



Planning Committee Agenda

For a meeting of the

Planning Committee

to be held in the Council Chambers, Civic Centre,
Boxshall Street, Brighton

on

Tuesday, 4 October 2011

Commencing at 7:00pm

Chairperson: Cr Louise Cooper-Shaw

Councillors: Cr Alex del Porto (Mayor)
Cr Felicity Frederico
Cr. Clifford Hayes
Cr. James Long BM, JP
Cr. Michael Norris
Cr. Simon Russell JP



Members of the Gallery

Your attention is drawn to Section 91 of Council's Governance Local Law No 1.

Section 91 The Chair's Duties and Discretions

In addition to the duties and discretions provided in this Local Law, *the Chair* -

- (a) must not accept any motion, question or statement which is derogatory, or defamatory of any Councillor, member of *Council* staff, or member of the community;
- (b) may demand retraction of any inappropriate statement or unsubstantiated allegation;
- (c) must ensure silence is preserved in the public gallery during any meeting;
- (d) must call to order any member of the public gallery who approaches the Council or Committee table during the meeting, unless invited by the *Chair* to do so; and
- (e) must call to order any person who is disruptive or unruly during any meeting.

An Authorised Officer must, if directed to do so by the Chairperson, remove from a meeting any Councillor or other person who has committed such an offence.

In the absence of an Authorised Officer the Chairperson may cause to be removed from a meeting any Councillor or other person who has committed such an offence.

Your co-operation is appreciated

Chairperson of Committee

Planning Committee – Schedule of Meetings

Tuesday 25 October 2011
Tuesday 22 November 2011
Tuesday 20 December 2011

Planning Committee Meeting

Planning Committee Charter

To deal with all matters relating to the consideration of planning applications.

This Committee has the full delegated authority of Council to finally determine upon planning applications.

Membership of the Committee

All Councillors

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BAYSIDE CITY COUNCIL

PLANNING COMMITTEE MEETING

TUESDAY, 4 OCTOBER 2011

- 4.1 **133-135 Were Street, Brighton**
Section 72 Amended Permit - Approve
Application No. 2003/0546/2 Ward: Northern

City Strategy - Statutory Planning
 File No: 2003/0546/2

APPLICATION DETAILS

Land Address:	133 – 135 Were Street, Brighton
Application is for:	Section 72 Amended Permit
Melway Reference:	76 F2
Ward:	Central
Application Number:	2003/0546/2
Applicant's/Owner's Name:	Flying Monkey Pty Ltd
Date Received:	16 May 2011
Zoning:	Business 1 Zone
Overlays:	Design and Development Overlay Schedule 2 Heritage Overlay HO625
Under what clause(s) is a permit required?	Clause 52.27 License Premises
Restrictive covenants on the title?	No
Current use and development:	Restaurant
Objections:	Twelve (12)

PROPOSITION

It is recommended that Council **approve** the Section 72 Application to Amend the Permit.

PROPOSAL

On 16 May 2011 the applicant applied to Council under Section 72 of the *Planning & Environment Act 1987*, seeking to amend the permit issued under Planning Permit No. 2003/0456/1 issued 5 January 2004 for an on-premises liquor license.

The Section 72 Application to Amend a Permit seeks the following amendments:

- Amend the Permit Preamble to include the premises at 135 Were Street, Brighton.
- Amend condition 4 which reads:

The liquor license must operate only for the current hours of operation, which are as follows:

- *Tuesday - 5:00pm to 9:00pm*
- *Wednesday, Thursday – 12:00pm to 3:00pm & 5:00pm to 9:00pm*
- *Friday - 12:00pm to 3:00pm & 5:00pm to 10:00pm*
- *Saturday – 5:00pm to 10:00pm*
- *Sunday – 5:00pm to 9:00pm*

Unless with the written consent of the Responsible Authority.

To Read:

The liquor license must only operate for the following hours:

- *Monday – Saturday: 7am – 11pm*
- *Sunday: 10am – 11pm*
- *Good Friday: 12noon – 11pm*
- *ANZAC Day: 12noon – 11pm*

Unless with the written consent of the Responsible Authority.

In summary, the proposed changes are effectively to include liquor service on Mondays, and increase the hours of liquor service on Tuesday through Sunday to 7am till 11pm (from 12pm/5pm to 9pm/10pm), and to include service on Good Friday and ANZAC Day.

SUBJECT SITE & LOCALITY

The site has a total area of 670 square metres (across two lots) and currently contains:

- A single storey restaurant which officers understand is presently operating between the hours of 9am and 5pm; and
- Three (3) dwellings approved under Planning Permit 2004/0571/1.

The main site/locality characteristics are:

- The subject site is located on the northern side of Were Street, at the corner of Hanby Street. Davie Lane abuts the site to the north.
- The subject site is located within the Were Street Neighbourhood Activity Centre.
- To the north of the site (across Davie Lane) at 1 Hanby Street is a double storey dwelling.
- To the east of the site (across Hanby Street) at 137 Were Street is a single storey dwelling.
- To the south of the site (across Were Street) at 132 Were Street is a double storey dwelling.
- To the south of the site (across Were Street) at 134 Were Street is a double storey dwelling.
- To the west of the site at 131 Were Street is a single storey shop.

