



**Special Meeting of Council
12 October 2010**

Notice Paper

For a Special Meeting of

Bayside City Council

Tuesday 12 October 2010

at 7.00pm

**Council Chamber
Civic Centre
Brighton**

In accordance with Section 84 of the Local Government Act 1989, a **Special Meeting of Bayside City Council** will be held in the **Council Chambers, Civic Centre, Brighton on Tuesday 12 October 2010 at 7.00pm** for the purpose of transacting the following business:

BUSINESS OF MEETING

Apologies

Declaration of Interests

- Item 1. Consideration of an Application to Amend a Permit pursuant to Section 87A of the Planning and Environment Act 1987 – 21-25 Wilson Street Brighton (Khyat’s Hotel)**

Adrian Robb
Chief Executive Officer

7 October 2010



Item 1. Consideration of an Application to Amend a Permit pursuant to Section 87A of the Planning and Environment Act 1987 – 21-25 Wilson Street Brighton (Khyat's Hotel)

City Strategy / Statutory Planning
COR 1797

Application Details

Land/Address:	21- 25 Wilson Street, Brighton
Application is for:	Application to Amend a Permit pursuant to Section 87A of the <i>Planning & Environment Act 1987</i>
Melway Reference:	67 F11
Ward:	Northern
Application Number:	2000/6179/1
Applicant's/Owner's Name:	Minawood Pty. Ltd C/- SJB Planning
Date Received:	28 September 2010
Zoning:	Residential 1 Zone
Overlays:	Design and Development Overlay Schedule 2
Under what clause(s) is a permit required?	Clause 32.01-4 – Construction of two or more dwellings on a lot
Restrictive covenants on the title?	No
Current use and development:	Khyat's Hotel – 21 dwellings under construction
Submissions:	Nil

BACKGROUND

This application has been made pursuant to Section 87A of the Planning and Environment Act 1987. The Tribunal has advised that this application has been placed on the Major Cases List and allocated the following hearing dates:

Practice Day Hearing	15 October 2010
Mediation	3 December 2010
Final Hearing	17 January 2011

The permit applicant has advised Council they will be seeking a Prompt and Final Hearing at the Practice Day Hearing on 15 October 2010.

Accordingly, Council's representatives at the Practice Day must be able to advise the Tribunal of Council's position on the application should the Tribunal direct that the matter proceed to an immediate Prompt and Final Hearing on the 15 October 2010.

Officers have already advised the Tribunal as part of the Practice Note material provided to the Tribunal that Council considers that this application requires public notification to occur, as has been conducted for previous applications on this site.

PROPOSITION

It is recommended that Council:

- A. Advise the Tribunal that public notification of the application should be directed by the Tribunal as has been conducted for previous applications on this site.
- B. Support the application.

PROPOSAL

On 28 September 2010 the Applicant lodged an Application with the Victorian Civil and Administrative Tribunal (VCAT) to Amend Planning Permit No 2000/6179/1 pursuant to Section 87A of the *Planning and Environment Act 1987*.

Planning Permit No 2000/6179/1 was issued at the direction of VCAT on 30 October 2000 for the development of 21 dwellings with associated car parking, and the retention of the Khyats Hotel building and bar use and a caretakers dwelling.

This current Application seeks to retain the hotel building and its external form, but make alterations to the internal arrangement which will result in an overall increase of four apartments within the existing Hotel building (two apartments on the ground floor and two apartments at first floor level).

This is in contrast to the previous 87A Application to the Tribunal (P919/2010) in which the applicant sought approval to convert the first floor into two apartments and to construct a third storey above the Hotel building to accommodate a further apartment. This application was not supported by Council and was also refused by VCAT.

This application is also in contrast to the previous 2008 Application to the Tribunal (P1629/2008) to Amend the Permit and Plans which proposed the demolition of most of the original hotel fabric and the cessation of the hotel use. This 2008 application was not supported by Council and was also refused by VCAT.

Details of the proposed amendments to the endorsed plans are as follows:

Basement:

- Reconfiguration of the southwest corner of the basement car park in order to replace four tandem car parking spaces with four independently accessible spaces.
- Removal of a previous access to the existing hotel building from the car park.
- Relocation of the rubbish bin storage area.

