Agenda

for the

Planning & Amenity Committee Meeting

To be held at the Council Chambers, Civic Centre, Boxshall Street Brighton

on

Monday, 10 December, 2018
at 7:00pm

Councillors:  Cr Alex del Porto
             Cr Laurence Evans
             Cr Michael Heffernan (Mayor)
             Cr James Long BM JP
             Cr Clarke Martin
             Cr Sonia Castelli
             Cr Rob Grinter
Members of the Gallery

Your attention is drawn to Section 92 of Council’s Governance Local Law No 1.

Section 92 The Chair’s Duties and Discretions

In addition to other duties and discretions provided in this Local Law, the Chair –

(a) must not accept any motion, question or statement which is derogatory, or defamatory of any Councillor, member of Council staff, or member of the community;

(b) may demand retraction of any inappropriate statement or unsubstantiated allegation;

(c) must ensure silence is preserved in the public gallery during any meeting;

(d) must call to order any member of the public who approaches the Council or Committee table during the meeting, unless invited by the Chair to do so; and

(e) must call to order any person who is disruptive or unruly during any meeting.

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

Your cooperation is appreciated

Chairperson of Council
Planning & Amenity Committee Meeting

Planning & Amenity Committee Charter
To deal with all matters relating to consideration of statutory planning, tree removal applications, traffic and parking matters.

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

Membership of the Committee
All Councillors

Order of Business

1. Apologies

2. Declarations of Interest

3. Adoption and Confirmation of the minutes of previous meeting

4. Matters of Decision

   4.1 55-57 Beaumaris Parade, Highett Notice of Decision to Grant a Planning Permit Application No: 2018/227/1 Ward: Central .......................... 5

   4.2 427A & 427B Hampton Street, Hampton Notice of Decision to Grant a Planning Permit Application No: 2018/276/1 Ward: Central................................................................. 45

   4.3 6 Brooklyn Place, Sandringham Secondary Consent - Approve Application No: 2015/344/2 Ward: Central ................................. 59

   4.4 4 Bemmersyde Avenue, Brighton Support the Grant of a Planning Permit (Consent Order) Application No: 2018/146/1 Ward: Northern ................................................................. 93

   4.5 Mayflower (7 Centre Road, Brighton East) Secondary Consent - Approve Application No: 2006/1023/3 Ward: Northern.......... 167

   4.6 VCAT Report - Decisions made in August and October 2018. 187

5. Confidential Business

   Nil

Next Meetings 2018

20 December 2018
1. Apologies

2. Declarations of Interest

3. Adoption and Confirmation of the minutes of previous meeting

   3.1 Confirmation of the Minutes of the Planning & Amenity Committee Meeting held on 13 November 2018.
4. **Matters of Decision**

4.1 **55-57 BEAUMARIS PARADE, HIGHETT**
**NOTICE OF DECISION TO GRANT A PLANNING PERMIT**
**APPLICATION NO: 2018/227/1  WARD: CENTRAL**

City Planning & Community Services - Statutory Planning
File No: PSF/15/8755 – Doc No: DOC/18/265342

1. **Application details**

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Notice of Decision to Grant a Planning Permit</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Applicant</strong></td>
<td>Keen Planning</td>
</tr>
<tr>
<td><strong>Title/Covenant/S173 Agreement</strong></td>
<td>The title is not subject to any restrictive covenants.</td>
</tr>
<tr>
<td><strong>Date application received</strong></td>
<td>23 April 2018 (Amended 21 September 2018)</td>
</tr>
<tr>
<td><strong>Current statutory days</strong></td>
<td>43 days</td>
</tr>
<tr>
<td><strong>Zoning</strong></td>
<td>Neighbourhood Residential Zone (Schedule 3)</td>
</tr>
</tbody>
</table>
| **Overlays** | Design and Development Overlay (Schedule 3)  
Development Contributions Plan Overlay (Schedule 1) |
| **Site area** | 933sqm |
| **Number of outstanding objections** | Nine |
| **Is a Development Contribution Levy applicable?** | Yes - $6,060 |
| **Is the site located within an area of cultural heritage sensitivity?** | Yes; however, works are exempt given that the lot is:  
- less than 0.11 hectares in size; and  
- not within 200 metres of the coast or the Murray River. |

**Proposal**

The application seeks the construction of four (4) double storey dwellings on land. Key details of the proposal are as follows:

- Four (4) double storey dwellings, with two (2) fronting Beaumaris Parade and two (2) fronting Rupert Street;
- A maximum building height of 7.84m;
- Site coverage 50%;
- Permeability 40%;
- Total of 8 site-on car spaces with two car spaces allocated to each dwelling within a single garage with a tandem car space in front; and
- Garden area 37.95%.

The decision plans are provided at **Attachment 1**.
An aerial image and photographs of the site and surrounds are provided at Attachment 2.

History
There is no planning permit history relevant to this application.

2. Planning controls

Planning Permit requirements
A planning permit is required pursuant to:

- Clause 32.09-5 (Neighbourhood Residential Zone) – Construction of two or more dwellings on a lot.

Note: Clause 32.09-4 requires that for the construction of a dwelling or residential building on a lot greater than 650 square metres, a lot must provide a minimum of 35% garden area at ground floor level.

The development plans confirm that the development has a garden area of 37.95%, which exceeds the minimum 35% garden area required by the Clause.

Planning Scheme Amendments
There are no Planning Scheme Amendments relevant to this application.

3. Stakeholder consultation

External referrals
There are no external referrals required to be made in accordance with Clause 66 of the Bayside Planning Scheme.

Internal referrals
The application was referred to the following Council departments for comment:

<table>
<thead>
<tr>
<th>Internal Referral</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arborist</td>
<td>No objection, subject to conditions.</td>
</tr>
<tr>
<td>Open Space Arborist</td>
<td>No objection, subject to conditions.</td>
</tr>
<tr>
<td>Traffic Engineer</td>
<td>No objection, subject to conditions.</td>
</tr>
</tbody>
</table>

Public notification
The application was advertised pursuant to Sections 52(1)(a) and (d) of the Planning and Environment Act 1987 and nine (9) objections were received.

Nine (9) objections remain outstanding at the time of this report.

The following concerns (summarised) were raised:

- Neighbourhood character/Streetscapes;
- Overdevelopment, the design is contrary to prevailing rhythm of built form and/or garden setting;
- Visual bulk;
- Overlooking;
- Overshadowing;
- Dark materiality;
- Traffic congestion/safety/number of crossovers;
- High front fence/safety;
• Front setback to Beaumaris Parade;
• Side setbacks;
• Balconies facing Rupert Street; and
• Minimal landscaping opportunities, particularly for Dwellings 3 & 4.

The number of objections received for this application is consistent across Council’s record management systems.

Consultation meeting

A consultation meeting was held on 23 August 2018 attended by the permit applicant and five (5) objectors.

Following the consultation meeting, amended plans were lodged by the Permit Applicant pursuant to Section 57A of the Planning and Environment Act, 1987. The amended plans included the following changes:

Dwelling 1
• Increased ground floor southern boundary setback to 2.0 metres (previously 1.2 metres).
• Lowered the height of the garage roof and wall on boundary for a length of 3.0 metres from the edge of the neighbouring habitable room window of 55 Beaumaris Parade.
• Provision of overshadowing Cross Sections on the plan TP8 in relation to shadow impact to No. 53 Beaumaris Parade.

Dwelling 4
• Provision of a 1.0 metre setback of the ground floor, Bedroom 1 and ensuite from the western boundary (previously wall on boundary).
• Increased setback to 2.0 metres (previously 1.0 metre) of the ground floor Kitchen from the western boundary.

The amended plans were circulated to all objectors. No objections were withdrawn as a result of the amended plans.

4. Recommendation

That Council resolve to issue a Notice of Decision to Grant a Planning Permit under the provisions of the Bayside Planning Scheme in respect of Planning application 5/2018/227/1 for the land known and described as 55-57 Beaumaris Parade, Highett for the construction of four (4) double storey dwellings on the land in accordance with the endorsed plans and subject to the following conditions from the standard conditions:

1. Before the development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the plans submitted with the application prepared by Archimedium Australia Pty Ltd referenced as Project No. 2018/03 Sheets TP3E, TP4E, TP5E & TP6E dated Sept 2018 and Landscape Plan prepared by Keystone Alliance referenced as Project No. L6705 Rev.E and dated 17 April 2018 but modified to show:
   a) A 1.0 metre offset to Dwelling 1’s crossover from the southern boundary.
b) The accurate location of individual trees within the group of Ornamental Pears shown collectively as Tree no. 7 on the development and landscape plan.

c) A notation on the plans stating sheds associated with Units 1, 3 and 4 will be constructed at surface level where/if any part of the shed comes within the Tree Protection Zone (TPZ) of Trees no. 2 and no. 4 located at No. 53 Beaumaris Parade.

d) Location of all plant and equipment, including hot water services and air conditioners etc. Plant equipment is to be located away from habitable room windows of dwellings and the adjoining properties habitable rooms.

e) Water Sensitive Urban Design measures in accordance with Condition 8 of this permit.

f) An amended Landscaping Plan in accordance with Condition 10 of this permit.

g) A Tree Management Plan in accordance with Condition 13 of this permit.

h) Provision of the development contributions fee in accordance with Condition 20.

All to the satisfaction of the Responsible Authority.

2. The layout of the site and the size, levels, design and location of buildings and works shown on the endorsed plans must not be modified for any reason (unless the Bayside Planning Scheme specifies that a permit is not required) without the prior written consent of the Responsible Authority.

3. Before the occupation of the site commences or by such later date as is approved in writing by the Responsible Authority, all buildings and works must be carried out and completed to the satisfaction of the Responsible Authority.

4. No plant, equipment, services or architectural features other than those shown on the endorsed plans are permitted above the roof level of the building/s without the written consent of the Responsible Authority.

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

6. Before the occupation of the site commences, screening of windows including fixed privacy screens be designed to limit overlooking as required by Standard B22 and be installed and maintained to the satisfaction of the Responsible Authority thereafter for the life of the building.

7. The walls on the boundary of the adjoining properties shall be cleaned and finished to the satisfaction of the Responsible Authority.

Water Sensitive Urban Design

8. Prior to the endorsement of plans pursuant to Condition 1, detailed plans to the satisfaction of the Responsible Authority must be submitted to and be endorsed by the Responsible Authority. The plan must be drawn to scale with dimensions and three copies must be provided. The plans must show:

a) The type of water sensitive urban design stormwater treatment measures to be used.
b) The location of the water sensitive urban design stormwater treatment measures in relation to buildings, sealed surfaces and landscaped areas.

c) Design details of the water sensitive urban design stormwater treatment measures, including cross sections.

These plans must be accompanied by a report from an industry accepted performance measurement tool which details the treatment performance achieved and demonstrates the level of compliance with the Urban Stormwater Best Practice Environmental Management Guidelines, CSIRO 1999.

9. The water sensitive urban design stormwater treatment system as shown on the endorsed plans must be retained and maintained at all times in accordance with the Urban Stormwater - Best Practice Environmental Management Guidelines, CSIRO 1999, to the satisfaction of the Responsible Authority.

**Landscaping**

10. Prior to the endorsement of plans pursuant to Condition 1, a detailed landscape plan to the satisfaction of the Responsible Authority must be submitted to and be endorsed by the Responsible Authority. The plan must be generally in accordance with the landscape concept plan drawn by Keystone Alliance Pty Ltd dated 17 April 2018 and be drawn to scale with dimensions and three copies must be provided. The plan must show:

a) The accurate location of individual trees within the group of Ornamental Pears shown collectively as Tree no. 7 within the arborist report prepared by Glenn Waters dated 4 January 2018.

b) A notation on the plans stating sheds associated with Units 1, 3 and 4 will be constructed at surface level where any part of the shed comes within the Tree Protection Zone (TPZ) of Trees no. 2 and no. 4 located at No. 53 Beaumaris Parade.

c) A canopy tree each within the secluded private open space of Dwellings 3 and 4 which will grow to a minimum height of 8.0m at maturity, with a height of at least 2.0m at the time of planting.

d) A survey including botanical names, Tree Protection Zones (TPZ’s) and Structural Root Zones (SRZ’s), of all existing trees on neighbouring properties where the Tree Protection Zones of such trees calculated in accordance with AS4970-2009 fall partially within the subject site.

e) A planting schedule of all proposed trees and shrubs, including botanical names, common names, pot sizes, sizes at maturity, and quantities of each plant.

f) Landscaping and/or planting within all areas of the site not covered by buildings or hard surfaces.

g) Details of surface finishes of pathways and driveways.

11. Before the occupation of the development, the landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of the Responsible Authority.

12. The landscaping shown on the endorsed plans must be maintained to the satisfaction of the Responsible Authority, including that any dead, diseased or damaged plants are to be replaced.
Tree Management and Protection Plan

13. Prior to the endorsement of plans pursuant to Condition 1, including any related demolition or removal of vegetation, a Tree Management Plan/Construction Impact Report prepared by a qualified Arborist in accordance with AS4970 Protection of Trees on Development Sites (2009) for all trees on neighbouring properties which have a Tree Protection Zone which extends into the subject site.

The report should demonstrate construction methods and materials proposed to ensure trees to be retained will remain viable post development to the satisfaction of the Responsible Authority.

14. All protection measures identified in the Construction Impact Report must be implemented, and development works undertaken on the land must be undertaken in accordance with the Construction Impact Report to the satisfaction of the Responsible Authority.

15. Before the development starts, including demolition or removal of vegetation, the name and contact details of the project Arborist responsible for preparing and implementing the Construction Impact Report must be submitted to the Responsible Authority.

16. Any pruning that is required to be done to the canopy of any tree to be retained (specify particular tree/s) is to be done by a qualified Arborist to Australian Standard – Pruning of Amenity Trees AS4373-1996. Any pruning of the root system of any tree to be retained (specify particular tree/s) is to be done by hand by a qualified Arborist.

Street tree protection

17. Before the development starts, tree protection fencing is to be established around the street trees 10, 12 and 13 marked for retention prior to demolition and maintained until all works on site are complete. The fencing is to be constructed and secured so its positioning cannot be modified by site workers. The fencing is to encompass the entire nature strip under the drip line of the tree. The Tree Protection Zone is to be established and maintained in accordance with AS 4970-2009. During construction of the crossover, tree protection fencing may be reduced to the edge of the Council approved crossover to facilitate the construction of the crossover.

There is to be no soil excavation within 2.0 metres of street trees 10, 12 and 13 measured from the edge of the trunk.

Street trees 11 and 14 (asset #s 476630 and 436239) can be removed under Clause 6.5 of the Street and Park Tree Management Policy (2016) to allow the development to proceed with the installation of the proposed vehicle crossings in their proposed locations.

Drainage

18. Before the development starts, the permit holder must apply to Council for the Legal Point of Discharge for the development from where stormwater is drained under gravity to the Council network.

19. Before the development, detailed plans indicating, but not limited to, the method of stormwater discharge to the nominated Legal Point of Discharge (and On-Site Detention System where applicable) must be submitted to and approved by Council’s City Assets and Projects Department.
Development Contribution

20. Prior to endorsement of the plan/s required under Condition 1 of this permit, the permit holder must pay a drainage levy in accordance with the amount specified under the Bayside Drainage Development Contributions Plan. The levy amount payable will be adjusted to include the Building Price Index applicable at the time of payment.

The levy payment shall be submitted to Council with the Bayside Drainage Development Levy Charge Sheet and it must include the Building Price Index applicable at the time of payment.

Permit Expiry

21. This permit will expire if one of the following circumstances applies:

a) The development is not started within two years of the date of this permit.

b) The development is not completed within four years of the date of this permit.

In accordance with Section 69 of the Planning and Environment Act 1987, a request may be submitted to the Responsible Authority within the prescribed timeframes for an extension of the periods referred to in this condition.

Permit Notes:

- This permit does not constitute any authority to carry out any building works or occupy the building or part of the building unless all relevant building permits are obtained.

- A permit must be obtained from Council for all vehicular crossings. These must be constructed under Council's supervision for which 24 hours' notice is required.

- Construction of any fence / wall / letterbox structures may necessitate removal / damage of some sections of footpath. If this is the case, a ‘Road Opening Permit’ must be obtained to facilitate such work.

- A ‘Road Opening / Stormwater Tapping Permit’ is to be obtained from the Infrastructure Department prior to the commencement of the connection to the Council Drain / kerb / channel.

- Before the development starts, the applicant must pay $6,060.00 to the Responsible Authority for the removal and replacement of an existing street tree. This amount has been determined in accordance with Council’s current policy for the removal of street tree(s). This amount may be increased by the Responsible Authority if an extension of time to commence work is granted and the amenity value of the street tree has increased. The Responsible Authority, or a contractor or agent engaged by the Responsible Authority, must undertake the removal and replacement of the street tree. Any replacement planting will be at the discretion of the Responsible Authority.

- The installation of the vehicle crossings at their proposed locations will severely impact on street trees 11 and 14 (asset #s 476630 and 436239). As the design does not allow any other option for the location of this vehicle crossing and to allow this development to proceed, the tree may be approved for removal under Clause 6.5 of the Street and Park Tree Management Policy (2016).

Before the vehicle crossing application will be approved, the applicant must pay $9,748.35 to the Responsible Authority for the removal and replacement
of the existing street tree(s). This amount has been determined in accordance with Council’s current policy for the removal of street trees. This amount may be increased by the Responsible Authority if an extension of time to commence work is granted and the amenity value of the street tree has increased. The Responsible Authority, or a contractor or agent engaged by the Responsible Authority, must undertake the removal and replacement of the street tree. Any replacement planting will be at the discretion of the responsible authority.

5. Council Policy

**Council Plan 2017-2021**

Relevant objectives of the Council plan include:

- Where neighbourhood character, streetscapes and heritage is respected and enhanced, and the community has a strong connection to place.
- Where development contributes to a high visual amenity, is ecologically sustainable, demonstrates high quality compliant design, and responds to the streetscape and neighbourhood context.

Relevant strategies of the Council plan include:

- Make discretionary planning controls stronger, by advocating for Council’s planning and urban design objectives to state government.
- Ensure new development responds to preferred neighbourhood character in activity centres.

**Bayside Planning Scheme**

- Clause 10 Planning Policy Framework
- Clause 11 Settlement
- Clause 12 Environmental and Landscape Values
- Clause 15 Built Environment and Heritage
- Clause 16 Housing
- Clause 18 Transport
- Clause 21.02 Bayside Key Issues and Strategic Vision
- Clause 21.03 Settlement and Housing
- Clause 21.04 Environmental and Landscape Values
- Clause 21.06 Built Environment and Heritage
- Clause 21.09 Transport and Access
- Clause 22.06 Neighbourhood Character Policy (Precinct G1)
- Clause 22.08 Water Sensitive Urban Design
- Clause 32.09 Neighbourhood Residential Zone (Schedule 3)
- Clause 43.02 Design and Development Overlay (Schedule 3)
- Clause 54.06 Development Contributions Plan Overlay (Schedule 1)
- Clause 52.06 Car Parking
- Clause 53.18 Stormwater Management in Urban Development
6. Considerations

In considering this application, regard has been given to the State and Local Planning Policy Frameworks, the provisions of the Bayside Planning Scheme, objections received and the individual merits of the application.

6.1. Neighbourhood character

The site is located within Neighbourhood Character Precinct G1. The proposal is considered to demonstrate an acceptable level of compliance with the preferred future character statement and precinct guidelines as contained in Attachment 3.

The area is characterised by a variety of built form, consisting of single and double storey face brick, render and weatherboard dwellings set within well-established spacious front gardens.

It is considered that the proposed development achieves an acceptable design response to the prevailing and preferred neighbourhood character, aligning with the objectives outlined in Precinct G1 by restricting the scale of the building to a double height and featuring a traditional residential style tiled pitched roof to limit visual bulk and massing impacts to the street and adjoining neighbours. The dwellings themselves are appropriately modulated and incorporate a 4.0m (ground floor) – 5.2m (first floor) internal setback (separation) between Dwellings 1 & 2 and 3 & 4, providing a genuine visual separation and appropriate space for canopy tree planting to reflect the detached grain of the immediate streetscape and the garden setting within side and rear setbacks.

The building envelopes, with recessive and articulated first floor elements, with appropriate side and rear setbacks, are considered acceptable and do not rely on walls constructed on boundaries, except for Dwelling 1’s garage which extends for less than 6.5m along the shared southern boundary. Further, the visually interesting façade treatments facing Beaumaris Parade and Rupert Street feature good levels of articulation and materials that respect the surrounding built form detail.

The proposal to remove all site vegetation is considered acceptable by Council’s Arborist subject to replacement landscaping being generally in accordance with the Bayside Landscape Design Guidelines (2016). A condition of approval is recommended for amendments to be made to the submitted concept landscape plan (prepared by Keystone Alliance dated 17 April 2018) to show additional canopy tree and appropriate tree protection measures to protect neighbouring Trees Nos. 2, 4 & 7 located within the adjoining property at No. 53 Beaumaris Parade.

The proposed 1.0m high horizontal aluminium front fence, with limited 1.8m high sections to provide privacy to open space areas within the development, will complement the varied streetscape character and allow views of the landscaped front setbacks facing Beaumaris Parade and Rupert Street.

On balance, it is considered that the proposed design response will favourably integrate and complement the preferred neighbourhood character prevalent within the surrounding streets and wider Neighbourhood Character Precinct G1.

6.2. Compliance with Clause 55 (ResCode)

An assessment against the requirements of Clause 55 is provided at Attachment 4. Those non-compliant standards are discussed below:
Street setback (Standard B6)

<table>
<thead>
<tr>
<th>Dwelling 1 &amp; 2 – Beaumaris Parade</th>
<th>Proposed Front Setback</th>
<th>ResCode Requirement</th>
<th>Complies?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Front</td>
<td>8.01 – 8.2</td>
<td>9</td>
<td>x</td>
</tr>
<tr>
<td>Side Street (D.2)</td>
<td>2</td>
<td>2</td>
<td>✓</td>
</tr>
</tbody>
</table>

Dwellings Facing the ‘Side Street’ – Rupert Street

<table>
<thead>
<tr>
<th>Proposed Front Setback</th>
<th>ResCode Requirement</th>
<th>Complies?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dwelling 3</td>
<td>3.0</td>
<td>3.0</td>
</tr>
<tr>
<td>Dwelling 4</td>
<td>3.0</td>
<td>3.0</td>
</tr>
</tbody>
</table>

The objective of the street setback is to ensure the setbacks of buildings from a street respect the existing or preferred neighbourhood character and make efficient use of a site.

The proposed setbacks are generally compliant with the standard and are considered suitable and anchors the development to the corner allotment.

The setback variation to Beaumaris Parade is 1.0 metre at ground floor, with the first floor setback 8.5m (Dwelling 1) and 9.0m (Dwelling 2) with a central break in the façade.

The setback variations in the facades, with an increased and recessed first floor above, are considered acceptable and will provide for a visually interesting façade which will not unreasonably dominate the streetscape. The front setback also allows for the provision of soft landscaping which will further assist soften the form and respond to the vegetated character of the streetscape. It is therefore considered that the front setback will continue to respond to the garden character of the area and provide sufficient space for suitable landscaping, including canopy tree planting in the street frontages.

Side and rear setbacks (Standard B17)

<table>
<thead>
<tr>
<th>Units 1 &amp; 2</th>
<th>Ground floor</th>
<th>First floor</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Requirement</td>
<td>Proposed</td>
</tr>
<tr>
<td>South (side)</td>
<td>0m or 2m</td>
<td>0m – 2m</td>
</tr>
<tr>
<td>West (rear)</td>
<td>0m or 3m</td>
<td>4.07m</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Units 3 &amp; 4</th>
<th>Ground floor</th>
<th>First floor</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Requirement</td>
<td>Proposed</td>
</tr>
<tr>
<td>East (side)</td>
<td>0m – 2m</td>
<td>4.07m</td>
</tr>
<tr>
<td>West (side)</td>
<td>0m -2m</td>
<td>1m – 2m</td>
</tr>
<tr>
<td>South (rear)</td>
<td>0m – 3m</td>
<td>5.24m</td>
</tr>
</tbody>
</table>

The objective of the standard is to ensure the height and setback of a building from a boundary respects the existing or preferred neighbourhood character and limits the impact on the amenity of existing dwellings.
At ground floor, the proposed 1.0m side setback to Dwelling 4’s bedroom 1 and ensuite is considered acceptable as it will be adjacent to the existing shed located at No. 4 Rupert Street and the remainder of the unit complies with the varied 2.0m side setback requirement, thus posing a minimal impact on the adjoining private open space to the west. The ground floor setback variation will not incur unreasonable overshadowing impacts to the SPOS of No. 4 Rupert Street given that, whilst shadow will incur at 9:00am, by 10:00am the shadow will fall entirely within the shadow from the common boundary fence. It must be noted that this wall was originally proposed along the boundary and compliant with this standard (i.e. zero setback); however, following the consultation meeting was subsequently setback 1.0m in an attempt to address neighbour concerns.

At first floor, the 3.2m southern setback of Dwelling 1 fails Council’s varied numerical requirement by 70mm, which is considered to be a negligible variation and will not pose unreasonable visual bulk amenity impacts to the neighbour at No. 53 Beaumaris Street.

**North facing windows (Standard B20)**

The objective seeks to allow adequate solar access to existing north-facing habitable room windows. This Standard applies given that a wall on boundary is located within 3.0 metres of the side of a north-facing window of No. 53 Beaumaris Parade.

