

Requests to be Heard

12 December 2022

Planning and Amenity
Delegated Committee Meeting

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12 December 2022 Planning and Amenity Delegated Committee Meeting

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1.	Dr David Delac	(A)

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1.	Mr Chris Thick	(A)

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1. Mr Hamish Balzan

(A)

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2. Ms Gabrielle Bibby	(O)
3. Mr Darren and Mrs Cathryn Sayers	(S)
4. Miss Vanessa Issa	(A)

WRITTEN STATEMENTS

Item 4.1		Objector (O) Supporter (S) Applicant (A)
482 Balcombe Road, Beaumaris		
1.	Dr David Delac	(A)
<p>We refer to Item 4.1, 482 BALCOMBE ROAD, BEAUMARIS, LOCAL LAW TREE REMOVAL APPLICATION, File No: PSF/15/8764 – Doc No: DOC/22/321005 and our application to obtain a planning permit to remove a tree. Hereinafter, the tree shall be referred to as Tree No 1, as shown in the arborist's report attached to the agenda item.</p> <p>The Executive Summary developed to support Councillors' decision making has not addressed the fact that 482 Balcombe Rd is a place of business, specifically a dental surgery that is frequented by members of the public and the employees of the business. The absence of this critical information is material to the decision you are being asked to make. It goes to the legal obligations (there are several under statute and common law) that we must consider ensuring that we afford members of the public and employees with a safe place to receive offered dental services and a safe place to work.</p> <p>The Executive Summary notes that "consideration of removal applications under Council's Local Law are assessed against the provisions of Council's Management of Tree Protection of Private Property Policy". The only relevant criterion within this policy that relates to our application is stated in the table in the Executive Summary called "General Criteria (1 criterion to be met)". The relevant section of the table is: "Tree Location – Report from licensed and/or qualified person in their field providing evidence of structural damage to building, services or infrastructure or is at risk to people or property, which can only be overcome by implementing a remedy that is unreasonable or greatly disproportionate to the value of the tree or the risk posed by the tree (assessed by Quantified Tree Risk Assessment (QTRA)". The Executive Summary suggests this criterion has NOT been met. That is mystifying when reports (attached in the Agenda) from "licensed and/or qualified persons" clearly satisfy this criterion. This document intends to show this criterion has been met and henceforth a tree removal permit should be granted.</p> <p>Furthermore, the decision making on this matter should NOT be solely based on council tree policy discussed in the paragraph above. We don't sit in a legal vacuum and just consider matters set out in the Planning and Environment Act if the thing that needs to be fixed in the business is a threat to the public or employees, with that threat resulting from a matter that could be dealt with by considering other legal obligations.</p> <p>What's missing in the Executive Summary can be found in the reports provided Mr Luke Sturgess, a qualified arborist and Mr Joel Grimmond, a registered civil engineer.</p> <p>Both of these people have pointed out that the address is that of a dental practice and both have provided their qualifications and experience, with both being independent of us. As such, it is reasonable for us to expect that both should be recognised by Council as Expert Witnesses, i.e. 'a person(s) recognised by VCAT</p>		

who has specialised knowledge based on the person's training, study or experience', as defined at s3, Victorian Civil and Administrative Tribunal Act 1998.

In the first report, prepared in March 2021, provided by Mr Luke Sturgess, he found that Tree No 1, which is adjacent to the driveway and carpark spaces of a **dental surgery** is in 'fair health but has outgrown its current location and has become an unmanageable risk to patients and pedestrians who frequent the property.'

Further, Mr Sturgess reported that Liquidambar tree roots (a non-native tree) are known to be invasive, often protruding above soil level within the tree protection zone and sometimes much further', as shown in photos included in his report.

Mr Sturgess further found that:

'The root system of Tree No 1 shows evidence of significant uprooting of extensive surface roots which has caused large, open cracks and lifting of the existing driveway, crossover and adjoining pavement. **This damage poses a significant hazard to patients and other pedestrians.** The damage to the driveway and surrounds also reduces the overall visual amenity of the property. **Many of these tripping hazards cannot be rectified as they are located within the Structural Root Zone (SRZ) of Tree No 1.'**

'Despite the Liquidambar providing significant street scape amenity, **in my opinion to reduce the risk associated with the health and safety of patients and pedestrians, it is recommended the Bayside City Council grant a Planning Permit for complete tree removal with appropriate tree replacement.**'

In the second report, prepared in October 2022, Mr Joel Grimmond, found that:

'The existing conditions of the concrete driveway and associated carpark do not comply with the ...Access and Egress Performance Requirements of The National Construction Code NCC 2019, Section D Access and Egress.

The driveway and carpark are unsuitable to function as suitable access and egress routes for both the staff and patients of the dental surgery.

The damaged concrete driveway and carpark pose significant tripping hazards and are a risk to the health and safety of both the staff and visitors of the dental surgery.

The driveway and carpark pavement need to be repaired or demolished and reconstructed, **to achieve compliance with The National Construction Code and provide access for people with disability and provide safe movement to and within a building.**'

In Mr Grimmond's concluding comments he has stated amongst other things that:

There are no suitable pavement solutions which can resist stresses induced by the large tree root system as well as provide access for people with disability or provide safe movement to and from the building.

The tree roots will continue to grow and eventually cause damage to the footings of the Dental Surgery Building.'

Mr Grimmond has recommended the following:

'The large tree should be removed.

The driveway and carpark should be demolished, and a new carpark and driveway constructed.

The construction should be either, asphalt pavement or a concrete pavement.

The new driveway and carpark need to include stormwater runoff collection drains.

The stormwater system needs to comply with relevant Plumbing and Drainage Standards and shall be connected to the relevant Legal Point of Discharge.'

The problems that Tree No 1 presents are not confined to our property. The property shares a common driveway with our neighbour at 484 Balcombe Rd. Their property is currently rented to a tenant. The owner and tenant also have every right to be afforded safe ingress and egress from their property. Our neighbour also has every right to expect us to fix the problem caused by Tree No 1 and every right to expect that they can offer their property free from an obvious nuisance.

Our business like the businesses conducted by Council, must respond to and be compliant with all laws, not just one. In this regard we take our responsibility to comply with the law very seriously. As the property owners we accept our responsibility to provide a safe environment for the staff and patients of the dental practice as well as members of the public who may have cause to visit the practice in the ordinary course of business.

The arborist and structural engineer reports confirm we will not be able to provide a safe environment, free from the risk of harm unless Tree No 1 is removed. We have upheld our responsibility by attending to this matter, seeking expert opinion to aid Councillors in their decision-making.

We seek a planning permit to remove Tree No 1 and to undertake the necessary work, as recommended in Mr Grimmond's report. Further, we seek dispensation to include native Bottlebrush as a replacement planting OR if an exotic is accepted, a Powton Sapphire Dragon. Both of these trees have a fairly non-invasive root systems. We also seek Councillor's direction that the chosen tree be set out on the plan away from the front of the property. This will make it easier for observation from the road reserve to be maintained, enhancing the security of the dental practice.

A key fundamental principle of dentistry is: if there is an infection in the mouth, to treat that infection successfully, the first thing that needs to happen is to locate the source of the infection. Often the source will be a particular tooth. The tooth in question either needs to have 'successful treatment' that clears the infection in order to salvage the tooth OR the tooth itself needs to be removed to resolve the infection. If the source of the infection is not found, the infection persists. These principles are absolutely relevant to the matter at hand,

The damage to the car park and driveway and the associated dangers to the public and our staff are the 'infection' in this scenario. Tree No 1 is the source of the infection, as confirmed by the arborist and structural engineer report. These same reports confirm the tree cannot have a 'successful treatment' (e.g. remove the problematic roots or use any form of material for the new driveway, that will

withstand the forces of the tree roots) allowing employees and the public safe access and egress from the dental practice. This leaves only one solution - remove the source of the infection to resolve the infection; i.e. remove the tree to allow the carpark and driveway to be fixed. If the root source of the problem, the tree, is not removed, the damaged carpark and driveway cannot be successfully replaced as evidenced by the aforementioned reports.

We ask Councillors to make a reasoned and reasonable decision as though you were faced with the same problem in your business, a decision that will help us to take action and in so doing, do no harm OR avoid a potential harm to the public and our employees.

Dr David and Natalie Delac
Directors of D and N Delac Super Pty Ltd ATF D and N Delac Superannuation Fund
Landlord of 482 Balcombe Rd Beaumaris

P.S. On the Agenda for tonight's meeting, at page 2/760, reference is made to the Planning and Environment Act 1987 (the Act).

One of the Objectives of planning in Victoria is set out at S4(1)(c): It is “to **secure** a pleasant, efficient and **safe working**, living and recreational **environment for all Victorians and visitors to Victoria**”. This objective of planning is complemented by an objective of the planning framework which states in S4(2)(g) Is “to encourage the achievement of planning objectives through positive actions by responsible authorities and planning authorities”.

