

Planning and Environment Act 1987

Panel Report

Bayside Planning Scheme Amendment C165

Well Street car park

17 December 2019


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Panel Report pursuant to section 25 of the Act

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A handwritten signature in black ink that reads "Lester Townsend". The signature is written in a cursive style with a large initial "L".

Lester Townsend

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Glossary and abbreviations

Council	Bayside City Council
DDO11	Design and Development Overlay Schedule 11
GRZ	General Residential Zone
ITS	Integrated Transport Strategy
MAC	Major Activity Centre
NRZ	Neighbourhood Residential Zone
planning scheme	Bayside Planning Scheme
PPF	Planning Policy Framework
PUZ	Public Use Zone
VCAT	Victorian Civil and Administrative Tribunal
VPP	Victoria Planning Provisions

Overview

Amendment summary

The Amendment	Bayside Planning Scheme Amendment C165
Common name	Well Street car park
Brief description	Rezone land at from General Residential Zone to Public Use Zone (Schedule 6) to facilitate the development of an at-grade car park
Subject land	5 to 7 Well Street, Brighton
Planning Authority	Bayside City Council
Authorisation	4 April 2019
Exhibition	Thursday 6 June to Monday 8 July 2019
Submissions	A total of 20 submissions were received to the Amendment (including 1 petition and 1 late submission), five of which were in support of the amendment – see Appendix A

Panel process

The Panel	Lester Townsend
Directions Hearing	Council Offices, Brighton, 28 October 2019
Panel Hearing	Council Offices, Brighton, 11 and 12 November 2019
Site inspections	Unaccompanied, 28 October, 11 and 12 November 2019
Appearances	See Appendix B
Citation	Bayside PSA C165 [2019] PPV
Date of this Report	17 December 2019

Executive summary

Bayside Planning Scheme Amendment C165 (the Amendment) seeks to rezone Council owned land at 5 and 7 Well Street to allow for the extension of a car park. 5 Well Street is occupied by an existing at-grade car park; 7 Well Street is vacant.

Key issues raised in submissions included:

- a misunderstanding that a public car park could proceed with a planning permit
- that the proposal was contrary to Council and planning scheme policies
- a potential loss of residential amenity to the street including visual and noise impacts on amenity resulting from a car park use
- increase in traffic and congestion to Well Street
- request for Council to provide public open space at the site instead of car parking
- personal concern that the rezoning of land would negatively affect property values
- support for the inclusion of cyclist parking and infrastructure
- concerns about the detailed design of the car park.

A car park was established on 5 Well Street in about 1994. Since it purchased 7 Well Street in 2005 Council has developed a sophisticated planning regime for the Church Street Major Activity Centre, and more recently a carefully crafted and thoughtful Integrated Transport Strategy (ITS).

The Council submission clearly presented arguments in favour of the proposal but ultimately these arguments must fail against the clear strategic and policy position set out in the planning scheme.

Council submitted that its response to community concerns around parking and transport was appropriate, and that parking is a complex problem that requires a range of actions to be considered, one of which is maximising opportunities for parking supply within the existing network.

The Panel agrees that parking is a complex issue that requires a range of actions and Council's strategic plans have developed those actions.

The proposal simply does not accord with Council's strategies and policies. Strategies and policies that could have addressed this proposal did not. Extending the Well Street car park does not feature as an action in any recent strategy.

According to Bayside ITS *"Providing additional capacity through more road space and parking is not a sustainable solution"* and yet this is precisely what this Amendment seeks to do.

While the current proposal is relatively minor, once rezoned there would be few planning controls prohibiting a more intense car park use. A rezoning that had the potential to allow for such development should have strategic justification.

The Amendment is not strategically justified and is not supported by the Panel. This is a proposal that, in the Panel's view, should not have progressed to an Amendment.

Recommendation

Based on the reasons set out in this Report, the Panel recommends that Bayside Planning Scheme Amendment C165 be abandoned.

1 Introduction

1.1 The Amendment

(i) Amendment description

The purpose of the Amendment is to rezone land from the General Residential Zone to Public Use Zone (Schedule 6) to allow for the extension of a public car park by 22 spaces.

(ii) The subject land

The properties at 5 and 7 Well Street are located on the northern side of Well Street, between St Andrews and Carpenter Streets, and are both Council owned.

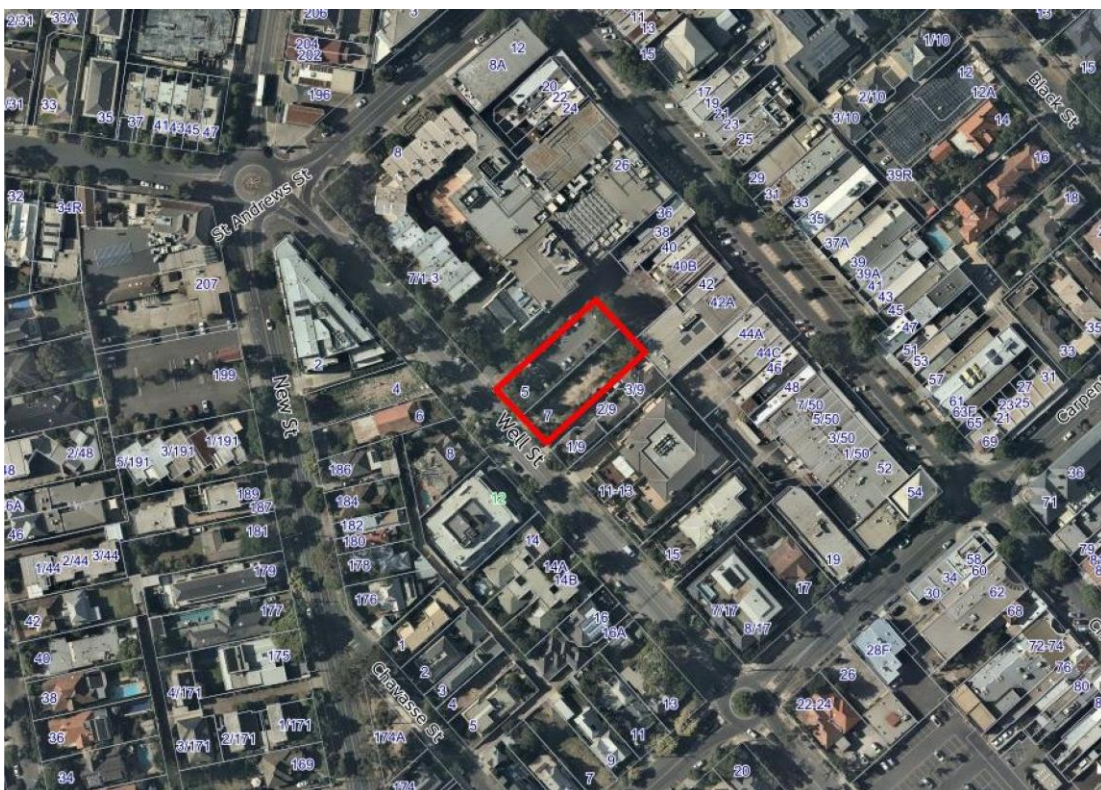
Both sites are rectangular and together provide a 27 metres street frontage to Well Street along the southwestern boundary.

Council has owned 5 Well Street since at least 1994 when a planning permit was issued to develop and use land as a public car park. The existing car park at 5 Well Street is 683 square metres in area, and contains 28 car parking spaces. It appears the constructed car park extends over the western boundary of 5 Well Street. This is not a critical issue for the Amendment.

Council purchased 7 Well Street in 2005 with the intent to construct a car park at the site. At the time of purchase Council continued to allow tenants to lease the property, under a tenancy agreement with Council until Council was ready to construct the car park.

7 Well Street is currently vacant and is 686.34 square metres in area. The site previously contained a dwelling which was demolished in 2017.

