Planning & Amenity Committee Meeting

Council Chambers
Civic Centre – Boxshall Street Brighton

Tuesday 14 May 2019
at 7pm

Agenda
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 12 Erowal Street, Beaumaris Grant a Planning Permit Application No: 2019/60/1 Ward: Southern.......................... 5
   4.2 24 & 26 Grenville Street, Hampton Notice of Decision to Grant a Permit Application No: 2018/820/1 Ward: Central............ 53
   4.3 23 Middleton Street, Highett Notice of Decision to Grant a Permit Application No: 2018/614/1 Ward: Central..................... 173
   4.4 Statutory Planning VCAT Update ........................................... 201

5. Confidential Business
Nil

Next Meetings 2019

Tuesday 11 June 2019
Tuesday 16 July 2019
Tuesday 30 July 2019 (*CANCELLED)
Tuesday 13 August 2019
Tuesday 10 September 2019
Tuesday 8 October 2019
Tuesday 22 October 2019 (*CANCELLED)
Tuesday 12 November 2019
Tuesday 26 November 2019 (*CANCELLED)
Monday 9 December 2019
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 30 April 2019.
This matter has been reported to the Planning and Amenity Committee for a decision as the application seeks to remove two or more trees protected by the Vegetation Protection Overlay Schedule 3 (VPO3).

1. Application details

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Grant a Planning Permit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicant</td>
<td>David Skinner</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>7th February 2019</td>
</tr>
<tr>
<td>Current statutory days</td>
<td>83 days</td>
</tr>
<tr>
<td>Zoning</td>
<td>Neighbourhood Residential Zone (Schedule 3)</td>
</tr>
<tr>
<td>Overlays</td>
<td>Design and Development Overlay (Schedule 3)</td>
</tr>
<tr>
<td>Site area</td>
<td>782 square metres</td>
</tr>
<tr>
<td>Number of outstanding objections</td>
<td>0</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 to remove vegetation native to Australia. Key details of the proposal are as follows:

- Removal of seven (7) trees, which includes three (3) trees protected by the Vegetation Protection Overlay, Schedule 3.

The applicant’s arborist report and application 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 42.02-2 (Vegetation Protection Overlay) – Removal of vegetation native to Australia.

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>
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<tr>
<th>Internal Referral</th>
<th>Response</th>
</tr>
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<tbody>
<tr>
<td>Arborist</td>
<td>No objection, subject to conditions.</td>
</tr>
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</table>

Public notification
The application was advertised pursuant to Sections 52(1)(a) and (d) of the Planning and Environment Act 1987 and no objections were received.

It is noted that the application was advertised as follows:

‘Removal of six (6) native trees within the Vegetation Protection Overlay, Schedule 3 (VPO3).’

Council’s Arborist carried out a site inspection and in their referral response advised that only three (3) of the trees sought to be removed require a permit pursuant to the VPO3. The description of the proposal has therefore been amended to read as follows:

‘Removal of three (3) native trees within the Vegetation Protection Overlay, Schedule 3 (VPO3).’

4. Recommendation

That Council resolve to Grant a Planning Permit under the provisions of the Bayside Planning Scheme in respect of Planning application 2019/60/1 for the land known and described as 12 Erowal Street, Beaumaris, for the removal of three (3) native trees in a Vegetation Protection Overlay (VPO3) in accordance with the endorsed plans and subject to the following conditions from the standard conditions:

1. Before the development starts, a landscape plan must submitted to and approved by the Responsible Authority. Once approved, the plan will be endorsed and form part of the permit. The plan must be drawn to scale with dimensions. The plan and numbers must generally be in accordance with the Arborist Report and prepared by McLeod Trees Arboricultural Assessment and Tree Preservation Strategy dated November 2018 and the plan must show:

   a) Tree No’s 3 and 9, protected under the VPO3 to be retained.

   b) All trees not protected under the VPO3 or Local Law to be omitted from the plan.
c) The replacement planting of two (2) indigenous canopy trees capable of reaching a height of at least 8 metres and a canopy spread of 4 metres in the front setback of the site.

d) A minimum of two different indigenous species must be used. All species must be consistent with Table 4: Indigenous Trees of the Bayside Landscape Guidelines 2016.

e) A survey, including botanical names, of all existing trees on neighbouring properties where their Tree Protection Zones (calculated in accordance with AS4970-2009) encroach into the subject site.

All to the satisfaction of the Responsible Authority.

2. The layout of the site and the location of vegetation 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. All planting shown on the endorsed plans must be carried out within six (6) months of the removal of the first tree to the Satisfaction of the Responsible Authority.

4. 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.

Permit Expiry

5. 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.

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.

Bayside Planning Scheme
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 and the individual merits of the application.

6.1. Neighbourhood character

The site is located within Neighbourhood Character Precinct H2. The proposal is considered to demonstrate an appropriate level of compliance with the preferred future character statement and precinct guidelines as contained in Attachment 3.

The site is currently occupied by a single dwelling, positioned within an established garden. This application seeks to remove seven (7) trees from the site; however, four (4) of the trees sought to be removed do not require a planning permit. Only the removal of trees protected by the Vegetation Protection Overlay (VPO) can be considered and assessed under this application. Three (3) trees sought to be removed are protected by the VPO, Tree No’s 2, 4 and 9.

Having assessed the proposal, Council’s Arborist is supportive of the removal of tree No. 2 which is a relatively small Lilly Pilly, located in the front setback of the site, adjacent to the eastern boundary. It is also considered that the removal of tree No. 4, a tea tree, also located in the front setback of the site, and adjacent to the western boundary, will be acceptable subject to the planting of a suitable replacement indigenous tree in this approximate area, to ensure that the bushy garden character of the area is maintained. A condition is included in the recommendation requiring the planting of indigenous canopy trees to replace these trees to be removed.

Council’s Arborist has commented that tree No. 9, a Lilly Pilly, is an exemplary specimen. Whilst it is noted that this tree is located in the rear setback of the site, behind the existing dwelling, the large tree, with a canopy spanning 10-14 metres and height of approximately 17 metres, is visible from the street and contributes to the overall character of the streetscape.

It is noted that the height of the tree mean that it would be visible behind any development not requiring a planning permit, such as a single two-storey dwelling, which may be constructed on the site.

The tree also contributes to the wider neighbourhood character and tree scape as it is visible from the rear windows and gardens of surrounding properties. With consideration of these points, the removal of this tree would be considered to have a detrimental impact on the tree scape of the area, the character of the neighbourhood and would be a poor design response to the guidelines for the precinct which seeks to retain large, established trees.
A condition is therefore recommended requiring the retention of Tree No. 9.

6.2. Landscaping

The objectives of the VPO3 are to retain the amenity, aesthetic character and habitat value of native vegetation by preventing the loss of native (particularly indigenous) vegetation and promoting the regeneration and replanting of indigenous species in the Beaumaris and Black Rock area.

The application plans show the removal of seven (7) trees from the site including three (3) trees protected by the VPO3.

The table below identifies those trees protected by the VPO3, those protected by the Local Law and those which are not protected by any statutory mechanism. Indigenous trees are marked with a **.

<table>
<thead>
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<th>VPO3 protected trees</th>
<th>Local Law protected trees</th>
<th>Trees not protected</th>
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<tbody>
<tr>
<td>2*,4*,9</td>
<td>3</td>
<td>-</td>
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Tree No’s. 2, 4 and 9, sought to be removed are protected by the VPO3. Further detail of each of these trees is provided in Attachment 4.

From an arboriculture perspective, Council’s Arborist has reviewed the application and advises that tree No’s 5, 6, 10 and 11 are not protected by the VPO3 or local law and their removal is supported due to a combination of poor health and low amenity value.

An assessment of the removal of those trees protected by the VPO (tree No.’s 2, 4 and 9) against the decision guidelines of the VPO3 is provided at Attachment 5.

The removal of tree No. 2 is considered to be acceptable when assessed against the decision guidelines of the VPO3. Tree No 2 is a small Lilly Pilly with a height of just over 2 metre and its removal will not impact on the overall quality of habitat within the broader area and is justified when considered against the level of replacement planting proposed. The removal of tree No. 2 is considered to comply with the objectives of the VPO3.

Council’s Arborist does not support the removal of Tree No. 9. This is a large Lilly Pilly, which is considered to be an excellent specimen with high amenity value, visible from several different viewpoints along Erowal Street as well as from neighbouring properties. This tree has a good health and structure, a life expectancy of more than 20 years and a high retention value. It is considered that the location of this tree could be considered and incorporated in the design of any potential development not requiring a planning permit on the site.

Council’s Arborist does not support the removal of Tree No. 4, a Tea Tree located in the front setback of the site. However, given that tree No. 9, located approximately in the centre of the site, is required to be retained, this will provide some limitations to the potential for future development on the site. It is therefore recommended that support is given for Tree No. 4 to be removed. On balance, it is considered that the removal of tree No. 4 would comply with the objectives of the VPO3, and the character of the area, including the extent of indigenous vegetation present, will be maintained, once replacement plantings are undertaken.

A condition requiring replacement indigenous planting to be provided in the front setback of the site is included in the recommendation.
Council’s Arborist has also identified that tree No. 3 is protected by the VPO. This tree is a large narrow leaved Black Peppermint which is proposed to be retained. Given that this tree is located within the front setback, close to the front of the site, its retention is not expected to prohibit future development and its retention is supported in accordance with the neighbourhood character guidelines for the precinct.

6.3. Street tree
This application does not seek to remove any street trees.

6.4. Cultural Heritage management plan
The site is not located within an area of cultural heritage sensitivity and therefore a cultural heritage management plan is not required.

Support Attachments
1. Application Plans and Documents ↓
2. Site and Surrounds ↓
3. Neighbourhood Character Assessment - Precinct H2 ↓
4. Tree Profiles ↓
5. Vegetation Protection Overlay Schedule 3 (VPO3) Assessment ↓
Item 4.1 – Matters of Decision
Arboricultural Assessment and Tree Preservation Strategy

Site Address:
12 Erowal Street, Beaumaris.

Report Commissioned By:
David Skinner – The Property Owner

Prepared By:
Mr. Aaron Richardson
Dip (Hort/Adv)

Wednesday, 14 November, 2018

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Introduction

This report is undertaken at the request of David Skinner, the property owner. The report contents should not be made available to any other parties, other than those affected, unless by the express permission of McLeod Trees Pty Ltd.

This report is an analysis of a number of trees, which are located on the site of 12 Erual Street, Beaumaris, and surrounding properties and council owned nature strip. The tree assessment and resolution plan identifies the health, condition and worthiness of retention of the trees, with a view to comment on, and make recommendations as to, the future management of the same in regard to proposed redevelopment of the site.

The report covers a number of aspects, but essentially provides comment on the impact of any vegetation on the potential for redevelopment of the site and provides guidelines and management techniques to address any potential issues.

The results and recommendations of this assessment are provided within Section 7 of this report. This final section outlines the guidelines and recommended management techniques required for addressing tree management on the site prior to the planning stage of the development.
1. Key Objectives

1.1. To inspect and assess the trees on the subject site at 12 Erowal Street, Beaumaris, and any within adjoining properties and council nature strips which have potential to be affected by any redevelopment of the site.

1.2. To provide information on the species, dimensions, health, structure, condition, useful life expectancy (ULE) and worthiness of retention of the trees and identify any potential conflicts between trees and the proposed development.

1.3. To provide recommendations and management strategies to resolve any potential conflicts between trees and proposed development.

2. Methodology

2.1. A site inspection was undertaken on Wednesday, 14 November, 2018. The nominated trees were inspected from the ground only and observations made of the growing environment and surrounding area. The trees were not climbed, and no samples of the tree or site soil were taken.

2.2. Observations were made of the trees to determine their health and condition, with measurements taken to establish canopy and trunk dimensions.

2.3. Tree Protection Zones were calculated using the Australian Standard – Protection of Trees on Development Sites (AS 4970 – 2009).

2.4. Each tree has been appointed an individual Tree Id. No. and marked accordingly on the attached site plan (Appendix 1). Due to the lack of detail and missing trees on the site plan provided, all tree locations and tree protection zones are estimated and not to scale.

2.5. The trees were classified with a Useful Life Expectancy and Retention Value based on structural integrity, condition and environmental and landscape character.

2.6. The data was recorded on the Wednesday, 14 November, 2018. All details were accurate and correct at this time. All data was collected on site by Mr. Aaron Richardson.
3. Report Limitations

3.1. The survey undertaken of the subject site trees was of a preliminary nature, with a visual inspection being made from ground level only. None of the subject trees were climbed and no samples (soil, fungal etc.) were taken for analysis. Tree defects, not apparent from the ground-based visual inspection, are expressly excluded from the scope of this report.

3.2. In collecting the data, measurements such as Trunk Diameter (DBH) were obtained using a specialist diameter measuring tape designed for the purpose. Tree heights and canopy spread were estimated using the assessors’ experience, education and knowledge. Tree Protection Zone calculations were made using the formula as per Australian Standard 4970 – 2009.

3.3. The report is limited, as per the brief, to offer recommendations in regard to tree retention and management strategies and associated recommended arboricultural works. Any works recommended, or further investigation are not included as part of the scope of this report.

4. Supplementary Information

4.1. The following information was used in preparation of this report:

➢ Australian Standard – Protection of Trees on Development Sites (AS 4970 – 2009)
➢ City of Bayside Council Planning Scheme

5. Observations

5.1. The property is located within City of Bayside Council, where it is classified as a Neighbourhood Residential Zone NRZ3. City of Bayside Council Local Laws require an approved permit for the removal or destruction of any tree with a trunk circumference over 155cm measured at 1.0m above ground level. The property is located within the Vegetation Protection Overlay (VPO3), a state planning overlay where a planning permit is required to remove any Native tree, unless the tree is less than 2.0m in height or has a trunk circumference less than 50cm measured at 1.0m from ground level.

5.2. There are a number of trees located within the subject site, adjoining properties, and council nature strip which have been included in this assessment and the management recommendations of the same will form topic of this report.
6. Discussion

6.1. Retention Values

A tree’s worthiness of retention is based upon a number of criteria, taking into consideration such factors as health, condition and structure, as well as age, species, location and other factors which may affect the long-term tenure of the tree. The retention value does not take into consideration the future use of the land, rather than that of the current situation and conditions, whereas worthiness of retention considers the trees tenure in the future use of the landscape.

Trees designated as high retention value are those of good health, site significance and semimature trees with potential for good growth and development within the completed landscape.

Trees designated as moderate retention value are those of fair health and structure which are considered to have potential within the future landscape, provided they do not impact upon the necessary development works. If these trees can be retained with minimal changes, they should be. However, they are not considered valuable enough to necessitate changes and adaptations to any development plans. By default, all trees on adjoining properties are classified with a moderate retention value, regardless of health or structural condition.

Low retention values have been attributed to trees within the subject site that are either displaying poor health and/or structural integrity, are of inappropriate species selection, are inappropriate for the site or have reached their useful life expectancy.

6.2. Tree Retention

The existing trees on the site could be considered an opportunity or a constraint within the context of future management of the property; however, this would depend on many factors. The condition of the trees, the types of trees present and their location on the site are a few of the issues that may be considered when assessing which trees should be retained.

The possible retention and management of trees in the landscape relies on more substantial criteria than simply perceived visual benefits, although this is certainly considered. Issues such as tree health, structure and stability are fundamental and primary considerations in the process of identifying trees that could be potentially retained in the long term. These attributes are assessed using risk management concepts as a platform and they assist with determining the retention value of individual trees.

Importantly, tree removal should not always be considered a negative issue. Retention for retention’s sake is a pointless activity if there is not a high possibility that the tree will not only survive but will be viable in the longer term (Hitchmough, 1994).
6.3. Tree Protection Zones

The Tree Protection Zone (TPZ) measurements provided are based on the Australian Standard for Protection of Trees on Development Sites (AS 4970 – 2009). These calculations are based on the formula of 12 X the Trunk Diameter (DBH).

Where it is deemed necessary that the development encroach upon the calculated Tree Protection Zone measurements of any tree to be retained, the Australian Standard allows for a 10% encroachment on one side of the TPZ, provided allowances are made to the remaining area and the Structural Root Zone (SRZ) is not compromised.

If during the preliminary design period it is determined that the area will require encroachment within the TPZ of greater than 10%, then exploratory root excavation may need to be undertaken in accordance with specifications as outlined in the Australian Standard.

6.4. Exploratory Root Excavation

Where it is proposed that development or excavation occur within the TPZ, exploratory root excavation may be required to be undertaken prior to the final design of any proposed works.

Wherever possible, any exploratory root excavation recommended must be undertaken in the form of hydro-excavation, or air space technology which is able to remove the soil and leave an undamaged, skeletonised root system which can then be inspected by an arborist and root data collated accordingly.

By undertaking such exploration, the exact extent of roots within the area can be determined and installation methods and future design plans can be amended if necessary, utilising the knowledge of exact root development and locations. At which time an exact Structural Root Zone measurement can be calculated, and Root Location Graph be compiled to assist in design methods.

6.5. Overview of Site

All trees of value or significance within the site or on adjacent properties that warrant further discussion in terms of retention and protection recommendations have been assessed and are addressed within this report.
7. Conclusion and Recommendations

7.1. Tree 1

- This Council owned tree is located on the nature strip, 4.4m from the edge of the existing crossover to the West, and has a DBH of 50mm resulting in a TPZ of 2.0m and an SRZ of 1.5m.
- This semi-mature native tree is a typical representation of the species, in good health, with a good structure and in good condition.
- No development is proposed within the TPZ of this tree, therefore providing tree protection measures as per Appendix 4 are implemented throughout the development process, this tree will not be impacted by the proposed development.

7.2. Tree 2

- This mature tree is located in the front yard of the subject site, 200mm from the Western boundary, and has a DBH of 170mm, which results in a TPZ of 2.0m and a SRZ of 2.2m.
- This native species has been significantly and repeatedly lopped which has resulted in an unsightly canopy of dense epicormic growth, and is in fair health with a poor structure and poor overall condition.
- Due to the tree’s poor condition its removal is recommended to allow for the opportunity to design uniform landscaping upon development completion.
- This tree triggers VPO-3 and will require approved planning permission to be removed.
- If tree removal is not approved, root investigation will be required to determine the presence and location of any significant roots along the Western edge of the proposed driveway. Design techniques sympathetic to the root system must be considered when developing the driveway and open space in the front yard.
- If tree removal is not approved all tree protection measures as per Appendix 4 must be implemented throughout the development process to ensure that this tree will not be impacted by the proposed development.
7.3. Tree 3

- This mature tree is located in the front of the subject site, 8.1m from the Western boundary, and has a DBH of 660mm, which results in a TPZ of 7.9m and an SRZ of 3.1m.
- This large native species provides a valuable contribution to the neighbourhood character due to its size and location on the subject site, however has thinning foliage cover in the upper canopy, co-dominant stems and represents a specimen fair health, with a fair structure and in fair overall condition.
- The proposed development results in a major encroachment of the TPZ.
- Due to the high retention value it is recommended to retain and protect this tree throughout the development process, however for the development to proceed in its current form root investigation is required.
- Design techniques sympathetic to root activity must be considered and subsequently approved by the responsible authority. Driveway construction must be constructed at or above existing grade with no compaction using a porous finish to allow water penetration and gaseous exchange within the root system. Any proposed driveway design must be approved by the responsible authority.
- All tree protection measures as per Appendix 4 must be implemented throughout the development process to ensure that this tree will be minimally impacted by the proposed development.
- Techniques that limit the impact on the trees root system must be used when landscaping or paving within the TPZ in the front yard of the property and must be constructed under consultation with the project arborist.
- All proposed works undertaken within the TPZ must be supervised by the project arborist.

7.4. Tree 4

- This mature tree is located in the front yard of the subject site, 400mm from the Eastern boundary, and has a DBH of 280mm, which results in a TPZ of 3.3m and a SRZ of 2.2m.
- This native species has failed at the base and now continues to survive, and is in good health with a poor structure and in poor overall condition.
- Although the development represents a minor encroachment of due to the trees poor condition, its removal is recommended to allow for the opportunity to design uniform landscaping upon development completion.
- This tree triggers VPO-3 and will require approved planning permission to be removed.
- If tree removal is not approved all tree protection measures as per Appendix 4 must be implemented throughout the development process to ensure that this tree will not be impacted by the proposed development.
- If tree removal is not approved techniques that limit the impact on the trees root system must be used when landscaping or paving in this location and must be constructed at existing grade under consultation with the project arborist.
7.5. Tree 5

- This mature tree is located in the front yard of the subject site, 2.7m from the Eastern boundary, and has a multi stemmed DBH of 80mm, which results in a TPZ of 2.0m and an SRZ of 1.5m.
- This native species represents a typical multi stemmed form, and is in good health with a good structure and in good overall condition.
- Although there are no arboricultural reasons to justify this trees removal, it is tucked away towards the rear of the front yard and provides little amenity value and it is therefore recommended for removal to allow for the opportunity to design uniform landscaping upon development completion.
- This tree triggers VPO-3 and will require approved planning permission to be removed.
- If tree removal is not approved all tree protection measures as per Appendix 4 must be implemented throughout the development process to ensure that this tree will not be impacted by the proposed development.
- If tree removal is not approved techniques that limit the impact on this trees root system must be used when landscaping or paving within the TPZ and must be constructed under consultation with the project arborist.
- All proposed works undertaken within the TPZ must be supervised by the project arborist.

7.6. Tree 6

- This mature tree is located within the subject site, 5.1m from the Eastern boundary, and has a multi stemmed DBH of 160mm resulting in TPZ of 2.0m and an SRZ of 1.7m.
- This exotic ornamental species represents a multi stemmed specimen that has been heavily possum grazed, in fair health with a fair structure and in poor condition.
- The tree has a sparse canopy, is unattractive and provides no significant contribution to the neighbourhood character.
- It is recommended to remove this tree due to its limited useful life expectancy.
- This tree can be removed at any time without further permission.

7.7. Tree 7

- This mature tree is located within the adjoining property to the West, 1.1m from the boundary, and has a DBH of 590mm resulting in TPZ of 7.0m and a subsequent encroachment onto the subject site of 5.9m.
- This native specimen is a good example of the species and provides a valuable contribution to the neighbourhood character. The tree is in good health, with a good structure and good overall condition.
- The proposed replacement driveway located on the Western boundary results in a major encroachment of the TPZ and an encroachment of the SRZ.
- Root investigation will be required to determine the presence and location of any significant roots along the Western boundary that may be affected by the development. If significant roots are located, design changes or an engineered solution sympathetic to root development, must be considered and approved by the responsibly authority.
- All works undertaken within the TPZ must be supervised by the project arborist.
7.8. Tree 8

- This mature tree is located within the adjoining property to the West, 200mm from the boundary, and has a DBH of 200mm resulting in TPZ of 2.4m and a subsequent encroachment onto the subject site of 2.2m.
- This exotic specimen is a good example of the species and provides a valuable contribution to the neighbourhood character. The tree is in good health, with a good structure and good overall condition.
- The proposed replacement driveway located on the Western boundary results in a major encroachment of the TPZ and an encroachment of the SRZ.
- Root investigation will be required to determine the presence and location of any significant roots along the Western boundary that may be affected by the development. If significant roots are located, design changes or an engineered solution sympathetic to root development, must be considered and approved by the responsible authority.
- All works undertaken within the TPZ must be supervised by the project arborist.

7.9. Tree 9

- This mature tree is located in the rear yard of the subject site, 4.3m from the Western boundary, and has a multi stemmed DBH of 795mm, which results in a TPZ of 9.5m and an SRZ of 3.2m.
- This native tree represents a large well managed specimen with a co-dominant form, in good health with a good structure and good overall condition.
- There are no arboricultural reasons to justify this trees removal however it is located within the proposed development and will require removal for the development to proceed in its current form.
- This tree triggers VPO-3 and will require approved planning permission to be removed.
- If tree removal is not approved significant design changes will be required.

7.10. Tree 10

- This mature tree is located in the rear yard of the subject site 300mm from the Western boundary, and has a DBH of 340mm, which results in a TPZ of 4.0m and an SRZ of 2.3m.
- This native species is a widely recognised weed, with a thinning upper canopy, likely due to possum grazing, and is in fair health with a fair structure and in fair overall condition.
- Although the development does not encroach the TPZ it is recommended to propose removal of this invasive weed species.
- This tree triggers VPO-3 and will require approved planning permission to be removed.
- If tree removal is not approved all tree protection measures as per Appendix 4 must be implemented throughout the development process to ensure that this tree will not be impacted by the proposed development.
7.11. Tree 11

- This mature tree is located in the rear yard of the subject site 3.0m from the Western boundary, and has a DBH of 270mm, which results in a TPZ of 3.2m and an SRZ of 2.0m.
- This native species is unmanaged, has failed at ground level, has creeper throughout the canopy and is in poor health with a poor structure and poor condition.
- Although the development does not encroach the TPZ it is recommended to propose removal of this tree due to its limited useful life expectancy.
- This tree triggers VPO-3 and will require approved planning permission to be removed.
- If tree removal is not approved all tree protection measures as per Appendix 4 must be implemented throughout the development process to ensure that this tree will not be impacted by the proposed development.

7.12. Trees 12, 13, 14, 15

- This row of semi-mature screen trees are located in the adjoining property to the South of the subject site, 1.1m from the Western boundary. The largest of the row has a DBH of 300mm, which results in a TPZ of 3.6m and an SRZ of 2.3m.
- These exotic species are typical of unmanaged specimens and are in good health with a good structure and good overall condition.
- The proposed development shows no direct encroachment of the TPZ’s, with the area designated for private open space. However, techniques that limit the impact on the trees root system must be used when landscaping or paving in this location and must be constructed at existing grade under consultation with the project arborist.
- Therefore, providing tree protection measures as per Appendix 4 are implemented throughout the development process these this trees will not be impacted.
- All works undertaken within the TPZ must be supervised by the project arborist.
7.13. Overview

There are no other trees or vegetation of significance within the site or adjoining properties which will affect redevelopment of the site.

All other small vegetation represents small plantings which are insignificant and recommended for removal to allow the opportunity to develop a uniform landscape plan upon project completion.

Tree 1 – Is a council owned nature strip tree that MUST be protected throughout the development process including all tree protection measures as per Appendix 4.

Trees 7, 8, 12, 13, 14 and 15 – Are trees located within neighbouring properties and MUST be protected throughout the development process including all tree protection measures as per Appendix 4.

Tree 3 – Located at the front of the subject site and is recommended to be incorporated into the proposed landscape design and subsequently should be protected throughout the development process including all tree protection measures as per Appendix 4.

Trees 7 and 8 – Root investigation will be required to determine the presence and location of any significant roots that may be affected by the proposed driveway and garage. If significant roots are located, design changes or an engineered solution sympathetic to root development, must be implemented and approved by the responsible authority.

Trees 2, 4, 5, 9, 10 and 11 – Trigger VPO-3 and require approval from City of Bayside Council to be removed. If removals are denied for trees 2 or 9 significant design changes must be considered.

Tree 6 – is recommended for removal and can be removed at any time without permission.
8. References

Coder K., 1996 Construction Damage Assessments; Trees and Sites, University of Georgia, School of Forestry Resources, Extension Publication for 96-039A 10/1996


Hitchmough, J., 1988, Landscape Plant Manual – Volume One, University of Melbourne


Standards Australia, 2007, Pruning of Amenity Trees, (AS 4373 – 2007), Standards Australia, NSW

Standards Australia, 2009, Protection of Trees on Development Sites, (AS 4970 – 2009), Standards Australia, NSW

Watson G.W. & Neely D., 1995, Trees and Building Sites, International Society of Arboriculture, USA
Appendix 1: Site Plan (Tree locations estimated)
### Appendix 2: Tree Details Database

<table>
<thead>
<tr>
<th>Tree No.</th>
<th>Botanical Name</th>
<th>Common Name</th>
<th>Origin</th>
<th>DBH (mm)</th>
<th>Height (m)</th>
<th>TDE (m)</th>
<th>SDH (m)</th>
<th>Health</th>
<th>Maturity</th>
<th>Condition</th>
<th>UD</th>
<th>Site Significance</th>
<th>Estimation Value</th>
<th>Comments</th>
<th>Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Callistemum nutans</td>
<td>Burlsbrush</td>
<td>Native</td>
<td>50</td>
<td>70</td>
<td>3.0</td>
<td>3.0</td>
<td>1.5</td>
<td>Good</td>
<td>Good</td>
<td>Good</td>
<td>25+</td>
<td>Low</td>
<td>Medium</td>
<td>Reduce canopy, implement tree protection measures.</td>
</tr>
<tr>
<td>2</td>
<td>Sargentia oriental</td>
<td>Lily Lily</td>
<td>Native</td>
<td>174</td>
<td>290</td>
<td>2.0</td>
<td>2.0</td>
<td>2.2</td>
<td>Poor</td>
<td>Poor</td>
<td>Poor</td>
<td>&lt;5</td>
<td>Low</td>
<td>Low</td>
<td>Remove - triggers SPO-1, requires planning permission to be removed.</td>
</tr>
<tr>
<td>3</td>
<td>Cotoneaster adpressus</td>
<td>Harrow Sweet Black Pepper</td>
<td>Native</td>
<td>640</td>
<td>910</td>
<td>12.0</td>
<td>9.0</td>
<td>1.1</td>
<td>Fair</td>
<td>Fair</td>
<td>Fair</td>
<td>6-25 Moderate</td>
<td>Medium</td>
<td>Remove - implements tree protection measures and requires investigation of permissible distance at existing grade.</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Lepidothamnus angustissimus</td>
<td>Coastal Tea Tree</td>
<td>Native</td>
<td>160</td>
<td>400</td>
<td>3.0</td>
<td>3.0</td>
<td>3.0</td>
<td>Good</td>
<td>Poor</td>
<td>Poor</td>
<td>&lt;5</td>
<td>Low</td>
<td>Low</td>
<td>Remove - triggers SPO-1, requires planning permission to be removed.</td>
</tr>
<tr>
<td>5</td>
<td>Melaleuca azelloides</td>
<td>Shiny Honey Myrtle</td>
<td>Native</td>
<td>80</td>
<td>130</td>
<td>5</td>
<td>2.0</td>
<td>1.5</td>
<td>Good</td>
<td>Good</td>
<td>Good</td>
<td>25+</td>
<td>Low</td>
<td>Medium</td>
<td>Removed - triggers SPO-1, requires planning permission to be removed.</td>
</tr>
<tr>
<td>6</td>
<td>Acer pseudoplatanus</td>
<td>Japanese Maple</td>
<td>Native</td>
<td>180</td>
<td>350</td>
<td>4.0</td>
<td>3.0</td>
<td>1.7</td>
<td>Fair</td>
<td>Fair</td>
<td>Poor</td>
<td>&lt;0</td>
<td>Low</td>
<td>Low</td>
<td>Remove - no permission required.</td>
</tr>
</tbody>
</table>

**McLeod Trees**

Page 13

*End of 14 A1*
## Item 4.1 – Matters of Decision

<table>
<thead>
<tr>
<th>Tree No.</th>
<th>Botanical Name</th>
<th>Common Name</th>
<th>Origin</th>
<th>Class (mm)</th>
<th>Initial Diameter (mm)</th>
<th>Height (m)</th>
<th>Wir (m)</th>
<th>Side (m)</th>
<th>Health</th>
<th>Structure</th>
<th>Condition</th>
<th>Delineate (m)</th>
<th>Site Significance</th>
<th>Retention Value</th>
<th>Costs</th>
<th>Recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>Cemnimile (E. bakeri)</td>
<td>Lemon Scented Gum</td>
<td>Native</td>
<td>590</td>
<td>740</td>
<td>7.0</td>
<td>2.9</td>
<td>Good</td>
<td>Good</td>
<td>Good</td>
<td>31&lt;</td>
<td>High</td>
<td>High</td>
<td>Neighbourhood attractive and significant native.</td>
<td>Remove – Implement Tree Protection Measures and undertake seed collection to perpetuate existing genetic pool.</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Phormis nodosa</td>
<td>Phormia</td>
<td>Everd</td>
<td>200</td>
<td>420</td>
<td>5.0</td>
<td>2.6</td>
<td>2.3</td>
<td>Fair</td>
<td>Fair</td>
<td>Fair</td>
<td>6-21</td>
<td>Low</td>
<td>Medium</td>
<td>Neighbourhood service tree, typical form.</td>
<td>Remove – Implement Tree Protection Measures.</td>
</tr>
<tr>
<td>9</td>
<td>Syngia wadi</td>
<td>Lilly Lily</td>
<td>Native</td>
<td>20</td>
<td>480</td>
<td>7.0</td>
<td>5.0</td>
<td>3.2</td>
<td>Good</td>
<td>Good</td>
<td>Good</td>
<td>21&lt;</td>
<td>Moderate</td>
<td>Medium</td>
<td>Large well-managed native, co-dominant canopy.</td>
<td>Remove for development to proceed. Trigger VPO-3, require planning permission to be removed.</td>
</tr>
<tr>
<td>10</td>
<td>Prunus sp.</td>
<td>Sweet Cherry</td>
<td>Native</td>
<td>210</td>
<td>430</td>
<td>6.0</td>
<td>4.0</td>
<td>2.5</td>
<td>Fair</td>
<td>Fair</td>
<td>Fair</td>
<td>6&lt;</td>
<td>Low</td>
<td>Low</td>
<td>Woody species, thinning upper canopy, potential spread, poor pruning.</td>
<td>Remove – Trigger VPO-3, require planning permission to be removed.</td>
</tr>
<tr>
<td>11</td>
<td>Lantana camara</td>
<td>Lantana</td>
<td>Native</td>
<td>200</td>
<td>300</td>
<td>3.0</td>
<td>3.0</td>
<td>3.0</td>
<td>Poor</td>
<td>Poor</td>
<td>Poor</td>
<td>6&lt;</td>
<td>Low</td>
<td>Low</td>
<td>Fruiting tree, failed at base, minors to 2m, requires extensive weed control.</td>
<td>Remove – Trigger VPO-3, require planning permission to be removed.</td>
</tr>
<tr>
<td>12-15</td>
<td>Cupressus sp.</td>
<td>Cypress</td>
<td>Everd</td>
<td>300</td>
<td>450</td>
<td>7.0</td>
<td>5.6</td>
<td>3.3</td>
<td>Good</td>
<td>Good</td>
<td>Good</td>
<td>6-21</td>
<td>Low</td>
<td>Medium</td>
<td>Neighbourhood row of mature trees.</td>
<td>Remove – Implement Tree Protection Measures.</td>
</tr>
</tbody>
</table>
Appendix 3: Definition of Terms

The following is a definition of terms used for arboricultural assessments.

**Tree #** - Identification number provided and tagged for individual trees.

**Genus/Species** - Botanical name of tree to Genus and species level.

**Common Name** - Common name of tree.

**Diameter at Breast Height (DBH)** - DBH is measured at 1400mm above ground level. In cases where the tree has multiple stems, the measurement is taken at the narrowest point below the stems, or ground level on multi-squared specimens.

**Height** - Average height in metres measured from ground only using specialised equipment where possible or estimated from ground level.

**Canopy Spread** - The average distance in metres of the spread of the canopy. For simplification, the distance measured North – South and East – West is averaged out to provide an overall canopy spread measurement.

**Health** - Health pertains to the tree vigour, performance and ability to withstand pathogenic entry. Health is measured as a rating of Good, Fair to Poor.

**Structure** - Pertains to the physical structure of the tree, including the main scaffold branches and roots. Structure includes those attributes that may influence the probability of major trunk, root or limb failure. Structure is measured as a rating of Good, Fair to Poor.

**Condition** - Condition is a combination of health and structure and provides an overall rating for each tree. As such a tree with a good health rating and a poor structure rating would be classified with a rating of Fair. Condition is measured as a rating of Good, Fair to Poor.

**Retention Value** - Retention Value of a tree pertains to the worthiness for retention. Based on a combination of factors, including species, location, condition, and future growth potential. The retention value is classified as a rating of High, Medium and Low.

**Useful Life Expectancy (ULE)** - ULE quantifies the span of time the tree might reasonably be expected to provide useful amenity value, with an acceptable level of safety with acceptable standards of maintenance.

ULE classifications are measured over the following time spans.

<table>
<thead>
<tr>
<th>Time Span</th>
<th>Classification</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>McLeod Trees</td>
</tr>
<tr>
<td>&lt; 5 years</td>
<td>Page 17</td>
</tr>
<tr>
<td>6 – 20 years</td>
<td>Erowal 14 AR</td>
</tr>
<tr>
<td>&gt; 21 years</td>
<td></td>
</tr>
</tbody>
</table>
Tree Protection Zone (TPZ) - The Tree Protection Zone is a specified area above and below ground and at a given distance from the trunk set aside for the protection of the trees' roots and crown to provide for the viability and stability of a tree to be retained where it is potentially subject to damage by development.

The TPZ is the principal means of protecting trees on development sites. The TPZ is a combination of the root area and crown area requiring protection. It is an area isolated from construction disturbance, so that the tree remains viable.

The TPZ is calculated using the formula as outlined in the Australian Standard (AS 4970 – 2009).
Appendix 4: Tree Protection Guidelines

1. General

1.1. Tree Protection measures include a range of activities and structures. Structures are used to identify and isolate the Tree Protection Zone (TPZ) (refer to section 3).

1.2. The TPZ is a restricted area usually delineated by protective fencing (or use of an existing structure such as an existing fence or wall). It is installed prior to site establishment and remain intact until completion of the works.

1.3. Some works and activities within the TPZ may be authorized by the determining authority. These must be supervised by the project arborist. Any additional encroachment that becomes necessary as the site works progress must be reviewed by the project arborist and be acceptable to the determining authority before being carried out.