It is apparent that all safety matters formally raised by us up to this time have not been referenced in the Executive Summary and that some of what we have previously submitted has been edited out, particularly where we've raised safety as an issue. It is as though a safe working environment is not for consideration in relation to Tree No 1. The reverse actually applies. It is the consideration. Not because the tree is likely to shed a limb but because of the damage the tree roots have done to vital infrastructure required to support access to and egress from our dental practice. As far as we are concerned, the removal of this vital information, if not drawn to attention by us may have impeded the only decision that a reasonable group of people should make in the circumstances, which is to grant the permit we seek, considering the unambiguously clear recommendations of two independent experts and their multiple references to safety. Please see Supporting Attachments 2 and 3 in the Agenda and find their safety concerns.

Item 4.2		Objector (O) Supporter (S) Applicant (A)
15 Mary Street, Beaumaris		
1.	Mr Geoffrey Humphreys	(A)
<u><i>Statement supporting Local Law tree removal application 2022/199</i></u>		
<p>- Agenda Item 4.2, for 15 Mary St, Beaumaris</p> <p>Property Owners: Geoff & Tracey Humphreys</p> <p><i>Thank you for your consideration today.</i></p> <p><i>Our family first moved into 15 Mary St, Beaumaris in 2001. Our home renovation will accommodate our growing family and will provide for off street parking for our four cars.</i></p> <p><i>In early 2022, my wife and I secured a builder, Bray Constructions, to progress our home renovation and we signed contracts in June 2022. With our finalised building plans, we submitted our application for a Building Permit to Bayside City Council in July 2022.</i></p> <p><i>In February 2022, my wife and I met with a Bayside City Council senior officer to understand the process for tree removal, recognising the subject tree's structural root zone would be impacted by the build. The officer was able to provide advice that the tree was covered by a Vegetation Protection Overlay (VPO) and that a Local Law tree removal permit would be required. The officer indicated that a Local Law tree removal permit will be issued if a Building Permit is approved for our renovation. We were also advised of the process on how to submit the Local Law tree removal application. Once we received our approved Building Permit (BS-U 43784/5172227029687) on September 2, 2022, we then submitted the Local Law tree removal permit application to Bayside City Council on September 12, 2022 (Submission Ref. PRUN-0000092986).</i></p>		

Our builder started demolition works in late September and has now completed the demolition works. We are now waiting on the Local Law tree removal permit approval to allow removal of the subject tree to progress our build. Our building contract outlines that weekly penalty fees will apply to the owner in event of any building delays.

A photo of the main structure of the tree is provided below.



As part of our Local Law tree removal application, we engaged an independent arborist (McLeod Trees) to provide an assessment of the tree and the impact of the building on the tree. Table 1 below, extracted from the McLeod Arborist report, provides tree data details. The McLeod Arborist report was provided as supporting documentation in our tree removal application. The report indicated that the tree is

directly impacted by the proposed development and will subsequently require removal for the development to proceed. The tree trunk is within 0.4m of the retaining wall for the driveway and within 2 meters of the main house foundations consistent with the approved Building permit.

Table 1: Tree data details from McLeod Arborist report

Tree No	Botanical Name	Common Name	Origin	D.B.H (mm)	Basal (mm)	Circ at 1m	T.P.Z (m)	S.R.Z (m)	Height (m)	Spread (m)
1	<i>Quercus robur</i>	English Oak	Exotic	960	1040	980	11.5	3.4	14.0	16.0

Health	Structure	Condition	U.L.E (years)	Retention Value	Site Significance	Permit Req.	Observations	Recomendations
Fair	Poor	Fair	5 - 20	Moderate	Moderate	Yes	Large previous stem failure, extensive decay present, split present within stem, previously lopped at approximately 5.0m, asymmetrical canopy bias	Remove - Permission from relevant authority required.

We understand and appreciate the importance of maintaining the extent of vegetation in Bayside's VPO area. If Council resolved to issue a tree removal permit, we will be planting a suitable native replacement tree to meet Council's requirements.

Thank you for your time and consideration of this matter.

Sincerely

Geoff & Tracey Humphreys

Item 4.3		Objector (O) Supporter (S) Applicant (A)
1.	Mr Chris Thick	(A)
<u>Re: Peppercorn Tree at 32 Folkestone Crescent Beaumaris</u>		



Dear Councilors

I hope to appear in person, but I am in Geelong for work on Monday afternoon so might be running late. This letter is in support of my application in case I don't make it back.

Above I have attached a picture of the tree in question – this picture was taken on the 24th of October 2022. Two months into Spring and there is zero foliage – this is basically how it looks all year. I believe the council's arborist assessment is that the tree is in only fair health, with a short life expectancy under 10 more years.

We recently received a building permit for the pool in the backyard (Building Permit No. 5463458890933) which was attached to the initial tree removal application also. The tree is located within the scope of works and without its removal the pool cannot be built. A major part of the pool design is a retaining wall which is required for the garden bed. As the property at our rear is raised, we need the retaining wall to ensure the land stays where it should. The tree is right on top of the back fence so it is in the way and the incorporated root system will make building a suitable retaining wall almost impossible.

My wife and I are moving from Moorabbin to Beaumaris to get away from the craziness of all the development taking place in our pocket near the train station. Our 2 girls (9 & 12) are going to high school in Mentone and our new house is walking distance to the school. In essence we are building our "forever home", and we have engaged Mark Browning Landscapes who has designed a beautiful landscape which is full of coastal natives. In short, our garden will absolutely be in

keeping with the area and includes the planting of 4 native Black Sheoaks which grow to roughly the same size as the Peppercorn. These designs were sent through with the initial removal application.

Finally, as mentioned the back property is raised and the current fence gives us absolutely zero privacy. The neighbour can stand at the back fence, and it is chest height on his side of the fence, so he stares straight into our backyard. I'm not suggesting anything untoward, but as the father of 2 girls with friends over swimming in a pool, I'd obviously rather this was not the case. The fence is currently under height regulations anyway and is in disrepair so and needs to be replaced with something similar as attached below. The tree is right where the fence will go.



This is the neighbour's fence at 30 Folkestone, and we intend to carry this theme through into our property. It will give us the necessary privacy we need, as well as looking quite stunning with our garden beds planted along the back fence.

I appreciate your understanding in this tree removal application and will endeavour to make the meeting in person.

Kind regards

Chris Thick and Kirrilly Wilson

Item 4.6		Objector (O) Supporter (S) Applicant (A)
282–284 Bay Street, Brighton		
1.	Mr Daniel Cullen	(A)
<p>Written Statement on behalf of Owners Corporation 1 Plan No. PS702525Y C/O - Stratabase 282-284 Bay St Brighton (OC), regarding Application (No. 5/2008/804/3)</p> <p>Dear Councillors,</p> <p>Our Amendment Application is founded on the basis that the heritage impact of the parapet must be assessed not only against the relevant heritage policies of the Bayside Planning Scheme, but must also be balanced against the adverse amenity impacts that would now result from these works. We do not believe these impacts have been fully and adequately considered by Council or the Tribunal.</p> <p>In regard to the building's heritage status, we acknowledge the building has a heritage overlay HO45 (paint control), however we also note our understanding that this recognition of significance occurred after the parapet had been removed in 1956. Similarly, the National Trust classified the building in 1965, again after the parapet had been removed, recognising the buildings heritage significance 'without' the parapet in place. The site itself is not included within the extent of HO747. It is not included on Australia's National Heritage List, nor is it included on the Victorian Heritage Register. We also note no heritage citation was provided for the site, within the Bayside Heritage Review (Allom Lovell, 1999). Our own heritage consultant (URBIS) has undertaken a Heritage Impact Statement. URBIS have supported our application to remove the permit condition for the parapet, on balance, and considering the significant amenity impacts. Reports from URBIS and our other supporting consultants are included in our Section 72 Application, and available on request.</p> <p>The Bayside planning departments Notice of Decision to Refuse to Grant an Amendment to a Permit Application: 2008/804/3 (Report) issued to the Planning and Amenity Delegated Committee Meeting has been reviewed. We provide comments below.</p> <p>The report singularly refers to the Applicant and does not distinguish between the original Developer and the Owners Corporation, the latter having no relationship to the Developer and who only became aware of this matter upon enforcement proceedings in 2021.</p> <p>Under Item 6.1, it is stated that '<i>The application has not included any information to demonstrate that the Councils demolition strategies have been met.</i>' We believe this is entirely irrelevant given the context of this application.</p> <p>Under Item 6.2 Clause 58.07-2 – Standard D27 – Room Depth Objective, the report states that '<i>...the reduced daylight quality will be to the area which is designated as the kitchen and meals area at Apartment 4. The main living area located closest to the north facing windows will still receive high levels of daylight.</i>' This response demonstrates a fundamental misunderstanding of the layout of Lot 4, with the majority of the living area significantly affected (becoming non-compliant) and the kitchen area only representing a fraction of the non-compliant space.</p> <p>This Report concludes that '<i>the deletion of the reinstatement of the parapet, ... is considered to be detrimental to the heritage significance of the building and the heritage precinct and Bay St activity centre to which it contributes</i>'.</p> <p>Our response is broken down below, to analyse this statement in detail:</p> <p>With regard to the assertion that '<i>the deletion of the reinstatement of the parapet is considered to be detrimental to ...heritage significance</i>', it is important to note that while the removal of the original fabric adversely affects the significance of a heritage place (as occurred in 1956 when the parapet was removed), reconstruction <u>does not restore a places historical significance</u>. The outcome of reconstruction, using new materials with no original materials, is not heritage fabric. While the reconstruction of the parapet may be considered a 'desirable' heritage objective for the</p>		

building, the Planning Scheme does not seek to achieve desirable or even the best outcome, but rather, acceptable outcomes.

