Planning & Amenity Committee Meeting

Council Chambers
Civic Centre – Boxshall Street Brighton

Tuesday 16 July 2019 at 7pm

Late Agenda
Members of the Gallery

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

Section 92 The Chair’s Duties and Discretions

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

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

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

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

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

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

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

Your cooperation is appreciated

Chairperson of Council
Planning & Amenity Committee Meeting

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

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

Membership of the Committee
All Councillors

Order of Business

4. Matters of Decision

4.12 2 Major Street, Highett Support the Grant of a Permit (Consent Order) Application No: 2017/563/1 Ward: Central ....................... 5

Next Meetings 2019

Tuesday 30 July 2019 (*CANCELLED)
Tuesday 13 August 2019
Tuesday 10 September 2019
Tuesday 8 October 2019
Tuesday 22 October 2019 (*CANCELLED)
Tuesday 12 November 2019
Tuesday 26 November 2019 (*CANCELLED)
Monday 9 December 2019
4. Matters of Decision

4.12 2 MAJOR STREET, HIGGETT
SUPPORT THE GRANT OF A PERMIT (CONSENT ORDER)
APPLICATION NO: 2017/563/1 WARD: CENTRAL

City Planning & Amenity - Development Services
File No: PSF/19/962 – Doc No: DOC/19/180887

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

1. Application details

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Support the Grant of a Permit (VCAT Consent Order)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicant</td>
<td>David Lock Associates</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>5 October 2017, with the substituted plans circulated on 5 July 2019.</td>
</tr>
<tr>
<td>Current statutory days</td>
<td>N/A</td>
</tr>
<tr>
<td>Zoning</td>
<td>General Residential Zone (Schedule 1)</td>
</tr>
<tr>
<td>Overlays</td>
<td>Design and Development Overlay (Schedule 5) Development Contributions Plan Overlay (Schedule 1)</td>
</tr>
<tr>
<td>Site area</td>
<td>592m²</td>
</tr>
<tr>
<td>Number of outstanding objections</td>
<td>Twelve (12) Two objectors have joined as parties to the VCAT proceedings.</td>
</tr>
<tr>
<td>Is a Development Contribution Levy applicable?</td>
<td>In the event of permit issue, $6,264 (three additional dwellings)</td>
</tr>
<tr>
<td>Is the site located within an area of cultural heritage sensitivity?</td>
<td>No</td>
</tr>
</tbody>
</table>

Purpose

The purpose of this report is to endorse a consent position reached by all parties on 12 July 2019 following the circulation of substituted plans at VCAT, prior to a merits hearing. The Draft Consent Order is provided at Attachment 1.

History

The application sought the construction of a partially two/part three storey building with basement parking and a front fence in excess of 1.2 metres of a lot.

At the 12 March 2019 Committee meeting, Council determined to refuse the original planning application. The grounds of refusal were as follows:
1. The proposal fails to respond to the objectives of Clause 22.06 (Neighbourhood Character, Precinct G1) of the Bayside Planning Scheme, on the following grounds:
   
a) The development fails to respond to the existing and preferred neighbourhood character for this precinct;
   
b) The development fails to maintain or enhance the garden setting of the dwelling; and
   
c) The development fails to maintain the rhythm of spacious visual separation between dwellings.

2. The proposed apartment building fails to meet the design objectives of Clause 43.02 (Design and Development Overlay Schedule 5).

3. The proposal fails to comply with the Objectives and Standards of Clause 55 of the Bayside Planning Scheme, in particular:
   
a) Standard B1 (Neighbourhood Character) – The proposal fails to respond to the existing and preferred character for this precinct;
   
b) Standard B17 (Side and Rear Setbacks) – The proposed side and rear setbacks fail to respect the existing and preferred character or limit amenity impacts on adjoining dwellings;
   
c) Standard B28 (Private Open Space) – The proposal fails to sufficient private open space for all dwellings; and
   
d) Standard B32 (Front Fences) – The proposed fencing does not respond to the existing or preferred neighbourhood character.

VCAT

An Application for Review against Council’s decision was lodged with VCAT pursuant to Section 77 of the Planning and Environment Act 1987.

