

WRITTEN STATEMENTS

19 October 2021

**Planning and Amenity Delegated
Committee Meeting**

- Item 4.1** **17 Lynch Street, Brighton** **(Page 4)**
1. Mrs Sophie Le Maistre (O)
- Item 4.2** **139 Bay Road, Sandringham** **(Page 9)**
1. Mr Campbell Sinclair (O)
- Item 4.3** **14 Gareth Avenue, Beaumaris** **(Page 11)**
1. Mrs Janice Sprayer (O)
 2. Ms Annie Price (O)
 3. Mr Martin and Mrs Monika Baker (O)
 4. Mrs Sophia Caldis (O)
 5. Mrs Robin Maxted (O)
 6. Mr Peter Crozier (O)
 7. Mrs Fiona Austin (O)
 8. Ms Nola McKinstry (O)
 9. Ms Jo Pritchard (O)
 10. Mr Gary & Mrs Jan Child (O)
 11. Prof. Chris Doucouliagos (O)
 12. Mr Jeff Sarkis – MJS Construction Group Pty Ltd (A)
- Item 4.4** **17 Birdwood Avenue, Brighton** **(Page 30)**
1. Ms Gillian Davies (O)
 2. Mr Tim Ryder – proUrban Advisory Planning and Management) (A)
- Item 4.5** **2/124 Esplanade, Brighton** **(Page 35)**
1. Mr Gerard Gilfedder – Currie & Brown (Australia) Pty Ltd (O)
 2. Mrs Barbara Layther (O)
 3. Mr Jeffrey Layther (O)
 4. Miss Astrid Magnusson (O)
 5. Mr Jason Barnfather – Squareback Planning Pty Ltd (A)
- Item 4.6** **120 Esplanade, Brighton** **(Page 44)**
1. Mr Andrew & Mrs Vickie Lee Young (O)
 2. Ms Anita Frawley (O)
 3. Mr Jason Barnfather – Squareback Planning Pty Ltd (A)
- Item 4.7** **54 Cluden Street, Brighton East** **(Page 51)**
1. Mr Ennio Bianchi (O)
 2. Mrs Sheilanne Dodds (O)
- Item 4.8** **14 Charming Street, Hampton East** **(Page 54)**
1. Mrs Maria Catalano (O)

2. Mr Salvatore Catalano (O)
3. Mrs Michelle and Mr Jamie Wilson (O)
4. Mrs Kholā Saeed – Team Permits Hub (A)

Item 4.9 5 Dudley Street, Brighton

(Page 62)

1. Mr Tom & Mrs Marcia Walsh (O)
2. Mr Moody Abbougattas (O)

Definitions

A= Applicant

S= Supporter

O= Objector

Item 4.1
17 Lynch Street, Brighton

1. Mrs Sophie Le Maistre (O)

Dear Councillors,

Objection Submission – Planning Application 5/2021/169/1 – 17 Lynch St, Brighton

I am the owner of the property located at the rear boundary, 24A Moffat Street, Brighton. Thank you for the opportunity to lodge a written submission.

I note in the Officer report that there were 3 neighbour objections, none of which have been removed. My concerns specifically relating to my property are –

- Set backs
- Overshadowing
- Privacy

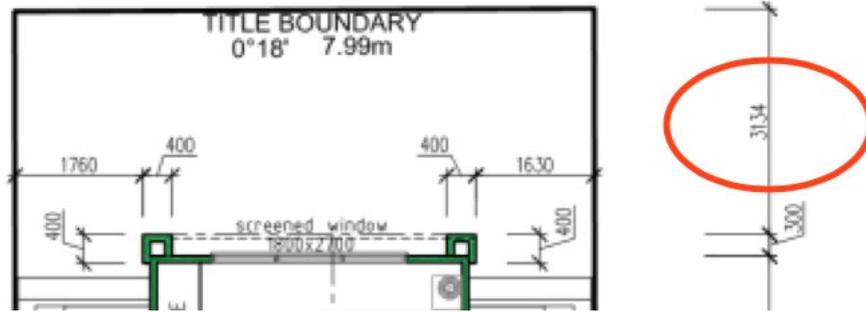
Whilst acknowledging this property has a Heritage Policy applied to it however adhering to this Policy must not be at a cost to areas of significant non-compliance.

SETBACKS – SUBSTANTIALLY NON-COMPLIANT

What concerns me most is the setback to the rear boundary (adjoining my property).

The setbacks are significantly non-compliant and will have a substantial adverse impact on my private open space.

The required setback from the Rear boundary (West) is 5.98m whereas the **proposed plans show 3.1m** – please see the diagram below which shows the measurement from the boundary to the facade of the second storey structure.



Side and rear setbacks (Standard A10)

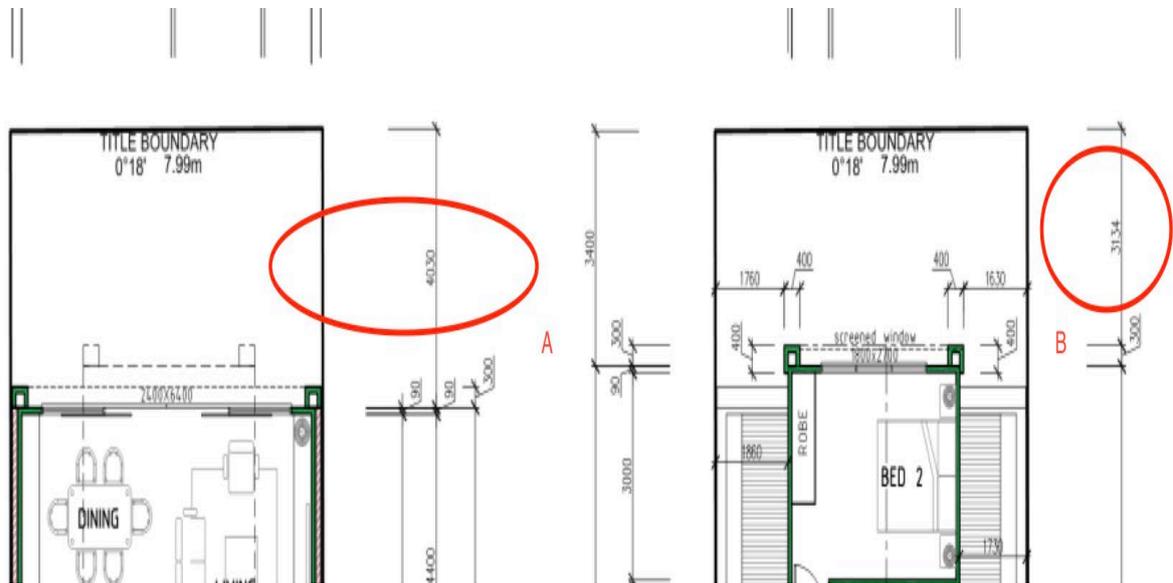
	First Floor	First Floor
	Required	Proposed
West (rear)	<u>5.98m</u>	<u>3.1m</u> *

*Please note that the Officers report incorrectly shows a setback of 3.4 as it has assumed the screened window is attached to the outside the building whereas the plans and image below clearly depicts the building itself is in fact 3.1 metres from the boundary.



I could understand a small variance to the setback given the small site and Heritage Policy however this is **approximately half the required setback 3.1m versus 5.98m** required by the Bayside Planning Scheme and is completely inappropriate giving rise to unreasonable amenity impact.

One factor driving this is that the proposed **first storey overhangs the ground floor** by 896cms (being 4030cms being distance from boundary on the ground floor (A) versus 3134cms being distance from boundary on the first floor (B)).



OVER SHADOWING

We also note that the proposed plans shadow diagram for the new build incorrectly represents the impact of the first storey being drawn from the boundary of the ground floor, whereas the first floor overhangs the ground floor by approx. 1 metre as shown. Hence overshadowing will be worse than depicted.

PRIVACY

The concern of privacy has been addressed by changing the proposed screens from slatted screen to louvred screens. Whilst this does provide extra protection from downward views into my back garden it does not change the fact that the bulk and visual aspect of the building will be 3.1m from the rear boundary - exceeding compliance by 2.88m.

OVERALL SIGNIFICANT AMENITY IMPACT

The amenity impact to secluded private open space will be severely compromised with the approval of non-compliant setbacks, and I urge you as councillors and fellow Bayside residents to amend the proposal to align with the Bayside Planning Scheme. My concern is

not only the overshadowing but that being only 3.1m from my boundary will significantly affect the amenity and enjoyment of my family time in the back garden – the very reasons for the introductions of such setbacks. I have planted trees on all sides of my property, creating a calm and green space for my family and wildlife to enjoy – if the plans for 17 Lynch St are allowed this will affect the amenity by altering the feeling and attractiveness of the space and is contrary to the policies established by the council.

I thank you for your time in considering my objections.

Yours sincerely,

Sophie Le Maistre

Item 4.2

139 Bay Road, Sandringham

1. Mr Campbell Sinclair (O)

This application is going to add to the traffic chaos in our street. How can the applicant request an increase in the number of children from 45 to 73 (an increase of 62%) while at the same reducing the number of car parking spaces on site? Where are the extra staff parking places and pick up points going to be - yes, in Rose Street opposite the centre. Staff from the centre are even now parking here. We are already experiencing congestion problems with motorists using our street as a "rat run" to avoid the Bluff/Bay Road intersection. This caused such difficulties for residents of Rose Street that 'No Standing' signs were requested from the Bayside City Council to be installed at the Bay Road end of Rose Street for safety issue reasons. Thankfully the Council recognised the dangers and put the signs up. The Council should at least undertake a proper traffic management assessment before considering this application any further. Safety has got to be a key consideration here.

Item 4.3

14 Gareth Avenue, Beaumaris

1. Mrs Janice Sprayer (O)

I totally oppose the planned development on the following grounds. Point 6.1 is a total contradiction by Point 6.2 regarding setbacks exposing over development on a small land parcel. The neighbouring properties to the north and south fence lines will lose visual access to sky and trees which is not in harmony with the character of the street. The bold design of front area has a predominance of hard surfaces allowing little opportunity for vegetation and softness to counterbalance the building.

2. Ms Annie Price (O)

Planning & Amenity meeting October 19, 2021,

Item 4.3 OBJECTION

I note the applicant declined a consultation.

