VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

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| planning and environment LIST | | vcat reference No. P454/2021  Planning Application No GE/DP-33820/2020 |
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| APPLICANT | Benewer (Aust) Pty Ltd | |
| responsible authority | Glen Eira City Council | |
| RESPONDENTs | Christopher R Knight AND Others and Yvonne Lane | |
| SUBJECT LAND | 99 Brewer Road  BENTLEIGH VIC 3204 | |
| WHERE HELD | Melbourne | |
| BEFORE | Nicholas Hadjigeorgiou, Member | |
| HEARING TYPE | Compulsory conference | |
| DATE OF HEARING | 7 July 2021 | |
| DATE OF ORDER | 1 September 2021 | |

# Order

### Amend application

1. Pursuant to clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998*, the permit application GE/DP-33820/2020 is amended by;-
2. Deleting the following permit trigger;-

Use of land as a restricted recreational facility(gym) pursuant to clause 33.01-1 of the Glen Eira Planning Scheme.

1. substituting for the permit application plans, the following plans filed with the Tribunal:

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| * Prepared by: | MJA Studio |
| * Drawing numbers: | DA1.00 (Rev D), DA1.01 (Rev C), DA1.02 (Rev H), DA1.03 (Rev H), DA1.04 (Rev F), DA1.05 (Rev G), DA1.06 (Rev G), DA1.07 (Rev G), DA2.01 (Rev J), DA2.02 (Rev G), DA2.03 (Rev G), DA2.04 (Rev G), DA3.01 (Rev F), DA3.02 (Rev F), DA4.01 (Rev C) and DA5.01 (Rev C) |
| * Dated: | 10 August 2021 |

1. In application P454/2021 the decision of the responsible authority is set aside.
2. In planning permit application GE/DP-33820/2020 a permit is granted and directed to be issued for the land at 99 Brewer Road, Bentleigh, in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:

* Demolition of the existing building construction of a four storey building and associated works, use of the land for a medical centre, childcare centre and food and drink premises, reduction in the carparking requirements and display of business identification signage on the land and affected by a Heritage Overlay.

1. The hearing scheduled to commence on 4 October 2021 for 3 days is vacated.
2. No order as to costs.

**Nicholas Hadjigeorgiou**

**Member**

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# APPEARANCES

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| For applicant | Kim Piskuvic, solicitor, Sam D’amico Town Planner, Chris Dwyer Architect, Michael Teimens and Derek Klau of Benewer (Aust) P/L |
| For responsible Authority | Kristian Cook and Michael Dowel, Town Planners (and Isabel Kirkman, observer) |
| For respondents | Christopher R Knight and Yvonne Lane in person.(no appearance by Sharon Wood). |

# remarks

### Full settlement

1. This matter involves an application pursuant to section 77 of the *Planning and Environment Act 1987* for a review of the Glen Eira City Council to refuse the grant of a permit for four storey mixed use building .
2. At the compulsory conference, the parties reached agreement and request orders by consent subject to the confirmation of the responsible authority acceptance of the settlement agreement. The parties requested that the Tribunal set aside the responsible authority decision and direct the grant of a Permit subject to conditions.
3. This order is made at the request of the parties and with their consent as an outcome of a compulsory conference.
4. The Tribunal regards the consent of the responsible authority to be a confirmation to the Tribunal that:

* the responsible authority is of the opinion that the permit is appropriate having regard to the matters it is required to consider under section 60 of the *Planning and Environment Act 1987* (**Act**), including the balanced application of the strategies and policies of the Glen Eira Planning Scheme (**Planning Scheme**) and is otherwise in conformity with the provisions of the Planning Scheme and the Act;
* the proposed orders will not result in any change to the proposed use/development which would materially affect any person other than the parties to the proceeding.

1. Based on the information available to the Tribunal, I consider it is appropriate to give effect to the settlement reached by the parties pursuant to section 93(1) of the *Victorian Civil and Administrative Tribunal Act 1998*.

**Nicholas Hadjigeorgiou**

**Member**

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# APPENDIX A

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| **PERMIT APPLICATION NO:** | GE/DP-33820/2020 |
| **LAND:** | 99 Brewer Road  BENTLEIGH VIC 3204 |
| **WHAT THE PERMIT ALLOWS:** | |
| * Demolition of the existing building construction of a four storey building and associated works, use of the land for a medical centre, childcare centre and food and drink premises, reduction in the carparking requirements and display of business identification signage on the land and affected by a Heritage Overlay.   in accordance with the endorsed plans. | |