2. Activities restricted within the TPZ

- Activities generally excluded from the TPZ include but are not limited to:
  - machine excavation including trenching;
  - excavation for fencing;
  - cultivation;
  - storage;
  - preparation of chemicals, including preparation of cement products;
  - parking of vehicles and plant;
  - refuelling;
  - dumping of waste;
  - wash down and cleaning of equipment;
  - placement of fill;
  - lighting of fires;
  - soil level changes;
  - temporary or permanent installation of utilities and signs, and
  - physical damage to the tree.

3. Protective fencing

3.1. Fencing should be erected before any machinery or materials are brought onto the site and before the commencement of works, including demolition. Once erected, protective fencing must not be removed or altered without approval by the project arborist. The TPZ should be secured to restrict access.

3.2. AS 4687 specifies applicable fencing requirements. Shade cloth or similar should be attached to reduce the transport of dust, other particulate matter and liquids into the protected area.

3.3. Fence posts and supports should have a diameter greater than 20mm and be located clear of roots.

3.4. Existing perimeter fencing and other structures may be suitable as part of the protective fencing.
4. Signs

4.1. Signs identifying the TPZ should be placed around the edge of the TPZ and be visible from within the development site. The lettering on the sign should comply with AS 1319. A warning sign shall prominently be displayed on each fence. The sign shall be a minimum of 300mm X 200mm and clearly state: “WARNING – Tree Protection Zone – This fence must not be removed without authorisation or consent”.

5. Other Tree Protection Measures

5.1. General

When tree protection fencing cannot be installed or requires temporary removal, other tree protection measures should be used, including those set out below.

5.2. Trunk and branch protection

Where necessary, install protection to the trunk and branches of trees as required. The materials and positioning of protection are to be specified by the project arborist.

Do not attach temporary power lines, stays, guys etc. to the tree. Do not drive nails into the trunks or branches.

5.3. Ground protection

If temporary access for machinery is required within the TPZ ground protection measures will be required. The purpose of ground protection is to prevent root damage and soil compaction within the TPZ. Measures may include a permeable membrane such as geotextile fabric beneath a layer of mulch or crushed rock below rumble boards.

These measures may be applied to root zones beyond the TPZ.

5.4. Root protection during works within the TPZ

Some approved works within the TPZ, such as regrading, installation of piers or landscaping may have the potential to damage roots.

If the grade is to be raised the material should be coarser or more porous than the underlying material. Depth and compaction should be minimized.

Manual excavation should be carried out under the supervision of the project arborist to identify roots critical to tree stability. Relocation or redesign of works may be required.

Where the project arborist identifies roots to be pruned within or at the outer edge of the TPZ, they should be pruned with a final cut to undamaged wood. Pruning cuts should be made with sharp tools such as secateurs, pruners, handsaws or chainsaws. Pruning wounds should not be treated with dressings or paints. It is not acceptable for roots within the TPZ to be ‘pruned’ with machinery such as backhoes or excavators.

Where roots within the TPZ are exposed by excavation, temporary root protection should be installed to prevent them drying out. This may include jute mesh or hessian sheeting as multiple layers over exposed roots and excavated soil profile, extending to the full depth of the root zone. Root protection sheeting should be pegged in place and kept moist during the period that the root zone is exposed.

Other excavation works in proximity to trees, including landscape works such as paving, irrigation, and planting can adversely affect root systems. Seek advice from the project arborist.
5.5. Installing underground services within the TPZ

All services should be routed outside the TPZ. If underground services must be routed within the TPZ, they should be installed by directional drilling or in manually excavated trenches.

The directional drilling bore should be at least 600 mm deep. The project arborist should assess the likely impacts of boring and bore pits on retained trees.

For manual excavation of trenches the project arborist should advise on roots to be retained and should monitor the works. Manual excavation may include the use of pneumatic and hydraulic tools.

5.6. Scaffolding

Where scaffolding is required it should be erected outside the TPZ. Where it is essential for scaffolding to be erected within the TPZ, branch removal should be minimized. This can be achieved by designing scaffolding to avoid branches or tying back branches. Where pruning is unavoidable it must be specified by the project arborist in accordance with AS 4373.

NOTE: Pruning works may require approval by determining authority.

Ground below the scaffolding should be protected by boarding (e.g. scaffold board or plywood sheeting). Where access is required, a board walk or other surface material should be installed to minimize soil compaction. Boarding should be placed over a layer of mulch and impervious sheeting to prevent soil contamination. The boarding should be left in place until the scaffolding is removed.

5.7. Maintaining the TPZ

5.8. Mulching

The area within the TPZ should be mulched. The mulch must be maintained to a depth of 50 - 100 mm using material that complies with AS 4454. Where the existing landscape within the TPZ is to remain unaltered (e.g. garden beds or turf) mulch may not be required.

5.9. Watering

Soil moisture levels should be regularly monitored by the project arborist. Temporary irrigation or watering may be required within the TPZ. An above-ground irrigation system should be installed and maintained by a competent individual.

5.10. Weed removal

All weeds should be removed by hand without soil disturbance or should be controlled with appropriate use of herbicide.
Appendix 6: Assumptions and Limiting Conditions

- McLeod Trees Pty Ltd contracts with you on the basis that you promise that all legal information which you provide, including land title and ownership of other property, are correct. McLeod Trees Pty Ltd is not responsible for verifying or ascertaining any of these issues.

- McLeod Trees Pty Ltd contracts with you on the basis that your promise that all affected property complies with all applicable statutes and subordinate legislation.

- McLeod Trees Pty Ltd will take all reasonable care to obtain necessary information from reliable sources and to verify data. However McLeod Trees Pty Ltd neither guarantees nor is responsible for the accuracy of information provided by others.

- If, following delivery of this report, you later require a representative of McLeod Trees Pty Ltd to attend court to give evidence or to assist in the preparation for a hearing because of this report, you must pay an additional hourly fee at our then current rate for expert evidence.

- Alteration of this report invalidates the entire report.

- McLeod Trees Pty Ltd retains the copyright in this report. Possession of the original or a copy of this report does not give you or anyone else any right of reproduction, publication or use without the written permission of McLeod Trees Pty Ltd.

- The contents of this report represent the professional opinion of the consultant. McLeod Trees Pty Ltd’s consultancy fee for the preparation of this report is in no way contingent upon the consultant reporting a particular conclusion of fact, nor upon the occurrence of a subsequent event.

- Sketches, diagrams, graphs and photographs in this report are intended as visual aids, are not to scale unless stated to be so, and must not be construed as engineering or architectural reports or as surveys.

- Unless expressly stated otherwise:
  - The information in this report covers only those items which were examined and reflects the condition of those items at the time of the inspection.
  - Our inspection is limited to visual examination of accessible components without dissection, excavation or probing. There is no warranty or guarantee, express or implied, that even if they were not present during our inspection, problems or defects in plants or property examined may not arise in the future.

- This agreement supersedes all prior discussions and representations between McLeod Trees Pty Ltd and the client on the subject, and is the entire agreement and understanding between these parties.
Skinner - 12 Erowal Street, Beaumaris
APPLICATION FOR PLANNING PERMIT re demolition, site clearance and ReBuild

Trees to be retained & removed

<table>
<thead>
<tr>
<th>Tree ref</th>
<th>Botanic name</th>
<th>Common name</th>
<th>Height Metres</th>
<th></th>
<th>Botanic name</th>
<th>Common name</th>
<th>Height Metres</th>
<th>Width Metres</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Existing trees</td>
<td></td>
<td>Replacement trees</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Front of house</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>T3</td>
<td>Eucalyptus Nicholi</td>
<td>Narrow Leaved Black Pepper</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>T2</td>
<td>Syzygium Smithii</td>
<td>Lilly Pilly</td>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>T4</td>
<td>Leptospermum Laevigatum</td>
<td>Coastal Tea Tree</td>
<td>4</td>
<td>Banksia Marginata</td>
<td>Silver Banksia</td>
<td>5</td>
<td>4 Existing tree is impacted by the removal of existing water &amp; gas lines</td>
<td></td>
<td></td>
</tr>
<tr>
<td>T5</td>
<td>Melaleuca Nesophila</td>
<td>Showy Honey Myrtle</td>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>T6</td>
<td>Acer palmatum</td>
<td>Japanese Maple</td>
<td>4</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Rear of house</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>T9</td>
<td>Syzygium Smithii</td>
<td>Lilly Pilly</td>
<td>17</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>T10</td>
<td>Pittosporum Undulatum</td>
<td>Sweet Attosporum</td>
<td>6</td>
<td>Banksia Marginata</td>
<td>Silver Banksia</td>
<td>5</td>
<td>4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>T11</td>
<td>Leptospermum Laevigatum</td>
<td>Coastal Tea Tree</td>
<td>3</td>
<td>Banksia Marginata</td>
<td>Silver Banksia</td>
<td>5</td>
<td>4</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Banksia Marginata</td>
<td>Silver Banksia</td>
<td>5</td>
<td>4</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Banksia Marginata</td>
<td>Silver Banksia</td>
<td>5</td>
<td>4</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Bursaria Spinosa</td>
<td>Sweet Bursario</td>
<td>6</td>
<td>4</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Skinner - 12 Erowal Street, Beaumaris
APPLICATION FOR PLANNING PERMIT re demolition, site clearance and ReBuild

**Landscape Plan Plant Schedule**

<table>
<thead>
<tr>
<th>Tree code</th>
<th>Botanic name</th>
<th>Common name</th>
<th>Height</th>
<th>Width</th>
<th>Plant size</th>
<th>No. of Planting</th>
</tr>
</thead>
<tbody>
<tr>
<td>EN</td>
<td>Eucalyptus Nicholi</td>
<td>Narrow Leaved Black Peppermint</td>
<td>12</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Tree to be retained**
EN

**Trees to be planted**

| BM | Banksia Marginata | Silver Banksia | 5 | 4 | 1 | 5 |
| AI | Acacia Impexa     | Lightwood      | 8 | 6 | 1 | 1 |
| BS | Bursaria Spinosa  | Sweet Bursario | 6 | 4 | 1 | 1 |

**Shrubs to be planted**

| CAC | Cassinia Aculeata | Common cassina | 3 | 2 200 dia pot | 4 |
| CAC | Correa Alba       | White correa   | 1 | 1 200 dia pot | 9 |
| CR  | Correa Reflexa    | Common correa  | 1 | 1 200 dia pot | 8 |

**Ground cover to be planted**

| PO  | Paterienia Occidentalis | Long purple flag | 0.4 | 0.6 150 dia pot | 5 |
| PL  | *POA Labillardiere*     | Common Tussack grass | 0.5 | 0.5 150 dia pot | 5 |
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>

Attachment 2
Figure 2 View towards the site from the north

Figure 3 View towards the site from the north (towards Tree 9 in the rear setback)
### Neighbourhood Character Precinct H2

**Preferred Future Character Statement**

The low scale dwelling styles sit within established gardens that contain some substantial vegetation including trees. Front setbacks are large, and sometimes variable, and dwellings usually include a pitched roof form of some type. The streetscapes have an open feel due to buildings being offset from at least one side boundary and a lack of intrusive front fencing, complemented by wide roads and nature strips. Linkages with the remainder of the Beaumars area are strengthened through the use of more indigenous planting in the private and public domains.

### Precinct Guidelines

<table>
<thead>
<tr>
<th>Objectives</th>
<th>Design Responses</th>
<th>Avoid</th>
<th>Planning Officer Assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>To maintain and enhance the garden settings of the dwellings.</td>
<td>• Prepare a landscape plan to accompany all applications that includes substantial trees and shrubs, preferably indigenous species.</td>
<td>Lack of landscaping and substantial vegetation. Removal of large trees. Planting of environmental weeds.</td>
<td>Responds The application seeks to remove seven (7) trees from the site, three (3) of which are protected by the Vegetation protection Overlay. The submitted landscape plan demonstrates that five (5) new canopy trees are proposed to be planted in the rear setback of the site and Tree No. 3, a large Narrow Leaved Black Peppermint in the front setback to be retained. In addition, a condition is recommended requiring Tree No. 9, the large Lilly Filly in the rear setback to be retained, and requiring a replacement indigenous tree to be provided in the front setback to replace Tree No. 4. Subject to the recommended conditions, it is considered that the garden setting of the dwelling will be maintained.</td>
</tr>
<tr>
<td></td>
<td>• Retain large, established trees and provide for the planting of new trees and shrubs wherever possible (locate footings outside root zone).</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>To maintain the rhythm of spacious visual separation between buildings and allow space for trees and other planting.</th>
<th>• Buildings should be sited to create the appearance of space between buildings and accommodate vegetation.</th>
<th></th>
<th>Responds The large site area means that there is sufficient space available for replacement canopy tree planting.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Buildings should be sited to allow space for a garden including trees and shrubs.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Objectives</td>
<td>Design Responses</td>
<td>Avoid</td>
<td>Planning Officer Assessment</td>
</tr>
<tr>
<td>---------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------</td>
<td>-----------------------------</td>
</tr>
<tr>
<td>• Minimise impervious surfaces, particularly in the front garden.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>To minimise the loss of front garden spaces and the dominance of car parking structures.</strong></td>
<td>• Locate garages and carports at or behind the line of the dwelling.</td>
<td>Car parking structures that dominate the façade or view of the dwelling.</td>
<td>N/A</td>
</tr>
<tr>
<td>• Recess upper levels from the front façade.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>To ensure that new buildings reflect the low scale forms of the area, and provide an articulated and interesting façade to the street.</strong></td>
<td>• Incorporate design elements into the front façade design of new dwellings such as recessed portions, projecting elements behind the front setback line, pitched roof forms, combinations of materials, textures or colours or other elements providing appropriate articulation.</td>
<td>Large, bulky buildings Poorly articulated roof, front and side wall surfaces</td>
<td>N/A</td>
</tr>
<tr>
<td>• Recess upper levels from the front façade.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>To use building materials and finishes that complement the natural setting.</strong></td>
<td>• Use a mix of materials, textures and finishes including render, timber, non-masonry sheeting, glazing, stone and brick.</td>
<td>Period reproduction styles and detailing</td>
<td>N/A</td>
</tr>
<tr>
<td><strong>To enhance the openness and informality of the streetscape and maintain views into front gardens.</strong></td>
<td>• Provide open style front fencing, other than along heavily trafficked roads. • Use vegetation as an alternative where possible.</td>
<td>High or solid front fencing.</td>
<td>N/A</td>
</tr>
</tbody>
</table>

**Note:**
- N/A indicates that no assessment was provided.
- This application does not seek a permit for new buildings.
### Attachment 4

<table>
<thead>
<tr>
<th>Tree No.</th>
<th>2</th>
<th>3</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Botanical Name:</strong></td>
<td><em>Syzygium smithii</em></td>
<td><em>Eucalyptus nicholii</em></td>
</tr>
<tr>
<td><strong>Common Name:</strong></td>
<td>Lilly pilly</td>
<td></td>
</tr>
<tr>
<td><strong>Height / Canopy:</strong></td>
<td>4m/1m</td>
<td>11m/8m</td>
</tr>
<tr>
<td><strong>Trunk Circ.@1m:</strong></td>
<td>82cm</td>
<td>225cm</td>
</tr>
<tr>
<td><strong>Location 1:</strong></td>
<td>W0</td>
<td>W5</td>
</tr>
<tr>
<td><strong>Location 2:</strong></td>
<td>N4</td>
<td>N4</td>
</tr>
<tr>
<td><strong>Origin:</strong></td>
<td>Indigenous</td>
<td>Victorian</td>
</tr>
<tr>
<td><strong>Age:</strong></td>
<td>Young</td>
<td>Semi-mature</td>
</tr>
<tr>
<td><strong>Health:</strong></td>
<td>Good</td>
<td>Fair</td>
</tr>
<tr>
<td><strong>Structure:</strong></td>
<td>Good</td>
<td>Fair</td>
</tr>
<tr>
<td><strong>Amenity Value:</strong></td>
<td>High</td>
<td>Moderate</td>
</tr>
<tr>
<td><strong>Life Expectancy:</strong></td>
<td>20 years +</td>
<td>10-19 years</td>
</tr>
<tr>
<td><strong>Retention Value:</strong></td>
<td>High</td>
<td>Medium</td>
</tr>
<tr>
<td><strong>Habitat Value:</strong></td>
<td>High</td>
<td>Moderate</td>
</tr>
<tr>
<td><strong>Support for Removal:</strong></td>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>
### Tree 4

<table>
<thead>
<tr>
<th>Tree No.</th>
<th>Botanical Name</th>
<th>Common Name</th>
<th>Height / Canopy</th>
<th>Trunk Circ.@1m</th>
<th>Location 1</th>
<th>Location 2</th>
<th>Origin</th>
<th>Age</th>
<th>Health</th>
<th>Structure</th>
<th>Amenity Value</th>
<th>Life Expectancy</th>
<th>Retention Value</th>
<th>Habitat Value</th>
<th>Support for Removal</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td></td>
<td>Tea tree</td>
<td>7m/3m</td>
<td>88cm</td>
<td>N6</td>
<td>E1</td>
<td>Indigenous</td>
<td>Young</td>
<td>Good</td>
<td>Good</td>
<td>Mature</td>
<td>20 years +</td>
<td>High</td>
<td>High</td>
<td>Yes</td>
</tr>
</tbody>
</table>

### Tree 9

<table>
<thead>
<tr>
<th>Tree No.</th>
<th>Botanical Name</th>
<th>Common Name</th>
<th>Height / Canopy</th>
<th>Trunk Circ.@1m</th>
<th>Location 1</th>
<th>Location 2</th>
<th>Origin</th>
<th>Age</th>
<th>Health</th>
<th>Structure</th>
<th>Amenity Value</th>
<th>Life Expectancy</th>
<th>Retention Value</th>
<th>Habitat Value</th>
<th>Support for Removal</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>Syzygium smithii</td>
<td>Lilly pilly</td>
<td>14m/10m</td>
<td>258cm</td>
<td>W5</td>
<td>S10</td>
<td>Indigenous</td>
<td>Young</td>
<td>Good</td>
<td>Good</td>
<td>Mature</td>
<td>10-19 years</td>
<td>Medium</td>
<td>High</td>
<td>No</td>
</tr>
</tbody>
</table>
## Definitions

The retention value of a tree considers the tree as a whole including its health, structure, amenity value and life expectancy. The criteria for high, medium and low retention value trees are:

**H** High

The tree is generally in good health and structure, provides high levels of amenity and is likely to do so for more than 20 years. The tree may have historic or cultural significance.

**M** Medium

The tree is generally in fair to good health and structure, provides moderate levels of amenity and is likely to do so for up to 20 years.

**L** Low

The tree is generally in fair health and structure, provides low levels of amenity and may do so for up to 10 years. The tree may be juvenile or otherwise small and easily replaced by advanced plantings or plantings that will provide similar amenity value in a reasonable timeframe.
### Attachment 5

**Decision Guidelines of the Vegetation Protection Overlay (Schedule 3)**

<table>
<thead>
<tr>
<th>Decision Guideline</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>The impact the vegetation removal would have on the character of the area</td>
<td>Three of the trees proposed to be removed trigger the VPO. It is recommended that trees 2 and 4 can be removed and subject to being replaced by appropriate indigenous vegetation, their removal would be acceptable. Tree 9 has a large, established canopy, visible from the street and from neighbouring properties and its removal would be detrimental to the neighbourhood character. As such, a condition is recommended requiring this tree to be retained. The remaining trees to be removed are either exotic or native with low amenity values and their removal would not be detrimental to the character of the area.</td>
</tr>
<tr>
<td>The impact the vegetation removal would have on the presence of indigenous species in the locality</td>
<td>The trees being removed will be required to be replaced by canopy trees in the front and rear setback of the dwelling which would ensure that there would not be an unreasonable impact on the indigenous species in the locality, in fact, the proposed replacement planting would increase the number of indigenous canopy trees on the site.</td>
</tr>
<tr>
<td>The impact the vegetation removal would have on the appearance of development.</td>
<td>The development will see the retention of Tree 3, a large Narrow Leaved Black Peppermint tree within the street setback. In addition, subject to condition, Tree 9, a large Lily Pilly tree within the rear setback will also be retained. Additional replacement planting will ensure that the development will continue to contribute to the bushy landscaped appearance of the neighbourhood.</td>
</tr>
<tr>
<td>The impact the vegetation removal would have on the habitat quality of any remaining vegetation and the fragmentation of wildlife corridors.</td>
<td>The proposal is not considered to have a detrimental impact on the fauna of the area. The trees to be removed will be suitably replaced with indigenous species subject to condition. This would ensure that quality habitats for fauna as well as food and shelter for wildlife are offered. As a result, the development would not have an undue adverse impact on wildlife corridors.</td>
</tr>
<tr>
<td>Any proposal to regenerate or plant indigenous vegetation on the site.</td>
<td>The submitted landscape plan shows the planting of 5 replacement native canopy trees within the rear setback and it is recommended that an indigenous replacement canopy tree is required to be provided within the front setback and secured by condition. There is ample space around the dwelling for the provision of indigenous planting within the site.</td>
</tr>
</tbody>
</table>
4.2  24 & 26 GRENVILLE STREET, HAMPTON
NOTICE OF DECISION TO GRANT A PERMIT
APPLICATION NO: 2018/820/1 WARD: CENTRAL

City Planning & Amenity - Development Services
File No: PSF/19/962 – Doc No: DOC/19/111150

1. Application details

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Notice of Decision to Grant a Permit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicant</td>
<td>SJB Planning Pty Ltd</td>
</tr>
<tr>
<td>Title/Covenant/S173 Agreement</td>
<td>There are no covenants or restrictions registered on title. 24 - Lot 1 Title Plan 365450R Volume 6509 Folio 791 26 - Lot 1 Title Plan 535739U Volume 7349 Folio 754</td>
</tr>
<tr>
<td>Date application received</td>
<td>13 December 2018 (Amended 21 February 2019)</td>
</tr>
<tr>
<td>Current statutory days</td>
<td>64 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 12) Development Contributions Plan Overlay (Schedule 1) Special Building Overlay</td>
</tr>
<tr>
<td>Site area</td>
<td>1020m²</td>
</tr>
<tr>
<td>Number of outstanding objections</td>
<td>7 (two objections submitted by the same party)</td>
</tr>
<tr>
<td>Is a Development Contribution Levy applicable?</td>
<td>Yes. Catchment area 16A.</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 the construction of a three storey building (plus basement) containing 9 dwellings. Key details of the proposal are as follows:

- Nine dwellings, all three bedroom comprising 6 apartments and 3 penthouse apartments.
- Three storey building measuring a maximum height of 10.98m above natural ground level.
- Ground floor street setback - 6.4m-8.45m.
- First floor street setback - 6.33m-8.41m.
• Second Floor - 11.4m-12.23m.
• West side setbacks
  o GF: 2m – 3.1m – 1.9m - 4.19m
  o FF: 2.85m-3.47m-2.93m -3m- 4.4m
  o SF: 4.65m-4.27m- 6.44m-8.07m.
• East side setbacks
  o GF: 4.39m – 2.07m – 3m
  o FF: 2.85m-3.47m-2.93m -3m- 4.4m
  o SF: 4.65m-4.27m- 6.44m-8.07m.
• South rear setbacks
  o GF: 3.2m – 4.51m – 2.76m – 6.98m
  o FF: 5.4m-2.8m-4.73m-3.33m
  o SF: 5.43m – 4.5m.
• Site coverage 60% (612m²).
• Permeability 29% (302m²).
• Garden area 35% (357m²).
• Basement parking providing 18 car parking spaces – two to each apartment.
• No visitor car parking required.
• Private waste collection.

The application plans are provided at Attachment 1.

An aerial image and photographs of the site and surrounds are provided at Attachment 2.

History

On 26 September 2017, planning permit application 2017/600/1 was lodged for a four storey residential building containing 11 dwellings and a front fence exceeding 1.5 metres in height. The built form consisted of:

• a three storey building;
• a sub-ground floor level (with bedrooms serviced by sunken or tiered courtyard gardens as well as enclosed cinema rooms, laundries, storage and bathrooms); and
• a basement for 24 car parking spaces,

Under delegation, Council officers issued a Notice of Decision to Refuse to Grant a Permit on 5 January 2018. The decision to not support the application was affirmed by the Victorian Civil and Administrative Tribunal (VCAT) on 3 September 2018.

In their consideration of the merits or otherwise of the case, VCAT affirmed Council’s decision and ordered that a permit not be issued, holding Council grounds of refusal in contention with regards the scale and massing of the building and lack of meaningful landscaping, its impact on neighbourhood character, its inability to provide appropriate garden setting, non-complaint setbacks, impacts on the amenity of neighbouring...
properties as well as the on-site amenity of the apartments, particularly at lower ground floor, solar access, and overlooking and overshadowing.

A copy of the VCAT Order is provided at Attachment 4. Further discussion in relation to this decision is provided throughout this report. The fundamental changes in the current proposal to application 2017/600/1 plans are outlined at Section 4 of this report.

2. Other Material Considerations

On 10 January 2018, planning permit 2017/162/1 was approved for the construction of two double storey dwellings and a 1.8m high front fence at 22 Grenville Street. Planning permit 2017/162/1 has not commenced and remains valid until 10 January 2020. Condition plans have not yet been endorsed in respect of the development. A copy of the decision plans is provided at Attachment 5 for information.

3. Planning controls

Planning Permit requirements

A planning permit is required pursuant to:

- Clause 32.08-6 (General Residential Zone) – Construction of a residential building.

Clause 32.08-4 requires that an application to construct a residential building on a lot must provide a minimum garden area of 35% on lots above 650 square metres. For the purposes of this application, the consideration of garden area is based on the consolidation of the lots comprising both 24 and 26 Grenville Street and thus a site area totalling 1020 square metres. Therefore there is a requirement to provide 357 square metres of garden area across the whole site. This is demonstrated on the development plans. The principal of calculating the garden area based on a consolidated site was not disputed by the Tribunal in their decision on the previous planning permit application.

- Clause 43.02-2 (Design and Development Overlay, Schedule 12) - Construct a building or construct and carry out works.

- Clause 44.05-2 (Special Building Overlay) – Construct a building or construct and carry out works.

Planning Scheme Amendments

On 31 January 2019, amendment C153 was gazetted and updates the boundaries of the Special Building Overlay (SBO) to reflect revised flood modelling undertaken by Melbourne Water. This includes adding new properties to the SBO, removing properties from the SBO and changing the extent to which the SBO covers some properties.

The Special Building Overlay is applicable to the subject site.

4. Stakeholder consultation

External referrals

The application was referred to the following authorities:

<table>
<thead>
<tr>
<th>Referral Authority</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Melbourne Water</td>
<td>No objection, subject to conditions.</td>
</tr>
</tbody>
</table>

Internal referrals

The application was referred to the following Council departments for comment:
The application was advertised pursuant to Sections 52(1)(a) and (d) of the Planning and Environment Act 1987 and eight (8) objections were received, two of which were lodged by the same party. One objection has since been withdrawn.

7 objections remain outstanding at the time of this report.

The following concerns were raised:

- Neighbourhood character
- Visual bulk
- Setbacks
- Non-compliance with objectives of Design and Development Overlay (Schedule 12)
- Overlooking
- Parking / Traffic
- Flooding
- Waste disposal
- Cumulative development impacts
- Undesirable precedent.

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

Consultation meeting

A consultation meeting was held on 1 April 2019 attended by the permit applicant and 3 objecting parties. As a result of this meeting and at the request of the objectors who attended the meeting, further information was provided by the applicant to demonstrate how the development now before Council has evolved as a result of the decision issued at the direction of VCAT and thus addressed the original grounds of refusal in respect to the previous planning application 2017/600/1. A summary of those design changes are itemised below:

Summary of reductions/ increases

The design changes are itemised as follows:

- Total liveable area reduced by approximately 30% (553m2 reduction)
- Total balcony/ deck areas reduced by 23% (43m2 reduction)
- Lower ground floor deleted
- 2 apartments deleted (reduced from 11 to 9)
- 6 car parking spaces deleted (reduced from 24 to 18)
- Site permeability increased from 22% to 29%
- Canopy trees increased from 4 to 9.
Summary of dimensional changes:

**Basement level**

- Northern basement wall set back a further 2.88m to 8.72m
- Eastern wall set back further 380mm
- Western wall set back further 890mm
- Southern wall setback further 2.55m to 3.75m on lower section and 2m on upper section.

**Lower Ground Level**

- Deleted in its entirety.

**Ground Floor level**

- Middle/entry section of front setback increased by 1.9m to 10.5m to the front door
- Western section of front setback increased by 1.245m to 8.445m
- Further 27.66m² of landscaping provided
- Increased tree canopy planting
- Permeable decking provided in lieu of paving with extent of paving reduced to provide landscaping.

**First Floor Level**

- Reduction in width by 2m from 19.8m to 17.8m
- Front western balcony of apartment 5 (formerly 7) setback a further 700mm from Grenville Street
- Northern wall associated with kitchen area of apartment 5 aligned with dining room wall
- Western frontage of Apartment 9 setback a further 530mm
- Eastern and western elevations re-articulated
- Rear setback a further 2m with a further articulated section setback 5m on south-eastern corner (recessed component from the southern boundary between bedroom 2 and the bathroom of apartment 8)
- Reconfiguration of apartments.

**Second Floor Level**

- Western side of front façade pulled back 1.2m to the balcony.
- Front setback to Apartment 6 increased to 12.5m.
- Western and eastern elevations re-articulated and setback.
- Rear western section setback a further 360mm from southern boundary (apartment 8 (formerly 10)).
- Articulated section added with 5m setback from southern boundary.

Following dialogue between the property owner and an objector (Hampton Neighbourhood Association) a conditional withdrawal was received. This withdrawal of objection was based on any permit being issued including Melbourne Water conditions.
5. Recommendation

That Council resolve to issue a Notice of Decision to Grant a Permit under the provisions of the Bayside Planning Scheme in respect of Planning application 2018/820/1 for the land known and described as 24-26 Grenville Street, Hampton, for the construction of a residential building (including basement) comprising 9 dwellings 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 be generally in accordance with the plans (submitted with the application / advertised/amended) prepared by Martin Friedrich Architects, dated 08/02/2019 drawing nos. TP1.01-TP1.05 inclusive and TP2.00, TP2.01, TP3.00, TP3.01, all revision 9 and TP5.00 dated 02/05/2018 revision 6, 00 dated 06/09/2017 revision 9, but modified to show:

   a) The internal ramp width to be a minimum of 3.6m wide (between two walls) in accordance with AS2890.1 or the Bayside Planning Scheme.

   b) The ramp where it intersects with the footpath to be 3.6m wide.

   c) The existing crossover adjusted to be 3.6m wide.

   d) Sightline visibility where the driveway intersects with the footpath in accordance with AS2890.1 and/ or Clause 52.06 of the Bayside Planning Scheme.

   e) The flat grade at the “flood apex” must be at least 2m in length in accordance with AS2890.1 and/ or Clause 52.06 of the Bayside Planning Scheme (i.e. minimum transition length is 2m in between two grades).

   f) A minimum 2.1m headroom to be provided at the entrance and throughout the basement in accordance with AS2890.1 and/ or Clause 52.06 of the Bayside Planning Scheme. A minimum 2.2m headroom to be provided in areas were refuse collection will occur.

   g) A “stop-go” signal system in accordance with the Traffic Impact Assessment prepared by GTA Consultants, dated 11/12/2018.

   h) All car spaces to be a minimum 2.6m wide in accordance with the Clause 52.06 of the Bayside Planning Scheme.

   i) Tandem car parking spaces in compliance with Clause 52.06 of the Bayside Planning Scheme.

   j) All column locations within the basement in accordance with AS2890.1.

   k) Allocated car parking as shown on a Construction Management Plan to be submitted in accordance with Condition 8 of this permit.

   l) Location of all plant and equipment, including hot water services and air conditioners etc.

   m) A schedule of construction materials, external finishes and colours (incorporating for example paint samples).
n) The retention of the two street tree assets in the road reserve fronting the site.

o) Screening on the south side of the second floor balcony of apartment 8 of the development in accordance with Standard B22 of Clause 55 of the Bayside Planning Scheme.

p) Water Sensitive Urban Design measures in accordance with Condition 9 of this permit.

q) A Landscaping Plan in accordance with Condition 11 of this permit.

r) An amended Sustainability Management Plan in accordance with Condition 24 of the permit.

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.

Car Parking Management Plan

8. Prior to the endorsement of plans pursuant to Condition 1, a car parking management 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. Traffic and parking operations on and adjacent to the site must conform to this endorsed plan. Three copies of the plan must be submitted. The plan must include:

   a) Allocation of parking for all individual tenancies.
   b) Any signs and/or line marking of car parking spaces, including visitor parking spaces within the basement.
   c) Servicing of the drainage and maintenance of car parking areas.

Water Sensitive Urban Design

9. 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.

10. 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**

11. 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 John Patrick, job no. 18-0882, Dwg Nos TP01 and TP02, dated Dec 18 and be drawn to scale with dimensions and three copies must be provided. The plan must show:

a) A survey, including botanical names, of all existing trees to be retained on the site including Tree Protection Zones calculated in accordance with AS4970-2009.

b) A survey, including botanical names, 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.

c) Both streets within the adjacent road reserve to be retained.

d) A planting schedule of all proposed trees and shrubs, including botanical names, common names, pot sizes, sizes at maturity, and quantities of each plant. Plantings must be 80% indigenous by species type and count.

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

f) Details of surface finishes of pathways and driveways.

12. 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.

13. 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**

14. Prior to the endorsement of plans pursuant to Condition 1, 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.

The Tree Management Plan must be specific to the trees shown on the Tree Protection Plan, in accordance with AS4970-2009, prepared by a suitably qualified Arborist and provide details of tree protection measures that will be utilised to ensure all trees to be retained remain viable post-construction. Stages of development at which inspections are required to ensure tree protection measures are adhered to must be specified.

The Tree Protection Plan must be in accordance with AS4970-2009, be drawn to scale and provide details of:

a) The Tree Protection Zone and Structural Root Zone for all trees to be retained on the site and for all trees on neighbouring properties including the nature strip, where any part of the Tree Protection Zone falls within the subject site.

b) The location of tree protection measures to be utilised.

15. 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.

16. 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.

17. Any pruning that is required to be done to the canopy of any tree to be retained 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 is to be done by hand by a qualified Arborist.

Street tree protection

18. Soil excavation must not occur within 2 metres from the edge of the Corymbia ficifolia street tree asset’s stems at ground level.

19. A tree protection fence is for the protection of a tree’s canopy and root zone. Conditions for street tree protection fencing during development are as follows:

a) Fencing is to be secured and maintained prior to demolition and until all site works are complete.

b) Fencing must be installed to comply with AS4970-2009, Protection of trees on development sites.

c) Fencing should encompass the Tree Protection Zone (TPZ) for all street trees adjacent to the development.

d) Fencing is to be constructed and secured so its positioning cannot be modified by site workers.

e) If applicable, prior to construction of the Council approved crossover, TPZ fencing may be reduced to the edge of the new crossover to facilitate works.

20. Prior to soil excavation for a Council approved crossover within the TPZ, a trench must be excavated along the line of the crossover adjacent to the tree
using root sensitive non-destructive techniques. All roots that will be affected by must correctly pruned.

21. Any installation of services and drainage within the TPZ must be undertaken using root sensitive non-destructive techniques.

Construction Management Plan

22. Before the commencement of works, including demolition, 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 experienced.
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.
Waste Management Plan

23. Prior to the endorsement of plans required under Condition 1, a Waste Management Plan must be submitted to and approved by the Responsible Authority. The Waste Management Plan must be generally in accordance with the Waste Management Plan prepared by Leigh Designs dated 5 December 2018 and clearly indicate that waste collection is to be via a private contractor, not Council, and include:

   a) Dimensions of storage waste areas.
   b) Storm water drains in storage areas should be fitted with a litter trap.
   c) The number and size of bins to be provided.
   d) Facilities for bin cleaning.
   e) Method of waste and recyclables collection.
   f) Types of waste for collection, including colour coding and labelling of bins.
   g) Hours of waste and recyclables collection (to correspond with Council Local Laws and EPA Noise Guidelines).
   h) Method of hard waste collection.
   i) Method of presentation of bins for waste collection.
   j) Sufficient headroom within the basement to accommodate waste collection vehicles.
   k) Sufficient turning circles for the waste collection vehicles to enter and exit the site in a forward direction.
   l) Strategies for how the generation of waste and recyclables will be minimised.
   m) Compliance with relevant policy, legislation and guidelines.

When approved, the plan will be endorsed and will then form part of the permit. Waste collection from the development must be in accordance with the plan, to the satisfaction of the Responsible Authority.

Sustainability Management Plan

24. Prior to the endorsement of plans pursuant to Condition 1, an amended Sustainability Management Plan (SMP) to the satisfaction of the Responsible Authority must be submitted to and be endorsed by the Responsible Authority. The SMP must be generally in accordance with the Sustainability Management Plan prepared by LUCID Consulting Australia dated 13 February 2019. The SMP must be modified to show:

   a) information to demonstrate how the building is orientated to take advantage of solar access and enable future installation of roof top solar.
   b) bicycle parking numbers as per the development plans.

Development Contribution

25. 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 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.
Drainage

26. 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.

27. 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.

28. Council stormwater drainage is for surface rainwater, no water below the Ground Water able is accepted into the Council Stormwater system. Only occasional clean, uncontaminated seepage water (associated with a rain event) is accepted to an appropriate Council underground drain. Otherwise, this subterranean water must be suitably retained on site.

Melbourne Water

29. The entire ground floor must be constructed with finished floor levels set no lower than 10.41 metres to Australian Height Datum, which is 300mm above the applicable flood level of 10.11 metres to Australian Height Datum.

30. Any doors, windows, vents and openings to the basement car park must be a minimum of 10.41 metres to AHD which is 300mm above the applicable flood level of 10.11 metres to AHD.