The application is scheduled for a full day hearing starting on 21 August 2019.

Following the decision made by Council, and upon further discussions following the lodgement of the Refusal (Section 77) Appeal, an agreement was reached on 12 July 2019 based on the substituted plans, circulated on 5 July 2019, which included the following changes to the decision plans:

Overall

- Deletion of the third storey;
- Modifications of the building’s façade; and
- Increased first floor side setbacks along the northern interface (shown below).

<table>
<thead>
<tr>
<th></th>
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<th>Amended plans</th>
<th>Setback Increase</th>
<th>Compliant</th>
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<tr>
<td>Dwelling 1</td>
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<td>3.54m</td>
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<td>No (0.65m variation)</td>
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<td>3.04m</td>
<td>3.8m</td>
<td>0.76m</td>
<td>Yes</td>
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<td>4.13m</td>
<td>0.76m</td>
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</tr>
<tr>
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<td>2.78m</td>
<td>3.54m</td>
<td>0.76m</td>
<td>Yes</td>
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The permit applicant, both objector parties and Council officers all agreed to the above changes subject to further conditions as listed in the Consent Order which is included at Attachment 1.
The Substituted Plans and a full list of the Statement of Changes are included at Attachments 2 and 3 respectively.

If the Consent Order is not endorsed by the Planning and Amenity Committee, the application will proceed to a full merits hearing on 21 August 2019.

2. Recommendation

That Council resolve to Support the Grant of a Permit under the provisions of the Bayside Planning Scheme in respect of Planning application 2017/563/1 for the land known and described as 2 Major Street, Highett for the development of four double storey dwellings and a front fence higher than 1.2 metres in accordance with the endorsed plans and subject to the following conditions:

1. Before the development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and electronic copies provided. The plans must be generally in accordance with the VCAT Amended plans (circulated on 5 July 2019) prepared by Shangri-La Construction referenced VCAT issue date 21/06/19 and revision number VC02 but modified to show:

   a) A pergola or porte cochere structure to be installed along the street-facing elements of the pedestrian walkway.
   b) The provision of up-lights along the pedestrian accessway.
   c) Demonstration of compliance with Standard B23 (Internal views) of the Bayside Planning Scheme.
   d) Reduction in the overall height of the front fence to a maximum of 1.8 metres.
   e) The 1:8 ramp grade at the bottom of the access ramp to be minimum 2.5 metres in length.
   f) A minimum 5.2 metre wide garage door to be provided for each garage.
   g) The gate for the driveway to be set back a minimum of 5.5 metres from the front property boundary.
   h) Deletion of all indicative landscaping.
   i) Earth filling and Earth cutting to be swapped on material schedule on TP-4.01.
   j) Outline the level of cut and fill across the site and show the proposed ground levels.
   k) Location of all plant and equipment, including hot water services and air conditioners etc. Plant equipment is to be located away from habitable room windows of dwellings and the adjoining properties’ habitable rooms.
   l) Material P1 to be replaced with bricks.
   m) The ceiling of any porches, verandah or underside of any overhang to be clad in timber.
Item 4.1 – Matters of Decision

n) A schedule of construction materials, external finishes and colours (incorporating for example paint samples).
o) Water Sensitive Urban Design measures in accordance with Condition 8 of this permit.
p) A Landscaping Plan in accordance with Condition 10 of this permit.
q) A Tree Management Plan and Tree Protection Plan in accordance with Condition 13 of this permit.
r) A Waste Management Plan in accordance with Condition 16 of this permit.
s) A Construction Management Plan in accordance with Condition 17 of this permit.
t) Payment of the Drainage Development Contributions Levy in accordance with Condition 21.
u) A minimum upper floor setback to the southern walls of dwelling 2 and 3 of 4 metres.
v) A timber look finish (external wall) to the upper floor southern walls of dwelling 2 and 3.

All to the satisfaction of the Responsible Authority.