# conditions

Amended plans

1. Before the development starts, amended and additional plans to the satisfaction of the Responsible Authority must be submitted to, and approved by, the Responsible Authority. The plans must be drawn to scale with dimensions and must generally accord with the plans identified as DA1.00 (Rev D), DA1.01 (Rev C), DA1.02 (Rev H), DA1.03 (Rev H), DA1.04 (Rev F), DA1.05 (Rev G), DA1.06 (Rev G), DA1.07 (Rev G), DA2.01 (Rev J), DA2.02 (Rev G), DA2.03 (Rev G), DA2.04 (Rev G), DA3.01 (Rev F), DA3.02 (Rev F), DA4.01 (Rev C) and DA5.01 (Rev C) all prepared by MJA Studio and all dated 10 August 2021 but modified to show:

*Built form changes*

1. Colour details to be shown on the signage schedule with muted tones used in accordance that shown in the 3D renders in the Urban Context Report prepared by MJA Studio, Rev. C and dated July 2021;
2. Acoustic screening details in accordance with the recommendations within the report prepared by Octave Acoustics dated 4 September 2020;
3. All floor plans to have setback dimensions for the walls and balconies to their respective boundaries;
4. The locations of all site services along the Brewer Road and Bendigo Avenue frontages. An enlarged elevation (scale 1:20) of these services that includes the design, materials and dimensions of all service provisions and that they are integrated into the development;

*Traffic and car parking*

1. The location of the pick-up/drop-off location annotated for the childcare centre;
2. Sectional diagrams demonstrating the height clearances for car space numbers 28 and 29;
3. Dimensions and the locations of the columns within the basement in accordance with Design Standard 2 of Clause 52.06-9 of the Glen Eira Planning Scheme;
4. Sectional diagrams of all vehicle ramps and fully dimensioned in accordance with Figure 2.8 of AS2890.1:2004;
5. An on-site loading bay to be notated;
6. Signage identifying which car spaces are available for the child care centre during drop-off and pick-up times;
7. Dimensions and clearances of the bike spaces; and

*Other plan requirements*

1. A landscape plan in accordance with Condition 3.
2. The layout of the uses and the development as shown on the endorsed plans, including the location and details of the signs must not be altered or modified (unless the Glen Eira Planning Scheme specifies a permit is not required) without the prior written consent of the Responsible Authority.

Landscaping plan

1. Before the development starts, landscape plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved the plans will be endorsed and will then form part of the permit. The landscape plan must be prepared by a person suitably qualified or experienced in landscape design and must be drawn to scale with dimensions. All species selected must be to the satisfaction of the Responsible Authority. The landscape plan must generally in accordance with the landscape plans submitted with the application and identified as TP01 to TP04, dated 20 August 2020 and prepared by John Patrick Landscape Architects Pty Ltd, but modified to show:
2. any changes resulting from the amended plans endorsed under condition 1;
3. tree species nominated and planted as a row within the northern setback;



1. plant species for planter boxes shown on the plans endorsed under condition 1.

Completion of landscaping

1. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, the landscaping works shown on the endorsed Landscaping Plan must be carried out and completed to the satisfaction of the Responsible Authority.

Landscaping Maintenance

1. The landscaping shown on the endorsed Landscaping Plan must be maintained to the satisfaction of the Responsible Authority including by:
2. Implementing and complying with the provisions, recommendations and requirements of the endorsed landscape plan.
3. Not using the areas set aside on the endorsed landscape plan for landscaping for any other purpose.
4. Replacing any dead, diseased, dying or damaged plants.

Public art

1. Before the development starts, details of the public art and sculpture identified on the western elevation, including the design, dimensions, colour and materials must be submitted to and approved by the Responsible Authority. When approved the document will be endorsed and will then form part of the permit.

Hours of operation

1. The uses must only operate between the following hours

*Medical centre*

1. 9am to 9pm, Monday to Friday; and
2. 8am to 5pm on Saturdays.

*Food and drink premises*

1. 8am to 5pm, 7 days a week.

*Child care centre*

1. 6.30am to 6.30pm, Monday to Friday; and
2. The outdoor play areas must not be used by children before 9am.

except with the prior written consent of the Responsible Authority.

Number of practitioners



1. No more than 19 practitioners may be present on the land for the purpose of providing health services as part of the medical centre uses, except with the prior written consent of the Responsible Authority.

Children numbers

1. No more than 120 children may be present on the land at any one time for the child care centre use, except with the prior written consent of the Responsible Authority.