31. The entry / exit driveway of the basement carpark must incorporate a flood proof apex set no lower than 10.41metres to AHD which is 300mm above the applicable flood level of 10.11 metres to AHD.

32. All areas outside of the building footprint must be kept at natural surface level including courtyard deck area.

33. The northern property boundary fence and internal fencing must be of an open style construction (50% open). Glass fences/screens at ground level must be replaced with fencing that allows for the free flow of floodwaters.

34. The building setbacks from the western and northern property boundary must be maintained and not altered without the prior approval of Melbourne Water.

35. There must be no solid structures or walls obstructing flows within the property frontage. The service cupboard, mailboxes and any fences/walls to be of an open style construction (50% open).

Consolidation

36. Before the development starts, the lots comprising the subject site must be consolidated into one lot under the Subdivision Act 1988 to the satisfaction of the Responsible Authority.

Permit Expiry

37. 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.
- Council records indicate there is a council stormwater drain running parallel to the south property boundary. Council consider this asset to be protected by an implied 2.0m easement, minimum distance of 1m from the asset. The plans indicate no proposal to encroach into the implied easement with any buildings or structures of note. Proposals to be built over the easement will require build over easement consent from the Responsible Authority.

6. **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.
- With village-style activity centres, combining retail at ground floor with increased opportunities for apartment-style living above.
- Where development contributes to a high visual amenity, is ecologically sustainable, demonstrates high quality compliant design, and responds to the streetscape and neighbourhood context.
- 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.
- Ensure new development responds to preferred neighbourhood character in activity centres.
Bayside Planning Scheme

- Clause 10  Planning Policy Framework
- Clause 11  Settlement
- Clause 13  Environmental Risks
- Clause 15  Built Environment and Heritage
- Clause 16  Housing
- Clause 21.02  Bayside Key Issues and Strategic Vision
- Clause 21.03  Settlement and Housing
- Clause 21.05  Environmental Risks
- Clause 21.06  Built Environment and Heritage
- Clause 21.11  Local Areas (Hampton Street Major Activity Centre)
- Clause 22.06  Neighbourhood Character Policy (Precinct F1)
- Clause 32.08  General Residential Zone (Schedule 2)
- Clause 43.02  Design and Development Overlay (Schedule 12)
- Clause 44.05  Special Building Overlay
- Clause 45.06  Development Contributions Plan Overlay (Schedule 1)
- Clause 52.06  Car Parking
- Clause 53.18  Stormwater Management in Urban Development
- Clause 55  Two or more dwellings on a lot
- Clause 55.07  Apartment Developments
- Clause 65  Decision Guidelines.

7. 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.

7.1. Strategic Justification

The site is located within the General Residential Zone in the Hampton Street Major Activity Centre (Precinct E), which is also a ‘Moderate Residential Growth Area’ as identified on Map 2 of Clause 21.02-5. The overarching principles of the Bayside Planning Scheme encourage medium density development in such areas.

Such a development however must strike a suitable balance between the purpose of the General Residential Zone and the relevant design objectives of the DDO12. It is considered that the site is a suitable location for this type of medium density development.

Pursuant to Map 1 of Clause 21.11-4, the site is identified as being in ‘Precinct 4: Residential Precinct.’ An objective of this precinct is to strengthen the role of the Hampton Street Centre as a multi-use centre offering retail, office, entertainment and community services.

Strategies to achieve this in Precinct 4 include:
To provide for increased housing densities and diversity of housing types within the centre and direct larger developments to larger sites within or immediately adjoin the business precincts.

Provide adequate off-street parking for all new dwellings.

The development would increase density on the site and in providing apartment living, allow for a diversity of dwelling type in the centre. The development provides for side and rear setbacks, a mixture of materiality and is suitable within its predominantly residential context.

The General Residential Zone has many purposes, including:

“To provide a diversity of housing types and moderate housing growth in locations offering good services and transport.”

The site is located within the Hampton Street Major Activity Centre and is approximately 200 metres walk to the peripheral business and local shopping area of Hampton and 250-500 metres to the Hampton retail core and Train Station respectively. In its location the site is considered to offer good access to community services and transport and where moderate housing growth is encouraged.

The site is strategically located to accommodate higher density development that will assist in strengthening the role of the Hampton Street Activity Centre. This area has been identified for moderate residential growth as opposed to neighbourhood residential zones that seek to limit number of dwellings, heights and maintain low scale development. Whilst it may be strategically supported, the proposal must also achieve the objectives of Clauses 22.06 and Clauses 55, as discussed further in this report.

Building Height

The site is within the General Residential Zone which imposes a mandatory height control of 11 metres (3 storeys) or 12 metres where the slope of the natural ground level at any cross section of the site of the building wider than 8 metres is 2.5 degrees or more. The Design and Development Overlay (Schedule 12) advises of a discretionary maximum height control of 11m at Clause 43.02 of the Bayside Planning Scheme and identifies the site as being within Precinct E of the Hampton Street Centre Framework Plan.

The development proposes a maximum height of 10.98 metres (three storeys) which falls within the maximum allowable height of 11 metres in both the General Residential Zone and Design and Development Overlay (Schedule 12). The siting and height of the building has had regard to its context in the Major Activity Centre as well as respecting the use and built form of directly abutting properties. The design response is suitably responsive to the site opportunities and constraints. The height and built form is appropriate and satisfies the objectives of the DDO12. The development conserves and enhances urban character and is considered compatible with the preferred future role of the Hampton Street Major Activity Centre.

The subject site is identified as being within and on the periphery of Hampton Street Major Activity Centre and this is considered an area where a transition in building height should occur given its interface with the Neighbourhood Residential Zone on the northern side of Grenville Street.

The Neighbourhood Residential Zone on the northern side of Grenville Street dictates a maximum two storey and 9 metre height control. The proposed residential building, in being three storeys and a maximum of 10.98m in height would provide a considered built form response and outcome for the preferred character for the Activity Centre in terms of the General Residential Zone (Schedule 2) and Design and Development Overlay.
(Schedule 12).

The Tribunal in considering the previous development on the site, albeit with a four storey form and subterranean accommodation, was of the view that ‘although the subject site is on the periphery, it is in an Activity Centre and based on the size of the land parcel and the planning controls that apply, a building that presents as a three storey apartment format is not inappropriate as a matter of principle’ (Para 51). Furthermore the subject site is in an area with considerable building diversity. One, two and three storey built forms exist in the locale, including single and multi-dwellings of old and new housing stock.

Building Setbacks

Pursuant to the design guidelines of the DDO12, buildings in a Residential Zone should be setback in accordance with the relevant Clause 55 standards, except that the second floor level should be setback a minimum of 4 metres behind the front wall of the floor immediately below, unless the second floor is an attic.

At second floor level of the building would, for the most part, comply with the 4 metre setback requirement of the DDO12. Only a small section of the kitchen/dining area associated with Apartment 6 of the development encroaches within this 4 metres setback. This relatively minor indiscretion is considered reasonable to interpret and is consistent with the recessive nature of the western part of the building.

Overall the staggered ground and first floor setbacks would present a suitable design response which would offer a reasonable level of articulation and visual interest to the street. The recessive design elements contribute to the softening of built form through the provision of balconies and choice of external finishes. The extent of fenestration featured throughout the facade will also alleviate visual bulk to the street and ensure that the development adopts an appropriate design response for the site and broader precinct.

7.2. Neighbourhood character

The site is located within Neighbourhood Character Precinct F1. The proposal is considered to demonstrate an acceptable level of compliance with the preferred future character statement and precinct guidelines as contained in Attachment 6.

From Grenville Street the proposal to recess part of the frontage of the building would serve to reduce the visual dominance of the building when combined with the composition of external finishes which would provide a horizontality to the built form. Such a setback would allow a transition between the built form on the adjoining lots of both 22 and 28 Grenville Street. It would also allow a sensitive transition between the dual-occupancy development at 22 Grenville Street which could be implemented in the future with the benefit of planning permit 2018/814/1 should this be constructed.

In its consideration of the front setback and the previous application, the Tribunal considered the site’s context and the existing (and approved) built form of No. 22 Grenville Street. The Tribunal accepted that a transitional front setback on the subject site to that of No. 22 Grenville Street is required, which has been incorporated in this proposal by way of a staggered front setback. This is further discussed at Section 7.3 of this report.

The development is largely compliant with side setbacks standards and in this, there is opportunity for planting within the side setbacks of the site. Although modest in its approach, being provided in raised planters, such planting would be little different in its extent to that which exists within the streetscape of Grenville Street. The visual separation between built form and the landscape setting of the development would be
reflective of the proportionality of built form to plot ratio that is evident adjacent and throughout Grenville Street.

Landscaping would largely be provided in the front and rear setbacks comprising a total of 9 canopy trees and other plantings. This combined with the perimeter planting in the side setbacks would provide an appropriate landscape setting to the development allowing it to be anchored within its wider streetscape setting and thereafter contribute to the vegetated character of this part of Bayside.

7.3. Compliance with Clause 55 (ResCode)

An assessment against the requirements of Clause 55 is provided at Attachment 7. Those non-compliant standards are discussed below:

Street setback (Standard B6)

The minimum street setback is the average distance of the setbacks of the front walls of the existing buildings on the abutting allotments facing the front street or 9 metres, whichever is the lesser. The front wall of the two abutting allotments are 10.08 metres to the west and 5.98 metres the east. As outlined in table 1 below, the proposal requires a minimum front setback of 8 metres.

<table>
<thead>
<tr>
<th>Ground floor</th>
<th>Proposed</th>
<th>Variation</th>
</tr>
</thead>
<tbody>
<tr>
<td>8.0m</td>
<td>6.4m - 8.45m</td>
<td>1.6m</td>
</tr>
<tr>
<td>First floor</td>
<td>8.0m</td>
<td>6.33m – 8.41m</td>
</tr>
<tr>
<td>Second Floor</td>
<td>12m</td>
<td>11.4m – 12.23m</td>
</tr>
</tbody>
</table>

A street setback from Grenville Street of between 6.4m to 8.45m at ground floor and 6.33m to 8.41m at first floor is proposed, when a setback of 8 metres is required to achieve this standard. 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.

Design and Development Overlay, Schedule 12 stipulates that the second floor (third storey) should be set back a minimum of 4 metres behind the front wall of the floor immediately below. Subsequently, the second floor would be required to be set back a minimum of 12 metres from the frontage, which is compliant.

The front façade incorporates two components, the eastern and western modules of the facade. The eastern module is setback 6.4 metres and the western module setback 8.45 metres. The eastern module of the front facades generally aligns with the front façade of No. 28 Grenville Street. The western module of the front façade is setback 8.45 metres and the increased setback provides a staggered transition to No. 22 Grenville Street. These front setbacks, including the staggered form, are reflected at first floor. This transition between the adjoining properties is evident below:
It is therefore considered that the proposal provides for a staggered front setback that will provide for an appropriate transition to the adjoining properties and the front setback common within the streetscape.

The front setback of the second floor is compliant with Standard B6, is recessed from the double storey podium level below and thereby reduces visual bulk to the street.

Although the building would be larger in scale than those immediately within the streetscape of Grenville it would maintain the garden character of the area. The front setback provided is sufficient to ensure that the building does not dominate the streetscape. In addition, the proposal is generally consistent with the design objectives of the Design and Development Overlay, Schedule 12. The proposal is designed to integrate with the existing and preferred built form character of the area and adopts a building height of 10.98m which falls below the permissible height of 11.0m (3 storeys) of the Design and Development Overlay.

The proposal offers a contemporary form, incorporating a mixture of limestone and render cladding and render with appropriate levels of glazing which is responsive to the more modern developments within the surrounding area. Subject to conditions, landscaping would be provided to ensure that the garden setting of the area is maintained and enhanced. It is considered that the proposal would demonstrate a high level of compliance with the precinct guidelines, with appropriate balance being achieved with the objectives of the Hampton Street Major Activity Centre.

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

The objective of the standard is to ensure the height and setback of a building from boundary respects the existing or preferred neighbourhood character and limits the impact on the amenity of existing dwellings.

The table below details the required and proposed setbacks for the development with areas of non-compliance underlined.
The variations sought at first floor on the east side of the building comprise 21cm and 4cm and relate to the master bedroom and bedrooms 2 and 3 of Apartment 9 of the development respectively. In finer detail, small sections of the parapet walling.

The variations sought at second floor on the west side of the building comprise 18cm of the roof section to the en-suite of Apartment 7 of the development.

These variations would not be discernible within the streetscape and would not cause material detriment to any third party as a result of unreasonable visual bulk, massing or overshadowing. The imposition of a condition to insist on compliance in this instance would have little to no effective consequence with regard to the perception of the development by objectors to it and is therefore considered unnecessary.

The proposed setbacks and siting of the building envelope respects the general pattern of development in the immediate area. In addition, the setbacks mostly satisfy the ResCode standard and reflect the preferred neighbourhood character of this developing Major Activity Centre and provision of the General Residential Zoning.

Overlooking (Standard B22)

The elevations drawings indicate first and second floor east, west and south elevation windows will be screened, where necessary, with louvres or obscure glazing up to a height of 1.7m measured from finished floor level. Balconies are shown to be screened by dado walling and planter boxes and pergola structures. With the exception of planter box screening to be provided at second floor level on the south elevation, it is considered that all screening proposed will limit unreasonable overlooking impacts from the development. It is therefore prudent to impose a condition on permit that the screening to the south side of the second floor balcony of apartment 8 be increased in height to comply with the standard. This is included in the recommendation.

Existing boundary fencing will protect adjoining properties from the unreasonable overlooking from to/from ground floor habitable room windows.

Solar Access (Standard B29)

The private open space of a dwelling or residential building should be located on its north side, if appropriate. The southern boundary of secluded open space should be at least set back from any wall on the north of the space at least (2+0.9h) metres, where ‘h’ is the height of the wall.

Secluded private space is provided in part to the south of the building servicing apartments 3 and 4 of the development. Additional usable areas have also been provided to the east and west of the building. For the open space to the south of the building...
comply with Standard 29, the proposed apartment would need to be setback some 7.76m from the southern boundary instead of the proposed minimum 2.8 metres setback.

Notwithstanding the above, as the southern setback area is not proposed to be the only private open space for apartments 3 and 4, with open space areas located to the east and west it is considered that an acceptable design outcome has been achieved.

It is noted that sites with north to south orientation does present a constraint to any development. The insistence on the required setback is considered unreasonable and unnecessary in this situation given the access to the other outdoor areas which receive reasonable solar access throughout the day to meet the standard and needs of future residents.

**Energy Efficiency (Standard B35)**

The Sustainability Management Plan and Section J report submitted in support of the application demonstrates that none of the five (5) modelled apartments have a cooling load in excess of 21 MJ/m² per annum, in accordance with the NatHERS Climate zone 62 Moorabbin, which achieves the objective of the standard.

**Windows (Standard B48)**

All habitable rooms with the exception of the cinema rooms that would be provided within Apartments 6 and 8 of the development would receive sufficient daylight. No apartments are to be served by secondary light sources.

Whilst the cinema rooms are considered habitable rooms, the functionality of their use is such that daylight should be minimised. Given this and as the other habitable rooms of apartments 6 and 8 would be appropriately served by external windows and be afforded sufficient light, the departure from the standard is considered appropriate in this instance.

### 7.4. Landscaping

The application plans show the removal of all trees from the site including 3 native trees. The trees to be removed are not protected by any statutory mechanism. Accordingly neither a planning permit nor local law permit is required for their removal.

Council’s Arborist advises that the two sites do not contain any significant vegetation worthy of retention.

Tree Nos. 6 and 20 are located on adjoining sites with their Tree Protection Zones (TPZ) extending into the subject site. As such consideration must be given to the impact of the development upon these trees. A Tree Protection Plan and Tree Management Plan would be required to be submitted to ensure these trees remain viable both during and post construction were a permit have been issued.

In addition to the above assessment, Council’s Arborist has reviewed the submitted development plans by Martin Friedrich Architects issue date 085/02/2019 and Landscape Plans prepared by Jack Merlo dated December 2018 and advised that it is considered acceptable.

Amongst other landscape layout and design matters, Standard B38 of Clause 55.07-4 requires the development to provide the deep soils areas and canopy trees specified in the table below. According to the *Apartment Design Guidelines for Victoria 2017*, deep soil is defined as:

…an area on natural ground unimpeded by a structure below (and above) providing for opportunities for groundwater infiltration and canopy trees.
The proposal requires that 7.5% of the site is deep soil. 4 medium canopy trees are proposed to be planted; these areas are located in three of the sites corner and a section of the sites frontage. Council’s Arborist has advised that the areas of deep soil are to be provided by cut and fill. Whilst this may be the case, natural ground would be provided which is capable of accommodating the planting proposed and will fulfil the objectives of the standard and ensure the site is appropriately landscaped.

Council’s Arborist is content that the proposed planting schedule includes sufficient vegetation that is sympathetic to the neighbourhood Character Guidelines and Bayside Landscape Guidelines and thus provides for 80% indigenous coastal species.

### 7.5. Street tree(s)

Two (2) *Corymbia ficifolia’s* (Flowering gum) are located within the nature strip to the front of the subject site and are proposed for retention. Council’s Street Tree Arborist has advised that the development provides sufficient space for the retention and long term growth of the trees. However, the arborist assessment prepared by “Open Space Management” dated 08/09/2017 submitted in support of the application does not include an assessment of the street tree assets. It is recommended that the ground floor plan be updated to show their retention with landscape and ground floor plans showing measures for tree protection. These matters can reasonably be controlled by conditions of permit and are included in the recommendation.

### 7.6. 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 2 car spaces per three or more bedroom dwellings.

The statutory car parking requirement for the proposal is as follows:

<table>
<thead>
<tr>
<th>Use</th>
<th>Size</th>
<th>Planning Scheme Parking Rate</th>
<th>Car Parking Requirement</th>
<th>Car Parking Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dwelling (resident)</td>
<td>9x 3 Bedroom</td>
<td>2 car parking spaces to each 3 bedroom dwelling</td>
<td>18 car parking spaces</td>
<td>18</td>
</tr>
<tr>
<td>Visitor</td>
<td>N/A - PPTN Area</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td>18</td>
<td>18</td>
<td></td>
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</tbody>
</table>

A total of 18 car parking spaces is provided within the basement of the development. The basement plan erroneously shows that three car parking spaces be associated with apartment 7 and only one space with apartment 8. Two spaces should be provided for each dwelling and has been proposed as part of the recommendation.

The application was referred to Council’s Traffic Engineer who expressed no concern.
with the development subject to the inclusion of permit conditions relating to vehicle access, driveway gradients, sightlines and internal parking dimensions. These are included as conditions of the permit.

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.

7.7. Waste Management

A waste management plan has been submitted as part of this application. Bin stores are indicated on the development plans to be located in the basement. A total of 7 bins are shown to be provided. However, the waste management plan indicates a total of 6 bins to be provided with three (3) allocated for garbage and three (3) recycling. The collection of them is proposed to occur weekly by a private waste contractor on site by a low-profile waste truck. Swept paths submitted with the application demonstrate that sufficient space is provided to allow collection vehicles to enter and exit the site in a forward direction.

Green waste is to be collected by the landscape gardener. The disposal of hard waste shall be managed by individual residents/body corporate and a private contractor. Council’s Waste Co-ordinator is content with the submitted waste management plan being satisfied with arrangements for private waste collection.

7.8. Special Building Overlay

Melbourne Water, as a deciding Referral Authority, raises no objection to the development subject to conditions. The conditions control the finished ground floor levels of the development, side setbacks and the solidity of structures within setbacks and the height of vent or window or door openings.

Melbourne Water are satisfied that such conditions and measures will prevent the redirection or obstruction of floodwater, stormwater or drainage water as an effect of the development.

7.9. Cultural Heritage management plan

The site is not located within an area of cultural heritage sensitivity and therefore a cultural heritage management plan is not required.

7.10. Development contributions levy

The subject site is located within catchment area 16A.

Based on the proposed application and the below recommendation, a payment of $5050 is required. The payment of the development contributions is included as a condition of permit.

7.11. Objector and other issues not already addressed

Overshadowing (Standard B21)

The shadow diagrams indicate minimal additional overshadowing will be cast over the existing private open space areas, including 9, 11 and 15 Willis Street and 22 and 28 Grenville Street to the west and east respectively, beyond the shadows already cast by existing development and boundary fencing throughout the day. As such the additional shadows cast are not considered to have an undue impact on the amenity of neighbouring properties.
Precedent

Future planning permit applications on this site or neighbouring and nearby land will be assessed against relevant planning policy and site conditions, based on their own merits at the time of assessment. The possibility of setting an undesirable precedent cannot be substantiated and is not a relevant planning consideration.

Cumulative Effect

It is acknowledged that planning permit application 2018/814/1 was submitted to Council on 12 December 2018 for the construction of a three storey building comprising 12 apartments above a basement car park and a front fence at 14 Grenville Street. However that application stands to be assessed on its own merits or otherwise and is not a material consideration in the determination of this application.

Support Attachments

1. Development Plans ↓
2. Site & Surrounds Imagery ↓
3. VCAT Decision Plans ↓
4. VCAT Final Order ↓
5. Decision Plans - 22 Grenville Street, Hampton ↓
6. Neighbourhood Character Precinct F1 ↓
7. Rescode Assessment ↓
Item 4.2 – Matters of Decision
Item 4.2 – Matters of Decision
Item 4.2 – Matters of Decision
ATTACHMENT 2 - SITE & SURROUNDS IMAGERY

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>Objection</td>
<td>⬤</td>
</tr>
<tr>
<td>Withdrawn</td>
<td>▽</td>
</tr>
</tbody>
</table>

Item 4.2 – Matters of Decision
Figure 2 View towards the site from the north

Figure 3 View towards the site from the north
Figure 4 View towards 22 Grenville Street to the west of the site.

Figure 5 View towards 28 Grenville Street to the east of the site.
Figure 6 View west along Grenville Street.

Figure 7 View east along Grenville Street.
Figure 8 View opposite subject site.
Item 4.2 – Matters of Decision
Item 4.2 – Matters of Decision
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RED DOT DECISION SUMMARY

The practice of VCAT is to designate cases of interest as 'Red Dot Decisions'. A summary is published and the reasons why the decision is of interest or significance are identified. The full text of the decision follows. This Red Dot Summary does not form part of the decision or reasons for decision.

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO: P106/2018

IN THE MATTER OF 2426 Grenville Pty Ltd v Bayside CC (Red Dot) [2018] VCAT 1338

BEFORE Margaret Baird, Senior Member, Judith Perlstein, Member

<table>
<thead>
<tr>
<th>NATURE OF CASE</th>
<th>Application to develop an apartment building on the subject land</th>
</tr>
</thead>
<tbody>
<tr>
<td>LOCATION OF PASSAGE OF INTEREST</td>
<td>Paragraphs 29 - 43</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>REASONS WHY DECISION IS OF INTEREST OR SIGNIFICANCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>LAW – issue of interpretation or application Consideration of the mandatory garden area requirement in the context of a permit application with a floor level below the existing ground level</td>
</tr>
<tr>
<td>LEGISLATION – interpretation or application of statutory provision</td>
</tr>
<tr>
<td>PLANNING SCHEME – interpretation or consideration of VPP provision Identification of apparent oversight when Amendment VC143 did not delete the words ‘at ground level’ in clause 32.08-4 despite an intent to do so, as evident in the ‘tracked changes’ version of the clause</td>
</tr>
</tbody>
</table>

SUMMARY

The permit application seeks approval for a four level apartment building, one floor being below ground level. A question of law arose with respect to the application of the mandatory garden area in this circumstance.

The decision is of interest because of the findings that:

- The definition of garden area does not refer to the ground level and the zone requirements do not state that the garden area must only be provided at ground level; and

- There is an apparent error in clause 32.08-4 where the words ‘at ground level’ have not been removed from clause 32.08-4 even though they are shown as intended to be removed in the ‘tracked changes’ version of clause 32.08-4 issued with Amendment VC143. This appears to be an issue that is relevant to other schemes, not only the Bayside Planning Scheme.
APPLICATION 2426 Grenville Pty Ltd

RESPONSIBLE AUTHORITY Bayside City Council

RESPONDENTS Tony Shepherd, Joe Morrison, Gino De Biase, Judith Bissland, Hampton Neighbourhood Association Inc.

SUBJECT LAND 24 and 26 Grenville Street
HAMPTON VIC 3188

WHERE HELD Melbourne

BEFORE Margaret Baird, Senior Member
Judith Perlstein, Member

HEARING TYPE Hearing

DATES OF HEARING 12, 13 & 14 June and 24 July 2018

DATE OF INTERIM ORDER 1 August 2018

DATE OF ORDER 3 September 2018

CITATION 2426 Grenville Pty Ltd v Bayside CC (Red Dot) [2018] VCAT 1338

ORDER

Application amended

1 Pursuant to section 127 and clause 64 of Schedule 1 of the Victorian Civil and Administrative Tribunal Act 1998, the permit application is amended by substituting the following plans for the application plans:

- Prepared by Martin Friedrich Architects;
- Revision 6;
- Dated 02052018.
Withdrawal of party

2 Leave is granted to Mr D Osborn to withdraw his objection.

No permit granted

3 In application P106/2018, the decision of the responsible authority is affirmed.

4 In planning permit application 5/2017/600/1, no permit is granted.

Margaret Baird
Senior Member

Judith Perlstein
Member

APPEARANCES

For 2426 Grenville Pty Ltd Mr D Scally, solicitor, Best Hooper solicitors. He called the following persons to present expert evidence:

- Mr D Iles, town planner.
- Mr J Merlo, landscape architect.
- Dr P Greenup, daylight engineer.

A statement by the project architect was tendered. A report by Mr A Patrick, arborist, was also tendered.

For Bayside City Council Ms J Bowdern, legal support planner with Ms A Rozankovic-Stevens. Ms Bowdern called the following person to present expert evidence:

- Mr T Biles, town planner.

For Joe Morrison Mr J Morrison.

For Gino De Biase Mr G De Biase.

For Tony Shepherd and the Hampton Neighbourhood Association Inc. Mr T Shepherd.
INFORMATION

Description of proposal  Apartment building containing 11 dwellings over four floor levels. The building contains three levels at ground and above. A fourth habitable level is below ground with bedrooms serviced by sunken or tiered courtyard gardens as well as enclosed cinema rooms, laundries, storage and bathrooms.

A further basement level provides basement parking for 24 cars, including two allocated visitor parking spaces. However, because of Amendment VC148 no on-site visitor parking is required and the two spaces are now proposed to be allocated to dwellings.

Nature of proceedings  Application under section 77 of the Planning and Environment Act 1987 – to review the refusal to grant a permit.

Planning scheme  Bayside Planning Scheme [scheme].


Permit requirements  Clause 32.08 – to construct two or more dwellings on a lot and to construct a fence of more than 1.5 metres in height.

Clause 43.02 – to construct a building or carry out works.

Relevant scheme policies and provisions  Clauses 11, 15, 16, 17, 18, 21, 22.06, 22.08, 32.08, 43.02, 45.06, 52.06, 55, 65 and 71.

Land description  The subject land comprises two lots on the south side of Grenville Street. It has a combined area of 1,020m². A single storey dwelling is on each lot.

The dwelling to the east, at No. 28 Grenville Street, has two storeys with a garage positioned forward of the house. A single storey dwelling is to the west, at No. 22 Grenville Street. A permit was issued in January 2018 for the development of No. 22 Grenville Street for two, side by side, double storey dwellings.

Land to the south fronts Willis Street including new dwellings at Nos. 11 and 15. There is a mix of older and newer single dwellings and units. The Willis Street area is experiencing significant redevelopment on its southern side leading toward the railway station.

Tribunal inspection  Between Days 3 and 4 of the hearing (unaccompanied).
WHAT IS THIS APPLICATION ABOUT?

1 2426 Grenville Pty Ltd proposes the development of an apartment building containing 11 units on the subject land. The Bayside City Council refused a permit. The permit applicant asks the Tribunal to review this decision.

2 The subject land is within the Hampton Street Major Activity Centre [Activity Centre], at the interface with land to the north that is outside this Activity Centre. The subject land is in an area where growth and intensification are targeted, demonstrated through the policies and provisions of the Bayside Planning Scheme [scheme] which provide the basis for our assessment and decision. The applicant submits the proposal is acceptable in its planning context and achieves external and internal amenity outcomes whereas the Council, parties and other persons opposing the application disagree.

3 Having regard to the relevant matters under the scheme, and submissions before us, the key issues for our determination are:
   • Does the application meet the mandatory garden area requirement in clause 32.08?
   • Does the proposal achieve an acceptable character outcome having regard to its location in the Hampton Street Major Activity Centre?
   • Does the proposal achieve an acceptable level of on-site amenity?
   • Are there any unreasonable off-site amenity impacts in terms of overshadowing, overlooking and visual bulk?
   • Can drainage and stormwater be appropriately managed?

4 We must decide whether to grant a permit and, if so, what conditions should apply to a permit. We must decide whether the proposal will produce an acceptable outcome having regard to the relevant policies and provisions in the scheme. Clause 71 requires the decision-maker to integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development.

5 We have decided to refuse a permit for reasons that follow. As a consolidated site in the Activity Centre, an apartment building is potentially acceptable. However, the scale, siting and massing of the development does not achieve the outcomes sought by DDO12 for this location. We are also not satisfied with the internal amenity for multiple dwellings, particularly those with a subterranean floor level. The proposal’s contribution to housing diversity and choice does not override these issues.

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1 The submissions and evidence of the parties, supporting exhibits given at the hearing and the statements of grounds filed have all been considered in the determination of the proceeding. In accordance with the Tribunal’s practice, these reasons do not recite or refer to all of this material. Questions of law have been determined by Member Perlstein, an Australian lawyer. We have considered submissions in response to our interim order of 1 August 2018 addressing the implications of Amendment VC148.

2 Other matters are raised in statements of grounds which we address briefly in these reasons.
WHAT IS THE APPLICABLE STRATEGIC CONTEXT?

Policy and strategic directions

6 As part of the Hampton Street Major Activity Centre there is an expectation of growth and intensification in the associated residential areas. Hampton Street is one of four major activity centres in Bayside. It is a location where the Municipal Strategic Statement directs new medium density housing, and increased housing densities and diversity of dwellings. It is a location for residential growth.

7 This is consistent with key themes in policy and Plan Melbourne 2017-2050. These include creating 20-minute neighbourhoods as well as focusing development in and around activity centres and employment corridors, on strategic re-development sites with good access to services and transport, particularly the Principal Public Transport Network. Planning policy and Plan Melbourne imperatives seek to deliver more affordable housing closer to jobs, transport and services.

8 Local policy identifies a key issue as facilitating commercial and housing development within activity centres in a manner that (inter alia) supports the vision for the centre. Among the policy objectives are achieving high quality built form and public realm design that conserves and enhances valued urban character and heritage places. Another objective is protecting the amenity of dwellings within and adjacent to activity centres. Relevant strategies to the current proceeding under the objectives include:

- Ensure new development is compatible with the vision for the centre and avoids materially altering the scale of the centre.
- Maintain and enhance the traditional, fine grain streetscape rhythm and building scale of activity centres.
- Ensure that the interface between Activity Centres [sic] and adjacent residential areas is appropriate in terms of built form and amenity.
- Maintain the spacious, low scale landscaped character of residential precincts, with residential buildings set back within vegetated front gardens and streetscapes.

9 The above themes, including a transition in built form at the interface between residential and business precincts, flow through to the policy for Hampton Street at clause 21.11-4 and built form controls that apply through DDO12. These are the most specific policy and provisions relating to the development of the Hampton Street Major Activity Centre. In summary, the subject land is included within several precincts under different policies and the overlay within the scheme. They are:

- Clause 21.11-4, Local areas – Hampton Street, Precinct 4;

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3 Plan Melbourne 2017-2050 removes the designation of activity centres however it is retained within the Local Planning Policy Framework of the Bayside Planning Scheme.

4 Clause 21.03-1.

5 Clause 21.06-1.2.

6 As found in Clause 21.06-1.2 Activity Centres.
- Clause 22.06, Neighbourhood Character Policy, Precinct F1; and
- DDO12, Built Form Standards for Hampton Street Major Activity Centre, Precinct E.

10 The vision for Hampton Street in clause 21.11-4 includes the following:

... activity will be focused between Willis Street and the railway line and extending behind to the revamped Willis Street precinct ...

...

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

11 New development is to support the Framework Plan and vision. Expectations for the Willis Street precinct contrast with the balance of the Hampton Street Major Activity Centre including residential areas within the Centre.

12 Clause 21.11-4 identifies four precincts within the Activity Centre. The subject land is within Precinct 4 – Residential Areas. An extract from the plan in clause 21.11-4, below, shows a notation along the land’s Grenville Street frontage to “Provide transitional building heights”.

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7 These are the same as the Built Form Precincts in DDO12.
13 It is policy for Precinct 4: Residential Areas at clause 21.11-4 to:
   • Provide for increased housing densities and diversity of housing types within the centre and direct larger developments to larger sites within or immediately adjoining the business precincts.
   • Provide adequate off-street parking for all new dwellings.

Zone and overlay provisions
14 Policies are given effect through the zoning and overlay provisions that apply to the subject land and environs within the Activity Centre.
15 Relevant scheme extracts are shown below. They identify the subject land as being in General Residential Zone 2 [GRZ2]. There are no clause 55 variations in GRZ2 and no additional decision guidelines. Clause 55.07 applies. West of Exon Street, Grenville Street separates the Hampton Street Major Activity Centre from land in the Neighbourhood Residential Zone [NRZ3] to the north. The second image, below, shows the application of DDO12 to this part of the Activity Centre.

16 We have considered the purpose and decision guidelines in clause 32.08 as appropriate in this case but do not recite them all here.
17 Clause 32.08 encourages a diversity of housing types and growth in locations offering good access to services and transport. It also encourages development that respects the neighbourhood character of the area.
18 Clause 55 calls up consideration of preferred character. As noted above, clause 22.06 includes the subject land in Precinct F1. There is a statement of preferred future character. The area of land comprising Precinct F1 includes land within and outside of the Activity Centre. The application of this clause must be informed by the fact that DDO12 is the most specific, and particularly relevant, control in the assessment of this permit application. DDO12 expressly applies to the subject land and sets out design objectives and provisions relating to (among others) built form provisions for the Hampton Street Major Activity Centre. DDO12 carries greater weight than the broader character policy in clause 22.06.
Consistent with clause 21.11-4, DDO12 contains directions for the Hampton Street Major Activity Centre as a whole. Local policy and DDO12 reconcile broader policy ambitions with respect to the management of growth and change as they relate to this location. We have considered clause 43.02 and the relevant matters within DDO12, including the decision guidelines at clause 3.0.

At this point we highlight several design objectives in DDO12 that are relevant in this proceeding:

- To ensure that the height of new development is compatible with the preferred future role and character of the Hampton Street Major Activity Centre.
- To develop the centre in a way that conserves and enhances its valued urban character and heritage places.
- To ensure that new development contributes to safe and active streets.
- To maintain a strong landscape character with residential buildings set within vegetated front gardens and streetscapes in the residential precincts.

The subject land is part of Precinct E in DDO12 where there is a discretionary maximum building height of 11 metres (3 storeys) although a mandatory three storey, 11 metre limit applies through the GRZ at clause 32.08-9.

Preferred and mandatory heights from three to six storeys are applied to specific locations having regard to factors such as residential interface, railway station proximity and heritage considerations.

The Willis Street precinct has a preferred height of six storeys.

New development and recent approvals include some higher forms and single dwellings such as a three level house being built on the east side of Exon Street north of Grenville Street.

We have been referred to many permit applications and development approvals in the Hampton Street Major Activity Centre which we have considered but do not list.

The residential precinct north of the subject land is within the NRZ and has a mandatory height limit of two storeys and 9 metres. There are scheduled clause 55 variations in the NRZ3 with respect to site coverage, minimum street setback, side and rear setbacks, and front fence height. This is relevant in understanding how land on the north side of Grenville Street may develop in the future based on the current scheme provisions.

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8 It is common ground that another design objective is not relevant. It is to “recognise the redevelopment potential of the Willis Street Precinct”. The subject land is not part of the Willis Street precinct. It is a residential precinct within DDO12.

9 12 metres if the specified slope applies, which is not the case here.

10 Village @ Hampton Pty Ltd v Bayside CC (Corrected) [2018] VCAT 25 (4 April 2018)
Reference document

27 The Hampton Street Centre - Final Structure Plan (November 2006) is a reference document in local policy and DDO12. The scheme provisions prevail and this document serves a background role.

Other scheme policies and provisions

28 The ‘Information’ section of these reasons sets out other relevant policies and provisions in the scheme that we have fully considered but do not recite.

DOES THE PROPOSAL MEET THE MANDATORY GARDEN AREA REQUIREMENT?

29 One of Council’s initial grounds of refusal for the proposal was that it failed to provide the 35% mandatory garden area requirement of clause 32.08-4, as areas in the upper basement/lower ground level were included in the calculation. Clause 32.08-4 in the scheme at the time of Council’s refusal included a requirement that “a lot must provide the minimum garden area at ground level” and Council did not consider that the tiered gardens and provision of courtyards within the lower ground level were provided “at ground level”.

30 The mandatory garden area requirement, the wording of clause 32.08-4 and the definition of garden area were amended by Amendment VC143, which, among other changes, deleted reference to “at ground level” within clause 32.08-4 and amended the definition of garden area in what is now clause 73.01, to:

Any area on a lot with a minimum dimension of 1 metre that does not include:

a) a dwelling or residential building, except for:

- an eave, fascia or gutter that does not exceed a total width of 600mm;
- a pergola;
- unroofed terraces, patios, decks, steps or landings less than 800mm in height;
- a basement that does not project above ground level;
- any outbuilding that does not exceed a gross floor area of 10 square metres; and
- domestic services normal to a dwelling or residential building;

b) a driveway; or

c) an area set aside for car parking.
The Council agreed during the hearing that the words “at ground level” had been removed, but submits that, despite the amendment, the mandatory garden area requirement of clause 32.08-4 is not met because of the percentage of garden that is provided at lower ground level.