PERMIT/SITE HISTORY

The following previous planning permits have been determined for the subject site:

- Planning permit No. 2009/0540/1 for a Dispensation from car parking associated with an as of right extension for 60 seats, (additional 31 seats) to an existing restaurant was issued at the direction of the Tribunal 9 July 2010.
- Planning Permit No. 2007/3615 for a four (4) lot subdivision was granted under Delegation on 20 February 2008.

- Planning permit No. 2005/0711/1 for Buildings and works and a car parking dispensation associated with an as-of-right extension (for 12 additional seats) to an existing restaurant was issued at the direction of the Tribunal on 28 June 2006.
- Planning Permit No. 2004/0571/1 for the construction of a double storey building containing three (3) dwellings and car parking to the rear of an existing office was issued by Council on 23 May 2005.
- Planning Permit No. 2003/0456/1 for an on-premises liquor license was issued pursuant to Planning Committee resolution on 5 January 2004. The officer report to the committee recommended the approved hours be Monday-Sunday, 12 noon to 11pm, on the basis that this accorded with the hours specified on the BYO liquor license previously issued. It appears that the reason for the committee's approval of differing hours (which now apply to the current liquor license) was to accord with the then actual trading hours of the restaurant.
- Planning Permit No. 2000/6007 for an on-premises 'BYO liquor license' was issued by Council on 29 June 2001.

PUBLIC NOTIFICATION

The application has been advertised pursuant to Section 52 of the *Planning and Environment Act 1987*, by:

- Sending notices to the owners and occupiers of adjoining land
- Placing two (2) signs on site

The notification has been carried out correctly.

Council has received twelve (12) objections to date.

The key issues that were raised in the objections are:

- The increase in hours will produce unacceptable levels of noise.
- There will be increase in parking and traffic problems.
- Detrimental to the safety of residents in the area.
- The change in hours will increase the number of patrons.

Locality Plan – 133-135 Were Street, Brighton

Legend

Subject land	★
Location of Objectors	●

Not all objectors shown.

REFERRALS

External Referrals by the Planning Scheme:

Referrals/Notice	Advice/Response/Conditions
Section 55 Referrals	N/A
Internal Council Referrals	Advice/Response/Conditions
N/A	N/A

ASSESSMENT

Relevant Provisions of the Planning and Environment Act 1987

Section 73(1) of the Planning and Environment Act 1987 states that Sections 47 to 62 apply to an application to amend a permit as if the application were an application for a permit and any reference to a permit were a reference to the amendment to the permit.

Therefore, the amendments to the permit and plans are to be assessed against the relevant planning controls affecting the proposal.

Note: Only the changes to the approved proposal are considered as part of this application for amendment.

Relevant Provisions of the Bayside Planning Scheme

State Planning Policy Framework

- Clause 10 Operation of the State Planning Policy Framework – The purpose of State Policy in planning schemes is to inform planning authorities and responsible authorities of those aspects of State Policy which they are to take into account and give effect to in planning and administering their respective areas. The State Planning Policy Framework provides a context for spatial planning and decision making by planning and responsible authorities. The planning policies are directed to land use and development, as circumscribed by the Planning and Environment Act 1987, a primary objective of which is to provide for the fair orderly, economic and sustainable use and development of land.
- Clause 11 Settlement – The objective of planning is to anticipate and respond to the need, recreation, of existing and future communities through the provision of zoned and serviced land for housing, employment and open space commercial and community facilities and infrastructure. Planning should recognise the need for and as far as practicable contribute towards, the health and safety, diversity of choice, adaption in response to changing technology, economic viability, a high standard of urban design and amenity, energy efficiency, prevention of pollution to land, water and air, protection of environmentally sensitive areas and natural resources, accessibility and land use and transport integration.
- Clause 17 Economic Development – Clause 17 is designed to provide for a strong and innovative economy where all sectors of the economy are critical to economic prosperity. To encourage development which meets the community's needs for retail, entertainment, office and other commercial services and provides net community benefit in relation to the accessibility, efficient infrastructure use and the aggregation and sustainability of commercial facilities.

Local Planning Policy Framework

- Clause 21.03 Settlement and Housing – Seeks to accommodate population increases and respond to changing demographic profiles. To direct new medium density housing to Major Activity Centres, large Neighbourhood Activity Centres and residential opportunity areas, particularly those with good access to public transport routes as identified in the Strategic Land Use Framework Plan.
- Clause 21.06 Built Environment and Heritage – Seeks to achieve quality design outcomes which improve the image of land use and development in Bayside and contribute to a sense of place appropriate to Bayside's character and maintains, strengthens and enhances local character. To facilitate quality design outcomes which make a positive contribution to the character of residential areas. To provide greater certainty to both residents and developers in relation to the preferred character of residential areas and areas that require special treatment or greater protection. To facilitate attractive well designed Activity Centres in keeping with neighbourhood character.
- Clause 21.07 Economic Development – Seeks to promote sustainable development of shopping centres within a regional context. To encourage new economic development which maintains and enhances the supply of and access to a range of employment and training opportunities. To maximise the economic, social and cultural benefits of tourism for Bayside. To ensure the proper integration of appropriate discretionary uses into residential areas.