I note he tried to call me to discuss my objection, but during work hours, so I was unable to speak.*

I note the applicant has made some changes to his plans to alleviate a some of the many objections he received. But I have not withdrawn my objection and am still opposed the proposed 2 x townhouse build at 14 Gareth Avenue Beaumaris because of the increase in building bulk compared to the home he plans to demolish; the loss of vegetation compared to the planned replacements (of which I believe hard surfaces such as decking and pergolas have been included within 'garden design') and non-compliant setbacks: The report states the northern ground floor includes an area of non-compliance Clause 55 (ResCode) yet it's 'acceptable'. How can it be acceptable if it's non-compliant?

Sadly, I know there are no grounds to object on the removal of an intact, lovely example of an MCM 'Beauy Classic' home. With the heritage study completion delayed, we have no way of knowing if this home would have been picked up for potential protection.

Sadly, I also note there are currently no grounds to object in regard Neighbourhood Character. It's a shame Council have taken so long to review their Neighbourhood Character policy - Noting that the current review is awaiting public consultation. I intend to submit that we should have a Neighbourhood Character Overlay that protects our unique suburb from this very type of development, and I know many in the community feel the same way.

The report states: *Whilst it is noted there are no other dual occupancy developments in proximity of the site, an increase of two dwellings on a lot is not unacceptable or unreasonable in this residential setting.* I disagree and feel for the neighbours who have to live directly next to them.

The report states: *A mix of render, timber cladding and brick provides for an interesting and contemporary design outcome within the streetscape context while complementing the natural setting of the surrounding dwellings.* I'm afraid I don't see anything interesting about this design and I fail to see how it complements the natural setting of the surrounding dwellings.

The report states: *Both garages are setback behind the front porch associated with Townhouse A. The porch is also set within the two garages, breaking up the visual dominance of the car parking.* Yet when I look at this render, all I can see is a dominance of car parking:



In my opinion, what the report writers are missing is that the existing amenity is far more preferable, interesting and complementary to the natural setting of the surrounding dwellings (and has no visual dominance of car parking) than the proposed 2 x new builds.

Thank you for reading my submission, Annie Price.

**I have also written to council asking that our phone numbers are not mandatory on objections forms, as it is disconcerting being called out of the blue from an unknown number of an applicant. I had some correspondence back but have not had a final answer.*

3. Mr Martin and Mrs Monika Baker (O)

Dear Sir/Madam,

Re: 14 Gareth Avenue, Beaumaris Vic 3193

Notice of decision to grant a permit

Application: 2021/300/1 Ward: Beckett Item 4.2

We are strongly against the decision to grant the permit.

We live next door to 14 Gareth Avenue, Beaumaris and are directly adversely affected by the proposed development.

Our concerns are listed below which we request be addressed:-

1. The proposed development **is non-compliant with Clause 55** (ResCode) in relation to side and rear setbacks (Standard B17) on the ground floor north side by 500mm which is significant and unacceptable.
2. The proposed development is a significant overdevelopment, being of significant scale with excessive bulk.
3. The proposed plans have excessive site coverage, there is no indication of how the site coverage was calculated considering the significant area of decking with an open pergola above.
4. The proposed development is definitely not in keeping with neighbourhood character.
5. The proposed development **removes most of the existing vegetation including canopy trees**. This will have a significant negative impact on the neighbourhood character.
6. The proposed development has excessive hard surface paving, particularly in the front setback area, significantly reducing the area for natural vegetation.
7. The proposed development presents to the street with a domination of 2 double car garages.

In light of the above, we believe that the proposed development be rejected as it is non-compliant with the required standards.

An appropriate design response would include a lower scale development featuring increased side and rear setbacks and increased opportunities for landscaping throughout the site.

We urge you to please consider our objections made and refuse the Grant of Planning Permit for the development.

Yours faithfully,

Martin and Monika Baker

4. Mrs Sophia Caldis (O)

I still have a number of concerns with the amended plans and would like more consideration given to the impact the current plans have on the neighborhood.

1. Overdevelopment of the site.
2. Contradiction between item 6.1 paragraph 4 and the table for "Side and Rear setbacks (Standard B17)".
3. The figures within the table "Side and rear setbacks (Standard B17)", North and East do not comply with those required by council.
4. Contradiction with item 6.2 paragraph 2 where the porch area is first considered non compliant but then is considered acceptable.

5. Mrs Robin Maxted (O)

To Whom It may concern.

RE: Agenda Item 4.3 (14 Gareth Avenue Beaumaris.)

Statement:

I live opposite to 14 Gareth Avenue, Beaumaris and will be adversely affected by the proposed development.

My concerns are listed as follows and I request they be addressed:-

- 1. The proposed development is non-compliant with Clause 55 (ResCode) in relation to side and rear setbacks (Standard B17) on the ground floor north side by 500mm which is significant and unacceptable.**
- 2. The proposed development will be a significant overdevelopment of the site, due to significant scale with excessive bulk.**
- 3. The proposed development has excessive hard surface paving, particularly in the front setback area, significantly reducing the area for natural vegetation.**
- 4. The proposed development presents to the street with a domination of 2 double car garages. Gareth Avenue will struggle to accommodate increased car parking on the street.**

In light of the above, I believe that the proposed development be rejected as it is non-compliant with the required standards.

An appropriate design response would include a lower scale development featuring increased side and rear setbacks and increased opportunities for landscaping throughout the site. The block is far better suited to a single occupancy development

I urge you to please consider my objections and refuse the Grant of Planning Permit for the development.

Robin Maxted

6. Mr Peter Crozier (O)

As the council is aware my main objection relates to the lack of sunlight due to a proposed construction that is 2.5 times the height of the existing dwelling.

As i have previously demonstrated this will result in a lessening of existing sunlight at 12 noon on the 22nd june of 3 metres. From may to august between 1 and 3 metres.

This is existing direct sunlight that i am asking to be kept.

I dont want any more or less.

The answer is to

1 reduce the height in the plans by by a total of 1.2 metres to bring the angle of the sun back to its current position on the 22nd june of 27 degrees.

Or 2.

Keep the existing plans but excavate down to aprox 1.2 to 1.4 metres below the current ground level and start the construction from there.

This will give us back the sun at 27 degrees and from heighest roof point to the base of our house as it is now.

I believe excavating will also solve the problems of privacy and light around the side entrance and kitchen at 16 gareth avenue.

I trust the council will take this into consideration and forget about the 22 september shade law which is ridiculous?

Peter Crozier
carer for val crozier.

7. Mrs Fiona Austin (O)

It is very distressing that a fine example of an architect designed mid -century modern home is to be demolished for two poorly designed town houses.

The town houses are not designed to be sustainable, they are designed to be cheaply built and they do not fit with Bayside Councils own Neighbourhood Character design guidelines for precinct H3. See statement below

'The bushy gardens surrounding the dwellings dominate the streetscapes. Where the topography is hilly, the buildings are set within the landscape, and are sometimes sited to take advantage of water views without dominating the streetscape. Adequate space is provided around dwellings for the retention and planting of vegetation, and indigenous canopy trees are common. Low or open style front fences are usually provided, in order to retain the openness of the front garden to the street. '

Councils own guidelines state developers are to AVOID:

- Large, bulky buildings
- Poorly articulated front and side wall surfaces.
- Minimise impervious surfaces particularly in front garden spaces to ensure space for plantings.
- Buildings should be setback a substantial distance from at least one side boundary.
- Lack of landscaping and substantial vegetation.
- Removal of large native trees.
- Buildings that are set further forward than the closest of the buildings on the adjoining two properties.
- Boundary to boundary development.
- Loss of front garden space.
- Car parking structures that dominate the façade or view of the dwelling.

This development includes almost everything on the list to AVOID

Overall development in Beaumaris is meant to:

- respect the remnant Coastal vegetation – and strengthening the bayside character with the planting of indigenous species
- Using building materials that complement the coastal location

- Encourage the use of low or open style front fencing – (possible timber instead of a solid rendered wall).
- Encourage innovative architecture that reflects the coastal setting
- Incorporate building elements and details that contribute to a lightness of structure
- Use a mixture of contemporary and traditional coastal materials, textures and finishes including render, timber, stone and brick – (possibly oversized timber front doors)
- FUTURE CHARACTER: The variety of dwellings should reflect the coastal setting through their design details and finishes
- An informal feel to the streetscape is achieved by spaces around buildings, the lack of or unobtrusive style front fencing and informal street treatments
- Incorporate design elements into the front façade design of new dwellings such as recessed portions, projecting elements behind the front setback line, combinations of materials, textures or colours or other elements providing appropriate articulation. Recess upper levels from the front façade.

As you can clearly see the design of these town houses could be built anywhere in Melbourne. They do not reflect the special requirements for Beaumaris.

If council allow this type of development in Beaumaris, then we will lose our unique neighbourhood character that groups like the Beaumaris Conservation Society have fought hard for over 60 years to preserve.

8. Ms Nola McKinstry (O)

Please note that ALL my original objections still hold; in particular the small site does not allow for two Townhouses unless they are considerably smaller in size than now and does not allow for important vegetation to remain. There is little vegetation area left (and little useful vegetation for the, sadly, disappearing variety of birdlife in Beaumaris due to overcrowding) in the front back and sides of both townhouses.

In addition, having perused the agenda, i would like to note the following:

1. Point 6.1 page 101: The paragraph beginning "Whilst it is noted.." This states that the plan allows for a fully compliant ground and first floor side and set backs, yet point 6.2, with respect to clause 55, show that this is not the case with one being 1 metre.
2. Point 6.2 page 102: The porch for Townhouse B is set at 1 metre, which is still not compliant because the standard requires 2 metres and still too close to the neighbouring property - lightweight or not.

Lastly, I would like to point out, that 1 block of allowed townhouses is used as an excuse for another block which introduces the encroachment of other Townhouses using prior instances of others elsewhere in the suburb as a leg into yet another street being invaded by all house and no flora and flora of substance. This is how a suburb like Beaumaris slowly becomes degraded from a village, into a suburb of wall to wall townhouses, little wildlife, and just another same-looking suburb.

9. Ms Jo Pritchard (O)

As a long-term local resident and rates payer, I wish to lodge my objection to the proposed dual occupancy for 14 Gareth Avenue Beaumaris.

My main concern is the over-development of the block and the lack of consideration of the site with respect to the proposed design. Most of the land has been taken up by the bulk of the built form, which squeezes 2 double storey townhouses, two double garages, two driveways, and two pools onto the block. There are virtually no setbacks from the adjoining properties which will be severely impacted by these structures.

There is no consideration of giving 'something back to the street' – with the front view totally dominated by the two double garages and driveways.