I agree with Mr Scally’s submission that the current definition of garden area is essentially all areas of a site that do not include the elements excluded by the definition. The definition does not now include any reference to ground level and the zone requirements do not require that the garden area be provided only at ground level. Having regard to the current wording, I find that the garden areas provided at lower ground level in the proposal before us do not come within any of the exclusions in the garden area definition and should therefore be included in an assessment of garden area.

I note, however, that although Amendment VC143 purported to amend clause 32.08-4 to remove the words “at ground level” and the submissions during the hearing were made on that basis, the current wording of clause 32.08-4 in the scheme has not been amended as discussed during the hearing and continues to include the words “at ground level”, as follows:

An application to construct or extend a dwelling or residential building on a lot, a lot must provide the minimum garden area at ground level as set out in the following table:

However, in reviewing the details of Amendment VC143, it is clear that the words “at ground level”, were intended to be deleted.

The Explanatory Report to VC143 clearly states:

The Amendment changes the Victoria Planning Provisions and all planning scheme by:

... 

- Amending clause 32.03-4 (General Residential Zone) and 32.09-4 (Neighbourhood Residential Zone) to:

... 

- Remove the reference to garden area being required to be provided at ground level.

The tracked changes approved version of clause 32.08 as included in the amendment documentation shows those words as deleted.

In reviewing clause 32.09-4 (Neighbourhood Residential Zone), I note that it has been amended as anticipated, as follows:

An application to construct or extend a dwelling or residential building on a lot must provide a minimum garden area as set out in the following table:

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11 This question is determined by Member Perlstein.
It appears that there is an error in the current wording of clause 32.08-4, possibly in all Victorian planning schemes. The clause has been amended slightly from the previous wording but has not been amended as apparently intended. If we had determined to grant a permit for this development, I would have considered the implication of those words still being included in the GRZ.

An additional issue raised during the hearing is the requirement in clause 32.08-4 that “an application... on a lot” must provide the minimum garden area. It was clarified that the subject land is comprised of two lots which are intended to be, but have not yet been, consolidated. Although the minimum garden area is proposed to be provided over the entire subject land, only one of the two lots currently satisfies the minimum garden area requirement (the lot containing the driveway does not do so). Since it is a mandatory requirement, there was discussion about whether the proposal must be refused as it does not provide the minimum garden area on each lot or whether this can be rectified via the inclusion of a planning permit condition requiring consolidation of the two lots prior to commencement of development under the permit.

This was discussed by the Tribunal in *Dromana Beach Pty Ltd.* This matter was addressed in *Sargentson v Campospe SC* (Red Dot) [2018] VCAT 710. In that decision, the Tribunal found that the assessment must be undertaken on the basis of the lots at the time of the decision rather than the planning unit, although acknowledged that the application of clause 32.08-4 of the Scheme could result in three different outcomes, based on three different interpretations, highlights the confusion that is caused by the manner in which the provision is drafted.

I agree that the provision as drafted appears to apply to the lot rather than the planning unit. On this basis the proposal does not meet the mandatory garden area requirement. Mr Scally indicated that the application was in the process of consolidating the lots. Had I been of a mind to grant a permit on the merits, I would have given further consideration to whether there was an alternative means of addressing this issue.

In this matter, Mr Scally has similarly advised that the consolidation of the two sites is currently proceeding. Given our decision to refuse the current application, I do not need to further consider this issue.

In conclusion, I find that there are difficulties with meeting the mandatory garden area requirement for this proposal for reasons other than those raised by Council in submission, being that the amendments intended to be made by Amendment VC143 with respect to ground level have not in fact been included in the scheme and that the required percentage of garden area is not met on each lot.

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12 I have reviewed the Kingston, Port Phillip, Melbourne and Stonnington Planning Schemes and the same error appears.

13 *Dromana Beach Pty Ltd v Mornington Peninsula SC* [2018] VCAT 666 at [92-93]
43 In principle, however, had the wording been amended as intended, I consider that following the gazettal of Amendment VC143, the courtyard and green spaces provided at lower ground level within this proposal can be included in an assessment of garden area for the purposes of meeting the garden area requirement on the basis that the words “at ground level” have been removed from the requirement and the definition does not otherwise exclude these areas.

DOES THE PROPOSAL ACHIEVE AN ACCEPTABLE BUILT FORM OUTCOME?

44 Relying on the evidence of Mr Iles and Mr Merlo, the applicant submits the proposal represents an appropriate level of change in its strategic context, the built form response and outcome accord with the preferred character for the Activity Centre in terms of DDO12 and GRZ2, a suitable landscape outcome can be achieved particularly in the streetscape, and the proposal will not dominate the streetscape as it incorporates appropriate setbacks, materials and finishes. The applicant submits the proposal achieves the objectives in clause 55 and is not an overdevelopment of the site. It is a well-articulated and modulated form which avoids excessive visual bulk to surrounding properties. The high-quality landscape outcome prepared by Mr Merlo can be realised and can achieve a strong landscape character with the proposed building set in a vegetated front garden meeting the design objective of DDO12 and preferred character.

45 The Council and residents opposing the permit application disagree.

46 For the Council, Mr Biles’ evidence is that a three storey building is acceptable in principle, but the proposal is an overdevelopment of the land. With respect to neighbourhood character, Mr Biles considers the scale and breadth of the building are unacceptable at the setback proposed from the street. Standard B6 is not met. Through cross-examination, Mr Biles indicated that stepping back the western section of the building by one metre could be acceptable subject to reconsideration of the design.

47 Mr Scally indicates that this could be addressed by a permit condition setting back the western part of the front façade at the ground and first floor levels and varying the materiality. However, Mr Scally also submits that there is no need to make these changes because the proposed building setback accords reasonably with the average building setbacks and having regard to the two dwellings approved at No. 22 Grenville Street with a setback of approximately 7.7 metres. He refers to the generous width of Grenville Street in the context of the land separation from the NRZ on the north side of Grenville Street.

48 Mr Biles’ evidence also refers to the landscape treatment around the land. He accepts the treatment proposed to Grenville Street. However, he expresses concern about the adequacy of the balance to achieve the garden setting sought by DDO12. Further, modifications suggested by the applicant to the lower gardens would, in Mr Biles’ opinion, affect the perimeter landscaping opportunities and outcomes.
Mr Scally challenges the view that landscaping is required around dwellings. He refers to the overlay provisions particularly in support of this submission. He notes the approved development at No. 22 Grenville Street that has little planting around the sides and rear of the two proposed dwellings. He submits there is no reason to provide greater setbacks from side and rear boundaries to achieve character and DDO12 outcomes.

Residents argue that the permit application is undermining and obviating the maximum building height allowed for this area by proposing a building with four residential levels. Among several other concerns are that the proposed development is inappropriate at this edge of the Activity Centre when land on the north side of Grenville Street is within the NRZ.

We have already referred to the subject land’s edge location in the Activity Centre. Although it is on the periphery, it is within the Activity Centre and, based on the size of the land parcel and the planning controls that apply, a building that presents as a three storey apartment format is not inappropriate is a matter of principle. The evidence of Mr Biles and Mr Iles is consistent on this point. The subject land is physically and visually detached from the Willis Street area nearer to the railway station which is the focus of the most substantial change envisaged in this Activity Centre based on the DDO12 provisions. The Willis Street area is experiencing significant change but is distinguished by DDO12 and the nature of recent development in the immediate environs of the subject land.

As the Nearmap image below demonstrates, the land is in an area with considerable building diversity. There are one, two and three storey forms in the locale, single dwellings and multi-units, and a mix of old and new dwelling stock. It is interesting to observe several large, single, detached dwellings that have been built on lots positioned on the north side of Willis Street notwithstanding the focus in the scheme to achieve more dwellings in the residential precinct that is part of the Activity Centre.
53 There is no doubt that implementation of State and local policy will bring change to the character of the area including with respect to a garden character outcome. We agree with the applicant that the overlay focuses on the streetscape presentation in this regard. Having said that, it is important to ensure that a suitable setting is provided for an apartment building of this size both in terms of its setback from the street and the landscaping that can be provided to achieve a:

strong landscape character with buildings set within vegetated front gardens and streetscapes.

54 It is in this respect that we find the positioning and form of the development to depart from the design objectives of DDO12. The spacing around the building as it presents to the street does not achieve the strong landscape character described in the design objectives for the overlay. Put simply, we agree with the Council and objectors that the garden setting is not achieved, and we do not accept Mr Iles’ conclusion that the proposal will make a positive contribution to the Grenville Street streetscape.

55 The ground level footprint has a setback of 6-7.4 metres that transitions from the garage at No. 26 Grenville Street (approximately 6 metres) to the existing dwelling at No. 22 Grenville Street of just over 10.08 metres (excluding the carport). The approved dwellings at No. 22 Grenville Street are set back 7.7 metres from the street. While the western wall steps back at the first floor level, the large balcony cantilevers with a setback from the street at less than 6 metres. The top floor is set back 4 metres from the terrace edge at 7.4 metres.

56 Taking into account the breadth of the building at some 19 metres (including first floor balconies), we agree with Mr Biles’ evidence about the ‘visual strength’ of the building in the streetscape given its breadth and forward siting on the land. The impact would be felt also by the unlikely prospect that the older unit sites (such as those evident in the aerial image above) will be redeveloped in the short term, given multiple ownerships.

57 There was discussion through the hearing as to the appropriate way in which Standard B38 should be approached with respect to deep soil volume. This Tribunal has not determined the legal interpretation of the Standard and, in any event, we are mindful that the clause contains provisions to apply where the deep soil area cannot be met. That is, the Standard is not mandatory. We agree with the Council that some spaces included in the design response before us fall short of a ‘clear’ area. Even so, we have assumed that the landscape design proposed by Mr Merlo is capable of being delivered in the available soil volumes, not all of which are at natural grade.

58 However, even when accepting this evidence, issues arising from the extent of hard surfacing in the front setback due to the driveway, two paved courtyards, services at the north-west corner, and pathway are not overcome.
The high front fence departs from the prevailing pattern, notwithstanding some higher forms in the street. Landscaping is forward of the new front fence, but this does not overcome the extent to which hard elements are presented by the building’s siting and associated paved spaces. Further, the subterranean spaces will be evident. This is not fatal, \textit{per se}. Subterranean elements in a building may well be acceptable and increasingly in large townhouses and units, gyms or cinema rooms are included as part of a basement. The issue here is that the front garden planting cannot be too high because there is a need to achieve an acceptable level of daylight (i.e. bedrooms to Unit 1 which rely on a relatively narrow corridor to access daylight). Creepers applied to the building do not compensate.

We are less concerned about criticisms by some parties about the architectural composition and the way the façade is articulated. The top floor is recessed as seen in the streetscape. In addition, the proposal minimises the visibility of parking using a basement parking level.

We have had regard to compliance with Standards such as B7, B8, B9 and B17 (noting the proposal is not fully compliant with Standard B17 as demonstrated in Mr Iles’ evidence). However, we agree with Mr Biles that the building’s scale and massing at this Activity Centre edge is not acceptable when understanding what the overlay seeks as the preferred character and relevant local policy. We do not agree with the applicant’s submission that the width of Grenville Street is influential – the road is essentially a residential street and it is not a road of generous proportions.

Nor do we consider this matter can be addressed by permit conditions. The discussion below makes clear that the front bedrooms in Unit 6 are among the worst performing with respect to the daylight analysis. While Unit 1 may be acceptable as designed, deeper front setbacks could be expected to have implications for the adequacy of daylight access to these spaces.

The land is large enough to ensure that the design objectives of DDO12 are met. The proposal fails to do so because of the size of the building footprint and amount of floor area attempted to be achieved. The proposal fails at this point. The contribution the development makes to urban consolidation objectives, and other acceptable outcomes, does not persuade us to conclude differently. Moreover, our findings below underscore the issues arising from a building that is too big for this land.

**ARE THERE ANY UNREASONABLE OFF-SITE AMENITY IMPACTS IN TERMS OF OVERTHEARING, OVERLOOKING AND VISUAL BULK?**

The applicant submits the proposal will not cause unacceptable impacts on adjacent properties. Relying on Mr Iles’ evidence, he submits Standards B21 and 22 are respectively met with respect to overshadowing and overlooking. There are only minor incursions to the Standard B17 envelope. The extent of change is reasonably expected given the Activity Centre location. Further, Mr Scally relies on the lack of objection from abutting property owners at Nos. 13 and 15 Willis Street and changes made to the proposal as shown in the substituted plans.
The Council does not agree. It raises concerns about overshadowing. Mr Biles states Standard B21 is not met with respect to Nos. 9 and 15 Willis Street, with the impact on the former regarded as unacceptable. He regards the room to establish canopy trees around the building as being unacceptable and states that the building scale pushes against the limits of acceptability whether or not Standard B17 is met. Mr Biles refers to screening devices that will limit overlooking.

The submissions and evidence are based on the existing conditions with respect to No. 22 Grenville Street. We also raised the question of the impact of the proposed development on the amenity of the approved development at No. 22 Grenville Street. Parties responded to our questions at the hearing and in evidence.

Overall, the proposal can meet, or could be modified to meet, the numerical standards in clause 55 such as with respect to Standards B17, 21 and 22. That is the case based on the existing situation and taking account of the approved development to the west. We see no reason why Standard B21 should not be met with respect to the small open space at No. 9 Willis Street. While we accept that the design includes transitional elements to the west and east, we find the rear section of the building lacks sufficient transition at the first floor level in particular. There is little scope for landscaping along the southern boundary to mitigate the visual impact. There are no objections from the properties at Nos. 13 and 15 Willis Street but that does not mean the outcome is acceptable.

**DOES THE PROPOSAL ACHIEVE AN ACCEPTABLE LEVEL OF ON-SITE AMENITY FOR FUTURE OCCUPANTS?**

**Lower level of dwellings 1 - 6**

The Council and residents strongly criticise the lower level of the development, however, the applicant submits that concerns in submissions and evidence about the internal amenity of the lower ground level apartments are over-stated. Mr Scally describes the dwellings as two level townhouses, all with generous open space areas at ground level. The areas at the lower ground level are secondary spaces, as is the case with the second and third bedrooms and cinemas.

The applicant relies on Mr Iles’ evidence that the subterranean areas deliver an acceptable level of amenity. Mr Iles refers to the large size of the apartments, the tiered gardens, large glazed windows, and quality of the ground level spaces. The applicant also relies on Dr Greenup’s daylight evidence in support of this submission that the daylight amenity to all the ground level spaces is acceptable, mindful that cinema rooms do not need to have windows. Dr Greenup’s addendum evidence addresses the impact with the approved development at No. 22 Grenville Street, other detailing with respect to fencing and window dimensions, and variations taking into account design changes to address flooding.
Further, Mr Scally relies on a daylight assessment tendered by the Council that shows better results than the applicant’s evidence.

In addition, we note a daylight report prepared at the time of the permit application based on earlier application plans.

While some parties strongly oppose the lower level habitable floor describing the spaces as “caves”. Mr Biles does not oppose the principle of lower level habitable rooms although it is a design response he says is more typically associated with sloping land. The subject land has a modest slope of around one metre rather than much steeper slopes to which he refers. Nonetheless, Mr Biles considers the concept could work and may be proposed more often into the future. That said, Mr Biles does not regard the lower ground level in this proposal as being acceptable. He has been extensively cross-examined about this opinion. This includes discussion about varying the depth and width of some sunken gardens, as well as the position of retaining walls and fencing that divides private open spaces.

The methodology adopted in the daylight report prepared for the Council and expert evidence differ. However, on the expert evidence before us, and the daylight report, the proposal could be said to achieve an adequate level of daylight access for bedrooms. An optimum amount of daylight is not required to be achieved.

Taking into account the approved development at No. 22 Grenville Street, the impact is greater for several units and, in the case of Unit 2, makes a “non-compliant” bedroom worse and brings bedroom 3 into ‘non-compliance’.14

Dr Greenup’s addendum report also takes account of vegetation in abutting sites and proposed planting for the subject land, even though this is not usually factored into his methodology. For example, it notes a number of those trees as not having unacceptable impacts whereas the hedges of lilly pilly plants would be expected to have some impact on daylight access to bedrooms facing the garden and sunken gardens for Units 2 to 5.

The plans show large dwellings. The focus of the dispute is the lower level of apartments 01 – 06. These have living rooms and a master bedroom at ground level, other than Unit 4 that has all bedrooms at the lower ground level. They have ground level private open space. Other bedrooms, laundries, storage, bathrooms and cinemas are at a lower ground level, with sunken or tiered courtyards providing daylight access to bedrooms.

The applicant’s case is advanced in part on the basis that the lower level bedrooms and other spaces have a secondary or tertiary role. It is said that they will be used by visitors such as grandchildren and for sleeping and that the cinema rooms will be used for that purpose. Mr Biles does not agree about the role of the bedrooms and neither do we.

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14 A term used by Dr Greenup
78 We find that there is nothing in the proposal that would limit the occupants to this demographic profile. Further, the cinemas may not be limited to television, movies and like entertainment as described on the plans.

79 The applicant compares the bedrooms with the usual situation where bedrooms do not have a courtyard, where bedrooms have highlight windows, and says the setbacks can be compared with Standard B17. That may be so, but the proposal involves shallow setbacks to retaining walls and fencing, such as the most problematic south-facing bedrooms in Unit 4. The sections show retaining walls, fencing and some trellis on the side and rear boundaries. While not included in the modelling per se, the bamboo along this fence-line would affect daylight access in addition to the fencing. Moreover, we agree with Mr Biles that these units involve large lower floor levels and that as one moves away from the bedroom window, the balance of the large interiors is solely reliant on artificial lighting and ventilation.

80 Dr Greenup’s evidence about management of the vegetation height is noted, as well as the removal of a section of east side trellis. This extent of micro-management is revealing. Moreover, we agree with the point that Mr Morrison makes – a neighbour on an abutting site could install trellis and/or plant canopy trees that would create the very impacts that the expert’s recommendations seek to avoid. The development does not sufficiently “future proof” itself and instead has the potential to force abutting developments to be set back further to limit daylight loss to windows in the lower ground level.

**Solar access to open spaces**

81 The daylight debate has arguably diverted attention from another relevant matter, being solar access. It is common ground that Standard B29 is not met with respect to solar access to multiple proposed open spaces such as for Units 3 and 4. These spaces will be excessively shadowed.

82 We consider this to be a further indicator of a development envelope that seeks too much from this site.

**Other clause 55 matters**

83 The Council submits there are many other areas of non-compliance with clause 55 including:

- Standard B23 (internal views).
- Standard B42 (building entry and circulation).
- Standard B43 (private open space above ground floor).
- Standard B44 (storage).
- Standard B48 (windows).
- Standard B49 (ventilation).
Mr Iles addresses these matters through his evidence for the applicant while Mr Biles agrees with the Council’s submission with respect to several non-compliances (such as Standards B42 and B43) as well as the extent of privacy screening. Taken together with the findings we have already made, it is clear to us that the proposal is seeking too much from this site.

Given our earlier findings, we do not need to address these matters in detail, as they are specific to the design response before us. The courtyards may provide an outlook from bedrooms, which may afford a level of amenity. However, it is relevant to be mindful of the broader aim of standards such as B42 and B48 that focus on the benefit of natural light to apartments rather than mechanical and artificial devices for light and air circulation, as Mr Biles’ evidence observes. As already stated, the lower ground levels of the proposed dwellings have no windows to the circulation area, laundry and bathrooms. Even on Dr Greenup’s evidence some of the bedrooms may require electrical lighting. Regardless of the price-point for the dwellings, we do not consider the outcome is acceptable.

CAN DRAINAGE AND STORMWATER BE APPROPRIATELY MANAGED?

Stormwater easement

The Council submits the proposal is too close to a stormwater pipe along the southern boundary. It submits the drain is protected by an implied easement. It makes clear that proposals to build over the easement will not be granted, and that the basement should be a minimum of 1 metre from the drain or 2 metres from the property boundary, whichever is the greater.

The applicant does not concede this is the case. It notes advice from the Council’s drainage engineer that a narrower width is required for the easement than the case now being advanced for the Council. It suggests a permit condition may be able to address this matter.

Given our earlier findings, we do not need to determine this question. We note inconsistent advice provided by the Council’s drainage engineer in February 2018 and the later position of the Council in this hearing.

Flooding – Amendment C153

Several parties refer to the subject land and nearby properties being affected by flooding. Amendment C153 has been adopted by the planning authority following its consideration of submissions by an independent panel. It can be regarded as a seriously entertained planning proposal.\(^{15}\) At the time of our decision, as far as we are aware, the Amendment has not been gazetted.

The applicant submits drainage and stormwater can be managed, based on an engineering report tendered at the hearing (also appended to Dr Greenup’s supplementary evidence). It says flooding across the site is quite shallow, in the order of 100mm. Modifications to accommodate the flood level will not require the building height to be increased.

\(^{15}\) Section 60(1A)(g) of the Planning and Environment Act 1987.
91 We understand that changes are possible to ensure the nominated flood level would be met and that the implications on daylight access have been considered in Dr Greenup’s supplementary evidence. While residents are concerned that the development would cause increased flooding on their properties, it is possible to engineer a proposal such as this to avoid that type of impact. If a fresh proposal is brought forward for the subject land, and it is affected by a Special Building Overlay,\textsuperscript{16} referral would be required to Melbourne Water.

DO ANY OTHER MATTERS RAISED IN STATEMENTS OF GROUNDS AND SUBMISSIONS WARRANT REFUSAL OF A PERMIT?

92 Various other issues are identified in statements of grounds filed by persons opposing the permit application. Mr Morrison refers to these matters specifically.

93 They include the following, with our conclusions on these issues briefly summarised:

- Lack of a masterplan for the Activity Centre. DDO12 and local policy are the implementation of the Council’s master planning for this location. Decisions are being made in the context of this strategic context and the associated development controls. We are told the Council is seeking to pursue mandatory controls and has been doing so since 2012. We must work within the regime that exists today and, in our view, it provides clear guidance as to the desired outcomes. That situation has changed with clause 21.11-4 and DDO12 now in the scheme. Despite that, it is open to the Council as planning authority to review the outcomes since DDO12 and clause 21.11-4 were introduced into the scheme and determine if a change to the vision is required.

- Cumulative impacts. This matter is linked to the above. There will be impacts on traffic, car parking, services and public transport with urban consolidation. These are not, however, reasons to refuse a permit for 11 dwellings in this location.

- Suitability of apartment sizes and layouts for ‘empty-nesters’. The applicant advances its case partly on the basis that the proposed townhouses, with lower ground level secondary spaces, are for empty nesters rather than families. Respondents disagree about the suitability of the layout given, for example, the spiral staircases for older residents. Above we have expressed some concerns about the internal amenity of the sizeable lower ground floors. An appropriate level of amenity must be achieved for the full dwelling, mindful that these units, although likely to be expensive, need to have an acceptable level of amenity regardless of the age or abilities of the occupants.

\textsuperscript{16} Noting third party exemptions apply under this clause.
• Waste collection. Waste collection is proposed within the site. These arrangements are regarded as impractical and unsafe in one submission while the Council seeks private collection services. As we have refused a permit, we have not explored the layout considerations further.

• Visitor parking. As already noted, the plans show two visitor parking spaces, but these are not required because of Amendment VC148. We note the applicant’s indication that these spaces would be allocated to dwellings, even though the Council seeks a different outcome for reasons stated in its response to our interim order in part linked to waste collection. As we have refused a permit, we have not explored the layout considerations further.

CONCLUSION

94 For the reasons set out above, the responsible authority’s decision is affirmed. No permit is granted.

Margaret Baird
Senior Member

Judith Perlstein
Member
PROPOSED DEVELOPMENT
for CARTER GRANGE
No. 22 GRENVILLE STREET, HAMPTON
TOWN PLANNING DOCUMENTATION

TP01 TITLE & STREET SCENE ELEVATION
TP02 NEIGHBOURHOOD & SITE DESCRIPTION PLAN
TP03 DESIGN RESPONSE PLAN
TP04 PROPOSED GROUND FLOOR PLAN
TP05 PROPOSED FIRST FLOOR PLAN
TP06 PROPOSED ELEVATIONS
TP07 9AM SHADOW DIAGRAM
TP08 1AM SHADOW DIAGRAM
TP09 11AM SHADOW DIAGRAM
TP10 12PM SHADOW DIAGRAM
TP11 3PM SHADOW DIAGRAM
Item 4.2 – Matters of Decision
Item 4.2 – Matters of Decision
Item 4.2 – Matters of Decision
Item 4.2 – Matters of Decision
**Neighbourhood Character Precinct F1**

**Preferred Future Character Statement**

The dwellings, including a continued frequent presence of pre WW2 dwellings, sit within garden settings. Buildings are occasionally built to the side boundary, however the impression of the streetscape is of informality and openness due to the open front fencing, and well-articulated building designs. Buildings and gardens are clearly visible from the street despite the presence of front fences, and these are appropriate to the building era. Buildings fronting the foreshore reflect their setting and provide a visually attractive built form interface with the reserve.

**Precinct Guidelines**

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<thead>
<tr>
<th>Objectives</th>
<th>Design Responses</th>
<th>Avoid</th>
<th>Planning Officer Assessment</th>
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| 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 and be appropriate to the building era. | Demolition of dwellings that contribute to the valued character of the Precinct. | Responds
The contributions of the typical dwellings proposed to be demolished do not add value to the character of the precinct that would necessitate their retention. |
| To maintain and enhance the garden settings of the dwellings, and enhance the bayside vegetation character. | • Retain established trees and vegetation. • Replace any trees removed with species that will grow to a similar height. • Encourage replanting of indigenous sandbelt vegetation. • Prepare a landscape plan to accompany all applications for new dwellings that includes substantial trees and shrubs, and indigenous coastal vegetation. | Lack of landscaping and substantial vegetation. Removal of trees. Planting of environmental weeds. | Responds
A landscape plan has been provided that demonstrates that there is sufficient space throughout the site to accommodate canopy tree and other plantings, particularly within the front and rear setbacks. Minimal perimeter planting is also proposed. Council’s Arborist is satisfied that 80% of such planting is of indigenous coastal species. |
| To ensure the building setbacks reflect the existing spacious visual separation of buildings and contribute to the informality of the dwelling setting. | • 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. | Responds
The proposed front setback variation of 1.6m at ground floor applies to the western half of the building. This recessive component serves to reduce the visual strength of the building and allow a transition in form between built form on |
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<tbody>
<tr>
<td>To minimise the loss of front garden spaces and the dominance of car parking structures.</td>
<td>• Locate garages and carports behind the line of the dwelling.</td>
<td>Car parking structures that dominate the façade or view of the dwelling.</td>
<td>A single crossover is proposed to the northeast corner of the site to allow resident access to parking located in the basement.</td>
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<td></td>
<td>• Underground car parking accessed from the front of the site should only be provided where other options are not 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>Responds:</td>
<td>The development would present to Grenville Street in a flat roofed form and would express recessed components in its front façade providing transition in the plane of the building from east to west and in the built form adjacent to it. Progressively recession would occur from</td>
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<td>• Recess second storey elements from the front façade.</td>
<td>High pitched or mansard roof forms with dormer windows.</td>
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<td>Responds:</td>
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<td>To respect the identified heritage qualities of adjoining buildings.</td>
<td>• Where adjoining an identified heritage building, respect the height, building forms, siting and materials, in the new building design.</td>
<td>N/A</td>
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<td></td>
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<td>Large bulky buildings with flat, poorly articulated front wall surfaces.</td>
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<td>There are no identified heritage buildings in the immediate vicinity of the site.</td>
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<td>To reflect the lightness of the streetscape created through the use of a mix of appropriate building materials and finishes.</td>
<td>• Incorporate a variety of timber or other non-masonry wall materials where possible.</td>
<td>Heavy materials and design detailing (e.g., Large masonry columns and piers).</td>
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<td>Responds</td>
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<td></td>
<td></td>
<td>The external finishes of the building would appear lightweight in their colour palette and would provide a subtle contrast to one another harmonising with the palette and composition of materials within the streetscape.</td>
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<tr>
<td>To maintain the openness of the streetscape and views to the dwellings.</td>
<td>• Provide open style front fences, other than along heavily trafficked roads.</td>
<td>High, solid front fencing.</td>
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<td>• Front fence style should be appropriate to the building era.</td>
<td>Responds</td>
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<td>A front fence is proposed and would take the form of a vertically aligned timber slat fence. The form of the fence would be reflective of the streetscape.</td>
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<tr>
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</table>
| To create a visually interesting and attractive built form interface with the foreshore reserve. | • Articulate the form buildings and elements, particularly front facades, and include elements that lighten the building form such as balconies, verandahs, non-reflective glazing and light-transparent balustrading.  
• Use a mix of contemporary and traditional coastal materials, textures and finishes, including render, timber, non-masonry sheeting, glazing, stone and brick.  
• Provide articulated roof forms to create an interesting skyline when viewed from the beach. | Buildings that have no relationship to the foreshore setting.  
Poorly articulated roof and building forms.  
Highly reflective materials or glazing. | contemporary built form of the building and would allow visual connection to be made with the development at street scale  
N/A  
The subject site is located in excess of 300 metres from the foreshore. |
### ATTACHMENT 7

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

<table>
<thead>
<tr>
<th>Title and Objective</th>
<th>Complies with Standard?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>B1 Neighbourhood Character Design respects existing neighbourhood character or contributes to a preferred neighbourhood character. Development responds to features of the site and surrounding area.</td>
<td>Yes</td>
<td>Refer Attachment 2.</td>
</tr>
<tr>
<td>B2 Residential Policy 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>Yes</td>
<td>Refer to report.</td>
</tr>
<tr>
<td>B3 Dwelling Diversity 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>B4 Infrastructure Provides appropriate utility services and infrastructure without overloading the capacity.</td>
<td>Yes</td>
<td>Any upgrades required will be the responsibility of the developer.</td>
</tr>
<tr>
<td>B5 Integration with the Street Integrate the layout of development with the street.</td>
<td>Yes</td>
<td>Refer to report.</td>
</tr>
</tbody>
</table>
| B6 Street Setback The setbacks of buildings from a street respect the existing or preferred neighbourhood character and make efficient use of the site. | No. | Minimum: 8.0m  
DDO12: Second floor (third storey) to be set back a minimum of 4m behind the front wall of the floor immediately below.  
Proposed: (east to west)  
Ground Floor: 6.4m – 8.45m  
First Floor: 6.33m – 8.41m  
Second Floor: 11.4m to wall, 7.4m to balcony – 12.23m to wall and 8.48m to balcony |
| B7 Building Height Building height should respect the existing or preferred neighbourhood character | Yes | Required: 11m  
Proposed: 10.98m |
<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Decision</th>
<th>Maximum</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>B6</td>
<td>Site Coverage</td>
<td>Yes</td>
<td>60%</td>
<td>60%</td>
</tr>
<tr>
<td>B9</td>
<td>Permeability</td>
<td>Yes</td>
<td>20%</td>
<td>29%</td>
</tr>
<tr>
<td>B10</td>
<td>Energy Efficiency</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>B11</td>
<td>Open Space</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>B12</td>
<td>Safety</td>
<td>Yes</td>
<td></td>
<td>No safety issues are considered to be likely to arise.</td>
</tr>
<tr>
<td>B13</td>
<td>Landscaping</td>
<td>Yes</td>
<td></td>
<td>Refer to report.</td>
</tr>
<tr>
<td>B14</td>
<td>Access</td>
<td>Yes</td>
<td>An appropriate vehicular access from Grenville Street is provided. Standard traffic conditions are included in the recommended conditions.</td>
<td>33% of street frontage</td>
</tr>
<tr>
<td>B15</td>
<td>Parking Location</td>
<td>Yes</td>
<td>Resident parking is provided within the basement. Access to it is via a shared ramp which would run beneath a part of Apartment 1. The access ramp is however setback in excess of 1.5m from the ramp and buffered by a raised planter box. Therefore it is not considered habitants of the apartment would not be detrimentally impacted by vehicular noise as a result. The site is located within a Principal Public Transport Network Area. Accordingly, there is not requirement to provide visitor parking to serve the development.</td>
<td>14.78% of street frontage</td>
</tr>
</tbody>
</table>
### B17 Side and Rear Setbacks
Ensure the height and setback respects the existing or preferred neighbourhood character and limits the amenity impact on existing dwellings.

<table>
<thead>
<tr>
<th>Ground Floor</th>
<th>First Floor</th>
<th>Second Floor</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>East (side)</strong></td>
<td><strong>Proposed</strong></td>
<td><strong>Proposed</strong></td>
</tr>
<tr>
<td>0m or 1m (North to south)</td>
<td>4.39m – 2.07m – 3m</td>
<td>1.99m – 2.17m-2.12m-1.96m – 2.14m</td>
</tr>
<tr>
<td><strong>West (side)</strong></td>
<td><strong>Proposed</strong></td>
<td><strong>Proposed</strong></td>
</tr>
<tr>
<td>0m or 1m (North to south)</td>
<td>2m – 3.1m – 1.9m - 4.19m</td>
<td>2.27m-2.27m-2.27m-2.84m</td>
</tr>
<tr>
<td><strong>South (rear)</strong></td>
<td><strong>Proposed</strong></td>
<td><strong>Proposed</strong></td>
</tr>
<tr>
<td>0m or 1m (East to West)</td>
<td>3.2m – 4.51m – 2.78m – 6.98m</td>
<td>2.49m</td>
</tr>
</tbody>
</table>

Areas of non-compliance are underlined.

### 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.

| N/A | Maximum Height: 3.6m Proposed: N/A |
| N/A | Maximum Average Height: 3.2m Proposed: N/A |
| N/A | Maximum Length: N/A Proposed: N/A |

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

Yes

The proposal is well setback from property boundaries to ensure daylight to existing windows is maintained.

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

Yes

There are no north facing windows within 3 metres of the mutual boundary of adjoining properties.

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

Yes

The shadow diagrams indicate minimal additional overshadowing will be case over the existing private open space areas beyond the shadows already cast by existing development and boundary fencing throughout the day. As such the additional shadows is not considered to have a negligible effect on the amenity of neighbouring properties and satisfies the tests contained within the standard.

### B22 Overlooking
Limit views into existing secluded private open space and habitable room windows.

No

The elevations drawings indicate first and second floor east, west and south elevation windows will be screened, where necessary, with louvres or obscure glazing up to a height of 1.7m measured from finished floor level. Balconies are shown to be screened by dado walling and planter boxes and pergola structures. With the exception of planter box screening to be provided at second floor level on the south elevation, it is considered that all screening proposed will limit unreasonable overlooking impacts from the development. It is therefore prudent to impose a condition on permit...
<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Decision</th>
<th>Reason</th>
</tr>
</thead>
<tbody>
<tr>
<td>B23</td>
<td>Internal Views&lt;br&gt;Limit views into existing secluded private open space and habitable room windows of dwellings and residential buildings within the same development.</td>
<td>Yes</td>
<td>At ground level, fencing to a height of 1.7m is indicated on the development plans.</td>
</tr>
<tr>
<td>B24</td>
<td>Noise impacts&lt;br&gt;Protect residents from external noise and contain noise sources in developments that may affect existing dwellings.</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>B25</td>
<td>Accessibility&lt;br&gt;Consider people with limited mobility in the design of developments.</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>B26</td>
<td>Dwelling Entry&lt;br&gt;Provide a sense of identity to each dwelling.</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>B27</td>
<td>Daylight to New Windows&lt;br&gt;Allow adequate daylight into new habitable room windows.</td>
<td>Yes</td>
<td>Refer to report.</td>
</tr>
<tr>
<td>B28</td>
<td>Private Open Space&lt;br&gt;Provide reasonable recreation and service needs of residents by adequate pos.</td>
<td>Yes</td>
<td>Required: An area of 40 square metres, with one part of the private open space consisting of secluded private open space at the side or rear of the residential building with a minimum dimension of 3 metres and convenient access from a living room. Proposed: Apartment 1: 60m² Apartment 2: 118m² Apartment 3: 76m² Apartment 4: 74m² All of which is considered secluded private open space.</td>
</tr>
<tr>
<td>B29</td>
<td>Solar Access to Open Space&lt;br&gt;Allow solar access into the secluded private open space of new dwellings/buildings.</td>
<td>No</td>
<td>Required: The private open space should be located on the north side of the dwelling or residential building, if appropriate. The southern boundary of secluded private open space should be at least set back from any wall on the north of the space at least (2+0.9h) metres, where ‘h’ is the height of the wall. Proposed: Secluded private space is provided to the south of the building servicing apartments 3.</td>
</tr>
</tbody>
</table>
and 4 of the development in addition to others areas of to the east and west of the building. The proposed apartment would need to be setback some 7.76m from the southern boundary to comply with the standard. This is considered unreasonable given the secluded private open space provided, where applicable, to the east and west of those apartments would receive reasonable solar access throughout the day to meet the standard and needs of the future residents.

<table>
<thead>
<tr>
<th>Item</th>
<th>B30 Storage</th>
<th>B31 Design Detail</th>
<th>B32 Front Fences</th>
<th>B33 Common Property</th>
<th>B34 Site Services</th>
<th>55.07 Apartment Developments</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Provide adequate storage facilities for each dwelling</td>
<td>N/A</td>
<td>Encourage design detail that respects the existing or preferred neighbourhood character</td>
<td>Yes</td>
<td>Refer report and Attachment 1.</td>
<td>Yes</td>
</tr>
</tbody>
</table>

|      | N/A | Yes | Required: 1.5m | Proposed: 1.5m | Yes | Communal areas would be contained within the building and include lobby areas and car parking areas. It is not anticipated that these could not be easily maintained or accessed. | Yes | Plans show mailboxes and storage areas and space for metres as required. |

| B35 Energy efficiency objectives  | Yes, partly.  | The submitted Sustainability Management Plan and Section J report demonstrates that none of the five (5) modelled apartments have a cooling load in excess of 21 MJ/m² per annum, in accordance with the NatHERS Climate zone 62 Moorabbin. No detail is provided to demonstrate how the building is orientated to take advantage of solar access and enable future installation of roof top solar.  |
| To achieve and protect energy efficient dwellings and buildings.  |  |  |
| To ensure the orientation and layout of development reduce fossil fuel energy use and make appropriate use of daylight and solar energy.  |  |  |
| To ensure dwellings achieve adequate thermal efficiency  |  |  |

| B36 Communal open space  | N/A | N/A |
| 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.

