Agenda

for the

Planning & Amenity Committee Meeting

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

on

Thursday, 21 December, 2017
at 7:00pm

Chairperson: Cr Rob Grinter
Councillors: Cr Alex del Porto
Cr Laurence Evans (Mayor)
Cr Michael Heffernan
Cr James Long BM JP
Cr Clarke Martin
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
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5. Confidential Business

Nil

Next Meetings 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 11 December 2017.
4. Matters of Decision

4.1 NOMINATION FOR SIGNIFICANT TREE REGISTER
2/14 EBDEN AVENUE, BLACK ROCK

City Planning & Community Services - Community Planning and Amenity Protection
File No: PSF/17/76 – Doc No: DOC/17/260885

1. Purpose and background
To consider a nomination for a Desert Ash (*Fraxinus angustifolia* subsp. *oxycarpa*) tree at 2/14 Ebdon Avenue, Black Rock to be included within Council’s Significant Tree Register. The nomination was lodged by the owner of the property.

In 1996 Council established a Significant Tree Register that is maintained in accordance with the Bayside Significant Trees Management Policy 2013 (the Policy). There are currently 80 tree sites listed in the Bayside Significant Tree Register, with no Desert Ash (*Fraxinus angustifolia* subsp. *oxycarpa*) on the list.

An arboricultural assessment and report provided by Ryder Arboriculture & Environment is attached to this report and was evaluated against the criteria contained within Council’s Policy.

2. Key Issues

Property Owner's reason for trees significant listing

On 1 October 2017 Council received a Significant Tree nomination from the owners of 2/14 Ebdon Avenue, Black Rock to place a Desert Ash (*Fraxinus angustifolia* subsp. *oxycarpa*), located in the rear yard of their property on Council’s Significant Tree Register.

The applicant advised that the tree is approximately 45-55 years old, attracts abundant fauna and provides significant aesthetic value. The application is made to ensure its safety from any unauthorised pruning or removal.

Independent Arboriculture Assessment

An assessment of the tree was undertaken on 1 October 2017 by Ryder Arboriculture & Environment. This assessment considered the overall arboriculture characteristics, the growing environment and overall site conditions which resulted in the following findings:

- The tree is an exotic species, being Desert Ash (*Fraxinus angustifolia* subsp. *oxycarpa*) estimated to be 60-80 years old.
- The overall condition is considered to be good, with a very dense crown and good extension growth. The structure does have some defects, as it has been lopped previously. However the extension growth from the lopping points appear to have good attachments and the structure is not considered to be compromised.
- The tree is not overly large in terms of height however it is quite broad spreading and it does have a very large trunk diameter.

The assessment of the tree for significance found that the tree meets the following Policy criteria:

- Criteria 6: ‘Aesthetic Value’ for its Neighbourhood significance. The tree contributes to the neighbourhood landscape in the municipality of Bayside City Council due to its aesthetic value.

The assessment focused on the 10 criteria within Council’s Policy, which is based upon the National Heritage Trust agreed criteria for assessing significant trees (Refer
attachment 2 ‘Significant Tree Criteria Assessment’). These criterion were used to assess the tree for significance in the local context within the City of Bayside, needing to meet at least one of the 10 criteria to be considered significant.

As the tree met one of the Significant Tree Criteria it is recommended that the tree be included in the City of Bayside Register of Significant Trees.

**Council’s Arborist’s Assessment:**

Council’s Senior Investigations Arborist has reviewed the report by Ryder Arboriculture & Environment. The findings and recommendations in the independent report are supported.

3. Considerations and implications of recommendation

**Liveable community**

**Social**

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 Management of Tree Protection on Private Property Policy 2015.

**Natural Environment**

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 landscape and tree canopy.

**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**

Council has engaged with the owner of the tree and 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 a Local Law permit be removed or pruned in some circumstances.

**Finance**

Administering Significant Tree nomination applications is within Council’s approved budget. Significant tree status may result in costs to the owner for maintenance.

**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 Community Plan 2015, the current Council Plan 2017, Management of Tree Protection on Private Policy 2015, Significant Trees Management Policy 2013 and the Local Law No.2 Neighbourhood Amenity.

Vegetation that has been identified as significant is one of the primary features of...
Bayside, contributing to the amenity of the residential environment and established land values. The benefit of the Significant Trees Management Policy 2013 is that trees that are included on the register can only be added or removed from it by a Council resolution.

4. **Recommendation**

That Council:

1. Grants significant status for a Desert Ash (Fraxinus angustifolia subsp. oxycarpa) tree at 2/14 Ebden Avenue, Black Rock.
2. Writes to the applicants informing them of Council’s decision.

**Support Attachments**

1. Significant Tree Assessment ↓
**Significant Tree Nomination-Assessment**

<table>
<thead>
<tr>
<th>Date</th>
<th>Sunday, 29 October 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Client Details:</td>
<td>Bayside City Council</td>
</tr>
<tr>
<td></td>
<td>Att: Ronan Hamill</td>
</tr>
<tr>
<td></td>
<td>78 Royal Avenue Sandringham VIC 3191</td>
</tr>
<tr>
<td></td>
<td>P: 9599 4314</td>
</tr>
<tr>
<td></td>
<td>E: <a href="mailto:rhamill@bayside.vic.gov.au">rhamill@bayside.vic.gov.au</a></td>
</tr>
<tr>
<td>Property Address:</td>
<td>14B Ebdon Avenue, Black Rock</td>
</tr>
</tbody>
</table>

Dear Ronan,

Following your request, a site visit was completed on Tuesday 17 October, 2017 to review a tree nominated for the significant tree register at 14B Ebdon Avenue, Black Rock (Figure 1). The tree has a large, established canopy that extends over several properties.

Figure 1: Aerial of 14B Ebdon Avenue and the subject tree.
**Botanic Name**  
*Fraxinus angustifolia* subsp. *oxycarpa*

**Common Name**  
Desert Ash

**Height**  
14m

**Width (N/S E/W)**  
13m x 16m

**Diameter @ 1m**  
92cm

**Circumference @ 1m**  
290cm

**Health**  
Good

**Structure**  
Fair

Tree height was estimated due to confined space and the inability to accurately use a laser range finder. Trunk measurement was at 1m due to the multistemmed nature at 1.4m. Tree canopy width was measured from the Neaemap Aerial image.

The subject tree is a large, healthy specimen growing in the rear yard of 14B Edben Avenue, Black Rock. The rear yard is small and the canopy extends over the subject property and house, the property at 16A Edben Avenue and the property at 310 Beach Road.

The canopy is dense and full with very little deadwood.

The structure of the tree is fair, having been lopped approximately 10-20 years ago. The tree has responded well to the lopping and has grown over the wounds. Resultant epicormic shoots have reconstituted the canopy and there is little sign of the tree having suffered significant failure. There is evidence to suggest and the resident confirmed that the tree has been pruned from time to time over the years.

The species is generally long-lived and a lifespan of 100 years for the species is reasonable. It is estimated that the tree is 90-80 years old. Based on its current condition and with no major changes to current conditions, a useful life expectancy of another 20 years is likely.

There is some evidence that the tree may be the cause of damage to the concrete slab on the adjacent property at 310 Beach Road. Given the close proximity of the tree and the lifting concrete, this tree is likely to be a cause; however, should be further investigated.
Significance

The assessment of significance has been determined based on the City of Bayside Significant Trees Management Policy 2013.

Criteria 1: Horticultural value

Any tree that is of horticultural or genetic value and could be an important source of propagating stock, including specimens that are particularly resistant to disease or exposure.

The subject tree is a common specimen that can be quite weedy. Whilst the species is used as a rootstock for other species, it is commonly and readily available. The species is common throughout Victoria and does not have any horticultural or genetic value.

Criteria 2: Location or context

Any tree that is in a unique location or context and so provides a contribution to the landscape, including remnant indigenous vegetation, important landmarks, and trees that form part of a historic garden, park or town.

Sub-criteria:
1. Historic garden or park
2. Historic cemetery
3. Important landmark
4. Remnant indigenous vegetation
5. End of natural range
6. Contribution to landscape
7. Historic town
8. Historic planting style.

The tree is located in a small rear yard, it is not indigenous, located in a public park, cemetery, landmark location, historic town nor is it at the end of its natural range. It does provide a contribution to the immediately surrounding landscape as the tree can be seen from several properties. Given the coastal influence, the tree has been restricted in its ultimate, mature height.

Criteria 3: Rare or localised

Any tree of a species or variety that is rare or of very localised distribution.

Sub-criteria:
1. Only known specimen
2. 1 to 10 known specimens
3. 10 to 50 known specimens
4. In the wild
5. End of natural range
6. Disjunct community.

The tree is not rare or localised and is common across Melbourne.

Criteria 4: Particularly old

Any tree that is particularly old or venerable.

Whilst the tree is mature, it is not particularly old or venerable.

Criteria 5: Outstanding size

Any tree outstanding for its large height, trunk circumference, or canopy spread.

Sub-criteria:
1. Height
2. Circumference
3. Canopy spread
4. Height x circumference
5. Spread x circumference
6. Height x circumference x spread.
The tree is mature in size; however, for the species is not considered particularly large. It is likely that there are several other specimens at least this size throughout the municipality. Across greater Melbourne, there would be a number of trees significantly larger than this.

Criteria 6: Aesthetic value
Any tree of outstanding aesthetic significance.

The tree is an attractive specimen; however, given its hidden location and restricted, mature height, it provides little to the streetscape or the wider landscape. It does not have outstanding aesthetic significance.

Criteria 7: Curious growth form
Any tree that exhibits a curious growth form or physical feature such as abnormal outgrowths, natural fusion of branches, severe lightning damage, or unusually pruned forms.

Sub-criteria:
1. Abnormal outgrowths
2. Fusion of branches
3. Unusually pruned
4. Unusually damaged.

The tree does not have any abnormal growth. The tree has been lopped and regrown; however, this is commonplace across Melbourne and for the species.

Criteria 8: Historical value
Any tree commemorating a particular occasion (including plantings by royalty) or with association to an important historical event.

Sub-criteria:
1. Cultural group
2. Public feature
3. World War I
4. World War II
5. British royalty
6. Non-British royalty
7. Visiting dignitary
8. Australian public figure
9. Victorian public figure.

No evidence was supplied that the tree has any historical value.

Criteria 9: Aboriginal culture
Any tree associated with Aboriginal activities.

Sub-criteria:
1. Scarred tree
2. Corroboree tree.

The tree is not indigenous and not a tree associated with aboriginal culture

Criteria 10: Outstanding example of species
Any tree that is an outstanding example of the species.

Whilst the tree is a mature, healthy specimen, it is not outstanding. It is likely that a number of similar specimens exist throughout the municipality and in the broader area.

Ref: CMR17-10-29BaysideEldanBlackRock.docx
When the tree is put in context with the 5 levels of significance, it satisfies Criteria 6 at a
neighbourhood level. The tree contributes to the neighbourhood landscape in the
municipality of Bayside City Council due to its aesthetic value.

If I can be of further assistance, please don’t hesitate to contact me on 0434 351 597.

Regards

Cameron Ryder
CsR Ryder Consulting Pty Ltd

Figure 2: The base of the tree and surrounds.
Figure 3: Upper canopy structure.

Figure 4: The tree canopy over the dwelling.
4.2 324 HAMPTON STREET, HAMPTON
NOTICE OF DECISION TO GRANT A PLANNING PERMIT
APPLICATION NO: 2016/518/1 WARD: CENTRAL

City Planning & Community Services - Development Services
File No: PSF/15/8755 – Doc No: DOC/17/256126

1. Purpose and background

To report a planning permit application for the construction of a three storey building comprising seven (7) dwellings, a waiver of the visitor car parking requirements, alteration of an access to a road in a Road Zone, (Category 1) and the construction of a front fence in excess of 1.5 metres in height, on a lot with an area of 957.49 metres square (refer Attachment 1) at 324 Hampton Street, Hampton (refer Attachment 2).

<table>
<thead>
<tr>
<th>Applicant</th>
<th>Belfield Planning Consultants Pty Ltd</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date application received</td>
<td>23 August 2016</td>
</tr>
<tr>
<td>Statutory days expired</td>
<td>18 August 2017</td>
</tr>
</tbody>
</table>

This application as originally submitted proposed the construction of a three storey building comprising ten (10) dwellings and alterations of an access to a road in a Road Zone, Category 1.

Through the submission of amended drawings the number of dwellings was reduced and correspondingly the number of car parking spaces from 19 to 15 parking spaces. The configuration of the access to the site and consequently the basement of the development has been altered. The development is now comprised of 3 bedroom apartments as opposed to a mix of both two and three bedroom apartments and overall the massing of the building has been reduced.

2. Policy implications

Planning permit requirements

Clause 32.08-4 (General Residential Zone Schedule 2) – Construction of two or more dwellings on a lot and construction of fence in excess of 1.5 metres in height.

Note: Clause 32.08-4 requires that for the construction of a dwelling or residential building on a lot greater than 650 square metres, a lot must provide a minimum of 35% garden area at ground floor level. The development plans confirm that this requirement is achieved.

Clause 43.02-2 (Design and Development Overlay Schedule 12) – Construct a building and carry out works exceeding a height of 10 metres overall where the slope of the natural ground level at any cross section of the site of the building wider than 8 metres is 2.5 degrees or more.

Clause 52.06-3 – (Car parking) – A reduction in car parking spaces required under Clause 52.06-5.

Clause 52.29 – (Land Adjacent to a Road Zone Category 1) – Alterations to an access to a Road Zone, Category 1.

Planning scheme amendments

There are no relevant planning scheme amendments.

3. Stakeholder Consultation

External referrals

The application was referred to the following authorities:
Referral Authority | Response
--- | ---
Vic Roads | No objection, subject to conditions.

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

| Internal Referral | Response |
--- | --- |
Traffic Engineer | No objection, subject to conditions. |
Arborist | No objection, subject to conditions. |
Open Space Arborist | No objection, subject to conditions. |
Drainage Engineer | No objection, subject to conditions. |

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

- Visual bulk, height, massing and lack of articulation;
- Overdevelopment of site;
- Disrespectful to elements of the neighbourhood character;
- Non-compliance with Clause 55 of the Bayside Planning Scheme;
- Overlooking;
- Overshadowing;
- Shortfall in on-site parking provision;
- Increased parking demand;
- Loss of vegetation from the site;
- Property devaluation;
- Noise disturbance during construction; and
- Noise from occupiers of the development and visitors to it.

Consultation meeting
The applicant was offered a consultation meeting on 30 November and declined the offer advising that the plans had been amended pursuant to Section 57A of the Planning & Environment Act 1987 to try and address objector concerns.

Those amendments included a reduction in the number of dwellings from 10 to 7 and correspondingly the number of car parking spaces from 19 to 15 parking spaces. The configuration of the access to the site and consequently the basement of the development has been altered. The development is now comprised of 3 bedroom apartments as opposed to a mix of both two and three bedroom apartments and overall the massing of the building has been reduced.

No objections were withdrawn as a result of the amendments.

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 2016/518/1** for the land known and described as **324 Hampton Street, Hampton**, for the **construction of a three storey building comprising seven (7) dwellings, a waiver of the visitor car parking requirements, alteration of an access to a road in a Road Zone (Category 1) and the construction of a front fence in excess of 1.5 metres in height** in accordance with the endorsed plans and subject to the following conditions:

1. Before the development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the plans prepared by Blue Print Drafting, Council date stamped 13 June 2017 but modified to show:

   a) 25 square metres of private open space associated with Apartment 2 in accordance with Standard B28 (Private Open Space) of the Bayside Planning Scheme.

   b) Column locations to be shown on the basement plan and 4.9m bays with a 250mm offset from the parking aisle.

   c) Unit numbers to be attributed to each dwelling signed or line marked.

   d) A vehicle crossover with a minimum width of 5.6 metres centred to the ramp.

   e) The vehicular access offset 1m from the northern property boundary.

   f) A 1m separator between the vehicular access to the site and the neighbouring vehicular access to the north.

   All to the satisfaction of the Responsible Authority.

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

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

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

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

6. Before 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.

**Traffic**

7. Garbage collection to occur on site via a 6.4m rear mini loader.

**Vic Roads**

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. Vehicles must enter and exit the site in a forward direction at all times.

**Water Sensitive Urban Design**

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

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

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

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

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

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

**Landscaping**

12. Before the development starts, a detailed Landscape Plan/s generally in accordance with the Landscape Plan/s prepared by Keystone Alliance Council date stamped 13 June 2017 must be submitted to and be endorsed by the Responsible Authority. The plan must be drawn to scale with dimensions and three copies must be provided. The plan must be modified to show:

   a) The existing Canary Island Palm within the rear setback transplanted to the northeast corner of the site with a 2m offset from each boundary fence.

   b) 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.

   c) 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.

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

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

   f) 80% indigenous coastal vegetation (by species and quantity).

   g) Details of surface finishes of pathways and driveways.

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. 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.

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

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.

16. 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.

17. 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.

18. The transplantation of the Canary Island Palm within the rear setback shall be supervised by an Arborist with minimum AQF Certificate 5 to ensure the survival of the palm following transplantation.

Waste Management

19. Before the development starts, a Waste Management Plan must be submitted to and approved by the Responsible Authority. The Waste Management Plan must clearly indicate that waste collection is to be via a private contractor, not Council, and include:

- a) Dimensions of storage waste areas;
- b) Storm water drains in storage areas should be fitted with a litter trap;
- c) The number and size of bins to be provided;
- d) Facilities for bin cleaning;
- e) Method of waste and recyclables collection;
- f) Types of waste for collection, including colour coding and labelling of bins;
- g) Hours of waste and recyclables collection (to correspond with Council Local Laws and EPA Noise Guidelines);
- h) Method of medical waste collection.
- i) Method of presentation of bins for waste collection;
- j) Strategies for how the generation of waste and recyclables will be minimised;
k) Compliance with relevant policy, legislation and guidelines.

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

Street trees

20. There is to be no soil excavation within 2 metres of the *Lophostemon confertus* street tree asset measured from the edge of the trunk.

21. Prior to soil excavation for a Council approved crossover within the Tree Protection Zone of the street tree assets, a trench must be excavated along the line of the crossover adjacent to the tree using root-sensitive, non-destructive techniques. All roots affected must be pruned in consultation with a suitably qualified Arborist.

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

Drainage

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

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

24. 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.

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

26. 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".

Permit Expiry

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

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

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

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

- 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.

- 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.

- Before the vehicle crossing application will be approved, the applicant must pay $2,829.46 to the Responsible Authority for the removal and replacement of the existing street tree(s). This amount has been determined in accordance with Council’s current policy for the removal of street trees. This amount may be increased by the Responsible Authority if an extension of time to commence work is granted and the amenity value of the street tree has increased. The Responsible Authority, or a contractor or agent engaged by the Responsible Authority, must undertake the removal and replacement of the street tree. Any replacement planting will be at the discretion of the responsible authority.

- The existing street tree/s to be retained must not be removed or damaged.

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

- The applicant is to bear the cost to reinstate/relocate the Council assets to provide the required access to the proposed development.

- The northern Lophostemon confertus street tree asset can be removed under Clause 6.5 of the Street and Park Tree Management Policy (2016) to allow the development to proceed with the installation of the proposed vehicle crossing in the proposed location.

5. Council Policy

Council Plan 2017-2021

Relevant strategies of the Council plan include:

- Where neighbourhood character, streetscapes and heritage is respected and enhanced, and the community has a strong connection to place.

- Where development contributes to a high visual amenity, is ecologically sustainable, demonstrates high quality compliant design, and responds to the streetscape and neighbourhood context.

Relevant strategies of the Council plan include:

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

Bayside Planning Scheme

- Clause 9 Plan Melbourne
- Clause 11 Settlement
- Clause 12 Environmental and Landscape Values
- Clause 15 Built Environment and Heritage
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 Strategic Justification

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

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

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

Strategies to achieve this in Precinct 4 include:

- To provide for increased housing densities and diversity of housing types within the centre and direct larger developments to larger sites within or immediately adjoin the business precincts.
- Provide adequate off-street parking for all new dwellings.

The development would increase density on the site and in providing apartment living, allow for a diversity of dwelling type in the centre. The development is relatively modest in scale and is suitable within its predominantly residential context.

The General Residential Zone has many purposes, one seeking:
"To provide a diversity of housing types and moderate housing growth in locations offering good services and transport."

The site is approximately 85 metres walk to the peripheral business and local shopping area of Hampton and just over 400 metres to the Hampton retail core and Train Station. In its arterial road location the site is considered to offer good access to community services and transport. A total of 7 dwellings complies with the moderate residential growth of the area.

The site is strategically located to accommodate higher density development that is in close proximity to community services and public transport where moderate residential growth will assist in strengthening the role of the Hampton Street Activity Centre. This area has been identified for such moderate residential growth as opposed to neighbourhood residential zones that seek to limit number of dwellings, heights and maintain low scale development. Whilst it may be strategically supported, the proposal must also achieve the objectives of Clauses 22.06 and Clauses 55 to receive officer support.

Building Height

The site is covered by the Design and Development Overlay Schedule 12 which identifies the site as being located within Precinct E of the Hampton Street Centre Framework Plan, which specifies a maximum (mandatory) height of 11 metres (3 storeys) or 12 metres where the slope of the natural ground level at any cross section of the site of the building wider than 8 metres is 2.5 degrees or more. In this instance, the 12 metre height limit prevails.

The development proposes a maximum height of 11.57 metres (three storeys) which falls within the maximum allowable height of 12 metres. The siting and height of the building has had regard to its context in the Activity Centre as well as respecting the use and built form of directly abutting properties. The design response is suitably responsive to the site opportunities and constraints. The height and built form is appropriate and satisfies the objectives of the DDO12. The development conserves and enhances urban character and is considered compatible with the preferred future role of the Hampton Street Activity Centre.

Building Setbacks

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

At second floor level, the proposal complies with the 4 metre setback requirement of the DDO12. The proposal presents a suitable design response which offers a reasonable level of articulation and visual interest to the street through the provision of recessed design elements and softening of built form through the provision of balconies and choice of external finishes. The extent of fenestration featured throughout the facade works to alleviate visual bulk to the street and will ensure that the development adopts an appropriate design response for the site and broader precinct.

6.2 Neighbourhood character

The tension between the strategic direction of Clause 21.11, the Design and Development Overlay Schedule 12 (DDO12) and the considerations of Neighbourhood Character referenced in Clause 22.06, has been the subject of a variety of Victorian Civil Administrative Tribunal (VCAT) decisions. In particular, Adams v Bayside CC [2014] VCAT 514 considered that greater weight should be given to Clause 21.11 and DDO11 over Clause 22.06 for the following reasons;

- The neighbourhood character precinct includes a large area with sub-precincts that are both within and outside the major activity centre.
• Clause 22.06 encourages development to respond to the prevailing neighbourhood character, but that is not the intent of other parts of the scheme that apply to land within the major activity centre.

• Clause 22.06 is a local policy. It is not a mandatory or prescriptive control. With respect to the exercise of discretion, the policy itself acknowledges that it is relevant to take into account “the extent to which the characteristics of the built and natural environment in the immediate vicinity may determine a preferred future character that is different from that applying to the remainder of the precinct in which the site is located.”

In addition there has been more recent VCAT commentary in relation to changes to the purpose of the General Residential Zone under Amendment C110, which deleted the word “moderate” in relation to housing growth and removed the reference to “implementing neighbourhood character policy and adopted neighbourhood character guidelines”. In particular, Bside six Pty Ltd v Bayside Cc [2017] VCAT 625 considered the amendment has weakened the relevance of the preferred neighbourhood character precinct guidelines in Clause 22.06 in relation to a site within the General Residential Zone 2 and the DDO8 (Sandringham Major Activity Centre).

Notwithstanding the above, the site is located within Neighbourhood Character Precinct F1 and the proposal is considered to demonstrate a reasonable level of compliance with the preferred future character statement and precinct guidelines as contained in Attachment 3.

The building incorporates appropriate boundary setbacks to reflect built form spacing of the area while promoting adequate visual separation between the adjoining dwellings. The building will sit comfortably within its context and will adopt a reasonable built form transition with the adjoining single and two storey dwellings. In addition, meaningful landscaping will be introduced to the front and rear setbacks which will maintain and enhance the landscaped character of the area, subject to conditions.

Pedestrian entry to the development is via a clearly defined and suitably designed access along the side boundary. This design is a suitable response to the site opportunities and will work to adopt a safe and visually interesting building entry.

While low, permeable front fencing is the preferred character, the use of a high, permeable front fence is consistent with the character of fencing within the immediate area.

Concerns have been raised in relation to the dominance and height of the proposed form. However the scale, siting and boundary spacing is responsive to the preferred built form character objective of the DDO12 and the design response is a suitable outcome for the existing and preferred character of the area. Importantly, the development is well articulated and offers a contemporary form responsive to the emerging character of medium density development featured within the area.

6.3 Compliance with Clause 55 (ResCode)

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

<table>
<thead>
<tr>
<th>Side and Rear Setbacks (Standard B17)</th>
<th>Ground floor</th>
<th>First Floor</th>
<th>Second Floor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Required</td>
<td>Proposed</td>
<td>Required</td>
<td>Proposed</td>
</tr>
<tr>
<td>North (side)</td>
<td>0m - 1m</td>
<td>2.4m - 0m - 2.4m</td>
<td>3.05m - 2.29m - 1.98m</td>
</tr>
<tr>
<td>South</td>
<td>0m - 1m</td>
<td>2.4m –</td>
<td>2.98m -</td>
</tr>
</tbody>
</table>
The proposal would vary the site setbacks as detailed in the table above. The objective of Standard B17 is to ensure the height and setback of a building from a boundary respect the existing or preferred neighbourhood character and limits the impact on the amenity of existing dwellings.

The following variations are sought on the northwest side of the development:

- 0.73m and 0.69m at first floor; and
- 2.15m at second floor.

The following variations are sought relative to the south east side of the development:

- 0.68m at first floor.
- 1.51m - 2.69m at second floor.

The variations sought at both first and second floor on the north (side) and at the second floor on the south (side) of the development are opposite existing driveways of the neighbouring residential properties to the north and south respectively and as such do not have a sensitive interface with those neighbouring properties. Otherwise the varied and compliant setbacks retain a sufficient level of visual separation with neighbouring properties and are distant enough from habitable room windows and area of private open space associated with them so as not to give rise to detrimental amenity impacts as a result of overlooking or overshadowing.

There would be a combined separation of 9m at first floor and 10.75m at second floor on the north side of the building and 5.9m at second floor on the south side of the building between the built form to the north and south of the site. This coupled with the articulation of the north and south elevations and front facade would satisfactorily reduce the visual bulk of the building.

The proposed variations are appropriate as the setbacks do not negatively impact the neighbouring properties, are consistent with the positional relationship of built form to plot ratio within the immediate area and overall, the proposal has a high level of compliance with ResCode.

**Site coverage (Standard B8)**

The proposed site coverage of the development is 74.62% which is 14.62% greater than the 60% required standard. Notwithstanding the variation being sought development would, subject to conditions, provide sufficient areas of private open space and landscaping to create a setting to the development. The extent of site coverage would not be obvious out-with the site and would not have any detrimental amenity impacts on neighbouring residential properties.

**Private Open Space (Standard B28)**

The proposed ground floor apartments 1 and 3 each have an area of private open space in excess of 25 square metres required by the standard with convenient access from a living area and a minimum dimension of 3 metres or more.

Ground floor apartment 2 has an alfresco area measuring 23.08 square metres. This is 1.92 metres short of the required standard. It is included in the officer recommendation, that the private open space associated with apartment 2 be increased to meet the standard.
Otherwise, the private open space associated with the first and second floor apartments of the development take the form of balconies that are each greater than 8 square metres with a minimum width of 2m or more.

**Front Fences (Standard B32)**

A 1.7 metre high front fence is proposed which exceeds the maximum height of 1.5 metres required by the standard. However, the extent of front fence enclosure is limited with the front setback being otherwise permeable. Landscaping would soften the visual impact of the fencing. Furthermore, the fencing would be seen in relation to other high front fence enclosures found elsewhere within the streetscape.

### 6.4 Car parking and traffic

Clause 52.06-5 of the Bayside Planning Scheme requires that a total of 2 parking spaces be provided for each three bedroom dwelling. Furthermore, that 1 visitor parking space be provided per 5 dwellings. In this regard, a total of 15 parking spaces are required to serve the development.

Whilst it is indicated on the application drawings that a total of 15 car parking spaces are to be provided, their allocation is to each apartment as shown in the table below:

<table>
<thead>
<tr>
<th>Apartment</th>
<th>No. of Car Parking Spaces</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>5</td>
<td>2</td>
</tr>
<tr>
<td>6</td>
<td>2</td>
</tr>
<tr>
<td>7</td>
<td>3</td>
</tr>
</tbody>
</table>

The applicant therefore seeks a waiver of the 1 visitor parking space.

Justification for the reduction of on-site parking provision is in the form of a car parking demand assessment submitted in support of the application. In considering the likely parking demand generated by the development the assessment states the following:

**On-site Parking provision**

The 15 resident parking spaces to be provided is in excess of the Planning Scheme requirements.

The short-stay and long-stay car parking demand likely to be generated by the proposed use

Long stay parking will primarily be generated by residents of the subject site and are adequately accommodated for within the on-site parking provisions.

Short stay parking will be generated by resident visitor to the subject site and is proposed to be accommodated on-street. Parking demand surveys undertaken by TTM Consulting (Vic) Pty Ltd on behalf of the applicant indicate that adequate parking is available within the surrounding street network to accommodate the anticipated demand by visitors. See table below:

<table>
<thead>
<tr>
<th>Location</th>
<th>Side</th>
<th>Control</th>
<th>Inventory</th>
<th>Date &amp; Time</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Wed 22 Feb 17 3:27pm</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Fri 23 Dec 16 2:18pm</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Thurs 17 Nov 16 8:36am</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Sun 28 Aug 16 1:23pm</td>
</tr>
</tbody>
</table>
Availability of public transport in the locality of the land

The site is within close proximity to train and bus routes. With a total of 5 bus routes from approximately 33 – 570 metres north of the subject site and Hampton Railway Station some 535 metres north of the subject site.

The convenience of pedestrian and cyclist access to the land

The site is within a primarily residential area. Footpaths are provided along the frontage of the site providing convenient pedestrian access and formal bicycle lanes in the surrounding area and will allow for convenient cyclist access.

The provision of bicycle parking and end of trip facilities for cyclists in the locality of the land

The applicant proposed a total of 9 bicycle parking spaces on site. With one bicycle parking space to be assigned to each of the dwellings in addition to 2 visitor bicycle parking spaces.

The Council’s Traffic Engineer concurs with the conclusions of the parking demand assessment and raises no objection to the proposal being satisfied that the development will be safely accessed and accommodated by a sufficient level of parking both on and off site. Matters raised by Council Traffic Engineer concerning the width of the altered crossover, the allocation and offsets of parking spaces to each dwelling and garbage collection vehicles can reasonably be controlled by conditions and are included in the officer recommendation.

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.

Vehicle access to the site is proposed via the existing crossover to the site which will be enlarged to create two-way access and egress to and from the basement car park. This will ensure vehicle accommodation is largely concealed from the street.

Vic Roads raises no objection to the application subject to conditions being imposed on a permit for the redundant section of the vehicle crossover site being re-instated with kerb, channel, footpath and verge to the satisfaction of the Responsible Authority and vehicle entering and exiting the site in a forward direction at all times. These matters are included in the officer recommendation.

6.5 Street tree removal

The Council’s Open Space Arborist confirms two street tree assets exist within the roadside verge outside the property both of which are *Lophostemon confertus*. It has been advised that one of the trees can be removed to facilitate the construction of the altered crossover. It was also recommended that there be no soil excavation within 2 metres of the *Lophostemon confertus* to be retained measured from the edge of its trunk. This matter can be controlled by a condition of a permit and is included as part of the recommendation.

6.6 Vegetation & Landscaping
The Council’s Arborist advises that the development would encroach into the Tree Protection Zone of a mature Canary Island Palm (*Phoenix canariensis*) shown for retention within the front setback of the site. It is recommended that a tree protection plan be submitted to ensure this tree as well as others on neighbouring properties that have Tree Protection Zones that encroach the site remain viable post construction.

Other trees within the front setback include Chinese Elms (*Ulmus parvifolia*), Bull Bay ‘Little Gem’ (*Magnolia grandiflora* ‘Little Gem) and Lemon (*Citrus limon*). These trees have low amenity values and their removal is considered acceptable subject to mitigation planting.

A similar sized Canary Island Palm (*Phoenix canariensis*) is located within the rear setback. The Council’s Arborist recommends that this be transplanted within the northeast corner of the site with an off-set of 2m from the fence on the north and east boundary to satisfy the guidelines of the Neighbourhood Character Policy for Precinct F1 which states design responses should ‘retain established trees and vegetation.’

It is further recommended that the landscape plan be amended to include coastal species and at least 80% indigenous coastal vegetation (by species and quantity).

The Council’s further advises that Chinese Elms (*Ulmus parvifolia*) and Bull Bay ‘Little Gem’ (*Magnolia grandiflora* ‘Little Gem) are also present to the rear of the site and have low amenity value. He therefore raises no objection to their removal.

Matters concerning the provision of an Arborists report, and amended landscape plan and tree transplantation can reasonably be controlled by conditions and are included in the officer recommendation.

### 6.7 Objections received

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

**Overlooking**

All habitable room windows with views towards the secluded private open space and habitable room windows of adjoining properties have been designed to incorporate appropriate screening measures in accordance with Standard B22 of Clause 55 of the Bayside Planning Scheme.

The first floor balcony on the north elevation requires no additional screening as it is demonstrated in section on drawing no. TP A09 submitted in support of the application that the raised balustrade that would enclose the north side of it, will limit overlooking of habitable room windows in the south elevation of the neighbouring residential properties of 1/ 326 and 2/ 326 Hampton Street to the north.

**Overshadowing**

The shadow diagrams submitted in support of the application indicate that between 9am and 3pm parts of the neighbouring residential property of 322 Hampton Street to the south of the subject site would be overshadowed. Namely a small part of it fronts setback, driveway and the roof of both the dwelling and the garage and shed associated with it, including a small part of the rear garden. However, the degree of overshadowing would be to a decreasing extent between those hours. Moreover, at least 75%/40m² of that neighbouring secluded private open space will receive at least five hours of sunlight between 9am and 3pm on 22 September Equinox.

No other neighbouring residential properties would be overshadowed by the development.

On the matter of overshadowing the proposed development is consistent with Standard B22.

**Property devaluation**
The planning system does not exist to protect the financial interest of one party over another. The matter of property devaluation is not therefore a material consideration in the determination of an application for a planning permit.

**Noise disturbance during construction**

Any noise attributed to the potential construction of a development is controlled under legislation other than planning legislation.

**Noise from occupiers of the development and visitors to it**

There would be nothing extraordinary in the residential use of the development that would require Council to exercise control over any noise and disturbance which may result from it. Matters of noise and disturbance to residents as a result of the use of the building in a domestic setting are considered under separate legislation other than planning legislation and are not a material consideration in the determination of this application.

**Support Attachments**

1. Development Plans ↓
2. Site & Surrounds Imagery ↓
3. Neighbourhood Character Precinct F1 ↓
4. Clause 55 Assessment ↓
Figure 1 Aerial overview of the site and surrounds.