Acoustic requirements

1. The acoustic report, prepared by Octave Acoustics and dated 4 September 2020 is to be endorsed as part of the permit. The provisions, recommendations and requirements of the endorsed Acoustic Report, must be implemented and complied with to the satisfaction of the Responsible Authority and must not be varied except with the written approval of the Responsible Authority.
2. Before the development is completed, all acoustic screening shown on the endorsed plans must be erected and thereafter maintained in accordance with the endorsed plans and acoustic report. The screening measures as shown on the endorsed plans and acoustic report are not to be altered or removed without the written consent of the Responsible Authority.
3. Within two months of all of the uses starting, a further Acoustic Report prepared by an acoustic engineer must be submitted to the Responsible Authority to its satisfaction. The further report must detail whether the noise levels associated with the uses are in accordance with the requirements of the endorsed Acoustic Report at Condition 10 during a time where the children are using the outdoor balconies during a peak time of operation. If the noise levels exceed those specified in the endorsed Acoustic Report at Condition 10, the report must outline a program or measures to ameliorate or attenuate noise to ensure that the levels are met, to the satisfaction of the Responsible Authority. The uses must not continue until such time that the attenuation measures have been implemented to the satisfaction of the Responsible Authority.
4. Noise levels to and from the development and use must not exceed those required to be met under the *Environment Protection Regulations* 2021 and EPA Publication 1826.4 *Noise limit and assessment protocol for the control of noise from commercial, industrial and trade premises and entertainment venues*, or any other equivalent or applicable State or relevant policy and should meet accepted sleep disturbance criteria EPA Publication 1254.2 and any other relevant guideline or Australian Standard.

Management plans

1. Before the development starts, a Waste Management Plan (WMP) to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit. The WMP must be generally in accordance with the Waste Management Plan prepared by Ratio and dated 3 September 2020, but modified to show:



1. An on-site loading bay for the waste collection truck.
2. The provisions, recommendations and requirements of the endorsed Waste Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority and must not be varied except with the written approval of the Responsible Authority.
3. Before the development starts, including any demolition and excavation, a Construction Management Plan (CMP) to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit. The CMP must show:
4. Delivery and unloading points and expected frequency;
5. Truck haulage routes, circulation spaces and queuing lanes;
6. Details how traffic and safe pedestrian access will be managed. These must be in the form of a Traffic Management Plan designed by a suitably qualified traffic practitioner;
7. A liaison officer for contact by owners / residents and the Responsible Authority in the event of relevant queries or problems experienced;
8. An outline of requests to occupy public footpaths or roads, or anticipated disruptions to local services;
9. Any requirements outlined within this permit as required by the relevant referral authorities:
   * + 1. Hours for construction activity must only occur within the following hours: 7am to 6pm – Monday to Friday;
       2. 7am to 1pm – Saturdays;
       3. No construction on Sundays or public holidays;
10. Measures to control noise, dust, water and sediment laden runoff;
11. Measures to ensure that subcontractors/tradespersons operating on the site are aware of the contents of the CMP;
12. Any construction lighting to be baffled to minimise intrusion on adjoining lots.
13. All construction (including demolition and excavation) must be carried out and complied with in accordance with the approved Construction Management Plan to the satisfaction of the Responsible Authority and must not be varied except with the written approval of the Responsible Authority.

Car Parking and Bicycle Parking Management Plan

1. Before the development is occupied, a Car Parking and Bicycle Parking Management Plan (CPBPMP) to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved the CPBPMP will be endorsed and will then form part of the permit. The CPBPMP must be drawn to scale and dimensioned. The plan must include:
2. The allocation of car spaces to each use within the development as follows:

(i) 23 car spaces for the medical centre;

(ii)13 spaces for the child care centre parents/guardians/waste collection;

(iii)13 spaces for the child care centre staff;

(iv) 2 spaces for the food and drink premises (café) staff.

1. Measures to enable the sharing of car spaces allocated to the child care centre parents/guardians by the medical centre outside of child care centre drop off/pick up times;
2. The number and location of the car spaces in the car park;
3. Barrier mechanisms;
4. Bicycle parking facilities including end of trip facilities and public access arrangements;
5. An internal signage plan for the commercial carpark including directional arrows and signage, informative signs indicating location of disabled bays, small parking bays, bicycle parking, exits, restrictions, pay parking system etc;
6. Details of way finding, cleaning, security of end of trip bicycle facilities; and
7. Any policing arrangements and/or formal agreements.

Car parking

1. Before the building occupied, the areas set aside for the parking of vehicles and access lanes as shown on the endorsed plans must be:
2. fully constructed
3. properly formed to such levels that may be used in accordance with the plans
4. surfaced with an all weather surface or seal coat (as appropriate)
5. drained and maintained in a continuously usable condition
6. line marked to indicate each car space, loading bay and/or access lane
7. clearly marked to show the direction of traffic along access lanes and driveways

all to the satisfaction of the Responsible Authority.

