Planning & Amenity Committee Meeting Agenda

Agenda

for the

Planning & Amenity Committee Meeting

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

on

Tuesday, 17 January, 2017
at 7.00pm

Chairperson: Cr Laurence Evans

Councillors: Cr Alex del Porto (Mayor)
Cr Michael Heffernan
Cr James Long BM JP
Cr Clarke Martin
Cr Rob Grinter
Cr Sonia Castelli
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

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5. Confidential Business

Nil

**Next Meetings 2017**

- Tuesday 14 February 2017
- Tuesday 14 March 2017
- Tuesday 18 April 2017
- Tuesday 9 May 2017
- Tuesday 13 June 2017
- Tuesday 18 July 2017
- Tuesday 15 August 2017
- Tuesday 12 September 2017
- Tuesday 17 October 2017
- Tuesday 14 November 2017
- Monday 11 December 2017
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 December 2016.
4. Matters of Decision

4.1 TREE REMOVAL - 50 OLYMPIC AVENUE, CHELTENHAM

City Planning & Community Services - Amenity Protection
File No: PSF/15/8764 – Doc No: DOC/16/274426

Executive summary

Purpose and background
The purpose of the report is to consider a resident’s appeal to Council to permit the removal of two Leyland Cypress (Cupressus leylandii) trees from their property located at 50 Olympic Avenue, Cheltenham. The value of each tree using the Bayside Tree Valuation Calculator is estimated to be $19,000. The owner seeks removal of the trees as they negatively impact and have a detrimental effect of the use and enjoyment of their pool and private open space.

An application to remove two Leyland Cypress (Cupressus leylandii) trees located in the rear yard of the property, was received on 12 May 2016. Attachment 1 includes photographs of the trees and their location on the property.

The trees are protected by Local Law No. 2 (Neighbourhood Amenity) and have been assessed in accordance with Council’s Management of Tree Protection on Private Property Policy 2015 (Attachment 2). As the request was made on nuisance and private amenity grounds, the trees did not meet the criteria for removal in the Policy and the permit application was refused by Council’s delegate. The results of the assessment are provided in Attachment 3.

The property owner wrote to Council on 14 November 2016, seeking to appeal the decision not to grant a tree removal permit and requested to have the decision considered by Council in accordance with Clause 16 of Local Law No. 2 (“Neighbourhood Amenity”).

Key issues
A summary of the assessment criteria and results for this tree removal application are provided below.

Property Owner’s reason for tree removal:
The applicant continues to have a number of concerns about the Leyland Cypress (Cupressus leylandii) trees including the following:
- the pool is a health hazard and dangerous to swim in and enjoy due to the constant dropping of excessive pine needles and debris from the trees;
- Possums, birds, and ducks are nesting in and around the trees and the related excrement and debris are fouling the pool. The applicant has invested in a $2,000 pool cover which is now continually covered in excrement and debris;
- There is ample room on the property to accommodate replacement trees in a more suitable location to allow family and friends to enjoy a safe and hygienic swimming experience;
- the cost of replacement pool covers and maintenance of pool pump equipment is excessive;
- the health department would certainly close the pool due health and hygiene hazards if this was a public swimming location;
- the property damage to pool area; and
- the situation of these trees renders the pool unusable
The applicant provided a quote from a pool maintenance contractor. The contractor’s quote for pool maintenance, cleaning and chemicals calculates to approximately $16,000 per annum.

Further to the points provided by the applicant, Mr Murray Thompson MP, Member for Sandringham has also attended the property and has written to Council to support the applicant’s concerns and support the removal and replacement of the trees.

**Council’s Arborist’s and Environmental Health Coordinator’s Assessment:**

**Health and Structure and Impacts:**

Council’s arborist has assessed the trees and concluded the trees are of good health and fair structure with a life expectancy of greater than 10 years. They have a high amenity value as they can be seen from the streetscape and from neighbouring properties. Overall they are rated as having a high retention value.

In accordance with Council’s Policy, a tree removal permit is granted where two of the following criteria are met; the health of the tree is poor, the structure of the tree is poor, and the sustainable life expectancy of the tree is assessed at less than five years. As the Leyland Cypress (*Cupressus leylandii*) trees did not satisfy this criteria a permit for removal was not granted.

Council’s arborist inspected the property and surrounding area in response to the concerns raised by the applicant. The inspection found that:

- the trees are large in size, and are in an inappropriate location within close proximity to the swimming pool;
- Excessive pine needles, animal excrement and debris were evident the pool; and
- 50% of each tree’s canopy overhangs the pool.

In accordance with Council’s Policy, a tree removal permit is granted where a referral by council’s Environmental Heath Coordinator confirms the tree has a detrimental impact on the surrounding environment/public health.

Council’s Environmental Health Coordinator inspected the property in response to the health concerns raised by the applicant. Evidence of excessive pine needle and debris from the tree was evident, however the amount of pine needles and debris was not considered a detrimental impact on the surrounding environment/public health.

In accordance with Council’s Policy, a tree removal permit is granted where the structural damage to infrastructure can only be overcome by implementing a remedy that is greatly disproportional to the value of the tree. There is evidence of wear and tear to pool equipment and combined with the excessive cost to clean the pool above and beyond normal ($16,000 P.A) is considered disproportionate to the value of the trees. The value of each tree using the Bayside Tree Valuation Calculator is estimated to be $19,000. This is considered to be a low end valuation; high end valuations for trees assessed in accordance with the policy are generally in the vicinity of $100 000. *(The example of a recent assessment of a Sydney Blue Gum (*Eucalyptus saligna*) and valued at $100,000). In this instance the annual maintenance cost will exceed the value of the two trees within three years.

The excessive pine needles and debris dropping into the pool is an ‘expensive nuisance’ for the applicant and therefore the removal of the trees is recommended. However as the policy does not accommodate the issue of a tree removal permit in the instance of excessive nuisance a permit cannot be granted under delegation. Therefore this report recommends removal of the trees and for them to be replaced with native in an appropriate location on the property.
Summary

An application to remove two Leyland Cypress (*Cupressus leylandii*) trees from 50 Olympic Avenue, Cheltenham has been previously refused as it did not meet the criteria for removal in Council’s Management of Tree Protection on Private Property Policy 2015. The trees are in a healthy condition, but they are located in an inappropriate location within close proximity to a pool which creates an ‘expensive nuisance’ for the property owner to clean and maintain on a yearly basis due to pine needle and debris dropping into the pool from the trees.

There is evidence of wear and tear to pool equipment and combined with the excessive cost to clean the pool ($16,000 per annum) is considered disproportionate to the value of the trees. The value of each tree using the Bayside Tree Valuation Calculator is estimated to be $19,000 each ($38,000 for both trees). This is considerably less than a recent tree assessment for a Sydney Blue Gum (*Eucalyptus saligna*) which was valued at $100,000. The policy only considers structural damage issues not pool maintenance caused through excessive pine needle and debris droppings from the trees.

The applicant has indicated that suitable native trees will be replanted which would result in a better long-term outcome as the property is located within the planning scheme vegetation protection overlay area. For these reasons, removal of the two Leyland Cypress (*Cupressus leylandii*) trees is recommended.

Recommendation

That Council:

1. grants a permit for the removal of two Leyland Cypress (*Cupressus leylandii*) trees at 50 Olympic Avenue, Cheltenham; and

2. requires a minimum of four replacement native trees to the satisfaction of the Manager Amenity Protection.

Support Attachments

1. Attachment 1. photographs of two Leyland Cypress (*Cupressus leylandii*) trees
3. Attachment 3. Tree Assessment Results for the two Leyland Cypress located at 50 Olympic Avenue Cheltenham
Considerations and implications of recommendation

Social
Protecting and expanding the tree canopy of the entire municipality is an integral part of
township amenity, natural beauty and a sustainable environment and is recognised in
Council’s Tree Protection Policy.

Natural Environment
Bayside City Council is committed to protecting, promoting and improving its highly valued
tree canopy. The existing vegetation is one of the primary features of Bayside, contributing to
the amenity of the residential environment and established land values.

Built Environment
Council’s objective is to provide for the balance between considerations relating to dwellings,
damage to structures or unacceptable risk of harm to occupants; and the retention and
replacement of the tree canopy to enhance local amenity and urban character.

Customer Service and Community Engagement
The application has been considered against Council’s adopted policies and assessment
criteria.

Human Rights
The implications of this report have been assessed and are not considered likely to breach or
infringe upon the human rights contained in the Victorian Charter of Human Rights and
Responsibilities Act 2006.

Legal
Trees meeting specific criteria as defined in Council’s Local Law No.2 Neighbourhood
Amenity are protected and require Council’s permission to be removed.

Finance
Administering Local Law tree removal applications and permits is within Council’s approved
budget.

If the tree is retained there may be costs to the owner for maintenance. If Council were to
approve the issuing of a tree removal permit the tree owner would be obliged to cover the
cost of the tree removal and any replacement planting required.

Links to Council policy and strategy
Protecting and expanding the tree canopy of the entire municipality is an integral part of
neighbourhood amenity, natural beauty and a sustainable environment and is recognised in
Council’s Tree Protection Policy within the Local Law No.2 Neighbourhood Amenity.
**Options considered**

### Option 1

<table>
<thead>
<tr>
<th>Summary</th>
<th>Council does not grant a permit to remove the two Leyland Cypress ((Cupressus leylandii)) trees as they do not meet Council's Management of Tree Protection on Private Property Policy 2015. A pruning permit could be granted to remove any deadwood from the trees. The trees have been assessed as having good health and high amenity value. Each tree’s valuation has been assessed at approximately $19,000.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benefits</td>
<td>The trees are of high amenity value and will continue to contribute to the neighbourhood character.</td>
</tr>
<tr>
<td>Issues</td>
<td>The applicant’s pool hygiene and excessive cleaning/maintenance costs will be an ongoing burden for the applicant. The annual additional costs of the pool cleaning/maintenance is considered unreasonable compared to the value of the trees.</td>
</tr>
</tbody>
</table>

### Option 2 (Recommended)

<table>
<thead>
<tr>
<th>Summary</th>
<th>Council grants a tree removal permit to remove the two Leyland Cypress ((Cupressus leylandii)) trees and requires the applicant to plant and maintain four replacement trees to the satisfaction of the Manager Amenity Protection as a condition of the tree removal permit.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benefits</td>
<td>Replacement trees will help to protect the local amenity and neighbourhood character and reduce excessive ongoing pool maintenance costs for the Landowner.</td>
</tr>
<tr>
<td>Issues</td>
<td>The loss of healthy, high amenity trees from the neighbourhood with a life expectancy of greater than 10 years.</td>
</tr>
</tbody>
</table>
Attachment 1

Photograph of the two Leyland Cypress (*Cupressus leylandii*) trees located at 50 Olympic Avenue, Cheltenham

Photograph of the two Leyland Cypress (*Cupressus leylandii*) trees viewed Stuart Avenue, Cheltenham
Photograph of the pine needle and debris dropping onto the pool cover from the two Leyland Cypress (Cupressus leylandii) trees located at 50 Olympic Avenue, Cheltenham

Aerial photograph of the two Leyland Cypress (Cupressus leylandii) trees located at 50 Olympic Avenue, Cheltenham
Photograph provided by Murray Thompson, MP, Member for Sandringham
Photograph provided by Murray Thompson, MP, Member for Sandringham
1. Policy Intent

Protecting and expanding the tree canopy of the entire municipality is an integral part of
neighbourhood amenity, natural beauty and a sustainable environment and identified in Goal 4.1.4
Protecting and enhancing vegetation (increase indigenous plant usage) on private and public land.

The Bayside Planning Scheme Vegetation Protection Overlay (VPO) and Local Law No. 2
‘Neighbourhood Amenity’ assist Council to protect and expand the tree canopy of the entire
municipality. Clause 36 in the Local Law No. 2 ‘Neighbourhood Amenity’, protects Significant and
Protected Trees on private property.

This Policy is intended to provide guidance with regard to assessing Local Law permits for Protected
Trees on private property in accordance with Local Law No. 2 – Neighbourhood Amenity, Clause 36 –
Tree Protection. A person, without a permit, must not destroy, damage or remove or allow to be
destroyed, damaged or removed protected or significant trees on any private property.

A permit is not required:
• where pruning is carried out by a qualified Arborist in accordance with the relevant Australian
  Standard (4373:2007) who certifies his work, including photographs before and after work; or
• in an emergency, any part of a tree that is an immediate threat to life and or property may be
  removed.

2. Purpose/Objective

The purpose of this Policy is to protect and enhance the urban character, by regulating tree removal
and pruning of trees on private property. The replacement planting will be achieved using species
that are suitable to the local vegetation character of the area and site constraints.

Protected trees can be very long-lived and provide a sense of character and identity to an area. They
also contribute significantly to modifying the impacts of living in an urban environment, including
reducing runoff into drains, reducing air temperatures, capturing dust particles and pollutants in the
Canopy, increasing property values, providing natural protection from the sun, contributing to
psychological well-being and providing habitat for local fauna.
An increasing density of urban development means that the number of large trees on private land is decreasing, therefore the health and sustainability of these trees is becoming increasingly important.

Decisions made in respect to tree removal permits need to consider the property owner’s needs, any risk or damage to persons or property and the impact of the tree removal on the environment and local amenity.

Objectives:
- to guide the decision making for tree removal permits for protected trees on private property;
- to guide the selection of replacement planting on private property where tree removal permits are granted, in order to enhance local amenity and urban character; and
- to encourage all tree pruning works to comply with the appropriate Australian Standards.

3. Scope
This Policy is limited in its application to trees that are protected under Local Law No. 2 – Neighbourhood Amenity.

A protected tree is a tree with a single, or combined trunk circumference greater than 155 centimetres measured at one metre above ground level, excluding species which are declared Noxious Weeds or an immediate hazard.

This Policy does not apply to exemptions and determinations made by the Responsible Authority regarding trees protected by the Bayside Planning Scheme. This includes, but is not limited to:
- Heritage Overlay;
- Significant Landscape Overlays;
- Native vegetation (Clause 52.17 Planning Scheme);
- Vegetation Protection Overlay;
- Significant Trees on Council's Significant Tree Register (refer instead Significant Trees Management Policy 2013); and
- Vegetation on land owned or managed by Council (refer instead Street and Park Tree Management Policy 2011).

4. Roles & Responsibilities

<table>
<thead>
<tr>
<th>Role</th>
<th>Responsibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Policy Development</td>
<td>Manager Amenity Protection</td>
</tr>
<tr>
<td>Policy Implementation</td>
<td>Coordinator Investigations</td>
</tr>
<tr>
<td>Policy Evaluation</td>
<td>Manager Amenity Protection</td>
</tr>
<tr>
<td>Policy Review</td>
<td>Manager Amenity Protection with Coordinator Investigations</td>
</tr>
<tr>
<td>Decision Making – Tree pruning and removal permits</td>
<td>As per section 7.5</td>
</tr>
<tr>
<td>Tree replacement</td>
<td>As per section 8</td>
</tr>
</tbody>
</table>

5. Monitoring, evaluation & review
The effectiveness of the Local Law Tree Permit Policy will be reviewed by the Amenity Protection Department and will consider input from community stakeholders. Information on applications and decisions will be maintained in Council’s record management system.

6. Policy statement
Bayside City Council has committed to providing high-quality living environments for residents, ratepayers and visitors.
Bayside’s vegetation makes an important contribution to local amenity, sense of place, neighbourhood character, landscape values and cultural heritage. It enhances local climatic conditions by providing shade, wind protection and relief from the urban heat island effect. In some locations, vegetation also contributes to native fauna habitat and local biodiversity.

Bayside City Council is committed to protecting and enhancing vegetation cover because it is regarded as integral to municipal identity and underlying land values. Recent research has confirmed that the tree canopy is gradually being eroded. Large trees are being lost due to land development, risk aversion, infrastructure and property maintenance, climate variability, natural attrition, pests and disease.

A proactive approach to protecting and enhancing vegetation cover is required in order to maintain the high levels of amenity and distinctive character of Bayside’s suburbs.

Council applies a range of regulatory and operational measures aimed at protecting vegetation on both private and public land. In relation to private land, two legal instruments facilitate vegetation protection and replacement:
• Local Law No. 2 – Neighbourhood Amenity (Clause 36 – Tree Protection)
• Bayside Planning Scheme (under provisions listed in Section 3 of this policy and through the use of planning permit conditions).

7. Tree removal permit
A Permit is required to remove a tree described in Clause 36(1) of the Local Law. Applications are made in writing using a standard template and must be adequately supported with the nominated information.

Tree removal applications need to include a plan for planting suitable replacement canopy tree or trees (information in section 8). Approved replacement trees may be subject to inspection by Council Officers after planting and failure to plant or removal shall be considered a breach of permit.

7.1 Assessment
The preliminary assessment includes inspection of the tree’s health and structure to determine if the tree is dead or structurally unstable. Permits are granted to remove dead or hazardous trees. Refer to Attachment A, Preliminary Assessment.

For trees not identified as structurally unstable or dead, a full tree removal assessment is undertaken. Refer to Attachment B, Tree Removal Assessment.

A Quantified Tree Risk Assessment (QTRA) is only completed to assess a tree’s risk where it is identified on the application form that the tree removal is required as it poses a danger to people or surrounding infrastructure. When a tree is assessed using the QTRA and an unacceptable risk of harm is identified, a Permit to remove the tree will be issued.

For a tree-failure hazard to exist there must be potential for failure of the tree and potential for injury or damage to result. The assessment will consider the likelihood of a combination of tree failure, harm to people and property and the likely severity of the harm. Refer to Attachment C.

Other considerations:
Officers assessing applications are to take into consideration all relevant matters, and specifically, any evidence supplied in the form of:

a) a report by a qualified Arborist where the report assesses the tree as posing an unacceptable risk; and
b) a report by a Structural Engineer where the report assesses that the tree is the primary cause of damage to the structure; and
c) a landscaping proposal that includes suitable canopy tree replacements, for trees proposed to be removed. When considering a) and b) above the report MUST contain verifiable information on which the conclusions are drawn.

7.2 Pruning trees on private property
Pruning should be carried out by a qualified Arborist in accordance with the relevant Australian standard (the current standard is Australian Standard 4373:2007 Pruning of Amenity Trees). This standard encourages pruning practices and procedures that reduce the potential for a tree hazard developing, branch failure, fungal infection or premature tree death. Local Law No. 2 states that a permit is required for a tree described in clause 36(1) of that local law to be cut, trimmed, lopped or pruned. Applications should be in the standard form and be adequately supported with relevant information.

A permit is not required:
• where pruning is carried out by a qualified arborist in accordance with the relevant Australian Standard (4373:2007) who certifies his work, including photographs before and after work; or
• in an emergency, any part of a tree that is an immediate threat to life and or property may be removed.

Lopping, topping or flush cutting are not promoted practices as the indiscriminate removal of trunks or leaders at internodal points in the crown may lead to the development of poorly attached epicormic growth.

7.3 Tree pruning / removal in emergency circumstances
In an emergency, that part of a tree that is an immediate threat to life and or property may be removed without a permit.

7.4 Branches overhanging properties
Where a permit is required to cut, trim, lop or prune limbs that overhang a property boundary, the owner of the tree (if not the applicant) will be provided with a copy of any permit issued.

It is noted that a permit does not change any common law rights and obligations relating to overhanging branches.

7.5 Decision making for Tree Removal and Pruning Permits
Tree assessments are undertaken by Council’s arborist in accordance with section 7.1, 7.2, 7.3 and 7.4. The Coordinator Investigations will inform the applicant of the decision made by Council.

If an applicant is dissatisfied with the decision in relation to the application, the applicant may apply in writing for an internal review of the decision. The internal review will be conducted by the Manager Amenity Protection.

The applicant can appeal the decision made by the Manager Amenity Protection not to grant a tree removal permit to Council under the Local Law No.2 clause 16.

7.6 Tree Assessment Definitions
The tree assessment definitions are provided in Attachment D and section 10 of this Policy.

8. Replacement Planting
In order to enhance the overall tree canopy cover, Council aims to:
• achieve a net increase in the number of canopy trees on both private and public land; and
• encourage the planting of canopy trees of sufficient scale to contribute to the diversity of the canopy.
Preferred tree planting ratios and scale

<table>
<thead>
<tr>
<th>Application type</th>
<th>Preferred number of canopy trees</th>
<th>Preferred scale of trees</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Tree removal under Local Law No. 2 - Neighbourhood Amenity</td>
<td>A minimum of one canopy tree for every canopy tree removed.</td>
<td>Replace canopy trees with new trees expected to mature to achieve the heights specified below.</td>
</tr>
</tbody>
</table>

8.1 Tree Replacement Planting Height

- Where the existing tree is 20 metres or less, the existing tree will be replaced with a tree capable of achieving a minimum of 75% of the existing tree’s size; or
- Where the existing tree is 21 metres or greater, the existing tree will be replaced with one tree capable of achieving a minimum of 75% of the existing tree’s size, or with two trees, one of which is capable of reaching a minimum height of 15 metres at maturity.

Applications are assessed and consideration will be given to site constraints and available tree replacement planting zones (refer to information in section 8.2 and 8.3). Alternative canopy heights may be approved in exceptional circumstances, for example where there are existing medium to large trees (greater than eight metres) on the site or there is insufficient set back to accommodate the tree root zone of a larger canopy tree.

Replacement trees that have been approved by Council may be inspected. Failure to plant, or removal, of the approved replacement tree will be considered a breach of permit.

8.2 Site constraints

Canopy trees should be included on all Replacement Planting Plans unless evidence is provided by a suitably qualified professional to the satisfaction of Council, that:

- there is insufficient soil volume to support the long-term viability of a canopy tree suitable to the locality; and
- the planting of a tree in a particular location would likely cause damage to property or infrastructure services, a substantial nuisance to adjoining property owners, or a traffic hazard that cannot be avoided or mitigated without unreasonable expense.

8.3 Tree Planting Zone

New canopy trees need to be carefully located and managed in order to promote tree growth and vitality, and to reduce the likelihood of long-term damage to buildings and infrastructure.

In order to ensure optimal conditions a Tree Planting Zone must be identified around each proposed new canopy tree and around canopy trees that are to be retained. The size of the Tree Planting Zone is based on the tree canopy spread (width) at maturity.

Tree Planting Zones should be sited and designed in accordance with the following guidelines:

- trees should be planted in locations where they will have access to sunlight and water;
- trees should be centred within their Tree Protection Zones in order to encourage even growth;
- trees should be planted outside of easements and in accordance with service authority guidelines (e.g. near sewer and water mains and power lines);
- overlapping of Tree Protection Zones should be minimised;
- Tree Protection Zones should be clear of buildings, hard surfaces and clothes lines. Where buildings or hard surfaces do encroach, applicants must demonstrate how healthy tree growth will be promoted and structural damage avoided;
- paved surfaces should be constructed of water-permeable materials;
- mulching to a minimum depth of 50mm should be installed throughout the majority of Tree Protection Zones. Mulched areas may include understorey planting; and
- where tank water is available, the installation of automatic drip irrigation is encouraged.
8.4 Species selection
The structure and mass of a tree's canopy is one of the most defining aspects of the character that it contributes to an area. Refer to Attachment E for a list of tree species.

These reports identify significant vegetation characteristics that form a major element of a distinctive urban character in the municipality, particularly in Beaumaris and Black Rock. Replacement trees are to be approved by the Manager Amenity Protection.

9. Related documents

<table>
<thead>
<tr>
<th>Policies</th>
<th>Significant Tree Management Policy 2013</th>
</tr>
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<tbody>
<tr>
<td>Legal</td>
<td>Bayside City Council, Local Law No. 2 Neighbourhood Amenity</td>
</tr>
<tr>
<td></td>
<td>Victorian Human Rights Charter</td>
</tr>
<tr>
<td>Procedures</td>
<td></td>
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<tr>
<td>Guidelines</td>
<td>Customer Focus Guideline</td>
</tr>
</tbody>
</table>

10. Definitions & Abbreviations

<table>
<thead>
<tr>
<th>Term</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td>Protected Tree</td>
<td>A Protected Tree is a tree with a single trunk circumference or combined</td>
</tr>
<tr>
<td></td>
<td>trunk circumference greater than 155 centimetres measured at one metre</td>
</tr>
<tr>
<td></td>
<td>above ground level but excluding species which are declared Noxious</td>
</tr>
<tr>
<td></td>
<td>Weeds.</td>
</tr>
<tr>
<td>Significant Tree</td>
<td>Are located on private property and public land or a tree listed on the</td>
</tr>
<tr>
<td></td>
<td>Significant Tree Register.</td>
</tr>
<tr>
<td>Tree</td>
<td>Any perennial plant having one or more permanent, woody, self-</td>
</tr>
<tr>
<td></td>
<td>supporting trunks and with branches forming a crown, and includes all</td>
</tr>
<tr>
<td></td>
<td>parts of the plant whether above or below ground.</td>
</tr>
<tr>
<td>Canopy tree</td>
<td>A tree which has, or at maturity is likely to have, sufficient height and</td>
</tr>
<tr>
<td></td>
<td>canopy characteristics to make a positive contribution to local amenity,</td>
</tr>
<tr>
<td></td>
<td>sense of place, microclimate and/or biodiversity. Minimum 8 x 4 metres.</td>
</tr>
<tr>
<td>Indigenous tree</td>
<td>Native species that were present in the original vegetation communities</td>
</tr>
<tr>
<td></td>
<td>of the suburb, excluding cultivars and varieties thereof.</td>
</tr>
<tr>
<td>Native tree</td>
<td>Species that are endemic to Australia, may include indigenous</td>
</tr>
<tr>
<td></td>
<td>(including cultivars and varieties of indigenous species).</td>
</tr>
<tr>
<td>Exotic tree</td>
<td>Species whose natural habitat is exclusively outside of Australia.</td>
</tr>
<tr>
<td>Weed species</td>
<td>Species identified as:</td>
</tr>
<tr>
<td></td>
<td>(a) a State prohibited weed;</td>
</tr>
<tr>
<td></td>
<td>(b) a regionally prohibited weed;</td>
</tr>
<tr>
<td></td>
<td>(c) a regionally controlled weed;</td>
</tr>
<tr>
<td></td>
<td>(d) a restricted weed;</td>
</tr>
<tr>
<td></td>
<td>under State catchment and land protection regulations.</td>
</tr>
</tbody>
</table>

Please note: This policy is current as at the date of approval. Refer to Council's website ([www.bayside.vic.gov.au](http://www.bayside.vic.gov.au)) or staff intranet to ensure this is the latest version.
1. PRELIMINARY ASSESSMENT

<table>
<thead>
<tr>
<th>Permit Requirement</th>
<th>Tree Health</th>
<th>Tree Structure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is a permit required for removal?</td>
<td>Evaluate tree health. Is the tree dead?</td>
<td>Evaluate tree structure. Is tree hazardous?</td>
</tr>
</tbody>
</table>

- **No**:
  - Do not proceed with assessment. Advise applicant.

- **Yes**:
  - Recommend removal of tree with conditions.
Additional Assessment Criteria for Tree Removal Permit Applications

1 Building Permits

Where a building permit has been issued under the Building Control Act 1993 and the permitted building(s) and/or construction works:

- are located in such a position that the subject tree is within the envelope of the permitted buildings or works;
- encroach on the tree protection zone of an existing tree by more than 40%; or
- encroach on the structural root zone of an existing tree.

A permit will be issued to remove the affected trees with Conditions, which include a requirement for replacement tree(s).

Where a Building Permit has been issued under the Building Control Act 1993 and the above criteria do not apply the application must be assessed in accordance with Table 1.

Table 1. Assessment method for tree removal

<table>
<thead>
<tr>
<th>Works proposed</th>
<th>Assessment</th>
<th>Recommendation</th>
</tr>
</thead>
</table>
| New dwelling, or alterations and additions to existing dwellings including extensions to the dwelling or garages built as part of the house. | The applicant can demonstrate to Council’s satisfaction that:  
- the proposed works cannot be redesigned;  
- appropriate arboricultural techniques as detailed in the submission of an arborist report cannot be employed in order to retain the tree; and  
- compensatory replacement planting can be established on site. | Approval  
Subject to a condition requiring replacement tree(s). |
| Tennis courts, patios, decks, and carports. | The applicant cannot satisfy the above requirement. | Refusal |

2 Tree Location

A Permit will be issued where a report from a licensed and/or qualified person in their field provides evidence that the tree is causing structural damage to a building, services or infrastructure or is a risk to people or property, which can only be overcome by implementing a remedy that is unreasonable or greatly disproportionate to the value of the tree or the risk posed by the tree (assessed by QTRA).

Trees located in close proximity to dwellings, garages, intersections and crossovers must be assessed in accordance with the criteria outlined in Table 2. The recommendation to the Coordinator Investigations should be consistent with the Table, unless subsequent steps in the procedure warrant a different recommendation.
Table 2

<table>
<thead>
<tr>
<th>Tree Location</th>
<th>Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Within two metres of a dwelling</td>
<td>Removal recommended if any part of the tree trunk is within two metres of an existing dwelling</td>
</tr>
<tr>
<td>Within one metre of a garage or carport</td>
<td>Removal recommended if the tree will outgrow the location and/or is causing damage to an existing garage or carport.</td>
</tr>
<tr>
<td>Crossover</td>
<td>Removal recommended if a crossover is approved within the structural root zone of the tree.</td>
</tr>
</tbody>
</table>

Conditions will include a requirement for replacement tree/s.

3 Medical condition

Where an application for tree removal:
- Where a medical certificate is provided from a doctor or specialist in the relevant field to certify that a specific tree is causing a specific allergic problem for a resident that significantly diminishes the quality of life of that person and there is no other way of managing the problem.

A permit would be issued for removal under delegated authority, subject to referral to the relevant Manager Amenity Protection and the inclusion of appropriate conditions. Conditions will include a requirement for replacement tree/s.

4 Tree health, structure and impacts

A tree removal permit will be granted where a referral report by Council’s Environmental Health, Assets, Traffic or other relevant Council Employee at Coordinator or Management level, or higher, confirms the tree has a detrimental impact on the surrounding environment/public health.

If any two of the tree health, structure and impacts criteria nominated below apply a recommendation for tree removal should be made to the Coordinator Investigations by the Arborist assessing the tree. Conditions for replacement tree/s would be included.

If none of the criteria apply, a recommendation for refusal of the application should be made to the Coordinator Investigations.

Criteria

Tree health, structure and impacts criteria:
- the health of the tree is classified as poor (definition included in Attachment D);
- the structure of the tree is classified as poor (definition included in Attachment D);
- the sustainable life expectancy of the tree is assessed at less than 5 years.

5 Social considerations

If any two of the 'Social considerations' criteria apply a recommendation for tree removal should be made to the Manager Amenity Protection subject to conditions. Conditions should include a requirement for replacement tree/s.

If less than two of following criteria apply, a recommendation for refusal of the application should be made.
Criteria
Social considerations criteria:
• the amenity or character value of the tree is classified as moderate or low (definition included in Attachment D);
• there are at least two other trees on the property that:
  - require Council permission to remove;
  - are classified as having an amenity or character value of moderate or high;
  - have a sustainable life expectancy of more than 10 years;
  - are not subject to a current removal permit application or existing permit;
• there are written letters supporting tree removal from property owners/tenants and adjacent to and opposite the property (at least four individual properties);
• demonstrate financial hardship and inability to undertake routine maintenance - the applicant has no source of income to pay for the maintenance and is receiving Centrelink benefits.
Tree Removal Assessment

3. QUANTIFIED TREE RISK ASSESSMENT

QTRA CondonTQA
Does the risk of harm rate as less than 1.36,000?
Yes
No

Recommend refusal of the application

Can the risk be mitigated with standard pruning?
Yes
No

Recommend refusal of the application and offer pruning permit

Recommend removal of tree with conditions.
Quantified Risk Assessment
Tree safety management involves limiting the risk of harm from tree failure while maintaining the benefits conferred by trees.

The Quantified Tree Risk Assessment (QTRA) system quantifies the risk of significant harm from tree failure in a way that enables tree managers to balance safety with tree values and operate to predetermine limits of tolerable or acceptable risk. Council's Arborist's have a licence to undertake a QTRA.

By quantifying the risk from tree failure as a probability, Quantified Tree Risk Assessment (QTRA) enables a tree owner or manager to manage the risk in accordance with widely applied and internationally recognised levels of risk tolerance. It provides a risk level against which mitigation strategies can be balanced to determine appropriate actions.