With regard to assertion that '*the deletion of the reinstatement of the parapet is considered to be detrimental to ... the heritage precinct*', we note that our building is excluded from HO747 Bay St Heritage Overlay Precinct. If the building was significant to the precinct, would it not be included within this HO747 overlay?

With regard to the assertion that '*the deletion of the reinstatement of the parapet is considered to be detrimental to ... the Bay St activity centre to which it contributes*', we highlight that the parapet has not existed since 1956 and that the Bay St Activity Centre has operated perfectly adequately without the parapet since that time. Furthermore, the community has had their opportunity to make a submission on this matter with the recent public advertising associated with our application. We note the significant show of support for our application, including Bay St commercial traders, with 14 in support and 1 objector. It is also our understanding that this solitary objector may have a conflict of interest in relation to this matter.

This Report further concludes that '*the reinstatement of the parapet would not cause any unreasonable material detriment to the internal amenity of the existing apartments on site.*'

It is difficult for us to comprehend how the Council's planning department could have reached this conclusion. Suffice to say it is easy to make such statements at arm's length and without having inspected the affected apartments. In any case, we respectfully and strongly disagree.

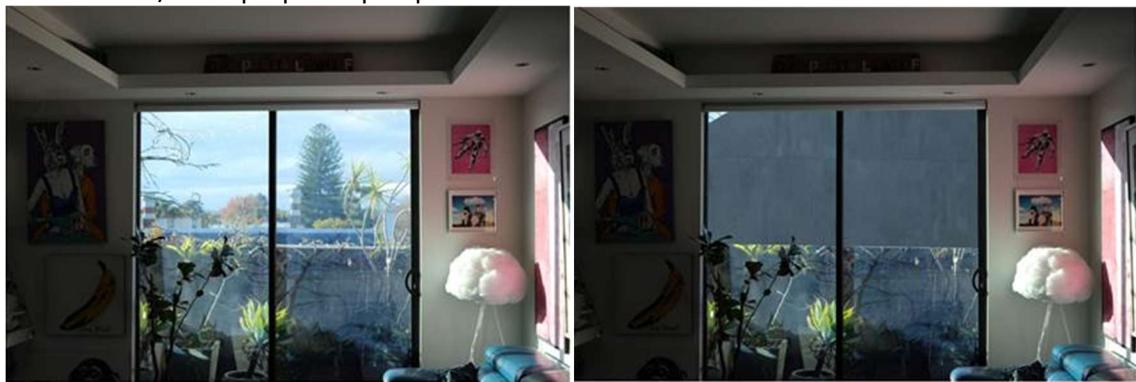
Our expert consultants have thoroughly considered amenity impacts and we highlight these as follows:

- Daylight Modelling Analysis indicates that Daylight Factor levels (which are only currently rated as 'adequate') become non-compliant for Lot 4, with the parapet in place.
- Our consultant GIW Environmental Solution concluded that '*average daylight factor across the living area is reduced from 4.8 to 3.15. This in our view will impact the daylight amenity and perception for the occupants (lot 6).*
- GIW stated '*In our view, the reinstatement of the parapet will have a negative impact on the amenity of the habitable spaces served*'.
- the loss of outlook and sense of enclosure experienced by Lot 4 – noting the construction of the parapet would result in an approximate 250mm gap from the top of the proposed parapet to the framing element.
- the loss of outlook and sense of enclosure experienced by Lot 6 (single living aspect), further impacted by the pediments atop the parapet.
- Clement Stone Town Planners stated 'As demonstrated by the enclosed discussion plans and photomontages, the impact on outlook, daylight and sense of enclosure will be significant to both Lot 4 and 6.
- If the building were assessed against today's standard, it would be Non-compliant with Clause 58.04-1 of the Bayside Planning Scheme and would not achieve the high standard of architectural design.

Lot 4 before / after proposed parapet.



Lot 6 before / after proposed parapet.



We must draw attention to the multiple failures of process that appear to have occurred within Council, which have contributed to a situation whereby a party who has done nothing wrong (the Owners Corporation), is being subjected to enforcement by Council.

- Having full knowledge that the Developer had not complied and was unlikely to comply with the permit prior to construction completion, yet taking no affirmative steps that we can see to prevent the issue of a certificate of Occupancy.
- Lack of reasonable steps to ensure prospective buyers of Lots were made aware of the non-compliance through council prepurchase documentation. This has continued to be the case with our most recent Lot owner purchasing in 2021 and no attempt by Council to make the parties aware. Our Lot owners are in the process of providing statutory declarations supporting that they were not made aware of this issue through their Section 32 Statements and pre-purchase due-diligence. We are also happy to provide Section 32 documents upon request.
- Failure to enforce the matter with the Developer – who was responsible for the permit non-compliance – then commencing enforcement some 7 years later with an unrelated party (the Owners Corporation).

We remind Council that we are a small OC (7 residential / 3 minor commercial) comprised of single parents, small families and mostly single income households. Whilst it may be outside of the remit of this planning application to consider costs, the resultant cost impacts to design, procure and construct the parapet and pediments, are expected to be between \$500k to \$1m based on an order of magnitude cost estimate provided to us by a quantity surveyor specialising in heritage works. The loss in property valuation to Lot 4 and 6 may be of a similar order of magnitude and are currently being assessed.

Given the circumstances, we do not believe it is fair and reasonable for Council to pursue enforcement against the Owners Corporation who has done nothing wrong. Despite making reasonable enquiries, we had no way of informing ourselves of the encumbrance that existed in relation to the building, prior to purchase. Had we known of these issues, we would not have purchased these Lots. We believe pursuit of enforcement now will result in a failure of procedural fairness and natural justice. Enforcement may cause some owners to suffer mortgage default or financial ruin due to the costs of the parapet and reduction in property value. The significant stress occurring now and into the future associated with costs, hardship and amenity impacts, are simply unacceptable to the Owners Corporation.

Notwithstanding the above, the question now is whether the heritage benefits associated with the reconstruction of the parapet outweigh the adverse amenity impacts that will be experienced by the occupants of the affected apartments.

Further to the above, and as it goes to the basis of our Section 72 application, the concluding statement of our heritage architect (Urbis), is as follows: '*In my opinion, the severity of the adverse amenity impacts outweighs the extent to which deletion of the condition seeking reconstruction of the parapet represents a loss from a heritage perspective*'.

We have full confidence that Bayside Councillors will consider all of the relevant matters that relate to this application, and arrive at an ethical and conscionable decision to support our application.

Best Regards,

Daniel Cullen on behalf of Owners Corporation 1 Plan No. PS702525Y C/O Stratabase Holdings Pty Ltd (the Applicant)

Item 4.7		Objector (O) Supporter (S) Applicant (A)
15 Stewart Street, Brighton		
1.	Mr Greg Barton	(O)
<p>Written Statement for Planning and Amenity Delegated Committee - 12/12/2022 Application Number: 5/2022/421/1 Address: 15 Stewart Street, Brighton</p>		
<p>Summary</p> <p>The main objection is the building of the garage on the western fence line. This entails a major encroachment on both the Tree Protection Zone (TPZ) and the Structural Root Zone (SRZ) of Tree 2. Tree 2 is in fact a row of trees (<i>Ficus microcarpa</i> var. <i>hillii</i>) in a hedge at 17 Cairnes Crescent. Both arborist reports detailed note that this is to be avoided.</p> <p>In support of this objection is that:</p> <p>Inconsistency of Council Values with regards to this Issue:</p> <p>The original application for the construction for two town houses at 15 Stewart Street was refused by Council at the Planning and Amenity Delegate Committee meeting on the 09/06/20 and supported at an appeal to VCAT. One the major deciding elements was that:</p> <p>“The key issue was the proposed garage at dwelling 2 which would encroach into the SRZ of tree 16 (a neighbouring tree). This is not an acceptable outcome.”</p> <p>The double garage was originally proposed to be on the eastern fence line, and this was not acceptable because of the encroachment of the SRZ of tree 16. The amended plan now has the double garage moved off the western boundary to accommodate this, and instead placed on the eastern boundary fence. Now the relocated double garage is encroaching on both the TPZ and SRZ of multiple trees instead of just the SRZ of a single tree, and this is now apparently acceptable. How can this sudden deviation of values be justified?</p> <p>Risk of Damage to Tree 2:</p> <p>I refer to the Arborist Report (Exploratory Root Investigation) by Jason Clifford (Dated 08/11/22) The summary of the investigation was “As a result, the trees would not be expected to be adversely impacted by the excavation and root severance required to construct the proposed garage.”</p> <p>This statement was followed by a list of constraints detailing how this is a risk assessment that cannot be considered to constitute a prediction of future events. No direct visual examination of the trees or their position was undertaken or requested. Hence a number of assumptions were made.</p> <p>The council report have summarised this investigation as: “The findings of this report conclude that the trees would not be adversely impacted by the proposed excavation.”</p> <p>Hence the council have not repeated exactly the conclusion of the report. They have instead downgraded the inherent risk involved.</p>		

The council have attempted to mitigate this risk by implementing a Tree Protection Management Plan which again does not totally mitigate all risk.