Figure 1: Subject land



(iii) Is an amendment needed

There was some confusion as to whether a rezoning was required to allow for the expansion of the car park. This confusion flows from Council's response to submissions presented as part of its 20 August 2019 Council meeting which states:

Whilst Council can apply for a car park to be developed upon the site within its existing zoning designation, it would be a section 2 use and would require a permit to be obtained. This process was considered, however it was overruled as the undertaking of a planning scheme amendment is more transparent

This is not correct. Council acknowledged at the Hearing that a car park intended to serve the shops in Church Street would be prohibited in the General Residential Zone. Council tendered a revised response to submissions (doc 8) that corrected this error in some instances and then a final response that corrected it in all instances (doc 32).

1.2 Summary of issues raised in submissions

Council received a total of 20 submissions, including 1 late submission and 1 petition. There were submissions supporting and opposing the proposed car park at 7 Well Street.

The issues raised in the submissions include:

- a misunderstanding that a public car park can be accommodated within the existing General Residential Zone
- concern that the proposal was contrary to Council and planning scheme policies
- visual and noise impacts on amenity resulting from a car park use
- increase in traffic and congestion to Well Street, impacting of the pedestrian accessibility
- request for Council to provide public open space at the site instead of car parking
- personal concern that the rezoning of land would negatively affect property values of surrounding residential properties
- a potential loss of residential amenity to the street
- support for the inclusion of cyclist parking and infrastructure
- concerns about the detailed design of the car park.

Council advised¹ that it proposes the following changes to design and configuration of the proposed car park in response to submissions:

- the number of car parking spaces has been reduced to 22 additional car parks – seven fewer spaces
- the reduction in the number of spaces allows for additional landscaping to be provided between the parallel parking, softening the overall impact of the car park
- bicycle racks are to be constructed to provide further opportunities for sustainable travel infrastructure to the centre
- construction of screening along the frontage of 7 Well Street car park to limit the impacts of views to the site from nearby properties – the height and design of the screening has not yet been determined

¹ Council Part B submission, paragraph 40

- the planting of vegetation along the frontage to 7 Well Street to soften the impact on the visual amenity of the street
- an additional disabled car parking bay has been included in 5 Well Street.

Council submitted² that the issue of inadequate car parking has been repeatedly raised in Council's *Annual Community Satisfaction Survey*. The survey outlines a range of matters including the community's satisfaction with Council's overall performance and change in performance, issues of importance to address in Bayside in the coming year, satisfaction with aspects of traffic and parking and the use of sustainable transport, amongst other topics.

The report on the survey outlines that:

... satisfaction with the availability of parking on both residential streets and main roads was 'poor' but was consistent with the metropolitan Melbourne average. The importance of car parking issues is reinforced by the fact that car parking was the most commonly nominated issue to address in the municipality at the moment, with 21.5 per cent up from 18 per cent raising these issues. This result is higher than the metropolitan Melbourne average of 14.6 per cent ... Unlike many other variables in the survey this year, there was no increase in satisfaction with the availability of car parking recorded.

1.3 The Panel's approach

The Panel has assessed the Amendment against the principles of net community benefit and sustainable development, as set out in Clause 71.02-3 (Integrated decision making) of the planning scheme.

The Panel considered all written submissions made in response to the exhibition of the Amendment, observations from site visits, and submissions, evidence and other material presented to it during the Hearing. It has reviewed a large volume of material, and has had to be selective in referring to the more relevant or determinative material in the Report. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

This Report deals with the issues under the following headings:

- Strategic justification
 - Is there a demand for parking?
 - Is this proposal supported by local policy?
 - Is the proposal supported by state policy?
 - Do recent strategies support the project?
- Other issues
 - Amenity Impacts
 - Does a lack of due diligence justify the amenity impacts?
 - Traffic and Pedestrian Impacts
 - Request for open space at the site instead of car parking
 - The design of the car park
 - Other parking actions.

² Council Part B submission, paragraph 41

2 Strategic justification

2.1 Introduction

It may be thought that the provision of 22 car spaces adjacent to an activity centre is so minor as to not warrant strategic justification. The Panel does not take this approach. The VPP has been specifically constructed to prohibit car parks in residential zones that serve uses not permitted in those zones. This provision is clearly intended to apply to the precise situation that is addressed by the Amendment.

Direction No. 11 Strategic Assessment of Amendments states:

3. In preparing an amendment a planning authority must:
 - (1) Evaluate and include in the explanatory report a discussion about how the amendment addresses the following strategic considerations [among other things]:
 - How does the amendment implement the objectives of planning in Victoria?
 - How does the amendment address any environmental, social and economic effects?
 - How does the amendment support or implement the Planning Policy Framework and any adopted State policy?
 - Does the amendment address the requirements of the Transport Integration Act 2010?

An Amendment could be strategically justified because it is:

- supported by local planning policy
- supported by state planning policy
- part of a strategic plan that is not yet part of the planning scheme.

This Chapter explores those possible justifications, but first it addresses the issue of the demand for new parking which was raised at the Hearing.

2.2 Is there a demand for parking?

The issue of the demand for car parking was raised at the Hearing and how that could be met by:

- better management of on-street parking suggesting that there was no need for additional car parking in the activity centre
- additional car spaces approved as part of a redevelopment of the 21-27 Well Street and Black Street car parks.

The *Church Street Major Activity Centre Car Parking Study* carried out by GTA in 2018:

- concluded that, on the basis of the floorspace forecasts of the Retail, Commercial and Employment Strategy 2016, maximum new parking demand would extend to an additional 279 car spaces by 2031³
- acknowledged that that figure is likely to reduce by reason of “*mode shift aspirations, future technology and continued residential densification*”⁴

³ Page 15

- acknowledged that future parking demand would likely (or at least potentially) be serviced by spaces on development sites⁵ but made no adjustment to allow for that.

Mr El Mouallem submitted that:

If the 20 per cent mode shift and the [30 or 33 per cent] onsite parking figures adopted by Maunsell AECOM⁶ and Aurecon⁷ are applied to the GTA estimates, estimated future demand remains in the vicinity of 150 car spaces. [44.4]

As noted above, GTA appears to conclude that even the demand for the maximum 279 car spaces could be satisfied by redevelopment of the 21-27 Well Street and Black Street car parks. [44.5]

Ms Basic presented photos of the relatively unused car parking in the Dendy Centre and the Panel's inspection confirmed available parking spaces.

In his evidence for Mr El Mouallem, Mr Fairlie acknowledged that:

It is apparent that there is insufficient convenient car parking for customers and traders at the centre at peak times and the development and implementation of some strategic opportunities to increase parking supply, whilst seeking to moderate future traffic growth and congestion around the centre is appropriate, particularly if it can incorporate other community benefits such as increased open space, landscaping, and complementary commercial uses. [6.1.3]

Opportunities exist within the centre to create parking to address parking demand consistent with adopted policies, for example the redevelopment potential for large at-grade car park sites at 22-26 Black Street and 21-27 Well Street. [6.1.4]

Council agreed⁸ with Mr Fairlie that those sites "*present excellent opportunities to significantly increase car parking and other community benefits*", but said that this does not discount the opportunity available at 7 Well Street to provide a more incremental solution.

Council noted that it has not abandoned those opportunities, but that the redevelopment of these sites is still an ongoing discussion with the community. Council resolved to defer the consideration of the Black and Well Street car parking proposals and to instead investigate maximising the use of existing parking capacity within the Church Street activity centre, including introduction of parking sensor technology and signage.

The Panel concludes that there is potentially need for additional parking at the activity centre, notwithstanding there could be better management of existing parking as proposed in Council strategies. The issue is whether the proposal is supported by policy.

2.3 Is this proposal supported by local policy?

(i) The issue

Is this proposal supported by local policy?

⁴ Page 15
⁵ Page 16
⁶ 2006 *Parking Precinct Plan*, page 13
⁷ 2012 *Review*, pages 46-48
⁸ Council Part B submission, paragraph 109

(ii) Submissions**Specific references to parking in the Church Street MAC**

Council submitted⁹ that the Church Street MAC is a location for housing and commercial growth, with the Structure Plan from 2006 informing the current planning scheme controls which provide the overall vision for how the centre will grow.