QTRA advisory risk thresholds

<table>
<thead>
<tr>
<th>Threshold</th>
<th>Description</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1/1- 1/9,999</td>
<td>Unacceptable (where imposed on others) Risks will not ordinarily be tolerated</td>
<td>• Control the risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Review the risk</td>
</tr>
<tr>
<td></td>
<td>Tolerable (by agreement) Risks may be tolerated if those exposed to the risk accept it, or the tree has exceptional value</td>
<td>• Control the risk unless there is broad stakeholder agreement to tolerate it, or the tree has exceptional value</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Review the risk</td>
</tr>
<tr>
<td>1/10,000 – 1/999.999</td>
<td>Tolerable (where imposed on others) Risks are tolerable if as low as reasonably practical (ALARP)</td>
<td>• Assess costs and benefits of risk control</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Control the risk only where a significant benefit might be achieved at reasonable cost</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Review the cost</td>
</tr>
<tr>
<td>1/1,000,000 or less risk</td>
<td>Broadly Acceptable Risk is already ALARP</td>
<td>• No action currently required</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Review the risk</td>
</tr>
</tbody>
</table>
Tree assessment definitions

Origin
(I) Indigenous
The tree is endemic to the local area and has been naturally occurring since recordings of flora commenced.
(V) Victorian
The tree is endemic to the state of Victoria and has been naturally occurring since recordings of flora commenced.
(A) Australian
The tree is endemic to mainland Australia and has been naturally occurring since recordings of flora commenced.
(E) Exotic
The tree is not endemic to any part of mainland Australia.

Health
Tree health is based on vigour and vitality. In assessing health, observations are made of the following:
- foliage characteristics
- extension growth
- wound wood development
- extent of predation or disease
In many instances correct application of arboricultural management practices can revitalise a tree and extend its ability to provide a value to the community.

(G) Good
- Tree displays 71-100% live canopy mass
- Foliage exhibits near optimal foliage characteristics in size, colour and density
- Tree may have low levels of tip dieback
- Tree may exhibit low levels of pest/pathogen infestation that is not expected to have a significant impact on the long term health of the tree

(F) Fair
- Tree displays 51-70% live canopy mass
- Foliage may be stunted or discoloured
- Tree exhibits less than optimal extension growth
- Tree has moderate pest/pathogen infestation which may be retarding growth and impacting on health levels, it is expected that the tree can recover with or without intervention

(P) Poor
- Tree displays <50% live canopy mass
- Tree exhibits low levels of extension growth
- Tree has extensive pest/pathogen infestation and is not expected to recover from such infestation even with intervention
- Tree may be senescent

(D) Dead
- Tree has no live vascular tissue

Structure
Structure refers to the physical integrity of the tree. Natural species form may not constitute poor structure. Pest/pathogen damage is not directly a structural issue, however may contribute to structural issues/faults.
In assessing structure, observations are made of the following:
- Branch attachment and union formation
- Damage to trunk/roots/unions/branches
- Trunk/scaffold/tertiary branch taper

In many instances correct application of arboricultural management practices can reduce likelihood of failure to an acceptable level and extend a tree’s ability to provide a value to the community.

(G) Good
- Tree has good branch attachment and well-formed unions
- Tree has good trunk and scaffold branch taper
- Tree may have poor tertiary branch taper
- Tree may exhibit structural defects on tertiary branches and attachments
- Complete tree failure or major structural failure under normal environmental conditions is unlikely
- Remedial pruning works may improve the structural rating of the tree

(F) Fair
- Tree may have poor scaffold branch/stem taper
- Tree may have poor tertiary branch taper
- Tree may have minor structural root damage/severance
- Tree may exhibit structural defects to the trunk or scaffold branches
- Majority of structural defects may be managed through current recognised arboricultural practices

(P) Poor
- Tree may exhibit major structural defects to trunk and/or scaffold branch attachments and/or roots

(H) Hazardous
- Complete or major structural failure is imminent

Amenity Value
The visual contribution the tree makes to the neighbourhood character.

(L) Low
- Tree has poor health and/or
- Tree provides little visual contribution to the neighbourhood character

(M) Moderate
- Tree has fair/good/excellent health and/or
- Tree is easily viewed from the street

(H) High
- Tree has fair/good/excellent health
- Tree is highly visible from the street
- Tree is visible from other streets in the area

(N/A) Not Applicable

Useful Life Expectancy
The period of time that the tree is expected to maintain a positive contribution to the neighbourhood character.

20 yrs +
Tree is likely a semi-mature or mature tree that is in good health and structure and is expected to maintain current levels of amenity for a minimum of 20 years.

10-19 yrs
Tree is likely a mature tree that is in good health and/or structure and is expected to maintain current levels of amenity for a minimum of 10 years.
4-9 yrs
Tree is likely a mature tree that is in fair health and/or structure and is likely declining. It is expected that the tree is not likely to maintain current levels of amenity for more than 9 years.

0-3 yrs
Tree is likely a mature tree that is in poor health and/or structure and is likely declining. It is expected that the tree is not likely to maintain current levels of amenity for more than 3 years.

Retention Value
The value of the tree when considering the tree as a whole. The health, structure, amenity value and life expectancy are considered when determining this factor. The tree location on the subject site or a development proposal is not a consideration for determining retention value.

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

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

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

(N) None
The tree has no features that would promote retention for any reason, such as a dead tree or one that provides no amenity value.

(O) Trees on other property
Any tree located outside the subject site is to be retained and protected.
REPLACEMENT TREES – COMMONLY ACCEPTED HEIGHTS AND WIDTHS AT MATURITY IN THE BAYSIDEN REGION

The structure and mass of a tree’s canopy is one of the most defining aspects of the character that it contributes to an area.

The Vegetation Character Assessment (March 2000) report identifies significant vegetation characteristics that form a major element of a distinctive urban character in the municipality, particularly in Beaumaris and Black Rock. These should be considered when selecting appropriate species.

<table>
<thead>
<tr>
<th>Indigenous</th>
<th>Common Name</th>
<th>Height</th>
<th>Width</th>
<th>Evergreen/ Deciduous</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acacia mearnsii</td>
<td>Black Wattle</td>
<td>8</td>
<td>6</td>
<td>E</td>
</tr>
<tr>
<td>Acacia melanoxylon</td>
<td>Blackwood</td>
<td>8</td>
<td>6</td>
<td>E</td>
</tr>
<tr>
<td>Allocasuarina littoralis</td>
<td>Black She-oak</td>
<td>8</td>
<td>6</td>
<td>E</td>
</tr>
<tr>
<td>Allocasuarina verticillata</td>
<td>Drooping She-oak</td>
<td>10</td>
<td>8</td>
<td>E</td>
</tr>
<tr>
<td>Banksia integrifolia</td>
<td>Coast Banksia</td>
<td>15</td>
<td>12</td>
<td>E</td>
</tr>
<tr>
<td>Eucalyptus camaldulensis</td>
<td>River Red Gum</td>
<td>15-25</td>
<td>12-18</td>
<td>E</td>
</tr>
<tr>
<td>Eucalyptus melliodora</td>
<td>Yellow Box</td>
<td>15-20</td>
<td>10-15</td>
<td>E</td>
</tr>
<tr>
<td>Eucalyptus ovata</td>
<td>Swamp Gum</td>
<td>15</td>
<td>12</td>
<td>E</td>
</tr>
<tr>
<td>Eucalyptus pauciflora</td>
<td>Snow Gum</td>
<td>10</td>
<td>8</td>
<td>E</td>
</tr>
<tr>
<td>Eucalyptus viminalis subsp. Rough-barked Manna Gum pyriogena</td>
<td>15</td>
<td>10-15</td>
<td>E</td>
<td></td>
</tr>
<tr>
<td>Eucalyptus radiata</td>
<td>Narrow-leaved Peppermint</td>
<td>15</td>
<td>10</td>
<td>E</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Native</th>
<th>Common Name</th>
<th>Height</th>
<th>Width</th>
<th>Evergreen/ Deciduous</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acacia pendula</td>
<td>Weeping Myall</td>
<td>8-10</td>
<td>6-7</td>
<td>E</td>
</tr>
<tr>
<td>Agonis flexuosa</td>
<td>Weeping Willow Myrtle</td>
<td>10-12</td>
<td>10-12</td>
<td>E</td>
</tr>
<tr>
<td>Allocasuarina torulosa</td>
<td>Rose She-oak</td>
<td>10</td>
<td>7</td>
<td>E</td>
</tr>
<tr>
<td>Angophora costata</td>
<td>Smooth-barked Apple</td>
<td>15-20</td>
<td>10-15</td>
<td>E</td>
</tr>
<tr>
<td>Angophora floribunda</td>
<td>Rough Barked Apple</td>
<td>12-15</td>
<td>10-12</td>
<td>E</td>
</tr>
<tr>
<td>Corymbia fiofolia</td>
<td>Red-flowering Gum</td>
<td>10-15</td>
<td>10-15</td>
<td>E</td>
</tr>
<tr>
<td>Corymbia exima</td>
<td>Yellow Bloodwood</td>
<td>15</td>
<td>10-12</td>
<td>E</td>
</tr>
<tr>
<td>Corymbia maculata</td>
<td>Spotted Gum</td>
<td>18-22</td>
<td>12-15</td>
<td>E</td>
</tr>
<tr>
<td>Elaeocarpus reticulatus</td>
<td>Blueberry Ash</td>
<td>8</td>
<td>3-5</td>
<td>E</td>
</tr>
<tr>
<td>Eucalyptus cephalocarpa</td>
<td>Silver-leaved Stringybark</td>
<td>8-15</td>
<td>8-12</td>
<td>E</td>
</tr>
<tr>
<td>Eucalyptus cinerea</td>
<td>Mealy Stringybark</td>
<td>12</td>
<td>7-10</td>
<td>E</td>
</tr>
<tr>
<td>Eucalyptus cornuta</td>
<td>Yate</td>
<td>8-12</td>
<td>10</td>
<td>E</td>
</tr>
<tr>
<td>Eucalyptus crenulata</td>
<td>Silver Gum</td>
<td>8</td>
<td>6</td>
<td>E</td>
</tr>
<tr>
<td>Eucalyptus largiflora</td>
<td>Black Box</td>
<td>10-15</td>
<td>8-12</td>
<td>E</td>
</tr>
<tr>
<td>Eucalyptus feoxygen</td>
<td>Yellow Gum</td>
<td>12</td>
<td>10</td>
<td>E</td>
</tr>
<tr>
<td>subsp. connata</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>----------------</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Eucalyptus mannifera</td>
<td>Red Spotted Gum</td>
<td>12-15</td>
<td>8-12</td>
<td>E</td>
</tr>
<tr>
<td>Eucalyptus microcarpa</td>
<td>Grey Box</td>
<td>15</td>
<td>10</td>
<td>E</td>
</tr>
<tr>
<td>Eucalyptus nicholli</td>
<td>Narrow-leaved Black Peppermint</td>
<td>10-15</td>
<td>10</td>
<td>E</td>
</tr>
<tr>
<td>Eucalyptus polyanthemos</td>
<td>Red Box</td>
<td>15</td>
<td>8-12</td>
<td>E</td>
</tr>
<tr>
<td>Eucalyptus pulchella</td>
<td>White Peppermint</td>
<td>15</td>
<td>7</td>
<td>E</td>
</tr>
<tr>
<td>Eucalyptus rubida</td>
<td>Candlebark Gum</td>
<td>15</td>
<td>12</td>
<td>E</td>
</tr>
<tr>
<td>Eucalyptus saligna</td>
<td>Sydney Blue Gum</td>
<td>15-25</td>
<td>12-18</td>
<td>E</td>
</tr>
<tr>
<td>Eucalyptus scoparia</td>
<td>Wallangarra White Gum</td>
<td>8-12</td>
<td>5-10</td>
<td>E</td>
</tr>
<tr>
<td>Eucalyptus sideroxylon</td>
<td>Red Ironbark</td>
<td>12-18</td>
<td>10-15</td>
<td>E</td>
</tr>
<tr>
<td>Eucalyptus tereticornis</td>
<td>Forest red gum</td>
<td>15-20</td>
<td>12-15</td>
<td>E</td>
</tr>
<tr>
<td>Lophostemon confertus</td>
<td>Brush Box</td>
<td>10-15</td>
<td>8-12</td>
<td>E</td>
</tr>
<tr>
<td>Melaleuca quinquenervia</td>
<td>Broad-leafed paperbark</td>
<td>10-15</td>
<td>8-12</td>
<td>E</td>
</tr>
<tr>
<td>Tristania laurina</td>
<td>Water Gum</td>
<td>8</td>
<td>6</td>
<td>E</td>
</tr>
<tr>
<td>Waterhousea floribunda</td>
<td>Weeping Lilly Pilly</td>
<td>10-12</td>
<td>8-10</td>
<td>E</td>
</tr>
</tbody>
</table>

**Exotic**

<table>
<thead>
<tr>
<th>Botanic Name</th>
<th>Common Name</th>
<th>Height</th>
<th>Width</th>
<th>Evergreen/ Deciduous</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acer cultivars</td>
<td>Maple</td>
<td>10-20</td>
<td>10-15</td>
<td>D</td>
</tr>
<tr>
<td>Araucaria heterophylla</td>
<td>Norfolk Island Pine</td>
<td>20-25</td>
<td>10-20</td>
<td>E</td>
</tr>
<tr>
<td>Arbuitus unedo</td>
<td>Irish Strawberry Tree</td>
<td>8</td>
<td>8</td>
<td>E</td>
</tr>
<tr>
<td>Catalpa bignonioides</td>
<td>Indian Bean Tree</td>
<td>10-12</td>
<td>10-12</td>
<td>D</td>
</tr>
<tr>
<td>Cedrus deodara</td>
<td>Deodar Cedar</td>
<td>15-25</td>
<td>12-18</td>
<td>E</td>
</tr>
<tr>
<td>Celtis occidentalis</td>
<td>Hackberry</td>
<td>7-12</td>
<td>6-10</td>
<td>D</td>
</tr>
<tr>
<td>Fraxinus ‘Raywood’</td>
<td>Claret Ash</td>
<td>12</td>
<td>9</td>
<td>D</td>
</tr>
<tr>
<td>Fraxinus excelsior ‘Aurea’</td>
<td>Golden Ash</td>
<td>8-12</td>
<td>7</td>
<td>D</td>
</tr>
<tr>
<td>Fraxinus pensylvanica</td>
<td>Green Ash</td>
<td>10-15</td>
<td>8-12</td>
<td>D</td>
</tr>
<tr>
<td>Gleditsia tricanthos</td>
<td>Honey Locust</td>
<td>10-15</td>
<td>8-15</td>
<td>D</td>
</tr>
<tr>
<td>Jacaranda mimosifolia</td>
<td>Jacaranda</td>
<td>8-12</td>
<td>8</td>
<td>D</td>
</tr>
<tr>
<td>Liquidambar styraciflua</td>
<td>American Sweetgum</td>
<td>12-22</td>
<td>12-15</td>
<td>D</td>
</tr>
<tr>
<td>Magnolia grandiflora</td>
<td>Bull Bay</td>
<td>8-15</td>
<td>8-12</td>
<td>E</td>
</tr>
<tr>
<td>Metrosideros excelsior</td>
<td>Pohutukawa</td>
<td>8-10</td>
<td>8-10</td>
<td>E</td>
</tr>
<tr>
<td>Platanus x acerifolia</td>
<td>London Plane</td>
<td>14-22</td>
<td>12-18</td>
<td>D</td>
</tr>
<tr>
<td>Pyrus cultivars</td>
<td>Flowering Pear</td>
<td>8-12</td>
<td>4-8</td>
<td>D</td>
</tr>
<tr>
<td>Quercus coccinea</td>
<td>Scarlet Oak</td>
<td>12-15</td>
<td>12-15</td>
<td>D</td>
</tr>
<tr>
<td>Quercus palustris</td>
<td>Pin Oak</td>
<td>15-22</td>
<td>12-18</td>
<td>D</td>
</tr>
<tr>
<td>Quercus rubra</td>
<td>Northern Red Oak</td>
<td>12-20</td>
<td>12-20</td>
<td>D</td>
</tr>
<tr>
<td>Schinus molle</td>
<td>American Pepper</td>
<td>8-15</td>
<td>10-15</td>
<td>E</td>
</tr>
<tr>
<td>Tilia cordata cultivars</td>
<td>Small-leaved Linden</td>
<td>15-20</td>
<td>12-20</td>
<td>D</td>
</tr>
<tr>
<td>Ulmus glabra ‘Lutescens’</td>
<td>Golden Elm</td>
<td>10-15</td>
<td>12-15</td>
<td>D</td>
</tr>
<tr>
<td>Ulmus parvifolia</td>
<td>Lacebark</td>
<td>12-15</td>
<td>10-15</td>
<td>D</td>
</tr>
<tr>
<td>Ulmus procera</td>
<td>English Elm</td>
<td>12-20</td>
<td>12-15</td>
<td>D</td>
</tr>
<tr>
<td>Zelkova serrata</td>
<td>Japanese Zelkova</td>
<td>15-20</td>
<td>12-15</td>
<td>D</td>
</tr>
</tbody>
</table>
Attachment 3

Table 1 Tree Assessment Results for the Leyland Cypress (*Cypressus leylandii*) trees located at 50 Olympic Avenue, Cheltenham.

<table>
<thead>
<tr>
<th>Criteria for granting tree removal permit</th>
<th>Description</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Building Permit</td>
<td>Building permit granted and building or construction works, and the tree cannot be retained</td>
<td>A building permit has not been issued.</td>
</tr>
<tr>
<td>2. Tree Location</td>
<td>Report by expert providing evidence that the tree is causing structural damage to the building, services. Evidence that the tree is causing structural damage to the building, services or infrastructure or is at risk to people or property, which can only be overcome by implementing a remedy that is unreasonable or greatly disproportionate to the value of the tree or risk posed by the tree. Tree trunk is within two metres of a dwelling. Within one metre of a garage or carport. Crossover within structural root zone.</td>
<td>No report provided. There is no structural damage evident, but the trees pine needle and debris dropping into the pool have caused excessive maintenance and cleaning costs, the value of the trees $38,000 is considerably less than the ongoing pool maintenance and cleaning costs. ($16,000 per annum) The tree is located within 2m from the swimming pool with 50% limbs overhanging the pool. No garage or carport proposed. Crossover not subject to this application.</td>
</tr>
<tr>
<td>3. Medical Conditions</td>
<td>Medical certificate from a doctor or specialist indicating the tree is causing a specific allergenic problem that is reducing the quality of life and there is no other way to manage the problem.</td>
<td>No correspondence was provided by the owner related to medical conditions caused by the tree.</td>
</tr>
<tr>
<td>Criteria for granting tree removal permit</td>
<td>Description</td>
<td>Comment</td>
</tr>
<tr>
<td>------------------------------------------</td>
<td>-------------</td>
<td>---------</td>
</tr>
<tr>
<td><strong>4. Tree health structure and impacts</strong></td>
<td>Evidence provided by Council staff indicating the tree has a detrimental impact on surrounding environmental and public health.</td>
<td>Council’s Environmental Health Coordinator inspected the tree on site and did not find that the pine needle and debris droppings were a detrimental impact on surrounding environmental and public health.</td>
</tr>
<tr>
<td></td>
<td>Removal granted where two of criteria or either poor health, structure or sustainable life expectancy less than five years.</td>
<td>Council’s arborist indicates the tree is of good health, high retention value with a life expectancy of greater than 10 years.</td>
</tr>
<tr>
<td><strong>5. Social considerations (two required to warrant tree removal)</strong></td>
<td>The amenity or character is moderate or low</td>
<td>The tree’s amenity value is high</td>
</tr>
<tr>
<td></td>
<td>There are at least two other trees on the property that are protected, have a sustainable life expectancy of more than 10 years and are not subject to a current removal permit application or existing permit</td>
<td>There are no other protected trees on the property.</td>
</tr>
<tr>
<td></td>
<td>Written letters of support provided by property owners/tenants (four) living adjacent or opposite the property</td>
<td>No letters of support provided from adjacent property owners. A letter of support was received from Murray Thompson MP Member for Sandringham.</td>
</tr>
<tr>
<td></td>
<td>Demonstrated financial hardship and inability to undertake routine maintenance – no source of income and receiving Centrelink payments</td>
<td>The property owner has made no representation of financial grounds.</td>
</tr>
<tr>
<td>Criteria for granting tree removal permit</td>
<td>Description</td>
<td>Comment</td>
</tr>
<tr>
<td>-----------------------------------------</td>
<td>-------------</td>
<td>---------</td>
</tr>
<tr>
<td>6. Report by property owners</td>
<td>Qualified arborist Structural engineer report</td>
<td>No independent reports were provided.</td>
</tr>
<tr>
<td>7. Quantified Tree Risk Assessment (QTRA) conducted</td>
<td>Risk calculated as – Broadly acceptable Tolerable Unacceptable</td>
<td>Risk was not raised as a reason by the applicant for the trees removal.</td>
</tr>
</tbody>
</table>
1. **Purpose and Background**

To report a planning permit application for the construction of two double-storey dwellings, the removal of native vegetation in the Vegetation Protection Overlay 3, and construction of a building in a Special Building Overlay, on a lot with an area of 839 square metres (refer Attachment 1) at 14 Agnes Street, Beaumaris (refer Attachment 2).

<table>
<thead>
<tr>
<th>Applicant</th>
<th>Les Finnis</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date application received</td>
<td>1 July 2016 (Amended)</td>
</tr>
<tr>
<td>Statutory days expired</td>
<td>1 September 2016</td>
</tr>
</tbody>
</table>

2. **Policy Implications**

**Planning permit requirements**

- Clause 32.09-5 (Neighbourhood Residential Zone) – Construction of two dwellings on a lot.
- Clause 42.02-2 (Vegetation Protection Overlay) – Removal of native vegetation.
- Clause 44.05 (Special Building Overlay) – Construction of a building.

**Planning scheme amendments**

Planning Scheme Amendment C139 has been prepared by Council and requires development to provide a financial contribution for drainage in this area. Council has adopted Amendment C139 and has submitted it to the Minister for Planning for approval. Whilst the Amendment is now considered ‘seriously entertained’, the Minister has not yet made a decision on the Amendment.

Planning Scheme Amendment C153 has been initiated by Council and proposes to modify the boundaries of the Special Building Overlay (SBO) and remove the Land Subject to Inundation Overlay from the Bayside Planning Scheme. The public exhibition process will conclude on 16 January 2017 and a report considering submissions will be presented to Council early in 2017. Case law confirms that proposed amendments to Planning Schemes are not considered to be ‘seriously entertained’ and applied in the assessment of permit applications until such time as they have progressed beyond a Panel and Adopted. As such, there is no statutory weight which can be given to Amendment C153. It is noted that whilst the subject site is located within the SBO area, no change is proposed in respect of the subject site.
3. Stakeholder Consultation

**External referrals**

In accordance with Clause 66 of the Bayside Planning Scheme, the application was referred to the following authorities:

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

**Internal referrals**

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

<table>
<thead>
<tr>
<th>Internal Referral</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arborist</td>
<td>Objects to the extent of tree removal proposed by the applicant. The proposal could be supported, only subject to the permit conditions set out in this report.</td>
</tr>
<tr>
<td>Traffic Engineer</td>
<td>No objection, subject to conditions.</td>
</tr>
<tr>
<td>Drainage Engineer</td>
<td>No objection, subject to conditions.</td>
</tr>
<tr>
<td>Street Trees 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 three objections were received. The following concerns were raised:

- Overdevelopment of the site;
- Incompatibility with neighbourhood character
- Loss of existing vegetation;
- Lack of dwelling diversity;
- Loss of natural and cultural heritage values;
- Detrimental effect on streetscape;
- Inaccuracy of site coverage calculations on submitted plans; and
- Overlooking (of proposed private open space from neighbouring property).

**Consultation meeting**

A consultation meeting was held on 14 September 2016, attended by a Council officer, the applicant and three objectors. No objections were withdrawn.
4. **Recommendation**

That Council:

Issues a **Notice of Decision to Grant a Permit** under the provisions of the Bayside Planning Scheme in respect of Planning Application 2016/228/1 for the land known and described as **14 Agnes Street, Beaumaris**, for the **construction of two double-storey dwellings**, the **removal of native vegetation in the Vegetation Protection Overlay 3**, and **construction of a building in a Special Building Overlay**, 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 submitted plans date-stamped 1 July 2016, but modified to show:

   a) The vehicle crossover and driveway (along its entire length) of Dwelling 1 relocated to provide for a minimum separation distance of 5.0 metres from Tree 1 (Coastal tea tree, refer submitted arboriculture assessment prepared by Total Tree Care, dated 19 May, 2016), in order to ensure that tree’s retention.

   b) The overhang of the first floors over the ground floors of both dwellings reduced to no greater than 0.75m.

   c) The front setback of the dwellings’ ground floors increased to 11.1m, to match the setback with the neighbouring dwelling at 12 Agnes Street.

   d) The side setbacks of the ground floors of both dwellings increased to a minimum of 2.0 metres.

   e) The paved paths adjacent to both side boundaries removed, and additional landscaping provided in their place.

   f) The paved alfresco areas and pools to the rear of both dwellings reduced in size to provide minimum 4.5 metre rear landscaped setbacks.

   g) Compliance with Standard B8 (Site Coverage) of Clause 55 of the Bayside Planning Scheme, via a coverage schedule on a revised site plan.

   h) The retention of Tree 9 (native Acacia floribunda) and any amendments to the proposed development necessary to achieve such.

   i) A dividing fence between the secluded open spaced of both dwellings to 1.8 metres in height.

   j) Diagrammatic evidence that the protruding, rear-facing Bedroom 3 window frames ensure compliance with the relevant ‘Internal Views’ standard (B23).

   k) The proposed storage areas within the garages have a minimum volume of 6m³.

   l) An amended landscape plan to the satisfaction of the Responsible Authority must be submitted to, and be endorsed by the Responsible Authority. The plan must show the relevant amendments required elsewhere in Condition 1.

   m) The Tree Management Plan and Tree Protection Plan in accordance with Condition 11 of this permit.
All to the satisfaction of the Responsible Authority.

2. The development as shown on the endorsed plans must not be altered 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, fixtures, fittings and vents servicing any building on the site must be concealed in service ducts or otherwise hidden from view to the satisfaction of the Responsible Authority.

6. The 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.

7. Before the occupation of the development starts, the areas 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.

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

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

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

11. Prior to the endorsement of plans pursuant to Condition 1, and before any related demolition or removal of vegetation is undertaken, 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 (report) must be specific to the site, be in accordance with Australian Standard: Protection of Trees on Development Sites AS4970-2009 and include:

- Details of Tree Protection Zones for all trees to be retained on the site and for all trees on neighbouring properties where any part of the Tree Protection Zone falls within the subject site;
- Comment on methods to be utilised and instruction on how to deploy them;
- Comment on when the protection measures are to be deployed;
- Comment on when the protection measures can be modified;
- Process that will be followed if any damage occurs to a tree;
- Process that will be followed if construction works require alteration to protection measures outlined in report; and
• Stages of development at which inspections will occur. Any proposed alteration to the plan must be assessed by the site arborist and can only occur following the approval of the site arborist. Any damaged tree must be inspected by the site arborist without any delay and remedial actions undertaken. Such actions must be documented.

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

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

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

13. 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.

14. Any pruning that is required to be done to the canopy of Tree 1 and Tree 9 is to be done by a qualified arborist to Australian Standard – Pruning of Amenity Trees AS4373-1996. Any pruning of the root system of these trees is to be done by hand by a qualified arborist.

15. The applicant must apply for the nominated legal point of discharge for the development where stormwater run-off must be collected and free drained to Council's drainage assets to Council standards.

16. Stormwater discharge must be retained for the portion above the discharge calculated using a Coefficient of Runoff of 0.35. The development is to have a Stormwater Detention System installed, the design capacity to be to the satisfaction of the Responsible Authority.

17. Any subsurface water captured on the site must be treated in accordance with Council's Policy for "Discharge of pumped Subterranean Water Associated with Basement or Below Ground Structures". Any seepage/agricultural drainage water must be filtered to rain water clarity and must be pumped to the nearest Council Drain/Pit and not be discharged to the kerb and channel unless directed otherwise.

18. All on-site stormwater is to be collected from the hard surface areas and must not be allowed to flow uncontrolled onto adjoining properties. The on-site drainage system must prevent discharge from each driveway onto the footpath. Such a system may include either:
   i. A trench grate (150mm minimum internal width) located within the property and/or
   ii. Shaping the driveway so that water is collected in a grated pit on the property and/or
   iii. Another Council-approved equivalent.

19. Before the development begins, detailed plans indicating, but not limited to, the method of stormwater discharge to the nominated Legal Point of Discharge (and On-Site Detention System where applicable) must be submitted to and approved by Council’s Infrastructure Assets Department.
20. The driveway / Parking areas / paved courtyards / paths and 'pervious' pavements must be graded / drained to prevent stormwater discharge onto the front footpath and into adjacent properties.

Melbourne Water (Conditions 21 & 22)

21. The pools and all structures, including footings, eaves, etc., must be set outside any easement or a minimum 1.5m laterally from the outside edge of the main drain, which the greater. Melbourne Water will not accept the pool plants or any associated pool plumbing to be located within their easement.

22. Landscaping plans near the asset are to be submitted to Melbourne Water for approval. They must be in line with Melbourne Water’s ‘Planting near Sewer, Drains, and Water Mains Guide’.

23. Before development commences the applicant must pay $3476.26 to the Responsible Authority for the removal and replacement of the existing street tree. This amount has been determined in accordance with Council’s current policy for the removal of street tree. This amount may be increased by the Responsible Authority if an extension of time to commence work is granted and the amenity value of the street tree has increased. The Responsible Authority, or a contractor or agent engaged by the Responsible Authority, must undertake the removal and replacement of the street tree. Any replacement planting will be at the discretion of the responsible Authority.

24. 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

- Council records indicate that there is a 4.57m wide drainage easement affecting the western and southern property boundaries as indicated on the drawings provided. The plans indicate that an alfresco and other minor structures shall be constructed over the easement. Any proposal to encroach into the easement will require Build over Easement consent from the responsible Authority/Authorities.

- 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.

Melbourne Water Note

- Property is within an area designated as a Special Building Overlay. Floor levels and requirements can be obtained from Land Development Team, Melbourne Water (Ph.: 9679 7517).

5. Council Policy

Council Plan 2013-2017

Relevant strategies of the Council plan include:
• 3.1.1 Developing planning strategies and policies with our community that enhance Bayside’s liveability along with its natural and built environment.

• 3.1.3 Advocating Council’s planning and urban design objectives.

Bayside Planning Scheme

• Clause 11 Settlement
• Clause 12 Environmental and Landscape Values
• Clause 15 Built Environment and Heritage
• Clause 16 Housing
• Clause 21.02 Bayside Key Issues and Strategic Vision
• Clause 21.03 Settlement and Housing
• Clause 21.04 Environmental and Landscape Values
• Clause 21.06 Built Environment and Heritage
• Clause 22.06 Neighbourhood Character Policy
• Clause 22.08 Water Sensitive Urban Design
• Clause 32.09 Neighbourhood Residential Zone (Schedule 3)
• Clause 42.02 Vegetation Protection Overlay (Schedule 3)
• Clause 44.05 Special Building Overlay
• 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 H3 and the proposal is considered to demonstrate an insufficient level of compliance with the preferred future character statement and precinct guidelines as contained in Attachment 3.

Adequate space is not provided around the proposed dwellings for the retention of established trees and the planting of vegetation. This is particularly evident with respect to Tree 1, which despite being located in the front, north-east corner of the site, would be adversely affected by a driveway (to Dwelling 1) being constructed within its Structural Root Zone.
The proposal involves 0.5m encroachments into the stipulated minimum side setbacks at ground-level to both side boundaries, which will not allow the rhythm of spacious visual separation between buildings to be maintained.

Although the side setbacks of the dwellings on the abutting sites to the east and west are less than 2m, the encroaching lengths of wall pertaining to those existing dwellings are much shorter, giving rise to lower perceived impact in respect to visual separation than will result with the new dwellings. Subject to the imposition of appropriate conditions, the proposed setbacks will be acceptable.