Ground Floor:

- Conversion of the existing hotel into two, two bedroom apartments.
- The four existing openings along the Wilson Street facade will be retained (including glazing).
- Construction of a fenced courtyard adjoining the new Apartment 22 and extension of the existing pergola.
- Construction of a new hallway link between the apartment building and the hotel building.

First Floor:

- Conversion of the existing ancillary hotel spaces to two, two bedroom apartments.
- Construction of a new hallway link between the apartment building and the hotel building with a consequential modification to the roofing behind the existing pitched portion of roofing.
- Extension of the existing rear window – all other existing first floor openings will be retained in an unaltered form.
- Both dwellings would be served by a ‘winter garden’ style balcony each measuring at least 9.8 square metres.

AMENDMENTS TO PLANNING PERMIT NO. 2000/6179/1

The above changes will require the following amendments to the permit:

- A change to what the permit allows, to include the four (4) additional apartments
- Changes to condition 1 to refer to the amended drawings.

SUBJECT SITE & LOCALITY

An inspection of the site and the surrounding area has been undertaken.

The site is located on the northern side of Wilson Street, abutting the (former) Brighton Police Station and is opposite the Brighton Town Hall and Brighton Council Chambers. The site is generally rectangular in shape, has a frontage of 40.5 metres, a depth of 52 metres and a total area of 2,377 square metres.

Works, as approved under Planning Permit No. 2000/6179/1, are well underway. This approval retains the Khyat’s Hotel building, which is a substantial double storey building containing the following:

- Public bar, Saloon Bar and Pool room on the ground floor
- Kitchen, office, meeting room, storeroom, bathroom and caretakers residence/meeting on the first floor

The main site/locality characteristics are:

- Immediately abutting the south-east of the site is the former Brighton Police Station which is located on the corner of Wilson and Carpenter Streets.
- To the north-west of the site is No 19 Wilson Street which comprises of two (2) single storey attached dwellings.
- To the north-east are detached dwellings fronting on to Collins Street or Carpenter Street (recent Notice of Decision to Grant a Planning Permit for the construction of 5 double storey townhouses at Nos 81-83 Carpenter Street).
- To the south, (across Wilson Street), is the Brighton Town Hall, Municipal offices, library and public car park

The buildings (police station, town hall, council chambers, court house, library and St Cuthbert’s church) immediately surrounding the subject site make up the City’s Civic Precinct. The ‘hotel’ makes a valuable contribution as an integral part of this association with the city’s social and cultural heritage. The City of Bayside Inter-War & Post-War Heritage Study notes that *‘With many of the district’s early hotels conspicuously sited on major thoroughfares, the present example stands out for its relatively isolated location, on the edge of a government precinct that would later include town hall, police station and law courts’*.

PERMIT/SITE HISTORY

Council refused Planning Permit No. 2000/6179/1, which was later issued at the direction of VCAT on the 30 October 2000, for the development of 21 dwellings and associated car parking.

Council endorsed the condition 1 plans on 13 August 2002.

The planning permit allows for redevelopment of the land whilst retaining the original hotel building (including bar use on the ground floor and the office and caretaker's flat on the first floor), demolition of the balance of the hotel, and the construction (over the hotel's car park and outbuilding areas) of 21 apartments. A basement car park will provide 52 car spaces for the use of the apartment residents and for hotel staff. No on-site car parking has been provided for the patrons of the hotel. The approved apartment building is 3 storeys in height.

The time to commence and to complete the development approved under this permit has been extended, allowing the use and development to commence by 25 March 2010 and to be completed by 25 March 2012.

As the permit was issued by VCAT, any proposal to vary the approved development or to amend the permit must be dealt with by VCAT.

In July 2008 an Application to Amend the Permit was lodged with the Tribunal. This application proposed the demolition of the hotel building, and the construction of a new building which no longer contained the hotel use, in order to develop an additional 5 apartments.