No. 53 Beaumaris Parade comprises two existing north-facing habitable room windows, with Dwelling 1’s family room setback 2.0 metre from the southern boundary failing the minimum setback requirement by 120mm. Cross-section shadow analysis has been provided in relation to the north-facing habitable room windows of No. 53 Beaumaris Parade, with the eastern-most habitable room window to receive some shadow at 10:00am. By 11:00am, the shadow falls below the window sill. The remaining north-facing windows will not incur any additional overshadowing.

The recent amendment included increasing the setbacks and lowering heights of the Dwelling 1 wall adjacent to No. 53 Beaumaris, which ensured adequate compliance with the Objective of Clause 55.04-4 (North Facing windows) by way of allowing adequate solar access to the existing north-facing habitable room windows.

This is considered to be a minor variation to the standard given the proposed setback will ensure these windows receive an adequate amount of solar access throughout the day.

**Solar Access to Open Space**

<table>
<thead>
<tr>
<th>Solar Access to Open Space</th>
<th>Wall Height</th>
<th>Proposed Setback</th>
<th>ResCode Requirement</th>
<th>Complies?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dwelling 3</td>
<td>3.6m – 5.7m</td>
<td>5.24m – 6.9m</td>
<td>5.2m – 7.14m</td>
<td>✔ &amp; ✗</td>
</tr>
<tr>
<td>Dwelling 4</td>
<td>3.6m – 5.7m</td>
<td>5.24m – 6.89m</td>
<td>5.2m – 7.14m</td>
<td>✔ &amp; ✗</td>
</tr>
</tbody>
</table>

The objective of Standard B29 is to allow solar access into the SPOS of new dwellings and it is noted that Dwellings 3 and 4 have SPOS areas within the southern setback due to the site’s orientation, therefore this Standard applies.

Whilst the SPOS areas will receive some shadow incurred from their own dwellings, it is noted that approximately 50% of the SPOS areas will receive uninterrupted sunlight throughout the day. It is considered that the amenity of the SPOS areas, in regards to solar access, is acceptable.

**6.3. Landscaping**

Council’s Arborist advises existing vegetation on the subject site has a low – moderate amenity value and is not protected by any Local Law due to its limited trunk size. There is no objection to removing on-site vegetation provided it is replaced with appropriate...
canopy tree planting in accordance with the Bayside Landscape Design Guidelines (2016).

Council’s Arborist is concerned that Dwelling 1’s driveway and tandem car space may adversely impact at least 2 trees within an existing group of Ornamental Pears shown collectively as Tree no. 7 on the plans located at No. 53 Beaumaris Parade and within the applicant’s submitted arborist report prepared by Glenn Waters dated 4 January 2018. As a result, Council’s Arborist requires individual trees within the group to be accurately shown on the landscape plan.

The existing driveway providing vehicle access to the subject site is located immediately adjacent to these trees in question, suggesting minimal root growth would have formed in this area. As a result, the location of Dwelling 1’s driveway and tandem car space is considered acceptable in this instance. However, a condition of permit requiring an amended landscape plan showing the accurate location of individual trees within the group of trees defined as Tree no. 7 is a prudent option and would not be an onerous requirement for the applicant.

Further, Council’s Traffic Engineer requires a minimum 1.0m offset to Dwelling 1’s crossover from the southern boundary. This in turn will further alleviate any potential impact Unit 1’s driveway and tandem car space may have on the adjacent Ornamental Pears.

In addition, proposed storage sheds associated with Dwelling’s 1, 3 & 4 shown adjacent to neighbouring Tree no. 2 and Tree no. 4 also located at No. 53 Beaumaris Parade will pose no detriment provided the sheds are constructed at surface level where any part comes within the TPZ of either tree. This requirement is recommended as a condition of permit in order to adequately protect neighbouring trees post development.

6.4. Street tree(s)

Council’s Street Tree Arborist has advised that existing street tree assets shown as Tree no. 11 and Tree no. 14 in the applicant’s submitted arborist report prepared by Glenn Waters will be adversely impacted by new crossovers proposed within the Beaumaris Parade and Rupert Street frontages and requires a minimum 2.0m clearance between the edge of any new crossover and trunk of the street tree asset. Alternatively, if this clearance cannot be achieved, Council’s Street Tree Arborist recommends the street tree assets can be removed and replaced at the applicant’s cost.

The submitted amended plans (Rev. E) indicate a minimum 2.74m clearance can be provided between the edge of Unit 2’s crossover and the street tree asset (Tree no. 11), whilst street tree asset (Tree no. 14) must be removed to accommodate Unit 4’s crossover.

As a result a condition of permit requiring the applicant pay for the removal and replacement of street tree asset Tree no. 14 is recommended.

6.5. Car parking and traffic

Pursuant to the car parking requirements at Clause 52.06, a dwelling requires car parking to be provided at a rate of 1 car space per one or two bedroom dwellings and 2 car spaces per three or more bedroom dwellings.

Each dwelling will comprise three or four bedrooms respectively and will be afforded at least two car parking spaces in the form of a single garage with tandem car space in front.

The proposed on-site car parking meets the requirements of Clause 52.06-5.

The application was referred to Council’s Traffic Engineer who expressed several concerns regarding sightlines, the provision of a corner splay in the north-east corner of the subject site, the offset of Unit 1’s crossover from the side boundary, the setback of Dwelling 2’s crossover to the intersection and provision of a double crossover to
Dwellings 3 and 4. The applicant amended the application, therefore the amended plans have responded to and addressed the above concerns.

6.6. Cultural Heritage management plan
The site is located within an area of cultural heritage sensitivity, therefore an assessment as to whether the proposal is considered a high impact activity has been undertaken. Based on the Aboriginal heritage planning tool questionnaire, a cultural heritage management is not required.

6.7. Development contributions levy
The subject site is located within catchment area 15B.

Based on the proposed application and the below recommendation, a payment of $6,060 is required. The payment of the development contributions is included as a condition of permit.

6.8. Design and Development Overlay, Schedule 3
A permit is not required to construct a building or to construct or carry out works for a residential building or dwelling.

6.9. Objector issues not already addressed

Neighbourhood Character/Built Form
As noted within this report, it is considered that the proposal is not unacceptable or unreasonable in this suburban residential setting. There are other examples of double storey development in the general area and the development proposes acceptable setbacks and landscaping areas to provide a transition in building scale.

Overlooking
Whilst the dwellings do have upper level habitable room windows within 9.0 metres of existing windows and private open space areas of the adjacent residential properties, all windows within 9.0 metres of existing adjacent habitable room windows and secluded private open space areas are screened in accordance with the requirements of Clause 55 (Standard B22) of the Bayside Planning Scheme.

Overshadowing
The submitted shadow diagrams comply with the requirements of Clause 55 (ResCode). At least 75% or 40m² with a minimum dimension of 3.0m of the secluded private open space located on adjacent land will receive a minimum of five hours of sunlight between 9:00am and 3:00pm on 22 September (September Equinox). The shadow diagrams submitted by the applicant have been checked. Shadows cast by the development will be largely contained within the development site itself or within the shadow cast by the common boundary fencing.

Traffic congestion/safety/number of crossovers
Whilst it is acknowledged that the development will generate some additional vehicle movements on the local road network, it is not considered that such additional movements would necessarily be concentrated or conflict substantially with existing traffic. The proposal has been reviewed by Council’s Traffic Engineers, who have raised no issue in relation to traffic movements.

High front fence (safety)
The fence adjacent to the dwelling frontages (front fence) to both streetscapes is less than 1.2 metres in height, thereby are ‘as-of-right’ pursuant to the Neighbourhood Residential Zone (no permit required). Notwithstanding this, the front fences are considered to acceptably respond to the neighbourhood character and the front fences will include visual permeability connecting the public and private realms.
Balconies facing Rupert Street

The provision of balconies to Dwellings 3 and 4 facing Rupert Street is considered acceptable given they will be integrated into the front facades, in which the architectural features continue to respond to the character of the streetscape. The balconies will further contribute to ‘eyes on the street’, which is encouraged and a positive urban design outcome by way of allowing for the passive surveillance of the street.

Support Attachments

1. Amended Plans
2. Site and Surrounds
3. Neighbourhood Character Assessment
4. ResCode Assessment
Item 4.1 – Matters of Decision
Attachment 3

Figure 1 Aerial overview of the site and surrounds

<table>
<thead>
<tr>
<th>Legend</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject site</td>
<td>★</td>
</tr>
<tr>
<td>Objector(s)</td>
<td>●</td>
</tr>
<tr>
<td>Withdrawn</td>
<td>▲</td>
</tr>
</tbody>
</table>
Figure 2 The site as viewed from Beaumaris Parade
Figure 3 The site (looking south) as viewed from Rupert Street
Figure 4 No. 53 Beaumaris Parade as viewed from the street.

Figure 5 No. 4 Rupert Street as viewed from the street.
Figure 5 Nos. 62 (right) and 64 Beaumaris Parade, as viewed from the street

Figure 6 Nos. 3 Rupert Street (looking north from Rupert Street)
ATTACHMENT 3

Neighbourhood Character Policy (Precinct G1)

Preferred Future Character Statement

The well-articulated dwellings sit within landscaped gardens, some with established trees. New buildings are frequent and are designed to respond to the site, and include a pitched roof form to reflect the dominant forms in the area. Buildings are occasionally built to the side boundary, however the overall impression of the streetscape is of buildings within garden settings due to the regular front setbacks, well vegetated front yards and additional street tree planting in the area.

Precinct Guidelines

<table>
<thead>
<tr>
<th>Objectives</th>
<th>Design Responses</th>
<th>Avoid</th>
<th>Planning Officer Assessment</th>
</tr>
</thead>
</table>
| To maintain and enhance the garden settings of the dwellings. | • Prepare a landscape plan to accompany all applications for new dwellings that includes substantial trees and vegetation.  
• Retain large, established trees and provide for the planting of new trees wherever possible.  
• Buildings should be sited to allow space for the planting of trees and shrubs. | Lack of landscaping and substantial vegetation.  
Removal of large trees.  
Planting of environmental weeds. | Responds  
Front setbacks within this section of Beaumaris Parade are fairly uniform averaging approximately 8.0m, with setbacks to Rupert Street generally in the order of 3m – 3.9m.  
Landscaping within front setbacks is established and consists of canopy tree planting and vehicle access is generally via 1 – 2 crossovers per allotment.  
Therefore, the proposed setbacks to both frontages and number of crossovers are considered reasonable in this instance and will provide an appropriate level of landscaping in response to the preferred garden setting and streetscape character.  
In addition, Council’s Arborist and Open Space Arborist support the removal of on-site vegetation and street tree asset Tree #14 subject to future landscaping in accordance with the Bayside Landscape Design Guidelines (2016) and replacement street tree planting at the applicant’s cost. These requirements are supported and are |
<table>
<thead>
<tr>
<th>Objectives</th>
<th>Design Responses</th>
<th>Avoid</th>
</tr>
</thead>
<tbody>
<tr>
<td>To maintain the rhythm of visual separation between buildings.</td>
<td>• Buildings should be sited to create the appearance of space between buildings and accommodate substantial vegetation.</td>
<td>Responds: Walls constructed to shared boundaries will be kept to a minimum with only Unit 1’s single garage being constructed to the southern boundary. Similarly, the double storey scale of the development is consistent with the prevailing and preferred low scale residential character evident within the precinct. The physical break between Units 1/2 and Units 3/4 extends and widens at first floor, which creates a genuine visual separation between buildings and maintains the rhythm of the streetscape. The first floor footprint will also be much smaller comparative to the ground floor envelope and is adequately articulated to minimise visual bulk and massing impacts to the street and/or neighbours.</td>
</tr>
</tbody>
</table>
| To ensure that new buildings provide an articulated and interesting façade to the street. | • Incorporate design elements into the front façade design of new dwellings such as recessed portions, projecting elements behind the front setback line, combinations of materials, textures or colours or other elements providing appropriate articulation.  
• Use pitched roof forms with eaves. | Responds: As mentioned above, the first floor element of all dwellings is well articulated and recessed from all boundaries to reduce massing impacts. The proposed design response is contemporary and features a traditional pitched tiled roof form to complement the preferred residential character, whilst the chosen external |
<table>
<thead>
<tr>
<th>Objectives</th>
<th>Design Responses</th>
<th>Avoid</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Planning Officer Assessment</td>
</tr>
<tr>
<td></td>
<td></td>
<td>materials and finishes using rendered brickwork in natural white tones and embellished with cedar timber battens and darker weatherfoil cladding at ground and first floor and appropriate use of fenestration and glazing is considered acceptable given the varied built form evident in Beaumaris Parade and wider surrounds to complement the streetscape. Some objectors are concerned about the introduction of balconies to the Rupert Street frontage, this is reasonable given balconies are uncommon in the immediate area, however the balconies are modest and provide appropriate articulation and interest to the facade treatments and mimic the design of other unit development emerging in the precinct. Further, the balconies encourage 'eyes on the street' and passive surveillance of the public realm. Therefore, the proposed balconies are considered acceptable.</td>
</tr>
<tr>
<td>To maintain the openness of the streetscape.</td>
<td>High, solid front fencing</td>
<td>Responds The proposed 1.0m high horizontal aluminium rail front fencing, incorporating 1.6m high sections to provide privacy to private open space areas, is considered suitably complementary to the streetscape and will allow views of the landscaped front setbacks in response to the established garden character in Beaumaris Parade and Rupert Street.</td>
</tr>
</tbody>
</table>
### ATTACHMENT 4
ResCode (Clause 55) Assessment

<table>
<thead>
<tr>
<th>Title and Objective</th>
<th>Complies with Standard?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>B1 Neighbourhood Character</strong>&lt;br&gt;Design respects existing neighbourhood character or contributes to a preferred neighbourhood character.&lt;br&gt;Development responds to features of the site and surrounding area.</td>
<td>Complies</td>
<td>Refer to Attachment 3 and report for further discussion.</td>
</tr>
<tr>
<td><strong>B2 Residential Policy</strong>&lt;br&gt;Residential development is consistent with housing policies in the SPPF, LPPF including the MSS and local planning policies.&lt;br&gt;Support medium densities in areas to take advantage of public transport and community infrastructure and services.</td>
<td>Complies</td>
<td>The proposal is considered appropriate with regard to providing site services and facilities to support the construction of multiple dwellings on a lot of this size, whilst sufficiently responding to key characteristics evident within the existing and preferred neighbourhood character as set by Council objectives.</td>
</tr>
<tr>
<td><strong>B3 Dwelling Diversity</strong>&lt;br&gt;Encourages a range of dwelling sizes and types in developments of ten or more dwellings.</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td><strong>B4 Infrastructure</strong>&lt;br&gt;Provides appropriate utility services and infrastructure without overloading the capacity.</td>
<td>Complies</td>
<td>The proposal will make use of existing infrastructure servicing the site. The developer will be responsible for upgrading this infrastructure if necessary to accommodate the development. Council’s drainage engineers have reviewed the application and raise no issues with infrastructure capacity in the area. It is noted that the developer will be required to pay a development contributions levy in accordance with the requirements of Clause 45.06 of the Bayside Planning Scheme.</td>
</tr>
<tr>
<td><strong>B5 Integration with the Street</strong>&lt;br&gt;Integrate the layout of development with the street</td>
<td>Complies</td>
<td>Subject to recommended conditions seeking changes to the façade treatment and increased first floor front setbacks. The proposed design response featuring a traditional pitched roof form with generous eaves, minimal walls constructed to boundaries, moderate building envelopes with landscaped setbacks facing each frontage, a recessive and articulated first floor element, suitable glazing, fenestration and external materials to respond to the</td>
</tr>
<tr>
<td>B6 Street Setback</td>
<td>Does Not Comply</td>
<td>Requirement:</td>
</tr>
<tr>
<td>-------------------</td>
<td>----------------</td>
<td>--------------</td>
</tr>
<tr>
<td>The setbacks of buildings from a street respect the existing or preferred neighbourhood character and make efficient use of the site.</td>
<td></td>
<td>Beaumaris Parade – 9m</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Rupert Street – 3m</td>
</tr>
<tr>
<td></td>
<td>Proposed:</td>
<td>Beaumaris Parade: 8m – 8.5m at ground floor and 8.5m – 10m (to indent between Dwelling 1 &amp; Dwelling 2) at first floor</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Rupert Street: 3m – 5.4m at ground floor and 3.6m – 4m (to balcony)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The non-compliance relates to the front setback of Dwelling 1 and 2 to Beaumaris Parade.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Refer to Attachment 3 and the report for further discussion.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>B7 Building Height</th>
<th>Complies</th>
<th>Maximum: 9m.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building height should respect the existing or preferred neighbourhood character.</td>
<td></td>
<td>Proposed: 7.84m (2 storeys)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>B8 Site Coverage</th>
<th>Complies</th>
<th>Maximum: 50%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Site coverage should respect the existing or preferred neighbourhood character and respond to the features of the site.</td>
<td></td>
<td>Proposed: 50%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Refer to the report for further discussion.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>B9 Permeability</th>
<th>Complies</th>
<th>Minimum: &gt;20%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reduce the impact of stormwater run-off on the drainage system and facilitate on-site stormwater infiltration.</td>
<td></td>
<td>Proposed: 40%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>B10 Energy Efficiency</th>
<th>Complies</th>
<th>All habitable areas, including habitable rooms and secluded private open space areas have been located to maximise solar access and no habitable rooms rely on secondary light sources.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Item</td>
<td>Description</td>
<td>Complies/Non-Compliance</td>
</tr>
<tr>
<td>------</td>
<td>-------------</td>
<td>-------------------------</td>
</tr>
<tr>
<td><strong>Ensure orientation and layout reduces fossil fuel energy use and makes appropriate use of daylight and solar energy.</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B11 Open Space</strong>&lt;br&gt;Integrate layout of development with any public and communal open space provided in or adjacent to the development.</td>
<td>N/A</td>
<td>There is no communal open space in or adjacent to the development.</td>
</tr>
<tr>
<td><strong>B12 Safety</strong>&lt;br/Layout to provide safety and security for residents and property.</td>
<td>Complies</td>
<td>The pedestrian entry points are clearly recognisable from either Beaumaris Parade or Rupert Street, while upper floor levels will allow for the passive surveillance of the street.</td>
</tr>
<tr>
<td><strong>B13 Landscaping</strong>&lt;br&gt;To provide appropriate landscaping.&lt;br&gt;To encourage:&lt;br&gt;• Development that respects the landscape character of the neighbourhood.&lt;br&gt;• Development that maintains and enhances habitat for plants and animals in locations of habitat importance.&lt;br&gt;• The retention of mature vegetation on the site.</td>
<td>Complies</td>
<td>The extent of the building footprints and setbacks to side and rear boundaries are generally acceptable and will provide suitable space for landscaping opportunities, including additional canopy tree planting throughout the site to soften and screen the development when viewed from the street and/or adjoining neighbours.&lt;br&gt;Council’s Arborist supports the proposed removal of all on-site vegetation due to its low – moderate amenity value subject to appropriate replacement landscaping in accordance with the Bayside Landscape Design Guidelines (2016). Therefore, it is recommended that the submitted concept landscape plan prepared by Keystone Alliance dated 17 April 2016 is amended to ensure full compliance with Council objectives and include a small canopy tree that will grow to a mature height of 8m within Units 3 &amp; 4.&lt;br&gt;In addition, the development will pose minimal impact to trees on neighbouring properties provided sheds are constructed at surface level when they come within the TPZ’s of Trees #2 &amp; 4 and individual trees within the group of trees shown as Tree #7 are accurately plotted on the plans. A Tree Management Plan is recommended via a condition of permit to ensure compliance with Council’s Arborists suggestions. Refer to Attachment 3 and the report for further discussion.</td>
</tr>
<tr>
<td><strong>B14 Access</strong></td>
<td>Complies</td>
<td>The proposed number and location of new crossovers to/from Beaumaris Parade and Rupert Street generally</td>
</tr>
</tbody>
</table>

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Ensure the safe, manageable and convenient vehicle access to and from the development. Ensure the number and design of vehicle crossovers respects neighbourhood character.

respects the preferred neighbourhood character.

Council’s Traffic Engineer raised concerns in relation to sightlines for Unit 1’s driveway, the proximity of Unit 2’s crossover to the intersection and provision of a double crossover to access Unit 3 & 4’s garages. The applicant has sought to tackle these concerns by lodging amended plans that suitably address many of the concerns raised.

Therefore, the proposed access is considered satisfactory and will pose minimal, if any, impact to neighbours, on-street parking and/or the surrounding traffic network, subject to a 1m offset to Unit 1’s crossover from the southern boundary.

Refer to the report for further discussion.

<table>
<thead>
<tr>
<th>B15 Parking Location</th>
<th>Complies</th>
<th>On-site car parking will be provided in the form of a single width garage, with tandem car space in front, conveniently located adjacent to the entry of each dwelling in accordance with Clause 52.06-6 of the scheme and ResCode requirement.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provide resident and visitor vehicles with convenient parking. Avoid parking and traffic difficulties in the development and the neighbourhood. Protect residents from vehicular noise within developments.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>B17 Side and Rear Setbacks</th>
<th>Does Not Comply</th>
<th>Refer to the report for further discussion. Areas of non-compliance are underlined. Note: the subject site is on a corner, therefore determining side and rear setbacks is problematic. Therefore, Unit 1 &amp; 2’s rear setback will be the west boundary, whilst Unit 3 &amp; 4’s rear setback will be orientated towards the south.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ensure the height and setback respects the existing or preferred neighbourhood character and limits the amenity impacts on existing dwellings.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Units 1 &amp; 2</th>
<th>Ground floor</th>
<th>First floor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requirement</td>
<td>Proposed</td>
<td>Requirement</td>
</tr>
<tr>
<td>South (side)</td>
<td>0m or 2m</td>
<td>0m – 2m</td>
</tr>
<tr>
<td>West (rear)</td>
<td>0m or 3m</td>
<td>4.07m</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Units 3 &amp; 4</th>
<th>Ground floor</th>
<th>First floor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requirement</td>
<td>Proposed</td>
<td>Requirement</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>East (side)</td>
<td>0m – 2m</td>
<td>4.07m</td>
</tr>
<tr>
<td>------------</td>
<td>---------</td>
<td>-------</td>
</tr>
<tr>
<td>West (side)</td>
<td>0m -2m</td>
<td>1m – 2m</td>
</tr>
<tr>
<td>South (rear)</td>
<td>0m – 3m</td>
<td>5.24m</td>
</tr>
</tbody>
</table>

**B18 Walls on Boundaries**
Ensure the location, length and height of a wall on a boundary respects the existing or preferred neighbourhood character and limits the amenity impacts on existing dwellings.

<table>
<thead>
<tr>
<th>Complies</th>
<th>South boundary</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Maximum Height: 3.6m</td>
</tr>
<tr>
<td></td>
<td>Proposed: 3.2m</td>
</tr>
<tr>
<td></td>
<td>Maximum Length: 18.55m</td>
</tr>
<tr>
<td></td>
<td>Proposed: 6.46m</td>
</tr>
<tr>
<td></td>
<td>The proposed wall height and length accords with the standard.</td>
</tr>
</tbody>
</table>

**B19 Daylight to Existing Windows**
Allow adequate daylight into existing habitable room windows.

| Complies | The development has been sufficiently setback from existing habitable room windows located at No. 53 Beaumaris Parade and No. 4 Rupert Street to achieve a minimum 3m² lightcour with a minimum dimension of 1.0m clear to the sky in satisfaction of the standard. |

**B20 North Facing Windows**
Allow adequate solar access to existing north-facing habitable room windows.

| Does Not Comply | The proposed 2.0m setback to Unit 1’s family room fails the minimum setback requirement by 120mm. Refer to Attachment 3 and the report for further discussion. |

**B21 Overshadowing Open Space**
Ensure buildings do not significantly overshadow existing secluded private open space.

| Complies | The submitted shadow diagrams indicate small portions of adjoining open space towards the south and west will experience additional overshadowing in the morning around 9.00am and afternoon at 3:00pm due to the orientation of the lots. However, the additional shadowing is considered reasonable and meets the test within the standard. |
| B22 Overlooking | Complies | The notations provided on the submitted elevations indicate all internal first floor windows of Units 1, 2 & 3 and west and south facing first floor habitable room windows of Units 1, 3 & 4 will have either high sills or fixed obscure glass or a selected metal screen to a minimum height of 1.7m above finished floor level to prevent unreasonable overlooking to adjoining properties. In addition, the existing 1.9m high common boundary fencing along the west and southern boundaries will provide adequate protection to immediately adjoining properties from unreasonable overlooking to/from ground floor windows. |
| B23 Internal Views | Complies | The submitted plans show internal windows have been screened and/or discreetly positioned and a 1.8m high timber fence at ground level will be erected between private open space areas to limit unreasonable internal views within the development in compliance with the standard. |
| B24 Noise Impacts | Complies | It is anticipated that the level of noise which will be emitted from the dwellings will not exceed levels otherwise expected from residential uses. |
| B25 Accessibility | Complies | Entries are accessible for people with limited mobility. In addition, the development could be further retrofitted to accommodate people with limited mobility in the future if required. |
| B26 Dwelling Entry | Complies | The development faces Beaumaris Parade and Rupert Street providing each dwelling with a sense of address and a clearly identifiable entry. |
| B27 Daylight to New Windows | Complies | All habitable windows will open out onto a space clear to the sky. |
### B26 Private Open Space

Provide reasonable recreation and service needs of residents by adequate private open space.

<table>
<thead>
<tr>
<th>Complies</th>
<th>Minimum:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>25m² secluded, 40m² overall with a minimum dimension of 3m</td>
</tr>
<tr>
<td></td>
<td>A balcony of 8m² with a minimum width of 1.6m and convenient access from a living room</td>
</tr>
</tbody>
</table>

**Proposed:**
The units meet the requirements of this standard and are provided with adequate private open space for the reasonable recreation and service needs of residents.