Legend

<table>
<thead>
<tr>
<th>Subject site</th>
<th>Objecor(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>✭</td>
<td>⚫</td>
</tr>
</tbody>
</table>
Figure 2 View of subject site from the west

Figure 3 View towards the site from public footpath on west side of triangle park
Figure 4 View towards site from southwest

Figure 5 Interface with neighbouring property of 322 Hampton Street to the south
Figure 6 Interface with neighbouring properties of 1/326, 2/326 & 3/326 Hampton Street to the north

Figure 7 View of subject site from the northwest
Figure 8 Mixed scale development examples of Dwellings on Linacre Road to the northwest of the site

Figure 9 Mixed scale development examples at Linacre Road/ Hampton Street
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 openess 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>
</table>
| To encourage the retention of dwellings that contribute to the valued character of the Precinct in the design of development proposals. | • Attempt to retain wherever possible intact and good condition dwellings that contribute to the valued character of the Precinct in designing new development. • Alterations and extensions should retain the front of these dwellings and be appropriate to the building era. | Demolition of dwellings that contribute to the valued character of the Precinct. | Responds
The existing building is not protected under the provisions of the Bayside Planning Scheme. |
| To maintain and enhance the garden settings of the dwellings, and enhance the bayside vegetation character. | • Retain established trees and vegetation. • Replace any trees removed with species that will grow to a similar height. • Encourage replanting of indigenous sandbelt vegetation. • Prepare a landscape plan to accompany all applications for new dwellings that includes substantial trees and shrubs, and indigenous coastal vegetation. | Lack of landscaping and substantial vegetation. Removal of trees. Planting of environmental weeds. | Responds
There is ample opportunity within the site front and rear setback to provide landscape setting to the development. The extent of landscaping would be little different to that which exists within the curtilage of three dwellings to the north of the subject site. Established trees of amenity value are and can be retained subject to conditions for their retention and transplantation. Mitigation planting for exotic species to be removed from the site, can be replaced with coastal indigenous species and count at a rate of 80% and can be controlled by conditions. |
| To ensure the building setbacks reflect the existing spacious visual | • Buildings should be sited to allow space for the planting of trees and shrubs. | Loss of front garden space. | Responds
In repositioning the vehicular access to the site |
<table>
<thead>
<tr>
<th>Objectives</th>
<th>Design Responses</th>
<th>Avoid</th>
<th>Planning Officer Assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>separation of buildings and contribute to the informality of the dwelling setting.</td>
<td>• Buildings should be sited to create the appearance of space between buildings and accommodate substantial vegetation.</td>
<td></td>
<td>this has allowed for a greater</td>
</tr>
<tr>
<td>To minimise the loss of front garden spaces and the dominance of car parking structures.</td>
<td>• Locate garages and carports behind the line of the dwelling.</td>
<td>Car parking structures that dominate the façade or view of the dwelling.</td>
<td>Responds/Does not respond</td>
</tr>
<tr>
<td></td>
<td>• Underground car parking accessed from the front of the site should only be provided where other options are not possible due to site constraints, the garage doors do not dominate the façade and the front setback area is retained as predominantly garden space.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>To ensure that new buildings and extensions do not dominate the streetscape.</td>
<td>• Recess second storey elements from the front façade.</td>
<td>High pitched or mansard roof forms with dormer windows.</td>
<td>Responds</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>To respect the identified heritage qualities of adjoining buildings.</td>
<td>• Where adjoining an identified heritage building, respect the height, building forms, siting and materials, in the new building design.</td>
<td>Large bulky buildings with flat, poorly articulated front wall surfaces.</td>
<td>Responds</td>
</tr>
<tr>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>To reflect the lightness of the streetscape created through the use of a mix of appropriate building materials and finishes.</td>
<td>• Incorporate a variety of timber or other non-masonry wall materials where possible.</td>
<td>Heavy materials and design detailing (eg. Large masonry columns and piers).</td>
<td>Responds</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Objectives</td>
<td>Design Responses</td>
<td>Avoid</td>
<td>Planning Officer Assessment</td>
</tr>
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</tr>
</tbody>
</table>
| **To maintain the openness of the streetscape and views to the dwellings.** | • Provide open style front fences, other than along heavily trafficked roads.  
• Front fence style should be appropriate to the building era. | High, solid front fencing. | **Responds**  
Whilst a 1.7m high solid front fence is proposed, it would be recessed from the front title boundary and would enclose only a small part of the front setback. Otherwise, the front setback would be embellished with landscaping and open to public view. |
| **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. | **Responds**  
The front façade of the building would be articulated with balconies enclosed by tinted glass balustrading. Horizontally aligned timber screening would be added to also, that combined with the render finish of its exterior walls would add to the visual interest of the building.  
The pitched roofed form of its third storey would be reflective of roof forms in the immediate area. |
<table>
<thead>
<tr>
<th>Title and Objective</th>
<th>Complies with Standard?</th>
<th>Comments</th>
</tr>
</thead>
</table>
| **B1 Neighbourhood Character**  
Design respects existing neighbourhood character or contributes to a preferred neighbourhood character.  
Development responds to features of the site and surrounding area. | Yes | Refer report. |
| **B2 Residential Policy**  
Residential development is consistent with housing policies in the SPPF, LPPF including the MSS and local planning policies.  
Support medium densities in areas to take advantage of public transport and community infrastructure and services. | Yes | The construction of a three storey building comprising seven (7) dwellings is supported by relevant policies for this site. |
| **B3 Dwelling Diversity**  
Encourages a range of dwelling sizes and types in developments of ten or more dwellings. | N/A | |
| **B4 Infrastructure**  
Provides appropriate utility services and infrastructure without overloading the capacity. | Yes | 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. |
| **B5 Integration with the Street**  
Integrate the layout of development with the street. | Yes | The dwellings appropriately address the street and entries are clearly identifiable from the streetscape. Vehicular access will be taken from Hampton Street via the existing vehicle access and crossover, the width of which is to be altered to accommodate two way vehicle movement. Pedestrian access would be formed in a part of the west property boundary and would be punctuated with a pergola. |
<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Decision</th>
<th>Required</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>B6 Street Setback</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>Yes</td>
<td>Required: 9m</td>
<td>Proposed: 11.48m</td>
</tr>
<tr>
<td>B7 Building Height</td>
<td>Building height should respect the existing or preferred neighbourhood character</td>
<td>Yes</td>
<td>Maximum allowed: 12m</td>
<td>Proposed: 11.57m</td>
</tr>
<tr>
<td>B8 Site Coverage</td>
<td>Site coverage should respect the existing or preferred neighbourhood character and respond to the features of the site.</td>
<td>No</td>
<td>Maximum allowed: 60%</td>
<td>Proposed: 74.62%</td>
</tr>
<tr>
<td>B9 Permeability</td>
<td>Reduce the impact of stormwater run-off on the drainage system and facilitate on-site stormwater infiltration.</td>
<td>Yes</td>
<td>Minimum: 20%</td>
<td>Proposed: 24.27%</td>
</tr>
<tr>
<td>B10 Energy Efficiency</td>
<td>Achieve and protect energy efficient dwellings and residential buildings. Ensure orientation and layout reduces fossil fuel energy use and makes appropriate use of daylight and solar energy.</td>
<td>Yes</td>
<td>The proposal provides appropriate solar access to the dwellings.</td>
<td></td>
</tr>
<tr>
<td>B11 Open Space</td>
<td>Integrate layout of development with any public and communal open space provided in or adjacent to the development.</td>
<td>N/A</td>
<td></td>
<td></td>
</tr>
<tr>
<td>B12 Safety</td>
<td>Layout to provide safety and security for residents and property.</td>
<td>Yes</td>
<td>The proposal provides clear legibility and access to the dwellings from the Hampton Street. The proposal allows for stairs and a lift to each apartment.</td>
<td></td>
</tr>
<tr>
<td>B13 Landscaping</td>
<td>To provide appropriate landscaping. To encourage: Development that respects the landscape character of the neighbourhood. Development that maintains and enhances habitat for plants and animals in locations of habitat importance.</td>
<td>Yes</td>
<td>Refer report.</td>
<td></td>
</tr>
</tbody>
</table>
The retention of mature vegetation on the site.

| B14 Access | Yes | Refer report. |
| 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. | Yes | Refer report. |

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.

| B15 Parking Location | Yes | Refer report. |

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

| B17 Side and Rear Setbacks | No | Refer to report the table below. Areas of non-compliance are underlined. |

<table>
<thead>
<tr>
<th>Ground floor</th>
<th>First Floor</th>
<th>Second Floor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Required</td>
<td>Proposed</td>
<td>Required</td>
</tr>
<tr>
<td>North (side)</td>
<td>0m - 1m</td>
<td>2.4m - 1m</td>
</tr>
<tr>
<td>South (side)</td>
<td>0m - 1m</td>
<td>2.4m - 4.8m - 2.4m</td>
</tr>
<tr>
<td>East (rear)</td>
<td>0m -1m</td>
<td>4.33m</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.

| B18 Walls on Boundaries | Yes | The only wall on boundary is the north elevation wall of the shower room of Apartment 1. Both its length and height comply with the standard. |

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

<p>| B19 Daylight to Existing Windows | Yes | The proposal is well setback from property boundaries to ensure daylight to existing windows is maintained and comfortably complies with the setback requirements of the standard. |</p>
<table>
<thead>
<tr>
<th>Criterion</th>
<th>Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>B20 North Facing Windows</strong></td>
<td>Yes</td>
</tr>
<tr>
<td>Allow adequate solar access to</td>
<td></td>
</tr>
<tr>
<td>existing north-facing habitable</td>
<td></td>
</tr>
<tr>
<td>room windows.</td>
<td></td>
</tr>
<tr>
<td>Whilst windows existing in the</td>
<td></td>
</tr>
<tr>
<td>north elevation of the</td>
<td></td>
</tr>
<tr>
<td>neighbouring property of 322</td>
<td></td>
</tr>
<tr>
<td>Hampton Street to the south,</td>
<td></td>
</tr>
<tr>
<td>they are in excess of 3 metres</td>
<td></td>
</tr>
<tr>
<td>of the mutual property boundary.</td>
<td></td>
</tr>
<tr>
<td>In this, those windows would</td>
<td></td>
</tr>
<tr>
<td>receive adequate solar access.</td>
<td></td>
</tr>
<tr>
<td><strong>B21 Overshadowing Open Space</strong></td>
<td>Yes</td>
</tr>
<tr>
<td>Ensure buildings do not</td>
<td></td>
</tr>
<tr>
<td>significantly overshadow</td>
<td></td>
</tr>
<tr>
<td>existing secluded private open</td>
<td></td>
</tr>
<tr>
<td>space.</td>
<td></td>
</tr>
<tr>
<td>Shadow diagrams submitted with</td>
<td></td>
</tr>
<tr>
<td>the application demonstrate that</td>
<td></td>
</tr>
<tr>
<td>at least 75%/40m² of adjoining</td>
<td></td>
</tr>
<tr>
<td>dwellings secluded private open</td>
<td></td>
</tr>
<tr>
<td>space receives at least five</td>
<td></td>
</tr>
<tr>
<td>hours of sunlight between 9am</td>
<td></td>
</tr>
<tr>
<td>and 3pm on 22 September.</td>
<td></td>
</tr>
<tr>
<td><strong>B22 Overlooking</strong></td>
<td>Yes</td>
</tr>
<tr>
<td>Limit views into existing</td>
<td></td>
</tr>
<tr>
<td>secluded private open space and</td>
<td></td>
</tr>
<tr>
<td>habitable room windows.</td>
<td></td>
</tr>
<tr>
<td>Refer report. All habitable room</td>
<td></td>
</tr>
<tr>
<td>windows with views towards the</td>
<td></td>
</tr>
<tr>
<td>secluded private open space and</td>
<td></td>
</tr>
<tr>
<td>habitable room windows of</td>
<td></td>
</tr>
<tr>
<td>adjoining properties have been</td>
<td></td>
</tr>
<tr>
<td>designed to incorporate</td>
<td></td>
</tr>
<tr>
<td>appropriate screening measures.</td>
<td></td>
</tr>
<tr>
<td>The first floor balcony on the</td>
<td></td>
</tr>
<tr>
<td>north elevation requires no</td>
<td></td>
</tr>
<tr>
<td>additional screening as it is</td>
<td></td>
</tr>
<tr>
<td>demonstrated on drawing no. TP</td>
<td></td>
</tr>
<tr>
<td>A09 in section that the raised</td>
<td></td>
</tr>
<tr>
<td>balustrade will limit overlooking.</td>
<td></td>
</tr>
<tr>
<td><strong>B23 Internal Views</strong></td>
<td>Yes</td>
</tr>
<tr>
<td>Limit views into existing</td>
<td></td>
</tr>
<tr>
<td>secluded private open space and</td>
<td></td>
</tr>
<tr>
<td>habitable room windows of dwellings</td>
<td></td>
</tr>
<tr>
<td>and residential buildings within</td>
<td></td>
</tr>
<tr>
<td>the same development.</td>
<td></td>
</tr>
<tr>
<td>All habitable room windows have</td>
<td></td>
</tr>
<tr>
<td>been screened and sited</td>
<td></td>
</tr>
<tr>
<td>appropriately in accordance with</td>
<td></td>
</tr>
<tr>
<td>this Standard.</td>
<td></td>
</tr>
<tr>
<td><strong>B24 Noise Impacts</strong></td>
<td>Yes</td>
</tr>
<tr>
<td>Protect residents from external</td>
<td></td>
</tr>
<tr>
<td>noise and contain noise sources</td>
<td></td>
</tr>
<tr>
<td>in developments that may affect</td>
<td></td>
</tr>
<tr>
<td>existing dwellings.</td>
<td></td>
</tr>
<tr>
<td>The development will not generate</td>
<td></td>
</tr>
<tr>
<td>any noise above that typically</td>
<td></td>
</tr>
<tr>
<td>expected from a residential</td>
<td></td>
</tr>
<tr>
<td>building.</td>
<td></td>
</tr>
<tr>
<td><strong>B25 Accessibility</strong></td>
<td>Yes</td>
</tr>
<tr>
<td>Consider people with limited</td>
<td></td>
</tr>
<tr>
<td>mobility in the design of</td>
<td></td>
</tr>
<tr>
<td>developments.</td>
<td></td>
</tr>
<tr>
<td>Entries are accessible for people</td>
<td></td>
</tr>
<tr>
<td>with limited mobility owing to</td>
<td></td>
</tr>
<tr>
<td>the ramped communal access to</td>
<td></td>
</tr>
<tr>
<td>the south of the building. A lift</td>
<td></td>
</tr>
<tr>
<td>is provided for access to the</td>
<td></td>
</tr>
<tr>
<td>upper level dwellings. The</td>
<td></td>
</tr>
<tr>
<td>development could be retrofitted</td>
<td></td>
</tr>
<tr>
<td>to accommodate people with</td>
<td></td>
</tr>
<tr>
<td>limited mobility in the future</td>
<td></td>
</tr>
<tr>
<td>if required.</td>
<td></td>
</tr>
<tr>
<td><strong>B26 Dwelling Entry</strong></td>
<td>Yes</td>
</tr>
<tr>
<td>Provide a sense of identity to</td>
<td></td>
</tr>
<tr>
<td>each dwelling.</td>
<td></td>
</tr>
<tr>
<td>The entries to the dwellings are</td>
<td></td>
</tr>
<tr>
<td>easily identifiable from the</td>
<td></td>
</tr>
<tr>
<td>street via a clear pedestrian</td>
<td></td>
</tr>
<tr>
<td>entry and walkway to the south of</td>
<td></td>
</tr>
<tr>
<td>the building.</td>
<td></td>
</tr>
<tr>
<td><strong>B27 Daylight to New Windows</strong></td>
<td>Yes</td>
</tr>
<tr>
<td>Allow adequate daylight into</td>
<td></td>
</tr>
<tr>
<td>new habitable room windows.</td>
<td></td>
</tr>
<tr>
<td>All habitable windows have direct</td>
<td></td>
</tr>
<tr>
<td>access to daylight.</td>
<td></td>
</tr>
<tr>
<td><strong>B28 Private Open Space</strong></td>
<td>No</td>
</tr>
<tr>
<td>Provide reasonable recreation</td>
<td></td>
</tr>
<tr>
<td>and service needs of residents</td>
<td></td>
</tr>
<tr>
<td>by adequate pos.</td>
<td></td>
</tr>
<tr>
<td>Refer report. The proposed ground</td>
<td></td>
</tr>
<tr>
<td>floor apartments 1 and 3 have an</td>
<td></td>
</tr>
<tr>
<td>area of private open space in</td>
<td></td>
</tr>
<tr>
<td>excess of 25sqm with convenient</td>
<td></td>
</tr>
<tr>
<td>access from a living area and a</td>
<td></td>
</tr>
<tr>
<td>minimum dimension of 3 metres</td>
<td></td>
</tr>
<tr>
<td>or more.</td>
<td></td>
</tr>
<tr>
<td>Apartment 2 has an alfresco area</td>
<td></td>
</tr>
<tr>
<td>measuring 23.08</td>
<td></td>
</tr>
<tr>
<td>Item</td>
<td>Description</td>
</tr>
<tr>
<td>------</td>
<td>-------------</td>
</tr>
<tr>
<td>B29 Solar Access to Open Space</td>
<td>Allow solar access into the secluded private open space of new dwellings/buildings.</td>
</tr>
<tr>
<td>B30 Storage</td>
<td>Provide adequate storage facilities for each dwelling.</td>
</tr>
<tr>
<td>B31 Design Detail</td>
<td>Encourage design detail that respects the existing or preferred neighbourhood character.</td>
</tr>
<tr>
<td>B32 Front Fences</td>
<td>Encourage front fence design that respects the existing or preferred neighbourhood character.</td>
</tr>
<tr>
<td>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>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>
4.3  37 - 41A BLUFF ROAD, BLACK ROCK  
NOTICE OF DECISION TO GRANT A PERMIT  
APPLICATION NO: 2017/237/1  WARD: SOUTHERN  
City Planning & Community Services - Development Services  
File No: PSF/15/8755 – Doc No: DOC/17/265867  

1. Purpose and background  
To report a planning permit application for buildings and works in a Commercial 1 Zone and Design and Development Overlay Schedule 1 associated with the construction of a (as of right) supermarket, associated removal of native vegetation, a reduction in the car parking and bicycle requirement and the construction and display of signage on a lot with an area of 937 square metres (refer Attachment 1) at 37 – 41a Bluff Road, Black Rock (refer Attachment 2).

<table>
<thead>
<tr>
<th>Applicant</th>
<th>Timothy Margetts c/- Planning &amp; Property Partners</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date application received</td>
<td>17 May 2017</td>
</tr>
<tr>
<td>Statutory days expired</td>
<td>9 December 2017</td>
</tr>
</tbody>
</table>

The Site  
The subject site consists of three, freehold allotments of land and Bayside owned Council car park land. The land referred to as 39 – 41a Bluff Road, Black Rock contains three (3) parcels of land formally referred to as Lots 1, 2 & 3 on Plan of Subdivision 404932.

The site consists of an area of approximately 937 square metres and is currently developed for the purposes of single storey buildings used as three separate retail tenancies. Each tenancy takes frontage to the Bluff Road commercial strip of shops.

The overall site area also includes the land adjoining the site to the south which is currently developed for the purposes of a Council owned and operated car park which includes the provision of 38 car parking spaces known as 37 Bluff Road, Black Rock formally referred to as Consolidated Plan 104465.

Access to the Council carpark is via Bluff Road in the south east corner of the land. Traffic entering the Council car park flows in a one way, clock wise direction around the perimeter and exits in the south east corner of the land. A Right of Way providing connection to the nearby Beach Road is located toward the south east of the carpark and is used to service the access, loading, and unloading requirements of the commercial tenancies located along the western side of Bluff Road.

Proposal Overview  
This application proposes the demolition of the three existing commercial buildings occupying the land and includes alterations to the Council carpark to enable the development of the Site for the purposes of a supermarket and car parking.

The supermarket will operate within a proposed single storey building with mezzanine level and will extend to all title boundaries of the site. The development is to contain a net floor area of approximately 959sqm across the ground and mezzanine level with two pedestrian entries along the Bluff Road frontage.

A loading bay area is provided at the south western rear of the proposed building and access to the loading bay arrangement will be gained through the existing Council car park.

A total of 14 x 90 degree car parking spaces are to be constructed on the southern side of the supermarket building envelope and accessed via the Council carpark, replacing six existing parking spaces included within the Council carpark.
The proposal also requires a planning permit for the removal of two trees from the site to accommodate for the proposed buildings and works. These two trees are protected by the Vegetation Protection Overlay Schedule 3, are located on the north western site of the Council carpark and will facilitate access to the proposed loading bay arrangements at the rear of the supermarket development.

**Previous VCAT Decision**

Planning Permit Application 2015/380/1 sought approval for 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 requirements associated with the as of right use of a supermarket.

The application was refused under delegation on 30 November 2015 for the following reasons:

1. The proposal does not comply with the car parking requirements of Clause 5.06 of the Bayside Planning Scheme and as such would impact adversely upon the availability of nearby on-street and off-street parking spaces to the detriment of the surrounding street network.

2. The proposal does not comply with the bicycle requirements of Clause 52.34 of the Bayside Planning Scheme and when considered the lack of car parking spaces provided on site will result in increased and unsuitable demands on on-street and off-street parking spaces.

3. The proposed 8.8m long loading vehicle and manoeuvrability of the vehicle will cause safety concerns for property and pedestrian sand will also undermine the function of the adjacent Council car park at 37 Bluff Road Black Rock.

4. The timber batten feature above the shopfront will present as a visually bulky dominant element of the streetscape to the detriment of the built form character of the area and Council does not consent to the projection of this element over public land.

The permit applicant subsequently lodged an Application for Review (VCAT Reference No. P165/2016) pursuant to Section 77 of the Planning and Environment Act 1987 against Council’s refusal to grant a planning permit.

In its Order dated 17 November 2016, the Tribunal affirmed Council’s decision and no permit was granted. However the following relevant issues were of key consideration at the hearing and have been considered as part of the design response of this application.

These considerations relate to the proposed built form, access through the car park, acceptability of the proposed loading and unloading arrangements, provision of car parking, bicycle parking and tree removal. The proposal’s suitability against these considerations are discussed in Section 6 of this report.

These key considerations raised throughout the hearing has been reflected in the proposed design response.

2. **Policy implications**

**Planning permit requirements**

**Clause 34.01-4 (Commercial 1 Zone)** – a permit is required to construct a building or construct or carry out works. A Supermarket is a Section 1 (as of right) Use within the Commercial 1 Zone.

**Clause 42.02-2 (Vegetation Protection Overlay Schedule 3)** – a permit is required to remove, destroy or lop any vegetation native to Australia.

**Clause 43.02-2 (Design and Development Overlay Schedule 1)** – a permit is required to construct a building or construct or carry out works including a building with a storey
that is greater than 3.5m in height measured from the floor level to finished floor level of
the floor above.

Clause 52.05-7 (Advertising Signs) – a permit is required to construct and display
business identification signage exceeding 8m².

Clause 52.06-3 (Car Parking) – a permit is required to reduce the number of required
car parking spaces associated with a supermarket use.

Clause 52.34-3 (Bicycle Facilities) – a permit is required to reduce the number of
required bicycle facilities associated with a supermarket use.

Planning scheme amendments

There are no planning scheme amendments relevant to this application.

3. Stakeholder Consultation

External referrals

The application was referred to the following authorities:

<table>
<thead>
<tr>
<th>Referral Authority</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>VicRoads</td>
<td>No objection. No conditions included.</td>
</tr>
</tbody>
</table>

Internal referrals

Planning Permit Application No. 2015/0380 was also referred to the following Council
departments for comment:

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

The above listed Departments were not re-notified of Planning Permit Application No.
2017/237 in light of their previous support for the application. The previous
recommendations of these Departments have been included within the recommendation
of the application.

Public notification

The application was advertised pursuant to Sections 52(1)(a) and (d) of the Planning and
Environment Act 1987 and a total of 60 objections were received. The following concerns
were raised as summarised below:

- Traffic generation and traffic safety;
- Pedestrian safety;
- Loss of car parking;
- Use of the existing Council car park;
- Proposed scale of development and use is out of character with the area;
- Noise disturbance;
- Excess pollution;
- Loss of vegetation; and
- Loss of character.

Consultation meeting
A consultation meeting was held on 4 September 2017 attended by the permit applicant and objectors. No objections were withdrawn following this 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 2017/237/1** for the land known and described as **37 – 41A Bluff Road, Black Rock**, for buildings and works in a **Commercial 1 Zone and Design and Development Overlay Schedule 1** associated with the construction of a (as of right) supermarket, associated removal of native vegetation, a reduction in the car parking requirement and the construction and display of signage in accordance with the endorsed plans and subject to the following conditions:

1. Before the development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the advertised plans prepared by TRG and Council date stamped 20 June 2017, but modified to show:
   a) Delivery and loading bay access designed to reflect the swept path diagram on the last page of Appendix C of the Traffic Engineering Report prepared by TraffixGroup dated March 2017 and any consequential upgrades to the existing Council car park to be provided at the Applicant’s expense.
   b) Details of the proposed signage, including full dimensions, colours and wording of all signs on the host building.
   c) Elevations showing the location of the proposed signs on the host building.
   d) The provision of five bicycle spaces designed in accordance with Clause 52.34 (Bicycle Facilities) of the Bayside Planning Scheme and to be located at the front of the subject site on the nature strip.
   e) A schedule of all proposed exterior decorations, materials, finishes and colours, including colour samples. A coloured elevation clearly identifying all materials proposed as identified in the materials and colour schedule must also be provided. All external glazing must be of a type that does not reflect more than 20% of visible light when measured at an angle of incidence to the glass surface.

All to the satisfaction of the Responsible Authority.

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

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

4. No plant, equipment, services or architectural features other than those shown on the endorsed plans are permitted above the roof level of the building/s without the written consent of the Responsible Authority.
5. All pipes (excluding downpipes), fixtures, fittings and vents servicing any building on the site must be concealed in service ducts or otherwise hidden from view to the satisfaction of the Responsible Authority.

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

7. The loading and unloading of vehicles and the delivery of goods to and from the premises must at all times be conducted entirely within the site and in a manner that limits interference with other vehicular traffic to the satisfaction of the Responsible Authority.

8. Prior to the occupation of the development, the provision of bicycle spaces in accordance with Clause 52.34 (Bicycle Facilities) must be installed on the footpath directly in front of the site to Council’s standards.

Section 173 Agreement

9. Before the commencement of development, an agreement under Section 173 of the Planning and Environment Act 1987, must be entered into between the owner and the Responsible in a form satisfactory to the Responsible Authority including:
   a) the Applicant/Owner must obtain legal access to the site over the land known as No. 37 Bluff Road, Black Rock (Council Land) for the purposes of vehicle access and the Owner of the Land must enter into a Section 173 Agreement under the Planning and Environment Act 1987 giving access rights to the subject land over the land known as No. 37 Bluff Road, Black Rock at the Owner’s cost;
   b) The agreement must outline the any upgrades to the public areas/Council car park to accommodate the proposal and include ongoing maintenance of the public areas/car park. Such upgrades and modifications to the public area/car park must be designed in accordance with Council’s standards and to Council’s satisfaction. Such plan must be submitted to Council for review and approval.
   c) The agreement must outline the provision of bicycle parking in accordance with Planning permit 2017/237, including the location, design, installation and ongoing maintenance. Such costs must be borne by the owner of the supermarket site.
   d) A requirement that the owner pay the costs of the Responsible Authority in relation to the agreement.

Parking and Traffic Management Plan

10. Before the development starts, a Traffic and Parking Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit. Traffic and parking operations on and adjacent to the site must conform to this endorsed plan. Three copies of the plan must be submitted. The plan must include:
   a) Delivery and loading bay access designed to reflect the proposed swept path diagram on the last page of Appendix C of the Traffic Engineering Assessment prepared by TraffixGroup and dated March 2017.
   b) Consistency with the other plans and reports referred to in this permit.
   c) Measures to protect pedestrian safety on thoroughfares providing access into and within the centre.
d) Measures to ensure that the safety and performance particularly at the access crossover/entrance to the car park and Bluff Road is not compromised.

e) All car parking, aisles and ramps designed in accordance with AS2890.1 Parking Facilities Part 1 Off Street Car Parking.

f) All loading docks and commercial access aisles designed in accordance with AS2890.2 Off Street Part 2 Commercial Vehicles Facilities.

g) Provision of directional signage as necessary.

h) Details of all access and parking area grades.

i) Detailed layout plans of internal traffic and car parking arrangements, truck loading areas and shopping trolley storage.

j) The proposed manoeuvrability of delivery and waste vehicles within the car park and addressing any impact on safety of pedestrians.

k) Trucks for both delivery and waste management servicing the supermarket be limited to 8.8m in length.

l) Deliveries to the site must utilise the loading bay area and are limited to a maximum 8.8m in length.

a) The number of deliveries made by an 8.8m vehicle is limited to 6 per day with hours of delivery to be between 7am – 9am and 12 noon – 7pm, Monday to Sunday unless without written consent from the Responsible Authority.

b) Deliveries from smaller vehicles must also utilise the loading bay area and are limited to hours of 7am – 7pm, Monday to Sunday unless without written consent from the Responsible Authority.

m) The location of all areas on and/or off site to be used for staff and customer parking.

n) Owner’s permission and any required planning permission for parking on other land.

o) The means by which the direction of traffic and pedestrian flows to and from car parking areas will be controlled both on and off site.

p) Servicing of the drainage and maintenance of car parking areas.

**Water Sensitive Urban Design**

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

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

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

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

   These plans must be accompanied by a report from an industry accepted performance measurement tool which details the treatment performance achieved and demonstrates the level of compliance with the Urban Stormwater Best Practice Environmental Management Guidelines, CSIRO 1999.
12. 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.

13. 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.

Waste Management Plan

14. Before the development starts, a Waste Management Plan must be submitted to and approved by the Responsible Authority. The Waste Management Plan must clearly indicate that waste collection is to be via a private contractor, not Council, and include:

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

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

Construction Management Plan

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

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

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

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

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

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

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

i) Site security.

j) Public safety measures.

k) Construction times, noise and vibration controls.

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

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

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

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


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

r) Details of crane activities, if any.

16. The provisions, recommendations and requirements of the endorsed Construction Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

### Drainage

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

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

19. 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”.
20. Prior to endorsement of the plan/s required under Condition 1 of this permit, the permit holder must pay a drainage levy in accordance with the amount specified under the Bayside Drainage Development Contributions Plan. The levy amount payable will be adjusted to include the Building Price Index applicable at the time of payment.

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

**Acoustic Report**

21. Before the development starts, an acoustic report prepared by a suitably qualified acoustic engineer must be submitted to and be endorsed by the Responsible Authority. The report must prescribe the form of acoustic treatment to:

   a) Further details of the proposed acoustic fence demonstrated on the proposed Site & Floor Plan Council date stamped 20 June 2017 including measures to protect existing dwellings to the west of the site with a direct interface to the subject site, from associated commercial noise sources, including, but not limited to, the proposed commercial use, loading docks (including reversing beepers) and all plant and equipment to be installed or constructed.

   b) That the acoustic fence demonstrates compliance with the relevant EPA guidelines.

All to the satisfaction of the Responsible Authority.

22. The recommendations contained in the approved acoustic reports must be implemented and completed and where they are recommendations of an ongoing nature, must be implemented and maintained to the satisfaction of the Responsible Authority.

23. Before the use begins, an acoustic fence must be erected in accordance with the fence demonstrated on the Proposed Site & Floor Plan Council date stamped 20 June 2017. The design of the fence must be prepared in consultation with/by a suitably qualified acoustic engineer. The details of the design and acoustic qualities of the fence must be to the satisfaction of the Responsible Authority. The acoustic fence must be maintained to the satisfaction of the Responsible Authority for the duration of the proposed use.

**Permit Expiry**

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**

- 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.
Before the development starts, the applicant must pay $4,964.28 to the Responsible Authority for the removal and replacement of the existing street trees. This amount has been determined in accordance with Council’s current policy for the removal of street trees. This amount may be increased by the Responsible Authority if an extension of time to commence work is granted and the amenity value of the street tree has increased. The Responsible Authority or a contractor or agent engaged by the Responsible Authority must undertake the removal and replacement of the street tree.

5. Council Policy

Council Plan 2017-2021

Relevant strategies of the Council plan include:

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

Relevant strategies of the Council plan include:

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

Bayside Planning Scheme

- Clause 9 Plan Melbourne
- Clause 15 Built Environment and Heritage
- Clause 17 Economic Development
- Clause 18 Transport
- Clause 19 Infrastructure
- Clause 21.02 Bayside Key Issues and Strategic Vision
- Clause 21.06 Built Environment and Heritage
- Clause 21.07 Economic Development
- Clause 21.09 Transport and Access
- Clause 21.10 Infrastructure
- Clause 21.11-8 Local Areas (Black Rock)
- Clause 22.08 Water Sensitive Urban Design
- Clause 42.02 Vegetation Protection Overlay (Schedule 3)
- Clause 43.02 Design and Development Overlay (Schedule 1)
- Clause 43.04 Development Contributions Plan Overlay (Schedule 1)
- Clause 52.05 Advertising Signs
- Clause 52.06 Car Parking
- Clause 52.07 Loading and Unloading of Vehicles
- Clause 52.34 Bicycle Facilities
- 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. Proposed use, and buildings and works

The site is situated within the Commercial 1 Zone. The purpose of the Commercial 1 Zone (of relevance) seeks to create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses.

Pursuant to Clause 74 of the Bayside Planning Scheme, the use of the land for the purposes of a Supermarket falls within the broader definition of Retail Premises. Pursuant to Clause 34.01-1 of the Commercial 1 Zone, a Shop is a Section 1 Use (permit not required). Therefore, no planning permit is required for the proposed land use.

A permit is required for the proposed building and associated works pursuant to Clause 34.01-4 (Commercial 1 Zone) and the Design and Development Overlay Schedule 1.

The proposed single storey development with mezzanine extends to all boundaries of the site and incorporates a modern form with a variety of materials and finishes to reflect the existing and preferred character of the precinct. The building frontage incorporates a well-defined pedestrian entry along Bluff Road with large clear glazed windows to activate the street frontage. A condition of permit requires the provision of a schedule of all proposed exterior materials and finishes and ensures that the proposed glazing does not reflect more than 20% of visible light to protect the amenity of the adjoining residential properties.

The proposed scale, form and design detail, subject to conditions, is consistent with the objectives of the Commercial 1 Zone and Design and Development Overlay Schedule 1. The single storey built form with mezzanine level is consistent with the scale of developments within the immediate precinct and the proposed built form achieves a suitable design response having regard to the amenity of the area.

The Tribunal in its previous consideration of P125/2016 raised no significant objection to the provision of an additional supermarket use within the area nor was the proposed scale and design of the built form a key consideration in the Tribunal's determination to refuse the application. The amended design response is considered to appropriately address previous issues of concern relating to the design through the replacement of a low scale, and appropriately designed development.

6.2. Access through the Council carpark

The application relates to 39 – 41A Bluff Road and to an additional 1.22 metre wide strip of land located along the southern boundary (Certificate of Title Volume 9026 Folio 614).

The loading arrangement for the site includes access through the existing Council car park at 37 Bluff Road, including the need to modify the car park landscape bed edging in the North West corner and the removal of existing vegetation.