Due to the location of the left townhouse's front door and the roof line, the structure looks strangely like a single house with two double garages flanking it's front door.

There is no retention of existing vegetation and there is little provision for front, side or rear gardens, resulting in a huge loss of native vegetation and habitat for local fauna. The lack of plantable garden space means that the driveway/garage view can never be softened with landscaping.

The town houses are not designed to be sustainable, and do not fit with Bayside Councils own Neighbourhood Character design guidelines for precinct H3.

The design does not respond to the specific site or to the surrounding Beaumaris streetscape which has a rich modern architectural history.

10. Mr Gary & Mrs Jan Child (O)

We are extremely concerned that this is an overdevelopment of a small site - less than 700 square meters - the development will significantly impact on our backyard ambience, and our privacy. It will provide extreme shadowing of outdoor areas and the development is too close to the rear of the property and will make us feel like we are living in Inner City, not beautiful Bayside. This is a development that is disproportionate to the site - if a double development is to occur here (and our belief is the site is too small for that purpose), it should be single story and have capacity for decent amounts of greenery. We should be trying to keep Bayside beautiful.

11. Prof. Chris Doucouliagos (O)

The agenda item notes that the planned buildings do not comply with some of the councils guidelines; see pages 101 and 102. It should be possible to modify the proposal so that it is fully compliant.

Also on a more substantive issue, the statement on page 101 that " Whilst it is noted there are no other dual occupancy developments in proximity of the site, an increase of two dwellings on a lot is not unacceptable or unreasonable in this residential setting" is a matter of subjective judgement. It is the view of the local residents that this is unacceptable and unreasonable.

Thank you for the opportunity to highlight these issues.

12. Mr Jeff Sarkis – MJS Construction Group Pty Ltd (A)

Hellier McFarland has been engaged to prepare a written response to the grounds of objection raised in relation to the above planning application to construct two dwellings on the land at 14 Gareth Avenue, Beaumaris.

The application was recently advertised, and we understand that 20 objections have been received from Beaumaris and further afield including objections from outside the Bayside municipality.

We note that there are no permit triggers under the Design and Development Overlay Schedule 3 which applies building height controls for non-residential buildings in the inland minimal residential growth area.

Summarise Grounds of Objection

- There are errors in the application in relation to site coverage.
- Loss of a mid-20th century dwelling.
- The proposal is contrary to the neighbourhood character.
- Scale and Bulk
- Contrary to the Significant Landscape Overlay and loss of tree protected by the Vegetation Protection Overlay.
- Poor quality housing and unimaginative design.
- Front elevation dominated by garages.
- Loss of trees in a Vegetation Protection Overlay.
- Setbacks are non-compliant.
- Overshadowing of neighbouring private open space and habitable room windows.

Response to Grounds of Objection

These comments should be read in conjunction with previous correspondence to Council dated July 2021 in response to the request for additional information as well as to plans recently submitted in response to outstanding office concerns. The recently submitted plans show the following changes:

- Redesign of the entry to Townhouse B by creating a 2.0m side setback to the northern boundary in response to the concerns raised re boundary-to-boundary construction. An arbour and side entry to Townhouse B were previously provided as part of the RFI response. As part of this change the garage store has been relocated from the front to the rear of the garage to minimise the width of the garage when viewed from the streetscape. The internal entrance way to dwelling has also been deleted. The porch and arbours have been set back 1.0m enabling an easily identifiable but visually permeable entry to Townhouse B and greater visual separation from the dwelling on the neighbouring property to the north at no. 16 Gareth Street.
- The width of the first floor has been adjusted to ensure the eaves, fascia & gutter are all within the allowable 500mm encroachment.
- Tree No. 2, the Willow Myrtle within the front setback is proposed to be removed. Correspondence is annexured from John Patrick Landscape Architects in support of the trees removal.





1. 'Errors' contained in the planning application

Site Coverage:

The definition of a building includes a dwelling, a garage or carport, a verandah and any other roofed building such as a garden shed. When calculating site coverage, if the upper storey projects over the ground floor, that part of the upper storey is also added onto the ground floor area. This does not include an underground basement that is constructed wholly underground. Outdoor paving, driveways, footpaths or building eaves are not included when calculating the amount of site coverage. (Planning Practice Note 27)

Clearly there will be an increase in site coverage as a consequence of replacing one dwelling with two. In this case, the site coverage of 47.96% has been calculated having regard to the above and found to comply with the maximum 50% variation to Standard B8 at Clause 55 of the Bayside Planning Scheme required in Schedule 3 of the Neighbourhood Residential Zone that applies to the site.

Private Open Space:

The total private open space area should not be less than 40 square metres for a dwelling where there are two or more dwellings on a lot and 80 square metres or 20 per cent of the area of the lot, whichever is the lesser, for one dwelling on lot. Secluded private open space with a minimum area of 25 square metres and a minimum dimension of 3 metres should be provided for both one or two or more dwellings on a lot. The 25 square metres of secluded private open space should be provided as part of the total private open space for the dwelling, not in addition to it. (Planning Practice Note 27)

Private open space has been provided for the proposed development as follows:

- Townhouse A - 91.13sqm of private open space is provided of which 59.27sqm is secluded private open space. This complies with the requirements of Standard B28 at Clause 55.
- Townhouse B - 84.11sqm is provided of which 59.69sqm is secluded. This complies with the requirements of Standard B28 of Clause 55.

Permeable Area:

At least 20 per cent of the site should have surfaces that can absorb water – such as garden beds, lawn and other unsealed surfaces. This can include driveways, footpaths and outdoor entertaining areas, provided the materials used for their construction are pervious. (Planning Practice Note 27)

38.82% of the site will be permeable having regard to the proposed building site coverage of 47.96% and proposed hard surface of 13.22%. This complies with Standard B9 at Clause 55.

2. Loss of a mid-20th century dwelling

There is no heritage protection afforded to either the dwelling on the site nor to the surrounding area. The site is well located with regard to community services, facilities, transport and infrastructure, is relatively flat, regular in shape and of a size that makes it a good candidate for redevelopment for two dwellings in line with State and local planning policy addressing the provision of additional housing and increased housing diversity.

3. Neighbourhood Character

Concern has been expressed by objectors that the construction of two townhouses is not in keeping with the low key neighbourhood character of Beaumaris. The proposal has been designed to have regard to the preferred neighbourhood character, described at Clause 22.06 of the Bayside Planning Scheme in Neighbourhood Character Area H3 as follows:

The bushy gardens surrounding the dwellings dominate the streetscapes. Where the topography is hilly, the buildings are set within the landscape, and are sometimes sited to take advantage of water views without dominating the streetscape. Adequate space is provided around dwellings for the retention and planting of vegetation, and indigenous canopy trees are common. Low or open style front fences are usually provided, in order to retain the openness of the front garden to the street.

The ensuing design guidelines reinforce this valued natural landscape setting and the way buildings sit within it. Landscape character is reflected in each of the design elements including siting to allow replanting of native vegetation particularly within the front setback, the location and design of parking structures, height not exceeding the canopy line, the use of building materials and colours to complement the natural setting, maintaining the openness of front yards, minimising hard paving to allow for garden area, and ensuring new buildings provide an articulated and interesting façade to the street.

The focus of new development in this area is clearly upon the protection of the landscape and how new development responds to this rather than built form character as such. There is no mention in the preferred character statement or design guidelines of architectural styles (which are mixed with styles from the 1950s to the 1980s and more recent evident throughout the area).

The proposed development provides a positive response to the design guidelines. The height sits below the prevailing tree line, the development is sited to allow space around the dwellings (particularly to the front and rear) for the planting of appropriate native and locally indigenous vegetation.

The proposed development avoids boundary-to-boundary construction, respecting the rhythm of dwelling spacing in the street by setting back the northern elevation of Townhouse B along the northern boundary. It is well articulated with a sensitive interplay of projecting and recessed elements that add interest and minimise the presence of garaging from the street, and features a suite of earthy colours, materials and finishes that will complement the natural landscape setting.

A row of low upright timber posts is proposed to be provided along the frontage that serve to define the frontage whilst retaining the openness to the street. Hard surface within the front setback has been minimised with the tapered design of the driveways which have been spaced to maximise the area available for the planting of trees as well as to provide an appropriate landscape interface with the street.

The proposed vegetation removal has been previously justified on the basis that the trees have a limited useful life expectancy or are not native to Victoria.

4. Scale and Bulk

The site is located in an area in which new single dwelling replacement housing tends to comprise of substantial family homes that are far larger than the dwellings they replace. The propose two dwelling development minimises scale and bulk by incorporating generous upper level setbacks and utilising an attractive palette of natural tones and finishes that add articulation and visual interest and respect the landscape character of the area.

The proposed siting respects the existing and preferred character with ground level setbacks ensure areas are provided throughout the development for appropriate replacement planting including canopy trees to complement the development and the landscape setting.

5. Vegetation Removal

The Significant Landscape Overlay does not apply to the site. The land is, however, subject to the Vegetation Protection Overlay Schedule 3 (VPO3) which addresses the Beaumaris and Black Rock native vegetation areas.

The vegetation objectives to be achieved in the VPO3 are:

- *To prevent the loss of native and particularly indigenous vegetation incurred by development.*
- *To retain the amenity, aesthetic character and habitat value of Australian native vegetation and indigenous vegetation in particular within the Beaumaris and Black Rock area.*
- *To promote the regeneration and replanting of indigenous species in the Beaumaris and Black Rock area.*

We have previously provided a detailed response to concerns raised regarding the removal of vegetation from the site in the July 2021 RFI response letter. Suffice to say, the proposed vegetation removal is justified given the trees have a low retention value based on limited useful life expectancy and/or are not native to Victoria.

The office of John Patrick Landscape Architects has prepared a landscaping plan featuring native and locally indigenous vegetation including trees to be planted throughout the site which will more than adequately compensate for the vegetation to be removed.

Overall, the objectives of the VPO3 have been achieved.

Quality of Construction and Design

The MJS Construction Group are award winning builders with over 30 years experience in residential building and design. Further, the quality of construction, including materials and sustainability, will be safeguarded by achievement of the relevant building controls.

The layout and design achieve a high standard of compliance with Clause 55 (ResCode). A detailed assessment has been previously provided with the planning application documents.

Garaging to the Front Elevation

A porch has been provided to the entrance of Townhouse A that projects in front of the garages to ensure that they read as a secondary element whilst contributing to articulation of the front elevation.