It is noted that Clause 32.09-4 of the Bayside Planning Scheme requires a minimum garden area at ground floor level of 35% of the site area. This equates to 275.8m². A total of 278m² has been provided, equating to approx. 35.5% garden area.

<table>
<thead>
<tr>
<th>Private Open Space</th>
<th>Secluded Private Open Space</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unit 1</td>
<td>98m²</td>
</tr>
<tr>
<td>Unit 2</td>
<td>139.84m²</td>
</tr>
<tr>
<td>Unit 3</td>
<td>64.4m²</td>
</tr>
<tr>
<td>Unit 4</td>
<td>72.88m²</td>
</tr>
</tbody>
</table>

### B29 Solar Access to Open Space

Allow solar access into the secluded private open space of new dwellings/buildings.

<table>
<thead>
<tr>
<th>Technical non-compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Whist the first floor setbacks of Dwellings 3 and 4 will fall short of the Standard B29 requirement (as per the table below), it is considered that all dwellings will be provided with adequate solar access throughout the day, including Units 3 &amp; 4 which have westerly solar access to their secluded private open space.</td>
</tr>
</tbody>
</table>

### Solar Access to Open Space

<table>
<thead>
<tr>
<th>Wall Height</th>
<th>Proposed Setback</th>
<th>ResCode Requirement</th>
<th>Complies?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dwelling 3</td>
<td>3.6m – 5.7m</td>
<td>5.24m – 6.9m</td>
<td>✔ &amp; ✓</td>
</tr>
<tr>
<td>Dwelling 4</td>
<td>3.6m – 5.7m</td>
<td>5.24m – 6.9m</td>
<td>✔ &amp; ✓</td>
</tr>
</tbody>
</table>

### B30 Storage

Provide adequate storage facilities for each dwelling.

<table>
<thead>
<tr>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>The submitted plans indicate a storage shed will be provided in each rear yard to meet the needs of future residents.</td>
</tr>
</tbody>
</table>

### B31 Design Detail

Encourage design detail that respects the existing or preferred neighbourhood character.

<table>
<thead>
<tr>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Refer to Attachment 3 and the report for further discussion. The proposed building envelopes, specifically setbacks to the west and</td>
</tr>
</tbody>
</table>

---

Item 4.1 – Matters of Decision
south appropriately respond to the adjoining sensitive interface abutments at No. 53 Beaumaris Parade and No. 4 Rupert Street by ensuring:

- No walls are constructed to shared boundaries in the vicinity of any private open space;
- Rear setbacks to Dwellings 3 & 4 exceed the minimum 3m requirement by at least 2m at ground floor and 5.9m at first floor to minimise visual bulk;
- Dwelling 4's ground floor bedroom is sufficiently set away from the shared western boundary and screened by an existing shed located at No. 4 Rupert Street, whilst the first floor bedroom, bath and stair are further recessed from the ground floor envelope to provide space to reflect the rhythm of visual separation between buildings facing Rupert Street and protect the sensitive open space area to the west;
- Dwelling 4's west facing ground and first floor windows are minimised and carefully positioned and/or screened to limit potential for unreasonable overlooking to 4 Rupert Street
- Views from Unit 3 & 4's south facing ground and first floor windows are restricted by a combination of generous rear setbacks, high boundary fencing and high sills and/or obscure glazing to a min. height of 1.7m above FFL.

In addition, the developments modulated built from, incorporating a 4.0m wide physical break between units at ground floor that extends between 5.2m-6.3m at first floor mimic the preferred pattern of development and rhythm of separation between buildings evident in the streetscape and wider precinct. Which in turn provides suitable space for replacement plantings, including canopy trees to soften the development and reflect the preferred garden setting of Precinct G1.
<table>
<thead>
<tr>
<th><strong>B32 Front Fences</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Encourage front fence design that respects the existing or preferred neighbourhood character.</td>
</tr>
<tr>
<td><strong>Complies</strong></td>
</tr>
<tr>
<td>Front fences within the immediate area vary in their style and construction yet are generally higher than 1.5m in height, particularly along Beaumaris Parade. Therefore the proposed 1.0m high front fence, extending in part to 1.8m to provide privacy to private open space and featuring horizontal aluminium rails supported by rendered posts will allow views to the landscaped front setbacks.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>B33 Common Property</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Ensure car parking, access areas and other communal open space is practical, attractive and easily maintained. Avoid future management difficulties in common ownership areas.</td>
</tr>
<tr>
<td><strong>N/A</strong></td>
</tr>
<tr>
<td>There is no common property.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>B34 Site Services</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Ensure site services and facilities can be installed and easily maintained and are accessible, adequate and attractive. Avoid future management difficulties in common ownership areas.</td>
</tr>
<tr>
<td><strong>Complies</strong></td>
</tr>
<tr>
<td>All appropriate site services can be easily catered for on-site with sufficient space for storage of rubbish bins and provision of mailboxes etc.</td>
</tr>
</tbody>
</table>
4.2 427A & 427B HAMPTON STREET, HAMPTON
NOTICE OF DECISION TO GRANT A PLANNING PERMIT
APPLICATION NO: 2018/276/1  WARD: CENTRAL

City Planning & Community Services - Development Services
File No: PSF/15/8755 – Doc No: DOC/18/278344

1. Application details

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Notice of Decision to Grant a Planning Permit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicant</td>
<td>Steller 256 Pty Ltd</td>
</tr>
<tr>
<td>Title/Covenant/S173 Agreement</td>
<td>The title is not subject to any restrictive covenants.</td>
</tr>
<tr>
<td>Date application received</td>
<td>10 May 2018</td>
</tr>
<tr>
<td>Current statutory days</td>
<td>95 days</td>
</tr>
<tr>
<td>Zoning</td>
<td>Commercial 1 Zone (Schedule 1)</td>
</tr>
<tr>
<td>Overlays</td>
<td>Design and Development Overlay (Schedule 12)</td>
</tr>
<tr>
<td></td>
<td>Development Contributions Plan Overlay (Schedule 1)</td>
</tr>
<tr>
<td>Site area</td>
<td>1,879sqm</td>
</tr>
<tr>
<td>Number of outstanding objections</td>
<td>16</td>
</tr>
<tr>
<td>Is a Development Contribution Levy applicable?</td>
<td>No</td>
</tr>
<tr>
<td>Is the site located within an area of cultural heritage sensitivity?</td>
<td>No</td>
</tr>
</tbody>
</table>

Proposal

The application seeks approval for the sale and consumption of liquor (café / restaurant licence) in association with a food and drink premises.

Key details of the proposal are as follows:

- Maximum of 170 patrons.
- Proposed hours for the sale and consumption of liquor:
  - Internal
    - 12pm - 11pm, Sunday to Thursday
    - 12pm - 1am, Friday to Saturday
  - Rear external courtyard
    - 12pm - 9pm, 7 days a week

The application plans are provided at Attachment 1.

An aerial image and photographs of the site and surrounds are provided at Attachment 2.
History
Planning Permit 2011/359/1 was issued at the direction of the Victorian Civil and Administrative Tribunal (VCAT) on 27 July 2012 for the land at 6/427-455 Hampton Street, Hampton.

The permit allows for the use and development of a mixed use (multi-dwellings and shops) five (5) storey building in a Business 1 Zone; the use and development of a food and drink premises in a Residential 1 Zone; the development of multi-dwellings in a Residential 1 Zone; associated car parking dispensation; a variation to the loading bay requirements; and altered access to a road in a Road Zone, Category 1.

Plans were endorsed on 13 March 2014.

A number of secondary consent amendments have been approved, relating to minor changes to the endorsed plans.

Section 72 amendment 2011/359/2 was approved on 9 October 2018, and amended the planning permit preamble, modified the approved use of the two ground floor tenancies from ‘shop’ to ‘food and drink premises’ and involved the subsequent reallocation of the allocated car spaces from the approved office and shop to food and drink premises.

Note: the approved change from shop and office to food and drink premises continue to be ‘as of right’ and is entirely exempt from providing the one (1) additional car space that would have been required prior to the gazettal of Amendment VC148.

2. Planning controls
Planning Permit requirements
A planning permit is required pursuant to:

- Clause 52.27 (Licenced Premises) – Use of the land to sell and consume liquor.

Planning Scheme Amendments
There are no Planning Scheme Amendments relevant to this application.

3. Stakeholder consultation
External referrals
There are no external referrals required to be made in accordance with Clause 66 of the Bayside Planning Scheme.

Internal referrals
The application was referred to the following Council departments for comment:

<table>
<thead>
<tr>
<th>Internal Referral</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Social Planner</td>
<td>No objection</td>
</tr>
</tbody>
</table>

Public notification
The application was advertised pursuant to Sections 52(1)(a) and (d) of the Planning and Environment Act 1987 and 16 objections were received.

All 16 objections remain outstanding at the time of this report.

The following concerns were raised:

- Use of the land as a food and drink premises;
- Trading hours of food and drink premises;
- Hours of proposed sale and consumption of liquor;
- Amenity impacts to entire Hampton Street precinct;
• Failure to correctly advertise application;
• Absence of an acoustic report and insufficient information provided with the application;
• Parking / Traffic;
• Location of external deck;
• Health impacts due to smoking;
• Crime, anti-social behaviour and security;
• Overlooking and privacy;
• Music;
• Odours from kitchen and vermin;
• High density living; and
• Property values.

The number of objections received for this application is consistent across Council’s record management systems.

Consultation meeting
A consultation meeting was held on 29 October 2018 attended by the permit applicant and 10 objectors.

The consultation meeting resulted in the amended hours for the sale and consumption of liquor as reported, after agreement by the attendees. The original proposed hours of were:

Internally
• 12pm – 1am, 7 days a week; and

Externally
• 12pm – 11pm, 7 days a week

However, as a result of this meeting no objections were withdrawn.

4. Recommendation
That Council resolve to issue a Notice of Decision to Grant a Planning Permit under the provisions of the Bayside Planning Scheme in respect of Planning application 2018/276/1 for the land known and described as 427A & 427B Hampton Street, Hampton, for the sale and consumption of liquor (in association with a food and drink premises) in accordance with the endorsed plans and subject to the following conditions from the standard conditions:

1) The layout of the uses on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.

2) The licenced area as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.

3) The sale of liquor may only occur within the licenced area as shown on the endorsed plan and may only occur between the following hours:

   Internally
   • Sunday to Thursday, 12pm - 11pm
   • Friday to Saturday, 12pm - 1am
Rear external courtyard

- 7 days a week 12pm - 9pm

No amendment to these hours of operation is to occur without the prior written consent of the Responsible Authority.

4) The predominant activity carried out on the premises (food and drink premises), must be the preparation and serving of meals for consumption on the premises.

5) All operations from the site (internally and externally) must comply with State Environment Protection Policy (SEPP) No. N-1 and/or N-2 and/or EPA Technical Guidelines.

Internal

6) No more than 135 patrons may be accommodated internally on the premises at any one time without the written consent of the Responsible Authority.

7) Tables and chairs are to be available for at least 75 per cent of patrons attending the premises at any one time.

External Courtyard

8) The external rear courtyard must be vacated by 9pm, 7 days a week.

9) No more than 35 patrons may be accommodated in the rear external area at any one time without the written consent of the Responsible Authority.

10) Tables and chairs are to be available for all patrons to the rear external area to discourage vertical drinking.

11) No external sound amplification equipment or loudspeakers are to be used for the purpose of announcement, broadcast, playing of music or similar purpose.

Permit Expiry

12) This permit will expire if one of the following circumstances applies:

a) The premises is not licenced under the Liquor Control Reform Act 1998 within two (2) years of the date of this permit.

b) The use is not started within two (2) years of the date of this permit.

c) The use is discontinued for a period of two (2) years or more.

In accordance with Section 69 of the Planning and Environment Act 1987, a request may be submitted to the Responsible Authority within the prescribed timeframes for an extension of the periods referred to in this condition.

Permit Notes

- This permit does not constitute any authority to carry out any building works.

- Unless a permit is not required under the Bayside Planning Scheme, signs must not be constructed or displayed without a further planning permit.

- Bayside City Council’s Local Law No. 2 – Neighbourhood Amenity, Part 12 – Schedule 2, clause 5.2.1, specifies that no sound amplification equipment, or like equipment may be erected or utilised in the outdoor seating area (Hampton Street frontage) to protect the amenity of the area.
5. Council Policy

Council Plan 2017-2021

Relevant objectives of the Council plan include:

- Where significant development is directed to specified and planned activity centres and strategic locations, providing a transition to surrounding residential areas and incorporating improved infrastructure and open space.
- With village-style activity centres, combining retail at ground floor with increased opportunities for apartment-style living above.
- Where a range of housing types is provided to accommodate the changing needs of the community, enabling people to age in place and providing opportunities for young adults and families to live and remain in the municipality.

Relevant strategies of the Council plan include:

- Make discretionary planning controls stronger by advocating for Council’s planning and urban design objectives to state government.

Bayside Planning Scheme

- Clause 10 Planning Policy Framework
- Clause 11 Settlement
- Clause 17 Economic Development
- Clause 21.02 Bayside Key Issues and Strategic Vision
- Clause 21.03 Settlement and Housing
- Clause 21.07 Economic Development
- Clause 21.09 Transport and Access
- Clause 21.11 Local Areas (Hampton Street Major Activity Centre)
- Clause 34.01 Commercial 1 Zone
- Clause 43.02 Design and Development Overlay (Schedule 12)
- Clause 45.06 Development Contributions Plan Overlay (Schedule 1)
- Clause 52.27 Licenced Premises
- Clause 65 Decision Guidelines
- Clause 52.06 Car Parking
- Clause 65 Decision Guidelines

6. Considerations

In considering this application, regard has been given to the State and Local Planning Policy Frameworks, the provisions of the Bayside Planning Scheme, objections received and the individual merits of the application.

6.1. Liquor Licence

The use of the land for the liquor licence is proposed to operate out of the existing ground floor commercial tenancies.

Associated with an ‘as-of-right’ section 1 use (as approved in Planning Permit 2011/359/2), consideration to the proposed trading hours is outside the gambit of the use of the site. However, Council can turn its mind to the restriction of hours associated with
the serving of alcohol.

In addition to the guiding principles of Bayside’s Alcohol Harm Minimisation Policy, Clause 52.27 sets out a number of Decision Guidelines to consider when determining the appropriateness of an application and is detailed below.

The Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies

Located in the Hampton Street Major Activity Centre and within an existing strip shop area, the subject site is contained to the ground floor of the existing five storey building.

The Planning Policy Framework (PPF) contains the relevant business objective at Clause 17.02 – Commercial of the Bayside Planning Scheme. The policy seeks to encourage development that meets the community’s needs for retail, entertainment, office and other commercial services, whilst providing new convenience facilities for the needs of the local population in new residential areas and within, or immediately adjacent to, existing commercial centres.

It is considered that the proposal will assist in providing a service to local residents in a convenient location whilst generating local employment opportunities and increasing the economic viability of the major activity centre by activating this section of Hampton Street.

The impact of the sale or consumption of liquor permitted by the liquor licence on the amenity of the surrounding area

Notwithstanding the residents that reside immediately above the subject site, the sites immediate and most sensitive interface is located to the western title boundary. This interface is the General Residential Zone, Schedule 2 (Clause 32.08) and the balance of the subject sites immediate boundaries are the Commercial 1 Zone.

Whilst there will be a level of increased activity and associated noise at the site, this cannot be attributed solely to the proposed liquor license. Additionally, the licensee will be required to manage aspects of the liquor license through a number of measures including the Responsible Serving of Alcohol that are managed outside the Planning Permit Process.

Restricting music to the internal spaces of the premises, the proposed SEPP N-1 and SEPP N-2 measures as outlined in the conditions contained in this report will ensure that music and noise generated from the premises will be kept within acceptable limits as defined by the Environmental Protection Agency (EPA).

Council policies seek to maintain the retail strip and street life on Hampton Street. Based on the comments provided by Council’s Social Planner and the proposed amended hours, subsequent to the consultation meeting, it is considered that the proposed liquor licence will enhance and contribute to the street life of the existing commercial shopping strip. On balance, it is considered that the issue of a liquor license for the site will have a negligible impact on the surrounding and nearby residential properties.

The impact of the hours of operation on the amenity of the surrounding area

The proposed hours sought for the sale and consumption of liquor:

Internally:
- Sunday to Thursday, 12pm - 11pm
- Friday to Saturday, 12pm - 1am

Rear external courtyard:
- 7 days a week 12pm - 9pm

The proposed hours are consistent with VicHealth evidence. The hours are not
associated with increased alcohol related harms and are considered unlikely to create undue detriment to the amenity of surrounding land users.

The hours are also consistent with the ordinary trading hours for a restaurant and cafe licence as suggested by the Victorian Commission for Gambling and Liquor Regulation, except the extended hours to 1am on Friday and Saturday nights. Council’s social planner has reviewed this request and considers it acceptable with no unforeseeable amenity impacts as a result.

Council’s Social Planner has reviewed the proposal and is satisfied that there is no evidence to suggest that the introduction of a Restaurant/Café Licence to the area will result in an increased risk of harm due to alcohol consumption based on the proposed hours of operation and the nature of surrounding venues.

The impact of the number of patrons on the amenity of the surrounding area

The sale and consumption of liquor is ancillary to the use of the site as a café/restaurant and the preparation and serving of food.

Notwithstanding, a number of conditions are proposed on the permit to discourage vertical drinking that are often found in other venues that change in nature over the course of a day.

Critical to the amenity of the dwelling located to the western title boundary, no more than 35 patrons are to be accommodated to the external rear courtyard whom must be seated at all times. Additionally, no music is to be played in this area and the rear courtyard is required to be vacated by 9pm, 7 days a week to minimise amenity impacts to the residential properties located directly adjacent to this boundary.

The cumulative impact of any existing licensed premises and the proposed licensed premises on the amenity of the surrounding area

Pursuant to Bayside’s Alcohol Harm Minimisation Policy, locations at risk of harms associated with cumulative impact have been identified as three or more licensed premises within a radius of 100 metres of the proposed land; or 15 or more licences premises (including the proposed premises) within the a radius of 500 metres from the subject land.

There are an estimated 36 liquor licences within 500 metres of the proposed venue, exceeding the recommended threshold of increased alcohol related harms by 20 licences.

Whilst on face value, the number of additional licences seems excessive, the cumulative impact is varied by the variety of licenses and venue types in the immediate vicinity.

A marked absence of destination points associated with licensed venues clustered near bars associated with ‘pre-loading’, and an absence of late night, high capacity venues within close proximity to the venue reduce cumulative amenity impacts.

A number of existing liquor licences in Hampton Street are associated with restaurants and cafes whose predominant activity, at all times, is the preparation and serving of meals and are largely a reflection of the municipalities’ demographics and destination value.

It is considered that the consent for the sale and consumption of liquor will not negatively impact upon the amenity of the surrounding area and is considered acceptable.

6.2. Car parking

Clause 52.06 – Car Parking, of the Bayside Planning Scheme requires the provision of car parking associated with the new use of the liquor license to be provided to the satisfaction of Council.
As previous planning permit 2011/359/2 approved the car parking reduction of one car space for the food and drink premises, any further reduction is not triggered by this application for a liquor license which continues to benefit from the recent approval. Importantly, the liquor licence is ancillary to the approved food and drink premises and will not alter the nature and intensity of the land use for which has been approved.

Notwithstanding that a liquor license itself has no car parking requirement pursuant to Clause 52.06-6, were a reduction in car spaces required, Amendment VC148 modified these triggers and car parking rates.

Resultantly, any car parking reductions associated with a new use within an existing building, is exempt from any requirement of a planning permit to reduce the required number of car parking spaces provided that following requirements are met:

- The building is in the Commercial 1 Zone, Commercial 2 Zone or Activity Centre Zone.
- The gross floor area of the building is not increased.
- The reduction does not exceed 10 car parking spaces.
- The building is not in a Parking Overlay with a schedule that allows a financial contribution to be paid in lieu of the provision of the required car parking spaces for the use.

As the proposal entirely falls within the above exemption because the site is within a commercial zone, the floor area is not being increased, the proposed reduction of car parking is one car space and there is no parking overlay, it is considered that the use of the land for the sale and consumption of liquor is acceptable and no planning permit is required for a car parking reduction.

6.3. Objector issues not already addressed

Failure to correctly advertise application

The statutory notice requirements of Section 52 of the Planning and Environment Act 1987 were correctly undertaken.

A sign was erected to the site frontage and letters were sent to all adjoining owners and occupiers.

Notice and review rights do not extend to the proposed land use for a food and drink premises as the use of the land is ‘as of right’ under the zone provisions.

Absence of an acoustic report and insufficient information provided with the application

Sufficient information to enable an informed view of the application has been made available for viewing at Council offices as part of the notification process, which has been carried out in accordance with Section 57 of the Planning and Environment Act 1987.

The submission of an acoustic report is not a statutory requirement for an application for a liquor license and no live music is proposed to be undertaken with the use.

The State Environment Protection Policy (SEPP) No. N-1 and/or N-2 and/or EPA Technical Guidelines are recommended to be included as a condition on any permit issued to minimise noise emissions from the premises to the adjoining residential area.

Additionally, pursuant to Clause 3(b)(i) of Section 9(a) the Liquor Control Reform Act 1998, the licensee of any Restaurant and cafe licence must not permit the live performance of any musical works.

Location of external deck

The location of the external deck to the rear of the subject site has been consistently shown on all of the development plans as approved in Planning Permit 5/2011/359/2 and
associated with the commercial ground floor tenancies. The proposal does not include any further building work in this space.

Health impacts due to smoking

Smoking is not a behaviour that is governed by the Planning and Environment Act 1987. The Tobacco Amendment Act 2016 governs smoking in cafes and restaurants. This legislation also covers outdoor dining areas where the consumption of food is provided on a commercial basis. The legislation prohibits smoking in all dining areas. Critically, the conditions as recommended on the planning permit ensure that the use of the outdoor area is confined to dining, which prohibits the use of the external outdoor space as a drinking area that may in turn allow smoking.

Crime, anti-social behaviour and security

There is no evidence to link an application of a liquor license associated with a food and drink premises with increased crime rates or reduced safety for residents.

Overlooking and privacy

Overlooking and privacy were matters considered in the original planning permit 2011/359/2 for which primary consent of the development and use of the site was granted.

Odours from kitchen and vermin

Mechanical exhausts systems are required for most cooking equipment and food premises must have sufficient natural or mechanical ventilation to effectively remove fumes, smoke, steam and vapours and must comply with Australian Standard AS 1668.2 - The use of mechanical ventilation and air-conditioning in buildings.

Although odours from the kitchen and vermin is not a valid consideration in the assessment for the use of the land for the sale and consumption of liquor, the inappropriate siting of flues and vents may result in the potential for cooking smells and other odours to impact on adjoining residential amenity.

A town planning permit may be required for the installation and to assess the appropriateness of the location of any flue if not already approved, to ensure minimal impacts of the discharge and emission of odour from the premises.

High Density living

The development of the subject site for a five storey building was approved in Planning Permit 5/2011/359/2. The construction of the five storey building (notwithstanding the internal fitout of the commercial tenancy) has been completed as evidenced by the photographs in Attachment 2.

Property values

The Victorian Civil and Administrative Tribunal has consistently found that property values are speculative and not a planning matter. Fluctuations in property prices are not a relevant consideration in assessing an application under the provisions of the Planning and Environment Act 1987, or the Bayside Planning Scheme.

Support Attachments

1. Red Line Plan ↓
2. Site and Surrounds Imagery ↓
ATTACHMENT 2
SITE AND SURROUNDS IMAGERY

Figure 1 Aerial overview of the site and surrounds.
NB: 5 objections are located at 45 Grenville Street.
7 objections are registered at the subject site of the mixed use building.
4 objectors are not located within the vicinity of the map above.

<table>
<thead>
<tr>
<th>Legend</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject site</td>
</tr>
<tr>
<td>Objector(s)</td>
</tr>
</tbody>
</table>
Figure 2 View north towards the site from the southern entrance of Burgess Street from Beach Road.

Figure 4 View toward the site frontage from the west, showing the driveway sloping up into the site.
1. Application details

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Approve the secondary consent amended plans</th>
</tr>
</thead>
<tbody>
<tr>
<td>Street address</td>
<td>6 Brooklyn Place, Sandringham</td>
</tr>
<tr>
<td>Application No.</td>
<td>2015/344/2</td>
</tr>
<tr>
<td>Applicant</td>
<td>Tenergy Pty Ltd</td>
</tr>
<tr>
<td>Title/Covenant</td>
<td>The title is not subject to any restrictive covenants.</td>
</tr>
<tr>
<td>Date application received</td>
<td>20 September 2018</td>
</tr>
<tr>
<td>Zoning</td>
<td>Neighbourhood Residential Zone (Schedule 3)</td>
</tr>
<tr>
<td>Overlays</td>
<td>Design and Development Overlay (Schedule 1)</td>
</tr>
<tr>
<td></td>
<td>Development Contributions Plan Overlay (Schedule 1)</td>
</tr>
<tr>
<td>Application plans and documents TRIM Ref No</td>
<td>DOC/18/226877</td>
</tr>
</tbody>
</table>

Proposal

Planning Permit 2015/344/2 allows:

Construction of a double storey dwelling on a lot less than 500 square metres.

The application seeks approval to amend the endorsed plans pursuant to condition 2 of Planning Permit 2015/344/2 on a lot with an area of 397 square metres.

The proposed amendments are as follows:

- Fireplace flue now shown on all elevations; and
- West facing ensuite, full height obscure glazed window installed at ground floor.

An aerial image of the site and surrounds are provided at Attachment 1.

The development plans are provided at Attachment 2.

History

Planning Permit 2015/344/1 was issued by Council on 16 March 2016, which allowed for “construction of a double storey dwelling on a lot less than 500 square metres and variation of the building envelope”.