I also note the removal of the common fence which is also proposed. This fence acts as a retaining wall between the two properties as they are at different levels. No replacement fence has been marked on the plans. We (at 17 Cairnes Crescent) built a "fence within a fence" in this area to obtain the height required for pool compliance purposes. The removal of the original fence to accommodate the new plans including the placement of the garage will most likely compromise the foundations of this "fence within a fence" and further compromise the roots of tree 2. I also note the exploratory trench dug by the arborists was dug on the western side of this retaining fence. Given that this is to be removed, the roots will be more exposed than just what the trench has exposed, increasing the risk of damage to the trees.

The council has at no stage, despite repeated direct written and verbal requests to do so, provided any form of communication as to what happens if the trees are damaged. Who is responsible for the damage and the cost of rectifying it?

For the committees consideration.

Greg Barton

Item 4.10		Objector (O) Supporter (S) Applicant (A)									
20 Correa Avenue, Cheltenham											
1.	Ms Robyn Taylor (for Southern Planning Consultants)										
<p><u>Planning and Amenity Delegated Committee Meeting – Monday 12 December 2022 at 6.30 pm</u></p> <p>Planning application number 5/2022/148/1</p> <p>Subject land 20 Correa Avenue Cheltenham</p> <p>Proposal Construction of two double story dwellings on a lot</p> <p>Applicant Southern Planning Consultants</p>											
<p>This application has been referred to Planning and Amenity Delegated Committee Meeting given it has received 7 objections.</p> <p>After these objections were received, the plans have been formally amended twice under Section 72 of the Planning and Environment Act to address most of the concerns raised by objectors. Consequently, 5 objections have been withdrawn by the date of 07/12/2022. (Please refer to appendix 1- Objector map)</p> <p>The following table provides a summary of objectors' concerns and design responses adapted to address those concerns.</p>											
<table border="1"> <thead> <tr> <th>Objectors' concerns</th><th>Response</th><th>Justification (if not addressed)</th></tr> </thead> <tbody> <tr> <td>Landscaping and Removal of Lilly Pilly Tree at the front setback</td><td>Building layout has been revised maintaining 2m side setback to the Western boundary, in order to retain the existing Lilly Pilly tree at the front setback. The entire driveway to dwelling 1 has been proposed to be constructed with permeable pavers to ensure the long-term survival of subject tree and the future planting which will be incorporated by a landscape plan prepared under planning permit conditions.</td><td></td></tr> <tr> <td>Daylight to existing windows and overshadowing</td><td>Both dwellings have been substantially setback from all boundaries, so that amenity of adjoining properties are not significantly compromised. As shown on shadow diagrams provided with latest development plans, the shadow casted by the proposed development will not significantly extends beyond the shadows casted by boundary fences.</td><td></td></tr> </tbody> </table>			Objectors' concerns	Response	Justification (if not addressed)	Landscaping and Removal of Lilly Pilly Tree at the front setback	Building layout has been revised maintaining 2m side setback to the Western boundary, in order to retain the existing Lilly Pilly tree at the front setback. The entire driveway to dwelling 1 has been proposed to be constructed with permeable pavers to ensure the long-term survival of subject tree and the future planting which will be incorporated by a landscape plan prepared under planning permit conditions.		Daylight to existing windows and overshadowing	Both dwellings have been substantially setback from all boundaries, so that amenity of adjoining properties are not significantly compromised. As shown on shadow diagrams provided with latest development plans, the shadow casted by the proposed development will not significantly extends beyond the shadows casted by boundary fences.	
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Overlooking	<p>Plans amended proposing a new 1.8m high fence along the rear boundary to avoid possible overlooking into the neighbouring property located to the South.</p> <p>All upper floor habitable windows have been applied with fixed obscured windows up to minimum 1.7m sill height from the finished floor level or positioned appropriately in accordance with Standard B22.</p>	
Site coverage	Plans have been amended to achieve less than 50% site coverage, which now records 49%.	
Street setback	7.6m street setback is maintained to front wall line and the garages have been further recessed maintaining more than 8m setback from the front boundary.	
Building heights	-	8.24m maximum height is proposed which is well below the permissible maximum height of 11m.
Visual bulk	<p>Plans have been amended to remove the alfresco areas positioned to the rear of proposed dwellings to reduce visual bulk appeared to the neighbouring properties located to the South. Accordingly,</p> <ul style="list-style-type: none"> • the site coverage has been reduced from 54.8% to 49% • Permeability has increased from 35.9% to 49%. (with proposed permeable driveway) • Maintains 41.6% garden area • Maintains 7.6m street setback • Proposes an open style front garden with improved landscaping • Features with brick, render and weatherboard like external walls in varied colour tones • Incorporates pitched roof design with well-articulated 	

Page 2 of 5

	<p>façade (garages are sited well behind the porches and front wall line)</p> <p>Supported with above design elements the revised plans will ensure a more sensitive design outcome which address most of the concerns raised by objectors in regard to neighbourhood character, visual bulk and over-development.</p> <p>Further to above, "Two new canopy trees in the rear setback to be minimum 8m in height at maturity" has been required under draft permit conditions included in the planning delegated report, which will further reduce the visual bulk appears to the properties located to the South of subject site.</p>	
Placement of air-conditioners and storage spaces	Plans have been detailed to show the positioning of air conditioning units, rainwater tanks, clothesline and storage facilities.	
Driveways/crossovers/on-street carparking	<p>Each dwelling is provided with a single garage and a tandem carparking space within the subject property in accordance with clause 52.6 requirements of the planning scheme.</p> <p>3m wide two crossovers will occupy 37.8% of the frontage which below the permissible 40% applied under clause 55.</p>	
Neighbourhood character /first dual occupancy development in the street and can set a precedent for future development.	-	<p>The subject site has a higher potential to be developed for a medium density residential given its locational advantage and supportive planning policy framework particularly being within General residential Zone.</p> <p>Concern was expressed that the grant of a permit would set a precedent for similar dual occupancy developments in the neighbourhood. There is no justification for this concern.</p> <p>Accordingly, we believe that each case must be decided on</p>

		its own merits and should avoid ambiguity.
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In addition to above design alterations, the applicant has formally agreed to setback the garage wall on Eastern boundary by 150mm and retain the existing boundary fence, after considering the further concerns raised by the neighbour. Council may consider of conditioning this requirement in a prospect planning permit appropriately. Referred to the above discussion, it is understandable that the design and the building layout has been substantially improved to address the legitimate concerns raised by objectors and in overall the subject development complies with relevant planning policies. On this basis we believe the application should be supported and granted with a planning permit.

Nishadi Bomiriya
Southern planning consultants

Objector Map – Appendix 1



Objector location

- Objections withdrawn (anonymous or by a community group)
- Objections withdrawn
- Objections not withdrawn

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Item 4.13		Objector (O) Supporter (S) Applicant (A)
7 Kent Avenue, Brighton		(O)
1.	Ms Andrea Tuckman	(O)
<p>What I am seeking to resolve the following 3 questions below in relation to how it impacts my property. I did visit council and ask these questions in person, however the guidance from council was that in order to have these questions raised and answered, I would have to go through this objection process. I hope you can kindly understand my concerns below:</p> <p>1. There appears to be a window in ensuite 2 on the first floor, which is not shown on the south elevation. This window should have the overlooking diagram into my property, however it was not present in the planning application. Can you please provide the overlooking diagram for this window?</p> <p>2. Shadows at 9 am and 12 pm look identical in the application. I'm expecting to see shadows on my property at 12pm. When I stand outside and measure the shadow from where I am standing at these same times, then it also makes me concerned that the shadow drawings provided are not accurate. Can you please review the shadow drawings and confirm their accuracy?</p> <p>3. The side and rear setback do not look like they are within the Bayside Residential Code. If you could please take a look at the blue lines, and then the drawings, hopefully you can understand where this looks to be presenting outside of the Bayside Residential Code. We ask that this comply with Bayside Residential Code and Setbacks.</p> <p>With appreciation,</p> <p>Andrea</p>		