Policy at Clause 21.11-3 of the scheme implements the 2016 strategy.

Mr El Moullem submitted¹⁰ that:

Remarkably, Council's Part A submission makes no mention of the local policy specific to the subject land: Clause 21.11-3.

Clause 21.11-3 sets a specific vision for the Church Street Major Activity Centre (MAC). That vision includes:

The large at-grade level car parks behind the shops in Well Street will be replaced with a mixed use development which will provide additional car parking, a small public open space and a residential interface with Well Street. ...

The centre will be easy to walk around, with safe, attractive and direct routes throughout, particularly to the railway station. Attractive spaces around the station will encourage people to use public transport.

The surrounding residential precinct will retain its spacious and leafy character and new housing will integrate with the existing streetscape and provide additional opportunities for people to live near the centre. The interface of the commercial and residential precincts will be marked by sensitive urban design treatments.

The strategies by which Objective 1 is to be implemented set a specific expectation for the redevelopment of at-grade car parks:

- Encourage redevelopment of larger sites and grade level car parks for residential with basement car parking.

The subject land is in the 'Residential precinct' which focuses on the delivery of residential uses.

Many of the submitters were familiar with the Structure Plan and well understood the strategies it proposed to address parking issues.

General policy on parking

Clause 21.02-3 acknowledges the key issues facing Bayside. In relation to the transport and access theme, the following challenges are outlined:

- Bayside is a largely car dependent municipality, with the majority of Bayside residents using a motor vehicle to travel to work.
- A high proportion of short trips are undertaken by car. This increases congestion on the roads and has negative environmental consequences.
- Bayside has a higher proportion of older persons and persons with a disability than the metropolitan average. Appropriate transport options need to be available for all people, including those with specific mobility requirements and those without access to a car.

⁹ Council Part B submission, paragraph 18

¹⁰ Paragraph 17

- There are increasing car parking pressures around railway stations, activity centres and the foreshore.
- There are conflicts between different types of street users in activity centres and on major corridors, such as Beach Road.
- The different transport options, for example, bus and train, are often not well integrated which means they are not an attractive alternative to the private car.

Objective 1 at Clause 21.09-1 seeks to:

... integrate transport and land use so that sustainable transport is an attractive and viable alternative to private vehicle use in Bayside.

The first specified strategy to achieve this seeks to:

... ensure new use and development supports the prioritisation of transport modes in the following order:

- Walking.
- Cycling.
- Public transport, community transport including taxis and community run buses and demand responsive transport.
- Private vehicles.
- Commercial vehicles servicing local areas.

Council submitted:

Whilst it has been suggested by some submitters that the creation of additional car park is not consistent with Council's sustainable transport objectives, it is acknowledged that it is not always feasible for older persons or young families to rely on public transport or walking to get around all the time. By providing additional parking, Council is intending to ensure that choice exists so that in the event that walking or public transport is not an option, the private car may be used. [Part B:24]

Council said¹¹ that the policy framework is not intending to imply that no private vehicle trips are to be encouraged in any circumstance, rather that priority should be given to walking, cycling and public transport over the private vehicle.

Council went on to say¹² Church Street MAC is already well equipped to accommodate walking and cycling visitation to the centre, with Well Street forming part of the municipal bicycle network. Public transport is available via the Middle Brighton Railway Station and bus services through the area, connecting the MAC with other areas of Bayside.

Council said it was seeking to strike the balance between the provision of sustainable transport methods and car parking, consistent with the objective at Clause 21.09-4 which aims:

To provide adequate car parking facilities in and around shopping centres, employment areas and in appropriate locations along the coast.

The strategies to achieve this objective include:

- Improve parking provision and access.
- Improve parking provision within and around Activity Centres.

¹¹ Council Part B submission, paragraph 27

¹² Council Part B submission, paragraph 28

Mr El Mouallem Submitted¹³ that the reduction of car dependence is a key issue submitting that Clause 21.09 ,Transport and Access,:

- identifies that *“the principles of sustainability include a reduced reliance on the private motor vehicle and greater reliance on sustainable transport, specifically, walking, cycling, public transport”*
- identifies *“significant community benefits”* of facilitating the use of streets for walking or cycling
- includes strategies deprioritising private vehicle trips in preference to sustainable transport
- identifies further strategic work:

Prepare a Parking Strategy for Bayside, setting out principles for the management of on-street and off-street car parking with a view to supporting an integrated and sustainable transport system.

Prepare parking precinct plans to identify and address parking issues in key Activity Centres.

Mr El Mouallem submitted¹⁴ that the Amendment was prepared without the benefit of such work establishing its integrated and sustainable transport outcomes.

Council submitted¹⁵ that the municipality faces a common challenge with an ageing population, as many older residents may experience reduced mobility and social isolation when they are no longer able to drive. The needs of older residents will need to be prioritised to ensure that the pedestrian environment in Bayside is safe and accessible. With many forms of public transport, accessibility can be challenging and the private car can be favoured over buses, where older, frailer persons may find such transport potentially hazardous. It said, it is important to ensure that options are provided to ensure transport choice.

(iii) Discussion

The Church Street Centre Framework Plan (Map 1 to Clause 21.11-3) identifies three specific locations for the delivery of car parking.¹⁶ Those locations do not include the subject land.

Instead, the subject land is dealt with in the Framework Plan as part the ‘Residential precinct’, and as the location for a *“future priority pedestrian link”* and a *“future laneway connection”*.

The issue of car parking in the centre has been addressed in a range of strategies and these are reflected in the planning scheme. In this case where there are specific policies dealing with a proposed use the Panel thinks that those policies ought to be followed. Council has had ample opportunity in developing strategies for the centre to test the proposition of expanding the Well Street car park and embedding that project in policy. It has not done so.

¹³ Paragraph 15

¹⁴ Paragraph 16

¹⁵ Council Part B submission, paragraph 35

¹⁶ 22-26 Black Street, 21-27 Well Street and at the railway end of Lindsay Street

The Panel accepts that there is some level of demand for additional parking within the MAC – the question is, what is the appropriate, orderly and co-ordinated response to that demand?

The Panel agrees with Mr El Mouallem that the answer is not that new car parking must be provided wherever and in whatever form it might be used.

The Panel does not see anything in local policy that makes it clear that this proposal ought to be supported. Certainly there is support in the strategy that seeks to *“Improve parking provision within and around Activity Centres”* but this needs to be balanced with other strategies across the scheme and in the overall framework. Importantly the planning scheme makes it clear that this will be through the provision of parking at already identified locations or as part of a future parking precinct plans.

(iv) Conclusions

The intended use of the subject land is inconsistent with specific structure plan policies on how parking will be addressed in the Church Street MAC local policy.

The broader policies on parking do not support the ad hoc creation of more or larger at-grade car parks and call for a planned approach.

2.4 Is the proposal supported by state policy?

(i) The issue

Is the proposal supported by state policy?

(ii) Submissions

Mr El Mouallem submitted that:

The essence of planning policy is that land (the scarcest resource) should be used as efficiently as possible. That is particularly relevant in highest order activity centres like the Church Street MAC, where planning controls encourage intensive and productive development, but impose onerous constraints in relation to built form, transitions and interfaces. [6]

The Amendment would be hostile to that principle. It would entrench the underutilisation of rare land within the MAC for the sake of 14 or 15¹⁷ new car parks.[7]

It cannot credibly be said that any policy support can be found, at any level, for developing at-grade car parks within highest order activity centers.[9]

Council identified the clauses in the PPF that it said supported the Amendment. Clause 11 of the planning scheme acknowledges that:

Planning is to anticipate and respond to the needs of existing and future communities through provision of zoned and serviced land for housing, employment, recreation and open space, commercial and community facilities and infrastructure.’

Council submitted¹⁸ that the purchase of 7 Well Street in 2005 for the purpose of a car park is consistent with this, as the identified need for additional parking is a longstanding issue in

¹⁷ Mr El Mouallem submitted that the site could not deliver the 22 spaces planned by Council.

