Agenda

for the

Planning & Amenity Committee Meeting

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

on

Tuesday, 16 April, 2019 at 7:00pm

Chairperson: Cr Rob Grinter

Councillors: Cr Sonia Castelli
Cr Alex del Porto
Cr Laurence Evans
Cr Michael Heffernan (Mayor)
Cr James Long BM JP
Cr Clarke Martin
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 58 Arkaringa Crescent, Black Rock Notice of Decision to Grant a Permit Application No: 2019/21/1 Ward: Southern .................. 7
   4.2 8 Maysbury Avenue, Brighton Notice of Decision to Grant a Permit Application No: 2018/597/1 Ward: Central ......................... 41
   4.3 233 New Street, Brighton Notice of Decision to Amend a Permit Application No: 2016/172/3 Ward: Northern ......................... 79
   4.4 Statutory Planning VCAT Update ............................................. 113

5. Confidential Business
   Nil
Next Meetings 2019

Tuesday 30 April 2019
Tuesday 14 May 2019
Tuesday 11 June 2019
Tuesday 16 July 2019
Tuesday 30 July 2019
Tuesday 13 August 2019
Tuesday 10 September 2019
Tuesday 8 October 2019
Tuesday 22 October 2019
Tuesday 12 November 2019
Tuesday 26 November 2019
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 12 March 2019.
4. Matters of Decision

4.1 58 ARKARINGA CRESCENT, BLACK ROCK
NOTICE OF DECISION TO GRANT A PERMIT
APPLICATION NO: 2019/21/1 WARD: SOUTHERN

This matter has been reported to the Planning and Amenity Committee for a decision because there are 2 or more trees to be removed in the Vegetation Protection Overlay Schedule 3 (VPO3).

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>John Alkemade &amp; Associates</td>
</tr>
<tr>
<td>Title/Covenant/S173 Agreement</td>
<td>The site is subject to restrictive covenants 1336908 and 1396127. The proposed development does not contravene the restrictions of the covenants.</td>
</tr>
<tr>
<td>Date application received</td>
<td>15 January 2019</td>
</tr>
<tr>
<td>Current statutory days</td>
<td>59 days (8 April 2019)</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></td>
<td>Vegetation Protection Overlay (Schedule 3)</td>
</tr>
<tr>
<td></td>
<td>Drainage Contribution Plan (Schedule 1)</td>
</tr>
<tr>
<td>Site area</td>
<td>797.81 square metres</td>
</tr>
<tr>
<td>Number of outstanding objections</td>
<td>1</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>Yes; however, a Cultural Heritage Management Plan is not required for this application.</td>
</tr>
</tbody>
</table>

Proposal
The application seeks the removal of vegetation in a Vegetation Protection Overlay on a lot with an area of 797.81 square metres.

Key details of the proposal are as follows:

- Removal of 10 trees from the site, including 3 trees which are protected by the Vegetation Protection Overlay (Schedule 3).

The proposal is to facilitate the construction of a new single storey dwelling which does not require a planning permit.

The application plans are provided at Attachment 1.

An aerial image and photographs of the site and surrounds are provided at Attachment 2.
History
Planning Permit 2018/582/1 was issued under delegation on 4 October 2018 to allow the removal of vegetation in a Vegetation Protection Overlay. Specifically, it was proposed to remove an existing *Agonis flexuosa* within the rear of the subject site.

2. Planning controls
Planning Permit requirements
A planning permit is required pursuant to:
- Clause 42.02 (Vegetation Protection Overlay Schedule 3) – A permit is required to remove, destroy or lop any 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>
<thead>
<tr>
<th>Internal Referral</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arborist</td>
<td>No objection, subject to conditions.</td>
</tr>
</tbody>
</table>

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

One (1) objection remains outstanding at the time of this report.

The following concerns were raised:
- Objection to the proposed removal of Tree 11.

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

Consultation meeting
A consultation meeting was not required in this instance. Tree 11, referred to in the objection received, does not require planning permission for its removal.
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 2019/21/1 for the land known and described as **58 Arkaringa Crescent, Black Rock**, for the **Removal of Vegetation in a Vegetation Protection Overlay** in accordance with the endorsed plans and subject to the following conditions from the standard conditions:

1. Before the commencement of any vegetation removal or works, 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 advertised plans but modified to show:

   a) A Landscaping Plan in accordance with Condition 3 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.

**Landscaping**

3. 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 advertised plans and be drawn to scale with dimensions and three copies must be provided. The plan must show:

   a) Replacement planting of 1 large canopy tree reaching a mature height of at least 10 – 15 metres tall and greater than 6 metres spread on the site.

   b) The retention of Tree 15 (*Melaleuca armillaris*) within the front setback of the site.

   c) 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.

   d) 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.

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

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

   g) Details of surface finishes of pathways and driveways.

4. 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.
5. 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

6. 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.

- Tree 11 (Exotic Palm) does not require planning permission under the Vegetation Protection Overlay (VPO3) or a Local Law permit for its removal. The removal of this tree is therefore a civil matter. The property owners of 58 and 56 Arkaringa Crescent, Black Rock are encouraged to discuss and resolve future removal.

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 12 Environmental and Landscape Values
- Clause 13 Environmental Risks
- Clause 14 Natural Resource Environment
- Clause 21.04 Environmental and Landscape Values
- Clause 21.05 Environmental Risks
- Clause 22.06 Neighbourhood Character Policy (Precinct H1)
- Clause 32.09 Neighbourhood Residential Zone (Schedule 3)
- Clause 42.02 Vegetation Protection Overlay (Schedule 3)
- Clause 43.02 Design and Development Overlay (Schedule 3)
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, the objection received and the individual merits of the application.

6.1. Neighbourhood character

The site is located within Neighbourhood Character Precinct H1. The proposal is considered to demonstrate an acceptable level of compliance with the preferred future character statement and precinct guidelines as contained in Attachment 3.

The subject site is situated within a heavily vegetated area which features a variety of native, indigenous trees and non-native trees. With respect to vegetation, the preferred character of Precinct H1 seeks to “encourage a diverse range of dwelling types set within well-vegetated streetscapes dominated by large native and exotic canopy trees within the public and private domains.” A key objective of the Precinct Guidelines is to “enhance the bayside vegetation character of the area through the retention and planting of appropriate coastal species.”

The application proposes the removal of 10 trees from the site, 3 of which require permission for their removal under the Vegetation Protection Overlay Schedule 3 (VPO3) as confirmed by Council’s Arborist. These trees are known as Trees 12, 14 and 15.

Subject to conditions pertaining to the retention of Tree 15 and replacement planting as detailed below, the proposal is consistent with the Preferred Future Character and the Precinct Guidelines of Neighbourhood Character Precinct H1.

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 10 trees from the site including 3 trees which are 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>
<tr>
<th>VPO3 protected trees</th>
<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>
<td>Proposed for removal</td>
</tr>
<tr>
<td>Trees 12, 14 and 15</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>

From an arboriculture perspective, Council’s Arborist has reviewed the application and advises that the VPO3 protected trees to be removed are supported, with the exception of Tree 15.

An assessment against the decision guidelines of the VPO3 is provided at Attachment 4 and a copy of Council’s Arborist referral comments is provided at Attachment 5. The
proposed extent of vegetation removal is considered to be acceptable when assessed against the decision guidelines of the VPO3. The character of the area, including the extent of indigenous vegetation present, will be maintained once replacement plantings are undertaken. A review of the trees listed in the above table are provided below.

Trees 8 and 9 are located within the south eastern (rear) corner of the site and are proposed to be removed. Council’s Arborist has confirmed that both trees are Australian native trees with trunk circumferences less than 50cm at 1 metre above ground level. As such, they are not protected by the VPO or the Local Law.

Tree 11 is an exotic palm and is located within the south western (rear) corner of the site. Council’s Arborist has confirmed that this tree is not protected by the VPO or the Local Law. An objection has been received from the adjoining land owner to the west of the site at 56 Arkaringa Crescent, Black Rock. Concerns were raised in relation to the accuracy of the proposed site plans and the trees location. The owners of 56 Arkaringa Crescent have advised that there is a significant encroachment of the tree into their property.

Council’s Arborist has confirmed that Tree 11 does not require planning permission under the VPO or a Local Law permit for its removal. The removal of this tree is therefore a civil matter. A note is included in the recommendation to advise that a planning permit or local law permit is not required for this tree removal and that discussions should occur between property owners prior to its removal.

Tree 12 is a group of six Lilly Pilly trees located along the western side of the site. Council’s Arborist has confirmed that the second tree from northern most Lilly Pilly is protected by the VPO and a permit is required for its removal. Following an assessment of this tree, Council’s Arborist has advised that the tree is in good health, has a poor structure, and a low amenity and retention value. As such, there is no objection to the removal of this tree.

Tree 13 is an exotic tree located along the western boundary of the site. Council’s Arborist has confirmed that it is not protected by the VPO or the Local Law and a permit is subsequently not required for its removal.

Tree 14 is a Prickly Paper bark and is a native tree protected by the VPO. Council’s Arborist has confirmed that the tree is in poor health, has a low amenity value and no retention value. Subsequently, there is no objection to the removal of this tree.

Tree 15 is a Bracelet Honey Myrtle and is a native tree protected by the VPO. The mature tree is located within the front setback of the property and has a medium retention value, is in good health, has a good structure and moderate amenity value. On this basis, Council’s Arborist has objected to the removal of this tree. The tree is located along the front property boundary of the site and is considered to contribute to the established landscaped character of the streetscape. It is considered that the removal of this tree would unreasonably impact on the character of the area and subsequently would contravene the decision guidelines of the VPO3. A condition requiring its retention is included as part of the recommendation.

Trees 17, 18 and 19 are not protected by the VPO or the Local Law.

Subject to conditions, the proposed vegetation removal will not impact on the overall quality of habitat within the broader area and the extent of removal is justified when considered against the level of development proposed, being a new single dwelling. Therefore, the proposed vegetation removal is considered to comply with the objectives of the VPO3.

Notwithstanding the above, Council’s Arborist has reviewed the submitted documentation and require the preparation of a plan which includes those trees to be retained and details of the proposed replacement planting (inclusive of 1 large canopy tree reaching a mature height of at least 10 – 15 metres tall and greater than 6 metres
spread on the subject site). This outcome will ensure the existing and preferred landscaped character of the area are maintained and further enhanced in accordance with the decision guidelines of the VPO3.

6.3. Cultural Heritage Management Plan
The site is located within an area of cultural heritage sensitivity; however, a cultural heritage management plan is not required.

6.4. Development contributions levy
Based on the proposed application, no development contributions levy is applicable.

6.5. Objector issues not already addressed
N/A

Support Attachments
1. Decision Plans
2. Site and Surrounds Imagery
3. Neighbourhood Character Assessment (Precinct H1)
4. VPO3 Assessment
5. Arborist Referral
6. Applicant's Arboricultural Assessment
Item 4.1 – Matters of Decision
Attachment 2 Site and Surrounds Imagery

Figure 1: Aerial Overview of subject site

<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>
</tbody>
</table>

Figure 2: View of the subject site from Arkaringa Crescent, Black Rock.
Neighbourhood Character Precinct H1

Preferred Future Character Statement

The diverse dwelling styles are set within well-vegetated streetscapes dominated by large native and exotic canopy trees within the public and private domains. Trees and other vegetation species reflect the coastal location of the area. The dwellings are set within spacious gardens to accommodate the trees. Streetscapes appear as a mixture of single and double storey dwellings, however individual buildings respect adjoining dwellings and do not dominate the streetscape. Low or open style front fences are usually provided, in order to retain the openness of the front garden to the street.

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 for new dwellings that utilises appropriate traditional coastal and native species.</td>
<td>Lack of landscaping and substantial vegetation.</td>
<td>Does not respond</td>
</tr>
<tr>
<td>To enhance the bayside vegetation character of the area through the retention and planting of appropriate coastal species</td>
<td>• Retain established large trees and native and traditional coastal vegetation and provide for the planting of new native coastal trees (locate footings outside root zone).</td>
<td>Removal of large trees, Planting of environmental weeds.</td>
<td>Responds Subject to conditions, the application will appropriately respond to the bayside vegetation character.</td>
</tr>
<tr>
<td>To retain the rhythm of spacious visual separation between buildings and ensure adequate space is provided around buildings for the retention and planting of vegetation.</td>
<td>• Buildings should be sited to allow space for the planting of significant trees and shrubs.</td>
<td>Loss of front garden space.</td>
<td>N/A to application</td>
</tr>
<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>N/A to application</td>
</tr>
<tr>
<td>Objectives</td>
<td>Design Responses</td>
<td>Planning Officer Assessment</td>
<td></td>
</tr>
<tr>
<td>------------</td>
<td>------------------</td>
<td>-----------------------------</td>
<td></td>
</tr>
<tr>
<td>To ensure that new dwellings are not visually dominant to the streetscape</td>
<td>Use a mix of materials, textures and finishes including rendered, timber, non-combustible cladding, stone and brick.</td>
<td>N/A to application</td>
<td></td>
</tr>
<tr>
<td>To maintain the openness of the front gardens to the street.</td>
<td>Provide open style front fences, other than along heavily trafficked roads.</td>
<td>N/A to application</td>
<td></td>
</tr>
<tr>
<td>To ensure that any new dwellings and associated work are of a similar size and design.</td>
<td>Parcels reproduction styles and detailing.</td>
<td>N/A to application</td>
<td></td>
</tr>
<tr>
<td>Avoid</td>
<td>Use pitched roof forms.</td>
<td>N/A to application</td>
<td></td>
</tr>
<tr>
<td>Avoid</td>
<td>Reduce upper level elements from the front facade.</td>
<td>N/A to application</td>
<td></td>
</tr>
</tbody>
</table>
## 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>All site trees, with the exception of Tree 15, are approved for removal due to a combination of poor health/structure and/or having no VPO3 or Local Law 2 protection.</td>
</tr>
<tr>
<td>The impact the vegetation removal would have on the presence of indigenous species in the locality</td>
<td>Above comments applicable.</td>
</tr>
<tr>
<td>The impact the vegetation removal would have on the appearance of development.</td>
<td>No impact.</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>Removal may have a nominal effect of wildlife corridor fragmentation.</td>
</tr>
<tr>
<td>Any proposal to regenerate or plant indigenous vegetation on the site.</td>
<td>No proposal has been put forward.</td>
</tr>
</tbody>
</table>
Bayside City Council
Planning & Amenity Committee Meeting - 16 April 2019
Attachment 5

BAYSIDE CITY COUNCIL - STATUTORY PLANNING DEPARTMENT - INTERNAL REFERRAL

<table>
<thead>
<tr>
<th>TO</th>
<th>Arborist</th>
</tr>
</thead>
<tbody>
<tr>
<td>FROM</td>
<td>Steven Mallett</td>
</tr>
<tr>
<td>ADDRESS</td>
<td>58 Arkaringa Crescent BLACK ROCK</td>
</tr>
<tr>
<td>APPLICATION NO.</td>
<td>5/2019/21/1</td>
</tr>
<tr>
<td>PROPOSAL</td>
<td>Removal of 15 trees in a Vegetation Protection Overlay</td>
</tr>
<tr>
<td>TRIM REFERENCE</td>
<td>DOC/19/13147</td>
</tr>
<tr>
<td>STATUS</td>
<td>Under assessment</td>
</tr>
</tbody>
</table>
| COMMENTS    | An assessment against the following is required:
  - Vegetation Protection Overlay – Schedule 3 |
| DATE OF REFERRAL | 23 January 2019 |

Contact with Steve – John Akelmade Architect – waiting on contact for permission to go on site.

Arbor Survey, Arboricultural Assessment, 58 Arkaringa Crescent Black Rock, 6 December 2018.

JA&A Proposed Site Plan, Dwg WD02, Rev B, Aug 2018

ARBORIST COMMENTS / CONDITIONS:

Landscape character of the site:
The subject site is reasonably well vegetated with small, medium and a large tree. There are a number of semi-mature trees that if provided an opportunity will develop into well form larger trees.

Landscape character of adjacent area:
Predominantly native medium and occasional larger trees with occasional exotic.

The requirements of NCP are:

<table>
<thead>
<tr>
<th>H1</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Prepare a landscape plan to accompany all applications for new dwellings that utilise appropriate traditional coastal and native species.</td>
<td></td>
</tr>
<tr>
<td>Retain established large trees and native and traditional coastal vegetation and provide for the planting of new native coastal trees (locate footings outside root zone).</td>
<td></td>
</tr>
<tr>
<td>Buildings should be sited to allow space for the planting of significant trees and shrubs.</td>
<td></td>
</tr>
<tr>
<td>Buildings should be sited to create the appearance of space between buildings and accommodate substantial vegetation.</td>
<td></td>
</tr>
<tr>
<td>minimise impervious surfaces particularly in front garden areas.</td>
<td></td>
</tr>
<tr>
<td>Lack of landscaping and substantial vegetation.</td>
<td></td>
</tr>
<tr>
<td>Removal of large trees.</td>
<td></td>
</tr>
<tr>
<td>Planting of environmental weeds.</td>
<td></td>
</tr>
<tr>
<td>Loss of front garden space.</td>
<td></td>
</tr>
</tbody>
</table>
Tree not protected by VPO.

<table>
<thead>
<tr>
<th>Tree No.</th>
<th>7</th>
</tr>
</thead>
<tbody>
<tr>
<td>Botanical Name:</td>
<td><em>Lagunaria patersonia</em></td>
</tr>
<tr>
<td>Common Name:</td>
<td>Norfolk Island Hibiscus</td>
</tr>
<tr>
<td>Height / Canopy:</td>
<td></td>
</tr>
<tr>
<td>Trunk Circ @1m:</td>
<td>&gt;200cm estimated</td>
</tr>
<tr>
<td>Location 1</td>
<td>~1m east</td>
</tr>
<tr>
<td>Location 2</td>
<td>~1m south</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Origin:</th>
<th>Indigenous</th>
<th>Victorian</th>
<th>Australian</th>
<th>Exotic</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age:</td>
<td>Young</td>
<td>Semi-mature</td>
<td>Mature</td>
<td>Over-mature</td>
</tr>
<tr>
<td>Health:</td>
<td>Good</td>
<td>Fair</td>
<td>Poor</td>
<td>Dead</td>
</tr>
<tr>
<td>Structure:</td>
<td>Good</td>
<td>Fair</td>
<td>Poor</td>
<td>Hazardous</td>
</tr>
<tr>
<td>Amenity Value:</td>
<td>High</td>
<td>Moderate</td>
<td>Low</td>
<td>None</td>
</tr>
<tr>
<td>Life Expectancy:</td>
<td>20 years +</td>
<td>10-19 years</td>
<td>4-9 years</td>
<td>0 - 3 years</td>
</tr>
</tbody>
</table>

Protected by Local Law.
Vegetation proposed to be removed on JA&A Proposed Site Plan

Trees 8 and 9, Pittosporum undulatum and Callistemon salignus. Both are Australian native trees with trunk circumferences less than 50cm at 1m above ground level. Not protected by VPO.

Tree 11 is an exotic palm, it is not protected by the VPO or the Local Law.