2. The layout of the site and the size, 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 endorsed by the Responsible Authority. The plan must be generally in accordance with the landscape concept plan drawn by Memla, reference 1975, dated 22-01-2018 and be drawn to scale with dimensions and three copies must be provided. The plan must show:

a) The provision of one large canopy tree capable of reaching a height of 12 metres at maturity or two smaller canopy trees capable of reaching a height of 8 metres or greater at maturity in the front setback of dwelling 1.

b) The provision of one small canopy tree capable of reaching a height of 8 metres at maturity in each of the gardens of dwellings 2 and 3.

c) The provision of two small canopy trees capable of reaching a height of 8 metres at maturity in the garden area of dwelling 4.

d) 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.

e) 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.

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

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

h) Details of surface finishes of pathways and driveways.

i) Provision of a hedge or similar screening vegetation on the southern side of the pathway (between the pathway and southern boundary fence) of approximately 14 metres in length. The hedge or similar screening vegetation should be eligible to grow to a height that restricts views to dwelling 2 and 3 upper floors from the directly abutting secluded private open space.
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.

Waste Management Plan

16. Before the endorsement of plans, 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).

h) Method of hard waste collection.
i) Method of presentation of bins for waste collection.

j) Sufficient headroom within the basement to accommodate waste collection vehicles.

k) Sufficient turning circles for the waste collection vehicles to enter and exit the site in a forward direction.

l) Strategies for how the generation of waste and recyclables will be minimised.

m) Compliance with relevant policy, legislation and guidelines.

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

**Construction Management Plan**

17. Prior to commencement of any building works including demolition works or the issue of a Building Permit, a Construction Management Plan (CMP) prepared 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 form part of this permit. The plan must provide for (but not limited to):

a) A pre-conditions survey (dilapidation report) of the land and all adjacent Council roads frontages and nearby road infrastructure.

b) Works necessary to protect road and other infrastructure.

c) Remediation of any damage to road and other infrastructure.

d) Containment of dust, dirt and mud within the land and method and frequency of clean up procedures to prevent the accumulation of dust, dirt and mud outside the land.

e) Facilities for vehicle washing, which must be located on the land.

f) The location of loading zones, site sheds, materials, cranes and crane/hoisting zones, gantries and any other construction related items or equipment to be located in any street.

g) Site security.

h) Management of any environmental hazards including, but not limited to:

   i. contaminated soil and ground water;

   ii. materials and waste;

   iii. dust;

   iv. stormwater contamination from run-off and wash-waters;

   v. sediment from the land on roads;

   vi. washing of concrete trucks and other vehicles and machinery; and

   vii. spillage from refuelling cranes and other vehicles and machinery.

i) The construction program.

j) Preferred arrangements for trucks delivering to the land, including delivery and unloading points and expected duration and frequency.
b) Parking facilities for construction workers.

c) Measures to ensure that all work on the land will be carried out in accordance with the Construction Management Plan.

d) An outline of requests to Council/Public authorities to occupy public footpaths or roads, or anticipated disruptions to local services.

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

f) The provision of a traffic management plan to comply with provisions of AS 1742.3-2002 Manual of uniform traffic control devices - Part 3: Traffic control devices for works on roads.

j) Include details of bus movements throughout the precinct during the construction period.

k) A Noise and Vibration Management Plan showing methods to minimise noise and vibration impacts on nearby properties and to demonstrate compliance with Noise Control Guideline 12 for Construction (Publication 1254) as issued by the Environment Protection Authority in October 2008. The Noise and Vibration Management Plan must be prepared to the satisfaction of the Responsible Authority. In preparing the Noise and Vibration Management Plan, consideration must be given to:

i. using lower noise work practice and equipment;

ii. the suitability of the land for the use of an electric crane;

iii. silencing all mechanical plant by the best practical means using current technology;

iv. fitting pneumatic tools with an effective silencer;

v. other relevant considerations; and

vi. any site-specific requirements.

During the construction:

j) Any stormwater discharged into the stormwater drainage system must be in compliance with Environment Protection Authority guidelines.

k) Stormwater drainage system protection measures must be installed as required to ensure that no solid waste, sediment, sand, soil, clay or stones from the land enters the stormwater drainage system.

l) Vehicle borne material must not accumulate on the roads abutting the land.

m) The cleaning of machinery and equipment must take place on the land and not on adjacent footpaths or roads.

n) All litter (including items such as cement bags, food packaging and plastic strapping) must be disposed of responsibly.