¹⁸ Council Part B submission, paragraph 16

the Church Street MAC. The purchase of the site and now, its transition from a residential building to a car park, delivers on the community need for additional car parking.

Clause 11.03-1S 'Activity Centres' outlines the objective:

... to encourage the concentration of major retail, residential, commercial, administrative, entertainment and cultural developments into activity centres that are highly accessible to the community.

Clause 18.02-4S 'Car parking' says:

Objective

To ensure an adequate supply of car parking that is appropriately designed and located.

Strategies

Allocate or require land to be set aside for car parking subject to the existing and potential modes of access including public transport, the demand for off-street car parking, road capacity and the potential for demand management of car parking.

Encourage the efficient provision of car parking by consolidating car parking facilities.

Design and locate car parking to:

- Protect the role and function of nearby roads.
- Enable easy and efficient use.
- Enable the movement and delivery of goods.
- Achieve a high standard of urban design and protect the amenity of the locality, including the amenity of pedestrians and other road users.
- Create a safe environment, particularly at night.
- Facilitate the use of public transport.

Protect the amenity of residential precincts from the effects of road congestion created by on-street parking.

Make adequate provision for taxi ranks as part of activity centres, transport interchanges and major commercial, retail and community facilities.

Council submitted¹⁹ that the Amendment facilitates the rezoning of the property at 5-7 Well Street to facilitate the redevelopment of 7 Well Street for a car park, ensuring that sufficient car parking is provided to meet demand, without resulting in adverse impacts on the road network. The consolidation of the site with the existing car park at 5 Well Street will ensure an efficient layout as the sites will be connected and will share an accessway.

(iii) Discussion

The Panel agrees that policy calls on planning authorities to:

... anticipate and respond to the needs of existing and future communities through provision of zoned and serviced land for housing, employment, recreation and open space, commercial and community facilities and infrastructure.'

However, it also states, at Clause 11.03-1S, Activity Centres:

Undertake strategic planning for the use and development of land in and around activity centres.

Give clear direction on preferred locations for investment.

¹⁹ Council Part B submission, paragraph 21

Policy also explicitly calls for structure planning at Clause 11.02-2S, Structure planning:

Ensure effective planning and management of the land use and development of an area through the preparation of relevant plans.

Facilitate the preparation of a hierarchy of structure plans ... that:

- Provide the broad planning framework for an area as well as the more detailed planning requirements for neighbourhoods and precincts, where appropriate.
- Provide for the development of sustainable and liveable urban areas in an integrated manner.
- Assist the development of walkable neighbourhoods.

The broad strategic question is whether state policy supports the creation of new at-grade car parks in major activity centres in existing areas, in the absence of any local strategy to do so. The Panel thinks that a fair reading of the whole of the PPF is that it does not.

State policy contains significant focus on:

- increasing sustainable transport²⁰
- reducing the number of private motorised trips²¹
- allocating land for car parking *“subject to existing and potential modes of access including public transport, the demand for off-street car parking, road capacity and the potential for demand management of car parking”*.²²

In the context of activity centres and residential precincts, high levels of amenity are demanded.²³ The Panel agrees with Mr El Mouallem that in these high order activity centres, it is particularly important that land use and development be consistent with reasoned and logical strategic planning.²⁴ As discussed above, the Amendment is not consistent with the adopted strategic plan for the centre.

In the Transport System Objectives, the *Transport Integration Act 2010* similarly enshrines principles of:

- environmental sustainability through promoting forms of transport with the least impact on the natural environment (s. 10(c))
- integration of transport and land use (s. 11(1))
- reduction of private motor vehicle transport (s. 11(2)(c)).

(iv) Conclusion

State policy aspirations are not met by an expansion of an at-grade car park onto activity centre land contrary to explicit local strategies on how parking is to be managed.

2.5 Do recent strategies support the project?

Any number of amendments seek to update a policy position and change zones and overlays to implement a changed position. In these cases the amendment is justified not by existing policy but by strategic planning work being brought into the planning scheme.

²⁰ See, for example, Clause 11.03-1S, 18.02-4S

²¹ See, for example, Clause 11.03-1S

²² Clause 18.02-4S

²³ Clause 11.03-1R, 11.03-1S, 18.02-4S

²⁴ As is required by Clause 11.03-1S

The Amendment does not seek to change policy. If the recent strategic work points to a different approach to parking provisions than set out in the planning scheme then the Amendment ought to make those policy changes.

Panels have recommended the abandonment of amendments where the zone or overlay controls are not supported by current policy and no changes to policy are proposed. Panels have also recommended abandonment of amendments where the amendment proposes policy changes to support a specific rezoning without sufficient strategic work.

Mr El Mouallem submitted:

24 Since at least 2005, Council has been advised by its expert consultants to manage future car parking demand by controlling that demand and, to the extent that it cannot be controlled, by developing certain key sites for mixed-use, residential and open space uses with additional car parking. [24]

At no time has any document or consultant identified the subject land as appropriate for expansion of at-grade car parking (or parking at all). [25]

Nor has any document or consultant suggested any strategic justification or motivation for the development of an expanded at-grade car park anywhere in the MAC. [26]

This chapter examines whether there is sufficient relevant strategic work (not reflected in planning scheme policy) to justify the amendment.

2.5.1 Does the Integrated Transport Strategy support the Amendment?

(i) The issue

The Explanatory Report says:

The Integrated Transport Strategy 2018-2028 identifies a range of actions to address the increasing demand for car parking supply by providing additional car parking in suitable locations. Other actions are also being undertaken by Council to increase and promote sustainable transport modes.

The issue is whether Council's *Integrated Transport Strategy 2018-2028* (ITS) provides strategic justification for the Amendment.

(ii) Relevant policies, strategies and studies

Five submissions raised concerns that Council is promoting the use of private vehicles over sustainable transport methods through the preparation of the Amendment. In 2018, Council adopted the ITS. It is not incorporated into the Scheme.

Council submitted²⁵ that:

The ITS provides the overarching approach to managing aspects of the transport system, with further detailed direction provided in specific Council transport strategies, including the *Bayside Bicycle Action Plan 2019-2026*, the *Bayside Walking Strategy 2015*, the *Bayside Road Safety Strategy 2019-2024* and the *Public Transport Advocacy Statement 2016*.

The primary focus of the ITS ... is to provide and advocate for sustainable travel modes and behaviour change programs to encourage and influence personal travel behaviour. The purpose of each of these strategies is identified below:

²⁵ Council Part A submission, paragraphs 101–102

The ITS identifies six goals with aligned Strategic Objectives. The goals include:

1. Enabling Sustainable Transport Choices
2. Improving Local Accessibility
3. Better Public Transport
4. User Friendly Streets
5. Integrated Transport and Land Use
6. Optimising Parking Opportunities.

The strategic objective for Goal 6 is:

Council will maximise the utilisation of existing parking space and balance the needs of drivers to ensure sufficient parking opportunities are available for those who need it.

Council²⁶ submitted that the ITS makes specific reference to managing congestion and increasing parking pressure, particularly in activity centres.²⁷ The ITS acknowledges that there has been an annual growth in private vehicle ownership in Bayside of 1.9 per cent (on average) over recent years and that if this trend is to continue, there will be an additional 20,000 private vehicles competing for road and parking space in Bayside over the next 10 years (2,000 per year, 40 per week).

The ITS indicates that the demand for on-street parking often outweighs the supply, due to the fact that there is not enough room on Bayside's streets to provide everyone with a parking space. Local congestion can also be generated by parking demand as drivers continue to 'hunt' for a vacant space.

The ITS Action Plan presents specific actions catered to each goal and strategic objective. The actions for Goal 6 have been outlined below: Manage parking for the benefit of the whole community through the use of policy tools:

- ensure that parking in activity centres is managed so available spaces are used more efficiently to enable appropriate turnover
- develop a municipal wide Parking Strategy
- review the provision of parking for drivers with disability permits in Major Activity Centres and Neighbourhood Activity Centres
- develop precinct based parking plans for each of the Major Activity Centres
- apply to the State government for a Parking Overlay which applies the Column B reduced activity centre car parking rates.