The Victorian Civil and Administrative Tribunal (VCAT) varied conditions of the permit on 20 February, 2017 by amending conditions 1(b), (e), and (g); adding condition 1(i) and amending condition 12.

An extension of time for commencement and completion date on the permit by 2 years was granted by Council 28 February, 2018.

An amendment to the permit to change the preamble to “Construction of a double storey dwelling on a lot less than 500 square metres” and deletion of conditions 1(g) and 12 was granted on 28 February 2018 by Council.
Plans were endorsed by Council 5 March, 2018 (Attachment 3).

2. Planning controls
   
   Planning Permit requirements
   
   There are no primary permit triggers to consider as part of this application. The application seeks to amend the endorsed plans pursuant to the secondary consent provisions afforded by Condition 2 of Planning Permit 2015/344/2.

3. Stakeholder consultation
   
   External referrals
   
   There are no external referrals required to be made in accordance with Clause 66 of the Bayside Planning Scheme.
   
   Internal referrals
   
   There are no referrals to Council departments required to be made for this application.
   
   Public notification
   
   Applications made in accordance with the secondary consent provisions are not subject to the notice requirements of Section 52 of the Planning and Environment Act 1987. Therefore, the amended plans have not been advertised.

4. Recommendation
   
   That Council resolve to:
   
   1. Approve the amended plans in accordance with secondary consent provisions of Planning Permit 2015/344/2.
   
   2. Plans identified as Elevations (Sheet No. 7, 8 and 15 of 16), prepared by TRENERGY be endorsed. These plans are to be read in conjunction with the plans previously endorsed on 5 March, 2018.
   
   3. Plans labelled as sheet 5, 6, and 8 endorsed on 5 March, 2018 be superseded.

5. Council Policy
   
   There are no primary Council policy matters to consider as part of the request to amend plans pursuant to the secondary consent provisions.

6. Considerations
   
   The Victorian Civil and Administrative Tribunal have set out, on a number of occasions, the principles, or tests, of Secondary Consent (e.g. Westpoint Corporation P/L v Moreland CC (2005) and Oz Property Group P/L v Moonee Valley CC (2014)).
   
   The tests include the following:

   Does the proposed amendment result in a transformation of the proposal?

   The proposed change is considered to be minor in nature and will have no impact on the amenity of adjoining properties and will not cause material detriment to any third parties. The proposed changes do not conflict with any permit conditions, objections raised in the application for which primary consent was granted for, and does not result in a transformation of the proposal.
   
   The changes are inconsequential from a planning perspective.
Does the proposed amendment authorise something for which primary consent is required under the planning scheme?

The amendment sought under this application is considered to be consistent with the proposal and does not authorise something for which primary consent is required for under the Bayside Planning Scheme.

Is the proposed amendment of consequence having regard to the purpose of a planning control under which the permit was granted?

Having regard to the development and the purpose of the planning controls under which the permit was granted, the proposed amendment is considered inconsequential as there has been no material change to the nature of the planning controls and policies affecting the land. It is considered that the changes are appropriate, will not detrimentally impact on the amenity of adjoining properties nor cause material detriment to any third parties.

Is the proposed amendment contrary to a specific requirement or condition of the permit?

The proposed amendments to the endorsed plans will not contravene any specific requirement or condition of the permit and remains compliant with the relevant objectives and standards of the Bayside Planning Scheme.

Support Attachments

1. Site and Surrounds
2. Secondary Consent Amended Plans
3. Endorsed Plans
4. Planning Permit
**Site and Surrounds**

*Figure 1 Aerial overview of the site and surrounds*

<table>
<thead>
<tr>
<th>Legend</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject site</td>
</tr>
</tbody>
</table>
Item 4.3 – Matters of Decision
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Item 4.3 – Matters of Decision
PLANNING PERMIT NO: 5/2015/344/2

Address of the Land: 6 Brooklyn Place SANDRINGHAM

The Permit Allows: Construction of a double storey dwelling on a lot less than 500 square metres in accordance with the endorsed plans and subject the following conditions.

The Following Conditions Apply To This Permit:

1. Before the development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the plans Council date stamped 16 June 2015 but modified to show:
   a) A Landscape plan in accordance with Condition 5.
   b) The windows to the library and bedroom 2 in the northern facade to comply with Standard A15 of Clause 54.04-6 of the Bayside Planning Scheme.
   c) Screening to the east side of the first floor balcony off bedroom 3 in accordance with Standard A15 of the Bayside Planning Scheme.
   d) Screening to the west side of the first floor balcony off the library in accordance with Standard A15 of the Bayside Planning Scheme.
   e) The layout and elevations of the dwelling at first floor level to be in accordance with the plans prepared by Trenergy, Job no. 214 TP, Version Oct.16, VCAT, Issue C in relation to the length and height of the western wall at first floor level; the siting and setbacks of the raised roof above the library; and the provision of privacy screening along the western side of balcony 2 to a height of 1.7m above floor level.
   f) A schedule of construction materials, external finishes and colours to the satisfaction of the Responsible Authority.
   g) **DELETED**
   h) Elevation details of the front fence and gate.
   i) The siting of balcony 2 amended to reflect the change to the length of the western wall at first floor level in accordance with condition 1e) but with no increase to the depth and area of the balcony.

2. The development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.

3. No plant, equipment, services or architectural features other than those shown on the endorsed plans are permitted above the roof level of the buildings without the written consent of the Responsible Authority.

4. The walls on the boundary of the adjoining properties shall be cleaned and finished to the satisfaction of the Responsible Authority.

Date issued: 16 March 2016
Date amended: 28 February 2018

Signature for the Responsible Authority

Planning and Environment Regulations 2005 Form 4
Note: Under Part 4, Division 1A of the Planning and Environment Act 1987, a permit may be amended. Please check with the responsible authority that this permit is the current permit and can be acted upon.
5. Before the development starts, a landscape plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit. The plan must be drawn to scale with dimensions and three copies must be provided. The plan must the following:

a) A survey including botanical names of all existing vegetation to be retained and/or removed.

b) Buildings and trees including botanical names on neighbouring properties within three metres of the boundary.

c) Details of surface finishes of pathways and driveways.

d) A planting schedule of all proposed trees, shrubs and ground covers, including botanical names, common names, pot sizes, sizes at maturity, and quantities of each plant. All species selected must be to the satisfaction of the Responsible Authority.

e) Landscaping and planting within all open areas of the site including increased landscaping within the front setback.

The landscape plan must also indicate that an in-ground irrigation system is to be provided to all landscaped areas.

6. Before the occupation of the development starts or by such later date as is approved by the Responsible Authority in writing, the landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of the Responsible Authority.

7. The landscaping shown on the endorsed plans must be maintained to the satisfaction of the Responsible Authority, including that any dead, diseased or damaged plants are to be replaced.

8. Before the commencement of works, detailed plans to the satisfaction of the Responsible Authority must be submitted to and be approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be in accordance with the guidelines outlined in Clause 22.08 of the Bayside Planning Scheme and must show:

a) The type of water sensitive urban design stormwater treatment measures to be used;

b) The location of the water sensitive urban design stormwater treatment measures in relation to buildings, sealed surfaces and landscaping areas;

c) Design details of the water sensitive urban design stormwater treatment measures, including cross sections;

These plans must be accompanied by a report from an industry accepted performance measurement tool, which details the treatment performance achieved and demonstrates the level of compliance with the Urban Stormwater Best Practice Environmental Management Guidelines, CSIRO 1999.

The water sensitive urban design stormwater treatment system as shown on the endorsed plan must be retained and maintained at all times in accordance with the Urban Stormwater Best Practice Environmental Management Guidelines, CSIRO 1999, to the satisfaction of the Responsible Authority.
9. The subject site must be drained to the satisfaction of Bayside Council's Engineering Services department. The applicant may apply for legal point of discharge and local drain information, or carry out on site verification.

10. Before the development begins, three sets of detailed plans indicating the method of stormwater discharge to the nominated Legal Point of Discharge (and Stormwater Detention Systems where applicable) must be lodged with Council's Engineering Services department for approval.

11. The driveway / parking areas / paved courtyards / paths and ' pervious' pavements must be graded / drained to prevent stormwater discharge onto the front footpath and into adjacent properties.

12. **DELETED**

13. This permit will expire if one of the following circumstances applies:
   a) The development is not started within two years of the date of this permit.
   b) The development is not completed within four years of the date of this permit.

   The Responsible Authority may extend the periods referred to above if a request is made in writing:
   - Before the permit expires; or
   - Within 6 months afterwards if development has not commenced; or
   - Within 12 months afterwards if the development has lawfully commenced.

**Permit Notes**

Building approval must be obtained prior to the commencement of the above approved works. Prior to commencement of any building works, an Asset Protection Application must be taken out. This can be arranged by calling Asset Protection Administrator, Mon-Fri 9:00am to 1:00pm on 9599 4638.

**Permit Notes**

<table>
<thead>
<tr>
<th>Date Amended</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>20 February 2017</td>
<td>As per VCAT's order P988/2016 dated 20 Feb'2017.</td>
</tr>
<tr>
<td></td>
<td>• Condition 1b) is amended</td>
</tr>
<tr>
<td></td>
<td>• Condition 1e) is amended</td>
</tr>
<tr>
<td></td>
<td>• Condition 1g) is amended</td>
</tr>
<tr>
<td></td>
<td>• A new condition is included 1 (i)</td>
</tr>
<tr>
<td></td>
<td>• Condition 12 is amended</td>
</tr>
<tr>
<td>28 February 2018</td>
<td>Extension of time granted to allow development to commence by 16 March 2020 and be completed by 16 Mach 2022.</td>
</tr>
</tbody>
</table>
 Amendment to the permit under Section 72 of the Planning and Environment Act 1987:
- Change the permit preamble to “Construction of a double storey dwelling on a lot less than 500 square metres.”
- Delete conditions 1g) and 12.

THIS PERMIT SUPERSEDES ALL OTHER PERMITS ISSUED.
FORM 4

PLANNING PERMIT

IMPORTANT INFORMATION ABOUT THIS PERMIT

WHAT HAS BEEN DECIDED?
The Responsible Authority has issued a permit.
(Note: This is not a permit granted under Division 5 or 6 of Part 4 of the Planning and Environment Act 1987.)

WHEN DOES A PERMIT BEGIN?
A permit operates:
* from the date specified in the permit; or
* if no date is specified, from:
  (i) the date of the decision of the Victorian Civil and Administrative Tribunal, if the permit was issued at the
direction of the Tribunal;
or
  (ii) the date on which it was issued, in any other case.

WHEN DOES A PERMIT EXPIRE?
1. A permit for the development of land expires if:
   * the development or any stage of it does not start within the time specified in the permit; or
   * the development requires the certification of a plan of subdivision or consolidation under the Subdivision Act
     1968 and the plan is not certified within two years of the issue of the permit, unless the permit contains a
different provision; or
   * the development or any stage is not completed within the time specified in the permit, or, if no time is specified,
     within two years after the issue of the permit or in the case of a subdivision or consolidation within 5 years of
     the certification of the plan of subdivision or consolidation under the Subdivision Act 1968.
2. A permit for the use of land expires if:
   * the use does not start within the time specified in the permit, or if no time is specified, within two years after the
     issue of the permit; or
   * the use is discontinued for a period of two years.
3. A permit for the development and use of land expires if:
   * the development or any stage of it does not start within the time specified in the permit; or
   * the development or any stage of it is not completed within the time specified in the permit, or, if no time is
     specified, within two years after the issue of the permit; or
   * the use does not start within the time specified in the permit, or, if no time is specified, within two years after the
     completion of the development; or
   * the use is discontinued for a period of two years.
4. If a permit for the use of land or the development and use of land or relating to any of the circumstances
   mentioned in section 6A(2) of the Planning and Environment Act 1987, or to any combination of use,
development or any of those circumstances requires the certification of a plan under the Subdivision Act 1968,
unless the permit contains a different provision:
   * the use or development of any stage is to be taken to have started when the plan is certified; and
   * the permit expires if the plan is not certified within two years of the issue of the permit.
5. The expiry of a permit does not affect the validity of anything done under that permit before the expiry.

WHAT ABOUT APPEALS?
* The person who applied for the permit may apply for a review of any condition in the permit unless it was granted
  at the direction of the Victorian Civil and Administrative Tribunal, in which case no right of review exists.
* An application for review must be lodged within 60 days after the permit was issued, unless a notice of decision to
  grant a permit has been issued previously, in which case the application for review must be lodged within 60 days
  after the giving of that notice.
* An application for review is lodged with the Victorian Civil and Administrative Tribunal.
* An application for review must be made on an Application for Review form which can be obtained from the
  Victorian Civil and Administrative Tribunal, and be accompanied by the applicable fee.
* An application for review must state the grounds upon which it is based.
* An application for review must also be served on the Responsible Authority.
* Details about applications for review and the fees payable can be obtained from the Victorian Civil and
  Administrative Tribunal.
4.4 4 BEMMERSYDE AVENUE, BRIGHTON
SUPPORT THE GRANT OF A PLANNING PERMIT (CONSENT ORDER)
APPLICATION NO: 2018/146/1  WARD: NORTHERN

City Planning & Community Services - Statutory Planning
File No: PSF/15/8755 – Doc No: DOC/18/284631

In accordance with Section 68(b) of the Governance Local Law No: 1 - 2013, a person is not permitted to present to this item as it is a report summarising a decision already made by another body. In addition, the Consent Order is the outcome from the VCAT Compulsory Conference where parties established an agreed position.

1. Application details

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Support the Grant of a Planning Permit (VCAT Consent Order)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicant</td>
<td>Planning and Property Partners Pty Ltd</td>
</tr>
<tr>
<td>Title/Covenant/S173 Agreement</td>
<td>The site is subject to restrictive covenant 1501885. The covenant does not restrict the proposed development.</td>
</tr>
<tr>
<td>Date application received</td>
<td>20 March, 2018</td>
</tr>
<tr>
<td>Current statutory days</td>
<td>N/A</td>
</tr>
<tr>
<td>Zoning</td>
<td>General Residential Zone (Schedule 2)</td>
</tr>
</tbody>
</table>
| Overlays       | Design and Development Overlay (Schedule 11)  
                 Development Contributions Plan Overlay (Schedule 1) |
| Site area      | 1,979m²                                                      |
| Number of outstanding objections | Four (4) |
| Is a Development Contribution Levy applicable? | Yes - $12,120 would be required Catchment area 11A |
| Is the site located within an area of cultural heritage sensitivity? | Yes; however, it was determined by VCAT that a CHMP was not required. |

Purpose
The purpose of this report is to endorse a consent position reached by all parties at a Compulsory Conference at VCAT on 27 November 2018.

History
The application sought the construction of a three storey residential development comprising ten (10) dwellings over basement parking, with a front fence exceeding 1.5 metres in height, within a Design and Development Overlay, Schedule 11.

The application was refused under delegation, with the grounds of refusal included at Attachment 1.

The Delegate Report is provided at Attachment 2.

The advertised (Decision) plans are provided at Attachment 3.
Key details of the assessed application were as follows:

- Provision of ten (10) dwellings (all comprising 3 bedrooms)
- Three storey building with a height of 10.99m (approx.)
- Provision of basement parking (26 spaces, including 2 visitor spaces) with access from Bemmersyde Avenue.

**VCAT**

The permit applicant subsequently lodged an application against Council’s Refusal to grant a Planning Permit with VCAT pursuant to Section 77 of the *Planning and Environment Act, 1987*. The application was heard at a Compulsory Conference (mediation) on 27 November 2018. One (1) objector was party to the appeal however unconditionally withdrew from the VCAT proceedings on 26 November 2018 (prior to the Compulsory Conference).

The permit applicant provided ‘without prejudice’ plans and renders in preparation for the Compulsory Conference, which improved the presentation of the built form to the streetscape and increased post-construction landscaping throughout the site. These plans and renders are included at Attachment 4. The key changes of the ‘without prejudice’ plans are:

- Increase of the breaks within the front (north-western) façade at first and second floor;
- Variation in the glass plank materiality placement throughout the facades;
- Softening of the material palette;
- Reduction of the upper storey parapet;
- All other changes as a result of the changes to floor plans and elevation plans explained above.

Further to the without prejudice plans, at the Compulsory Conference, the permit applicant agreed to:

- Increase the provision of landscaping within the front setbacks to include taller canopy tree planting;
- Softening of the material palette.

The permit applicant and Council Officers (the sole party to the proceeding) agreed to a consent position. If the consent order is not endorsed by the Planning and Amenity Committee, the application will proceed to a three day hearing commencing on 18 February 2019.

**2. Recommendation**

That Council resolve to:

**Support the Grant of a Planning Permit** under the provisions of the Bayside Planning Scheme in respect of Planning application 2018/146/1 for the land known and described as 4 Bemmersyde Avenue, Brighton for the construction of a three storey building consisting of ten (10) dwellings with basement parking and a front fence in excess of 1.5 metres in the Design and Development Overlay in accordance with the endorsed plans and subject to the following conditions:

1. Before the development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part
of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must generally be in accordance with the advertised plans prepared by Jackson Clements Burrows Architects but modified to show:

a) Alteration to all floor plans and elevations consistent with drawings SK-01, SK-02 and SK-03 prepared by Jackson Clements Burrows dated 27 November 2018.

b) Relocation of the swimming pool for apartment 0.04 so that it does not encroach into the north-east drainage easement.

c) The basement ramp to show all intermediate levels and headroom of 2.2m in accordance with AS2890.1.

d) Increase the gap between the visitor parking space and the lift to 3m to allow a garbage vehicle to turn around and exit in a forward manner without encroaching into the visitor parking space.

e) The new vehicle crossing to be constructed with a separator with the adjoining crossing and removal of redundant crossing.

**General conditions**

2. The layout of the site and the size, levels, design and location of buildings and works shown on the endorsed plans must not be modified for any reason (unless the Bayside Planning Scheme specifies that a permit is not required) without the prior written consent of the Responsible Authority.

3. Before the occupation of the site commences or by such later date as is approved in writing by the Responsible Authority, all buildings and works must be carried out and completed to the satisfaction of the Responsible Authority.

4. No plant, equipment, services or architectural features other than those shown on the endorsed plans are permitted above the roof level of the building/s without the written consent of the Responsible Authority.

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

6. The walls on the boundary of the adjoining properties shall be cleaned and finished to the satisfaction of the Responsible Authority.

**Water Sensitive Urban Design**

7. The water sensitive urban design stormwater treatment system as shown on the endorsed plans must be retained and maintained at all times in accordance with the Urban Stormwater - Best Practice Environmental Management Guidelines, CSIRO 1999, to the satisfaction of the Responsible Authority.

**Landscaping**

8. Before the development starts, a detailed landscape plan to the satisfaction of the Responsible Authority must be submitted to and be endorsed by the Responsible Authority. The plan must be drawn to scale with dimensions and three copies must be provided. The plan must be generally in accordance
with the advertised plans prepared by Eckersley Garden Architecture Pty Ltd but modified to show:

a) Additional taller canopy tree planting within the front setback adjacent to both entrances to the satisfaction of the Responsible Authority.

b) Sufficient planting areas to facilitate the future growth of all proposed canopy tree plantings, including both above and below ground parts (canopies and roots).

c) No canopy tree plantings located within service easements.

d) No grade changes within the TPZ of neighbouring trees where garden beds currently exist.

e) Further details on proposed planting boxes for Levels 2 and 3 including:

   o A cross section view of construction detail and irrigation system proposed.

9. Before the occupation of the development, the landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of the Responsible Authority.

10. The landscaping shown on the endorsed plans must be maintained to the satisfaction of the Responsible Authority, including that any dead, diseased or damaged plants are to be replaced.

**Tree Management and Protection Plan**

11. Before the development starts, including any related demolition or removal of vegetation, a Tree Management Plan (report) and Tree Protection Plan (drawing), to the satisfaction of the Responsible Authority, must be submitted to and be endorsed by the Responsible Authority.

12. The Tree Management Plan (report) must be specific to the site, be in accordance with Australian Standard: Protection of Trees on Development Sites AS4970-2009 and include:

   - Details of Tree Protection Zones for all trees to be retained on the site and for all trees on neighbouring properties where any part of the Tree Protection Zone falls within the subject site, including all Bayside City Council street trees to be retained;
   - Comment on methods to be utilised and instruction on how to deploy them;
   - Comment on when the protection measures are to be deployed;
   - Comment on when the protection measures can be modified;
   - Process that will be followed if any damage occurs to a tree;
   - Process that will be followed if construction works require alteration to protection measures outlined in report; and
   - Stages of development at which inspections will occur.

Any proposed alteration to the plan must be assessed by the site arborist and can only occur following the approval of the site arborist. Such approval must
be noted and provided to the Responsible Authority within 28 working days of a written request.

Any damaged tree must be inspected by the site arborist without any delay and remedial actions undertaken. Such actions must be documented.

The Tree Protection Plan must be drawn to scale and show the location of all tree protection measures to be utilised.

If tree protection measures are proposed to be changed during the development, one plan for each stage of tree protection measures must be submitted.

13. All protection measures identified in the Tree Management and Protection Plans must be implemented, and development works undertaken on the land must be undertaken in accordance with the Tree Management and Protection Plans, to the satisfaction of the Responsible Authority.

14. Before the development starts, including demolition or removal of vegetation, the name and contact details of the project arborist responsible for implementing the Tree Management Plan must be submitted to the Responsible Authority.

**Drainage**

15. Before the development starts, the permit holder must apply to Council for the Legal Point of Discharge for the development from where storm-water is drained under gravity to the Council network.

16. Before the development, detailed plans indicating, but not limited to, the method of storm-water discharge to the nominated Legal Point of Discharge (and On-Site Detention System where applicable) must be submitted to and approved by Council’s Infrastructure Assets Department.

17. Before Council records indicate that there is a 1.22m wide drainage easement along the north east and east property boundary as well as 1.37m wide drainage easement along south property boundary as indicated on the drawings provided. The plans indicate that a swimming pool with decking shall be constructed over the north east easement. A swimming pool cannot be built over an easement; however, decking can be built over an easement. Any proposal to encroach into the easement will require Build Over Easement consent from the Responsible Authority/Authorities.

**Waste Management Plan**

18. All Waste Management measures on the site must be carried out in accordance with the endorsed Waste Management Plan to the satisfaction of the Responsible Authority.

**Construction Management Plan**

19. Before the commencement of works, a Construction Management Plan (CMP), to the satisfaction of the Responsible Authority, must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit and shall thereafter be complied with. The CMP must specify and deal with, but not be limited to the following as applicable:

a) A detailed schedule of works including a full project timing.
b) A traffic management plan for the site, including when or whether any access points would be required to be blocked, an outline of requests to occupy public footpaths or roads, or anticipated disruptions to local services, preferred routes for trucks delivering to the site, queuing/sequencing, excavation and swept-path diagrams.

c) The location for the parking of all construction vehicles and construction worker vehicles during construction.

d) Delivery of materials including times for loading/unloading, unloading points, expected frequency and details of where materials will be stored and how concrete pours would be managed.

e) Proposed traffic management signage indicating any inconvenience generated by construction.

f) Fully detailed plan indicating where construction hoardings would be located.

g) A waste management plan including the containment of waste on site: disposal of waste, stormwater treatment and on-site facilities for vehicle washing.

h) Containment of dust, dirt and mud within the site and method and frequency of clean up procedures in the event of build-up of matter outside the site.

i) Site security.

j) Public safety measures.

k) Construction times, noise and vibration controls.

l) Restoration of any Council assets removed and/or damaged during construction.

m) Protection works necessary to road and other infrastructure (limited to an area reasonable proximate to the site).

n) Remediation of any damage to road and other infrastructure (limited to an area reasonably proximate to the site).

o) An emergency contact that is available for 24 hours per day for residents and the Responsible Authority in the event of relevant queries or problems experience.


q) All contractors associated with the construction of the development must be made aware of the requirements of the Construction Management Plan.

r) Details of crane activities, if any.

**Development Contribution Condition**

20. Prior to commencement of development, the permit holder must pay a drainage levy in accordance with the amount specified under the Bayside Drainage Development Contributions Plan. The levy amount payable will be adjusted to include the Building Price Index applicable at the time of payment.
The levy payment shall be submitted to Council with the Bayside Drainage Contributions Levy Charge Sheet and it must include the Building Price Index applicable at the time of payment.

21. This permit will expire if one of the following circumstances applies:
   a) The development is not started within three years of the date of this permit.
   b) The development is not completed within five years of the date of this permit.

In accordance with Section 69 of the Planning and Environment Act 1987, a request may be submitted to the Responsible Authority within the prescribed timeframes for an extension of the periods referred to in this condition.

3. Amended Plan Assessment

This report details how the amended plans at Attachment 4 respond to the previous Grounds for Refusal and relevant planning policies.

1. The proposal fails to respond to the objectives of Clause 22.06 (Neighbourhood Character, Precinct B2) of Bayside Planning Scheme, on the following grounds:
   a) The development fails to respond to the existing and preferred neighbourhood character for this precinct.
   b) The scale, siting and boundary setbacks of the proposal fail to complement the built form character, resulting in an outcome which dominates the streetscape.
   c) The high front fence profile fails to maintain the openness of the streetscape and views into front gardens.

The plans tabled at the Compulsory Conference reflect the discussions and suggestions made by Council officers to the architects to rectify the issues raised on the decision plans. The continuity of the visual mass and bulk as viewed from the street was of concern, especially as the upper level of the building had a protrusive parapet form which exacerbated the height and breadth.