If required, the Construction Management Plan may be approved in stages. Construction of each stage must not commence until a Construction Management Plan has been endorsed for that stage, to the satisfaction of the Responsible Authority.

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

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

20. Council records indicate that there is a 150mm diameter South East Water sewer pipe running parallel to the east property boundary. Council consider this asset to be protected by an implied easement, minimum distance of 1m from the asset. The plans indicate no proposals to encroach into the implied easement with any buildings or structures of note. Proposals to be built over the easement will require Build Over Easement consent from the Responsible Authority/Authorities.

Drainage Development Contributions

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

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

Permit Expiry

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

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

Permit Notes:

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

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

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

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

This report will detail how the amended plans at Attachment 2 respond to the previous Ground for Refusal and relevant planning policies.

Ground of Refusal 1

1. The proposal fails to respond to the objectives of Clause 22.06 (Neighbourhood Character, Precinct G1) of the Bayside Planning Scheme, on the following grounds:
   
a. The development fails to respond to the existing and preferred neighbourhood character for this precinct;
      
The existing character of Major Street is in transition with medium density accommodation increasingly replacing single dwelling occupancy. Notwithstanding that, along Major Street single and double storey built form is common. The amended plans allow for a two storey built form, rather than a three storey form, more appropriately reflects the existing character of the street.
      
The inclusion of bricks within the dwelling 1 façade will more appropriately reflect the surrounding built form. Brick is a common feature within the existing streetscape. The inclusion of timber cladding along the southern upper floor outlook will reduce the oblique bulk of the upper storey. These changes have been included as a condition of the permit. On balance, the proposal is now acceptably respectful of the surrounding built form subject to conditions contained within the Consent Order.
   
b. The development fails to maintain or enhance the garden setting of the dwelling; and
      
The amended application includes an updated development scheme to achieve the mandatory garden area requirement, allowing a larger percentage of the site to be used for landscaping. Conditions embedded within the planning permit require landscaping to be undertaken in accordance with the development. Several canopy trees will be required to be planted prior to the occupancy of the development and, upon maturity, these trees will appropriately enhance the garden settings of the dwellings.
   
c. The development fails to maintain the rhythm of spacious visual separation between dwellings.
      
The increase in first floor setbacks along the northern interface with No. 4 Major Street will acceptably maintain the rhythm of spacious visual separation within the streetscape. Conditions in the consent order require additional recessing along the upper floor southern setback to deliver a greater visual separation along this interface. This results in reduced visual impact to an objector’s property. Subject to conditions, the amended plans now appropriately reflect the rhythm of visual separation within Major Street.

Ground of Refusal 2

2. The proposed apartment building fails to meet the design objectives of Clause 43.02 (Design and Development Overlay Schedule 5)

The proposed development now suitably achieves the design objectives of the Design and Development Overlay, Schedule 5 (DDO5). The increased side setbacks and the deletion of the third storey more appropriately reflects the intent of the preferred medium density residential areas. Specifically, the side setbacks are now considered acceptable in order to provide quality landscaping. Furthermore, the built form will retain the amenity of surrounding low density development by providing a reasonably recessive upper storey. This satisfies this refusal ground.
Ground of Refusal 3

3. The proposal fails to comply with the Objectives and Standards of Clause 55 of the Bayside Planning Scheme, in particular:

   a. Standard B1 (Neighbourhood Character) – The proposal fails to respond to the existing and preferred character for this precinct;

      As outlined above, the neighbourhood character is now satisfactorily enhanced by the proposal.

   b. Standard B17 (Side and Rear Setbacks) – The proposed side and rear setbacks fail to respect the existing and preferred character or limit amenity impacts on adjoining dwellings;

      Whilst non-compliances remain at the northern and southern ground floor, these are affected by the slope of the natural ground level downhill toward the street. These non-compliances are perceptibly small and will have reduced impacts on the amenity of adjoining dwellings. The ground floor side setbacks satisfy the side and rear setbacks objective.