The existing Council carpark comprises 38 car spaces including two disabled car spaces, which are designed in a mixture of parallel and 90 degree bays. The carpark is accessed via a double crossover to Bluff Road, partly on a right of way. Traffic movement within the car park is one-way from the entrance, clockwise and then exiting at the entrance point. The car park allows two hour free parking between 8am – 7pm, Monday to Saturday.

The legality of access via the existing car park was discussed by the Tribunal in its Order dated 17 November 2016 (paragraphs 13 – 21). Broadly, no resolution of legal access from a road or street was provided and agreed on both by parties in the proceeding.

However it was indicated that a Section 173 Agreement between the permit applicant
and Bayside Council could address access rights to the loading bay. Consequently, a condition to submit and approve an appropriately worded Section 173 Agreement is included in the recommendation in relation to the proposed reconfiguration of the car park for the provision of additional car parking and associated access to the rear of the site (see Condition 9).

6.3. **Acceptability of the proposed loading and unloading arrangements**

Clause 52.07 (Loading and Unloading of Vehicles) requires land to be set aside for loading and unloading of commercial vehicles in order to prevent loss of amenity or any adverse effect on traffic flow and road safety as a consequence of the development or use.

The proposed supermarket comprises a ground floor space of 759sqm and a mezzanine level comprising approximately 200sqm. Therefore, the total leasable floor area of the building is 959sqm.

The following table outlines the loading bay requirements of the proposed development:

<table>
<thead>
<tr>
<th>Floor Area of Building</th>
<th>Required Minimum Loading Bay Dimensions</th>
<th>Proposed Minimum Loading Bay Dimensions</th>
</tr>
</thead>
<tbody>
<tr>
<td>2,600sqm or less in single occupation</td>
<td>Area</td>
<td>27.4sqm</td>
</tr>
<tr>
<td></td>
<td>Length</td>
<td>7.6m</td>
</tr>
<tr>
<td></td>
<td>Width</td>
<td>3.6m</td>
</tr>
<tr>
<td></td>
<td>Height</td>
<td>4.0m</td>
</tr>
</tbody>
</table>

In accordance with the above, the proposed loading bay dimensions meet the minimum requirements of Clause 52.07 (Loading and Unloading of Vehicles).

As confirmed by the applicant, access to the loading and unloading facilities at the south western rear of the proposed building requires consultation and deliberation between Council and the applicant and is subject to an agreement to appropriate terms through the implementation of Section 173 Agreement. The preparation and approval of a Section 173 Agreement is included as part of the recommendation (see Condition 9).

The maximum sized delivery vehicle will be limited by the size of the loading bay to 8.8m long trucks which allows all trucks up to 8.8m long Medium Rigid Vehicle (MRV) as defined in AS2890.2-2002 (see Condition 10).

Council’s Traffic Engineers have objected to the provision of 8.8m long trucks however it is confirmed that trucks already use the Council car park and Right of Way to service commercial properties fronting Bluff Road.

Loading is proposed to occur as follows (as detailed in the proposed Traffic Engineering Assessment, March 2017, page 25):

a) Trucks enter the Council carpark from Bluff Road and travel clockwise around the car park. From the car park, trucks will reverse into the site to undertake loading.

b) Once loading activities have been completed, trucks will travel in a forwards direction to the southern two-way aisle and turn east (left hand turn) through the car park and to Bluff Road (along the newly altered two-way accessway).

Alternatively, the applicant has confirmed that the one way access agreement can be maintained by having the truck exit with the travel direction of the car park by turning immediately east out the car park along the northern aisle followed by navigating through the eastern aisle.

As a result, the north east most car space will need to be removed result in the net gain of 7 spaces instead of 8 spaces. This option is reflected in the last page of Appendix C.
of the report and is considered to be the most suitable design response for the proposal.

The previous application proposed a loading bay that achieved the minimum dimensional requirements at Clause 52.07 (Loading and Unloading of Vehicles) of the Bayside Planning Scheme. However Council in its previous refusal along with the Tribunal in its determination to affirm Council’s decision to direct no permit issued, questioned whether the layout and functionality of the loading bay was appropriate.

The Tribunal in its determination recognised that a loading bay is an essential part of the operation of a supermarket and on site loading is necessary given the size and frequency of deliveries, even for a small scale supermarket.

Council in its determination failed to support the proposed application for the provision of a truck to perform a reversing manoeuvre within a public car park through the existing laneway. It was also considered that the exiting 8.8m truck would need to travel against the one way traffic flow until it could exit the laneway. The Tribunal was not satisfied that a delivery management plan could address the safety concerns regarding loading and unloading and advised that there would need to be separate agreements established between Council and the permit holder about the management of the loading bay.

The Tribunal also raised concerns regarding the impact on the loading bay on the amenity of the adjoining properties immediately to the west. There is private open space and habitable room windows in close proximity to the proposed loading bay. The decision plans demonstrate the provision of a proposed acoustic treatments and further clarification around the treatments of this fence can be appropriately controlled by a condition of permit as demonstrated in the proposed recommendation.

The provision of a loading management plan was discussed throughout P165/2016 to ensure that the reversing movements and contra flow was supervised and car park traffic managed at these times. It was also advised that a loading management plan would need to manage the timing of deliveries to ensure that trucks were not waiting for the loading bay within the car park.

While there has been no substantial discussion in either cases pertaining to hours of delivery, the following hours were considered in P165/2016:

a) Deliveries to the site must utilise the loading bay area and are limited to a maximum 8.8m vehicle length;

b) The number of deliveries made by an 8.8m vehicle is limited to 4 per day with hours of delivery to be between 7am – 9am and 12 noon to 7pm, Monday to Saturday and 12 noon to 7pm on Sunday.

c) Deliveries from smaller vehicles must also utilise the loading bay area and are limited to hours of 7am to 7pm Monday to Saturday and 9am – 7pm on Sundays.

The applicant now proposes the following delivery hours:

a) Deliveries to the site must utilise the loading bay area and are limited to a maximum 8.8m in length.

b) The number of deliveries made by an 8.8m vehicle is limited to 6 per day with hours of delivery to be between 7am – 9am and 12 noon – 7pm, Monday to Sunday unless without written consent from the Responsible Authority.

c) Deliveries from smaller vehicles must also utilise the loading bay area and are limited to hours of 7am – 7pm, Monday to Sunday unless without written consent from the Responsible Authority.

Whilst the hours of delivery have changed, these hours are considered to appropriately align with the conditions of the Commercial 1 Zone while also having regard to the amenity of the adjoining residential properties to the west. Importantly, the hours of delivery will largely occur at times when there is less demand for car parking therefore
limiting the chance of competing demands between car park users and large delivery vehicles. A Loading Management Plan is required though as a condition and is included within the recommendation of this report to ensure any conflict is appropriately managed.

6.4. ** Provision of car parking**

<table>
<thead>
<tr>
<th>Proposed Use</th>
<th>Quantity / Size</th>
<th>Statutory Parking Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supermarket</td>
<td>5 spaces to each 100sqm of leasable floor area</td>
<td>47 spaces (959sqm of leasable floor area)</td>
</tr>
</tbody>
</table>

The proposed development falls under the land use category of a Supermarket pursuant to Clause 74 of the Bayside Planning Scheme. The Bayside Planning Scheme sets out the parking requirements for new developments under Clause 52.06.

Before granting a permit to reduce the number of spaces, Council must consider the following relevant decision guidelines of Clause 52.06-6 (Car Parking).

- The availability of alternative car parking in the locality of the land.
- On street parking in residential zones in the locality of the land that is intended to be for residential use.
- Any car parking deficiency associated with the existing use of the land.
- The impact of fewer car parking spaces on local amenity, including pedestrian amenity and the amenity of nearby residential areas.
- Access to or provision of alternative transport modes to and from the land.
- The equity of reducing the car parking requirement having regard to any historic contributions by existing businesses.

The site is currently occupied by a commercial building with a floor area of approximately 453sqm. This building has been used as a variety of shop and retail tenancies. A shop has a car parking requirement of 4 car spaces per 100sqm. Therefore, the existing shops have a statutory requirement to provide 18 spaces. The applicant contends that the existing use has a shortfall of 13 car spaces.

In its Car Parking Demand Assessment (page 19, Traffic Engineering Assessment), TraffixGroup confirm that smaller supermarkets generate considerably lower demands per 100sqm than larger format supermarkets (which are typically more car reliant due to the size of shopping purchases).

The results of the TraffixGroup surveys indicate that smaller supermarkets generate 0.5-2.6 spaces per 100sqm. Adopting a rate of 2.5 spaces per 100sqm generates a peak demand of 23 spaces for the proposed 959sqm of leasable floor area comprising 7 staff and 16 customer spaces.

The car spaces provided will be located partially on site and partially in the existing Council carpark. It is proposed to change the 6 parallel parking spaces along the shops and replace them with 14 x 90 degree spaces which results in a net gain of 8 spaces.

The previous planning application proposed a complete waiver of the car parking requirements set out in Clause 52.06 (Car Parking). VCAT Member Carew confirmed that a centre based approach (paragraph 44) is warranted and in established activity centres it is not practical on most sites, other than the very large sites within the area, to provide off street car parking for customers and for one hundred per cent of staff. It was
also advised that “in such a context, the importance of promoting a vibrant commercial activity centre outweighs the disbenefits of the failure to provide this off street car parking.”

Council currently applies this approach to the centre, providing a balance between on street and off street parking facilities throughout the centre with associated management strategies. Importantly, Member Carew in her consideration confirmed that “the overall pool of car parking in this centre is reasonable and well managed and on a purely numerical basis the demand for this use can be accommodated across the area and on this basis it would be reasonable to provide for a reduction in the car parking requirement taking into account the full range of matters set out in Clause 52.06.” Notwithstanding, Member Carew confirmed that a reduction to zero is acceptable in this context.

Accordingly, the proposal having considered the swept path diagram in Appendix C of the Traffic Engineering Assessment results in a net increase of 8 spaces and seeks to address the parking shortfall identified in the Tribunal’s earlier decision.

On balance, the proposal suitability addresses the concerns previously raised by Council and the Tribunal through the provision of a modified car park design which will provide suitable provision for customers and staff of the proposed development. In addition, the surrounding network and applying a centre based approach to car parking is acceptable. In light of the scale of development, reduction in car parking and surrounding availability, the proposal in its current form is acceptable having regard to the conditions outlined in the recommendation of the report.

6.5. Bicycle Facilities

<table>
<thead>
<tr>
<th>Proposed land use</th>
<th>Statutory Requirement</th>
<th>Total Required Bicycle Spaces</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retail Premises</td>
<td>1 space allocated to each employee to each 300sqm of leasable floor area</td>
<td>1 space allocated to each patron to each 500sqm of leasable floor area</td>
</tr>
<tr>
<td></td>
<td>959sqm = 3</td>
<td>959sqm = 2</td>
</tr>
<tr>
<td></td>
<td>Total Required: 5</td>
<td>Provided: 0</td>
</tr>
</tbody>
</table>

Clause 52.34 (Bicycle Facilities) requires the provision of bicycle facilities before any new use commences. Table 1 at Clause 52.34-3 does not specifically list a Supermarket and therefore the use is defined as a Retail Premises in accordance with Clause 75.12 of the Bayside Planning Scheme.

The proposed development should provide for 1 bicycle space per 300sqm of leasable floor area for employees and 1 space to each 500sqm of leasable floor area for patrons.

As such, a total of five (5) bicycle spaces should be provided, comprising of three employee spaces and 2 patron spaces associated with 959sqm of leasable floor area.

The application proposes a waiver of the required number of bicycle spaces and confirms that the existing provision of two bicycle spaces within the site’s frontage provides sufficient spaces to accommodate existing and future employees and patrons.

The Tribunal in its Order paragraph 55 of P165/2016 confirms that bicycle parking should be provided, particularly where no parking is proposed. Accordingly, a condition of permit requires the applicant to provide the required number of spaces within the nature strip directly in front of the site (see Condition 1d).
6.6. **Landscaping**

A permit is required for the removal of two trees located on the north western side of the Council carpark which will facilitate access to the proposed loading bay arrangements at the rear of the supermarket development. Council in its previous assessment of Planning Permit Application 2015/380 raised no concern with the removal of these trees.

Council in its previous recommendation raised no concern subject to compensation to Council for the removal of the trees. The Tribunal also concluded that the removal of the trees is acceptable in light of the Commercial 1 zoning of the land (paragraph 60).

6.7. **Signage**

The development plans have been designed to incorporate indicative business identification signage zones for the host building. Details of the proposed signs have not been provided and a condition of permit is included to require updated plans to include the detail of signage on the proposed development.

6.8. **Objections received**

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

**Noise disturbance**

The proposed land use creates a low-speed environment compensating for the shared use of thoroughfares by both pedestrians and vehicles. Noise emissions associated with vehicles coming and going will not be so unreasonable that it would disturb the amenity of neighbours. A suitably designed acoustic fence will be conditioned as part of the approved development to protect the amenity of users of adjoining land. (See Conditions 21 - 23)

**Excess pollution**

A development of this nature is consistent with the established urban setting. Matters related to noise will be managed through Conditions 21-23 and Waste Management through Condition 14.

**Support Attachments**

1. Development Plans ↓
2. Site and Surrounds Imagery ↓
3. VCAT Order - P165 2016 Tim Margetts v Bayside CC ↓
Item 4.3 – Matters of Decision
Item 4.3 – Matters of Decision
Figure 1. Aerial overview of the site and surrounds.

Note: Not all objections are marked on the above image.

<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 of the existing entry to the Council car park (37 Bluff Road, Black Rock).

Figure 3. The existing Council car park and existing built form to the north of the car park.
Figure 4. Existing built form located on the subject site viewed from Bluff Road.
ORDER

No permit granted

1 In application P165/2016 the decision of the responsible authority is affirmed.

2 In planning permit application 2015/380/1 no permit is granted.

Megan Carew
Member
APPEARANCES

For applicant
Mr Paul Chiappi, Barrister, instructed by Planning and Property Partners.
He called Ms Charmaine Dunstan, Traffic Engineer, Traffix Group to give evidence.

For responsible authority
Ms Jennifer Bowdern, Legal Support Planner
She called Mr Simon Beale, Traffic Engineer, O’Brien Traffic to give evidence.

For respondents
Ms Jill Whyte
Mr Jianbin Hao assisted by Ms Danielle Kuter (translator). He tabled a written statement.
Mr Anthony Worters for himself and Ms Li Fang Zhou
Mr Bin Wu

INFORMATION

Description of proposal
Development of land for a 1000m² supermarket.
Waiver of car parking requirements.
Tree removal.

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

Planning scheme
Bayside Planning Scheme

Zone and overlays
Commercial 1 Zone (C1Z)
Design and Development Overlay-Schedule 1 (DDO1)
Vegetation Protection Overlay- Schedule 3 (VPO3)
Permit requirements

Clause 34.01-4 for Buildings and Works in the C1Z
Clause 43.02 for Buildings and works in the DDO1 (ground floor exceeds floor to ceiling height of 3.5m).
Clause 42.02 for tree removal under the VPO3.
Clause 52.06 for the reduction of car parking requirements to zero.
Clause 52.34 for the waiver of bicycle parking to zero.

Relevant scheme policies and provisions

Clauses 9, 11, 12, 15, 17, 18, 21, 34.01, 42.02, 43.02, 52.06, 52.07, 52.34, 65.

Land description

The subject site is located on the west side of Bluff Road, towards the northern end of the Black Rock Activity Centre. The review site is a consolidated site that comprises three titles with common property (known as 39, 41 and 41A Bluff Road) and an additional small strip of land with separate title.

The review site is located to the immediate north of a Council car park (37 Bluff Road). The Council car park has access to Bluff Road and to a laneway that runs along its southern boundary and returns southwards along the rear of the Bluff Road shops to intersect with Beach Road.

To the immediate west are the side and rear yards of residential properties that front Sylvia Crescent.

Tribunal inspection

I inspected the site and its environs following the hearing.
REASONS

WHAT IS THIS PROCEEDING ABOUT?

1 The review site is located within the Black Rock Neighbourhood Activity Centre, centred on the “clock tower” at the Beach Road roundabout and extending along parts of Beach, Bluff and Balcombe Roads.

2 The permit applicant seeks to develop the land for a supermarket of 1000m², comprising 848m² of ground level floor area and a mezzanine level. The supermarket is orientated to Bluff Road, and also to the adjoining off-street Council car park to the south. Access to the supermarket’s loading bay is proposed through this public car park. No car or bicycle parking is proposed for staff or customers of the supermarket.

3 The Council did not support the application. It says that while the use is one that it would encourage within the activity centre, this is not an appropriate site. Council says that the proposal relies too heavily on the adjacent public car park. It contends that the proposed access to the loading bay is unacceptable and that a waiver of car and bicycle parking to zero is not appropriate.

4 The respondents in this matter support Council’s position. In addition Ms Whyte raised concerns about the proposed loss of vegetation on the site and in the car park.

5 Having inspected the site and surrounds and considered the State and Local Planning Policy Frameworks, the purpose of the zone and overlays, the decision guidelines of the relevant clauses of the Bayside Planning Scheme, the submissions of the parties and the evidence before me, I have determined to affirm the decision of the Responsible Authority. I have not been persuaded that the proposal results in a net community benefit. My reasons are set out below.

WHAT IS THE PLANNING CONTEXT?

6 The policy considerations relevant to this proposal are a balance between those that encourage retail development within activity centres against those that seek to protect the function and amenity of these areas.

7 The parties did not dispute that there was strong policy support for a supermarket to be located within this activity centre. Clause 21.11-8 identifies Black Rock as a neighbourhood activity centre with the objective to protect and reinforce the centre’s local convenience function. I find that a new supermarket within the Black Rock Activity centre is one that serves

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1 The submissions and evidence of the parties, any supporting exhibits given at the hearing and the statements of grounds filed have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons.
the needs of the local and broader community and is consistent with the purposes of the Commercial 1 Zone.

8 Mr Chiappi submitted that I should place significant weight on the level of policy support and the acceptability of this use within the zone in balancing the matters that I must consider. I agree. I accept that this is an area where commercial land use is encouraged to add to the vitality of activity centres. However, development must still respond to the site context and provide for acceptable function, form and amenity so as to achieve ‘net community benefit and sustainable development’ in accordance with Clause 10 of the Planning Scheme.

9 Mr Hao and Mr Worters questioned the need for an additional supermarket in the centre. The centre does already have supermarkets, including the Foodworks to the south in Bluff Road and the Thomas Dux store opposite.

10 At the time of Council’s consideration, the possible end user or tenant of the supermarket was unknown. At the hearing the permit applicant tabled a letter dated 14 October 2016 from Woolworths Group that notes that it is considering the site for a Metro store\(^2\). The advice also notes that:

> Woolworths owns and operates the Thomas Dux store in Bluff Road opposite the subject site. It has a retail floor area of about 500 square metres. The store trades well, but is too small and cannot cater for local customer demand. We will close the Thomas Dux store if this application succeeds and a Metro store is developed on the subject site.

11 The fact that there are already supermarkets within the activity centre does not necessarily equate to there being no need for another facility. The provision of consumer choice is supported by the economic policies at both a State\(^3\) and local level within the planning scheme. I am satisfied that the expansion of the supermarket offering would provide consumer choice and support the vitality of the activity centre.

12 The very strong strategic support for a supermarket in this location must be balanced against the design response in this case.

**IS LEGAL ACCESS THROUGH THE CAR PARK PROVIDED OR NECESSARY?**

13 The application relates to land at 39-41A Bluff Road (the three existing shops) and to an additional 1.22m wide strip of land along the southern boundary (Certificate of Title Volume 9026 Folio 614) as shown in the attached development plan at Appendix A. However, the loading bay proposes to take access over the Council car park at 37 Bluff Road, including the need to modify the car park landscape bed edging in the northwest corner and to remove trees. As the proposal relies in part on the

\(^2\) A Woolworths format store less than 1000m\(^2\) floor space.

\(^3\) Clause 17
Council car park, I find that this should be included within the planning unit.

14 The Council car park has recently been reconstructed and provides for 38 car spaces (including two disabled car spaces). Car parking is laid out in a mix of 90 degree and parallel bays. The car parking is accessed via a double crossover to Bluff Road, partly on a right of way. Traffic movement within the car park is one-way from the entrance, clockwise and then exiting at the entrance point. A traffic island divides the entrance/ egress manoeuvres. The car parking area allows two hour parking between 8am -7pm Monday to Saturday.

15 The rear car parking to the existing shops on the review site takes access from the Council car park via Easements E2 and E3 as identified on the development plan (Appendix A). The easements used to relate to a former crossover to Bluff Road that has now been reinstated (for a bus stop). Turning into the review site within the constraints of the current easements would be difficult and not suitable for the proposed loading bay.

16 The parties agree that there is no legal access to the proposed loading bay at present (other than where this coincides with the public right of way/ laneway) on the south side of the Council car park.

17 Council’s draft conditions sought to address the question of legal access by requiring that the permit holder obtain a carriageway easement or enter into a Section 173 Agreement providing for access rights prior to any works commencing. Council indicated at the hearing that negotiations were continuing with the permit applicant and that the application was not futile. Mr Chiappi submitted that the applicant accepts that planning approval may require the applicant to procure right of access.

18 In Transkit Investments Pty Ltd v Boroondara CC [2010] VCAT 798, the Tribunal considered the question of legal access. The Tribunal in that case referred to the determination in Holly v Yarra CC [2004] VCAT 420 where it indicated that legal access must be clear. A permit condition requiring that legal access be provided was not an appropriate means of resolving the issue.

19 However in other decisions of this Tribunal it has been found that it is acceptable for access to be resolved at a later time. For example in Scamporlino v Melbourne CC & Anor [2009] VCAT 2634 the Tribunal found:

19 Bulla Lane is a private lane. The permit applicant has not yet demonstrated any legal right or agreement to use this lane for access to the ground floor of the proposed development. The responsible authority’s permit conditions propose that formalised legal access must be demonstrated before any buildings or works start. The responsible authority otherwise approved of the proposed parking and traffic arrangements for the proposal.
20 The objector applicants submitted that no permit should be granted until lawful access via Bulla Lane has been conclusively established. Lawful access to the development site is clearly a relevant matter in the application before me, but the question is whether such access must be demonstrated at the stage the permit application is made or determined, or whether there is scope for the permit holder to provide confirmation of this before the development commences.

21 While I am aware of case authorities that have upheld similar submissions to those made by the objector applicants, there are also numerous others that have granted a permit conditional on lawful access being demonstrated before any aspect of the development starts.

22 In the circumstances, I prefer the latter approach. I was presented with aspects of evidence that I consider indicate a reasonable chance of lawful access being demonstrated via long user. There may also be other methods available to the permit applicant to obtain lawful access, such as an application to declare the laneway a public highway. However, for the present purposes, at this stage, I am by no means satisfied that the grant of a permit would be futile. Lawful access will need to be established and demonstrated as a precondition to the permit holder being able to act on the permit.

20 I find that whether legal access can be dealt with subsequent to the grant of a permit is a question that turns on each particular case. In this case, I find that it would be possible to resolve this subsequent to the grant of a permit subject to the drafting of that condition.

21 However, I do not need to make further findings on this issue because the greater question is whether access through the car park for the loading bay is acceptable based on the planning merits. For the reasons I have set out below, I have determined that, with the current car park layout, it is not acceptable.

IS LOADING AND UNLOADING ACCEPTABLE?

22 A loading bay is an essential part of the operation of a supermarket. On-site loading is necessary given the size and likely frequency of deliveries, even for a small supermarket as proposed.

23 The dimensions of the loading bay meet the requirements of Clause 52.07 of the Planning Scheme and no permission is required pursuant to this provision. However, the layout of the site and the functionality of the loading bay remain relevant to my consideration. The decision guidelines of the zone specifically require consideration of the movement of pedestrians.
and cyclists, and vehicles providing for supplies, waste removal, emergency services and public transport and the provision of car parking.

The proposed loading bay arrangements will only accommodate up to an 8.8m long truck. Smaller vehicles can be accommodated within the current car park layout, however the larger 8.8m trucks will be required to reverse into the loading bay within the car park area and exit the loading bay moving against the one-way flow to the laneway to the south side of the Council car park and then exit to Beach Road down the length of the laneway.

Mr Chiappi submitted that the applicant was prepared to accept a condition that trucks (for both delivery and waste management) servicing the supermarket be limited to 8.8m. As directed by the Tribunal the permit applicant confirmed following the hearing that Woolworths would accept conditions as follows:

- Deliveries to the site must utilise the loading bay area and are limited to a maximum 8.8m vehicle length.
- The number of deliveries made by an 8.8m vehicle is limited to 4 per day with hours of delivery to be between 7am- 9am and 12 noon to 7pm Monday to Saturday and 12 noon to 7pm on Sundays.
- Deliveries from smaller vehicles must also utilise the loading bay area and are limited to hours of 7am to 7pm Monday to Saturday and 9am -7pm on Sundays.

Council submitted that the proposed loading arrangements were unacceptable. It relied on the evidence of Mr Beale in this respect. Mr Beale considered that it was undesirable for a truck to perform a reversing manoeuvre within a public car park. He was also concerned that the exiting 8.8m truck would need to travel against the one way traffic flow until it could exit the laneway. Mr Beale says that the reversing of the trucks and exit contra to the circulation in this car park would not provide for safe or efficient vehicle movements.

Mr Beale was of the opinion that should the loading bay be approved that a loading management plan would be required to ensure that the reversing movements and contra flow was supervised and car park traffic managed at these times. He also considered such a plan would need to manage the timing of deliveries to ensure that trucks were not waiting for the loading bay within the car park.

The proposed manoeuvring of delivery and waste vehicles within the car park and impact on safety of pedestrians was of concern to the respondents.
in this matter. Ms Whyte submitted that pedestrians use the laneway and that increased truck use would conflict with this.\(^5\)

29 The permit applicant contends that access to the loading bay is acceptable within the constraints of this site. It relied on the evidence of Ms Dunstan. Ms Dunstan says that although the truck would be egressing against the traffic flow in the car park that this is acceptable due to the limited number of 8.8m vehicles (1-2), the driver’s visibility, the short distance to be travelled and the width of the access aisle, which is capable of accommodating two-way traffic.

30 Ms Dunstan says that movements within a public car park are not subject to the road rules and that there would be nothing “illegal” about the truck travelling against the one-way flow. Ms Dunstan considered that a management plan was not required. She submits that the operators would have to load and unload in a safe manner and that this is usually resolved by loading management plans developed internally by the end user.

31 Mr Worters outlined the use of the laneway now for the Foodworks supermarket that has loading to the rear. He noted that larger trucks are required to reverse into the laneway from Beach Road. Ms Dunstan also photographed an 8.8m truck entering the laneway from the Council car park. Given the current role and appearance of the laneway, pedestrians would need to take care in utilising it. I would not refuse this proposal because of increased use of the laneway. I note that Ms Dunstan suggested that the laneway could become one-way to minimise conflict\(^6\) which I find would be a sensible approach.

32 However, I am not persuaded that it is a good planning outcome for access to the loading bay to be provided for through the Council car park in its current configuration. I find that the need for deliveries and waste management trucks to reverse into the loading bay and move contrary to the flow of the car park is unacceptable in the context of this small, but well used car park.

33 This is not something that can be simply remedied by condition given that the car park is not within the ownership or control of the permit applicant. A delivery management plan is sometimes used to manage loading and unloading and was adopted by the Tribunal in *Coles Group Property Developments Limited v Boroondara CC* [2016] VCAT 693. However, access to the loading bay in that case was via a public laneway, not through a Council car park. I am not satisfied that a delivery management plan can address my concerns about loading and unloading in this case given that the occupier of the supermarket does not control the Council car park. There

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\(^5\) The laneway is identified as a ‘key pedestrian route’ in the *Black Rock Village Framework Plan 2009 Addendum July 2012* which is a reference document at Clause 21.11-8.

\(^6\) I note that this is a suggestion in the *Black Rock Village Framework Plan 2009 Addendum July 2012* is a reference document at Clause 21.11-8.
would need to be separate agreements established between Council and the permit holder about the management of the loading bay.

34 Ms Dunstan suggested some alternative options, including introducing two way flow to allow the vehicle to exit to Bluff Road or modification being made to the car park layout or reduction in the landscaping strips and traffic island at Bluff Road as demonstrated in the plan prepared by Traffix Group and tabled at the hearing. Each of these suggestions could be pursued, but I find that any changes are a matter for Council’s management of its car park.

35 In addition, I expressed concern at the hearing about the impact of the loading bay on the amenity of the adjoining properties immediately to the west. There is private open space and habitable room windows in close proximity to the loading bay. While there is an existing fence of about 3m in height (2m plus lattice extension), it is not an acoustic fence. This was not considered in the application and the ability to implement acoustic treatments is restricted by the fact that the permit holder does not have control over the Council car park. However, this may be resolved in any future consideration to changes to the car park layout.

36 Council’s traffic engineers also raised a concern that the proposed loading and unloading access arrangements would compromise the potential for Council to make alternative use of the Council car park land in the future. I would agree. The car park is a large site within an activity centre and could be potentially redeveloped in the future. However, this would be a matter for Council in considering whether it would agree to make any alterations to the car park layout or enter into any management agreement.

IS CAR PARKING PROVISION ACCEPTABLE?

37 The objectives for the Black Rock activity centre include to ensure the Centre maintains an adequate supply of appropriately designed and managed on and off-street multi-purpose car parking. Clause 22.11-8 includes the objectives to maintain the supply of publicly available car parking spaces.

38 Clause 52.06 requires the provision of 5 car spaces per 100m² of leasable floor area for a supermarket, a total requirement of 50 car spaces for this proposal. A permit can be granted to reduce these requirements and I agree with the submissions of Mr Chiappi that the planning scheme provisions contemplate the possibility of a reduction to zero.

39 Council submits that a complete waiver of car parking is not acceptable. The Council considers that the use would rely for customer car parking on the adjoining Council car park, which is already well utilised. Council’s position is that the site should make some contribution to car parking within the activity centre.

40 I had the benefit of the evidence of Mr Beale and Ms Dunstan. The two traffic engineers had a number of areas of agreement. Both agreed that it was appropriate to adopt a centre wide approach to car parking. They also
agree that a lesser rate than the statutory requirement was appropriate in this case because of the small size of the supermarket. The differences between the two traffic experts are set out below:

<table>
<thead>
<tr>
<th>Mr Beale</th>
<th>Ms Dunstan</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 spaces per 100m² = 30 spaces</td>
<td>2.5 spaces per 100m² = 25 spaces required</td>
</tr>
<tr>
<td>spaces required</td>
<td>Staff requirements 9 spaces</td>
</tr>
<tr>
<td></td>
<td>Staff requirements 8 spaces</td>
</tr>
<tr>
<td>Customer parking 21 spaces</td>
<td>Customer parking 17 spaces</td>
</tr>
</tbody>
</table>

41 Both experts agree that a car parking deficiency for the existing use of the land can be relied upon (noting that staff parking is provided for on site), but differ as to the amount (Beale suggests 10 customer spaces, Dunstan 12).

42 Both experts surveyed similar areas of car parking across the centre as a whole. The main difference was that the Traffix Group surveys included the beach car park on the southern side of Beach Road, which O’Brien group distinguished. The surveys showed that at present the Council car park immediately adjacent to the site has a high level of usage, particularly on Friday and Saturday mornings and that parking as a whole in the centre was well used and that unrestricted parking that could accommodate staff was limited (particularly if the Beach car park is excluded).

43 Both traffic engineers agree that the demand for car parking for the supermarket would displace car parking from the adjoining Council car parking, as it would be customer’s preference to park near the supermarket and then in Bluff Road. The two traffic engineers agreed that the displaced traffic would need to be accommodated elsewhere within the centre to maintain a balance. It was also agreed that staff would need to park elsewhere within the centre because of the time restrictions on the adjoining Council car park. The evidence of both traffic engineers is consistent with Ms Whyte’s “lived experience” that she had adjusted her visitation to the centre to not coincide with peak times due to the poor availability of car parking.

44 I agree that a centre based approach to car parking is warranted. I established activity centres it is not practicable on most sites, other than the very large sites within the area, to provide off street car parking for customers, and for one hundred percent of staff. In such a context the importance of promoting a vibrant commercial activity centre outweighs the disbenefits of the failure to provide this off-street car parking.

45 It is an approach that Council already applies in this centre providing a balance between on street and off street car parking facilities throughout the centre, with associated management strategies. I agree with Ms Dunstan that the overall pool of car parking in this centre is reasonable and well
managed. On a purely numerical basis the demand for this use can be accommodated across the area surveyed by both Mr Beale and Ms Dunstan and on this basis it would be reasonable to provide for a reduction in the car parking requirement taking into account the full range of matters set out in Clause 52.06.

46 However, a centre based approach is also about managing the distribution of car parking throughout the centre. I am not persuaded that on balance that it is acceptable that this use make no contribution to the overall car parking within the centre because of its demand on the northern end of the centre. I find that the proposed supermarket would require an unacceptably high proportion of the car spaces in the adjoining Council car park and at the northern end of the shopping centre. I am not persuaded that a reduction to zero is acceptable in this context.

47 This is consistent with the findings of the Tribunal in *Aldi Stores v Whitehorse CC* [2014] VCAT 273 where a small supermarket of 1500m² (not an Aldi) was proposed.

18 Mr Simkus also referred to the Practice Note’s advice that car parking should not dominate assessments of new uses and developments and that it is sensible to reduce parking rates rather than prevent appropriate uses that increase an activity centre’s viability.

19 I find this policy context anticipates that parking demand is relatively fluid in this activity centre. Many businesses, such as those in the small shops fronting Canterbury Road, operate without the need for a planning permit and rely on the existing supply of on-street parking spaces and public car parks. The car parking demand generated by these businesses varies, as it depends on the number of customers and the length of their stay. In this context, it is sensible to allow new uses that require a planning permit and which provide less than the required number of car spaces to occupy these shops provided they contribute to the centre and do not generate unreasonable parking demands.

20 However, supermarkets differ from the businesses described above. Supermarkets are primary destinations in activity centres. In other words, they ‘anchor’ the centre to the benefit of other shops which are visited as part of the supermarket trip. Apart from this, supermarket patrons demand conveniently located parking spaces given the size and weight of most purchases, rather than being satisfied carrying their goods over greater distances. These characteristics are reflected in the car parking rates of clause 52.06 where the required rate for supermarkets is 5 spaces per 100 square metres of floorspace whereas it is 4 spaces for shops.

21 As a result, I find this supermarket must provide parking spaces for the vast majority of its patrons and these parking spaces must
be conveniently located. Apart from this, any overflow must be able to park close by on the street. My concern is that there are too few available on-street parking spaces close to the site to accommodate the parking shortfall.

48 While this is not a supermarket that intends to provide for a weekly shop, but rather a convenience function, I find that it will still be a destination in its own right. Mr Chiappi referred to it as an “anchor”. I am being asked to in effect allocate to this particular use a significant proportion of the available car parking supply to the northern end of the activity centre. I am not persuaded this is acceptable even for a supermarket which has economic benefit to the centre. The proposal will place a disproportionate burden on the publically available car parking proximate to the site.

49 It was the opinion of Mr Beale that the site was capable of contributing some car parking to the overall supply. He provided sketch plans of two options, one a basement layout providing for a net gain of 16 car spaces and one with 90 degree car parking to the northern access aisle to the Council car park which would provide for a net gain of 8 car spaces (with the deletion of the current parallel spaces).