2.	Mr Joe Grech (for Human Habitats)	(A)
<p>Dear Sir / Madam,</p> <p>We would firstly like to thank Council for the opportunity to make this submission to a proposal we and our client are very excited about; a new family house that will complement the existing and emerging character of Bayside and Brighton. As the owner and future occupier of the dwelling, the project team headed by renowned architects at Nicholas Day Architecture have taken great pride and care in preparing the architectural plans for this house as well as working through matters raised by Council throughout the application process.</p> <p>Given the fantastic location within one of Brighton's beautiful beachside avenues, the project team have prepared a development scheme that is in keeping with the character of the area and in particular the local character of Kent Avenue. The proposal that is before the Bayside Council today is appropriate in terms of the planning context, proposing just one dwelling on the land, that is of a high architectural quality and of a style featured within Kent Avenue and in the surrounding streetscape. The proposal for one dwelling is highly appropriate in addressing the objectives of the Neighbourhood Residential Zone, and achieves all relevant planning scheme objectives and standards of the zone including building height, setbacks, site coverage, permeability and garden area.</p> <p>The reason that the proposal requires a planning permit, is due to the Design and Development Overlay Schedule 1 (Coastal Height Control), that aims to protect the foreshore environment from excessive built form height and scale. This application requires a minor variation (of just 0.5 metres) to the recommended internal floor to floor ceiling heights. This variation will be imperceptible from surrounding lots and particularly from the coast, noting the significant size of the land of over 1000 square metres, and the separation from the coastline of approximately 150 metres. The house will therefore comfortably sit within the streetscape, and will not be excessive in terms of height or scale. The planning documentation submitted to Council included an extensive neighbour character analysis of both the existing and emerging character of the area, demonstrating that the proposed house is highly complementary to the streetscape character.</p> <p>In summary, the house will deliver a positive planning outcome for the following reasons:</p> <ul style="list-style-type: none"> The proposed use and form of development provides a positive response to the Bayside Planning Scheme and relevant planning policy framework; The proposed development will provide a high-amenity single dwelling that is consistent with the residential character of the area; and The proposal only requires a planning permit as a result of a minor internal building height non-compliance that will be imperceptible to neighbouring lots or to the foreshore environs, and could otherwise be built as of right. <p>We therefore respectfully request Bayside Councillors support this proposal. This proposal has been designed to high standards, which will ensure it sits comfortably on the site and within the neighbourhood. We hope that this submission is clear, and enables Council to resolve to issue a Notice of Decision to Grant a Planning Permit.</p> <p>Should you have any queries regarding that proposal or require clarification, please do not hesitate to contact myself on (03) 9909 2202 or by email to jgrech@humanhabitats.com.au.</p> <p>Yours sincerely</p>  <p>Joe Grech Associate</p>		

Item 4.15		Objector (O) Supporter (S) Applicant (A)
1 Summerhill Road, Beaumaris		
1.	Mr Robert Simunic	(O)
Objection to development proposal at 1 Summerhill Rd, Beaumaris.		
<p>I object to the proposed application 5/2022/379/1 based on the impact to the character of the neighbourhood, and the proposed fences not being compliant with building regulation 427 relating to maximum height of fences on corner allotments.</p> <p>The proposed development is of a scale which is voluminous, and overbearing on the surrounding neighbourhood. It requires considerable variations to the setback provisions, and if granted, would then tower over adjacent properties.</p> <p>The scale of the fence, being up to 2.7m high, and with a lower half component of up to a 1.2m of solid concrete is not reflected in any of the nearby properties, so would cause a considerable change in the character of the surrounding neighbourhood.</p> <p>The amended plans have also not included the pool, as was included within the original arborist report. As there has been no amended report it is unclear whether there is an intention to include the pool now, or at a later stage.</p> <p>It was also noted during the consultation meeting, by the applicants' town planning consultant, that there is no provision for planning to consider neighbours objections based on views. It is relevant to note that the applicant has designed this dwelling with maximal height to gain view of the golf course from the master bedroom.</p> <p>Had the applicant had considered the comments of the objecting neighbours and amended the plans to lower the starting FFL of the basement, effectively lowering the overall height of the building then the proposal would likely be considered less objectionable. The impact to the applicant would likely have eventuated in a smaller building footprint as the building setback would need to be increased to accommodate the revised basement ramp.</p> <p>Alternatively, had the applicant altered the design to bring the ceiling heights to a more standard height then a similar effect would be achieved. The impact to the applicant would likely be to not have the optimal views of the golf course from the master bedroom, and as it was already noted by their town planning consultant that views are not a consideration for planning.</p> <p>It is also interesting to note that the applicant has listed a development cost of \$890,000. A reasonable estimate for a mid-range build of a basement car park can be costed at \$1800 per square metre. The average cost for a high end house build ranges between \$3000 to \$5000 per square metre. (1) Taking the average of \$4000 per square metre and multiplied by the area (279 sq m) this gives an estimated house build cost \$1,116,000. When the basement costs are calculated (\$1800 x 142) at \$255,600 this then gives a total build cost in excess of \$1,370,000.</p>		
<p>Boundary fences.</p> <p>The proposal cannot be seen to support council's planning objectives of a "low, open style front fence".</p> <p>The proposal indicates a solid render wall, with a total fence height of up to 2.7m. It cannot be considered "low", or "open style". The upper component of the fence, being a vertical metal cladding fence, can also not be considered an appropriate alternative where vegetation is the preference. The material specifications (page 7 of the amended plans) only offers a statement of it being a metal fence but does not state whether it will be louvered as per the 3D images. There is a lack of detail as to the spacing between the louvers, and to what degree the fence will be designed to be "open style". The lack of detail easily allows for louvers to be designed to overlap, creating a solid style fence.</p> <p>The proposed fences are also not in alignment of building regulation 427, requiring a maximum height of 1m within 9m of a point of intersection of street alignments on corner allotments.</p>		



Photo ④

This is approximately indicative of the overall height of the fence relative to the current street frontage, with a person of 1.8m for reference.

Setbacks

The front setback is not compliant with CLAUSE 32.09 NEIGHBOURHOOD RESIDENTIAL ZONE

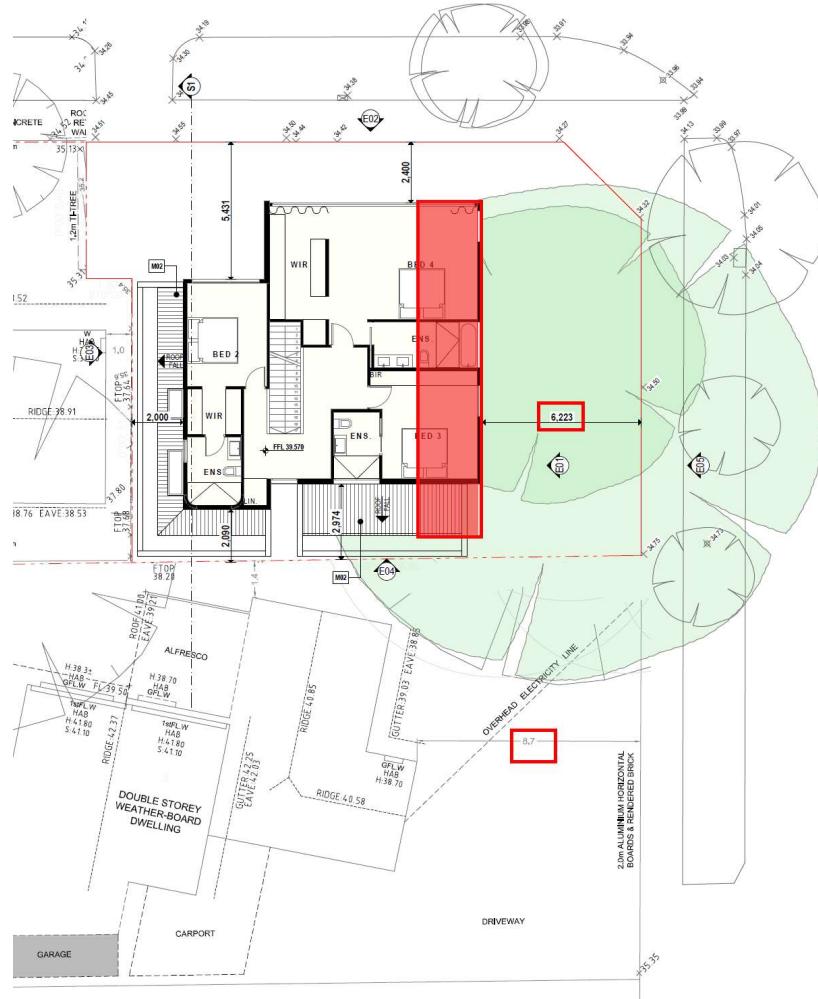
Schedule 3 (NRZ3): Minimal Residential Growth Area

Minimum Street Setback – Standard A3 – The greater distance of the setbacks of the front walls of the existing buildings on the abutting allotments facing the front street or 9 metres, whichever is the lesser.