Local Planning Policies

- None

Zoning

- Clause 34.01 Business 1 Zone – Encourages the intensive development of business centres for retailing and other complementary commercial, entertainment and community uses. **A planning permit is not required under this provision.**

Overlays

- Clause 43.02 Design and Development Overlay Schedule 2 – 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 and to maintain a strong landscape character with buildings set within vegetated surrounds. **A planning permit is not required under this provision.**
- Clause 43.01 Heritage Overlay (HO625) – Seeks to conserve and enhance heritage places of natural or cultural significance, to conserve and enhance those elements which contribute to the significance of heritage places, to ensure that development does not adversely affect the significance of heritage places and to conserve specifically identified heritage places by allowing a use that would otherwise be prohibited if this will demonstrably assist with the conservation of the significance of the heritage place. **A planning permit is not required under this provision.**

Particular Provisions

- Clause 52.27 licensed Premises – Aims to ensure that licensed premises are situated in appropriate locations and to ensure that the impact of the licensed premises on the amenity of the surrounding area is considered. **A planning permit is required for the increase in the hours of the liquor license.**

General Provisions

- Clause 65 Decision Guidelines – Details matters to be considered when determining a planning application.

SUMMARY OF KEY ISSUES

The following is a summary of the relevant planning issues and areas of non-compliance, considering planning principles and issues raised by the objectors.

Clause 52.27 Licensed Premises

Clause 52.27 of the Bayside Planning Scheme aims to ensure that licensed premises are situated in appropriate locations and to ensure that the impact of the licensed premises on the amenity of the surrounding area is considered. The proposal is for an increase in licensed hours of an existing On-Premises liquor license.

Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

- *The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*

The amendment seeks to extend the hours of operation of the existing on-premises license to Monday – Saturday: 7am – 11pm, Sunday: 10am – 11pm and Good Friday/ANZAC Day: 12noon – 11pm. The proposed amendments are consistent with State and Local policy and allow for varied uses and services within a neighbourhood activity centre and are consistent with the Business 1 Zoning of the site.

- *The impact of the sale or consumption of liquor permitted by the liquor license on the amenity of the surrounding area.*

The subject site at 133 Were Street currently holds an on-premises liquor license, what is proposed is not a new activity on that land. It is considered that the increase in hours of the liquor license associated with the approved restaurant use is appropriate and will not unreasonably impact upon the amenity of the surrounding area, and this is discussed further in the next section. The site at 135 Were Street, although part of the same premises resultant from the permit issued at the direction of VCAT in 2006, does not have a license to enable liquor service. If liquor is or has been served in this area since 2006 it would appear that this may have occurred illegally. However, as 135 Were Street is part of the same premises as 133 Were Street, it is logical that the same capability for liquor service should exist across the two sites, and that the hours and restrictions should also be same. Accordingly, the granting of permission to serve liquor at 135 Were Street would not unreasonably impact upon the amenity of the area.

- *The impact of the hours of operation on the amenity of the surrounding area.*

The application seeks to extend the liquor license hours to Monday – Saturday: 7am – 11pm, Sunday: 10am – 11pm and Good Friday/ANZAC Day: 12noon – 11pm.

The important question to be resolved in this case is whether the proposed duration of the use is appropriate. In this regard considerations include the compact size of the neighbourhood activity centre, its location nestled within a broader residential area, and the reliance of the commercial uses (including this use), in part, on surrounding streets for customer parking.

Given the compact size and sensitive location of the activity centre, this is not an area where outright 'entertainment' uses would be appropriate. Nor would it be appropriate for uses which are likely to attract large volumes of people, particularly those who would arrive by vehicle, due to the limited availability of parking in the area. However, what is already permitted is not an entertainment use, rather a cafe/restaurant typical of many neighbourhood activity centres, and with a seating capacity of 60 persons. It is common for these types of cafes/restaurants to trade into the evening.

However, evening trade by the use, with liquor service, has potential to generate some amenity impact to neighbouring residential properties by way of noise from patrons exiting the premises and getting into vehicles, some of which may be parked in proximity to surrounding dwellings. Whilst this impact will be limited given the modest size and seating volumes of the restaurant, is not reasonable to extend this potential for impact until 11pm. As an alternative, 10pm is a more common closing time for liquor service in restaurants in locations such as this.

The proposal is also to create the opportunity for liquor service in the morning from 7am. Given that the use is a restaurant, it is not considered that this will be likely to result in amenity impact to neighbours by way of attraction of early morning revellers and/or anti-social behaviour. The allowance for service of liquor at these times will allow opportunities for service to those who choose to take alcohol with their morning coffee or meal, for example at special occasions such as during the Melbourne Cup carnival.