The without prejudice plans, including extension of the visual breaks in the form with the use of light weight, glazed panelling within the curved breaks strengthens the visual break within the built form and allowing the development to present as three separate volumes/modules to Bemmersyde Avenue. Further, the reduction of the upper level parapet will reduce the prominence of the upper level so as to be visually recessive behind the building’s double storey podium level.

The addition of trees and deep soil planting where possible and the careful design and management of the open spaces within the development has enhanced the scheme. This has been attained through a further developed concept Landscape Plan providing a multi-layered landscape system and a clear hierarchical structure of spaces, from communal to private, should provide a good level of amenity for external and internal living spaces and enhance the visual quality of the development as a whole.

2. The proposal fails to provide an appropriate response to the design objectives and decision guidelines of the Design and Development Overlay Schedule 11 of the Bayside Planning Scheme.

The second ground for refusal relates to excess height, in particular, the provision of the prominent second level when combined with the visual mass of the built form when
presenting to Bemmersyde Avenue and fails to achieve the design Objectives of the DDO11.

The improvements made to the design, being the breaks in the building facing the site’s frontage, the recessing of the North West corner of the building and the reduction of the upper level parapet ensure a vast improvement to the built form’s presentation to the streetscape. The proposal is also less prominent to the adjoining properties.

Further, the paneling finish within the breaks and upper level have been amended to the glass plank paneling. The recessing of the upper level via reduction of the parapet, combined with the visual breaks and material alterations throughout the first and second level facades, results in a combined recessive built form which will acceptably absorb the upper level, and considered acceptable in this instance.

3. The proposal fails to comply with the Objectives and Standards of Clause 55 of the Bayside Planning Scheme, in particular:
   a) Standard B1 – Neighbourhood Character
   b) Standard B3 – Dwelling Diversity
   c) Standard B6 – Street Setback
   d) Standard B13 – Landscaping
   e) Standard B17 – Side and rear setbacks
   f) Standard B21 – Overshadowing Open Space
   g) Standard B28 – Private Open Space
   h) Standard B31 – Detailed Design
   i) Standard B32 – Front Fences
   j) Standard B47 – Room Depth

The amendments sought through the without prejudice plans and the agreed amendments at the Compulsory Conference, result in a form which provides an improved design response to the immediate context, including through the use of materiality, provision of breaks within the form and provision of greater canopy tree landscaping.

The alterations to the floor plans, with associated internal reconfigurations, will allow for improved internal amenity of the proposed dwellings, including improving the pedestrian entrances, will provide for improved internal amenity for occupants and visitors of the proposed development.

Consequently, when considered on balance with the vastly improved presentation to the streetscape, it is considered the amendments will acceptably satisfy the Objectives and Standards of Clause 55 of the Bayside Planning Scheme.

4. The proposal fails to comply with the purpose of Clause 32.09 of the Bayside Planning Scheme, in particular:
   a) The built form fails to respect identified neighbourhood character and landscape characteristics.

The purposes of the General Residential Zone are, amongst others:

- To encourage development that respects the neighbourhood character of the area.
- To encourage a diversity of housing types and housing growth particularly in locations offering good access to services and transport.
- To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.
As outlined previously in this report, the without prejudice plans provide an improved response to character of the street. The provision of breaks within the building’s façade with the use of light weight, glazed panelling within the curved breaks strengthens the visual breaks within the built form and allowing the development to present as three separate volumes/modules to Bemmeryde Avenue.

Further, the reduction of the upper level parapet will reduce the prominence of the upper level so as to be visually recessive behind the building’s double storey podium level. As such, the proposal is deemed to acceptably respond to the neighbour character whilst providing an acceptable level of housing growth within a location proximate to services and transport.

5. **The proposal is an overdevelopment of the site**

As described above, the changes to the plans address the previous grounds for refusal to an acceptable level.

The overall building shows strong compliance with Council policy, and the upper level (noting its generous recession and low visibility) is not of such consequence that would warrant progression to a full merits hearing, particularly given that the changes now proposed may be retracted.

The overall development is considered to show an appropriate level of compliance with the Bayside Planning Scheme and the Decision Guidelines of Clause 65.

6. **No Cultural Heritage Management Plan has been submitted.**

This matter was discussed at a Practice Day Hearing held by the Tribunal on 19 October 2018, in which the permit applicant called an expert witness in relation to the ground disturbance. Following evidence provided by the expert, the Tribunal determined that a CHMP is not required due to the area having undergone significant ground disturbance.

**Support Attachments**

1. Refusal ↓
2. Delegate Report ↓
3. Advertised (Decision) Plans ↓
4. Without Prejudice Plans ↓
NOTICE OF DECISION TO REFUSE TO GRANT A PERMIT

Application No.: 5/2018/146/1
Planning Scheme: Bayside
Responsible Authority: Bayside City Council

ADDRESS OF THE LAND:
4 Bemensyde Avenue BRIGHTON

WHAT HAS BEEN REFUSED?
Construction of a three storey building consisting of ten (10) dwellings with basement parking and a front fence in excess of 1.5 metres in the Design and Development Overlay

GROUNDS OF REFUSAL:

1. The proposal fails to respond to the objectives of Clause 22.06 (Neighbourhood Character, Precinct B2) of Bayside Planning Scheme, on the following grounds:
   a) The development fails to respond to the existing and preferred neighbourhood character for this precinct.
   b) The scale, siting and boundary setbacks of the proposal fail to complement the built form character, resulting in an outcome which dominates the streetscape.
   c) The high front fence profile fails to maintain the openness of the streetscape and views into front gardens.

2. The proposal fails to provide an appropriate response to the design objectives and decision guidelines of the Design and Development Overlay Schedule 11 of the Bayside Planning Scheme.

3. The proposal fails to comply with the Objectives and Standards of Clause 55 of the Bayside Planning Scheme, in particular:
   a) Standard B1 – Neighbourhood Character
      b) Standard B3 – Dwelling Diversity
      c) Standard B6 – Street Setback
      d) Standard B13 - Landscaping
      e) Standard B17 – Side and rear setbacks
      f) Standard B21 – Overshadowing Open Space
      g) Standard B28 – Private Open Space
      h) Standard B31 – Detailed Design
      i) Standard B32 – Front Fences
      j) Standard B47 – Room Depth

4. The proposal fails to comply with the purpose of Clause 32.09 of the Bayside Planning Scheme, in particular:
   a) The built form fails to respect identified neighbourhood character and landscape characteristics.

5. The proposal is an overdevelopment of the site.

6. No Cultural Heritage Management Plan has been submitted.

Date of notice: 16 August 2018

Michael Kelleher
Signature for the Responsible Authority

Planning and Environment Regulations 2015 - Form 7
FORM 7

IMPORTANT INFORMATION ABOUT THIS NOTICE

WHAT HAS BEEN DECIDED?

- The responsible authority has decided to refuse to grant a permit.
  (Note: This is not a refusal under Division 5 of Part 4 of the Planning and Environment Act 1987.)
- This notice sets out on which the application has been refused.
- The reasons or grounds on which the application has been refused are those of the responsible authority unless otherwise stated.

WHAT ABOUT REVIEWS?

For the applicant –

- The person who applied for the permit may apply for a review of the refusal.
- The application for review must be lodged within 60 days of the giving of this notice.
- An application for review is lodged with the Victorian Civil and Administrative Tribunal.
- An application for review must be made on the relevant form which can be obtained from the Victorian Civil and Administrative Tribunal and be accompanied by the applicable fee.
- An application for review must state the grounds upon which it is based.
- A copy of an application for review must be served on the responsible authority, each other party and each other person entitled to notice of the application for review under the Planning and Environment Act 1987 and the Victorian Civil and Administrative Tribunal Act 1998 within 7 days after lodging the application with the Victorian Civil and Administrative Tribunal.
- Details about applications for review and the fees payable can be obtained from the Victorian Civil and Administrative Tribunal.

For a recommending referral authority—

- If the applicant applies for a review of this decision, the applicant must give notice to any recommending referral authority that objected to the grant of the permit after an application for review is lodged.

For an objector—

- If the applicant applies for a review of this decision, the applicant must give notice to objectors in accordance with the requirements of the Planning and Environment Act 1987 and the Victorian Civil and Administrative Tribunal Act 1998.

Planning and Environment Regulations 2015
<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Notice of Decision to Refuse to grant a Permit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proposal</td>
<td>Construction of a three storey building consisting of ten (10) dwellings with basement parking and a front fence in excess of 1.5 metres in the Design and Development Overlay</td>
</tr>
<tr>
<td>Application No.</td>
<td>5/2018/146/1</td>
</tr>
<tr>
<td>Address</td>
<td>4 Bemmersyde Avenue BRIGHTON</td>
</tr>
<tr>
<td>Applicant</td>
<td>Planning &amp; Property Partners Pty Ltd</td>
</tr>
<tr>
<td>Title/Covenant/S173 Agreement</td>
<td>The site is subject to restrictive covenant 1501885. The covenant does not restrict the proposed development.</td>
</tr>
<tr>
<td>Date application received</td>
<td>20/03/2018</td>
</tr>
<tr>
<td>Current statutory days</td>
<td>60 days</td>
</tr>
<tr>
<td>Zoning</td>
<td>General Residential Zone (Schedule 2)</td>
</tr>
<tr>
<td>Overlays</td>
<td>Design and Development Overlay (Schedule 11) Development Contributions Plan Overlay (Schedule 1)</td>
</tr>
<tr>
<td>Site area</td>
<td>1979m²</td>
</tr>
<tr>
<td>Number of outstanding objections</td>
<td>4</td>
</tr>
<tr>
<td>Is the site located within an area of cultural heritage sensitivity?</td>
<td>Yes</td>
</tr>
<tr>
<td>Is a development contribution fee applicable?</td>
<td>Had the application been supported then a fee of $12,120 would be required Catchment area 11A</td>
</tr>
<tr>
<td>Responsible officer</td>
<td>Fiona Farrand</td>
</tr>
<tr>
<td>Signature</td>
<td></td>
</tr>
<tr>
<td>Planning delegate</td>
<td>Michael Kelleher</td>
</tr>
<tr>
<td>Signature and date</td>
<td>16/8/15</td>
</tr>
</tbody>
</table>
1. **Application details**

**Proposal**

The application seeks Construction of a three storey building consisting of ten (10) dwellings with basement parking and a front fence in excess of 1.5 metres in the Design and Development Overlay.

Key details of the proposal are as follows:

- 10 dwellings (all three bedrooms)
- Building height – three storeys 10.99m (max)
- Site coverage 59%
- Permeability 27%
- Garden area – 39%
- Basement parking – 26 parking spaces provided, including two (2) visitor spaces

An aerial image and photographs of the site and surrounds are provided at **Attachment 1**.

**History**

There is no planning permit history relevant to this application.

2. **Planning controls**

**Planning Permit requirements**

A planning permit is required pursuant to:

- Clause 32.08-6 Construction of two or more dwellings on a lot and a front fence in excess of 1.5 metres
- Clause 43.02-2 Buildings and works in the DDO12 (permit required as height over 9 metres)

**Planning Scheme Amendments**

On 31 July 2018, the Bayside Planning Scheme was amended by Planning Scheme Amendment VC148. The amendment proposes a variety of changes across the planning scheme. Under this new amendment, Clause 52.06 applies for any site or part of a site identified within the Principal Public Transport Network area (PPTN). The parking requirements specified under Column B in the car parking table do not require the provision of residential visitor parking for any site within the PPTN. The image below shows the PPTN shaded in green and the located of the site outlined in red. The planning permit requirement to provide residential visitor parking spaces on the site is no longer relevant.
3. **Stakeholder consultation**

**External referrals**

There are no external referrals required to be made in accordance with Clause 66 of the Bayside Planning Scheme.

**Internal referrals**

The application was referred to the following Council departments for comment:

<table>
<thead>
<tr>
<th>Internal Referral</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arborist</td>
<td>Does not support of removal of trees 2 and 3.</td>
</tr>
<tr>
<td>Drainage Assets Engineer</td>
<td>No objection, subject to conditions</td>
</tr>
<tr>
<td>Sustainability</td>
<td>Makes recommendations, that could be included as permit conditions had the application been supported.</td>
</tr>
<tr>
<td>Traffic Engineer</td>
<td>Raises some concerns, refer to main report.</td>
</tr>
<tr>
<td>Waste Coordinator</td>
<td>No objection</td>
</tr>
</tbody>
</table>

**Public notification**

The application was advertised pursuant to Sections 52(1)(a) and (d) of the *Planning and Environment Act 1987* and four objections were received.

Four objections remain outstanding at the time of this report.

The following concerns were raised:

- Neighbourhood character – inappropriate scale of built form
- Insufficient setbacks;
- Overlooking;
- Overshadowing;
- High front fencing and provision of secluded private open space in front gardens is inappropriate;
- Insufficient planting;
- Parking / Traffic;
- Building disruption; and
- Headlight glare from cars exiting basement.

The number of objections received for this application is consistent across Council’s record management systems.

**Consultation meeting**

A consultation meeting was not considered necessary for this application as the application was recommended for refusal.

4. **Council Policy**

**Council Plan 2017-2021**

Relevant objectives of the Council plan include:

- Where significant development is directed to specified and planned activity centres and strategic locations, providing a transition to surrounding residential areas and incorporating improved infrastructure and open space.
- Where neighbourhood character, streetscapes and heritage is respected and enhanced, and the community has a strong connection to place.
Where development contributes to a high visual amenity, is ecologically sustainable, demonstrates high quality compliant design, and responds to the streetscape and neighbourhood context.

Relevant strategies of the Council plan include:

- Make discretionary planning controls stronger, by advocating for Council’s planning and urban design objectives to state government.
- Ensure new development responds to preferred neighbourhood character in activity centres.

**Bayside Planning Scheme**

- Clause 11 Settlement
- Clause 13 Environmental Risks and Amenity
- Clause 15 Built Environment and Heritage
- Clause 16 Housing
- Clause 18 Transport
- Clause 21.02 Bayside Key Issues and Strategic Vision
- Clause 21.03 Settlement and Housing
- Clause 21.06 Built Environment and Heritage
- Clause 21.11 Local Areas (specify activity centre)
- Clause 22.06 Neighbourhood Character Policy (Precinct B2)
- Clause 22.08 Water Sensitive Urban Design
- Clause 32.08 General Residential Zone (Schedule 2)
- Clause 43.02 Design and Development Overlay (Schedule 11)
- Clause 52.06 Car Parking
- Clause 55 Two or more dwellings on a lot
- Clause 65 Decision Guidelines

5. **Considerations**

In considering this application, regard has been given to the State and Local Planning Policy Frameworks, the provisions of the Bayside Planning Scheme, objections received and the individual merits of the application.

5.1. **Neighbourhood character**

The site is located within Neighbourhood Character Precinct B2. It is considered that the proposed development comprising a three storey apartment building results in a development that does not respond to the existing garden setting of the immediate and surrounding area. The intensification of the development on the site by virtue of the siting and three storey built form with limited mid-building building recession creates a long, continuous three storey structure that is not in keeping with the existing single and multi-dwelling character of the area and in particular Bemmersyde Avenue.

The protrusion of the first floor together with limited punctuation of the elevations further increases the dominance of the built form. Furthermore, the extent of area occupied by the basement car parking and the minimal building separation provided between the dwellings, restricts opportunities for planting of meaningful landscaping to allow the dwellings to sit within a garden setting respectful of the existing and preferred future character. Therefore, the proposal is considered to be an overdevelopment of the site.
A detailed assessment of the application against the relevant Guidelines of Precinct B2 is contained in this report as Attachment 2.

5.2. Design and Development Overlay (Schedule 11)

The design objectives of this schedule are as follows:

- 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; and,
- To maintain a strong landscape character with residential buildings set within vegetated front gardens and streetscapes in the residential precincts.

The subject site is identified as being located within the Church Street Major Activity Centre and identified as been within Precinct E of the Schedule.

Precinct E has the following build form provisions:

**Table to build form precinct provisions**

Refer to Built Form Precinct Map at the end of the schedule.

<table>
<thead>
<tr>
<th>Precinct</th>
<th>Preferred building height</th>
<th>Maximum building height</th>
</tr>
</thead>
<tbody>
<tr>
<td>B</td>
<td>13.5m (4 storeys)</td>
<td>-</td>
</tr>
<tr>
<td>C</td>
<td>11.0m (3 storeys)</td>
<td>-</td>
</tr>
<tr>
<td>D</td>
<td>8.0m (2 storeys) fronting Well Street</td>
<td></td>
</tr>
<tr>
<td></td>
<td>11.0m (3 storeys) fronting any other street</td>
<td>11.0m (3 storeys), or 12.0m (3 storeys) where the slope of the natural ground level at any cross section of the site of the building wider than 8m is 2.5 degrees or more</td>
</tr>
</tbody>
</table>

For clarity purposes, the following map shows where the proposed development is located in relation to the 'E Built Form Precinct Map'.
Schedule 11 to the DDO requires that ‘buildings in a Residential Zone should be set back in accordance with the relevant Clauses 54 and 55 standards except that the second floor should be set back a minimum of 4 metres behind the front wall of the floor immediately below, unless the second floor is an attic.’

The proposed second floor is set back 3.99m from the first floor. Had the application been supported, then a condition requiring a 4m setback, it is further noted that the front setback is non-compliant, and hence each level should be further recessed to ensure compliance and reduce building dominance.

The proposed three storey development is within the height guidelines set out in the schedule to the DDO and lies within the Church Street Major Activity Centre, where a higher degree of development is considered appropriate. The site is large, being almost 2000m² in size, but is located at the end of a small residential cul-de-sac. The surrounding development is generally single or two storey. Whilst the three storey nature with the recessive second floor is considered appropriate within the location of the site, the sheer bulk and mass of the development across the entirety of the site, particularly with the essentially unbroken solid massing of the first floor will result in a dominant proposal that fails to provide an appropriate design response.
A more suitable design response for this site would involve a large and meaningful break in the built form within its middle region, allowing the building to be viewed as two separate buildings from most vantage points.

In addition, the proposal fails to maintain a strong landscape character with insufficient space being provided for appropriate tree planting and landscaping.

As such, the proposal does not provide an appropriate or acceptable response to the design objectives and decision guidelines of the Design and Development Overlay (Schedule 11).

5.3. **Compliance with Clause 55 (ResCode)**

An assessment against the requirements of Clause 55 is provided at Attachment 3. Those non-compliant standards are discussed below:

**Dwelling diversity (Standard B3)**

The objective of this clause is to encourage a range of dwelling sizes and types in developments of more than 10 dwellings. This application proposed 10 x 3 bedroom dwellings. Whilst there is no diversity in the number of bedrooms, the dwellings are of different sizes and layouts, which is considered to be acceptable in this instance.

**Street setback (Standard B6)**

<table>
<thead>
<tr>
<th></th>
<th>Required</th>
<th>Proposed</th>
<th>Variation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bemmeryde Avenue</td>
<td>7.875m</td>
<td>6.15 - 7.6m</td>
<td>0.275 - 1.725m</td>
</tr>
</tbody>
</table>

A street setback of 6–7.6 metres is proposed. The objective of the street setback is to ensure the setbacks of buildings from a street respect the existing or preferred neighbourhood character and make efficient use of a site.

The subject site is located at the end of a cul-de-sac and curves around the end of the street resulting in an unconventional street setback. Given the extensive length of built form along the streetscape, full compliance with the standard should be achieved.

**Side and rear setbacks (Standard B17)**

<table>
<thead>
<tr>
<th>Ground floor</th>
<th>First Floor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requirement</td>
<td>Proposed</td>
</tr>
<tr>
<td>North-east (side)</td>
<td>0–0.2m or 1.0m</td>
</tr>
<tr>
<td>South-west (side)</td>
<td>0–0.2m or 1.0m</td>
</tr>
<tr>
<td>South-east (rear)</td>
<td>0–0.2m or 1.0m</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Second Floor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Required</td>
<td>Proposed</td>
</tr>
<tr>
<td>North-east (side)</td>
<td>6.09m</td>
</tr>
<tr>
<td>South-west (side)</td>
<td>5.59m</td>
</tr>
<tr>
<td>South-east (rear)</td>
<td>6.09m</td>
</tr>
</tbody>
</table>

The proposal is generally compliant with the requirements of the standard. The only area of non-compliance with the required setbacks is on the north-east elevation at first floor level. However, the margin of non-compliance is a maximum of 13cm, which is considered very minor and which will not have any detrimental impact. Had the application been
recommended for approval, then full compliance could be achieved via permit condition.

**Overshadowing open space (Standard B21)**

The submitted shadow diagrams show that the neighbouring property to the south-west, 2A Bemmersyde Avenue will suffer increased overshadowing to the private open space between the hours of 10am to midday. The private open space for this property is located to the side of the property, adjacent to the subject site. The applicant argues that the increased overshadowing is very minor and will not have any unreasonable impact on the amenity or useability of the private open space. The standard states that the secluded private open space of a dwelling should not be further reduced if the private open space is less than the dimensions specified in the standard. In this case, the area of private open space is very small and is located immediately adjacent to the shared boundary with the subject site. It is considered that any additional overshadowing will have an unacceptable impact and is an indication of an overdevelopment of this large site that does not adequately respond to its surrounds.

**Private open space (Standard B28)**

All apartments meet the numerical requirements of this standard, however the secluded private open space for the ground floor apartments is provided in the front garden areas of the properties. The reasoning put forward for this is to make the most of the northerly aspect. In order to ensure that these areas are secluded, high level solid front fencing is proposed, which is not considered to be an appropriate outcome. The site itself is almost 2000m² in size; as such, it is considered that the proposal could be better designed to provide more appropriately located secluded private open space within this generous site.

**Front Fences (Standard B32)**

<table>
<thead>
<tr>
<th>Bemmersyde Avenue</th>
<th>Required</th>
<th>Proposed</th>
<th>Variation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.5m</td>
<td>1.9m</td>
<td>400 mm</td>
<td></td>
</tr>
</tbody>
</table>

The objective of this standard is to encourage front fence design that respects the existing or preferred neighbourhood character. A solid front fence of 1.9 metres in height is proposed to the front boundary of the site. It should be noted that there is an existing high solid front fence, however there is only a single dwelling on the site, with the majority of it being garden area and therefore limited built form. This proposal will significantly increase the built form of the site and will only be exacerbated by the solid front fence.

**Deep soil areas and canopy trees objective (Standard B38)**

Required area - 10% of site area with a minimum dimension of 6 metres and minimum of 1 large tree (at least 12 metres) per 90 square metres of deep soil or 2 medium trees per 90 square metres of deep soil

Council’s Arborist has advised that although the selection of Black Locust (*Robinia pseudoacacia*) and Smooth-leaved Quandong (*Etrocarpus fremantle*) are supported, the planting areas are not of a sufficient size to allow these trees to reach their mature dimensions. Many of these trees are located within the easements along the north-eastern and southern eastern boundaries.

**Room depth (Standard B47)**

The requirement under this standard is that single aspect habitable rooms should not exceed a room depth of 2.5 times the ceiling height. The depth of an open plan, habitable room may be increased to 9 metres if all the following requirements are met:

- The room combines the living area, dining area and kitchen;
- The kitchen is located furthest from the window;
- The ceiling height is at least 2.7 metres from finished floor level to finished ceiling level;
- This excludes where services are provide above the kitchen.
All of the ground floor apartments exceed the depth of 9 metres from the single aspect habitable room. Ceiling heights are 3 metres from ffl to fcl and the kitchen is located to the rear of each of the rooms. Whilst the living areas can be considered to achieve the objective of the clause in terms of allowing adequate daylight into single aspect habitable rooms, this is only achieved by the high level ceilings.

5.4. Landscaping

No trees are proposed for retention of the subject site. These include a Sweet Gum (tree 2) and a Himalayan Cedar (tree 3), both of which are located within the front setback of the site. These trees are Local Law protected trees. Council’s Arborist has advised that both trees have a high amenity value. Tree 2 has fair structure and appears in good health and tree 3 is in fair health and good structure. Given the high amenity value and significant size of these trees, their removal is not supported by Council’s Arborist.

The retention of one or both of these trees would have contributed to the breaking up of the built form mid-block.

No objection is raised to the removal of the other existing vegetation on the site subject to replacement canopy tree planting in accordance with Council’s Landscape Guidelines.

In terms of the impacts on neighbouring vegetation, several of the neighbouring trees are likely to have root activity present within the subject site. Insufficient information has been provided in terms of the accurate location for all tree to be retained on neighbouring properties where their TPZ extends into the subject site, as well as the accurate dimensions for the TPZ for all tree to be retained. Without this information, Council cannot ascertain the impact on the neighbouring trees. Had the application been supported then this information could have been required as a condition.

A landscaping plan has been submitted showing a high level of replacement planting. Council’s Arborist has advised that it is not in accordance with Council’s Landscape Guidelines. No survey of existing vegetation proposed for removal or details of trees to be retained within neighbouring properties has been included, existing trees to be retained have not been numbered in accordance with the provided arborist report and the TPZ dimensions are not to scale.

Although the selection of Black Locust (Robinia pseudocacia) and Smooth-leaved Quandong (Eleocarpus eumundii) as replacement canopy tree plantings is supported, the planting areas are not of a sufficient size to allow these trees to reach their mature dimensions and many are located within the easement.

5.5. Car parking and traffic

Pursuant to the car parking requirements at Clause 52.06, a dwelling requires car parking to be provided at a rate of 1 car space per one or two bedroom dwellings and 2 car spaces per three or more bedroom dwellings.

All dwellings comprise of three bedrooms, thereby requiring the provision of 20 parking spaces. 24 parking spaces for the residents are proposed in the form of basement parking, with an additional two visitor parking spaces. As stated earlier in this report, Planning Scheme Amendment VC148 has removed the requirement for residential visitor parking for site located within the Principal Public Transport Network. The proposal is fully compliant with the parking requirements specified in Clause 52.06.