On 24 July 2008 Council resolved to seek authorisation from the Minister for Planning to prepare a planning scheme amendment under Section 8A(3) of the Planning and Environment Act 1987, to place 21-25 Wilson Street, Brighton, in a heritage overlay, and to introduce interim heritage controls. To date no interim heritage controls apply to the subject site.

The Application to Amend the Permit was advertised in accordance with the VCAT direction. In excess of 4,000 objections were received. Council did not support the application on 14 October 2008. On 25 March 2009 VCAT refused the amendment application.

In making its decision VCAT found that the cultural and social significance of the hotel 'use' was an overarching consideration and that buildings, which contribute to neighbourhood character, should be protected even if a Heritage Overlay does not cover them.

In March 2010 an Application to Amend a Permit was lodged with the Tribunal. This application proposed the conversion of the first floor into two apartments and the construction of a third storey to contain on further apartment. This application was not supported by Council and was refused by VCAT.

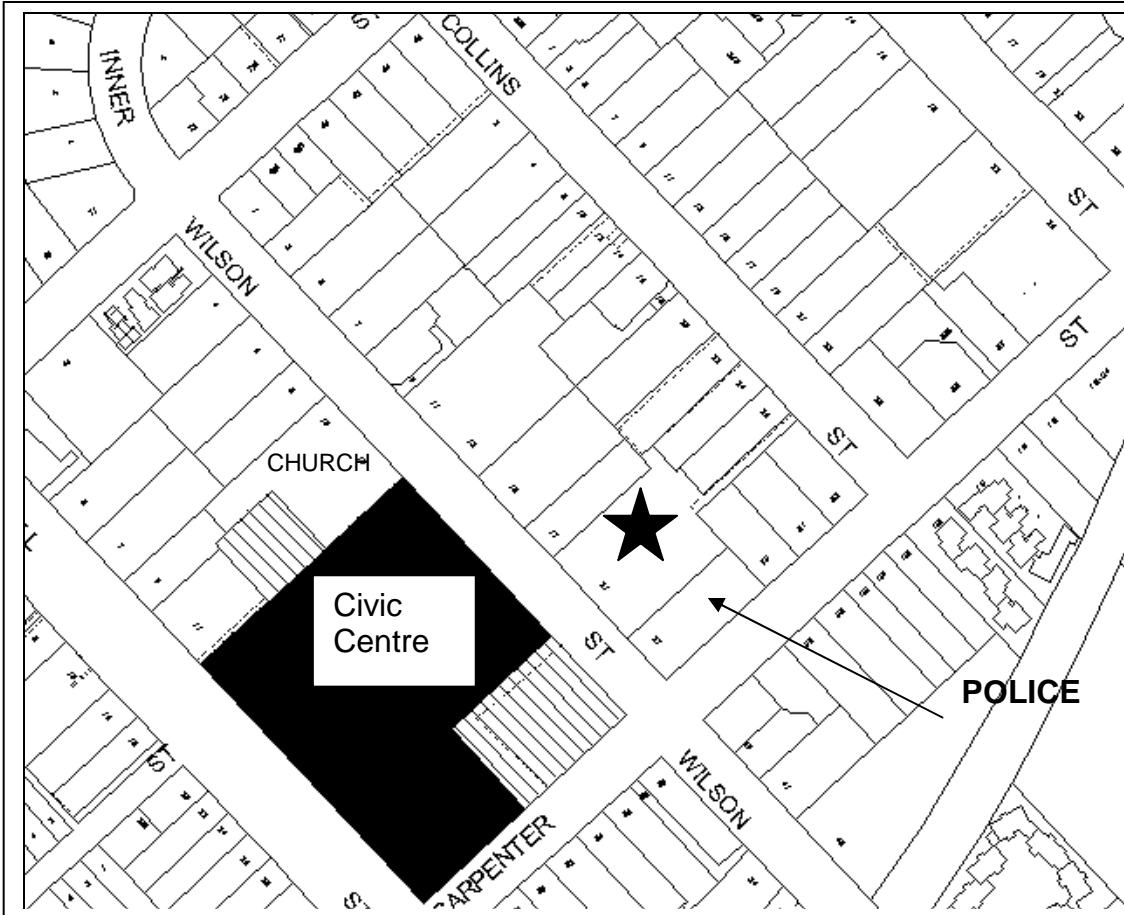
PUBLIC NOTIFICATION

Council has advised the Tribunal that it considers that this application should undergo public notification as have previous applications on this property, including:

- (a) *Serve a copy of the application on the current owners and occupiers of adjoining properties.*
- (b) *Publish a notice of the application on the land, on the Wilson Street frontage.*
- (c) *Notification to the participants of previous VCAT hearing for this property.*

The Tribunal has not responded to this request to date.

LOCALITY MAP



Legend	
Subject land	★

ASSESSMENT

Relevant Provisions of the Bayside Planning Scheme

State Planning Policies

- Clause 11 – Settlement – Planning is to anticipate and respond to the needs of existing and future communities through provision of zoned and serviced land for housing, employment, recreation and open space, commercial and community facilities and infrastructure.
- Clause 15 – Built Environment and Heritage – seeks to ensure that all new land use and development appropriately responds to its landscape, valued built form and cultural context, and protect places and sites with significant heritage, architectural, aesthetic, scientific and cultural value.
- Clause 15.01-1 – Urban Design – seeks to create urban environments that are safe, functional and provide good quality environments with a sense of place and cultural identity.

- Clause 15.01-5 – Cultural identity and neighbourhood character – seeks to recognise and protect cultural identity, neighbourhood character and sense of place. Strategies to ensure this include ensuring that development responds and contributes to existing sense of place and cultural identity and that development responds to its context and reinforces special characteristics of local environment and place but emphasising (as relevant) the heritage values and built form that reflect community identity and the values, needs and aspirations of the community.

Municipal Strategic Statement

- Clause 21.04-2 - Vision and Overarching goals - Aims to enrich a locality or village focus whilst encouraging new economic development that adds value to the economy of Bayside and builds on a collaborative approach to achieving the goals in the planning scheme. The design and image objectives aim to achieve high quality design and continually improve the image of land use and development in Bayside, which contributes to a sense of place appropriate to Bayside's character and maintains, strengthens and enhances local character.
- Clause 21.05 – Housing – seeks to accommodate increases in residential population levels and changing demographic profiles to provide greater certainty to both residents and developers in relation to the preferred future character of residential areas and areas that require special treatment or greater protection and to facilitate quality design outcomes which make a positive contribution to the character of residential areas.
- Clause 21.09 Heritage - To protect and enhance the City's buildings, trees and structures of cultural significance for present and future generations and to recognise the varying degrees to which individual buildings contribute to the significance of a heritage area.
- Clause 21.10 - Streetscape Design - Aims to protect and enhance the valued aspects of living, working and recreating in Bayside such as its cultural heritage and Bayside character, leafy streetscapes, artworks and vistas.

Local Planning Policies

- Clause 22.07-1 – Neighbourhood Character Policy - Aims to encourage development in the area that responds to the particular built form and natural environment elements that make up the neighbourhood character of Bayside.
- Clause 22.07-2 - Aims to ensure that development is responsive to the preferred future character of the area and to retain and enhance the identified elements that contribute to the character of the area.
- Clause 22.09 – Heritage Policy – Aims to conserve and enhance the cultural features of Bayside's heritage places to ensure that the form and appearance of any additions, alterations, or new development is complementary. The heritage policy objectives aim to promote design excellence which clearly and positively supports the ongoing significance of heritage places to ensure that new development in heritage precincts, including external additions and alterations, is respectful to the architectural, social and/or historic character of the precinct and makes a positive contribution to its built form and amenity. The policy also aims to ensure that non-contributory buildings in heritage precincts are developed in a manner that is sympathetic to, and does not detract from, the significance of the heritage precinct.

Zoning

- Residential 1 Zone – the purpose of the zone is to provide for residential development at a range of densities to meet the housing needs of all households, to encourage residential development that respects the neighbourhood character and in appropriate locations, to allow educational, recreational, religious, community and a limited range of other non-residential uses to serve the community.