Tree 12 is a group of six Syzygium sp. (Lilly Pilly trees). The second from northern most Lilly Pilly is protected by the VPO.

Tree 13 Pittosporum tenuifolium is an exotic tree, it is not protected by the VPO or the Local Law.

Tree 14 is a Melaleuca stypheloides, a native tree protected by the VPO.

Tree 15 is a Melaleuca armillaris, a native tree protected by the VPO.

Tree 17 is an Acacia sp, an Australian native tree with a trunk circumference less than 50cm at 1m above ground level. Not protected by VPO.

Trees 18 and 19 are Robinia pseudoacacia, an exotic tree, they are not protected by the VPO or the Local Law.
VPO trees proposed to be removed.

<table>
<thead>
<tr>
<th>Tree No.</th>
<th>12 – northern most tree of group</th>
</tr>
</thead>
<tbody>
<tr>
<td>Botanical Name:</td>
<td><em>Syzygium sp.</em></td>
</tr>
<tr>
<td>Common Name:</td>
<td>Lily Pilly</td>
</tr>
<tr>
<td>Height / Canopy:</td>
<td>4mX2m</td>
</tr>
<tr>
<td>Trunk Circ @1m:</td>
<td>57cm - measured</td>
</tr>
<tr>
<td>Location 1</td>
<td>As per plan</td>
</tr>
</tbody>
</table>

Location 2

<table>
<thead>
<tr>
<th>Origin:</th>
<th>Indigenous</th>
<th>Victorian</th>
<th>Australian</th>
<th>Exotic</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age:</td>
<td>Young</td>
<td>Semi-mature</td>
<td>Mature</td>
<td>Over-mature</td>
</tr>
<tr>
<td>Health:</td>
<td>Good</td>
<td>Fair</td>
<td>Poor</td>
<td>Dead</td>
</tr>
<tr>
<td>Structure:</td>
<td>Good</td>
<td>Fair</td>
<td>Poor</td>
<td>Hazardous</td>
</tr>
<tr>
<td>Amenity Value:</td>
<td>High</td>
<td>Moderate</td>
<td>Low</td>
<td>None</td>
</tr>
<tr>
<td>Life Expectancy:</td>
<td>20 years +</td>
<td>10-19 years</td>
<td>4-8 years</td>
<td>0 - 3 years</td>
</tr>
<tr>
<td>Retention Value:</td>
<td>High</td>
<td>Medium</td>
<td>Low</td>
<td>None</td>
</tr>
<tr>
<td>Habitat value:</td>
<td>High</td>
<td>Moderate</td>
<td>Low</td>
<td></td>
</tr>
<tr>
<td>Support for removal:</td>
<td>Yes</td>
<td>No</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

![Tree Fitness Value Assessment Matrix]
Tree No: 14

Botanical Name: *Melaleuca stypheloides*

Common Name: Prickly Paper bark

Height / Canopy:

Trunk Circa 1m: >100cm - estimated

Location 1: As per plan

Location 2

Origin: Indigenous  Victorian  Australian  Exotic

Age: Young  Semi-mature  Mature  Over-mature

Health: Good  Fair  Poor  Dead

Structure: Good  Fair  Poor  Hazardous

Amenity Value: High  Moderate  Low  None

Life Expectancy: 20 years +  10-19 years  4-9 years  0 - 3 years

Retention Value: High  Medium  Low  None

Habitat Value: High  Moderate  Low

Support for removal: Yes  No

---

<table>
<thead>
<tr>
<th>Tree Habit Value Assessment Matrix</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Category</td>
<td></td>
</tr>
<tr>
<td>---------------------------------</td>
<td>---</td>
</tr>
<tr>
<td>Australian</td>
<td></td>
</tr>
<tr>
<td>Victorian</td>
<td></td>
</tr>
<tr>
<td>Indigenous</td>
<td></td>
</tr>
<tr>
<td>Exotic</td>
<td></td>
</tr>
<tr>
<td>Age: Young</td>
<td></td>
</tr>
<tr>
<td>Semi-mature</td>
<td></td>
</tr>
<tr>
<td>Mature</td>
<td></td>
</tr>
<tr>
<td>Over-mature</td>
<td></td>
</tr>
<tr>
<td>Health: Good</td>
<td></td>
</tr>
<tr>
<td>Fair</td>
<td></td>
</tr>
<tr>
<td>Poor</td>
<td></td>
</tr>
<tr>
<td>Dead</td>
<td></td>
</tr>
<tr>
<td>Structure: Good</td>
<td></td>
</tr>
<tr>
<td>Fair</td>
<td></td>
</tr>
<tr>
<td>Poor</td>
<td></td>
</tr>
<tr>
<td>Hazardous</td>
<td></td>
</tr>
<tr>
<td>Amenity Value: High</td>
<td></td>
</tr>
<tr>
<td>Moderate</td>
<td></td>
</tr>
<tr>
<td>Low</td>
<td></td>
</tr>
<tr>
<td>None</td>
<td></td>
</tr>
<tr>
<td>Life Expectancy: 20 years +</td>
<td></td>
</tr>
<tr>
<td>10-19 years</td>
<td></td>
</tr>
<tr>
<td>4-9 years</td>
<td></td>
</tr>
<tr>
<td>0 - 3 years</td>
<td></td>
</tr>
<tr>
<td>Retention Value: High</td>
<td></td>
</tr>
<tr>
<td>Medium</td>
<td></td>
</tr>
<tr>
<td>Low</td>
<td></td>
</tr>
<tr>
<td>None</td>
<td></td>
</tr>
<tr>
<td>Habitat Value: High</td>
<td></td>
</tr>
<tr>
<td>Moderate</td>
<td></td>
</tr>
<tr>
<td>Low</td>
<td></td>
</tr>
<tr>
<td>Support for removal: Yes</td>
<td></td>
</tr>
<tr>
<td>No</td>
<td></td>
</tr>
</tbody>
</table>
**Tree No.** 15

**Botanical Name:** *Melaleuca armillaris*

**Common Name:** Bracelet Honey Myrtle

**Height / Canopy:**

**Trunk Circ. @ 1m:** 100cm - measured

**Location 1** As per plan

**Location 2**

<table>
<thead>
<tr>
<th>Origin</th>
<th>Indigenous</th>
<th>Victorian</th>
<th>Australian</th>
<th>Exotic</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age</td>
<td>Young</td>
<td>Semi-mature</td>
<td>Mature</td>
<td>Over-mature</td>
</tr>
<tr>
<td>Health</td>
<td>Good</td>
<td>Fair</td>
<td>Poor</td>
<td>Dead</td>
</tr>
<tr>
<td>Structure</td>
<td>Good</td>
<td>Fair</td>
<td>Poor</td>
<td>Hazardous</td>
</tr>
<tr>
<td>Amenity Value</td>
<td>High</td>
<td>Moderate</td>
<td>Low</td>
<td>None</td>
</tr>
<tr>
<td>Life Expectancy</td>
<td>20 years +</td>
<td>10-19 years</td>
<td>4-9 years</td>
<td>0 - 3 years</td>
</tr>
<tr>
<td>Retention Value</td>
<td>High</td>
<td>Medium</td>
<td>Low</td>
<td>None</td>
</tr>
<tr>
<td>Habitat Value</td>
<td>High</td>
<td>Moderate</td>
<td>Low</td>
<td></td>
</tr>
</tbody>
</table>

**Support for removal:** Yes | No

---

**Tree Habitat Value Assessment Matrix**

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Category 1</th>
<th>Category 2</th>
<th>Category 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Origin</td>
<td>3 points</td>
<td>2 points</td>
<td>1 point</td>
</tr>
<tr>
<td>Occupation by native forest</td>
<td>3 points</td>
<td>2 points</td>
<td>1 point</td>
</tr>
<tr>
<td>Diameter of trees</td>
<td>2 points</td>
<td>1 point</td>
<td>0 point</td>
</tr>
<tr>
<td>Hollowing trait</td>
<td>3 points</td>
<td>2 points</td>
<td>1 point</td>
</tr>
<tr>
<td>Wildlife corridor</td>
<td>3 points</td>
<td>2 points</td>
<td>1 point</td>
</tr>
<tr>
<td>Impact on adjacent flora</td>
<td>3 points</td>
<td>2 points</td>
<td>1 point</td>
</tr>
</tbody>
</table>

---

**Item 4.1 – Matters of Decision**
Other VPO trees on site:

<table>
<thead>
<tr>
<th>Name</th>
<th>HxW</th>
<th>Trunk circ</th>
<th>Location 1</th>
<th>Retention</th>
<th>Amenity</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Agonis flexuosa</em></td>
<td>2.1m tall</td>
<td>200cm+ estim</td>
<td>In south-west corner</td>
<td>Low</td>
<td>None, old dead stump.</td>
</tr>
<tr>
<td><em>Banksia sp.</em></td>
<td>11X6</td>
<td>91cm measured</td>
<td>Central on north boundary</td>
<td>High</td>
<td>Good example of specimen.</td>
</tr>
</tbody>
</table>

**SIGNATURE**  Shane Hall  
**DATE**  07 March 2019

Figure 2: *Banksia serrata*

Figure 1: Dead Agonis stump was measured to confirm it is over 2m in height.
1. SUMMARY

The objective of the Arboricultural Assessment is to undertake a review of the condition of the trees on and adjoining 58 Arkaringa Crescent, Black Rock. The report is primarily focused on an assessment of the arboricultural value and the protection value of the specimens assessed. The protection value of the trees takes into account the arboricultural value, landscape and environmental significance, ownership and relevant legislative controls. Based on the arboricultural value and protection value criteria it has been determined that only Trees 7 and 16 are worthy of retention and protection. Whilst Trees 10 and 11 are in fair to good overall condition and of moderate landscape value they are palm species which are not recognised under Bayside City Council's Consolidated Local Law No. 2 or covered under Vegetation Protection Overlay - Schedule 3 (VPO3).

The majority of trees assessed are generally considered to be of low to moderate landscape significance in terms of their mass and contribution to the canopy coverage to the immediate local area. Trees 3, 4, 7, 10 (group), 11, 16 and 18 are in fair to good overall condition and considered to be on moderate landscape value. The remaining 13 trees are either in poor overall condition or of low landscape value.

The site is located within Neighbourhood Residential Zone - Schedule 3 of the Bayside Planning Scheme and is subject to Vegetation Protection Overlay - Schedule 3. Under VPO3 a permit is required to remove any vegetation native to Australia that is greater than 2m in height and greater than 16cm diameter measured at 1m above ground level. From the assessments a planning permit is required to remove Trees 7, 8, 9, 12 (group), 14, 15, 16 and 17.

The site is also covered by Consolidated Local Law No. 2 'Neighbourhood Amenity' which states that a permit is required for the removal or pruning of any tree with a single or combined trunk circumference greater than 155cm measured at 1m above ground level. Other than the 8 trees or groups of trees requiring a planning permit, no other trees / palms within the subject site require a permit to be removed under the Local Law.

The tree data can be found in Section 2.1 and the Tree Location Plan is in Section 2.2. The Arboricultural Value only provides a rating of the arboricultural condition of the trees. The aerial photograph in Figure 1 shows the subject site and the approximate outline of the property boundaries.
### Item 4.1 – Matters of Decision

<table>
<thead>
<tr>
<th>Location</th>
<th>N/A</th>
<th>Price</th>
<th>Age</th>
<th>Fire</th>
<th>Paint</th>
<th>Tree</th>
<th>Vegetation</th>
<th>S/T</th>
<th>Sewer Drainage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Site 1</td>
<td>Yes</td>
<td>$120,000</td>
<td>10 years</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Site 2</td>
<td>No</td>
<td>$90,000</td>
<td>5 years</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Site 3</td>
<td>Yes</td>
<td>$150,000</td>
<td>15 years</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Note: All figures are in Australian dollars.
3. SURVEY METHODOLOGY

Site observations and tree data are recorded on site on the date(s) of inspection. This assessment of trees is based upon the condition of the trees and the site conditions noted on the inspection date(s) only. The characteristics of each tree or group of trees of similar characteristics have been undertaken in accordance with the Visual Tree Assessment (VTA) methodology (Mattheck & Breloer, 1998).

The survey identifies trees or groups of trees within the subject site over 2 metres in height and on adjoining lands (neighbouring properties and or Council or other regulatory body or Crown land) where their projected Tree Protection Zones (TPZs) extend to within the project site and may be affected by the proposed buildings and or works. The assessment is undertaken from a visual inspection from ground level only. No individual tree or trees were climbed and no samples of soil, plant material or pest and disease infestation (if present) were taken for analysis. Defects not apparent from this ground-based visual inspection are excluded from the discussion within the assessment. This assessment is not a risk assessment and no other assessment methodologies have been used.

This assessment is based on an improved and modified version of current industry best practice. ‘Retention Value’ is not used as the primary driver for any recommendations. The primary driver for the recommendations within the report is the characteristic of ‘Protection Value’. Protection value is derived from a combination of the physical arboricultural characteristics and life expectancy recorded as the ‘Arboricultural Value’ in conjunction with the landscape significance or amenity value, ownership and relevant regulatory controls.
4. Recorded Data and Explanation of Terms

The following data is recorded on site:

- **Tree Identification Number (Tree No.)** – This is a sequential numeric numbering system used to identify each tree on the attached site map. These numbers may also relate to tags placed on each tree in the field if required. Any deviation of the numbering system will be specifically noted within the report.

- **Genus/Species (Botanical Name)** – Species identification is considered as common and made using species characteristics observed on site or sampled and researched off site. Specific cultivar or subspecies details are omitted unless where known. No samples have been taken to the National Herbarium of Victoria for accurate analysis and identification unless specifically noted within the report.

- **Common Name** – This is the typical common name assigned to the tree species. For many trees, there is likely to be numerous common names that could be used. The common name provided should only be seen as a secondary identification tool.

- **Origin** – This may be recorded as Native (originates from Australia, outside of the survey area), Indigenous (originates from within the survey area), Exotic (originates from outside of Australia).

- **Health** - relates to the tree vigour and canopy density. The characteristic assigned to the tree may be represented as a combination of any of these categories (e.g. Fair to Poor or Fair – Poor). In these instances, there may be a combination of the characteristics listed below or the foliage density is at the upper or lower scale of each category. In some cases, ‘Health’ may be noted as being ‘Very Good’ which indicates an optimal condition or ‘Very Poor’ which indicates that the tree is of such poor health and is unlikely to recover. In some cases, the ‘Health’ condition will be provided as ‘Dead’. In this case, there is no observable indication that the tree is alive at the time of inspection. Health is rated according to the following categories:

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Good</td>
<td>Foliage density / bud formation (Deciduous) is greater than 75% at optimal growth. There is less than 10% canopy dieback present and foliage has no or very minor tip dieback. Tree may also have visible extension growth if it is in active growth and is showing no signs of nutrient deficiency (i.e. chlorosis) or active pest or disease presence. The tree may also have good wound wood development.</td>
</tr>
<tr>
<td>Fair</td>
<td>Foliage density / bud formation (Deciduous) is between 50-75% at optimal growth for the species. There may be 10-30% canopy dieback present and foliage may have minor tip dieback. Tree may be showing signs of normal growth, but it is not consistent throughout the crown. Some foliage discoloration may be present from possible nutrient deficiency or other cause (i.e. pest or disease).</td>
</tr>
<tr>
<td>Poor</td>
<td>Canopy may be asymmetrical (not typical for the species and affecting vigour) and or canopy may be suppressed. There may be greater than 30% canopy dieback present and foliage density is below 50%. Stunted growth through leaf size or petiole extension and discoloration of the leaf may be present. Tree may be producing epicormic shoots as a stress response. Nutrient deficiency, lack of resources (water, light etc) or pathogens may be the causal agent in the tree's decline.</td>
</tr>
</tbody>
</table>

[Advertised Plan]
Arboricultural Assessment

- **Structure** - relates to the physical form of the tree, including the trunk(s), main scaffold branches and roots. Structure includes the attributes that may influence the probability of trunk, limb or root plate failure. The characteristic assigned to the tree may be represented as a combination of any of these categories (e.g. Fair to Poor or Fair to Good). In these instances, there may be a combination of the characteristics listed below. In some cases, ‘Structure’ may be noted as being ‘Very Good’ which indicates an optimal condition or ‘Very Poor’ which indicates that the tree has major structural defects and may be of a relatively high risk of failure of the identified tree part. 

Structure is rated according to the following categories:

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Good</td>
<td>The form of the tree is ecocentric or decocentric and typical of the species characteristics and exhibits good symmetrical form. Major limbs are well formed with acceptable branch taper and unions appear to be strong with no signs of major defects. The tree has minimal defects or decay throughout the trunk and limbs. There is no sign of root plate heave or damage to the root system (mechanical or other). The tree is unlikely to suffer major branch or trunk failure under normal environmental (weather) conditions.</td>
</tr>
<tr>
<td>Fair</td>
<td>The form of the tree is ecocentric or decocentric and typical of the species characteristics and has a fairly symmetrical form. Tree may exhibit minor structural defects that may be managed through formative/remedial/restorative or structural pruning. Only minor wounds and or areas of decay are present that do not affect the overall stability or structural integrity of any major parts of the tree. Minor root damage may have occurred in the past. Defects present are likely to cause only minor branch failure under normal environmental (weather) conditions.</td>
</tr>
<tr>
<td>Poor</td>
<td>Tree has a poorly formed crown that is not symmetrical. Branch and or trunk taper may be unacceptable and scaffold limbs may be overextended. Branch unions exhibit significant defects that cannot be managed through formative pruning. There is likely to be decay in parts of the tree that may result in branch or trunk failure. Major root damage may have occurred and there may be evidence of root plate heave. Defects that are present may result in major failure of branches or trunk under normal environmental (weather) conditions.</td>
</tr>
</tbody>
</table>

- **Age Class** - is given as a guide to the current life stage of the tree. Ultimately, the level of maturity that a tree may reach is dependent on the growing environment. The ‘Mature’ age class may extend for many years and is given only as an indication of the maturity of the tree based on the conditions of the local environment. Age Class is rated according to the following categories:

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Planting</td>
<td>Planted within approximately 2 years</td>
</tr>
<tr>
<td>Juvenile</td>
<td>Estimated as between 2 - 10 years old</td>
</tr>
<tr>
<td>Semi-mature</td>
<td>Estimated at between 10 - 20 years old, however, this may be species dependant</td>
</tr>
<tr>
<td>Mature</td>
<td>Estimated at over 25 years old or in a life stage that is considered at the peak of growth for the species.</td>
</tr>
<tr>
<td>Senescent</td>
<td>In the declining phase of the trees lifespan</td>
</tr>
</tbody>
</table>

- **Arboricultural Value** - is rated according to the overall health, structure and estimated life expectancy of the tree (often referred to as ‘Useful Life Expectancy - ULE’). Often the life expectancy or ULE of a tree may be difficult to quantify as there are too many variables and therefore it is not directly recorded as a characteristic in the report. ULE has traditionally been used to guide future replanting and tree population heuristics.