Minimising the amount of hard surface and maximising the area available for landscaping and the provision of canopy trees within the front setback will also ensure that the development sits well within the landscape setting and that the garages do not dominate the streetscape presentation.

Setbacks

Neighbourhood Residential Zone Schedule 3

A new building not on or within 200mm of a boundary should be set back 2 metres from the side boundary, and 3 metres from the rear boundary, plus 0.6 metres for every metre of height over 3.6 metres up to 6.9 metres, plus 2 metres for every metre of height over 6.9 metres. (NRZ3)

Whilst it is proposed to construct the garage of Townhouse A on the southern boundary, the balance of the dwelling will be set back the required 2.0m ensuring space for the planting of appropriate vegetation to complement the landscape character of the area.

The 2.0m setback of Townhouse B from the northern boundary ensures the design avoids boundary-to-boundary development and respects the rhythm of dwelling spacing in the street. This proposed setback is also in excess of the 1.5m setback of the existing dwelling on the site from the northern boundary.

The proposed entry arbour to Townhouse B is setback 1 metre from the northern side boundary. This design approach is considered acceptable in the context of the side setback requirements outlined in the Schedule to the Zone which seek that a new building should be setback 2 metres from a side boundary. While Standard

B17 notes that porches may generally encroach an additional 0.5 metres into the side setback the proposed additional encroachment of just 0.5m is considered appropriate and acceptable given the porches setback from the street frontage, its limited height and transparency of the structure.

All other side and rear setbacks comply with the varied standard.

Overall, the proposal is also considered to achieve the objective of the neighbourhood character guidelines with respect to the rhythm of dwelling spacing in the street. Buildings on the neighbouring properties to the north and south are also set back, ensuring that the spacing is retained between the properties.

Overshadowing

The shadow diagrams provided with the planning application clearly show that there will be no shadowing of neighbouring secluded private open space or habitable rooms and that shadows cast will be confined to the existing fence line, driveway and a car port.

Thank you for the opportunity to provide a written response to the grounds of objection. The applicant has worked closely with council over the course of this application and made amendments where possible to address concerns as they have arisen. The resulting proposal will provide an attractive, site responsive addition to the streetscape that will safeguard local residential amenity and achieves a high level of compliance with all relevant policy objectives and planning scheme requirements.

We trust that this will enable the application to be further considered and we look forward to your approval.

Yours sincerely,



Brad Evans
Manager Planning
Hellier McFarland
planning@hmf.com.au

Item 4.4

17 Birdwood Avenue, Brighton

1. Ms Gillian Davies (O)

Thank you for the opportunity to submit this Request to be Heard.

Council's own documents - obtained under FOI - are inconsistent with the decision made in this matter. It is constantly stated that the owners are only applying for this permit because they did not realise the earthworks were not included in their original building permit. Firstly, the owner is apparently a property developer, and it is simply not credible he was unaware of what was included in a building permit. Secondly, he did not originally apply for a building permit. He simply constructed two timber huts on the land and only applied for a permit after complaints were received by Council. Again, as a property developer, it is not credible he was unaware that the construction of two timber huts on a vacant block of land was illegal. And so, he was forced to apply – retrospectively – for a Building Permit. There were also issues regarding the construction of the front fence and he again – retrospectively – applied for the appropriate permit. Now, he is applying – retrospectively – for a permit for earthworks. How many times can an owner disregard the Council building requirements, proceed to undertake the work, and then apply retrospectively for the appropriate permit.

Council's recommendations to grant the permit retrospectively do not take into account the report of Council's own officers, obtained under FOI. I draw your attention to the following file notes:

“The complaint has come in from a private Town Planner who is acting for and on behalf of the neighbouring owner. There is significant evidence (as attached – including on Intramaps Satellite timeline images) which indicates that the owner/developer of the property at No. 17 Birdwood Avenue (currently a vacant demolition site) is and has been over the last couple of years stock piling and spreading imported soils (most likely from their other property at No. 20 Birdwood Ave when excavating the basement at that site – refer timeline Satellite images) over the vacant site in an attempt to raise the natural ground level of the site and hence increase the height and view of his future development (yet to have commenced and no Building Permit yet issued). Also refer attached pictures/inspection report. etc.”

“The site has been vacant/demolished for over three (3) years, fill has been delivered, spread and levelled over the site slowly over the last 2-3 years. No building works have been carried out, no Building Permit/Planning Permit appears to be on foot at this stage for the future redevelopment of the site. Hence they would not have had/undertaken a reestablishment survey to document the existing RL's at this stage. As a result there is every chance by the time they do that the newly created soil levels will be documented as natural ground levels, which clearly they aren't as pictured. By doing so will raise their building height and hence views when going through the design process.”

Council officer (name redacted), Bayside internal email sent Friday 18 October 2019 at 5.36pm.

“I have never heard anything back from Planning Investigations on this matter since an am unaware if any action has been taken on the matter. ... There is no doubt in my mind that the owners are land banking this golden mile foreshore property and will sit on it while they go about slowly altering the natural ground levels, which is clearly prevalent based on my report and investigations which is also further corroborated by our aerial images – refer

timeline images, where it is clear that they have dumped soils/fill across the site from their other property just a few blocks up whilst that was under construction.”

Council officer (name redacted), Bayside internal email sent Tuesday 11 February 2020 at 3.28pm.

“With reference to the attached inspection report, can you please clarify whether or not a Planning Permit is required to add more than 1m in depth of fill (approx. up to 1.8m toward the rear of the block) to this site.”*

Council officer (name redacted), Bayside internal email sent Monday 30 March 2020 at 12.14pm.

***Note that this email mentions a fill of up to 1.8m, rather than 1.5m noted in the Decision to Grant a Permit.**

“We had gone through this before ... however have never heard anything further or definitive response as to whether or not a Planning Permit was required for the works.”

Council officer (name redacted), Bayside internal email sent Friday 8 May 2020 at 9.56am.

“Further to my previous e-mails ... I agree that the placement of the fill as outlined results in a change of the topography of the site ... Where to from here?”

Council officer (name redacted), Bayside internal email sent Wednesday 17 June 2020 at 12.32pm.

The Planning Report prepared by proUrban dated 16 July 2021 refers to the earthworks being “...on the **eastern** portion of the site.” (page 6, Section 3.1) The earthworks in question were undertaken on the western portion of the site.

There is a clear pattern to the approach of the owner in regard to acquiring the necessary permits for building works. He continues to demonstrate an unchallenged ability to take advantage of failings in Council’s operations.

Your internal emails, and the concerns raised in them, are at odds with the decision reached in this matter. I would urge Council to reconsider its decision to grant the requested permit.

Thank you for your consideration.

Gillian Davies

2. Mr Tim Ryder – proUrban Advisory Planning and Management) (A)

Dear Councillors,

WRITTEN STATEMENT TO PP 5/2021/376/1 17 BIRDWOOD AVENUE, BRIGHTON

Please find below a written statement which we understand will be read out in support of the planning application for 17 Birdwood Avenue at the Council meeting on the evening of Tuesday 19 October.

STATEMENT BEGINS

Good evening Councillors,

proUrban, Advisory, Planning & Management ('proUrban') act on behalf of the permit applicant, JA Project Services Pty Ltd, in relation to land at 17 Birdwood Avenue, Brighton ('the site').

The application seeks retrospective planning approval for the introduction of fill to the rear portion of the site. The works were undertaken following advice by Council that they were covered by the existing approved building permit. The landowner has since received advice from Council that planning approval is actually required and has lodged this application to rectify the situation

The earth works have occurred on the eastern portion of the site. The works predominately filled and levelled the area where a swimming pool was previously located. The extent of fill introduced ranged from 0.2m to 1.5m. The deepest fill (1-1.5 m) was concentrated to the pool area.

Importantly the levels of fill introduced were done so to flatten the site, and in a manner which makes the site generally the same level of each of the neighbouring properties. As a result the impact on adjoining properties and the foreshore area is negligible. We consider the works are consistent with the relevant objectives of the Design and Development Overlay, Schedule and have no detrimental impact on the neighbourhood character of the area.

We acknowledge that objections have been received to this proposal, with a focus of these being in relation to the single storey residential dwelling that has been constructed at the front of the site. We note that these works did not require a planning permit and are not part of the application before you tonight. We note that this dwelling is not utilised as the landowners primary place of residence but rather used regularly for recreation purposes, due to it's convenient foreshore location. We note the use of a dwelling in this manner is similar to that a beach-house or holiday-home, and there are no provisions in the Bayside Planning Scheme which prohibit this.

Finally, we would like to thank Steven Mallett and the other Council officers involved for the positive and constructive approach they have taken in their consideration of this application. We very much agree with their conclusion that this application should be approved. We trust that you are able to support their recommendation this evening.

STATEMENT ENDS

If you require any further information or clarification in relation to the application, please do not hesitate to contact me at tim.ryder@pro-urban.com.au or 0404025602.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Tim Ryder', with a stylized flourish at the end.

Tim Ryder

Director

Item 4.5
2/124 Esplanade, Brighton

1. Mr Gerard Gilfedder – Currie & Brown (Australia) Pty Ltd (O)

Our ref: 500485
Your ref: 2017/204/3
Page 36 of 67

Councillors Laurence Evans & Alex Del Porto
Mayor & Chair Planning & Amenity Delegated Committee
Bayside City Council
PO Box 27
SANDRINGHAM VIC 3191

18 October 2021

Dear Councillors

ADDITIONAL SUBMISSION TO THE S72 APPLICATION TO AMEND PERMIT 2017/204/3

I refer to the above matter and the report to be considered by Council's Planning and Amenity Delegated Committee on 19 October 2021 (Item 4.5 refers).

I act on behalf of Ms Barbara Layther, Mr Jeffrey Layther, and Ms Astrid Magnusson owners of 13A Manor Street and 3/124 Esplanade Brighton.

The amendments proposed in the application include:

- The construction of a roof access structure to the existing roof deck
- Works within common property 'air space'
- Amend the preamble to include works in common property.

It is noted that while an application can be lodged, to build the lift access under the Design and Development Overlay – Schedule 1 and within common property, it does not automatically follow that a permit or an amendment to a permit should be granted. The key concern with the proposal is the incremental reduction in amenity for the objectors and increase in visual bulk of the building adjoining their properties. There is also concern that there is an incremental dilution of the design and built form considered appropriate by VCAT.