      The first floor setbacks have been increased along the northern interface. This will reduce the impacts to the amenity of the property to the north. Furthermore, it delivers an acceptable pattern of development within the existing streetscape. While a minor non-compliance still exists along the front of the site, it is measurably small and will not be discernible. A condition of the consent order requires additional inset to occur along the southern upper floor interface, satisfactorily reducing amenity impacts to objector properties to the south.

      The amended plans show significant improvements with respect to the northern first floor setbacks, with the improvements as follows:

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   c. Standard B28 (Private Open Space) – The proposal fails to sufficient private open space for all dwellings; and

      The minor reductions in private open space are considered acceptable in the context of the site and surrounds. Dwellings 1 and 4 exceed the measureable requirement. Dwellings 2 and 3 exceed the 25m² required for secluded private open space however do not achieve the 40m² required for total private open space. Dwelling 2 has 31.5m² (deficit of 8.5m²) of POS and Dwelling 3 has 28.2m² of POS (deficit of 11.8m²).

      The SPOS of Dwellings 2 and 3 are considered to be acceptably useable for the future residents of these dwellings. As such, on balance with the improvements to the plans, the POS areas are considered to be acceptable.

   d. Standard B32 (Front Fences) – The proposed fencing does not respond to the existing or preferred neighbourhood character.
Fencing within the immediate vicinity is generally solid brick and exceeds 1.2 metres in height. The proposed fence would have a solid 500m rendered plinth with open timber screen fence to a height of 1.5 metres above. The timber fencing would be 50% open.

The design of the fencing is considered appropriate, will integrate well within the streetscape and provide elements of visual permeability. That said, a height of 2 metres is considered out of keeping with surrounding fences. A condition is included in the consent order requiring the height to be reduced to 1.8 metres in keeping with the surrounding fencing.

4. Conclusion

As described above, the changes to the plans are substantial, and address the previous grounds of refusal to an acceptable level.

All the concerns raised by Council and the objectors have been satisfactorily addressed by the amendments or by conditions imposed within the consent order. This includes the deletion of the third storey, increased northern and southern first floor setbacks and modifications being made to the building’s façade.

The combination of amendments results in a development which is considered to show an acceptable level of compliance with the Bayside Planning Scheme.

Support Attachments

1. Signed Consent Order ↓
2. Formally Amended Development Plans ↓
3. Statement of Changes for Amended Plans ↓
Consent order – S 77, s79 or s 82
Permit granted after REFUSAL OR NOD

Tribunal File No: P560/2019
Permit Application No: 5/2017/563/1
Date of Comp. Conf: 12 July 2019
Member: S. R. Cimino

PARTIES

Responsible Authority: Bayside CC – Mr J. Kane, barrister, direct access
Applicant(s) for Review: Shangri La Constructions Pty Ltd – Mr J. Halaliku, planning consultant, David Lock and Associates
Respondent(s) Present: Mr Gary McCulloch in person
Ms Kristin Murphy - Mr Craig Murphy

TERMS OF SETTLEMENT - REQUEST FOR CONSENT ORDER

Subject to the Council confirming its consent subsequent to the Compulsory Conference and no new parties arising from notice of amended plans, the parties request that the Tribunal make the following order by consent pursuant to Section 93(1) of the Victorian Civil and Administrative Act 1998 as settlement of this proceeding:

Amend application

1 Pursuant to section 127 and clause 64 of Schedule 1 of the Victorian Civil & Administrative Tribunal Act 1998, the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:
Prepared by: Shangri-La Construction
Drawing numbers: TP-2.01, TP-2.02, TP-2.03, TP-2.05, TP-2.06, TP-3.01, TP-3.02, TP-3.03, TP-3.04, TP-3.05, TP-3.06, TP-3.07, TP-3.08, TP-4.01, TP-4.02, TP-5.01, all marked VC02 'VCAT issue'
Dated: 21 June 2019

Photocopy of this signed document to be handed to each party prior to departure

Level 7, 55 King Street, Melbourne Vic 3000  DX 210576 Melbourne
GPO Box 5408CC, Melbourne Vic 3001  Internet: http://www.vcm.vic.gov.au
Telephone 03 9628 9700  Facsimile 03 9628 9788