The ‘Arboricultural Value’ takes into account the overall condition and life expectancy of the tree however it does not take into account the landscape or environmental status or suitability of the tree in the landscape. This rating is not a ‘Retention Value’ or ‘Protection Value’, it is only a rating of the overall condition of the physical characteristics of the tree and its expected longevity (based on growing conditions). For example, a tree of a semi mature or younger age class may be given a medium or high arboricultural value based on its condition, however it may be given no protection value based on its current size and low landscape significance and or amenity value. The arboricultural value is rated based on the following categories:

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| Document Ref: 6438D5B1arkangia Cres BLACK ROCK | Uncontrolled when printed | Prepared: 06/12/2018 |
### Arboricultural Assessment

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low</td>
<td>A tree of low arboricultural value may be considered to be in poor condition overall with a low life expectancy (less than 10 years). The tree may be showing signs of poor health and or structure. The tree may either have a poor health rating and it is unlikely to recover or a poor structure that cannot be remedied though normal arboricultural pruning practices.</td>
</tr>
<tr>
<td>Medium</td>
<td>A tree of medium arboricultural value may be considered to be in fair condition overall. This tree may be considered as an average tree that provides average benefits to the site and local area with an estimated longevity of between 10 – 20 years. The tree may have evidence of fair to poor health that may be improved through cultural practices. The tree may have some structural defects that can be remedied through normal arboricultural pruning practices.</td>
</tr>
<tr>
<td>High</td>
<td>A tree of high arboricultural value may be considered to be of good overall health and structure. The tree is considered to have a life expectancy of greater than 20 years. Under normal maintenance practices this tree is expected to perform well in the landscape in the long term.</td>
</tr>
</tbody>
</table>

- **Ownership** – the ownership is noted as this may affect the 'Protection Value' of a tree or group of trees. Generally, trees and or vegetation that are located on adjoining lands that are not of the ownership of the project site may be subject to permission for removal and or works within the tree protection zone. Traditionally, this may be referred to as ‘Third Party Ownership’. Adjoining lands may be owned by private property owners and this is noted as being in the category ‘Neighbours’. Trees located on road reserves, nature strips or adjoining parklands/ open spaces are often owned or managed by the local Responsible Authority and are given the ownership category of ‘Council’. Where known, ownership may be noted as being ‘Crown’ or another regulatory body (e.g. Melb Water). In some cases, the ownership will be noted as ‘Other’ and this will be explained in the ‘Site Analysis’ section of the report.
Arboricultural Assessment

- **Protection Value** - is determined based on a combination of the Arboricultural Value, the ownership/location of the tree, the landscape/ecological and/or cultural/heritage significance of the tree. The Protection Value also takes into account the suitability of the tree in the current and future landscape and the species status (i.e., identified weed species). The tree may also be protected under any relevant Planning or Local Law regulations which is also taken into account under Protection Value. Protection Value is rated according to the following categories:

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>None</td>
<td>A tree or group of trees of ‘No’ protection value may be considered to be in poor condition overall and is assigned a low arboricultural value and is within the project site. The tree may be of medium or high arboricultural value, however, if it is a known weed species, is doing considerable infrastructure damage or is not suitable to the site (based on its physical characteristics), it is considered to be of no protection value. The tree may be a juvenile to young specimen that can easily be replaced with new tree planting that will provide a greater amenity in the next 5–10 years. This tree may have a low landscape significance in terms of its height and mass within the landscape (i.e., generally less than 8 metres in height and spread). Trees that are located on adjoining land may be given a rating of ‘None’ if they are found to be dead or extremely hazardous and do not have any regulatory protection and or habitat value. In such instances this will be defined within the report. The tree(s) may or may not be subject to any local Planning or other regulatory control (i.e. Local Law).</td>
</tr>
<tr>
<td>Moderate</td>
<td>A tree or group of trees of ‘Moderate’ protection value may be considered to be in fair to good condition overall and is located within the project site. The tree may be of medium or high arboricultural value, however, it may or may not be suitable to the site in the long term (based on its physical characteristics) for greater than 20 years. The tree may provide a moderate level of landscape significance or amenity and be of moderate individual significance. The tree may be in a semi mature to early mature life stage. Ideally any future development should consider a moderate protection value to be retained and incorporated into the design. However, if the retention and or adequate protection of this tree cannot be achieved with a reasonable design footprint then consideration should be given to the removal of the tree and replacement with a new tree suitable to the landscape and available space. Only trees within the project site may be given a rating of ‘Moderate’. Trees that are located on adjoining land are not given a rating of ‘Moderate’. The tree(s) may or may not be subject to any local Planning or other regulatory control (i.e. Local Law).</td>
</tr>
<tr>
<td>High</td>
<td>A tree or group of trees of ‘High’ protection value may be considered to be in good condition overall and is suitably located within the project site (i.e. within the front setback). The tree (if within the project site) will be of high arboricultural value and should have a life expectancy of greater than 20 years if protected and managed. The tree may provide a moderate to high level of landscape significance or amenity and be of moderate to high individual significance. The tree will be in a mature life stage but not beginning senescence. Ideally any future development should consider a high protection value to be retained and incorporated into the design when the tree is located on the site. The design should have regard to the adequate protection of this tree throughout any development on the project site. This tree may have a high landscape significance in terms of its height and mass within the landscape (i.e. generally greater than 12 metres in height and spread). Trees located on adjoining lands, not of the ownership of the project site, are given a high protection value, regardless of their overall condition (Arboricultural Value), the environmental/landscape significance and or cultural/heritage significance (i.e. historic or remnant old veteran trees) unless they are Dead and do not have any regulatory protection and or habitat value. High protection value may also be assigned to known weed species, however this will be noted within the report. The tree(s) may or may not be subject to any local Planning or other regulatory control (i.e. Local Law).</td>
</tr>
</tbody>
</table>

- **Notes/Comments** – The general notes/comments provide additional support where required for the tree data collected in the field.
5. GLOSSARY OF COMMONLY USED TERMS

Amenity
Although difficult to quantify, the term as used in this report relates to the contribution given to the landscape or streetscape in terms of visual aesthetics. It may also relate to the contribution in terms of shade or protection from the elements.

Bifurcation
A stem or branch forked or divided into two or more parts or branches. Used to describe a union point. A bifurcation may have different characteristics dependant on the load distribution on the union and the size of the branches or stems that arise from the union point.

Branch Bark Ridge
Swelling of bark tissue on the upper side of the branch junction or union. Considered the normal pattern of development in contrast to included bark (from Matheny & Clark, 1994).

Branch collar
Trunk tissue that forms around the base of a branch between the main stem and the branch. As the branch decreases in vigour or begins to die, the branch collar becomes more pronounced (AS4373).

Chlorotic
Discolouration of the leaves, yellow in colour resulting from a lack of chlorophyll

Codominant
Generally relates to trunks/ stems (although it may relate to scaffold branches within the crown) of two or more and of equal or similar size and relative importance (Matheny & Clark, 1994).

Compartmentalisation
Physiological process which creates the chemical and mechanical boundaries that act to limit the spread of disease and decay organisms (Matheny & Clark, 1994).

Decay
Degeneration and de-lignification of plant tissue, including wood, by pathogens or micro-organisms (AS4373).

Epicormic Shoots
Shoots which arise from adventitious or latent buds (usually dormant). They are generally produced in response to environmental stress.

Included Bark
The pattern of development at a branch union where bark is turned inward rather than outward or pushed out. Relates to the branch bark ridge and bifurcations. (Matheny & Clark, 1994)

Live Crown Ratio (LCR)
Relative proportion of healthy crown in proportion to overall tree height. Often not used in isolation due to the different natural forms of many species and growing conditions. Generally, a LCR of less than 30% may result in a poor structural rating, however, when this is used and noted within this report, it is based on potential changes to the environment where this condition may have an effect on long term protection value.

Lateral
A branch arising from another branch or stem (AS4373)
Arboricultural Assessment

Lopping
Cutting back a limb or stem at any point with no regard to natural target pruning. Random cutting of branches or stems between branch unions or at internodes on young trees. Not considered an acceptable practice as part of the Australian Standard AS4973-2007 - Pruning of Amenity Trees.

Senescence or Senescent
The organic process of age and the deterioration of tissue within the tree.

Wound wood/ Reaction Wood
Lignified, partially differentiated tissue which develops from the callus associated with wound or pruning cuts.
6. COMPANY PROFILE AND QUALIFICATIONS

6.1.1. COMPANY PROFILE

Arbor Survey Pty Ltd is an Arboricultural Consulting company based in Victoria, Australia. The principal consultants, Mark Reynolds and Blake Clancy have been involved within the Arboricultural Industry for a combined period of over 25 years, working for both private sector clients and within the public sector at numerous Victorian Local Government Authorities.

Our consultants have vast experience in providing Arboricultural referral within local councils in relation to planning applications and Strategic Planning advice relating to planning scheme amendments. We have extensive experience in quantified tree risk assessment (QTRA and TRAQ), health and structural condition assessments, tree valuations, development impact assessments and tree management and protection plans. We also have provided Expert Evidence statements and represented numerous private and public sector clients at the Victorian Civil and Administrative Tribunal (VCAT) and Magistrates Court.

Arbor Survey Pty Ltd is dedicated to best practice within the industry and are committed to ongoing professional development.

Professional Memberships
- Member of the International Society of Arboriculture (ISA)
- Member of Arboriculture Australia
- Member of the Victorian Tree Industry Association (VTIA)
- Member of the Victorian Environment and Planning Law Association (VEPLA)

6.1.2. MARK REYNOLDS

Qualifications
- Bachelor of Applied Science (Horticulture) - University of Melbourne (Burnley Campus)
- Registered Quantified Tree Risk Assessment (QTRA)
- ISA TRAQ Register User

Experience
- Senior Arborist – Boroondara Council
- Open Space Coordinator – Cardinia Shire Council
- Senior Arborist – City of Kingston
- Private arboricultural and vegetation consulting under Tri-dimensional Consulting
- Treescape Consulting Pty Ltd – Arboricultural Consultant
- Bayside City Council – Vegetation Planner/ Senior Investigations Arborist

6.1.3. BLAKE CLANCY

Qualifications
- Bachelor of Applied Science (Horticulture) - University of Melbourne (Burnley Campus)
- Advanced Diploma of Horticulture (Arboriculture) – University of Melbourne (Burnley Campus)
- Registered Quantified Tree Risk Assessment (QTRA)
- ISA TRAQ Register User

Experience
- Senior Consulting Arborist – Homewood Consulting Pty Ltd
- Consulting Arborist – Greenwood Consulting Pty Ltd

6.1.4. CLAUDINE REYNOLDS

Qualifications
- Graduate Certificate in Arboriculture - University of Melbourne (Burnley Campus)
- Diploma of Horticulture – Holmesglen Institute (Waverley Campus)
- Bachelor of Science / Commerce – Monash University (Clayton Campus)
- Registered Quantified Tree Risk Assessment (QTRA)

[Document Ref: R437D S1 Ar LS 1 Ar LSing Cres BLACK ROCK] [Uncontrolled when printed] [Prepared: 06/12/2013]
4.2 8 MAYSBUY AVENUE, BRIGHTON
NOTICE OF DECISION TO GRANT A PERMIT
APPLICATION NO: 2018/597/1 WARD: CENTRAL

City Planning & Amenity - Development Services
File No: PSF/19/962 – Doc No: DOC/19/88122

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>Pink Architecture</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>1 July 2017</td>
</tr>
<tr>
<td>Current statutory days</td>
<td>13 September 2018</td>
</tr>
<tr>
<td>Zoning</td>
<td>Neighbourhood Residential Zone (Schedule 3)</td>
</tr>
<tr>
<td>Overlays</td>
<td>Design and Development Overlay (Schedule 1)</td>
</tr>
<tr>
<td>Site area</td>
<td>664sqm</td>
</tr>
<tr>
<td>Number of outstanding objections</td>
<td>3</td>
</tr>
<tr>
<td>Is a Development Contribution Levy applicable?</td>
<td>Yes - $2,020 Catchment Area 7</td>
</tr>
<tr>
<td>Is the site located within an area of cultural heritage sensitivity?</td>
<td>N/A</td>
</tr>
</tbody>
</table>

Proposal
The application seeks construction of two dwellings on a lot and a front fence greater than 1.2m.

Key details of the proposal are as follows:

- Two (2) x three (3) bedroom dwellings;
- Two storeys dwellings - 6.6m high not including roof access;
- A roof deck on each dwelling;
- Swimming pools on northern and southern boundaries;
- Site coverage 50%;
- Permeability 25%; and
- A front fence 1.2m – 1.6m high, setback a minimum of 2.4m from the front setback.

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) – Construction of two or more dwellings on a lot and a front fence greater than 1.2m.
- Clause 43.02 (Design and Development Overlay 1) – Construction of a roof deck above the second storey of a building.

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

3. Stakeholder consultation

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

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

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

Public notification
The application was advertised pursuant to Sections 52(1)(a) and (d) of the Planning and Environment Act 1987 and three (3) objections were received.

The three (3) objections remains outstanding at the time of this report.

The following concerns were raised:

- Height and Setbacks;
- Roof decks and access;
- Overlooking;
- Neighbourhood Character;
- Overshadowing;
- Pool location; and
- Vegetation.

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

Consultation meeting
A consultation meeting was held on Wednesday 21 November 2018 attended by the permit applicant and three (3) objectors.

The applicant offered to remove the roof decks, pools and in addition assurance that the
neighbouring trees would be protected during and post construction. These offers can be introduced by condition of permit.

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 2018/597/1 for the land known and described as 8 Maysbury Avenue, Brighton for the construction of two dwellings and a front fence greater than 1.2m in the Neighbourhood Residential Zone Schedule 1 in accordance with the endorsed plans and subject to the following conditions from the standard conditions:

1. Before the development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the plans advertised and prepared by Pink Architecture referenced TP 3.00, TP3.01, TP3.02, TP4.01, TP 4.02, dated 16 October 2018 and L-TP1 Rev A dated September 2018, but modified to show:

   a) Deletion of the roof decks and associated access structures.
   b) Deletion of both swimming pools.
   c) A notation on the ground floor plan and the west elevation that the front door and sidelight of each dwelling are to be glazed with clear glass.
   d) Ground floor plan amended to show a sidelight window next to the front door of Dwelling 2 to match the elevations.
   e) The setback to Bedroom 1 and the bathroom (notated as 5 and 6 on Drawing TP3.01) on the first floor of each dwelling should be increased to 3m.
   f) Design changes to the retaining wall near the boundary with Tree 10 to ensure that there is no more than 10% encroachment into the Tree Protection Zone (TPZ) in accordance with AS4970-2009 to the satisfaction of the Responsible Authority.
   g) Increase of the front setback lawn areas to a minimum of 36sqm to accommodate a large canopy tree, minimum 12m in height at maturity.
   h) Two canopy trees within the rear setback with a minimum height of 8m at maturity.
   i) 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 habitable rooms of adjoining properties.
   j) A schedule of construction materials, external finishes and colours.
   k) Water Sensitive Urban Design measures in accordance with Condition 8.
   l) A Landscape Plan in accordance with Condition 10.
   m) Tree Management and Protection Plan in accordance with Condition 13.
   n) Provision of the development contributions fee in accordance with Condition 22.
All to the satisfaction of the Responsible Authority.

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

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

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

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

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

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

Water Sensitive Urban Design

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

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

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

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

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

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

Landscaping

10. Prior to the endorsement of plans pursuant to Condition 1, a detailed landscape plan to the satisfaction of the Responsible Authority must be submitted to and be endorsed by the Responsible Authority. The plan must be generally in accordance with the landscape concept plan drawn by John Patrick, reference L-TP01 Rev A, dated September 2018 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 on neighbouring properties where the Tree Protection Zones of such trees calculated in accordance with AS4970-2009 fall partially within the subject site.

b) A planting schedule (which must include indigenous coastal trees) of all proposed trees and shrubs, including botanical names, common names, pot sizes, sizes at maturity, and quantities of each plant. Landscaping and/or planting within all areas of the site not covered by buildings or hard surfaces.

c) Details of surface finishes of pathways and driveways.

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

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

Tree Management and Protection Plan

13. Prior to the endorsement of plans pursuant to Condition 1, including any related demolition or removal of vegetation, a Tree Management Plan (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.

16. Any pruning that is required to be done to the canopy of any tree to be 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

17. Soil excavation must not occur within 2.5 metres from the edge of the street
tree asset's stem at ground level.

18. 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.

19. Street trees must not be removed, lopped, damage or pruned by any party other than Bayside City Council authorised tree care contractors.

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.

Development Contribution

22. 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

23. 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.

24. 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.

VicTrack

25. Before the commencement of the development, including demolition and bulk excavation, detailed construction/engineering plans and computations for any construction or works likely to have an impact on railway operations, railway infrastructure assets or railway land are to be submitted to, and approved by, VicTrack and the Rail Operator. The plans must detail all excavation of the site adjacent to the railway corridor having any impact on the railway land. The construction or works must be carried out in accordance with the plans
approved by VicTrack and the Rail Operator.

**Permit Expiry**

26. 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.

- The existing street tree must not be removed or damaged.

- The permit holder must, at all times, ensure that the common boundary with railway land is fenced at the permit holder's expense to prohibit unauthorised access to the rail corridor.

- The permit holder must not, at any time:

  a) allow any drainage, effluent, waste, soil or other materials to enter or be directed to the railway land; or

  b) store or deposit any waste, soil or other materials on the railway land.

- The permit holder must not enter any railway land without the written consent of the Rail Operator. If the permit holder has obtained the Rail Operator's written consent to enter the railway land, the permit holder must comply with the Rail Operator's Site Access Procedures and Conditions when accessing the railway land.

- The permit holder must not carry out, or allow to be carried out, any excavation, filling or construction on the common boundary between the subject land and the railway land unless it has obtained the prior written approval of VicTrack and the Rail Operator.

- All works, including hoardings, must be undertaken within the subject land and must not encroach onto the railway land.

- The permit holder must not install, or cause to be installed, any permanent or temporary ground anchors within the railway land.
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.
- Where a range of housing types is provided to accommodate the changing needs of the community, enabling people to age in place and providing opportunities for young adults and families to live and remain in the municipality.

Relevant strategies of the Council plan include:

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

Bayside Planning Scheme

- Clause 9 Plan Melbourne
- Clause 11 Settlement
- Clause 16 Housing
- Clause 21.02 Bayside Key Issues and Strategic Vision
- Clause 21.03 Settlement and Housing
- Clause 21.04 Environmental and Landscape Values
- Clause 22.06 Neighbourhood Character Policy (Precinct C1)
- Clause 22.08 Water Sensitive Urban Design
- Clause 32.09 Neighbourhood Residential Zone (Schedule 3)
- Clause 43.02 Design and Development Overlay (Schedule 1)
- Clause 45.06 Development Contribution Plan (Schedule 1)
- 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 C1. The character of the precinct is varied, comprising older and contemporary 2 - 3 storey residential buildings. Although the current dwelling is an original home, it has been substantially altered. The street itself has been substantially altered, and a new development such as this proposal would not be out of context.
There are generous front setbacks which allow for the retention of a spacious garden setting, this is further enhanced by the proposed front fence being setback 2.4m from the front boundary allowing for planting right up to the street front. The front fence is a mixture of 50/50 solid and vertical posts, which allow a good level of visibility into the front gardens.