50 Ms Dunstan in her evidence also provided options for on-site parking for staff adjoining the loading bay.

51 Each of these solutions presented design difficulties, however would not be insurmountable and should be considered in any revised proposal.

BICYCLE PARKING

52 At Clause 52.34, bicycle parking is required to be provided as 3 employee spaces and two visitor spaces. The proposal does not provide for any bicycle parking, although it is noted that there is an existing bike rack in front of the review site in the public realm.

53 Council did not support the lack of provision for bicycle parking. Council seeks a minimum of 3 employee spaces be provided within the building. It accepts that the visitor spaces can be provided in an additional rail on the street frontage.

54 The respondents submit that this is a major centre for bicycle activity associated with Beach Road and that it would be appropriate for this use to provide for cyclists.

55 I agree that bicycle parking should be provided, particularly where no car parking is proposed. However, I consider that this could be addressed through a planning permit condition.

IS THE BUILT FORM OUTCOME OTHERIWISE ACCEPTABLE?

56 The proposal is for a contemporary building form with a projecting timber batten canopy and verandah. Council was generally satisfied with the
proposed building form, subject to some minor modifications to the timber batten feature to ensure that it was contained within the site boundaries.

57 The permit applicant agrees that the feature should be contained within the title boundaries. I find that these minor questions of built form could have been addressed by permit conditions.

TREE REMOVAL

58 The proposal requires the removal of trees on the land forming part of the review site and also two trees located on the south western side of the Council car park to provide access to the loading bay. Council’s arborist had no objection to the removal of the trees on the review site or Council’s trees subject to the permit holder compensating Council.

59 Ms Whyte raised a concern about the loss of the trees and the shade and amenity provided to the Council car park.

60 The trees in question appear to be *Allocasuarina verticillata*. The arborist report accompanying the application (Galbraith and Associates 14 May 2014) addressed the Council trees and concludes that the “two trees are indigenous to the site, mature and healthy”. However, the report concludes that they are poor in structure and are close to the end of their useful life expectancy.

61 On balance I find that it is acceptable to remove the trees given the Commercial 1 zoning of the land.

CONCLUSION

62 For the reasons given above, the decision of the responsible authority is affirmed. No permit is granted.

Megan Carew
Member
4.4 17 ROODING STREET, BRIGHTON
NOT SUPPORT THE GRANT OF A PLANNING PERMIT
APPLICATION NO: 2017/396/1 WARD: NORTHERN

1. Purpose and background
To report a planning permit application which is the subject of an appeal to the Victorian Civil and Administrative Tribunal (VCAT) pursuant to Section 79 (failure to determine) of the Planning and Environment Act 1987.

The application is for the construction of eleven, two storey townhouses with basement car parking and a front fence exceeding a height of 1.5 metres (refer Attachment 1) on a lot with an area of 1,273 square metres at 17 Rooding Street, Brighton (refer Attachment 2).

VCAT have listed the matter for a compulsory conference (mediation) on 20 February 2018, and a two day hearing commencing on 9 April 2018.

2. Policy implications
Planning permit requirements
Clause 32.08 - General Residential Zone, Schedule 2 (GRZ2) - Construction of two or more dwellings on a lot & construction of a front fence exceeding 1.5 metres.

Planning scheme amendments
There are no planning scheme amendments relevant to this proposal.

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>Arborist</td>
<td>Objection.</td>
</tr>
<tr>
<td>Street Tree 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>Property Officer</td>
<td>Provided street addressing details should a permit issue.</td>
</tr>
<tr>
<td>Traffic Engineer</td>
<td>Objection.</td>
</tr>
<tr>
<td>Waste Management Officer</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.

Applicant: Ratio Consultant Pty Ltd
Date application received: 26 June 2017
Statutory days expired: 4 November 2017
Environment Act 1987 and 23 objections were received. The following concerns were raised:

- Neighbourhood character;
- Overdevelopment;
- Overlooking;
- Traffic volumes;
- Car parking, on-site and reduced on-street parking availability;
- Waste collection;
- Noise and light pollution;
- On-site storage;
- Pressure on infrastructure within the area;
- Loss of rental income; and
- Errors included in the application material.

Consultation meeting

A consultation meeting was held on 18 October 2017 attended by Councillor Del Porto, the permit applicant and project team comprising of planners, traffic engineers and architects, and 19 objectors. No objections were withdrawn.

As a result of this meeting the permit applicant gave an undertaking to consider amending the proposed plans to respond to concerns raised by residents and Council. The permit applicant did not submit amended plans and lodged an application for review pursuant to Section 79 (failure to determine) of the Planning and Environment Act 1987.

4. Recommendation

That Council:

Determines to Not Support the application under the provisions of the Bayside Planning Scheme in respect of Planning application 2017/396/1 for the land known and described as 17 Rooding Street, Brighton, for the construction of eleven, two storey townhouses with basement car parking and a front fence exceeding a height of 1.5 metres for the following reasons:

1. The proposed development fails to meet the vision of the Bay Street Major Activity Centre (Clause 21.11-2 of the Bayside Planning Scheme) to retain its spacious and leafy character and appropriately integrate new housing within the streetscape.

2. The proposal fails to respond to the objectives of Clause 22.06 (Neighbourhood Character, Precinct B1) of Bayside Planning Scheme, on the following grounds:
   a) The development fails to respond to the existing and preferred neighbourhood character for this precinct.
   b) The proposal fails to maintain and enhance the garden settings of dwellings.
   c) The scale, siting and boundary setbacks of the proposal fail to complement the built form character, resulting in an outcome which dominates the streetscape.

3. The proposal fails to comply with the Objectives and Standards of Clause 55 of the Bayside Planning Scheme, in particular:
a) Standard B1 – Neighbourhood Character – the proposal fails to respond to the existing and preferred neighbourhood character for this precinct.

b) Standard B3 – Dwelling Diversity – the proposal fails to provide a range of dwelling sizes and types.

c) Standard B5 – Integration with the Street – the proposal fails to integrate the layout and proposed built form within the streetscape.

d) Standard B6 – Street Setback – The proposed front setbacks are proposed at 6.21m and 5.91m to ground and first floor respectively in lieu of 6.72m.


f) Standard B12 – Safety – The proposed layout fails to provide safety and security for residents.

g) Standard B13 – The proposed development fails to provide sufficient post-construction landscaping and the protect existing vegetation on adjoining properties.

h) Standard B14 – Access – The proposed access arrangements fails to ensure safe and convenient access to and from the development.

i) Standard B17 – Side and Rear Setbacks

- The ground floor rear (northern setback) is proposed at 1.67 metres in lieu of 2 metres.

- The proposed setbacks to the southern boundary to the rear of 13 and 15 Rooding Street are proposed at 1.15m and 1.22m in lieu of 2m.

j) Standard B22 – Overlooking – the proposal may result in unreasonable views being gained into habitable room windows and private open space areas located on the adjacent land without appropriate limitation.

k) Standard B23 – Internal Views – the proposal may result in unreasonable overlooking between adjoining properties within the development.

l) Standard B26 – Dwelling Entries – the proposed entries fail to provide a sense of address or a transitional space around each entrance.

m) Standard B28 – Private Open Space – The proposal fails to meet a minimum overall area of 40 square metres of private open space for all townhouses.

n) Standard B29 – Solar Access to Open Space – the proposal fails to allow solar access into the secluded private open space for all townhouses.

o) Standard B30 – Storage – the development fails to provide adequate on-site storage for each townhouse.

p) Standard B31 – Design Detail – the proposal fails to adopt any design details of the existing and preferred neighbourhood character.

q) Standard B32 – front fences – the proposal exceeds the preferred fence height and does not facilitate open views to complement the gardens setting.

4. The application fails to afford a suitable level of internal amenity for future residents by way of the poor pedestrian accessway, excessive use of screening and inadequate dwelling layout.
5. The application fails to ensure that vehicles can safely egress to and from the site and manoeuvre within the site in accordance with Clause 52.06 (car parking) of the Bayside Planning Scheme.

5. **Council Policy**

**Council Plan 2017-2021**

Relevant strategies of the Council plan include:

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

Relevant strategies of the Council plan include:

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

**Bayside Planning Scheme**

- Clause 9  Plan Melbourne
- Clause 11  Settlement
- Clause 15  Built Environment and Heritage
- Clause 16  Housing
- Clause 21.11  Local Areas (Bay Street Major Activity Centre Area)
- Clause 22.06  Neighbourhood Character Policy
- Clause 22.08  Water Sensitive Urban Design
- Clause 32.08  General Residential Zone (Schedule 2)
- Clause 43.02  Design and Development Overlay (Schedule 10)
- Clause 45.06  Drainage Contributions Plan 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. **Strategic Context**

State Planning Policy Framework supports the intensification of development in and around public transport nodes and in activity centres.

The Local Areas policy (Clause 21.11-2) contains a subsection relating specifically to the Bay Street Major Activity Centre. Policy seeks to encourage residential development close to shops and services to provide a transition from the business precinct to low scale residential areas.

Furthermore, Council Policy encourages an increase the number of dwellings and the variety of dwelling types in this area, redevelopment of larger sites for higher density
residential dwelling types and the provision of adequate off-street parking for all new dwellings.

It is considered that the proposal meets the above policy aspirations.

Notwithstanding the above, it is considered that the proposed development fails in achieve the policy vision of the area by retaining its spacious and leafy character, while also appropriately integrating new housing into the streetscape.

Furthermore, the interface of the proposed development with the adjoining lower scale residential development is not considered to be dealt with in a sensitive manner (discussed further below).

As such, it is considered that the proposal fails to meet the built form policy aspirations for the area.

6.2. Neighbourhood character

The site is located within Neighbourhood Character Precinct B1. The proposal is considered to have failed in demonstrating any appropriate degree of compliance with the preferred future character statement and precinct guidelines as contained in Attachment 3.

Council acknowledges the unique ‘L’ shape configuration of the site. The site has a frontage of 19.12 metres to Rooding Street, a rear boundary length of 47.58 metres and yields a total site area of 1,261 square metres.

The development fails to provide sufficient opportunities for landscaping within the front setback, along the perimeter of the site and interspersed within the site itself. The land of post-construction landscaping is considered to be one of failures of the proposed development and compromises any visual separation to adjoining properties.

Whilst the proposed setbacks are generally acceptable, the proposed built form is at odds with the preferred character of the area and the opportunity to soften any such impact cannot be achieved on this site due to the lack of opportunities for deep soil planning. This is due to the basement car park which reduces the opportunities for alternative landscaping to establish. The leafy character of the area would be compromised as a result.

Further to this, the application material also fails to demonstrate how vegetation on adjoining properties can be protected during construction, particularly Tree 15 (Schinus Aeria/ Peppercorn Tree) at 13 Rooding Street.

The proposed development is a contemporary design and fails to appropriately integrate with the prevailing character of the street.

The streetscape is characterised by pitched roof forms and highly articulated facades. The proposed development fails to respond to the finer grain development patterns adopting a modularised façade, flat roof form and dominant first floor which reads as a bulky element in the streetscape. The departure from the preferred character of the area is further emphasised by a heavy dependence on render and metal louvers which fail to provide any consistency with materiality characteristics within the area.

The application proposes a 1.88 metre high stone-clad front fence with metal infill. This is considered to result in a poor streetscape outcome, which further compromises street level activation and further heightens the dominance of the basement access ramp to the streetscape.

For these reasons it is considered the proposed development fails responding to the preferred character of the area or respecting the existing character.

6.3. Compliance with Clause 55 (ResCode)

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

**Neighbourhood Character (Standard B1)**

See above assessment at Section 6.2 and Attachment 3 of this report.

**Dwelling Diversity (Standard B3)**

The subject site is appropriately located with regard to services and facilities to support the construction multiple dwellings on a lot of this size. The proposed development fails in striking an appropriate balance between respecting the character of the area and a diversity of housing types and housing growth.

11 no. 3 bed townhouses are proposed. All dwellings have a ground floor w/c but only one has shower facilities. It is considered this development should incorporate a variety of housing types to assist with introducing greater dwelling diversity on the periphery of the Bay Street Major Activity Centre.

**Integration with the Street (Standard B5)**

The development fails to integrate appropriately with the street and features a modularised façade which is at odds with the prevailing streetscape.

The façade treatment fails to adopt finer grain architectural details which result in a large, bulky building with flat, poorly articulated wall surfaces. In addition, poor pedestrian and vehicular links are proposed.

See Neighbourhood Character at Attachment 3 for further discussion.

**Street Setback (Standard B6)**

The development proposes a street setback of 6.21m at ground floor and 5.91m at first floor (first floor marginally cantilevering over the floor below).

The street setback is required to be no less than the adjoining setback at 15 Rooding Street - 6.72m (4.6m to the projecting windows). An assessment of street setbacks must be undertaken against existing conditions.

Notwithstanding this, it is acknowledged that there is a current application at 15 Rooding Street (Application No. 2017/565), which proposes a street setback of 5.6 metres at ground floor, 5.2 metres at first floor and 7.9 metres at second floor.

Whilst the proposed street setbacks (when measured against existing conditions) is non-compliant, Council does acknowledge that it provides an appropriate setback and transition to the side wall of the childcare centre at 13 Asling Street.

However, the design response (including cantilevering elements) fails to appropriately ameliorate the proposed building bulk that presents Rooding Street.

**Energy Efficiency (Standard B10)**

Habitable areas, including habitable rooms and secluded private open space areas are not located to maximise solar access and some habitable rooms will have to rely on secondary light sources. A site responsive design would allow for north-facing areas of secluded private open space but these areas are generally located to the south and west of the proposed built form.

**Safety (Standard B12)**

The application fails to afford an appropriate level of safety to future residents. The proposed pedestrian entry points and not adequately recognisable from either the streetscape or communal pedestrian pathway. Furthermore, the long gun-barrel pedestrian pathway is designed in an arrangement where it is ‘one way in, one way out’, and all upper levels are screened, therefore not allowing for the passive surveillance along the pathway.
Landscaping (Standard B13)
See Section 6.5 of this report for discussion.

Access (Standard B14)
See Section 6.4 of this report for discussion.

Side and Rear Setback (Standard B17)
The below table sets out the required and proposed setbacks.

<table>
<thead>
<tr>
<th></th>
<th>Ground floor</th>
<th>Proposed</th>
<th>First Floor</th>
<th>Requirement</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>East (side)</td>
<td></td>
<td>0,1m</td>
<td></td>
<td>2.09m, 2.45m and 2.8m to the eastern walls of Townhouses 1 to 7.</td>
<td>1.9m and 2.49m to the eastern walls of Townhouses 1 to 7.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1.88m, 2.25m and 3.23m to the eastern walls of Townhouses 1 to 7.</td>
<td>1.78m, 1.95m, 2.69m to the western walls of Townhouses 1 to 5.</td>
</tr>
<tr>
<td>West (side)</td>
<td></td>
<td>0,1m</td>
<td></td>
<td>5.25m to the western walls of Townhouses 1 to 5.</td>
<td>2m to the western wall of Townhouse 11.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>4.23m, 4.25m and 5.28m to the western walls of Townhouses 1 to 5.</td>
<td>1.78m to the northern wall of Townhouse 7.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2.33m to the northern wall of Townhouse 7.</td>
<td>2.64m and 3m to the northern wall of Townhouses 8 to 11.</td>
</tr>
<tr>
<td>North (rear)</td>
<td></td>
<td>0, 2m</td>
<td></td>
<td>1.67m, 2.2m, 2.64m and 3m to the northern walls of Townhouses 7 to 11.</td>
<td>1.78m to the northern wall of Townhouse 7.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2.13m to the northern wall of Townhouses 8 to 11.</td>
<td>1.89m to 1.94m to the southern wall of Townhouses 8 to 11.</td>
</tr>
<tr>
<td>South (boundary to rear of 13 and 15 Rooding Street)</td>
<td></td>
<td>0, 2m</td>
<td></td>
<td>1.15m, 1.22m and 3.46m</td>
<td>2.85m to 2.92m</td>
</tr>
</tbody>
</table>

All areas of non-compliance are underlined and discussed below.

At ground floor, the northern wall setback to Townhouses 9 and 10 are proposed at 1.67 metres in lieu of 2 metres. The length of non-compliance extends for approximately 9.7 metres along the northern property boundary (length of 54 metres).

The rear setbacks are generally considered to be modest and don’t reflect the generous rear gardens which characterise the street. The built form being constructed in such close proximity to the common boundaries with 14 to 22 Cowper Street results in minimal opportunity for landscaping to assist in softening the massing of the proposal.

The built form to the southern boundary with 13 Rooding Street is proposed at 1.15 metres. This offset is considered unreasonable not only due to its impact on the adjoining Tree 15 (Schinus aeria / Peppercorn Tree at 13 Rooding Street) but also due to the limited opportunities for landscaping and the resultant space around the built form being impractical and unusable and difficult to access (there are no kitchen or bedroom access doors to the service area).

The proposed 1.22 metre setback to the southern wall of Townhouse 8 in lieu of 2 metres
is considered unacceptable due to its proximity to Trees 8 and 9 (Washintontonia robusta / Palm Tree) to the rear of 15 Rodding Street (currently subject to a planning permit application). The reduced setback at this location further adds to the visual bulk of the overall development.

At first floor, a 1.88 metres eastern side setback is proposed to the common boundary with 13 Asling Street in lieu of 1.9 metres. This minor variation is considered acceptable and does not result in an unreasonable impacts to the rear service area associated with this property.

The proposed development is relatively compliant with the required setbacks, however it is noted that the numerical setbacks of this Standard do not reflect the generous setbacks and spacious visual separation with dwellings along the street. The high level of separation is not appreciated due to the narrow street width and well vegetated front gardens. The proposed development, if approved, would compromise these characteristics of Rooding Street.

Overlooking (Standard B22) and Internal View (Standard B23)
All habitable room windows have been screened to a minimum height 1.7 metres above finished floor level or have been sited appropriately to generally respond to the objectives of this Standard B22.

It is however noted that the Spandrel Glass: Dark Grey and the Metal Louvers have not been annotated as being fixed or what percentage of transparency they allow for and as such it is considered the proposed plans do not satisfy this Standard. A condition would be required for clarification.

Concerns regarding overlooking to the Childcare Centre would be addressed through clarification of the above. Further the internal fences would be required to increase to a minimum of 1.8m in height to prevent internal overlooking.

Notwithstanding the above, the heavy reliance on screening fails to ensure an appropriate level of internal amenity for future residents.

Dwelling Entries (Standard B26)
The development fronts Rooding Street and includes a pedestrian pathway along the eastern site boundary.

The individual dwelling entries are defined by being inset from the boundary and appear to have a pergola structure over. Whilst this assists in defining the entries it is noted that the entries to Townhouse 11 is in excess of 84m from the pedestrian access gate and not visible from Rooding Street.

The entries are not considered to have a personal sense of address or a transitional space around the entry.

Private Open Space (Standard B28)
Pursuant to this Standard a minimum of 25 square metres secluded and 40 square metres overall with a minimum dimension of 3 metres is required. Pursuant to Clause 32.08-4 a minimum garden area of 35% is required i.e. 445.55m².

Whilst all townhouses are provided with the required area and dimension of secluded private open space, only two dwellings are provided with overall private open space area requirements of 40m². This is considered to be indicative of overdevelopment and the design not being responsive to the features of the site.

The development complies with the minimum garden area requirements pursuant to Clause 32.08-4.

Solar Access to Open Space (Standard B29)
Appropriate solar access to the areas of secluded private open space have not been provided. Between 12 noon and 2pm the areas of secluded private open space associated with Townhouse 1 to 7 and 11 are considered to receive an acceptable level of solar access. These area are unacceptably overshadowed due to their orientation throughout the remainder of the day.

All remaining townhouses are overshadowed through the course of the day.

**Storage (Standard B30)**

Designated storage areas are provided within the basement, but fails to meet the minimum area of 6 cubic metres.

It is acknowledged that additional storage could be provided at ground floor level within the rear gardens. However, this is considered to be indicative of a design that is not fully resolved and may further compromise the internal amenity of the future residents.

**Design Details (Standard B31)**

Refer to Section 6.2 of the report and Attachment 3.

**Front Fences (Standard B32)**

The application proposes a 1.88 metre high stone-clad front fence with metal infill. This is considered to result in a poor streetscape outcome, that further compromises street level activation and further heightens the dominance of the basement access ramp to the streetscape.

### 6.4. Car parking and traffic

**Traffic**

A Traffic Impact Assessment submitted by the Applicant has been reviewed by Council’s Traffic Engineer who notes that the report does not accurately consider exiting traffic movements within the area.

The report anticipates that a maximum of 7 additional trip will occur to the site during peak hours and this can be easily absorbed into the existing traffic flow of Rooding Street. Council’s Traffic Engineer however notes that the existing width of the carriageway of Rooding Street (i.e. No Stopping on one side along with kerbside parking on the other) does not offer simultaneous two-way traffic. Therefore there is a potential concern in regards to the traffic generation from the site.

The applicant has not provided any traffic count data in Rooding Street to see whether the additional traffic generated from the site is acceptable and can be absorbed into surrounding road network.

Council’s Traffic Engineer has not raised concerns regarding pedestrian safety within the area as a result of the development it is however acknowledged that additional traffic within the narrow street will likely increase opportunities for incidents.

**Access and car parking**

Council’s Traffic Engineer has not raised concerns about the proposed access arrangements.

It is however noted that the Council’s Traffic Engineer has raised concerns about the level of traffic and width of Rooding Street which will impact the efficiency of the access. It is noted a wider access to enable a car to prop on the basement access ramp may be appropriate but this would have negative impacts in terms of neighbourhood character and presentation to the streetscape.

The proposed car parking requirements are noted in the below table.

<table>
<thead>
<tr>
<th>Use</th>
<th>Quantity</th>
<th>Rate</th>
<th>Requirement</th>
<th>Proposed</th>
</tr>
</thead>
</table>

Item 4.4 – Matters of Decision
Resident | 11 x three bed townhouses | 2 per dwelling | 22 | 22
Visitor | 11 townhouses | 1 per dwelling | 2 | 2
Total | | | 24 | 24

The total parking proposed is considered satisfactory.

Waste Management

Council’s Waste Officer has reviewed the proposed Waste Management Plan and offers no objections to the proposed on-site, private waste collection subject to conditions.

6.5. Vegetation & Landscaping

Street Tree

Council’s Open Space Arborist has noted that the proposed access ramp would impact on the street tree and a minimum 2 metre offset would be required for its retention. It is also noted that this tree is proposed to be removed as part of the planning permit application associated with 15 Rooding Street.

Existing vegetation on site

The application plans show the removal of all trees on the site. Whilst support is given for the majority removals, strong consideration must be given to the retention of Tree 12 (Macadamia integrifolia). This tree is an uncommon occurrence within metropolitan Melbourne and Victoria and should be retained.

The tree is located approximately in the doorway of Townhouse 9 and as such its retention would require a significant re-design.

Vegetation on adjoining properties

Council’s Arborist has raised concerns regarding the impact on the development on vegetation to adjoining properties, specifically Tree 3 (Magnolia solulangeanna Magnolia Tree) within the front setback of 15 Rooding Street, Tree 7 (Eriobotrya japonica/ ) to the rear of 18 Cowper Street and Tree 15 (Schinus aeria / Peppercorn Tree) to the rear of 13 Rodding Street. The Tree Protection Zone for Tree 15 in particular extends into the proposed built form of Townhouses 9 and 11. Whilst the applicant has been made aware of these issues a design response has not been forthcoming to respond to these concerns.

Proposed Landscaping

Council’s Arborist has noted that the proposed replacement planting is not suitable and the siting of the development does not create sufficient opportunities for meaningful landscaping. The extent of the basement will not enable deep soil planting for the majority of the site and will not enable meaningful landscaping to establish that would assist in softening views of the built form.

6.6. Objections received

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

Loss of rental income

The decision guidelines of the Planning Scheme and Planning and Environment Act 1987 do not accommodate consideration of lost income arising as a result of new development and competing land uses.

Errors in application material
The assessment is based on the architectural drawings. Council does not rely on statements included in the supporting documentation. Statements

Support Attachments
1. Development Plans ↓
2. Site and Surrounds Imagery ↓
3. Neighbourhood Character Assessment (Precinct B1) ↓
4. Clause 55 (ResCode) Assessment ↓
ATTACHMENT 2
Site and Surrounds Imagery

Figure 1. Aerial Overview of subject site and objector map. Please note some objectors have been received from beyond the map boundaries.

<table>
<thead>
<tr>
<th>Legend</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject site</td>
<td>⭐</td>
</tr>
<tr>
<td>Objectors</td>
<td>⬤</td>
</tr>
</tbody>
</table>
Figure 2: View of the subject site.
Figure 3: View of the adjoining childcare centre and the subject site.
Figure 4: View of the adjoining child care centre from Asling Street.
Figure 5: View of the adjoining property at 15 Rooding Street.
Figure 6: View of the opposite property at 32 Rooding Street.
Figure 7: View of opposite properties at 1 & 2/32 Rooding Street.
Figure 8: View of four dwelling development under construction at 11 Asling Street (corner of Asling and Rooding Street).
ATTACHMENT 3

Neighbourhood Character Policy (Precinct B1)

Preferred Future Character

The diverse dwelling styles, with a continued presence of pre WW2 era dwellings, and new buildings that respect, without replicating, these styles, sit within established gardens with large trees. Garages and car ports are set behind the dwelling façade so as not to dominate the streetscape. Generous side setbacks on at least one side allow vegetation to flow around the dwellings and this, along with avenue street trees and open style front fences, contributes to the green, leafy streetscapes within the area.

Precinct Guidelines

<table>
<thead>
<tr>
<th>Objectives</th>
<th>Design Responses</th>
<th>Avoid</th>
<th>Planning Officer Assessment</th>
</tr>
</thead>
</table>
| To encourage the retention of dwellings that contribute to the valued character of the Precinct in the design of development proposals | • Attempt to retain wherever possible intact and good condition dwellings that contribute to the valued character of the Precinct in designing new development.  
• Alterations and extensions to should retain the front of these dwellings | Demolition of dwellings that contribute to the valued character of the Precinct. | The existing dwelling is not considered to be of high architectural quality. Whilst its retention is not critical to the valued character of the area, it presents a more comfortable fit within the Roolding streetscape over that proposed. |
| To maintain and enhance the garden settings of the dwellings.              | • Retain large trees wherever possible.  
• Prepare a landscape plan to accompany all applications for new dwellings that includes substantial trees and shrubs | Lack of landscaping and substantial vegetation. Removal of large canopy trees. | The proposed site layout fails to provide sufficient opportunities for landscaping. The extent of the basement car park fails to provide deep soil planting for large trees to establish.  
It is further noted that all vegetation on site is proposed to be removed, including Tree 12 (Macadamia intergrifolia) which is uncommon within metropolitan Melbourne and Victoria. |
<table>
<thead>
<tr>
<th>Objectives</th>
<th>Design Responses</th>
<th>Avoid</th>
<th>Planning Officer Assessment</th>
</tr>
</thead>
</table>
| To maintain the rhythm of spacious visual separation between buildings and provide space for front gardens. | • Buildings should be sited to allow space for the planting of trees and shrubs.  
• Buildings should be sited to create the appearance of space between buildings and accommodate substantial vegetation. | Lack of front garden space          | The development proposes a contemporary design response which features a variety of modern materials and finishes.  
The built form is offset from adjoining site boundaries which maintains the street rhythm, but as discussed above, fails in providing opportunities for landscaping to soften the visual breaks along the streetscape. |
| To minimise the dominance of car parking facilities, driveways and crossovers. | • Locate garages and car ports behind the line of the dwelling.  
• Provide vehicular access from a rear laneway where possible, while maintaining pedestrian access from the street frontage  
• Provide a maximum of one single-width crossover per typical property frontage, where no alternative is available | Car parking facilities that dominate the facade or view of the dwelling.  
Dominance of crossovers and driveways. | The proposed access ramp to the basement car park represents a void within the streetscape and fails to minimise car parking and associated accesses. |
| To ensure new development respects the dominant buildings forms and scale of buildings in the Precinct, through the use of innovative architectural responses. | • Recess upper storey elements from the front façade.  
• Articulate the form of buildings and elevations, particularly front facades. | Large bulky buildings with flat, poorly articulated wall surfaces. | The proposed development whilst adopting a contemporary design fails to appropriately integrate with the prevailing character of the street. The streetscape is characterised by pitched roof forms and highly articulated facades.  
The proposed development fails to respond to the finer grin development patterns adopting a modularised façade and dominant first floor which reads as a bulky element in the streetscape. |
<table>
<thead>
<tr>
<th>Objectives</th>
<th>Design Responses</th>
<th>Avoid</th>
<th>Planning Officer Assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>To respect the identified heritage qualities of adjoining buildings.</td>
<td>• Where adjoining an identified heritage building, reflect the dominant building form, height, materials and massing of the heritage building/s, of the heritage building/s in the new building design.</td>
<td>Imitation or reproduction of historic building styles and detailing</td>
<td>The site is located to the rear of the Asling Street Heritage Precinct (HO 746) and adjacent to 13-15 Asling Street (HO 640) which is home to Bambimi Early Learning Centre. Whilst objection has been raised in respect of the development’s impact on these heritage properties, it is asserted the development fails to respond to the finer grain development patterns and roofscape of Rooding Street but does not represent an uncomfortable backdrop to properties fronting Cowper Street.</td>
</tr>
<tr>
<td>To reflect the building materials in locations where there is particular consistency.</td>
<td>• Where consistent materials are used in the streetscape, use similar tonings in the colours of new buildings</td>
<td>Excessive use of render on external walls.</td>
<td>The proposed development fails to draw upon the materiality of the streetscape. The contemporary built form is further emphasised as a departure from the preferred character by the use of render and metal louvers. These are materials that are not commonly found within the streetscape.</td>
</tr>
<tr>
<td>To maintain the openness of the streetscape.</td>
<td>• Provide open style front fences appropriate to the building era</td>
<td>High, solid front fencing.</td>
<td>A 1.7 metre high front fence is proposed with metal pailing inserts. Whilst this fence restricts views into the front garden area it is necessitated due to the area of secluded private open space associated with Townhouse 1 immediately behind. The fence height and profile whilst a departure from the preferred character is similar to the fences found along the Rooding streetscape.</td>
</tr>
</tbody>
</table>
## ATTACHMENT 4
### ResCode (Clause 55) Assessment

<table>
<thead>
<tr>
<th>Title and Objective</th>
<th>Complies with Standard?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>B1 Neighbourhood Character</strong></td>
<td>No</td>
<td>Refer to Section 6.2 of the report and Attachment 3.</td>
</tr>
<tr>
<td>Design respects existing neighbourhood character or contributes to a preferred neighbourhood character.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Development responds to features of the site and surrounding area.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B2 Residential Policy</strong></td>
<td>Yes</td>
<td>Refer to ‘Strategic Justification’ at Section 6.2 of the report for a detailed assessment of the proposal against the relevant policy context.</td>
</tr>
<tr>
<td>Residential development is consistent with housing policies in the SPPF, LPPF including the MSS and local planning policies.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Support medium densities in areas to take advantage of public transport and community infrastructure and services.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B3 Dwelling Diversity</strong></td>
<td>No</td>
<td>Refer to Section 6.3 of the report for discussion.</td>
</tr>
<tr>
<td>Encourages a range of dwelling sizes and types in developments of ten or more dwellings.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B4 Infrastructure</strong></td>
<td>Yes</td>
<td>The proposal will make use of existing infrastructure servicing the site. The developer will be responsible for upgrading this infrastructure if necessary to accommodate the development. Council’s drainage engineers have reviewed the application and raise no issues with infrastructure capacity in the area. It is noted that the developer would be required to pay a development contributions levy in accordance with the requirements of Clause 45.06 of the Bayside Planning Scheme.</td>
</tr>
<tr>
<td>Provides appropriate utility services and infrastructure without overloading the capacity.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B5 Integration with the Street</strong></td>
<td>No</td>
<td>Refer to Section 6.3 of the report for discussion.</td>
</tr>
<tr>
<td>Integrate the layout of development with the street</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B6 Street Setback</strong></td>
<td>No</td>
<td>Requirement: 6.72m (4.6m to the projecting windows)</td>
</tr>
<tr>
<td>The setbacks of buildings from a street respect the existing or preferred neighbourhood character and make efficient use of the site.</td>
<td></td>
<td>Proposed: 6.21m at ground floor and 5.91m at first floor.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Refer to Section 6.3 of the report for discussion.</td>
</tr>
</tbody>
</table>
### B7 Building Height
Building height should respect the existing or preferred neighbourhood character.

<table>
<thead>
<tr>
<th>Item</th>
<th>Yes</th>
<th>Minimum: 11m / 3 storeys maximum.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Design and Development Overlay, Schedule 10 also identifies a maximum building height of 3 storeys / 11 metres.</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Proposed:</strong> 7.85 metres (2 storeys)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>It is noted that the basement at no point rises more than 1.2m above the natural ground level and therefore the development meets the definition of a two storey building.</td>
</tr>
</tbody>
</table>

### B8 Site Coverage
Site coverage should respect the existing or preferred neighbourhood character and respond to the features of the site.

<table>
<thead>
<tr>
<th>Item</th>
<th>Yes</th>
<th>Maximum: 60%</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td><strong>Proposed:</strong> 53.17%</td>
</tr>
</tbody>
</table>

### B9 Permeability
Reduce the impact of stormwater run-off on the drainage system and facilitate on-site stormwater infiltration.