Furthermore, it will not ensure adequate space is provided around buildings for the retention and planting of vegetation. Similar to Tree 1, Tree 9 is located in close proximity to a boundary (in the latter's case the rear boundary), yet despite this fortunate positioning the proposed development does not provide for its retention. A similar assertion could be made in respect of Tree 4 (like Tree 9 also a native species), which is located inside the west (side) boundary, where, given the importance accorded to the retention of existing vegetation under the provisions of the Neighbourhood Character Policy, it could be reasonably expected to be safe from removal.

While the application argues that the new building will satisfy the objective that new developments provide an articulated and interesting façade to the street, the proposed design directly contravenes the specific instruction that upper levels should be recessed from the front façade. The proposed duplex building instead features an overhang along its frontage.

These deficiencies can, however, be sufficiently remedied through the imposition of appropriate conditions on any permit issued.

6.2 Compliance with Clause 55 (ResCode)

An assessment against the requirements of Clause 55 is provided at Attachment 4. Those non-compliant standards are discussed below:

Street setback (Standard B6)

<table>
<thead>
<tr>
<th>Required</th>
<th>Proposed</th>
<th>Variation</th>
</tr>
</thead>
<tbody>
<tr>
<td>8.95m</td>
<td>8.6m</td>
<td>0.35m</td>
</tr>
</tbody>
</table>

It is considered that the street setback should be increased to 11.1m for both dwellings’ ground floors (the same as the neighbouring dwelling at 12 Agnes Street) and to no less than 10.35m at the upper floors, i.e. an overhang of a maximum 0.75m. These increased setbacks will ensure that the proposed design is acceptable in respect of preferred neighbourhood character despite it lacking a recessed upper floor.

Side and rear setbacks (Standard B17)

<table>
<thead>
<tr>
<th>Ground floor</th>
<th>First Floor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requirement</td>
<td>Proposed</td>
</tr>
<tr>
<td>East (side)</td>
<td>0m or 2m</td>
</tr>
<tr>
<td>West (side)</td>
<td>0m or 2m</td>
</tr>
</tbody>
</table>
The proposal involves 0.5m encroachments into the stipulated minimum 2m side setbacks at ground-level to both side boundaries, which will not allow the rhythm of spacious visual separation between buildings to be maintained. Although the side setbacks of the dwellings on the abutting sites to the east and west are less than 2m, the encroaching lengths of wall pertaining to those existing dwellings are much shorter, giving rise to lower perceived impact in respect to visual separation than will result with the new dwellings.

The first-floor side setbacks to Bedroom 3 of both dwellings, to the western and eastern property boundaries, marginally fail to comply with the requirements of Schedule 3 to the Neighbourhood Residential Zone. First floor setbacks of 3.86m are proposed, where 3.92m is required under the relevant standard. It is considered, however, that the development in its proposed form would be indistinguishable from a complying development, due to the insignificant degree of encroachment.

Internal views (Standard B23)
The application states that the proposal complies with the standard in respect of the protruding, rear-facing Bedroom 3 window frames. A condition will be imposed requiring diagrammatic evidence that compliance is achieved with the standard.

Storage (Standard B)
As the submitted plans do not demonstrate explicitly that the storage areas provided will have the required 6m³ minimum volume, a condition will be imposed requiring diagrammatic evidence that compliance is achieved with the standard.

6.3 Car Parking and Traffic
Each dwelling is provided with at least two car spaces in accordance with Clause 52.06. Council’s Traffic Engineer has reviewed the application and raised no objection.

The level of increased traffic generated by the proposed development will not adversely impact the local road network and Council’s Traffic Engineer has raised no objection in this regard.

6.4 Street Trees
The proposal will necessitate the removal of two street trees. Council’s open space arborist has assessed the proposed development and stated that the trees’ removal is supportable, subject to the applicant paying for the removal by Council of the trees and replanting of replacement trees.

6.5 Vegetation & Landscaping

<table>
<thead>
<tr>
<th>VPO3 protected trees</th>
<th>Local Law protected trees</th>
<th>Trees not protected</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trees 1, 2 &amp; 9</td>
<td>Nil</td>
<td>Nil</td>
</tr>
</tbody>
</table>

NB: One additional tree not included in arborist report, located ~3 m from west boundary and ~13 m from north boundary is protected by VPO3 and is proposed for removal.
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 objectives of the VPO3 must be considered in association with the other statutory controls governing the site and relevant State and Local Planning Policies. This includes the overarching purposes of the relevant zone and overlays and the need to ensure decisions reflect broader strategic policy objectives. Such strategic policy objectives include encouraging urban consolidation and the efficient use of established residential land to reduce the outward expansion of the metropolitan area.

The application plans and accompanying reports are not specific with respect to which trees are to be removed from the site. Nowhere in the submitted information is there a categorical list or table stating which trees are to be removed and which are to be retained.

In some instances, the submitted information is contradictory, with trees mentioned as being retained in the report not shown on the submitted landscaping plan. Other trees that are mentioned as being retained would in fact be terminally undermined by the proposed development, so in effect are counted as being removed.

Council’s arborist considers that the proposed development will require the removal or will lead to the destruction of the following trees:

- Tree 1 – Coastal tea tree (Leptospermum laevigatum) with a height of 6 metres. The applicant’s arborist has stated that this tree has a high retention value.
- Tree 2 – Coastal tea tree (Leptospermum laevigatum) with a height of 6 metres. The applicant’s arborist has stated that this tree has a high retention value.
- Tree 4 – Weeping bottlebrush (Callistemon viminalis) with a height of 5 metres. The applicant’s arborist has stated that this tree has a low retention value.
- Tree 9 – Gossamer wattle (Acacia floribunda) with a height of 5 metres. The applicant’s arborist has stated that this tree has a low retention value.
- A native Heath-leaved Banksia (Banksia ericifolia) tree (unmarked and not discussed in the applicant’s arborist’s report) with a height exceeding 4 metres, adjacent to the north wall of the existing dwelling that, in the Council’s arborist’s opinion, provides a low level of amenity.

An arboriculture report prepared by Total Tree Care, dated 19 May 2016 was submitted with the application, detailing the condition of existing trees on the site, including the street tree and neighbouring trees within 3 metres of the common boundaries. The report noted that Trees 1 and 2 have high retention value. All other trees assessed, out of a total of 11, were either situated on a neighbouring property (Trees #3, 5, 6, 7, 8, 10 & 11) or were deemed to have a low retention value (Trees #4 & 9).

Council’s arborist has reviewed the application and the submitted arboricultural report, and has visited the site and provided the following comment:

- Trees 1 and 2 are valuable trees in the context of the VPO that should be retained into developments in the VPO area. Tree 1 provides a higher level of amenity and its retention value is higher than Tree 2. Tree 1’s location provides for a better opportunity to be fully and properly protected than if designing around Tree 2. Strict controls over the location of the driveway, tree protection measures and the construction techniques during installation are primary to any support being given to this application.
- Similarly with Tree 9, whilst in the VPO context its value is lower given its non-indigenous status than Trees 1 and 2, design considerations are necessary to
facilitate its retention. This tree will provide amenity to the users of the eastern part of The Concourse and provide for a continuum of canopy along Moseys Run.

- Replacement planting minimums should be specified as a condition of the permit, with a requirement of 2 indigenous trees, one capable of reaching a minimum height of 10 m at maturity and another capable of reaching 6 m at maturity to offset the loss of tree 2 and the VPO tree not identified in the arborist report, respectively. All other plantings must be 80% indigenous by plant count and specious count. At least three shrubs capable of reaching a minimum height of 3 m should be included in each unit to help in creating the bushy character as set out by the Neighbourhood Character Guidelines.

The proposed extent of vegetation removal is considered acceptable with respect to the decision guidelines of the VPO3, provided that changes are made to the design of the vehicle access to Dwelling 1 to ensure the retention of Tree 1, the Coastal tea tree located in the north-east corner of the site. Furthermore, Tree 9, the Wattle located adjacent to the south boundary, will also need to be retained.

The character of the area will be maintained if these trees are retained and substantial new planting of native vegetation is carried out and the plantings are maintained long-term. With these conditions, the removal of Trees 2 and Tree 4 is supported.

Council’s Arborist has reviewed the submitted landscape plan and advised that it will be considered acceptable subject to it being amended to provide for an increased level of replacement planting, sufficient to compensate for the loss of trees on the site. A revised landscape plan should be submitted, demonstrating that it meets the preferred character provisions and the landscape guidelines for the VPO.

6.6 Objections received

Issues raised by objectors that have not been addressed in the assessment above, are discussed below:

Lack of dwelling diversity

Under the provisions of the Neighbourhood Residential 3 Zone (NRZ3), the subject site can only accommodate a maximum of two dwellings. Given this limitation, it would not be reasonable, or possible, to stipulate that a range of dwelling sizes, based on the number of bedrooms contained within each dwelling, be provided on the site. It is noted that Standard B3 (Dwelling Diversity) of Clause 55 applies only to developments of ten or more dwellings.

Inaccuracy of site coverage calculations on submitted plans

The applicant has acknowledged a discrepancy existed between the submitted drawings and the stated level of site coverage, and stated an intention to amend the plans to comply with the NRZ3 requirement. The application provided a 49% site coverage figure, while an objector calculated the actual coverage to be 51.2%.

It is noted that a reduction in site coverage will now result, in any case, as a result of amendments to the footprint of the building required under Condition 1 of any permit that issues for this proposed development. The applicant will also be required to include a site coverage schedule on amended plans to demonstrate compliance with the relevant controls.
Overlooking (of proposed private open space from neighbouring property)

It is not the applicant’s responsibility to avoid overlooking of the subject site from neighbouring properties or windows, only to avoid overlooking of neighbouring properties that arises from the development. The owners / occupiers of neighbouring sites have the option available to them of screening their own windows if they so wish.

Support Attachments

1. Development Plans ↓
2. Site Surrounds and Imagery ↓
3. Neighbourhood Character Assessment Precinct H3 ↓
4. Clause 55 (ResCode) Assessment ↓
5. Vegetation Protection Overlay Assessment ↓
Item 4.2 – Matters of Decision
Figure 1 Aerial overview of the site and surrounds

Note: Second objector’s property is beyond the scope of this plan.

<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 (west side of frontage)
Figure 3. View towards the site (east side of frontage)
**ATTACHMENT 3**

**Neighbourhood Character Policy (Precinct H3)**

**Preferred Future Character Statement**

The bushy gardens surrounding the dwellings dominate the streetscapes. Where the topography is hilly, the buildings are set within the landscape, and are sometimes sited to take advantage of water views without dominating the streetscape. Adequate space is provided around dwellings for the retention and planting of vegetation, and indigenous canopy trees are common. 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>
</table>
| To strengthen the bushy garden character of the area through the planting of appropriate species. | • Retain large established trees and understorey, and provide for the planting of new indigenous trees wherever possible (locate footings outside root zone).  
• Prepare a landscape plan to accompany all applications for new dwellings that utilises appropriate native, preferably indigenous, vegetation.  
• Minimise impervious surfaces particularly in front garden spaces to ensure space for plantings. | Lack of landscaping and substantial vegetation.  
Removal of large established trees.  
Planting of environmental weeds | Does not respond  
The proposal involves the removal of an excessive amount of native vegetation, including indigenous trees. This deficiency can be acceptably ameliorated through the imposition of appropriate conditions on any permit issued. |

| To maintain the rhythm of spacious visual separation between buildings and ensure adequate space is provided around buildings for the retention and planting of vegetation. | • Buildings should be sited to allow space for a garden, including trees and shrubs.  
• Buildings should be sited to create the appearance of space between buildings and accommodate vegetation. | Loss of front garden space. | Does not respond  
There are inadequate setbacks to the side boundaries to maintain sufficient visual separation between buildings. In addition, a more appropriate level of landscaping could be implemented were larger setbacks to be... |
<table>
<thead>
<tr>
<th>Objectives</th>
<th>Design Responses</th>
<th>Avoid</th>
<th>Planning Officer Assessment</th>
</tr>
</thead>
</table>
| To minimise the loss of front garden spaces and the dominance of car parking structures. | • Locate garages and carports behind the line of the dwelling.  
• 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 structures that dominate the façade or view of the dwelling.                                                                 | Responds  
The proposed development provides for garages located behind the line of the dwellings' upper floors. It is noted, however, that the cantilevering of the upper floors over the ground floors is inconsistent with the preferred neighbourhood character, and this report recommends that the proposal be amended to provide for recessed upper floors. When this change is implemented, it will also be necessary to amend the ground-floor design, as without any additional change the garages would no longer be located behind the line of the dwelling.  
A condition will be imposed on any permit issued requiring the proposed garages to be located behind the line of the dwelling, so that they do not dominate the façade.  
An appropriate front setback will be maintained.                                                                                                                                                                                                                                                                                                                                                                                                      |
| To minimise site disturbance and impact of the building on the landscape. | • Buildings should be designed to follow the contours of the site on sloping sites.  
• Minimise the use of retaining walls and battering of slopes.  
• Design new buildings and extensions so as not to exceed the predominant tree canopy height. | Major excavation works and site levelling. Buildings that protrude above the tree canopy height.                                           | N/A  
The site has no appreciable slope.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
<p>| To ensure that new buildings provide an                                  | • Incorporate design elements into the front façade design of new dwellings such as recessed portions, projecting elements                                                                                           | Large, bulky buildings                                                                                                               | Responds                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |</p>
<table>
<thead>
<tr>
<th>Objectives</th>
<th>Design Responses</th>
<th>Avoid</th>
<th>Planning Officer Assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>articulated and interesting façade to the street.</td>
<td>behind the front setback line, combinations of materials, textures or colours or other elements providing appropriate articulation.</td>
<td>Poorly articulated front and side wall surfaces.</td>
<td>The application in its proposed form provides for a satisfactory level of articulation and visual interest. Compliance with this aspect will, however, need to be reassessed once the amended plans required under Condition 1 are submitted, as substantial changes to the development’s façade, including the provision of a recessed upper floor in place of a cantilevered one and a consequential redesign of the ground-floor façade, are anticipated.</td>
</tr>
<tr>
<td>To use building materials and finishes that complement the natural setting.</td>
<td>Use a mix of materials, textures and finishes including render, timber, non-masonry sheeting, glazing, stone and brick.</td>
<td>Period reproduction styles and detailing.</td>
<td>Responds</td>
</tr>
</tbody>
</table>
| To maintain the openness of the front garden to the street. | Provide open style front fences, other than along heavily trafficked roads.  
• Use vegetation as an alternative where possible. | High or solid front fences.                                              | Responds                                                                                                                                                        |
|                                                     |                                                                                  |                                                                      | No front fence is proposed.                                                                                                                                      |
## ATTACHMENT 4
### ResCode (Clause 55) Assessment

<table>
<thead>
<tr>
<th>Title and Objective</th>
<th>Complies with Standard?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. B1 Neighbourhood Character</td>
<td>No</td>
<td>Refer Attachment 3 and Section 6.1 of the accompanying report for detailed discussion.</td>
</tr>
<tr>
<td>Design respects existing neighbourhood character or contributes to a preferred neighbourhood character. Development responds to features of the site and surrounding area.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. B2 Residential Policy</td>
<td>Yes</td>
<td>The subject site is appropriately located with regard to the services and facilities required to support two dwellings.</td>
</tr>
<tr>
<td>Residential development is consistent with housing policies in the SPPF, LPPF including the MSS and local planning policies. Support medium densities in areas to take advantage of public transport and community infrastructure and services.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. B3 Dwelling Diversity</td>
<td>N/A</td>
<td>Only two dwellings are proposed.</td>
</tr>
<tr>
<td>Encourages a range of dwelling sizes and types in developments of ten or more dwellings.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. B4 Infrastructure</td>
<td>Yes</td>
<td>Any upgrades required will be the responsibility of the developer.</td>
</tr>
<tr>
<td>Item</td>
<td>B5 Integration with the Street</td>
<td>Yes</td>
</tr>
<tr>
<td>-----</td>
<td>--------------------------------</td>
<td>-----</td>
</tr>
<tr>
<td>5.</td>
<td>B6 Street Setback</td>
<td>No</td>
</tr>
<tr>
<td>6.</td>
<td><strong>Proposed:</strong> 8.6m</td>
<td></td>
</tr>
<tr>
<td></td>
<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>
</tr>
<tr>
<td></td>
<td><strong>Minimum:</strong> 8.95m (average of neighbouring properties)</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Proposed:</strong> 8.6m</td>
<td></td>
</tr>
<tr>
<td></td>
<td>It is considered that the proposed development would be more consistent with the preferred neighbourhood character if the street setback was increased to 11.1m at the dwellings' ground floors, and to no less than 10.35m at the upper floors, representing an overhang of a maximum 0.75m.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Minimum: 8.95m (average of neighbouring properties)</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Proposed:</strong> 8.6m</td>
<td></td>
</tr>
<tr>
<td></td>
<td>The dwellings appropriately address the street and entries are clearly identifiable from the road.</td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>B7 Building Height</td>
<td>Yes</td>
</tr>
<tr>
<td>8.</td>
<td><strong>Proposed:</strong> 6.8m</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Building height should respect the existing or preferred neighbourhood character.</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Proposed:</strong> 6.8m</td>
<td></td>
</tr>
<tr>
<td>9.</td>
<td>B8 Site Coverage</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td><strong>Proposed:</strong> No more than 50%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Site coverage should respect the existing or preferred neighbourhood character and respond to the features of the site.</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Proposed:</strong> No more than 50%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Note: In response to an objection received, the applicant has agreed that the advertised plans do not show compliance with the 50% maximum level required by the standard, contrary to statements made in the application. The applicant has also agreed to amend the application to demonstrate compliance with the standard. This will be required as a condition on any permit issued for this development.</td>
<td></td>
</tr>
<tr>
<td>10.</td>
<td>B9 Permeability</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td><strong>Proposed:</strong> 32.5%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Reduce the impact of stormwater run-off on the drainage system and facilitate on-site stormwater infiltration.</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Proposed:</strong> 32.5%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Note: The changes to the proposal required under Condition 1 will in all likelihood result in changes to levels of site coverage, permeable surfacing and impermeable surfacing.</td>
<td></td>
</tr>
<tr>
<td>11.</td>
<td>B10 Energy Efficiency</td>
<td>Yes</td>
</tr>
</tbody>
</table>
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.

<table>
<thead>
<tr>
<th>12. B11 Open Space</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Integrate layout of development with any public and communal open space provided in or adjacent to the development.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>13. B12 Safety</th>
<th>Yes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Layout to provide safety and security for residents and property.</td>
<td>No safety issues are considered likely to arise.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>14. B13 Landscaping</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>To provide appropriate landscaping. To encourage:</td>
<td></td>
</tr>
<tr>
<td>1. Development that respects the landscape character of the neighbourhood.</td>
<td></td>
</tr>
<tr>
<td>2. Development that maintains and enhances habitat for plants and animals in locations of habitat importance.</td>
<td></td>
</tr>
<tr>
<td>3. The retention of mature vegetation on the site.</td>
<td>Council’s arborist has stated that the proposal fails to provide for the retention of the existing indigenous and native trees on the site. The submitted landscape plan will need to be amended to show some significant trees retained (refer discussion in accompanying report and changes required under Condition 1). The required increases of the side and rear setbacks also necessitate amendments to the submitted landscape plan.</td>
</tr>
</tbody>
</table>
15. 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>Item</th>
<th>Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>15. B14 Access</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Appropriate vehicular access is provided.</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Maximum:</strong> 33% of street frontage</td>
<td></td>
</tr>
<tr>
<td><strong>Proposed:</strong> 32.8% of street frontage</td>
<td></td>
</tr>
<tr>
<td>Two 3m-wide vehicle crossovers are proposed, and the site has a width of 18.29m.</td>
<td></td>
</tr>
<tr>
<td>Note: While a change to the location of the crossover to Dwelling 1 will be required under Condition 1, the width of the crossover will not exceed 3m, so compliance with the standard will be maintained.</td>
<td></td>
</tr>
</tbody>
</table>

16. 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>Item</th>
<th>Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>16. B15 Parking Location</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>The proposed car parking areas are appropriately located, in this instance in ground-floor double-garages.</strong></td>
<td></td>
</tr>
</tbody>
</table>

17. B17 Side and Rear Setbacks

<table>
<thead>
<tr>
<th>Item</th>
<th>Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>17. B17 Side and Rear Setbacks</td>
<td>No</td>
</tr>
<tr>
<td><strong>The application proposes 1.5m side setbacks to the ground-floor walls of both dwellings, where the standard requires minimum 2m setbacks. These setbacks are considered inconsistent with the preferred neighbourhood character (refer Attachment 3 and Section 7.1 of the accompanying report).</strong></td>
<td></td>
</tr>
<tr>
<td>18.</td>
<td>Ensure the height and setback respects the existing or preferred neighbourhood character and limits the amenity impact on existing dwellings.</td>
</tr>
<tr>
<td>19.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Ground floor</th>
<th>First Floor</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Requirement</strong></td>
<td><strong>Proposed</strong></td>
</tr>
<tr>
<td>East (side)</td>
<td>0m or 2m</td>
</tr>
<tr>
<td>West (side)</td>
<td>0m or 2m</td>
</tr>
</tbody>
</table>

20. 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

<table>
<thead>
<tr>
<th>Item</th>
<th>Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>20. B18 Walls on Boundaries</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>There are no walls proposed on the boundaries.</strong></td>
<td></td>
</tr>
<tr>
<td>Item</td>
<td>Description</td>
</tr>
<tr>
<td>------</td>
<td>-------------</td>
</tr>
<tr>
<td>21. B19 Daylight to Existing Windows</td>
<td>Allow adequate daylight into existing habitable room windows.</td>
</tr>
<tr>
<td>22. B20 North Facing Windows</td>
<td>Allow adequate solar access to existing north-facing habitable room windows.</td>
</tr>
<tr>
<td>23. B21 Overshadowing Open Space</td>
<td>Ensure buildings do not significantly overshadow existing secluded private open space.</td>
</tr>
<tr>
<td>24. B22 Overlooking</td>
<td>Limit views into existing secluded private open space and habitable room windows.</td>
</tr>
<tr>
<td>25. B23 Internal Views</td>
<td>Limit views into existing secluded private open space and habitable room windows of dwellings and residential buildings within the same development.</td>
</tr>
<tr>
<td>26. B24 Noise Impacts</td>
<td>Protect residents from external noise and contain noise sources in developments that may affect existing</td>
</tr>
</tbody>
</table>
dwellings.

<table>
<thead>
<tr>
<th>Item</th>
<th>Accessibility</th>
<th>Consider people with limited mobility in the design of developments.</th>
<th>Yes</th>
<th>The dwellings’ entries are at ground-level, so will be easily accessible by people with limited mobility.</th>
</tr>
</thead>
<tbody>
<tr>
<td>27. B25</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>28. B26</td>
<td>Dwelling Entry</td>
<td>Provide a sense of identity to each dwelling.</td>
<td>Yes</td>
<td>The entries to both dwellings will be clearly identifiable from the street.</td>
</tr>
<tr>
<td>29. B27</td>
<td>Daylight to New Windows</td>
<td>Allow adequate daylight into new habitable room windows.</td>
<td>Yes</td>
<td>All habitable room windows will have direct access to daylight.</td>
</tr>
<tr>
<td>30. B28</td>
<td>Private Open Space</td>
<td>Provide reasonable recreation and service needs of residents by adequate pos.</td>
<td>Yes</td>
<td>Minimum: 25m² secluded, 40m² overall Proposed: Dwelling 1 – approx. 62m² (secluded) Dwelling 2 – approx. 62m² (secluded)</td>
</tr>
<tr>
<td>31. B29</td>
<td>Solar Access to Open Space</td>
<td>Allow solar access into the secluded private open space of new dwellings/buildings.</td>
<td>Yes</td>
<td>Appropriate solar access to the private open space areas is provided. The standard is met (8.12m required, 8.84m proposed).</td>
</tr>
<tr>
<td>32. B30</td>
<td>Storage</td>
<td>Provide adequate storage facilities for each dwelling.</td>
<td>No</td>
<td>It is not clear that the storage spaces provided within each garage have a minimum 6m³ volume. Clarification will be required by way of a permit condition.</td>
</tr>
<tr>
<td>33. B31</td>
<td>Design Detail</td>
<td>Encourage design detail that respects the existing or preferred neighbourhood character.</td>
<td>Yes</td>
<td>Refer discussion in Attachment 3.</td>
</tr>
</tbody>
</table>
34. **B32 Front Fences**  
Encourage front fence design that respects the existing or preferred neighbourhood character.  

| Yes | No front fence is proposed. |

35. **B33 Common Property**  
Ensure car parking, access areas and other communal open space is practical, attractive and easily maintained. Avoid future management difficulties in common ownership areas.  

| Yes | No common property is proposed. |

36. **B34 Site Services**  
Ensure site services and facilities can be installed and easily maintained and are accessible, adequate and attractive.  

| Yes | There is adequate space in and around the dwellings for these services and facilities. |
## ATTACHMENT 5

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

<table>
<thead>
<tr>
<th>Decision Guideline</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>The impact the vegetation removal would have on the character of the area</strong></td>
<td>The proposal does not provide for an adequate level of native vegetation retention. It is considered that the proposed development should be amended to ensure Tree #1 and Tree #9, as shown on the submitted arboricultural assessment prepared by Total Tree Care, are retained and protected. Given the importance accorded to the retention of indigenous and native vegetation under the VPO provisions, the lack of regard had in this instance to preserving the existing vegetation is a major and prominent flaw in the application. Council’s arborist recommended that Tree #2 also be retained, but it is considered that this tree is not well positioned to allow further reasonable development of the site, and its removal is acceptable provided that the more well sited Tree #1 and Tree #9 are retained.</td>
</tr>
<tr>
<td><strong>The impact the vegetation removal would have on the presence of indigenous species in the locality</strong></td>
<td>The local neighbourhood is characterised by a predominance of native vegetation, and the amended landscape plan required by a condition of permit would need to comprise 80% native species, including canopy trees.</td>
</tr>
<tr>
<td><strong>The impact the vegetation removal would have on the appearance of development.</strong></td>
<td>Provided that certain significant specimens (i.e. Tree #1 and Tree #9) are retained on the site, and high-quality landscaping is undertaken post-construction, the vegetation removal will not have a detrimental effect on the appearance of the development.</td>
</tr>
<tr>
<td><strong>The impact the vegetation removal would have on the habitat quality of any remaining vegetation and the fragmentation of wildlife corridors.</strong></td>
<td>The proposed development’s impact on fauna and habitat quality will be minimised and mitigated through the imposition of conditions relating to the retention of existing trees and landscaping of the site with predominantly native species.</td>
</tr>
<tr>
<td><strong>Any proposal to regenerate or plant indigenous vegetation on the site.</strong></td>
<td>Replanting of the site with predominantly native species will ensure that sufficient regeneration occurs post-development.</td>
</tr>
</tbody>
</table>
4.3  427-461 HAMPTON STREET & 82 HOLYROOD STREET, HAMPTON
NOT SUPPORT THE GRANT OF A PLANNING PERMIT
APPLICATION NO: 2016/390/1 WARD: CENTRAL

City Planning & Community Services - Development Services
File No: PSF/15/8755 – Doc No: DOC/16/275037

1. Purpose and background

To report a planning permit application which is the subject of a Victorian Civil and Administrative Tribunal (VCAT) proposing the construction of an eight (8) storey mixed use building comprising:

- Ground floor retail use – a Café for up to 50 patrons and a Shop of 1,584 sqm; and
- First to seventh floor residential use - 7 storeys of apartments (6x1 bedroom and 71x2 bedroom) as well as 3x3 bedroom townhouses to Holyrood Street, comprising a total 108 dwellings across the site.

The proposal also seeks the reduction in the standard car and bicycle requirements and alteration (removal) of access to a road on a lot with an area of 3,724 square metres (refer Attachment 1) at part of the land 427-461 Hampton Street & 82 Holyrood Street, Hampton.

The subject site of 427-461 Hampton Street is a very long lot, which has been subdivided to provide a large number of premises and land parcels. The part of the land that is the subject of this application is shown at Attachment 2.

<table>
<thead>
<tr>
<th>Applicant</th>
<th>Bowden Planning Hampton Beach Pty Ltd</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date application received</td>
<td>18 May 2016</td>
</tr>
<tr>
<td>Date Further Information requested</td>
<td>10 June 2016</td>
</tr>
<tr>
<td>Date applicant advised of significant concerns with the proposal</td>
<td>10 June 2016</td>
</tr>
<tr>
<td>Statutory days expired</td>
<td>16 August 2016</td>
</tr>
</tbody>
</table>

Appeal by the applicant to VCAT

An application for review under Section 79 of the Planning and Environment Act 1987 (the Act) has been lodged with VCAT. The review was lodged because Council did not make a decision on this major application within 60 statutory days.

A Compulsory Conference is set for 14 February 2017 and a full Merits Hearing set for 3 April 2017 for five days.
Because the VCAT appeal has been lodged, Council is unable to formally determine the application. Rather, this report sets out the assessment and justification to recommend that Council advises VCAT that, had it been able to make a decision on the application, it would have refused the grant of a planning permit.

It is recommended that Council **Not Support** the grant of a planning permit for the reasons set out in this report.

**Documented concerns with the application**

Council wrote to the applicant on 10 June 2016 outlining the following concerns with the proposal:

“A preliminary assessment of the application has been undertaken and the following areas of concern have been identified:

- The height and siting of the development does not comply with Council’s strategic vision for the Hampton Street Major Activity Centre as noted within Clause 21.11-4 and within the Design and Development Overlay Schedule 12. The preferred height in this location is four storeys and specific setback requirements are detailed in the Design and Development Overlay Schedule 12. Compliance with these boundary setbacks is encouraged.
- In light of the above height and setbacks, the proposed built form does not achieve a suitable transition between the adjoining southern and western interfaces, along with the streetscape context. A reduction in the overall height, combined with increased boundary setbacks and greater articulation is recommended.
- The location of the loading bay along the Holyrood Street frontage is not an appropriate design response to the street. The relocation of the loading bay is recommended to enhance the activation of this façade.
- The depth of the building entry, central courtyards and internal corridors do not promote acceptable urban design outcomes, particularly with regards to internal amenity and access to daylight. Saddleback bedrooms (i.e. Apartment 2.06) are discouraged. Additionally, the location and boundary setbacks of the south facing apartments does not promote a suitable design response for the site.
- It is considered that the footprint of the proposed basement will not allow for meaningful landscaping across the site. Due to the level of shadowing of the central courtyard, it is considered that the health of any future landscaping will be compromised.
- A contemporary design outcome for this site is encouraged however the design detail in its current form is not appropriate. The proposed elevations demonstrate a repetitive use of materials and finishes. Increased diversity of materials and finishes to enhance visual interest and articulation is recommended.”

Bowden Planning, the applicant, responded to Council’s concerns in a letter dated 26 June 2016. This letter formed part of the advertised material. The applicant stated that while the proposal exceeds the preferred height policies for the site, as set out in Clause 21.11-4 of the Bayside Planning Scheme, “The 4 storey discretionary height has been varied in permits issued by the Tribunal for properties south of the review site which are significantly smaller than the subject site. It is submitted that a larger built form is appropriate on this site.”
The applicant has made no changes to the proposal to seek to respond to either Council’s documented concerns in the 10 June 2016 letter, or to the objections raised by the community.

2. **Victorian Planning Provision and Planning Scheme changes**

**Better Apartment Design Standards**

Better Apartments Design Standards have been introduced to improve the liveability and sustainability of apartments in Victoria. The standards will come into effect in March 2017 when they are implemented in the Victoria Planning Provisions and all planning schemes. As Clause 54 and 55, the Design Standards set out a range of outcome ‘objectives’ and ‘standards’ that contain the requirements to meet the objective.

Transitional provisions apply, meaning that from March 2017 onward, applications lodged prior to the introduction of the new apartment provisions will be assessed under the planning scheme requirements that currently exist.

As the application was submitted in 2016, before the new Standards came into operation, the applicant has not provided a detailed analysis of the development against these new standards or provided some of the acoustic and design documents that would form part of the Application Requirements from March 2017. The apartment development cannot be assessed and the recommendation provided is not formally assessed against the new Design Guidelines.

However, on 29 November 2016, Council resolved at its Ordinary Council Meeting to support the Victorian Government’s new Better Apartment Design Standards.

Therefore, the Design Guidelines form both the State Government and Bayside Council’s position on what standard of apartment living should be met by developers for our future community.