The landscape plan proposed includes canopy trees and shrubs, a condition of permit will require that the plant schedule include indigenous planting. There are no native trees being removed by the proposed development.

The garages are located at the front of the dwelling; the upper levels project 0.5m in front of the garages and have floor to ceiling windows overlooking the street. This helps to recess the dominance of the garages and help activate the street. The elevations show the front doors to be glazed with a full height sidelight window adjacent to the door. This also will enhance how the development addresses the street frontage and encourages passive surveillance from the dwellings. It is noted that the ground floor plan does not show a sidelight window to Dwelling 2. A condition of permit will require that it is noted on the plan that the front doors and sidelights are to be glazed and to show a sidelight window adjacent to the front door of Dwelling 2.

A mix of materials, colours and finishes have been proposed which further break up the well-articulated building.

The dwellings are to be flat roofed and along with the deletion of the proposed roof decks (discussed further below) ensure that the building height does not dominate the streetscape. It is noted that the dwelling to the south is double storey as are several other dwelling in the street.

The proposal is considered to demonstrate an appropriate level of compliance with the preferred future character statement and precinct guidelines as contained in Attachment 2.

6.2. Compliance with Clause 55 (ResCode)

<table>
<thead>
<tr>
<th></th>
<th>Ground floor</th>
<th>First Floor</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Requirement</td>
<td>Proposed</td>
</tr>
<tr>
<td>North(side)</td>
<td>0m or 2m</td>
<td>1.73m – 2m</td>
</tr>
<tr>
<td>South (side)</td>
<td>0m or 2m</td>
<td>2m</td>
</tr>
<tr>
<td>East (rear)</td>
<td>0m or 3m</td>
<td>7m – 9m</td>
</tr>
</tbody>
</table>

The master bedroom, bedroom 1 and bathroom of Dwelling 1 and Dwelling 2 do not comply with the side setback standard in relation to the northern boundary and southern boundary respectively.

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

The site has a substantial cut of approximately 1m, the height of the walls has been taken from NGL, the setback requirement in brackets shows what the setback would be if measured from the bottom of the cut. The variation of approximately 0.6m is not considered inappropriate; however, this non-compliance makes up approximately 65% of the length of the first floor side walls. A condition of permit will require that the setback for Bedroom 1 and the bathroom should be increased to 3m, to give greater articulation and closer compliance. The setback for the Master bedroom and associated walk in
robes and ensuite will remain 2.7m.

The northern boundary abuts the rear open space of dwellings which face Gould Street, due to the orientation of the site and the substantial setbacks to these dwelling there are no amenity impacts.

The southern boundary still has adequate separation; there is no further overshadowing than that of the existing fences and all windows are above 1.7m or are adequately screened.

**Front Fences (Standard B32)**

<table>
<thead>
<tr>
<th>Required</th>
<th>Proposed</th>
<th>Variation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maysbury Avenue</td>
<td>1.2m</td>
<td>1.2 – 1.6mm</td>
</tr>
</tbody>
</table>

A front fence of 1.2m – 1.6, metres in height is proposed to the front boundary of the site on Maysbury Avenue. Pursuant to Standard B32, a front fence to a maximum of 1.2 metres in height is provided preferred. The objective of this standard is to encourage front fence design that respects the existing or preferred neighbourhood character.

The increase of height from 1.2m to 1.6m is due to the fall of the site, the fence proposed is vertical slats and rendered wall, 50% of the fence proposed has visual permeability. In addition, the proposed fence is setback 2.4m from the boundary, allowing the opportunity for landscaping directly to the streetscape. The variation in this context is appropriate.

**6.3. Landscaping**

The application plans show the removal of 3 trees from the site; there are no native trees. The table below identifies those trees protected by the Local Law and those which are not protected by any statutory mechanism. Native trees are marked with a ‘*’.

<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></td>
<td>Tree 7,8,9</td>
</tr>
</tbody>
</table>

Council’s Arborist in their referral response advised that these trees have low amenity and the preferred outcome is to replace with indigenous coastal trees as per Neighbourhood Character Policy (NCP).

Trees 2, 3, 4, 5, 6, 10, 11, 12 and 13 are all located on adjoining sites with their Tree Protection Zones (TPZ) extending into the subject site. Tree No 10 is located on an adjoining site to the north. The proposed development will result in a 29% encroachment on the Tree Protection Zone (TPZ) by the proposed development. It is considered that this needs to be reduced to ensure the health and viability of the tree. Therefore, a condition of any approval should be included to require that design changes are made to the retaining wall along the boundary adjacent to tree 10 to ensure that there is no more than a 10% encroachment into the TPZ.

Council’s Arborist has advised that a Tree Protection Plan and Tree Management Plan will be required to be submitted to ensure that these trees remains 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 submitted landscape plan and considers that the plan is generally acceptable. Conditions of permit will require that the planting schedule include indigenous coastal trees, that the front setback lawn area be increased to a minimum of 36sqm to accommodate a large canopy tree and that there are two canopy trees in the rear setback.
6.4. **Street tree(s)**

Tree No. 1 is located within the nature strip and is proposed for retention. Council’s Street Tree Arborist has advised that there are no objections, subject to conditions.

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 3 bedrooms and is afforded two car parking spaces in the form of a double garage, with additional tandem parking in the driveway. Dwelling 2 comprises three bedrooms and has a single garage and tandem outdoor 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 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.

6.6. **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.

6.7. **Roof Decks**

The roof decks are proposed to be centrally located and setback 2m from the roof directly below. The roof deck access structures are not setback at all. A 2m setback is required by the DDO1.

Neighbours are concerned with regard to overlooking from the proposed roof decks and the non-compliant access structures.

As a result of the consultation meeting, it was agreed that to allay the concerns of the neighbours, the roof decks would be deleted by condition of permit if one was to be issued. Such condition has been included in the recommendation.

6.8. **Swimming Pools**

There are swimming pools proposed for each dwelling on the northern and southern boundary respectively. An objection was raised in regard to the location and size of the pool to the south. Concern was mainly about the size of the pool reducing the opportunity for screen planting along the boundary.

This was discussed at the consultation meeting and the applicant agreed to delete the swimming pools, which could be dealt with by condition of permit if one is to be issued. Such condition has been included in the recommendation.

6.9. **VicTrack**

VicTrack is not a referral authority; however, as an abutting landowner they were informed of the proposed development as part of the advertising process. VicTrack have no objections to the proposal but have included conditions and notes which will form part of the permit.

6.10. **Development contributions levy**

The subject site is located within catchment area 7.

Based on the proposed application and the below recommendation, a payment of $2,200 is required. The payment of the development contributions is included as a condition of permit.
Support Attachments

1. Decision Plans ↓
2. Site and Surrounds Imagery ↓
3. Neighbourhood Character Assessment - Precinct C1 ↓
4. Clause 55 (ResCode) Assessment ↓
Item 4.2 – Matters of Decision
Item 4.2 – Matters of Decision
Item 4.2 – Matters of Decision
Item 4.2 – Matters of Decision
Item 4.2 – Matters of Decision
Item 4.2 – Matters of Decision
Item 4.2 – Matters of Decision
attachment 1

Figure 1 Aerial overview of the site and surrounds

<table>
<thead>
<tr>
<th>Legend</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject site</td>
<td>⭐</td>
</tr>
<tr>
<td>Objector(s)</td>
<td>●</td>
</tr>
<tr>
<td>Withdrawn</td>
<td>▲</td>
</tr>
</tbody>
</table>
Figure 2 View towards the site
### Neighbourhood Character Precinct C1

#### Preferred Future Character Statement

The mix of dwelling styles, including a substantial presence of pre WWII 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.

#### Precinct Guidelines

<table>
<thead>
<tr>
<th>Objectives</th>
<th>Design Responses</th>
<th>Avoid</th>
<th>Planning Officer Assessment</th>
</tr>
</thead>
</table>
| To encourage the retention of dwellings that contribute to the valued character of the Precinct in the design of development proposals. | • Attempt to retain wherever possible intact and good condition dwellings that contribute to the valued character of the Precinct in designing new development.  
• Alterations and extensions should retain the front of these dwellings. | Demolition of dwellings that contribute to the valued character of the Precinct. | Responds  
Although the proposed dwelling to be removed is an original house, it has been substantially altered. Maysbury Avenue is not an intact street and has a variety of dwelling types. |
| To maintain and enhance the spacious garden settings of the dwellings.     | • Prepare a landscape plan to accompany all applications for new dwellings that includes substantial trees and shrubs. | Lack of landscaping and substantial vegetation.                     | Responds  
A landscape plan has been provided. Generous front and rear setback have allowed for substantial planting. |
| To enhance the bayside vegetation character of the area.                  | • Retain large trees and established native and traditional coastal vegetation and provide for the planting of new indigenous coastal trees where possible. | Removal of large native and coastal trees.  
Planting of environmental weeds.                                         | Responds  
There is no established native traditional coastal vegetation currently on site. Suitable replacement planting has been proposed and additional indigenous native trees will be added as a condition of permit. |
| To retain the sense of spaciousness in the area and provide adequate space for front gardens. | • Buildings should be sited to allow space for the planting of trees and shrubs.  
• Buildings should be sited to create the appearance of space between buildings and | | Responds  
Large front setbacks have allowed for adequate front garden space. An increased garden area |
<table>
<thead>
<tr>
<th>Objectives</th>
<th>Design Responses</th>
<th>Avoid</th>
<th>Planning Officer Assessment</th>
</tr>
</thead>
</table>
| To minimise the dominance of car parking facilities, driveways and crossovers. | • Locate garages and car ports at or behind the line of the dwelling.  
• Minimise hard paving in front yards.  
• 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. | Car parking facilities that dominate the façade or view of the dwelling.  
Loss of front garden space. | Responds  
The garages have been well designed to not dominate the dwelling.  
The hard paving is at a minimum to allow for appropriate landscaping. |
| To ensure that new buildings and extensions do not dominate the streetscape. | • Recession upper level elements from the front façade. | High pitched roof forms with dormer windows. | Responds  
The proposed roof flat and the upper level does not dominate the streetscape. |
| To respect the identified heritage qualities of adjoining buildings. | • Where adjoining an identified heritage building, respect the height, building forms, siting and materials, of the heritage building’s in the new building design. | Buildings that dominate heritage buildings by height, siting or massing. | Responds  
N/A |
| To encourage the use of a variety of building materials, finishes and design detail that complement the coastal setting. | • Use a mix of materials including timber or other non-masonry wall materials in building design.  
• Use simple building details and articulate roof forms. | Large, poorly articulated external wall surfaces of one material only.  
Heavy materials and design detailing (eg. large masonry columns and piers). | Responds  
Materials, colours and finishes compliment the well-articulated building. |
| To encourage the openness of the streetscape. | • Provide open style fencing, other than along heavily trafficked roads. | High, solid front fencing. | Responds  
The fence is setback 2.4m and has 50% permeability |
| To create a visually interesting and attractive built form interface with the environment. | • Articulate the form of buildings and elements, particularly front facades, and include elements that lighten the building form. | Buildings that have no relationship to the environment. | Responds  
N/A |
<table>
<thead>
<tr>
<th>Objectives</th>
<th>Design Responses</th>
<th>Avoid</th>
<th>Planning Officer Assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>foreshore reserve, on properties fronting the reserve and visible from the reserve.</td>
<td>such as balconies, verandas, non-reflective glazing and light, transparent balustrading.</td>
<td>the foreshore setting.</td>
<td>Poorly articulated roof and building forms.</td>
</tr>
<tr>
<td></td>
<td>• Use a mix of contemporary and traditional coastal materials, textures and finishes, including render, timber, non-masonry sheathing, glazing, stone and brick.</td>
<td>Highly reflective materials or glazing.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Provide a fence or landscaping treatment to delineate the property boundary fronting the foreshore reserve.</td>
<td>Blank walls facing the foreshore.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Provide articulated roof forms to create an interesting skyline when viewed from the beach.</td>
<td>Lack of distinction between public and private spaces along the foreshore.</td>
<td></td>
</tr>
</tbody>
</table>
**Attachment 3**

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

<table>
<thead>
<tr>
<th>CLAUSE 55.02 NEIGHBOURHOOD CHARACTER AND INFRASTRUCTURE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Title and Objective</strong></td>
</tr>
<tr>
<td><strong>B1 Neighbourhood Character</strong></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>
</tr>
<tr>
<td><strong>B2 Residential Policy</strong></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>
</tr>
<tr>
<td><strong>B3 Dwelling Diversity</strong></td>
</tr>
<tr>
<td>Encourages a range of dwelling sizes and types in developments of ten or more dwellings.</td>
</tr>
<tr>
<td><strong>B4 Infrastructure</strong></td>
</tr>
<tr>
<td>Provides appropriate utility services and infrastructure without overloading the capacity.</td>
</tr>
<tr>
<td><strong>B5 Integration with the Street</strong></td>
</tr>
<tr>
<td>Integrate the layout of development with the street</td>
</tr>
</tbody>
</table>

**CLAUSE 55.03 SITE LAYOUT AND BUILDING MASSING**
<table>
<thead>
<tr>
<th>Title and Objective</th>
<th>Complies with Standard?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>B6 Street Setback</strong></td>
<td>Complies</td>
<td>Requirement: 7.035m. Proposed: 7.54m to 8.54m at ground floor and 7.4m and 8.04m at first floor.</td>
</tr>
<tr>
<td>The setbacks of buildings from a street respect the existing or preferred neighbourhood character and make efficient use of the site.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B7 Building Height</strong></td>
<td>Complies</td>
<td>Maximum: 9m. Design and Development Overlay, Schedule 1 also identifies a height of 2 storeys excluding an attic and basement. Proposed: 6.6 metres It is noted that the development is cut into the site so from natural ground level the highest point is approximately 6.2m</td>
</tr>
<tr>
<td>Building height should respect the existing or preferred neighbourhood character.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B8 Site Coverage</strong></td>
<td>Complies</td>
<td>Maximum: 50% Proposed: 50%</td>
</tr>
<tr>
<td>Site coverage should respect the existing or preferred neighbourhood character and respond to the features of the site.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B9 Permeability</strong></td>
<td>Complies</td>
<td>Minimum: &gt;20% Proposed: 25%</td>
</tr>
<tr>
<td>Reduce the impact of stormwater run-off on the drainage system and facilitate on-site stormwater infiltration.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B10 Energy Efficiency</strong></td>
<td>Complies</td>
<td>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.</td>
</tr>
<tr>
<td>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.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B11 Open Space</strong></td>
<td>N/A</td>
<td>There is no communal open space in or adjacent to the development.</td>
</tr>
<tr>
<td>Integrate layout of development with any public and communal open space provided in or adjacent to the development.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B12 Safety</strong></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>Layout to provide safety and security for residents and property.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B13 Landscaping</strong></td>
<td>Complies</td>
<td>The siting of the development creates sufficient opportunities for meaningful landscaping subject to conditions. A condition of permit will require an amended landscape plan to be submitted to the satisfaction of the Responsible Authority.</td>
</tr>
<tr>
<td>To provide appropriate landscaping. To encourage:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Development that respects the landscape character of the neighbourhood. • Development that maintains and enhances habitat for plants and</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
animals in locations of habitat importance.  
- The retention of mature vegetation on the site.

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

<table>
<thead>
<tr>
<th></th>
<th>Complies</th>
<th>Council’s Traffic Engineer has assessed the development and no concerns were raised due to the safety of access for vehicles.</th>
</tr>
</thead>
</table>

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

<table>
<thead>
<tr>
<th></th>
<th>Complies</th>
<th>On site car parking is provided in the form a double garage and tandem parking for Dwelling 1 and a single garage plus tandem parking for Dwelling 2. Standard traffic conditions are included as permit conditions. Refer to Section 6.4 of the report for further discussion.</th>
</tr>
</thead>
</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><strong>B17 Side and Rear Setbacks</strong></td>
<td>No</td>
<td>Refer to Section 6.3 of the Report.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Ground floor</th>
<th>First Floor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requirement</td>
<td>Proposed</td>
<td>Requirement</td>
</tr>
<tr>
<td>North(side)</td>
<td>0m or 2m</td>
<td>1.73m – 2m</td>
</tr>
<tr>
<td>South (side)</td>
<td>0m or 2m</td>
<td>2m</td>
</tr>
<tr>
<td>East (rear)</td>
<td>0m or 3m</td>
<td>7m – 9m</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th></th>
<th>Complies</th>
<th>There is a 6.7m wall proposed on the northern boundary. The overall height is 3.4m, however due to the cut of the site the height of the wall from NGL is only 2.7m.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Item</td>
<td>Description</td>
<td>Compliance</td>
</tr>
<tr>
<td>------</td>
<td>-------------</td>
<td>------------</td>
</tr>
<tr>
<td>B19 Daylight to Existing Windows</td>
<td>Allow adequate daylight into existing habitable room windows.</td>
<td>Complies</td>
</tr>
<tr>
<td>B20 North Facing Windows</td>
<td>Allow adequate solar access to existing north-facing habitable room windows.</td>
<td>Complies</td>
</tr>
<tr>
<td>B21 Overshadowing Open Space</td>
<td>Ensure buildings do not significantly overshadow existing secluded private open space.</td>
<td>Complies</td>
</tr>
<tr>
<td>B22 Overlooking</td>
<td>Limit views into existing secluded private open space and habitable room windows.</td>
<td>Complies</td>
</tr>
<tr>
<td>B23 Internal Views</td>
<td>Limit views into existing secluded private open space and habitable room windows of dwellings and residential buildings within the same development.</td>
<td>Complies</td>
</tr>
<tr>
<td>B24 Noise Impacts</td>
<td>Protect residents from external noise and contain noise sources in developments that may affect existing dwellings.</td>
<td>Complies</td>
</tr>
</tbody>
</table>

**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>B25 Accessibility</td>
<td>Complies</td>
<td>Both dwellings have a step up to the front porch and another into the front door. The entrances to both dwellings could easily be retrofitted to make them accessible for people of all abilities. The development could be further retrofitted to accommodate people with limited mobility in the future if required.</td>
</tr>
<tr>
<td>B26 Dwelling Entry</td>
<td>Complies</td>
<td>The entries to both dwellings are easily identifiable from the street.</td>
</tr>
<tr>
<td>B27 Daylight to New Windows</td>
<td>Complies</td>
<td>All habitable windows will open out onto a space clear to the sky.</td>
</tr>
</tbody>
</table>
### B26 Private Open Space
Provide reasonable recreation and service needs of residents by adequate private open space.