The VCAT decision approving the original permit held:

"28 The proposed dwelling reflects built form characteristics evident in the surrounding area, including the flat roof form, contemporary design and the variety of finishes including rendered brickwork, timber cladding and glazing, which are consistent with those found in the vicinity. The curved elements of the proposal will create visual interest."

and

"36 I have considered the relevant design objectives, and decision guidelines at Schedule 1 to the DDO. I am satisfied that the proposal is acceptable for the following reasons:

a. The proposed access to the roof deck is by sliding hatch (rather than an access structure) and this, together with the materials used including the glazed balustrade and glass privacy screen and planter box with landscaping minimises the visual impact of the roof deck. On this basis, I

consider that the design of the roof deck adequately integrates the structure and form and associated access with the building;”

There is now a proposal to add a 2.4m high structure to provide additional building for a lift within the approved 4.77m setback of the roof deck from the north-eastern wall of the existing building. This introduces an additional solid and bulky built form into the vista of the objectors. This is inconsistent with the flat roof form of the area.

It is submitted that the existing approved sliding hatch access is appropriate and there is no need to introduce this solid massing element on the roof.

The agenda report indicates at page 166 of 339 that “The access structure is not setback 2 metres from the roof edge immediately below but is not required to as it does not form part of the ‘roof deck’.” The definition of a roof deck in the Design and Development Overlay – Schedule 1 “means an area designed and used as private open space that is located above the upper storey of a building.” It is submitted that as the lift structure and foyer are ancillary to the roof deck in that the structure is to provide alternative access to the roof deck they should be considered as part of the deck. That is, they would not be required if the deck were not permitted. It is submitted that a setback of 1.2m from the north-eastern wall for a bulk structure is inappropriate and inconsistent with the design objective of the overlay “to protect the amenity and privacy of residential properties.

Accordingly, the submission requests that the amendment be refused, and the current approved development be retained.

I hope this submission is clear. Please do not hesitate to contact me on 0407 878 316 should you wish to discuss any aspect further.

Yours sincerely
For and on behalf of
Currie & Brown (Australia) Pty Ltd



Gerard Gilfedder
Associate
Manager Planning Services

E gerard.gilfedder@curriebrown.com
M 0407 878 316

2. Mrs Barbara Layther (O)

Application: 5/2017/204/3 Agenda item: 4.5 Meeting 19 October 2021

Subject site: 2/124 Esplanade, Brighton

Barbara Layther representing 3/124 Esplanade BRIGHTON

Statement from owners /custodians Unit 3

One of four Owners Corporation units the subject site, Unit 2, is set mid location on a site of 329sq m. with its entrance foyer at the rear. Unit 1 a developed 2 storey dwelling is directly in front and Unit 3 a single storey villa directly behind. It will be the unit most affected, having only the common property driveway as an outlook to the sea.

Unit 2&3 front doors face each other.

The application is to amend a permit by: - **the construction of a roof access structure to the existing roof deck including works that fall within common property air space.**

To be built is: -

- i) a lift structure so a passenger lift can extend up through the 2nd storey roof.
- ii) in front of the lift a non-habitable room – a foyer into which both access points enter and
- iii) the stairway roof access structure. A door opens from here into the foyer and through another door onto the glass enclosed roof deck. All at 3rd storey level.

AND ALL THIS is to be built on the very edge of the Unit 2 roof, directly opposite the porch of Unit 3.

We protest against the proposed roof access structure as the lift would provide vehicular access to, and departure from, the roof deck and then **its use is done**. How many times would the lift be used a week and regardless of usage how long would this structure be there - forever!

This structure is to be built in dark material possibly timber cladding and will be noticeably intrusive, large, bulky and permanent. It will always be in sight and we believe this to be a gross disproportionate use of space and time for those who use the lift and rarely see it and for those who are forced to see it daily and never use it.

This dark roof access structure is a vision blocker. Whereas the stairway entrance requires no access structure and the clear 1.7 glass balustrades around the roof deck allow vision through and beyond and blend well into the surrounds. Therefore the access structure should not be built with material that is solid and will impact on the amenity of close neighbours.

Altogether the roof access structure covers TWO roof access points, has considerable bulk and a combined width reaching across more than half of its rear eastern wall. This width (combining the 2 access points) is greater than the width of most neighbouring roof access structures.

The lift will be right on the edge of the wall, at the south-east corner of the dwelling directly opposite and close to the Unit 3 facade. It will increase permanent visual bulk, overshadowing and minimise the view. Feelings of spaciousness given by an open view of the sky will be impacted. As well shadowing and loss of light would increase. Late in the day shadows would be cast where never before.

The planner may consider there is minimal impact for the rear unit. We dispute this because the huge lift enclosure and the associated structure standing on the edge of the 2nd storey wall and close above you is of maximum visual impact. The roof access structure equates approximately to 1/3rd of the height of the two storey construction and would be always added up there on top as a permanent fixture. It would be there in view 24 hours of every day. It would be there every time a Unit 3 occupant goes out the front door, moves about the garden or looks out a window because whatever is built on the unit 2 site is what Unit 3 is set to see.

Elevations TP2.00/01 on pp 177/178 of 399 and Sections TP3.00 on p179 of 399 demonstrate this.

The current Roof Top Plan TP.002 p.191 of 399 shows a clear contrast to the bulk of the combined access structure in the proposed Roof Deck Plan TP1.03 p.176 of 399.

The stair access does not need an access structure so the impact of visual bulk is minimised and softened by the addition of 6 pot plants and the use of clear glass balustrades. Stair climbers step right onto the roof deck.

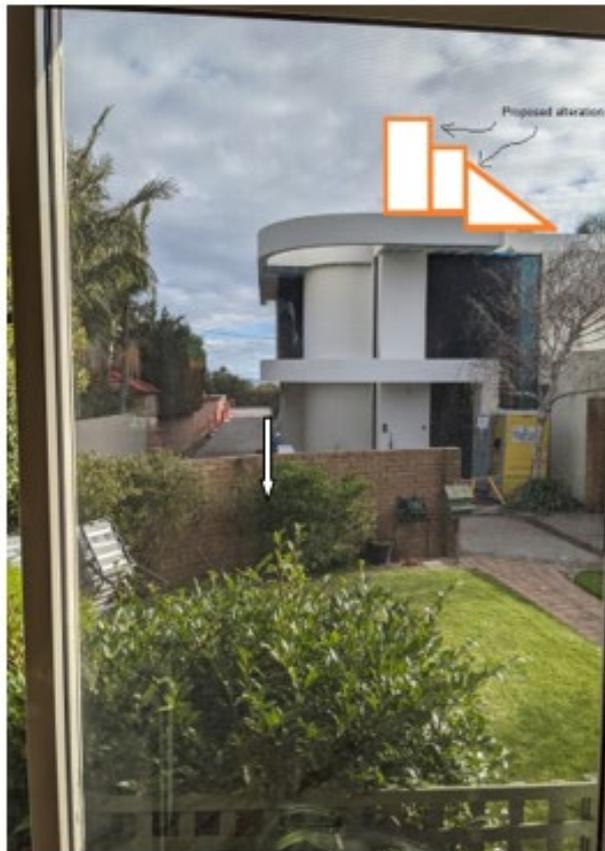
In contrast again, the plan TP1.03 shows what looks like a BBQ etc in lieu of the pot plants.

It should be noted: The roof deck stairway is accessed from the first floor level. A lift brings occupants from the front foyer to this level. Here particularly are accommodated the elderly and those with limited ability who can be ushered to the balcony where they are able to enjoy a sea view. This same amenity can be enjoyed by taking from this level one flight of stairs up to the roof deck.

We oppose the amendment mainly on the grounds of the immense visual bulk of the roof access structure in dark imposing material which we believe is an unnecessary intrusion when there is already acceptable access by stairway.

SO if this amendment to have a lift access is granted, occupants of Unit 3 will always be seeing a two storey structure with 1/3rd of its height added up on top.

3. Mr Jeffrey Layther (O)



Proposed roof access structures

Vertical arrows roughly indicate the common driveway boundary. From living room, Unit 3



Horizontal arrow defines width of sea view (note over grown garden before demolition)
The original OC of 124 Esplanade: - alignment of Unit 1 at front, Unit 2 mid location, Unit 3 at rear

4. Miss Astrid Magnusson (O)

Planning and Amenity Delegated Committee Meeting 19.10.2021

Agenda Item: 4.5 2/124 Esplanade, BRIGHTON 3186

Application: 5/2017/204/3 Ward: Dendy

Astrid Magnusson co -owner Unit 3 124 Esplanade

Statement

Subject site: Unit 2 / 124 Esplanade Brighton 3186 - Owners Corporation RP 1743

Pertinent points against proposal to add high structure to provide additional building for a lift : -

High structure inconsistent with the flat roof form of the area.

Existing approved sliding hatch access is appropriate and there is no need to introduce this solid massing element on the roof.

Clear glass balustrades allow vision through and beyond while opaque glass balustrades provide privacy.

Planter boxes and pots with landscaping minimise the visual impact of the roof deck.

The only outlook from Unit 3, apart from the view to the Bay down the common drive, is the Unit 2 building and what is built on the roof.

It is obvious to observers that Unit 2 is much taller than Unit 1 in front. This current height nullifies the opportunity for Unit 3 behind to build a second storey with an outlook to the sea and horizon. Units 1 2 and 3 are built one behind the other and were formerly aligned. The OC has a designated height restriction of 7.62m. Managing this height restriction should have seen each unit and neighbours behind retaining sea views over the units in front. Units 1 and 4 have both developed within 7.62m, have sea views and the flat roof form consistent with the area.

It is well to remember that the measurement of the height of the roof deck floor from the surface of the roof is the measurement that will affect the ultimate height of structures on it and the extent of visual bulk. Current estimate is 9.2m

I believe these points recommend that the amendment should not be granted.

5. Mr Jason Barnfather – Squareback Planning Pty Ltd (A)

Agenda Item 4.5 2/124 ESPLANADE, BRIGHTON

Dear Councillors,

On Tuesday night, our application for amendments to an existing planning permit will be presented to Councillors for consideration.

The application primarily seeks to provide an access structure to an already permitted roof terrace to allow for an integrated lift and stair access structure.

This matter is back before Council following our decision last month to defer the item to allow time for notice to be provided of the application on the body corporate and all owners of lots 1 – 4 of 124 Esplanade. This notice has occurred and as outlined in the Agenda on Page 162, we have met all obligations in accordance with the requirements of the Planning and Environment Act 1987.