<table>
<thead>
<tr>
<th>Item</th>
<th>Yes</th>
<th>Minimum: &gt;20%</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td><strong>Proposed:</strong> 43.7%</td>
</tr>
</tbody>
</table>

### B10 Energy Efficiency
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.

| Item | No | Refer to Section 6.3 of the report for discussion. |

### B11 Open Space
Integrate layout of development with any public and communal open space provided in or adjacent to the development.

| Item | N/A | There is no communal open space in or adjacent to the development. |

### B12 Safety
Layout to provide safety and security for residents and property.

| Item | No | Refer to Section 6.3 of the report for discussion. |

### B13 Landscaping
To provide appropriate landscaping.

<table>
<thead>
<tr>
<th>Item</th>
<th>No</th>
<th>Refer to Section 6.5 of the report for discussion.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>- Development that respects the landscape character of the neighbourhood.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Development that maintains and enhances habitat for plants and animals in locations of habitat importance.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- The retention of mature vegetation on the site.</td>
</tr>
</tbody>
</table>

### B14 Access

| Item | No | Refer to Section 6.4 of the report for discussion. |
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>B15 Parking Location</th>
<th>Yes</th>
<th>On site car parking is provided in the form of a basement carpark. Refer to Section 6.4 of this report for further discussion.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provide resident and visitor vehicles with convenient parking.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Avoid parking and traffic difficulties in the development and the neighbourhood.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Protect residents from vehicular noise within developments.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>B17 Side and Rear Setbacks</th>
<th>No</th>
<th>Refer to Section 6.3 of the report for discussion.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ensure the height and setback respects the existing or preferred neighbourhood character and limits the amenity impacts on existing dwellings.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Ground floor</th>
<th>Proposed</th>
<th>First Floor</th>
<th>Requirement</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requirement</td>
<td></td>
<td>Requirement</td>
<td>Proposal</td>
<td></td>
</tr>
<tr>
<td><strong>East (side)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>0.1m</td>
<td>2.09m, 2.45m and 2.8m to the eastern walls of Townhouses 1 to 7.</td>
<td>1.9m and 2.49m to the eastern walls of Townhouses 1 to 7.</td>
<td>1.88m, 2.25m and 3.23m to the eastern walls of Townhouses 1 to 7.</td>
<td></td>
</tr>
</tbody>
</table>

| **West (side)** |          |  |  |          |
| 0.1m | 5.25m to the western walls of Townhouses 1 to 5. 2m to the western wall of Townhouse 11. | 1.78m, 1.95m, 2.69m to the western walls of Townhouses 1 to 5. 2.09m to the western wall of Townhouse 11. | 4.23m, 4.25m and 5.28m to the western walls of Townhouses 1 to 5. 3m to the western wall of Townhouse 11. |

| **North (rear)** |          |  |  |          |
| 0, 2m | 1.67m, 2.2m, 2.64m and 3m to the northern walls of Townhouses 7 to 11. | 1.78m to the northern wall of Townhouse 7. 2.13m to the northern wall of Townhouses 8 to 11. | 2.33m to the northern wall of Townhouse 7. 2.64m and 3m to the northern wall of Townhouses 8 to 11. |

<p>| <strong>South (boundary to rear of 13 and 15 Rooding Street)</strong> |          |  |  |          |
| 0, 2m | 1.15m, 1.22m and 3.46m | 1.89m to 1.94m to the southern wall of Townhouses 8 to 11. | 2.85m to 2.92m |</p>
<table>
<thead>
<tr>
<th>B18 Walls on Boundaries</th>
<th>N/A</th>
<th>No walls are proposed to be constructed on the boundary.</th>
</tr>
</thead>
<tbody>
<tr>
<td>B19 Daylight to Existing Windows</td>
<td>Yes</td>
<td>The development has been sufficiently setback from all habitable room windows to abutting properties. The closest windows are located at 18 Cowper Street. The wall are required to be setback 3.35m and are proposed at 3.76m. The proposal is setback 7.94m and therefore complies</td>
</tr>
<tr>
<td>B20 North Facing Windows</td>
<td>N/A</td>
<td>There are no north facing windows within 3m of the shared boundary.</td>
</tr>
<tr>
<td>B21 Overshadowing Open Space</td>
<td>Yes</td>
<td>Additional overshadowing will occur to areas of secluded private open space associated with the side setback of 11 Rooding Street and the rear gardens associated with 13 and 15 Rooding Street. Due to the orientation of the site no other properties will be affected by overshadowing resulting from the proposed development. The western setback to the Childcare Centre is utilised as a service area. At 9am the overshadowing extends beyond the shadowing cast by the existing fence. By 12 noon marginal overshadowing results to adjoining properties. By 2pm, additional overshadowing starts to encroach into the western setback of the Childcare Centre. This is not an area of secluded private open space and therefore is not required to be assessed against this Standard. The extent of additional overshadowing will continue to ensure that buildings do not significantly overshadow existing area of secluded private open space in accordance with this standard.</td>
</tr>
<tr>
<td>B22 Overlooking</td>
<td>No</td>
<td>Refer to Section 6.3 of the report for discussion.</td>
</tr>
<tr>
<td>Item</td>
<td>Decision</td>
<td>Description</td>
</tr>
<tr>
<td>--------</td>
<td>----------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>B23 Internal Views</td>
<td>No</td>
<td>Limit views into existing secluded private open space and habitable room windows of dwellings and residential buildings within the same development. Refer to Section 6.3 of the report for discussion.</td>
</tr>
<tr>
<td>B24 Noise Impacts</td>
<td>Yes</td>
<td>Protect residents from external noise and contain noise sources in developments that may affect existing dwellings. It is anticipated that the level of noise which will be emitted from the dwellings will not exceed levels otherwise expected from residential uses.</td>
</tr>
<tr>
<td>B25 Accessibility</td>
<td>Yes</td>
<td>Consider people with limited mobility in the design of developments. Entries are accessible for people with limited mobility with a lift provided from the basement car park. The development could be further retrofitted with stair lifts to accommodate people with limited mobility in the future if required. The travel distances to the townhouses in the north-west corner of the site are however considered excessive.</td>
</tr>
<tr>
<td>B26 Dwelling Entry</td>
<td>No</td>
<td>Provide a sense of identity to each dwelling/residential building. Refer to Section 6.3 of the report for discussion.</td>
</tr>
<tr>
<td>B27 Daylight to New Windows</td>
<td>Yes</td>
<td>Allow adequate daylight into new habitable room windows. All habitable windows will open out onto a space clear to the sky or a covered external space which itself is open to the sky.</td>
</tr>
<tr>
<td>B28 Private Open Space</td>
<td>No</td>
<td>Provide reasonable recreation and service needs of residents by adequate private open space. Minimum: 25m² secluded, 40m² overall with a minimum dimension of 3 m; Pursuant to Clause 32.08-4 a minimum garden area of 35% is require i.e. 445.55m². Proposed:Whilst all townhouses are provided with the required area and dimension of secluded private open space, only two dwellings are provided with overall private open space area requirements of 40m². The development complies with the minimum garden area requirements pursuant to Clause 32.08-4.</td>
</tr>
<tr>
<td>B29 Solar Access to Open Space</td>
<td>No</td>
<td>Allow solar access into the secluded private open space of new dwellings/buildings. Refer to Section 6.3 of the report for discussion.</td>
</tr>
<tr>
<td>Item</td>
<td>Description</td>
<td>Decision</td>
</tr>
<tr>
<td>------</td>
<td>-------------</td>
<td>----------</td>
</tr>
<tr>
<td>B30 Storage</td>
<td>Provide adequate storage facilities for each dwelling.</td>
<td>No</td>
</tr>
<tr>
<td>B31 Design Detail</td>
<td>Encourage design detail that respects the existing or preferred neighbourhood character.</td>
<td>No</td>
</tr>
<tr>
<td>B32 Front Fences</td>
<td>Encourage front fence design that respects the existing or preferred neighbourhood character.</td>
<td>No</td>
</tr>
<tr>
<td>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>
<td>Yes</td>
</tr>
<tr>
<td>B34 Site Services</td>
<td>Ensure site services and facilities can be installed and easily maintained and are accessible, adequate and attractive. Avoid future management difficulties in common ownership areas.</td>
<td>Yes</td>
</tr>
</tbody>
</table>
4.5 7 - 9 HALIFAX STREET, BRIGHTON
SUPPORT THE GRANT OF A PLANNING PERMIT
APPLICATION NO: 2016/478/1  WARD: NORTHERN

City Planning & Community Services - Development Services
File No: PSF/15/8755 – Doc No: DOC/17/275316

1. Purpose and background

To report a planning permit application which is the subject of an appeal to the Victorian Civil and Administrative Tribunal (VCAT) pursuant to Section 79 (failure to determine) of the Planning and Environment Act 1987.

The application is for the construction of a three storey building (containing 21 apartments) with basement car park, front fence exceeding a height of 1.5 metres in a Design and Development Overlay (Schedule 11) and Special Building Overlay (refer Attachment 1) on a lot with an area of 2,295 square metres at 7 – 9 Halifax Street, Brighton (refer Attachment 2).

<table>
<thead>
<tr>
<th>Applicant</th>
<th>SJB Planning</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date application received</td>
<td>3 August 2016</td>
</tr>
<tr>
<td>Statutory days expired</td>
<td>18 January 2017</td>
</tr>
<tr>
<td></td>
<td>4 November 2017 from the date Council received revised Melbourne Water referral.</td>
</tr>
</tbody>
</table>

VCAT have listed the matter for a compulsory conference (mediation) on 12 January 2018, and a two day hearing commencing on 22 February 2018.

2. Policy implications

Planning permit requirements

Clause 32.08-6 (General Residential Zone) – Construction of two or more dwellings on a lot and a front fence exceeding a height of 1.5 metres.

Clause 43.02 (Design and Development Overlay, Schedule 11) – Buildings and works exceeding a height of 10 metres.

Clause 44.05-1 (Special Building Overlay) – Buildings and works in a Special Building Overlay.

Planning scheme amendments

Planning Scheme Amendment C153 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 concluded on 16 January 2017 and Council has requested the Minister for Planning to appoint an independent Planning Panel to consider submissions received. 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.

Amendment C153 proposes to modify the overlay, but will still be applicable to the site. As is the case now, a planning permit will be required to construct or carry out works that are located within the area covered by the SBO.

Amendment VC136 was incorporated into the Bayside Planning Scheme on 13 April 2017 and introduced state wide planning requirements for apartment developments. The Amendment changed the Victorian Planning Provisions (VPP) and all planning schemes...
in Victoria by Amending Clause 55 (Two or more dwellings on a lot and residential buildings) to include new requirements for apartment developments.

This application was lodged prior to the approval date of Amendment VC136 and therefore benefits from the transitional provisions. The new provisions do not apply to this proposal.

3. **Stakeholder Consultation**

**External referrals**

The application was referred to the following authorities:

<table>
<thead>
<tr>
<th>Referral Authority</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Melbourne Water</td>
<td>Referral dated 19 December 2016 objected to the proposed development.</td>
</tr>
<tr>
<td></td>
<td>After site investigation works by the permit applicant in response to the Melbourne Water referral. Melbourne Water issued a revised referral response on 5 September 2017 offering 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>No objections, subject to conditions.</td>
</tr>
<tr>
<td>Street Tree Arborist</td>
<td>No objections, subject to conditions.</td>
</tr>
<tr>
<td>Drainage Engineer</td>
<td>No objections, subject to conditions.</td>
</tr>
<tr>
<td>Traffic Engineer</td>
<td>No objections, subject to conditions.</td>
</tr>
<tr>
<td>Waste Management Officer</td>
<td>No objections, subject to conditions.</td>
</tr>
</tbody>
</table>

**Public notification**

The application was advertised pursuant to Section 52(1)(a) and (d) of the *Planning and Environment Act 1987* and 36 objections were received. The following concerns were raised:

- The General Residential Zoning of the subject site is incorrect;
- Overdevelopment / development density;
- Neighbourhood character;
- Visual bulk;
- On-site amenity impacts;
- Off-site amenity impacts including overlooking, overshadowing and loss of sunlight;
- Traffic;
- Car parking and access;
- Vegetation removal and impact on adjoining vegetation;
- Construction Management;
- Easement / Melbourne Water concerns; and
Item 4.5 – Matters of Decision

- Accuracy of the supporting town planning report.

**Consultation meeting**

Council Officers undertook a site visit to the immediately abutting objectors on 2 November 2017. Residents were provided an opportunity to seek clarification on aspects of the proposed development.

An objector meeting was held 27 November 2017 attended by Council Officers and 18 objectors. As the meeting was held after the permit applicant lodged an appeal to the Victorian Civil and Administrative Tribunal (VCAT), the meeting enabled all objecting parties an opportunity to discuss their concerns with Council Officers and seek clarification on the relevant planning policies and procedures.

**4. Recommendation**

That Council:

Determines to **Support** the application under the provisions of the Bayside Planning Scheme in respect of Planning application 2016/478/1 for the land known and described as 7 – 9 Halifax Street, Brighton, for the **construction of a three storey building (containing 21 apartments)** with basement car park, front fence exceeding a height of 1.5 metres in a Design and Development Overlay (Schedule 11) and Special Building Overlay in accordance with the endorsed plans and subject to the following conditions:

1. Before the development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the SJB Architects Architectural Drawings, Job No. 21285, Dated 6 October 2016 but modified to show:
   a) The ground floor central courtyard facing windows associated with dwellings 0.3, 0.4, 0.7 and 0.8 to be acoustically treated.
   b) The internal screening associated with the first and second floor central facing courtyard windows of dwellings 1.3, 1.4, 1.7, 1.8, 2.1, 2.2, 2.3 and 2.4 reduced.
   c) Internal boundary fencing to comply with Standard B23 - Internal views.
   d) The site services located along the property frontage realigned to be adjacent the pedestrian, vehicular accessway or in an alternative location to the satisfaction of the Responsible Authority.
   e) All upper level bathrooms (including water closest) and laundries to have provisions for a skylight (or similar) where no direct daylight access is afforded to these rooms.
   f) The pergola structures associated with Apartments 2.2 and 2.3 deleted.
   g) Requirements of Melbourne Water Conditions (conditions 21 - 32) and associated changes with no net increase to the overall building height.
   i) Location of all plant and equipment, including hot water services and air conditioners. Plant equipment is to be located away from habitable room windows of dwellings and the adjoining properties habitable rooms.
j) Deletion of boundary fence notations.

k) An amended Landscape Plan in accordance with Condition 6, with all indicative landscaping deleted from the development plans.

l) A Tree Protection and Management Plan in accordance with Condition 9. Any consequential changes to facilitate the requirements of the Tree Protection and Management Plan are to the satisfaction of the Responsible Authority.

m) Drainage Contributions Levy Charge in accordance with Condition 15.

n) A Car Parking Management Plan in accordance with Condition 16.

All to the satisfaction of the Responsible Authority.

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

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

4. No plant, equipment, services or architectural features other than those shown on the endorsed plans are permitted above the roof level of the buildings 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 Standard B23 and be installed and maintained to the satisfaction of the Responsible Authority thereafter for the life of the building.

7. 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 Jack Mario, TP01 – TP05, Project 15.151, Revision B, 18/7/2016 and be drawn to scale with dimensions and three copies must be provided. The plan must show:

   a) All plants in the landscape plan must be coastal adapted; preferentially indigenous species.

   b) Details of construction methods and Tree Management measures approved pursuant to the requirements of Condition 10 of this permit.

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

   d) Details of surface finishes of pathways and driveways.

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

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

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

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) Details of Tree Protection Zones for all trees on neighbouring properties
where any part of the Tree Protection Zone falls within the subject site;
b) Comment on methods to be utilised and instruction on how to deploy them;
c) Comment on when the protection measures are to be deployed;
d) Comment on when the protection measures can be modified;
e) Process that will be followed if any damage occurs to a tree;
f) Process that will be followed if construction works require alteration to
protection measures outlined in report; and
g) 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:

a) The location of all tree protection measures to be utilised, specifically Tree
#10 (Lemon Scented Gum / Corymbia citriodora) located in close proximity
to the rear setback of 33 Huntingfield Road and Tree # 8 (Spotted Gum /
Gorymbia maculate Tree) located within the rear setback of 80 Well Street
and adjacent to the proposed access ramp.

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

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

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

13. A tree protection fence is required for the protection of a tree’s canopy and root
zone. 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.

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

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

14. 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 plan must be drawn to scale with dimensions and three copies must be provided. The plans must show:
   a) The type of water sensitive urban design stormwater treatment measures to be used.
   b) The location of the water sensitive urban design stormwater treatment measures in relation to buildings, sealed surfaces and landscaped areas.
   c) Design details of the water sensitive urban design stormwater treatment measures, including cross sections.

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

15. 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.

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

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

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

18. Before the development commence, a traffic and parking management plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will
then form part of the permit. Traffic and parking operations on and adjacent to the site must conform to this endorsed plan. Three copies of the plan must be submitted. The plan must be generally in accordance with the plan (specify any earlier submitted plan) but must include:

a) The means by which the direction of traffic and pedestrian flows to and from car parking areas will be controlled both on- and off-site.

b) Car parking allocations.

c) Servicing of the drainage and maintenance of car parking areas.

19. Before the commencement of works, a Waste Management Plan must be submitted to and approved by the Responsible Authority. The Waste Management Plan must clearly indicate that waste collection is to be via a private contractor, not Council, and include:

a) Dimensions of storage waste areas.

b) Storm water drains in storage areas should be fitted with a litter trap.

c) The number and size of bins to be provided.

d) Facilities for bin cleaning.

e) Method of waste and recyclables collection.

f) Types of waste for collection, including colour coding and labelling of bins.

g) Hours of waste and recyclables collection (to correspond with Council Local Laws and EPA Noise Guidelines).

h) Method of hard waste collection.

i) Method of presentation of bins for waste collection.

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

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

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

m) Compliance with relevant policy, legislation and guidelines.

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

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

a) A detailed schedule of works including a full project timing.

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

c) The location for the parking of all construction vehicles and construction worker vehicles during construction.
d) Delivery of materials including times for loading/unloading, unloading points, expected frequency and details of where materials will be stored and how concrete pours would be managed.

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

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

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

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

i) Site security.

j) Public safety measures.

k) Construction times, noise and vibration controls.

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

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

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

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


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

r) Details of crane activities, if any.

Melbourne Water Conditions

21. The south eastern apartment building must be constructed with finished floor levels set no lower than 11.52 metres to Australian Height Datum (AHD), which is 300mm above the applicable flood level of 11.22 m to AHD.

22. The north western apartment building must be constructed with finished floor levels set no lower than 11.3 metres to Australian Height Datum (AHD), which is 300mm above the applicable flood level of 11.0 m to AHD.

23. Prior to the issue of an Occupancy Permit, a certified survey plan, showing finished floor levels and finished surface levels (as constructed) reduced to the AHD, must be submitted to Melbourne Water to demonstrate that the floor levels have been constructed in accordance with Melbourne Water’s requirements.

24. The entry / exit driveway of the basement carpark must incorporate a flood proof apex constructed to no lower than 11.52 which is 300mm above the applicable flood level at the site of entry.

25. All doors, windows, vents and openings to the basement car park must be finished a minimum of 300mm above the applicable flood level at any point on the site.
26. The layout of the site, design and location of buildings and works of the building envelope must not be altered without the prior consent of Melbourne Water.

27. No fill is to be imported into the overland flow path.

28. Any new fence must be of an open style of construction (minimum 50% open) to allow for the passage of overland flows.

29. Prior to the commencement of works, a separate build over application shall be made directly to Melbourne Water's Asset Services Team for assessment and approval of any proposed works over or near Melbourne Water's drain.

30. Prior to the endorsement of the landscape plan, the plantings along the south western boundary must be in line with our Planting near our Assets guidelines and approved by Melbourne Water.

31. The depth of the footings must be adequate to satisfy the angle of repose relative to the drain as per Melbourne Water's specification. Refer to the Melbourne Water Web site Standard Drawing: 'Angle of Repose - Footing Design' for details.

32. No stock piling of building materials or construction equipment is to be located over the Melbourne Water drain.

**End Melbourne Water Conditions**

33. 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**

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

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

5. **Council Policy**

**Council Plan 2017-2021**

Relevant strategies of the Council plan include:

- Where neighbourhood character, streetscapes and heritage is respected and enhanced, and the community has a strong connection to place.

- Where development contributes to a high visual amenity, is ecologically sustainable, demonstrates high quality compliant design, and responds to the streetscape and neighbourhood context.

Relevant strategies of the Council plan include:

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

**Bayside Planning Scheme**

- Clause 9 Plan Melbourne
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. Strategic Justification

The Planning Policy Framework supports the intensification of development in and around public transport nodes and in activity centres. The local areas policy contains a subsection relating specifically to the Church Street Major Activity Centre (Clause 21.11-3) that seeks to encourage residential development close to shops and services, to provide a transition from the business precinct to low scale residential areas; redevelopment of larger sites and grade level car parks for residential with basement car parking.

State and Local Planning Policy envisage an increase in housing density in well serviced areas such as this. Clause 11 State Planning Framework of the Bayside Planning Scheme encourages higher density housing development on sites that are well located in relation to activity centres, employment corridors and public transport. The increase in population and density at this site is considered an appropriate response to the underutilised state of the site and the proximity of the site to public transport, shops and other services. While any increase in population density will likely increase the level of activity around the site and area, it is not envisioned that such an increase would be detrimental or substantially more intensive than what is currently experienced.

The Victorian State Government has provided a clear policy imperative of urban consolidation which is heavily dependent on medium density housing development. Density of the development is determined from a quantitative assessment of a development’s compliance with a series of criteria set out in the Bayside Planning Scheme. This includes an assessment of the design’s ability to provide for the amenity...
of future residents, protect the amenity of existing residents and respond to the attributes and constraints of the site. The number of dwellings and associated pedestrian and vehicle movements account for the site’s accessibility and location.

State Government policy is to encourage higher density housing in well located activity centres with access to public transport, recreation, education and other convenience services. This site fulfils the locality requirements.

The proposal satisfies the substantive requirements of Clause 55 in respect to site coverage, setbacks, permeability, car parking, and open space provision and therefore the proposal is not considered to be an over development of the site. State Government Policy, as well as Council Policy supports higher densities in areas that are within Activity Centres such as the Church Street Activity Centre, or within areas with good access to public transport and other services.

6.2. Neighbourhood character

The site is located within Neighbourhood Character Precinct B2. The proposal is considered to demonstrate a suitable level of compliance with the preferred future character.

The site is located within an Activity Centre. There is an imperative under the Bayside Planning Scheme to encourage increased densities in areas in proximity to and well served by transport and services. The proposed development achieves this objective.

The development allows for the retention of high amenity value vegetation on the site and to adjoining properties and includes opportunity to incorporate substantial landscaping. This is in part as result of the generous front, side and rear setbacks.

The proposed building height at 11.3 metres exceeds that of adjoining built forms, however the height is ameliorated through the recessed second floor and use of balconies and modularisation of the façade which facilitates the dominating built form reading as that of a two storey development. Whilst it is noted there are no other three storey buildings in proximity of the site, an increase in height of one storey is not unacceptable or unreasonable in this residential setting.

There are other examples of three storey development further afield and the density of the development allows for generous setbacks and landscaping areas to provide a transition in building scale and the proposal is in keeping with the Neighbourhood Character Policy.

The building’s bulk is tempered through its articulation from front and side boundaries, further complemented by the contrasting wall cladding materials utilised at different levels. The design response is suitable in the emerging character of the area.

It is noted that the site services are located along the property frontage and result in unnecessary bulk/mass across the streetscape. Therefore, it is recommended that the site services be realigned to be along the pedestrian or vehicular accessway.

6.3. Design and Development Overlay (Schedule 11)

The design objectives of this schedule are as follows:

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

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

Precinct E allows for a maximum building height of 11 metres (3 storeys) and 12 metres (3 storeys) where the slope of the natural ground level at any cross section of the site of the building wider than 8 metres is 2.5 degrees or more.

The east 74-80 Well Street) and south-boundaries (31-33 Huntingfield Road and 5 Halifax Street) are properties that feature transitional building heights.

The proposed development plans comply with the Design and Development Overlay – Schedule 11 for the following reasons:

- The proposed development consists of a maximum height of 11.12 metres (from the minimum finished floor level stipulated by Melbourne Water) / three storeys development. There are no portions that exceed the 12 metres limit;
- The second floor is setback front the north, east and west boundaries and reads as a recessive element to the dominant built form presented to Halifax Street. The southern setbacks at second floor level are not recessed due to the generous setback of 5.75 metres and 7.48 metres and 9 metres visual break in the built form;
- The built form provides an appropriate transition to the lower scale built form to the south and west boundaries by including a generous setback to the southern boundary and the stepping down of the built form along Halifax Street adjacent to the abutting Neighbourhood Residential Zone;
- The bulk, location and appearance of the development is considered to be in keeping with the emerging character and appearance of buildings located within close proximity and is considered to enhance the streetscape due to its contemporary architecture and generous setbacks that will allow meaningful landscaping to establish;
- The proposal does not unreasonably overshadow any public space, any adjoining streets and any additional overshadowing to adjoining properties complies with the requirements of Standard B21;
- The proposed use of a mixture of building materials provides a level of articulation and breaks up the any perception of visual bulk from all abutting allotments. The modularisation of the built form into two distinct blocks only connected by a narrow corridor, central to the site, results in an acceptable building massing;
- The subject is located within 600 metres of middle Brighton Station which encourages the use public transport as advocated by planning policies;
- The proposed development will contribute to creating a vibrant residential activity centre whilst respecting the existing neighbourhood character;
- The subject site does not adjoin any heritage dwellings, therefore the design, form, layout, proportion and scale of the proposed buildings is considered to be compatible with the style, form, proportion, and scale of the neighbouring properties; and
- The basement level car parking is considered to provide an appropriate design response and provides for a level of car parking that does not unreasonably impact on the availability of on-street car parking.

The proposed development is considered to be consistent with the objectives of the DDO11.

The proposed development and the dwelling diversity responsive to the requirements of State and Local planning policies.

Whilst it is acknowledged the proposal represents a change from single dwellings being constructed on generous lots, the zoning of the site is such that a change in the built
form is to be expected. It is inherently difficult to integrate a three storey development into a streetscape dominated by single and double storey dwellings but the proposal is considered to strike a good balance between denser developments and ensuring the design is respectful to the existing and preferred character of the area.

6.4. 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

Side and Rear Setbacks (Standard B17)

The proposed side and rear are detailed in the below table.

<table>
<thead>
<tr>
<th>Ground floor</th>
<th>First Floor</th>
<th>Second Floor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requirement</td>
<td>Proposed</td>
<td>Requirement</td>
</tr>
<tr>
<td>North (side)</td>
<td>0, 1m</td>
<td>3.7m, 6.8m and 14.6m</td>
</tr>
<tr>
<td>South (side)</td>
<td>0, 1m</td>
<td>5.75m, 6.59m, 7.48m and 16.2m</td>
</tr>
<tr>
<td>West (rear)</td>
<td>0, 2m</td>
<td>2.99m and 3.2m</td>
</tr>
</tbody>
</table>

All proposed side and rear setbacks are fully compliant, save for the rear setback to the balconies associated with Apartments 2.2 and 2.3 on the western boundary.

The proposed setback to the balcony of Apartment 2.2 is proposed at 3.2 metres in lieu of 3.49 metres (variation of 0.29 metres). The proposed setback to the balcony of Apartment 2.3 is proposed at 2.99 metres in lieu of 3.19 metres (variation of 0.2m metres).

The propose variations are considered acceptable as they are located opposite a single storey dwelling and common driveway associated with Units 2, 3 and 4 at 72 Well Street.

Their minor encroachment will not result in any adverse amenity impacts through overlooking, overshadowing or visual bulk.

The proposed massing of the building to this elevation is broken up with a recess to the internal corridor and material choices. The pergola structure to these balconies whilst adding further articulation also draw the line of vision beyond the wall. Which is recessed behind. For this reason a condition has been included to delete the pergola structures associated with these apartments.
Solar Access to Open Space (Standard B29)

Standard B29 seeks private open space to be located on the north side of the dwelling or residential building, if appropriate. The southern boundary of secluded private open space should be set back from any wall on the north of the space.

The application material refers to the southern boundary as the common boundary to 5 Halifax Street and the rear boundaries of 31 and 33 Huntingfield Road. The eastern boundary from Halifax Street. This is technically defined at the south-west and south-east boundaries. For ease of reference commentary in this report aligns with the development plans.

The Standard requires a setback of 10.6 metres to the southern boundary. A setback of in lieu of 5.75 metres to 7.48 metres is proposed with a generous 16.2 metres setback to the linking corridor between the built forms. To the eastern boundary, setbacks of 8.2 metres are proposed to area of open space.

Whilst these setbacks are not numerically compliant with this Standard, the proposed areas are considered to remain usable and benefit from solar access to the eastern boundary from 9am to 11am and to the southern boundary from 2pm onwards. The numerical non-compliances with this Standard is indicative of the site orientation and one experienced throughout the metropolitan area. The proposed setbacks generously exceed the numerical requirements of Standard B17 and will not result in any amenity impacts for future residents.

6.5. Internal amenity

The proposed development generally affords an appropriate level of internal amenity for the future occupants, by way of size of dwellings, layouts and provision of open space.

Notwithstanding this, it is recommended that the internal amenity could be further improved by way of acoustically treating windows, provision of skylight windows (or similar for upper level dwellings) and reduction of the level of internal screening (to improve daylight access and solar penetration into dwellings).

These recommendations are reflected within the Condition 1 requirements of the recommended position.

6.6. Car parking and traffic

Traffic

Whilst it is acknowledged that the development will generate some additional vehicle movements on the local road network, it is not considered that such additional movements would necessarily be concentrated or conflict substantially with existing traffic. Furthermore some residents may choose to walk, cycle or use public transport which is available within a short walking distance of the site.

A traffic report accompanied the application and whilst aspects of parking demand and supply may be questioned (such as no consideration of recent approvals within the area such as the childcare centre), such concerns however have been considered are not deemed to have any material impacts on Council’s assessment on traffic.

The applicant’s report has been reviewed by Council’s Traffic Engineer who is satisfied that the site can accommodate the traffic numbers generated by the development in a safe manner without leading to unreasonable congestion across the area.

Access and car parking

Council’s Traffic Engineer raised preliminary concerns about the proposed basement access ramp gradients due the required basement apex level. The ramp grade either side of the apex is 1:8 and therefore meets the maximum summit grade change requirement and is less than the 1:6.7 sag grade change. The applicant provided additional information demonstrating that no scraping will occur with the proposed 1.3
metre flat transition.

Even though the full ramp is 22.7 metres long, that section of the ramp that is 1:4.5 is less than 20 metres long - ie 14.6 metres. Therefore the restriction of 20 metres should be applied to the 1 in 4.5 section only and therefore there is no non-compliance issue in this regard.

The proposed car parking requirements are noted in the below table.

<table>
<thead>
<tr>
<th>Use</th>
<th>Quantity</th>
<th>Rate</th>
<th>Requirement</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Resident</td>
<td>3 x 1 bed apartments</td>
<td>1 per dwelling</td>
<td>12</td>
<td>33</td>
</tr>
<tr>
<td></td>
<td>9 x 2 bed apartments</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>bed townhouses</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>9 x 3 bed townhouses</td>
<td>2 per dwelling</td>
<td>18</td>
<td></td>
</tr>
<tr>
<td>Visitor</td>
<td>21 apartments</td>
<td>1 per 5 dwellings</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td>34</td>
<td>38</td>
</tr>
</tbody>
</table>

A surplus of four car parking spaces is provided for the proposed development. The applicant has not nominated how the car parking spaces are to be allocated. A Car Parking Management Plan has been included as a condition of permit to resolve the allocations. It is noted that 9 tandem (18 spaces) should logically be allocated to the 3 bed apartments whilst the remaining 3 tandem spaces (6 spaces) should be allocated to 1 and 2 bed apartments. The remaining 9 independent spaces should be allocated to the 1 and 2 bed apartments.

6.7. Vegetation & Landscaping

Vegetation on site

The Landscaping Objective of Clause 55 (ResCode) requires consideration to be given to the retention of existing trees and protection of any predominant landscape features of the neighbourhood. However, the land is zoned for residential purposes and there are no specific vegetation protection overlays applicable to the site. Tree #9 (Silver Birch / Betula pendula) is proposed for removal and has a low amenity value and its removal is acceptable. The tree is not considered of such importance to warrant significant redesign to enable their retention. A condition on the planning permit will require a landscape plan to be submitted and endorsed as part of the planning permit. This will require the planting of appropriate replacement vegetation.

The retention of Tree #10 (Lemon-scented Gum / Corymbia citriodora) is supported; this tree has a high amenity value. The proposed basement level requires an encroachment of ~8% into the tree protection zone (TPZ). Council’s Arborist has noted that the tree can remain viable through maintaining soil levels around the tree.

Vegetation on adjoining properties

The arborist’s report submitted by the applicant calculates the encroachment into the TPZ of tree #8 (Spotted Gum / Corymbia maculata) to be 18% and recommends a non-destructive root investigation (NRI). As Tree #8 has high amenity value Council’s Arborist has requested a NRI report. The applicant has provided this and Council’s Arborist noted that the report identifies measures that allow for the successful retention of this tree.

Proposed Landscaping
The proposed landscaping plan has been reviewed by Council’s Arborist and noted as being acceptable. The proposal provides for appropriate landscape planting within the front, side and rear setbacks and within the second floor balconies. Six canopy trees Upright Ornamental Pear trees capable of reaching a mature height of 11 metres with a canopy spread of 6 metres are proposed and will soften the proposed built form whilst retaining the leafy character of the area. The arborist has noted there are sufficient soil volumes for the trees to establish whilst Melbourne Water have offered no objection to the proposed plantings along the southern boundary.

**Street Trees**

There are two Platanus x acerifolia (London Plane) street tree assets fronting the properties (one in front of each property). The plan shows a proposed vehicle crossing on the northern boundary (adjacent to the street tree in front of #9). The existing vehicle crossing in front of #7 is not in front of a driveway and this will be made redundant. The vehicle crossing adjacent to #7 is within the SRZ for the street tree. A 3.5 metres offset will be required as a condition of permit or else the applicant must demonstrate how this tree can be retained through street tree protection measures. The application proposes a 3.4 metres offset and tree protection measure will ensure the retention of these trees.

### 6.8. Special Building Overlay

A 3.05 metre wide easement is offset approximately 2 metres from the southern site boundary. The easement contains Melbourne Water assets.

The Melbourne Water referral dated 19 December 2016 objected to the proposed development. The grounds of objection related to the proposed finished floor levels and insufficient design details showing how Melbourne Water’s assets can be protected. A response to these concerns required extensive site investigations works by the permit applicant.

After site investigation works by the permit applicant in response to the Melbourne Water referral. Melbourne Water issued a revised referral response on 5 September 2017 offering no objection, subject to conditions. These conditions relate to engineering requirements and an increase to the finished floor level. The increase in the finished floor level varies between 0.02m to the eastern block and 0.62m to the western block.

The proposed increase in building height can be accommodated in part through a condition requiring the internal floor to ceiling height being reduced.

It is noted that the building height requirements are relative to the proposed finished floor level.

### 6.9. Objections received

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

**The General Residential Zoning of the subject site is incorrect**

The zoning of the site has been through an extensive public consultation process and panel hearing process. This development application is not a test as to whether the zoning is correct. The Bayside Planning Scheme and Planning and Environment Act 1987 dictate that any proposals which require a Planning Permit are assessed against the relevant provisions of the planning scheme.

**Overdevelopment / development density**

The planning scheme does not restrict the number of units that can be located within a given area. Therefore each planning permit application must be assessed against the relevant provisions of the Bayside Planning Scheme. The existence of a high number of dwellings in the area would not be sufficient grounds for Council to justify refusal of the application before the Victorian Civil and Administrative Tribunal.
Overdevelopment is a commonly used expression to dismiss development proposals which seek to remove existing buildings and to introduce significant new built form into particular neighbourhoods. An assessment against State and local planning policies and the provisions of Clause 55 can often demonstrate that a proposal is not an overdevelopment despite being more intensive than what existed before.

The design responds to the opportunities and constraints of the site and its context. It is unrealistic for objectors to expect that the site, being within an activity centre, will not go through redevelopment.

The Bayside Planning Scheme and the Planning and Environment Act 1987 does not elaborate on the definition of what constitutes medium or high density housing. Rather, the suitability of the development with respect to density and height is determined by the design’s response to the site context, location and the relevant planning scheme objectives.

Construction Management

Building work can sometimes affect adjoining properties. An owner who is proposing building work has obligations under the Building Act 1993 to protect adjoining property from potential damage from their work. If building work is close to or adjacent to adjoining property boundaries, then the relevant building surveyor may require the owner to carry out protection work in respect of that adjoining property. This is to ensure that the adjoining property is not affected or damaged by the proposed building work. Protection work provides protection to adjoining property from damage due to building work. It includes but is not limited to underpinning of adjoining property footings, including vertical support, lateral support, protection against variation in earth pressures, ground anchors, and other means of support for the adjoining property. This process is not controlled or overseen via the planning process and regulations. It is a matter addressed at the building permit stage.

