

6 Ordinary Business

6.1 Town Planning Reports

6.1.1 Officer Major Activity Centre Urban Design Framework VCAT order

Responsible GM: Lili Rosic
Author: Livia Baranyay and Marcelle Bell

Recommendation(s)

That Council authorise the Manager of Planning and Design to instruct Council's Planning Strategy and Urban Design staff and/or Council Solicitors on any application for review at the Victorian Civil and Administrative Tribunal relating to Officer's Major Activity Centre Urban Design Framework

Attachments

1 – Grounds of Review (2.1.1 – 3 pages)

Executive Summary

On the 26 March 2024, Council received an order from the Victorian Civil Administrative Tribunal for the Grounds of Review under Section 149 (1) of the Planning and Environment Act for Officer's Major Activity Centre Urban Design Framework. The Applicant, Officer Holdings (Vic) Pty Ltd, located at 67 Officer South Road is seeking changes to the Council's endorsed Officer Major Activity Centre Urban Design Framework.

The Applicant is seeking changes to Officer's Urban Design Framework to recognise residential development is not prohibited and can be considered within a 'Local Business' sub-precinct depicted in Officer's Precinct Structure Plan (PSP). The Applicant also alleges the Urban Design Framework fails to recognise the full range of uses appropriate for the Core sub-precinct.

Council and Victorian Planning Authority staff do not consider the present Urban Design Framework prohibits residential development in the Local Business sub-precinct or conflict with the Urban Growth Zone. Nonetheless, Council staff are open to discussing this matter raised by the Applicant to determine if any changes are possible with a view to avoiding the need to proceed to a Victorian Civil Administrative Tribunal hearing.

This matter will be considered at a future Compulsory Conference and/or a Victorian Civil Administrative Tribunal hearing. Staff authorisation to act on Council's behalf is requested to ensure a decision at the Victorian Civil Administrative Tribunal can be made.

Background

Council in collaboration with the Victorian Planning Authority endorsed Officer's Major Activity Centre Urban Design Framework at a Council Meeting on 19th February 2024.

On the 26 March 2024 Council received from the Victorian Civil Administrative Tribunal, an order for the review of Officer's Major Activity Centre Urban Design Framework, as per Attachment 1.

The application is seeking the following:

1. *That the Officer Major Activity Centre Urban Design Framework be amended to be consistent with the Officer Precinct Structure Plan and Urban Growth Zone, Schedule 4, by expressly recognising the appropriateness of residential / mixed-use development in the Local Business sub-precinct and the range of appropriate uses in the Core sub-precinct; or*
2. *A declaration pursuant to s 124 of the Victorian Civil and Administrative Tribunal Act 1998 that Officer UDF is invalid because it is inconsistent with the PSP.*

In summary the Applicant's grounds are:

The approved Officer Major Activity Centre Urban Design Framework is inconsistent with the Officer Precinct Structure Plan and Urban Growth Zone, Schedule 4 in that it fails to recognise, and could be interpreted as prohibiting, residential development in the Local Business sub precinct and the full range of uses recognised as appropriate for the Core sub-precinct in the PSP.

Council staff do not consider the present Urban Design Framework prohibits residential development in the Local Business sub-precinct or conflict with the Urban Growth Zone. Nonetheless, Council staff are open to discussing this matter raised by the Applicant to determine if any changes are possible with a view to avoiding the need to proceed to a Victorian Civil Administrative Tribunal hearing.

On the 3 May 2024 a Practise Day Hearing was conducted and representatives for the Applicant, Victorian Planning Authority and Council were present.

Under the Planning and Environment Act 1987, a decision of the responsible authority can be reviewed under Section 149(1a-1d) of the Act in relation an approved document.

Senior Member Dhojan wasn't entirely convinced that Section 149(1) of the Planning and Environment Act is the correct provision to be relied on for this application, stating that in her view it was not clear that the Urban Growth Zone (Schedule 4) schedule requires the Urban Design Framework to be 'prepared to the satisfaction of Council and Victorian Planning Authority' and therefore the Tribunal does not have jurisdiction under Section 149(1). Senior Member (SM) Dhojan indicated that she thought Section 149B of the Planning and Environment Act would be a more appropriate avenue for review.

The parties made their submissions, consistent with the written submissions filed last week, being that Section 149(1) is the correct provision, based on the wording of the Urban Growth Zone (Schedule 4). Mr Watters acting on behalf of the Applicant took the Tribunal through the Applicant's rationale for relying on Section 149(1)(a) in detail.