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>B37 Solar access to communal outdoor open space</td>
<td>To allow solar access into communal outdoor open space.</td>
<td>N/A</td>
</tr>
<tr>
<td>B38 Deep soil areas and canopy trees objective</td>
<td>To promote climate responsive landscape design and water management in developments to support thermal comfort and reduce the urban heat island effect.</td>
<td>Yes</td>
</tr>
<tr>
<td>B39 Integrated water and stormwater management</td>
<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>Yes</td>
</tr>
<tr>
<td>B40 Noise impacts</td>
<td>To contain noise sources in developments that may affect existing dwellings. To protect residents from external and internal noise sources.</td>
<td>N/A</td>
</tr>
<tr>
<td>B41 Accessibility</td>
<td>To ensure the design of dwellings meets the needs of</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>B42 Building entry and circulation</strong></td>
<td><strong>Yes</strong></td>
<td></td>
</tr>
<tr>
<td>--------------------------------------</td>
<td>---------</td>
<td></td>
</tr>
<tr>
<td>To provide each dwelling and building with its own sense of identity.</td>
<td>The building entry and lobby area provide a clearly identifiable communal area with adequate access to natural light and ventilation. Large north facing picture windows and a roof void would allow light to flood communal spaces. Stair and lift access to all dwellings would be provided centrally located from the basement to all floors.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>B43 Private open space above ground floor</strong></th>
<th><strong>Yes</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>To provide adequate private open space for the reasonable recreation and service needs of residents.</td>
<td>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: Apartment 5: 13m² balcony Apartment 6: 74m² balcony at 2F Apartment 7: 8m² balcony at FF and 26m² balcony at 2F Apartment 8: 42m² Apartment 9: 14m²</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>B44 Storage</strong></th>
<th><strong>Yes</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>To provide adequate storage facilities for each dwelling.</td>
<td>Required: 3 bedroom apartments require a total minimum storage allocation of 18m³ per apartment with 12m³ within the apartment. Provided: The development plans detail appropriate storage allocated to each apartment internally and externally within the basement.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>B45 Waste and recycling</strong></th>
<th><strong>Yes</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>To ensure dwellings are designed to encourage waste recycling. To ensure that waste and recycling facilities are accessible, adequate and attractive. To ensure that waste and recycling facilities are designed</td>
<td>The proposal provides for waste storage within the basement. The Waste Management Plan prepared by Leigh Design dated 5 December 2018 advises waste collection will be via a private contractor and not Council. Council’s Waste Services is satisfied with content of the WMP, considering it appropriate. A condition of permit will be included in the recommendation to ensure effective management on the site.</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>----</td>
<td>----</td>
</tr>
</tbody>
</table>
|    | **B46 Functional layout**  
To ensure dwellings provide functional areas that meet the needs of residents. | **Yes**  
**Requirement:** Bedrooms should be provide for a main bedroom with minimum dimensions of 3m x 3m. Two or more bedroom dwellings should have a minimum living area of width of 3.6m with a minimum area of 12m².  
**Proposed:**  
All apartments comply with the functional layout plan standards. |    |
|    | **B47 Room depth**  
To allow adequate daylight into single aspect habitable rooms. | **Yes**  
All single aspect habitable rooms would not exceed the room depth of 2.5 times the ceiling heights including combined living/dining and kitchen areas. |    |
|    | **B48 Windows**  
To allow adequate daylight into new habitable room windows. | **No.**  
All habitable rooms with the exception of the cinema rooms that would be provided within apartments 6 and 8 would receive sufficient daylight with no apartments to be served by secondary light sources.  
Whilst the cinema rooms are considered habitable accommodation, the functionality of their use is such that daylight should be minimised. Given this and as the other habitable rooms of apartments 6 and 8 would be appropriately served by external windows and be afforded sufficient light, the departure from the standard is considered appropriate in this instance. |    |
|    | **B49 Natural ventilation**  
To encourage natural ventilation of dwellings.  
To allow occupants to effectively manage natural ventilation of dwellings. | **Yes**  
**Requirement:** At least 40% of dwellings should provide effective cross ventilation that has:  
- A maximum breeze path through the dwelling of 18 metres.  
- A minimum breeze path through the dwelling of 5 metres.  
- Ventilation openings with approximately the same area.  
**Proposed:**  
Apartments 1, 2, 3, 5 and 9 meet this standard which equates to 55.5% of the apartments. |    |
1. Application details

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Notice of Decision to Grant a Permit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicant</td>
<td>Devcon Planning Services</td>
</tr>
<tr>
<td>Title/Covenant/S173 Agreement</td>
<td>The site is subject to restrictive covenant 1424413. The covenant does not restrict the proposed development.</td>
</tr>
<tr>
<td>Date application received</td>
<td>13 February 2019 (Amended)</td>
</tr>
<tr>
<td>Current statutory days</td>
<td>90 days</td>
</tr>
<tr>
<td>Zoning</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      | 635 square metres |
| Number of outstanding objections | 3 |
| Is a Development Contribution Levy applicable? | Yes - $2020.00  
|                | Catchment Area 15B |
| Is the site located within an area of cultural heritage sensitivity? | Yes, however the proposal does not trigger the need for a Cultural Heritage Management Plan |

Proposal

The application seeks approval for the construction of two double storey dwellings on a lot. Key details of the proposal are as follows:

- Each dwelling will have a maximum building height of 6.982 metres
- Total site coverage is 49.28%
- Total site permeability is 40.82%
- Dwelling 1 incorporates a double garage with tandem outdoor parking provided in the driveway
- Dwelling 2 incorporates a single garage with tandem outdoor parking provided in the driveway

The application 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 32.09-6 (Neighbourhood Residential Zone - Schedule 3) – Construction of two or more dwellings on a lot.

Note: Pursuant to clause 32.09-4, the construction of a dwelling or residential building on a lot 500-650 square metres, requires the provision of a minimum of 30% garden area at ground floor level.

The development plans confirm that the development has a garden area of 261.22 square metres which equates to 40.82% and exceeds the minimum of 30% garden area required.

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>Raised the following concerns:</td>
</tr>
<tr>
<td></td>
<td>- Potential impact to neighbouring vegetation.</td>
</tr>
<tr>
<td></td>
<td>This has been addressed via conditions.</td>
</tr>
<tr>
<td>Drainage Assets Engineer</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>Raised the following concerns:</td>
</tr>
<tr>
<td></td>
<td>- Position of the proposed crossover to dwelling 2 and proximity of existing speed hump. These are addressed via 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 three objections were received.

Three objections remain outstanding at the time of this report.

The following concerns were raised:

- Overlooking
- Neighbourhood character
- Two dwellings will create added traffic congestion
- Increased noise, parking and street traffic
- Safety concerns regarding a double crossover
- Construction and building concerns
- Noise impacts from A/C units.

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

Consultation meeting

The applicant declined a consultation meeting and decided to lodge amended plans following concerns raised by Council in relation to neighbourhood character and the objections received.

An amended plans were subsequently lodged on 13 February 2019 (post consultation meeting) pursuant to Section 57A of the Planning and Environment Act 1987.

Key changes featured in the amended plans are as follows:

- The garage associated with dwelling 2 reduced to a single garage;
- Ground floor side setbacks increased from 1.15m – 1.45m to 2 metres to comply with Standard B17; and
- Site coverage reduced from 51.57% to 49.8% to comply with Standard B8.

These amended plans were circulated to objectors on 20 March 2019. No objections have been withdrawn.

4. Recommendation

That Council resolve to issue a Notice of Decision to Grant a Permit under the provisions of the Bayside Planning Scheme in respect of Planning application 2018/614/1 for the land known and described as 23 Middleton Street, Highett for the Construction of two dwellings on a lot 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 amended plans prepared by G and E Drafting Service and known as revision: February 2019 but modified to show:

   a) The reconfiguration or relocation of the speed hump to the satisfaction of the Responsible Authority at the full cost of the owner and in accordance with plans prepared and approved by Council.

   b) Location of bins to both dwellings notated on ground floor plan.

   c) Street tree annotated to be removed.

   d) Incorporation of a variety of materials and finishes to the front façade and side walls in accordance with Clause 22.06 (Neighbourhood Character Policy).

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

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

   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 landscaping on the ground floor plan TP18-763 known as revision: February 2019, be drawn to scale with dimensions but modified to show:
   a) A survey, including botanical names, of all existing trees to be retained and removed on the site including Tree Protection Zones calculated in accordance with AS4970-2009.
   b) A survey, including botanical names, 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.

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

d) Details of all landscaping, water sensitive urban design elements (as applicable) and surface finishes.

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

f) The planting of one tree capable of reaching 12m at maturity in the front set back of one of the dwellings.

g) The planting of two trees capable of reaching 8m at maturity in the rear set back of dwelling 1.

h) The planting of one tree capable of reaching 8m at maturity in the rear set back of the dwelling 2.

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 (report) and Tree Protection Plan (drawing), to the satisfaction of the Responsible Authority, must be submitted to and be endorsed by the Responsible Authority.

The Tree Management Plan must be specific to the trees shown on the Tree Protection Plan, in accordance with AS4970-2009, prepared by a suitably qualified Arborist and provide details of tree protection measures that will be utilised to ensure all trees to be retained remain viable post-construction. Stages of development at which inspections are required to ensure tree protection measures are adhered to must be specified.

The Tree Protection Plan must be in accordance with AS4970-2009, be drawn to scale and provide details of:

a) The Tree Protection Zone and Structural Root Zone 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.

b) The location of tree protection measures to be utilised.

14. 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.

15. 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.
Development Contribution

16. 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.

Drainage

17. 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.

18. 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.

Permit Expiry

19. 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.

- Council records indicate that there is no easement within the property.

- Subsurface water must be treated in accordance with Council’s Policy for “Works on Assets within the Road Reserve Policy 2018”.

- Before the development starts the applicant must pay $2,573.18 to the Responsible Authority for the removal and replacement of an existing street tree. This amount has been determined in accordance with Councils 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.

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.

Bayside Planning Scheme

- Clause 9 Plan Melbourne
- Clause 11 Settlement
- Clause 15 Built Environment and Heritage
- Clause 16 Housing
- Clause 21.02 Bayside Key Issues and Strategic Vision
- Clause 21.03 Settlement and Housing
- Clause 21.06 Built Environment and Heritage
- 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 52.06 Car Parking
- Clause 55 Two or more dwellings on a lot
- 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. Neighbourhood character

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

Middleton Street is generally characterised by single and double storey dwellings, majority of which include pitched roof forms with a mix of materials such as render, brick and weatherboard with generous setbacks and established landscape settings.
Broadly, the construction of two, double storey side by side dwellings are consistent with the built form pattern of development in the area. The proposal adequately maintains the rhythm of visual separation between buildings and incorporates reasonable landscaping opportunities consistent with the existing and preferred character of the area.

The dwellings feature an articulated front façade with a skillion roof form which results in an innovative design response to the more traditional dwelling forms featured throughout the street. A condition however has been included to require the provision of a mixture of materials and finishes to improve the visual interest and articulation of the development.

Concerns have been raised in relation to the proposed side by side development and design detail of each dwelling. However, as detailed above, and subject to conditions outlined in the recommendation, the proposed development will sit comfortably within its streetscape context.

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></th>
<th>Required</th>
<th>Proposed</th>
<th>Variation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Middleton Street</td>
<td>8.15m</td>
<td>Dwelling 1: 7.51m</td>
<td>645mm</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Dwelling 2: 8.21m</td>
<td></td>
</tr>
</tbody>
</table>

A street setback from Middleton Street of 7.51 metres is proposed for dwelling 1 and 8.21m for dwelling 2, when a setback of 8.15 metres is required for both dwellings to achieve compliance with this standard.

Dwelling 1 is non-compliant with a variation of 645mm from the standard.

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

The variation is considered to be acceptable in this instance as the proposal incorporates sufficient articulation which will work to ensure the dwellings will complement the built form character of the area.

Moreover, it is considered that the proposed street setback will adequately respect the existing built form character as a number of dwellings featured throughout the street incorporate a variety of setbacks ranging from 6 – 7 metres. Specifically, 1/27 Middleton Street to the north of the site has a street setback of approximately 7.4 metres and therefore the proposed setback of 7.51 metres associated with dwelling 1 will respectfully complement the existing and preferred neighbourhood character.

**Site Services (Standard B34)**

The objective seeks to ensure that site services can be installed and easily maintained and that site facilities are accessible, adequate and attractive.

The bin locations have not been indicated on the plans, however there is sufficient space around the two dwellings to accommodate all services, due to compliant ground floor side setbacks. A condition requiring compliance with Standard B34 has been included in the recommendation.

6.3. Landscaping

The application plans show the removal of a nectarine tree from the rear of the site. There are no trees that align with the Neighbourhood Character Policy (NCP) or protected by the Local Law or any statutory mechanism.
The table below identifies the trees protected by the Local Law and those which are not protected by any statutory mechanism.

<table>
<thead>
<tr>
<th>Local Law protected trees</th>
<th>Trees not protected</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proposed for removal</td>
<td>Proposed for retention</td>
</tr>
<tr>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Proposed for removal</td>
<td>Proposed for retention</td>
</tr>
<tr>
<td>Nectarine</td>
<td>Apricot</td>
</tr>
</tbody>
</table>

Council’s Arborist in their referral response advised that the removal of the nectarine tree is supported as it is considered to be insignificant in the landscape.

Council’s Arborist has advised that a Tree Protection Plan and Tree Management Plan will be required to ensure the trees on adjoining properties which have their Tree Protection Zones extending into the subject site, remain viable both during and post construction. A condition to this effect is included in the recommendation.

In addition to the above assessment, Council’s Arborist has reviewed the landscaping concept on the ground floor plan and advised that further planting is required. Conditions requiring the provision of planting of additional canopy trees across the site is included in the recommendation.

6.4. Street tree(s)

There is an existing tree located within the nature strip which is proposed for retention.

Council’s Street Tree Arborist has advised that the design is not supported as the new proposed crossover to the south of the subject site requires a minimum 2 metre offset from the street tree, however the proposed southern crossover also requires a minimum distance of 850mm from the power pole.

To accommodate the proposed design, Council’s Arborist has advised that the tree is supported to be removed, subject to conditions which are included in the recommendation.

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.

Dwelling 1 comprises of three bedrooms and is afforded three car parking spaces in the form of a double garage and tandem outdoor car parking. Dwelling 2 comprises of three bedrooms and is afforded two car parking spaces in the form of a single garage and tandem outdoor car parking. The proposed on site car parking meets the requirements of Clause 52.06-5.

The application was referred to Council’s Traffic Engineer who was generally supportive of the design; however, expressed concerns relating to the presence of the existing speed hump.

Council’s Traffic Engineer advised that the applicant will need to relocate the speed hump if they wish to keep the crossover in the same location, as there are safety concerns for a vehicle to exit onto a speed hump. These concerns have been discussed with the applicant and a condition has been included requiring the relocation of the speed hump unless an alternative arrangement can be agreed upon to the satisfaction of the Responsible Authority.

Traffic congestion has been raised by a number of objectors. The increased traffic movement associated with one additional dwelling on the site is considered acceptable and can be readily accommodated in the surrounding street network. Council’s Traffic Engineers raised no concerns with regard to traffic congestion.
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 plan is not required because the construction of two dwellings is exempt.

An objection received has raised concerns that the proposal fails to respect the cultural heritage sensitivity of the area. Whilst the proposal is within an area of cultural heritage sensitivity, a cultural heritage management plan is not required in this instance.

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 $2,020.00 is required. The payment of the development contributions is included as a condition of permit.

6.8. Objector issues not already addressed

Concerns have been raised in relation to possible soil collapse and drainage problems as a result of the development. The construction will be required to meet building regulations and specifications will be dealt with by the private building surveyor.

Concerns have also been raised in relation to concerns resultant from the proposed air conditioning units. It is noted that air conditioning units are exempt from planning permission pursuant to Clause 62.02-2 of the Bayside Planning Scheme.

Support Attachments

1. Application Plans
2. Site and Surrounds
3. Neighbourhood Character Assessment
4. ResCode Assessment
**LEGEND (Design Response)**

1. Proposed development is in keeping with the character of the area.
   - Sensitive developments are already established in the area.

2. To avoid overdevelopment or boundary lines has been kept to 22m on the front boundary and 12.5m on the South boundary which consist of the presence of both buildings.
   - Building setback is up to 1:10m in some boundaries.

3. Overhanging from upper storey will be addressed by providing highlight windows or glazing (plastics) as required.
   - Any move from ground level will be checked by infill, boundary lines, and development (plastics) and screen planting.

4. Driveways have been constructed & varied in width to avoid a visual effect.

5. Private open spaces will face north & south in areas of the proposed development by Runnels as well as Bayside Council guidelines.

6. Living rooms will have a northerly orientation to assist energy efficiency.

7. Although the proposed front setbacks are not strictly within guidelines, we feel that they should be accepted as one of the next quite generous widths of 22m for dealing with C3 and 12.5m for dealing (C2) and will not harm from the character of the area.
   - setbacks in the immediate area vary from 7m to 8m.

**CONCLUSION**

- It is considered that the proposal generally complies with the requirements of Runnels and meets the guidelines by Bayside City Council, and will complement the character of the area by providing good quality dwellings that are density housing.

**DESIGN RESPONSE PLAN 1:200**

Revision: February 2019

Stott & Co. Architect
Item 4.3 – Matters of Decision
Item 4.3 – Matters of Decision
Attachment 2: Site and Surrounds

Figure 1 Aerial overview of the site and surrounds

- Objector address not shown on this map (14 Bluegum Avenue, wheelers Hill Victoria - co-owner of 21 Middleton Street Highton).
- Objector address not shown on this map (34/70 Albert Road South Melbourne – co-owner of 21 Middleton Street Highton).

<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>

Item 4.3 – Matters of Decision
Figure 2 View towards the site

Figure 3 View towards the site and neighbouring property (21 Middleton Street)
## Neighbourhood Character 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. | Does not respond  
A condition has been included to the recommendation requiring the landscape plan to be updated in accordance with the Bayside Landscaping Guidelines. |
| To maintain the rhythm of visual separation between buildings. | • Buildings should be sited to create the appearance of space between buildings and accommodate substantial vegetation. | | Responds  
The proposal adequately maintains visual separation between buildings. The ground floor side setbacks are compliant allowing for the planting of vegetation. |
| 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 reeded or striped, 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. | Large, bulky buildings with poorly articulated front and side wall surfaces. | Responds  
The proposal does not provide a variety of materials to the front façade. A condition has been included to the recommendation to incorporate different colours and materials to the front and side walls.  
The proposal incorporates an articulated front façade with stiplon roof forms with eaves. |
| To maintain the openness of the streetscape. | | High, solid front fencing | N/A  
No front fence proposed |
### Attachment 4

**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 a dwelling (other than a dwelling in or forming part of an apartment development); or To construct or extend a residential building.</td>
<td>All of Clause 55 except Clause 55.07-1 to 55.07-15 (inclusive).</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>CLAUSE 55.02 NEIGHBOURHOOD CHARACTER AND INFRASTRUCTURE</strong></th>
<th><strong>Complies with Standard?</strong></th>
<th><strong>Comments</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>B1 Neighbourhood Character</strong></td>
<td>Complies</td>
<td>Refer to Attachment 3.</td>
</tr>
<tr>
<td>Design respects existing neighbourhood character or contributes to a preferred neighbourhood character. Development responds to features of the site and surrounding area.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B2 Residential Policy</strong></td>
<td>Complies</td>
<td>The subject site is appropriately located with regard to services and facilities to support the construction multiple dwellings on a lot of this size.</td>
</tr>
<tr>
<td>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></td>
<td></td>
</tr>
<tr>
<td><strong>B3 Dwelling Diversity</strong></td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>Encourages a range of dwelling sizes and types in developments of ten or more dwellings.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B4 Infrastructure</strong></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.</td>
</tr>
<tr>
<td>Provides appropriate utility services and infrastructure without overloading the capacity.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Title and Objective</td>
<td>Complies</td>
<td>Comments</td>
</tr>
<tr>
<td>---------------------------------------------------------</td>
<td>----------</td>
<td>---------------------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>B5 Integration with the Street</strong></td>
<td></td>
<td>The development will integrate appropriately with the street and features a staggered front setback at ground floor level, providing an appropriate transition to the setbacks of the adjoining properties.</td>
</tr>
<tr>
<td><strong>CLAUSE 55.03 SITE LAYOUT AND BUILDING MASSING</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| **B6 Street Setback**                                  | Complies | Requirement: 8.155m  
Proposed:  
Dwelling 1 – 7.51m  
Dwelling 2 – 8.21m |
| The setbacks of buildings from a street respect the existing or preferred neighbourhood character and make efficient use of the site. |          |                                                                           |
| **B7 Building Height**                                 | Complies | Maximum: 9m.  
Proposed: 6.982 metres |
| Building height should respect the existing or preferred neighbourhood character. |          |                                                                           |
| **B8 Site Coverage**                                   | Complies | Maximum: 50%  
Proposed: 49.28% |
| Site coverage should respect the existing or preferred neighbourhood character and respond to the features of the site. |          |                                                                           |
| **B9 Permeability**                                    | Complies | Minimum: >20%  
Proposed: 40.82% |
| Reduce the impact of stormwater run-off on the drainage system and facilitate on-site stormwater infiltration. |          | An objection received from 34/70 Albert Road, South Melbourne, raised concerns with the permeability. As noted above the permeability complies with the standard. |
| **B10 Energy Efficiency**                              | Complies | 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. |
| Achieve and protect energy efficient dwellings and residential buildings.  
Ensure orientation and layout reduces fossil fuel energy use and makes appropriate use of daylight and solar energy. |          |                                                                           |
<p>| <strong>B11 Open Space</strong>                                     |          | There is no communal open space in or adjacent to the development.       |
| Integrate layout of development with any public and communal open space provided in or adjacent to the development. |          |                                                                           |</p>
<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Complies</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>B12 Safety</td>
<td>Layout to provide safety and security for residents and property.</td>
<td>Complies</td>
<td>The pedestrian entry points are clearly recognisable while upper levels allow for the passive surveillance of the street.</td>
</tr>
<tr>
<td>B13 Landscaping</td>
<td>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.</td>
<td>Does not comply</td>
<td>A condition has been included to update the landscape plan to be in accordance with the Bayside Landscaping Guidelines.</td>
</tr>
<tr>
<td>B14 Access</td>
<td>Ensure the safe, manageable and convenient vehicle access to and from the development. Ensure the number and design of vehicle crossovers respects neighbourhood character.</td>
<td>Complies</td>
<td>No more than 40% occupied - Vehicle crossings occupy 37.5% of the street frontage</td>
</tr>
<tr>
<td>B15 Parking Location</td>
<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>Complies</td>
<td>On site car parking is provided in the form of garages.</td>
</tr>
</tbody>
</table>

**CLAUSE 55.04 AMENITY IMPACTS**

<table>
<thead>
<tr>
<th>Title and Objective</th>
<th>Complies with Standard?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>B17 Side and Rear Setbacks</td>
<td>Complies</td>
<td>An objection received from 34/70 Albert Road, South Melbourne, raised concerns with the side and rear setbacks. As noted below the proposed setbacks comply with the standard.</td>
</tr>
</tbody>
</table>

<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 (side)</td>
<td>0m or 2m</td>
</tr>
<tr>
<td></td>
<td>South (side)</td>
</tr>
<tr>
<td>---------------</td>
<td>-------------</td>
</tr>
<tr>
<td></td>
<td>0m or 2m</td>
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</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.

**Complies**
North – Length: 10.5m, height: 3.2m

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

**Complies**
The development has been sufficiently setback from all habitable room windows to abutting properties.

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

**N/A**
There are no north facing windows within 3m of the shared boundary.

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

**Complies**
Additional overshadowing will occur over the adjoining driveway to the south which is a non-sensitive area, therefore does not result in any amenity impacts.

An objection received from 34/70 Albert Road, South Melbourne, and 21 Middleton Street raised concerns with overshadowing. As noted above the proposed additional overshadowing comply with the standard.

**B22 Overlooking**
Limit views into existing secluded private open space and habitable room windows.

**Complies**
All habitable room windows have been screened to a minimum height 1.7 metres above finished floor level or have been sited appropriately in accordance with this Standard.

An objection received from 34/70 Albert Road, South Melbourne, and 21 Middleton Street raised concerns with overlooking from the southern first floor bathroom window. As noted above the proposal has screened all habitable room windows where necessary.
### Item 4.3 – Matters of Decision

**B23 Internal Views**  
Limit views into existing secluded private open space and habitable room windows of dwellings and residential buildings within the same development.  
Complies  
All habitable room windows have been sited appropriately in accordance with this Standard. At ground floor level internal fencing to a height of 2m limits views between adjoining areas of secluded private open space within the development.

**B24 Noise Impacts**  
Protect residents from external noise and contain noise sources in developments that may affect existing dwellings.  
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.

### CLAUSE 55.05 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><strong>B25 Accessibility</strong></td>
<td>Complies</td>
<td>The development could be further retrofitted to accommodate people with limited mobility in the future if required.</td>
</tr>
<tr>
<td>Consider people with limited mobility in the design of developments.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B26 Dwelling Entry</strong></td>
<td>Complies</td>
<td>The development fronts Middleton Street and includes a clearly identifiable entry with dedicated pedestrian pathway. The entry provides shelter, a sense of personal address and a transitional space around the building entry.</td>
</tr>
<tr>
<td>Provide a sense of identity to each dwelling/residential building.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B27 Daylight to New Windows</strong></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>
</tbody>
</table>
| **B28 Private Open Space**                              | Complies                 | Minimum:  
25m² secluded, 40m² overall with a minimum dimension of 3 m;  
Proposed:  
Dwelling 1 – 49.33 square metres  
Dwelling 2 – 81.46 square metres |
| Provide reasonable recreation and service needs of residents by adequate private open space. |                          |                                                                          |
| **B29 Solar Access to Open Space**                       | Complies                 |                                                                          |
| Allow solar access into the secluded private open space of new dwellings/buildings. |                          |                                                                          |
| **B30 Storage**                                          | Complies                 | Designated storage areas have been provided.                             |
| Provide adequate storage facilities for each dwelling.   |                          |                                                                          |
## 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><strong>B31 Design Detail</strong></td>
<td>Complies</td>
<td></td>
</tr>
<tr>
<td>Encourage design detail that respects the existing or preferred neighbourhood character.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B32 Front Fences</strong></td>
<td>N/A</td>
<td>No front fence proposed</td>
</tr>
<tr>
<td>Encourage front fence design that respects the existing or preferred neighbourhood character.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B33 Common Property</strong></td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>Ensure car parking, access areas and other communal open space is practical, attractive and easily maintained.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Avoid future management difficulties in common ownership areas.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B34 Site Services</strong></td>
<td>Does not comply</td>
<td>Mail boxes and clotheslines have been shown but bin locations have not been shown, a condition to the permit has been included to show the bin locations.</td>
</tr>
<tr>
<td>Ensure site services and facilities can be installed and easily maintained and are accessible, adequate and attractive.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Avoid future management difficulties in common ownership areas.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
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.

1. 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.

The Statutory Planning Team are also focussed on the responsible management of planning applications to minimise the need for the involvement of VCAT. A list of all applications lodged and determined in April 2019 are provided in Attachment 1 and Attachment 2 respectively for information purposes.

VCAT Appeals

Council manages a considerable number of matters which are referred to VCAT. These matters include merit appeals and compulsory conferences for decisions made by the Council and its delegates.

It should be noted that the number of appeals lodged with VCAT against a failure of the Council or delegate to make a decision is minimal, demonstrating that decisions are being made within a reasonable timeframe.

Attachment 3 includes details of upcoming VCAT hearings, including compulsory conferences.

VCAT outcomes

As a result of Council representation at VCAT, there are various outcomes/determinations. As such, this report provides details of the determinations received for the previous month and also shows the progress of VCAT outcomes for the financial year.

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 and 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 96 decisions, of which:

- 39 have been settled by consent orders; and
- 6 have been withdrawn; 1 has been dismissed, 1 has been remitted and 2 have been struck out.

The total number of LGPRF measured decisions for the year to date is therefore 47. This table below reflects the new 2018/19 LGPRF reporting requirements for Council.

<table>
<thead>
<tr>
<th>Time period</th>
<th>Decisions where the Council Delegate or Committees decision has been overturned or 'Set Aside'</th>
<th>Decisions where the Council Delegate or Committees decision has been agreed with, either having been entirely ‘Affirmed’ or the conditions of the permit ‘varied’</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 2018</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>August 2018</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>September 2018</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>October 2018</td>
<td>4</td>
<td>1</td>
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<tr>
<td>November 2018</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>December 2018</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>January 2019</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>February 2019</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>March 2019</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>April 2019</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td><strong>TOTAL DECISIONS</strong></td>
<td><strong>23</strong></td>
<td><strong>24</strong></td>
</tr>
<tr>
<td><strong>LGPRF Result</strong></td>
<td><strong>48.9%</strong></td>
<td><strong>51.1%</strong></td>
</tr>
</tbody>
</table>

Attachment 4 included provides a summary of each case identifying the key issues for Council policy and strategy.

VCAT Outcomes relating to Planning and Amenity Committee meeting decisions

In April 2019, VCAT determined three applications that were a result of a Planning and Amenity Committee decision. A summary of these decisions is detailed below.

**142-142A Esplanade, Brighton**

The Tribunal, in an order dated 30 April 2019, refused an application for a planning permit, overturning Council’s decision to issue a notice of decision to grant a planning permit determined at the Planning and Amenity Committee meeting on 11 December 2017. The application sought the construction of a two storey building containing four dwellings with basement car parking and roof top terraces and alterations to the access of a road in a Road Zone, Category 1.

The permit applicant formerly substituted amended plans prior to the Tribunal hearing. The changes to the built form shown in the amended plans include a redesign of the basement layout, alterations to the ground and first floor plans, replacement of the attics with roof top terraces and subsequent redesign of all elevations and the facade of the building. Council’s officers formed a position of support for the changes shown in the amended plans.

The Tribunal ultimately determined to refuse the application based on the extent of built form deep into the site that will result in unreasonable visual bulk to the adjoining properties. This was found to be inconsistent with the existing neighbourhood character.
and contrary to the local policy guidance about future or preferred neighbourhood character for this area. The Tribunal also noted that a redesign of the proposal is required to address the sensitive interfaces with the adjoining properties.

A complete copy of the VCAT order is provided at Attachment 5.

**4 Montclair Avenue, Brighton**

A proposal to construct a three storey building plus basement including five apartments was applied for on 22 March 2018. The subject site sits within the General Residential Zone Schedule 2 (GRZ2) and is subject to Design and Development Overlay Schedule 10 (DDO10). GRZ2 applies to moderate residential growth areas denoted within the various activity centres including the Bay Street Activity Centre. DDO10 relates specifically to the built form standards of the Bay Street Activity Centre. The Planning and Amenity Committee refused the application based on neighbourhood character grounds at its meeting of 11 September 2018.

An order was received on 15 October 2018 advising that an appeal of Council’s refusal had been lodged. A total of eight objectors were joined as parties to the appeal.

A compulsory conference was held on 22 January 2019 and no outcome was reached. The applicant formally substituted amended plans to address most of the conditions as recommended by officers in their recommendation to the Planning and Amenity Committee. The application was set down for a hearing on 12 March 2019 for three days.

In determining the application, the Tribunal acknowledged the site’s strategic location, which is suitable for a higher density development, and noted current planning policy clearly emphasises directing new medium density housing to major activity centres. The Tribunal concluded that the proposed development fits appropriately into the strategic context of the area.

The Tribunal also acknowledged that the dwellings within proximity to the subject site in Montclair Avenue are single storey dwellings with many restricted by a single dwelling covenant. Whilst it could be said that the existing neighbourhood character within the immediate vicinity of the subject site is that of single storey, single dwellings on a lot, the provisions of the Bayside Planning Scheme indicate that whilst they are likely to remain as single dwellings, this does not necessarily mean that their built form will remain as single storey. The planning scheme through the application of the GRZ2 and DDO10 provides clear expectation that in terms of built form, dwellings within the area may or are expected to change significantly.

The Tribunal further agreed with the officer’s recommendation, including a quotation from the officers’ report that ‘a failure to acknowledge the contradiction between the Neighbourhood Character Precinct B5 and the inclusion of the site within the Bay Street Activity Centre and DDO10 would result in an assessment whereby one would effectively ‘have one foot on the accelerator and one foot on the brake’ (i.e. the intensive development sought under the DDO10 (and various other State and Local Policy) would be severely restricted by the objectives of Clause 22.06 (Neighbourhood Character Policy) that effectively requires development to respect the surrounding largely single and double storey housing stock’.

The Tribunal also agreed with the officers’ recommendation that the proposal responds appropriately to Precinct B5 Guidelines which encourages modern contemporary architectural responses by re-interpreting existing building forms.

The Tribunal further agreed with the officers’ recommendation that the proposal complies with most of the ResCode standards, which results in acceptable amenity impacts on adjoining properties.
The Tribunal did not believe the potential traffic generation will cause any unreasonable impacts to the neighbourhood and, in their view, there is no traffic engineering or car parking issues that would warrant a refusal of the permit.

In summary, the Tribunal agrees with the majority of the officers' recommendation and set the Planning and Amenity Committee's decision aside to direct that a permit be issued.

A complete copy of the VCAT order is provided at Attachment 6.

**70/15 Centre Road, Brighton East**

This was an application for review pursuant to Section 80 of the Planning and Environment Act 1987 to review the conditions contained within the permit. Specifically, the permit application sought a review of Conditions 1k, 8, 12f, 12g, 19 and 31. The Tribunal in its Order dated 5 April 2019 determined to vary the decision of the Responsible Authority as follows.

In relation to the review of Conditions 1k) and 12h), the Tribunal confirmed that the proposal achieved the required number of car parking spaces as outlined in Clause 22.07 (Discretionary Uses in Residential Areas) and the proposed number of spaces would be sufficient to service the long term resident parking needs. Moreover, it was confirmed that after Amendment VC148, Clause 52.06 would no longer require any visitor spaces and as such, the additional requirement for visitor spaces could not be warranted.

In relation to the proposed shuttle bus service (Conditions 12f and 12g), the Tribunal confirmed that 'existing and future residents are already serviced by the PPTN and by the existing community bus. There is no material before me that suggests that these services are not enough for present or future resident needs. I find that a private shuttle bus is not warranted in these circumstances’ (paragraph 25 of the Order).

The permit applicant sought to amend Condition 19 to require the provision of a tree management plan prior to the commencement of buildings and works rather than prior to the endorsement of plans. This condition was retained in its current form by the Tribunal.

The permit applicant also sought the deletion of Condition 31 which requires the provision of a development levy under the Development Contribution Plan Overlay. The condition was not deleted by the Tribunal however the wording of the condition was subsequently amended.

A complete copy of the VCAT order is provided at Attachment 7.

1. **Recommendation**
   
   That Council resolve to:
   
   a) Receive and note the report; and
   
   b) Note the outcome of VCAT decisions on the planning applications handed down during April 2019.