**Planning scheme amendments**

Planning Scheme Amendment C139 has been prepared by Council and requires development to provide a financial contribution for drainage in this area. Council has adopted Amendment C139 and has submitted it to the Minister for Planning for approval. Whilst the Amendment is now considered ‘seriously entertained’, the Minister has not yet made a decision on the Amendment.

Planning Scheme Amendment C153 has been initiated by Council and proposes to modify the boundaries of the Special Building Overlay (SBO) and remove the Land Subject to Inundation Overlay from the Bayside Planning Scheme. The public exhibition process will conclude on 16 January 2017 and a report considering submissions will be presented to Council early in 2017. Case law confirms that proposed amendments to Planning Schemes are not considered to be ‘seriously entertained’ and applied in the assessment of permit applications until such time as they have progressed beyond a Panel and Adopted. As such, there is no statutory weight which can be given to Amendment C153.
3. Policy implications

Planning permit requirements

- Clause 34.01-4 (Commercial 1 Zone) – construct a building or construct or carry out works.
- Clause 34.01-1 (Commercial 1 Zone) – use of the land for accommodation because the residential frontage at ground level on Holyrood Street exceeds 2 metres.
- Clause 32.08 (General Residential Zone 2) – construction of two or more dwellings on a lot.
- Clause 43.02 (Design and Development Overlay 12) – construct a building or carry out works.
- Clause 44.05 (Special Building Overlay) – construct a building or to construct or carry out works.
- Clause 52.06 (Car Parking) – reduce the number of car parking spaces.
- Clause 52.29 (Land Adjacent to a Road Zone Category 1) – alter (including remove) access to a Road Zone Category 1
- Clause 52.34 (Bicycle Facilities) – reduce the requirement to provide bicycle facilities

4. Stakeholder Decision Making and Consultation

External referrals – Determining

Based on set criteria, Council is required to refer some types of application to external authorities.

Under Clause 66 of the Bayside Planning Scheme, a Determining Referral Authority can direct Council to refuse an application, or to approve it often subject to conditions.

Council is required to refuse the application for the reasons provided by a Determining Referral Authority if it is directed to. Council has no power to 'overturn' or dispute a determining referral authority and any concerns raised under this provision of the scheme hold significant weight.
Determining Referral Authority | Response
--- | ---
VicRoads under Clause 52.29 | **Objection, the application is required to be REFUSED.**

On 4 January 2017, VicRoads lodged a statement of grounds **objecting** to the proposal.

The grounds of objection are:

1. That the proposed development has not adequately considered the impact of expected traffic generation upon the safe and efficient operation of the arterial road network, nor any reasonably required mitigation measures.
2. That vehicles in the southern section of the existing Hampton Village carpark will be unable to perform the required movements to exit the land in a forward direction, particularly when the car park is full.
3. That insufficient information has been provided to be able to determine the traffic and safety implications of the location of the proposed loading bay and access ramp on Holyrood Street with regards to the existing bus stop and bus service.
4. That insufficient information has been provided to be able to determine the traffic and safety implications of the proposed additional on-street car parking spaces along both Hampton Street and Holyrood Street.

Melbourne Water under Clause 44.05 | Referred as the development is within the Special Building Overlay.

No objection, subject to conditions should a permit be issued.

Public Transport Victoria (PTV) under Clause 52.36 | Referred as the development proposed 60 or more dwellings.

No objection, subject to conditions should a permit be issued.

External referrals - Recommending

The application was not referred to any other Referral Authorities for their recommendation.

Internal advice

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

<table>
<thead>
<tr>
<th>Internal Advice</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arborist</td>
<td>No objection, subject to conditions.</td>
</tr>
<tr>
<td>Trees to be removed:</td>
<td>4</td>
</tr>
<tr>
<td>Trees to be planted:</td>
<td>1 in the frontage of 82 Holyrood Street</td>
</tr>
<tr>
<td>Traffic Engineer</td>
<td><strong>Objection</strong> to proposed car parking waiver and concerns relating to car parking layout.</td>
</tr>
<tr>
<td>------------------</td>
<td>--------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Drainage Engineer</td>
<td>No objection, subject to conditions.</td>
</tr>
<tr>
<td>Street Tree Arborist</td>
<td>No objection, subject to conditions.</td>
</tr>
<tr>
<td>Urban Design</td>
<td><strong>Concerns raised</strong></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 233 objections to the proposal have been received to date. The following summary provides details of the concerns raised by the objectors:

**Traffic / Parking**
- Traffic generation;
- Traffic safety issues;
- Inappropriate location / size of loading bay;
- Lack of provision for loading;
- Lack of provision for car parking on the site (resident and visitor);
- Lack of disabled parking facilities on site;
- Lack of charging facilities available for electric cars;
- Lack of bicycle parking provided on site;

**Built form**
- Neighbourhood Character;
- Height, bulk and mass of the building;
- Density;
- Lack of landscaping proposed;
- Lack of transition in building height / from to adjoining properties;

**Amenity impacts**
- Overshadowing and Overlooking;
- Poor internal amenity, particularly regarding secluded private open space;
- Wind tunnel effects;
- Noise impacts from future residents (including air conditioning noise);
- Lack of protection to basement from flooding impacts;
- Lack of infrastructure and community facilities to support proposal;
- The proposal has not adequately responded to the Permit issued for 11-15 / 427 Hampton Street in terms of setbacks, overlooking, overshadowing and visual bulk;
- Noise from trucks utilising the loading bay;
- Noise from waste collection;
- Noise and dust impacts during construction;
- Poor internal amenity with 16 apartments having a southerly aspect;

**Other**
- Lack of economic benefit to local residents;
- Waste management;
- Balconies overhanging road reserve;
- Insufficient dwelling diversity; and
- Potential of cafe being used for fast food chain which is of poor nutrition.

**Consultation meeting**
A consultation meeting was not held due to the very high number of objections to the proposal and that on assessment, officers determined to recommend that the application would not be supported.

The application fails to meet the Bayside Planning Scheme requirements to such an extent that only a major redesign of the proposal, which would require an amendment to the application, could deal with these concerns.

**5. Recommendation**

That Council:

A: Determines to **Not Support** the grant of a planning permit under the provisions of the Bayside Planning Scheme in respect of Planning Permit application 2016/390/1 for the land known and described as **427-461 Hampton & 82 Holyrood Street, Hampton**, for the **construction of mixed use building and a consequent reduction in the standard car and bicycle requirements and alteration (removal) of access to a road** on the following grounds:

**Strategic Planning**

1. The proposal fails to meet the vision for Bayside, as set out in Clause 21.30, by failing to ensure a dwelling diversity of housing is provided to meet the needs of the community over time and failing to support the provision of housing to enable people to live in Bayside throughout their lives, as the majority of the proposed units are two bedroom and will not meet accessible living requirements;

2. The proposed 8 storey height of the building proposed to face Hampton Street is contradictory to the Clause 21.11-4 Hampton Street Major Activity Centre as the maximum height planned for this location is 4 storeys;

**Design and Development**

3. Pursuant to Clause 43.02 (Design and Development Overlay 12) and Clause 21.11 of the Bayside Planning Scheme, the proposed design of the building does not respond to the features of the area, will create unreasonable visual amenity impacts from Hampton Street, Holyrood Street and the surrounding area, street setback of the building (to all levels) within 82 Holyrood Street and The west setback of Levels 1 and 2 of the building in the northwest corner of the site are inadequate, the East facing dwellings facing the internal courtyard will be presented with excessive visual bulk as a consequence of the height of the building within 427-461 Hampton Street;

**Amenity for adjacent existing and future residents**
4. The height of the building results in unreasonable and significant overshadowing, overlooking and excessive visual bulk to the adjoining developments to the south and west;

5. The development will unreasonably impact upon the amenity of dwellings located to the west of the site as a consequence of excessive overshadowing and visual bulk;

Internal Amenity for future residents of the proposed dwellings

6. The apartment residential dwellings will not meet the livability and internal amenity objectives for future residents of the development, as set out in the Bayside Planning Scheme at Clause 55 and Clause 21.03, as the windows and room depth of the southern ‘row’ of apartments does not provide adequate daylight, many of the apartments would not be able to be natural ventilated and the proposed internal courtyard is inadequate to achieve an appropriate level of on-site amenity, and specifically adequate levels of privacy and acceptable visual impacts;

Traffic and transport impacts – Council

7. The proposal does not provide for an adequate amount of on-site car parking for the future needs of the building as required by Clause 52.06;

8. The applicant has failed to demonstrate that the new traffic generated by the 108 dwellings and commercial floorspace would not have an adverse impact upon the Hampton Street/Holyrood Street road intersection both in terms of waiting times and the operation of the junction and in terms of the safety impacts for vehicles and pedestrians;

9. The proposal does not provide sufficient bicycle facilities, including shower and change rooms, in accordance with Clause 52.34 of the Bayside Planning Scheme;

10. The proposed basement layout is not designed in accordance with Clause 52.06-8 and will therefore not facilitate appropriate access for waste and delivery vehicles;

11. The gradient of the loading bay does not comply with AS2890.2:2002 and therefore will not facilitate appropriate provision for loading facilities in accordance with Clause 52.07 of the Bayside Planning Scheme;

Traffic and transport impacts - VicRoads

12. That the proposed development has not adequately considered the impact of expected traffic generation upon the safe and efficient operation of the arterial road network, nor any reasonably required mitigation measures;

13. That vehicles in the southern section of the existing Hampton Village carpark will be unable to perform the required movements to exit the land in a forward direction, particularly when the car park is full;

14. That insufficient information has been provided to be able to determine the traffic and safety implications of the location of the proposed loading bay and access ramp on Holyrood Street with regards to the existing bus stop and bus service; and

15. That insufficient information has been provided to be able to determine the traffic and safety implications of the proposed additional on-street car parking spaces along both Hampton Street and Holyrood Street.

B: Advises VCAT that it does not support the proposal, does not consider the matter can be mediated at Compulsory Conference and wishes to have the matter heard in
full at the Merits Hearing of 3 April 2017.

6. **Council Policy**

*Council Plan 2013-2017*

Relevant strategies of the Council plan include:

- **3.1.1** Developing planning strategies and policies with our community that enhance Bayside’s liveability along with its natural and built environment.
- **3.1.3** Advocating Council’s planning and urban design objectives.

**Bayside Planning Scheme**

- **Clause 11** Settlement
- **Clause 12** Environmental and Landscape Values
- **Clause 13** Environmental Risks
- **Clause 14** Natural Resource Environment
- **Clause 15** Built Environment and Heritage
- **Clause 16** Housing
- **Clause 17** Economic Development
- **Clause 18** Transport
- **Clause 19** Infrastructure
- **Clause 21.02** Bayside Key Issues and Strategic Vision
- **Clause 21.03** Settlement and Housing
- **Clause 21.05** Environmental Risks
- **Clause 21.06** Built Environment and Heritage
- **Clause 21.07** Economic Development
- **Clause 21.08** Open Space
- **Clause 21.09** Transport and Access
- **Clause 21.10** Infrastructure
- **Clause 21.11** Local Areas
  - 21.11-4 - Hampton Street
- **Clause 22.04** Business Employment Area Policy
- **Clause 22.06** Neighbourhood Character Policy (Precinct E2 – 82 Holyrood Street)
- **Clause 22.08** Water Sensitive Urban Design
- **Clause 32.08** General Residential Zone (Schedule 2)
- Clause 34.01 Commercial 1 Zone
- Clause 43.02 Design and Development Overlay (Schedule 12)
- Clause 44.05 Special Building Overlay
- Clause 52.06 Car Parking
- Clause 52.07 Loading and Unloading of vehicles
- Clause 52.29 Alteration of Access to a Road Zone Category 1
- Clause 52.34 Bicycle Facilities
- Clause 52.35 Urban Context Report and Design Response for Residential Development of five or more storeys (pre-Better Apartment Design Guidelines)
- Clause 52.36 Integrated Public Transport Planning
- Clause 65 Decision Guidelines

7. **Considerations**

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

7.1. **Assessment against Bayside Planning Scheme strategic policies and objectives**

The proposal is for the construction of a 26.17m tall (8 storey) mixed use building comprising Ground floor retail use one (1) 230sqm Café for up to 50 patrons and four (4) Shop units totalling 1,584 sqm and seven (7) storeys of apartment accommodation and three townhouses, containing a total 108 dwellings across the site.

The subject site is located within the Hampton Street Major Activity Centre (MAC) and has frontages to both Hampton Street and Holyrood Street. The subject site is predominately zoned Commercial 1, with a small part of the site zoned as General Residential (where the land faces Holyrood Street).
Principal for a well-designed mixed use development on the site

The purpose for the Commercial 1 Zone (C1Z) is to provide higher density development with a mixture of uses be provided in the commercial zoned land including retail, office, business, entertainment and community uses, with residential uses at densities complementary to the role and scale of the commercial centre. Residential development within the General Residential Zone Schedule 1 (GRZ1) should provide for moderate housing growth which respects the neighbourhood character. Design Development Overlay 12 (DDO12) applies.

Therefore the site is subject to two zone specific policy considerations, but all subject to the strategic policy visions and objectives of Clause 21.11 – Hampton Street Major Activity Centre at Clause 21.11-4 of the Bayside Planning Scheme.

The Hampton Street Framework Plan at Clause 21.11-4 shows that site is located within Hampton MAC Business Precinct 2: ‘Peripheral Business and Local Shopping Area’, where is it policy that developments encourage mixed use developments with shop, office and other non-residential uses on the ground floor and residential on upper levels as well as encouraging uses that contribute to the separate local shopping centre role of the business area north of South Road.
The Municipal Strategic Statement at Clause 21.03 of the Bayside Planning Scheme sets out that the overarching objective of accommodating population increases and responding to changing demographic profiles include the following strategies:

- Ensure a diversity of housing is provided to meet the needs of the community over time; and
- Support the provision of housing to enable people to live in Bayside throughout their lives; and
- Direct new medium density housing to Major Activity Centres, residential opportunity areas, particularly those with good access to public transport routes as identified in the Residential Strategic Framework Plan.

**Building Height**

The proposal is for the construction of a 26.17m tall (8 storey) mixed use building comprising Ground floor retail use one (1) 230sqm Café for up to 50 patrons and four (4) Shop units totalling 1,584 sqm and seven (7) storeys of apartment accommodation and three townhouses, containing a total 108 dwellings across the site.

DDO12 sets out that the Design Response regarding building heights is that:

- A building should not exceed the Preferred Building Heights (in metres and storeys) specified in the built form precinct provisions of this schedule; and
- Development on land in a Commercial Zone or Public Use Zone that is adjacent to a Residential Zone should be designed to achieve a transition in height and building form.

The Framework Plan for Hampton Street clearly states that the preferred height of future developments in this Built Form Precinct B is 13.5m, which equates normally to a building of up to 4 storeys. Pursuant to the DDO12, the Commercial portion of the land has a preferred height of 13.5 m (4 storeys) while the General Residential zoned land (82 Holyrood Street) has a mandatory maximum building height of 11.0m (3 storeys).

DDO 12 sets out at Page 5 of 7 the decision guidance for considering ‘Variations’ to the requirements of this schedule. It states that an application to vary the requirements in this schedule (including preferred building heights) must:

- Identify the design objectives, design requirements and outcomes to be achieved for the proposal as specified in this schedule.
- Include an assessment of how any departure from a preferred building height or building setback specified in this schedule assists in achieving the design objectives and built form outcomes to be achieved for the proposal as specified in this schedule.
- Demonstrate that the proposal will achieve the following outcomes (as appropriate):
  - A high standard of architectural design.
  - Innovative environmental design.
  - Minimal overshadowing of adjoining streets, public spaces and residential properties.
  - Minimal impact on the amenity of adjoining residential precincts.
  - Transitions in scale to lower building forms.
An application to vary the requirements in this schedule should also identify (where relevant) whether the site has any particular characteristics or features that warrant the variation and an alternative design response. Before deciding on an application, the responsible authority must consider a range of factors set out in the DDO12 decision guidelines, of note to this assessment is the need to consider:

- The design response;
- The impact of the upper levels of the building on surrounding residential land;
- The setback of upper levels of the building from any residential zoned land;
- The Hampton Street Centre Framework Plan contained in Clause 21.11; and
- Design Guidelines for Higher Density Residential Development (Department of Sustainability and Environment 2004)

At a proposed 26.17m, the main building seeks to significantly vary the Hampton Street Centre Framework Plan and DDO12 schedule requirements regarding Building Height. The variation is over double the schedule requirements - the preferred height being proposed to be exceeded by 12.67m. The main mixed use building is over twice as tall in meters, and twice as tall in storey heights, as the preferred height for the Hampton Street element of the site and the application has not demonstrated that the proposal will achieve the policy outcomes that may support the variation of the preferred building height because a high standard of architectural design has not been proposed, the building is not of innovative environmental design, it does not minimise overshadowing of adjoining streets and residential properties, it does not minimal impact on the amenity of adjoining residential precincts (and rather it adversely impacts upon them) and does not provide an appropriate transition in scale to the lower building forms on Holyrood Street.

An application to vary the requirements in this schedule should also identify whether the site has any particular characteristics or features that warrant the variation and an alternative design response. The subject site is indeed large, but the size of the site in and of itself does not lead the design response to be able to accommodate a proposal with 82% site coverage. Other design responses could have been proposed that may have responded more appropriately to the wide site, but the large, monolithic and bulky ‘box’ design which provides rear-facing units that significantly fail to meet reasonable internal amenity standards is not considered to provide the very special site characteristics and circumstances that would warrant support for such a large variation from the DDO height schedule. Further assessment of the building design concerns are set out below.

**Precedents for varying the preferred heights in Hampton Street**

The applicant has stated that “The 4 storey discretionary height has been varied in permits issued by the Tribunal for properties south of the review site which are significantly smaller than the subject site. It is submitted that a larger built form is appropriate on this site.” The applicant is referring to the building shown in the image below.
1-9/427 Hampton Street, Hampton. Existing part four, part six storey building.

This existing building also at 1-9/427 Hampton Street, on the southern-most portion of this large site, is an existing building that is six storeys in height. However, this VCAT approved development is designed to appear as four storeys from the street, with the part-five and part-six storey building significantly recessed upper floors and was successfully argued by the applicant to be a site responsive design.

VCAT have also approved a permit for a five (5) storey mixed use development at the intervening site on 11-15/427 Hampton Street, again, with a more site responsive design (ref 2013/0500). This permit has not been implemented.

VicTrack submitted an application to Council in December 2017 (ref: 2016/828, known as the land at 5A Railway Crescent and 1-25 Koolkuna Lane & 2-6 Willis Street, Hampton) for a building of seven (7) storeys in the Willis Street Precinct A1 where the preferred height limit is up to 6 storeys.

While Council is still considering the assessment of this application by VicTrack and no decision has been made, this example is given because this VicTrack application seeks a development one storey over the preferred height limit – not 4 storeys as proposed in this 427 Hampton Street application.

While a precedent has in some ways been set by these VCAT decisions for a variation to the preferred heights based on good design and site specific circumstances, notably VCAT approved development went only up to the 6 storey height limits that are supported elsewhere in Hampton Street MAC – nowhere is an 8 storey height supported in the Hampton MAC.

This building which VCAT approved on appeal is still two storeys lower than the proposal, and the major Willis Street VicTrack application only proposed 7 storeys in a centre location which has been allocated for significant redevelopment.

In short, the proposal is too tall and too dense for Hampton Street in any part of the MAC, but particularly on this site. The apartment style living which is planned for Hampton Street can be provided on a number of sites in the MAC, and therefore the smaller style of housing that is needed in Bayside to provide for future residents is already planned to be accommodated within the height limits shown in the framework plan.
There is no site specific or strategic justification for this height and density of building – it is a significant overdevelopment of the subject site.

On assessment, it is concluded that the planning and building design response proposed in this application in no way responds to the DDO12 criteria to justify this extreme variation from the Bayside Planning Scheme preferred height controls.

Other Building Design decision considerations

DDO 12 states that on land in a Commercial, Residential Growth Zone or Public Use Zone any new building should be designed to:

- Present a fine grained, human scale to streets and public open space.
- Provide active street frontages with shopfronts at street level particularly in the retail core, where shop fronts should predominate.
- Provide articulated and well-designed facades, fenestration, parapet treatments, other detailing and materials to provide interest at street level and reinforce the human scale.
- Maintain the vertical and horizontal design rhythm of buildings in the business precincts.
- Ensure corner sites are designed to address both street frontages with shopfront windows at street level.

The main mixed use building does not provide a good interface between Holyrood Street and Hampton Street, being inappropriately bulky and not providing an urban design transition between the activity centre C1Z and the General Residential Zone, where the character of that neighbourhood must be respected. The design response whereby the townhouse style of dwelling is used to the rear of the site to provide an interface between the ‘higher’ and ‘lower’ height areas is supported in principal, but the main building height and design is so overbearing on the townhouses and the adjacent approved Holyrood Street development that the use of this urban design principal is very poorly utilised. The height of the main building would need to be significantly reduced for this outcome to succeed. Neighbourhood character matters are considered below.

Design and Development Overlay 12 (DDO12), which applies to the whole site, seeks development which is compatible with the preferred future role and character of the Activity Centre. The DDO12 also seeks a transition in height and building form between the Commercial zone and a Residential zone. Considering this policy context, the principal of an architecturally responsive mixed us proposal broadly responds to aspirations for increased development in the Hampton MAC.

The extent of growth proposed however, meaning the height and setbacks, is not adequately respectful or complementary to the role and scale of the Activity Centre and adjoining residential area. There are also a series of other major deficiencies which are not adequately or appropriately resolved and which cumulatively result in an unacceptable development outcome. These deficiencies are addressed in more detail below.

In relation to street setbacks, the Design and Development Overlay (DDO) recommends that the ground floor of the building be located on the title boundary with the third floor (fourth storey) of the building set back a minimum of 5 metres from the front street boundary and any street boundary adjacent to a Residential Zone. In response, facing Hampton Street and returning into Holyrood Street, the proposal achieves a three-storey podium with the upper levels set back a minimum of 5 metres from the podium.
It is noted that balconies serving the third floor do encroach into this setback however, the response is generally consistent with the DDO and considered to be acceptable.

A consistent 5m setback is maintained through level four to eight of the building. The DDO only anticipates a five storey building and maintaining this consistent setback for 3 levels above this height is not necessarily appropriate, particularly without any other vertical differentiation to the massing. As already observed the height of the building presents excessive visual bulk.

Within the Residential zoned property at No. 82 Holyrood Street, the schedule to the DDO seeks buildings to be setback from the street in accordance with Clause 55 standards, except that the second floor should be set back a minimum of 4 metres behind the front wall of the floor immediately below. The site’s western neighbour is setback 8.4m from Holyrood Street, while a consistent 3m minimum setback is proposed to the dwellings facing Holyrood Street. This setback is not considered adequate and should be increased so the building sits’ approximately midway between the building element which is within the C1Z and the western neighbour. A greater setback will allow an improved transition into the residential street and ability to incorporate meaningful front setback landscaping.

The design should also adopt the 4m upper level setback preferred by the DDO within the area subject to the GRZ. Holyrood Street is comprised of one and two storey dwellings, usually with pitched roofing. Recessing the upper element of the building reduces its visual impact and better responds to the residential characteristics of this street.

DDO12 also seeks to achieve setbacks abutting a boundary containing a dwelling and located in a Residential Zone of 3m at ground floor, 5m at first floor, 10m at second floor and 15m at third floor. The proposal provides setbacks which comply with these requirements along the majority of the western boundary. A portion of the ground floor wall however, is sited on this boundary and is setback only around 1m, the setback to the first and second floor balconies are also 1m. The ground floor wall on boundary is acceptable however, the upper levels should be setback to accord with Standard B17 of Clause 55 to provide adequate space between the buildings, consistent with the characteristics of Holyrood Street.

Building Design

The proposed form within the commercial precinct provides active frontages to Hampton Street and returning into Holyrood Street, which is appropriate. This section of the building also provides weather protection at footpath level. The pedestrian interface facing Hampton Street has been divided into 4 sections to resemble the finer grained subdivision pattern of building forms along Hampton Street to the north and further to the south, which is also appropriate.

Council’s urban design consultant comments recommended that the corner of the proposal be further articulated to distinguish it from the rest of the Hampton Street facade. This concern is shared, since the east elevation of the upper level currently presents an unbroken mass along the length of the site and when combined with the building’s height is overly bulky.

The entrance to the building for the residential apartments on Hampton Street is in an appropriate location and will provide a transition from the street to residential interiors. However, the entrance as shown on the elevation plan does not show that the entrance will provide a clear sense of address. If a permit was to issue an enhanced entry with improved sense of entry / address should be required.
Although contrary to the guidelines of the Neighbourhood Character Precinct, it is considered that the flat roof form proposed is appropriate due to the connection of the site to the Commercial Zone. It is considered that the cement render framing elements provide appropriate depth to the façade, articulation to the form and an appropriate transition from the Commercial Zone to the Residential Zone.

The streetscape render indicates that the basement car park entrance as being light coloured. Referral comments from Council’s urban design consultant recommends the basement car parking entrance to be darker in colour so that it recedes next to the lighter coloured pedestrian entrance to the courtyard. If a permit was to issue this could also form a condition of approval.

7.2. Amenity

Internal Amenity

Internal and external spaces of the building are generally functional and appropriately sized. There are concerns however with daylight access to recessed bedrooms, which are at times as deeply set as 4.5m (i.e. Apartment 101-1.07) or more (i.e. Apartments 1.11-1.18), particularly when these are south facing (Apartments 1.08-1.10). The application was accompanied by a daylight assessment prepared by Sustainable Development Consultants. The report concludes that adequate daylight is provided to all habitable rooms however, the floor plates modelled do not appear to correspond with the application plans. Further the report does not assume the development of the southern neighbour which will further compromise the internal amenity of south facing dwellings. The design needs to be reviewed to ensure adequate daylight levels are achieved.

The proposed south facing dwellings have potentially further comprised amenity as a consequence of the interface to the approved building to the south. The proposal seeks to introduce southern facing apartments with a 4.5 metres setback to the building (used as open space for Apartments 1.08-1.10) and a minimum 3m setback to balconies. These balconies project over the living spaces of dwellings below. The abutting site to the south proposes apartments which are set back 4 metre from the common boundary meaning there would be an 8.5m separation between the glass line of facing apartments and a 7m separation between balconies. Views would also be available downwards, respectively, into the lower level terraces. At present the design would require privacy screening, which would further erode on site amenity for these dwellings. Overall the south facing dwellings raise a number of issues regarding on and off site amenity.

An open courtyard is proposed at the first floor, within the centre of the site. The open space area provides a division in the building form to allow for sunlight and daylight access to centrally located dwellings. On the first floor, the central courtyard has a minimum width of 9 metres. The referral comments received by Council’s urban design consultant recommends a minimum of 10 metres separation between facing apartments given the length of the courtyard. It is considered that this suggestion should be adopted since it will also assist to alleviate overlooking from west facing apartments into the private and secluded open space of ground level east facing apartments without resorting to privacy screening.

The additional meter over the 9m suggested by Clause 55 will allow for some privacy within these outdoor areas. The east wall of the second floor plan also needs to be articulated in some manner (potentially through the incorporation of glazing) to provide an improved outlook for dwellings opposite. The outlook for east facing dwellings abutting the courtyard would be to 7 levels of dwellings orientated towards them, setback only 9m.
While there are modulations in the built form and material differences, the visual outlook is considered to be excessive and further supports the case that the building’s height is excessive. It is noted that internal sections did not accompany the planning permit application.

A Landscape Plan could be required if a permit was to issue to demonstrate that this shared outdoor space is functional and attractive for the future residents of the building.

Dwellings are provided with a mixture of above-bonnet storage (4m³) and stand-alone cages (6m³- 12m³). Council’s Traffic department recommends that the above-bonnet storage be relocated as this will limit the type of vehicles available to park in these spaces. It is not considered necessary to adopt this suggestion, since above bonnet storage is a typical part of modern apartment developments. Moreover, it should not prevent most vehicles from entering in a forward direction. The amount of storage proposed is considered appropriate for apartment style developments.

Each dwelling is provided with a minimum size of secluded private open space at the ground floor of 27sqm. For the upper floors, each dwelling is provided with a minimum of 8sqm of balcony. All balconies are greater than 1.6m in width. The provision of outdoor space is acceptable.

Balconies have been designed to be orientated to the north, east and west where possible to achieve adequate sunlight availability. Eight apartments are located on the southern side of the building which have a solely southern orientation. At the first floor, these southern facing apartments have a larger balcony being 4.6m in width, while at the upper floors balconies are 2.8m in width. This is considered acceptable. Shadowing diagrams provided indicate that dwellings facing the internal courtyard will receive an acceptable level of access to daylight. At each time of the day from 12 noon to 3pm, various areas of the common courtyard area will receive sunlight.

**External Amenity**

Primarily since the site is on a corner, the amenity related consequences of the proposal are limited to the immediate south and western neighbours. These interfaces are considered below.

**South**

The adjoining approved building to the south is five storeys in height and it provides a 4m north setback. This setback area is used for open space for north facing, first floor apartments. This means that there would be a 6m setback between the proposed south facing balconies and the approved north facing balconies, and a 3m setback from proposed south facing balconies and ground level open spaces. It is considered that this arrangement results in unreasonable privacy impacts for the neighbouring building, in the event it proceeds. Screening should be required of south facing balconies.

There is also significant overshadowing of the adjoining development and as a consequence of the building’s height above that recommended by DDO12 this shadowing extends further and for longer than expected and is considered to be unreasonable. For the same reason, the visual consequences of the site upon the southern neighbours are excessive.
West

To the west of the site at 74-80 Holyrood Street there are numerous balconies, windows and ground floor areas of private and secluded open space orientated towards the east nearby the common boundary. Shadow diagrams submitted with the permit application show that at 9am all of these spaces are completely shadowed. At 10am there is a lesser impact although, there are still some outdoor spaces which are completely shadowed. The affected spaces are unlikely to currently meet the requirements of Standard B21 of Clause 55 which is one of the decision guidelines within the C1Z and particularly relevant to apply at the interface of the GRZ. The loss of significantly more sunlight than currently exists, as proposed by the application, is not reasonable or acceptable.

All habitable room windows within 9 metres of adjoining habitable room windows and secluded private open space have been screened appropriately to the west of the site. Specifically, the first floor west facing balconies are screened to a height of 1.7m. West facing habitable rooms and windows at level two are sufficiently recessed to alleviate unreasonable overlooking.

In terms of visual bulk it is noted that outside of at the very front of the site, the development adopts the setback parameters outlined within DDO12 and described above opposite the east facing window and balconies at the western neighbour. While DDO12 does not prescribe setbacks above level four, this does not mean that any upper levels can adopt the same setback. The additional height above that sought by the DDO will cause unreasonable visual consequences for the site’s western neighbours, particularly those abutting the C1Z area of the site.

It is also noted that windows within 74-80 Holyrood Street are provided with an adequate setback to achieve Standard B19 (Daylight to existing windows) of Clause 55.

7.3. Traffic and transport

The development proposes basement car parking, accessed from a new location in Holyrood Street. The basement entry is contained within the C1Z area of the site. A specific parking allocation has not been provided although all commercial car parking must be confined to the C1Z area of the land.

VicRoads objection

VicRoads are a determining referral authority, and are a party joined to the VCAT appeal for this application.

VicRoads objects to the issuing of a permit for the development on the following grounds:

- That the proposed development has not adequately considered the impact of expected traffic generation upon the safe and efficient operation of the arterial road network, nor any reasonably required mitigation measures.

- That vehicles in the southern section of the existing Hampton Village carpark will be unable to perform the required movements to exit the land in a forward direction, particularly when the car park is full.

- That insufficient information has been provided to be able to determine the traffic and safety implications of the location of the proposed loading bay and access ramp on Holyrood Street with regards to the existing bus stop and bus service.

- That insufficient information has been provided to be able to determine the traffic and safety implications of the proposed additional on-street car parking spaces along both Hampton Street and Holyrood Street.
Council concurs with VicRoads concerns and also objects to the proposal on the traffic and transport matters.

**Car Parking**

The following table summarises the car parking requirement set out in the Planning Scheme and the proposed provision of parking. Note that this table has been prepared on the assumption that the retail space will be used as a shop and that the café will accommodate 50 patrons. This needs to be verified by the permit applicant.