Item 4.1 – Matters of Decision
Grant permit

2 In application no. P560/2019, the Responsible Authority’s decision is set aside.

3 In permit application no. 5/2017/563/1 a permit is granted and directed to be issued for the land at 2 Major Street HIGHTETT VIC 3190 in accordance with the endorsed plans and on the conditions set out in Appendix A. The permit allows:

   Construction of four (4) double storey dwellings with basement parking

   A front fence with a height in excess of 1.2 metres

Compulsory conference and Hearing vacated

4 The compulsory conference listed for 12 August 2019 is cancelled and the date vacated.

5 The hearing listed for the 21 August 2019 is cancelled and the date vacated.

APPENDIX A

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 generally in accordance with the plans prepared by Shangri-La Construction referenced VCAT Issue 02, drawing nos. TP-2.01, TP-2.02, TP-2.03, TP-2.05, TP-2.06, TP-3.01, TP-3.02, TP-3.03, TP-3.04, TP-3.05, TP-3.06, TP-3.07, TP-3.08, TP-4.01, TP-4.02, TP-5.01 all dated 21 June 2019 but modified to show:

   a) A pergola or porte cochere structure to be installed along the street-facing elements of the pedestrian walkway;

   b) The provision of up-lights along the pedestrian accessway;

   c) Demonstration of compliance with Standard B23 (Internal views) of the Bayside Planning Scheme;

   d) Reduction in the overall height of the front fence to a maximum of 1.8 metres;

   e) The 1:8 ramp grade at the bottom of the access ramp to be minimum 2.5 metres in length;

   f) A minimum 5.2 metre wide garage door to be provided for each garage;

   g) The gate for the driveway to be set back a minimum of 5.5 metres from the front property boundary;

   h) Deletion of all indicative landscaping;
i) Earth filling and Earth cutting to be swapped on material schedule on TP-4.01;

j) Outline the level of cut and fill across the site and show the proposed ground levels;

k) 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;

l) Material P1 to be replaced with bricks;

m) The ceiling of any porches, verandah or underside of any overhang to be clad in timber;

n) A schedule of construction materials, external finishes and colours (incorporating samples of all materials on a colour and materials board);

o) Water Sensitive Urban Design measures in accordance with Condition 8 of this permit;

p) A Landscaping Plan in accordance with Condition 10 of this permit;

q) A Tree Management Plan in accordance with Condition 13 of this permit; and,

r) A Waste Management Plan in accordance with Condition 16 of this permit;

s) A Construction Management Plan in accordance with Condition 17 of this permit;

t) Payment of Drainage Development Contributions in accordance with Condition 21.

u) A minimum upper floor setback to the southern walls of dwelling 2 and 3 of 4 metres.

v) A timber look finish (external wall) to the upper floor southern walls of dwellings 2 and 3.

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; and,
    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 Memla, reference 1975, dated 22-01-2018 and be drawn to scale with dimensions and three copies must be provided. The plan must show:

a) The provision of one large canopy tree capable of reaching a height of 12 metres at maturity or two smaller canopy trees capable of reaching a height of 8 metres or greater at maturity in the front setback of dwelling 1;

b) The provision of one small canopy tree capable of reaching a height of 8 metres at maturity in each of the gardens of dwellings 2 and 3;

c) The provision of two small canopy trees capable of reaching a height of 8 metres at maturity in the garden area of dwelling 4;

d) 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.

e) 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.

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

g) Landscaping and/or planting within all areas of the site not covered by buildings or hard surfaces; and,

h) Details of surface finishes of pathways and driveways.

i) Provision of a hedge or similar screening vegetation on the southern side of the pathway (between the pathway and southern boundary fence) of approximately 14 metres in length. The hedge or similar screening vegetation should be able to grow to a height that restricts views to upper floors of dwellings 2 and 3 from the secluded private open space of the dwelling at Unit 4, 2A Major Street, Highett, but not exceed a height of 3 metres.
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; and,

   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.