The potential for damage arising to the property during construction are outside the scope of the planning process and are not sufficient to warrant the refusal of the application. These matters are dealt with by the building surveyor. Some noise and other off site impacts are inevitable when any construction occurs. The developer will be required to meet relevant Local Laws and EPA regulations regarding construction practices to ensure these impacts are mitigated.

Infrastructure

A concern in a number of objections was the impact of development on infrastructure. The site owner will be required to address infrastructure servicing demands of the additional dwellings as stipulated by the various service agencies at the time of either subdivision or connection of the development including any service authority requirements to contribute to the cost of upgrading trunk infrastructure.

Accuracy of the supporting town planning report

Concerns regarding the accuracy of distances from the subject site to train stations and the commercial centre. These figures are not relied upon and the development plans are assessed on their merit. Statement regarding walking distances to the station and walkable communities are important considerations but strict compliance with a 400 metres radius of services and amenities commonly found within such areas does not prohibit such developments. As previously noted the site is located within a General Residential Zone which is an area designated for housing growth subject to development respecting the neighbourhood character. This report outlines how the proposed development is considered to meet these policy objectives.

Minor inaccuracies on any development plans are noted and accounted for during the assessment process and do not prohibit a comprehensive assessment of the application being undertaken by Council.
Support Attachments

1. Development Plans
2. Site and Surrounds Imagery
3. Neighbourhood Character Assessment (Precinct B2)
4. Clause 55 (ResCode) Assessment
Item 4.5 – Matters of Decision
Item 4.5 – Matters of Decision
Design Response

The site is orientated in North-West to South-East direction allowing excellent solar penetration into the site.

It also benefits from proximity to public transport and major vehicle infrastructure, Brighton Beach and a number of local schools.
Outdoor Terrace
<table>
<thead>
<tr>
<th>Item</th>
<th>4.5</th>
<th>Matters of Decision</th>
</tr>
</thead>
</table>

### Area Schedule

<table>
<thead>
<tr>
<th>Area</th>
<th>Code</th>
<th>Code Description</th>
<th>Code Area</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Unit</th>
<th>Unit Description</th>
<th>Unit Area</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
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</tbody>
</table>
Figure 1. Aerial Overview of subject site. Due to the number of objections received this has not been detailed on the map. All objections originate from abutting properties and those within the immediate vicinity.

<table>
<thead>
<tr>
<th>Legend</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject site</td>
</tr>
<tr>
<td>🟢</td>
</tr>
</tbody>
</table>
Figure 2: View looking towards the subject site from 33 Huntingfield Road.
Figure 3: View looking towards the subject site from 33 Huntingfield Road. The tree in the background is Tree #10 which is proposed for retention.
Figure 4: View from the rear of 33 Huntingfield Road looking towards the subject site and the roof of 3/72 Well Street.
Figure 5: View from the rear of 31 Huntingfield Road towards the subject site.
Figure 6: View looking north-west along Huntingfield Road.
Figure 7: 5 Halifax Street. A vacant site with approval for the construction of a double storey dwelling.
Figure 8: The subject site.
Figure 9: Directly opposite the subject site.
Figure 10: 3/72 Well Street which shares a boundary with the subject site.
Figure 11: The subject site from the common driveway of 72 Well Street.
ATTACHMENT 3
Neighbourhood Character Policy (Precinct B2)

Preferred Future Character Statement

The diverse dwelling styles, with a continued presence of pre WW2 dwellings, sit within established gardens with occasional tall canopy trees. Side setbacks on both sides, and the setting back of car ports/garages from the dwelling, allows for vegetation to flow around the dwellings. New buildings blend with the existing, through using a variety of materials or colours within front façades, and by respecting the older building styles and scales without replicating them. Open style front fencing improves the visual connection between the dwelling and the street. Street tree planting consistency is improved to provide a unifying element to the area.

Precinct Guidelines

<table>
<thead>
<tr>
<th>Objectives</th>
<th>Design Responses</th>
<th>Avoid</th>
<th>Comments</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>To encourage the retention of dwellings that contribute to the valued character of the Precinct in the design of development proposals.</td>
<td>Demolition of dwellings that contribute to the valued character of the Precinct.</td>
<td>Demolition of the existing dwelling does not require planning approval.</td>
</tr>
<tr>
<td>To maintain and enhance the garden settings of the dwellings.</td>
<td>Prepare a landscape plan to accompany all applications for new dwellings that includes substantial trees and shrubs.</td>
<td>Lack of landscaping and substantial vegetation. Removal of large canopy trees.</td>
<td>The proposed development allows for the retention of Tree #10 (Lemon Scented Gum / Corymbia citriodora) located in close proximity to the rear setback of 33 Huntingfield Road and Tree # 8 (Spotted Gum / Gorymbia maculate Tree) located within the rear setback of 80 Well Street and adjacent to the proposed access ramp. The proposed site layout plan demonstrates there are sufficient areas of open space in which to include canopy plantings, including six Upright Ornamental</td>
</tr>
<tr>
<td>Objectives</td>
<td>Design Responses</td>
<td>Avoid</td>
<td>Comments</td>
</tr>
<tr>
<td>---------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>To maintain the rhythm of spacious visual separation between buildings and provide space for front gardens.</td>
<td>• Buildings should be sited to allow space for the planting of trees and shrubs.</td>
<td>Lack of front garden space.</td>
<td>Adequate visual separation and space within the front setback is provided to promote landscaping opportunities across the site. Compliant first and second floor side setbacks and articulation along the sides to these facades offer visual interest and work to alleviate any perception of visual bulk when viewed from public vantage points and adjoining dwellings. The recessed second floor ensures the dominant built form presents as double storey and sits comfortably with neighbouring lower scale dwellings. The modularisation of the front façade and maintains the street rhythm.</td>
</tr>
<tr>
<td></td>
<td>• Buildings should be sited to create the appearance of space between buildings and accommodate substantial vegetation.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>To minimise the loss of front garden space and the dominance of car parking facilities.</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>Basement level car parking is proposed with a basement access ramp offset 4 metres from the common boundary with 80 Well Street. Basement car parking will remove all car parking from grade level and ensure that car parking structures do not dominate the site in favour of generous side setbacks and opportunities for landscaping. This is considered to be a positive design response to the site constraints while</td>
</tr>
<tr>
<td></td>
<td>• Provide only one vehicular crossover per typical site frontage.</td>
<td>Dominance of crossovers and driveways</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Underground car parking accessed from the front of the site should only be provided where other options are not possible due to site constraints, the garage doors do not dominate the façade and the front setback area is retained as predominantly garden space.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Objectives</td>
<td>Design Responses</td>
<td>Avoid</td>
<td>Comments</td>
</tr>
<tr>
<td>---------------------------------------------------------------------------</td>
<td>------------------------------------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------</td>
<td>----------</td>
</tr>
<tr>
<td>To ensure new development respects the dominant buildings forms and scale of buildings in the Precinct, through the use of innovative architectural responses.</td>
<td>• Articulate the form of buildings and elevations, particularly front facades.</td>
<td>Large bulky buildings with flat, poorly articulated wall surfaces.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Recess upper storey elements from the front façade.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>To respect the identified heritage qualities of adjoining buildings.</td>
<td>• Where adjoining an identified heritage building, reflect the dominant building form, height, materials and massing of the heritage building/s, of the heritage building/s in the new building design.</td>
<td>Imitation or reproduction of historic building styles and detailing.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>To use a variety of building materials and finishes that provide visual interest in the streetscape.</td>
<td>• Incorporate a variety of building materials such as brick, render, timber and non-masonry into the building design.</td>
<td>Excessive use of render on external walls.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Use simple building details.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>To improve the visual connection between the dwellings and the streetscape and encourage views to front gardens.</td>
<td>• Provide open style front fences, other than along heavily trafficked roads.</td>
<td>High, solid front fencing.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Front fence style should be appropriate to the building era.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Balancing the direction of State and Local Policies to utilise larger sites for medium density housing.

The proposed 6 metre wide crossover will not be dominant to the streetscape given the site width.

The extent of proposed vegetation will assist in softening the presentation to the streetscape and ensuring the leafy character of the area is retained.

The proposal offers a contemporary form, responsive to the mix of old and modern architectural styles featured in the area. The proposed massing, concentrated toward the north and east of the block will ensure the building does not unreasonably dominate the streetscape.

There are no heritage properties in close proximity to the subject site but it is noted that the proposal is respectful of the prevailing neighbourhood character and provides a suitable transition in height coupled with setbacks to ensure the proposal does not dominate the streetscape.

A schedule of proposed materials and finishes has been detailed and comprises of white blocks, dark bronze perforated screens and timber cladding.

The staggered front fence heights are reflective of other fence profiles featured along Halifax Street. The fence will be responsive to the street topography and is partially recessed 2 metres from the street.
<table>
<thead>
<tr>
<th>Objectives</th>
<th>Design Responses</th>
<th>Avoid</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>edge to facilitate landscaping further contributing to the landscaping characteristics on site.</td>
</tr>
</tbody>
</table>
### ATTACHMENT 4

**ResCode (Clause 55) Assessment**

<table>
<thead>
<tr>
<th>Title and Objective</th>
<th>Complies with Standard?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>B1 Neighbourhood Character</strong></td>
<td>Yes</td>
<td>Refer to Attachment 3.</td>
</tr>
<tr>
<td>Design respects existing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>neighbourhood character or contributes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>to a preferred neighbourhood</td>
<td></td>
<td></td>
</tr>
<tr>
<td>character.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Development responds to features of</td>
<td></td>
<td></td>
</tr>
<tr>
<td>the site and surrounding area.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B2 Residential Policy</strong></td>
<td>Yes</td>
<td>Refer to ‘Strategic Justification’ section of the report for an assessment of the proposal against the relevant policy context.</td>
</tr>
<tr>
<td>Residential development is consistent with housing policies in the SPPF, LPPF including the MSS and local planning policies.</td>
<td>Refer to ‘Strategic Justification’ section of the report for an assessment of the proposal against the relevant policy context.</td>
<td></td>
</tr>
<tr>
<td>Support medium densities in areas to take advantage of public transport and community infrastructure and services.</td>
<td>Refer to ‘Strategic Justification’ section of the report for an assessment of the proposal against the relevant policy context.</td>
<td></td>
</tr>
<tr>
<td><strong>B3 Dwelling Diversity</strong></td>
<td>Yes</td>
<td>The proposal provides a total of 21 apartments with a mix of 1, 2 and 3 bedroom apartments.</td>
</tr>
<tr>
<td>Encourages a range of dwelling sizes and types in developments of ten or more dwellings.</td>
<td>The proposal provides a total of 21 apartments with a mix of 1, 2 and 3 bedroom apartments.</td>
<td></td>
</tr>
<tr>
<td><strong>B4 Infrastructure</strong></td>
<td>Yes</td>
<td>The proposal will make use of existing infrastructure servicing the site. The developer will be responsible for upgrading this infrastructure if necessary to accommodate the development. Council’s drainage engineers have reviewed the application and raise no issues with infrastructure capacity in the area. It is noted that the developer will be required to pay a development contributions levy in accordance with the requirements of Clause 45.06 of the Bayside Planning Scheme.</td>
</tr>
<tr>
<td>Provides appropriate utility services and infrastructure without overloading the capacity.</td>
<td>The proposal will make use of existing infrastructure servicing the site. The developer will be responsible for upgrading this infrastructure if necessary to accommodate the development. Council’s drainage engineers have reviewed the application and raise no issues with infrastructure capacity in the area. It is noted that the developer will be required to pay a development contributions levy in accordance with the requirements of Clause 45.06 of the Bayside Planning Scheme.</td>
<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 and features a staggered front setback at ground, first and second floor levels, providing an appropriate transition to the setbacks of the adjoining properties. Whilst the development sits taller than the adjoining properties it remains complementary and</td>
</tr>
<tr>
<td>Integrate the layout of development with the street</td>
<td>The development will integrate appropriately with the street and features a staggered front setback at ground, first and second floor levels, providing an appropriate transition to the setbacks of the adjoining properties. Whilst the development sits taller than the adjoining properties it remains complementary and</td>
<td></td>
</tr>
</tbody>
</table>
appropriately transitions in height and built form, adopting increasing setbacks towards the Neighbourhood Residential Zone.

See Neighbourhood Character at Attachment 3 for further discussion.

<table>
<thead>
<tr>
<th><strong>B6 Street Setback</strong></th>
<th><strong>Yes</strong></th>
<th><strong>Requirement: 4 metres.</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>The setbacks of buildings from a street respect the existing or preferred neighbourhood character and make efficient use of the site.</td>
<td>Yes</td>
<td>The required front setback is 4 metres as there is no existing building on either of the abutting allotments facing the same street and the street does not front a Road Zone Category 1.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>It is noted that the adjoining site at 5 Halifax Street featured a dwelling with a front setback of 10.4 metres which would have dedicated a 9 metre front setback for the proposed development. As this property has since been demolished the current site circumstances dictate the reduced 4 metre setback.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>It is noted that the proposed setback of the dwelling approved for 5 Halifax Street is 8.6 metres with the garage being setback 7 metres.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The side setback of 80 Well Street is approximately 5 metres.</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Proposed:</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Ground floor:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>8.83 metres.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>First floor:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>8.22 metres to kitchen and bedroom walls of Apartment 1.1 and balconies.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>10.4 metres to wall of Apartment 1.9 and living room.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Second floor:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>8.22 metres and 8.38 metres to the balcony edge</td>
</tr>
<tr>
<td></td>
<td></td>
<td>12.2 metres to the bedroom of Apartment 2.4.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>13.8 metres to the wall of Apartment 2.1.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The proposed front setbacks stagger between the existing side setback of 80 Well Street and the setback of the dwelling at 3 Halifax Street (being the closest built form to Halifax Street) and the yet to be constructed approval at 5 Halifax Street.</td>
</tr>
<tr>
<td>Item</td>
<td>B7 Building Height</td>
<td>B8 Site Coverage</td>
</tr>
<tr>
<td>------</td>
<td>-------------------</td>
<td>-----------------</td>
</tr>
<tr>
<td><strong>B7 Building Height</strong></td>
<td>Building height should respect the existing or preferred neighbourhood character.</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>B8 Site Coverage</strong></td>
<td>Site coverage should respect the existing or preferred neighbourhood character and respond to the features of the site.</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>B9 Permeability</strong></td>
<td>Reduce the impact of stormwater run-off on the drainage system and facilitate on-site stormwater infiltration.</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>B10 Energy Efficiency</strong></td>
<td>Achieve and protect energy efficient dwellings and residential buildings. Ensure orientation and layout reduces fossil fuel energy use and makes appropriate use of daylight and solar energy.</td>
<td>Yes</td>
</tr>
</tbody>
</table>

The proposed setbacks are consistent with the existing development pattern of the area.

**Maximum:** 12 metres / 3 storeys due to the gradient of the land being greater than 2.5 degrees over an 8 metre cross-section.

Design and Development Overlay, Schedule 11 also identifies a height of 12 metres / 3 storeys due to the gradient of the land being greater than 2.5 degrees over a 8 metre cross-section.

As the site is in a Special Building Overlay the maximum building height specified in the zone or schedule is the vertical distance from the minimum floor level determined by the relevant drainage authority or floodplain management authority to the roof or parapet at any point.

**Proposed:** 11.3 metres (3 storeys) from Natural Ground Level. However this is technically 10.5 metres from the finished floor level will be 10.50 AHD.

The overall building height resulting from the requirements of Melbourne Water would be 11.12 metres. This remains compliant with the Standard. Notwithstanding this, a condition has been included requiring any additional heights to be absorbed within the already proposed building height.

It is noted that the basement at no point rises above natural ground level.
<table>
<thead>
<tr>
<th>Item</th>
<th>Section</th>
<th>Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>B11 Open Space</td>
<td>Integrate layout of development with any public and communal open space provided in or adjacent to the development.</td>
<td>N/A</td>
</tr>
<tr>
<td>B12 Safety</td>
<td>Layout to provide safety and security for residents and property.</td>
<td>Yes</td>
</tr>
<tr>
<td>B13 Landscaping</td>
<td>To provide appropriate landscaping. To encourage: - Development that respects the landscape character of the neighbourhood. - Development that maintains and enhances habitat for plants and animals in locations of habitat importance. - The retention of mature vegetation on the site.</td>
<td>Yes</td>
</tr>
<tr>
<td>B14 Access</td>
<td>Ensure the safe, manageable and convenient vehicle access to and from the development. Ensure the number and design of vehicle crossovers respects neighbourhood character.</td>
<td>Yes</td>
</tr>
<tr>
<td>B15 Parking Location</td>
<td>Provide resident and visitor vehicles with convenient parking. Avoid parking and traffic difficulties in the development and the neighbourhood. Protect residents from vehicular noise within developments.</td>
<td>Yes</td>
</tr>
<tr>
<td>B17 Side and Rear Setbacks</td>
<td>Ensure the height and setback respects the existing or preferred neighbourhood character and limits the amenity impacts on existing dwellings.</td>
<td>No</td>
</tr>
</tbody>
</table>
The southern boundary the common boundary with 5 Halifax Street and 31 and 33 Halifax Street. The wall height are taken from the Natural Ground Level in lieu of the finished floor levels due to the Special Building Overlay.

<table>
<thead>
<tr>
<th>Ground floor</th>
<th>First Floor</th>
<th>Second Floor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requirement</td>
<td>Proposed</td>
<td>Requirement</td>
</tr>
<tr>
<td>North (side)</td>
<td>0, 1m</td>
<td>3.7m, 6.8m and 14.6m</td>
</tr>
<tr>
<td></td>
<td>3.7m to the balcony edge</td>
<td>4.69m to wall</td>
</tr>
<tr>
<td></td>
<td></td>
<td>5.3m to wall</td>
</tr>
<tr>
<td>South (side)</td>
<td>0, 1m</td>
<td>5.75m, 6.59m, 7.48m and 16.2m</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4.69m to 5.69m to the wall</td>
</tr>
<tr>
<td>West (rear)</td>
<td>0, 2m</td>
<td>2.99m and 3.2m</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4.69m to 4.99m to the walls</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.

N/A

There are no walls proposed to be constructed on the boundary.

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

Yes

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

All habitable room windows are in excess of 9 metres from the common boundary and the built form is further offset from the common boundaries.

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

N/A

There are no north facing windows within 3m of the shared boundary.
### B21 Overshadowing Open Space
Ensure buildings do not significantly overshadow existing secluded private open space.

| Yes | Additional overshadowing will occur within the rear setbacks of 31 and 22 Huntingfield Road at 9, 10 and 11 am. The additional overshadowing is within the acceptable limits of this Standard i.e. after 9am these areas will all receive a minimum of 40 square metres of sunlight. |

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

| Yes | All habitable room windows and terraces within 9 metres of areas of secluded private open space or habitable room windows have been screened to a minimum height 1.7 metres above finished floor level or have been sited appropriately in accordance with this Standard. |

### B23 Internal Views
Limit views into existing secluded private open space and habitable room windows of dwellings and residential buildings within the same development.

| Yes | All habitable room windows have been screened to a minimum height 1.7 metres above finished floor level or have been sited appropriately in accordance with this Standard. At ground floor level internal fencing is generally proposed to a height of 1.8 metres however a condition has been included to require this to be clearly annotated to limits views between adjoining areas of secluded private open space within the development. |

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

| Yes | It is anticipated that the level of noise which will be emitted from the dwellings will not exceed levels otherwise expected from residential uses. |

### B25 Accessibility
Consider people with limited mobility in the design of developments.

| Yes | Entries are accessible for people with limited mobility with a lift provided from the basement car park to second floor level. The development could be further retrofitted to accommodate people with limited mobility in the future if required. |

### B26 Dwelling Entry
Provide a sense of identity to each dwelling/residential building.

| Yes | The development includes a dedicated pedestrian entry access via a pathway defined by planter beds and mail boxes. |

### B27 Daylight to New Windows
Allow adequate daylight into new habitable room windows.

<p>| Yes | All habitable windows will open out onto a space clear to the sky |</p>
<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Status</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<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><strong>Minimum:</strong> 25m² secluded, 40m² overall with a minimum dimension of 3 m; A balcony of 8m² with a minimum width of 1.6m. <strong>Proposed:</strong> All apartments meet the requirements of this standard and are provided with adequate private open space for the reasonable recreation and service needs of residents. It is noted that Clause 32.09-4 of the Bayside Planning Scheme requires a minimum garden area at ground floor level of 35% of the site area. This equates to 830m². A total of 1060 m² has been provided, equating to 44.7 % garden area. It is noted the garden areas calculated in the 44.7% include areas not classified as private open space associated with an apartment but exclude balconies.</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>No</td>
<td>See Section 6.3 of the report for further discussion.</td>
</tr>
<tr>
<td><strong>B30 Storage</strong></td>
<td>Provide adequate storage facilities for each dwelling.</td>
<td>Yes</td>
<td>Designated storage areas are provided for all apartments within the basement and have a minimum capacity of 6 cubic metres.</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 Section 6.2 of the report for further discussion.</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>No</td>
<td><strong>Maximum:</strong> 1.5 metres <strong>Proposed:</strong> 1.5 metres, 1.7 metres and 2.05 metres See Section 6.3 of the report for further discussion.</td>
</tr>
<tr>
<td><strong>B33 Common Property</strong></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>
<td>Yes</td>
<td>All areas of common property have been designed to clearly delineate public, communal and private areas. Common property is functional and capable of efficient management.</td>
</tr>
<tr>
<td><strong>B34 Site Services</strong></td>
<td>Yes</td>
<td>All appropriate site services can be easily catered for on-site. Mails boxes are shown to adjoin the pedestrian entry with waste provisions being provided within the basement level.</td>
<td></td>
</tr>
<tr>
<td>----------------------</td>
<td>-----</td>
<td>----------------------------------------------------------------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>Ensure site services and facilities can be installed and easily maintained and are accessible, adequate and attractive.</td>
<td></td>
<td>Avoid future management difficulties in common ownership areas.</td>
<td></td>
</tr>
</tbody>
</table>
1. **Purpose and background**

To report a planning permit application for the construction of a roof deck above the second storey of a dwelling that is currently under construction within a Design and Development Overlay – Schedule 1 on a lot with an area of 750 square metres (refer Attachment 1) at 11 Gray Court, Beaumaris (refer Attachment 2). The dwelling itself does not require a planning permit because the site is greater than 500 square metres.

<table>
<thead>
<tr>
<th>Applicant</th>
<th>Meaden Architecture and Interiors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date application received</td>
<td>9 August 2017</td>
</tr>
<tr>
<td>Statutory days expired</td>
<td>14 October 2017</td>
</tr>
</tbody>
</table>

2. **Policy implications**

**Planning permit requirements**

Clause 43.02-2 (Design and Development Overlay – Schedule 1) – Construction of a roof deck above the second storey of a building.

**Planning scheme amendments**

There are no planning scheme amendments which are relevant to this application.

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 Council departments for comment.

**Public notification**

The application was advertised pursuant to Sections 52(1) (a) and (d) of the *Planning and Environment Act 1987* and 10 objections were received, however three of these came from the same address. The following issues were raised:

- Visual bulk;
- Overlooking;
- Neighbourhood Character;
- Building height; and
- Precedence.

**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 2017/479/1** for the land known and described as **11 Gray Court, Beaumaris**, for the construction of a roof deck above a second storey within a Design and Development Overlay (Schedule 3) in accordance with the endorsed plans and subject to the following conditions:

1. 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.

2. 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.

### 5. Council Policy

**Council Plan 2017-2021**

Relevant strategic objectives of the Council plan include:

- Where neighbourhood character, streetscapes and heritage is respected and enhanced, and the community has a strong connection to place.
- Where development contributes to a high visual amenity, is ecologically sustainable, demonstrates high quality compliant design, and responds to the streetscape and neighbourhood context.
- Where a range of housing types is provided to accommodate the changing needs of the community, enabling people to age in place and providing opportunities for young adults and families to live and remain in the municipality.

Relevant strategies of the Council plan include:

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

**Bayside Planning Scheme**

- Clause 9 Plan Melbourne
- Clause 11 Settlement
- Clause 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 21.05 Environmental Risks
- Clause 21.06 Built Environment and Heritage
- Clause 21.07 Economic Development
- Clause 32.09 Neighbourhood Residential Zone (Schedule 3)
6. Considerations

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

6.1. **Compliance with Clause 43.02 (Design and Development Overlay – Schedule 1)**

The proposed roof deck complies with all of the requirements for a roof deck as outlined in Clause 43.02.

The proposed roof deck is to be constructed of complimentary materials, and of an architectural style which integrates with the style of the building. The roof deck is located towards the front of the building and the shape of the deck mirrors the curved shape of the front of the building.

The edge of the roof deck is set at least 2m from the roof edge immediately below on all sides. The balustrade is 1m in height and there are no structures or elements which exceed 1.7m in height, aside from the access structure. It is considered that the visual impact of the roof deck when viewed from the streetscape and adjoining dwellings is minimised and would not be unreasonable.

While the Design and Development Overlay requires that overlooking be assessed when considering a roof deck application, it does not provide any specific standard or tools to do so, and as such the requirements of Standard A15 of Clause 54.04 (ResCode) would be the most suitable assessment tool.

Standard A15 requires decks to be located and designed to avoid direct views into secluded private open space and habitable room windows of existing dwellings within 9m of the deck. According to the standard, screening is not required to protect views into secluded private open space or habitable room windows of existing dwellings which are more than 9m away.

As noted, the roof deck is located towards the front half of the dwelling. As a result, the private open space located behind the dwelling (to the west), which belongs to 9 Gray Court, is further than 9m from the deck and screening is not required at this interface.

To the northern boundary, the existing dwelling at No. 9 Gray Court is located approximately 13 metres away from the edge of the roof deck. The land adjoining the common boundary with 11 Gray Court is a driveway and therefore not considered secluded private open space. Accordingly the northern boundary of the roof deck will not be required to be screened in order to achieve compliance with this requirement.

At the southern side of the proposal, the nearest existing window (to 14 Gray Court) is approximately 12 metres from the southern edge of the proposed roof deck and therefore screening is not required. Some of the rear secluded private open space for this dwelling is located within 9m of the southern edge of the roof deck and should be screened to limit overlooking. Section 1 of the plans submitted with the application demonstrates that sightlines from the roof deck towards this private open space are interrupted by the height of the southern parapet, and appropriately limits the views into secluded private open space and habitable room windows.

The access structure proposed is 2.4m in height and complies with the requirements of the Design and Development Overlay. The access structures are located at the rear of the roof deck and will not be visible from the streetscape as they are setback 11m from the front of the building (18.5m from the front boundary). The access structures also do not enclose any useable floor space.

Given the proposed roof deck meets all of the requirements of the Design and
Development Overlay – Schedule 1, it is considered that the roof deck satisfies all of the requirements and decision guidelines for roof decks outlined in this overlay and should therefore be supported.

6.2. Objections received

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

Overlooking (Reserve)

The planning scheme encourages new development to be designed and orientated to provide views over public space. The development will have distance views of the reserve. These views do not breach the overlooking provisions of Clause 54 (ResCode) of the Bayside Planning Scheme and will ensure increased surveillance of, and safety to the reserve users.

Precedent

Future planning permit applications on this site or neighbouring and nearby land will be assessed against relevant planning policy and site conditions, based on their own merits at the time of assessment.

The possibility of setting an undesirable precedent cannot be substantiated and is not a relevant planning consideration.

Building Height

The only trigger for a planning permit with this application is for the construction of a roof deck above a second storey of a building. As such the building height cannot be assessed against the controls of the Neighbourhood Residential Zone. Notwithstanding this, the proposed building height of 8.8m and not more than 2 stories, is compliant with the requirements of the zone.

Neighbourhood Character

Given this application is not being assessed against anything other than the Design and Development Overlay, there is limited scope to assess the application against neighbourhood character. It is noted however, that a number of properties within close proximity to the subject site contain roof decks and the proposed roof deck is considered to be respectful of the surrounding neighbourhood character.

Support Attachments

1. Development Plans ↓
2. Site and Surrounds ↓
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>![Star]</td>
</tr>
<tr>
<td>Objector(s)</td>
<td>![Circle]</td>
</tr>
<tr>
<td>Multiple objector site</td>
<td>![Triangle]</td>
</tr>
</tbody>
</table>
Figure 2. View from of the site from the street.

Figure 3. View of a neighbouring roof deck from the south eastern corner of the public reserve.
4.7 15 WATTLE AVENUE, BEAUMARIS
SUPPORT THE GRANT OF A PLANNING PERMIT
APPLICATION NO: 2016/838/1  WARD: SOUTHERN WARD

City Planning & Community Services - Development Services
File No: PSF/15/8755 – Doc No: DOC/17/266080

1. Purpose and background

To report a planning permit application which is the subject of an appeal to the Victorian Civil and Administrative Tribunal (VCAT) pursuant to Section 79 (failure to determine) of the Planning and Environment Act 1987.

The application is for the construction of two (2) double storey dwellings, a front fence exceeding 1.2m in height and the removal of vegetation within the Vegetation Protection Overlay Schedule 3 (VPO3) on a lot with an area of 775 square metres (refer Attachment 1) at 15 Wattle Avenue, Beaumaris (refer Attachment 2).

<table>
<thead>
<tr>
<th>Applicant</th>
<th>David Lock Associates (Aust.) Pty Ltd</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date application received</td>
<td>21 December 2016</td>
</tr>
<tr>
<td>Statutory days expired</td>
<td>10 May 2017</td>
</tr>
</tbody>
</table>

A similar development on the subject site was refused under delegation on 28 January 2016. Planning Permit Application 2015/479 was refused for the following reasons:

1. The proposed development is contrary to the preferred character of the area as identified by Clause 22.06 (Neighbourhood Character Policy) of the Bayside Planning Scheme as a result of:
   a) The built form that extends along the length of the site and does not enable the proposed development to retain or contribute to a sense of spaciousness in area.
   b) The height, mass, and length of double storey built form, combined with the limited landscaping opportunities, will result in a visually dominant presence in the street and for abutting properties.
   c) The lack of space for landscaping will not strengthen the bushy garden character of the area.
   d) The extent of walls on the west boundary, lack of landscaping potential along the east and west boundary and in the rear yards of both dwellings, is contrary to the dwelling spacing and landscape character of the area.

2. The proposed development would have unreasonable amenity impact to neighbouring dwelling to the west by way of unrelieved visual bulk and extended built form at ground and first floor level.

3. The development contravenes the following objectives of Clause 55 (Two dwellings on a lot) of the Bayside Planning Scheme:
   a) Standard B1 – Neighbourhood Character: The proposed development does not achieve the objectives sought for this precinct.
   b) Standard B2 – Residential Policy: The scale of development proposed does not accord with the housing location policies in the planning scheme.
   c) Standard B5 – Integration with the Street
   d) Standard B6 – Frontage Setback
   e) Standard B10 – Energy Efficiency
4. The location and configuration of the driveway will not allow for the safe and efficient movement of vehicles from the garage of Dwelling 1 in accordance with the requirements of Clause 52.06 of the Scheme.

This application includes the following changes to the plans:

- Greater landscaping opportunities;
- High level of compliance with ResCode;
- Reduction in mass, and length of the double storey built form;
- High level of compliance with the emerging and preferred neighbourhood character; and,
- The removal of all walls on boundary.

The proposed development has been assessed on its own merits.

2. **Policy implications**

Planning permit requirements

Clause 32.09-6 (Neighbourhood Residential Zone Schedule 3) – Construction of two dwellings on a lot and a front fence exceeding a height of 1.2 metres.

Clause 42.02-3 (Vegetation Protection Overlay Schedule 3) – Removal of vegetation native to Australia.

Planning scheme amendments

There are no relevant planning scheme amendments associated with the proposal.

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>Drainage Engineer</td>
<td>No objection, subject to conditions.</td>
</tr>
<tr>
<td>Arborist</td>
<td>No objection, subject to conditions.</td>
</tr>
<tr>
<td>Street Trees</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 received. The following concerns
were raised:

- Removal of vegetation;
- Loss of animal habitat;
- ResCode non-compliances;
- Loss of views; and
- Inconsistent with the neighbourhood character.

Consultation meeting
A consultation meeting was held on 14 June 2017 attended by the permit applicant and 4 objectors. As a result of this meeting no objections were withdrawn.

4. Recommendation
That Council:

Determines to Support the application under the provisions of the Bayside Planning Scheme in respect of Planning Application 2016/0838/1 for the land known and described as at 15 Wattle Avenue, Beaumaris for the construction of two (2) double storey dwellings, a fence exceeding 1.2m in height and removal of vegetation within the Vegetation Protection Overlay - Schedule 3 (VPO3) in accordance with the endorsed plans and subject to the following conditions from the standard conditions:

1. Before the development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be in accordance with the advertised plans submitted with the application but modified to show:
   a) Full compliance with Standard B17 (Side rear setbacks) of the Bayside Planning Scheme;
   b) Full compliance with Standard B6 (Street setback) of the Bayside Planning Scheme;
   c) Adequate sightlines must be provided where the proposed driveway intersects with the front footpath as per the diagram shown in AS2890.0.
   d) Reduction of non-permeable surfaces located within the POS of unit 1 and 2;

All to the satisfaction of the responsible authority.

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

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

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

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

6. Detailed plans to the satisfaction of the Responsible Authority drawn to scale with dimensions to show:
   a) The type of water sensitive urban design stormwater treatment measures to be used.
   b) The location of the water sensitive urban design stormwater treatment measures in relation to buildings, sealed surfaces and landscaped areas.
   c) Design details of the water sensitive urban design stormwater treatment measures, including cross sections.

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

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

8. Before the development starts tree protection fencing is to be established around the street trees marked for retention prior to demolition and maintained until all works on site are complete. The fencing is to be constructed and secured so its positioning cannot be modified by site workers. The fencing is to encompass the entire 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.

9. 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 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) Coastal Banksia (*Banksia integrifolia*) must be planted in a central position within the front setback of Unit 1;
   c) Annotation that no soil excavation with in the 3.2 metres of the *Melaleuca linariifolia* street tree will occur;
   d) A survey, including botanical names, of all existing protected vegetation to be removed from the site.
   e) A survey, including botanical names, of all existing trees on neighbouring properties where the Tree Protection Zones of such trees calculated in accordance with AS4970-2009 fall partially within the subject site.
   f) A planting schedule of all proposed trees and shrubs, including botanical names, common names, pot sizes, sizes at maturity, and quantities of each plant.
   g) Landscaping and/or planting within all areas of the site not covered by buildings or hard surfaces.
   h) Details of surface finishes of pathways and driveways.

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

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

a)  Construction of the driveway must be constructed above grade, with permeable topping used;

b)  Demonstrated recommendations outlines within the arborist report relating to the use of root sensitive techniques for neighbouring trees.

c)  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;

d)  Comment on methods to be utilised and instruction on how to deploy them;

e)  Comment on when the protection measures are to be deployed;

f)  Comment on when the protection measures can be modified;

g)  Process that will be followed if any damage occurs to a tree;

h)  Process that will be followed if construction works require alteration to protection measures outlined in report; and

i)  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.

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

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

15. Before the development starts, including demolition or removal of vegetation, a tree protection fence must be installed for the protection of a tree's canopy and root zone. Street tree protection fencing during development are as follows:

a)  Fencing is to be secured and maintained prior to demolition and until all site works are complete.
b) Fencing must be installed to comply with AS 4970–2009, Protection of trees on development sites.