<table>
<thead>
<tr>
<th>Proposed Use</th>
<th>Quantity / Size</th>
<th>Statutory Parking Rate</th>
<th>Car spaces provided</th>
</tr>
</thead>
<tbody>
<tr>
<td>One or two bedroom dwelling</td>
<td>76 dwellings</td>
<td>76 spaces (1 per dwelling)</td>
<td>76+64 = 140 spaces</td>
</tr>
<tr>
<td>Three or more bedroom dwelling</td>
<td>32 dwellings</td>
<td>64 spaces (2 per dwelling)</td>
<td></td>
</tr>
<tr>
<td>Visitor Parking (dwellings)</td>
<td>108 dwellings</td>
<td>21 (1 space per 5 dwellings)</td>
<td>14</td>
</tr>
<tr>
<td>Restaurant (Café)</td>
<td>50 patrons</td>
<td>20 (0.4 spaces to each patron)</td>
<td>2</td>
</tr>
<tr>
<td>Shop</td>
<td>1,584sqm</td>
<td>63 (4 spaces to each 100sqm)</td>
<td>16</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>244</strong></td>
<td></td>
<td><strong>172</strong></td>
</tr>
<tr>
<td><strong>Shortfall</strong></td>
<td></td>
<td></td>
<td>Reduction of 72 car parking space</td>
</tr>
</tbody>
</table>

In response to the provision of car parking, Council’s traffic engineers have made the following comments:

- The Planning Scheme car parking rates are appropriate and should be provided.
- A visitor car parking rate of 0.15 spaces per dwelling should be provided (not 0.12 as adopted by the applicant).
- Given the parking allocated for the café, is recommended that the café be limited to daytime operation only (opening no later than 5pm) by way of a suitable permit condition.
- A peak parking demand rate of 3 car spaces per 100m² would be supported (consistent with the Hampton Parking Precinct Plan, Maunsell, August 2006), which equates to a demand of up to 48 car spaces for the retail components.

Council’s engineers also noted:

- Traffic Group undertook parking utilisation surveys at 9am, 12noon, 1pm, 7pm and 8pm on Friday 18 March 2016 and at 12pm, 1pm, 7pm and 8pm on Saturday 19 March 2016. Given the substantial waiver of customer car parking that is sought, surveys should have been undertaken for a longer period during business hours.
- Nonetheless, the survey data shows that the peak demand occurred on the Saturday at 1pm, when there were 67 vacant on-street parking spaces. Many of these spaces are located in front of residential properties.
• The site has an existing parking deficiency of approximately 17 spaces (i.e. spaces that are currently being accommodated on-street). As the anticipated peak customer/visitor off-site parking demand is 43 spaces, this equates to an additional 43 – 17 = 26 car parking spaces that would need to be accommodated on-street.

• Whilst there is sufficient availability of car parking on the whole in the surrounding area, the proposed development alone would result in a significant reduction of the spare capacity (utilising up to 38% of all available parking spaces).

• It is noted that Traffix Group also surveyed the off-street car park at the frontage of the site, finding reasonable availability of parking. However, aerial photography shows that this car park can become far more utilised. One recent photo showed 37 parked cars (whereas Traffix Group found a maximum demand of 29 cars).

And concluded:

Based on the above assessment, Traffic Engineering makes the recommendation that:

• The visitor car parking allocation is increased from 14 spaces to 16 spaces; and
• A total of 20 car spaces are made available for customer use in the area immediately following the access ramp (with this area segregated off to ensure the resident/employee parking spaces are separately and securely accessed).

This will leave 16 surplus car spaces.

Additionally, a note must be placed on any permit granted to state that occupants will not be eligible for car parking permits."

Selling of car parking

The application also proposes that an additional pool of 38 parking spaces is provided and the Traffix Group report indicates that these spaces “will be provided for residents and staff in the future” and that they “will be sold to residents who determine they require additional parking”.

This selling of car parking, which appears to be in contravention of the Planning Scheme intent at Clause 52.06 as well as the Bayside Community Plan 2016 to provide sufficient car parking on site, it not supported.

On the basis of the expert advice provided by Council’s engineering department the waiver of parking is not supported.

Traffic matters

Council’s traffic engineer has advised that they generally concur with the principals of the applicants submitted distribution assessment has been undertaken and it is anticipated the majority of traffic would be generated to/from Hampton Street. However, a SIDRA analysis is required in order to be able to fully assess the level of impact at the Hampton Street / Holyrood Street intersection and ascertain the true impact of the additional traffic generated on the surrounding street network.

Council is concerned that the proposed development has not adequately considered the impact of expected traffic generation upon the safe and efficient operation of the local and wider arterial road network and has not
Bicycle Parking
Clause 52.34 of the Planning Scheme specifies that the following bicycle parking provisions are required:

- 22 resident spaces and 11 visitor spaces for dwellings;
- 2 employee spaces and 2 shopper spaces are required for the proposed restaurant / cafe use; and
- 3 employee spaces and 3 visitor spaces are required for the proposed shop / retail component.

As 34 bicycle spaces are proposed, there is a shortfall of 9 spaces and the development fails to provide shower and staff change facilities that are needed to actively encourage future workers to be able to travel to the site by sustainable transport modes in this MAC location.

Loading Facilities
The provision of a loading bay meets the requirement of Clause 52.07, and the dimensions exceed the minimum of 7.6m x 3.6m. The available height clearance may meet the requirement of 4.0m but this cannot be ascertained from the plans with 100% surety. This requirement must be met.

The loading bay would require trucks to reverse in from Holyrood Street, which is considered acceptable (noting that achieving forward entry and exit would require a much larger loading area). The gradient of the loading bay is 1:16, which does not comply with AS2890.2:2002.

Waste Collection
The waste storage area is located in the basement, inconveniently far from the lift core.

No Waste Management Plan has been provided and nor has it been indicated how exactly waste will be collected and by what type of vehicle. A suitable vehicle must be able to enter the basement (unhindered by the ramp gradients and height clearance restrictions), stop in a suitable location (not blocking any parking) and manoeuvre conveniently before exiting again in a forward direction. From the application documentation, it appears that waste vehicle access is insufficient for the scale of development proposed. Failure to provide sufficient waste management will result in adverse impacts for future residents and for business owners operating from the shops and cafes.

A revised proposal with an improved functional building design could adequately deal with these matters.

7.4. Street tree removal

The proposed basement accessway relies upon the removal of a street tree. The removal of this tree has not been justified and is not supported.
7.5. **Vegetation & Landscaping**

The application plans show the removal of 4 trees from the site. The table below identifies those trees protected by the Local Law and those which are not protected by any statutory mechanism. None of the trees identified below are native to Australia.

<table>
<thead>
<tr>
<th>Local Law protected trees</th>
<th>Trees not protected</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proposed removal for retention</td>
<td>Proposed removal for retention</td>
</tr>
<tr>
<td>Tree 9, Liquidambar</td>
<td>Tree 7, Silver Tarata</td>
</tr>
<tr>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Tree 8, Loquat</td>
<td>No</td>
</tr>
<tr>
<td>Tree 12, Chinese Elm</td>
<td>No</td>
</tr>
</tbody>
</table>

Council’s Arborist in their referral response advised that there is no objection to the removal of trees from the site.

7.6. **How could the Building Design be revised to address these concerns?**

The current proposal cannot be modified by permit conditions to address the above significant concerns as the changes that would be required would be so significant they would result in a complete transformation of the proposal.

Should VCAT be minded to approve a modified development on the site that seeks to address officers concerns as specified in this report, the following is provided.

**Building height and design**

The building would need to be significantly redesigned and reduced in height, scale and bulk to provide a development that would visually be ‘read’ as a 4 storey development from Holyrood Street to be able to satisfy Council’s adopted policy vision for this site.

Reducing the height of the main building and the number of dwellings within would reduce the other consequential adverse impacts that this building will have on the MAC, such as car parking and traffic impacts (because the car parking standards could be met and traffic generation would be reduced), and less units will inevitably mean a less ambitious floorplan that can provide a better standard of internal amenity for future residents.

Should a permit be issued for the proposal, the scheme would also need to be significantly amended to:

- Reduce the height of the building to better respond to the existing context and emerging character;
- Provide further articulation to the corner element of the building to distinguish the building return from the rest of the Hampton Street façade;
- Provide a minimum separation of 10m between facing apartments across the central courtyard;
• Improve the internal amenity of the building, most notably to provide an additional circulation core to serve northwest apartments and opaque privacy glazing to east side of corridor at Level 2 adjoining central courtyard;

• Provide a greater southern boundary setback (adjacent to the approved development at Holyrood Street) as from the shadow diagrams and drawings provided with the application do not demonstrate that the adjacent residential dwellings would not have a compromised amenity from the overshadowing and overbearing of the proposed building; and

• Seek to retain the street tree.

Overall, the design of the future building on this site should:

• Present a fine grained, human scale to streets and public open space;

• Provide active street frontages with shopfronts at street level particularly in the retail core, where shop fronts should predominate;

• Provide articulated and well designed facades, fenestration, parapet treatments, other detailing and materials to provide interest at street level and reinforce the human scale;

• Maintain the vertical and horizontal design rhythm of buildings in the business precincts; and

• Demonstrate that is sufficiently addresses both street frontages of Hampton and Holyrood Streets.

Internal amenity

On redesign, the future building on this site should meet the selected Clause 55 standards and the new design standards of the Better Apartment Design Guidelines.

Landscaping changes

Two trees (Trees No. 10 & 11) are located on adjoining sites with their Tree Protection Zones (TPZ) extending into the subject site. As such consideration must be given to the impact of the development upon these trees. Council’s Arborist has advised that a Tree Protection Plan and Tree Management Plan will be required to be submitted to ensure these trees remain viable both during and post construction. This could be addressed via a condition if a Permit were to issue.

In addition to the above assessment, Council’s Arborist has reviewed the submitted landscape plan and advised that further detail is required. A Landscape Plan is also required for the first floor, as trees are proposed. A canopy tree(s) is/are required for the Holyrood Street frontage within 82 Holyrood Street.

Traffic and transport changes

Council’s Traffic Engineers would require the following changes to the proposal in order to be able to support the development:

• It is recommended as a condition of permit that the size of delivery vehicle be limited to no greater than 6.4m.

• To ensure a 6.4m truck can stop and unload clear of the footpath, it is recommended the total length of the loading bay be increased to 9.4m (which allows 3.0m for the tailgate and unloading activities) and the gradient must be lessened to 1:25.
- A Waste Management Plan should be provided and the building designed to ensure that a suitable vehicle can enter the basement (unhindered by the ramp gradients and height clearance restrictions), stop in a suitable location (not blocking any parking) and manoeuvre conveniently before exiting again in a forward direction. A Swept path analysis for the waste vehicles must also be provided.

- The full car parking requirement for residents and visitors as well as the commercial floorspace on site. When the number of dwellings are reduced by the removal of the excessive upper storeys, the basement proposed should be redesigned to achieve car parking compliance with Clause 52.06.

- A Section 173 Agreement should be entered into by the owner to ensure that the basement car parking required by the Planning Scheme for residents and commercial workers and visitors is not allocated or sold inappropriately, and that residents understand on-street car parking permits will not be granted, as this will have an adverse impact on the on-street parking in surrounding streets and on resident travel patterns.

- Clause 52.34 specifies that were 5 or more employee spaces are required, a shower/change room must be provided. This requirement must also be met on site. The bicycle layout should also be revised to allow for 20% of bicycle spaces be at ground level (horizontal), be in a protected area where they cannot be struck by vehicles and the resident / employee bicycle parking be separately secured.

- Fences for the cafe and townhouse 1 to be suitably splayed to ensure that the owners do not place vision-obstructing objects in these areas;

- The proposed intercom system to be relocated;

- Ramp gradients to be revised to comply with Clause 52.06 and Australian Standards;

- Clearance heights to the basement to comply with Clause 52.06 and Australian Standards;

- Convex mirrors to be installed due to poor sight lines;

- Revision of vehicle passageways or smoke lobby to ensure appropriate sight lines are provided;

- Car parking spaces adjacent to walls or other high obstructions to be widened by 0.3m;

- The disabled space dimensions to comply with AS/NZS 2890.6:2009;

- Column dimensions adjacent to car spaces to be dimensioned to ensure compliance;

- Relocation of storage cages from above-bonnet to on-ground storage; and

- A 3m x 3m splay is recommended at the north-eastern corner of the property. This would facilitate an improved level of safety for pedestrians.
7.7. **Objections received**

Issues raised by objectors that have not been addressed in the assessment above, are discussed below.

**Lack of charging facilities available for electric cars**

This is not a requirement of the Planning Scheme.

**Overshadowing**

The proposal will result in unreasonable overshadowing to adjoining properties as outlined in the shadow diagrams provided.

**Wind tunnel effects**

The proposal is not anticipated to create unreasonable wind tunnel at the proposed height and given the existing development within the surrounding area.

**Impact on views**

Whilst it is recognised that views may form part of residential amenity, there is no specific controls for this property that protects residents’ rights to a view. It is not considered that the extent of views lost or the significance of the view would warrant refusal or modification of the application.

**Noise impacts from future residents (including air conditioning noise)**

The site is located within a both the Commercial Zone and the General Residential Zone. Within the General Residential Zone, the use of the land for dwellings does not require a Planning Permit. Within the Commercial Zone, it is considered that noise impacts will be less than traditional commercial properties.

**Lack of protection to basement for flooding impacts**

The application was referred to Melbourne Water who had no concerns with the proposed development subject to conditions.

**Lack of infrastructure and community facilities to support proposal**

The capacity of services in the area is a matter for the relevant servicing authorities. The applicant will be required to ensure appropriate connections at the subdivision stage.

**Lack of economic benefit to local residents**

This is not a relevant planning consideration.

**Noise from trucks utilising the loading bay**

It is considered common practice for vehicles to unload goods within a Commercial Zone. It is not considered that noise will be any greater front the loading bay than on the street kerb. It is noted that the loading bay is set back from the residential interface of the site.

**Noise from waste collection**

Although a waste management plan has not been provided with the application, it is assumed that waste collection will occur from within the basement and therefore noise impacts will be minimised.
Noise and dust impacts during construction

If a Permit were issued for the development, a Construction Management Plan would be required to be submitted which would detail how such potential construction impacts are to be managed.

Some noise and other off site impacts are inevitable when any construction occurs. The developer will be required to meet relevant Local Law and EPA regulations regarding construction practices to ensure these impacts are mitigated.

Balconies overhanging road reserve

All balconies proposed are within the title boundaries of the site.

Potential of cafe being used for fast food chain which is of poor nutrition

A food and drinks premises (including a take away or ‘fast food’ premises) is an ‘as of right use’ meaning it falls within Section 1 within a Commercial Zone and does not require use planning permission.

Support Attachments

1. Development Plans ↓
2. Site and Surrounds Imagery ↓
Item 4.3 – Matters of Decision
Figure 1. Objector map.

<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>

Note: Many objections have been received from beyond the map boundaries.
Figure 2. Aerial image of wider site context.
Figure 3. Aerial image of the subject site and surrounding context.
View looking east towards five storey development at 425 Hampton Street
View looking south along Hampton Street with the subject site terminating beside the five storey development at 425 Hampton Street.

View looking north along Hampton Street towards with the subject site to the left.
View looking west towards the subject site (427 to 455 Hampton Street).

View looking north-west to the subject site (429-455 Hampton Street).
View looking north from the boundary of the subject site with 510-512 Hampton Street in the foreground and the street intersection with Littlewood Street in the background.
View looking east along Littlewood Street, opposite the subject site.
View looking south along Hampton Street with the subject site terminating beside the five storey development at 425 Hampton Street.

View looking north along 457 and 459-461 Hampton Street
View looking south-west across Hampton Street towards the street intersection with Holyrood Street. The subject site is in the foreground with 425 Hampton Street in the background.

View looking south-west along Hampton Street with 465 and 463 in the foreground, the street intersection with Holyrood Street and subject site beyond.
View looking north-east towards 520-526 Hampton Street (opposite the subject site) and to 528 Hampton Street (Hampton Primary School).
View looking west towards 459-461 and 457 Hampton Street with crossover to 427 Hampton Street to the right of the picture.
North elevation of 459-461 Hampton Street.
View looking south-east to 84 and 82 Holyrood Street and the side elevation of 459-461 Hampton Street.
View looking north from the subject site with Holyrood Street in the foreground and 463 Hampton Street beyond.

View looking south along Holyrood Street
View looking south towards 82 and 84 Holyrood Street.
View looking south towards 74 and 82 Holyrood Street.

View looking east along Holyrood Street towards the junction with Hampton Street.
View looking south-west towards the corner of Holyrood Street and Exon Street.
4.4 22 SIMS STREET, SANDRINGHAM
NOTICE OF DECISION TO GRANT A PLANNING PERMIT
APPLICATION NO: 2016/536/1 WARD: SOUTHERN

City Planning & Community Services - Development Services
File No: PSF/15/8755 – Doc No: DOC/16/278480

1. Purpose and background

To report a planning permit application for the alterations and addition, including a first floor addition and a roof deck to the existing dwelling on a lot with an area of 352 square metres (refer Attachment 1), at 22 Sims Street, Sandringham (refer Attachment 2).

<table>
<thead>
<tr>
<th>Applicant</th>
<th>Peter Brown Architects Pty Ltd</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date application received</td>
<td>24 October 2016 (Amended)</td>
</tr>
<tr>
<td>Statutory days expired</td>
<td>26 December 2016</td>
</tr>
</tbody>
</table>

2. Policy implications

Planning permit requirements

Clause 32.08-3 (General Residential Zone – Schedule 3) – Construction and extension of one dwelling on a lot 500 square metres.

Clause 43.02 - 2 (Design and Development Overlay – Schedule 8) – A permit is required to construct a roof deck.

Planning scheme amendments

Planning Scheme Amendment C139 has been prepared by Council and requires development to provide a financial contribution for drainage in this area. Council has adopted Amendment C139 and has submitted it to the Minister for Planning for approval. Whilst the Amendment is now considered ‘seriously entertained’, the Minister has not yet made a decision on the Amendment.

Amendment C153 proposes to remove the SBO from the site and as such will no longer apply to an application on this site.

3. Stakeholder Consultation

External referrals

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

Internal referrals

The application was not referred any to Council departments.

Public notification

The application was advertised pursuant to Sections 52(1) (a) and (d) of the Planning and Environment Act 1987, and two objections were received. The following concerns were raised:

- Overlooking; and
- The sides of the proposed roof deck is not setback at least 2 metres on all side from the roof edge of the storey immediately below in accordance with DDO8.
Consultation meeting
The applicant declined a consultation meeting.

4. Recommendation
That Council:

Issues a Notice of Decision to Grant a Permit under the provisions of the Bayside Planning Scheme in respect of Planning Application 2016/536/1 for the land known and described as 22 Sims Street, Sandringham, for the alterations and additions to a dwelling on a lot less than 500sqm 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 a permit. The plans must be generally in accordance with the application plans, Council’s date stamped 24 October 2016 but modified to show:
   a) Deletion of proposed roof deck, and associated access structure and materials, and any outdoor amenity area on the roof.
   b) A schedule of construction materials, external finishes and colours (incorporating for example paint samples).

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. 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.

4. All pipes, 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.

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

6. Before occupation, fixed privacy screens to the balcony and roof deck 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. Before the development starts, the permit holder must apply to Council for the Legal Point of Discharge for the development from where stormwater is draining under gravity to the Council network.

8. 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.
- Prior to commencement of any building works, an Asset protection Application must be taken out. This can be arranged by calling Asset Protection Administrator on 9599 4638.

5. Council Policy

Council Plan 2013-2017

Relevant strategies of the Council plan include:

- 3.1.1 Developing planning strategies and policies with our community that enhance Bayside’s liveability along with its natural and built environment.
- 3.1.3 Advocating Council’s planning and urban design objectives.

Bayside Planning Scheme

- Clause 11 Settlement
- Clause 12 Environment and Landscape Values
- Clause 15 Built Environment and Heritage
- Clause 16 Housing
- Clause 21.02 Bayside Key Issues and Strategic Vision
- Clause 21.03 Settlement and Housing
- Clause 21.04 Environment and Landscape Values
- Clause 21.06 Built Environment and Heritage
- Clause 22.06 Neighbourhood Character Policy
- Clause 32.08 General Residential Zone (Schedule 3)
- Clause 43.02 Design and Development Overlay (Schedule 8)
- Clause 54 One Dwelling 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 F1 and the proposal is considered to demonstrate a high level of compliance with the preferred future character statement and precinct guidelines as contained in Attachment 4.
The proposed alterations, addition, and a roof deck at 22 Sims Street generally respects the existing neighbourhood character. The proposal proposes to maintain the existing front fence, the side setback to the west boundary and provide adequate articulation. The proposal has also maintained the existing visual separations on the side boundary, and maintained front setback in order to continue the existing rhythm on Sims Street. The proposed roof deck is well recessed from the frontage minimising visual impact to the streetscape.

6.2. Roof Deck (Design and Development Overlay – Schedule 8)

The subject site is located within the Sandringham Village Major Activity Centre and specifically within Built Form Precinct F which has a maximum height control of 11.0 metres (2 storeys + attic). The proposed built form is two storeys with an overall height of 8.42 metres. The proposed built form complies with the required height for the precinct.

The plans show a roof deck above the first floor level. The Design and Development Overlay – Schedule 8 (DDO8) states that in a residential zone a roof deck should:

- Be designed and constructed of materials that integrate with the architectural styles and form of the building.
- Be set back on all sides at least 2 metres from the roof edge of the storey immediately below to minimise the visual impact on the street and adjoining properties.
- Be designed to limit views into secluded private open space and habitable room windows of adjacent dwellings.
- Be accessed by a structure that is designed and located to have minimal impact on the street and adjoining properties, does not enclose any useable floor space and does not exceed 2.4 metres in height (measured from floor level at the point of access onto the roof deck).

The roof deck has generally been designed to integrate with the architectural style and form of the building, and does not include any elements that exceed a height of 1.7 metres except for the access stairs, and will have minimal impact on the streetscape and adjoining properties because of a 13.9 metres front setback. Although the setback for a roof deck is not a mandatory requirement at least 2 metres to all sides should have been proposed. The proposal only provides a side setback of 1.5 metres to the west boundary but fails to provide a side setback to the east boundary. The roof deck could be conditioned to achieve compliance however, it is considered that this will render an unusable space as it will provide approximately 15.6 square metres. As such, a condition to delete the roof deck is included in the recommendation.

6.3. Compliance with Clause 54 (ResCode)

An assessment against the requirements of Clause 55 is provided at Attachment 4. Those non-compliant standards are discussed below:
Side and Rear setback (Standard A10)

<table>
<thead>
<tr>
<th></th>
<th>Ground Floor</th>
<th>First Floor</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Required</td>
<td>Proposed</td>
</tr>
<tr>
<td>East (side)</td>
<td>0m or 1m</td>
<td>0m</td>
</tr>
<tr>
<td>West (side)</td>
<td>0m or 1m</td>
<td>1.84m</td>
</tr>
<tr>
<td>South (rear)</td>
<td>0m or 1m</td>
<td>13.32m</td>
</tr>
</tbody>
</table>

Standard A10 seeks to ensure that 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 proposal seeks a 2.56 metres variation to the side setback to the first floor east boundary. The proposed plans show that the first floor east elevation is setback 0 metres, the Standard requires a 2.56 metres side setback. It is considered that the variation should be allowed because No.24 is also built to the boundary and therefore consistent with the existing character of the neighbourhood.

The proposal seeks a 480mm variation to the first floor west elevation. The purpose of Standard A10 is to ensure that the proposal respects the existing or preferred neighbourhood character and limits the impact on the amenity of existing dwelling. It is considered that the proposal has met the objective by maintaining the existing separation in order to respect the existing character. Also, due to the site constraints of the site it would be reasonable to have this type of development on such a site.

Walls on Boundary (Standard A11)

The proposal shows to the east boundary a significant length of the wall to be built on boundary. The overall length of wall when built will be 26.84 metres. The maximum length permitted is 14.20 metres.

The variation to the length of wall on the eastern boundary is considered acceptable because 26.84 metres will be concealed by the abutting wall to No.24. As such, the proposal will not cause unreasonable visual bulk or cause significant overshadowing to secluded private open space.

Overshadowing (Standard A14)

Shadow diagrams submitted with the application demonstrate that at least 75 per cent, or 40 square metres of adjoining dwellings secluded private open space do not receive at least five hours of sunlight between 9am to 3pm on 22 December. Adjoining property at No.20 approximately 40.9 square metres of secluded private open space is overshadowed at 9am to 10am on 22 December. No.24 is not unreasonably overshadowed although at 3pm on 22 December there is some overshadowing. Due to the site being very small it is considered that compliance cannot be achieved on a site this size. Also, with the recommendation to delete the roof deck, it is considered that overshadowing to both abutting properties will be minimised.
6.4. **Objections received**

Issues raised by objectors that have not been addressed in the assessment above, are discussed below.

**Overlooking**

This objection raised relates to the overlooking from the proposed balcony and roof deck into the private open space and habitable room of No. 20 Sims Street.

Under the recommendation for the development, the proposed roof deck is conditioned to be deleted.

The proposed balcony is 5.52 metres wide and 1.95 metres in length with a planting bed, and a 1.7 metres timber slats screen of 20% transparency to the west elevation. Standard A15 objective is to limit views into existing secluded private open space and habitable room windows. A balcony should have permanently fixed external screens to at least 1.7 metres above floor level and be no more than 25% per cent transparent. It is considered that the proposed balcony does limit views into the existing secluded private open space and habitable room windows to No. 20. The proposed balcony complies with Standard A15.

The proposed roof deck complies with the requirements. A 1.7 metres timber screening on the west and east elevation is proposed. The timber screening will limit views to adjoining secluded open space and habitable windows.

**Support Attachments**

1. Development Plans ↓
2. Site and Surrounds Imagery ↓
3. Clause 54 (ResCode) Assessment ↓
4. Neighbourhood Character Assessment Precinct F1 ↓
ATTACHMENT 2

Site and Surrounds Imagery

Figure 1 Aerial overview of the site and surrounds

<table>
<thead>
<tr>
<th>Legend</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject site</td>
<td>★</td>
</tr>
<tr>
<td>Objector(s)</td>
<td>●</td>
</tr>
</tbody>
</table>
Figure 2 View towards the site from the north

Figure 3 View towards No.24 Sims Street from the northeast
Figure 4 View towards No.20 Sims Street from the northwest
## ATTACHMENT 3

### ResCode Clause 54 (One Dwelling on a Lot) Assessment

<table>
<thead>
<tr>
<th>Title and Objective</th>
<th>Complies with Standard?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A1 Neighbourhood Character</strong></td>
<td>Yes</td>
<td>Refer report.</td>
</tr>
<tr>
<td>Design respects existing neighbourhood character or contributes to a preferred neighbourhood character. Development responds to features of the site and surrounding area.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>A2 Integration with Street</strong></td>
<td>Yes</td>
<td>The dwellings appropriately address the street and entries are clearly identifiable from either the streetscape.</td>
</tr>
<tr>
<td>Integrate the layout of development with the street.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>A3 Street Setback</strong></td>
<td>Yes</td>
<td>Minimum: 9m</td>
</tr>
<tr>
<td>Setbacks of buildings from a street respect the existing or preferred neighbourhood character and make efficient use of the site</td>
<td>Proposed: 10m</td>
<td></td>
</tr>
<tr>
<td><strong>A4 Building Height</strong></td>
<td>Yes</td>
<td>Maximum: 11m</td>
</tr>
<tr>
<td>Building height respects the existing or preferred neighbourhood character.</td>
<td>Proposed: 8.42m</td>
<td></td>
</tr>
<tr>
<td><strong>A5 Site Coverage</strong></td>
<td>Yes</td>
<td>Maximum: 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>Proposed: 41.90%</td>
<td></td>
</tr>
<tr>
<td><strong>A6 Permeability</strong></td>
<td>Yes</td>
<td>Minimum: 20%</td>
</tr>
<tr>
<td>Reduce the impact of stormwater run-off on the drainage system and facilitate on-site stormwater infiltration.</td>
<td>Proposed: 41.96%</td>
<td></td>
</tr>
</tbody>
</table>
**A7 Energy Efficiency**
Achieve and protect energy efficient dwellings.
Ensure the development's orientation and layout reduce fossil fuel energy use and makes appropriate use of daylight and solar energy.

<table>
<thead>
<tr>
<th>Item</th>
<th>Decision</th>
<th>Reason</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>The proposal provides appropriate solar access to the dwelling.</td>
<td></td>
</tr>
</tbody>
</table>

**A8 Significant Trees**
Development respects the landscape character of the neighbourhood and retains significant trees on site.

<table>
<thead>
<tr>
<th>Item</th>
<th>Decision</th>
<th>Reason</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>Refer report. No significant trees to be removed from the subject site.</td>
<td></td>
</tr>
</tbody>
</table>

**A10 Side and Rear Setbacks**
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.

<table>
<thead>
<tr>
<th>Ground Floor</th>
<th>First Floor</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Required</strong></td>
<td><strong>Proposed</strong></td>
</tr>
<tr>
<td>East (side)</td>
<td>0m or 1m</td>
</tr>
<tr>
<td>West (side)</td>
<td>0m or 1m</td>
</tr>
<tr>
<td>South (rear)</td>
<td>0m or 1m</td>
</tr>
</tbody>
</table>

**A11 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 impact on the amenity of existing dwellings.

<table>
<thead>
<tr>
<th>Item</th>
<th>Decision</th>
<th>Reason</th>
</tr>
</thead>
</table>
| No          | Maximum Height: 3.6m  
  **Proposed:** 3.6m to living area  
  Maximum Average Height: 3.2m  
  **Proposed:** 26.82m  
  Refer to section 6.3 of the report. |

**A12 Daylight to existing windows**
To allow adequate daylight into existing habitable room windows.

<table>
<thead>
<tr>
<th>Item</th>
<th>Decision</th>
<th>Reason</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>The proposal is well setback from property boundaries to ensure daylight to existing windows is maintained.</td>
<td></td>
</tr>
<tr>
<td>A13 North Facing Windows</td>
<td>Yes</td>
<td>No north facing windows on adjoining properties are affected.</td>
</tr>
<tr>
<td>--------------------------</td>
<td>-----</td>
<td>----------------------------------------------------------</td>
</tr>
<tr>
<td>A14 Overshadowing Open Space</td>
<td>No</td>
<td>Shadow diagrams submitted with the application demonstrate that at least 75%/40m² of adjoining dwellings secluded private open space do not receive at least five hours of sunlight between 9am and 3pm on 22 December. Refer section 6.3 of the report.</td>
</tr>
<tr>
<td>A15 Overlooking</td>
<td>Yes</td>
<td>Refer report. Addressed via conditions.</td>
</tr>
<tr>
<td>A16 Daylight to New Windows</td>
<td>Yes</td>
<td>All habitable windows have direct access to daylight.</td>
</tr>
<tr>
<td>A17 Private Open Space</td>
<td>Yes</td>
<td>Minimum: 25m² secluded, 40m² overall Proposed: 100.61m² secluded, 137.96m² overall</td>
</tr>
<tr>
<td>A18 Solar Access to Open Space</td>
<td>Yes</td>
<td>Appropriate solar access to the private open space areas is provided.</td>
</tr>
<tr>
<td>A19 Design Detail</td>
<td>Yes</td>
<td>Refer to section 6.1 of the report.</td>
</tr>
<tr>
<td>A20 Front Fences</td>
<td>Yes</td>
<td>Required: 1.2m Proposed: No change</td>
</tr>
</tbody>
</table>
ATTACHEMENT 4

Neighbourhood Character Precinct F1

Preferred Future Character Statement

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

Precinct Guidelines

<table>
<thead>
<tr>
<th>Objectives</th>
<th>Design Responses</th>
<th>Avoid</th>
<th>Planning Officer Assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>To encourage the retention of dwellings that contribute to the valued character of the Precinct in the design of development proposals.</td>
<td>• Attempt to retain wherever possible intact and good condition dwellings that contribute to the valued character of the Precinct in designing new development.</td>
<td>Demolition of dwellings that contribute to the valued character of the Precinct.</td>
<td>The proposal will retain the ground floor level including front of the dwelling contributing to the valued character of the Precinct. The proposed first floor addition is designed appropriately to the building era.</td>
</tr>
<tr>
<td>To maintain and enhance the garden settings of the dwellings, and enhance the bayside vegetation character.</td>
<td>• Retain established trees and vegetation.</td>
<td>Lack of landscaping and substantial vegetation.</td>
<td>The alteration and additions will not alter the front garden setting. Ground and first floor side setback (west boundary) is maintained to maintain garden settings. A decking area has been proposed at the rear yard, but still allows grass area to maintain garden settings.</td>
</tr>
<tr>
<td>Objectives</td>
<td>Design Responses</td>
<td>Avoid</td>
<td>Planning Officer Assessment</td>
</tr>
<tr>
<td>----------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------</td>
</tr>
</tbody>
</table>
| To ensure the building setbacks reflect the existing spacious visual separation of buildings and contribute to the informality of the dwelling setting. | • Buildings should be sited to allow space for the planting of trees and shrubs.  
• Buildings should be sited to create the appearance of space between buildings and accommodate substantial vegetation. | Loss of front garden space.                                                       | The ground floor front setback will not be altered, and the existing visual separation to the west boundary will be maintained. |
| To minimise the loss of front garden spaces and the dominance of car parking structures. | • Locate garages and carports behind the line of the dwelling.                    | Car parking structures that dominate the façade or view of the dwelling. | The existing car parking facilities will be retained.                                          |
| To ensure that new buildings and extensions do not dominate the streetscape. | • Recess second storey elements from the front façade.                            | High pitched or mansard roof forms with dormer windows.               | The proposed first floor addition is recessed from the front to reduce its dominance to 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, in the new building design. | Large bulky buildings with flat, poorly articulated front wall surfaces. | The site is not a heritage building nor in a heritage overlay.                                 |
| To reflect the lightness of the streetscape created through the use of a mix of appropriate building materials and finishes. | • Incorporate a variety of timber or other non-masonry wall materials where possible. | Heavy materials and design detailing (eg. Large masonry columns and piers). | The proposal will incorporate a variety of materials that will complement the existing dwelling. |
| To maintain the openness of the streetscape and views to the dwellings.    | • Provide open style front fences, other than along heavily trafficked roads.      | High, solid front fencing.                                           | Responds  
No change to the existing fence.                                                            |
<table>
<thead>
<tr>
<th>Objectives</th>
<th>Design Responses</th>
<th>Avoid</th>
<th>Planning Officer Assessment</th>
</tr>
</thead>
</table>
| To create a visually interesting and attractive built form interface with the foreshore reserve. | • Articulate the form buildings and elements, particularly front facades, and include elements that lighten the building form such as balconies, verandahs, non-reflective glazing and light-transparent balustrading.  
• Use a mix of contemporary and traditional coastal materials, textures and finishes, including render, timber, non-masonry sheeting, glazing, stone and brick.  
• Provide articulated roof forms to create an interesting skyline when viewed from the beach. | Buildings that have no relationship to the foreshore setting.  
Poorly articulated roof and building forms.  
Highly reflective materials or glazing. | The development promotes an appropriate mix of materials for the area, and articulates well with surrounding built form.  
The roof form is appropriate with the surrounding character, and will not overly interfere with the streetscape. Glazing has been kept to a minimum, and the built form is adequately recessed to afford relief to the proposed built form. |
### 4.5 5 MARGARET STREET, BRIGHTON EAST
NOTICE OF DECISION TO GRANT A PLANNING PERMIT
APPLICATION NO: 2016/500/1  WARD: CENTRAL

City Planning & Community Services -
File No: PSF/15/8755 – Doc No: DOC/16/272928

1. **Purpose and background**

   To report a planning permit application for the construction of two double storey dwellings on a lot with an area of 624 square metres (refer Attachment 1) at 5 Margaret Street, Brighton East (refer Attachment 2).