SM Dhojan reserved her decision, noting that there are a few possible outcomes:

- The matter could be set down for preliminary hearing to determine whether s149(1) is the correct provision; or
- The matter could be determined on the material presented at the Practise Day Hearing. In other words, the Senior Member would either allow the application to proceed under Section 149(1) and set the matter down for a Compulsory Conference and hearing or find that the matter has been filed under the wrong provision and invite the Applicant to amend its application to be brought under Section 149B.

Council staff will learn of the outcome from the Victorian Civil Administrative Tribunal Order soon.

Policy Implications

Any proposed change to the Officer's Major Activity Centre Urban Design Framework Officer will require to be policy neutral or minor and be agreed to for the purpose of clarity by Council and the

Victorian Planning Authority staff. No changes are proposed to Cardinia's Planning Scheme, Urban Growth Zone or Officer's Precinct Structure Plan.

Relevance to Council Plan

5.1 We practise responsible leadership

5.1.4 Maximise value for our community through efficient service delivery, innovation, strategic partnerships and advocacy.

Climate Emergency Consideration

No climate emergency considerations are relevant to these processes.

Consultation/Communication

Council staff and Council's lawyers have been in communication with the Applicant and will continue discussions leading up to Victorian Civil Administrative Tribunal proceedings.

Financial and Resource Implications

The financial and resource implications for this matter will be undertaken as part of the Department's operational budget.

Conclusion

Based on above report it is recommended that:

- a. That Council authorise the Manager of Planning and Design to instruct Council's Planning Strategy and Urban Design staff and/or Council Solicitors on any application for review at the Victorian Civil and Administrative Tribunal relating to Officer's Major Activity Centre Urban Design Framework.

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P310/2024
PERMIT APPLICATION NO. T220531 PA

APPLICANT	Officer Holdings (VIC) Pty Ltd (ACN 633 421 459)
RELEVANT AUTHORITIES	Cardinia Shire Council Victorian Planning Authority
SUBJECT LAND	67 Officer South Road OFFICER VIC 3809
DATE OF ORDER	26 March 2024

ORDER

- This application is listed for a practice day hearing as detailed below.
The hearing will be at 55 King Street, Melbourne.
If there is any change to these details, the Tribunal will notify you.

Practice Day Hearing:	
Date	3 May 2024
Start time	For details of the start time, please refer to the Tribunal's website (www.vcat.vic.gov.au/todays-hearings) after 5.00pm on the day before the hearing
Duration	1 hour
Conduct	Online Platform

The details of the online platform will be provided to the parties before the hearing.

- The purpose of the practice day hearing is:
 - to consider if the application made under Section 149(1)(a) is made under the correct provision of the *Planning and Environment Act 1987* or if leave should be granted to amend the application to apply under a different provision;
 - to consider the future conduct of the proceeding. This may include a consideration of dates, duration, compulsory conference and/or venue.
- Parties must attend the practice day hearing with the following information:
 - details of any other applications at the Tribunal that are related to this application;



- submissions, including any supporting evidence and documents, relating to the specific purpose of the practice day hearing (where relevant);
- if any party is seeking procedural directions, a copy of the directions sought.
- a draft of terms of settlement, if the matter is likely to be settled by consent on the day.

What the applicant must do

- 4 By **Thursday 4 April 2024**, the applicant must give the following documents to the responsible authority and the Victorian Planning Authority:
- a copy of the application and all attachments; and
 - any other material given to the Tribunal; and
 - a copy of this order.

Submissions for the applicant for review for the practice day hearing

- 5 No later than **10 business days** prior to the practice day hearing, the applicant for review must provide an electronic copy of their submissions addressing the specific purpose/s of the practice day hearing set out in this order, together with copies of any associated material sought to be relied upon during the practice day hearing (such as supporting documentation, case law and photographs) to the Tribunal and all parties. The copy for the Tribunal must be sent to admin@vcat.vic.gov.au.

Submissions for all other parties to the proceeding for the practice day hearing

- 6 No later than **5 business days** prior to the practice day hearing, any other party to the proceeding must file submissions in reply to the submissions of the applicant for review, and addressing the specific purpose/s of the practice day hearing set out in this order, together with copies of any associated material sought to be relied upon during the practice day hearing (such as supporting documentation, case law and photographs) to the Tribunal and all parties. The copy for the Tribunal must be sent to admin@vcat.vic.gov.au.

Dalia Cook
Member

HELP AND SUPPORT

Information for all parties is available at the Tribunal's website
www.vcat.vic.gov.au

For information about what happens after you make your application, visit
www.vcat.vic.gov.au/afterapplyplanning

For information about responding to an application visit
www.vcat.vic.gov.au/respondplanning

If you are not able to access the website, contact the Tribunal on 1300 01 8228
Monday to Friday 9.00am to 4.30pm to request a paper copy.

To find out about the Tribunal's support services such as interpreters, disability
support and security, visit www.vcat.vic.gov.au/support