Mr El Mouallem submitted:

Nowhere in the ITS is there any support for creating new car parking. [40.3]

Council submitted that:

The ITS acknowledges that appropriate car parking is essential for encouraging access to residential, commercial, recreational and industrial activities, and promoting connections with public transport. To manage parking demands across the municipality, policy tools will be developed to assist Council to manage parking across the municipality in a strategic way for the benefit of the whole community. [Part A:111]

²⁶ Council Part A submission, paragraph 107

²⁷ ITS, Section 1, Page 5 and 29

Council submitted²⁸ that its framework for ensuring sustainable travel is a viable option for Bayside residents, should not undermine the fact that the community has a desire for, and an identified need for more car parking which needs to be responded to. It is said that whilst this site provides only a small increase to the number of parking spaces, its role is important in delivering car parking to meet community need.

(iii) Discussion

Council has quoted from ITS to support its case, however a more fulsome consideration of the ITS presents a less supportive picture for new parking. The first references to parking policy in ITS at page 3 of the strategy make it clear that the strategy does not seek to increase parking supply:

Providing additional capacity through more road space and parking is not a sustainable solution ... as the increase in trips arising from a growing population and increasing vehicle ownership will continue to outpace road capacity. Similarly, the provision of additional car parking will also be utilised by the growth in vehicle ownership, potentially leading to a repeat of the dilemma once again.

The Panel is disappointed that Council did address the clear indication that ITS does not consider the proposals of the type proposed by the Amendment to be sustainable. This is particularly relevant where:

- The *Planning and Environment Act (1987)* says under Objectives at s4(1):
The objectives of planning in Victoria are:
 - (a) to provide for the fair, orderly, economic and sustainable use, and development of land
- The *Transport Integration Act (2010)* s6 Vision statement says:
The Parliament recognises the aspirations of Victorians for an integrated and sustainable transport system that contributes to an inclusive, prosperous and environmentally responsible State”

It should be stressed that the ITS is Council’s own policy document. It is not the Panel’s assessment that additional parking capacity is not a sustainable solution – it is Council’s. Such strategies are meant to guide day-to-day decision making not simply be undertaken as an exercise in their own right.

Council does have a framework for ensuring sustainable travel and it is important to work towards the implementation of this framework, even though some members of the community seek a different approach to parking.

The ITS promotes the improvement and prioritisation of local accessibility. Walking and cycling are both the most sustainable forms of transport and should be encouraged for short trips to work, school, activity centres and train stations. This is recognised in Strategic Direction 10, of ITS which seeks to “*improve the integration of cycling with land use development, public transport and other key amenities*”.

The site provides only a small increase to the number of parking spaces, and hence will have negligible impact in delivering car parking to meet community need, if this were supported by policy.

²⁸ Council Part B submission, paragraphs 74-75

The development of the car park at 7 Well Street is:

- not a location where additional off-street parking is proposed according to strategies in the planning scheme
- “*unstainable*” according to Council’s own ITS, the strategy that the explanatory report seeks to rely on.

The ITS does recognise that increased supply in activity centres may be warranted, but sets out that this is to be approached by the following actions:²⁹

- Action 61: Develop a municipal wide parking strategy
- Action 64: Develop precinct based parking plans for each Major Activity Centre.

(iv) Conclusions

There is little support for the current proposal in the ITS.

2.5.2 Does any other strategic report support the Amendment?

(i) Parking Precinct Plan

In 2006, Maunsell AECOM produced the *Parking Precinct Plan*.

On the basis of the future retail and commercial development forecast in the Structure Plan, the Parking Precinct Plan estimated future demand as an additional 144 to 184 spaces.

It recommended that demand be managed by restricting existing on- and off-street parking in the heart of the centre and areas immediately adjacent to it.³⁰

The plan considered it “*reasonable*” to develop new parking facilities “*over the existing parking lots located on the corner of Carpenter and Black Streets and off Well Street between Carpenter Street and the railway line*” to provide 120 to 160 spaces.³¹

In relation to 7 Well Street the plan noted³² “*Council is committed to provide an additional 29 car parking spaces on the adjacent parcel of land to the Well Street car park.*”

The plan was not incorporated into the Scheme, having apparently been abandoned by Council sometime in the years following.

Aurecon “Expert Witness Review” of the Parking Precinct Plan

In 2012, Aurecon produced an “*Expert Witness Review*” of the *Parking Precinct Plan*.

Aurecon generally agreed with the Maunsell AECOM estimates for parking demand, estimating demand for an additional 132 to 165 parking spaces “*depending on whether a modal shift in private car trips can be facilitated in the area*”.³³

Notably, Aurecon’s recommendations regarding parking were:

- that new developments should be supplemented by additional parking or measures to reduce demand

²⁹ ITS page 40.

³⁰ Page 14.

³¹ Pages 14 and 15.

³² In a footnote on Page 5 and in Section 5.2.2.

³³ Pages 8, 48.

- that certain rates of parking should be required for residential development
- that Council should keep its finger on the pulse of car ownership characteristics and dwelling types to ensure rates remain appropriate *“based on sound research into the characteristics of the area”*.³⁴

On the basis of parking surveys and estimates of demand, Aurecon considered it likely that commercial and retail parking would overflow into surrounding residential streets *“unless new developments are designed to accommodate a significant proportion of their own parking demand on-site”*.³⁵

Aurecon did not conclude that any additional off-street (public) parking was required, or that it should be provided at any particular place.

What weight should be given to the Parking Precinct Plan for the Church Street Activity Centre 2006?

The Panel does not think any weight should be given to the Parking Precinct Plan. At the time of its preparation parking precinct plans could be incorporated into planning schemes. This was not done with the plan.

Had it been incorporated or otherwise implemented in the planning scheme it would have weight and would continue to have weight until it was superseded by new policy, or a change in circumstances. More recent strategic work (discussed in the next section) has not carried forward the proposal.

The Panel also notes that the Parking Precinct Plan is silent on whether the proposal is a good idea or not. It simply notes that Council intends to deliver the additional parking.

(ii) Other plans

Church Street Centre Structure Plan

In 2006, the *Church Street Centre Structure Plan* was produced. It sets policy expectations for the MAC in terms of development, access, and transport.

It proposes that the large at-grade level car parks behind the shops in Well Street be replaced with a mixed use development which will provide additional car parking, a small public open space and a residential interface with Well Street.

The Structure Plan states:

- The Black Street car park and the 21-27 Well Street car park are specifically identified for redevelopment *“to a residential development incorporating replacement car parking and additional spaces (total of 140-180 additional spaces to be provided)”*³⁶ together with public open space.³⁷
- Within the relevant Precinct 4: Surrounding Residential Areas, the existing at-grade car park is encouraged to be redeveloped, but not as a slightly larger at-grade car park:

³⁴ Page 9

³⁵ Page 49

³⁶ Page 16. See also page 18

³⁷ Page 5

Encourage redevelopment of larger sites and grade level car parks for residential with basement car parking.³⁸

There is no suggestion anywhere in the Structure Plan that the subject land should be used for an expanded car park.

The Structure Plan specifically encourages “*more intense development*” on sites which, like the subject land, are immediately next to the commercial core, and provides for the protection of the amenity of residential areas adjacent to the commercial core.³⁹

In August 2016, Council reviewed of the *Church Street Centre Structure Plan*. A recommendation of that review was the preparation of a Car Parking Plan for the MAC, together with a Community Infrastructure Study.

The *Church Street Centre Structure Plan* is a reference document to Clause 21.11-3.⁴⁰ It remains there, and in identical form, following its 2016 review.

Bayside Housing Strategy

In 2012, Council produced the *Bayside Housing Strategy*. It contains a key objective “*that car parking and traffic will not be dominant within activity centres and will have minimal impact on the function and aesthetics of activity centres, particularly at a pedestrian scale.*”⁴¹

The strategy does not support the proposal.