Overlays

- Design and Development Overlay Schedule 2 – DDO2 – Building Height Control - Inland Areas aims to:
 - ❖ achieve architectural and urban design outcomes that contribute positively to local urban character and enhance the public realm while minimising detrimental impact on neighbouring properties;
 - ❖ to preserve the existing character and amenity of the areas as low rise (up to two storeys) suburban areas with a strong garden character
 - ❖ to maintain the prevailing streetscape rhythm, building scale and height of neighbourhoods
 - ❖ to maintain a strong landscape character with buildings set within vegetated surrounds

Particular Provisions

- Clause 55 - includes specific objectives and standards for residential development.
- Clause 52.06 - Car Parking - aims to ensure the provision of an appropriate number of car parking spaces having regard to the activities on the land and the nature of the locality, to ensure that the design and location of the car parking areas do not adversely affect the amenity of the locality and enables easy and efficient use.
- Clause 52.34 - Bicycle facilities - encourages cycling as a mode of transport and aims to provide secure, accessible and convenient parking spaces.
- Clause 65 - sets out decision guidelines for the responsible authority to consider in order to ensure acceptable outcomes in terms of State and Local Planning Policies.

SUMMARY OF KEY ISSUES

The following report presents an assessment and a comparison of the current Application to Amend the Permit with the previous application that was not supported by Council and was later refused by VCAT.

The granting of the original permit to allow the development of 21 apartments was considered to satisfy the metropolitan urban consolidation objectives as expressed in Clause 12 of the Bayside Planning Scheme and Council's Municipal Strategic Statement.

The original application to develop the hotel site was not required to consider the significant contribution that Khyats Hotel made to Bayside's civic precinct and to the Bayside community as the original hotel building, and hotel function was being retained.

In determining to not support the previous Application to Amend the Permit (which proposed demolition of the hotel building), Council considered that despite the fact that the site was not protected by a Heritage Overlay, the proposal to demolish the hotel and to replace the hotel use with only residential use (26 apartments instead of the previously approved 21) would negatively impact on the character of the local area and would sever the hotel's relationship and historic associations with the civic precinct.

Council also considered that this would not respect the high value that the Bayside community placed on the social and cultural significance of the place, noting that the original application to develop the hotel had not considered the significant contribution that Khyats Hotel made to Bayside's civic precinct and to the Bayside community as the hotel function was retained.

In its decision on the initial section 87A application to VCAT (P1629/2008) the Tribunal said:

[86] This case is not about protecting the use of Khyat's as a hotel. The permit does not relate to use and, in any event, could not compel the continuation of the existing use. Whilst it was an issue of concern to the many objectors, it is not a matter we can deal with, except to make the following observations.

[87] We recognise that even if the building form of Khyat's Hotel is retained, this will not necessarily guarantee its continued use as a Hotel. Nevertheless, if the built form is retained, there is a possibility that the use may continue and its social significance will be preserved. If the built form is retained and the use is changed, there will still be a vestige of the cultural identity of Khyat's left. But if the hotel is demolished, then its cultural identity and the sense of place created by it will be gone forever.

In a subsequent section 87A application to the Tribunal (P919/2010), in which it was proposed to retain the hotel use at ground floor, to develop the first floor for apartments and to construct a third level containing additional apartments, the Tribunal said:

[11] I consider that the alteration to the building's external appearance is so great that it will lose its recognisable form as a traditional 19th century hotel building and its public character will be largely obliterated. Its setback will not change but its physical form will in terms of the roof, the facade walls and the height of the building.

[18] In my view, the alterations to the Khyat's Hotel building proposed by the current amendment will be tantamount to demolishing it. Its recognisable character as a 19th century hotel will be lost. I accept and agree with the conclusion of Robyn Riddett that:

The alterations and additions as proposed will fundamentally, adversely and unacceptably alter the form of Khyats Hotel to the point where it will be barely recognisable as a 19th century hotel building, regardless of use in any point of time.

[19] As a result, I find that its cultural identity and its contribution to the sense of place, which existing in the Brighton civil precinct, will be lost.