Waste Management Plan
Before the endorsement of plans, 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. A private waste collection from within the basement. No on-street loading is permitted;
- f) Types of waste for collection, including colour coding and labelling of bins;
- g) Hours of waste and recyclables collection (to correspond with Council Local Laws and EPA Noise Guidelines);
- h) Method of hard waste collection;
- i) Method of presentation of bins for waste collection;
- j) Sufficient headroom within the basement to accommodate waste collection vehicles;
- k) Sufficient turning circles for the waste collection vehicles to enter and exit the site in a forward direction;
- l) Strategies for how the generation of waste and recyclables will be minimised; and,
- 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.

**Construction Management Plan**

Prior to commencement of any building works including demolition works or the issue of a Building Permit, a Construction Management Plan (CMP) prepared 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 form part of this permit. The plan must provide for (but not limited to):

- a) A pre-conditions survey (dilapidation report) of the land and all adjacent Council roads frontages and nearby road infrastructure;
- b) Works necessary to protect road and other infrastructure;
- c) Remediation of any damage to road and other infrastructure;
e) Containment of dust, dirt and mud within the land and method and frequency of clean up procedures to prevent the accumulation of dust, dirt and mud outside the land;

f) Facilities for vehicle washing, which must be located on the land;

g) The location of loading zones, site sheds, materials, cranes and crane hoisting zones, gantries and any other construction related items or equipment to be located in any street;

h) Site security;

i) Management of any environmental hazards including, but not limited to:

   i. contaminated soil and ground water,
   ii. materials and waste,
   iii. dust,
   iv. stormwater contamination from run-off and wash-waters,
   v. sediment from the land on roads,
   vi. washing of concrete trucks and other vehicles and machinery, and
   vii. spillage from refuelling cranes and other vehicles and machinery;

i) The construction program;

j) Preferred arrangements for trucks delivering to the land, including delivery and unloading points and expected duration and frequency;

k) Parking facilities for construction workers;

l) Measures to ensure that all work on the land will be carried out in accordance with the Construction Management Plan;

m) An outline of requests to Council / Public authorities to occupy public footpaths or roads, or anticipated disruptions to local services;

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

o) The provision of a traffic management plan to comply with provisions of AS 1742.3-2002 Manual of uniform traffic control devices - Part 3: Traffic control devices for works on roads;
p) Include details of bus movements throughout the precinct during the construction period;

q) A Noise and Vibration Management Plan showing methods to minimise noise and vibration impacts on nearby properties and to demonstrate compliance with Noise Control Guideline 12 for Construction (Publication 1254) as issued by the Environment Protection Authority in October 2008. The Noise and Vibration Management Plan must be prepared to the satisfaction of the Responsible Authority. In preparing the Noise and Vibration Management Plan, consideration must be given to:

i. using lower noise work practice and equipment,

ii. the suitability of the land for the use of an electric crane,

iii. silencing all mechanical plant by the best practical means using current technology,

iv. fitting pneumatic tools with an effective silencer,

v. other relevant considerations, and

vi. any site-specific requirements;

During the construction:

r) Any stormwater discharged into the stormwater drainage system must be in compliance with Environment Protection Authority guidelines;

s) Stormwater drainage system protection measures must be installed as required to ensure that no solid waste, sediment, sand, soil, clay or stones from the land enters the stormwater drainage system;

t) Vehicle borne material must not accumulate on the roads abutting the land;

u) The cleaning of machinery and equipment must take place on the land and not on adjacent footpaths or roads; and,

v) All litter (including items such as cement bags, food packaging and plastic strapping) must be disposed of responsibly.

If required, the Construction Management Plan may be approved in stages. Construction of each stage must not commence until a Construction Management Plan has been endorsed for that stage, to the satisfaction of the Responsible Authority.

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

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

20 Council records indicate that there is a 150mm diameter South East
Water sewer pipe running parallel to the east property boundary. Council
consider this asset to be protected by an implied easement, minimum
distance of 1m from the asset. The plans indicate no proposals to encroach
into the implied easement with any buildings or structures of note.
Proposals to be built over the easement will require Build Over Easement
consent from the Responsible Authority/Authorities.

Development Contributions

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

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

 Permit Expiry

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

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

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

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

- END OF CONDITIONS -

Other terms
This agreement is subject to the Council confirming that it gives its consent and no new parties arising from notice of amended plans. If the Council consents and no new parties arise from notice of amended plans, this agreement stands and the parties request orders by consent pursuant to Section 93(1) of the Victorian Civil and Administrative Tribunal Act 1998.