Bayside Bicycle Strategy 2013 and Bayside Walking Strategy 2015

In 2013 Council produced the *Bayside Bicycle Strategy 2013*, and, in 2015, the *Bayside Walking Strategy 2015*. Both documents aim to increase the number of people using sustainable personal transport rather than private motor vehicle travel.⁴²

The strategies do not support the proposal.

Church Street Activity Centre Car Parking Background Report

In 2016, Council produced the Church Street Activity Centre Car Parking Background Report.

The subject land is identified as a “*restricted site*”.

It refers to a further survey carried out by Aurecon in 2014, and concludes that:

The [2014] survey results highlight the importance of better managing parking within the MAC to increase availability and turnover of parking in the ‘core area’ and retail areas at peak times of the year.⁴³

Replicating the 2006 recommendations of the *Parking Precinct Plan*, the *Background Report* recommended that Council:

- provide shorter term parking in the heart of the centre
- consider the introduction of short-term parking restrictions in unrestricted areas immediately adjacent to Church Street (within 200 to 300 metres).⁴⁴

³⁸ Page 8

³⁹ Page 10

⁴⁰ And Clauses 21.06, 21.07 and 21.09

⁴¹ 2016 *Background Report*, page 8

⁴² 2016 *Background Report*, page 8

⁴³ Page 23

⁴⁴ See Council Part A submission, paragraph 137

Among some ten considered measures for reducing demand and changing existing travel habits, the report considers the option of *“improvements and extensions to the supply of off-street parking”*.⁴⁵ In doing so, it identified the potential for use of privately owned land for delivery of parking to service new demand, and otherwise noted the opportunities to increase off-street supply by the redevelopment of the 21-27 Well Street and Black Street car parks.

The report does not support the proposal.

Bayside Community Plan

In August 2016, Council adopted the *Bayside Community Plan 2025*. The plan this about parking:

Car parking is another contentious issue for Bayside residents, especially for those commuters using Bayside streets, and for multi-car families. Suggestions for improvement include removing parking restrictions in the activity centres to support commercial growth, but imposing greater parking restrictions in residential streets near train stations. Others value the higher turnover of parking in activity centres, as it encourages economic trade.

These dilemmas do not translate into a need for more parking places, but the need to efficiently manage the available parking while encouraging other ways to get around Bayside.⁴⁶

The report does not support the proposal.

Future Management of Car Parking in Bayside Discussion Paper

In May 2017, Council produced the Future Management of Car Parking in Bayside Discussion Paper.

Having noted that VCAT *“has been critical of Bayside’s approach to parking matters and has highlighted the need for Council to prepare a centre based approach, rather than decision making on an individual case by case basis”*,⁴⁷ the paper notes that:

Whilst certain actions may result in competing pressures, and others are easily implementable, it is important to ensure that any approach [to car parking] balances the needs of different users and works towards Council’s sustainability objectives.⁴⁸

In recommending *“short term actions and quick wins”*, the paper suggest that areas for increased car parking supply should be identified.⁴⁹

It then recommends that Council develop:

- a Municipal Parking Strategy
- Precinct Parking Plans for all MACs.⁵⁰

The discussion paper does not mention the subject land but discusses the redevelopment of 21-27 Well Street and Black Street car parks.

The discussion paper does not support the proposal.

⁴⁵ Page 43.

⁴⁶ Page 20.

⁴⁷ Page 39.

⁴⁸ Page 41.

⁴⁹ Pages 42 to 43.

⁵⁰ Page 45.

Retail, Commercial and Employment Strategy 2016

The strategy does not mention the subject site.

Church Street Major Activity Centre Car Parking Study

In 2018, Council commissioned GTA to produce the Church Street Major Activity Centre Car Parking Study.

GTA was specifically tasked to “*establish whether an additional off-street parking facility is warranted from a car parking perspective*”.⁵¹ Though the conclusions of the GTA report are unclear, it appears that GTA formed the view that additional off-street parking *could be* warranted, but that the construction of any new parking should be carefully considered.⁵²

The GTA report appears to conclude that the redevelopment of the Black Street and 21-27 Well Street car parks would have the capacity to adequately service future demand.

Mr El Mouallem submitted:

However, GTA expresses its recommendations cautiously. That is appropriate, in light of its work being “*through the lens*” of the ITS. [41]

The study provides no support for the proposal.

2.6 Overall conclusion

The Panel concludes that there is potentially need for additional parking at the activity centre, notwithstanding there could be better management of existing parking as proposed in Council strategies. Any proposal to address parking need should be strategically justified and accord with adopted plans for the centre.

The intended use of the subject land is inconsistent with specific structure plan policies on how parking will be addressed in the Church Street MAC local policy in the planning scheme. The broader policies on parking do not support the ad hoc creation of more or larger at-grade car parks.

State policy aspirations are not met by an expansion of an at-grade car park onto activity centre land contrary to explicit local strategies on how parking is to be managed.

There is no support for the current proposal in the ITS. There is mention of the proposal in the Parking Precinct Plan but this has been superseded by new policy. No new policy supports the proposal.

⁵¹ Page 1
⁵² Page 19

3 Response to submissions

3.1 Amenity impacts

(i) The issue

Concerns were raised about the amenity impacts of the proposal

(ii) Submissions

Is a permit needed?

Council explained⁵³ that Clause 62.02-1 of the planning scheme would exempt the current proposal from requiring a planning permit as the works would be undertaken on behalf of Council and are to cost less than \$1 million.

Council submitted⁵⁴ that it does not currently propose to increase the intensification of the proposed car park layout at 7 Well Street any more than the proposed plan for 22 car parks. However, several submissions raised further concerns that Council will develop car spaces at a greater intensity in the future than the current at-grade plan.

Council pointed out⁵⁵ that sections of the planning scheme that can ease this concern:

- Any proposal for a multi-deck car park would exceed \$1 million and would therefore require a planning permit⁵⁶
- The Design and Development Overlay (DDO11) that applies to the land provides the following objectives:
 - to ensure that the height of new development is compatible with the preferred future role and character of the Church Street Major Activity Centre
 - to develop the centre in a way that conserves and enhances its valued urban character and heritage places
 - to ensure that new development contributes to safe and active streets
 - to maintain a strong landscape character with residential buildings set within vegetated front gardens and streetscapes in the residential precincts.
- DDO11 restricts building height on the subject land to a maximum of 11 metres (3 storeys) and seeks to ensure that any development conserves and enhances the valued urban character, and creates safe and active streets.

Council considered that:

... that were the use to change from an at-grade car park to something with more substantial built form, a planning permit is likely to be required. This will allow for a public notice process to ensure that community views are sought. [Part B:53]

Amenity impacts of the proposal

The Traders Association submitted that: *“you don’t buy in Well Street because of amenity. You buy in Well Street to financial benefit from being able to take advantage of future*

⁵³ Council Part B submission, paragraph 50

⁵⁴ Council Part B submission, paragraph 49

⁵⁵ Council Part B submission, paragraphs 49-52

⁵⁶ It would not be subject to the exemptions under Clause 62.02-1 of the planning scheme

development opportunities, ...". Submissions from local residents rejected this claim outlining the positive aspects of the street and the wider area.

Mr Goode submitted that *"anything other than residential development in a residential zone should be out of the question"*.

Council submitted⁵⁷ that it will continue to liaise with property owners at 9 Well Street (adjoining the site) to ensure the property boundary interface is appropriately treated. Council observed that none of those property owners made submissions to the Amendment.