- *The impact of the number of patrons on the amenity of surrounding area.*

The number of patrons permitted under the existing liquor license of 138 patrons is not being amended. It is not known how the license was issued with 138 patrons listed as the maximum capacity, however it is likely that this results either from a now discontinued practice of Liquor Licensing Victoria in approximating maximum patron limits from available licensed floor area, or from a contention by a previous operator that 138 seats were (at times) provided. It is relevant to note that Planning Permit No. 2009/0540/1 issued for a dispensation from car parking associated with an as of right extension for 60 seats, (additional 31 seats) to an existing restaurant limits the number of seats to 60. Accordingly, the maximum seated patronage allowed at present is 60 persons, regardless of what the license contains. An amendment would need to be sought to Planning Permit No. 2009/0540/1 to increase this number. Council officers have written to Liquor Licensing Victoria to alert them to this inconsistency and recommend that the limits be aligned at the time of the next license renewal.

- *The cumulative impact of any existing and the proposed liquor license, the hours of operation and number of patrons, on the amenity of the area.*

The application is for the increase in hours associated with an existing liquor license. Consideration has been given to the principals outline in Practice Note 61 *Licensed premises: Assessing cumulative impact* prepared by the Department of Planning and Community Development (March 2011) to provide guidance when preparing and assessing application under Clause 52.17.

In accordance with the Practice Note cumulative impact should be assessed by taking into account the number and type of licensed premises in an area, their distance from the subject land and whether they can be easily accessed from the subject land.

In general a cluster would occur where there are three or more licensed premises (including the subject land) within a radius of 100m from the subject land; or 15 or more licensed premises (including the subject land) within a radius of 500 metres from the subject land.

To assess the possible cumulative impacts the following survey has been undertaken of all licensed premises within a 100m radius of the subject site (including the subject premises).

Venue	Address	License Type	Hours of operation
Olie and Ari (subject site)	133-135 Were Street, Brighton	On-premises	<p>ALLOWED LIQUOR SERVICE HOURS</p> <p>Sunday Between 5 p.m. and 9 p.m.</p> <p>Good Friday Between 12 noon and 3 p.m.; also 5 p.m. and 10 p.m.</p> <p>Anzac Day (Sunday & Tuesday) Between 5 p.m. and 9 p.m.</p> <p>Anzac Day (Wednesday & Thursday) Between 12 noon and 3 p.m.; also 5 p.m. and 9 p.m.</p> <p>Anzac Day (Friday) Between 12 noon and 3 p.m.; also 5 p.m. and 10 p.m.</p> <p>Anzac Day (Saturday) Between 5 p.m. and 10 p.m.</p> <p>Tuesday Between 5 p.m. and 9 p.m.</p> <p>Wednesday & Thursday Between 12 noon and 3 p.m.; also 5 p.m. and 9 p.m.</p> <p>Friday Between 12 noon and 3 p.m.; also 5 p.m. and 10 p.m.</p> <p>Saturday Between 5 p.m. and 10 p.m.</p>
Oxleys Supermarket	112-116 Were Street, Brighton	Packaged Liquor	<p>On any day other than Sunday, Good Friday, Anzac Day or Christmas Day between 9am and 11pm.</p> <p>Sunday between 10am and 11pm</p> <p>Anzac Day between 12noon and 11pm</p>

There is only one (1) other licensed premises within a 100m radius of the site inclusive of the subject site. It is considered that the proposed amendment will not result in a cumulative impact upon the amenity of the surrounding area.

It is considered that the proposed amendment to the existing on-premises liquor license responds appropriately to the provisions of Clause 52.27, and will not impact upon the amenity of the adjoining area.

CONCLUSION

A 10pm time limit on the liquor license will be sympathetic to surrounding development and will respect the residential amenity of adjoining properties through the appropriate hours of the liquor license. It is therefore recommended that the proposed amendments be approved on this basis.

RECOMMENDATION

It is recommended that Council Issue a Notice of Decision to Amend Planning Permit Application 2003/0546/2 issued for an on-premises liquor license for the following amendments.

- Amend the Permit Preamble to include the premises at 135 Were Street, Brighton.
- Amend condition 4 which reads:

The liquor license must operate only for the current hours of operation, which are as follows:

- *Tuesday - 5:00pm to 9:00pm*
- *Wednesday, Thursday – 12:00pm to 3:00pm & 5:00pm to 9:00pm*
- *Friday - 12:00pm to 3:00pm & 5:00pm to 10:00pm*
- *Saturday – 5:00pm to 10:00pm*
- *Sunday – 5:00pm to 9:00pm*

Unless with the written consent of the Responsible Authority.

To Read:

The liquor license must only operate for the following hours:

- *Monday – Saturday: 7am – 10pm*
- *Sunday: 10am – 10pm*
- *Good Friday: 12noon – 10pm*
- *ANZAC Day: 12noon – 10pm*

Unless with the prior written consent of the Responsible Authority.

4.2 **170-171 Beach Road, SANDRINGHAM**
Secondary Consent - Approve
Application No. 2007/0389/1 Ward: Southern

City Strategy - Statutory Planning
 File No: 2007/0389/1

APPLICATION DETAILS

Land/Address:	170-171 Beach Road, Sandringham
Application is for:	Secondary Consent – Amended Plans
Melway Reference:	76 H11
Ward:	Southern
Application Number:	2007/0389/1
Applicant's/Owner's Name:	Urbis
Date Received:	27 July 2011
Statutory Days Expiry:	27 August 2011
Zoning:	Residential 1 Zone
Overlays:	Design and Development Overlay Schedule 1 Cultural Sensitivity Overlay
Restrictive covenants on the title?	No
Current use and development:	Multi-unit development under construction

PROPOSITION

It is recommended that the **amendments to the plans be approved** by Council under the provisions of Secondary Consent.