Once again, we support the recommendation and assessment undertaken by the Planning Department and thank them for making necessary adjustments to reflect the deferral and additional notice.

We also wish to highlight the following in relation to the application to assist with your decision making:

- The lift and stair access structure is consistent with the mandatory requirements of the Design and Development Overlay Schedule 1 that were introduced by Council more than 15 years ago. This is achieved by:
 - Limiting the height to not more than 2.4 metres above the roof terrace level. In this case, it is only 700 millimetres above the current endorsed balustrade height which is 1.7 metres.
 - A visually recessive presentation which minimises its impacts on the surrounding properties.
 - Integration in an architectural sense, with similar materials and finishes to the balance of the dwelling and roof terrace (as shown below).



- Limiting overlooking opportunities. In fact, this proposal is expected to decrease overlooking opportunities from the objectors' properties to the rear (north-east) as the structure will replace 1.7m high clear glazing and there are no windows within the access structure with outlook to the north-east.
- The provision of lift access ensures that all persons, including those with disabilities, have access to the roof terrace. This is consistent with the objectives of the Liveable Housing Design Guidelines which are expected to be introduced into the National Construction Code next year which, in part, seek to ensure homes are designed for any occupant, regardless of their age or ability. The relevance to this application is that the occupants of this dwelling will include older persons, one of whom has a significant knee injury and would likely be excluded from using the terrace.
- There are countless examples of roof terraces with access structures along The Esplanade and more broadly in this area and therefore this application is consistent with the character of the area.

Overall, we consider the changes to be appropriate having regard to the Planning Scheme provisions and having considered the potential impacts of the amendments.

We therefore urge Councillors to support the application and if you have any questions prior to the Meeting, please email jason@squareback.com.au or call us on 9965 1930.

Regards,

Jason Barnfather
Director
Squareback

Item 4.6
120 Esplanade, Brighton

1. Mr Andrew & Mrs Vickie Lee Young (O)

Planning Application 5/2021/193/1

Written submission supporting our objection to this permit.
Andrew & Vickie-Lee Young – Unit 2 / 120 Esplanade Brighton VIC 3186

Contents

1. Background
2. Planning Process
3. Land Title & Ownership
4. Objection – Development Of Common Property
5. Precedence – Common Land
6. Objection – Overlooking
7. Other Matters
8. Closing

Background

My name is Andrew Young. My wife Vickie-Lee Young and I are the residents and shareholders of Unit 2, 120 Esplanade, Brighton 3186. We have owned our shareholding (right to occupy) since settling on the 21st of January 2014.

- 120 Esplanade is owned by an Owners corporation – Seaview Flats Pty Ltd (ACN 004 314 318) – of which I am a director.
- The property consists of 4 units, presently all units are owner occupied.
 - The owners of Unit 1 & Unit 2 **OBJECT** to the submitted request for planning permission.
 - The owners of Unit 3 & Unit 4 **SUPPORT** the submitted request for planning permission.
- Title of ownership falls to the owner's corporation and each unit has a “right to occupy” their respective residence.

Planning Process

During the planning process, the plans were submitted to council without all owner's consent. Whilst units 3 & 4 had discussed the proposal in general, *no consent was given to units 3 and units 4 to submit their plans.*

Council has failed to acknowledge planning permit 5/2015/827/3 that has some relevance to the core of this proposal – Unit 4 are building in existing “outdoor” space.

As highlighted in the agenda, on page 214, previous development applications had submitted and approved by council. In addition, those plans had all been previously approved by all directors.

The consent process has not taken place on this occasion.

We would argue that the planning process undertaken by Units 3 & 4 was questionable & was morally wrong and that it was not in the common benefit of all residents. The decks are exclusive to units 3 & 4. Units 1 & 2 gain nothing apart from discontent, possible damage to their properties and extensive inconvenience.

Land Title & Ownership

The department of environment, land, water & planning recognises the land at 120 Esplanade as a **single title**;

- LAND DESCRIPTION - Lot 1 on Title Plan 873797R (formerly known as part of Dendy's Crown Special Survey Parish of Moorabbin).
 - PARENT TITLE Volume 06347 Folio 334 Created by instrument 2385389 02/03/1951

The ownership and registered proprietor of the land is as follows;

- SEAVIEW FLATS PTY LTD of 120 THE ESPLANADE BRIGHTON 2640224 16/09/1954

Objection – Development Common Property

- In note 6.10 in the agenda, on page 220 – council planners have determined that;
 - “On review of the title applicable to the land, no works appear to locate on common property”.
- We would argue that the owners of unit 1 & 2 will be directly disadvantaged by approval (and possible construction) of the roof decks. The plans submitted clearly require demolition of common roof space that would possibly be of practicable use by units 1 & 2.
 - In construction of the decks, units 1 & 2 will be adversely impacted in the space previously made available to them will no longer be available. We may choose to house plant and equipment in this space – we will no longer be afforded this opportunity

Precedence – Common Land

- If the council rejects our argument regarding the development of common property and still determines to grant the permit to units 3 & 4, we are concerned that it will set a dangerous precedence;
 - Despite the equal right to occupy amongst four (4) owners, two (2) units are entitled to obtain “common land” for their own benefit and exclusive use.
 - We think a more equitable option would be that a special condition be added to the planning permit to require 75% of owners consenting to the granting of planning permit.
 - FYI, if as an owner's corporation we decided to remove a tree – **council will only approve of 75% of owners consent** – why should the same policy be not applicable for planning permits.

Objection - Overlooking

- In regard to overlooking concerns, on page 220, section 6.10 of the agenda, the council planning team have noted the following regards to overlooking;
 - *“When looking West towards the Bay, the residents using the roof deck will not be within 9 metres of habitable room windows or private open space of adjoining dwellings.”*
- We would argue whilst the proposed screening addresses **overlooking from external properties** – it does not address the concerns of the of the nearest residents i.e., **Units 1 & 2 – directly below the units 3 & 4**
- Units 1 & 2 have private courtyards that were established prior to the owners of Unit 3 & 4 taking residence. **Unit 4 already has an outdoor deck that looks directly into our courtyard and has plans (5/2015/827/3) to build this in**
- The proposed roof decks will still clearly be visible to units 1 & 2 when we are enjoying our private outdoor space.
- Noise from the roof decks for units 3 & 4 would be clearly heard from the previously established outdoor spaces of Unit's 1 & 2.

Other Matters

Whilst we understand this is a planning hearing, we would ask the council to consider other factors;

- Units 3 & 4 believe it is their right to roof decks as they have no outside space.
 - The previous owner of Unit 3 “built -in” their previous outdoor space.
 - This is a case of buyer beware – when buying their respective residences, they should have considered this.
 - Units 3 & 4 have access to outside space on balconies at the front of the property.
- Unit 4 has outdoor space but has plans with council to “build in the majority of this space.”
 - The planning reference for this is; 5/2015/827/3
- This is not of total community benefit all residents of 120 Esplanade.
 - It only benefits 2 of 4 owners. Hence whilst not all owners agree.

Closing

- We would like to see council uphold our objection based on the arguments of;
 - Existing Planning Permit 5/2015/827/3 for unit 4 to “build in” their existing outdoor space.
 - Common Property
 - Overlooking
 - Community Benefit
- Thank you for your time and consideration.

2. Ms Anita Frawley (O)

When I saw the permit advertised on the front fence (after I had signed contracts and purchased the house) it said the application was submitted on behalf of Unit's 1,2,3 and 4. I was not aware of any permits that had been applied for when I purchased the house, it was not advised by the previous owner or listed on the section 32.

On reading the council advertised notice on the fence, my original understanding was that the decks were for all the unit owners and that all the owners had given their consent as the permit was applied for by units 1,2,3,4. After investigating I was advised that only two out of the four owners have agreed to the application and the decks were for the exclusive use of Unit's 3 and 4. If this is the case I would like to understand how this can proceed and then be approved if only two out of the four owners (directors) have agreed? How was the permit applied for in the first place?

My major concerns are:

- The weight/damage onto my apartment, I already have noticed cracks in the corner points of my roof which I presumed may have occurred when Unit 3 (above my apartment), built in on their open space deck area.
- The over look into my private courtyard from the deck, this causes me great concern and I would not have purchased the property if I had known they were applying for the decks for their personal use. On page 233 of the plans it states, "overlooking obscured by canopy below". I have no "canopy" below apartment 3 just an umbrella in the courtyard and plants. In addition, noise from the roofdecks for Unit's 3 & 4 would be heard from the previously established outdoor spaces of Unit's 1 & 2.
- Both apartments could have purchased unit 1 (my apartment) when it was owned by the previous owners and I do not see how they feel that these roof decks can be exclusive to them and proceed without the permit application approval of Unit's 1 and 2.
- The look of the lift on the deck and how it sits up in the open roof space. We have a magnificent heritage building and I cannot see how this is in keeping with the look of the existing building.

This planning application is not of total community benefit to all the residents of 120 Esplanade. It only benefits 2 of the 4 owners hence the reason whilst not all owners agree to the application.

Thank you for taking the time to hear my concerns,

Kind regards

Anita Frawley

3. Mr Jason Barnfather – Squareback Planning Pty Ltd (A)

Dear Councillors,

On Tuesday night, our application for the construction of two roof decks will be presented to Councillors for consideration.

We support the recommendation and assessment undertaken by the Planning Department and in addition, we wish to highlight the following in relation to the application to assist with your decision making:

- The design of the roof terracing, lift and stair access are consistent with the mandatory requirements of the Design and Development Overlay Schedule 1 that were introduced by Council more than 15 years ago. This is achieved by:
 - Limiting the height of the access structure so that in this application, it is contained within the height of the privacy screening (1.7 metres).
 - A visually recessive presentation which minimises its impacts on the surrounding properties.
 - Integration in an architectural sense, with similar materials and finishes to the balance of the rear of the building form.
 - Limiting overlooking opportunities through the provision of 1.7 metre high privacy screening along the sides and rear of the terraces. This ensures the neighbours privacy is protected whilst allowing an outlook from the terraces to the front (towards the water).
- The lift will comply with the relevant building regulations for residential lifts and these regulations have regard to acoustic treatment. In addition, the lift will be used infrequently (unlike a lift in an apartment building) and it sits on top of a 300mm concrete slab which will limit noise transfer to the lower level of the building.
- There are countless examples of roof terraces with access structures along The Esplanade and more broadly in this area and therefore this application is consistent with the character of the area.

Overall, we consider the proposal to be appropriate having regard to the Planning Scheme provisions and having considered the potential impacts of the proposal.