The application was referred to Council’s Traffic Engineer who raised a concern that there may be potential access issues if motorists have not parked correctly on street in line with the road rules. However, the Traffic Engineer has advised that this is difficult to enforce and it is outside of planning controls.

Concerns have been raised in relation to increased car parking congestion however it is considered that the proposed development will not unreasonably impact on the car parking network in the street. In addition, car parking congestion was not raised as a concern by Council’s Traffic Engineer.

5.6. Cultural heritage management plan

The Aboriginal Heritage Regulations 2018 commenced on 23 May 2018, replacing the
Aboriginal Heritage Regulations 2007. As a result of the new regulation, the mapping system identifying areas of cultural heritage sensitivity have been updated. Based on the Aboriginal heritage planning tool questionnaire, changes to the mapping system mean that a cultural heritage management plan is now required, when it previously wasn’t. No cultural heritage management plan has been provided. As the application is being recommended for refusal, this will be included as a reason for refusal.

5.7. Development contributions levy
The subject site is located within catchment area 11A. Had the application been supported then a payment of $12,120 would have been required.

5.8. Objector issues not already addressed
Building disruption
Noise and truck movements during the construction phase of development are a temporary and unavoidable consequence of development and not justification to withhold development of the site.

Headlight glare from cars exiting basement
It is an inevitable fact that development within an established urban setting may well result in increased levels of light pollution, however this is not justification for refusing an application.

Recommendation
That Council resolve to:

Issue a Notice of Decision to Refuse to Grant a Permit under the provisions of the Bayside Planning Scheme in respect of Planning application 5/2018/145/1 for the land known and described as 4 Bemmery Avenue BRIGHTON, for the Construction of a three storey building consisting of ten (10) dwellings with basement parking and a front fence in excess of 1.5 metres in the Design and Development Overlay for the following reasons:

1. The proposal fails to respond to the objectives of Clause 22.06 (Neighbourhood Character, Precinct B2) of Bayside Planning Scheme, on the following grounds:
   a) The development fails to respond to the existing and preferred neighbourhood character for this precinct.
   b) The scale, siting and boundary setbacks of the proposal fail to complement the built form character, resulting in an outcome which dominates the streetscape.
   c) The high front fence profile fails to maintain the openness of the streetscape and views into front gardens.

2. The proposal fails to provide an appropriate response to the design objectives and decision guidelines of the Design and Development Overlay Schedule 11 of the Bayside Planning Scheme.

3. The proposal fails to comply with the Objectives and Standards of Clause 55 of the Bayside Planning Scheme, in particular:
   a) Standard B1 – Neighbourhood Character
   b) Standard B3 – Dwelling Diversity
   c) Standard B6 – Street Setback
   d) Standard B13 - Landscaping
   e) Standard B17 – Side and rear setbacks
   f) Standard B21 – Overshadowing Open Space
   g) Standard B28 – Private Open Space
   h) Standard B31 – Detailed Design
   i) Standard B32 – Front Fences
   j) Standard B47 – Room Depth
4. The proposal fails to comply with the purpose of Clause 32.09 of the Bayside Planning Scheme, in particular:

a) The built form fails to respect identified neighbourhood character and landscape characteristics.

5. The proposal is an overdevelopment of the site.

6. No Cultural Heritage Management Plan has been submitted.
Figure 1 Aerial overview of the site and surrounds

<table>
<thead>
<tr>
<th>Legend</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject site</td>
<td>✭</td>
</tr>
<tr>
<td>Objector(s)</td>
<td>🔴</td>
</tr>
</tbody>
</table>
Figure 2 View towards the site and 2A Bemmersyde Avenue

Figure 3 View towards the site from the southwest
Figure 4 View along Bemmersyde Avenue from the north east
Neighbourhood Character Precinct B2

Preferred Future Character Statement

The diverse dwelling styles, with a continued presence of pre WWII dwellings, sit within established gardens with occasional tall canopy trees. Side setbacks on both sides, and the setting back of car ports/garages from the dwelling, allows for vegetation to flow around the dwellings. New buildings blend with the existing, through using a variety of materials or colours within front façades, and by respecting the older building styles and scales without replicating them. Open style front fencing improves the visual connection between the dwelling and the street. Street tree planting consistency is improved to provide a unifying element to the area.

Precinct Guidelines

<table>
<thead>
<tr>
<th>Objectives</th>
<th>Design Responses</th>
<th>Avoid</th>
<th>Planning Officer Assessment</th>
</tr>
</thead>
</table>
| To encourage the retention of dwellings that contribute to the valued character of the Precinct in the design of development proposals. | • Attempt to retain wherever possible intact and good condition dwellings that contribute to the valued character of the Precinct in designing new development.  
• Alterations and extensions should retain the front of these dwellings. | Demolition of dwellings that contribute to the valued character of the Precinct. | Responds  
The existing dwelling on the site makes little contribution to the character of the precinct. |
| To maintain and enhance the garden settings of the dwellings.              | • Prepare a landscape plan to accompany all applications for new dwellings that includes substantial trees and shrubs. | Lack of landscaping and substantial vegetation. | Does not respond  
Council’s Arborist has advised that the proposed landscape plan is not in accordance with Council’s Landscape Guidelines.  
Whilst some of the proposed species are acceptable (Black Locust and Smooth-leaved Quandong), the planting areas are not of a sufficient size to allow these trees to reach their mature dimensions. |
| To maintain the rhythm of spacious visual separation between buildings and provide space for front gardens. | • Buildings should be sited to allow space for the planting of trees and shrubs.  
• Buildings should be sited to create the appearance of space between buildings and accommodate substantial vegetation. | Loss of front garden space. | Does not respond  
Refer to comments above about the proposed planting areas, which are of an insufficient size to allow the proposed trees to reach their mature dimensions. This is an indication that the proposed development is too large, given that the site itself is of a generous nature. |
| To minimise the loss of front garden space and the dominance of car parking facilities. | • Locate garages and carports behind the line of the dwelling.  
• Provide only one vehicular crossover per typical site frontage.  
• Underground car parking accessed from the front of the site should only be provided where other options are not | Car parking facilities that dominate the façade or view of the dwelling. | Responds in part  
Parking is proposed to be in the form of a basement with a single vehicular access.  
Solid front fencing is proposed at a height of 1.9m. The reasoning provided for this height is that it provides... |
<table>
<thead>
<tr>
<th>Objectives</th>
<th>Design Responses</th>
<th>Avoid</th>
<th>Planning Officer Assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>To ensure new development respects the dominant buildings forms and scale of buildings in the Precinct, through the use of innovative architectural responses.</td>
<td>possible due to site constraints, the garage doors do not dominate the façade and the front setback area is retained as predominantly garden space.</td>
<td>screening for the private open space of the ground floor dwellings. Section of the fence will be set back marginally from the front boundary to allow for landscaping in front, although the fencing will still be visible. It should be noted that there is an existing solid front fencing.</td>
<td></td>
</tr>
</tbody>
</table>
| To respect the identified heritage qualities of adjoining buildings. | * Articulate the form of buildings and elevations, particularly front facades.  
* Recess upper storey elements from the front façade. | Large buildings with poorly articulated facades. | Does not respond  
The proposed development is for a three storey apartment building, with basement parking. Although the second floor is recessed from the lower levels and the ground floor provides acceptable setbacks, the first floor projects forward of the ground floor and overhangs, resulting in a bulky protrusion. The built form contains very limited articulation by way of physical means relying on use of materials. In this instance it is not particularly successful and fails to pick up on the form and scale of development within the precinct. Furthermore, the applicant is reliant on the planting of canopy trees to soften the impact of the built form, however the proposed trees will only reach a mature height of 4m, which will provide insufficient screening to a 10.5m high building. |
| To use a variety of building materials and finishes that provide visual interest in the streetscape. | * Where adjoining an identified heritage building, respect the height, building forms, siting and materials of the heritage building/s, in the new building design. | Buildings that dominate heritage buildings by height, siting or massing. Imitation or reproduction of historic building styles and detailing. | N/A |
| | * Incorporate a variety of building materials such as brick, render, timber and non-masonry into the building design.  
* Use simple building details. | Exclusive use of one material on external wall facades. | Responds in part  
The proposal incorporates a variety of materials within the design. Light coloured bricks and translucent glass channels are the main finishes, with render also being incorporated. Whilst the materials palette is... |
<table>
<thead>
<tr>
<th>Objectives</th>
<th>Design Responses</th>
<th>Avoid</th>
<th>Planning Officer Assessment</th>
</tr>
</thead>
</table>
| To improve the visual connection between the dwellings and the streetscape and encourage views to front gardens. | * Provide open style front fences, other than along heavily trafficked roads.  
* Front fence style should be appropriate to the building era. | High, solid fences | Considered appropriate for the location, the bulk of the building as discussed elsewhere is considered out of keeping. |

A 1.9m high solid front fence is proposed along the front boundary, although it would be set back slightly in part to allow for landscaping in front. Although there is an existing solid front fence, this is read in the context of the existing site, which is largely undeveloped. The presence of a three-storey building together with a solid front fence fails to provide a visual connection between the dwellings and streetscape and will obscure views to front gardens.
Attachment 3

ResCode Clause 55 (Two or More Dwellings on a Lot and Residential Buildings)

<table>
<thead>
<tr>
<th>Application type</th>
<th>Applicable clauses</th>
</tr>
</thead>
<tbody>
<tr>
<td>To construct or extend an apartment development; or To construct or extend a dwelling in or forming part of an apartment development.</td>
<td>All of Clause 55 except Clause 55.03-5, Clause 55.03-6, Clause 55.04-8, Clause 55.05-1, Clause 55.05-2 and Clause 55.05-6.</td>
</tr>
</tbody>
</table>

**CLAUSE 55.02 NEIGHBOURHOOD CHARACTER AND INFRASTRUCTURE**

<table>
<thead>
<tr>
<th>Title and Objective</th>
<th>Complies with Standard?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>B1 Neighbourhood Character</strong>&lt;br&gt;Design respects existing neighbourhood character or contributes to a preferred neighbourhood character. Development responds to features of the site and surrounding area.</td>
<td>Does not comply</td>
<td>Refer to Attachment 2 and report.</td>
</tr>
<tr>
<td><strong>B2 Residential Policy</strong>&lt;br&gt;Residential development is consistent with housing policies in the SPPF, LPPF including the MSS and local planning policies. Support medium densities in areas to take advantage of public transport and community infrastructure and services.</td>
<td>Complies</td>
<td>The subject site is appropriately located with regard to services and facilities to support the construction of multiple dwellings on a lot of this size.</td>
</tr>
<tr>
<td><strong>B3 Dwelling Diversity</strong>&lt;br&gt;Encourages a range of dwelling sizes and types in developments of ten or more dwellings.</td>
<td>Does not comply</td>
<td>Refer report.</td>
</tr>
<tr>
<td><strong>B4 Infrastructure</strong>&lt;br&gt;Provides appropriate utility services and infrastructure without overloading the capacity.</td>
<td>Complies</td>
<td>The proposal will make use of existing infrastructure servicing the site. The developer will be responsible for upgrading this infrastructure if necessary to accommodate the development. Council's drainage engineers have reviewed the application and raise no issues with infrastructure capacity in the area. It is noted that had the application been supported, then the developer would be required to pay a development contributions levy in accordance with the</td>
</tr>
</tbody>
</table>
### B5 Integration with the Street
Integrate the layout of development with the street

<table>
<thead>
<tr>
<th>Requirements of Clause 45.06 of the Bayside Planning Scheme.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>CLAUSE 55.03 SITE LAYOUT AND BUILDING MASSING</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Title and Objective</strong></td>
</tr>
<tr>
<td>-------------------------</td>
</tr>
</tbody>
</table>
| B6 Street Setback       | Does not comply             | Requirement: 7.87m.  
                          |                             | Proposed: 6.15-7.6m at ground floor and 5.9-7.6m at first floor.  
                          |                             | Refer report. |
| B7 Building Height      | Complies                    | Maximum: 11m.  
                          |                             | Proposed: 10.99 metres (3 storeys+ basement)  
                          |                             | It is noted that the basement at no point rises above natural ground level. |
| B8 Site Coverage        | Complies                    | Maximum: 60%  
                          |                             | Proposed: 59% |
| B9 Permeability         | Complies                    | Minimum: >20%  
                          |                             | Proposed: 27% |
| B10 Energy Efficiency   | N/A                         | Not relevant for apartment developments. |
| B11 Open Space          | N/A                         | Not relevant for apartment developments. |
| B12 Safety              | Complies                    | The pedestrian entry points are clearly recognisable while upper levels allow for |
**Bayside City Council**  
**Planning & Amenity Committee Meeting - 10 December 2018**  
**Attachment 2**

<table>
<thead>
<tr>
<th>Layout to provide safety and security for residents and property.</th>
<th>the passive surveillance of the street.</th>
</tr>
</thead>
</table>
| **B13 Landscaping**  
To provide appropriate landscaping.  
To encourage:  
• Development that respects the landscape character of the neighbourhood.  
• Development that maintains and enhances habitat for plants and animals in locations of habitat importance.  
• The retention of mature vegetation on the site. | Does not comply | See Section 5.4 of the report for further discussion. |

<table>
<thead>
<tr>
<th>Complies</th>
<th>An appropriate access off Bemmeryde Avenue to basement parking has been provided.</th>
</tr>
</thead>
</table>

**B14 Access**  
Ensure the safe, manageable and convenient vehicle access to and from the development.  
Ensure the number and design of vehicle crossovers respects neighbourhood character.

| Complies | On site car parking is provided in the form of a basement carpark.  
Refer to Section 5.5 of the report for further discussion. |
| --- | --- |

**B15 Parking Location**  
Provide resident and visitor vehicles with convenient parking.  
Avoid parking and traffic difficulties in the development and the neighbourhood.  
Protect residents from vehicular noise within developments.

---

**CLAUSE 55.04 AMENITY IMPACTS**

<table>
<thead>
<tr>
<th>Title and Objective</th>
<th>Complies with Standard?</th>
<th>Comments</th>
</tr>
</thead>
</table>
| **B17 Side and Rear Setbacks**  
Ensure the height and setback respects the existing or preferred neighbourhood character and limits the amenity impacts on existing dwellings. | Does not comply | Refer to Section 5.3 of the Report. |

<table>
<thead>
<tr>
<th>Ground Floor</th>
<th>First Floor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Required</td>
<td>Proposed</td>
</tr>
<tr>
<td>North-east (side)</td>
<td>0-0.2m or 1.0m</td>
</tr>
<tr>
<td>South-west (side)</td>
<td>0-0.2m or 1.0m</td>
</tr>
<tr>
<td>Item</td>
<td>Description</td>
</tr>
<tr>
<td>------</td>
<td>-------------</td>
</tr>
<tr>
<td>B18 Walls on Boundaries</td>
<td>Ensure the location, length and height of a wall on a boundary respects the existing or preferred neighbourhood character and limits the amenity impacts on existing dwellings.</td>
</tr>
<tr>
<td>B19 Daylight to Existing Windows</td>
<td>Allow adequate daylight into existing habitable room windows.</td>
</tr>
<tr>
<td>B20 North Facing Windows</td>
<td>Allow adequate solar access to existing north-facing habitable room windows.</td>
</tr>
<tr>
<td>B21 Overshadowing Open Space</td>
<td>Ensure buildings do not significantly overshadow existing secluded private open space.</td>
</tr>
<tr>
<td>B22 Overlooking</td>
<td>Limit views into existing secluded private open space and habitable room windows.</td>
</tr>
<tr>
<td>B23 Internal Views</td>
<td>Limit views into existing secluded private open space and habitable room windows of dwellings and residential buildings within the same development.</td>
</tr>
<tr>
<td>B24 Noise Impacts</td>
<td>Protect residents from external noise and contain noise sources in developments that may affect existing dwellings.</td>
</tr>
</tbody>
</table>

**CLAUSE 55.06 ON-SITE AMENITY AND FACILITIES**
<table>
<thead>
<tr>
<th>Title and Objective</th>
<th>Complies with Standard?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>B25 Accessibility</td>
<td>N/A</td>
<td>Not relevant for apartment developments.</td>
</tr>
<tr>
<td>Consider people with limited mobility in the design of developments.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>B26 Dwelling Entry</td>
<td>N/A</td>
<td>Not relevant for apartment developments.</td>
</tr>
<tr>
<td>Provide a sense of identity to each dwelling/residential building.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>B27 Daylight to New Windows</td>
<td>Complies</td>
<td>All habitable windows will open out onto a space clear to the sky.</td>
</tr>
<tr>
<td>Allow adequate daylight into new habitable room windows.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>B28 Private Open Space</td>
<td>Does not comply</td>
<td>Refer to section 5.3 of the report.</td>
</tr>
<tr>
<td>Provide reasonable recreation and service needs of residents by adequate private open space.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>B29 Solar Access to Open Space</td>
<td>Complies</td>
<td>All apartments will have sufficient solar access to the private open space.</td>
</tr>
<tr>
<td>Allow solar access into the secluded private open space of new dwellings/buildings.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>B30 Storage</td>
<td>N/A</td>
<td>Not relevant for apartment developments.</td>
</tr>
<tr>
<td>Provide adequate storage facilities for each dwelling.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**CLAUSE 55.06 DESIGN DETAIL**

<table>
<thead>
<tr>
<th>Title and Objective</th>
<th>Complies with Standard?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>B31 Design Detail</td>
<td>Does not comply</td>
<td>Refer to section 5.3 of the report.</td>
</tr>
<tr>
<td>Encourage design detail that respects the existing or preferred neighbourhood character.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>B32 Front Fences</td>
<td>Does not comply</td>
<td>Refer to section 5.3 of the report.</td>
</tr>
<tr>
<td>Encourage front fence design that respects the existing or preferred neighbourhood character.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>B33 Common Property</td>
<td>Complies</td>
<td>All areas of common property have been designed to clearly delineate public, communal and private areas. Common property is functional and capable of efficient management.</td>
</tr>
<tr>
<td>Ensure car parking, access areas and other communal open space is practical, attractive and easily maintained. Avoid future management difficulties in common ownership areas.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
**B34 Site Services**

Ensure site services and facilities can be installed and easily maintained and are accessible, adequate and attractive.

Avoid future management difficulties in common ownership areas.

| Complies | All appropriate site services can be easily catered for on-site. Mail boxes are shown to adjoin the pedestrian entry with waste provisions being provided within the basement level. |

---

**CLAUSE 55.07 APARTMENT DEVELOPMENTS**

<table>
<thead>
<tr>
<th>Title and Objective</th>
<th>Complies with Standard?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Standard B35 Energy efficiency objectives</strong></td>
<td>Could be conditioned to comply.</td>
<td>The site orientation maximises the solar access and does not unreasonably reduce energy efficiency and solar access to adjoining properties. Areas of open space facing north have been maximised where possible. A NatHERS Assessment has not been provided with the amended application but it is considered the proposed development reasonable provides for an appropriate level of energy efficiency. Had the application been supported then a condition has been included to require measures to ensure compliance with this the NatHERS Cooling Load. It should be noted that the correct climate zone for the subject site is Moorabbin, which has a maximum cooling load of 21MJ/M², not Melbourne as specified in the submitted information.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Standard B36 Communal open space</th>
<th>N/A</th>
<th>This standards relates to developments with 40 or more dwellings.</th>
</tr>
</thead>
<tbody>
<tr>
<td>To ensure that communal open space is accessible, practical, attractive, easily maintained and integrated with the layout of the development. Developments with 40 or more dwellings should provide a minimum area of communal open space of 2.5 sq metres per dwelling or 250 sq metres, whichever is lesser.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Standard B37 Solar access to communal outdoor open space</strong></td>
<td>N/A</td>
<td>There is no communal outdoor open space provided within this development. Communal areas within this development at ground floor level to do constitute recreational outdoor open space.</td>
</tr>
<tr>
<td>To allow solar access into communal outdoor open space.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Standard B38 Deep soil areas and canopy trees objective</strong></td>
<td>Does not comply</td>
<td>Refer to section 5.3 of the report.</td>
</tr>
<tr>
<td>To promote climate responsive</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Standard B30 Integrated water and stormwater management</td>
<td>Complies</td>
<td>The supporting Water Sensitive Urban Design Report shows that rainwater tanks with a total storage volume of 25,000 litres will be located below ground.</td>
</tr>
<tr>
<td>--------------------------------------------------------</td>
<td>----------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>To encourage the use of alternative water sources such as rainwater, stormwater and recycled water. To facilitate stormwater collection, utilisation and infiltration within the development. To encourage development that reduces the impact of stormwater run-off on the drainage system and filters sediment and waste from stormwater prior to discharge from the site.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Standard B40 Noise impacts</th>
<th>Complies</th>
<th>The lifts have been centralised within the building to minimise the noise impacts. In addition all mechanical plant and services are located on the roof or in the basement to minimise the noise impacts.</th>
</tr>
</thead>
<tbody>
<tr>
<td>To contain noise sources in developments that may affect existing dwellings. To protect residents from external and internal noise sources.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Standard B41 Accessibility</th>
<th>Could be conditioned to comply.</th>
<th>Requirement: 50 per cent of dwellings should have:</th>
</tr>
</thead>
<tbody>
<tr>
<td>To ensure the design of dwellings meets the needs of people with limited mobility.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- A clear opening width of at least 850mm at the entrance to the dwelling and main bedroom.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- A clear path with a minimum width of 1.2 metres that connects the dwelling entrance to the main bedroom, an adaptable bathroom and the living area.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- A main bedroom with access to an adaptable bathroom.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- At least one adaptable bathroom that meets all of the requirements of either Design A or Design B specified in Table B7.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Proposed:</strong> Insufficient detail has been provided to demonstrate compliance. This could be secured by condition and is not considered a reason for refusal.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Standard B42 Building entry and circulation</th>
<th>Complies</th>
<th>The building entry and foyer area provides a clearly identifiable area which benefits from direct solar access and natural ventilation. Stair access and lift is provided internally to the dwellings.</th>
</tr>
</thead>
<tbody>
<tr>
<td>To provide each dwelling and building with its own sense of identity.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>To ensure the internal layout of buildings provide for the safe, functional and efficient movement of residents.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>To ensure internal communal areas provide adequate access to daylight</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| Standard B43 Private open space above ground floor | Complies | Requirement: An area of 15 square metres, with a minimum dimension of 3 metres at a podium or other similar base and convenient access from a living room, or a balcony with an area of 12m² with a minimum dimension of 2.4 metres. Proposed: All apartments above ground level meet the requirements and have in excess of the minimum areas required for balconies.

| Standard B44 Storage | Complies | Required: 3 bed apartments require 18m³ total minimum storage volume and 12m³ minimum storage volume with the dwelling. Provided: all dwellings are provided with storage areas that meets the requirements.

| Standard B45 Waste and recycling | Complies | The proposal provides for appropriate and conveniently located areas for waste collection on site. A waste management Plan has been included as a condition of permit requiring on-site waste collection services.

| Standard B46 Functional layout | Complies | Requirement: Bedrooms should provide for a main bedroom with a minimum dimensions of 3m x 3.4m. All other bedrooms should have a minimum dimension of 3m x 3m. 2 or more bedroom dwellings should have a minimum living area width of 3.6m with a minimum area of 12m². Proposed: All apartments comply with the minimum widths and area.

| Standard B47 Room depth | Does not comply | Refer to section 5.3 of the report.

| Standard B48 Windows | Complies | Requirement: Habitable rooms should have a window in an external wall of the building. A window may provide daylight to a bedroom from a smaller secondary area within the bedroom where the window is clear to the sky. The secondary area should be:
- A minimum width of 1.2 metres.
- A maximum depth of 1.5 times the width, measured from the
<table>
<thead>
<tr>
<th>Standard B49 Natural ventilation</th>
<th>Could be conditioned to comply.</th>
</tr>
</thead>
<tbody>
<tr>
<td>To encourage natural ventilation of dwellings.</td>
<td>Requirement: At least 40 per cent of dwellings should provide effective cross ventilation that has:</td>
</tr>
<tr>
<td>To allow occupants to effectively manage natural ventilation of dwellings.</td>
<td>- A maximum breeze path through the dwelling of 18 metres.</td>
</tr>
<tr>
<td></td>
<td>- A minimum breeze path through the dwelling of 5 metres.</td>
</tr>
<tr>
<td></td>
<td>- Ventilation openings with approximately the same area.</td>
</tr>
</tbody>
</table>

**Proposed:** All rooms have a window in an external wall of the building.

**Proposed:** No indication has been given of the number of dwellings that comply with the requirement. This could be a condition of permit had the application been supported.
01 CONTEXT ANALYSIS
CONTEXT IMAGES - JOURNEY DOWN BEMMERSYDE AVENUE

VIEW 1 - APPROX 20M TR FROM CHURCH ST/BEMMERSYDE AVENUE JUNCTION
Subject site not visible from Church St/Bemmersyde Avenue intersection.

VIEW 2 - APPROX VIEW TR FROM CHURCH ST/BEMMERSYDE AVENUE JUNCTION
Subject site barely visible, shaded by street trees.

VIEW 3 - APPROX SITE TR FROM CHURCH ST/BEMMERSYDE AVENUE JUNCTION
Subject site just visible, shaded by street trees and neighbouring single storey dwelling.

VIEW 4 - APPROX SITE TR FROM CHURCH ST/BEMMERSYDE AVENUE JUNCTION
Bemmersyde Avenue screen itself when immediately in front of property. Shielded by street line canopies and landscape treatment.