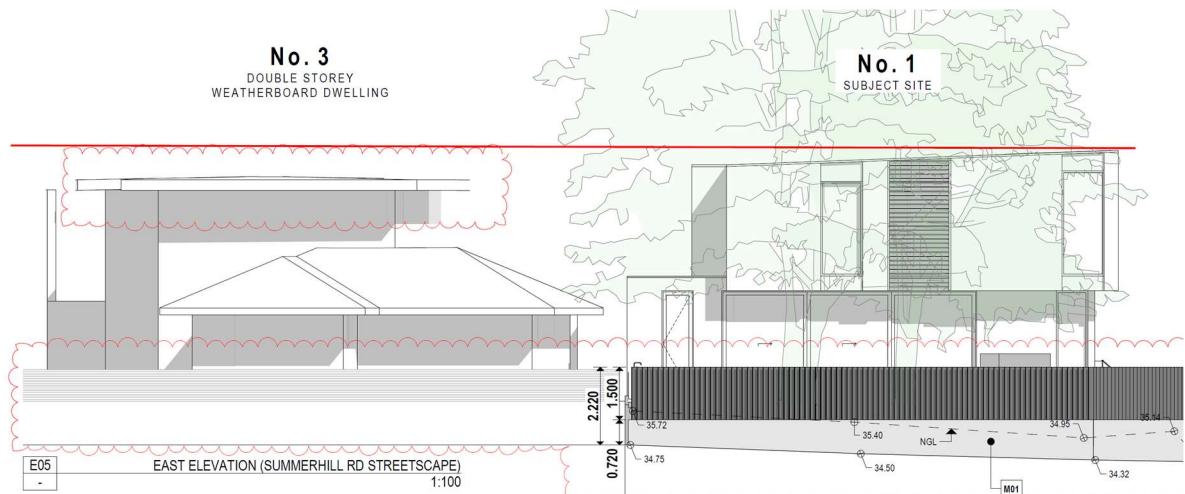
As the Summerhill Rd frontage is considered the front of the property then this would require the new dwelling to be set back the same distance as the front setback of the abutting dwelling facing the same street – being 3 Summerhill Rd. Page 6 of the amended plans shows this is clearly not the case where the proposal seeks to amend the setback from approximately 8.7m down to 6.223m – a reduction of ~2.5m.

The area highlighted in red in the image below shows the non-compliant area of the proposed building, or approximately 25% of the proposed building envelope.

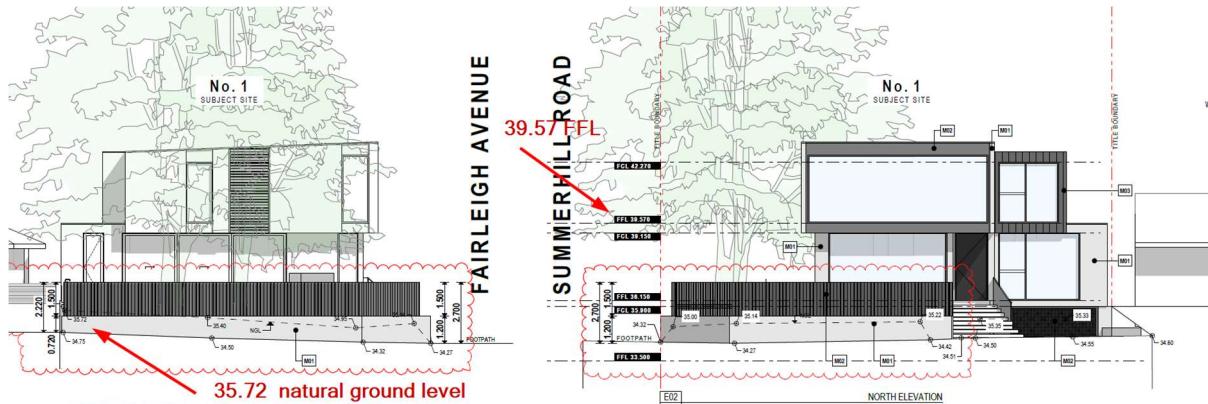
FAIRLEIGH AVENUE



Page 7 of the advertised plans clearly demonstrate the proposed dwelling to be considerably taller than the neighbouring property.. This is not consistent with the character of the neighbourhood, where the buildings generally follow the natural terrain. It is also inconsistent with Standard A4 & B7, requiring a graduating height between new and existing buildings. This is even more starkly apparent when viewed from Fairleigh Ave where there is no graduation – it is simply a massive step.



Considering the northern elevation of the advertised plan demonstrates that the proposed building will have considerable impact on the neighbouring property at 4 Fairleigh Avenue. The natural ground level is indicated on the plans at 35.72 (page 7), with the FFL of the first floor being 39.57, which can be considered the height of the roof of the ground floor. According to the plans, this indicates the wall will be in excess of the 3.6m maximum at a height of 3.85m.



The voluminous mass of the building, combined with the considerable setback amendments, is clearly not in keeping the neighbourhood character.

Item 4.16		Objector (O) Supporter (S) Applicant (A)
1.	Mr Peter Robertson	(O)
		<p>Dear Sirs,</p> <p>P & I Robertson, we reside at 77 Holyrood St Hampton 3188, we provide the following objections / comments in relation to the council report scheduled for council meeting on 12/12/2022 and planning application for building and works 5/2022/298/1 at 469 Hampton St Hampton 3188 your review and action.</p> <p>Council report advises that the works applied for under this retrospective building works permit were allowed under State of Emergency / Covid 19 powers which extended to allow open air dining.</p> <p>It is noteworthy that the rear car park under croft area in question being used as a Beer Garden never met the criteria for an open air dining space - The rear area has solid walls on two adjacent sides and the remainder has been closed with a Timber Paling Fence and Chain Mesh Fence which is completely covered with an imperious Plastic Weathered covering, effectively has little or no free air and no forced fresh air supply refer photographs in the council report.</p> <p>The retrospective planning application and works relates to these building works constructed without a planning or building permit to convert the rear under croft car park into a Beer Garden.</p> <p>There is a separate planning application to extend the red line to include the rear under croft car park area / 'Beer garden' which is the subject of a VCAT hearing scheduled for February.</p> <p>The 'Beer Garden' which accommodates seating for 30 people is located just 8m from our bedroom and living rooms and operates up to 11 pm Tuesday to Sunday night and operates under a temporary permit issued under the state of Emergency Covid 19 Pandemic. The State of Emergency Powers were revoked on 12 October 2022.</p> <p>The use of this space as a Beer garden in its current form is the subject of numerous noise complaints to council and issues with people milling in the lane till 11.30 creating both a noise, odours from smokers, antisocial behaviour and safety issue and is completely inappropriate for this location.</p> <p>The sound from Patrons in this rear area reflects off the brick walls directly back to our place and the noise level produced by 30 people on the booze is well in excess of the EPA guidelines even without amplified sound destroying our right to quiet amenity and we are unable to sleep until Picasso function finishes and the patrons have departed.</p> <p>Picasso promote this Beer Garden as a party room and have had discos with amplified music, live musicians playing saxophone and singers, patrons think they are out the back paddock and carry on at the top of their lungs.</p> <p>We have throughout the red line application been supportive of Picasso expanding their business, provided it be done in a way that does not adversely impact on our amenity proposing various solutions none of which have been entertained.</p> <p>The fundamental question is, are the proposed building and works appropriate for the planned use of this space as a Beer Garden and the answer is <u>a resounding no!</u></p> <p>The council report goes to lengths to justify not having to assess or address any of the amenity issues raised by the 25 plus objectors; deferring these to be resolved by the Planning Permit Application to extend the Red Line, or dismissing them as an as of right, or other.</p>

It is important to note that the Planning application to extend red line is purely for the Liquor Licence / Red line to be extended and will not address any building works, these must be dealt with by the current Building and Works Permit application.

Council report suggests that it is not their responsibility to assess compliance with EPA guidelines and that this responsibility lies with the operator. This is quite the opposite to my experience as a Design and Construct Builder of 40 years in major construction of Hospitals, Residential Projects and Schools. An acoustic assessment of the noise to be generated by its use, and the operation of the plant and equipment is undertaken to ensure that there are no adverse impacts on the amenity of adjoining properties is standard practice, particularly if it is known to be of a sensitive nature and given the track record of complaints this is well known to the council.

The design is then developed and tested to ensure it addresses any acoustic requirements, this has not occurred.

I have consulted with a senior representative at the EPA and their advice is this is a Town Planning issue and should be dealt with by the responsible authority which is Bayside Council.