**Support Attachments**

1. Application Lodged in April 2019
2. Application Determined in April 2019
3. VCAT upcoming appeals
4. VCAT Determined Appeals - April 2019
5. VCAT Order - Appeal P3006/2017 - 142-142A Esplanade, Brighton (5.2016.87.1)
7. VCAT Order - Appeal P1838/2018 - 15 Centre Road, Brighton East (5.2017.285.1)
<table>
<thead>
<tr>
<th>Application</th>
<th>Property Address</th>
<th>Development Details</th>
<th>Received</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.2015 180.3</td>
<td>2 Dart St, HIGHTETT</td>
<td>Dwelling(s) Other - Alts/Addrs, Bld Only</td>
<td>01/04/19</td>
</tr>
<tr>
<td>5.2019 171.1</td>
<td>3/437 - 357 Bay RD, CHELTERNHAM</td>
<td>Advertising Signs</td>
<td>01/04/19</td>
</tr>
<tr>
<td>5.2019 174.1</td>
<td>178 Ludstone RD, HAMPTON</td>
<td>2 New Dwellings</td>
<td>01/04/19</td>
</tr>
<tr>
<td>5.2019 7747.1</td>
<td>16 Railway CRES, HAMPTON</td>
<td>Subdivision of Land (19 or more lots)</td>
<td>01/04/19</td>
</tr>
<tr>
<td>5.2019 352.2</td>
<td>50 Sargood ST, HAMPTON</td>
<td>2 New Dwellings</td>
<td>02/04/19</td>
</tr>
<tr>
<td>5.2019 170.1</td>
<td>47 Littlewood ST, HAMPTON</td>
<td>1 Dwelling - Alts &amp; Addrs - DDO</td>
<td>02/04/19</td>
</tr>
<tr>
<td>5.2019 175.1</td>
<td>441A Bluff RD, HAMPTON</td>
<td>Education Centre - New Use Only</td>
<td>02/04/19</td>
</tr>
<tr>
<td>5.2019 180.1</td>
<td>8 Worthing RD, HIGHTETT</td>
<td>1 Dwelling - New - SBO</td>
<td>03/04/19</td>
</tr>
<tr>
<td>5.2019 7749.1</td>
<td>21 Champion ST, BRIGHTON</td>
<td>Subdivision of Land (1 to 9 Lots)</td>
<td>03/04/19</td>
</tr>
<tr>
<td>5.2019 7750.1</td>
<td>14 Sybil ST, HAMPTON EAST</td>
<td>Vary/Remove Easements &amp; Other Restrictions</td>
<td>03/04/19</td>
</tr>
<tr>
<td>5.2019 571.3</td>
<td>45 Duncan ST, SANDRINGHAM</td>
<td>2 New Dwellings</td>
<td>04/04/19</td>
</tr>
<tr>
<td>5.2019 795.2</td>
<td>44 Bay RD, SANDRINGHAM</td>
<td>Liquor Licence - New &amp; Alts</td>
<td>04/04/19</td>
</tr>
<tr>
<td>5.2019 178.1</td>
<td>9 Wallace Grove, BRIGHTON</td>
<td>2 New Dwellings and Carparking</td>
<td>04/04/19</td>
</tr>
<tr>
<td>5.2019 186.3</td>
<td>36 - 40 Graham RD, HIGHTETT</td>
<td>Retirement Village - New Use &amp; Building and Carparking</td>
<td>05/04/19</td>
</tr>
<tr>
<td>5.2019 173.1</td>
<td>17 Leith CRES, HAMPTON EAST</td>
<td>1 Dwelling - New - Lot &lt; 500m2</td>
<td>05/04/19</td>
</tr>
<tr>
<td>5.2019 186.1</td>
<td>65 Vincent ST, SANDRINGHAM</td>
<td>Fence on a lot &gt; 500 m2</td>
<td>05/04/19</td>
</tr>
<tr>
<td>5.2019 185.1</td>
<td>168 Thomas ST, HAMPTON</td>
<td>2 New Dwellings</td>
<td>08/04/19</td>
</tr>
<tr>
<td>5.2019 189.1</td>
<td>48 Sargood ST, HAMPTON</td>
<td>2 New Dwellings</td>
<td>08/04/19</td>
</tr>
<tr>
<td>5.2019 7752.1</td>
<td>10 Holmthrust CRT, BRIGHTON</td>
<td>Subdivision of Land (1 to 9 Lots)</td>
<td>08/04/19</td>
</tr>
<tr>
<td>5.2019 124.1</td>
<td>356 - 360 Hampton ST, HAMPTON</td>
<td>Demolition of Dwelling/Building and 1 Dwelling - Alts &amp; Addrs - Heritage</td>
<td>08/04/19</td>
</tr>
<tr>
<td>5.2015 578.2</td>
<td>4 Arthur AVE, BRIGHTON</td>
<td>2 New Dwellings</td>
<td>10/04/19</td>
</tr>
<tr>
<td>5.2018 380.2</td>
<td>13 Clonoe ST, HIGHTETT</td>
<td>2 New Dwellings</td>
<td>10/04/19</td>
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<tr>
<td>5.2019 194.1</td>
<td>1/18 Charlton AVE, CHELTERNHAM</td>
<td>Liquor Licence - New &amp; Alts</td>
<td>10/04/19</td>
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<tr>
<td>5.2016 783.2</td>
<td>58 Champion ST, BRIGHTON</td>
<td>2 New Dwellings</td>
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</tr>
<tr>
<td>5.2019 201.1</td>
<td>531 Reserve RD, CHELTERNHAM</td>
<td>Demolition of Building in HO</td>
<td>12/04/19</td>
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<tr>
<td>5.2019 202.1</td>
<td>256 - 260 Bay RD, SANDRINGHAM</td>
<td>Advertising Signs</td>
<td>12/04/19</td>
</tr>
<tr>
<td>5.2019 7754.1</td>
<td>40 Highland AVE, HIGHTETT</td>
<td>Subdivision of Land (1 to 9 Lots)</td>
<td>12/04/19</td>
</tr>
<tr>
<td>5.2019 196.1</td>
<td>14 New ST, HAMPTON</td>
<td>3 New Dwellings</td>
<td>15/04/19</td>
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<tr>
<td>5.2019 206.1</td>
<td>42 - 48 Advantage RD, HIGHTETT</td>
<td>Retail Premises Other - New Bld &amp; Use</td>
<td>15/04/19</td>
</tr>
<tr>
<td>5.2019 207.1</td>
<td>60 Comer ST, BRIGHTON EAST</td>
<td>2 New Dwellings</td>
<td>15/04/19</td>
</tr>
<tr>
<td>5.2016 330.2</td>
<td>54A Kingston ST, HAMPTON</td>
<td>2 New Dwellings</td>
<td>16/04/19</td>
</tr>
<tr>
<td>5.2017 262.2</td>
<td>3/28 Pine ST, BRIGHTON EAST</td>
<td>1 Dwelling - Alts &amp; Addrs - SBO</td>
<td>16/04/19</td>
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<tr>
<td>5.2019 198.1</td>
<td>14 Earlsfield RD, HAMPTON</td>
<td>2 New Dwellings</td>
<td>16/04/19</td>
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<td>5.2019 211.1</td>
<td>1/20 Luxmore ST, CHELTERNHAM</td>
<td>1 Dwelling - New - DDO</td>
<td>16/04/19</td>
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<tr>
<td>5.2019 213.1</td>
<td>6 Avelin ST, HAMPTON</td>
<td>1 Dwelling - Alts &amp; Alts - Heritage</td>
<td>16/04/19</td>
</tr>
<tr>
<td>5.2019 208.1</td>
<td>66 Grange RD, SANDRINGHAM</td>
<td>Child Care Centre - Alts &amp; Addrs</td>
<td>18/04/19</td>
</tr>
<tr>
<td>5.2019 212.1</td>
<td>42 Mills ST, HAMPTON</td>
<td>2 New Dwellings</td>
<td>18/04/19</td>
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<tr>
<td>5.2019 215.1</td>
<td>735 Hampton ST, BRIGHTON</td>
<td>Miscellaneous</td>
<td>18/04/19</td>
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<td>5.2019 216.1</td>
<td>178 South RD, BRIGHTON EAST</td>
<td>Medical Centre - Alts &amp; Addrs to Bld &amp; Use</td>
<td>18/04/19</td>
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<td>5.2019 35.1</td>
<td>1 Hudson ST, HAMPTON</td>
<td>1 Dwelling - Alts &amp; Addrs - SBO</td>
<td>21/04/19</td>
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<tr>
<td>5.2015 311.5</td>
<td>277 Bay RD, CHELTERNHAM</td>
<td>Residential Bld - New Use &amp; Building</td>
<td>23/04/19</td>
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<td>5.2015 606.3</td>
<td>411A Bluff RD, HAMPTON</td>
<td>1 Dwelling - Alts &amp; Addrs on Lot &lt; 500m2</td>
<td>23/04/19</td>
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<tr>
<td>5.2016 681.2</td>
<td>20 - 22 Worthing RD, HIGHTETT</td>
<td>6 - 10 New Dwellings</td>
<td>23/04/19</td>
</tr>
<tr>
<td>5.2017 436.2</td>
<td>14 Menzies AVE, BRIGHTON</td>
<td>1 Dwelling - Alts &amp; Addrs - Heritage</td>
<td>23/04/19</td>
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<tr>
<td>5.2019 380.2</td>
<td>60 Lynch CRES, BRIGHTON</td>
<td>2 New Dwellings</td>
<td>23/04/19</td>
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<tr>
<td>5.2019 192.1</td>
<td>120 Were ST, BRIGHTON</td>
<td>Dwelling(s) Other - Alts, Addrs, Bld Only</td>
<td>23/04/19</td>
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<tr>
<td>5.2019 217.1</td>
<td>116A Ludstone ST, HAMPTON</td>
<td>Construction of a front fence associated with a dwelling</td>
<td>23/04/19</td>
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<tr>
<td>5.2019 218.1</td>
<td>116B Ludstone ST, HAMPTON</td>
<td>Fence on a Lot &lt; 500m2</td>
<td>23/04/19</td>
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<tr>
<td>5.2019 778.1</td>
<td>53 Beach RD, HAMPTON</td>
<td>Certification and Subdivision of Land (1 to 9 Lots)</td>
<td>25/04/19</td>
</tr>
<tr>
<td>5.2019 779.1</td>
<td>21 Mary AVE, HIGHTETT</td>
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<td>30/04/19</td>
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### Northern

<table>
<thead>
<tr>
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<th>Development Details</th>
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<tbody>
<tr>
<td>5.2014 700.2</td>
<td>05 Male ST, BRIGHTON</td>
<td>1 Additional Dwelling on a Lot</td>
<td>01/04/19</td>
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<tr>
<td>5.2019 168.1</td>
<td>19 William ST, BRIGHTON</td>
<td>1 Dwelling - Alts &amp; Addrs on Lot &lt; 500m2</td>
<td>01/04/19</td>
</tr>
<tr>
<td>5.2019 172.1</td>
<td>2/128 - 130 Head ST, BRIGHTON</td>
<td>Fence on a lot &gt; 500 m2</td>
<td>01/04/19</td>
</tr>
<tr>
<td>5.2019 192.1</td>
<td>325 New ST, BRIGHTON</td>
<td>Advertising Signs</td>
<td>02/04/19</td>
</tr>
<tr>
<td>5.2019 176.1</td>
<td>17 Garnet-Leary AVE, BLACK ROCK</td>
<td>Remove Destroy or Lop Native Vegetation</td>
<td>02/04/19</td>
</tr>
<tr>
<td>5.2019 177.1</td>
<td>30 Hornby ST, BRIGHTON EAST</td>
<td>2 New Dwellings</td>
<td>02/04/19</td>
</tr>
<tr>
<td>Application</td>
<td>Property Address</td>
<td>Development Details</td>
<td>Received</td>
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<tr>
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<td>-----------</td>
</tr>
<tr>
<td>5.2019 179.1</td>
<td>106 Church ST, BRIGHTON</td>
<td>Fence on a lot &gt; 500 m²</td>
<td>02/04/19</td>
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<tr>
<td>5.2019 181.1</td>
<td>8 Cluden ST, BRIGHTON EAST</td>
<td>1 Dwelling - Alts &amp; Adds - SBO</td>
<td>03/04/19</td>
</tr>
<tr>
<td>5.2019 190.1</td>
<td>7 Normandy ST, BRIGHTON</td>
<td>1 Dwelling - Alts &amp; Adds - DDO and 1 Dwelling - Alts &amp;</td>
<td>03/04/19</td>
</tr>
<tr>
<td></td>
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<td>Adds - Heritage</td>
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**Southern**

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**Total:** 102
### Planning Applications Summary - Councillor Bulletin

Determined from 1/04/2019 to 30/04/2019

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**Item 4.4 – Matters of Decision**

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| 5.2018.861.3        | 36 - 40 Graham RD, HIGHT 3190  
Retirement Village - New Use & Building and Carparking and Vary/Remove | Amended Permit Granted - Delegate | 30/04/2019 |
Office - New Building & Use and Reduction/Waiver of Car Park Requiremene | Notice of Decision Granted - Council | 30/04/2019 |
| 5.2018.571.1        | 11 Chandos ST, CHELTENHAM 3192  
Warehouse - New Building & Use | Notice of Decision Granted - Delegate | 30/04/2019 |
| 5.2018.724.1        | 8 Volland St, BRIGHTON EAST 3197  
2 New Dwellings | Notice of Decision Granted - Council | 30/04/2019 |
| 5.2019.281.1        | 31 Abbott ST, SANDRINGHAM 3191  
Residential Bldg - New Use & Building | Notice of Decision Granted - Delegate | 30/04/2019 |
| 5.2019.351.1        | 1 Hudson ST, HAMPTON 3188  
1 Dwelling, Alts & SBD | Permit & Plans Granted - Delegate | 30/04/2019 |
| 5.2019.201.1        | 331 Reserve RD, CHELTENHAM 3192  
Demolition of Building in HO | Permit & Plans Granted - Delegate | 30/04/2019 |
| 5.2012.132.3        | 1/279 Bay ST, BRIGHTON 3186  
Restaurant - Alts/Addts to Bldg & Use | Application Withdrawn | 01/04/2019 |
| 5.2017.259.3        | 16 St Andrews ST, BRIGHTON 3186  
Dwellings and Fence on a lot > 500 m2 and Carparking | Amended Permit Granted - Delegate | 01/04/2019 |
| 5.2018.330.2        | 6 Head ST, BRIGHTON 3186  
1 Dwelling - Alts & DDO | Amended Permit Granted - Delegate | 01/04/2019 |
| 5.2018.791.1        | 34 Durrant ST, BRIGHTON 3186  
1 Dwelling - Alts & Heritage | Permit Granted - Delegate | 03/04/2019 |
| 5.2019.145.1        | 7 Normanby ST, BRIGHTON 3186  
1 Dwelling, Alts & Addts - DDO | Application Withdrawn | 03/04/2019 |
| 5.2019.152.1        | 9 May ST, BRIGHTON 3186  
Fence on a lot > 500 m2 | Permit & Plans Granted - Delegate | 03/04/2019 |
| 5.2019.773.1        | 2/93 Hampton ST, BRIGHTON 3186  
Subdivision of land (1 to 9 Lots) | Permit Granted - Delegate | 03/04/2019 |
| 5.2017.289.2        | 348 North RD, BRIGHTON EAST 3187  
1 Additional Dwelling on a Lot | Notice of Decision Granted - Delegate | 04/04/2019 |
| 5.2018.773.1        | 12 Lawrence ST, BRIGHTON 3186  
1 Dwelling - Alts and DDO | Permit Granted - Delegate | 04/04/2019 |
| 5.2018.856.1        | 119 Cohn ST, BRIGHTON 3186  
1 Dwelling - Alts & DDO | Permit Granted - Delegate | 04/04/2019 |
| 5.2019.121.1        | 214A Esplanade, BRIGHTON 3186  
1 Dwelling - Alts & DDO | Notice of Decision Granted - Delegate | 04/04/2019 |
| 5.2019.961.1        | 11/12 Manor ST, BRIGHTON 3186  
1 Dwelling - Alts & Addts - DDO | Permit & Plans Granted - Delegate | 04/04/2019 |
| 5.2019.161.1        | 5 Wragboll CRT, BRIGHTON 3186  
1 Dwelling, Alts & SBD | Permit & Plans Granted - Delegate | 04/04/2019 |
| 5.2019.772.1        | 81 Halifax ST, BRIGHTON 3186  
Vary/Remove Easements & Other Restrictions | Permit Granted - Delegate | 04/04/2019 |
| 5.2018.769.1        | 7 Bleeby AVE, BRIGHTON 3186  
2 or More Additional Dwellings on a Lot | Permit Refused - Delegate | 05/04/2019 |
| 5.2019.591.1        | 53 Crough ST, BRIGHTON EAST 3187  
Fence on a lot > 500 m2 | Permit & Plans Granted - Delegate | 08/04/2019 |
| 5.2019.176.1        | 17 Garnet-Leary AVE, BLACK ROCK 3193  
Remove/Destroy or Lop Native Vegetation | Permit Refused - Delegate | 08/04/2019 |
| 5.2017.6.2          | 26 - 30 Grosvenor ST, BRIGHTON 3186  
Education Centre - Alts/Addts to Bld Only | Amended Permit Granted - Delegate | 09/04/2019 |
| 5.2019.190.1        | 7 Normanby ST, BRIGHTON 3186  
1 Dwelling - Alts & DDO and 1 Dwelling - Alts & Heritage | Permit & Plans Granted - Delegate | 09/04/2019 |
| 5.2019.775.1        | 34 Wall ST, BRIGHTON 3186  
Subdivision of Land (1 to 9 Lots) | Permit Granted - Delegate | 09/04/2019 |
| 5.2003.311.3        | 785 Hampton ST, BRIGHTON 3186  
1 Dwelling - Alts & DDO | Amended Permit Granted - Delegate | 10/04/2019 |
| 5.2017.525.2        | 9 Adamson ST, BRIGHTON 3186  
6 - 10 New Dwellings | Amended Permit Granted - Delegate | 10/04/2019 |
| 5.2018.764.1        | 16 Noonan CL, BRIGHTON 3186  
Subdivision of Land (1 to 9 Lots) | Application Withdrawn | 11/04/2019 |
| 5.2018.92.2         | 36 Cochrane ST, BRIGHTON 3186  
1 Dwelling - Alts & Heritage | Amended Permit Granted - Delegate | 12/04/2019 |
| 5.2019.411.1        | 101 Church ST, BRIGHTON 3186  
Advertising Signs | Application Lapsed | 12/04/2019 |
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<td>3/12 St James Park DVE, BRIGHTON 3186 1 Dwelling - Alts &amp; Adds on Lot &lt; 500m²</td>
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<td>5.2014.665.2</td>
<td>6A Cole ST, BRIGHTON 3186 Dwelling(s) Other - Alts/Adds, Bld Only</td>
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<td>5.2017.452.3</td>
<td>42 Murphy ST, BRIGHTON 3186 1 Additional Dwelling on a Lot</td>
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**Southern**

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### VCAT Determined Appeals from - 1/04/2019 to 30/04/2019

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<td>P946/2018</td>
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<td>Catherine Hickey &amp; Shane Neaves</td>
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<td>Norton Homes Pty Ltd</td>
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<tr>
<td>VCAT Member</td>
<td>Laurie Hewet</td>
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<td>10/01/2019</td>
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#### Appeal type

Notice of Decision to Grant a Permit

#### Plans substituted

Yes

#### Plans substituted (prior to hearing)

Yes

#### VCAT determination

Varied Permit to Issue

#### LGPRF outcome

AFFIRMED

#### Comments:

The Tribunal, in an order received by Council on 11 April 2019, determined to vary the decision of the Responsible Authority and directed that a planning permit be granted for the use of the land for research and development (industry), buildings and works including the construction of one dwelling on a lot less than 300 square metres in area, a reduction in the provision of car parking requirements and advertising signage.

The Tribunal, in an interim order dated 10 January 2019, 'concluded that the proposal is acceptable other than for the impact of the proposed building on the north facing window in the neighbouring property to the south' (paragraph 2) and provided the permit applicant an opportunity to prepare amended plans to address the Tribunal’s concerns about this aspect of the proposal.

The permit applicant took advantage of the opportunity provided by the Tribunal and prepared amended plans that were circulated to the other parties, who were then provided with the opportunity to comment on the amended plans. Significantly, as noted by the Tribunal, ‘the amended plans now demonstrate that the proposed first floor level complies with standard A13 of Clause 54.04-4’ (paragraph 6) and that ‘because the standard is met the objective which is to allow adequate solar access to existing north-facing habitable room windows is also met’ (paragraph 8).
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<tr>
<td>Respondents</td>
<td>P Roland; L Hamilton-Ficsher; H &amp; R Barrow; J &amp; N Rigopoulos; B Rowe; S &amp; N King; J &amp; B Thomson; P &amp; P Mizera; M Hunt</td>
</tr>
<tr>
<td>VCAT Member</td>
<td>Helen Gibson</td>
</tr>
<tr>
<td>Date of hearing</td>
<td>12/03/2019</td>
</tr>
<tr>
<td>Date of order</td>
<td>17/04/2019</td>
</tr>
<tr>
<td>Proposal</td>
<td>Construction of a three storey building containing five dwellings over basement car parking in a General Residential Zone Schedule 2 and Design and Development Overlay Schedule 10</td>
</tr>
<tr>
<td>Officer recommendation/Delegate determination</td>
<td>Notice of decision</td>
</tr>
<tr>
<td>Council determination</td>
<td>REFUSAL</td>
</tr>
</tbody>
</table>

**Appeal type**  Refusal to Grant a Permit  
**Plans substituted** Yes  
**VCAT determination** Permit to Issue  
**LGPRF outcome** SET ASIDE  

**Comments:**

A proposal of construction of a three storey building plus basement including five apartments was applied on 22 March 2018.

The subject site sits within the General Residential Zone Schedule 2 (GRZ2) and is subject to Design and Development Overlay Schedule 10 (DDO10) under the Bayside Planning Scheme. GRZ2 applies to moderate residential growth areas denoted within the various Activity Centres including the Bay Street Activity Centre. DDO10 relates specifically to the built form standards of the Bay Street Activity Centre. Officer reported this application back to the planning committee to recommend an approval subject to conditions. Committee refused the application based on the neighbourhood character grounds.

An order was received on 15 October 2018 advising an appeal under s77 of the Planning and Environment Act 1987 has been lodged. 8 objecting parties joined in the hearing.

A compulsory conference was held on 22 January 2019 and no outcome was reached. The applicant formally substitute the plan to address most of Council’s conditions as recommended by officers. The application was sent to hearing on 12 March 2019 for 3 days.
In the hearing, the following issues were considered:

- **Strategic Context**
  The tribunal acknowledged its strategic location which is suitable for a higher density development as well as the currently planning policy clearly emphasises on directing new medium density housing to Major Activity Centres. Tribunal concludes that the proposed development fits appropriately into the strategic context of the area.

- **Neighbourhood Character**
  Tribunal acknowledged that the dwellings within proximity to the subject site in Montclair Avenue are single storey dwellings with many restricted by a single dwelling covenant. Whilst it could be said that the existing neighbourhood character within the immediate vicinity of the subject site is that of single storey, single dwellings on a lot the provisions of the Bayside Planning Scheme indicate that whilst they are likely to remain as single dwellings, this does not necessarily mean that their built form will remain as single storey. The planning scheme through the application of the GRZZ and DDO10 provides clear expectation that in terms of built form dwellings within the area may or are expected to change significantly. Tribunal further agrees with Council’s recommendation including a quotation from the officers’ report that ‘a failure to acknowledge the contradiction between the Neighbourhood Character Precinct B5 and the inclusion of the site within the Bay Street Activity Centre and DDO10 would result in an assessment whereby one would effectively ‘have one foot on the accelerator and one foot on the brake’. I.e., the intensive development sought under the DDO10 (and various other State and Local Policy) would be severely restricted by the objectives of Clause 22.06 (Neighbourhood Character Policy) that effectively requires development to respect the surrounding largely single and double storey housing stock.’

- **Built Form**
  The tribunal’s decision agrees with officers’ recommendation that the proposal responds appropriately to Precinct B5 Guidelines which encourages modern contemporary architectural responses by re-interpreting existing building forms.

- **Impact on adjoining properties**
  The tribunal’s decision further agrees with officers’ recommendation that the proposal complies with most of ResCode standards which offers acceptable amenity impacts on adjoining properties.

- **Landscaping**
  The landscape plan indicates an appropriate level of landscaping can be achieved that will make a significant contribution to Montclair Avenue meeting the requirements of DDO10. The proposal includes 12 trees to be planted in natural soil volumes, together with three trees in raised planters. In addition, a palette of shrubs, ground covers and climbing plants has been proposed to allow for a complete garden picture to be created. Protection is also to be provided to the Olive Tree close to the southern boundary.

- **Traffic**
  Tribunal’s decision does not believe the potential traffic generation will cause any unreasonable impacts to the neighbourhood and in their view that there is no traffic engineering or car parking issue that would warrant a refusal of the permit.

In summary, Tribunal agrees with most of officers’ recommendation and set the current Committee’s decision aside to direct a permit to be issued.
<table>
<thead>
<tr>
<th>Subject land</th>
<th>2 Hurlstone ST, BRIGHTON EAST</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application no.</td>
<td>2016.412.1</td>
</tr>
<tr>
<td>VCAT reference no.</td>
<td>P444/2019</td>
</tr>
<tr>
<td>Applicant</td>
<td>Richard and Kristin Bailey</td>
</tr>
<tr>
<td>Referral Authority</td>
<td>N/A</td>
</tr>
<tr>
<td>Respondents</td>
<td>Bayside City Council</td>
</tr>
<tr>
<td>VCAT Member</td>
<td>M Blackburn</td>
</tr>
<tr>
<td>Date of hearing</td>
<td>27/03/2019</td>
</tr>
<tr>
<td>Date of order</td>
<td>24/04/2019</td>
</tr>
<tr>
<td>Proposal</td>
<td>Alterations and additions of a single dwelling on a lot less than 500 square metres</td>
</tr>
<tr>
<td>Officer recommendation/Delegate determination</td>
<td>Refused</td>
</tr>
</tbody>
</table>

**Council determination**

N/A

**Appeal type**

S149

**Plans substituted (prior to hearing)**

Yes

**VCAT determination**

Secondary Consent approved

**LGPRF outcome**

SET ASIDE

**Comments:**

An application to amend the endorsed plans and include a swimming pool was refused by Council. Council’s was concerned that the location of the pool would render a large Lebanese cedar tree unviable as the pool is proposed to be constructed within the Structural Root Zone of this tree. This tree makes a significant contribution to the neighbourhood character of the area. The applicant submitted that construction of the pool would not render the tree unviable, and provided evidence from an arborist that despite the SRZ encroachment, the tree could remain healthy.

Ultimately, VCAT agreed with the evidence of the applicant’s arborist and set aside Council’s decision, allowing the pool to be constructed.
Subject land: 60 Lynch CRES, BRIGHTON
Application no.: 2018.386.1
VCAT reference no.: P408/2019
Applicant: David Lederer
Referral Authority: N/A
Respondents: Keen Planning

VCAT Member: Helen Gibson
Date of hearing: 2/04/2019
Date of order: 2/04/2019
Proposal: Neighbourhood Residential Zone Schedule 3: Construction of two dwellings on a lot over a basement car park including a front fence in excess 1.2m building or carry out works including a fence

Officer recommendation/ Delegate determination: Notice of decision

Council determination: N/A

Appeal type: Notice of Decision to Grant a Permit
Plans substituted (prior to hearing): No

VCAT determination: Appeal Withdrawn
LGPRF outcome: AFFIRMED

Comments:

The application was appealed under s80, objector appeal under section 82 of the Planning and Environment Act 1987. The objector believed one of his trees should be protected by a permit condition.

Now the appeal has been withdrawn given an agreement has been reached by both parties.

The applicant has lodged an s72 amendment to include the requested condition as per the agreement.
<table>
<thead>
<tr>
<th>Subject land</th>
<th>5 Cromer RD, BEAUMARIS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application no.</td>
<td>2018.167.1</td>
</tr>
<tr>
<td>VCAT reference no.</td>
<td>P2528/2018</td>
</tr>
<tr>
<td>Applicant</td>
<td>Graeme Todd</td>
</tr>
<tr>
<td>Referral Authority</td>
<td>N/A</td>
</tr>
<tr>
<td>Respondents</td>
<td>Lowe Constructions</td>
</tr>
<tr>
<td>VCAT Member</td>
<td>Geoffrey Code</td>
</tr>
<tr>
<td>Date of hearing</td>
<td>3/04/2019</td>
</tr>
<tr>
<td>Date of order</td>
<td>3/04/2019</td>
</tr>
<tr>
<td>Proposal</td>
<td>Construction of two (2) double storey dwellings and a front fence exceeding a height of 1.2m</td>
</tr>
<tr>
<td>Officer recommendation/ Delegate determination</td>
<td>Notice of decision</td>
</tr>
<tr>
<td>Council determination</td>
<td>N/A</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Appeal type</th>
<th>Notice of Decision to Grant a Permit</th>
</tr>
</thead>
<tbody>
<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 subject site is located within Neighbourhood Residential Zone (Schedule 3), Design and Development Overlay (Schedule 1) and Vegetation Protection Overlay (Schedule 3).

On 22 November 2018 Council issued a Notice of Decision to Grant a permit for the construction of two dwellings on a lot and a front fence. Pursuant to Section 82 of the Planning and Environment Act, 1987 an application for Review was lodged against Council’s decision by the objector to the application. The application was scheduled for a hearing on 5 April 2019.

Without prejudice plans were circulated in advance of the hearing adjusting the building footprint of one of the dwellings on the site and thus increasing its front setback from Cromer Road. Through private mediation between the permit applicant and applicant for review an agreement was reached on the amended front setback proposal. A Consent Order was reached in respect of the matter between all parties, including Council on 2 April 2019 agreeing to the changes and subject to conditions listed in the Consent Order.

The hearing was vacated. By Order of VCAT a permit issued on 3 April 2019.
Subject land: 15 Centre RD, BRIGHTON EAST
Application no.: 2017.285.1
VCAT reference no.: P1838/2018
Applicant: Halcyon Senior Citizens Village Society Inc
Referral Authority: VicRoads
Respondents: N/A

VCAT Member: Tracey Bilston-McGillen
Date of hearing: 5/04/2019
Date of order: 5/04/2019
Proposal: Buildings and works to allow the staged redevelopment of the existing Retirement Village to accommodate a total of 152 independent living units within three separate buildings (maximum four storeys in height), a reduction in the associated car parking requirements and alteration to access to a road in a Road Zone, Category 1

Officer recommendation/ Delegate determination: Notice of decision

Council determination: NOTICE OF DECISION

Appeal type: Conditions

Plans substituted (prior to hearing): No

VCAT determination: Varied Permit to Issue
LGPRF outcome: AFFIRMED

Comments:

This was an Application for Review pursuant to Section 80 of the Planning and Environment Act 1987 to review the conditions contained within the permit.

Specifically, the permit application sought a review of Conditions 1k, 8, 12f, 12g, 19 and 31.

These conditions are as follows:

1k) The provision of an additional 20 on-site parking spaces to be appropriately located on the site. These additional car spaces must be located behind Building A and concealed from the street to the satisfaction of the Responsible Authority.

8. Before the occupation of the development, the area(s) set aside for the parking of vehicles and access as shown on the endorsed plans must be:
   a) Constructed;
   b) Property 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;

All to the satisfaction of the Responsible Authority.

12f) Provision of a shuttle bus for the occupants of the facility operating 7 days a week and at least 3 times per day. The Car Parking Management Plan must clearly outline proposed hours of operation of the shuttle bus, the size of the shuttle bus, capacity of shuttle bus, provision of services and location of pick
up and drop off and details if the shuttle bus is to be kept on site, to the satisfaction of the Responsible Authority.

12g) The shuttle bus service must be operational prior to the occupation of the site.

19) Prior to the endorsement of plans pursuant to Condition 1, 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.

The Tree Management Plan must be specific to the trees shown on the Tree Protection Plan, in accordance with AS4970-2009, prepared by a suitably qualified Arborist and provide details of tree protection measures that will be utilised to ensure all trees to be retained remain viable post-construction. Stages of development at which inspections are required to ensure tree protection measures are adhered to must be specified.

The Tree Protection Plan must be in accordance with AS4970-2009, be drawn to scale and provide details of:

a) The Tree Protection Zone and Structural Root Zone 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.

b) The location of tree protection measures to be utilised.

31. Prior to endorsement of the plans 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.

The Tribunal in its Order dated 5 April 2019 determined to vary the decision of the Responsible Authority as follows:

In relation to the review of Conditions 1k) and 12h), the Tribunal confirmed that the proposal achieved the required number of spaces as outlined in Clause 22.07 (Discretionary Uses in Residential Areas) and the proposed number of spaces would be sufficient to service the long term resident parking needs. Moreover it was confirmed that after Amendment VC148, Clause 52.06 would no longer require any visitor spaces and as such, the additional requirement for visitor spaces could not be warranted.

In relation to the proposed shuttle bus service (Conditions 12f and 12g), the Tribunal confirmed that ‘existing and future residents are already serviced by the PPTN and by the existing community bus. There is no material before me that suggests that these services are not enough for present or future resident needs. I find that a private shuttle bus is not warranted in these circumstances.’ (paragraph 25 of the Order).

The permit applicant sought to amend Condition 19 to require the provision of a tree management plan prior to the commencement of buildings and works rather than prior to the endorsement of plans. This condition was retained in its current form by the Tribunal.

The permit applicant also sought the deletion of Condition 31 which requires the provision of a development levy under the Development Contribution Plan Overlay. The condition was not deleted by the Tribunal however the wording of the condition was subsequently amended.
Subject land  10 Mariemont AVE, BEAUMARIS
Application no.  2017.761.1
VCAT reference no.  P2073/2018
Applicant  T & C McGregor
Referral Authority  N/A
Respondents  N/A
VCAT Member  Alison Slattery
Date of hearing  9/04/2019
Date of order  9/04/2019
Proposal  Construction of two dwellings, construction a front fence over 1.2m in height and removal of native vegetation retrospectively
Officer recommendation/ Delegate determination  Permit granted

Council determination  N/A

Appeal type  Conditions
Plans substituted  No
(prior to hearing)
VCAT determination  Varied Permit to Issue
LGPRF outcome  N/A

Comments:

Council issued a permit on 23 August 2018 subject to conditions. The applicant lodged a section 80 application under the Planning and Environment Act 1987 to review the following conditions:
a) Garage to dwelling 2 setback 2.0m from east boundary.
d) The existing crossovers removed, replaced with new crossovers, with a maximum width of 3.0m.

The applicant approached Council to discuss alternative options. Applicant served an amended plan which provides an alternative solution to address Condition 1a) and Council agreed with the proposal. Condition 1d), the applicant agreed to not challenge it.

A consent order reached on 10 April 2019 and a varied permit has been issued.
<table>
<thead>
<tr>
<th>Subject land</th>
<th>52 Weatherall RD, CHELTENHAM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application no.</td>
<td>2018.732.1</td>
</tr>
<tr>
<td>VCAT reference no.</td>
<td>P2574/2018</td>
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<tr>
<td>Applicant</td>
<td>Samuel James Howie</td>
</tr>
<tr>
<td>Referral Authority</td>
<td>N/A</td>
</tr>
<tr>
<td>Respondents</td>
<td>N/A</td>
</tr>
<tr>
<td>VCAT Member</td>
<td>K Birtwistle</td>
</tr>
<tr>
<td>Date of hearing</td>
<td>24/04/2019</td>
</tr>
<tr>
<td>Date of order</td>
<td>24/04/2019</td>
</tr>
<tr>
<td>Proposal</td>
<td>Removal of one (1) tree native to Australia</td>
</tr>
<tr>
<td>Officer recommendation/Delegate determination</td>
<td>Refusal</td>
</tr>
<tr>
<td>Council determination</td>
<td>N/A</td>
</tr>
</tbody>
</table>

**Appeal type**

Refusal to Grant a Permit

**Plans substituted (prior to hearing)**

No

**VCAT determination**

Permit to Issue

**LGPRF outcome**

N/A

**Comments:**

Council refused the removal of a native tree within the rear of the subject site. At the hearing, it became apparent the applicant had not submitted enough information to convince Council to support the removal of the tree.

VCAT adjourned the hearing and provided the applicant 3 weeks to submit a QTRA regarding the likelihood of failure of the tree, and diagrams which illustrated how much of the tree could be removed as of right, large sections of the tree overhung the dwelling and can be removed without a permit.
Subject land: 142 Esplanade, BRIGHTON
Application no.: 2016.87.1
VCAT reference no.: P3006/2017
Applicant: S Chapman, K Millett & Others
Referral Authority: VicRoads
Respondents: Eileen Lui

VCAT Member: R Naylor & K Birtwistle
Date of hearing: 21/03/2019
Date of order: 30/04/2019
Proposal: Construction of a two storey residential building on a lot comprising
4 apartments with basement car parking, attic and alteration of an
access to a road in a Road Zone Category 1

Officer recommendation/
Delegate determination: Notice of decision

Council determination: NOTICE OF DECISION

Appeal type: Conditions
Plans substituted (prior to hearing): No
VCAT determination: Refused (No Permit to Issue)
LGPRF outcome: SET ASIDE

Comments:
The Tribunal, in an order dated 30 April 2019, refused an application for a planning permit, overturning Council’s decision to issue a notice of decision to grant a planning permit formed at the Planning and Amenity Committee meeting on 11 December 2017. The application sought the construction of a two storey building containing four dwellings with basement car parking and roof top terraces and alterations to the access of a road in a Road Zone, Category 1.

The permit applicant formerly substituted amended plans prior to the Tribunal hearing. The changes to the built form shown in the amended plans include a redesign of the basement layout, alterations to the ground and first floor plans, replacement of the attics with roof top terraces and subsequent redesign of all elevations and the facade of the building. Council’s officers formed a position of support for the changes shown in the amended plans.

The Tribunal ultimately determined to refuse the application based on ‘the extent of built form deep into the site will result in unreasonable visual bulk to the adjoining properties’. This was found to be ‘inconsistent with the existing neighbourhood character and contrary to the local policy guidance about future or preferred
neighbourhood character for this area’. The Tribunal noted that ‘a redesign of the proposal is required to address the sensitive interfaces with the adjoining properties’.
VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL
ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P3006/2017
PERMIT APPLICATION NO. 5/2016/87/1

CATCHWORDS
Two storey building containing four dwellings, visual bulk to neighbouring properties, vehicle access and sightlines, roof decks, limiting overlooking, changes to planning application part of the planning process

APPLICANTS
- Scott Chapman
- Kathryn Millett & others

RESPONSIBLE AUTHORITY
- Bayside City Council

RESPONDENT
- Eileen Lui

REFERRAL AUTHORITY
- VicRoads

SUBJECT LAND
- 142 & 142A Esplanade, Brighton

WHERE HELD
- Melbourne

BEFORE
- Rachel Naylor, Senior Member
- K Birtwistle, Member

HEARING TYPE
- Hearing

DATES OF HEARING
- 21 & 22 March 2019

DATE OF ORDER
- 30 April 2019

CITATION
- Chapman v Bayside CC [2019] VCAT 624

ORDER
No permit granted
1. In application P3006/2017 the decision of the responsible authority is set aside.
2. In planning permit application 5/2016/87/1 no permit is granted.

Rachel Naylor
Senior Member

K Birtwistle
Member
APPEARANCES

For Scott Chapman
MR S Chapman

For Kathryn Millett & Others
Ms K Millett, Mr K Riley and Mr M Scott

For Bayside City Council
Mr J Kane, Barrister of counsel by direct brief

For Eileen Liu
Mr P O’Farrell of counsel by direct brief
He called the following expert witnesses:
• Mr V Gnanakone, traffic engineer of One Mile Grid; and
• Mr T McBride-Burgess, town planner of Contour Consultants.