PROPOSAL

Planning permit No. 2007/0389/1 was issued on 22 November 2007 for the construction of thirty five (35) double storey dwellings with basement car parking and roof decks in a Design and Development Overlay 1 in accordance with the endorsed plans.

It is proposed to amend the plans pursuant to the secondary consent provisions found at condition five "*The use and/or development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.*" The application was received by Council on 27 July 2011. The changes include:

Basement (TP1.01/J)

- Escape stair added in north-east corner to meet Building Code of Australia and Fire Engineering requirements.

Ground (TP1.02/K)

- Escape Stair from north-east corner of basement indicated with relocated bin storage from east boundary.
- Car parking along east boundary adjusted to include relocated visitor car space due to the need for a basement escape stair.
- Bin store now located adjacent to the new escape stairs behind the substation, previously located on the east boundary.
- Services along north east corner of site and landscape areas along the northern boundary reconfigured to allow for relocated car space.
- Horizontal highlight window added to the rear elevation of units 2-10 adjacent to the landscaping.

Roof (TP1.04/K)

- Car park exhaust riser added above unit 30.
- Condenser units added for unit 1 within the roof deck area, at floor level, behind the screens.
- Unit 11 and 30 roof fall amended.
- Balustrade material between unit 10 and 11 changed from glass to rendered wall with no change to the overall height.

Sections (TP2.01/H)

- Glazing for windows on marked 'G3' changed to 'opaque glass soft white' (affects to south-west facing windows) shown on section B-B (south west elevation of units 12 through 21).
- Garage doors in basement shown on section B-B which were omitted on the previously endorsed sections.
- Sections A-A and B-B corrected to delete reference to the ground detention tank which should not appear in these sections.

Sections (TP2.02/C)

- Section C-C (north-east elevation of units 1 through 11) is a new plan, which was endorsed 6 May 2008, but has not been amended since. The latest plan includes a range of changes to address inconsistencies which have been generated by other amendments processed since this plan was endorsed, including:
 - The window in the north-east facing wall at the top of each roof deck access stair-well reduced in width.
 - The ground floor vertically oriented windows within units 2 through 10 adjacent to the landscape area replaced with horizontal highlight windows. Corresponding change also made on plan TP1.02/K.
 - First floor vertical window between each façade 'box' reduced in width.
 - Garage doors in basement for units 1 through 11 shown on section C-C which were omitted on the previously endorsed sections.
 - Location of external hot water units and external condenser units shown on the north-east side of the inward facing roof deck screens so as to be minimally visible from outside the development site.
 - Material 'T1' added for units 1 & 11.
 - Canopy roof added between units 1 and 2.
- Section E & F corrected to address inconsistencies with the other endorsed plans including:
 - Splayed facade deleted and replaced with a flat infill roof.
 - Roof deck deleted.

Elevations (TP3.01/J)

- North Elevation amended as follows:
 - Fire Hydrant enclosure shown in elevation (1400mm high).
 - Letterbox enclosures shown in elevation (1400mm high).
 - T1 capping codes amended to C1 in elevation to accord with the updated materials schedule.
- East Elevation amended as follows:
 - Basement Car park / Bin Enclosure Timber screen shown in elevation (1650mm high).
 - Capping code C1 between 'façade boxes' amended to C3 in elevation.

Elevations (TP3.02/J)

- South Elevation
 - Car park exhaust enclosure louvre shown on plan – on eastern-most building, facing south, approximately 200mm below the highest point of the wall.
 - Glazed roof balustrade amended to solid R2 balustrade finish.
- West Elevation
 - Letterboxes shown with face plate (1400mm high).
 - Roof top balustrade amended to utilise material G1 rather than G2.
 - Unit 10 solid balustrade end indicated.

Material Schedule (Elevations and Sections)

- M3 colour amended to Sandblasted Aluminium metallic.
- R4 render deleted and all elevations amended to replace R4 with R3.

Landscape Plan

- Replaced with new plan reflecting layout changes which have occurred on the site – no change to plant species or overall design.