We therefore urge Councillors to support the application and if you have any questions prior to the Meeting, please email jason@squareback.com.au or call us on 9965 1930.

Regards,



Jason Barnfather
Director
Squareback

Item 4.7

54 Cluden Street, Brighton East

1. Mr Ennio Bianchi (O)

Planning Permit 5/2021/243/1, 54 Cluden Street, Brighton East:

Happy to support appropriate development, however this particular proposal raises some issues as follows:

1 - The proposed dwellings do not encourage retention nor contribute to the valued character of the Precinct. The proposed two dwellings do not replace the existing dwelling with similar form to the streetscape, nor similar building materials. The property consists of brickwork to the ground floor and a cheap/afterthought timber like cladding to the first floor. Contrary to the proposed Planning Permit Report, no property within within the precinct vicinity has this feature. This is evidenced within the actual report's Figures 3 to Figures 6 of the advertised Town Planning Permit. In particular, the properties within Archer Court are in stark contrast to this proposal.

2 - The cladding should be consistent brickwork on both floors or rendered concrete/cement cladding to both floors, not a mismatching mix, as was approved a few years ago by Council.

3 - The proposal is different to that proposed by the developer and approved by Council and the locals a few years ago, which was a smaller development, with a consistent rendered or brick façade on both levels, and there were no basements.

4 - There are concerns as to the height of the fence at the corner of Archer Crt and 54 Cluden Street, which tends to be a blind spot. This location has many families in the area, and children play in Archer Court. A no parking sign would need to be placed in front of 54 Cluden Street along Cluden Street, and the proposed fence height would need to be reduced, to improve visibility when exiting Archer Court and entering Cluden Street, and vice versa.

2. Mrs Sheilanne Dodds (O)

Given the proposed apartments are positioned on the corner of the intersection of Cluden St, Archer Crt and Arnot St; the main concern is road safety. I oppose the current application on the basis of inadequate off street parking. Considering the number of bedrooms and the relatively compact overall space of each unit, it would be naive to assume that residents would park two cars in the garage rather than use it for storage, and/or a kid's play zone, or workshop or gym. It is crucial to avoid more cars being parked on that corner by providing sufficient driveway off street parking for 2 cars per unit rather than the current one. This is already a tricky intersection to navigate without the visual hinderance of cars from an 8 bedroom development being positioned so close to the corner.

Item 4.8

14 Charming Street, Hampton East)

1. Mrs Maria Catalano (O)

RE: PP 5/2021/202/1

14 Charming Street, Hampton East

As a resident of Charming Street, I have many concerns about the intended development at 14 Charming Street.

My family have lived at 20 Charming Street for over 25 years. As part of our property, we have a very large and significant Lemon Scented Gum located in the rear north-western corner of my backyard that is very healthy and continues to grow. This tree overhangs the properties located at 12 and 14 Charming Street and Unit 3 at 2 King Street. Over the years we have had a number of dealings with the owners of all these properties.

This tree has created many disagreements with my neighbours as they hate the mess this tree makes throughout the year. In January, it sheds **ALL** its bark. Then, once it has flowered, the petals and stamens blow everywhere, followed by millions of tiny gumnuts which fall, not only in our backyard, but the neighbouring properties as well. Not to mention the sap that constantly drips causing damage to anything it touches, turning it black in the process.

Neighbours have asked us to cut branches down, but we have never been granted permission to do so by Bayside Council despite our requests. It has caused us much trouble over the years, often resulting in unwanted disagreements with our fellow neighbours.

The proposed development at 14 Charming Street, plans to build Dwelling 4 directly under the canopy of this tree. This means significant branches will need to be removed which we find unacceptable and incredulous that Bayside Council would even consider. Even with some of the imposing branches removed, this tree will still span significantly over Dwelling 4. All the bark, flowers and gumnuts will continue to fill gutters and create debris around Dwelling 4. The sap will blacken the exterior walls, roof and anything placed in the rear yard such as outdoor furniture. Based on previous experience, this will create issues not only for the new owner, who will be unaware of the long-term effects this tree, but also result in unwanted angst between my family and the new owner. This is extremely unfair on us as we do not want to have any issues with our potential new neighbours.

Another important matter to factor into this equation, is that this tree totally shades the private open space of the Dwelling 4 throughout the day. This has not been shown on the existing drawings. This towering tree bends and sways greatly, especially during strong winds. However, the drawings submitted only show a stationary tree canopy. The reality is, we live in a windy area, and on such days the tree's branches will strike Dwelling 4, dropping additional debris in the process. This unfairly increases my liability. If, due to an act of mother nature, this tree does cause any damage to Dwelling 4, will Bayside Council take on liability? If this application is supported by council, I request council provide me with an Indemnity policy for the life of this tree.

We are very concerned with the buildings encroachment into the root zone of this tree despite the arborist report. We understand the building process very well and fear for the safety of the trees survival. With the lack of canopy trees in this area, this is a very important tree. We would ask that the small living room and study on the ground floor be removed out of the encroachment zone and the 1st and 2nd floors be set back further to avoid the existing tree canopy..

We also have a concern of the setback of the 2nd floor from the streetscape. All the houses in Charming Street are single and double story. The 3rd level (2nd storey) should be setback further to decrease its impact on the streetscape and neighbours amenities.

Currently on the landscaping drawings, a 1.8m high paling fence is nominated. The fencing currently has bamboo screening to 2.4m high. The fence is leaning substantially due to the bamboo screening. The fence requires replacement to a height of 2.4m with no fence extenders used to achieve the height at the expense of the developer. We require this to be on the town planning drawings.

Kind Regards

Maria Catalano

2. Mr Salvatore Catalano (O)

RE: PP 5/2021/202/1

14 Charming Street, Hampton East

I am the property owner of 16 Charming Street..

This development will take away the beautiful sunlight I receive in my north facing window. At no point in the day will this bedroom receive sunlight as it currently enjoys (especially in winter).

The setbacks should be adjusted according it to ensure that sunlight enters these rooms.

Also, the drawings do not state what is happening with the boundary fence. We expect existing fence to be retained and if replaced, it will be done at expense of developer.

Kind Regards

Salvatore Catalano

3. Mrs Michelle and Mr Jamie Wilson (O)

To whom it may concern,

I wish to raise some concerns in relation to the proposed development at 14 Charming Street, Hampton East.

My husband and I have resided at 3/2 King Street for the last 28 years and are extremely concerned about the impact the proposed development will have on our neighbour's gum tree.

Although this gumtree is glorious in stature, it has been and is, the bane of our lives. I cannot emphasise enough the distress this tree causes us with its constant mess caused by falling bark, leaves, flowers, gum nuts and sap. It is incessant! The falling debris causes damage to our gutters, deck, garden beds, outdoor furniture, not to mention any washing left on the line.

Over the years, we have pleaded with our neighbours to trim the tree over our side of the fence, but unfortunately there are limitations to how much can be trimmed annually. Now having seen the plans of the intended 4 dwelling development, we find it hard to imagine how this structure can be built without significantly impacting this tree. The canopy of its branches will surely be a hindrance to this three-storey development.

I do not believe that Bayside Council will grant permission for its branches to be removed to enable this development to proceed. The long-term effects and impact that this tree will have on Dwelling 4 will be inconceivable to the unsuspecting buyer. Being located under the tree's canopy and being so close to its branches, will cause unimaginable damage. Over the years, we have spent thousands of dollars in repairs and maintenance on our property due to the continual damage caused by this tree. Although this tree currently appears healthy, there have been concerns over the years raised by ourselves and surrounding neighbours in relation to safety in high wind conditions. Not only does this increase the amount of falling debris, filling gutters and dropping damaging sap, but it also heightens safety concerns. In the existing drawings, only a stationary canopy has been considered. It does not take into account how Dwelling 4 will be affected when the tree bends and sways in high winds. I also noticed that in the recent Town Planning Report submitted to Council, that it does not address the objection of how Dwelling 4 will be accommodated under the tree's canopy.

We are extremely concerned about how Dwelling 4 will be affected by the large gumtree and vice versa, as we do not believe the full impact of this situation has been taken into consideration.

Sincerely yours,
Michelle and Jamie Wilson

4. Mrs Kholā Saeed – Team Permits Hub (A)

This statement has been prepared regarding review of the proposed application at 14 Charming Street for construction of four (4) triple storey dwellings with associated parking and landscaping. The proposed development allows for four (4) triple storey attached dwellings in a battle axe configuration and proposes the following features:

- Common driveway with enclosed double garages with ground floor living/study areas
- The dwellings propose reverse living layout with living areas on the first floor and kitchen areas along with bedrooms
- The second floors propose master bedrooms with enclosed ensuite areas.
- The proposed development ensures adequate setbacks allowing for spacious front and rear yard settings with canopy tree plantations.
- The development proposes a lightweight material palette with the use of render on ground floor and cladding on upper floors with the front façade incorporating architectural features in form of vertical screens.

The proposal adequately addresses the Bayside Planning Scheme including the relevant State and Local Planning Policy Framework, Hampton East Activity Centre plan and provisions applicable to the subject site and proposal. A brief discussion against the relevant considerations is provided below.

Planning Policy Framework

In terms of policy framework, Clause 11.03-1s encourages a higher level of housing densities for activity centres to allow communities with access to a range of facilities, transportation and services. In addition, Clause 18.01- Land use and Transport Planning encourages the concentration of higher density housing in accessible locations with ease of access to public transport and facilitate walking/cycling. Furthermore, one of the key principles of Plan Melbourne 2050 is to create 20-minute walkable neighborhoods by allowing mixed use/higher density neighborhoods. One of the key directions (Direction 2.2) of Plan Melbourne-2050 is to deliver increased housing supply in activity centres that are usually well served with public transport and have access to a range of facilities.

In consideration of above. It is indicated that this is exactly the type of location where Bayside Policy Framework and Plan Melbourne – 2050 is indicating that significantly higher levels of residential density are appropriate. Notwithstanding, in terms of detailed design assessment, the proposal achieves a high level of compliance with Clause 55,

responsiveness to surrounding characteristics and the applicable Activity Centre Zone - Hampton East Activity Centre guidelines.

Surroundings and Neighbourhood Character

The proposal is highly responsive to existing built form, surrounding features and preferred neighbourhood character of the area. The immediate surroundings of the subject site contains open garden settings with single storey dwellings and spacious landscaped settings. In particular importance, the rear adjoining site (20 Charming) contains a significant landscaped setting including a mature gum tree. The proposed development ensures it is highly responsive to it by ensuring minimal impact on the tree and no removal would be necessary, as per the arborist report provided and Council's Tree Planner.