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

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

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

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

17. Installation of utility services within the TPZ, any installation of services and drainage within the TPZ must be undertaken using root sensitive non-destructive techniques.

18. 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 opening must be removed and replaced with footpath/nature strip/kerb and channel, to the satisfaction of the Responsible Authority.

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. Any subsurface water captured on 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.

22. 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.

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

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

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:

- A permit must be obtained from Council for all vehicular crossings. These must be constructed under Council’s supervision for which 24 hours notice is required.
- This permit does not constitute any authority to carry out any buildings works or occupy the building or part of the building unless all relevant building permits are obtained.

5. **Council Policy**

*Council Plan 2017-2021*

Relevant strategic objectives of the Council plan include:

- Where neighbourhood character, streetscapes and heritage is respected and enhanced, and the community has a strong connection to place.
- Where development contributes to a high visual amenity, is ecologically sustainable, demonstrates high quality compliant design, and responds to the streetscape and neighbourhood context.
- Where a range of housing types is provided to accommodate the changing needs of the community, enabling people to age in place and providing opportunities for young adults and families to live and remain in the municipality.

Relevant strategies of the Council plan include:

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

*Bayside Planning Scheme*

- Clause 11 Settlement
- Clause 15 Built Environment and Heritage
- Clause 16 Housing
- Clause 21.02 Bayside Key Issues and Strategic Vision
- Clause 21.03 Settlement and Housing
- Clause 21.06 Built Environment and Heritage
- Clause 22.06 Neighbourhood Character Policy (Precinct H3)
- Clause 22.08 Water Sensitive Urban Design
- Clause 32.09 Neighbourhood Residential Zone (Schedule 3)
- Clause 42.02 Vegetation Protection 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 the Neighbourhood Character Precinct H3. 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.

The development incorporates appropriate boundary setbacks to reflect the built form pattern of the area while promoting adequate visual separation between the adjoining dwellings. It is noted that the character Wattle Avenue Street consists of various built form elements, therefore the proposed contemporary design will not seem at odds with the immediate area. The dwellings will sit comfortably within their context largely due to the articulated facades, roof form responsive to dwelling forms in the neighbourhood, appropriate front setbacks (subject to conditions), materials and finishes that are complementary to the existing and the preferred character of the area.

The contemporary design of the dwellings provide a level of visual interest along with various forms of articulation along all boundaries. The various forms of external building materials including timber lining assist in integrating the development in to the prevailing and emerging neighbourhood character.

The buildings setback from the side boundaries allow for suitable landscaping opportunities to enhance the landscaped character of the area. The proposed setback along with the amount of open space along Wattle Avenue provides ample opportunity for the provision of landscaping, thus maintaining the vegetated streetscape.

On balance, it is considered that the proposal is respectful of both the prevailing and preferred neighbourhood character and appropriately responds to the characteristics of, vegetated streetscape, visual separation between buildings, and open street presentation.

6.2 Compliance with Clause 55 (ResCode)

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

B6 Street Setback

Standard B6 requires the setback to be the average distance of the setbacks of the front walls of the existing buildings on the abutting allotments facing the front street or 9 metres, whichever is the lesser.

The abutting allotments (13 Wattle Ave and 17 Wattle Ave) contain a setback of 8.47m and 12.49m, therefore the setback should be 10.4m or 9 metres, whichever is the lesser, which in this instance the setback should be 9 metres.

The applicant proposes the setback of 8 metres. The variation of 1 metre is sought. Given the size of the dwellings and the consistent / prevailing setback along the northern side of Wattle Avenue, the variation of 1 metre is not supported. The provision of the additional 1 metre would result in better landscaping opportunities, the 1 metre setback can be accommodated and absorbed within the proposed development without causing any detrimental amenity impacts to any future resident.

It is for this reason that a condition will be placed on any permit issued requiring full compliance with Standard B6. The provision of 9 metre setback can be accommodated without negatively impacting the internal amenity of future residents.

Side and rear setbacks (Standard B17)
The encroachment of the ground floor along the eastern boundary of Dwelling 2 proposes a setback of 1.8m, therefore a variation of 0.2m is sought. Additionally the western ground floor or dwelling 2 requires a setback of 2, however a 1.5 metre setback is proposed, and therefore a variation of 0.5m is sought. The variation sought is not supported as the areas of noncompliance abut the secluded private open space of neighbouring properties. It is acknowledged that the variations are minimal, however Council considers that the increased setbacks can be accommodated without negatively impacting the internal amenity of the future residents. As such a condition is included to ensure compliance with the minimum side and rear setback requirements of Standard B17.

**B32 Front Fences**

A 1.8m fence is proposed, therefore a variation of 0.6m is sought. The variation is considered to be appropriate as:

- The proposed 1.8m is existing and forms part of the character of Wattle Avenue; and,
- There are various examples of similar fencing heights throughout Wattle Avenue;

**6.2 Street tree removal**

Council’s open space arborist raised concerns with the proposed development in relation to its proximity to the crossover. The proposed location of the crossover layout would impact the tree’s health and stability. Nevertheless Council’s open space arborist provided support for the construction of the crossover, subject to conditions. These conditions will form part of any permit issued.

**6.3 Car parking and traffic**

A minimum of two off-street parking spaces are to be provided for each dwelling, in accordance with the requirements of Clause 52.06 (Car parking) of the Planning Scheme.

Council’s Traffic Engineer has also requested that a corner splay be provided to enable adequate visibility between the road and footpath users. This has been included as a condition in the recommendation.

The development is likely to result in a marginal increase in traffic, but this can be accommodated within the surrounding street network. Council’s Traffic engineer has no concerns with this minor increase in traffic.

**6.4 Vegetation & Landscaping**

Council’s Arborist has attended the site and has advised that the existing vegetation on the site have low – medium amenity values.

The table below identifies those trees protected by the Local Law and those which are not protected by any statutory mechanism. Native trees are marked with an *.

<table>
<thead>
<tr>
<th></th>
<th>Ground Floor Required</th>
<th>Proposed</th>
<th>First Floor Required</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>West (side)</td>
<td>0m or 2m</td>
<td>1.5m (D2) or 2m</td>
<td>3.92m (D1)</td>
<td>5.6m (D1)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>3.74m (D2)</td>
<td>4.0m – 4.6m (D2)</td>
</tr>
<tr>
<td>East (side)</td>
<td>0m or 2m</td>
<td>1.8m (D2), 4.3m, 4.8m, 6.6m, 9.1</td>
<td>3.68m (D1)</td>
<td>4.3m – 5.9m (D1)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>3.80m (D2)</td>
<td>5.5m – 7.9m (D2)</td>
</tr>
<tr>
<td>North (rear)</td>
<td>0m or 3m</td>
<td>3m</td>
<td>3.68m (D2)</td>
<td>4.2m – 4.5m (D2)</td>
</tr>
</tbody>
</table>
Local Law protected trees

<table>
<thead>
<tr>
<th>Proposed removal for retention</th>
<th>Proposed retention for removal</th>
<th>Proposed retention for removal</th>
<th>Proposed retention for removal</th>
</tr>
</thead>
<tbody>
<tr>
<td>N/A</td>
<td>N/A</td>
<td>Tree # 1*, 2*, 6*, 9*, and 10*.</td>
<td># 14*</td>
</tr>
</tbody>
</table>

Council’s Arborist in their referral response advised that Trees #4 and 5 are dead therefore their removal is supported.

Trees #7 and 8 are small exotic trees; below the size requiring a permit for removal under the Local Law, No: 2 Amenity Protection. Removal of these trees is acceptable if replaced with suitable new plantings in the landscape design.

Trees #1, 2 and 6 trigger the VPO3; these are small trees, with low amenity values. Their removal is acceptable if replaced with suitable new indigenous plantings.

Trees #9 and 10 are both of the size to trigger the VPO3, these trees are centrally located in the block and their retention would curtail development; therefore permit their removal on the proviso that substantial replacement canopy tree plantings are included in the design response. The tree protection zones (TPZs) of trees #11, 12 and 13 fall within the proposed driveway; they will remain viable if above grade, permeable topping is used and the trees are protected during the construction process, this forms part of Council recommendation.

The proposed planting of a Coastal Banksia (Banksia integrifolia) in the front setback is supported. Council’s Arborist advised that the tree should be planted in a central position within the front setback in order to allow it to develop a full canopy.

Council’s Arborist advised that the extent of paving in the rear private open spaces must be substantially reduced to provide a greater soil volume (free of impermeable surfaces), for the growth of the proposed Lightwood (Acacia implexa) plantings. This forms part of Council recommendation.

The landscape plan uses indigenous and native species and is in accordance with the objectives of the VPO3 and Neighbourhood Character Policy, precinct H3.

With regards to the future planting on the site, the proposed development incorporates landscaping opportunities to achieve an outcome consistent with the existing and preferred character of the area. The Bayside City Council Landscape Guidelines (2015) specify that for low density applications, one large canopy tree (8-15 m height and greater than 4m canopy spread) should be planted within the frontage and/or 2 smaller trees in the rear of each dwelling. The proposed landscape plan exceeds the above mentioned requirements.

The proposed development is considered to comply with The Bayside City Council Landscape Guidelines (2015). The landscape plan also includes a variety of shrubs and ground covers within the front and rear setbacks, and along the side boundaries. The landscape plan will achieve an outcome consistent with the preferred landscaped character of the area.

An assessment against the requirements of the Vegetation Protection Overlay – Schedule 3 is provided at attachment 5.

6.5 Objections received

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

The Victorian Civil and Administrative Tribunal has consistently found that although impact upon views can be considered amongst the amenity impacts of a proposal, there cannot be considered a right to any particular view. In the absence of particular planning controls which might require the protection of, or sharing of views, loss of views is usually afforded very limited weight. This is especially the case where a view is obtained across adjoining land and the views are not afforded any special consideration in a planning control. In this case the development is not considered to intrude unreasonably upon the skyline to reduce the amenity of neighbours through their outlook or access to daylight.

Whilst it is recognised that views may form part of residential amenity, the Tribunal has consistently held that there is no legal entitlement to a view.

Support Attachments

1. Development Plans ↓
2. Site Surrounds and Imagery ↓
3. Neighbourhood Character Assessment ↓
4. Clause 55 Assessment ↓
5. Vegetation Protection Overlay - Schedule 3 Assessment ↓
Figure 1 Aerial overview of the site and surrounds. One objection is located outside of this map.

Legend

<table>
<thead>
<tr>
<th>Subject site</th>
<th>Objecor(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>✭</td>
<td>●</td>
</tr>
</tbody>
</table>
Figure 2 View of the site as seen from Wattle Avenue (south)

Figure 3 View of the site from the northwest
Figure 3 View of the site from the northeast
Neighbourhood Character 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. | Responds  
The proposed development provides for the planting of native vegetation in and around the proposed development. It is acknowledged that the proposed development required the removal of 5 established trees, however subject to conditions, they will be replaced. There is sufficient impervious surfaces particularly in front garden spaces to ensure space for plantings. No environmental weeds are proposed to be planted. |
| 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. | Responds  
There is sufficient space to provide substantial trees to maintain and enhance the garden settings of the dwellings. |
| 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. | Car parking structures that dominate the façade or view of the dwelling. | Responds  
The garages are located behind the line of the dwellings, all effort has been taken to reduce the garages dominance as they located outside the public realm, thus |
<table>
<thead>
<tr>
<th>Objectives</th>
<th>Design Responses</th>
<th>Avoid</th>
<th>Planning Officer Assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>To minimise site disturbance and impact of the building on the landscape.</strong></td>
<td>the garage doors do not dominate the façade and the front setback area is retained as predominantly garden space.</td>
<td>reducing the visual impact on the streetscape. The landscaping plan demonstrates sufficient landscaping opportunities in order to meet the vegetated streetscape of Wattle Avenue.</td>
<td></td>
</tr>
<tr>
<td><strong>To ensure that new buildings provide an articulated and interesting façade to the street.</strong></td>
<td>Building 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.</td>
<td>Major excavation works and site levelling. Buildings that protrude above the tree canopy height.</td>
<td>Responds The proposed development is considered to follow the topography of the subject site and therefore no major excavation is proposed. The maximum height of the building is 7.2m and is therefore the proposed development is considered to protrude above the tree canopy.</td>
</tr>
<tr>
<td><strong>To use building materials and finishes that complement the natural setting.</strong></td>
<td>Use a mix of materials, textures and finishes including render, timber, non-masonry sheeting, glazing, stone and brick.</td>
<td>Period reproduction styles and detailing.</td>
<td>Responds The proposed development incorporates a mixture of building material such as timber, timber cladding; and, render. The colours are considered to compliment the</td>
</tr>
<tr>
<td>Objectives</td>
<td>Design Responses</td>
<td>Avoid</td>
<td>Planning Officer Assessment</td>
</tr>
<tr>
<td>---------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------</td>
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<td>------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>To maintain the openness of the front garden to the street.</td>
<td>• Provide open style front fences, other than along heavily trafficked roads.</td>
<td>High or solid front fences.</td>
<td>responds</td>
</tr>
<tr>
<td></td>
<td>• Use vegetation as an alternative where possible.</td>
<td></td>
<td>The development does not propose to change the front fence, the 1.7m picket fence will remain.</td>
</tr>
</tbody>
</table>

streetscape of Wattle Avenue. The proposed development doesn’t reduce the style and period of the dwellings found throughout the immediate area.
ResCode Clause 55 (Two or More Dwellings on a Lot and Residential Buildings)

<table>
<thead>
<tr>
<th>Title and Objective</th>
<th>Complies with Standard?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>B1 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>B2 Residential Policy</strong></td>
<td>Yes</td>
<td>The subject site is appropriately located with regard to the services and facilities required to support the proposed aged care facility.</td>
</tr>
<tr>
<td>Residential development is consistent with housing policies in the SPPF, LPPF including the MSS and local planning policies. Support medium densities in areas to take advantage of public transport and community infrastructure and services.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B3 Dwelling Diversity</strong></td>
<td>N/A</td>
<td>The proposal is for the development of two dwellings therefore an assessment against Standard B3 is not required.</td>
</tr>
<tr>
<td>Encourages a range of dwelling sizes and types in developments of ten or more dwellings.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B4 Infrastructure</strong></td>
<td>Yes</td>
<td>Any upgrades required will be the responsibility of the developer.</td>
</tr>
<tr>
<td>Provides appropriate utility services and infrastructure 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 addresses the street and entries are clearly identifiable from the road.</td>
</tr>
<tr>
<td>Integrate the layout of development with the street.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| **B6 Street Setback**                       | Yes, subject to conditions. | Standard B6 requires the setback to be the average distance of the setbacks of the front walls of the existing buildings on the abutting allotments facing the front street or 9 metres, whichever is the lesser.  
The abutting allotments (13 Wattle Ave and 17 Wattle Ave) contain a setback of 8.47m and 12.49m, therefore the setback should be 10.4m or 9 metres. 
The applicant proposes the setback of 8 metres. The variation of 1 metre is sought. |
<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Yes/No</th>
<th>Requirement</th>
</tr>
</thead>
</table>
| **B7 Building Height** | Building height should respect the existing or preferred neighbourhood character | Yes | Required: 9m  
Proposed: 7.2m |
| **B8 Site Coverage** | Site coverage should respect the existing or preferred neighbourhood character and respond to the features of the site. | Yes | Maximum: 50%  
Proposed: 45% |
| **B9 Permeability** | Reduce the impact of stormwater run-off on the drainage system and facilitate on-site stormwater infiltration. | Yes | Minimum: 20%  
Proposed: 30.6% |
| **B10 Energy Efficiency** | 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. | Yes | The proposal provides for adequate solar access to the building, with living areas and private space located to achieve maximum energy efficiency. |
| **B11 Open Space** | Integrate layout of development with any public and communal open space provided in or adjacent to the development. | N/A | N/A.  
No communal areas are proposed. |
| **B12 Safety** | Layout to provide safety and security for residents and property. | Yes | The entrances of both dwellings will be clearly seen from Wattle Avenue.  
The secluded private open space areas of both dwellings will be appropriately fenced so that public thoroughfares are avoided. |
<p>| <strong>B13 Landscaping</strong> | 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. | Yes | Refer report. |</p>
<table>
<thead>
<tr>
<th>Item</th>
<th>Question</th>
<th>Decision</th>
<th>Reason</th>
</tr>
</thead>
<tbody>
<tr>
<td>B14 Access</td>
<td>Ensure the safe, manageable and convenient vehicle access to and from the development. Ensure the number and design of vehicle crossovers respects neighbourhood character.</td>
<td>Yes</td>
<td>Appropriate vehicular access is provided. <strong>Maximum:</strong> 33% of street frontage <strong>Proposed:</strong> 29% of street frontage The development proposes to retain the existing crossover.</td>
</tr>
<tr>
<td>B15 Parking Location</td>
<td>Provide resident and visitor vehicles with convenient parking. Avoid parking and traffic difficulties in the development and the neighbourhood. Protect residents from vehicular noise within developments.</td>
<td>Yes</td>
<td>Refer report.</td>
</tr>
<tr>
<td>B17 Side and Rear Setbacks</td>
<td>Ensure the height and setback respects the existing or preferred neighbourhood character and limits the amenity impact on existing dwellings.</td>
<td>Yes, subject to conditions.</td>
<td>Refer report.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Ground Floor</th>
<th>First Floor</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>West (side)</strong></td>
<td><strong>East (side)</strong></td>
</tr>
<tr>
<td>Required</td>
<td>Proposed</td>
</tr>
<tr>
<td>0m or 2m</td>
<td>1.5m or 2m</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>North (rear)</strong></td>
<td><strong>North (rear)</strong></td>
</tr>
<tr>
<td>0m or 3m</td>
<td>3m</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>B18 Walls on Boundaries</th>
<th>N/A</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ensure the location, length and height of a wall on a boundary respects the existing or preferred neighbourhood character and limits the amenity impacts on existing dwellings.</td>
<td>No proposed walls on boundaries are proposed.</td>
<td></td>
</tr>
</tbody>
</table>

| B19 Daylight to Existing Windows | Yes | The proposal is set back from property boundaries sufficiently to ensure daylight to existing windows is maintained. |

<p>| B20 North Facing Windows | Yes | There are no north facing windows within |</p>
<table>
<thead>
<tr>
<th>Item</th>
<th>4.7 – Matters of Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Allow adequate solar access to existing north-facing habitable room windows.</td>
<td>metres of the boundary.</td>
</tr>
<tr>
<td><strong>B21 Overshadowing Open Space</strong>&lt;br&gt;Ensure buildings do not significantly overshadow existing secluded private open space.</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>B22 Overlooking</strong>&lt;br&gt;Limit views into existing secluded private open space and habitable room windows.</td>
<td>Yes, subject to condition</td>
</tr>
<tr>
<td><strong>B23 Internal Views</strong>&lt;br&gt;Limit views into existing secluded private open space and habitable room windows of dwellings and residential buildings within the same development.</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>B24 Noise Impacts</strong>&lt;br&gt;Protect residents from external noise and contain noise sources in developments that may affect existing dwellings.</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>B25 Accessibility</strong>&lt;br&gt;Consider people with limited mobility in the design of developments.</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>B26 Dwelling Entry</strong>&lt;br&gt;Provide a sense of identity to each dwelling.</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>B27 Daylight to New Windows</strong>&lt;br&gt;Allow adequate daylight into new habitable room windows.</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>B28 Private Open Space</strong>&lt;br&gt;Provide reasonable recreation and service needs of residents by adequate pos.</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>B29 Solar Access to Open Space</strong>&lt;br&gt;Allow solar access into the secluded private open space of new dwellings/buildings.</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>B30 Storage</strong>&lt;br&gt;Provide adequate storage</td>
<td>Yes</td>
</tr>
</tbody>
</table>
facilities for each dwelling.

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Decision</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<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 discussion in Attachment 3.</td>
</tr>
</tbody>
</table>
| **B32 Front Fences** | Encourage front fence design that respects the existing or preferred neighbourhood character. | Variation required | **Required:** 1.2 m  
**Proposed:** 1.8 m  
A 1.8m fence is proposed, therefore a variation of 0.6m is sought. The existing fence will remain and it is not proposed to be removed. The existing fence will continue to allow a level of permeability as is considered to be appropriate. |
| **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 | Complies |
| **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 development for required services and facilities. |
**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 proposed removal of Tree # 1*, 2*, 6*, 9*, and 10* (native trees are marked with a *) would have an impact on the character of the area once removed. However the landscape plans demonstrate that replacement planting will assist in enhancing the character of Wattle Avenue. It is noted that the street tree abutting the allotment (south) will assist in maintaining the vegetated streetscape.</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 application proposes to enhance the area by increasing the number of native vegetation provides on site. The applicant proposes 6 medium to large trees along with 37 small – large shrubs and small trees.</td>
</tr>
<tr>
<td><strong>The impact the vegetation removal would have on the appearance of development.</strong></td>
<td>The removal of vegetation will allow the development to be visible however the replacement planting will assist in screening the development. The number of trees and shrubs proposed are considered to be sufficient in order to negate the proposed vegetation removal.</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>No impact on the habitat quality is anticipated as the subject site is located within a semi built-up area of Beaumaris.</td>
</tr>
<tr>
<td><strong>Any proposal to regenerate or plant indigenous vegetation on the site.</strong></td>
<td>As mentioned above, the applicant proposes 6 medium to large trees along with 37 small – large shrubs and small trees. The proposed regeneration is considered to be sufficient.</td>
</tr>
</tbody>
</table>

**Definitions**

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

**(H) High**

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

**(M) Medium**

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

**(L) Low**

The tree is generally in fair health and structure, provides low levels of amenity and may do so for up to 10 years. The tree may be juvenile or otherwise small and easily replaced by advanced plantings or plantings that will provide similar amenity value in a reasonable timeframe.
4.8 179 AND 181 CHURCH STREET, BRIGHTON
NOTICE OF DECISION TO GRANT A PLANNING PERMIT
APPLICATION NO: 2017/175/1 WARD: NORTHERN

1. Purpose and background
The application is for the development of a three-storey residential building containing ten (10), three (3) bedroom dwellings, fence exceeds a height of 1.2m and a basement car park on a lot with an area of 1,226 square metres (refer Attachment 1) at 179 and 181 Church Street, Brighton (refer Attachment 2).

2. Policy implications
Planning permit requirements
Clause 32.08-4 - General Residential Zone, Schedule 2 (GRZ2) - Construction of two or more dwellings on a lot.
Clause 32.08-6 - General Residential Zone, Schedule 2 (GRZ2) - Construction of a front fence within 3 metres of a street.
Clause 43.02-2 - Design and Development Overlay, Schedule 11 (DDO11) – Construct a building or construct and carry out works exceeding a height of 9 metres

Planning Scheme Amendment
There are no planning scheme amendments relevant to this proposal.

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>Drainage Engineer</td>
<td>No objection, subject to conditions.</td>
</tr>
<tr>
<td>Arborist</td>
<td>No objection, subject to conditions.</td>
</tr>
<tr>
<td>Traffic Engineer</td>
<td>No objection, subject to conditions.</td>
</tr>
</tbody>
</table>

Public notification
The application was advertised pursuant to Sections 52(1) (a) and (d) of the Planning and Environment Act 1987 and 17 objections were received. The following concerns were raised:
- Overdevelopment;
- Noise;
- Side setbacks;
• Car parking impacts and increased traffic congestion;
• Visual bulk / height / physical dominance;
• Loss of views;
• Overshadowing;
• Location of air conditioning units;
• Inconsistency with neighbourhood character;
• Loss of privacy/overlooking;
• Light pollution; and
• Limited landscaping opportunities.

Consultation meeting

A consultation meeting was offered to the applicant, however the applicant declined a consultation meeting.

The applicant chose to conduct their own level of consultation directly with the objectors; as a result, five (5) objections were withdrawn.

The applicant submitted ‘discussion’ plans on 6 December 2017. Council’s decision is based on these plans. The plans include the following changes:

• Site coverage reduced from 75% to 68%;
• Permeable area increased from 15% to 16.4%;
• Minor amendments to the floor plans to reduce site coverage;
• Additional visitor parking to basement (total of 2 as per planning scheme requirements);
• Relocation of air conditioning to basement;
• increased screening; and
• Retain/rebuild of existing wall on north/east boundary.

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 2017/175/1 for the land known and described as 179-181 Church Street, Brighton, for the development of a three-storey residential building containing ten (10), three (3) bedroom dwellings, fence exceeds a height of 1.2m and basement carpark in accordance with the endorsed plans and subject to the following conditions from the standard conditions:

1. Before the development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the advertised plans but modified to show:
   a) Modifications in accordance with the ‘discussion’ plans Council date stamped 6 December 2017;
   b) Reduction in the overall site coverage to be a maximum of 60% in accordance with Standard B8 (Site Coverage) of the Bayside Planning
b) Provision of 20% permeability throughout the entire site in accordance with Standard B9 (Permeability) of the Bayside Planning Scheme;
d) Installation of a signal system at the top of the ramp with a ‘stop-go’ signal;
e) The provision of external security lighting within the site;
f) Details of the pedestrian sight triangle on the north-west side of the accessway must have a minimum 1m offset from the north-west property boundary provide adequate sight triangle;
g) Ground and floor levels to be shown in Australian Height Datum;
h) Location of all plant and equipment, including hot water services and air conditioners etc. Plant equipment is to be located away from habitable room windows of dwellings and the adjoining properties habitable rooms.

All to the satisfaction of the responsible of the responsible authority.

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

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

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, 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;

Landscaping

7. Prior to the endorsement of plans pursuant to Condition 1, a Landscape Plan to the satisfaction of the Responsible Authority must be submitted to and be endorsed by the Responsible Authority. The plan must be drawn to scale with dimensions and three copies must be provided. The plan must 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 protected vegetation to be removed from the site.
c) Provision of a 10 small canopy trees throughout the site;
d) A survey, including botanical names, of all existing trees on neighbouring properties where the Tree Protection Zones of such trees calculated in accordance with AS4970-2009 fall partially within the subject site.
e) A planting schedule of all proposed trees and shrubs, including botanical names, common names, pot sizes, sizes at maturity, and quantities of each plant.
f) Landscaping and/or planting within all areas of the site not covered by buildings or hard surfaces.

g) Details of surface finishes of pathways and driveways.

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

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

Water Sensitive Urban Design

10. Before the development starts, detailed plans to the satisfaction of the Responsible Authority must be submitted to and endorsed by the Responsible Authority. The plan must be drawn to scale with dimensions and three copies must be provided. The plans must show:

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

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

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

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

11. 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.

Traffic / Drainage

12. Before the occupation of the development starts, the area(s) set aside for vehicle parking and access ways 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.

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

14. 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.

15. 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.

Waste Management Plan

16. Before the development starts, a Waste Management Plan must be submitted to and approved by the Responsible Authority. The Waste Management
Plan must clearly indicate that waste collection is to be via a private contractor, not Council, and include:

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

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

Construction Management Plan

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

a) A detailed schedule of works including a full project timing.
b) A traffic management plan for the site, including when or whether any access points would be required to be blocked, an outline of requests to occupy public footpaths or roads, or anticipated disruptions to local services, preferred routes for trucks delivering to the site, queuing/sequencing, excavation and swept-path diagrams.
c) The location for the parking of all construction vehicles and construction worker vehicles during construction.
d) Delivery of materials including times for loading/unloading, unloading points, expected frequency and details of where materials will be stored and how concrete pours would be managed.
e) Proposed traffic management signage indicating any inconvenience generated by construction.
f) Fully detailed plan indicating where construction hoardings would be located.
g) A waste management plan including the containment of waste on site: disposal of waste, stormwater treatment and on-site facilities for vehicle washing.

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

i) Site security.

j) Public safety measures.

k) Construction times, noise and vibration controls.

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

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

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

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


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

r) Details of crane activities, if any.

Development Contributions

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

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

Permit Expiry

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

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

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

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

Permit Notes

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

- Council must be notified of the vehicular crossing and reinstatement works.
• 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 2017-2021

Relevant strategies of the Council plan include:

• Where neighbourhood character, streetscapes and heritage is respected and enhanced, and the community has a strong connection to place.

• Where development contributes to a high visual amenity, is ecologically sustainable, demonstrates high quality compliant design, and responds to the streetscape and neighbourhood context.

Relevant strategies of the Council plan include:

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

Bayside Planning Scheme

• Clause 9 Plan Melbourne
• Clause 11 Settlement
• Clause 15 Built Environment and Heritage
• Clause 16 Housing
• Clause 21.02 Bayside Key Issues and Strategic Vision
• Clause 21.03 Settlement and Housing
• Clause 21.06 Built Environment and Heritage
• Clause 21.10 Infrastructure
• Clause 21.11 Local Areas
• Clause 22.06 Neighbourhood Character Policy (Precinct B2)
• Clause 22.08 Water Sensitive Urban Design
• Clause 32.08 General Residential Zone (Schedule 2)
• Clause 43.02 Design and Development Overlay (Schedule 11)
• Clause 45.06 Drainage Contributions Plan Overlay
• Clause 52.06 Car Parking
• Clause 55 Two or more dwellings on a lot
• Clause 65 Decision Guidelines

5. Considerations

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

5.1. Strategic Justification
The Planning Policy Framework supports the intensification of development in and around public transport nodes and in activity centres. The local areas policy contains a subsection relating specifically to the Church Street Major Activity Centre (Clause 21.11-3) that seeks to encourage residential development close to shops and services to provide a transition from the business precinct to low scale residential areas.

Furthermore Clause 21.11 encourages redevelopment of larger sites and grade level car parks for residential with basement car parking and encourages the provision of adequate off-street parking for all new dwellings.

Additionally, the policy in Clause 21 seeks to provide an opportunity for as many people as is appropriate given the character of the area and the opportunities for change to live and work in Brighton, with access to public transport and within walking and cycling distance of activity centres, and hence to provide a real transport option for people other than the private car. It is considered that the proposal meets the above policy aspirations.

5.2. Design and Development Overlay Schedule 11 (DDO11)

The design objectives of this schedule are as follows:

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

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

Precinct E has the following build form provisions:

<table>
<thead>
<tr>
<th>Precinct</th>
<th>Preferred building height</th>
<th>Maximum building height</th>
</tr>
</thead>
<tbody>
<tr>
<td>B</td>
<td>13.5m (4 storeys)</td>
<td>-</td>
</tr>
<tr>
<td>C</td>
<td>11.0m (3 storeys)</td>
<td>-</td>
</tr>
<tr>
<td>D</td>
<td>9.0m (2 storeys) fronting Well Street 11.0m (3 storeys) fronting any other street</td>
<td>-</td>
</tr>
<tr>
<td>E</td>
<td>11.0m (3 storeys); or 12.0m (3 storeys) where the slope of the natural ground level at any cross section of the site of the building wider than 8m is 2.5 degrees or more</td>
<td>-</td>
</tr>
</tbody>
</table>

The proposal retains the low rise, neighbourhood character of the Church Street Major Activity Centre by respecting the scale of built form. The amended plans comply with the Design and Development Overlay – Schedule 11 for the following reasons:
- The proposed development consists of a maximum height of 10 metres (above NGL) / three storeys development. There are no portions that exceed the 11 metres;
- The second floor is setback 4 metres from the front wall of the first floor;
- The bulk, location and appearance of the development is considered to be in keeping with the emerging character and appearance of adjacent buildings located within close proximity and is considered to enhance the streetscape;
- The proposed development does not overshadow any public space nor any adjoining streets to an unsatisfactory level;
- The proposed use of a mixture of building materials provides a level of articulation and breaks up the perceived bulk from all abutting allotments;
- The subject is located within walking distance to Middle Brighton Station which encourages the use public transport and furthers The Church Street Centre Framework Plan;
- The proposed development will contribute to creating a vibrant residential activity centre;
- The proposed development is considered to be consistent with the Church Street Centre Framework Plan;
- The subject site does not abut any heritage dwellings, therefore the design, form, layout, proportion and scale of the proposed buildings is considered to be compatible with the style, form, proportion, and scale of the neighbouring properties; and,
- The layout and appearance of areas set aside for car parking is considered sufficient;

In principle, the proposed development and the diversity of the housing stock is supported. The precinct as a whole offers a variety of dwelling sizes and types therefore the increase in assortment of dwellings for the subject site is an appropriate outcome for the precinct. In general, this form of medium density development is encouraged under the Church Street Centre Framework Plan therefore, the proposed development is considered to be consistent with the objectives of the DDO11.

5.3. Neighbourhood character

The site is located within the Neighbourhood Character Precinct B2. 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.

The development incorporates appropriate boundary setbacks to reflect the built form pattern of the area while promoting adequate visual separation between the adjoining dwellings. It is noted that the character of Church Street consists of various built form elements, therefore the proposed contemporary design will not seem at odds with the immediate area. The development will sit comfortably within the context largely due to the articulated facades, roof form responsive to dwelling forms in the neighbourhood, appropriate front setbacks in accordance with the DDO, materials and finishes that are complementary to the existing and the preferred character of the area. The contemporary design of the development provides a level of visual interest along with various forms of articulation along all boundaries. The various forms of external building materials including brick veneer assists in integrating the development in to the emerging neighbourhood character.

The proposed setbacks from the side boundaries allow for suitable landscaping opportunities to enhance the landscaped character of the area. The proposed setback along with the amount of open space along the frontage, side and rear of the subject site
provides an opportunity for the provision of landscaping, subject to conditions, thus maintaining the vegetated streetscape.

On balance, it is considered that the proposal is respectful of both the prevailing and preferred neighbourhood character and appropriately responds to the characteristics of, vegetated streetscape, visual separation between buildings, and street presentation.

5.4. **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 (noting the corresponding objectives have been achieved):

**Street Setback (Standard B6)**

The proposed development is on a corner allotment, therefore the proposed setback should be the same distance as the setback of the front wall of the existing building on the abutting allotment facing the front Street or 9 metres; whichever is the lesser.

Based on these calculation the setback should be 7.6 metres. The development proposes a setback of 5.5 metres, therefore a variation of 2.1 metres is sought.

The proposed variation of 2.1m is supported as:

- Church Street provides various street setbacks that range from 22.1m to 3.6, therefore there is no prevailing street setback;
- The proposed 2.1m is considered to be minimal;
- The proposed development is located on a corner therefore the 5.5m setback is considered to act as a transitional setback to that of the abutting allotments which is 7.6m;
- The proposed setback is not considered be detrimental to the immediate area;
- The proposal of vegetation located along street frontage would reduce the visual impact of the proposed development; and
- Considering the siting and the scaling of the upper floors, the proposed setback is considered to be appropriate.

**Site Coverage (Standard B8)**

The subject site is located within a General Residential Zone – Schedule 2, therefore the site coverage should be 60%, the proposed site coverage is 68% and therefore a variation of 8% is sought.

Considering the size of the lot (1,226sqm) there is insufficient justification for a variation of 8% it is for this reason that a condition will be placed on any permit issued requiring site coverage to be reduced to 60%. The reduction in the footprint by 8% is considered to minimal and will have no detrimental/amenity impact on the use of the site. The 8% can be provided by reducing the overall built form, this can be accommodated internally, given the size of the proposed development. The reduction in the overall footprint of the development would provide for greater landscaping opportunities.

**Permeability (Standard B9)**

Pursuant to Standard B9 a development should provide for 20% permeability, the development proposes permeability of 16.4%, therefore a variation of 3.6% is sought.