For VicRoads
No appearance

For Mena & Peter Fekry
Messrs M & P Fekry
INFORMATION

Land description

The site
The site is located on the eastern side of Esplanade, opposite Brighton Beach, in Brighton. It is located approximately 500 metres from the Church Street activity centre. The site comprises two lots with a combined width of 16.5 metres, a depth of 56.9 metres, and an overall site area of 926 sq.m.

The site is currently developed with two, two storey dwellings under a common roof. The dwellings have frontage to the Esplanade with vehicle access currently available at both the front and the rear of the site. There are existing garage/carpark structures on the site adjacent to the rear laneway.

The surrounds
There is a laneway along the rear of the site that begins at Wellington Street and ends generally in line with the southern boundary of this site. This laneway then connects into the driveway of the units at No. 140 Esplanade. This shared driveway is private land that is commonly owned by the units at No. 140.

The public laneway has a number of units and a tennis court built along its east side.

Nos. 144 and 144A Esplanade are two, two storey dwellings under a common roof on the north side of the site. Nos. 144 and 144A have a combined rear secluded private open space area.

The land at units 1 and 2, 140 Esplanade is currently vacant and there is a planning permit for the development of this land with two new attached double storey dwellings facing the Esplanade with roof decks and a basement car park accessed off No. 140’s shared driveway.

Units 3 and 4, 140 Esplanade are part one and part two storey houses oriented to northerly secluded private open spaces adjacent to the shared driveway.
| Description of proposal | Construction of a two storey building containing four dwellings with basement carparking. There are two dwellings on each floor level, built side by side in east-west direction along the site’s length. The dwellings on each level are generally mirror images of the other, with living areas at the front (taking advantage of the bayside views) and bedrooms at the rear.

The basement is accessed from a new double width crossover to the Esplanade. It contains 11 car spaces, storage areas for each dwelling and a bin storage room.

The building is contemporary with a pitched roof and an overall height of 8.1 metres. The first floor dwellings each have a roof deck accessed via a metal hatch. |
| Nature of proceedings | Applications under section 82 of the Planning and Environment Act 1987 – to review the decision to grant a permit. |
| Planning scheme | Bayside Planning Scheme |
| Zone and overlays | Neighbourhood Residential Zone Schedule 3 – Minimal Residential Growth Area (NRZ3) Design and Development Overlay Schedule 1 – Building Height Control Coastal (DDO1) Development Contributions Plan Overlay Schedule 1 (DCPO1) Adjoins a Road Zone Category 1 (RDZ1) |
| Permit requirements | Clause 32.08-6 – Construction of two or more dwellings on a lot in NRZ3 Clause 43.02-2 – Construction of a roof deck above a two storey building in DDO1 Clause 52.29 – Alteration of access to a road in RDZ1 |
| Tribunal inspection | An inspection of the site and the adjoining properties (who are parties to the proceeding) was undertaken after the hearing accompanied by the parties. An inspection of the surrounding area was also undertaken on the same day, which was unaccompanied. |
REASONS

WHAT IS THIS PROCEEDING ABOUT?

1. Eileen Liu (the permit applicant) proposes to develop a two storey building comprising four dwellings at Nos. 142 and 142A Esplanade, Brighton. In December 2017, Bayside City Council (Council) issued a Notice of Decision to Grant a Planning Permit (NOD) for the proposed development subject to a number of conditions.

2. Ms Millett, Mr Riley and Mr and Mrs Scott reside to the south of the site at units 3 and 4, 140 Esplanade. They have jointly lodged an application to review Council’s decision. They say the proposal will result in access issues with respect to their land, and that there are safety risks associated with any changes to the existing rear laneway configuration. Ms Millett and Mr Riley say that there will be the potential for overlooking and loss of privacy to their land, and that the proposal lacks detail about the exact building height proposed. Mr and Mrs Scott say that the proposal fails to comply with various clause 55 objectives and standards including those relating to neighbourhood character, site coverage, side and rear setbacks, overlooking and site services. They say the proposal will result in unacceptable visual bulk, particularly given existing vegetation along their common boundary with the site will be removed.

3. Mr Chapman resides to the north of the site and made submissions on behalf of himself and his uncle who reside at Nos. 144 and 144A Esplanade. Mr Chapman says that the proposal is an overdevelopment of the site, and the building setbacks and secluded private open space areas are unacceptable. He also says that the minimum garden area is not met, and the proposal will result in vehicle access safety impacts to his property as a result of the proposed fencing at the front of the site.

4. Messrs Fekry appeared for units 1 and 2, 140 Esplanade at the start of the hearing, wishing to be heard. They did not object to this proposal until 20 February 2019 by lodging an objection directly with the Council. This objection was not served on any other party to this proceeding or the Tribunal. After hearing from the parties, we decided not to join Messrs Fekry as a party to the proceeding, but allowed them the opportunity to state their concerns based on the objection made to the Council. They are concerned about overlooking, overshadowing, the need for a spray at the Esplanade for vehicle sightlines and queried the details of the proposed fencing along the common boundary.

5. It was common ground amongst the parties that this site is suitable for redevelopment with more than one dwelling. The site’s suitability includes

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1 The submissions and evidence of the parties, the supporting exhibits given at the hearing, and the statements of grounds filed; have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons.
its locational attributes of being proximate to a large activity centre, being on a main road, being devoid of any heritage or landscape constraints, and being within close proximity to the foreshore and beach, public transport and existing community infrastructure. Having made this finding, it is also important and necessary to explain that this site is not in an area identified through planning policy as an area encouraged or expected to accommodate increased housing densities. Hence, whilst the site is a suitable candidate for medium density housing, there is no planning policy guidance to suggest that there is a desire or necessity for four dwellings on this site.

6 The key issue in this case is whether this particular design is an acceptable response to this site having regard to the physical and planning policy contexts. How many dwellings can be accommodated within an acceptable design response is a matter for the Applicant.

7 For reasons that we will explain, we have decided to set aside the Council’s decision and direct that no permit issue. We find the extent of built form deep into the site will result in unreasonable visual bulk to the adjoining properties. This is inconsistent with the existing neighbourhood character and contrary to the local policy guidance about future or preferred neighbourhood character for this area. A redesign of the proposal is required to address the sensitive interfaces with the adjoining properties.

**DESIGN RESPONSE TO NEIGHBOURHOOD CHARACTER**

8 Planning policy requires development to respond to its physical context and to achieve good quality environments through good urban design. Design objectives seek development that contributes positively to local urban character, and minimises detrimental impacts on neighbouring properties.

9 The permit applicant submits the proposed design introduces new dwellings into this neighbourhood without undermining its existing or future character; and that the layout and form of the proposal is sympathetic to the area and does not result in unacceptable off-site amenity impacts. The residents disagree.

10 The Neighbourhood Residential Zone (NRZ) purpose includes recognising areas of predominantly single and double storey residential development, and managing and ensuring that development respects identified neighbourhood character or landscape characteristics. Schedule 1 to the NRZ varies a few clause 55 standards including seeking a maximum 50% site coverage and greater side and rear setbacks.

**Existing character**

11 There are a mix of architectural styles in this neighbourhood as well as a mix of building types including detached and attached houses, units, townhouses and apartments. The predominant building height, particularly along the Esplanade, is two storeys. Vegetation is generally subservient to the buildings along the Esplanade frontage as properties seek to capitalise...
on the Port Phillip Bay views. However, vegetation remains evident, particularly adjacent to side and rear property boundaries. Examples of this can be seen on the site at present as well as in some of the surrounding properties.

Aerial view of site (with green marker) and surrounding properties

**Preferred future character**

12 The site and surrounds are located within Precinct C1 of the Neighbourhood Character local planning policy² and the preferred character statement is:

The mix of dwelling styles, including a substantial presence of pre WW2 dwellings, sit within spacious gardens and do not dominate or overwhelm the streetscape. Garden plantings, and well-articulated façades and roof forms, assist in minimising the dominance of buildings from within the street space, as well as providing visual interest. Front setbacks allow planting of substantial trees and shrubs and side setbacks on both sides maintain a sense of spaciousness in the area. Trees are a mixture of exotic and natives, with an increasing frequency of traditional coastal and indigenous species, strengthening the visual connection of the area with the coast. Open style front fences retain an ability to view buildings from the street. Buildings fronting the foreshore reflect their setting and provide a visually attractive built form interface with the reserve.

² At Clause 22.06
Streetcapes presentation

13 The presentation of this proposal to the foreshore is contemporary. The Council submits the architectural expression respects the prevailing roof form and the materiality is consistent with the modern materials evident along the Esplanade. The Applicant provided further details of the materials during the accompanied inspection (TP41 Rev D), and these are acceptable.

14 The building is set back from the street allowing sufficient room for the planting of substantial trees and shrubs. Given the mix of architectural styles and these (already described) aspects of the design, we find the streetscape interface is an acceptable design response to the existing and preferred neighbourhood character.

![Architectural impression of streetscape presentation](image)

A sense of spaciousness

15 The Council and the permit applicant submit the proposal complies with the varied clause 55 standards relating to the front setback and site coverage. Mr McBride-Burgess acknowledges not all of the sides of the building meet the varied standard B17, but considers the objective is met as No. 140 has its communal driveway abutting the site and there are already other examples of developments within the rear of lots in this immediate...
neighbourhood. He also considers the articulation and landscaping opportunities sufficiently address any perceived visual bulk impact.

16 The Council acknowledges that there is visual separation evident between buildings in this neighbourhood, particularly along the Esplanade. The Neighbourhood Character policy seeks buildings in spacious garden settings. The policy seeks side setbacks on both sides to maintain a sense of spaciousness in the area, and a mix of exotic and native coastal and indigenous trees to strengthen the visual connection of the area with the coast.

17 The residents are concerned about the extent of development in the rear of the site, submitting that it is creating an unreasonable visual bulk. The neighbours in units 3 and 4 of No. 140 have their dwellings and secluded private open space areas oriented to the north, which means their outlook is towards this site. At present, there are trees, shrubs and other vegetation in the rear of this site and along the common boundary with No. 140’s shared driveway, creating a vegetated outlook for these units. The proposed design changes this outlook significantly.

18 The design contains two dwellings on each floor level, one on the north side and one on the south side. The design of each dwelling on each floor level is generally a mirror image of the other. Similarly, the design of the dwellings on the ground floor and the first floor are very similar. The west (front) end comprises open plan kitchen and living areas. There is then a courtyard/lightwell, followed by bedrooms. In the case of the ground floor dwellings, there is a rumpus area on the east side of the courtyards before the bedrooms begin. The first floor plan extract above illustrates that the first floor dwellings are effectively one room shorter at the rear than the ground floor dwellings (because they do not include a rumpus area).
19 Despite some variation in materials and finishes in the middle section of each side wall, the overall presentation is of a two storey form. This is because the differences in the side setbacks at each floor level are minor and the materials and finishes do not sufficiently articulate and break up the extent of the building form. For example, on the south side, the front west end and the middle section have setback differences between ground and first floors of 400mm, and the rear east end is setback 3.29m at ground floor and 3.89m at first floor.

20 The proposed side setbacks of the upper floor do not all meet the varied B17 standard. The north side should be set back between 3.56 and 3.74 metres whereas the proposed setbacks are 2.06 to 3.8 metres. The south side should be setback between 3.56 and 3.62 metres whereas the proposed setbacks are 2.13 to 3.89 metres. In any event, we are of the opinion that there is more to assessing the visual bulk than just compliance with standard B17 (whether varied or not).

21 The proposed ground floor side setbacks include some decking and generally rectangular spaces with a width of primarily 2 to 2.4 metres followed by a smaller rear section that is about 3.2 metre wide. The rear setbacks are 3.8 to 4.0 metres, of which a significant proportion is proposed to be decked. There is no landscape plan for this proposal. The permit application material included a landscape plan, but the Council, Ms Millett and Mr Scott all submit the likelihood of being able to achieve tall trees/shrubs capable of screening the building is questionable given the difficulties faced in growing tall vegetation in this coastal environment.

22 We are not persuaded the proposed design responds in an acceptable manner to its context.

23 Whilst there are buildings across the length of some surrounding properties, they contain a mix of single and double storey forms as well as articulation, setbacks and secluded private open space areas that contain landscaping. All of which contribute to some softening of the views of the buildings. We are not persuaded this proposal achieves a similar outcome. This proposed built form has substantive sections that are lacking in articulation and modulation, and are not softened by any meaningful landscaping. It is a harsh design response to its sensitive interfaces, with no acceptable modulation of these impacts.

24 Whilst a two storey form that captures the views of the bay and foreshore is site responsiveness, any two storey development, particularly in the rear half of this site, needs to respond to the surrounding sensitive interfaces. In this case, we find the northern orientation of units 3 and 4 of No. 140 Esplanade to be particularly sensitive. We also find a development on this site should demonstrate its responsiveness to the shared secluded private open space at the rear of Nos. 144 and 144A Esplanade.

25 Visual bulk is the planning term often used to describe a negative impression of a building upon its surrounds. The acceptability of a visual...
bulk impact can be considered having regard to a range of factors such as
the setbacks of the various built form elements, the articulation of the
building including architectural expression, setbacks and materials and
finishes, and the landscaping opportunities that can assist to filter views of
the building.

26 Assessing visual bulk is a balancing exercise. Matters to be balanced
include the zone and planning policy expectations for change. The NRZ
allows for change but its purpose seeks to ensure respect for neighbourhood
count. Hence, this is not a residential zone where residential
development change is encouraged to a greater degree than respect for
neighbourhood character. Similarly, the relevant planning policies place no
particular emphasis on this neighbourhood undergoing change to such an
extent that the neighbourhood character is expected to change. The
preferred future character generally accords with the established character
in so far as buildings are evident as is landscaping, with a recognition that
landscaping is an element that contributes to the character. The preferred
future character seeks a sense of spaciousness. We are not persuaded this
proposal contributes to this character outcome.

27 The first floor of the proposed development extends for a depth of more
than 36 metres along its southern elevation (abutting No. 140), the rear part
of which is in reasonably close proximity to the secluded private open space
areas of units 3 and 4 of No. 140. The courtyard/void in the length of the
proposed building is not located at a point that provides any visual relief to
these sensitive interfaces. We are not persuaded that the shared driveway of
No. 140 sufficiently separates these sensitive interfaces from the site to
lesser the visual bulk impact. This communal driveway is not a wide space
and, overall, No. 140 is a slightly lower natural ground level than the site.
Our accompanied inspection revealed the existing building on the site as
well as the large house on No. 146 Esplanade are clearly visible from units
3 and 4 of No. 140. However, so too is the existing vegetation on the site
that assists to soften the visual presence of these buildings. The existing
vegetation is to be removed, so this advantage is being lost. In the absence
of a landscape plan for this proposal that is generally supported by the
Council, we are unable to find that future landscaping may assist to screen
the visual presence of the proposed building. We reiterate that the proposed
building will extend into the rear of this site with a form, height and mass
that is greater than surrounding development.

28 We considered whether a landscape plan for this proposal would address
our concerns. However, for the reasons already explained, there is a
balance to be struck in the development of this site between the detail of the
proposed building and the proposed landscaping opportunities. Hence,
more is required in terms of changes to the proposal than just the provision
of landscaping.

29 We considered whether the design could be modified through imposing
permit conditions or issuing an interim order allowing an opportunity to
redesign the development, particularly in the rear half of the site. However, all the dwellings in this development are oriented to face the bay with its bedrooms to the rear. Greater side setbacks generally and/or modifying the extent of the first floor across the site will impact upon the size of the dwellings (e.g. the number of bedrooms) and the useability of the remaining spaces. A redesign is necessary and it should include considering whether to include four dwellings in a development, and/or whether the rear of the development could or should include dwelling(s) that has/have no direct outlook to the foreshore.

ARE THERE ANY OTHER ISSUES?

30 The key reason why we have decided to set aside the Council’s decision is because of our concerns about the acceptability of the proposed building, particularly in the rear half of the site. Other issues were raised by the residents and we have decided to make findings about some of these to assist all parties in the event that another planning application is lodged with the Council to develop this site with more than two dwellings.

Esplanade vehicle access arrangements

31 Mr Chapman is concerned about the loss of the sightline that exists because there is no side fencing along the common boundary with this site for the first two metres or so. During the hearing, the permit applicant indicated it was happy to retain this existing opening, particularly as the proposed layout intends to have a front fence set back from the street frontage.

32 There is no land surveying information about how far back the existing side boundary fence is. We would not want to see the opportunities for landscaping, front fencing and the provision of appropriate secluded private open space on the site to be unreasonably affected by this offer. We generally support the offer to retain this arrangement, but suggest that it needs to be considered afresh with the knowledge of the existing setback and the proposed setback of this boundary fence, and what it means for the landscaping and fencing across the front of the site.

Rear splay in southeast corner

33 Units 3 and 4 of No. 140 want the rear splay between the north-south public laneway and their east-west shared driveway retained. This splay is part of the site and is located in its southeast corner.

34 Mr Guanakone’s evidence is that the splay is not necessary in terms of the vehicle safety or sightlines. He considers leaving the splay will not change the existing situation including vehicle safety. He also considers removing the splay will have no impact on vehicle safety or sightlines because only a handful of vehicles use it.

35 As No. 140’s shared driveway is private land, this is not a situation where regular usage of this corner would be expected. We agree with the permit applicant’s submission that the splay is probably a private issue for the land.

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owners to resolve, particularly as Mr Guanakone’s evidence is that vehicle access is acceptable without the splay. Nevertheless, the permit applicant acknowledges the only impact upon the proposed development by keeping the splay is that it reduces the size of the private open space area for the southern ground floor dwelling. Whether that impact is acceptable depends upon the acceptability of the proposed building, which includes considering the landscaping opportunities. For example, if a new design needs that corner of the site for landscaping as part of its efforts in the design to deal with the visual bulk impact, this may be determined to be preferable to providing a splay that is not considered necessary from a traffic engineering perspective. Alternatively, if the combination of setbacks, articulation and landscaping all create an acceptable design response, the retention of the existing splay could be given effect to. It all depends upon the acceptability of the design response. We encourage the permit applicant and the residents to work together to achieve an acceptable design outcome for this southeast corner.

Overlooking

36 Mr Chapman is concerned that the end of standard B22 has not been fully considered as it states:

This standard does not apply to a new habitable room window, balcony, terrace, deck or patio which faces a property boundary where there is a visual barrier at least 1.8 metres high and the floor level of the habitable room, balcony, terrace, deck or patio is less than 0.8 metres above ground level at the boundary.

37 The accompanied site inspection revealed that there are differences in the ground levels across the two lots that comprise the site, as well as between the site and the adjoining properties to the north and south. As part of any new permit application, consideration should be given to ensuring that overlooking is limited, including of proposed ground floor windows. To meet the exemption in standard B22 (quoted above), there should be a visual barrier (such as boundary fencing) at least 1.8 metres high as well as the floor level being less than 0.8 metres above the ground level at the boundary. There were submissions in the hearing that the Council prefers to leave boundary fencing to the Fences Act 1968. Whilst the actual replacement of boundary fencing can be left to the respective lot owners to resolve, the Council still needs to be satisfied that the overlooking has been limited and meets the Overlooking objective at clause 55.04-6.

Roof decks

38 The proposal incorporates two roof decks. The permit applicant provided further information on day 2 of the hearing (roof terrace cross section) about the heights of the balustrading and staircase hatch access doors. The permit applicant also tabled an illustration about the intended hatch door design. This additional information satisfies us that the requirements
regarding roof decks in Design and Development Overlay Schedule 1 can be met.

**Impacts on units 1 and 2 of No. 140**

39 Messrs Fekry are concerned about potential overlooking from the roof decks and balconies to their approved new residential development. We do not share their concerns. Most of their windows and roof decks are screened already in accordance with clause 55 and any development on this site will do the same to ‘limit’ overlooking as is sought by the Overlooking objective.

40 They are also concerned that 6 to 7 metre high canopy trees along the southern boundary (as contained in an earlier landscape plan for an earlier proposal on this site) will cause overshadowing. Any north facing windows in their approved development need to be provided with a level of sunlight access, but there are no provisions in the planning scheme that require consideration of overshadowing by vegetation or future vegetation. This concern is not a reason to refuse a development.

41 Messrs Fekry are concerned about the splay needed for visibility to exit No. 140’s shared driveway. Mr Gnanakone considers what is proposed is acceptable. Neither VicRoads nor the Council have expressed any other concerns with the proposed access arrangements. Hence, we are not persuaded that any changes are necessary.

**Extent of modifications to proposed plans**

42 One final matter we wish to respond to is Mr Chapman’s concerns about the changes made to the proposal over its planning application duration including the amended plans presented to us, the corrections made to the streetscape elevation and the shadow diagrams in Mr McBride-Burgess’ evidence and the further material tabled by the permit applicant during the hearing such as the roof deck details and the materials and finishes details.

43 Whilst we can appreciate that corrections and additional material may be challenging for non-planning professionals to keep up with, the flexibility of the planning approval process is deliberate, to enable changes to a proposal to make it acceptable. The substantial changes made were included in the amended plans presented to us, which were provided to the parties before the hearing. This is acceptable. The correcting material contained in the planning witness’ evidence statement is acceptable too. Mr McBride-Burgess undertook his role appropriately in identifying errors and seeking to have them corrected to assist us in our decision-making. Similarly, the additional material and details provided by the permit applicant during the hearing also assisted us in considering elements of the proposal. As these additional matters are about details in the proposed development (rather than large or wholesale changes to the development), all parties had the benefit of this material and could respond to it during the...
hearing. Again, this detail and the parties’ views about it assisted us in our
decision-making.

44 Planning a development is a fluid process, as it should be because the
intention of the Planning and Environment Act 1987 and the relevant
planning scheme is to facilitate development that is acceptable. Often
achieving an acceptable design response requires changes during the permit
application process as well as part of any planning permit that issues (i.e.
through permit conditions). That is what has occurred in this case.

CONCLUSION

45 For the reasons explained above, the decision of the responsible authority is
set aside. No permit is to issue.

Rachel Naylor
Senior Member

K Birtwistle
Member
Amend permit application

1 Pursuant to section 127 and clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998*, the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:
Permit granted

2 In application P1993/2018 the decision of the responsible authority is set aside.

3 In planning permit application 2018/160 a permit is granted and directed to be issued for the land at 4 Montclair Avenue, Brighton in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:

- Construction of a three storey building containing five dwellings over basement car parking in a General Residential Zone Schedule 2 and Design and Development Overlay Schedule 10.

Jeanette G Rickards,
Senior Member
APPEARANCES

For applicant  Mr P O’Farrell, Barrister, Direct Brief

He called as witnesses:

- Mr T McBride-Burgess, Town Planner, Contour Consultants Pty Ltd
- Mr D Hancox, Traffic Engineer, TTM Consulting (Vic) Pty Ltd
- Mr J Patrick, Landscape Architect, John Patrick Landscape Architects Pty Ltd

For responsible authority  Mr J Kane, Barrister, Direct Brief

For respondents:

Nick, John & Panagiota Rigopoulos  Mr D Epstein, Barrister, Direct Brief

Nick Rigopoulos, John Rigopoulos, Peter Fischer, Harriet Barrow, Beatrix Rowe, Sam King, Patricia Mizera, Malcolm Hunt  All in person
INFORMATION

Description of proposal
Construction of a three storey building containing five dwellings over a basement.

Nature of proceeding
Application under section 77 of the Planning and Environment Act 1987 – to review the refusal to grant a permit.

Planning scheme
Bayside

Zone and overlays
General Residential Zone Schedule 2 (Moderate Residential Growth Areas)
Design and Development Overlay Schedule 10 (Built Form Standards for Bay Street Major Activity Centre)
Development Contributions Plan Overlay Schedule 1

Permit requirements
Clause 32.08-6 – Construction of two or more dwellings on a lot and a front fence exceeding a height of 1.5 metres
43.02-2 Construction of buildings and works

Relevant scheme policies and provisions
Clauses 11.01-1S, 11.01-1R, 15.01-1S, 15.01-1R, 15.02-1S, 15.01-5S, 15.02-1S, 16.01-1S, 16.01-1R, 16.01-3S, 16.01-4S, 21.02, 21.03, 21.04, 21.06, 21.07, 21.09, 21.10, 21.11, 22.06, 22.08, 55 and 65

Land description
The subject site is located on the east side of Montclair Avenue. It is rectangular with a frontage to Montclair Avenue of 16.66 metres and an overall site area of 660 square metres. Access to the site is via a crossover adjacent to the southern boundary. A single storey dwelling is currently located on the site.

To the north is 6 Montclair Avenue, a single storey brick dwelling.

To the south is 2 Montclair Avenue, a single storey brick veneer dwelling.

To the east (rear) is 33 Warleigh Grove, a double storey dwelling with a tennis court and swimming pool to the rear.

Tribunal inspection
13 March 2019
REASONS

WHAT IS THIS PROCEEDING ABOUT?

1 The applicant 4 Montclair Pty Ltd seeks review of the decision of Bayside City Council (the council) to refuse to grant a permit for the construction of a three storey building containing five dwellings over a basement car park.

2 In summary the council’s grounds of refusal relate to neighbourhood character, built form and impact on adjoining properties.

3 Several residents have objected to the proposal with several making submissions to the Tribunal. The residents expressed similar concerns to the council in relation to neighbourhood character, built form and impact on adjoining properties. Of additional concern to several of the residents was that the subject site is one of only a very small number of properties within Montclair Avenue that is not restricted by a single dwelling covenant.

4 Mr Nick Rigopoulos undertook extensive research in relation to the issue of the covenant submitting that for all intent a covenant should have been imposed on the subject land.

5 The title to the subject land is clear. There is no restriction on the title. The title is a valid document for which the Tribunal is entitled to rely upon no matter what history might suggest.

6 The following issues will be considered in this determination:
   • Strategic Context
   • Neighbourhood Character
   • Built Form
   • Impact on adjoining properties
   • Landscaping
   • Traffic

STRATEGIC CONTEXT

7 The subject site sits within the General Residential Zone Schedule 2 (GRZ2) and is subject to Design and Development Overlay Schedule 10 (DDO10) under the Bayside Planning Scheme. GRZ2 applies to moderate residential growth areas denoted within the various Activity Centres including the Bay Street Activity Centre. DDO10 relates specifically to the built form standards of the Bay Street Activity Centre.

8 This strategic context is important as within the Bayside Planning Scheme the subject site is located just north of Bay Street and is included within the

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1 The submissions and evidence of the parties, any supporting exhibits given at the hearing, and the statements of grounds filed; have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons.
defined boundary of the Bay Street Major Activity Centre. As well as being strategically placed within the Activity Centre it also sits approximately 140m from the North Brighton Railway Station. I note that further north of the subject site the properties within Montclair Avenue fall just outside the Activity Centre’s defined boundary and within the Neighbourhood Residential Zone which sets different expectations for land within such an area, compared to the area in which the subject site is located.

9 The Bayside Planning Scheme at Clause 21.02 recognises that the ‘municipality is experiencing increased development pressure for higher density development due to urban consolidation policies, its proximity to Melbourne and its attractiveness as a coastal location’. To manage this, it is recognised that there is a need to direct population growth into appropriate locations and provide housing that meets the changing needs of the community. It is also recognised that there is a need to provide certainty in relation to the preferred future character for residential areas’, as such it is recognised that ‘Activity Centres will play an increasingly important role in providing for future housing needs, particularly as opportunities diminish elsewhere due to neighbourhood character, heritage and environmental constraints’. It is expected therefore that within the municipality of Bayside increased diversity and density of dwellings will be provided within Activity Centres to provide for future housing needs.2

10 There is clear emphasis on directing new medium density housing to Major Activity Centres and further emphasis is made within land zoned GRZ2 which seeks ‘to encourage a diversity of housing types and housing growth particularly in locations offering good access to services and transport’. GRZ2 applies to ‘moderate residential growth areas’ being to the residential areas located within the denoted Activity Centre area. The vision for the area is highlighted under Clause 21.11-2:

The surrounding residential precinct will retain its spacious and leafy character and new housing will integrate with the existing streetscape and provide additional opportunities for people to live near the centre.

11 The subject site is located within Precinct 4 under Clause 21.11-2 which refers to the strategies for the ‘Residential areas’ within the Activity Centre to meet the objective of strengthening ‘the role of Bay Street Brighton as a multi-use centre offering retail, office, entertainment and community services’. The strategies include to ‘increase the number of dwellings and the variety of dwelling types in this area’ and ‘provide adequate off-street parking for all new dwellings’.

12 To the south of the subject site is Warleigh Grove which wraps around the rear of commercial buildings fronting Bay Street. This area is covered by GRZ4 which also relates to the moderate residential growth areas in the

2 Clause 21.03 Bayside Planning Scheme
Bay Street Major Activity Centre but more specifically to the Warleigh Grove precinct. DDO10 also applies.

13 The properties on the north side of Warleigh Grove are generally single or double storey with some more recent three storey developments. No. 33 Warleigh Grove abuts the rear of the subject site and is covered by a site specific Heritage Overlay (HO368). Properties on the southern side of Warleigh Grove contain a significant number of new higher more intensive built forms ranging in height from two to four storeys.

14 Within the ‘Table to built form precinct provisions’ under DDO10 the subject site is located in Precinct E which identifies a maximum building height of 11m (3 Storeys) or 12m (3 Storeys) on a slope, whereas the southern side of Warleigh Grove falls within Precinct E1 where no maximum building height is identified, although there is an indication of preferred building heights of 11m (3 Storeys) or 12m (3 Storeys) on a slope.

15 The strategic policy for the subject land and its surrounds is therefore for more intense development. This is in stark contrast to the existing housing stock which is generally single storey and of the Post War era.

16 Under the Planning and Environment Act 1987 (the Act) one of the objectives of planning in Victoria is to balance the present and future interests of all Victorians and one of the objectives of the planning framework as set out in the Act is to facilitate development which achieves the objectives of planning in Victoria and planning objectives set up in planning schemes.

17 The proposed development fits appropriately into the strategic context of the area.

NEIGHBOURHOOD CHARACTER

18 It is acknowledged that the dwellings within proximity to the subject site in Montclair Avenue are single storey dwellings with many restricted by a single dwelling covenant. I note that several of the residents indicated they would vehemently oppose any removal or variation of a single dwelling covenant. Whilst the covenant is to some extent a restriction, it does not prevent the construction of a single dwelling on those lots currently restricted at a height of either two or three storeys as the prevailing GRZ2 and DDO10 both include a maximum building height of 11m and 3 storeys. It was pointed out to me during my inspection that there have been at least two recent redevelopments on restricted lots with two storey dwellings.

19 Therefore, whilst it could be said that the existing neighbourhood character within the immediate vicinity of the subject site is that of single storey, single dwellings on a lot the provisions of the Bayside Planning Scheme indicate that whilst they are likely to remain as single dwellings, this does

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3 Section 4(1)(g) of the Planning and Environment Act 1987
4 Section 4(2)(e) of the Planning and Environment Act 1987
not necessarily mean that their built form will remain as single storey. The planning scheme through the application of the GRZ2 and DDO10 provides clear expectation that in terms of built form dwellings within the area may or are expected to change significantly.

20 Both GRZ2 and DDO10 encourage respect for neighbourhood character and maintaining a strong landscape character. The subject site falls within Neighbourhood Character Precinct B5 in Clause 22.06 which in relation to ‘preferred future character’ describes in general detail, in my view, what the existing character is. The precinct guidelines seek to ensure that for new development there is space around buildings for landscaping, upper levels are recessed, modern and contemporary architecture is encouraged that adopts, adapts or reinterprets existing building forms, as well as incorporating a variety of building materials.

21 The Precinct B5 character must be considered in light of the provision in Clause 22.06-3 which provides that consideration should be given as to ‘whether the site is located within a residential opportunity area as shown on the Strategic Framework Plan of the Municipal Strategic Statement and the extent to which this may alter the relevance of the design responses to consideration of the proposal’. It is acknowledged the subject site is located within a residential opportunity area and as such this must be given significant weight.

22 The residents provided a detailed description of the neighbourhood character highlighting, as well as the single storey features of many dwellings, the Inter War and Californian Bungalow architecture of many of the dwellings, the setback of the dwellings from Montclair Avenue, the established landscape features within each lot, as well as the setbacks to side boundaries. Reference was also made to the two dwellings in Montclair Avenue that have site specific Heritage Overlays as well as the abutting property at 33 Warleigh Grove.

23 As stated in the council officers’ report a failure to acknowledge the contradiction between the Neighbourhood Character Precinct B5 and the inclusion of the site within the Bay Street Activity Centre and DDO10: … would result in an assessment whereby one would effectively ‘have one foot on the accelerator and one foot on the brake’. I.e., the intensive development sought under the DDO10 (and various other State and Local Policy) would be severely restricted by the objectives of Clause 22.06 (Neighbourhood Character Policy) that effectively requires development to respect the surrounding largely single and double storey housing stock.

**BUILT FORM**

24 Whilst the Bayside Planning Scheme recognises ‘the need to protect the quality and character of the urban environment’ within the Major Activity Centre, the replacement and construction of single dwellings is discouraged.
with more efficient use of built form through the consolidation of sites and construction of basement car parks encouraged.\(^5\)

25 With a proposed maximum building height of 10.03m and three storeys the proposed development complies with the height requirements stipulated in GRZ2 and DDO10.

26 The building is to be setback 7.5m from Montclair Avenue. The dwelling at 2 Montclair Avenue to the south is setback 8.2m and the dwelling to the north at 6 Montclair Avenue has a setback of 7.63m. Clause 55 Standard B6 requires a setback of 7.9m. The proposal requires a variation to the front setback of 0.4m.

27 The proposed setback is like the setback of 2 Montclair Avenue to the south and 6 Montclair Avenue to the north with both having front porches that sit forward of each dwelling reducing the perception of built form setback. The variation to the setback will not be perceptible and is considered appropriate, particularly as there is enough area within this front setback for landscaping, discussed below.

28 The wall of the first floor is setback approximately 9.9m from Montclair Avenue. A balcony 2.4m in depth sits across the front of the first floor. When viewed from the street the first floor balcony sits behind framed vertical brick pillars that extend from the ground floor to the top of the first floor, intervening between the pillars are planter boxes at the edge of the first floor balcony. This presentation is said to be visually dominant within the streetscape.

29 The built form of the proposed development as it addresses Montclair Avenue is different to the surrounding dwellings but given the policy context it is to be expected that any new development will be significantly different from the existing dwellings.

30 The ground and first floor present as a single element at approximately 7.1m in height. The use of the vertical brick pillars across the front emphasising the windows behind at both the ground and first floor levels provides articulation to the front façade. The two storey height of the front façade with its flat form at the top of the first floor presents as similar to the height of the roof at 2 Montclair Avenue and the ridge of the roof at 6 Montclair Avenue, although the proposed built form is contemporary. The use of materials found within the area such as brick and render relate the building to the context of the area and meet the objective in the Precinct 5 Guidelines ‘to use a variety of materials and finishes that reflect those in the streetscape’.

31 Under DDO10 buildings in a Residential Zone should be set back in accordance with the relevant Clause 55 Standards, except that the second floor should be set back a minimum of 4 metres behind the front wall of the

\(^5\) Ibid

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floor immediately below, unless the second floor is an attic with recessed upper levels encouraged behind the front wall.

32 In this respect, the upper second floor level is setback from the main façade approximately 4m with the upper level front wall setback 11.50m from Montclair Avenue and 7.5m to the edge of the balcony. A low level pitched roof design responds to the pitched roof characteristics found within the streetscape.

33 The proposal responds appropriately to Precinct B5 Guidelines which encourages modern contemporary architectural responses by re-interpreting existing building forms.

**IMPACTIONS ON ADJOINING PROPERTIES**

34 The issues for the adjoining two properties relate to setbacks from the side boundaries, overlooking and overshadowing. Apart from a small section of the proposed development located on the boundary, the proposed development has similar setbacks from its side and rear boundaries to the various dwellings within Montclair Avenue.

35 Both neighbouring properties at 2 and 6 Montclair Avenue highlighted the perception of visual dominance of the proposed development when viewed from their abutting rear open space areas. This visual dominance, they submitted, was due to the setbacks from the northern and southern boundaries of the subject site.

**Side and rear setbacks**

36 In relation to 2 Montclair Avenue, apart from the single storey section of the entry lobby located on the common boundary, the proposed development is to be setback 2.24m from the boundary at the ground and first floor levels. The entry lobby is setback from Montclair Avenue approximately 20m and does not extend above the ground floor with the wall height being 2.8m where the allowed height is 3.2m and the length of wall on the boundary is 7.2m with the maximum allowable length of 16.6m. This section of the proposal on the boundary sits opposite the northern side of 2 Montclair Avenue. In this location the dwelling at 2 Montclair Avenue is setback from the common boundary 890mm and 1.19m from the rear verandah section of the dwelling. The location of this element on the boundary will have no unreasonable impact on the amenity of the dwelling at 2 Montclair Avenue.

37 The building steps in 2.24m from the side common boundary with 2 Montclair Avenue from the rear of the entry lobby. This side presentation of the proposal to 2 Montclair Avenue is that of a two storey built form opposite the rear private open space of 2 Montclair Avenue. The building extends into the rear of the subject land with the rear of the building being setback 4.15m from the rear boundary, however this rear setback forms what was part of a rear laneway that extended north from Warleigh Grove.
The actual built form of the building along the common boundary with 2 Montclair Avenue finishes opposite the rear boundary of 2 Montclair Avenue so in this respect there will be built form extending along the whole of the common boundary. Built form extending the length of the common boundary with 2 Montclair Avenue is a significant change from what currently exists on the subject land, but I am unable to conclude that being able to see built form is unreasonable within this urban area.