In view of the neighbourhood character and surrounding built form, the proposed triple storey development adequately responds to the emerging built form within Charming Street. There is a degree of diversity in Charming Street with several detached dwellings and some more recently completed developments.

Activity Centre Zone

The subject site is located within Hampton East Activity Centre zone and is zoned for Activity Centre Zone (Schedule 1) purposes. The subject site is identified within Residential Transition Precinct and the purpose of the precinct is to provide a transition from higher residential densities in the core of precinct to those traditional residential areas that are outside the structure plan boundary. The proposed development adequately addresses the precinct objective and requirements, including limiting the development to three (3) storeys or under 11m as required by the schedule requirements of this precinct.

In addition, the proposal effectively addresses the precinct guidelines by ensuring a spacious front setback and adequate rear setbacks, allowing for a traditional residential garden setting to be maintained within the streetscape via the planting of canopy trees. In addition, breakage between ground floor-built form with garden settings would adequately meet the precinct guidelines requiring townhouse style compact gardens and allowing for visual separation via the planting of substantial vegetation.

Overall, the use of lightweight materials, architectural features such as screening and fenestration, a low profile flat roof form combined with spacious garden settings all ensure a proposal that achieves a high level of compliance with the ACZ1 objectives and its

precinct guidelines via the provision of modest residential infill in form of townhouses whilst maintaining the residential streetscape qualities and backyard characteristics.

It is considered that the proposal strikes a balanced approach to the increasing density requirements envisaged within the Activity Centre Zone whilst maintaining the neighbourhood character requirements and design guidelines contained within the 'Transitional Precinct' of the Activity Centre framework plan. The proposed development is responsive to the surrounding features and achieves a high level of compliance with Bayside Planning Scheme requirements including Clause 55 (Rescode) and Car Parking provisions. Apart from a strong planning policy support for the proposal, it is considered that the design response is appropriate, that the locality can accommodate the contentious third level particularly as the subject land is located on the eastern side of Charming Street undergoing a 'transitional' phase of built form.

Regards

TEAM PERMITS HUB

0409 198 597

permitshub@gmail.com

Item 4.9
5 Dudley Street, Brighton

1. Mr Tom & Mrs Marcia Walsh (O)

We live directly behind 5 Dudley St Brighton. The development is within full view of the living areas of our home.

The development at 5 Dudley St Brighton has a long history dating back to 2007.

Through a number of iterations the plans were finally accepted at VCAT in 2016 following a Notice of Refusal by Bayside dated 15 June 2015.

Among a number of grounds for refusal by Bayside Planning the following reasons were included;

The proposed development is contrary to the preferred character of the area as identified in 22.06, particularly as the double storey built form extends for the length of the site, the height mass and length of double storey built form would be visually dominant and lack for landscaping.

The location of the roof decks will contribute to excessive building bulk and overlooking.

During the VCAT hearing in 2016, member Ruddell visited our home to make an informed decision on our objections against the size and bulk of the application.

Among his key determinations to achieve, member Rundell noted the following;

8. 3. Does the development respond to its built form and policy contexts?
9. I must decide whether a permit should be granted and, if so, what conditions should be applied.

Among those considerations were;

24. Schedule 3 to NRZ varies some standards of clause 55, particularly street setback, side and rear boundary setbacks, site coverage and the height of front fences.

Following that visit, and in his point 60, Member Rundell determined the southern setback to be increased from 6 metres to 10 metres.

In the conditions of permit, member Rundell made the following comments;

1 b. The south (rear) walls of the master bedroom and ensuites of dwellings 3 and 4 setback at least 10 metres from the southern boundary with no changes to setbacks to the other boundaries.

3. All pipes with the exception of downpipes, fixtures, fittings and vents servicing any building on the site must be concealed in service ducts or otherwise hidden from view to the satisfaction of the Responsible Authority.

Member Rundell made special mention of plant and equipment.

4. No Plant, equipment, services or architectural features other than those shown on the endorsed plans are permitted above the roof level without the written consent of the responsible authority.

From Bayside's own guide which is included within this Secondary consent decision notice, see page 330.

Installation of fixed domestic plant equipment.

What to consider before installation.

- When planning new developments or renovating existing dwellings identify the equipment required to service the dwelling.
- Consult your neighbours to address any concerns that they may have in relation to the location and operation of the equipment before it is installed.

Implications of poorly located equipment

- Even though the location of your equipment may have been included in an approved planning permit, Council may still direct you to undertake works or stop using equipment if it impacts your neighbours.

We also note, the Decision Notice does not include the photos we sent to Bayside Planning prior to them making their determination. The only photos in the submission, are from positions the equipment is not visible.

Please see the view from our home.



In response to;

6 Considerations on pages 315 & 316

1. VCAT decision: para 47 identifies rear height of the building to be 6.9m down to 6.6m and is described as "modest height" (para 44).

Although the maximum building height in the NRZ is 9.0m nonetheless VCAT imposed a condition prohibiting AC units above the first floor, given the objections from the rear properties.

2. The planning officer states: *Domestic services, including air conditioning units, vents, are exempt from requiring a planning permit as outlined in Clause 62.02-2 of the Bayside Planning Scheme and as such, planning officers would not have any authority to determine the location of these services.*

This plant is not a domestic unit, but an industrial scale plant designed to service the entire building, but either way we refer to Bayside's

Installation of fixed domestic plant equipment above.

3. This plant would have been known to the designers and should have accompanied the amended plans when VCAT considered this case.
4. The preparation of amended plans prior to the VCAT hearing, to lower building height, and the discussion at the end of the hearing to determine appropriate conditions, it would appear on the actions subsequently taken since, that the applicant knew that plant on top of the building was going to be problematic, but deliberately disregarded the VCAT condition.
5. Given the condition imposed by VCAT on this specific issue, the applicant knows that they would not have a solid case to vary or remove this condition at VCAT but have chosen to disregard and go down the secondary consent path.
6. The tests for secondary consent were identified by the Tribunal in *WestPoint V Moreland*.
7. VCAT has established tests for the assessment of secondary consent. In *WestPoint Corporation V Moreland CC 2005 (VCAT 1049)* the Tribunal identified a number of principles to be assessed when examining modifications under secondary consent. An assessment of the modifications to the plans is provided against these principles below. At paragraph 38 the Tribunal identified:
 - *It does not result in the transformation of the proposal;*
It does not transform the apartment building, but is a substantial additional to the roof top and height of the building.
 - *It does not authorise something for which primary consent is required under the planning scheme;*
 - *It is of no consequence having regard to the purpose of the planning control under which the permit was granted;*
 - *It is not contrary to a specific requirement as distinct from an authorisation within the permit, which itself cannot be altered by consent.*

Condition 4 is a specific requirement imposed by VCAT to prevent building plant being located on top of the building and accentuating the height.

8. The 9.0m building height in the NRZ is the maximum height, and is discretionary. Because you comply does not mean you obtain an approval.
As the VCAT decision demonstrates.

Dear councillors,

From the outset of this application, many years ago, Bayside Council resisted this development for all the right reasons, all the way to VCAT hearings, no doubt at considerable expense to the Council, and that of the many objectors, including our family and neighbours.

Through negotiated positions, changes of plans with reductions in heights and setbacks, eventually a permit was granted by Member Rundell at VCAT, however with certain specific conditions.

Those conditions, were the result of a hearing(s), which took into the account the views and concerns of all stakeholders, including the immediate neighbours.

As a directly affected neighbour, we were content with the eventual permit and the conditions placed on the development.

We do note a number of the aesthetic features have already been removed or downgraded, one might suspect, for reasons of cost.

Surely then, it's not too much to ask, that the developer then abide by those same conditions as set by VCAT.

There is little doubt, the intention was not to contest the conditions at VCAT, as the chances of success were high risk, ignore them as construction and time elapsed, and then rely on secondary consent if the need arose.

Why then, after fighting the application for years, the Bayside planners merely accept the changes, knowing full well they were a result of a hearing(s) they were involved in, maybe not personally, but as a part of the Bayside Planning department.

What message do we send to other developers about adhering to negotiated permit conditions within Bayside?

We ask that you vote against the retrospective secondary consent regarding the equipment now installed on the roof.

If the developer wants to have the conditions changed, let them go back and convince VCAT, who set them in the first instance.

Yours sincerely,

Tom, Marcia Walsh and family.

2. Mr Moody Abbougattas (O)

We understand that under the VCAT permit conditions of this development, no equipment was to be installed above the roof line shown in the plans which accompanied the application.

We also understand the reason for this was a result of the objections lodged by a number local residents including those from Mulgoa Street, many of which have a direct view of the building, as do we.

The installation is definitely not a domestic sized unit, but a commercial sized plant to service the entire building. The equipment is an eyesore, which will be in our view forever. It has been installed on the roof to save the developer money.

This installation would have been well known to the architects and other building professionals and should have been included in the permit application plans, which would no doubt have been disallowed.

However, knowing their chances of success at that point, it appears they have chosen to take the easy option via secondary consent.

The tests for secondary consent were identified by the Tribunal in Westpoint V Moreland.

VCAT has established tests for the assessment of secondary consent. In WestPoint Corporation V Moreland CC 2005 (VCAT 1049) the Tribunal identified a number of principles to be assessed when examining modifications under secondary consent. An assessment of the modifications to the plans is provided against these principles below.

At paragraph 38 the Tribunal identified:

- It does not result in the transformation of the proposal;
- Whilst it does not transform the apartment building, it is a substantial additional to the roof top and height of the building.
- It does not authorise something for which primary consent is required under the planning scheme;
- It is of no consequence having regard to the purpose of the planning control under which the permit was granted;
- It is not contrary to a specific requirement as distinct from an authorisation within the permit, which itself cannot be altered by consent.

However, Condition 4 of the permit is a specific requirement imposed by VCAT to prevent building plant being located on top of the building and accentuating the height. Whilst the 9 metre building height in the NRZ is the maximum height, and is discretionary, just because you comply does not mean you obtain an approval. As the VCAT decision with this permit clearly demonstrated!

We urge the elected Bayside Councillors to take a hard line in defence of their own long term residents to send a message to developers who choose to "game" the system by withholding building details at VCAT, then rely on quietly pushing them through the secondary consent system, whilst even the affected nearby residents are unaware of this "permit by stealth".