The Tribunal continued and concluded that:

[23] I have reached a similar conclusion with respect to this latest proposal. I do not consider that the five additional units proposed in the current design configuration outweighs the loss of integrity of the existing hotel building and the contribution it makes to neighbourhood character and to the cultural heritage significance of the Brighton civil precinct.

[24] As the Tribunal acknowledged in the previous Minawood case, use is not the issue here even though a component of hotel use is proposed to be retained in the amended plans. The critical issue is the built form and, in particular, the proposed changes to the existing physical form and outline of the building. I find that the proposed built form is unacceptable for the reasons I set out above. This does not preclude use of part of the existing building for residential purposes, but whatever use the building is put to in the future, the balance of policy objectives identified by the Tribunal in Minawood should be retained.

[25] I conclude, as did the Tribunal in Minawood, that an appropriate balance involves retention of the remaining existing built form of the hotel in such a way that it can continue to be interpreted as a typical 19th century suburban hotel. The amendment fails to achieve this outcome and should therefore be refused.

The application which is currently before the Tribunal proposes modifications to the internal layout of the basement car park and the conversion of the ground and first floor of the Khyat's Hotel building into four apartments. The modifications which are proposed to take place would not structurally alter the existing openings along the Wilson Street facade (including glazing), with the only external modification being visible from Wilson Street being the construction of a wall to enclose the secluded open space for one apartments, and minor modifications to the link between the Hotel building and the new apartment complex, being located at the rear of the Hotel building.

It is considered that the proposed modifications succeed at retaining the remaining existing built form of the hotel in a way that will ensure that it is continued to be interpreted as a typical 19th century suburban hotel, irrespective of the uses which occur within.

Neighbourhood Character

In its determination of the application which proposed the demolition of the hotel building the Tribunal noted the following with regards to Neighbourhood Character:

The Brighton civic precinct has quite a different neighbourhood character to the rest of the residential component of Precinct B2. The neighbourhood character value of Khyats Hotel (or any replacement building) should not be judged by preference to the preferred future character for Precinct B2, but by reference to the character of the civic precinct itself and the fact the site is within a residential opportunity area.

The Tribunal stated that :

It is common ground that the hotel building itself is not significant on 'aesthetic' grounds. Rather, the hotel is significant in the hearts and minds of the community and for what it has provided in social terms for nearly 150 years inside its four walls, a meeting place and focus for community gatherings.

The hotels significance cannot be evoked simply by siting the new building on the boundary. Symbolically, retention of the existing external fabric, even with a different use, is necessary in order to salvage something of the place's significance.

In contrast to the recently refused Section 87A Application, this application proposes no external alterations to the hotel building which will be visible from Wilson Street. There is some modification of the existing roof proposed, but this is behind the ridgeline of the roof and is necessary to link the old hotel to the new residential building. The retention of the building accords with the neighbourhood character objectives that encourage the retention of dwellings (buildings) that contribute to the valued character of the Precinct and to respect the identified heritage qualities of adjoining buildings.

All heritage reports on the Khyat's hotel building have recognised that the building has undergone substantial modifications over time. Detailing to the eaves and roof has been undertaken, and also to window shapes and openings. Other minor additions and modifications have been undertaken throughout the years. The Khyats building is not a pristine façade that has remained intact since its original construction. Of significance for this building is not the detailing or built form, but the role that the hotel has played in the civic precinct, and this is what is considered to be of utmost importance to be preserved. This however, must not be at the total loss of the existing built form.

Accordingly, it is considered that the proposal to retain the 'hotel building and use' will respect the importance of the cultural contribution that the existing building makes to the valued character of the area and its contribution as an integral component of the civic precinct, and whilst modifications to the built form are proposed, they are not, in the whole, considered to be to the detriment of the remaining 'heritage' built form.

Heritage

At the Special Meeting of Council held on Thursday 24 July 2008 Council resolved to prepare an amendment to the Bayside Planning Scheme to include the property in the schedule to clause 43.01, Heritage Overlay, as an individual property. The Minister has not supported this request.