SUBJECT SITE & LOCALITY

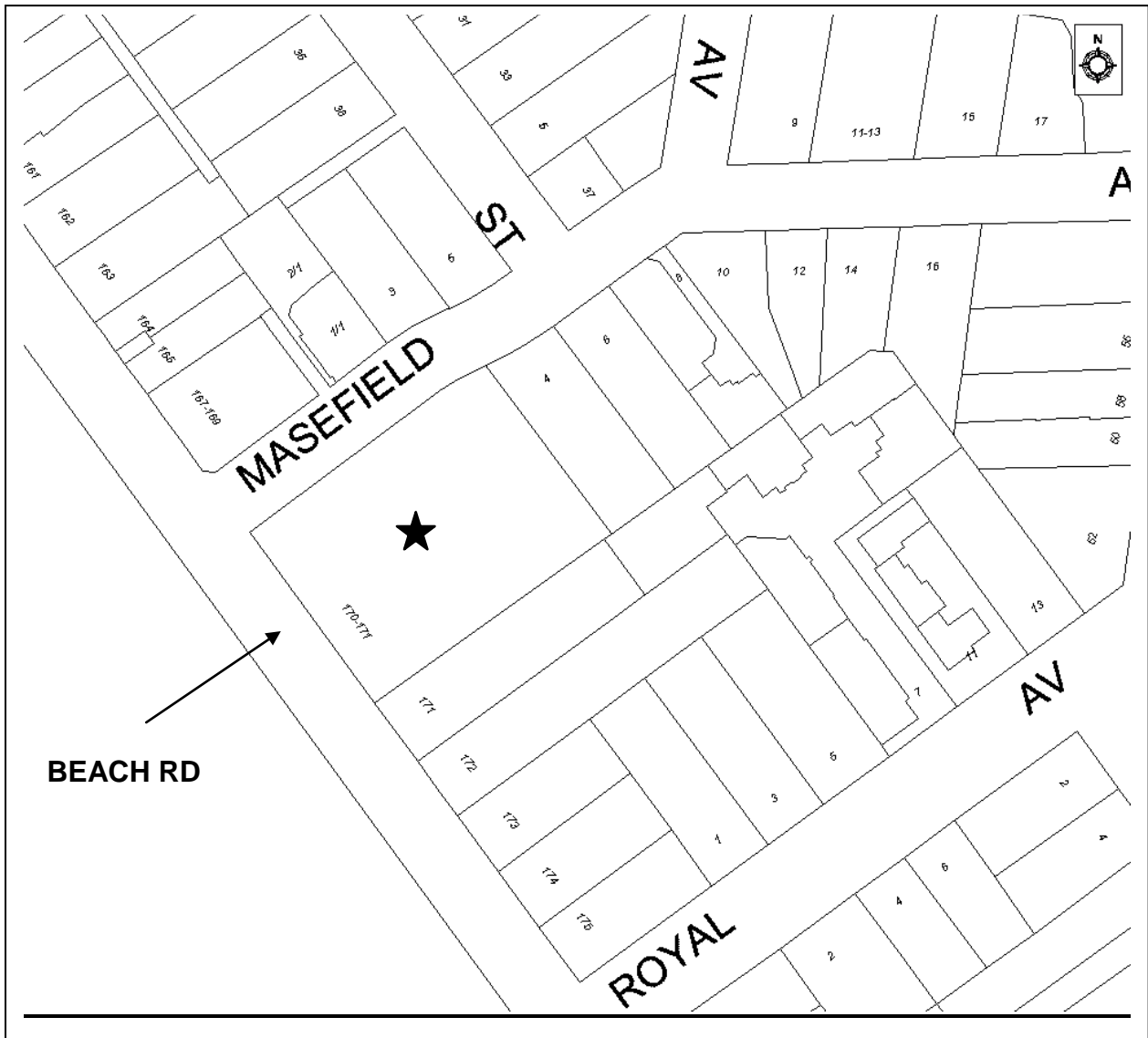
An inspection of the site and the surrounding area has been undertaken.

The subject site is located on the east side of Beach Road and has a total site area of approximately 4,020 square metres. The site is currently a building site, with the basement of the development in question completed and some ground floor works underway.

The main site/locality characteristics are:

- The adjoining property to the **north-east** at 4 Masefield Avenue contains a single storey brick dwelling with a front setback of approximately 11.5 metres.
- To the **south-west** is Beach Road.
- To the **north-west** are dwellings at numbers 167-169 Beach Road and numbers 1, 3 and 5 Masefield Avenue.
- The adjoining property to the **south-east** at 172 Beach Road contains a double storey brick dwelling.

Locality Plan – 170-171 Beach Road, Sandringham



Subject land	★
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PERMIT/SITE HISTORY

- On 22 November 2007, Council issued Planning Permit 2007/0389/1, after consideration by the Planning Committee, for the construction of a multi unit development with basement car parking and roof decks in a Design and Development Overlay 1.

The following amendments to the permit and plans have been approved since the issue of the permit:

Date	Amendment
3 December 2007	<ul style="list-style-type: none"> Amendment to Conditions 1c, 1h, 1i, 1k, 1n, 1o, 1p, 1r, 1s, 6 and 27. Deletion of Conditions 24 and 25
31 December 2007	<ul style="list-style-type: none"> Amending the permit to allow for the construction of 35 units in lieu of 36 units Amendment to Conditions 1c, 1h, 1i, 1k, 1m, 1n, 1o, 1p, 1r, 1s, 6 and 27. Deletion of Conditions 24 and 25.
12 March 2008	This permit was subject to an appeal against conditions (pursuant to s80 of the P&E Act 1987). Conditions of the permit were varied by order of the Tribunal dated 12 March 2008 (following consent from Council and the applicant and subsequent withdrawal of the appeal).
3 November 2008	<p>Secondary Consent to Amend Plans:</p> <ul style="list-style-type: none"> Multiple (small) changes to plans to improve residential amenity/aesthetics and to reflect the details of the accurate working drawings Changes to the materials and finishes.
22 December 2008	<p>Secondary Consent to Amend Plans:</p> <ul style="list-style-type: none"> Amendments to the landscaping plan.
12 October 2009	Extension of time granted to allow development to commence by 22 November 2011 and be completed by 22 November 2013
29 March 2010	Extension of time granted to allow development to commence by 22 November 2012 and be completed by 22 November 2014.
13 July 2010	<p>Secondary Consent to Amend Plans:</p> <p><u>Basement</u></p> <ul style="list-style-type: none"> Internal rearrangement of the basement including the relocation of garage car parking along the north western boundary at the base of Units 22-30 into the basement. Car parking spaces U03, U05, U07, U09, and U22-U30 provided with a minimum width of 2.9 metres as per Condition 1(r). All double garages within the basement provided with a minimum width of 5.5 metres as per Condition 1(s). The garbage and recycling receptacle amended in accordance with Condition 1 (v). Alterations to the basement entrance. <p><u>Ground Floor</u></p> <ul style="list-style-type: none"> The garages for Units 22-30 relocated to the basement and the dwellings reconfigured to include entries, an additional bedroom and landscaping fronting the internal road. Internal alterations to Units 12-20 due to rearrangement of stairwells. The substation near the north east corner of the site reduced in size.

	<ul style="list-style-type: none"> • The boundary wall to Unit 11 increased by 800 mm in length to include an additional bedroom. • Increase is the area of private open space provided for Unit 30 and Unit 21. • Internal rearrangement of Unit 33 including alterations to the dwelling entrances from the street. <p><u>First Floor</u></p> <ul style="list-style-type: none"> • The south eastern first floor setback of Unit 30 increased to 6.77 metres and the south elevation (south elevation on TP3.02/E) modified to include an additional highlight window. • Units 12-20 rearranged to include secluded open space areas (formally balconies and now terrace spaces) which gain greater exposure to the northern sun. • The south western building line of Units 12-20 shifted reducing the separation between Units 12-20 and Units 4-11 by 700mm (to 5.85 metres). • Introduction of an angled building form to the south western part Units 12-20 to taper the buildings at above ground floor level. • The first floor balconies facing Masefield Avenue (Units 31-36) skewed in form to improve articulation of the façade and facilitate obscure views to the foreshore. • The balcony for Unit 22 deleted. <p><u>Other Changes</u></p> <ul style="list-style-type: none"> • The roof top deck stair wells for Units 12-20 and 32 altered and the incorporation of appropriate screening measures as required by Condition 1 (k). • Units 22-30 increased in height by 215mm (at the parapet) from 6.585 metres to 6.82 metres. • External spiral stair cases for U11 and U21 deleted. • Alterations to the materials and finishes.
21 September 2010	<p>Secondary Consent to Amend Plans:</p> <p><u>Basement</u></p> <ul style="list-style-type: none"> • The layout of car parking facilities reconfigured to provide for lift access from the basement for Units 1-11 resulting in the loss of four car parking spaces. • The basement envelope at the northern corner of the site expanded to facilitate six additional car parking spaces. <p><u>Ground and First Floor</u></p> <ul style="list-style-type: none"> • Units 1-11 and Units 34 and 35 reconfigured to provide for lift access. • The ramp east of Unit 35 garage flattened. • The east elevation of Unit 35 modified to include additional screening measures (adjacent to the common driveway) to the light well and first floor windows. • On the south elevation of Unit 11 there is an additional highlight window. • Additional first floor windows facing the Beach Road and Masefield Avenue for Units 1-10 and 31-33.

	<p><u>Other Changes</u></p> <ul style="list-style-type: none"> • The roof top decks of Units 34 and 35 are centralised on the roof as a result of the lift access and relocated stairwells. • The roof top deck stairwells for Unit 1, 34 and 35 reconfigured as a result of the lift access. <p>The brown cladding treatment continued across the first floor of Unit 11 on the south elevation.</p>
11 March 2011	Condition 18 amended at the direction of the Tribunal.

PUBLIC NOTIFICATION

Applications under the provision of Secondary Consent are exempt from notice requirements of Section 52 (1) (a), (b) and (d) of the *Planning and Environment Act 1987*.

REFERRALS

The landscaping response was referred to Council's Investigations Arborists who advised that the amended landscaping plan accords with the requirements of condition 1f).

ASSESSMENT

The principles, or tests, of Secondary Consent

The Victorian Civil and Administrative Tribunal has set out, on a number of occasions, the principles or tests of Secondary Consent (eg. *Westpoint Corporation PL v Moreland CC [2005]*). The tests include the following:

- *The proposed amendment does not result in a transformation of the proposal.*
It is considered the changes to the plans are minor and will not result in a transformation of the proposal.
- *The proposed amendment does not authorise something for which primary consent is required under the planning scheme.*
The proposed changes do not include any additional construction beyond that allowed in the existing permit. The proposal does not require primary planning consent.
- *The proposed amendment is of no consequence having regard to the purpose of the planning control under which the permit was granted.*
The proposal is in accordance with the Residential 1 Zone requirements, under which the planning permit was originally granted. The proposed changes are in accordance with the requirements of the Schedule to the Residential 1 Zone, and the DDO1. The proposed changes will not have a detrimental impact upon the adjoining properties.