<table>
<thead>
<tr>
<th>Applicant</th>
<th>Mr McCarthy, Marque Property Group Pty Ltd</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date application received</td>
<td>26 September 2016 (Amended)</td>
</tr>
<tr>
<td>Statutory days expired</td>
<td>30 November 2016</td>
</tr>
</tbody>
</table>

2. **Policy implications**

   **Planning permit requirements**

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

   **Planning scheme amendments**

   Planning Scheme Amendment C139 has been prepared by Council and requires development to provide a financial contribution for drainage infrastructure in this area. Council has adopted Amendment C139 and has submitted it to the Minister for Planning for approval. Whilst the Amendment is now considered ‘seriously entertained’, the Minister has not yet made a decision on the Amendment.

   Planning Scheme Amendment C153 has been initiated by Council and proposes to modify the boundaries of the Special Building Overlay (SBO) and remove the Land Subject to Inundation Overlay from the Bayside Planning Scheme. The public exhibition process will conclude on 16 January 2017 and a report considering submissions will be presented to Council early in 2017. Case law confirms that proposed amendments to Planning Schemes are not considered to be ‘seriously entertained’ and applied in the assessment of permit applications until such time as they have progressed beyond a Panel and Adopted. As such, there is no statutory weight which can be given to Amendment C153. It is noted that the subject site is not within the SBO area and is not proposed to be included in the SBO area.

3. **Stakeholder Consultation**

   **External referrals**

   There were 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>Open Space Arborist</td>
<td>No objection, subject to conditions to protect one street tree and for the applicant to bear the cost of the removal and replanting of the other street tree.</td>
</tr>
<tr>
<td>Traffic Engineer</td>
<td>No objection, subject to conditions.</td>
</tr>
<tr>
<td>Drainage Engineer</td>
<td>No objection, subject to conditions.</td>
</tr>
<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 five (5) objections were received. The following concerns were raised:

- Overdevelopment;
- Inconsistent with neighbourhood character;
- Traffic/ car parking;
- Increased pressure on reticulated services;
- Application inaccurately represents No.7 Margaret Street;
- Noise impact of these on neighbouring properties from unknown location of plant and equipment;
- Overlooking;
- No commencement date for construction provided;
- Risks of demolition;
- Overshadowing;
- Flooding issues with Margaret Street built over two streams; and
- Impact on value of properties.

Consultation meeting

The applicant declined Council’s offer to facilitate a consultation meeting with the objectors.
4. **Recommendation**

That Council:

Issues a **Notice of Decision to Grant a Permit** under the provisions of the Bayside Planning Scheme in respect of Planning Application 2016/500/1 for the land known and described as **5 Margaret Street, Brighton East**, for the **construction of two double storey dwellings** in accordance with the plans date stamped 26 September 2016 and subject to the following conditions from the standard conditions:

1. Before the development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the amended plans with date stamped 26 September 2016 but modified to show:
   a) Southern boundary fence raised to provide an effectively visual screen to 1.8 metres in height from natural ground level.
   b) Details of the solar panels on roof, including type and projection from roof.
   c) All site services to be located on plans, including bins, air conditioning, hot water systems, clothes lines and mail boxes. Plant and equipment should be located sensitively in relation to habitable room windows on the subject site and neighbouring properties.
   d) Driveways and pedestrian pathways of both dwellings to be permeable.
   e) Both Burgundy Myrtles replaced with a large canopy tree in the front setback of each new dwelling with the capacity to reach a mature height of 10m and spread of 6m at maturity.
   f) An amended landscape plan in accordance with Condition 10 of this permit.
   g) A schedule of construction materials, external finishes and colours.

2. The development as shown on the endorsed plans must not be altered 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, 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 occupation, 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 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. Before the occupation of the development starts, the areas 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.

9. Before the occupation of the development starts, new or altered vehicle crossing 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.

10. Prior to the endorsement of plans pursuant to condition 1, an amended 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 Zenith Concepts and dated September 2016 and be drawn to scale with dimensions and three copies must be provided. The plan must show:
   a) Pedestrian pathways to the entrance of both dwellings to be permeable to water.
   b) Both Burgundy Myrtles replaced with a large canopy tree in the front setback of each new dwelling with the capacity to reach a mature height of 10m and spread of 6m at maturity.

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.

13. Before the development starts, including any related demolition or removal of vegetation, a Tree Management Plan (report) and Tree Protection Plan (drawing) for the tree to be retained on site and for trees on neighbouring properties whose tree protection zone extends into the subject site, 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. Before the development starts tree protection fencing is to be established around the Field Maple (Acer campestre) street tree prior to demolition and maintained until all works on site are complete. The fencing is to be constructed and secured so its positioning cannot be modified by site workers. The fencing is to encompass the entire naturestrip under the drip line of the tree. The Tree Protection Zone is to be established and maintained in accordance with AS 4970-2009. During construction of the crossover, tree protection fencing may be reduced to the edge of the Council approved crossover to facilitate the construction of the crossover.

17. Before the development starts the applicant must pay $1,899.40 to the Responsible Authority for the removal and replacement of the Trident Maple (Acer buergerianum) street tree. This amount has been determined in accordance with Council’s current policy for the removal of street tree(s). This amount may be increased by the Responsible Authority if an extension of time to commence work is granted and the amenity value of the street tree has increased. The Responsible Authority, or a contractor or agent engaged by the Responsible Authority, must undertake the removal and replacement of the street tree. Any replacement planting will be at the discretion of the Responsible Authority.

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

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

20. The driveway / Parking areas / paved courtyards / paths and ‘pervious’ pavements must be graded / drained to prevent stormwater discharge onto the front footpath and into adjacent properties.

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

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

Permit notes

- Council records indicate that there is a 1.83m wide drainage and sewerage easement along the western property boundary as indicated on the drawings provided. The plans indicate that a fence shall be constructed over the easement. Any proposal to encroach into the easement will require Build over Easement consent from the Responsible Authority/Authorities.

- Subsurface water must be treated in accordance with Council’s Policy for "Discharge of Pumped Subterranean Water Associated with Basements or Below Ground Structures.

5. Council Policy

Council Plan 2013-2017

Relevant strategies of the Council plan include:
3.1.1 Developing planning strategies and policies with our community that enhance Bayside’s liveability along with its natural and built environment.

3.1.3 Advocating Council’s planning and urban design objectives.

Bayside Planning Scheme

- Clause 11 Settlement
- Clause 12 Environmental and Landscape Values
- Clause 15 Built Environment and Heritage
- Clause 16 Housing
- Clause 21.02 Bayside Key Issues and Strategic Vision
- Clause 21.03 Settlement and Housing
- Clause 21.04 Environmental and Landscape Values
- Clause 21.06 Built Environment and Heritage
- Clause 22.06 Neighbourhood Character Policy
- Clause 22.08 Water Sensitive Urban Design
- Clause 32.09 Neighbourhood Residential Zone (Schedule 3)
- Clause 43.02 Design and Development Overlay (Schedule 3)
- Clause 52.06 Car Parking
- Clause 55 Two or More Dwellings on a Lot
- Clause 65 Decision Guidelines

6. Considerations

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

6.1. Neighbourhood character

The site is located within Neighbourhood Character Precinct D4 and the proposal is considered to demonstrate a high level of compliance with the preferred future character statement and precinct guidelines as contained in Attachment 3.

In particular, the proposal is considered to maintain the rhythm of front boundary setbacks in Margaret Street and the appearance of spaciousness and visual separation between buildings. Both garages are recessed from the front elevation of each dwelling and driveway areas have been minimised to provide access to the garages and a single tandem car park to reduce the dominance of parking facilities on the streetscape. The proposal is sufficiently setback from the street to accommodate planting to soften the proposal in the streetscape and as no front fence is proposed, the openness of the streetscape will be enhanced.
6.2. **Compliance with Clause 55 (ResCode)**

An assessment against the requirements of Clause 55 is provided at Attachment 4. Those non-compliant standards are discussed below:

**Street setback (Standard B6)**

<table>
<thead>
<tr>
<th>Required</th>
<th>Proposed</th>
<th>Variation</th>
</tr>
</thead>
<tbody>
<tr>
<td>8.723m</td>
<td>8.2m</td>
<td>0.523m</td>
</tr>
</tbody>
</table>

A street setback of 8.2 metres is proposed, while pursuant to this standard a setback of 8.723 metres is required. The objective of this standard is to ensure setbacks of buildings from a street respect the existing or preferred neighbourhood character and make efficient use of a site. The preferred future character of the area includes an objective to maintain and enhance the garden settings of the dwellings and the rhythm of front boundary setbacks.

Dwellings in Margaret Street demonstrate a generally consistent setback from the street of between 7 – 9 metres, with the exception of a few outliers, No.3 and No.7 are setback 8.723 and 7.636 metres respectively. The proposal would provide a graduated setback between these two properties and is considered to sit comfortably in the streetscape. The proposal would maintain the existing rhythm of front boundary setbacks in Margaret Street. Subject to the recommended conditions requiring additional planting, the proposal is considered to maintain and enhance the garden setting of the site and surrounds. Given all of the above, the proposal is considered to achieve the objective of standard B6.

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

<table>
<thead>
<tr>
<th>Ground floor</th>
<th>First Floor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requirement</td>
<td>Proposed</td>
</tr>
<tr>
<td>North (side)</td>
<td>0m or 2m</td>
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<td>0m or 2m</td>
</tr>
<tr>
<td>West (rear)</td>
<td>0m or 3m</td>
</tr>
</tbody>
</table>

The proposed garages to both properties would be setback from the side boundaries by 1 metre, contrary to the standard of 0 or 2 metres as outlined in Schedule 3 to the Neighbourhood Residential Zone. The objective of the standard is to ensure that 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 preferred future character includes an objective to maintain the rhythm of visual separation between buildings. The existing streetscape can be characterised by a general impression of visual separation between dwellings; however there is an emerging character of large single dwellings that extend from boundary to boundary, including at No. 2, 4, 8 and 10 Margaret Street. The proposal would provide a visual separation between dwellings to either side which is considered to be consistent with both the preferred future character and existing character of the area. The locations of the garages would not have an unreasonable impact on the amenity of any neighbouring property.

Bedroom three on the first floor of dwelling one would infringe the rear setback control from the western boundary by 10mm. Given the minor nature of the non-compliance, this aspect of the proposal is considered to have no impact on the amenity of neighbouring properties or the character of the area.

The master suite on the first floor of dwelling one infringes the side setback standard from the southern boundary by 150mm. It is noted the non-compliance relates to the master suite only and the rest of the first floor southern elevation complies with the setback control. The proposal is considered to maintain sufficient visual separation to the neighbouring dwelling to the south to comply with the preferred future character of the area.

The dwelling at No.3 is located adjacent to the master suite of dwelling one; however the neighbouring properties windows adjacent to the master suite are non-habitable. The non-compliance would also be setback 5.6 metres from the neighbouring dwelling. Given this, the proposed non-compliance with the side setback control would avoid any unreasonable amenity impacts on neighbouring properties.

Overlooking (Standard B22)

All habitable room first floor windows to the sides and rear of the proposed dwellings utilise either obscure glazing, screening or a sill height of 1.7 metres above finished floor height to avoid overlooking impacts in accordance with this standard.

The northern and western boundaries feature paling fencing to 2 metres in height, which provides an effective visual barrier in accordance with this standard. The southern boundary fencing is proposed to be raised to 1.7 metres. To accord with standard B22, a condition of approval is recommended to raise the boundary fence on this boundary to a minimum of 1.8 metres.

Site services (B34)

Bins, air conditioning, hot water systems, clothes lines and mail boxes have not been indicated on the plans. There is sufficient space around the two dwellings to accommodate all services; however given the proximity to neighbouring properties and the concern raised by objectors, a condition of approval is recommended to ensure the locations of all services are appropriately located away from habitable room windows to minimise noise impacts.

6.3. Car parking and traffic

Each dwelling is provided with two car spaces in accordance with Clause 52.06. Council’s Traffic Engineer has reviewed the application and raised no objection subject to minor conditions which are included as part of the recommended permit conditions.

The level of increased traffic and parking demand generated by the proposed development will not adversely impact the local road network and Council’s Traffic Engineer has raised no objection in this regard.
6.4. Vegetation & Landscaping

From an arboriculture perspective Council’s Arborist has reviewed the application, the submitted arborist report, visited the site and advises that:

- Existing vegetation is of a good health but of low amenity value. Removal of all 5 trees on the development site is acceptable on that basis, subject to suitable new plantings.

- Replacement tree species proposed for the front setbacks are too small and will not contribute to the amenity of the site or streetscape. The design does not provide enough room for the planting of trees in the rear private open spaces. A landscape plan is required which includes the planting of one large canopy tree in the front setback of each new dwelling with the capacity to reach a mature height of 10m and canopy spread of 6m at maturity.

- The extent of the driveway must be reduce to the minimum required for the transit of vehicles and concrete must be replaced with a material which is permeable to water.

Conditions of approval are recommended for all of the above.

On 3 Margaret Street the tree protection zone (TPZ) of a Desert Ash (Fraxinus angustifolia) and Kurrajong (Brachychiton populneus), growing adjacent to the site boundary, will extend into the subject site. On 7 Margaret Street the TPZ of a Red Flowering Gum (Corymbia ficifolia) and Irish Strawberry Tree (Arbutus unedo), growing adjacent to the site boundary, will extend into the subject site.

Council’s Arborist has reviewed the plans and recommended that a Tree Management Plan is prepared by the applicant to demonstrate to the satisfaction of the Responsible Authority that all trees on neighbouring properties, which have any part of their Tree Protection Zone within the subject site, will remain viable post-construction. This is recommended as a condition of approval.

Council’s Open Space Arborist has reviewed the application and advises there is an Acer buergerianum (Trident Maple) street tree asset fronting the property to the south; and, an Acer campestre (Field Maple) street tree asset fronting the property to the north.

A 2.0m setback of the crossovers is required to retain both street trees. Provided there is no alternative location for the proposed crossovers, Council’s Open Space Arborist would support the approval of tree removal under Clause 6.5 of the Street and Park Tree Management Policy (2016), subject to the conditions requiring the application to bear the reasonable cost under Council’s current policy for removal and replacement of street trees.

Given the site circumstances, a 2 metre setback from the Acer buergerianum is unlikely to be possible and would result in the loss of an on street car park between the two crossovers. The recommendations of Council’s Open Space Arborist to remove the tree and require replacement planting is included in the recommendation.

6.5. Objections received

Issues raised by objectors that have not been addressed in the assessment above, are discussed below.
Application inaccurately represents No.7 Margaret Street

An objector has identified the plans do not accurately represent No.7 Margaret St in relation to the area adjacent to the existing carport on the subject site. Officers have visited the site and believe the plans to be an acceptable standard to allow an assessment to be completed.

Risks of Demolition

A building permit will be required to demolish the existing house. Consideration of the potential risk in demolition, including of Asbestos, will be considered in this process. Such matters are outside the remit of a planning assessment.

Commencement and duration of construction

A standard condition requiring development to commence within two years and be completed within 4 years of the grant of the permit has been recommended.

Flooding issues with Margaret Street built over two streams

It is unclear whether this is the case; however the subject site and immediately adjacent properties are not subject to the Special Building Overlay (SBO), which indicates land liable to inundation by overland flows from the urban drainage system. Furthermore, the subject site is not proposed to be included in the SBO as part of the amendment C153, which represents new flood and overland flow modelling undertaken by Melbourne Water.

Neighbouring property values

The impact of the proposal on neighbouring property values is not a planning consideration and cannot form part of this assessment.

Support Attachments

1. Development Plans ↓
2. Site Surrounds and Imagery ↓
3. Neighbourhood Character Assessment Precinct D4 ↓
4. Clause 55 (ResCode) Assessment ↓
Item 4.5 – Matters of Decision
ATTACHMENT TWO
Site and Surrounds Imagery

Figure 1 Aerial overview of the site and surrounds

<table>
<thead>
<tr>
<th>Legend</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Subject site</td>
<td>★</td>
</tr>
<tr>
<td>Objector(s)</td>
<td>●</td>
</tr>
</tbody>
</table>
Figure 2 View southwest towards the site

Figure 3 View northwest towards the site
Figure 4 View of No.2 and 4 Margaret Street

Figure 4 View of No.8 and 10 Margaret Street
ATTACHMENT 3
Neighbourhood Character Policy (Precinct D4)

Preferred Future Character

The wide variety of dwelling styles sit within established gardens, with occasional canopy trees, and do not dominate the streetscape. The buildings are consistently set back from the front and at least one side boundary, which, combined with the open style front fencing, creates a sense of spaciousness in the streetscape. Avenues of street trees assist in unifying streetscapes.

Precinct Guidelines

<table>
<thead>
<tr>
<th>Objectives</th>
<th>Design Responses</th>
<th>Avoid</th>
<th>Planning Officer Assessment</th>
</tr>
</thead>
</table>
| To maintain and enhance the garden settings of the dwellings and rhythm of front boundary setbacks. | • Prepare a landscape plan to accompany all applications for new dwellings that includes substantial trees and shrubs.  
• Retain large trees wherever possible.  
• Buildings should be sited to allow space for the planting of trees and shrubs. | Lack of landscaping and substantial vegetation.  
Removal of large trees. | The existing site is sparsely vegetated and all existing trees and shrubs are proposed to be removed as part of the development. A landscape plan has been submitted in support of the application which details replacement planting across the site. Subject to the recommended conditions requiring additional planting, the proposal would maintain and enhance the garden setting of the site and surrounds. Dwellings in Margaret Street demonstrate a generally consistent setback from the street of 7 – 9 metres, with the exception of a few outliers including No.6 and No.9 with 3.2 and 11.55 metres respectively. Notably No.3 and No.7 are setback 8.723 and 7.636 metres respectively. The proposal would provide a graduated setback between these two properties and is considered to sit |
<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 the rhythm of visual separation between buildings.</td>
<td>• Buildings should be sited to create the appearance of space between buildings and accommodate substantial vegetation.</td>
<td></td>
<td>comfortably in the streetscape. The proposal would maintain the rhythm of front boundary setbacks in Margaret Street.</td>
</tr>
</tbody>
</table>

To minimise the dominance of car parking structures in the streetscape.  

<table>
<thead>
<tr>
<th></th>
<th>Design Responses</th>
<th>Avoid</th>
<th>Planning Officer Assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td></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>Both garages are recessed from the front elevation of each dwelling. Single garages are proposed for both dwellings which occupy less than half of the ground floor frontage. Driveway areas have been minimised to provide access to the garages and a single tandem car park only. A sufficient amount of front garden space is retained for landscaping and planting which would soften the dwellings appearance in the streetscape.</td>
</tr>
<tr>
<td>Objectives</td>
<td>Design Responses</td>
<td>Avoid</td>
<td>Planning Officer Assessment</td>
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<td>--------------------------------------------------------------------------</td>
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<td>----------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>To ensure that buildings and extensions do not dominate the streetscape.</td>
<td>• Recess second storey elements from the front façade.</td>
<td></td>
<td>The proposal is sufficiently setback from the street to accommodate planting to soften the proposal in the streetscape. The proposal reflects a French provincial style with rendered elevations and concrete tiles.</td>
</tr>
<tr>
<td></td>
<td>• Use simple building details.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>To maintain the openness of the streetscape and the views into front gardens.</td>
<td>• Front fences should be open style, other than along heavily trafficked roads.</td>
<td>High, solid front fences.</td>
<td>No front fence is proposed. The openness of the streetscape will be enhanced.</td>
</tr>
</tbody>
</table>
## ATTACHMENT 4
ResCode (Clause 55) Assessment

<table>
<thead>
<tr>
<th>Title and Objective</th>
<th>Complies with Standard?</th>
<th>Requirement and Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>B1 Neighbourhood Character</strong></td>
<td>Yes</td>
<td>Refer to Attachment 3.</td>
</tr>
<tr>
<td>Design respects existing</td>
<td></td>
<td><strong>Standard?</strong> Yes Refer to Attachment 3.</td>
</tr>
<tr>
<td>neighbourhood character or</td>
<td></td>
<td><strong>Requirement and Proposed</strong> The construction of a medium density dual lot development is supported by relevant policies for this site.</td>
</tr>
<tr>
<td>contributes to a preferred</td>
<td></td>
<td><strong>Proposed</strong> The construction of a medium density dual lot development is supported by relevant policies for this site.</td>
</tr>
<tr>
<td>neighbourhood character.</td>
<td></td>
<td></td>
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<tr>
<td>Development responds to features</td>
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<td></td>
</tr>
<tr>
<td>of the site and surrounding area.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B2 Residential Policy</strong></td>
<td>Yes</td>
<td>The construction of a medium density dual lot development is supported by relevant policies for this site.</td>
</tr>
<tr>
<td>Residential development is</td>
<td></td>
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<tr>
<td>consistent with housing policies</td>
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<td>in the SPPF, LPPF including the</td>
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<tr>
<td>MSS and local planning policies.</td>
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<tr>
<td>Support medium densities in areas</td>
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<tr>
<td>to take advantage of public</td>
<td></td>
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<tr>
<td>transport and community</td>
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<tr>
<td>infrastructure and services.</td>
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<tr>
<td><strong>B3 Dwelling Diversity</strong></td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>Encourages a range of dwelling</td>
<td></td>
<td></td>
</tr>
<tr>
<td>sizes and types in developments</td>
<td></td>
<td></td>
</tr>
<tr>
<td>of ten or more dwellings.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B4 Infrastructure</strong></td>
<td>Yes</td>
<td>The dwellings will make use of existing infrastructure servicing the site. The developer will be responsible for upgrading this infrastructure if necessary to accommodate the development.</td>
</tr>
<tr>
<td>Provides appropriate utility</td>
<td></td>
<td></td>
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<tr>
<td>services and infrastructure</td>
<td></td>
<td></td>
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<tr>
<td>without overloading the capacity.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B5 Integration with the Street</strong></td>
<td>Yes</td>
<td>The development will integrate appropriately with the street. The dwellings would be oriented to Margaret Street and feature clearly defined pedestrian entries and vehicle access.</td>
</tr>
<tr>
<td>Integrate the layout of development</td>
<td></td>
<td></td>
</tr>
<tr>
<td>with the street</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B6 Street Setback</strong></td>
<td>No</td>
<td>Required: 8.723m Proposed: 8.2m Refer to report</td>
</tr>
<tr>
<td>The setbacks of buildings from a</td>
<td></td>
<td></td>
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<tr>
<td>street respect the existing or</td>
<td></td>
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<tr>
<td>preferred neighbourhood character</td>
<td></td>
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<tr>
<td>and make efficient use of the</td>
<td></td>
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<tr>
<td>site.</td>
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<tr>
<td><strong>B7 Building Height</strong></td>
<td>Yes</td>
<td>Maximum: 8m Proposed: 7.85m</td>
</tr>
<tr>
<td>Building height should respect</td>
<td></td>
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<td>the existing or preferred</td>
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<td></td>
</tr>
<tr>
<td>neighbourhood character.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B8 Site Coverage</strong></td>
<td>Yes</td>
<td>Maximum: 50% Proposed: 49.98%</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Item 4.5 – Matters of Decision</td>
<td>Page 205 of 277</td>
<td></td>
</tr>
<tr>
<td>--------------------------------</td>
<td>------------------</td>
<td></td>
</tr>
<tr>
<td><strong>Site coverage</strong> should respect the existing or preferred neighbourhood character and respond to the features of the site.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| **B9 Permeability** | Yes | **Minimum:** 20%  
**Proposed:** 41.5% |
| Reduce the impact of stormwater run-off on the drainage system and facilitate on-site stormwater infiltration. | |
| **B10 Energy Efficiency** | Yes | All habitable areas, including habitable rooms and secluded private open space areas would be appropriately located in relation to the east – west orientation of the site. |
| 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. | |
| **B11 Open Space** | N/A | |
| Integrate layout of development with any public and communal open space provided in or adjacent to the development. | |
| **B12 Safety** | Yes | Both dwellings entries would be clearly recognisable while the upper storeys would allow for the passive surveillance of the street. |
| Layout to provide safety and security for residents and property. | |
| **B13 Landscaping** | Yes | The proposal allows for the provision of meaningful landscaping opportunities across the site. Refer to report. |
| To provide appropriate landscaping.  
To encourage:  
- Development that respects the landscape character of the neighbourhood.  
- Development that maintains and enhances habitat for plants and animals in locations of habitat importance.  
- The retention of mature vegetation on the site. | |
| **B14 Access** | Yes | **Maximum:** 40% of street frontage  
**Proposed:** 35% of street frontage |
| Ensure the safe, manageable and convenient vehicle access to and from the development.  
Ensure the number and design of vehicle crossovers respects neighbourhood character. | |
| **B15 Parking Location** | Yes | On site car parking is provided with a single garage and a single tandem car park for both dwellings. The proposed parking location is secure and convenient for future residents. |
| 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.

### B17 Side and Rear Setbacks
Ensure the height and setback respects the existing or preferred neighbourhood character and limits the amenity impacts on existing dwellings.

<table>
<thead>
<tr>
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</tr>
<tr>
<td>West (rear)</td>
<td>0m or 3m</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.

- Yes
- **Maximum:** 16.645m
- **Proposed:** None

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

- Yes
- All setbacks are consistent with the requirements of Standard B19.

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

- Yes
- Setbacks of dwelling one from the southern boundary are consistent with the requirements of Standard B20.

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

- Yes
- A review of the existing and proposed shadow diagrams demonstrates that the adjoining secluded private open space areas will receive sufficient solar access in accordance with the Standard.

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

- No
- Refer to report.
<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Decision</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>B23 Internal Views</strong></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>Yes</td>
<td>All habitable room windows have been screened and sited appropriately in accordance with this Standard. Timber paling fencing to 1.8 metres in height will be used between the SPOS of dwelling 1 and 2.</td>
</tr>
<tr>
<td><strong>B24 Noise Impacts</strong></td>
<td>Protect residents from external noise and contain noise sources in developments that may affect existing dwellings.</td>
<td>Yes</td>
<td>The level of noise associated with the two dwellings is not anticipated to exceed that expected of a residential use.</td>
</tr>
<tr>
<td><strong>B25 Accessibility</strong></td>
<td>Consider people with limited mobility in the design of developments.</td>
<td>Yes</td>
<td>Both dwelling entries are accessible for people with limited mobility.</td>
</tr>
<tr>
<td><strong>B26 Dwelling Entry</strong></td>
<td>Provide a sense of identity to each dwelling/residential building.</td>
<td>Yes</td>
<td>Both dwelling entries are easily identifiable from the street and provide a sense of identity.</td>
</tr>
<tr>
<td><strong>B27 Daylight to New Windows</strong></td>
<td>Allow adequate daylight into new habitable room windows.</td>
<td>Yes</td>
<td>All habitable windows will open out onto a space clear to the sky.</td>
</tr>
<tr>
<td><strong>B28 Private Open Space</strong></td>
<td>Provide reasonable recreation and service needs of residents by adequate private open space.</td>
<td>Yes</td>
<td>Minimum: 25m² secluded, 40m² overall Proposed: 84m² and 34m² for dwelling 1 and 83m² and 34m² for dwelling 2. Adequate private open space is provided for the reasonable recreation and service needs of residents.</td>
</tr>
<tr>
<td><strong>B29 Solar Access to Open Space</strong></td>
<td>Allow solar access into the secluded private open space of new dwellings/buildings.</td>
<td>Yes</td>
<td>Appropriate solar access to the private open space areas is provided.</td>
</tr>
<tr>
<td><strong>B30 Storage</strong></td>
<td>Provide adequate storage facilities for each dwelling.</td>
<td>Yes</td>
<td>Designated 6m³ storage areas are provided in each rear yard.</td>
</tr>
<tr>
<td><strong>B31 Design Detail</strong></td>
<td>Encourage design detail that respects the existing or preferred neighbourhood character.</td>
<td>Yes</td>
<td>Refer to Attachment 3.</td>
</tr>
<tr>
<td><strong>B32 Front Fences</strong></td>
<td>Encourage front fence design that respects the existing or preferred neighbourhood character.</td>
<td>Yes</td>
<td>No front fence is proposed.</td>
</tr>
</tbody>
</table>
### B33 Common Property
Ensure car parking, access areas and other communal open space is practical, attractive and easily maintained.

Avoid future management difficulties in common ownership areas.

N/A

### B34 Site Services
Ensure site services and facilities can be installed and easily maintained and are accessible, adequate and attractive.

Avoid future management difficulties in common ownership areas.

No  
Refer to report.
4.6 165-167 TRAMWAY PARADE, BEAUMARIS
NOTICE OF DECISION TO GRANT AN AMENDED PLANNING PERMIT
APPLICATION NO: 2014/457/2 WARD: SOUTHERN

City Planning & Community Services - Statutory Planning
File No: PSF/15/8755 – Doc No: DOC/16/277757

1. Purpose and background

To report a planning permit application for a Section 72 Amendment to the Planning Permit 2016/457/1 issued by the Victorian Civil and Administrative Tribunal (VCAT) on 4 December 2015 for the development of four dwellings and removal of vegetation (refer Attachment 1) at 165-167 Tramway Parade, Beaumaris (refer Attachment 2).