Council has also applied for precinct controls to protect not only the Khyats Hotel building but other buildings such as the police station, town hall and law courts. To date there has been no decision by the Minister in response to Council's request for authorisation to exhibit an amendment.

On the previous Section 87A Application Council's Heritage advisor noted that it was imperative that even though the approved development is underway, and the visual context of the hotel has been changed, that its *"presence has been somewhat lessened by new built form. Nevertheless it is still recognizable as a 19th century hotel and it is imperative that it remains so otherwise its contribution to cultural identity, sense of place in Brighton and its neighbourhood character will be irretrievably lost."*

With regard to the proposed modifications to the façade as previously proposed the Heritage Advisor made the following observation:

The first floor apartments are proposed to be set back behind the façade to provide a balcony. This will involve removal of the existing first floor windows that will leave voids in the façade. This will change the appearance of the building unacceptably as this approach does not respect the dominant building form i.e. an enclosed building and the cultural values which flow there from."

This revised proposal does not propose any modifications to the external façade of the hotel building, with all windows and doors to remain.

Private open space for proposed apartment 22 is to be provided within a courtyard adjacent to the existing hotel building, with a new fence to be provided for a short length along Wilson Street, wrapping around into the site and running parallel with the hotel building. Private open space for the remaining additional apartments is proposed to be provided in the form of winter balconies, and is considered to comply with the requirements of the Bayside Planning Scheme.

The increase in the number of apartments from the approved 21 to 25 is not considered to be either at odds with the previous VCAT determination nor the intent of the Bayside Planning Scheme. As recognized by the Tribunal there is no power to require continued operation of a hotel function on the site. The issue that this application raises is therefore related to the retention of the existing built form and provision of adequate parking and open space for additional apartments.

Concern has been raised to previous applications for amendment that the '4,300 objections to the previous application is testament to the strong community opposition to the demolition of the hotel'. This amended proposal however does not propose the demolition of the hotel building, but rather modification of the principal hotel building.

On balance it is considered that this current application will not compromise the integrity of the 'place' but will add further to the historic layers of the evolution of the hotel, and will demonstrate the evolutionary adaptation of the building, in response to the changing needs of the community.

Car Parking

It is proposed to provide an additional four (4) car parking spaces, one car space for each of the two bedroom apartments. The proposed car spaces comply with the car parking requirements of the Bayside Planning Scheme.

Overlooking

It is considered that the proposed additional apartments will not result in unreasonable overlooking of secluded private open space of adjoining properties nor or other dwellings within the complex.

Overshadowing

It is considered that there will be no unreasonable or additional overshadowing resulting from the proposed amendments to the plans, complying with the overshadowing requirements of Clause 55 Standard B21 of the Bayside Planning Scheme.

Open Space

Each of the proposed apartments will be provided with open space in either the form of a courtyard or 'wintergarden'. It is considered that the amount of open space provided accords with the private open space requirements of Clause 55 Standard B28 of the Bayside Planning Scheme.

CONCLUSION

The Tribunal in its 2009 determination found that the case was not about protecting the use of Khyat's as a hotel.

The current application now proposes the retention of the hotel's built form as viewed from Wilson Street, and whilst not retaining the hotel function which has been of significant concern for the community, it has been clearly expressed by the Tribunal that this is a matter that the owner cannot be compelled to continue with.

The hotel building will still, even with the proposed changes, be clearly recognisable as a hotel. The built form will continue to make a contribution to the precinct in which it is located, and responds appropriately to the context of the site in terms of urban character and cultural heritage associations.

It is therefore recommended that the Application to Amend the Permit and Plans be supported.

RECOMMENDATION

In relation to the application made to VCAT pursuant to Section 87A of the *Planning and Environment Act 1987* to Amend Planning Permit No. 2000/6179/1 and the plans endorsed under the permit, in respect of the land known and described as 21-25 Wilson Street, Brighton to allow for an additional four (4) apartments to be developed within the Khyats Hotel building envelope and associated works, that Council resolves to:

- A. Advise the Tribunal that public notification of the application should be directed by the Tribunal as has been conducted for previous applications on this site.
- B. Support the application.