If the Council does not consent to this agreement by 18 July 2019 (or some other date agreed to by the applicant), the parties acknowledge that this agreement is void and the matter will proceed to hearing commencing on 21 August 2019.

If the Council consents but new parties arise from notice of amended plans, the parties request that the matter be listed for a further compulsory conference. If agreement is not reached at any further compulsory conference, the parties that are signatories to this document agree to advise the Tribunal at any hearing that they consent to the grant of a permit in accordance with the terms set out in this document.

**Procedural orders**
1  Confirm hearing
2  Admin mention 2 August 2019 – RA and applicant to advise the Tribunal and other parties if the matter is resolved or proceeding to hearing or compulsory conference at 9am on 12 August 2019
3  Expert reports 14 August 2019

SIGNED and dated 12 July 2019

Applicant/s for Review

Mr J. Haidiniku, planning consultant, David Lock and Associates

Responsible Authority

Mr J. Kane, barrister

For Gary McCulloch

Mr G. McCulloch

For Kristin Murphy

Mr C. Murphy
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Consent Orders / Record of Settlement

Where the matter settles, please confirm or amend the standard Consent Orders below, or indicate any specific orders / Record of Settlement in the box provided:

[*Note: Confidential Terms of Settlement are NOT to be kept on file]

☐ The proceeding is struck out [with a right to apply for reinstatement]*
☐ The application is withdrawn.
☐ No order as to costs.
☐ Other (specify below)
☐ See attached sheet(s)

☐ Unrepresented parties: "ADR Agreement: Cooling off Period" handed and explained to all parties present; OR
☐ Cooling off Period - Not Applicable.

Mediator/Member.
Signed.

Mediator/Member.
Signed.

Attendance at Mediation / Compulsory Conference

(if appropriate)

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<tr>
<th>Name</th>
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<td>J. Hales</td>
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<td>J. Keen</td>
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<td>E. Murphy</td>
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5 July 2019

Responsible VCAT Planning Officer
Bayside City Council
76 Royal Avenue,
SANDRINGHAM VIC 3191

VIA EMAIL: enquiries@bayside.vic.gov.au ; smatheson@bayside.vic.gov.au

Dear Sir/Madam,

RE: CIRCULATION OF AMENDED PLANS AHEAD OF VCAT APPEAL P560/2019

ADDRESS: 2 Major Street, HIGGERT VIC 3190

APPLICATION NO: 2017/563

David Lock Associates (Australia) Pty. Ltd. ("DLA") act on behalf of Shangri La Constructions Pty Ltd ("the applicant") in relation to the application for appeal filed under section 77 of the Planning & Environment Act 1987 ("the Act").

The purpose of this letter is to inform the Council that the Applicant has decided to formally amend development plans ahead of the VCAT proceeding and compulsory conference which is scheduled on 21 August 2019 and 12 July 2019, respectively.

Statement of changes

- Deletion of the third storey of the development, with consequential redesign of Dwelling 1, so the whole building is no more than two-storeys;
- Modification of the façade and updated to suit a 2-storey building;
- Reduction the scale of the upper floor via increased setbacks from the northern boundary;
- Updated development scheme to achieve a garden area requirement of 37.6% which complies with the mandatory requirement;
- Updated shadow diagrams to clearly delineate between building and existing fence line shadows;
- Ground level setback remain unchanged.

DLA notes that the above changes affected all drawings within the attached Town Planning Drawing Set.

As required by VCAT, the Applicant is to provide a number of documents to as a result of their decision to amend plans as follows:

- A completed notice of amendment of an application (PNPE2 ‘Form A’);
- A set of clearly readable and scaled copy, with dimensions of any amended plans; and
- The written statement of changes is as above;
Should Council change its position on this matter, please notify our offices as soon as possible.

Should you have any queries, please do not hesitate to contact me on (03) 9682 8568 or at Jonathan@Dlaust.com.

Yours sincerely,

Jonathan Halaliku
Senior Associate