This applications seeks to vary the restrictive covenant that applies to the site by removing the words “comprising at least five main rooms including lounge dining room – kitchen and two bedrooms…” and consequently remove Conditions 1(e) and 6(b) of the planning permit.

<table>
<thead>
<tr>
<th>Applicant</th>
<th>Keen Planning</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date application received</td>
<td>13 October 2016 (Amended)</td>
</tr>
<tr>
<td>Statutory days expired</td>
<td>12 December 2016</td>
</tr>
</tbody>
</table>

2. Policy implications

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 approved as part of the original application but not sought to be amended.

Original planning permit requirements

A planning permit was originally required pursuant to Clause 32.09-5 (Neighbourhood Residential Zone) of the Bayside Planning Scheme to construct two or more dwellings on a lot.

A planning permit was also originally required pursuant to Clause 42.02-2 (Vegetation Protection Overlay 3) of the Bayside Planning Scheme to remove, destroy or lop any vegetation native to Australia.

Planning permit requirements

Clause 52.02 (Easements, Restrictions and Reserves) – Vary a restriction that applies to the title.

Planning scheme amendments

Planning Scheme Amendment C153 has been initiated by Council and proposes to modify the boundaries of the Special Building Overlay (SBO) and remove the Land Subject to Inundation Overlay from the Bayside Planning Scheme. This site is unaffected by this proposed amendment.
3. Stakeholder Consultation

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

Internal referrals
The application was not referred to any internal Council departments.

Public notification
The application was advertised pursuant to Section 52(1AA) of the Planning and Environment Act 1987 and four objections were received. None of these objections were received from beneficiaries of the restrictive covenant. The following concerns were raised:

- Covenant being made null and void;
- Does not comply with VCAT direction;
- Removal of Existing House;
- Construction of four dwellings on a lot; and
- Loss of Vegetation.

Consultation meeting
The applicant declined a consultation meeting.

4. Recommendation

That Council:

Issues a Notice of Decision to Grant an Amended Permit under the provisions of the Bayside Planning Scheme in respect of Planning Application 2016/457/1 relating to the land known and described as 165-167 Tramway Parade, Beaumaris, for the variation of a covenant A295635 (Instrument no. W996971F), development of four dwellings and removal of vegetation in accordance with the endorsed plans and subject to the following conditions:

1. Before the development starts, amended plans must be submitted to and approved by the Responsible Authority. Such plans are to be drawn to scale with dimensions and three copies are to be provided. When approved the plans will be endorsed as evidence of their approval and will thereby become the endorsed plans in relation to this permit. The plans must be generally in accordance with the plans lodged with the Responsible Authority and date stamped 27 February 2015 but modified to show:

   (a) a cross section showing the driveway grade in accordance with ‘Design Standard 3’: Gradients as contained within Clause 52.06 of the Bayside Planning Scheme;
   (b) all pedestrian doors are to be provided outwards from the garages;
   (c) water Sensitive Urban Design in accordance with Condition 18 of this permit;
   (d) notations indicating the nature of external cladding which must be brick, brick veneer or weatherboard;
   (e) Deleted;
(f) a landscape plan generally in accordance with the landscape plan dated 19 June 2015 which is to show:

(i) a survey including botanical names of all existing vegetation to be retained and/or removed;

(ii) buildings and trees including botanical names on neighbouring properties within three metres of the boundary;

(iii) details of surface finishes of pathways and driveways;

(iv) 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;

(v) landscaping and planting within all open areas of the site;

(vi) the planting of one mid-sized canopy tree in the frontage setback and secluded open space of both front dwellings;

(vii) replacement plant species should be at least 60% indigenous species;

(viii) an in-ground irrigation system to all landscape areas; and

(ix) retention of the Eucalyptus Bicostata (Blue Gum) tree in the front setback marked as tree #1 on the landscape plan dated 19/06/2015;

(g) a schedule of construction materials, external finishes and colours (incorporating paint samples); and

(h) plans in accordance with the guidelines in Cluse 22.08 of the Bayside Planning Scheme which must show:-

(i) the type of water sensitive urban design stormwater treatment measures to be used;

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

(iii) design details of the water sensitive urban design stormwater treatment measures, including cross sections; and

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.

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

3 Before the development starts, a schedule of construction materials, external finishes and colours (incorporating paint samples) to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. When approved, the schedule will be endorsed and will then form part of the permit.

4 Except for downpipes all pipes, fixtures, fittings and vents servicing the dwellings must be concealed in service ducts or otherwise hidden from view to the satisfaction of the responsible authority.
5 No plant, equipment, services or architectural features other than those shown on the endorsed plans are permitted above the roof level of the dwellings without the written consent of the responsible authority.

6 (a) All external cladding is to be brick, brick veneer or weatherboards but such cladding may be painted, rendered or otherwise treated.

(b) Deleted.

Traffic
7 Vehicular crossings must be constructed to the road to suit the proposed driveways to the satisfaction of the responsible authority.

Landscaping
8 Prior to the commencement of the development hereby approved (including demolition), a Tree Management Plan must be submitted to and approved by the Responsible Authority. The Tree Management Plan is to detail measures during construction to provide for the health of the existing tree(s) which are to be retained on site.

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

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

Tree Protection Zones
11 Prior to commencement of works, including demolition, a Tree Protection Fence is to be established around the Melaleuca linariifolia street tree and any on-site trees to be retained and maintained until all works on site are complete. The fencing is to be:

(a) constructed and secured so its positioning cannot be modified by site works;

(b) in relation to the street tree encompass the entire nature strip under the drip line of the tree;

(c) established and maintained in accordance with Australian Standards 4970 Protection of trees on development site; and

(d) during construction of the crossover, tree protection fencing may be reduced to the edge of the council approved crossover to facilitate the construction of the crossover.

Root Tree Pruning
12 Prior to soil excavation, a trench along the line of the proposed crossover must be dug by hand.

13 All affected roots must be correctly pruned according to Australian Standard AS 4373-2007.

Drainage
14 The applicant must apply for the nominated legal point of discharge for the development where stormwater run-off must be collected and free drained to Council's drainage assets to Council standards.
15 Any seepage/agricultural drainage water must be filtered to rain water clarity and
must be pumped to the nearest Council Drain/Pit and not be discharged to the
kerb and channel to the satisfaction of the Responsible Authority (unless it
directs otherwise.

16 All on−site stormwater is to be collected from the hard surface areas and must
not be allowed to flow uncontrolled onto adjoining properties. The on-site
drainage system must prevent discharge from each driveway onto the footpath.
Such a system may include either:

(a) a trench grate (150mm minimum internal width) located within the property
and/or

(b) shaping the driveway so that water is collected in a grated pit on the
property and/or

(c) another Council approved equivalent.

17 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.

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

Water Sensitive Urban Design

19 The water sensitive urban design stormwater treatment system required as part
of the endorsed plans by Condition 1(h) 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.

Expiry

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

(a) the development is not started within two (2) years of the date of this
permit; and

(b) the development is not completed within four (4) years of the date of issue
of this permit.

In accordance with section 69 of the Planning and Environment Act 1997, an
application may be submitted to the Responsible Authority for an extension of
the periods referred to in this condition.

Variation of Covenant

21 Within 30 days of the date of this amended permit, a plan of variation of
restriction must be submitted to the responsible authority for certification.

22 Prior to the commencement of the development, the certified plan must be
lodged with the Office of Titles for registration in accordance with Section 23 of
the Subdivision Act 1988.
<table>
<thead>
<tr>
<th>Date</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>17 January 2016</td>
<td>Amendment under Section 72 of the Planning and Environment Act 1987 by:</td>
</tr>
<tr>
<td></td>
<td>Amending the permit description to state:</td>
</tr>
<tr>
<td></td>
<td>Variation of a covenant A295635 (Instrument no. W996971F), development of four dwellings and removal of vegetation</td>
</tr>
<tr>
<td></td>
<td>Amending the conditions applicable to the permit by:</td>
</tr>
<tr>
<td></td>
<td>Deleting Condition no. 1(e) and 6(b)</td>
</tr>
<tr>
<td></td>
<td>Inserting two new conditions, to state:</td>
</tr>
<tr>
<td></td>
<td>21. Within 30 days of the date of this amended permit, a plan of variation of a restriction must be submitted to the</td>
</tr>
<tr>
<td></td>
<td>responsible authority for certification.</td>
</tr>
<tr>
<td></td>
<td>22. Prior to the commencement of the development, the certified plan must be lodged with the Office of Titles for registration</td>
</tr>
<tr>
<td></td>
<td>in accordance with Section 23 of the Subdivision Act 1988.</td>
</tr>
</tbody>
</table>

5. **Council Policy**

**Council Plan 2013-2017**

Relevant strategies of the Council plan include:

- 3.1.1 Developing planning strategies and policies with our community that enhance Bayside’s liveability along with its natural and built environment.
- 3.1.3 Advocating Council’s planning and urban design objectives.

**Bayside Planning Scheme**

- Clause 11 Settlement
- Clause 12 Environmental and Landscape Values
- Clause 15 Built Environment and Heritage
- Clause 16 Housing
- Clause 21.02 Bayside Key Issues and Strategic Vision
- Clause 21.03 Settlement and Housing
- Clause 21.04 Environmental and Landscape Values
- Clause 21.06 Built Environment and Heritage
- Clause 22.06 Neighbourhood Character Policy
- Clause 22.08 Water Sensitive Urban Design
- Clause 32.09 Neighbourhood Residential Zone (Schedule 3)
• Clause 43.02 Design and Development Overlay (Schedule 3)
• Clause 42.02 Vegetation Protection Overlay (Schedule 3)
• Clause 52.02 Easements, Restrictions and Reserves
• 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 Planning and Environment Act, the provisions of the Bayside Planning Scheme, objections received and the individual merits of the application.

6.1. Removal of Covenant

Covenant A295635 (Instrument no. W996971F) states:

“…shall not at any time hereafter erect or allow to be erected upon the said lot any building other than a private dwelling house (with garage and outbuildings) being of either brick veneer or weather-board comprising at least five main rooms including lounge dining room – kitchen and two bedrooms and it is intended that the above covenant shall be set out as an encumbrance at the foot of the Certificate of Title…”

Section 60 of the Act sets out those matters which Council must consider as part of an application to vary or remove a restrictive covenant. This is reinforced by Clause 52.02 of the Bayside Planning Scheme. Subsection (5) of Section 60 states the following:

(5) The responsible authority must not grant a permit which allows the removal or variation of a restriction referred to in subsection (4) unless it is satisfied that—

(a) the owner of any land benefited by the restriction (other than an owner who, before or after the making of the application for the permit but not more than three months before its making, has consented in writing to the grant of the permit) will be unlikely to suffer any detriment of any kind (including any perceived detriment) as a consequence of the removal or variation of the restriction; and

(b) if that owner has objected to the grant of the permit, the objection is vexatious or not made in good faith.

The objections received are not from beneficiaries of the covenant.

It is considered that beneficiaries of the covenant will not suffer any detriment as a result of the variation of the covenant. The internal layout of the dwelling, whether with separate rooms or open-plan, will appear as the same built form and the spaces will be used in a similar manner. Given the accommodation is not changing and the open plan nature reflects a modern use of a building, the variation of the covenant is unlikely to result in any detriment to the beneficiaries of the covenant. It is also noted that the beneficiaries do not adjoin the property and are located some 240 metres from the proposed dwellings.
6.2. **Objections received**

Issues raised by objectors that have not been addressed in the assessment above, are discussed below:

**Covenant being made null and void**

The planning scheme permits the removal / variation of covenants through a planning application process, subject to the decision guidelines specified under Section 60 of the Act and the provisions contained at Clause 52.02 of the Bayside Planning Scheme. The change proposed is a variation to the covenant, rather than removal of it.

**Does not comply with VCAT direction**

VCAT imposed Conditions 1(e) and 6(b) due to the presence of the covenant to ensure that the terms of the covenant would not be breached by the proposed development. Had the covenant not existing, these conditions would not have been applied. It was suggested at the time of the VCAT hearing that the applicant amend their application to include the variation of the covenant, however, this was not pursued.

It is open to the applicant to pursue such an application at this time. It is noted that the applicant does not seek removal of that part of the covenant or those parts of the conditions that refer to building materials.

**Removal of Existing House**

The house has no heritage designation and does not require a planning permit for its removal.

**Construction of four dwellings on a lot**

The existing permit allows the construction of four dwellings on the lot. The current zoning of the land would prohibit the construction of four dwellings on the lot, however the owner benefits from the existence of the planning permit. This aspect of the proposal is not being amended and is not subject to this application.

**Loss of Vegetation**

The existing permit allows the removal of vegetation from the site. This aspect of the proposal is not being amended and is not subject to this application.

**Support Attachments**

1. Planning permit 2014/457/1
2. Original advertised plans
3. Site and Surrounds Imagery
The Following Conditions Apply To This Permit:

1. Before the development starts, amended plans must be submitted to and approved by the Responsible Authority. Such plans are to be drawn to scale with dimensions and three copies are to be provided. When approved the plans will be endorsed as evidence of their approval and will thereby become the endorsed plans in relation to this permit. The plans must be generally in accordance with the plans lodged with the Responsible Authority and date stamped 27 February 2015 but modified to show:

   (a) a cross section showing the driveway grade in accordance with ‘Design Standard 3’: Gradients as contained within Clause 52.06 of the Bayside Planning Scheme;

   (b) all pedestrian doors are to be provided outwards from the garages;

   (c) water Sensitive Urban Design in accordance with Condition 18 of this permit;

   (d) notations indicating the nature of external cladding which must be brick, brick veneer or weatherboard;

   (e) in relation to each dwelling not less than five main rooms including lounge room, dining room, kitchen and two bedrooms, such rooms to be delineated and created by permanent walls or partitions extending floor to ceiling or with not more than 600mm gaps at floor and ceiling level, such walls or partitions to be fixtures with the specifications to be noted on the plans;

   (f) a landscape plan generally in accordance with the landscape plan dated 19 June 2015 which is to show:

      (i) a survey including botanical names of all existing vegetation to be retained and/or removed;

      (ii) buildings and trees including botanical names on neighbouring properties within three metres of the boundary;

      (iii) details of surface finishes of pathways and driveways;

Date issued: 4 December 2015

Planning and Environment Regulations 2006 Form 4

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.
(iv) 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;

(v) landscaping and planting within all open areas of the site;

(vi) the planting of one mid-sized canopy tree in the frontage setback and secluded open space of both front dwellings;

(vii) replacement plant species should be at least 60% indigenous species;

(viii) an in-ground irrigation system to all landscape areas; and

(ix) retention of the Eucalyptus Bicostata (Blue Gum) tree in the front setback marked as tree #1 on the landscape plan dated 19/06/2015;

(g) a schedule of construction materials, external finishes and colours (incorporating paint samples); and

(h) plans in accordance with the guidelines in Clause 22.08 of the Bayside Planning Scheme which must show:-

(i) the type of water sensitive urban design stormwater treatment measures to be used;

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

(iii) design details of the water sensitive urban design stormwater treatment measures, including cross sections; and

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.

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

3 Before the development starts, a schedule of construction materials, external finishes and colours (incorporating paint samples) to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. When approved, the schedule will be endorsed and will then form part of the permit.

4 Except for downpipes all pipes, fixtures, fittings and vents servicing the dwellings must be concealed in service ducts or otherwise hidden from view to the satisfaction of the responsible authority.
5 No plant, equipment, services or architectural features other than those shown on the endorsed plans are permitted above the roof level of the dwellings without the written consent of the responsible authority.

6 (a) All external cladding is to be brick, brick veneer or weatherboards but such cladding may be painted, rendered or otherwise treated.

(b) Each dwelling is to have five main rooms including lounge room, dining room, kitchen and two bedrooms, such rooms to be delineated and constituted by the construction of solid fixed walls or partitions which are to be fixtures and which are to extend from floor to ceiling or with gaps of not more than 600mm at floor and/or ceiling level.

Traffic

7 Vehicular crossings must be constructed to the road to suit the proposed driveways to the satisfaction of the responsible authority.

Landscaping

8 Prior to the commencement of the development hereby approved (including demolition), a Tree Management Plan must be submitted to and approved by the Responsible Authority. The Tree Management Plan is to detail measures during construction to provide for the health of the existing tree(s) which are to be retained on site.

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

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

Tree Protection Zones

11 Prior to commencement of works, including demolition, a Tree Protection Fence is to be established around the Melaleuca linariifolia street tree and any on-site trees to be retained and maintained until all works on site are complete. The fencing is to be:

(a) constructed and secured so its positioning cannot be modified by site works;

(b) in relation to the street tree encompass the entire nature strip under the drip line of the tree;

(c) established and maintained in accordance with Australian Standards 4970 Protection of trees on development site; and

(d) during construction of the crossover, tree protection fencing may be reduced to the edge of the council approved crossover to facilitate the construction of the crossover.
Root Tree Pruning

12 Prior to soil excavation, a trench along the line of the proposed crossover must be dug by hand.

13 All affected roots must be correctly pruned according to Australian Standard AS 4373-2007.

Drainage

14 The applicant must apply for the nominated legal point of discharge for the development where stormwater run-off must be collected and free drained to Council's drainage assets to Council standards.

15 Any seepage/agricultural drainage water must be filtered to rain water clarity and must be pumped to the nearest Council Drain/Pit and not be discharged to the kerb and channel to the satisfaction of the Responsible Authority (unless it directs otherwise).

16 All on-site stormwater is to be collected from the hard surface areas and must not be allowed to flow uncontrolled onto adjoining properties. The on-site drainage system must prevent discharge from each driveway onto the footpath. Such a system may include either:
   (a) a trench grate (150mm minimum internal width) located within the property and/or
   (b) shaping the driveway so that water is collected in a grated pit on the property and/or
   (c) another Council approved equivalent.

17 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.

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

Water Sensitive Urban Design

19 The water sensitive urban design stormwater treatment system required as part of the endorsed plans by Condition 1(h) 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.
Expiry

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

(a) the development is not started within two (2) years of the date of this permit; and
(b) the development is not completed within four (4) years of the date of issue of this permit.

In accordance with section 69 of the Planning and Environment Act 1997, an application may be submitted to the Responsible Authority for an extension of the periods referred to in this condition.
Item 4.6 – Matters of Decision
ATTACHMENT 3
Locality Map

The objectors from 14 Gramatan Street do not appear on this map. That site is approximately 1km to the west of the subject site.
4.7  1 NAUTILUS STREET, BEAUMARIS
NOTICE OF DECISION TO GRANT A PLANNING PERMIT
APPLICATION NO: 2016/60/1  WARD: SOUTHERN

1. Purpose and background
To report a planning permit application for the construction of two double-storey dwellings and the removal of vegetation within a Vegetation Protection overlay (VPO3) on a lot with an area of 772 square metres (refer Attachment 1) at 1 Nautilus Street, Beaumaris (refer Attachment 2).

<table>
<thead>
<tr>
<th>Applicant</th>
<th>Acorn Planning</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date application received</td>
<td>31 May 2016, amended 22 July 2016</td>
</tr>
<tr>
<td>Statutory days expired</td>
<td>3 September 2016</td>
</tr>
</tbody>
</table>

2. Policy implications
Planning permit requirements
Clause 32.09-5 (Neighbourhood Residential Zone) – Construction of two dwellings on a lot.
Clause 42.02-2 (Vegetation Protection Overlay) – Removal of vegetation native to Australia.

Planning scheme amendments
Planning Scheme Amendment C139 has been prepared by Council and requires development to provide a financial contribution for drainage in this area. Council has adopted Amendment C139 and has submitted it to the Minister for Planning for approval. Whilst the Amendment is now considered ‘seriously entertained’, the Minister has not yet made a decision on the Amendment.

Planning Scheme Amendment C153 has been initiated by Council and proposes to modify the boundaries of the Special Building Overlay (SBO) and remove the Land Subject to Inundation Overlay from the Bayside Planning Scheme. The public exhibition process will conclude on 16 January 2017 and a report considering submissions will be presented to Council early in 2017. Case law confirms that proposed amendments to Planning Schemes are not considered to be ‘seriously entertained’ and applied in the assessment of permit applications until such time as they have progressed beyond a Panel and Adopted. As such, there is no statutory weight which can be given to Amendment C153. It is noted that the subject site is not within the SBO area, and is not proposed to be included in the SBO area.

3. Stakeholder Consultation
External referrals
There were 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>Traffic Engineer</td>
<td>No objection, subject to conditions</td>
</tr>
<tr>
<td>Arborist</td>
<td>No objection, subject to conditions</td>
</tr>
<tr>
<td>Drainage Engineer</td>
<td>No objection, subject to conditions</td>
</tr>
<tr>
<td>Street Tree 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 four (4) objections were originally received.

Two (2) objections were withdrawn after advertising of the proposal was completed, and two (2) objections are outstanding.

The objecting residents raised the following concerns:
- Bulk of building;
- Parking congestion;
- Vegetation removal;
- Overdevelopment;
- External material; and
- Overshadowing.

Consultation meeting
No consultation meeting has been held.

4. Recommendation
That Council:

Issue a Notice of Decision to Grant a Permit under the provisions of the Bayside Planning Scheme in respect of Planning Application No. 2016/60/1 for the land known and described as 1 Nautilus Street, Beaumaris, for the construction of two double storey dwellings and the removal of vegetation within a VPO3, subject to the following 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 advertised) Council date-stamped 22 July 2016, but modified as follows:

   a) The external wall materials amended to provide for only brick or concrete construction, so as to comply with the terms of the covenant on the title (refer Instrument No. 2693758.

   b) The elevation plans amended to show a 1m east-boundary setback (the advertised elevation plans show the ground floor of Residence 2 built to the east boundary, but the site plan shows it having a 1m ground-floor setback).

   c) An additional front (streetscape) elevation provided, showing show the front
f) The side setbacks of the dwellings’ ground floors increased to a minimum of 2.0 metres (east and west boundaries).

d) The plans amended to demonstrate compliance is achieved in respect of Standard B23 (Internal overlooking).

e) A landscaping plan provided in accordance with Condition 11.

f) Water-sensitive urban design measures (rain gardens and water tanks) in accordance with Condition 7.

h) The proposed development amended so as to retain and protect Tree 1 (Liquidambar).

i) The proposed development amended so as to retain and protect Trees 7 – 11 located on the neighbouring properties to the west.

j) The garage doors widened to 4.8m minimum and these dimensions notated on amended plans.

k) The pedestrian doors from the Residence 2 garage amended to open outwards from the garage.

l) The Residence 1 crossover relocated to provide for a 1m offset from the west boundary, and the Residence 2 crossover relocated to provide for a 2m offset from the east boundary, so as to ensure a 12.5m minimum distance is provided between the internal edges of the 3m-wide crossovers. This will allow two on-street car parking spaces to be retained directly adjacent to the subject site.

m) Sight lines in accordance with diagram shown in AS2890.1 must be provided where the two vehicle crossovers intersect with the footpath at the property boundary.

2. The use and/or development as shown on the endorsed plans must not be altered 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, fixtures, fittings and vents servicing any building on the site must be concealed in service ducts or otherwise hidden from view to the satisfaction of the Responsible Authority.

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

7. Before the development starts, detailed plans to the satisfaction of the Responsible Authority must be submitted to and be endorsed by the Responsible Authority. The plans 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.

8. 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.

9. Prior to the occupation of the development, 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.

10. Prior to the occupation of the development, 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.

11. Prior to the endorsement of plans pursuant to Condition 1, an amended 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 Genus Landscape Architects, reference 16-0212, dated May 2016, 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. Plantings must be 80% indigenous by species type and count.

   d) Two (2) indigenous canopy trees within the site’s front setback (i.e. one in front of each proposed dwelling)

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

   f) Details of surface finishes of pathways and driveways.

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

13. 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.

14. Prior to the endorsement of plans pursuant to Condition 1, including any related demolition or removal of vegetation, a Tree Management Plan (report) and Tree Protection Plan (drawing), to the satisfaction of the Responsible Authority, must be submitted to, and 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.

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

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

17. Any pruning that is required to be done to Tree #1 (Liquidambar to be retained) is to be done by a qualified arborist to Australian Standard – Pruning of Amenity Trees AS4373-1996. Any pruning of the root system of this tree to be retained is to be done by hand by a qualified arborist.

18. Tree protection fences are required for the protection of the two adjacent street trees' canopies and root zones. Conditions for street tree protection fencing during development are as follows:

- Fencing is to be secured and maintained prior to demolition and until all site works are complete.
- Fencing must be installed to comply with AS 4970–2009, Protection of trees on development sites.
- Fencing should encompass the Tree Protection Zone (TPZ) for all street trees adjacent to the development.
- Fencing is to be constructed and secured so its positioning cannot be modified by site workers.
- 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. 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.

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

21. Sight lines in accordance with diagram shown in AS2890.1 must be provided where the two vehicle crossovers intersect with the footpath at the property boundary.

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:**
- Council records indicate that there is a 1.83m-wide drainage and sewerage easement along the northern property boundary, as indicated on the drawings provided. The plans indicate no proposals to encroach into the 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.

5. **Council Policy**

**Council Plan 2013-2017**

Relevant strategies of the Council plan include:
- 3.1.1 Developing planning strategies and policies with our community that enhance Bayside’s liveability along with its natural and built environment.
- 3.1.3 Advocating Council’s planning and urban design objectives.

**Bayside Planning Scheme**
- Clause 11 Settlement
- Clause 12 Environmental and Landscape Values
- Clause 15 Built Environment and Heritage
- Clause 16 Housing
- Clause 21.02 Bayside Key Issues and Strategic Vision
- Clause 21.03 Settlement and Housing
- Clause 21.04 Environmental and Landscape Values
- Clause 21.06 Built Environment and Heritage
- Clause 22.06 Neighbourhood Character Policy H4
- Clause 22.08 Water Sensitive Urban Design
- Clause 32.09 Neighbourhood Residential Zone (Schedule 3)
- Clause 42.02 Vegetation Protection Overlay (Schedule 3)
- Clause 43.02 Design and Development Overlay (Schedule 1)
– Matters of Decision

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 H4 and, subject to conditions to increase the boundary setbacks, 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.

In particular, the extent of the proposed encroachments of the side setback standards will be acceptable having regard to the “informal feel to the streetscapes, achieved by spaces around buildings”. The local area is characterised by substantial side and rear setbacks, with only accessory buildings, such as sheds; or open structures, such as carports, built to the boundaries. The proposal entails a garage built to the west boundary, and reduced ground-floor setbacks to the west and east boundaries at the rear of both dwellings.

6.2. Compliance with Clause 55 (ResCode)

An assessment against the requirements of Clause 55 is provided at Attachment 4. Those non-compliant standards are discussed below:

Street Setback (Standard B6)

<table>
<thead>
<tr>
<th>Required</th>
<th>Proposed</th>
<th>Variation</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.57m</td>
<td>7.0m</td>
<td>0.57m</td>
</tr>
</tbody>
</table>

The application proposes a street setback of 7.0m to the upper-storey balcony of Residence 1 of the development, where the standard requires 7.57m, an encroachment of 0.57m. The upper-storey balcony of Residence 2 will have a street setback of 7.5m, so an encroachment of 0.07m. The ground floors of the dwellings will comply with the required setback.

The design provides for a well graduated street setback when viewed in relation to the neighbouring properties, being 6 Coral Avenue to the west (2.71m at the common boundary), and 3 Nautilus Street to the east (7.87m to the front wall). The front of the proposed building is also well articulated and will not present a dominating built form to the road. The encroachments proposed are minor and would be difficult to differentiate visually from a proposal with a complying street setback.
**Side and Rear Setbacks (Standard B17)**

<table>
<thead>
<tr>
<th>Ground floor</th>
<th>First Floor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requirement</td>
<td>Proposed</td>
</tr>
<tr>
<td>West (side)</td>
<td>0m or 2m</td>
</tr>
<tr>
<td></td>
<td>3.89m</td>
</tr>
<tr>
<td>East (side)</td>
<td>0m or 2m</td>
</tr>
<tr>
<td></td>
<td>3.89m</td>
</tr>
</tbody>
</table>

The application proposes a side setback of 1.5m to the ground-floor wall of Residence 1 (west boundary), where the standard requires 2m, resulting in an encroachment of 0.5m. The application also proposes a side setback of 3.2m to the first-floor wall of Residence 1, where the standard requires 3.89m, resulting in an encroachment of 0.69m.

The application proposes a side setback of 1.0m to the ground-floor wall of Residence 2 (east boundary), where the standard requires 2.0m, resulting in an encroachment of 1.0m. The application also proposes a side setback of 3.5m to the first-floor wall of Residence 2 (east boundary), where the standard requires 3.89m, resulting in an encroachment of 0.39m.

These setbacks are considered inconsistent with the preferred neighbourhood character, as noted earlier in this report. It is recommended that the plans be amended (via conditions in the recommendation) to provide for a reduced level of non-compliance, so as to create the appearance of greater space between buildings.

### 6.3. **Car Parking and Traffic**

Each dwelling is provided with two car spaces in accordance with Clause 52.06. Council’s Traffic Engineer has reviewed the application and raised no objection, subject to standard conditions being imposed on any permit issued.

The level of increased traffic generated by the proposed development will not adversely impact the local road network and Council’s Traffic Engineer has raised no objection in this regard.

### 6.4. **Vegetation & 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 objectives of the VPO3 must be considered in association with the other statutory controls governing the site and relevant State and Local Planning Policies. This includes the overarching purposes of the relevant zone and overlays and the need to ensure decisions reflect broader strategic policy objectives. Such strategic policy objectives include encouraging urban consolidation and the efficient use of established residential land to reduce the outward expansion of the metropolitan area.

Council’s Arborist has reviewed the application and advises that there is one tree on the site protected under the criterion of the VPO3, being a Lilly Pilly (Syzygium smithii) located in the rear private open space (Tree #21 in the submitted vegetation assessment). The Lilly Pilly is in a poor condition of health due to repeated possum browsing.
This tree has a low amenity value and life expectancy of less than three (3) years. Removal of this tree is, therefore, deemed acceptable provided it is replaced with suitable indigenous coastal tree plantings within the front setback.

With the exception of tree #1, other trees on the site have low amenity values and their removal is acceptable if they are then replaced with indigenous coastal tree plantings and landscaping.

The other trees to be removed are deemed to either be in poor health, have poor structure, or both, or are not significant specimens, in which case their removal can be adequately mitigated through the provision of a high-quality landscaping plan that comprises 80% indigenous species and includes canopy trees.

<table>
<thead>
<tr>
<th>VPO3 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>Tree #21</td>
<td>Nil</td>
</tr>
</tbody>
</table>

Tree #1 is a mature Liquidambar (*Liquidambar styraciflua*) located in the south-east corner of the site. The tree has been browsed (“fed upon by continual nibbling” – Collins English Dictionary, Australian Edition, 1986) by possums and is in a fair condition of health. Due to extensive Ivy (*Hedera helix*) cover on the trunk the structure of this tree could not be comprehensively assessed. This tree has a moderate amenity value.

The footprint of proposed Residence 1 does not encroach into the tree protection zone (TPZ) of Tree #1. If the existing soil level within the TPZ is maintained and a root-sensitive driveway is installed, this tree can be retained. The driveway must be installed above the natural ground level and constructed of a permeable material; loose aggregate such as gravel, rock chip or pebble is optimal.

It is also noted that Trees #7-11 on the neighbouring properties to the west will need to be protected from harm. Council’s arborist states the proposed fill and hard landscaping encroaches within the structural root zones (SRZs) of trees #7 – 11 and under the advertised proposal these trees will not remain viable. If the existing soil level within the TPZs is retained and the hard landscaping is replaced with garden beds, these trees will remain viable.

In addition to the above assessment, Council’s Arborist has reviewed the submitted landscape concept plan and advises the following: The submitted landscape plan must include 80% indigenous species and two (2) canopy indigenous canopy trees in the front setback. These trees must have the capacity to reach a height of 10m and spread of 6m at maturity.

6.5. **Objections received**

Issues raised by objectors that have not been addressed in the assessment above, are discussed below.