**Complies**

**Minimum:**
25m² secluded, 40m² overall with a minimum dimension of 3 m;

**Proposed:**
- Dwelling 1 – 66sqm secluded and 136sqm overall
- Dwelling 2 – 53sqm secluded and 141sqm

---

### B29 Solar Access to Open Space
Allow solar access into the secluded private open space of new dwellings/buildings.

**No**

**Appropriate solar access to the private open space areas is provided.**

---

### B30 Storage
Provide adequate storage facilities for each dwelling.

**Complies**

**Designated storage areas are provided in the rear setback and have a minimum area of 6 cubic metres.**

---

### 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>Refer to the body of the report for further discussion.</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>Variation required</td>
<td>The applicant proposes a 1.2m – 1.6m high front fence, which propose a combination of vertical posts and render. The fence is setback 2.4m from the frontage allowing for adequate planting</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>Ensure car parking, access areas and other communal open space is practical, attractive and easily maintained. Avoid future management difficulties in common ownership areas.</td>
</tr>
<tr>
<td><strong>B34 Site Services</strong></td>
<td>Complies</td>
<td>All appropriate site services can be easily catered for on-site.</td>
</tr>
<tr>
<td>Ensure site services and facilities can be installed and easily maintained and are accessible, adequate and attractive. Avoid future management difficulties in common ownership areas.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
1. Application details

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Notice of Decision to Amend a Permit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicant</td>
<td>SJB Planning</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>9 January 2019</td>
</tr>
<tr>
<td>Current statutory days</td>
<td>70 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></td>
<td>Development Contributions Plan Overlay (Schedule 1)</td>
</tr>
<tr>
<td>Site area</td>
<td>3557m²</td>
</tr>
<tr>
<td>Number of outstanding objections</td>
<td>4</td>
</tr>
<tr>
<td>Is a Development Contribution Levy applicable?</td>
<td>N/A</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 an amendment to a previously approved permit allowing the use and development of the land for a Retirement Village and use of the land to sell or consume liquor.

Planning Permit 2016/172/1 was issued on 7 June 2017 at the direction of the Victorian Civil and Administrative Tribunal (VCAT). A copy of the permit is provided at Attachment 2.

The endorsed plans are provided at Attachment 3.

The proposed amendments to the permit are as follows:

Second Floor

- Changes to Apartment 2.04 including:
  - The removal of northern section of pergola;
  - north western window of lounge reduced in size;
  - entrance hallway window;
  - replaced with a sliding door and side light,
  - southern bedroom en-suite window changed from clear to opaque glazing;
  - clothesline added to southern balcony; and
  - a skylight added to the en-suites of each bedroom.
• 3 skylights added to the kitchen of Apartment 2.02.
• A skylight added to the bathroom of Apartment 2.07.
• Material change to the terraces of level 2 from decking to paving.

Roof Plan
• Changes to second floor apartments below to accommodate skylights and apartment 2.04 pergola.
• Material of stairwell roof changed from metal decking to concrete.
• Relocation of the kitchen exhaust duct from the middle of the roof to the southern elevation.
• Upper car park exhaust vent to run horizontally and not vertically along the roof.
• Removal of 1 chimney and the minor relocation of 2 chimneys from the eastern roof edge.

Elevations
• Removal of 1 chimney and the minor relocation of 2 chimneys from the eastern elevation.
• Relocation of kitchen exhaust vent from the middle of the roof to the southern facade.
• The plant platform acoustic screening changed from wrought iron balustrade to aluminium balustrade.
• Changes to elevations as per above noted amendments.

Liquor Licence Plan
• Liquor licensing area increased to include the northern end of the ground floor alfresco terrace that adjoins the lounge, fronting New Street.

The application plans are provided at Attachment 1.

An aerial image and photographs of the site and surrounds are provided at Attachment 4.

History
Planning Permit 2016/172/1 was issued at the direction of the Victorian Civil and Administrative Tribunal (VCAT) on 7 June 2017 that allowed the Use and development of the land for a Retirement Village and use of the land to sell or consume liquor. A copy of the permit is provided at Attachment 2.

A Section 71 amendment to correct a clerical mistake to Condition 1(e) and 1(f) of the permit was approved on 31 October 2017.

Plans were endorsed in accordance with the Planning Permit on 22 December 2017.

A Secondary Consent application to amend the endorsed plans was approved by the Planning and Amenity Committee at its meeting of 15 May 2018.

A Section 72 Amendment Application was approved on 21 June 2018 which allowed the addition of a staff bed-sit on level 2. No conditions were added and plans were subsequently endorsed on 2 July 2018.

Construction has commenced on site.

This is the second Section 71 amendment to the permit.
2. Planning controls

Pursuant to Section 72 of the Planning and Environment Act 1987, the ambit of discretion is limited to the proposed changes sought by the applicant. Consideration cannot be given to elements already approved as part of the original application but not sought to be amended.

Original planning permit requirements

- Clause 32.09-1 (Neighbourhood Residential Zone – Schedule 3) – Use of Land for Accommodation.
- Clause 32.09-7 – (Neighbourhood Residential Zone – Schedule 3) - Buildings and Works associated with a Section 2 use.
- Clause 43.02-2 – (Design & Development Overlay – Schedule 3) - Construction of buildings and works.
- Clause 52.27 – (Licensed Premises) - Use of land to sell or consume liquor.

Planning Scheme Amendments

There are no Planning Scheme Amendments relevant to this application.

3. Stakeholder consultation

External referrals

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

Internal referrals

There are no referrals to Council departments required in association with this Section 72 amendment application.

The application was not referred to Council’s Social Planner due to the minor increase (approximately 15 square metres) to the licensed area.

Public notification

The application was advertised pursuant to Sections 52(1)(a) and (d) of the Planning and Environment Act 1987 and four (4) objections were received.

Four (4) objections remain outstanding at the time of this report.

The following concerns were raised:

- The relocation of the kitchen exhaust duct as it will result in:
  - Noise pollution;
  - Odour emissions;
  - Loss of enjoyment of private open space; and
  - Visual impact.

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

Consultation meeting

The applicant declined a consultation meeting. However, a concept plan (provided at Attachment 5) was prepared in response to the concerns raised. This concept plan was circulated to all objectors on 25 March 2019. No objections were withdrawn.
Recommendation

That Council resolve to issue a **Notice of Decision to Amend a Permit** under the provisions of the Bayside Planning Scheme in respect of Planning application 2016/172/3 for the land known and described as **233 New Street, Brighton** for the use and development of the land for a Retirement Village and use of the land to sell or consume liquor in accordance with the endorsed plans and subject to the following conditions from the standard conditions:

1. Before the use and/or development start/s, 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 received on the 23 January 2019 but modified to show:

   (a) A Landscaping Plan in accordance with the Conditions of this permit.
   (b) Location of all plant and equipment, including hot water services and air conditioners etc.
   (c) A schedule of construction materials, external finishes and colours (incorporating for example paint samples).
   (d) Water Sensitive Urban Design measures in accordance with Conditions of this permit.
   (e) A Traffic and Management Parking plan.
   (f) A Tree Management Plan in accordance with Condition 16.
   (g) A Revised Waste Management Plan in accordance with Conditions of this permit.
   (h) A Construction Management Plan in accordance with Conditions of this permit.
   (i) Updated fence treatments as shown in Plans TP206 and TP207 Revision 2.
   (j) A fence having a total height of 3.3m along the common boundary with 4 Esperance Avenue.
   (k) Headroom clearance of 2.2m at the entry to the basement ramp.
   (l) **The proposed roof top kitchen exhaust duct to be contained in a custom-made metal enclosure.**

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 use and / or 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. Before occupation, screening of windows as shown on the endorsed plans must be installed and maintained to the satisfaction of the Responsible Authority thereafter for the life of the building.

6. Before 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.

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

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

9. Noise emanating from the subject land must not exceed the permissible noise levels when determined in accordance with State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1, to the satisfaction of the Responsible Authority. Any works required to ensure and maintain the noise levels must be completed prior to the commencement of the use or occupation of the site and maintained thereafter, all to the satisfaction of the Responsible Authority.

10. Before the occupation of the development starts, the area(s) set aside for vehicle parking and accessways must be constructed, drained and line marked to the satisfaction of the Responsible Authority. Such areas must be kept available for these purposes at all times.

11. Before the occupation of the development starts, new or altered vehicle crossing(s) servicing the development must be constructed to the satisfaction of the Responsible Authority and any existing disused or redundant crossing or crossing opening must be removed and replaced with footpath/nature strip/kerb and channel, to the satisfaction of the Responsible Authority.

12. Any security boom, barrier or similar device controlling vehicular access to the premises must be located a minimum of six metres inside the property to allow vehicles to prop clear of New Street.

13. Before 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 Tract,
project no 0316-0132-02, dated 16 February 2017, 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. Canopy trees are to be planted at a height of 3.0m or as otherwise approved by the responsible authority.

(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

14. 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.

15. 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.

16. Before the commencement of construction, 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.

17. 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.

18. Before the development starts, the name and contact details of the project arborist responsible for implementing the Tree Management Plan must be submitted to the Responsible Authority.

19. Any pruning that is required to be done to the canopy of any tree to be retained, particularly the peppercorn on the adjoining property to the north, 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.

20. 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.

21. Before the development commences, 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.

22. Before development commences the applicant must replace the street trees to be removed to the satisfaction of the responsible authority and in accordance with the endorsed landscape plans.

23. Before the endorsement of plans pursuant to Condition 1, a Waste Management Plan must be 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). Collection shall be by way of private collection contractor.
(h) Method of hard waste collection. Hard waste collection shall be by way of private collection contractor.
(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.

24. Before the endorsement of plans pursuant to Condition 1, 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) Proposed construction lighting.

(k) The ongoing privacy of adjacent properties.

(l) Public safety measures.

(m) Construction times, noise and vibration controls.

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

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

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

(q) 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.


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

(t) Details of crane activities, if any.

25. Any CCTV cameras on the review site must be positioned so as not to record any adjacent private open space or neighbouring windows.

26. Public Transport Victoria must be notified 3 weeks prior to the commencement date for any works scheduled to occur on the subject site, at
which point PTC will give public notice for the removal of the bus stop and will proceed with the works upon the nominated date.

27. 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:

<table>
<thead>
<tr>
<th>Date Amended</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>31 October 2017</td>
<td>Permit correction pursuant to Section 71 of the Planning and Environment Act 1987 to:</td>
</tr>
<tr>
<td></td>
<td>The amendment to Permit Condition 1e is as follows:</td>
</tr>
<tr>
<td></td>
<td>• A Traffic and Management Parking plan.</td>
</tr>
<tr>
<td></td>
<td>The amendment to Permit Condition 1f is as follows:</td>
</tr>
<tr>
<td></td>
<td>• A Tree Management Plan in accordance with Condition 16.</td>
</tr>
<tr>
<td></td>
<td>The amendment to Permit Condition 16 is as follows:</td>
</tr>
<tr>
<td></td>
<td>• Delete ‘Condition 17’ reference in the second paragraph of Condition 16.</td>
</tr>
<tr>
<td></td>
<td>Subsequent renumbering of remaining conditions.</td>
</tr>
<tr>
<td>21 June 2018</td>
<td>Amendment to the permit under Section 72 of the Planning and Environment Act 1987 to:</td>
</tr>
<tr>
<td></td>
<td>Amendment the endorsed plans under the Planning Permit involving:</td>
</tr>
<tr>
<td></td>
<td>• The addition of a staff bed-sit to level 2 southern internal elevation.</td>
</tr>
<tr>
<td>16 April 2019</td>
<td>The amendments to the permit include:</td>
</tr>
<tr>
<td></td>
<td><strong>Second Floor</strong></td>
</tr>
<tr>
<td></td>
<td>• The removal of Apartment 2.04 northern section pergola and eastern section increased across the eastern facade, north western window of lounge reduced in size, entrance hallway window replaced with a sliding door and side light, southern bedroom en-suite window changed from clear to opaque glazing, clothesline added to southern balcony and a skylight added to the en-suites of each bedroom.</td>
</tr>
<tr>
<td></td>
<td>• 3 skylights added to the kitchen of Apartment 2.02.</td>
</tr>
<tr>
<td></td>
<td>• A skylight added to the bathroom of Apartment 2.07.</td>
</tr>
<tr>
<td></td>
<td>• Material change to the terraces of level 2 from decking to paving.</td>
</tr>
</tbody>
</table>
### Roof Plan
- Changes to second floor apartments below to accommodate skylights and apartment 2.04 pergola.
- Material of stairwell roof changed from metal decking to concrete.
- Relocation of kitchen exhaust vent from the middle of the roof to the southern elevation.
- Upper car park exhaust vent to run horizontally and not vertically along the roof.
- Removal of 1 chimney and the minor relocation of 2 chimneys from the eastern roof edge.

### Elevations
- Removal of 1 chimney and the minor relocation of 2 chimneys from the eastern elevation.
- Relocation of kitchen exhaust vent from the middle of the roof to the southern façade.
- The plant platform acoustic screening changed from wrought iron balustrade to aluminium balustrade.
- Changes to elevations as per above noted amendments.

### Liquor Licence Plan
- Liquor licensing area increased to include the northern end of the ground floor alfresco terrace that adjoins the lounge, fronting New Street.

### Conditions
- Addition of condition 1 i) relating to the proposed roof top kitchen exhaust duct to be contained in a custom-made metal enclosure.

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**4. Council Policy**

**Council Plan 2017-2021**

Relevant objectives of the Council plan include:

- Where significant development is directed to specified and planned activity centres and strategic locations, providing a transition to surrounding residential areas and incorporating improved infrastructure and open space.
- Where neighbourhood character, streetscapes and heritage is respected and enhanced, and the community has a strong connection to place.
- 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:

- Ensure new development responds to preferred neighbourhood character in activity centres.

**Bayside Planning Scheme**

- Clause 11 Settlement
- Clause 15 Built Environment and Heritage
- Clause 16 Housing
- Clause 18 Transport
- Clause 21.02 Bayside Key Issues and Strategic Vision
- Clause 21.03 Settlement and Housing
- Clause 21.06 Built Environment and Heritage
- Clause 21.09 Transport and Access
- Clause 21.11 Local Areas
- Clause 22.06 Neighbourhood Character Policy C1
- Clause 22.07 Discretionary Uses in Residential Areas
- Clause 22.08 Water Sensitive Urban Design
- Clause 43.02 Design and Development Overlay (Schedule 3)
- Clause 45.06 Development Contributions Plan Overlay (Schedule 1)
- Clause 52.06 Car Parking
- Clause 52.27 Licensed Premises
- Clause 52.36 Integrated Public Transport Planning
- Clause 56.06 Access and Mobility Management
- Clause 65 Decision Guidelines

5. **Considerations**

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

The consideration of the amendments is limited to the proposed changes sought by the applicant. Consideration has not been given to elements already approved as part of the original application but not sought to be amended.

5.1. **Assessment of amendments**

**Relocation of the roof top kitchen exhaust duct**

The proposed kitchen exhaust roof top duct is located at the southern end of the New Street wing and aligns vertically with the kitchen below, at ground level.

The original proposed location of the duct was 4 metres north of its current location (as shown on Sheet 5 of the existing Endorsed Plans – Attachment 3) and was to have horizontal transitions that allowed it to pass through the apartments. The applicant states the relocation of the kitchen exhaust duct is due to the horizontal transitions being non-compliant with Australian Standards.

Four objections were raised in regards to the location of the kitchen exhaust roof top duct with concern to noise, odour, fumes and visual impact. These objections came from 4
townhouses which adjoin the eastern end of the site’s southern boundary.

In relation to the noise, odour and fumes, the applicant has stated that it meets the necessary Australian Standards. These standards are complied with having particular regard to the closest receptors, the future occupants of Apartment 2.02 and 2.03 of the development, to which the exhaust adjoins.

Further, the exhaust duct is to be located 10.2 metres from the southern boundary of the site which is shared with the townhouses and the top of the duct is to be located 12.4 metres above ground level, venting vertically.

With regard to the visual impact of the rooftop kitchen exhaust duct, the applicant has stated that a custom-made metal enclosure can be proposed, that is finished in the same colour and material to match the roof allowing it to visually blend into the roofscape of the development. The kitchen exhaust duct housing will also take the vertical line of the external wall below further reducing any potential visual impacts.

Considering the vertical distance from ground level and the distance from the southern boundary of the site (and the abutting Park Street townhouses) it is considered that there will be no undue impact on the amenity of the abutting properties. Furthermore, the applicant has confirmed that the exhaust duct meets and exceeds the relevant Australian Standards. It is considered that the relocation of the kitchen exhaust duct is acceptable.

In order to further address the visual amenity of the adjoining properties, a condition should be included on any planning permit to issue to ensure that the roof top duct be contained in the custom-made metal enclosure as per the concept 3D graphic of the applicant’s response to objections (Attachment 5), dated 25 March 2019.

Remainder of building and works

There are no changes proposed to either the ground or first floor of the development.

The proposed changes to the second floor are considered to be minor in nature.

The modifications to Apartment 2.04 include:

- the removal of the northern section of the pergola;
- north western lounge window reduced in size;
- entrance hallway window replaced with a sliding door;
- southern bedroom en-suite window changed from clear to opaque glazing;
- clothesline added to the southern balcony; and
- a skylight added to each of the bedroom en-suites.

These additions, requested by the future owners, increase the functionality of the apartment and improve sun shading to the north facing living area. Furthermore, the changes will not result in any increase to overlooking or visual bulk.

The introduction of skylights to Apartments 2.04, 2.07 and 2.02 increase the internal amenity by providing more daylight to the apartments. The proposed changes are all compliant and cause no material detriment to adjoining properties.

The proposed changes to the roof are largely to accommodate the modifications made to the second floor. Additional amendments include material changes to the roof of the stairwell and lift from metal decking to concrete, the relocation of the upper car park exhaust vent, material confirmation of plant platform screening and the removal of 1 chimney and the marginal relocation of two other chimneys. These changes are minor, minimise visibility of services, do not change the overall appearance of the building and will cause no off-site amenity impacts.
Liquor Licence

The liquor licensing plan has been updated to reflect the changes in layout of the ground floor alfresco area which adjoins the lounge/dining area and fronts onto New Street. The changes result in a small increase (approximately 15m²) to the licensed area and this minor increase will not cause unreasonable detriment to the amenity of the surrounding area. Accordingly, the amendment to the liquor licensing plan is considered acceptable.

5.2. 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.

5.3. Development contributions levy

As development has already started and will not result in any additional dwellings, no development contributions levy is applicable.

Support Attachments

1. Decision Plans ↓
2. Planning Permit ↓
3. Endorsed Plans ↓
4. Site and Surrounds Imagery ↓
5. 3D Graphic of Proposed Kitchen Exhaust Duct ↓
Item 4.3 – Matters of Decision
<table>
<thead>
<tr>
<th>PLANNING PERMIT NO:</th>
<th>5/2016/172/2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Responsible Authority:</td>
<td>Bayside City Council</td>
</tr>
<tr>
<td>Planning Scheme:</td>
<td>Bayside</td>
</tr>
</tbody>
</table>

**Address of the Land:**
233 New Street BRIGHTON

**The Permit Allows:**
Use and development of the land for a Retirement Village and use of the land to sell or consume liquor in accordance with the endorsed plans and subject the following conditions.

**The Following Conditions Apply To This Permit:**

1. Before the use and/or development start/s, 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 Demaine and dated Feb 17) but modified to show:
   
   (a) A Landscaping Plan in accordance with the Conditions of this permit.
   
   (b) Location of all plant and equipment, including hot water services and air conditioners etc.
   