Council submitted⁵⁸ that the amenity impacts resulting from the car park itself are limited and indeed, entirely reasonable for land within a Major Activity Centre:

In relation to traffic impacts and noise associated with vehicle movements, it is important to consider that whilst within a residential precinct, the area is still within a Major Activity Centre. It is commonly accepted by Planning Panels and the Victorian Civil and Administrative Tribunal that residents in or near activity centres cannot expect the same level of amenity as that experienced by residents in the quiet heart of a residential area. The occupiers of properties within a MAC must have regard to their location and base their expectations about amenity on that fact. [54]

In relation to the proposed expansion of the car park, the amenity impacts resulting from additional cars in the locality is considered to be minor. The use itself will not result in any excessive noise impacts (compared for example if the site were to be used for a commercial use for example), as the additional vehicle and traffic noise is unlikely to be significantly more noticeable than that which presently exists at 5 Well Street. [55]

(iii) Discussion

This is not an administrative amendment. It is designed to achieve a particular outcome.

Council does not argue that the proposal will not have adverse amenity impacts. It argues that the impacts will be acceptable.

The VPP are constructed so that car parks serving commercial premises cannot be constructed in the residential streets behind those premises without a rezoning. This is no accident. It means that a rezoning⁵⁹ is required to permit such a car park. Such a rezoning would need to be strategically justified to meet the tests of Ministerial Direction 11.

The Panel acknowledges that VCAT has generally held residents living in or near business and industrial zones cannot expect the same level of amenity as residents living in a wholly residential area. Nonetheless, VCAT has held residents on the border of a residential zone are still entitled to protection of their amenity, but not to the same standard as those whose homes are in the midst of a residential area.

The key consideration is what are the 'legitimate expectations' for amenity in an area.

VCAT has observed that legitimate expectation has long been part of the planning process. Legitimate expectations, however, cannot be formed independently of the planning scheme requirements.

⁵⁷ Council Part B submission, paragraph 56

⁵⁸ Council Part B submission, paragraph 57

⁵⁹ Or site specific exclusion

In this case given the nature of the existing zoning opposite, and the lack of policy support for an expanded car park on the site, the residents' legitimate expectations might be that higher density residential development would occur on the site, not an at-grade car park.

(iv) Conclusion

The Panel agrees that the car park will have adverse amenity impacts on the surrounding area in Well Street. These impacts are not so great as to rule out such car parks in any situation, but for this proposal would be contrary to residents' legitimate amenity expectations for this section of Well Street in the absence of stronger positive policy support for the car park.

3.2 Does a lack of due diligence justify the amenity impacts?

(i) The issue

It was submitted that local residents ought to have known that a car park was proposed for the land.

(ii) Submissions

The Traders Association believes a relevant consideration is when objector owners purchased their properties in Well Street and whether they purchased before or after the Council purchased 7 Well Street for car parking. The Association argued that 97 per cent of properties in the area of Well Street were built or purchased after 2005, and that:

The due diligence undertaken by these buyers as part of their purchase would mean that 97 per cent of the current owners should have been aware of the proposed car park extension at Number 7 Well Street prior to them purchasing their property.

Even if the due diligence undertaken by their solicitor as part of the purchase process did not inform them of the plans for 7 Well Street, the information that Council had purchased 7 Well Street for additional parking has been publicly available as early as the 2006 Parking Precinct Plan for Church Street ...

These people are not being ambushed or unfairly disadvantaged by the plan to create a car park at 7 Well Street.

(iii) Discussion

To the extent that 'due diligence' is a relevant consideration – and the Panel is not sure that it is – the Panel thinks that a fairer approach to due diligence would be to see what the published strategies and policies for the centre say. The relevant most recent strategy for the centre is silent on this proposal.

Local residents might have known that 7 Well Street had been purchased by Council, but this does not mean people moving into the area from elsewhere would know, or know that Council proposed to turn the site into a car park, given its lack of relevance in planning policy.

If the 'agent of change' principle is to apply then the as far as the new car park at 7 Well Street is concerned the Panel considers that Council is the agent of change. The relevant date for this consideration is when the change is proposed, not when a land owner buys land.

(iv) Conclusions

It is not clear to the Panel how any new resident would reasonably be aware of this proposal before the Amendment was advertised. If they were aware it is not clear that this would justify any adverse impact on amenity.

3.3 Traffic and pedestrian impacts

A number of submissions also raised issues in relation to the impact that the proposed car park will have on the function of Well Street by generating additional vehicle movements.

Council advised:⁶⁰

- Well Street as a Collector Road carries approximately 5,800 vehicles per day (2018 figures).
- Council's Local Area Traffic Management Policy (2019), states that a Collector Road can carry typically 10,000 vehicles per day. If capacity were to be exceeded, Council will monitor the road and consider vehicle speeds and the number of vehicle crashes to determine the functioning of the road.
- The additional 22 car parks, are proposed to operate with 2-hour parking controls between 8am and 6pm – hence they would generate up to 44 extra traffic movements⁶¹ per hour or 264 movements a day.
- The additional traffic movements would bring the total movements to 6064 vehicles per day. This is still 3,936 vehicles below the Collector Road's capacity.

Council submitted that:

The additional 264 traffic volume is not expected to cause a significant impact upon existing conditions in the surrounding road network. In other words, the creation of the car park would increase the traffic movements by 4.3 per cent. With the creation of the proposed car park, Well Street will continue to operate below its capacity and within a range that is considered appropriate for a collector road within a [Major Activity Centre]. [B:62]

Several submitters also raised concerns regarding vehicle speed, and the danger that additional vehicles may cause to pedestrians, partially arising from the increased number of residents living in the area.

At its 15 October 2019 meeting, Council received a petition signed by 143 people requesting Council install a pedestrian crossing in the area between St Andrews Street and Carpenter Street. It is understood the objective is to ensure there is a safe place to cross Well Street between those streets.

The Panel notes that Well Street is designated as a Collector Road and considers that this is suitable level of road for a car park.

3.4 Request for open space at the site instead of car parking

As part of the submissions Council received a petition to designate 7 Well Street as public open space with Children's playground facilities.

⁶⁰ Council Part B submission, paragraphs 59-61

⁶¹ A 'movement' includes the accessing and exiting of a vehicle from the car park

One submission in objection to the Amendment suggested that an underground car park would be better suited to the vicinity, with open space encouraged at ground level.

The Bayside Open Space Strategy Suburb Analysis and Action Plan 2012 identifies that parts of the Church Street MAC are not within 400 metres of public open space of larger than 0.9 hectares.

Council submitted:

The *Bayside Open Space Strategy* 2012 does not identify the subject site as an opportunity for public open space and no assessment has been completed to determine the appropriateness of the site as a location for open space in the centre, given this site was purchased for the express purpose of constructing a car park on the site. [B:79]

It is not the Panel's role to recommend whether or not the site should be used for public open space. The Panel's role is to advise whether it is appropriate to rezone the land based on Council's proposed use for the site, namely an at-grade car park.

3.5 The design of the car park

Section 4.1 of Mr Fairlie's evidence discusses the proposed car park design. Mr Fairlie outlines that the design of the proposed car park extension fails to meet the dimensional requirements of Clause 52.06-9 of the planning scheme.

As outlined in the Note to Table 2 of Clause 52.09-6 that:

Some dimensions in Table 2 vary from those shown in the Australian Standard AS2890.1-2004 (off-street). The dimensions shown in Table 2 allocate more space to aisle widths and less to marked spaces to provide improved operation and access. The dimensions in table 2 are to be used in preference to the Australian Standard AS2891.1-2004 (off-street) except for disabled spaces which must achieve Australian Standard AS2890.6-2009 (disabled).

Other submitters raised concerns about the safety of ingress and egress. Council submitted⁶² that the design complies with AS2890.1-2004 and that if the proposed zone is to be applied, compliance with the Australian Standard is sufficient. Council submitted that the number of spaces or the layout of the car park should not be a determining factor in whether the Amendment is approved, and that any potential restriction imposed seeking compliance with the planning scheme provisions is not required.

Council considered that the required Australian Standard has been complied with, and therefore, the design changes referenced by Mr Fairlie which would result in a reduction of five parking spaces are unnecessary.

It is not the Panel's role to assess the design of the car park, beyond noting that the site can deliver car spaces.