**Consultation over the end finish of the brickwork**

Covenant 2693758 (created 29 Nov 1954) requires the exterior walls of any building constructed on the site to be of brick or concrete construction. A condition will be imposed on any permit issued requiring the exterior wall materials to be amended to provide for only brick or concrete construction.
Overlooking

The balconies at the rear of the proposed dwellings, which are situated between 6.2m and 7.0m from the rear boundary, abutting 6 Florida Avenue, are screened to a height of 1.7m on their sides, are however proposed to have only 1m high balustrades where they look out onto the secluded private open space at the rear of 6 Florida Avenue. It is noted, however, that the owners of 6 Florida Avenue have not objected to the proposed development, having formally withdrawn the objection they had submitted earlier, and that the proposal complies with the standard.

Overdevelopment

The application has been assessed to not represent an overdevelopment of the site, subject to minor changes being made to the design of the building, in particular the side setbacks.

Privacy from ensuite window on western elevation

The west-facing ensuite is not a habitable room, so no screening of this window is necessary. In its current form it complies with Standard B22 of Clause 55 (Overlooking).

Overshadowing

The proposed development will not result in excessive shadowing of the neighbouring property to the west. The proposal complies with Standard B21 (Overshadowing open space).

Support Attachments

1. Development Plans ↓
2. Site and Surrounds Imagery ↓
3. Neighbourhood Character Policy (Precinct H4) ↓
4. Clause 55 (ResCode) Assessment ↓
5. Decision Guidelines of the Vegetation Protection Overlay (Schedule 3) ↓
ATTACHMENT TWO
Site and Surrounds Imagery

Figure 1 Aerial view of the site and surrounds

Legend

<p>| | |</p>
<table>
<thead>
<tr>
<th></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 Nautilus St (east end of frontage)
Figure 3. View towards the site from Nautilus St (west end of frontage)
ATTACHMENT 3
Neighbourhood Character Policy (Precinct H4)

Preferred Future Character Statement

The single and double storey dwellings sit within the topography and informal landscaped surrounds, including remnant and indigenous coastal trees. The variety of dwelling styles reflect the coastal setting through their design, details and finishes. An informal feel to the streetscapes is achieved by spaces around buildings, the lack of or unobtrusive style of front fencing and informal street treatments. Along Beach Road, development responds to its highly visible location on the edge of the coast by providing visually interesting forms and facades. Informal street treatments remain in those streets with no kerbing and remnant street tree planting is retained.

Precinct Guidelines

<table>
<thead>
<tr>
<th>Objectives</th>
<th>Design Responses</th>
<th>Avoid</th>
<th>Planning Officer Assessment</th>
</tr>
</thead>
</table>
| To enhance the bayside vegetation character of the area through the planting of indigenous coastal species. | • Prepare a landscape plan to accompany all applications for new dwellings that utilises indigenous coastal species.  
• Retain large, established trees and provide for the planting of new trees and shrubs wherever possible (locate footings outside root zone). | Lack of a landscape plan.  
Removal of large established trees.  
Use of exotic species and planting of environmental weeds | Responds, subject to condition  
The proposed development will provide for a suitable level of landscaping, subject to a landscape plan being submitted and approved by Council prior to works commencing on the site. Only a concept landscape plan was submitted with the application. The landscape plan must include 80% indigenous species and two (2) canopy indigenous canopy trees in the front setback. These trees must have the capacity to reach a height of 10 m and a spread of 6 m at maturity. |
| To maintain the rhythm of spacious visual separation between buildings.   | • Dwellings should be sited to create the appearance of space between buildings and to accommodate substantial vegetation. |                                                                                                      | Does not respond  
The application proposes a side setback of 1.5m to the top of the ground-floor wall of Residence 1 (west boundary), where the standard requires 2.18m, resulting in an encroachment of 0.68m. The ground-floor |
<table>
<thead>
<tr>
<th>Objectives</th>
<th>Design Responses</th>
<th>Avoid</th>
<th>Planning Officer Assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>To minimise the dominance of car parking structures and the loss of front garden space.</td>
<td>- Locate garages and carports behind the line of the dwelling.</td>
<td>- Car parking facilities that dominate the façade or view of the dwelling.</td>
<td>wall of Residence 2 will have a side setback of 1.0m, where the standard requires 2.0m, resulting in an encroachment of 1.0m. These setbacks are considered inconsistent with the preferred neighbourhood character, as the pattern in the immediate neighbourhood is of greater setbacks. It is recommended that the submitted plans be amended to provide for a reduced level of non-compliance, so as to create the appearance of space between buildings.</td>
</tr>
</tbody>
</table>
|                                                                           | - Minimise paving in front garden areas including driveways and crossovers.      | - Creation of new crossovers and driveways or wide crossovers.       | Responds \>
|                                                                           | - 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. | - Front setbacks dominated by impervious surfaces.                     | Responds \>
<p>|                                                                           |                                                                                  |                                                                      | Car parking will be provided within ground-level double-garages located behind the line of the dwelling. |
| To ensure that new buildings and extensions do not dominate the streetscape. |                                                                                  |                                                                      |                                                                                                     |
|                                                                           |                                                                                  |                                                                      |                                                                                                     |</p>
<table>
<thead>
<tr>
<th>Objectives</th>
<th>Design Responses</th>
<th>Avoid</th>
<th>Planning Officer Assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>To encourage innovative architecture that reflects the bayside setting.</td>
<td>• New buildings should be individually designed to respond to the characteristics of the bay side location and the site.</td>
<td>Large, bulky buildings with poorly articulated front and side wall surfaces.</td>
<td>Responds</td>
</tr>
<tr>
<td></td>
<td>• Incorporate building elements and details that contribute to a lightness of structure including balconies, verandahs, glazing and light transparent balustrading.</td>
<td>Heavy design detailing (e.g. Masonry columns and piers). Highly reflective materials or glazing.</td>
<td>The proposed development features a flat roof and other modern design elements that are commonplace in development on near the coast. In particular, the building’s front and rear elevations have significant fenestrated areas and large decks.</td>
</tr>
<tr>
<td>To use lighter looking building materials and finishes that complement the bayside setting.</td>
<td>• Use a mix of contemporary and traditional coastal materials, textures and finishes including render, timber, non-masonry sheeting, glazing, stone and brick.</td>
<td>Period reproduction styles and detailing.</td>
<td>Responds</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>The design features an appropriate variety of materials and colours,</td>
</tr>
<tr>
<td>To maintain the openness of the streetscape and views to coastal garden settings.</td>
<td>• Provide open style front fencing, other than in exceptional circumstances.</td>
<td>High or solid front fencing.</td>
<td>Responds</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>No front fence is proposed.</td>
</tr>
<tr>
<td>To create a visually interesting and attractive built form interface with the foreshore reserve, on properties fronting Beach Road and visible from the reserve.</td>
<td>• Where the properties front to both Beach Road and another street, ensure the dwellings present visually interesting elevations on all faces visible from the public domain.</td>
<td>Flat, poorly articulated roof forms and facades visible from the public domain. High, solid front fencing on Beach Road.</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>• Use landscaping materials and coastal plants within the front setback that contribute to the coastal character and amenity of the street.</td>
<td></td>
<td>The site does not front Beach Road and is not visible from the reserve.</td>
</tr>
<tr>
<td></td>
<td>• Provide articulated roof forms to create an interesting skyline when viewed from the beach.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Title and Objective</td>
<td>Complies with Standard?</td>
<td>Comments</td>
<td></td>
</tr>
<tr>
<td>-------------------------------------</td>
<td>--------------------------</td>
<td>---------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>37. B1 Neighbourhood Character</td>
<td>Yes</td>
<td>Refer Attachment 2.</td>
<td></td>
</tr>
<tr>
<td>Design respects existing neighbourhood character or contributes to a preferred neighbourhood character. Development responds to features of the site and surrounding area.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>38. B2 Residential Policy</td>
<td>Yes</td>
<td>The subject site is appropriately located with regard to the services and facilities required to support two dwellings.</td>
<td></td>
</tr>
<tr>
<td>Residential development is consistent with housing policies in the SPPF, LPPF including the MSS and local planning policies. Support medium densities in areas to take advantage of public transport and community infrastructure and services.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>39. B3 Dwelling Diversity</td>
<td>N/A</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Encourages a range of dwelling sizes and types in developments of ten or more dwellings.</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>40. B4 Infrastructure</td>
<td>Yes</td>
<td>Any upgrades required will be the responsibility of the developer.</td>
<td></td>
</tr>
<tr>
<td>Item</td>
<td>41. B5 Integration with the Street</td>
<td></td>
<td></td>
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<tr>
<td>------</td>
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<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Overloading the capacity.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Yes</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>The dwellings appropriately address the street and entries are clearly identifiable from the road.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>B5 Integration with the Street</strong></td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>Integrate the layout of development with the street.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>No</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Minimum: 9m</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Proposed: 8.4m</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>Refer to Section 6.2 of report for detailed discussion.</td>
<td></td>
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<tr>
<td></td>
<td><strong>B6 Street Setback</strong></td>
<td></td>
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<tr>
<td></td>
<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>
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<tr>
<td></td>
<td>Yes</td>
<td></td>
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<tr>
<td></td>
<td><strong>B7 Building Height</strong></td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>Yes</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>B8 Site Coverage</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Yes</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>B9 Permeability</strong></td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>Yes</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td><strong>B10 Energy Efficiency</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Yes</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>The proposal provides for appropriate solar access to the dwellings. In particular, both dwellings will have large north-facing windows at both ground and upper levels, and the development has a 6-star energy rating.</td>
<td></td>
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</tr>
<tr>
<td></td>
<td><strong>Yes</strong></td>
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<td></td>
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<td></td>
<td><strong>Yes</strong></td>
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<td><strong>Yes</strong></td>
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<td><strong>Yes</strong></td>
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<td><strong>Yes</strong></td>
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<td></td>
<td><strong>Yes</strong></td>
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<tr>
<td></td>
<td><strong>Yes</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Item</td>
<td>B11 Open Space</td>
<td>B12 Safety</td>
<td>B13 Landscaping</td>
</tr>
<tr>
<td>------</td>
<td>----------------</td>
<td>------------</td>
<td>----------------</td>
</tr>
</tbody>
</table>
| 48.  | Integrate layout of development with any public and communal open space provided in or adjacent to the development. | N/A | Yes, subject to condition | Council’s arborist has stated that the landscape plan to be submitted pursuant to a permit condition must include 80% indigenous species and two (2) canopy indigenous canopy trees in the front setback. These trees must have the capacity to reach a height of 10 m and spread of 6 m at maturity. | Yes | Appropriate vehicular access is provided.  
Maximum: 33% of street frontage  
Proposed: 27% of street frontage  
The proposed car parking areas are appropriately located, in this instance in ground-level double garages. |
| 49.  | Layout to provide safety and security for residents and property. | Yes | No safety issues are considered likely to arise. | | |
| 50.  | To provide appropriate landscaping. To encourage:  
4. Development that respects the landscape character of the neighbourhood.  
5. Development that maintains and enhances habitat for plants and animals in locations of habitat importance.  
6. The retention of mature vegetation on the site. | Yes, subject to condition | | | |
| 51.  | Ensure the safe, manageable and convenient vehicle access to and from the development.  
Ensure the number and design of vehicle crossovers respects neighbourhood character. | Yes | | |
| 52.  | Provide resident and visitor vehicles with convenient parking. Avoid parking and traffic difficulties in the development and the | Yes | | |
neighbourhood. Protect residents from vehicular noise within developments.

53. B17 Side and Rear Setbacks

54. Ensure the height and setback respects the existing or preferred neighbourhood character and limits the amenity impact on existing dwellings.

No

The application proposes a side setback of 1.5m to the ground-floor wall of Residence 1 (west boundary), where the standard requires 2m, resulting in an encroachment of 0.5m. The application also proposes a side setback of 3.2m to the first-floor wall of Residence 1, where the standard requires 3.89m, resulting in an encroachment of 0.69m.

The application proposes a side setback of 1.0m to the ground-floor wall of Residence 2 (east boundary), where the standard requires 2.0m, resulting in an encroachment of 1.0m. The application also proposes a side setback of 3.5m to the first-floor wall of Residence 2 (east boundary), where the standard requires 3.89m, resulting in an encroachment of 0.39m.

<table>
<thead>
<tr>
<th>Ground floor</th>
<th>First Floor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Required</td>
<td>Proposed</td>
</tr>
<tr>
<td>West (side)</td>
<td>0m or 2m</td>
</tr>
<tr>
<td>East (side)</td>
<td>0m or 2m</td>
</tr>
</tbody>
</table>

It is recommended that the plans be amended to provide for a reduced level of non-compliance, so as to create the appearance of greater space between buildings.

55. 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.

Yes

Maximum Height: 3.6m
Proposed: 3.2m
Maximum Average Height: 3.2m
Proposed: approx. 3m
Maximum Length: 17.13m (south)
Proposed: 10m (south)

56. B19 Daylight to Existing Windows

Allow adequate daylight into existing habitable room windows.

Yes

The proposal is set back from property boundaries sufficiently to ensure daylight to existing windows is maintained.

57. B20 North Facing Windows

Allow adequate solar access to existing north-facing habitable room windows.

Yes

The subject is located on the north side of Nautilus Street.

58. B21 Overshadowing

Yes

Shadow diagrams submitted with the application demonstrate that at least 75%/40m² of adjoining dwellings secluded private open space receives at least five hours of sunlight between 9am
<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Open Space</strong></td>
<td>Ensure buildings do not significantly overshadow existing secluded private open space.</td>
</tr>
<tr>
<td><strong>59. B22 Overlooking</strong></td>
<td>Limit views into existing secluded private open space and habitable room windows.</td>
</tr>
<tr>
<td></td>
<td>Yes</td>
</tr>
<tr>
<td><strong>60. B23 Internal Views</strong></td>
<td>Limit views into existing secluded private open space and habitable room windows of dwellings and residential buildings within the same development.</td>
</tr>
<tr>
<td></td>
<td>No</td>
</tr>
<tr>
<td><strong>61. B24 Noise Impacts</strong></td>
<td>Protect residents from external noise and contain noise sources in developments that may affect existing dwellings.</td>
</tr>
<tr>
<td></td>
<td>Yes</td>
</tr>
<tr>
<td><strong>62. B25 Accessibility</strong></td>
<td>Consider people with limited mobility in the design of developments.</td>
</tr>
<tr>
<td></td>
<td>Yes</td>
</tr>
<tr>
<td><strong>63. B26 Dwelling Entry</strong></td>
<td>Provide a sense of identity to each dwelling.</td>
</tr>
<tr>
<td></td>
<td>Yes</td>
</tr>
<tr>
<td><strong>64. B27 Daylight to New Windows</strong></td>
<td>Allow adequate daylight into new habitable room windows.</td>
</tr>
<tr>
<td></td>
<td>Yes</td>
</tr>
<tr>
<td><strong>65. B28 Private Open Space</strong></td>
<td>Minimum: 25m² secluded, 40m² overall</td>
</tr>
<tr>
<td></td>
<td>Proposed: Dwelling 1 – 56m² secluded</td>
</tr>
<tr>
<td>Item</td>
<td>Description</td>
</tr>
<tr>
<td>------</td>
<td>-------------</td>
</tr>
<tr>
<td>66. B29 Solar Access to Open Space</td>
<td>Provide solar access into the secluded private open space of new dwellings/buildings.</td>
</tr>
<tr>
<td>67. B30 Storage</td>
<td>Provide adequate storage facilities for each dwelling.</td>
</tr>
<tr>
<td>68. B31 Design Detail</td>
<td>Encourage design detail that respects the existing or preferred neighbourhood character.</td>
</tr>
<tr>
<td>69. B32 Front Fences</td>
<td>Encourage front fence design that respects the existing or preferred neighbourhood character.</td>
</tr>
<tr>
<td>70. B33 Common Property</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>71. B34 Site Services</td>
<td>Ensure site services and facilities can be installed and easily maintained and are accessible, adequate and attractive.</td>
</tr>
</tbody>
</table>
### ATTACHMENT 5

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

<table>
<thead>
<tr>
<th>Decision Guideline</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>The impact the vegetation removal would have on the character of the area</strong></td>
<td>There is a moderate amount of vegetation on the site, but only one tree, a Liquidambar, is worthy of retention in the opinion of Council’s arborist. This tree can be retained if the existing soil level within its TPZ is maintained and a root-sensitive driveway installed. Minor modification of the submitted design would be required to achieve this. Only one tree to be removed meets the criteria for protection under the VPO, being a Lilly Pilly in poor overall health. There would be no detrimental effect on the treed character of the local area of the proposed removal, provided that sufficient replanting with native species is undertaken within the site.</td>
</tr>
<tr>
<td><strong>The impact the vegetation removal would have on the presence of indigenous species in the locality</strong></td>
<td>The local neighbourhood is characterised by a predominance of native vegetation, and the landscape plan required by permit condition would need to comprise 80% native species, including canopy trees.</td>
</tr>
<tr>
<td><strong>The impact the vegetation removal would have on the appearance of development.</strong></td>
<td>The proposed removal of vegetation will not have a detrimental effect on the appearance of the development, as additional landscaping of the site will be undertaken. In addition, the existing Liquidambar tree within the front setback can be retained, with only a minor modification to the design.</td>
</tr>
<tr>
<td><strong>The impact the vegetation removal would have on the habitat quality of any remaining vegetation and the fragmentation of wildlife corridors.</strong></td>
<td>The proposed development’s impact on fauna and habitat quality will be minimised and mitigated through the imposition of conditions relating to landscaping of the site with predominantly native species.</td>
</tr>
<tr>
<td><strong>Any proposal to regenerate or plant indigenous vegetation on the site.</strong></td>
<td>Replanting of the site with predominantly native species will ensure that sufficient regeneration occurs post-development.</td>
</tr>
</tbody>
</table>
Executive summary

To inform Council of Victorian Civil and Administrative Tribunal (VCAT) determinations received in the months of November and December 2016 and to show the progress of VCAT outcomes for the financial year.

Summary details for the decisions handed down are attached.

<table>
<thead>
<tr>
<th>Month</th>
<th>Year</th>
<th>Council Upheld</th>
<th>Council Over-turned</th>
<th>Delegate Upheld</th>
<th>Delegate Over-turned</th>
<th>Other (e.g. Varied, by Consent or Sec87A)</th>
<th>Withdrawn</th>
<th>Total</th>
<th>Set Aside</th>
<th>Affirmed</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 2016</td>
<td>0</td>
<td>3</td>
<td>0</td>
<td>4</td>
<td>4</td>
<td>1</td>
<td>12</td>
<td>7</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>August 2016</td>
<td>0</td>
<td>0</td>
<td>4</td>
<td>9</td>
<td>0</td>
<td>1</td>
<td>14</td>
<td>9</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>September 2016</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>3</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>October 2016</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>3</td>
<td>2</td>
<td>0</td>
<td>7</td>
<td>3</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>November 2016</td>
<td>0</td>
<td>1</td>
<td>3</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>8</td>
<td>3</td>
<td>3</td>
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</tr>
<tr>
<td>December 2016</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>0</td>
<td>4</td>
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<tr>
<td>TOTAL</td>
<td>1</td>
<td>4</td>
<td>10</td>
<td>21</td>
<td>10</td>
<td>2</td>
<td>48</td>
<td>25</td>
<td>14</td>
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</tr>
</tbody>
</table>

*Local Government Performance Reporting Framework (Data to be reported to State Government)

Key issues

Decisions made by the VCAT may affect neighbourhood character outcomes and community perceptions of liveability in their neighbourhoods.

The number of decisions by Council or Council’s Delegate that are ‘Set Aside’ by VCAT is measured by the Local Government Performance Reporting Framework (LGPRF) as the key measure of Statutory Decision Making Quality.

It is essential for Council to monitor the outcomes of VCAT hearings to understand the effect of the decisions and opportunities to further refine planning controls.

Know Your Council

On 16 August 2016 in the Ordinary Council Meeting, Council set a target that 50% of all applications heard at VCAT in 2016/17 should be affirmed or ‘agreed with’.

This information shows that in the 6 months of the year, Council achieved a 36% positive outcome.

VCAT has set aside or ‘disagreed with’ 25 of Council’s decisions this financial year, and affirmed or ‘agreed with’ 14 Council decisions.
Recommendation
That the report on the VCAT decisions on the planning applications handed down during the months of November and December 2016 be received and noted.

Support Attachments
1. VCAT Report ↓

Considerations and implications of recommendation

Liveable community

Social
The recommendation will not have any social effects.

Natural Environment
The recommendation will not have any effect on the natural environment.

Built Environment
The recommendation will not have any effect on the built environment.

Customer Service and Community Engagement
The recommendation will not have any effect on customer service or on community engagement.

Human Rights
The recommendation will not have any effect on human rights.

Legal
The recommendation does not create any legal issues for Council.

Finance
The recommendation does not have any strategic financial implications for Council.

Links to Council policy and strategy
The decisions of the VCAT may affect Council’s capacity to achieve objectives set out in the Council Plan.
VCAT Determined Appeals from 1/11/2016 to 30/11/2016

Subject land: 41A Bluff RD, BLACK ROCK
Application no.: 2015 380 1
VCAT reference no.: P185/2016
Applicant: Tim Margetts
Referral Authority: N/A
Respondents: Jill Whyte, Jianbin Hao, John Mingos, Anthony Worters, Li Fang Zhou, Bin Wu

Before: M Carew
Date of hearing: 17/10/2016
Date of order: 17/11/2016
Proposal: Retail Premises
Buildings and works in a Commercial 1 Zone and Design and Development Overlay Schedule 1, removal of native vegetation, reduction in car parking and bicycle parking requirements pursuant to Clauses 52.06 and 52.34 of the Bayside Planning Scheme in association with the as of right use of a supermarket

Officer recommendation: Refusal
Council recommendation: Not applicable
Appeal type: Refusal to Grant a Permit
Plans substituted (prior to hearing): No
VCAT determination: No Permit to issue
LGPRF outcome: Affirmed
Subject land 5 - 11 Sandringham RD, SANDRINGHAM
Application no. 2015.589.1
VCAT reference no. P881/2016
Applicant Malcolm Donald Motherwell & Julie Marie Motherwell
Referral Authority N/A
Respondents iKids Investments Pty Ltd

Before L Hewet
Date of hearing 19/10/2016
Date of order 15/11/2016
Proposal Child Care Centre - New Use & Bld
Use and development of the land for a child care centre and display of business identification signage

Officer recommendation Notice of decision
Council recommendation Notice of decision
Appeal type Conditions
Plans substituted No
(prior to hearing)

VCAT determination Varied Permit
LGPRF outcome Not Applicable
<table>
<thead>
<tr>
<th>Subject land</th>
<th>94 Dendy ST, BRIGHTON</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application no.</td>
<td>2015.137.1</td>
</tr>
<tr>
<td>VCAT reference no.</td>
<td>P955/2016</td>
</tr>
<tr>
<td>Applicant</td>
<td>Fine Line Building Design</td>
</tr>
<tr>
<td>Referral Authority</td>
<td>N/A</td>
</tr>
<tr>
<td>Respondents</td>
<td>N/A</td>
</tr>
</tbody>
</table>

**Before**
- V Davies

**Date of hearing**
- 2/11/2016

**Date of order**
- 7/11/2016

**Proposal**
- 2 New Dwellings
- The construction of two or more dwellings on a lot in a Neighbourhood Residential Zone

**Officer recommendation**
- Notice of decision

**Council recommendation**
- Refusal

**Appeal type**
- Refusal to Grant a Permit

**Plans substituted**
- No

**VCAT determination**
- Permit granted

**LGPRF outcome**
- Set Aside
<table>
<thead>
<tr>
<th>Subject land</th>
<th>8 Moor ST, SANDRINGHAM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application no.</td>
<td>2015.783.1</td>
</tr>
<tr>
<td>VCAT reference no.</td>
<td>P964/2016</td>
</tr>
<tr>
<td>Applicant</td>
<td>Graeme &amp; Sue Matthews</td>
</tr>
<tr>
<td>Referral Authority</td>
<td>N/A</td>
</tr>
<tr>
<td>Respondents</td>
<td>N/A</td>
</tr>
<tr>
<td>Before</td>
<td>J A. Bennett</td>
</tr>
<tr>
<td>Date of hearing</td>
<td>8/11/2016</td>
</tr>
<tr>
<td>Date of order</td>
<td>9/11/2016</td>
</tr>
<tr>
<td>Proposal</td>
<td>2 New Dwellings</td>
</tr>
<tr>
<td></td>
<td>Construction of two (2) double storey attached dwellings in the Neighbourhood Residential Zone 3</td>
</tr>
</tbody>
</table>

**Officer recommendation**
- Not support

**Council recommendation**
- Not applicable

**Appeal type**
- Failure to Grant a Permit

**Plans substituted (prior to hearing)**
- Yes

**VCAT determination**
- Permit to Issue

**LGPRF outcome**
- Set Aside
Subject land: 8 Billson ST, BRIGHTON EAST
Application no.: 2015.523.1
VCAT reference no.: P979/2016
Applicant: Tim and Michelle Riordan
Referral Authority: N/A
Respondents: G E Sedunary

Before: E A Bensz
Date of hearing: 9/11/2016
Date of order: 9/11/2016
Proposal: 2 New Dwellings and Subdivision of Land (1 to 9 Lots)
Two dwellings in a Neighbourhood Residential Zone

Officer recommendation: Notice of decision
Council recommendation: Not applicable
Appeal type: Conditions
Plans substituted (prior to hearing): No
VCAT determination: Permit to Issue
LGPRF outcome: Affirmed
### Item 4.8 – Matters of Decision

<table>
<thead>
<tr>
<th>Subject land</th>
<th>32 Florence ST, BRIGHTON EAST</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application no.</td>
<td>2014.827.2</td>
</tr>
<tr>
<td>VCAT reference no.</td>
<td>P1582/2016</td>
</tr>
<tr>
<td>Applicant</td>
<td>Charlotte Anne Katherine Anne Knezeic</td>
</tr>
<tr>
<td>Referral Authority</td>
<td>N/A</td>
</tr>
<tr>
<td>Respondents</td>
<td>N/A</td>
</tr>
<tr>
<td>Before</td>
<td>L Hewet</td>
</tr>
<tr>
<td>Date of hearing</td>
<td>14/11/2016</td>
</tr>
<tr>
<td>Date of order</td>
<td>15/11/2016</td>
</tr>
<tr>
<td>Proposal</td>
<td>2 New Dwellings</td>
</tr>
<tr>
<td></td>
<td>Construction of two double storey dwellings</td>
</tr>
<tr>
<td>Officer recommendation</td>
<td>Permit granted</td>
</tr>
<tr>
<td>Council recommendation</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Appeal type</td>
<td>Conditions</td>
</tr>
<tr>
<td>Plans substituted</td>
<td>No</td>
</tr>
<tr>
<td>(prior to hearing)</td>
<td></td>
</tr>
<tr>
<td>VCAT determination</td>
<td>Varied Permit</td>
</tr>
<tr>
<td>LGPRF outcome</td>
<td>Not Applicable</td>
</tr>
<tr>
<td>Item</td>
<td>Subject land</td>
</tr>
<tr>
<td>------</td>
<td>-------------</td>
</tr>
<tr>
<td>4.8</td>
<td>12 Melrose ST, SANDRINGHAM</td>
</tr>
</tbody>
</table>

**Before**
G. Rundell

**Date of hearing**
17/11/2016

**Date of order**
30/11/2016

**Proposal**
Retail Premises Other - New Bld & Use
Construction of a four storey building comprising one shop and three dwellings, reduction in the required car parking ratio and waiver of the loading and unloading of vehicles requirement

**Officer recommendation**
Refusal

**Council recommendation**
Not applicable

**Appeal type**
Refusal to Grant a Permit

**Plans substituted**
No

**VCAT determination**
No permit to issue

**LGPRF outcome**
Affirmed
Subject land 33 Bateman ST, HAMPTON
Application no. 2015.273.1
VCAT reference no. P1103/2016
Applicant C and J Shippard
Referral Authority N/A
Respondents N/A

Before G Rundell
Date of hearing 23/11/2016
Date of order 23/11/2016
Proposal 2 New Dwellings
The construction of two double storey dwellings in the Neighbourhood Residential Zone Schedule 3

Officer recommendation Refusal
Council recommendation Not applicable
Appeal type Refusal to Grant a Permit
Plans substituted No
(prior to hearing)
VCAT determination Permit to issue
LGPRF outcome Set Aside
VCAT Determined Appeals from 1/12/2016 to 31/12/2016

<table>
<thead>
<tr>
<th>Subject land</th>
<th>24 Linacre RD, HAMPTON</th>
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<tbody>
<tr>
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<td>2015.538.1</td>
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<td>VCAT reference no.</td>
<td>P991/2016</td>
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<tr>
<td>Applicant</td>
<td>Carl De Fina for P905/2016 and Jamaly Hampton Pty Ltd for P991/2016</td>
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<td>Referral Authority</td>
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<tr>
<td>Respondents</td>
<td>Jamaly Hampton Pty Ltd for P991/2016 and Carl De Fina for P905/2016</td>
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Before C Fong

Date of hearing 7/11/2016

Date of order 2/12/2016

Proposal

11 - 25 New Dwellings
Construction of a three storey apartment building plus basement for multiple dwellings

<table>
<thead>
<tr>
<th>Officer recommendation</th>
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<td>Appeal type</td>
<td>Conditions</td>
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<td>Plans substituted (prior to hearing)</td>
<td>Yes</td>
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<td>VCAT determination</td>
<td>Varied Permit</td>
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<tr>
<td>LGPRF outcome</td>
<td>Not Applicable</td>
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</tbody>
</table>
Subject land 37 Willis ST, HAMPTON
Application no. 2016.299.1
VCAT reference no. P1247/2016
Applicant Alistor Shontfield
Referral Authority N/A
Respondents Sheila O'Shea, Robert Blair

Before G Code
Date of hearing 7/12/2016
Date of order 19/12/2016
Proposal 11 - 25 New Dwellings
Construction of fifteen dwellings on two lots in a General Residential Zone; Construction of a front fence with a height more than 1.5 metres in a General Residential Zone; Partial demolition and construction of buildings and works in a Heritage Overlay; Construction of buildings and works with a building height 10 metres or more in a Design & Development Overlay and reduction in the number of visitor vehicle parking spaces from 3 to 2

Officer recommendation Not support
Council recommendation Not applicable
Appeal type Failure to Grant a Permit
Plans substituted Yes
(prior to hearing)
VCAT determination Permit Granted
LGPRF outcome Set Aside
<table>
<thead>
<tr>
<th>Subject land</th>
<th>6 Were ST, BRIGHTON</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application no.</td>
<td>2014.666.1</td>
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<tr>
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<td>P1110/2016</td>
</tr>
<tr>
<td>Applicant</td>
<td>Ausco Investment Group Pty Ltd</td>
</tr>
<tr>
<td>Referral Authority</td>
<td>N/A</td>
</tr>
<tr>
<td>Respondents</td>
<td>Richard Buxton, Versailles Owners Corporation, Belinda Evans and John Campbell, Phillip Durston and Linda Ryan, Ian Russell</td>
</tr>
<tr>
<td>Before</td>
<td>Dalia Cook &amp; G Rundell</td>
</tr>
<tr>
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<td>14/12/2016</td>
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<tr>
<td>Proposal</td>
<td>Subdivision of Land (1 to 9 Lots)</td>
</tr>
<tr>
<td></td>
<td>Subdivision into 6 lots in the Neighbourhood Residential Zone and Design and Development Overlay</td>
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<tr>
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<tr>
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<tr>
<td>(prior to hearing)</td>
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<tr>
<td>Subject land</td>
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<tr>
<td>Application no.</td>
<td>2015.799.1</td>
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<tr>
<td>VCAT reference no.</td>
<td>P1208/2016</td>
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<tr>
<td>Applicant</td>
<td>Shangri-La Construction</td>
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<td>Referral Authority</td>
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<td>Respondents</td>
<td>Tony Boerkamp, Cameron Frazer, Susan Bartholomaeus, Peter Crossley and Andrew Rumbelow</td>
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<td>Before</td>
<td>Margaret Baird</td>
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<td>Date of hearing</td>
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<tr>
<td>Proposal</td>
<td>4 New Dwellings</td>
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<td>Construction of four double storey dwellings and basement car parking</td>
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<thead>
<tr>
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<tr>
<td>Appeal type</td>
<td>Conditions</td>
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<tr>
<td>Plans substituted</td>
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<tr>
<td>(prior to hearing)</td>
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<td>VCAT determination</td>
<td>No permit to issue</td>
</tr>
<tr>
<td>LGPRF outcome</td>
<td>Affirmed</td>
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5. Confidential Business

Nil

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

Adrian Robb

Chief Executive Officer