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   (j) A fence having a total height of 3.3m along the common boundary with 4 Esperance Avenue.
   
   (k) Headroom clearance of 2.2m at the entry to the basement ramp.

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 use and/or 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.

**Date issued:** 7 June 2017

**Date amended:** 21 June 2018

**Michael Kelleher**

Signature for the Responsible Authority

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**Planning and Environment Regulations 2005 Form 4**

*Note: Under Part 4, Division 1A of the Planning and Environment Act 1987, a permit may be amended. Please check with the responsible authority that this permit is the current permit and can be acted upon.*
5. **Before occupation**, screening of windows as shown on the endorsed plans must be installed and maintained to the satisfaction of the Responsible Authority thereafter for the life of the building.

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   (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.

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

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

9. Noise emanating from the subject land must not exceed the permissible noise levels when determined in accordance with State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1, to the satisfaction of the Responsible Authority. Any works required to ensure and maintain the noise levels must be completed prior to the commencement of the use or occupation of the site and maintained thereafter, all to the satisfaction of the Responsible Authority.

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**PLANNING PERMIT NO:** 5/2016/172/2  
**Responsible Authority:** Bayside City Council  
**Planning Scheme:** Bayside

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**Date issued:** 7 June 2017  
**Date amended:** 21 June 2018

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

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15 The landscaping shown on the endorsed plans must be maintained to the satisfaction of the
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The Tree Management Plan must be specific to the trees shown on the Tree Protection
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The Tree Protection Plan must be in accordance with AS4970-2009, be drawn to scale and
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(a) The Tree Protection Zone and Structural Root Zone for all trees to be retained on the
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Zone falls within the subject site.

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

17 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.

18 Before the development starts, the name and contact details of the project arborist
responsible for implementing the Tree Management Plan must be submitted to the
Responsible Authority.

Date issued: 7 June 2017
Date amended: 21 June 2018

Michael Kallake
Signature for the Responsible Authority

Planning and Environment Regulations 2005 Form 4
Note: Under Part 4, Division 1A of the Planning and Environment Act 1987, a permit may be amended. Please check with the
responsible authority that this permit is the current permit and can be acted upon.
19 Any pruning that is required to be done to the canopy of any tree to be retained, particularly the peppercorn pm the adjoining property to the north, 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.

20 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.

21 Before the development commences, 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.

22 Before development commences the applicant must replace the street trees to be removed to the satisfaction of the responsible authority and in accordance with the endorsed landscape plans.

23 Before the endorsement of plans pursuant to Condition 1, a Waste Management Plan must be 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). Collection shall be by way of private collection contractor.
(h) Method of hard waste collection. Hard waste collection shall be by way of private collection contractor.
(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.

24 Before the endorsement of plans pursuant to Condition 1, 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) Proposed construction lighting.
(k) The ongoing privacy of adjacent properties.
(l) Public safety measures.
(m) Construction times, noise and vibration controls.
(n) Restoration of any Council assets removed and/or damaged during construction.
(o) Protection works necessary to road and other infrastructure (limited to an area reasonably proximate to the site).
(p) Remediation of any damage to road and other infrastructure (limited to an area reasonably proximate to the site).
(q) 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.
(s) All contractors associated with the construction of the development must be made aware of the requirements of the Construction Management Plan.
(t) Details of crane activities, if any.

Date issued: 7 June 2017
Date amended: 21 June 2018

Signature for the Responsible Authority

Note: Under Part 4, Division 1A of the Planning and Environment Act 1987, a permit may be amended. Please check with the responsible authority that this permit is the current permit and can be acted upon.
25 Any CCTV cameras on the review site must be positioned so as not to record any adjacent private open space or neighbouring windows.

26 Public Transport Victoria must be notified 3 weeks prior to the commencement date for any works scheduled to occur on the subject site, at which point PTC will give public notice for the removal of the bus stop and will proceed with the works upon the nominated date.

27 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**

<table>
<thead>
<tr>
<th>Date Amended</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>31 October 2017</td>
<td>Permit correction pursuant to Section 71 of the Planning and Environment Act 1987 to:</td>
</tr>
<tr>
<td></td>
<td>The amendment to Permit Condition 1e is as follows:</td>
</tr>
<tr>
<td></td>
<td>• A Traffic and Management Parking plan.</td>
</tr>
<tr>
<td></td>
<td>The amendment to Permit Condition 1f is as follows:</td>
</tr>
<tr>
<td></td>
<td>• A Tree Management Plan in accordance with Condition 16.</td>
</tr>
<tr>
<td></td>
<td>The amendment to Permit Condition 16 is as follows:</td>
</tr>
<tr>
<td></td>
<td>• Delete 'Condition 17' reference in the second paragraph of Condition 16.</td>
</tr>
<tr>
<td></td>
<td>Subsequent renumbering of remaining conditions.</td>
</tr>
<tr>
<td>21 June 2018</td>
<td>Amendment to the permit under Section 72 of the Planning and Environment Act 1987 to:</td>
</tr>
<tr>
<td></td>
<td>Amendment the endorsed plans under the Planning Permit involving:</td>
</tr>
<tr>
<td></td>
<td>• The addition of a staff bed-sit to level 2 southern internal elevation.</td>
</tr>
</tbody>
</table>
FORM 4

PLANNING PERMIT

IMPORTANT INFORMATION ABOUT THIS PERMIT

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

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

WHEN DOES A PERMIT EXPIRE?

1. A permit for the development of land expires if:
   * the development or any stage of it does not start within the time specified in the permit; or
   * the development requires the certification of a plan of subdivision or consolidation under the Subdivision Act 1988 and the plan is not certified within two years of the issue of the permit, unless the permit contains a different provision; or
   * the development or any stage is not completed within the time specified in the permit, or, if no time is specified, within two years after the issue of the permit or in the case of a subdivision or consolidation within 5 years of the certification of the plan of subdivision or consolidation under the Subdivision Act 1988.

2. A permit for the use of land expires if:
   * the use does not start within the time specified in the permit, or if no time is specified, within two years after the issue of the permit; or
   * the use is discontinued for a period of two years.

3. A permit for the development and use of land expires if:
   * the development or any stage of it does not start within the time specified in the permit; or
   * the development or any stage of it is not completed within the time specified in the permit, or, if no time is specified, within two years after the issue of the permit; or
   * the use does not start within the time specified in the permit, or, if no time is specified, within two years after the completion of the development; or
   * the use is discontinued for a period of two years.

4. If a permit for the use of land or the development and use of land or relating to any of the circumstances mentioned in section 6A(2) of the Planning and Environment Act 1987, or to any combination of use, development or any of those circumstances requires the certification of a plan under the Subdivision Act 1988, unless the permit contains a different provision:
   * the use or development of any stage is to be taken to have started when the plan is certified; and
   * the permit expires if the plan is not certified within two years of the issue of the permit.

5. The expiry of a permit does not affect the validity of anything done under that permit before the expiry.

WHAT ABOUT APPEALS?
* The person who applied for the permit may apply for a review of any condition in the permit unless it was granted at the direction of the Victorian Civil and Administrative Tribunal, in which case no right of review exists.
* An application for review must be lodged within 60 days after the permit was issued, unless a notice of decision to grant a permit has been issued previously, in which case the application for review must be lodged within 60 days after the giving of that notice.
* An application for review is lodged with the Victorian Civil and Administrative Tribunal.
* An application for review must be made on an Application for Review form which can be obtained from the Victorian Civil and Administrative Tribunal, and be accompanied by the applicable fee.
* An application for review must state the grounds upon which it is based.
* An application for review must also be served on the Responsible Authority.
* Details about applications for review and the fees payable can be obtained from the Victorian Civil and Administrative Tribunal.
Figure 1 Aerial overview of the site and surrounds

<table>
<thead>
<tr>
<th>Legend</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject site</td>
<td>⭐</td>
</tr>
<tr>
<td>Objector(s)</td>
<td>♾</td>
</tr>
</tbody>
</table>
Figure 2 View towards the site from New Street.
4.4 STATUTORY PLANNING VCAT UPDATE

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 March 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 the 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 & 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 87 decisions, of which

- 36 have been settled by consent orders; and
- 5 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 42. 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>
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<tr>
<td>July 2018</td>
<td>3</td>
<td>3</td>
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<tr>
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<td>October 2018</td>
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<td>November 2018</td>
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<td>December 2018</td>
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<td>2</td>
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<tr>
<td>January 2019</td>
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<td>2</td>
</tr>
<tr>
<td>February 2019</td>
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<td>3</td>
</tr>
<tr>
<td>March 2019</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td><strong>TOTAL DECISIONS</strong></td>
<td><strong>20</strong></td>
<td><strong>22</strong></td>
</tr>
<tr>
<td>LGPRF Result</td>
<td>48%</td>
<td>52%</td>
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</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 March 2019, VCAT determined one application that was a result of a Planning and Amenity Committee decision. This related to 128 Bluff Road, Black Rock, which was an amendment to the 'under construction' development.

The Tribunal approved the amendment to the planning permit, overturning Council’s decision to refuse the amendments. Member Fong found the latest set of plans acceptable because

“Compared to the amended plans refused in 2017 and the current version, two of the significant increases in building massing have been reduced. They are the proposed extension to the first floor balcony of Unit 2 which is no longer extended, and the increase in the footprint of unit 3 at the northeast corner of the first floor, along the southern elevation and the size of the first floor balcony, with the stairs to the roof terrace protruding out from the western elevation. The previous amended plans would result in a narrowing of building separation between Units 1 and 2, and between Units 2 and 3, and an extension of the ground floor footprint.” (Paragraph 22)
The Tribunal was mindful of the concerns of the Objectors at Unit 2/130 Bluff Road. The Tribunal held that a practical way of resolving these concerns which had been going on since 2011 was to require extra permit conditions.

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

2. **Recommendation**

   That Council:
   
   a) receive and note the report; and
   
   b) note the outcome of VCAT decisions on the planning applications handed down during March 2019.

**Support Attachments**

1. Application Lodged in March 2019
2. Application Determined in March 2019
3. VCAT upcoming appeals
4. VCAT Determined Appeals - March 2019
5. VCAT Order - Appeal P1574.2018 - 128 Bluff Road Black Rock (5.2010.224.5)
## Application

<table>
<thead>
<tr>
<th>Application</th>
<th>Property Address</th>
<th>Development Details</th>
<th>Received</th>
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<tbody>
<tr>
<td>5.2019 79.1</td>
<td>748 T Hampton ST, BRIGHTON</td>
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<td>01/03/19</td>
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<td>Minor Sports &amp; Rec Fac - New Use Only</td>
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<td>5.2019 109.1</td>
<td>78 Thomas ST, HAMPTON</td>
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<td>04/03/19</td>
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<td>Fence on a Lot &lt; 500m2</td>
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<td>3 Princess AVE, HIGHETT</td>
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<td>04/03/19</td>
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<td>05/03/19</td>
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<td>25 Morley CRES, HIGHETT</td>
<td>2 New Dwellings</td>
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<td>Demolition of Dwelling/Building and 1 Dwelling - Alts &amp; Adds - Heritage</td>
<td>08/03/19</td>
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<td>09/03/19</td>
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<td>Beach PK, BEAUMARIS</td>
<td>Community Fac Alts&amp;Add to Bid Only</td>
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<td>16/03/19</td>
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<td>2 New Dwellings</td>
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<td>5.2019 167.1</td>
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<td>2 New Dwellings and Fence on a lot &gt; 500 m2</td>
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<td>Subdivision of Land (1 to 9 Lots)</td>
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<td>Dwellings(s) Other - Alts/Add, Bid Only</td>
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## Northern

<table>
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</thead>
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<td>1 Dwelling - Als &amp; Adds - Heritage</td>
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<td>5.2018.787.1</td>
<td>36 Carpenter ST, BRIGHTON 3186</td>
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<td>Advertising Signs</td>
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<td>5.2013.757.4</td>
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<td>11 - 25 New Dwellings</td>
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<td>1 Dwelling - Als &amp; Adds on Lot &lt; 500m2</td>
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<td>5.2018.831.1</td>
<td>53 Bay ST, BRIGHTON 3186</td>
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<td>1 Dwelling - Als &amp; Adds - DDO</td>
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<td>5.2018.847.1</td>
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<td>5.2014.434.2</td>
<td>7 Montgomery ST, BRIGHTON EAST 3187</td>
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<td>Dwelling(s) Other - Als/Adds, Bld Only</td>
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<td>5.2018.642.1</td>
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<td>1 Educ/Comm/Pub Fac Other - New Bld &amp; Use</td>
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<td>Fencing on a lot &lt; 500 m2</td>
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<td>5.2018.474.1</td>
<td>27 Elizabeth ST, BRIGHTON EAST 3187</td>
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<td>2 New Dwellings</td>
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<td>5.2018.436.1</td>
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<td>1 Dwelling - Als &amp; Adds - Heritage</td>
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<td>5.2019.773.1</td>
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<td>2 New Dwellings and Removal of Vegetation</td>
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<td>1 Dwelling - Als &amp; Adds - DDO</td>
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<td>5.2019.774.1</td>
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<td>Property Address</td>
<td>Determination</td>
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<td>5.2019.772.0</td>
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<td>5.2016.589.3</td>
<td>10 Meredith ST, SANDRINGHAM 3191</td>
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<td>5.2011.357.4</td>
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<td>5.2018.553.1</td>
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<td>5.2016.722.2</td>
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<td>5.2019.117.1</td>
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<td>5.2018.694.1</td>
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<td>5.2019.139.1</td>
<td>61 First ST, BLACK ROCK 3193</td>
<td>Permit Granted - Delegate</td>
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<td>5.2019.141.1</td>
<td>21 Bellevue CRT, BEAUMARIS 3193</td>
<td>Permit Granted - Delegate</td>
<td>20/03/2019</td>
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<td>5.2017.643.2</td>
<td>1/34 Balcombe RD, BEAUMARIS 3193</td>
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<td>5.2018.730.1</td>
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<td>Notice of Decision Granted - Delegate</td>
<td>22/03/2019</td>
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<td>5.1969.862.0</td>
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<td>Amended Permit Granted - Delegate</td>
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<td>5.2015.784.2</td>
<td>51 Oak ST, BEAUMARIS 3193</td>
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<td>25/03/2019</td>
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<td>5.2018.781.0</td>
<td>389 Beach RD, BEAUMARIS 3193</td>
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<td>5.2019.155.1</td>
<td>30 Melrose ST, SANDRINGHAM 3191</td>
<td>Permit &amp; Plans Granted - Delegate</td>
<td>25/03/2019</td>
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<tr>
<td>5.2018.978.1</td>
<td>11 Fourth ST, BLACK ROCK 3193</td>
<td>Permit Granted - Delegate</td>
<td>26/03/2019</td>
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<td>5.2018.544.1</td>
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<td>5.2015.236.2</td>
<td>88 Bay RD, SANDRINGHAM 3191</td>
<td>Amended Permit Granted - Delegate</td>
<td>28/03/2019</td>
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Total: 81
### Upcoming VCAT Appeals - Councillor Bulletin

**Date report produced:** 1/04/2019

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<tr>
<th>App No.</th>
<th>Property Address</th>
<th>Bayside Determination</th>
<th>Appeal No.</th>
<th>Appeal Type</th>
<th>Compulsory Conference</th>
<th>Hearing Date</th>
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</thead>
</table>

#### Central

- **2018.305.1**  27-28 Black Rd, SANDRINGHAM 3191
  - Permit Refused - Delegate
  - **P2935/2018** Notice to Grant a Permit
  - **15/03/2019**

- **2018.303.1**  100 Apartment St, DANZIGINGHAM 3191
  - Permit Refused - Delegate
  - **P4812/2018** Failure to Grant a Permit
  - **13/01/2019**

- **2017.921.1**  24 Seaview St, HAMPTON 3188
  - Notice of Decision Granted - Council
  - **P3151/2018** Notice of Decision to Grant a Permit
  - **28/05/2018**

- **2018.171.1**  32 Longview Rd, HAMPTON 3188
  - Notice of Decision Denied - Delegate
  - **F354/2018** Notice of Decision to Grant a Permit
  - **03/06/2018**

- **2018.164.1**  5 Wodonga CRES, HAMPTON EAST 3188
  - Notice of Decision Granted - Delegate
  - **P4547/2018** Conditions
  - **13/06/2018**

- **2018.301.1**  18 Manifold Rd, BRIGHTON EAST 3187
  - Notice of Decision Granted - Delegate
  - **P1724/2019** Conditions
  - **19/06/2019**

- **2016.481.1**  25 Highland AVE, HOPETT 3190
  - Permit Granted - Delegate
  - **P3900/2019** Conditions
  - **29/06/2019**

- **2018.242.1**  46 Denney St, BRIGHTON 3185
  - Notice of Decision Granted - Council
  - **F051/2018** Conditions
  - **03/06/2018**

- **2018.242.1**  46 Denney St, BRIGHTON 3185
  - Notice of Decision Granted - Delegate
  - **P3955/2018** Notice of Decision to Grant a Permit
  - **12/07/2019**

- **2018.361.1**  60 Lytton CRES, BRIGHTON 3185
  - Notice of Decision Granted - Delegate
  - **F0610/2019** Notice of Decision to Grant a Permit
  - **19/01/2019**

- **2018.213.1**  22-23 Attwood St, CARRUM 3191
  - Notice of Decision Denied - Delegate
  - **F3475/2019** Notice to Grant a Permit
  - **29/05/2019**

#### Northern

- **2018.301.1**  10 Hamilton St, BRIGHTON 3186
  - Notice of Decision Granted - Delegate
  - **P2173/2018** Notice of Decision to Grant a Permit
  - **23/04/2018**

- **2018.301.1**  293 Bay St, BRIGHTON 3186
  - Notice of Decision Denied - Delegate
  - **P2333/2018** Failure to Grant a Permit
  - **28/06/2018**

- **2018.377.1**  649 Nepean Hwy, BRIGHTON EAST 3187
  - Notice of Decision Granted - Delegate
  - **P0338/2018** Notice of Decision to Grant a Permit
  - **30/06/2018**

- **2018.241.1**  15 Collingwood St, BRIGHTON 3186
  - Notice of Decision Denied - Delegate
  - **P2627/2018** Notice of Decision to Grant a Permit
  - **12/06/2019**

- **2018.720.1**  52 Black St, BRIGHTON 3186
  - Notice of Decision Denied - Delegate
  - **F1112/2019** Notice of Decision to Grant a Permit
  - **13/05/2019**

- **2018.301.1**  269 Churchill St, BRIGHTON 3186
  - Notice of Decision Granted - Delegate
  - **P3040/2018** Notice of Decision to Grant a Permit
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- **2018.421.1**  7 Carpenter St, BRIGHTON 3186
  - Notice of Decision Granted - Delegate
  - **P759/2019** Notice of Decision to Grant a Permit
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- **2018.155.1**  196 Ross St, BRIGHTON 3186
  - Notice of Decision Granted - Delegate
  - **P1057/2019** Notice of Decision to Grant a Permit
  - **25/01/2019**