- *The proposed amendment is not contrary to a specific requirement (or condition of the permit) as distinct from an authorisation within the permit, which itself cannot be altered by consent.*

The proposed amendment is not in contravention of any requirement or condition of the planning permit as granted.

The proposed modifications of the endorsed plans comply with the requirements of the Bayside Planning Scheme.

CONCLUSION

It is considered that the proposed change to the permit is satisfactory and meets the above tests of secondary consent. The proposed changes mainly affect internal layout elements, with no additional height or bulk being proposed. The proposed amendment does not result in a transformation of the original proposal and will not cause detriment to any other person.

RECOMMENDATION

That the amended plans lodged on 27 July 2011 be **approved** under the Secondary Consent Provisions of **Planning Permit No. 2007/0389/1** for the **construction of thirty five (35) double storey dwellings with basement car parking and roof decks in a Design & Development Overlay 1 at 170-171 Beach Road, Sandringham** and the following table be added to the permit:

Date	Change to permit
	<p>Secondary Consent to Amend Plans:</p> <p>Basement (TP1.01/J)</p> <ul style="list-style-type: none"> ▪ Escape stair added in north-east corner to meet Building Code of Australia and Fire Engineering requirements. <p>Ground (TP1.02/K)</p> <ul style="list-style-type: none"> ▪ Escape Stair from north-east corner of basement indicated with relocated bin storage from east boundary. ▪ Car parking along east boundary adjusted to include relocated visitor car space due to the need for a basement escape stair. ▪ Bin store now located adjacent to the new escape stairs behind the substation, previously located on the east boundary. ▪ Services along north east corner of site and landscape areas along the northern boundary reconfigured to allow for relocated car space. ▪ Horizontal highlight window added to the rear elevation of units 2-10 adjacent to the landscaping. <p>Roof (TP1.04/K)</p> <ul style="list-style-type: none"> ▪ Car park exhaust riser added above unit 30. ▪ Condenser units added for unit 1 within the roof deck area, at floor level, behind the screens. ▪ Unit 11 and 30 roof fall amended. ▪ Balustrade material between unit 10 and 11 changed from glass to rendered wall with no change to the overall height.

Sections (TP2.01/H)

- Glazing for windows on marked 'G3' changed to 'opaque glass soft white' (affects to south-west facing windows) shown on section B-B (south west elevation of units 12 through 21).
- Garage doors in basement shown on section B-B which were omitted on the previously endorsed sections.
- Sections A-A and B-B corrected to delete reference to the ground detention tank which should not appear in these sections.

Sections (TP2.02/C)

- Section C-C (north-east elevation of units 1 through 11) is a new plan, which was endorsed 6 May 2008, but has not been amended since. The latest plan includes a range of changes to address inconsistencies which have been generated by other amendments processed since this plan was endorsed, including:
 - The window in the north-east facing wall at the top of each roof deck access stair-well reduced in width.
 - The ground floor vertically oriented windows within units 2 through 10 adjacent to the landscape area replaced with horizontal highlight windows. Corresponding change also made on plan TP1.02/K.
 - First floor vertical window between each façade 'box' reduced in width.
 - Garage doors in basement for units 1 through 11 shown on section C-C which were omitted on the previously endorsed sections.
 - Location of external hot water units and external condenser units shown on the north-east side of the inward facing roof deck screens so as to be minimally visible from outside the development site.
 - Material 'T1' added for units 1 & 11.
 - Canopy roof added between units 1 and 2.
- Section E & F corrected to address inconsistencies with the other endorsed plans including:
 - Splayed facade deleted and replaced with a flat infill roof.
 - Roof deck deleted.

Elevations (TP3.01/J)

- North Elevation amended as follows:
 - Fire Hydrant enclosure shown in elevation (1400mm high).
 - Letterbox enclosures shown in elevation (1400mm high).
 - T1 capping codes amended to C1 in elevation to accord with the updated materials schedule.
- East Elevation amended as follows:
 - Basement Car park / Bin Enclosure Timber screen shown in elevation (1650mm high).
 - Capping code C1 between 'façade boxes' amended to C3 in elevation.

Elevations (TP3.02/J)

- South Elevation
 - Car park exhaust enclosure louvre shown on plan – on eastern-most building, facing south, approximately 200mm below the highest point of the wall.
 - Glazed roof balustrade amended to solid R2 balustrade finish.
- West Elevation
 - Letterboxes shown with face plate (1400mm high).
 - Roof top balustrade amended to utilise material G1 rather than G2.
 - Unit 10 solid balustrade end indicated.

Material Schedule (Elevations and Sections)

- M3 colour amended to Sandblasted Aluminium metallic.
- R4 render deleted and all elevations amended to replace R4 with R3.

Landscape Plan

- New plan reflecting layout changes which have occurred on the site.