Advertised Plan

Reference:
- Item 4.4 – Matters of Decision

Attachment 3

Bayside City Council
Planning & Amenity Committee Meeting - 10 December 2018
BEMMERSYDE AVENUE
4 BEMMERSYDE AVENUE, BRIGHTON VIC

ARCHITECTURAL DRAWINGS

<table>
<thead>
<tr>
<th>SHEET NO</th>
<th>DRAWING TITLE</th>
<th>SCALE</th>
</tr>
</thead>
<tbody>
<tr>
<td>TP0-000</td>
<td>DRAWING SCHEDULE</td>
<td>MTS</td>
</tr>
<tr>
<td>TP0-101</td>
<td>SITE CONTEXT PLAN</td>
<td>1:200 A3</td>
</tr>
<tr>
<td>TP0-102</td>
<td>DEMOLITION PLAN</td>
<td>1:200 A3</td>
</tr>
</tbody>
</table>

EXISTING CONDITIONS:

<table>
<thead>
<tr>
<th>SHEET NO</th>
<th>DRAWING TITLE</th>
<th>SCALE</th>
</tr>
</thead>
<tbody>
<tr>
<td>TP1-101</td>
<td>BASEMENT PLAN</td>
<td>1:200 A3</td>
</tr>
<tr>
<td>TP1-102</td>
<td>GROUND FLOOR PLAN</td>
<td>A</td>
</tr>
<tr>
<td>TP1-103</td>
<td>FIRST FLOOR PLAN</td>
<td>A</td>
</tr>
<tr>
<td>TP1-104</td>
<td>SECOND FLOOR PLAN</td>
<td>A</td>
</tr>
<tr>
<td>TP1-105</td>
<td>ROOF PLAN</td>
<td>A</td>
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<tr>
<td>TP1-106</td>
<td>GARDEN PLAN</td>
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</tr>
<tr>
<td>TP2-101</td>
<td>ELEVATIONS</td>
<td>1:100 A2</td>
</tr>
<tr>
<td>TP2-102</td>
<td>ELEVATIONS (PLANTING NOT SHOWN FOR CLARITY)</td>
<td>1:100 A2</td>
</tr>
<tr>
<td>TP2-103</td>
<td>ELEVATIONS (PLANTING NOT SHOWN FOR CLARITY)</td>
<td>1:100 A2</td>
</tr>
<tr>
<td>TP3-101</td>
<td>SECTION A &amp; B</td>
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</table>

DEVELOPMENT SUMMARY

<table>
<thead>
<tr>
<th>LEVEL</th>
<th>UNITS</th>
<th>CARS</th>
<th>STORAGE</th>
<th>MSR</th>
<th>GPA</th>
<th>BALCONY</th>
</tr>
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<tbody>
<tr>
<td>BASEMENT</td>
<td>4</td>
<td>32</td>
<td>92 m²</td>
<td>0 m²</td>
<td>0 m²</td>
<td>0 m²</td>
</tr>
<tr>
<td>GROUND FLOOR</td>
<td>4</td>
<td>808 m²</td>
<td>0 m²</td>
<td>0 m²</td>
<td>144 m²</td>
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<tr>
<td>SECOND FLOOR</td>
<td>2</td>
<td>435 m²</td>
<td>0 m²</td>
<td>535 m²</td>
<td>216 m²</td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td>14</td>
<td>84</td>
<td>2372 m²</td>
<td>2063 m²</td>
<td>480 m²</td>
<td></td>
</tr>
</tbody>
</table>

SITE AREA: 1674 m²
GARDEN AREA: 777 m² (47%)
SITE COVERAGE: 1234 m²
SITE PERMEABILITY: 546 m² (33%)

Advertised Plan
4 Bemmersyde Ave
BRIGHTON VIC 3186

BEMMERSYDE RESIDENTIAL LANDSCAPE PLANS

FOR PLANNING

<table>
<thead>
<tr>
<th>SHEET NO.</th>
<th>DRAWING</th>
<th>SCALE</th>
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<tr>
<td>BEM018-01-01</td>
<td>Ground Level - Planting Plan</td>
<td>1:100 @ A1</td>
</tr>
<tr>
<td>BEM018-01-02</td>
<td>Level 1 Plan</td>
<td>1:100 @ A1</td>
</tr>
<tr>
<td>BEM018-01-03</td>
<td>Level 1 Plan</td>
<td>1:100 @ A1</td>
</tr>
</tbody>
</table>

Received
19 JUN 2018
Planning Department

Advertised Plan

Bayside City Council
Planning & Amenity Committee Meeting - 10 December 2018
Attachment 3
4.5 MAYFLOWER (7 CENTRE ROAD, BRIGHTON EAST)
SECONDARY CONSENT - APPROVE
APPLICATION NO: 2006/1023/3 WARD: NORTHERN

City Planning & Community Services - Statutory Planning
File No: PSF/15/8755 – Doc No: DOC/18/271741

1. Application details

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Approve the secondary consent amended plans</th>
</tr>
</thead>
<tbody>
<tr>
<td>Street address</td>
<td>7 Centre Road, Brighton East</td>
</tr>
<tr>
<td>Application No.</td>
<td>2006/1023/3</td>
</tr>
<tr>
<td>Applicant</td>
<td>WSC Planning Pty Ltd</td>
</tr>
<tr>
<td>Title/Covenant</td>
<td>The title is not subject to any restrictive covenants.</td>
</tr>
<tr>
<td>Date application received</td>
<td>12 October, 2018</td>
</tr>
<tr>
<td>Zoning</td>
<td>Neighbourhood Residential Zone (Schedule 3)</td>
</tr>
<tr>
<td>Overlays</td>
<td>Special Building Overlay</td>
</tr>
<tr>
<td></td>
<td>Design and Development Overlay (Schedule 3)</td>
</tr>
<tr>
<td></td>
<td>Development Contributions Plan Overlay (Schedule 1)</td>
</tr>
<tr>
<td>Application plans and documents</td>
<td>DOC/18/248744</td>
</tr>
</tbody>
</table>

Proposal

Planning Permit 2006/1023/3 allows:

Alterations and additions to an existing aged care facility, including the construction of 3 storey buildings in a Design and Development Overlay 2, basement parking in a Special Building Overlay and alterations to a crossing in a Road Zone Category 1 and the creation of new access in a Road Zone Category 1

The application seeks approval to amend the endorsed plans pursuant to condition 2 of Planning Permit 2006/1023/3 on a lot, associated with the Mayflower Brighton, Residential Aged Care Facility.

The proposed amendments is as follows:

- Demolition of the existing staff kitchenette and dining area, single toilet and balcony on Level 1 (first floor).
- Construction of a larger staff area (including kitchenette) with construction over the existing balcony.
- Built form will not project beyond the balcony line and will remain within the existing line.

All works are setback to the rear of the existing double storey built form fronting Centre Road, approximately 29.5 metres from the closest road frontage.

The development plans are provided at Attachment 1.

An aerial image of the site and surrounds are provided at Attachment 2.
History
Planning Permit 2006/1023/1 was issued on 10 September 2007 at the direction of the Victorian Civil and Administrative Tribunal (VCAT).

Plans were endorsed by Council on 10 September 2007. The plans have since been amended via Section 72 of the Planning and Environment Act 1987, numerous times, with the current endorsed plans dated 26 June 2018.

The current planning permit is provided at Attachment 3.

2. Planning controls

Planning Permit requirements
There are no primary permit triggers to consider as part of this application. The application seeks to amend the endorsed plans pursuant to the secondary consent provisions afforded by Condition 2 of Planning Permit 2006/1023/3.

3. Stakeholder consultation

External referrals
There are no external referrals required to be made in accordance with Clause 66 of the Bayside Planning Scheme.

Internal referrals
There are no referrals to Council departments required to be made for this application.

Public notification
Applications made in accordance with the secondary consent provisions are not subject to the notice requirements of Section 52 of the Planning and Environment Act 1987.

Therefore, the amended plans have not been advertised.

4. Recommendation

That Council resolve to:
1. Approve the amended plans in accordance with secondary consent provisions of Planning Permit 2006/1023/3.
2. Plans identified as Drawing TP.13 (Part Plan – Level 1 C) prepared by Godfrey Spowers (Victoria) Pty Ltd and dated 10/4/18 be endorsed. These plans are to be read in conjunction with the previously endorsed plans.

5. Council Policy

There are no primary Council policy matters to consider as part of the request to amend plans pursuant to the secondary consent provisions.

6. Considerations

The Victorian Civil and Administrative Tribunal have set out, on a number of occasions, the principles, or tests, of Secondary Consent (e.g. Westpoint Corporation P/L v Moreland CC {2005} and Oz Property Group P/L v Moonee Valley CC {2014}).

The tests include the following:

Does the proposed amendment result in a transformation of the proposal?

The amendment does not result in a transformation of the proposal. The scale of the overall building fabric will not change. The proposal does not alter the outcome related
to site coverage, permeability, overlooking or overshadowing, nor will result in any removal of vegetation. From a neighbourhood character perspective, the proposal will still be an appropriate outcome.

The proposed change is considered to be minor in nature and will have no impact to the amenity of adjoining properties and will not cause material detriment to any third parties. The proposed changes do not conflict with any permit conditions, objections raised in the application for which primary consent was granted for; and, does not result in a transformation of the proposal. The changes are predominantly internal and will not result in any external impacts, nor alter the number of beds of the facility or associated staff.

Does the proposed amendment authorise something for which primary consent is required under the planning scheme?

The primary consent was issued at the direction of VCAT for the construction of residential aged care facility, over basement parking, in a Design and Development Overlay and Special Building Overlay. The amendment sought under this application is considered to be consistent with the proposal and does not authorise something for which primary consent is required for under the Bayside Planning Scheme.

The existing number of beds (lodging rooms) associated with the aged care facility will not be increased as a result of this secondary consent application, and therefore does not trigger additional car parking requirements pursuant to Clause 52.06-5 of the Bayside Planning Scheme.

Is the proposed amendment of consequence having regard to the purpose of a planning control under which the permit was granted?

Having regard to the development and the purpose of the planning controls under which the permit was granted, the proposed amendment is considered inconsequential as there has been no material change to the nature of the planning controls and policies affecting the land. It is considered that the changes are appropriate, will not detrimentally impact on the amenity of adjoining properties nor cause material detriment to any third parties.

Is the proposed amendment contrary to a specific requirement or condition of the permit?

The proposed amendments to the endorsed plans will not contravene any specific requirement or condition of the permit and remains compliant with the relevant objectives and standards of the Bayside Planning Scheme.

Support Attachments

1. Application Plans ⇩
2. Site and Surrounds ⇩
3. Planning Permit 2006/1023 ⇩
Figure 1 Aerial overview of the site and surrounds

Legend

| Subject site & location of works | ✪ |
Attachment 3

PLANNING PERMIT NO: 5/2006/1023/3

Responsible Authority: Bayside City Council
Planning Scheme: Bayside

Address of the Land: 7 Centre Road BRIGHTON EAST
The Permit Allows: Alterations and additions to an existing aged care facility, including the construction of 3 storey buildings in a Design Development Overlay 2, basement parking in a Special Building Overlay and alterations to a crossing in a Road Zone Category 1 and the creation of new access in a Road Zone Category 1 in accordance with the endorsed plans and subject the following conditions.

The Following Conditions Apply To This Permit:

1 Before development commences, amended plans must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the plans by Woodhead P/L (Drawings TP004 to TP010, "VCAT Issue" dated 1/08/2007) but modified to show:
   a) Alterations to the car parking layout generally in accordance with the report of Mr Russell Fairlie, Traffic Engineer of Ratio Consultants, dated August 2007;
   b) A schedule of all exterior colours, materials and finishes.

2 The use and/or development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.

3 The Grant Street tree that is proposed to be removed to be replaced with a suitable replacement tree. The size, species and location to be determined by the Responsible Authority, all costs to be borne by the developer.

4 Before development commences, a construction management plan must be submitted to and approved by the responsible authority. The management plan must set out measures to limit any impacts of construction on the amenity of the locality. The plan must not be revised without the consent of the Responsible Authority. The construction must be undertaken in accordance with the provisions of the management plan to the satisfaction of the responsible authority.

5 The use and development must be managed so that the amenity of the area is not detrimentally affected, through the:
   a) Transport of materials, goods or commodities to or from the land;
   b) Appearance of any building, works or materials;
   c) Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil;
   d) Presence of vermin;
   e) Others as appropriate.

6 Except with the consent of the responsible authority deliveries to and from the site (including waste collection) must only take place between 7.00 am and 6.00 pm Monday to Friday.

Date issued: 10 September 2007
Date amended: 18 June 2018

Planning and Environment Regulations 2005 Form 4
Note: Under Part 4, Division 1A of the Planning and Environment Act 1987, a permit may be amended. Please check with the responsible authority that this permit is the current permit and can be acted upon.

Signature for the Responsible Authority

Page 1 of 10
7 All security alarms or similar devices installed on the land must be of a silent type in accordance with any current standard published by Standards Australia International Limited and be connected to a security service.

8 Noise levels emanating from the premises must not exceed those required to be met under State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade), No. N-1.

9 No external sound amplification equipment or loudspeakers are to be used for the purpose of announcement, broadcast, playing of music or similar purpose.

10 Piping associated with, reticulated water, sewerage or air conditioning must not be attached to the exterior façade of any building above ground floor level unless reasonably concealed from view from the public realm or from an adjoining property to the satisfaction of the responsible authority.

11 No plant, equipment, services or architectural features other than those shown on the endorsed plans are permitted above the roof level of the building(s) without the written consent of the Responsible Authority.

12 Provision must be made on the land for the storage and collection of garbage and other solid waste. This area must be graded and drained and screened from public view to the satisfaction of the Responsible Authority.

13 External lighting must be designed, baffled and located so as to prevent any adverse effect on adjoining land to the satisfaction of the Responsible Authority.

14 Except with the consent of the responsible authority, before the use or occupation of the development starts, the area(s) set aside for the parking of vehicles and access lanes as shown on the endorsed plans must be:
   a) constructed;
   b) properly formed to such levels that they can be used in accordance with the plans;
   c) surfaced with an all-weather-seal coat;
   d) drained;
   e) line marked to indicate each car space and all access lanes;
   f) clearly marked to show the direction of traffic along access lanes and driveways, to the satisfaction of the Responsible Authority.

Car spaces, access lanes and driveways must be kept available for these purposes at all times.

15 A minimum of 4 car space(s) must be provided for the exclusive use of disabled persons. The car space(s) must be provided as close as practicable to a suitable entrance(s) of the building and must be clearly marked with a sign to indicate that the space(s) must only be utilised by disabled persons. The minimum dimensions of the car space(s) must be 3.2 metres wide by 4.9 metres long.

16 Vehicular crossing(s) must be constructed to the road to suit the proposed driveway(s) to the satisfaction of the Responsible Authority and any existing crossing or crossing opening must be removed and replaced with footpath, nature strip, and kerb and channel to the satisfaction of the Responsible Authority.
17 Except with the consent of the responsible authority, vehicles (other than in an emergency) must not exit the site to Grant Street via the western crossover.

18 The Legal Point of Discharge for this development is to be the Council drain located at the rear of the property. The Developer should be satisfied that levels permit the adoption of the above discharge point.

19 Plans for the construction of the outfall drain must receive Bayside City Council approval prior to the commencement of the development.

20 Any paved courtyards/paths must be graded/drained to prevent stormwater discharge into adjacent properties.

21 No polluted and/or sediment laden run-off is to be discharged directly or indirectly into (Bayside City Council) drains or watercourses. To this end, pollution or litter traps must be provided on site.

**Melbourne Water Conditions**

22 Finished floor levels must be a minimum of 300 mm above the applicable flood level.

23 Any proposed vehicle parking areas must have finished surface levels no lower than 350 mm below the applicable flood level.

24 The entry / exit of the basement car park must incorporate a flood proof apex of a minimum of 300 mm above the applicable flood level.

25 All doors, windows, vents and openings to the basement car park must be a minimum of 300 mm above the applicable flood level.

26 Any vehicular and/or pedestrian access must be designed and constructed to comply with the following safety criteria associated with the applicable flood level. (A) Depth of flow does not exceed 0.35m; (B) Velocity of flow does not exceed 1.5m/s; (C) The Depth x Velocity product does not exceed 0.35 sq.m/s.

27 The development must be designed to convey overland flows to meet Melbourne Water's site safety criteria and not impact upon adjacent flood levels. An engineer's report and computations demonstrating this will be required for approval.

28 Any road or access way intended to act as a stormwater overland flow path must be designed and constructed to comply with the floodway safety criteria outlined within Appendix G of Melbourne Water's Land Development Manual.

29 The building/structure including footings, eaves etc must be set outside any easement or a minimum 1.5 metre laterally clear of the outside edge of the main drain, whichever is greater.

30 Prior to Building Permit being issued, any demolition of structures, removal of existing trees etc shall require separate approval from Melbourne Water. The details shall include:
- The method works of to be carried;
- Machinery access, no additional loading to be placed on drain.

31 Prior to building permit being issued, the depth of the foundations must be adequate to satisfy the angle of repose relative to the drain as per Melbourne Water's specification. See attached Standard Drawing: 'Angle of Repose - Footing Design' for details.

Date issued: 10 September 2007

Date amended: 18 June 2018

Arthur Vatalio

Signature for the Responsible Authority
32 Prior to Building Permit being issued, a separate Building Application shall be made directly to Melbourne Water for detailed terms and conditions.
Design plans shall be submitted to include the following:
- Driveway type, thickness etc;
- Method of works;
- Building footings;
- Any other structures/works that are within easement or affecting the drain.

33 Any new connection shall be made to Council's drainage system. Evidence will need to be provided by Council regarding the point of discharge. In the event that connection cannot be made to Council's system a separate application is necessary for any new or modified stormwater connection or alteration to Melbourne Water’s drainage system (i.e. junction pits) shall require approval from Melbourne Water.

34 A legal Buildover Agreement for structures/works over Melbourne Water’s drain shall be entered into with Melbourne Water.

35 No loading shall be placed directly on Melbourne Water’s drain. Engineering computations shall be submitted to Melbourne Water.

36 Prior to commencement of works/demolishment, Melbourne Water shall require to carry out a pre- and post construction inspection of the drain at your expense.

37 Landscaping plans shall be submitted to Melbourne Water for approval to include the following; Paving, Tree Species.

38 Any new internal sewer, drainage or services shall have a minimum offset of 1.5 metre from the outside edge of Melbourne Water’s drain or unless otherwise agreed by Melbourne Water.

VicRoads Conditions

39 Signs and linemarking must be provided to direct and control the flow of traffic internal and external to the site to the satisfaction of the responsible authority and VicRoads.

Permit Expiry

40 This permit will expire if one of the following circumstances applies:
- the development and use is/are not started within two years of the date of this permit.
- the development is not completed within five years of the date of this permit.

The Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires, or within three months afterwards.

41 Prior to the removal of the street tree hereby approved, a payment of $7,316.85 must be made to Bayside City Council who will remove and replace the street tree in accordance with Council’s street tree policy. This figure will be required to be revised if the tree is not removed by 19 May 2015.
## Permit Notes

<table>
<thead>
<tr>
<th>Date</th>
<th>Amendment</th>
</tr>
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<tbody>
<tr>
<td>21 April 2008</td>
<td>Secondary Consent to Amend Plans in accordance with Condition 1(b) 'A schedule of all exterior colours, materials and finishes': Secondary Consent to Amend Plans: Basement Plan (tp 004) • Basement plan reconfigured with two (2) additional car spaces. Ground Floor (tp 005) • Hydrotherapy pool changed to a lap pool. • Central atrium space included. • Day care, multipurpose room and gym re configured. • Four (4) apartments added that contain two (2) bedrooms each. • Relocation of car parking spaces 28, 29, 33 and 34. First Floor (tp 006) • Central atrium space linking the ground floor. • Separation created between apartments and community areas. • Apartments 1/6, 1/7 &amp; 1/8 reconfigured. Second Floor (tp007) • Atrium continues to the second floor offering light to the spaces located below. • Apartments 2/6, 2/7 &amp; 2/8 reconfigured. West Elevation (tp008) • Change the use of render to aluminium composite material. • Second floor aged care changed from render to brick. • Use of sandstone cladding to articulated frame. • Gate added to gas meter enclosure as required. West Elevation (tp009) • Fenestration detailing amended. • Balconies clad in sandstone with glass balustrades. • Carparking areas clad in metal louvers in lieu of steel louvers in precast concrete. • Solar water heating system added to the top of the roof. North Elevation (tp010) • Fenestration detailing amended. • Balconies clad in sandstone with glass balustrades. • Solar water heating system added to the top of the roof. South Elevation (tp011) • Fenestration detailing amended. • Balconies clad in sandstone with glass balustrades with columns forming a colonnade. • Car parking areas clad in metal louvers in lieu of steel louvers in precast concrete. • Solar water heating system added to the top of the roof.</td>
</tr>
</tbody>
</table>

Date issued: 10 September 2007  
Date amended: 18 June 2018  

Arthur Vatsis  
Signature for the Responsible Authority

Planning and Environment Regulations 2005 Form 4  
Note: Under Part 4, Division 1A of the Planning and Environment Act, 1987, a permit may be amended. Please check with the responsible authority that this permit is the current permit and can be acted upon.
PLANNING PERMIT NO: 5/2006/1023/3

Bayside City Council
Planning & Amenity Committee Meeting - 10 December 2018

PLANNING PERMIT NO: 5/2006/1023/3

14 October 2010

Permit Amended under Section 71 of the Planning and Environment Act 1987 to:

West Elevation (tp008)
Reference to “change of use of render to aluminium composite material” deleted.

East Elevation (tp009)
'West Elevation' renamed 'East Elevation'.

North Elevation (tp010)
Reference to “Solar water heating system added to the top of the roof” deleted.

South Elevation (tp011)
Reference to “Solar water heating system added to the top of the roof” deleted.

20 December 2011

Secondary consent Amendments to plans

Basement Plan (TP 004)
- Basement plan reconfigured
- Bin Store included within the basement

Ground Floor (TP 005)
- Hydrotherapy pool changed to a lap pool.
- External ramp added to provide disabled access into the Grant Street building
- Foyer within the Grant Street building altered to include the ramp access and services. W/C internal layouts reconfigured.
- Services access stair added for maintenance purposes only (includes lockable gate)
- Bin store increased in size as part of rationalisation of refuse collection areas (see also item 2H below)
- Car park entrance and internal storage areas altered
- Foyer within Centre Road building altered to improve access
- Public activity area altered within the Centre Road building
- Bin storage area has been relocated to roundabout and replaced with landscaping.

First Floor (TP 006)
- Central atrium space linking the ground floor.
- Grant Street building foyer altered to accommodate new ramp. W/C layouts configured
- Foyer within Centre Road building altered to improve access
- Internal layout of administration area within Centre Road building reconfigured

Second Floor (TP007)
- Atrium continues to the second floor offering light to the spaces located below.
- Grant Street building foyer altered to accommodate new ramp; W/C layouts configured.
- Foyer within Centre Road building altered to improve access

West Elevation (TP008)
- Change the use of render to aluminium composite material.
- Sunshade louvers removed from western facade of Centre Road building.

Date issued: 10 September 2007
Date amended: 18 June 2018

Signature for the Responsible Authority

Planning and Environment Regulations 2005 Form 4

Note: Under Part 4, Division 1A of the Planning and Environment Act 1987, a permit may be amended. Please check with the responsible authority that this permit is the current permit and can be acted upon.
PLANNING PERMIT NO: 5/2006/1023/3

Responsible Authority: Bayside City Council
Planning Scheme: Bayside

- Sunshade louvers within ground floor façade of Centre Road building replaced by rendered wall
- Sunshade louvers removed from western façade of Centre Road building, glazing to be insulated against heat gain/loss
- Schedule of materials to include ventilated screens.

West Elevation (TP009)
- Fenestration detailing amended.
- Glazing and louvers replaced with brick finish adjacent to fire stair of Centre Road building
- Sunshade louvers removed from western façade of Centre Road building, glazing to be insulated
- Schedule of materials to include ventilated screens
- Schedule annotated to show removal of louvres
- Foyer within Centre Road building altered to improve access
- Internal layout of administration area within Centre Road building reconfigured

Second Floor (TP007)
- Atrium continues to the second floor offering light to the spaces located below.
- Grant Street building foyer altered to accommodate new ramp; W/C layouts configured.
- Foyer within Centre Road building altered to improve access

West Elevation (TP008)
- Change the use of render to aluminium composite material.
- Sunshade louvers removed from western facade of Centre Road building
- Sunshade louvers within ground floor façade of Centre Road building replaced by rendered wall
- Sunshade louvers removed from western façade of Centre Road building, glazing to be insulated against heat gain/loss
- Schedule of materials to include ventilated screens.