- **2018.265.1**  57 York St, BRIGHTON 3186
  - Notice of Decision Granted - Delegate
  - **P199/2019** Notice of Decision to Grant a Permit
  - **26/01/2019**

- **2018.6.1**  18 Lawrence St, BRIGHTON 3186
  - Notice of Decision Granted - Delegate
  - **P3929/2019** Notice of Decision to Grant a Permit
  - **31/01/2019**

- **2018.763.1**  6 Thompson St, BRIGHTON 3186
  - Notice of Decision Granted - Delegate
  - **P5825/2019** Notice of Decision to Grant a Permit
  - **30/05/2019**

#### Southern

- **2016.181.1**  5 Cranmer RD, BEAULIEU 3163
  - Notice of Decision Granted - Delegate
  - **P2024/2018** Notice of Decision to Grant a Permit
  - **30/06/2019**

- **2017.923.1**  76 Sandringham Rd, SANDRINGHAM 3191
  - Notice of Decision Denied - Council
  - **F0235/2018** Conditions
  - **26/06/2019**

- **2017.923.1**  10 Malvern Ave, BEAULIEU 3150
  - Notice of Decision Granted - Delegate
  - **P2475/2018** Conditions
  - **23/04/2019**

- **2018.171.1**  6 Black St, SANDRINGHAM 3191
  - Notice of Decision Granted - Delegate
  - **P2245/2018** Notice of Decision to Grant a Permit
  - **17/05/2019**

- **2016.181.1**  37 Bay Rd, SANDRINGHAM 3191
  - Notice of Decision Denied - Delegate
  - **P2495/2018** Notice of Decision to Grant a Permit
  - **29/05/2019**

- **2018.601.1**  302/72 Beach Rd, BEAULIEU 3153
  - Notice of Decision Denied - Delegate
  - **F0714/2018** Notice of Decision to Grant a Permit
  - **29/05/2019**

- **2018.212.1**  213/164 Beach Rd, BEAULIEU 3153
  - Notice of Decision Denied - Delegate
  - **P0979/2019** Notice of Decision to Grant a Permit
  - **07/06/2019**

- **2018.52.1**  45 Beach Rd, BEAULIEU 3153
  - Notice of Decision Denied - Delegate
  - **P0392/2019** Notice of Decision to Grant a Permit
  - **7/06/2019**

- **2016.602.1**  1 Nuniel St, BEAULIEU 3165
  - Notice of Decision Denied - Delegate
  - **P0615/2019** Notice of Decision to Grant a Permit
  - **14/07/2019**

- **2018.54.1**  200 Riddoch Rd, BEAULIEU 3150
  - Notice of Decision Denied - Council
  - **P1852/2019** Notice of Decision to Grant a Permit
  - **18/07/2019**

- **2018.54.1**  200 Riddoch Rd, BEAULIEU 3150
  - Notice of Decision Denied - Delegate
  - **F0471/2019** Notice of Decision to Grant a Permit
  - **17/01/2019**

### Appeals

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### VCAT Determined Appeals from - 1/03/2019 to 31/03/2019

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<td>Application no.</td>
<td>2010.224.5</td>
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<tr>
<td>VCAT reference no.</td>
<td>P1574/2018</td>
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<tr>
<td>Applicant</td>
<td>V &amp; L Pita</td>
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<tr>
<td>Referral Authority</td>
<td>N/A</td>
</tr>
<tr>
<td>Respondents</td>
<td>Michael Hogarth-Scott</td>
</tr>
<tr>
<td>VCAT Member</td>
<td>Christina Fong</td>
</tr>
<tr>
<td>Date of hearing</td>
<td>31/01/2019</td>
</tr>
<tr>
<td>Date of order</td>
<td>8/03/2019</td>
</tr>
<tr>
<td>Proposal</td>
<td>Construction of three (3) double storey dwellings with roof decks</td>
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<tr>
<td>Officer recommendation/ Delegate determination</td>
<td>NOD to Amend a Permit</td>
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<tr>
<td>Council determination</td>
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<td>Appeal type</td>
<td>Refusal Amended Permit</td>
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<tr>
<td>Plans substituted</td>
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<tr>
<td>VCAT determination</td>
<td>Amended Permit to issue</td>
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<tr>
<td>LGPRF outcome</td>
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</table>

**Comments:**

The Tribunal in an Order dated 8 March 2019 Refused to amend Planning Permit No. 2010/224 which allowed for the construction of three (3) double storey dwellings with roof decks. Member Fong in her decision commented that she had earlier refused to allow a different set of amending plans in June 2018.

During the current hearing, she noted that the plans did not seem to comply with the building envelope as required by the varied standard in Standard B17 and she gave the Permit Applicant an opportunity to provide the Tribunal with a further set of diagrams displaying whether the proposed Units 2 and 3 complied with Standard B17 as varied by Standard B17 of the Bayside Planning Scheme. The Permit Applicant provided the Tribunal with these Plans on 19 February 2019.

The Tribunal commented that currently the construction of the development had ceased. Unit 3 was not up to lock up stage. Whilst the walls of the ground floor were completed only the timber frame of the upper level was partially done. Member Fong is finding the latest set of plans acceptable held that "Compared to the amended plans refused in 2017 and the current version, two of the significant increases in building massing have been reduced. They are the proposed extension to the first floor balcony of Unit 2 which is no longer extended, and the increase in the footprint of unit 3 at the northeast corner of the first floor; along the southern elevation and the size of the first floor balcony, with the stairs to the roof terrace protruding out from the western elevation. The previous amended plans would result in a narrowing of building separation between Units 1 and 2, and between Units 2 and 3, and an extension of the ground floor footprint." (Paragraph 22)
The Tribunal was mindful of the concerns of the Objectors at Unit 2/130 Bluff Road whose opposition to the latest set of amended plans consisted of concerns with respect to overlooking, the impact on their enjoyment of their open space, the building remaining non-compliant with permits, the development remaining too close to their common boundary, a lack of enforcement action, and their lack of faith in the proposal complying with permit condition.

The Tribunal held that a practical way of resolving this issue which had been going on since 2011 was to require extra permit conditions limiting the potential visual bulk of Unit 3 on the adjoining property was to require additional setbacks for this unit as it faced Unit 2/130 Bluff Road. The Tribunal also required that the gap between Unit 2 and 3 be increased by reducing the length of the northern wall of Unit 3 at first floor level.
Subject land: 4 Sunlit CRT, HAMPTON EAST
Application no.: 2017.246.1
VCAT reference no.: P1352/2018
Applicant: Shangri-La Construction
Referral Authority: Melbourne Water
Respondents: Giovanni Imperatori
VCAT Member: E A Bensz
Date of hearing: 31/01/2019
Date of order: 14/03/2019
Proposal: Construction of six double storey dwellings on a lot located in a Special Building Overlay

| Officer recommendation/ Delegate determination | Refusal |
| Council determination | N/A |

| Appeal type | Refusal to Grant a Permit |
| Plans substituted (prior to hearing) | No |

| VCAT determination | Varied Permit to Issue |
| LGPRF outcome | N/A |

Comments:
Council’s delegate determined to refuse an application for the construction of six double storey dwellings on a lot located within a Special Building Overlay on 28 June 2018. The refusal was based only on Melbourne Water’s objection to the proposal pursuant to Section 55 of the Planning and Environment Act 1987 as a determining referral authority. The applicant lodged an appeal pursuant to Section 77 of the Planning and Environment Act 1987 with the Victorian Civil and Administrative Tribunal (VCAT) against Council’s decision to refuse to grant a planning permit. One objector lodged a Statement of Grounds in association with the Application for Review.

Prior to the Compulsory Conference scheduled for 31 January 2019, Melbourne Water confirmed that amended plans prepared by the applicant addressed the concerns raised by Melbourne Water. Subsequently, Melbourne Water no longer objected to the application.

The outcome of the Compulsory Conference was that an in-principle agreement was reached between the Applicant and Council’s Officers, subject to the conditions. The objector failed to attend the Compulsory Conference and was subsequently struck out as a party to the proceeding by the Tribunal. During the Planning and Amenity Committee Meeting dated 26 February 2019, Council determined to support the VCAT Consent Order and a permit was subsequently issued on 14 March 2019.
Subject land: 81 Bay ST, BRIGHTON
Application no.: 2018.366.1
VCAT reference no.: P2466/2018
Applicant: L + V Brighton Pty Ltd
Referral Authority: N/A
Respondents: N/A

VCAT Member: J. A. Bennett
Date of hearing: 5/03/2019
Date of order: 5/03/2019
Proposal: The construction of a mixed use building including more than one dwelling and a reduction in the standard car parking requirement

Officer recommendation/ Delegate determination: Refusal
Council determination: N/A

Appeal type: Refusal to Grant a Permit
Plans substituted (prior to hearing): No
VCAT determination: Permit to Issue
LGPRF outcome: N/A

Comments:

Council originally refused this development in November 2018 for the construction of a five (5) storey mixed use development with a reduction on car parking requirements in a Commercial 1 Zone because of its concerns inter alia with the excessive height and scale of the proposed building and the size of the car parking waiver sought.

The Applicant lodged an Application for Review against Council’s Refusal pursuant to section 77 of the Planning and Environment Act 1987. Prior to the schedule hearing date of 13 May 2019 the Applicant submitted Amended Plans to Council to address the latter’s concerns and in the hope of settling them matter.

Council assessed these Plans and determined that as they largely addressed it concerns the matter could be settled by consent and the hearing date vacated.

In an Order dated 5 March 2019 the Tribunal gave effect to the consent position reached between the parties and the permit was issued.
Subject land: 51 Beach RD, HAMPTON  
Application no.: 2018.374.1  
VCAT reference no.: P13/2019  
Applicant: Gayle Tickell  
Referral Authority: N/A  
Respondents: Mitsouri Architects  
VCAT Member: J A Bennett  
Date of hearing: 12/03/2019  
Date of order: 12/03/2019  
Proposal: Construction of one dwelling on a lot of less than 500 square metres and alteration of an access to a road in a Road Zone, Category 1  
Officer recommendation/Delegate determination: Notice of decision  
Council determination: N/A  

<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>Appeal Withdrawn</td>
</tr>
<tr>
<td>LGPRF outcome</td>
<td>N/A</td>
</tr>
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</table>

Comments:  
Council issued a Notice of Decision to Grant a Planning Permit for the construction of one dwelling on lot less than 500' at the subject site known as No. 51 Beach Road, Hampton on 10 December 2018.

On 14 January 2019 Council received notice that the Objector had lodged an Application for Review against Council's decision pursuant to section 82 of the Planning and Environment Act 1987. The Objector sought to rely upon a number of grounds at the hearing including unreasonable visual bulk and overshadowing as well as other off-site amenity impacts by the proposed development on their property at No. 52 Beach Road, Hampton.

The Tribunal set the matter down for a full hearing on the merits for 11 July 2019 at 10.00am for 1 Day.

The Applicant for Review withdrew their Application and in an Order dated 12 March 2019 the Appeal was withdrawn.
Subject land 26 Garnet-Leary AVE, BLACK ROCK
Application no. 2018.185.1
VCAT reference no. P1752/2018
Applicant Ari Perdikoyiannis
Referral Authority N/A
Respondents Blane Hansen & Others
VCAT Member Karina Shpigel
Date of hearing 13/03/2019
Date of order 13/03/2019
Proposal Construction of two (2) double storey dwellings on a lot and removal of native vegetation

<table>
<thead>
<tr>
<th>Officer recommendation/Delegate determination</th>
<th>Refusal</th>
</tr>
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<tbody>
<tr>
<td>Council determination</td>
<td>N/A</td>
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</tbody>
</table>

Appeal type Refusal to Grant a Permit
Plans substituted (prior to hearing) No
VCAT determination No Permit to Issue
LGPRF outcome AFFIRMED

Comments:

The matter was heard before Member Shpigel, a legal member of VCAT. At the hearing HWL Ebsworth Lawyers presented submissions on Council’s behalf supported by photos, case and planning scheme extracts. The objectors were represented by a Mr Blane Hanson, a resident, who presented submissions on the day.

At the conclusion of the hearing, Member Shpigel handed down an oral decision on the application and upheld Council’s decision to refuse to grant a permit, primarily on neighbourhood character grounds.

In arriving at this decision the Tribunal found that it was not satisfied with the design and response of the proposal to its site and location and that it was not one particular matter that led to this view but a multitude of matters. More particularly the Tribunal noted:

- the absence of sufficient landscaping at the Fern Street frontage and between the dwellings;
- the poor presentation to Fern Street, combined with the presentation of 2 double garages and extensive hard surface areas which is inconsistent with the preferred future character of the area;
- not enough spacing between dwellings;
- the size of the development combined with the fairly ‘boxy’ form in the streetscape being discordant with the existing and preferred character of the area;
- more work needing to be done to better integrate with the corner context including responding to the spacing between development;
- the proposed flat roof form combined with the 'cubist' form with minimal setbacks to Fern Street, being out of place and out of character; and
- given the presence of the Vegetation Protection Overlay - where so much vegetation is being removed it should be incumbent on the applicant to show replacement vegetation which is called for under the planning scheme. This has not been provided for in the proposal.

The Tribunal noted that in arriving at its decision it did not rely upon the registered restrictive covenant that previously affected the land.
Subject land  
15/427 - 455 Hampton ST, HAMPTON

Application no.  
2013.500.1

VCAT reference no.  
P2153/2018

Applicant  
See Pickle Pty Ltd

Referral Authority  
N/A

Respondents  
Hampton Beach Pty Ltd

VCAT Member  
S.R. Cimino

Date of hearing  
18/03/2019

Date of order  
18/03/2019

Proposal  
Buildings and works for the construction of a five-storey building containing shops and dwellings in the Commercial 1 Zone and Design and Development Overlay Schedule 12; Reduction in the required car parking rates; and Creation and alteration of access onto a Road Zone, Category 1

Officer recommendation/ Delegate determination  
Refusal

Council determination  
N/A

Appeal type  
Amend a Permit

Plans substituted  
No

VCAT determination  
Permit to Issue

LGPRF outcome  
N/A

Comments
An amendment application was lodged via Section 87A of the Planning and Environment Act, 1987, with the proceedings set down for a Compulsory Conference on 13 March 2019 and, should it not settle, a Merits Hearing on 3 May 2019.

The permit applicant circulated ‘Without Prejudice’ plans to all parties for consideration on 7 February 2019.

Prior to the Compulsory Conference, all parties attended a meeting at Council Offices on 20 February 2019 to discuss the circulated ‘Without Prejudice’ plans. At this meeting, all parties came to an agreement and signed a Consent Order.

The Consent Order was accepted by the Tribunal with an Order issued on 18 March 2019 vacating both the Compulsory Conference and Merits Hearing, and directing an amended permit to issue.

The approved five (5) storey form, height, setbacks and materiality will predominantly remain unchanged. The Section 87A Amendment sought, predominantly, to alter the front façade by way of increasing the height of the pedestrian street canopy to match neighbouring properties and increasing the height of the arched Stone framing element to the front façade to match the Level 4 balustrade height, in order to align with the neighbouring buildings. The amendment also sought for internal reconfigurations of the dwellings.
Specifically, the amendment sought:

Level 1
- Depth of façade columns reduced to Dwelling 101

Level 2
- Depth of façade columns reduced to Dwelling 201

Level 3
- Dwelling 301 deck increased to accommodate façade design / opening to southern side screened to 1.7m

Level 4
- Façade parapet increased to match balustrade height of apt 401 deck / apt 401 deck increased to accommodate façade design

Elevations
- Height of pedestrian street canopy raised to match neighbouring properties
- Arched Stone element to front façade increased into height to match level 4 balustrade height, providing general alignment with neighbouring buildings
- Arch elements rotated 180 degrees due to increase in street canopy height
Subject land: 7 Tulip GVE, CHELTENHAM
Application no.: 2018.292.1
VCAT reference no.: P2019/2018
Applicant: Invogue Property Pty Ltd
Referral Authority: N/A
Respondents: N/A

VCAT Member: Mary-Anne Taranto
Date of hearing: 22/03/2019
Date of order: 22/03/2019
Proposal: Construction of six (6) double storey dwellings

Officer recommendation/ Delegate determination: Refusal

<table>
<thead>
<tr>
<th>Council determination</th>
<th>N/A</th>
</tr>
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Appeal type: Refusal to Grant a Permit

Plans substituted (prior to hearing): Yes

VCAT determination: Remit - Council to determine

LGPRF outcome: N/A

Comments:

An Application for Review against the Refusal decision made by Council was lodged with VCAT pursuant to Section 77 of the Planning and Environment Act, 1987. The application was scheduled for a hearing on 22 March 2019.

Following the decision made by Council, and upon further discussions following the lodgment of the Section 77 Appeal, formally substituted plans were circulated to Council and all objectors on 4 February 2019. No third parties joined to the proceedings.

Upon review of the substituted plans, an agreement (Consent Order) was reached between the Permit Applicant and Council Officers on 1 March 2019 based on the substituted plans, which included the numerous changes to the plans, including retention of the two canopy trees on site, increased garden area and greater compliance with Clause 55 (ResCode). The permit applicant and Council Officers agreed to the above changes and subject to further conditions as listed in the Consent Order.

The application was heard at the Planning and Amenity Committee meeting on 12 March 2019, in which two (2) objectors spoke in support of the changes and withdrew their original objections. The Committee unanimously supported the formally substituted plans and determined to support the Grant of a Permit (by ratifying the Consent Order).
However, the Consent Order was not accepted by the Tribunal, therefore the application proceeded to a full merits hearing on 22 March 2019 for one (1) day. At the hearing, the Tribunal heard from both parties (Council and the Permit Applicant) in relation to the substituted plans, however determined that it was not in a position to determine a decision in relation to the substituted plans.

Pursuant to Section 51(2) (d) of the *VCAT Act, 1998*, the Tribunal determined to remit the decision making back to Council as the Responsible decision maker. By doing so, the Tribunal excused itself from the proceedings and passed the decision making back to Council to issue an approval or refusal.

Given Council has considered the application and determined to Support the Grant of a Permit (by ratifying the consent order), Council therefore formed its decision and pursuant to Section 51(2) (d) of the *Victorian Civil and Administrative Tribunal (VCAT) Act, 1998*, Council Officers therefore issued a Planning Permit subject to conditions.
VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1574/2018
PERMIT APPLICATION NO. 2010/224/3

CATCHWORDS

Section 77 of the Planning and Environment Act 1987; Bayside Planning Scheme; Neighbourhood Residential Zone; amendment to permit; different zoning at time of approval; building for front two dwellings almost complete; construction not in accordance with endorsed plans

APPLICANT

Vaso and Ljubica Pitra

RESPONSIBLE AUTHORITY

Bayside City Council

RESPONDENT

Michael Hogarth-Scott

SUBJECT LAND

128 Bluff Road, Black Rock

WHERE HELD

Melbourne

BEFORE

Christina Fong, Member

HEARING TYPE

Hearing

DATE OF HEARING

31 January 2019

DATE OF ORDER

8 March 2019

CITATION

Pitra v Bayside CC [2019] VCAT 334

ORDER

1  In application P1574/2018 the decision of the responsible authority is set aside.

2  Planning permit 2010/224/3 is amended and an amended permit is directed to be issued for the land at 128 Bluff Road, Black Rock in accordance with the endorsed plans and the conditions set out in Appendix A. The amended permit allows:
   •  Construction of three (3) double storey dwellings with roof decks.