3.6 Other parking options

At paragraph 6.1.6, Mr Fairlie provided recommendations for other sustainable transport related initiatives for Council to consider in conjunction with the increased car parking at Well Street:

⁶² Council Part B submission, paragraph 95

- Facilitating the use of car share schemes in Brighton by providing dedicated on-street parking for approved 'car share' vehicles in the streets surrounding Church Street.
- Install recharging facilities for electric vehicles.
- Consider the introduction of more short-term (2P) parking restrictions in streets adjacent to the Church Street Activity Centre to increase parking opportunities.
- Consider the introduction of evening Permit Zone parking restrictions in streets that are exposed to strong parking demands during evening periods when off-street parking spaces are available.
- Continue to implement facilities to encourage greater use of walking and bicycle mode to the centre.

These recommendations are not matters that are before this Panel. The Panel concluded in Chapter 2.2 that there is a potential need for additional parking at the activity centre, notwithstanding there could be better management of existing parking as proposed in Council strategies.

Appendix A: Submitters to the Amendment

No.	Submitter
1	Brian Hatswell
2	Phillip and Jane Ellis
3	Carol and Martin Carter
4	Jack Librach
5	Warwick Abbot
6	Miralem Basic
7	Graham and Fay Goode
8	Sam Ikonomou
9	Hanna El Moullem
10	Elizabeth Neal
11	Trevor Neal
12	Annabel and Kent Kay
13	Howard and Margaret Grant
14	Julian Kardis
15	Church Street Traders Association
16	John Kardis
17	Denise Kinnon
18	Ken Grenda AM
19	Geraldine Bagwell
20	Petition by Miralem Basic

Planning Panels Victoria received seven pro forma submissions directly from local residents. Two of the pro forma submissions were from people who had previously made a submission to the Amendment. Five were from people who had not previously made a submission.

At the Directions Hearing, the Panel indicated that it would use its powers to inform itself to consider late submissions, or direct submissions to the Panel received up until that point. One of the direct submitters, Ms Reeves, was represented at the Hearing.

Appendix B: Parties to the Panel Hearing

Submitter	Represented by
Bayside City Council	Tom Vercoe
Hanna El Mouallem	Robert Forrester of Counsel instructed by DWF, calling the following expert evidence: - traffic from Russell Fairlie of Ratio Consultants
Elizabeth Neal	Herself and John Quinn
Howard Grant	
Miralem Basic	
John Kardis	
Julian Kardis	
Denise Kinnon	Noelle Pudney
Janis Reeves	Ken Dunstan
Graeme Goode	
Church Street Traders Association	Tim Scully

Appendix C: Chronology

Date	Event
November 1994	Approval for a Planning Permit to develop and use land at 5 Well Street, Brighton as a public car park.
1998	<p>Andrew O'Brien and Associates commissioned by Council to undertake a Church Street Car Parking Study and review a 1993 study.</p> <p>This included investigation into the use of on- and off-street car parking serving the Church Street shopping centre. In general, the study identified deficiencies in car parking for the Church Street shopping centre including:</p> <ul style="list-style-type: none"> - limited on- and off-street parking supply to cater for peak parking demands - the lack of convenient long term parking for traders/employees - parking impacts in surrounding residential streets.
December 2001	<p>Church Street Urban Design Strategy prepared for Council and adopted in December 2001. This action plan outlines actions relating to:</p> <ul style="list-style-type: none"> - urban design - transport and circulation - planning issues including heritage and car parking - retail support. <p>The strategy refers to the findings of the Andrew O'Brien and Associates Church Street Car Parking Study.</p>
2005	A Parking Precinct Plan developed for the Church Street Major Activity centre by Maunsell Australia Pty Ltd.
April 2005	Valuation of the property was undertaken by Matheson Stephen property valuers.
August 2005	Review of Parking Occupancy & Turnover prepared by Maunsell Australia.
September 2005	Bayside City Council resolves to purchase 7 Well Street.
September 2005	Council completes a review of all car parking in the Church Street area as part of the Major Activity Centre Structure Plan.
October 2005	Council purchases the property at 7 Well Street for potential use as a car park. The house on the property will continue to be occupied by tenants.
6 October 2006	A residential tenancy agreement renegotiated for the premises at 7 Well Street, Brighton. This agreement was for a one year.
November 2006	The Structure Plan and the Parking Precinct Plan for the Church Street Centre adopted.
2006 onwards	Various residential tenancy agreements continued upon the property. The final tenancy leasing agreement ends in January 2018.
August 2016	The Church Street Activity Centre Car Parking Background Report finalised.

Date	Event
May 2017	A discussion paper on the Future Management of Car Parking in Bayside finalised.
2018	The Bayside Integrated Transport Strategy 2018-2028 adopted by Council.
May 2018	Council issued a Request for Quotation to undertake the Demolition of the building at 7 Well Street.
June 2018	A building approval to demolish the house at 7 Well Street was granted.
June 2018	Letters were distributed to inform the surrounding traders and residents of the demolition of the house at 7 Well Street. Information was also provided on Councils website about the demolition and that Council will be commencing the process to rezone the land to develop the car park.
October 2018	Church Street Major Activity Centre Car Parking Study was completed.
19 February 2019	A request to prepare Amendment C165 presented at Council's Ordinary Meeting. Council resolved to commence a planning scheme amendment to rezone 5 & 7 Well Street, Brighton from General Residential to the Public Use (Schedule 6) and seek authorisation from the Minister for Planning.
4 April 2019	Ministerial Authorisation to prepare the Amendment (C165) granted and DELWP provided consent for Council to proceed to the public exhibition stage of the amendment process.
4 June 2019	Public notice and advertisement of Amendment C165 provided in the Bayside Leader. Letters and flyers were sent out to affected properties and land in close proximity to the activity centres.
6 June 2019	Notice of Amendment C165 appears in the Government Gazette.
8 July 2019	Submissions to Amendment C165 are due to be submitted to the responsible authority.
20 August 2019	Submissions considered by Council. Council resolved to request the appointment of a Panel and also undertake a review of on-street parking restrictions and permit parking opportunities opposite 7 Well Street in accordance with the Managing On-Street Car Parking Demand Policy, if 7 Well Street is rezoned to allow a car park to be constructed.
26 August 2019	Council formally requested a Planning Panel be appointed to consider submissions received to Amendment C165.

Appendix D: Document list

No.	Date	Description	Provided by
1	11/11/2019	Part A submission	Council
2	— " —	Part B submission	— " —
3	— " —	Council residential framework	— " —
4	— " —	Council residential projections	— " —
5	— " —	Submitter map	— " —
6	— " —	Community survey results	— " —
7	— " —	Extract from ITS	— " —
8	— " —	Revised response to submissions	— " —
9	— " —	2009 satisfaction survey	— " —
10	— " —	Council monitoring and review of the Church Street MAC	— " —
11	— " —	Expert evidence Mr Fairlie	Robert Forrester
12	— " —	Church Street Parking draft report	— " —
13	— " —	Submission for Mr El Mouallem	— " —
14	— " —	Clause 21.11 of the planning scheme	— " —
15	— " —	Letter from Bayside Council to Mr El Mouallem	— " —
16	— " —	VCAT decision on 5 Well Street	— " —
17	12/11/2019	Map of parking restrictions	Council
18	— " —	Plan of 5 Well Street	— " —
19	— " —	Details of parking restrictions	Robert Forrester
20	— " —	Aerial photo of site	Miralem Basic
21	— " —	Photos of Dendy car park	— " —
22	— " —	Submission	— " —
23	— " —	Photos	John Kardis
24	— " —	Layout plan and other attachments	— " —
25	— " —	Submission attachments	— " —
26	— " —	Submission on behalf of J Reeves	Ken Dunston
27	— " —	Submission attachments	— " —
28	— " —	Submission	Graeme Goode
29	— " —	Submission attachments	— " —
30	— " —	Submission on behalf of Trader's Association	Tim Scully
31	— " —	Council closing submission	Council
32	— " —	Revised response to submissions (final position)	— " —
33	— " —	Title plan	Robert Forrester