Vehicular crossings

1. Before the building is occupied, vehicular crossings must be constructed to the road to suit the proposed driveways to the satisfaction of the Responsible Authority and any existing vehicle crossing or crossing opening must be removed and replaced with footpath, naturestrip and kerb and channel to the satisfaction of the Responsible Authority.

Public Services

1. Any modification to existing infrastructure and services within the road reserve (including, but not limited to electricity supply, telecommunications services, gas supply, water supply, sewerage services and stormwater drainage) necessary to provide the required access to the site, must be undertaken by the permit holder to the satisfaction of the relevant authority. All expenses to undertake modification to infrastructure and services must be met by the owner of the land.

Construction over an easement

1. No buildings are to be constructed over or works undertaken under any easement or other area of land where there is a restriction (including sewers, drains, pipes, wires or cables) under the control of a public authority, except with the prior written consent of the relevant authority.

General amenity

1. The amenity of the area must not be adversely affected by the uses or development including through the:
2. transport of materials, goods or commodities to or from the land;
3. appearance of any building, works, stored goods or materials;
4. emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, wastewater, waste products, grit or oil;
5. Traffic generated by the use,

or in any other way, to the satisfaction of the Responsible Authority.

1. All security alarms or similar devices installed on the land must be of a silent type.
2. All outdoor lighting must be baffled and/or located to prevent light from the site causing detriment to the locality to the satisfaction of the Responsible Authority.
3. All pipes, fixtures, fittings and vents servicing the building must be concealed in service ducts or otherwise hidden from view to the satisfaction of the Responsible Authority.
4. No plant, equipment, services or architectural features other than those shown on the endorsed plans are permitted above the roof level of the buildings without the prior written consent of the Responsible Authority.



1. Before the building is occupied, the walls on the boundary of the adjoining property must be cleaned and finished in a manner to the satisfaction of the Responsible Authority. Painted or bagged walls must be finished to a uniform standard and unpainted or unrendered walls must have all excess mortar removed.

Environmental assessment

1. Before the development starts (other than for necessary demolition and investigation works forming part of the environmental site assessment process), a Preliminary Risk Screen Assessment Statement to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The Preliminary Risk Screen Assessment Statement must be prepared by a suitably qualified environmental professional in accordance with the *Potentially Contaminated Land General Practice Note* (Department of Environment, Land, Water and Planning, July 2021). The report must include recommendations as to whether the condition of the land requires an Environmental Audit to be conducted taking into account the proposed uses. The permit holder must comply with the findings of the Preliminary Risk Screen Assessment Statement to the satisfaction of the Responsible Authority, including if required the preparation of an Environmental Audit.
2. If, in accordance with Condition 29, an Environmental Audit is required, then before the development starts (other than for necessary excavation, demolition and investigation works), an Environmental Audit must be undertaken pursuant to section 208 of the *Environment Protection Act 2017* and an Environmental Audit Statement prepared and provided to the Responsible Authority.
3. Where an Environmental Audit Statement is issued for the land in accordance with Condition 29:
4. The buildings and works and the uses of the land that are the subject of this permit must comply with all directions and conditions contained within the Statement to the satisfaction of the Responsible Authority;
5. Before the use or development starts (other than for necessary excavation, demolition and excavation works) and before the issue of an Occupancy Permit under the *Building Act 1993*, a letter prepared by an Environmental Auditor appointed under Division 1 of Part 8.3 of the *Environment Protection Act 2017* must be submitted to the Responsible Authority to verify the directions and conditions contained in the Environmental Audit Statement are satisfied; and
6. Where any condition of that Statement requires any maintenance or monitoring of an ongoing nature, the Owner must enter into an Agreement with Council under section 173 of the *Planning and Environment Act 1987*. Where a section 173 Agreement is required, the Agreement must be executed before the development starts. All expenses involved in the drafting, negotiating, reviewing, lodging, registering and execution of the Agreement, including those incurred by the Responsible Authority, must be met by the Owner.

Signage



1. The signs must be constructed and maintained to the satisfaction of the Responsible Authority.
2. All business identification signage must not be externally illuminated.

Permit expiry

1. This permit will expire if one of the following circumstances applies:
2. The development is not started within three years of the date of this permit.
3. The development is not completed within five years of the date of this permit.
4. The use is not started within five years of the date of this permit.
5. The use is discontinued for a period of two years.

The Responsible Authority may extend the permit if a request is made in writing in accordance with Section 69 of *Planning and Environment Act* 1987.

1. The permit as it relates to the display of signs will expire fifteen years from the date on which the use commences, at which stage all signs and structures built specifically to support and illuminate the signs must be permanently removed from the land.

**---** **End of Conditions** ---