Christina Fong
Member
### APPEARANCES

<table>
<thead>
<tr>
<th>Category</th>
<th>Representation</th>
</tr>
</thead>
<tbody>
<tr>
<td>For applicant</td>
<td>Chris Mckenzie, town planner, Planning Appeals Pty Ltd</td>
</tr>
<tr>
<td>For responsible authority</td>
<td>Jason Kane, barrister, by direct brief</td>
</tr>
<tr>
<td>For respondeut</td>
<td>Michael Hogarth-Scott in person, with Margaret Hogarth-Scott</td>
</tr>
</tbody>
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INFORMATION

Description of proposal  Amendment to the endorsed plans of a development for three double storey dwellings.

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

Planning scheme  Bayside Planning Scheme

Zone and overlays  Neighbourhood Residential Zone (NRZ3, Design and Development Overlay (DDO3), and Vegetation Protection Overlay.

Permit requirements  Clause 32.09-6

Land description  The land is on the east side of Bluff Road between Bayview Crescent and Cheltenham Road. It is regular in shape, with a frontage of 14.99 metres, a depth of 60.35 metres, and an area of around 905 square metres. A three unit development is under construction, with the two front dwellings almost complete, and the ground floor of the rearmost dwelling completed.

Adjoining the land to the north is a dual occupancy at 130 Bluff Road. The front dwelling is a two storey attic original house. The rear dwelling is a single storey dwelling. The respondent is the resident of this dwelling.

Adjoining the land to the south is a single storey single dwelling. So are the lots at the rear of the land, which are developed for single dwellings with their backyards along their common boundary. These dwellings face Stanhope Street.

Tribunal inspection  2 February 2019, and from 130 Bluff Road, and not accompanied by the parties.
REASONS

WHAT IS THIS PROCEEDING ABOUT?

1 This is a section 77 of the Planning and Environment Act 1987 against council’s refusal to amend the permit issued to develop the land for three double storey dwellings.

2 The grounds of refusal relate to the proposed amendments failing to respond to clause 22.06 (Neighbourhood Character Policy) for Precinct H1, and to comply with the objectives and standards of clause 55 in neighbourhood character (B1), side and rear setbacks (B17), and detail design (B31). This refusal is contrary to council officer’s recommendation to approve the amendment subject to conditions, some aimed to require a time line for the plans to be endorsed and occupancy permit not to be issued until the development is verified to be in accordance with endorsed plans.

3 During the hearing, the issue of the building envelope of the development against clause 55.04-1 and standard B17 came up. I made the observation that the submitted plans show these envelopes being based on the default standard of B17, and not the standard as varied in the Bayside Planning Scheme. I also observed that the development is unlikely to meet the varied standard, particularly for Units 2 and 3.

4 I indicated that an opportunity will be provided for the permit applicant to submit revised plans showing the development against this standard within seven days. The purpose of these plans is to show the extent of compliance or non-compliance with this standard.

5 My order dated 5 February 2019 provided this opportunity, that the review applicant is to submit diagrams showing the performance of the development of Units 2 and 3 against standard B17 as varied in the Bayside Planning Scheme, and plans showing the proposed amendments sought in this review over the endorsed plans of the permit issued for the development. This order also specified that it will proceed to determine the matter if the required plans are not received by the due date. The Tribunal has received these plans on 19 February 2019.

6 This matter has come before this Tribunal in an earlier review for a different set of amendments. In upholding council’s refusal to approve the amending plans, I made several observations:

- The zoning of the land at the time of the original approval in 2011 was General Residential. The zoning of the land has since changed to Neighbourhood Residential Zone. This change places an emphasis on neighbourhood character rather than urban consolidation.

1 The submissions 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.

• The building as constructed shows a number of discrepancies between the endorsed plans and as-built, and they did not form part of the amended design. That would mean further amended plans to bring the development into conformity with the constructed version.

• The size and scale of the development as approved when the land was in the General Residential Zone should not increase and further erode the scale recommended for the Neighbourhood Residential Zone.

• Council was concerned with the proposed works in the first round of amending the design, and that there are works in the development that do not correspond with the endorsed plans or submitted plans, or correlate with constructed works on site, which may trigger future demolition of structures or further amended plans.

• This development is a classic case where a design has ‘evolved’ during construction without obtaining approval first for modifications. As a result, the completion of the development is delayed pending further approvals, and parties feeling frustrated.

• I made a suggestion that the permit holder should have a good revaluation of what the development is meant to be, how they can be accommodated within the approved plans, where else has the construction version contravening the endorsed plans, how the constructed version correlate with the submitted plans for amendments, how the revised design perform against the planning scheme, and lodge a set of amended plans to comprehensively resolve the differences. Otherwise, there will be further piecemeal applications for amended plans.

7 In that decision, I upheld council’s refusal of the amended design, based on the increase in the building massing of dwellings compared to the endorsed plans, further encroachment into Standard B17 as varied in the Bayside Planning Scheme, and the increase in the sizes of the first floor balcony of Unit 2 and other structures not consistent with the zoning and neighbourhood character of the area.

8 The current state of play for the development is that construction has ceased. Unit 3 is not at lock-up stage. While the walls of the ground floor are up, the timber frame of the first floor is partially done.

9 I understand that there is currently no valid building permit, pending further planning and building approval. The planning permit is due to expire for the completion of the development in April 2019.

10 I should again stress that the matter before the Tribunal is not to determine whether the building as constructed fails to conform with the endorsed plans of the planning permit. That is the domain of the enforcement of the permit. The matter before this Tribunal is the proposed amendments in this round of amended permit.
THE EARLIER AMENDED DESIGN

11 The 2017 version of amended design was not supported by me. That version proposes to replace the approved spiral stairs to access roof terraces for the dwellings, increase the size of the first floor balcony of Unit 2 with a consequential reduction in the gap between Units 1 and 2 from 3.8 metres to 1.8 metres, and increases the footprints of the ground and first floors of Unit 3. Mr. and Mrs. Hogarth-Scott, also respondents at the time, expressed frustration with the way the land has been developed, particularly that the approved version was the result of an agreement amongst the parties. They also observed that the site has been a construction site for eight years and it is affecting their health and the construction of the building was not in accordance with the endorsed plans and as agreed to.

12 Their main concerns with that version at the time were increased bulk; a lack of separation between buildings, the open stairs replacing the spiral stairs causing overlooking into their family room and meal area, loss of outlook, and increased overlooking. They were also concerned with the ‘incessant variations and ongoing uncertainty regarding submissions for plan variations’

THE CURRENT AMENDED PLANS

13 The current amended plans were refused by council, a decision that was not council officer’s recommendation. At the hearing, Mr. Kane explained council’s position, which is that the revised design is still inconsistent with the preferred neighbourhood character according to the Neighbourhood Character Policy for Precinct H1, and would still cause unreasonable impact on adjoining properties in terms of visual bulk.

14 He submits that each modification in the amended plans, when considered individually, may appear to be relatively minor. Collectively, council considers the impact as unacceptable, because:

- The reduced setbacks apply to entire wall lengths which increases the massing and bulk to the sensitive interface to the north;
- The amendments push out the upper levels of the built forms of Units 1 & 2, all three roof decks and the lift overrun of Unit 3 coming closer to sensitive interfaces, and overall, reduces the “spacious visual separation between buildings” that the neighbourhood character policy seeks for the precinct;
- An overall reduction in the visual separation between dwellings, failure to respond to the fine grain nature of the development of the area; and
- The built form is dominant and overbearing when viewed from the adjoining homes.

15 On the other hand, council officer’s support of the current amended plans which was not accepted by council, was based on his interpretation of the
Tribunal’s comments and recommendation in the 2017 amended plans
Tribunal decision. They are:

Changes to the planning scheme

When the permit was issued in 2011, the zoning of the land was General
Residential. The subsequent change to Neighbourhood Residential Zone has
placed a greater emphasis on neighbourhood character, and as such a design
needs to respond to the preferred character of the area.

The proposed amendments consistent with the existing and preferred
neighbourhood character

The amended design is to introduce additional elements beyond the
originally approved design. However, these elements are not considered to
erode the neighbourhood character given the physical context of the site, a
consideration that clause 22.06-3 acknowledges. Council officer notes that
the site is in an area where infill development is evident, where many older
homes have been replaced with larger and robust built form. His assessment
of the amended plans against the precinct guidelines of precinct H1 is that
these guidelines have been adequately responded to.

Off-site impact

Council officer notes that the current amended plans will involve slight
increase in the maximum height of the building (from 8.48 metres to 8.54
metres, an increase of 0.06 metres), increase in the finished floor levels of
the dwelling of 0.1 and 0.02 metres, minor reduction in the side setback
from the northern and southern boundaries, but have increased setbacks
from the rear which the officer commented as positive.

16 Council officer concluded that the proposed amendments are mainly minor
in nature, and would not result in unreasonable impact.

17 The Hogarth-Scotts from 2/130 Bluff Road continues to oppose the latest
amended plans. Their issues are overlooking, the impact on their enjoyment
of their open space, the building remaining non-complying with permits,
the development remains too close to their common boundary, a lack of
enforcement action, and their lack of faith in the proposal complying with
permit condition.

18 Mr. McKenzie, planning consultant for the applicant explained that the
current amended plans are different from the version refused by the
Tribunal, and that these plans have taken heed of the Tribunal’s decision.
As suggested by the Tribunal, this latest version was based on a survey of
the land and the development as constructed, which obtained council
officer’s support. The notable difference from the 2017 amended plans he
identified include the first floor balcony of Unit 2 previously proposed to be
extended now remains the same, and where there are differences between
the approved version and the amended plans, they are minor and benign.
The differences are in the order of between 2 cm and 10 cm for heights,
setbacks varied (increases and decreases) are in the range of 2 cm – 22 cm.
and they are changes formulated in close consultation with council planning officer, the same officer who opposed the previous set of changes.

19 His submission is that the set of changes currently before the Tribunal properly responds to the Tribunal’s direction to properly establish the as-constructed variations and then seek approval for final endorsed plans with more limited changes and more consistency with the endorsed plans. He contended that the current design is less ambitious than the version refused by council and upheld by the Tribunal.

20 Further, he also notes that the neighbours at the rear has been consulted, which resulted in a lift to a sill height of 1850 mm on the east elevation of Unit 3, plus adding a planter to the roof terrace, replacing the powder and store room on the roof in the approved plans for this unit.

21 My inspection of the site and from 2/130 Bluff Road confirms that the site is secure with no noticeable progress in the construction since my last inspection in 2017. Whilst Units 1 and 2 at front appears to be at the lock-up stage, completed works for Units 3 are confined to ground floor, with some frame on the first floor erected. My inspection was also from within 2/130 Bluff Road, and reveals that visual bulk from the development is mainly from the northern walls of Units and 3.

22 Compared to the amended plans refused in 2017 and the current version, two of the significant increase in building massing has been reduced. They are the proposed extension to the first floor balcony of Unit 2 which is now extended, and the increase in the footprint of unit 3 at the northeast corner of the first floor, along the southern elevation and the size of the first floor balcony, with the stairs to the roof terrace protruding out from the western elevation. The previous amended plans would result in a narrowing of building separation between Units 1 and 2, and between Units 2 and 3, and an extension of the ground floor footprint.

23 I am mindful that the original permit was granted in 2011, when the land was in the General Residential Zone. The purpose of the General Residential Zone is for urban consolidation and development to respect neighbourhood character. The development commenced pursuant to a valid planning permit.

24 My observation at the last hearing is that the boundaries set by the current zoning should not be further encroached in order to be consistent with the current zone. I consider the previous scheme as one that encroaches on the approved massing of the development at to the detriment of the neighbourhood character of the area and in the adverse amenity impact on adjoining dwellings.

25 A comparison between the current amended plans and the approved plans, accepting that these latest amended plans are based on a survey of the development as built and that there should not be further rectification retrospective amending plans, still show some minor encroachments to the...
approved version. Each of the variations can be described as minor, and none exceeding 200 mm. For example, the setback of the first floor of Unit 2 from the northern boundary is reduced by 13 cm, the length of the first floor of the northern wall of this dwelling increased by 12 cm; the gap between Units 2 and 3 reduced by 0.03 metre, the length of the northern wall of Unit 3 increased by 0.03 metre, the height of the lift overrun increased by 0.06 metres, and other minor modifications.

26 My review of the submitted Standard B17 envelopes, as varied by the Bayside Planning Scheme, compared to my own assessment shows that the northern walls of Units 2 and 3 cannot meet the standard. The long and short are that the further reduction in the setback of Unit 2 from the northern boundary, and the marginally longer northern building walls of Units 2 and 3 may be negligible individually, but collectively add to the visual bulk of the development.

27 As indicated in my last decision, I do not support further encroachments into standard B17 as varied. From a practical point of view, it would be draconian to require the length of constructed walls to be reduced in order not to exceed the approved version, which already exceeds this standard.

28 A practical way of ensuring that there is no additional visual bulk to 2/130 Bluff Road is to require additional setbacks of built form of Unit 3 that face 2/130 Bluff Road, and on the basis that when it is increased in Unit 2, there will be a proportional reduction in the built form of Unit 3. This is possible because Unit 3 is far from completion. In fact, the first floor is constructed to the extent of some partial timber frames, which is not difficult to reconstruct.

29 Based on my calculation of the discrepancies between the endorsed plans and the current amended plans, and for the purpose of not increasing the amount of building mass facing north, the following changes to the design would compensate the additional encroachments shown in the amended plans from the endorsed plans:

The footprint of the first floor of Unit 3 can be reduced by:

- Increasing the gap between Units 2 and 3 and reducing the length of the northern wall of Unit 3 by setting the first floor western wall of Unit 3 north of the lift to a minimum of 4.3 metres (proposed to be 4.032 metres) without increasing the footprint of this floor;
- Increasing the setback of the first floor northern wall of Unit 3 to a minimum of 1.93 metres from the northern boundary.
- The size and dimension of the roof terrace of Unit 3 reduced so that its east-west length is reduced by 0.9 metre.

30 The matter has been going on since 2011. There is some urgency that the matter can be resolved in a practical and timely manner. It serves no purpose for the site to be idle, with possible deterioration of building as
constructed as Unit 3 is not weather-proof and presents an unsightly appearance.

31 The approval of the modifications given in this order should be a forward step towards completing the development.

32 I am confident that the minor reduction in Unit 3 to make up for the minor increases in the size and reduction in setbacks of the front dwellings should bring the development comparable to the development as approved in 2011, and that the completion of the development can be achieved in a timely manner.

CONCLUSION

33 For the reasons given above, the decision of the responsible authority is set aside, and the permit amended.

Christina Fong
Member
APPENDIX A – PERMIT CONDITIONS

<table>
<thead>
<tr>
<th>PERMIT APPLICATION NO</th>
<th>2010/224/5</th>
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<tbody>
<tr>
<td>LAND</td>
<td>128 Bluff Road, Black Rock</td>
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**WHAT THE AMENDED PERMIT ALLOWS**

In accordance with the endorsed plans:

- Construction of three double storey dwellings with roof decks.

**CONDITIONS**

1. Within 60 days of the amended permit (Planning Permit 2010/224/5), 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 on 17 May 2018 but modified to show:
   a) First floor of Unit 3 modified:
      i. Further setting back from Unit 2 by reducing the length of the northern wall of this dwelling and by setting the western wall north of the lift to a minimum of 4.3 metres from the first floor eastern wall of the first floor of Unit 2;
      ii. The setback of the first floor northern wall of this dwelling increased to a minimum of 1.93 metres from the northern boundary;
      iii. The size and dimensions of the roof terrace of this dwelling reduced by reducing the east-west length of this area by 0.9 metres.
   b) Each double garage must be at least 5.5 metres wide and 6 metres long from internal wall to wall. The dimension on the garage door opening (minimum 4.8 metres) for each garage is to be shown on the ground floor plan.
   c) The existing street tree to be retained and a Tree Protection Zone is to be established around the tree in accordance with the Australian Standards 4970.
   d) Details of any proposed front fence.
   e) The proposed landscape treatment for the site including the existing and proposed species in accordance with Condition 5 of this permit.
f) Water sensitive urban design stormwater treatment measures in accordance with Condition 9 of this permit.

g) Relocation of the first floor bathroom window of dwelling 3 from the eastern elevation to the southern elevation and screened in accordance with Standard B22 of Clause 55 of the Bayside Planning Scheme.

h) A revised landscape plan to show details of roof deck planters and a planting schedule.

i) A front fence elevation detailing changes to the pedestrian entry.

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

3. The walls on the boundary of the adjoining properties must be cleaned and finished to the satisfaction of the responsible authority.

4. Conditions required by Vic Roads
   a) Provisions to allow vehicles to drive forwards when both entering and exiting the property must be available at all times and all vehicles must enter and exit the property in a forward direction.

   b) The edges of the vehicular crossover must be angled at 60 degrees to the road reserve boundary to the satisfaction of the Responsible Authority.

   c) Prior to the use of the permitted development, any redundant portion of the existing crossover must be removed and the footpath, nature strip and kerbing reinstated to the satisfaction of the Responsible Authority.

5. Before the development starts, a landscape plan to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. When approved, the plan will be endorsed and will then form part of the permit. The plan must be drawn to scale with dimensions and three copies must be provided.

   The plan must show:

   a) A survey of all existing vegetation to be retained and/or removed

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

   c) Details of surface finishes of pathways and driveways

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

   e) Landscaping and planting within all open areas of the site.

   f) 1 native tree capable of growing to 8 metres at maturity in the front setback.
g) The Liquidambar styraciflua located 1 metre from the north boundary and 25 metres from the east boundary at 126 Bluff Road, Black Rock to be protected in accordance with AS4970

All species selected must be to the satisfaction of the responsible authority.

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

6. The existing street trees must not be removed or damaged.

7. All existing vegetation shown on the endorsed plans to be retained must not be removed, destroyed, pruned or lopped without the written consent of the responsible authority, all tree pruning must be carried out by a qualified Arborist to AS 4373, Pruning of Amenity Trees.

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

9. Before the commencement of works, detailed plans to the satisfaction of the Responsible Authority must be submitted to and be approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be in accordance with the guidelines outlined in Clause 22.10 of the Bayside Planning Scheme and must show:

   a) The type of water sensitive urban design stormwater treatment measures to be used;
   
   b) The location of the water sensitive urban design stormwater treatment measures in relation to buildings, sealed surfaces and landscaping areas;
   
   c) Design details of the water sensitive urban design stormwater treatment measures, including cross sections;

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

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

10. Prior to the issuing of a certificate of occupancy, written correspondence from a Licensed Land Surveyor must be provided to the Responsible Authority confirming that the as built conditions match the endorsed plans.

11. Prior to the issuing of a certificate of occupancy, written correspondence from an Arborist / Landscape Architect must be provided to the...
Responsible Authority confirming that the as built conditions match the endorsed plans.

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

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

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

END OF CONDITIONS