Reduction in parking is required but was not applied for under the application to extend the red line nor has it been applied for under this building and works application - No traffic management report or justification to support a dispensation in parking. Bayside Planning Scheme requires 4 car parking spaces for the base tenancy and a further 2 for the 3-bedroom residence on level 1 and a further 2 for the addition of the Beer Garden yet only 2 are proposed to be provided. This issue is dismissed by council. Parking in the Retail strip and adjoining streets has been a going issue for many years this reduction in parking is only adding to the problem.

Façade Cladding it is unclear how it can be justified that plastic 'weathered covering' is in keeping with the Hampton Neighbourhood Character it looks like something from the ghetto.

The selection of façade material is clearly a Town Planning responsibility, Retail is class 6 construction and external walls within 3 m of the boundary (Fire Source) are required to be fire rated, knowingly endorsing a product that is non-compliant with the NCC and Combustible Façade regulation is questionable.

Changing use from a Car Park Class 7a to Retail (Beer Garden) Class 6 brings with it regulatory compliance obligations, has this been assessed?

There is a fundamental flaw in the Planning Laws if a retail establishment can convert an undercroft car park at the rear of the premises into another use directly adjacent to a quiet residential area on either a temporary basis or permanent basis without demonstrating compliance with Rules and Regulations and for the Council to make a proper assessment along with consulting adjoining owners and addressing amenity impacts, and ensure that design addresses all key issues, the current design and council report does not.

Other Councils approach

South Melbourne

The Terminus Hotel in South Melbourne was given temporary permit to change use of car park into Beer Garden received noise complaints from adjoining owners, council is working with Pub to construct an acoustic wall to address noise concerns refer attached 3AW news brief 26/10

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Terminus Hotel owner left frustrated by neighbouring complaints

24/10/2022

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DEE DEE DUNLEAVY



Terminus Hotel owner, Chris Shearer, has been left frustrated by complaints from neighbours nearby the venue.

Residents in a neighbouring block of units believe The Terminus is exploiting an exemption introduced during the COVID-19 pandemic to operate a large beer garden in the hotel's car park.

Mr Shearer claims there are plans underway to fix the issue.

"We've got plans with the Yarra City Council at the moment to enclose the space, which is acoustically treated and sound engineered construction that will make life better for everyone, not only in the venue but in the street," he told Dee Dee.

Mr Shearer has tried to solve the problem with measures such as no entertainment outside and not emptying bins at certain times but the complaints still continue.

City of Melbourne

MCC Guidelines for Outdoor Dining – requirement for the proprietor to consult with adjoining owners to ensure there were no amenity impacts

SAFETY AND AMENITY — Street dining should be designed to create an attractive, comfortable and safe ambience and should not compromise public amenity. The outdoor dining space should be non-invasive and respectful of city amenity. Safety features and well-designed and maintained furniture and associated infrastructure are essential.

ELIGIBILITY CRITERIA

1. Must be an eligible street with specific traffic conditions
2. Must satisfy safety and amenity requirements (see technical specifications in appendix)
3. Should have support from neighbouring businesses on either side of parklet
4. Applications should involve more than one hospitality business requesting multiple consecutive parking bays to be converted into café parklets
5. Residential areas and in front of residential building — a letter of support from adjacent residential neighbours, or body corporate if in front of a residential apartment block, will help support the application.

Bayside Council

Granted a temporary permit for an open air dining area which was not open air, and has allowed the applicant to choose whether they consult or not, and have despite numerous complaints about noise has chosen not to address the amenity impacts within the planning application process in either the Red Line Extension or this Building and Works Permit application.

Picasso has refused to engage in any meaningful discussion to mediate the application to extend the red line and the matter is now headed to formal VCAT hearing.

It appears that the building and works will go down this path as well which is unfortunate as there was an opportunity to try and reach some resolution without wasting everyone's time and money, this opportunity has sadly been wasted. We refer you to our Objection for further detail.

Yours Sincerely

Peter & ilma Robertson

2.	Ms Gabrielle Bibby	(O)
Objection to Building and Works Planning Application 5/2022/298/1 Picasso Restaurant 469 Hampton St Hampton 3188 Bayside City Council Meeting 12/12/2022 Agenda Item 4.16 Respondent: Gabrielle Bibby, 71 Holyrood Street, Hampton 3188		
The retrospective planning application and works relates to temporary building works which were allowed under State of Emergency / Covid 19 powers.		
Given these Powers were revoked on 12 October 2022, it is appropriate that the temporary works now be subject to the standard Bayside City Council (BCC) Town Planning and Building Permit processes and governance. These processes provide safeguards for all stakeholders.		
4 OBJECTIONS		
As a local resident my interest and thus my objections mainly relate to the negative impacts to amenity.		
These are my 4 objections to the application.		
1	Noise	I live about 100mtrs from the dining area in question. My home is a new build, with double glazed windows. With all windows closed, I can hear the noise from Picasso's temporary dining area. It invades our quiet space, and keeps us awake. The BCC town planning process considers noise impacts. Why are noise impacts not considered as part of this application?
2	Parking reduction	The area in question is the conversion of an undercroft carpark. 4 car spaces are now gone. Town Planning for this site requires 4 car parks for the restaurant business and 2 car parks for the 3-bedroom accommodation above. We have already had issues with the parking of several Picasso vehicles on Holyrood St for days and months on end – not moving, in 2hr zones, on residential streets. The BCC town planning process considers reduction to parking spaces. Why is parking reduction this not considered as part of this application?
3	Built form	The temporary structure is wire mesh fencing covered with nylon green shade cloth. This built form is not similar to, does not compliment, nor does it add any architectural merit to the buildings in the vicinity which are mainly red brick, concrete mass, or rendered. The BCC town planning process considers built form, the materials proposed and fit with the street scape. Why is built form not considered as part of this application?
4	Fire Safety	The temporary structure is composed of highly combustible nylon shade cloth. It is a fire hazard from smoking patrons, and from the water heating unit adjacent to it. The BCC town planning process considers safety. Why is fire safety not considered as part of this application?

IN CLOSING

On reading the BCC report for this meeting I am concerned about how the **process** has been applied and the **limited considerations** addressed for this application when it comes to including the standard aspects of a town planning and/or building permit – such as:

1. Noise impacts
2. Parking reductions
3. Built form, and
4. Fire safety.

I am also very concerned that if Council approves this application as is, without addressing these 4 items, then it sets a **precedent** that other Hampton Street (and Bayside) businesses will be open to adopt.

The time to address these factors is now. Relying on compliance as a remedy after the event is not acceptable or practical nor will it result in a positive, long-term outcome for any stakeholders.

I understand that 25 or so households have objected to the application. That more people are not involved in this meeting is likely more a reflection of the meeting date being mid-December – school holidays and Christmas celebrations - than of a lack of legitimate concern.

OUTCOME SOUGHT

- 1. I urge the Councillors to not decide on this application until it fully addresses these 4 standard town planning considerations** in a way that negates the impacts to amenity for nearby residents, and in the case of fire safety for patrons and nearby businesses and residents.
- 2. As the State of Emergency powers expired on 12 October 2022, I urge the Council to suspend the permit for this space until such time as the revised application is considered and decided.**

3.	Mr Darren and Mrs Cathryn Sayers	(S)
<p>To Whom It May Concern</p> <p>Noise Complaint – Picassos Family Restaurant (469 Hampton Street, Hampton)</p> <p>We have become aware that a noise complaint has been made in relation to the use of an alfresco dining area at Picasso's restaurant (469 Hampton Street, Hampton).</p> <p>Our property at 48 Avondale Street enjoys access to the laneway that links us to the retail precinct of Hampton Street where Picasso's restaurant is located.</p> <p>The distance from the back entrance of our property to the alfresco area of Picasso's is just 40 steps. The distance from the complainant's back entrance to the alfresco area is 26 steps... so we are just 14 steps further away. The side of our property also borders the complainant's rear fence.</p> <p>We have never had a reason to be upset or concerned about noise emanating from Picasso's restaurant, either from the alfresco area or from diners leaving the premises and passing through the laneway. We have dined in the alfresco area with large groups of family and friends on multiple occasions and were impressed with how private it is and how nicely it has been fitted out.</p> <p>While it would have been easier for us to exit the restaurant via the rear door to return to our home, we were told by the staff that this is not a permitted entry/exit point and were asked to leave via the front entrance on Hampton Street, which we were happy to do.</p> <p>Since moving here in 2016, we have only heard noise coming from Picassos once on a Saturday night. The noise was caused by someone using a microphone in the alfresco area – presumably for speeches, and was followed by some clapping and cheering. It lasted no more than 15 minutes and the event ceased by 9pm, or so we believe, as we didn't hear anything else after that!</p> <p>We know the pain and disruption that noisy neighbours can cause, as the only issues we have had since moving here 8 years ago relates to the noise generated by the 'party boys' at 77 Holyrood Street – the sons of the complainant. The parties have recently ceased as we understand the boys have now moved out of home.</p> <p>We find it interesting that the complainant – who we now know was aware of these gatherings while he and his wife enjoyed weekends away – had such little respect or concern for the wellbeing of his neighbours for all these years. That he is now asking for a similar level of respect and concern for his own wellbeing due to the supposed "excessive noise" caused by Picasso's restaurant is ironic to say the least.</p> <p>We fully support Picasso's application for an alfresco dining area and reconfirm our statement that there is no issue with noise emanating from our neighbours at 469 Hampton Street.</p> <p>Yours faithfully</p> <p>Darren & Cathryn Sayers</p>		