38 What will be viewed from the rear private open space of 2 Montclair Avenue will be the two storey built form of the building setback 2.24m from the common boundary. The upper second level in this location is setback between 3.3m and 3.9m from the common boundary. An Olive Tree sits near the corner of the rear open space of 2 Montclair Avenue and garden beds extend along the common boundary. The setback to the southern boundary of the ground and first floor complies with the provisions of Standard B17.

39 The setback of the second floor to the southern boundary varies. There is a small section of non-compliance at this level at the top most part of the wall on the southern elevation. This non-compliance will be imperceptible and unlikely to result in any unreasonable impact to the amenity of 2 Montclair Avenue.

40 On the northern boundary the proposed development is to be setback 2m at the ground and first floor level with the setback to the upper second level approximately 4m. The abutting dwelling at 6 Montclair Avenue is setback from the common boundary approximately 2.8m providing a separation of built form at the ground and first floor level of 4.8m.

41 There is a non-compliance at the upper second floor level with the top of the balcony planter being 7m resulting in a required setback of 2.19m. As identified by Mr McBride-Burgess this portion of the wall is situated opposite the side of the adjoining dwelling. This non-compliance will be imperceptible.

42 The proposed development is setback from the rear boundary at the ground and first floor level 3m and the upper level 5.4m with the upper level balcony being setback 3m. The rear private open space of 33 Warleigh Grove abuts the rear boundary. This area of private open space is relatively open and consists of a swimming pool adjacent to the common boundary and a tennis court.

Overlooking

43 Standard B22 seeks ‘to limit views into existing secluded private open space and habitable room windows’.

44 There is no potential for overlooking from any windows on the southern elevation of the proposed development into the rear private open space of 2 Montclair Avenue. At the second floor level there are highlight windows at a height of 1.7m to the ensuite bathroom directly opposite the rear private
open space area. All remaining windows to the first and second floor are to be screened with opaque glass or a perforated metal screen.

A balcony is proposed to wrap around the upper second floor commencing on the south elevation opposite two north facing habitable room windows at 2 Montclair Avenue and extending across the front, along the full northern elevation and across the eastern rear elevation finishing at the south east corner of the upper second floor. Planter boxes are to extend around the balcony as well as opaque glass screening to a height of 1.7m of the balcony along the southern elevation portion.

Whilst the balcony is approximately 1m in width along the northern elevation there appears to only be planter boxes to prevent the downward views from this balcony into the rear private open space of 6 Montclair Avenue. The rear private open space of 6 Montclair Avenue contains minimal vegetation with a row of establishing pear trees along its the northern boundary but limited vegetation along the southern boundary, generally opposite the two habitable room windows of the dwelling. A large deck is located to the rear of the dwelling with the remaining area generally open lawn and a shed in the rear south-east corner.

Whilst the planter boxes will prevent direct downward views into the rear private open spaces of both 2 and 6 Montclair Avenue, rather than requiring sections of the balcony along the northern and a portion of the southern elevation to be removed particularly as the width suggests it is unlikely that these areas will be heavily trafficked, I will require a 1.7m high opaque screen to sit above the planter boxes and to extend along the northern elevation from the north-western edge of the proposed dwelling along the rear eastern boundary, as well as a section of opaque screening above the planter boxes along the southern edge of the balcony in its south-eastern corner.

The swimming pool at the rear of 33 Warleigh Grove is located close to the common boundary. The proposed setback of the three levels at the eastern elevation are considered appropriate. An opaque glass screen at a height of 1.7m is to sit above the planter boxes at the first floor level. As indicated above I consider this treatment should also occur at the upper second floor level. Three Blueberry Ash trees are proposed to be planted along the eastern boundary opposite the location of the swimming pool providing an element of additional screening along the common boundary. The dwelling located at 33 Warleigh Grove has its own heritage listing. It is an Edwardian Villa constructed in 1910 that has aesthetic significance to the area. The dwelling sits close to the front of the property and is located well away from the abutment of the proposed development. The proposed development will have no impact on the heritage character and significance of 33 Warleigh Grove.
Overshadowing

49 Standards B19, B20 and B21 in Clause 55 relate to daylight to existing habitable room windows, solar access to existing north-facing habitable room windows and overshadowing to existing secluded private open space.

50 Standard B21 seeks ‘to ensure buildings do not significantly overshadow existing secluded private open space’.

51 Standard B19 seeks ‘to allow adequate daylight into existing habitable room windows’ and Standard B20 seeks ‘to allow adequate solar access to existing north-facing habitable room windows’.

52 2 Montclair Avenue is located to the south of the proposed development. Additional shadowing to the rear private open space of 2 Montclair Avenue will occur because of the proposed development. I acknowledged that mid-winter there will be increased overshadowing, however the assessment under Clause 55 Standard B21 is considered on 22 September and provides:

Where sunlight to the secluded private open space of an existing dwelling is reduced, at least 75 per cent, or 40 square metres with minimum dimension of 3 metres, whichever is the lesser area, of the secluded private open space should receive a minimum of five hours of sunlight between 9 am and 3 pm on 22 September.

53 An assessment of the overshadowing to the rear private open space of 2 Montclair Avenue indicates it will have increased shadow close to its northern boundary and within its rear open space area between the hours of 9 am and 3 pm on 22 September. The assessment indicates that most shadow will be experienced at midday; however, the extent of the increased shadow does not result in any non-compliance with this standard. At least 75% of the rear private open space of 2 Montclair Avenue will receive at least five hours of sunlight between 9am and 3pm on 22 September.

54 There will be some increased overshadowing of the swimming pool at 33 Warleigh Grove at approximately 3pm the remainder of the rear open space will not be impacted.

55 There are three windows facing north. Two are to bedrooms in 2 Montclair Avenue. Mr McBride-Burgess indicated the upper level eave near the lift core extends into the area of assessment under Standard B20:

If a north-facing habitable room window of an existing dwelling is within 3 metres of a boundary on an abutting lot, a building should be setback from the boundary 1 metre, plus 0.6 metres for every metre of height over 3.6 metres up to 6.9 metres, plus 1 metre for every metre of height over 6.9 metres, for a distance of 3 metres from the edge of each side of the window.

56 It is recommended a permit condition provide that “the eave be cut back to not extend past the centrally located north facing window at 2 Montclair Avenue.”
57 The occupant of 2 Montclair Avenue indicated that the bedroom was used for reading in front of the window, on my site inspection I noted there were fine curtains to the window, however these had been drawn back to emphasise the possible impact. The assessment under Standard B19 provides:

Buildings opposite an existing habitable room window should provide for a light court to the existing window that has a minimum area of 3 square metres and minimum dimension of 1 metre clear to the sky.

The calculation of the area may include land on the abutting lot.

58 My assessment of the proposal in relation to Standards B19 and B20 is that the building has been setback to comply with the requirements of both standards. The view from the bedroom window is of the existing dwelling on the subject land. The new view because of the proposal will be still of a building, but rather than single storey it will be two storeys. The setback of the proposed building is not dissimilar to that of the existing building.

LANDSCAPE

59 DDO10 seeks to maintain a 'strong landscape character with residential buildings set within vegetated front gardens and streetscapes'.

60 Mr John Patrick presented a landscape plan that incorporates a number of canopy trees throughout the site as well as extensive planting proposed along the side and rear boundaries and edging of the upper level balconies.

61 Within the front setback Mr Patrick has proposed a Jacaranda and two deciduous Jerilderie Red Brachyiton. Hedging in planter boxes will provide an appropriate screening edge to the front balcony of dwelling 1. The three canopy trees within the front setback are to be planted at a height of 1.6m and 3m respectively providing for an initial landscaped outcome that will only increase over time. A 1m area for planting is proposed along the northern boundary entry to the basement. Overall this will provide an appropriate landscaped presentation to Montclair Avenue meeting the requirements of DDO10.

62 Along the southern boundary Mr Patrick recommends planting a form of clumping bamboo expected to reach at least 4m in height as well as a Lilly Pilly in the south eastern corner with an expected 10m height at maturity and a Blueberry Ash with an expected 9m height at maturity at the rear of the entry and opposite the rear of the dwelling at 2 Montclair Avenue. Two sections of blank wall to a height of two storeys are located opposite the southern boundary and Mr Patrick recommended that climbing plants be incorporated on these walls. Given the location of the existing Olive Tree in the rear of 2 Montclair Avenue, no additional canopy trees are proposed only the bamboo along the fence line.

63 Whilst the view from the rear private open space of 2 Montclair will be of two storey built form the proposed landscaping opposite the rear open space along with the existing Olive Tree near the common boundary will in my
view provide for an appropriate landscaped outcome that will to a certain extent soften and provide for a vegetated view of the built form from the rear of 2 Montclair Avenue.

64 A Lilly Pilly is proposed in the rear north-eastern corner. This will provide an additional and appropriate screen from the rear of Mr Fischer’s property at 3 Grandview Road. The rear south-west corner of his property abuts the rear north-east corner of the subject land. Within this corner of Mr Fischer’s rear private open space is a swimming pool which is screened along his southern and western boundaries by extensive vegetation.

65 The rear south-east corner of Mr Fischer’s property abuts the rear section of the subject land where it incorporates the former laneway. The rear of the proposed development at the ground and first floor are setback from the rear boundary 3.8m. Mr Fischer expressed some concern regarding the potential for overlooking into his rear private open space. Given the proposed screening to the rear balcony at the first floor level and the upper second floor level setback 5m, as well as the extensive vegetation along his southern and western boundaries, I am unable to conclude Mr Fischer’s rear private open space will be impacted by overlooking from the proposed development. Whilst Mr Fischer may be able to see the north-east corner of the proposed building and sections of the northern and eastern elevations particularly from his study window and slightly elevated deck at the rear of his dwelling, I am unable to conclude, given the distance and the intervening vegetation, that within a suburban area this is an unreasonable outlook.

66 A total of seven Capital Pear trees are proposed to be planted along the northern boundary with under storey planting of camellias. At maturity the Capital pear is expected to reach at least 11m which will provide significant screening of the built form when viewed from the rear private open space of 6 Montclair Avenue. The rate of growth of such trees was evident on the northern side of the rear private open space of 6 Montclair Avenue that has a similar planted screening of Capital Pears that extend well above the fence line.

67 Mr Patrick suggested a modification to the structure of the basement in this northern location so that ‘a ledge is created along the boundary providing for an 800mm deep planting space at ground level’. As indicated by Mr Patrick ‘this will allow the Capital Pears to be planted in a way that permits their roots to explore the contiguous soil volume available on site and immediately adjacent to the site’. This recommendation can be incorporated into a condition on any permit to issue.

68 Planter boxes containing Dwarf Orange Jessamine are proposed along the northern elevation of the upper second level. Whilst this upper level will be visible from the rear private open space of 6 Montclair Avenue the proposed planting along the edge of the balcony will provide a green edge to the built form. I have also recommended that an obscure glass screen be...
located along this northern edge above the planter boxes to provide additional screening.

69 The landscape plan indicates an appropriate level of landscaping can be achieved that will make a significant contribution to Montclair Avenue meeting the requirements of DDO10. The proposal includes 12 trees to be planted in natural soil volumes, together with three trees in raised planters. In addition, a palette of shrubs, ground covers and climbing plants has been proposed to allow for a complete garden picture to be created. Protection is also to be provided to the Olive Tree close to the southern boundary.

TRAFFIC

70 The subject site is located within the Principal Public Transport Network. No visitor car space is required on site.

71 It is proposed to provide for 11 on site car spaces within a basement car park accessed via a single crossover on the northern boundary. Vehicle access to the existing dwelling is via a single crossover on the southern boundary. This will be removed resulting in no increased access points to the subject site.

72 The provision of a basement car park accords with the Precinct guidelines to ‘locate garages and carports behind the line of the dwelling’ and ‘provide one single width driveway crossover per typical site frontage’.

73 The provision of 11 car spaces is two more than the Bayside Planning Scheme requirement in Clause 52.06 of 9 car spaces.

74 Mr Damien Hancock provided Traffic Engineering evidence on behalf of the applicant. He recommended some internal changes to the basement car park as follows:

- The southern wall along the ramp within the basement is to be redesigned to allow greater area for vehicles to turn when exiting the basement.
- The wall adjacent to parking space 5 is to be removed and replaced with a column in accordance with the parking space clearance required by Clause 52.06-9.
- A clearance of 250mm is to be provided between parking spaces 2 and 3 to allow for a column in accordance with the parking space clearances required by Clause 52.06-9.
- The basement envelope adjacent to parking space 11 is to be widened to allow adequate area for a vehicle to reverse out of parking space 9.

75 Residents raised concerns regarding the increase in vehicles within Montclair Avenue due to the proposal. Montclair Avenue is a typical local road with a single carriage way approximately 8.6m wide. Parking is permitted on both sides of the street with 2-hour parking restrictions on the
west side and no controls on the east side. During my site inspection I observed a number of vehicles parked on both sides of the street.

76 Mr Hancox expressed the view to residents that vehicles parking on both sides of the street contributed to the slowing down of through traffic with a vehicle coming from one direction often being required to wait to allow a vehicle from the other direction to pass. This, in his view, is an excellent traffic calming measure.

77 Whilst Mr Hancox considered two car spaces could be removed as the required number of 9 were provided, this was related more to the potential to provide an additional planting area, rather than an issue of the number of vehicles. The change indicated by Mr Patrick addresses this issue.

78 No traffic counts were undertaken by Mr Hancox and he was not aware of any having been undertaken by the council. He considered 31 vehicle movements per day could occur because of the proposed development with a rate of 3 vehicle movements per hour in peak periods. In Mr Hancox’s view within this location the additional vehicle movements likely to be generated by the proposal will be imperceptible within the road network. He indicated there were several ways of approaching the site.

79 In my view, there is no traffic engineering or car parking issue that would warrant a refusal of the permit.

CONCLUSIONS

80 A set of draft conditions were provided for consideration at the conclusion of the hearing. All parties were given an opportunity to comment on the proposed conditions.

81 As indicated above I will include the conditions recommended by Mr McBride-Burgess, Mr Patrick and Mr Hancox. I will also include a condition requiring additional screening around the upper second level balcony.

CONCLUSION

82 Clause 71.04 of the Bayside Planning Scheme provides that ‘because a permit can be granted does not imply that a permit should or will be granted’. In this respect the Tribunal standing in the shoes of the responsible authority must decide ‘whether the proposal will produce acceptable outcomes in terms of the Municipal Planning Strategy, the Planning Policy Framework, the purpose and decision guidelines of the overlay and any of the other decision guidelines in Clause 65’. 6

83 The policies pertaining to the subject site under both the Planning Policy Framework and the Local Planning Policy Framework, as well as the strategic context in which the subject land is located, provide for an

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6 Clause 71.04 Bayside Planning Scheme
expectation that there will be significant change to development within this area zoned GRZ2 and subject to DDO10.

84 For the above reasons I have concluded that a permit should be granted subject to conditions. I have reached this conclusion having considered the existing and expected neighbourhood character as provided by the residents and the expected neighbourhood character as envisioned within the Bayside Planning Scheme and more specifically the policies that relate to the Bay Street Activity Centre.

85 I acknowledge there will be a significant change to the neighbourhood from the perspective of the adjoining properties but as highlighted within the above reasons any potential impacts can be managed by appropriate conditions.

Jeanette G Rickards,
Senior Member
APPENDIX A – PERMIT CONDITIONS

<table>
<thead>
<tr>
<th>PERMIT APPLICATION NO:</th>
<th>2018/160/1</th>
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</thead>
<tbody>
<tr>
<td>LAND:</td>
<td>4 Montclair Avenue, Brighton</td>
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WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Construction of a three storey building containing five dwellings over basement car parking in a General Residential Zone Schedule 2 and Design and Development Overlay Schedule 10.

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 prepared by Format Architects but modified to show:

   (a) The building eave at the upper level to be cut back to not extend past the centrally located north facing window at 2 Montclair Avenue.

   (b) The southern wall along the ramp within the basement to be redesigned to allow greater area for vehicles to turn when existing the basement.

   (c) The wall adjacent to parking space 5 is to be removed and replaced with a column in accordance with the parking space clearances required by Clause 52.06-9.

   (d) A clearance of 250mm is to be provided between parking spaces 2 and 3 to allow for a column in accordance with the parking space clearances required by Clause 52.06-9.

   (e) The basement envelope adjacent to parking space 11 to be widened to allow adequate area for a vehicle to reverse out of parking space 9.

   (f) Revised overlooking diagrams showing a sight level at 1.7m from the Finished Floor Level to ensure the Objective of Overlooking under Clause 55.04-6 is achieved.

   (g) The addition of an opaque glass screen to a height of 1.7m above the planter boxes on the upper second level balcony on the northern, eastern and southern elevations.
(h) An internal fence at a minimum of 1.8m to be provided to separate the private open space of G1 and G2 in accordance with Standard B2.3 of the Bayside Planning Scheme.

(i) Front fence detail as reflected in the landscape Plan prepared by John Patrick Landscape Architects Pty Ltd dated 20 February 2019 including timber fencing and gates.

(j) A cut-out section of the basement along the northern elevation in accordance with Drawing A303 Issue 3.

(k) Internal storage floor and elevation plans to demonstrate the proposal complies with Standard B4.4 of the Bayside Planning Scheme.

(l) Revised ramp access section plan showing all intermediate levels in accordance with Clause 52.06 of the Bayside Planning Scheme.

(m) 3.6m wide crossover with 1m offset from the northern property boundary.

(n) Adequate slight lines to be provided at the top of the ramp in accordance with Clause 52.06 of the Bayside Planning Scheme.

(o) Car parking space allocation to each apartment.

(p) The existing crossover to be shown on the proposed development plans. It must be annotated that the crossover is to be reinstated to nature strip at the developer’s cost.

(q) 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.

(r) A schedule of construction materials, external finishes and colours (incorporating for example paint samples). The roof materials must be of subdued colour.

(s) An acoustic report prepared by a qualified acoustic engineer in accordance with Condition 23 to demonstrate the compliance of Standard B4.0 of the Bayside Planning Scheme. Any modifications must be accommodated in the current design without alterations to the external building envelope.

(t) Water Sensitive Urban Design measures in accordance with Condition 5 of this permit.

(u) A Landscaping Plan in accordance with Condition 7 of this permit.

(v) A Tree Management Plan in accordance with Condition 10.

(w) A Waste Management Plan in accordance with Condition 24.

(x) Development Contribution in accordance with Condition 21.
(y) Any amendments to the existing building must be absorbed within the current building footprint.

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.

(a) 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.

(b) 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.

(c) 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

5 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

6 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

7 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 Plan prepared by John Patrick Landscape Architects Pty Ltd, Job Number 18-0969, Drawing No. VCAT01, Revision A dated 20 February 2019 and be drawn to scale with dimensions and three copies must be provided. The plan must show:

(a) A survey, including, botanical names of all existing trees to be retained on the site including Tree Protection Zones calculated in accordance with AS4970-2009.

(b) A survey including botanical names, 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.

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

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

(e) Details of surface finishes of pathways and driveways.

(f) Retention of the existing street tree.

(g) Tree Protection Zone (TPZ) of the existing street tree.

(h) Adequate planting areas including soil volume to facilitate at least five (5) small replacement canopy trees. The canopy tree species must be capable of achieving mature canopy dimensions of 6m in height, and 4m width in accordance with Bayside City Council Landscape Guidelines (2016).

(i) The TPZ of neighbouring trees where it extends within the subject site.

(j) Any requirements as listed in the Condition 13.

(k) Any amendments to the development plans.
8. 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.

9. 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

10. Prior to the endorsement of plans pursuant to Condition 1, including any
related demolition or removal of vegetation, a Tree Management Plan
(report), a Tree Impact Assessment (report) and Tree Protection Plan
(drawing), to the satisfaction of the Responsible Authority, must be
submitted to and be endorsed by the Responsible Authority.

The Tree Impact Assessment must be specific the encroachment within the
TPZ of Tree #16 and demonstrate its retention. This assessment must take
the proposed planter boxes along the boundary into consideration.

The Tree Management Plan must be specific to the trees shown on the Tree
Protection Plan, in accordance with AS4970-2009, prepared by a suitably
qualified Arborist and provide details of tree protection measures that will
be utilised to ensure all trees to be retained remain viable post-construction.
Stages of development at which inspections are required to ensure tree
protection measures are adhered to must be specified.

The Tree Protection Plan must be in accordance with AS4970-2009, be
drawn to scale and provide details of:

(a) Any recommendations suggested by the Tree Impact Assessment.

(b) The Tree Protection Zone and Structural Root Zone 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.

(c) The location of tree protection measures to be utilised.

11. 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.

12. 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.

13. Any pruning that is required to be done to the canopy of Tree 16 to be
retained is to be done by a qualified Arborist to Australian Standard –
Pruning of Amenity Trees AS4373-1996. Any pruning of the root system of
Tree 16 to be retained is to be done by hand by a qualified Arborist.
Street tree protection

14 Before the development starts, tree protection fencing is to be established around the street trees 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.

15 Soil excavation must not occur within 2 metres from the edge of the street tree asset’s stem at ground level.

16 Street trees must not be removed, lopped, damage or pruned by any party other than Bayside City Council authorised tree care contractors.

17 Any installation of services and drainage within the TPZ must be undertaken using root-sensitive, non-destructive techniques.

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 Infrastructure Assets Department.

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.

21 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.

Construction Management Plan

22 Before the commencement of works including demolition, 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 reasonably 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.
Dwellings acoustically treated

23 Prior to the endorsement of the plans, an acoustic report must be submitted to and approved by the Responsible Authority to demonstrate how the dwellings will be acoustically treated to minimise noise transmission (compliance with Standard B40 under Clause 55 of the Bayside Planning Scheme) from the adjacent railway line to the satisfaction of the Responsible Authority.

Waste Management Plan

24 Before the endorsement of plans, the Waste Management Plan prepared by Leigh Design, Report Date 09 January 2018, must be revised and submitted to and approved by the Responsible Authority. The Waste Management Plan must clearly indicate that waste collection is to be via a private contractor, not Council, and include:

   (a) Dimensions of storage waste areas.
   (b) Storm water drains in storage areas should be fitted with a litter trap.
   (c) The number and size of bins to be provided.
   (d) Facilities for bin cleaning.
   (e) Method of waste and recyclables collection.
   (f) Types of waste for collection, including colour coding and labelling of bins.
   (g) Hours of waste and recyclables collection (to correspond with Council Local Laws and EPA Noise Guidelines).
   (h) Method of hard waste collection.
   (i) Method of presentation of bins for waste collection.
   (j) Strategies for how the generation of waste and recyclables will be minimised.
   (k) Compliance with relevant policy, legislation and guidelines.

When approved, the plan will be endorsed and will then form part of the permit. Waste collection from the development must be in accordance with the plan, to the satisfaction of the Responsible Authority.

Permit Expiry

25 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.

- End of conditions -
ORDER

1 In application P1838/2018 the decision of the responsible authority is varied.

2 The Tribunal directs that planning permit 5/2017/285/1 must contain the conditions set out in planning permit 5/2017/285/1 issued by the responsible authority on 20 August 2018 with the following modifications:
   (a) Conditions 1k, 12(f), 12(g) and 12(h) are deleted.
   (b) Condition 8 is amended to read:

   8 Before the occupation of the final stage of the development, the area(s) set aside for each particular stage of the development for the parking of vehicles and access as shown on the endorsed plans must be:
      a) Constructed for the relevant stage;
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.

All to the satisfaction of the Responsible Authority

(c) Condition 12 is amended by adding the following words at the end of the condition:

The use and development must accord with the Car Parking Management Plan to the satisfaction of the Responsible Authority.

(d) Condition 31 is amended to read:

31 Prior to the commencement of buildings and works or at such other time as agreed by the collecting agency, a development levy must be paid to the collecting agency in accordance with the Bayside Drainage Development Contributions Plan. The amount of the development levy must be in accordance with the Bayside Drainage Development Contributions Plan. This development levy is not payable if the Supreme Court of Victoria determines that a contribution is not required for a retirement village in the appeal made by the Bayside City Council in Bayside City Council v Stockland Development Pty Ltd (Case No. S ECI 2019 00847), or if the proceeding is withdrawn by Bayside City Council whether by consent or not, or otherwise dismissed.

3 The responsible authority is directed to issue a modified planning permit in accordance with this order.

Megan Carew
Member
APPEARANCES

For applicant
Mr Ian Pitt, QC, Best Hooper
He called Mr Brett Young, Traffic Engineer, Ratio Consultants to give evidence.

For responsible authority
Ms Jennifer Bowden, Solicitor, Bayside City Council
Assisted by Ms Rosie Nolan, Town Planner, Bayside City Council

For referral authority
Mr Gauran Verma for VicRoads

INFORMATION

Description of proposal
Buildings and works to allow the staged redevelopment of the existing retirement village to accommodate a total of 152 independent living units within three separate buildings (maximum four storeys in height), a reduction in the associated car parking requirements and alteration of access to a Road Zone- Category 1.

Nature of proceeding
Application under section 80 of the Planning and Environment Act 1987 – to review the conditions contained in the permit.

Planning scheme
Bayside Planning Scheme

Zone and overlays
Neighbourhood Residential Zone- Schedule 3 (NRZ3)
Design & Development Overlay- Schedule 3 (DDO3)
Development Contributions Overlay- Schedule 1 (DCPO1)
Special Building Overlay- as to part (SBO)
Centre Road is included within a Road Zone- Category 1 (RDZ1)
<table>
<thead>
<tr>
<th>Permit requirements</th>
<th>Clause 32.09-9- for buildings and works in the NRZ3.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Clause 43.02-2- for buildings and works in DDO3).</td>
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<td></td>
<td>Clause 44.05-2- for buildings and works in the SBO.</td>
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<tr>
<td></td>
<td>Clause 52.29- for alteration of access to a road</td>
</tr>
<tr>
<td></td>
<td>in a RDZ1.</td>
</tr>
<tr>
<td>Relevant scheme policies and provisions</td>
<td>Clauses 10, 11, 15, 16, 21.02, 21.03, 21.06,</td>
</tr>
<tr>
<td></td>
<td>22.05, 22.06, 22.07, 32.09, 43.02, 44.05, 52.06,</td>
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<tr>
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<td>52.29, 65 and 72.01</td>
</tr>
<tr>
<td>Land description</td>
<td>The review site is located on the north side of</td>
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<td></td>
<td>Centre Road, east of the intersection with</td>
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<td></td>
<td>Hampton Street. It has frontage to Centre Road</td>
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<td>of 102m and a total site area of 6781m².</td>
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<td></td>
<td>The land is presently developed as a retirement</td>
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<td>village with a series of buildings within a</td>
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<td>landscaped setting. There are 7 two bedroom living</td>
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<td>units, 7 single bedroom living units and</td>
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<td></td>
<td>55 bedsit living units. Car parking is provided</td>
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<td>within the frontage of the land for 24 spaces.</td>
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<td>To the east of the site is a large retirement</td>
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<td>village/ aged care accommodation known as the</td>
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<td></td>
<td>Mayflower. To the north, east and south of the</td>
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<td></td>
<td>site is residential development.</td>
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<tr>
<td>Tribunal inspection</td>
<td>I inspected the review site and its surrounds</td>
</tr>
<tr>
<td></td>
<td>following the hearing.</td>
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</tbody>
</table>
REASONS

WHAT IS THIS PROCEEDING ABOUT?

1. Bayside City Council granted a permit for the redevelopment of the Halycon retirement village subject to conditions. The village was established by the former City of Brighton and various benefactors in 1978. It provides affordable independent living units for the retirement community.

2. The proposed redevelopment will increase the number of independent living units on the land to 152. The new development will take the form of 3 buildings up to four storeys in height within a landscaped setting. Car parking is proposed in two separate car parks to the east and west of the accommodation, each accessed from Centre Road. Figure 1 shows the proposed site layout.

Figure 1: Site layout

3. The permit applicant seeks a review of several conditions of the permit. Conditions 1k), 8, 12f), 12g), 12h), 19 and 31.

4. The permit applicant submits that the wording of condition 8 should be amended to reflect the staged development proposed. Council supported the changes to this condition and I have not discussed this further here.

The submissions and evidence of the parties, any supporting exhibits given at the hearing and the statements of grounds filed have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons.
5 The remaining conditions relate to whether:
   • Additional car parking is required to service the development;
   • The development should provide a shuttle bus service for residents;
   • A Tree Management and Protection Plan is required prior to endorsement of plans under condition 1; and
   • Whether a development levy is required for the proposal under the Development Contributions Plan Overlay.

6 I must decide whether the proposed conditions are warranted having regard to the relevant policies and provisions in the Bayside Planning Scheme. Having considered the submissions and evidence before me and with regard to the applicable policies and provisions of the planning scheme, I have determined to vary the decision of the responsible authority. My reasons follow.

**IS ADDITIONAL CAR PARKING REQUIRED TO SERVICE THE DEVELOPMENT (CONDITIONS 1K AND 12H)?**

7 The development proposes two areas of car parking each separately accessed from Centre Road:
   • The western car park for 27 spaces.
   • The eastern car park for 24 spaces (two reserved for deliveries, medical and maintenance personnel only) plus a separate drop off bay.

8 Condition 1k) requires the plans to be amended to show:
   k) The provision of an additional 20 on-site car parking spaces to be appropriately located on the site. These additional car spaces must be located behind Building A and concealed from the Street to the satisfaction of the Responsible Authority.

9 Condition 12h) requires the Car Parking Management Plan to require that:
   h) No more than 50 residents are eligible for on-site car parking. All remaining residents will not be eligible for on-site car parking.

10 The two conditions read together require a total provision of 50 car spaces for residents (as is proposed) and an additional 20 spaces for visitors and service (2 proposed). Council says that the additional provision is required to reduce the demand for car parking by visitors and staff on the street.

11 Council’s traffic engineer was referred the original proposal which had a lesser rate of car parking provision than what is before me. While there was no formal internal referral, emails from Council’s traffic engineer to the planning officers (tabled at the hearing) did not support the car parking reduction as originally proposed and noted that Council had received requests for residential parking permits from existing residents.
Following the initial referrals to the traffic engineer the car parking provision on site was increased to the 52 spaces now before me. No further comments from the traffic engineer were tabled.

The permit applicant relied on the evidence of Mr Young. Mr Young’s investigations noted that the current rate of car ownership for existing residents was 0.45 spaces per unit resulting in a shortfall (compared to demand) of 9 car spaces for existing residents. His view was that nine residents currently park on street and have the benefit of resident car parking permits.

He formed the view that the proposal would have a lesser demand for resident car parking than the existing use because it would no longer be open to residents to obtain resident parking permits post redevelopment and that on-street parking in the area is generally restricted. He was of the view that it was acceptable for visitor parking requirements to be met on-street.

Clause 52.06 requires consideration of car parking for the proposal. Clause 52.06 as at the time of the Council’s decision required provision of 1 car space per one or two bedroom unit and one space for every five units for visitors. After the assessment of this application by Council\(^2\), Amendment VC148 changed the application of Clause 52.06 as it applies to this site (31 July 2018). Land as nominated on the designated Principal Public Transport Network (PPTN) maps (including the review site) benefits from a reduced car parking requirement. In this case there would be no requirement for visitor car parking.

It was the evidence of Mr Young that preference should be given to the policy provision. He referred to the requirement of Clause 52.06-3 that:

The car parking requirement specified for a use listed in Table 1 does not apply if:

- a car parking requirement for the use is specified under another provision of the planning scheme….

Council has a local planning policy at Clause 22.07 that specifies a rate of car parking provision for a retirement village of 0.3 spaces per unit. This rate does not distinguish between resident and visitor parking. It was common ground that the proposed total car parking provision exceeds this rate.

While I agree with Mr Pitt that Clause 22.07 is a provision of the scheme, I am not persuaded that it is in the form of a car parking requirement because it forms part of the planning policy framework. I say this even taking into account the fact that it includes the word “requirement” within the policy.

However, even if I am wrong on this I find that it makes little difference to the facts of this case. The proposal meets the provisions of Clause 22.07. Further, Council in its conditions is satisfied that 50 car spaces are satisfied.

\(^2\) Council meeting 17 July 2018.
sufficient to service the long term resident parking needs. Fifty car spaces are provided. After Amendment VC148, Clause 52.06 no longer requires any visitor car parking and as such the additional requirement for visitor spaces cannot be warranted. I will delete these conditions.

SHOULD A SHUTTLE BUS BE PROVIDED (CONDITIONS 12F AND 12G)?

19 Conditions 12f) and 12g) require the Car Parking Management Plan to require:
   f) provision of a shuttle bus for the occupants of the facility operating 7 days a week and at least 3 times per day. The Car Parking Management Plan must clearly outline proposed hours of operation of the shuttle bus, the size of the shuttle bus, capacity of the shuttle bus, provision of services and the location of pick up and drop off and details if the shuttle bus is to be kept on site, to the satisfaction of the Responsible Authority.
   g) The shuttle bus service must be operational prior to the occupation of the site.

20 Council submits that the requirement for a shuttle bus will be a significant benefit for future residents and partly assists in justifying the reduction in car parking numbers.

21 VicRoads supports the shuttle bus (despite it not forming part of its requirements). Mr Gauran says that it will potentially reduce the need for residents to cross the road to use the public bus.

22 The permit applicant submits that the requirement is not justified for this development and will place an unjustified ongoing financial burden on future residents. The evidence of Mr Young is that the site is already well serviced by public transport and the existing community bus and that there is acceptable access to the bus stops via the pedestrian lights at Hampton Street.

23 In addition to the site’s location on the PPTN, residents of the existing site also enjoy access to a community bus service. There was some debate at the hearing about whether this service was still operational and its extent. I provided the parties with the opportunity to confirm this following the hearing. Council advised by email letter dated 29 March 2019 that the community bus is run by Bayside’s Aged and Disability Services and that users pay a nominal amount. Users must meet specific criteria (such as being over 65 years of age). The scheduled services include:
   • Black Rock Activity Centre five times per week Monday to Friday;
   • Southland Shopping Centre once per week on Thursdays.
   • Brighton Senior Citizens Centre once week on Mondays.
   • Transport to special events by arrangement.
All parties agreed that access to special bus services such as the community bus above supports the needs of residents of the retirement village. Such services assisting social integration and resident mobility.

However, I find that existing and future residents are already serviced by the PPTN and by the existing community bus. There is no material before me that suggests that these services are not enough for present or future resident needs. I find that a private shuttle bus is not warranted in these circumstances.

WHEN SHOULD THE TREE MANAGEMENT AND PROTECTION PLAN BE REQUIRED (CONDITION 19)?

The permit applicant sought to amend this condition to require the provision of the tree management plan prior to the commencement of buildings and works, rather than prior to the endorsement of plans. Condition 1e) would require consequential change as it requires any changes arising out of the Tree Management and Protection Plan to be shown on the endorsed plans.

An arborist’s report by STEM Arboriculture (30 May 2017) was submitted with the permit applicant. This report is based on the proposed removal of 28 trees from the land. The report generally addressed tree protection measures for trees to be retained or protected.

Council’s arborist did not support the removal of Trees 13 and 14 which are located within the site frontage. Condition 16 requires an amended landscape plan to include the retention of these trees. This was not contested by the permit applicant.

Condition 19 seeks the provision of a Tree Management and Protection Plan. The requirements are generally addressed in the STEM Arboriculture report. However, the report would need to be amended to include retention of Trees 13 and 14.

I find that it is common to require this work to be undertaken prior to the endorsement of plans and for the tree protection measures to be specified on the development plans and/or landscape plan. This is because minor modifications can be required to items like paving types or fence types or locations. I have retained the condition.

IS A DEVELOPMENT LEVY REQUIRED (CONDITION 31)?

The permit applicant submits that Condition 31 relating to a requirement to pay a development levy under the provisions of the Development Contribution Plan Overlay-Schedule 1 (DCPO1) should be deleted.

In Stockland Development Pty Ltd v Bayside CC (Corrected) [2019] VCAT 147, the Tribunal determined that no development levy was payable under the provisions of the DCPO1 for a retirement village. This decision is the subject of an appeal by Bayside City Council to the Supreme Court of Victoria in Bayside City Council v Stockland Development Pty Ltd (Case No. S ECI 2019 00847).
33 Council submitted that:

Given that the issue as to whether or not a development contribution levy should apply to a retirement village is currently before the Court, it would be counterproductive if the Tribunal were to entertain substantial further legal argument on the point.

Council submitted that the condition should be amended to read:

Prior to the commencement of buildings and works or at such other time as agreed by the collecting agency, a development levy must be paid to the collecting agency in accordance with the Bayside Drainage Development Contributions Plan. This condition does not apply (and is of no force or effect) if the Supreme Court of Victoria dismisses the appeal made by the Bayside City Council in Bayside City Council v Stockland Development Pty Ltd (Case No. S ECI 2019 00847), or if the proceeding is withdrawn by Bayside City Council whether by consent or not.

34 The permit applicant supported this approach, but sought changes to the wording as follows:

Prior to the commencement of buildings and works or at such other time as agreed by the collecting agency, a development levy must be paid to the collecting agency in accordance with the Bayside Drainage Development Contributions Plan. The amount of the development levy must be in accordance with the Bayside Drainage Development Contributions Plan. This amount is not payable if the Supreme Court of Victoria determines that a contribution is not required for a retirement village in the appeal made by the Bayside City Council in Bayside City Council v Stockland Development Pty Ltd (Case No. S ECI 2019 00847), or if the proceeding is withdrawn by Bayside City Council whether by consent or not, or otherwise dismissed.

35 Subject to the use of the words “development levy” in the third sentence instead of “contribution”, for consistency, I am satisfied that this is an acceptable approach. The condition allows for the development levy to be collected if required for the proposed development.

CONCLUSION

36 For the reasons given above, the decision of the responsible authority is varied.

Megan Carew
Member
5. Confidential Business

Nil