West Elevation (TP009)
- Fenestration detailing amended.
- Glazing and louvers replaced with brick finish adjacent to fire stair of Centre Road building
- Sunshade louvers removed from western façade of Centre Road building, glazing to be insulated
- Schedule of materials to include ventilated screens
- Schedule annotated to show removal of louvres

North Elevation (TP010)
- Fenestration detailing amended.
- Small section of balcony removed from northern façade of Centre Road building
- Door added at second floor level of Centre Road building
- Correction made to plan to remove balcony from existing building

Date issued: 10 September 2007
Date amended: 18 June 2018
Signature for the Responsible Authority

Planning and Environment Regulations 2005 Form 4
Note: Under Part 4, Division 1A of the Planning and Environment Act, 1987, a permit may be amended. Please check with the responsible authority that this permit is the current permit and can be acted upon.
<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
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<tbody>
<tr>
<td>21 August 2012</td>
<td>Secondary Consent to Amend Plans:</td>
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<tr>
<td></td>
<td>The ridge level height of the lift overruns to the east and west buildings (facing Grant Street) shown as 27.01 metres and 23.55 metres (AHD) respectively.</td>
</tr>
<tr>
<td>1 October 2013</td>
<td>Extension of time granted to allow development to be completed by 12 September 2015.</td>
</tr>
<tr>
<td>25 October 2013</td>
<td>Secondary Consent to Amend Plans:</td>
</tr>
<tr>
<td></td>
<td>Awning added at first floor level above terrace; and</td>
</tr>
<tr>
<td></td>
<td>Outdoor terrace at second floor level updated to include a pergola and sun shade with fixed planters.</td>
</tr>
<tr>
<td>15 May 2014</td>
<td>Secondary Consent to Amend Plans:</td>
</tr>
<tr>
<td></td>
<td>Amend the construction management plan to include a provision of a work zone along the Grant Street frontage to facilitate Stage 3 works of the aged care facility. The area of the work zone will extend along the entire frontage of the subject site, located on the southern side of Grant Street.</td>
</tr>
<tr>
<td>21 May 2014</td>
<td>Amendment to endorsed plans under Section 72 of the Planning and Environment Act 1987 to include:</td>
</tr>
<tr>
<td></td>
<td>The inclusion of Condition 41; and</td>
</tr>
<tr>
<td></td>
<td>Removal of the <em>Melaleuca armillaris</em> tree located within the nature strip on Grant Street.</td>
</tr>
<tr>
<td>Date</td>
<td>Description</td>
</tr>
<tr>
<td>------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
</tbody>
</table>
| 10 September 2014 | Secondary Consent to Amend Plans:  
- Amend the elevations by replacing asphalt shingles with metal roof sheathing (Custom-orb profile in the Colourbond colour 'Windspray').  
13 May 2015 | Extension of time granted to allow development to be completed by 1 February 2016.  
15 June 2015 | Amendment pursuant to Section 71 of the Planning and Environment Act 1987:  
- Permit notes corrected to include previously referenced approvals on the 20th December 2011- Drawing (TP012) and 21 August 2012.  
7 June 2016 | Secondary Consent Amended Plans  
- Replacing terracotta tiles with Colourbond sheeting;  
- Existing timber and aluminium framed windows replaced with double glazed aluminium frames;  
- Existing balustrade replaced with glass detailing to match balustrading details of the existing development;  
- Alterations to façade which includes applied render at certain locations to replicate the finish found within the development.  
22 June 2016 | Extension of time granted to allow development to finish by 10 September 2017.  
18 June 2018 | Amendment to the permit under Section 72 of the Planning and Environment Act 1987 to:  
- Demolition of existing lounge room  
**Phase 1 (Margaret Beynon House)**  
- Construction of 2 new bedrooms in place of lounge room  
- Demolition of vacated bedrooms  
**Phase 2 (Margaret Beynon House)**  
- East wing building extension including 4 new bedrooms  
- Demolition of vacated bedrooms, dining room and servery, and nurse station  
**Phase 3 (Margaret Beynon House)**  
- South wing building extension for 3 new bedrooms and lounge  
- Construction of 1 new bedroom adjacent to dining room  
- Refurbishment of dining area and nurse station - Demolition of vacated 4 bedrooms  
**Phase 4 (Margaret Beynon House)**  
- Construction of new west wing lounge cluster  
- Construction of south wing dining and servery  
- Lift upgrades (2 No.)  
- Laundry and kitchen redevelopment |

Date issued: 10 September 2007  
Date amended: 18 June 2018  
Signature for the Responsible Authority
Phase 4 (Rennolds House)
- Demolition of lounge, dining, laundry and kitchen areas
- Refurbishment of lounge, dining, and servery
- Reconstruction of staff office and entry lounge

This permit supersedes all other permits issued.
FORM 4

PLANNING PERMIT

Sections 63 and 68

IMPORTANT INFORMATION ABOUT THIS PERMIT

WHAT HAS BEEN DECIDED?
The Responsible Authority has issued a permit.
(Note: This is not a permit granted under Division 5 or 6 of Part 4 of the Planning and Environment Act 1987.)

WHEN DOES A PERMIT BEGIN?
A permit operates:
* from the date specified in the permit; or
* if no date is specified, from:
  (i) the date of the decision of the Victorian Civil and Administrative Tribunal, if the permit was issued at the direction of the Tribunal; or
  (ii) the date on which it was issued, in any other case.

WHEN DOES A PERMIT EXPIRE?
1. A permit for the development of land expires if:
   * the development or any stage of it does not start within the time specified in the permit; or
   * the development requires the certification of a plan of subdivision or consolidation under the Subdivision Act 1988 and the plan is not certified within two years of the issue of the permit, unless the permit contains a different provision; or
   * the development or any stage is not completed within the time specified in the permit, or, if no time is specified, within two years after the issue of the permit or in the case of a subdivision or consolidation within 5 years of the certification of the plan of subdivision or consolidation under the Subdivision Act 1988.
2. A permit for the use of land expires if:
   * the use does not start within the time specified in the permit, or if no time is specified, within two years after the issue of the permit; or
   * the use is discontinued for a period of two years.
3. A permit for the development and use of land expires if:
   * the development or any stage of it does not start within the time specified in the permit; or
   * the development or any stage of it is not completed within the time specified in the permit, or, if no time is specified, within two years after the issue of the permit; or
   * the use does not start within the time specified in the permit, or, if no time is specified, within two years after the completion of the development; or
   * the use is discontinued for a period of two years.
4. If a permit for the use of land or the development and use of land or relating to any of the circumstances mentioned in section 6A(2) of the Planning and Environment Act 1987, or to any combination of use, development or any of those circumstances requires the certification of a plan under the Subdivision Act 1988, unless the permit contains a different provision:
   * the use or development of any stage is to be taken to have started when the plan is certified; and
   * the permit expires if the plan is not certified within two years of the issue of the permit.
5. The expiry of a permit does not affect the validity of anything done under that permit before the expiry.

WHAT ABOUT APPEALS?
* The person who applied for the permit may apply for a review of any condition in the permit unless it was granted at the direction of the Victorian Civil and Administrative Tribunal, in which case no right of review exists.
* An application for review must be lodged within 60 days after the permit was issued, unless a notice of decision to grant a permit has been issued previously, in which case the application for review must be lodged within 60 days after the giving of that notice.
* An application for review is lodged with the Victorian Civil and Administrative Tribunal.
* An application for review must be made on an Application for Review form which can be obtained from the Victorian Civil and Administrative Tribunal, and be accompanied by the applicable fee.
* An application for review must state the grounds upon which it is based.
* An application for review must also be served on the Responsible Authority.
* Details about applications for review and the fees payable can be obtained from the Victorian Civil and Administrative Tribunal.
In accordance with Section 68(b) of the Governance Local Law No: 1 - 2013, a person is not permitted to present to this item as it is a report summarising a decision already made by another body, being VCAT.

Executive summary

To inform Council of Victorian Civil and Administrative Tribunal (VCAT) determinations received the previous month and to show the progress of VCAT outcomes for the financial year.

All councils are required to report to the Local Government Performance Reporting Framework (LGPRF) each year on the timeliness (SP1), service standard (SP2), cost per application (SP3) and decision quality of Statutory Planning (SP4).

The LGPRF measure SP4 used by the State Government to assess the quality of Council's decision making is the number of decisions made by Council that were not overturned or 'set aside' by VCAT on appeal by either the applicant or objectors.

Council has a target for 2018/19 that 55% of all Planning & Amenity Committee and Delegated Officer decisions should not be set aside by VCAT. This is comparable with other inner urban Councils in Melbourne such as Port Phillip and Stonnington.

The LGPRF measure does not include applications to amend VCAT issued permits (Section 87A applications), consent orders or appeals which are withdrawn by the applicant or objector prior to a hearing.

For the 2018/19 financial year, Council has received 46 decisions, of which

- 23 have been settled by consent orders;
- 2 have been withdrawn; and 1 has been struck out.

The total number of LGPRF measured decisions for the year to date is therefore 20. This table below reflects the new 2018/19 LGPRF reporting requirements for Council.

<table>
<thead>
<tr>
<th>LGPRF Statutory Planning Measure 4 (SP4) – Decision Quality</th>
</tr>
</thead>
<tbody>
<tr>
<td>Time period</td>
</tr>
<tr>
<td>-------------------</td>
</tr>
<tr>
<td>July 2018</td>
</tr>
<tr>
<td>August 2018</td>
</tr>
<tr>
<td>September 2018</td>
</tr>
<tr>
<td>October 2018</td>
</tr>
<tr>
<td>TOTAL DECISIONS</td>
</tr>
<tr>
<td>LGPRF Result</td>
</tr>
</tbody>
</table>
The number of days VCAT representation has required Council Officers to be in attendance at hearings is summarised below:

- 29 days at a Practice Day;
- 18 days at a Compulsory Conference; and
- 42 days in Final Hearings
totalling 89 days for the current financial year.

**Attachment 1** included provides a summary of each case identifying the key issues for Council policy and strategy.

**Summary of 2017/18 Financial Year**

For comparison, the 2017/18 financial year, Council received 112 decisions, of which:

- 27 were settled by consent orders;
- 9 were withdrawn; and
- 2 were struck out.

The total number of LGPRF measured decisions was 74. Of the 74 decisions, VCAT agreed with Council on 43 decisions and overturned 31. This resulted in 58% of decisions being affirmed.

Interestingly, in 2017/18 Council officers attended the Tribunal a total of 183 days, being:

- 55 days at a Practice Day;
- 48 days in a Compulsory Conference; and
- 80 days in a Final Hearing.

**Recommendation**

That Council:

1. receives and note the report; and
2. notes the outcome of VCAT decisions on the planning applications handed down during August and October 2018.

**Support Attachments**

1. VCAT Determined Appeals - part August 2018 & October 2018 ↓
<table>
<thead>
<tr>
<th>Subject land</th>
<th>15 Coronation ST, BRIGHTON EAST</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application no.</td>
<td>2014.23.2</td>
</tr>
<tr>
<td>VCAT reference no.</td>
<td>P467/2018</td>
</tr>
<tr>
<td>Applicant</td>
<td>John Finn</td>
</tr>
<tr>
<td>Referral Authority</td>
<td>N/A</td>
</tr>
<tr>
<td>Respondents</td>
<td>BH Prestige Homes</td>
</tr>
<tr>
<td>VCAT Member</td>
<td>K Birtwistle</td>
</tr>
<tr>
<td>Date of hearing</td>
<td>31/08/2018</td>
</tr>
<tr>
<td>Date of order</td>
<td>31/09/2018</td>
</tr>
<tr>
<td>Proposal</td>
<td>Construction of two (2) double storey dwellings</td>
</tr>
<tr>
<td>Officer recommendation/ Delegate determination</td>
<td>Notice of decision</td>
</tr>
<tr>
<td>Council determination</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Appeal type</td>
<td>Notice of Decision to Grant a Permit</td>
</tr>
<tr>
<td>Plans substituted (prior to hearing)</td>
<td>No</td>
</tr>
<tr>
<td>VCAT determination</td>
<td>Varied Permit to Issue</td>
</tr>
<tr>
<td>LGPRF outcome</td>
<td>N/A</td>
</tr>
</tbody>
</table>

**Comments:**

The Application for Review was an objector appeal to an NOD relating to a Section 72 Amendment in relation to the location of air-conditioning units.

All parties reached an agreed (consented) position on the day of the VCAT Merits Hearing in relation to the positioning of the air-conditioning units.

The Tribunal accepted the Consent Order at the Hearing and issued a subsequent Order.
VCAT Determined Appeals from: 1/10/2018 to 31/10/2018

Subject land: 422 New ST, BRIGHTON
Application no.: 2017.546.1
VCAT reference no.: P194/2018
Applicant: Rendall Pty Ltd
Referral Authority: N/A
Respondents: Thomas & Josephine Nolan and others
VCAT Member: Tracy Watson
Date of hearing: 28/06/2018
Date of order: 10/10/2018
Proposal: Construction of a four (4) storey building containing an office, shop and five (5) apartments and a reduction in car parking requirements.

Officer recommendation/Delegated determination: Refusal
Council determination: Not applicable
Appeal type: Failure to Grant a Permit
Plans substituted (prior to hearing): Yes
VCAT determination: Permit to Issue
LGPRF outcome: SET ASIDE

Comments:

The Tribunal set aside Council's decision Not to Support an Application for the construction of a four (4) storey building accommodating a shop, office and five (5) dwellings with associated car parking at the subject site known as No. 422 New Street, Brighton. The site is currently developed with a single storey building.

The Tribunal did not accept Council's arguments that the proposed four (4) storey building in this small low scale activity centre was too visually bulky and not sufficiently respectful of the design objectives of the Design and Development Overlay Schedule 2 (DDO-2) applying to the subject site. Council had also argued unsuccessfully that the nearby Martin Street Activity Centre is where four (4) storey buildings should be located as this is specifically supported by Clause 21.11-7 (Local Area Policy) of the Bayside Planning Scheme.

The Tribunal accepted the expert town planning witness who expressed the view that the proposed design response was appropriate for its context. Member Watson held that a positive outcome of the proposal was the elimination of the existing car parking area which fronts New Street and its replacement with an active street edge.

The Tribunal also noted that the third storey was well setback from all site boundaries and the proposed fourth storey was even more recessive with a much smaller foot print than the third storey. It also held that there were no unreasonable off site amenity impacts caused by the proposal. The Tribunal accepted the expert evidence of the two Traffic Witnesses called by the Applicant at the hearing that the ROW was functional and could successfully provide access to on site car parking. The Tribunal concluded that there were no traffic engineering reasons to refuse the granting of a permit.
Subject land: 10/284 Highett RD, HIGHETT
Application no.: 2016.396/1
VCAT reference no.: P282/2018
Applicant: Guida Pedley
Referral Authority: N/A
Respondents: S Hikaka
VCAT Member: Bill Sibinis
Date of hearing: 10/09/2018
Date of order: 23/10/2018
Proposal: Use of the site as a restricted recreation facility (gymnasium and fitness centre), associated business identification signage and a waiver of the car parking requirements

Officer recommendation/ Delegate determination: Notice of decision
Council determination: Not applicable
Appeal type: Notice of Decision to Grant a Permit
Plans substituted (prior to hearing): No

VCAT determination: No Permit to Issue
LGPRF outcome: SET ASIDE

Comments:

On 21 January 2018 Council officers issued a Notice of Decision to Grant a Planning Permit for Application 2016/396/1. This allowed the use of the site as a restricted recreation facility (gymnasium and fitness centre), associated business identification signage and a waiver of the car parking requirements. Support for the application was subject to the imposition of 7 conditions of permit.

An objector residing immediately above the subject property lodged an application to review Council’s NOD. The matter was considered in a half day hearing on 10 September 2018. The Tribunal ultimately directed that Council’s decision was set aside. The Member felt that there was too much uncertainty around the amenity impacts that adjoining landowners were experiencing from the land use. The Member ordered that the applicant undertake appropriate acoustic testing and treatment measures prior to re-lodging any planning application.
Subject land: 398 New ST, BRIGHTON

Application no.: 2015.679.2

VCAT reference no.: P624/2018

Applicant: Christos Christou and others

Referral Authority: N/A

Respondents: Stcokwood Design

VCAT Member: Greame David

Date of hearing: 20/09/2018

Date of order: 4/10/2018

Proposal: Alterations and additions of a single dwelling on a lot less than 500 square metres in the Neighbourhood Residential 3 Zone

Officer recommendation/
Delegate determination: Notice of decision

Council determination: Notice of decision

Appeal type: Conditions

Plans substituted
(prior to hearing): No

VCAT determination: Amended Permit To Issue

LGPRF outcome: AFFIRMED

Comments:

The Application for Review was an objector appeal to an NOD relating to a Section 72 Amendment to increase the maximum height of the dwelling from 8.11m to 8.918m, alter the layout and reduce the size of the roof terrace, remove the obscure glazing from the first floor bathroom and staircase windows and remove the skylight from the ground floor meals area.

At the hearing, all parties presented their position. The Tribunal member then carried out an unaccompanied site inspection.

The Tribunal, in its Final Order, upheld Council's decision to amend the permit subject to varying Condition 1 of the permit.
Subject land
3/56 Fewster RD, HAMPTON

Application no.
2000.5599.3

VCAT reference no.
P780/2018

Applicant
G & D Kingwill

Referral Authority
N/A

Respondents
N/A

VCAT Member
Margaret Baird

Date of hearing
2/10/2018

Date of order
2/10/2018

Proposal
Subdivision of Land into 3 lots

Officer recommendation/
Delegation determination
Refusal

Council determination
Not applicable

Appeal type
Refusal Amended Permit

Plans substituted
No

(prior to hearing)

VCAT determination
Amended Permit To Issue

LGPRF outcome
N/A

Comments:
An application for review in accordance with Section 77 of the Planning and Environment Act 1987 was lodged in response to Council’s refusal to grant an amended planning permit to allow the removal of one Eucalyptus mannifera (Brittle gum) on grounds relating to Neighbourhood Character and significant tree value.

The subject tree was presented to Council to be in a state of decline with poor health and structure and a low Arboricultural value, conflicting with Council’s Arborist’s assessment whom found no justifiable reasons for its removal.

A letter of support for removal of the tree was received from the adjoining property who has unsuccessfully campaigned for the removal of the tree over a number of years, citing risk to personal life and safety. However, fatal to the officers recommendation been upheld at the Tribunal was that the tree was not protected by any statutory mechanism other than the endorsed landscape plan.

In light of this, Council consented to the removal of the tree prior to the listed hearing date, subject to the replacement planting of one Callistemon (King Park Special) and one Eucalyptus leucoxylon (Yellow gum) in the same location as the subject tree.

An amended planning permit was issued and plans were endorsed.
Subject land: 134 Bluff RD, BLACK ROCK
Application no.: 2018.7666.1
VCAT reference no.: P1575/2018
Applicant: Lowe Design and Build
Referral Authority: N/A
Respondents: N/A

VCAT Member: Michael Deidun
Date of hearing: 3/10/2018
Date of order: 3/10/2018
Proposal: Four (4) Lot Subdivision

| Officer recommendation/Delegate determination | Permit granted |
| Council determination | Not applicable |
| Appeal type | Conditions |
| Plans substituted (prior to hearing) | No |
| VCAT determination | No permit to issue |
| LGPRF outcome | N/A |

Comments:

Planning Permit 5/2018/7666/1 for Four (4) lot subdivision included condition 3 requiring the payment of an open space contribution. The applicant lodged an appeal to VCAT on the basis of condition 3. The subject site consist of two lots and the proposed development comprises two dwellings on each lot.

The basis for the appeal was that an application for two lot subdivision is exempt from the payment of an open space contribution, and it was concluded that this should also apply in this instance given the proposed four lot subdivision is over two lots. It was agreed with the applicant that the open space contribution should not apply in this instance. Condition 3 has been deleted from the permit.

The VCAT appeal was subsequently withdrawn.
Subject land: 2/1 Martin ST, BRIGHTON
Application no.: 2016.445.2
VCAT reference no.: P803/2018
Applicant: E A Farag
Referral Authority: N/A
Respondents: N/A

VCAT Member: Alison Glynn
Date of hearing: 5/10/2018
Date of order: 5/10/2018
Proposal: Construction of a roof deck above a second storey within a Design and Development Overlay Schedule 1

Officer recommendation/ Delegate determination: Refusal
Council determination: Refusal
Appeal type: Refusal Amended Permit
Plans substituted (prior to hearing): No

VCAT determination: Amended Permit To Issue
LGPRF outcome: SET ASIDE

Comments:

The Tribunal set aside Council's decision to Refuse to amend Planning Permit No. 2016/445/2 allowing the maximum height of the proposed roof deck to be increased by 1 metre. The Tribunal did not accept Council's arguments that the increased height which complied with changes to the maximum height allowable under the Neighbourhood Residential Schedule 3 (NRZ3) Zoning applying to the land would cause unreasonable overlooking and overshadowing.

Member Glynn made an oral decision at the end of the hearing and held that the increase in the height of the roof deck would have no adverse amenity impacts on adjoining properties. None of the original Objectors had sought to be parties at the Appeal.
Subject land: 84 Spring RD, HAMPTON EAST
Application no.: 2016.691.3
VCAT reference no.: P1227/2018
Applicant: Marios Michaelides
Referral Authority: N/A
Respondents: N/A
VCAT Member: Sarah McDonald
Date of hearing: 5/10/2018
Date of order: 8/10/2018
Proposal: Construction of two dwellings, two lot subdivision, removal of an easement and construction of a front fence in excess of 1.2m in height

| Officer recommendation/Delegated determination | Refusal |
| Council determination                          | Not applicable |
| Appeal type                                    | Refusal Amended Permit |
| Plans substituted (prior to hearing)           | No |
| VCAT determination                             | Amended permit to issue |
| LGPRF outcome                                  | N/A |

Comments:

This matter involved an application under Section 87A of the Planning and Environment Act 1987 to amend planning permit no. 2016/691/1 which allows the development of an apartment building on the subject land. The amendments involved the reconfiguration of the buildings internal layout including the reduction in the number of dwellings from 53 to 40.

At the compulsory conference held on 5 October 2018, the parties reached an agreement based on a set of amended plans which was subject to the consent order being ratified by Council. Following the 16 October Planning and Amenity Committee meeting,

Council confirmed its consent to the application and the associated agreement. Subsequently, the Tribunal in its Order dated 22 October 2018 directed an amended permit to be issued subject to conditions.
Subject land 6 Fernhill RD, SANDRINGHAM
Application no. 2016.372.1
VCAT reference no. P1721/2018
Applicant Bsidepix
Referral Authority N/A
Respondents Mary and Elizabeth Anderson, Andrew Whitaker
VCAT Member J A Bennett
Date of hearing 12/10/2018
Date of order 12/10/2018
Proposal Construction of a three storey building containing 22 dwellings and 47 car spaces in the General Residential Zone Schedule 2 and Design and Development Overlay 8
Officer recommendation/ Not support
Delegate determination
Council determination Not support
Appeal type Conditions
Plans substituted Yes (prior to hearing)
VCAT determination Amended Permit to issue
LGPRF outcome N/A

Comments:
The subject site is located within the General Residential Zone (Schedule 2), the Design and Development Overlay (Schedule 8) and the Development Contributions Overlay (Schedule 1).

A Planning Permit for the Construction of a three storey building containing 22 dwellings and 47 car spaces was issued by VCAT on 24 May 2017 and subsequently amended on 19 April 2018. Following the gazetted of Planning Scheme Amendment VC148, the Applicant lodged an Application to Amend the Permit under S87A of the Planning and Environment Act 1987.

The proposed amendment was to remove conditions 1(p) and 13(b) in relation to the requirement for visitor parking as it is no longer a requirement given the site’s location within a Principal Public Transport Network Area.

A consent order was signed by both parties and submitted to the Tribunal, who directed that the permit be amended accordingly.

The Hearing was vacated.
Subject land  5 Reynolds ST, HAMPTON EAST
Application no.  2016.596.1
VCAT reference no.  P1309/2018
Applicant  Reynolds Street Developments Pty Ltd
Referral Authority  N/A
Respondents  Ms Soula Lakrindis & others
VCAT Member  S. R. Cimino
Date of hearing  22/10/2018
Date of order  22/10/2018
Proposal  Construction of a multi storey residential development
Officer recommendation/Delegate determination  Support
Council determination  Support
Appeal type  Amend a Permit
Plans substituted (prior to hearing)  Yes
VCAT determination  Amended Permit to issue
LGPRF outcome  N/A

Comments:

The subject site is zoned Residential Growth, and is also covered by the Design and Development Overlay 2 and the Development Contributions Plan Overlay.

The originally proposed development comprised 53 dwellings over five levels, and was granted a planning permit at VCAT via Consent Order on 14 November 2017.

The applicant lodged a subsequent amendment application through VCAT (under Section 87 of the Planning and Environment Act 1987) for various changes to the permit and associated design – including a reduction in the number of dwellings to 40 and numerous façade changes.

The compulsory conference held on 5th and 8th October 2018, all parties eventually agreed to the amended design, and this design, along with the proposed permit conditions was ratified at the Planning and Amenity committee meeting of 16 October 2018.

An Amended Planning Permit was issued in accordance with the signed Consent Order.
Subject land: 2 Heathfield RD, BRIGHTON EAST
Application no.: 2017.584.1
VCAT reference no.: P1514/2018
Applicant: Cosmo Oliva
Referral Authority: Melbourne Water
Respondents: N/A

VCAT Member:
Date of hearing: 29/10/2018
Date of order: 31/10/2018
Proposal: The construction of two, double-storey dwellings with basement car parking, and a front fence in excess of 1.2 metres

Officer recommendation/ Delegate determination: Refusal
Council determination: Not applicable
Appeal type: Refusal to Grant a Permit
Plans substituted (prior to hearing): Yes

VCAT determination: Permit to be Issued
LGPRF outcome: N/A

Comments:

The subject site is located within the Neighbourhood Residential Zone (Schedule 3), the Design and Development Overlay (Schedule 3), the Special Building Overlay and the Development Contributions Overlay (Schedule 1).

A Notice of Refusal to Grant a Planning Permit for the Construction of two double storey dwellings with basement parking and a front fence in excess of 1.2 metres was issued by Council. An Application for Review was lodged to the Victorian Civil and Administrative Tribunal (VCAT) under Section 77 of the Planning and Environment Act 1987.

At the Compulsory Conference held on the 29 October 2018, agreement was reached between the parties. A consent order was signed by both parties and the Tribunal, directed that the decision of the responsible authority be set aside and a permit be granted. The Hearing was vacated.
5. Confidential Business

Nil

As Chief Executive Officer, I hereby declare that the contents of this agenda relating to the closed meeting of the ordinary meeting of Council are deemed confidential and accordingly members of Council are reminded that the contents of the agenda are not to be disclosed to any other party.

Mick Cummins

Chief Executive Officer