4.	Miss Vanessa Issa	(A)
To Whom It May Concern/ Members of the Council		
Intention:		
<p>During the course of this document, I will be outlining the matters brought to Council against Picasso's Family Restaurant from the Local Objections. I aim to address all concerns and to peacefully reach a resolution with all community members who have petitioned against Picasso's Family Restaurant.</p> <p>It is imperative that as a business located on Hampton Street, we maintain a civil relationship with our neighbouring businesses and residents. After what has been a tumultuous few years in food retail, the added weight and stress of this matter has caused great angst for the Issa family, which is why we hope to remedy any issues associated with the community.</p>		
<p>Please review direct responses below to the Objections made:</p>		
<p><u>Statement 1: Inappropriate for the location:</u></p> <p>As cited on Bayside Council's website, "<i>Hampton Street is Bayside's longest shopping strip and is home to over 320 businesses including a growing café and dining scene. Reflecting the cosmopolitan and family-friendly Bayside lifestyle, Hampton Street has an array of retail, specialty shops and services, all a stroll from Hampton train station</i>"¹</p> <p>Hampton Street is iconic and Picasso's Family Restaurant has been a residing business established in 1997. Over the course of these years, it has served and played a pivotal role in the local community.</p> <ul style="list-style-type: none"> ● As part of the Coronavirus pandemic, the Victorian Government imposed grants and new legislation for the hospitality industry to continue operation and keep the community safe. This involved the utilisation of outdoor dining spaces under the 'Small Business Ventilation Program - Ventilation Grant' and 'The COVIDSafe Outdoor Activation Voucher Program.' ● Due to the dire state of businesses throughout the state of Victoria during the lockdowns, these programs were designed to support businesses like <i>Picasso's Family Restaurant</i> and move regular dining activities outdoors. This was to boost and sustain Victorian businesses and cater for the Victorian public during the remainder of 2021 and beyond.² ● In the last year, the use of the rear outdoor dining space has attracted new customers to our business and the shopping strip. It allowed us to generate more business opportunities and for people to feel safe when dining during/after the impacts of COVID-19. The popularity for this area was based on word-of-mouth recommendations via small family functions and dining experiences, providing advantages for both our business and the local community. ● This outdoor space has brought more employment opportunities, allowing Picasso's Family Restaurant to assist with the financial burden that covid has presented for job seekers nationwide. <p>Based on our customers' feedback and our business' popularity, we believe that it is false to say that the location of this outdoor area is inappropriate. It is attached to a commercial</p>		

¹<https://www.bayside.vic.gov.au/services/business-and-commerce/hampton-street-retail-village>

² <https://business.vic.gov.au/grants-and-programs/small-business-ventilation-program>

dwelling, in a known and popular commercial retail area. It has been welcomed by the majority of our clientele and community.

Statement 2: Amenity Impacts, Statement 7: Operating Hours, Statement 8: Noise

- While investigating the amenity impacts of the space, we have liaised with Daniel from the EPA (Environment Protection Authority) regarding our rights as a business. As per the Environment Protection Regulations 2021 S.R No. 47/2021, a musical instrument or any electrical amplified sound reproducing equipment including a stereo, radio, television or public address system – prohibited (of 156):
 - Monday to Thursday & Sunday after 10pm.
 - Friday, Saturday & Public Holidays after 11pm.

We have agreed to abide by these rules for operation and also noise level control, and if there are to be any changes in the future, we will notify the Bayside Council immediately.

- From the objection, it has been requested that we install “*a solid acoustically rated external walls and doors required to encapsulate the noise to be compliant with EPA Sepp N1 Requirements*”.
- To be proactive based on the current circumstances, we have reached out to a local Builder to provide a quote if we were to facilitate these designs to aim to decrease any noise from this area.
- This is a consideration for our business, but unfortunately, we are struggling with the after-effects from COVID-19 and this added expense is not feasible.

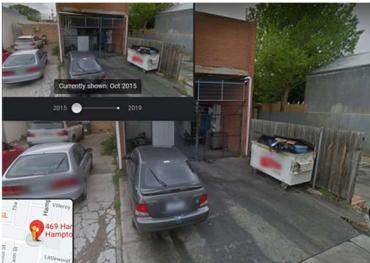
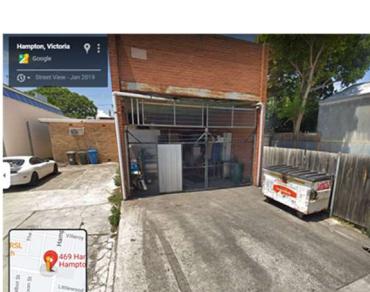
Statement 3: Car Spaces

The argument regarding car spaces recently decreasing for this area is false.

From as early as 2015, there has only been two (2) car spaces available. These are occupied by Staff/Owners.

- The occupants of the building upstairs occupy 1 bedroom, with the both residents being the business owner and employee, not affecting the car space available.
- Overall, there are approximately 7 staff members who live locally and do not attend the premise in a vehicle.

Please view images of proof that parking remains unaltered.

Image 1: October 2015	Image 2: January 2019	Image 3: December 2022
		

Statement 4: Design and Construction

- In regards to the design with the plastic shade cloth, we agree with the objections made; and will investigate to ensure we replace it with materials compliant to **NCC guidelines**.

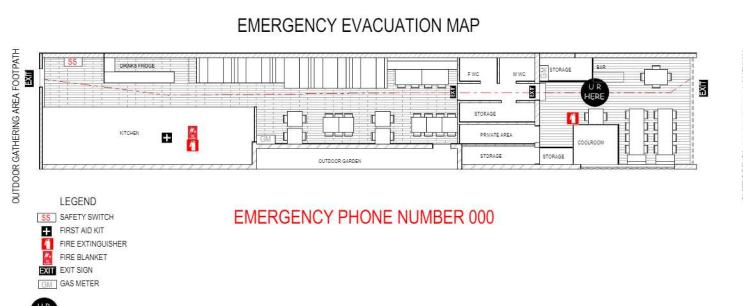
Statement 5: Anti-social Behaviour

- All patrons upon booking and entering of the venue, are instructed that they are unable to exit the building through the back gate. This exit is only to be used in case of an emergency and for employee and delivery access.
- To further action this item, we have included 'Emergency Exit' signs on the gate to indicate only for 'Emergency Exits'.
- This area is a smoking-free zone and there is a zero tolerance to patrons smoking inside the premises, as it is a health hazard. A 'No Smoking' sign has been erected in the area to counteract anti-social behaviour and smoking (please see image attached).



Statement 6: Fire Escape

- There is a designated fire exit at the entry/exit of the property for the first-floor residence. This has not been impacted due to the outdoor dining area.
- The new design has provided an additional fire safety exit through the supplementary gate that was not there originally.
- There is also a fire extinguisher in the rear dining area in case of an emergency. This is serviced yearly by UFE Services Pty Ltd.



OUTDOOR GATHERING AREA LANEWAY

Statement 9: Doorway/ramps

- We are currently sourcing additional assistance in producing/providing adequate support for patrons requiring further assistance using the rear space.
- We currently have the necessary precautions placed on the steps, highlighting the step and a sign on the door leading to the rear dining space.



Summary:

Thank you for your time and consideration in reviewing the responses set out above.

Please be aware that we have tried to cooperate at every stage of this matter as we want a peaceful resolution, which doesn't impact our business further. It is no secret that we are struggling from the after-effects of COVID-19 as most small businesses are, but the financial burdens experienced were unforeseeable.

The main community member who initiated the above action was once a loyal customer to our establishment (both him and his wife), we would be beyond happy to welcome him as a friend to our business once this matter is resolved. We understand that change and concerns are part of all community issues, however we are here to resolve these.

On that note, if there is an underlying matter, which is not known to our owners, please know that we welcome conversation to also find a solution. As this entire ordeal has been distressing and exhausting.

As identified in this response, the use of the outdoor dining space has brought in new customers and a positive outcome to both our business and the wider community; and also an additional space to provide an opportunity to increase income and strengthen our business after the last few years.

Both Tarek and Vivienne Issa of 469 Hampton Street, Hampton, have agreed to adhere to the laws in place by the authorities as included above.

This process has been costly and stressful, and their only request is that before issues or concerns made by residents/community members are accelerated to hearings and mediation, they would like the opportunity to address the matter(s) personally. They welcome any community members to approach either of them (Tarek or Vivienne) with concerns, which will be dealt with immediately.

Your time is appreciated and I look forward to discussing any area of this document further.