As mentioned above, given the size of the lot (1,226sqm) Council considers that there is insufficient justification for the variation on 3.6%. By reducing the site coverage (as mentioned above), the permeability will therefore be increased. In order to ascertain that the development complies with Standard B9, a condition will be placed on any permit issued requiring the permeability be increase to a minimum of 20%.
Side and Rear Setbacks (Standard B17)

<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><strong>North (rear)</strong></td>
<td><strong>Required</strong></td>
</tr>
<tr>
<td>0-0.2m or 1m</td>
<td>2.9 m – 4.9m</td>
</tr>
<tr>
<td><strong>West (side)</strong></td>
<td><strong>Required</strong></td>
</tr>
<tr>
<td>0-0.2m or 1m</td>
<td>2.2m – 4.7m</td>
</tr>
<tr>
<td><strong>East (Bemmersyde Avenue (side))</strong></td>
<td><strong>Required</strong></td>
</tr>
<tr>
<td>0-0.2m or 2m</td>
<td>2.5m – 5.3m</td>
</tr>
</tbody>
</table>

| **Proposed**                               | **Proposed**                |
| **North (rear)**                           | 1.1m, 1.3m                  |
| **West (side)**                            | 1.39m, 1.96m                |
| **East (Bemmersyde Avenue (side))**        | 2.3m, 2.5m                  |

| **Second floor**                           | **Proposed**                |
| **Required**                               | **Proposed**                |
| **North (rear)**                           | 5.69m, 5.99m                |
| **West (side)**                            | 5.8m, 5.99m                 |
| **East (Bemmersyde Avenue (side))**        | 5.09m, 5.99m                |

| **Proposed**                               | 4.4m                        |

The proposal complies with the required setbacks at ground level, however two variations are required along the first floor and second floor; they are follows:

- First floor along the east (Bemmersyde Avenue (side)) a variation of 0.5m is sought; and,
- Second floor along the east (Bemmersyde Avenue (side)) a variation of 0.6m is sought.

This variation is considered to be appropriate as:

- The subject site along the eastern boundary buts a non-interactive interface (Bemmersyde Avenue) therefore negative impact on Avenue is not anticipated;
- Due to the proposed mixture of building materials along the east the visual bulk is reduced;
- The encroachment is not considered to have a detrimental impact on neighbourhood character of the area as it does not create an unreasonable amount of visual bulk when viewed from the abutting allotment as well as the public realm;
- The variation of between 0.05 – 0.6m is considered to be minimal as it achieves the objective of the standard;
- There is sufficient built form separation (recession) between first and second floor;
- The proposed setback does not negatively overshadow the Bemmersyde Avenue;

The proposed variations are considered to appropriate as the setbacks are not considered to negatively impact the neighbouring properties, the setbacks are consistent with the built from within the immediate area and the overall proposal has a high degree of compliance with ResCode.

Furthermore, it is noted that a certain level of compromise is required based on the site’s location and been identified as been located within a Major Activity Centre (Church Street Major Activity Centre).

**Front fences (Standard B32)**
A 1.8m fence is proposed, therefore a variation of 0.6m is sought. The variation is considered to be appropriate as:

- The 1.8m fence provides seclusion to the private open space of unit A1 and A4;
- There are various examples of similar fencing heights throughout Church Street;
- The proposed fence will not appear to be at odds with the immediate area as the abutting allotment (175 Church Street) contains a 2m (approx.) front fence.

5.5. Car parking and traffic

The purpose of Clause 52.06 (Car Parking) is to:

- To ensure the provision of an appropriate number of car parking spaces having regard to the demand likely to be generated, the activities on the land and the nature of the locality.
- To support sustainable transport alternatives to the motor car.
- To promote the efficient use of car parking spaces through the consolidation of car parking facilities.
- To ensure that car parking does not adversely affect the amenity of the locality.
- To ensure that the design and location of car parking is of a high standard, creates a safe environment for users and enables easy and efficient use.

The development proposes the following:

<table>
<thead>
<tr>
<th>Use</th>
<th>Size</th>
<th>Planning Scheme Parking Rate</th>
<th>Car Parking Requirement</th>
<th>Car Parking Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dwelling (resident)</td>
<td>10 x 3 Bedroom</td>
<td>2 spaces to each 3 bedroom dwelling</td>
<td>20 spaces</td>
<td>22 spaces</td>
</tr>
<tr>
<td>Dwelling (visitor)</td>
<td>10 dwellings</td>
<td>1 space for visitors to every 5 dwellings</td>
<td>2 visitor spaces</td>
<td>2 visitor spaces</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td></td>
<td><strong>22 SPACES</strong></td>
<td><strong>23 SPACES</strong></td>
</tr>
</tbody>
</table>

Pursuant to Clause 52.06 a minimum of 20 spaces are required to be provided for the proposed development with an additional 2 visitor spaces. The proposal complies with Clause 52.06.

It is noted that the advertised plans required the variation of one (1) visitor parking space, however the without prejudice plans submitted on 6 December 2017 provide the statutory requirement of two (2) spaces.

Additionally, pursuant to Clause 52.34 – Bicycle Facilities, a residential development is required to provide;

- One (1) space to each five (5) dwellings for residents and one (1) to each ten (10) dwellings for visitors.

The proposed development proposed six (6) bicycle spaces, which is in excess of the statutory requirement.

Whilst it is acknowledged that the development will generate some additional vehicle movements on the local road network, it is not considered that such additional movements would necessarily be concentrated or conflict substantially with existing traffic. Furthermore some residents may choose to walk, cycle or use public transport which is available within a short walking distance of the site.

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.

5.6. Vegetation & Landscaping

Council’s Arborist has attended the site and has advised that the existing vegetation on the site have low amenity values. It is noted that no trees are protected by any statutory planning overlay.

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

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

Council’s Arborist in their referral response advised that there is no objection to the proposed removal of all trees on their low amenity value and subject to replacement value. Conditions will be placed on any permit issued requiring replacement planting to occur throughout the development.

With regards to the future planting on the site, the proposed development incorporates landscaping opportunities to achieve an outcome consistent with the existing and preferred character of the area. The Bayside City Council Landscape Guidelines (2015) specify that for low density applications, one large canopy tree (8-15 m height and greater than 4m canopy spread) should be planted in the front of dwelling one and one – two medium tree and two small (6m to 8m height) tree are planted in the rear of the site. Council arborist advised that the site should either accommodate 4 large trees or 10 small trees. It was considered that the provision of 10 small trees reaching a height of 6m to 8m would assist in screening the development and further contribute to the neighbourhood character of the area. It is considered that sufficient soil volume has been provided for 10 small trees to grow to their full potential. The provision of landscaping will reduce the visual impact to the abutting allotments.

The proposed development is considered to comply with The Bayside City Council Landscape Guidelines (2015) subject to conditions. The landscape plan also includes a variety of shrubs and ground covers within the front and rear setbacks, and along the side boundaries. The landscape plan will achieve an outcome consistent with the preferred landscaped character of the area.

5.7. Objections received

Overdevelopment

State and Local Planning Policy envisage an increase in housing density in well serviced areas such as this. Clause 21.11 State Planning Framework of the Bayside Planning Scheme encourages higher density housing development on sites that are well located in relation to activity centres, employment corridors and public transport. The increase in population and density at this site is considered an appropriate response to the underutilised state of the site and the proximity of the site to public transport, shops and other services. While any increase in population density will likely increase the level of activity around the site and area, it is not envisioned that such an increase would be detrimental or substantially more intensive than what is currently experienced.

Loss of views
The Victorian Civil and Administrative Tribunal has consistently found that although impact upon views can be considered amongst the amenity impacts of a proposal, there cannot be considered a right to any particular view. In the absence of particular planning controls which might require the protection of, or sharing of views, loss of views is usually afforded very limited weight. This is especially the case where a view is obtained across adjoining land and the views are not afforded any special consideration in a planning control. In this case the development is not considered to intrude unreasonably upon the skyline to reduce the amenity of neighbours through their outlook or access to daylight.

**Noise**

The proposed residential use will have noise impacts consistent with those normal to a residential zone. Speech, laughter, music etc. are noises associated with people living their lives and are all part of life in an urban area.

The noise levels generated by the development will not be significantly above that of the surrounding area. Residents are no more or less likely to generate excessive noise than the occupiers of the surrounding dwellings.

**Location of air conditioning units**

The amended plans relocate the air conditioning condensers to the basement.

**Light pollution**

The amount of lighting caused by the proposed development is not considered to be unreasonable for a residential building. The proposed development does not have any externally lit signage nor any other lighting at is considered to cause direct or indirect amenity impacts.

**Support Attachments**

1. Development Plans
2. Site and Surrounds Imagery
3. Neighbourhood Character Assessment
4. Clause 55 Assessment
Item 4.8 – Matters of Decision
Figure 1 Aerial overview of the site and surrounds, two objections were received from properties located outside of this map.

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

Figure 3 View towards the site from the northeast
Figure 3 View towards the site from the southeast (Bemmersyde Avenue).
Attachment 2
Neighbourhood Character Precinct B2
Preferred Future Character Statement

The diverse dwelling styles, with a continued presence of pre WW2 dwellings, sit within established gardens with occasional tall canopy trees. Side setbacks on both sides, and the setting back of carports/garages from the dwelling, allows for vegetation to flow around the dwellings. New buildings blend with the existing, through using a variety of materials or colours within front façades, and by respecting the older building styles and scales without replicating them. Open style front fencing improves the visual connection between the dwelling and the street. Street tree planting consistency is improved to provide a unifying element to the area.

Precinct Guidelines

<table>
<thead>
<tr>
<th>Objectives</th>
<th>Design Responses</th>
<th>Avoid</th>
<th>Planning Officer Assessment</th>
</tr>
</thead>
<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. • Alterations and extensions should retain the front of these dwellings.</td>
<td>Demolition of dwellings that contribute to the valued character of the Precinct.</td>
<td>Responds</td>
</tr>
<tr>
<td>To maintain and enhance the garden settings of the dwellings.</td>
<td>• Prepare a landscape plan to accompany all applications for new dwellings that includes substantial trees and shrubs.</td>
<td>Lack of landscaping and substantial vegetation.</td>
<td>Respond</td>
</tr>
<tr>
<td>To maintain the rhythm of spacious visual separation between buildings and provide space for front gardens.</td>
<td>• 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.</td>
<td>Loss of front garden space.</td>
<td>Responds, subject to conditions</td>
</tr>
<tr>
<td>To minimise the loss of front garden space and the dominance of car parking facilities.</td>
<td>• Locate garages and carports behind the line of the dwelling. • Provide only one vehicular crossover per typical site frontage. • Underground car parking accessed from the front of the site should only be provided where other options are not possible due to site constraints, the garage doors do not dominate the façade and the front setback area is retained as predominantly garden space.</td>
<td>Car parking facilities that dominate the façade or view of the dwelling.</td>
<td>Responds</td>
</tr>
<tr>
<td>To ensure new development respects the dominant buildings</td>
<td>• Articulate the form of buildings and elevations, particularly front façades.</td>
<td>Large buildings with poorly</td>
<td>Responds</td>
</tr>
</tbody>
</table>

Church Street contains various forms of development including contemporary
<table>
<thead>
<tr>
<th>Objectives</th>
<th>Design Responses</th>
<th>Avoid</th>
<th>Planning Officer Assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>forms and scale of buildings in the Precinct, through the use of innovative architectural responses.</td>
<td>• Recess upper storey elements from the front façade.</td>
<td>articulated facades.</td>
<td>design. The proposed development will enhance the existing and emerging character of the area by utilising similar forms of materials, finishes; and, landscaping. The dwellings feature articulated forms and second storey elements will be recessed from the side walls and surfaces. The recessed upper storey elements from the front façade response to the neighbourhood character of the street. It is considered that due to the architectural design found throughout Church street, the proposed development is considered to be appropriate as it meets the existing and emerging neighbourhood character of the street.</td>
</tr>
<tr>
<td>To respect the identified heritage qualities of adjoining buildings.</td>
<td>• Where adjoining an identified heritage building, respect the height, building forms, siting and materials of the heritage building/s, in the new building design.</td>
<td>Buildings that dominate heritage buildings by height, siting or massing. Imitation or reproduction of historic building styles and detailing.</td>
<td>N/A The proposed development is located within close proximity to heritage dwellings, however the proposed development does not adjoin any heritage dwelling</td>
</tr>
<tr>
<td>To use a variety of building materials and finishes that provide visual interest in the streetscape.</td>
<td>• Incorporate a variety of building materials such as brick, render, timber and non-masonry into the building design. • Use simple building details.</td>
<td>Exclusive use of one material on external wall facades.</td>
<td>Responds The proposal utilises a variety of materials, including render and brickwork. The palette of colours is considered appropriate and assists in reducing visual bulk.</td>
</tr>
<tr>
<td>To improve the visual connection between the dwellings and the streetscape and encourage views to front gardens.</td>
<td>• Provide open style front fences, other than along heavily trafficked roads. • Front fence style should be appropriate to the building era.</td>
<td>High, solid fences</td>
<td>Responds The front fencing would be of a height up to 1.8 metres and be brick render. It is considered the fence does not present as a dominant feature as it is in keeping with the surrounding area. The fencing material is considered to be appropriate and will not seem juxtaposed to the immediate area.</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><strong>B1 Neighbourhood Character</strong></td>
<td>Yes</td>
<td>Refer report.</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><strong>B2 Residential Policy</strong></td>
<td>Yes</td>
<td>The subject site is appropriately located with regard to the services and facilities required to support the proposed residential development.</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><strong>B3 Dwelling Diversity</strong></td>
<td>Yes</td>
<td>Refer report.</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>
<td></td>
</tr>
<tr>
<td><strong>B4 Infrastructure</strong></td>
<td>Yes</td>
<td>Any upgrades required will be the responsibility of the developer.</td>
<td></td>
</tr>
<tr>
<td>Provides appropriate utility services and infrastructure without overloading the capacity.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B5 Integration with the Street</strong></td>
<td>Yes</td>
<td>The development addresses the street and entries are clearly identifiable from the road.</td>
<td></td>
</tr>
<tr>
<td>Integrate the layout of development with the street.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B6 Street Setback</strong></td>
<td>Variation required</td>
<td>The proposed development is on a corner, therefore the proposed setback should be the same distance as the setback of the front wall of the existing building on the abutting allotment facing the front street or 9 metres, whichever is the lesser. Based on these calculation the setback should be 7.6 metres, the development proposes a setback of 5.5 metres. Refer to report for justification.</td>
<td></td>
</tr>
<tr>
<td>The setbacks of buildings from a street respect the existing or preferred neighbourhood character and make efficient use of the site.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| B7 Building Height | Yes | **Required:** 11m  
<table>
<thead>
<tr>
<th></th>
<th></th>
<th><strong>Proposed:</strong> 9.6m</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building height should respect the existing or preferred neighbourhood character</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| B8 Site Coverage | Yes, subject to condition | **Maximum:** 60%  
|                  |                            | **Proposed:** 68%  
|                  | Refer to report for justification. |
| Site coverage should respect the existing or preferred neighbourhood character and respond to the features of the site. |

| B9 Permeability | Yes, subject to condition | **Minimum:** 20%  
|                 |                            | **Proposed:** 16.4%  
|                 | Refer to report for justification. |
| Reduce the impact of stormwater run-off on the drainage system and facilitate on-site stormwater infiltration. |

| B10 Energy Efficiency | Yes | The proposal provides for adequate solar access to the building, with living areas and private space located to achieve maximum energy efficiency. |
|                       |     |                                                               |
| 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 | N/A. |
|               |     |      |
| Integrate layout of development with any public and communal open space provided in or adjacent to the development. |

| B12 Safety | Yes | Complies |
|           |     |          |
| Layout to provide safety and security for residents and property. |

| B13 Landscaping | Yes | Refer 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
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>Required</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>Appropriate vehicular access is provided; the proposed development utilises the existing crossover (located off Church Street).</td>
</tr>
</tbody>
</table>

**Maximum:** 40% of street frontage

**Proposed:** 30% of street frontage

### 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>Required</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>Refer report.</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Required</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Variation required</td>
<td>Refer report.</td>
</tr>
</tbody>
</table>

### Ground Floor

<table>
<thead>
<tr>
<th>Required</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>North (rear)</td>
<td>0-0.2m or 1m, 2.9 m – 4.9m, 1.1m, 1.3m, 3.3m, 5.8m</td>
</tr>
<tr>
<td>West (side)</td>
<td>0-0.2m or 1m, 2.2m – 4.7m, 1.39m, 1.96m, 1.6m, 2.9m, 3.3m</td>
</tr>
<tr>
<td>East (Bemmersyde Avenue (side))</td>
<td>0-0.2m or 2m, 2.5m – 5.3m, 2.3m, 2.5m, 1.8m, 2.5m</td>
</tr>
</tbody>
</table>

### First Floor

<table>
<thead>
<tr>
<th>Required</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>North (rear)</td>
<td>5.69m, 5.99m, 6.0m, 6.1m, 6.2m</td>
</tr>
<tr>
<td>West (side)</td>
<td>5.8m, 5.99m, 6.0m</td>
</tr>
<tr>
<td>East (Bemmersyde Avenue (side))</td>
<td>5.09m, 5.99m, 4.4m</td>
</tr>
</tbody>
</table>

### Second floor

<table>
<thead>
<tr>
<th>Required</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>North (rear)</td>
<td>6.0m, 6.1m, 6.2m</td>
</tr>
<tr>
<td>West (side)</td>
<td>6.0m</td>
</tr>
<tr>
<td>East (Bemmersyde Avenue (side))</td>
<td>4.4m</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Required</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>N/A</td>
<td>No walls on boundary is proposed.</td>
</tr>
</tbody>
</table>

### B19 Daylight to Existing

<table>
<thead>
<tr>
<th>Required</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>The proposal is set back from property boundaries sufficiently to ensure daylight to</td>
</tr>
</tbody>
</table>

Item 4.8 – Matters of Decision
<table>
<thead>
<tr>
<th>Item</th>
<th>Title</th>
<th>Decision</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Windows</td>
<td>Allow adequate daylight into existing habitable room windows.</td>
<td>existing windows is maintained.</td>
<td></td>
</tr>
<tr>
<td>B20 North Facing Windows</td>
<td>Allow adequate solar access to existing north-facing habitable room windows.</td>
<td>Yes</td>
<td>There are no north facing windows within 3 metres of the boundary.</td>
</tr>
<tr>
<td>B21 Overshadowing Open Space</td>
<td>Ensure buildings do not significantly overshadow existing secluded private open space.</td>
<td>Yes</td>
<td>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 and 3pm on 22 December.</td>
</tr>
<tr>
<td>B22 Overlooking</td>
<td>Limit views into existing secluded private open space and habitable room windows.</td>
<td>Yes</td>
<td>The development provides and exceeds the requirement of B22 by providing external screens, planter boxes and highlight windows in order to minimise overlooking.</td>
</tr>
<tr>
<td>B23 Internal Views</td>
<td>Limit views into existing secluded private open space and habitable room windows of dwellings and residential buildings within the same development.</td>
<td>Yes</td>
<td>Windows and balconies are designed to prevent overlooking into secluded private open space and habitable room windows of dwellings within the development by using screening and other measures to comply with the requirements of B23.</td>
</tr>
<tr>
<td>B24 Noise Impacts</td>
<td>Protect residents from external noise and contain noise sources in developments that may affect existing dwellings.</td>
<td>Yes</td>
<td>Plant room have been incorporated into the design of the building and is located on the roof centrally within the building away from the sensitive boundary interfaces.</td>
</tr>
<tr>
<td>B25 Accessibility</td>
<td>Consider people with limited mobility in the design of developments.</td>
<td>Yes</td>
<td>The development has been designed to accommodate people with limited mobility.</td>
</tr>
<tr>
<td>B26 Dwelling Entry</td>
<td>Provide a sense of identity to each dwelling.</td>
<td>Yes</td>
<td>The building has been designed with a sense of address to the street and allowing for shelter and a transitional space around the entry.</td>
</tr>
<tr>
<td>B27 Daylight to New Windows</td>
<td>Allow adequate daylight into new habitable room windows.</td>
<td>Yes</td>
<td>All habitable room windows have direct access to daylight.</td>
</tr>
<tr>
<td>B28 Private Open Space</td>
<td>Provide reasonable recreation and service needs of residents by adequate pos.</td>
<td>Yes</td>
<td>All dwellings provide sufficient private open space for future residents.</td>
</tr>
<tr>
<td>B29 Solar Access to Open Space</td>
<td>Allow solar access into the</td>
<td>Yes</td>
<td>Where practicable, private open space for each bedroom is located on the northern elevation (or east or west).</td>
</tr>
<tr>
<td>Item</td>
<td>Description</td>
<td>Action</td>
<td>Notes</td>
</tr>
<tr>
<td>------</td>
<td>-------------</td>
<td>--------</td>
<td>-------</td>
</tr>
<tr>
<td>B30 Storage</td>
<td>Provide adequate storage facilities for each dwelling.</td>
<td>Yes</td>
<td>All units are provide with sufficient storage facilities.</td>
</tr>
<tr>
<td>B31 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>
<tr>
<td>B32 Front Fences</td>
<td>Encourage front fence design that respects the existing or preferred neighbourhood character.</td>
<td>Variation</td>
<td>The 1.8m front fence is considered to be in keeping with the existing fence heights found throughout Church Street.</td>
</tr>
<tr>
<td>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>
<td>Yes</td>
<td>Complies, all common areas including pathways and basement car parking are easily delineated.</td>
</tr>
<tr>
<td>B34 Site Services</td>
<td>Ensure site services and facilities can be installed and easily maintained and are accessible, adequate and attractive.</td>
<td>Yes</td>
<td>There is adequate space in and around the development for required services and facilities.</td>
</tr>
</tbody>
</table>
1. **Purpose and background**

To report a secondary consent application for the use and development of a four storey building (plus basement car park) containing a retail premises and 22 dwellings, a reduction in the required car parking rate and a waiver of the loading and unloading of vehicles requirement on a lot with an area of 1,006 square metres (refer Attachment 1) at 439 Bay Street, Brighton (refer Attachment 2).

Planning Permit 2014/921/1 was issued at the direction of the Victorian Civil and Administrative Tribunal (VCAT) on 10 February 2016. The permit allows the use and development of a four storey building (plus basement car park) containing a retail premises and 22 dwellings, a reduction in the required car parking rate and a waiver of the loading and unloading of vehicles requirement (refer Attachment 3).

The applicant has now sought permission to amend the endorsed plans with the following change:

- Installation of a Parkolay Pakonfor 111 car stacker system in lieu of the Wohr Combilift 543-2.0 model.

**Note:** The site has been cleared and is under construction.

2. **Policy implications**

Planning permit requirements

There are no primary policy matters to consider as part of this application, which seeks to amend the endorsed plans pursuant to the secondary consent provisions afforded by Condition 2 of Planning Permit 2014/921/1.

3. **Stakeholder Consultation**

Referrals

There were no external referrals requires to be made in accordance with Clause 66 of the Bayside Planning Scheme and no internal referrals required to be made to other Council departments for comment.

Public notification

Applications made in accordance with the secondary consent provisions are not subject to the notice requirements of Section 52 of the *Planning and Environment Act 1987*. Therefore, the amended plans have not been advertised.

4. **Recommendation**

That Council:

Approve the Amended Plans in accordance with Secondary Consent Provisions of Planning Permit No. 2014/921/1 in respect of the land known and described as 439 Bay Street, Brighton, for the **Use and development of a four storey building (plus basement car park) containing a retail premises and 22 dwellings, a reduction in**
the required car parking rate and a waiver of the loading and unloading of vehicles requirement in accordance with the endorsed plans and subject to the following changes:

<table>
<thead>
<tr>
<th>Date</th>
<th>Amendments</th>
</tr>
</thead>
<tbody>
<tr>
<td>21 December 2017</td>
<td>Secondary Consent Amended Plans:</td>
</tr>
<tr>
<td></td>
<td>- Modifications to the development of the four storey building plus basement car park, which is known as 439 Bay Street, Brighton, in particular:</td>
</tr>
<tr>
<td></td>
<td>- Basement</td>
</tr>
<tr>
<td></td>
<td>- Installation of a Parkolay Pakonfor 111 car stacker system in lieu of the Wohr Comblift 543-2.0 model.</td>
</tr>
</tbody>
</table>

5. **Council Policy**

There are not any primary relevant Council policy matters to consider as part of the request to consider amending plans pursuant to the secondary consent provisions afforded by the planning permission.

6. **Considerations**

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

The tests include the following:

6.1. **Does the proposed amendment result in a transformation of the proposal?**

The amendment does not result in a transformation of the proposal. The amendment would provide for change to the model and manufacturer of the approved car stacker system. Importantly, the proposed alteration does not change the required number of car parking spaces which is consistent with the approved permit.

The scale and height of the overall building will not change. The proposal does not alter the outcome related to site coverage, permeability, overlooking or overshadowing. From a neighbourhood character perspective, the change would be inconsequential.

The proposed change is considered to be minor in nature and will have no impact to the amenity of adjoining properties and will not cause material detriment to any third parties. The proposed changes does not conflict with any permit conditions, objections raised in the application for which primary consent was granted for; and, does not result in a transformation of the proposal.

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

The primary consent was issued at the direction of VCAT for the use and development of a four storey building (plus basement car park) containing a retail premises and 22 dwellings, a reduction in the required car parking rate and a waiver of the loading and unloading of vehicles requirement. The amendment sought under this application is considered to be consistent with the proposal and does not authorise something for which primary consent is required for under the Bayside Planning Scheme.

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

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

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

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

**Support Attachments**

1. Development Plans ↓
2. Site and Surrounds Imagery ↓
3. Planning Permit 2014/921/1 and Endorsed Plans ↓
25th October, 2017

Guy de Vos
Figurehead
Tenancy 1, 11 Newton Street,
CREMORNE VIC 3121

Dear Guy,

PROPOSED DEVELOPMENT
439 BAY STREET, BRIGHTON
USE OF ALTERNATIVE VEHICLE STACKER

The Applicant currently has a Planning Permit for the construction of a building at 439 Bay Street, Brighton. Condition No. 9 of the Planning permit states the following:

9. The car stackers to be installed are a Wohr Comblift 543-2.0 Standard Type unless with the written consent of the Responsible Authority. The car stackers must be maintained in good working condition to the satisfaction of the Responsible Authority.

The applicant is seeking consent to change the model of stacker to a Parkolay Parkonfor 111.

Attached are the following items:

- The Car Stacker shop drawings that indicate the location of columns and other structural elements, and confirm that the platform width is 2.4 metres.
- The specification for the Parkolay Parkonfor 111 car stacker unit.

I can confirm the dimensions and structural elements of the Parkolay Parkonfor 111 is the same as the currently approved Wohr Comblift 543-2.0 unit.

The unit allows the top level of spaces (approximately one third of spaces) to accommodate vehicles of 1.8 metres in height, which satisfies the design criteria set down in Clause 52.06-9 of the Planning Scheme.

Please advise if you have any further queries.

Yours faithfully,

TTM Consulting (Vic) Pty. Ltd.

[Signature]

Damien Hancox

Ref 969117564.DOC

Suite 9, 70-80 Wellington Street, Collingwood, Vic, 3066
Telephone: (03) 9419 0911  Fax: (03) 9415 9456  email@ttmconsulting.com.au  web: www.ttmconsulting.com.au
ABN 71 123 813 865

Item 4.9 – Matters of Decision
APPENDIX A
Car Parking Equipment Tender Submission

Emerald Apartments,
439 Bay St,
Brighton
15 July 2017
Guy De Vos
Figurehead Construction
11 Newton St,
Cremorne, Vic 3121

Subject: Car Stacker System for Emerald Apartments

Dear Guy,

Thank you for the invitation and opportunity to submit our tender for this project. Our tender submission includes the procurement, delivery, installation, commissioning and twelve months’ warranty & essential maintenance of car stacker system based on the drawings provided.

The proposed equipment is manufactured under the Parkolay brand by Otomatik Otopark Sistemleri A.S. in Turkey. This company’s location enables them to offer the best of both worlds – innovative European design combined with low manufacturing costs. They have almost 20 years’ experience in the car stacker industry and have fully implemented both ISO 9001 and ISO 14001 management systems.

More information is available from their website: http://www.otomatik.com.tr/

When considering this offer please keep in mind the following advantages offered by the Parkolay brand:

- User friendly flat platforms for more safe & comfortable walking that are also easier to keep clean
- Recessed system columns across the system entrance for wider, easier parking access
- Increased lifting capacity of 2200kg with option to upgrade to 2800kg
- Wide choice of system width & height/pit depth options to suit more applications

The equipment is fully compliant with the applicable Australian Standard (AS 5124) which is based on the European manufacturing standard EN 14010 and is fully supported by Hamilton Elevators experienced team of Technicians as the exclusive authorized Australian Parkolay distributor.

We trust that this proposal meets with your requirements. If you have any questions please don’t hesitate to contact me.

Best Regards

Simon Bartlett
Victorian Sales Manager
Hamilton Elevators
0419 761 861
simon.bartlett@hamiltonelevators.com

Good People...great value
Car Parking Equipment Offer Summary

<table>
<thead>
<tr>
<th>Equipment Location</th>
<th>Model</th>
<th>Quantity</th>
<th>Car Spaces</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basement level</td>
<td>Parkonfor 111</td>
<td>1</td>
<td>26</td>
<td></td>
</tr>
</tbody>
</table>

Total Price (excluding GST)

Equipment Specifications – Car Stackers

<table>
<thead>
<tr>
<th>Description</th>
<th>Parkonfor 111 triple level puzzle system for 26 cars (x 1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parking Platform Widths</td>
<td>2400mm</td>
</tr>
<tr>
<td>Motor</td>
<td>4kW 3-phase (20 amp, 400V/50Hz)</td>
</tr>
<tr>
<td>Maximum Car Weights</td>
<td>2200kg (550kg per wheel – balanced)</td>
</tr>
<tr>
<td></td>
<td>Option for upgrade to 2800kg per vehicle if required</td>
</tr>
<tr>
<td>Maximum Car Heights</td>
<td>Upper level – 1800mm (based on 3800mm clear headroom)</td>
</tr>
<tr>
<td></td>
<td>Entrance level – 1750mm</td>
</tr>
<tr>
<td></td>
<td>Pit level – 1750mm</td>
</tr>
<tr>
<td>Maximum Car Length</td>
<td>5100mm</td>
</tr>
<tr>
<td>Operation</td>
<td>Push button key activated control panel</td>
</tr>
<tr>
<td></td>
<td>Full remote-control operation is also included with 26 handsets</td>
</tr>
<tr>
<td>Gates/Doors</td>
<td>Vertical opening roller shutters included</td>
</tr>
<tr>
<td>Warranty</td>
<td>12 months from Practical Completion</td>
</tr>
</tbody>
</table>

Site Requirements – Car Stackers

| Pit Depth                               | 2000mm                                                      |
| Pit Length                              | 5500mm                                                      |
| Pit Width                               | 23800mm (based on 300mm wide structural columns at entrance) |
| Headroom                                | 3800mm above entrance level clear of any obstructions or intrusions |
| Electrical                              | 3-phase to 20 amp outlet provided at agreed switch cabinet locations. Wall mounting space (approx. 800 x 1200 x 250mm) required for location. Must be located outside system on suitable adjacent wall |
| Construction                            | As per technical data sheet provided noting applicable nominated loadings. There must be no channels, spoon drains or other obstructions conflicting with fixing locations otherwise variations may apply |
| Safety                                  | Any exposed side or rear areas around the stackers must be protected by walls or fences to the equivalent height above ground level of the pit depth. No allowance for this is included in this proposal |
| Access                                  | Clear access to the stacker locations is required for delivery vehicles. The installation area must be dry with adequate space provided for tools & storage of equipment prior to assembly |

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Indicative Installation Schedule

<table>
<thead>
<tr>
<th>Drawings</th>
<th>2 weeks (subject to approval process)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manufacture</td>
<td>8-10 weeks</td>
</tr>
<tr>
<td>Delivery to site</td>
<td>7 weeks</td>
</tr>
<tr>
<td>Installation</td>
<td>6-8 weeks (window)</td>
</tr>
</tbody>
</table>

Contract Payment Schedule

<table>
<thead>
<tr>
<th>Sequence</th>
<th>Payment Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Commence manufacturing</td>
<td>20% of contract value to secure price &amp; prepare shop drawings.</td>
</tr>
<tr>
<td>2. On delivery to site</td>
<td>60% of contract value to be paid on or before delivery to site in exchange for transfer of ownership</td>
</tr>
<tr>
<td>3. On completion of installation</td>
<td>20% of contract value by progress claims</td>
</tr>
</tbody>
</table>

Terms

1. Price is based on Hamilton Elevators terms and conditions.
2. The following is the Owner/Builder responsibility;
   a. Ensure stacker locations are accessible for delivery & completely free of water
   b. Provide secured storage on site for equipment and tools adjacent to the installation locations
   c. Provide traffic control during delivery
   d. Provide stacker/turntable installation locations within tolerances.
   e. Filling/protecting covering of any gaps due to oversize pits
   f. Enclosing of any exposed side & rear areas arounds the equipment for safety
   g. Permanent power to the required locations prior to Hamilton Elevators starting on site.
4. On the day of delivery of the equipment to site Hamilton Elevators are given a cheque or a copy of the Electronic Fund Transfer slip for the delivery invoice. If payment is not provided then the equipment will not be delivered and costs for the rescheduling, unloading and transporting including storage will be borne by the builder. This will be charged on an additional invoice.
5. Tender is valid for 30 days and may change subject to exchange rates. The final contract price is not confirmed until a Letter of Intent & deposit payment is received to enable hedging of the contract value against exchange rate fluctuations.
6. Limited user inductions are included as negotiated with Owner or Owner’s Representative
7. Under no circumstances will keys or inductions be provided until all outstanding payments are made
8. Procurement of equipment will not commence until the agreed deposit amount is paid in full
Formal Instrument of Agreement for Contract

Agreement made the ______ day of ______ 2017

BETWEEN

Hamilton Elevators Pty Ltd of 120C White Street,
Mordialloc, Victoria 3195

AND

Figurehead Construction
11 Newton St,
Cremorne, Vic 3121

................................. [insert ABN]

IT IS AGREED that this Formal Instrument of Agreement, together with the documents listed comprises the contract between the parties

Contract Sum:

The Contract Sum is a lump sum subject to variation only in accordance with the provisions of this Contract. Unless stated to be otherwise all amounts set out in this Contract do not include Goods and Services Tax.

Brief Scope of Works:

Supply, installation & commission of Parkolay Parkkonfor 111 Car Stacker Systems for a total of 26 car parking spaces at 439 Bay St, Brighton, Victoria in line with the Terms & Conditions contained in this document.

Execution:

Signed for and on behalf of Hamilton Elevators Pty Ltd

_____________________________ Signature of authorised representative

Signed for and on behalf of Figurehead Construction

_____________________________ Signature of authorised representative

_____________________________ Expected Installation Date

To accept this offer please complete this page, initial all other pages & return the complete document to Hamilton Elevators

Good People...great value
**APPLICATION**

The systems provide independent parking for permanent use.
For movement one empty space on entry level is necessary per system.
The upper platforms are lifted vertically. The lower ones are sliding horizontally.

When platform #4 was requested.
Platform #3 and #5 shifts to left.
Then platform #4 lowers to the entrance level.
In lower position the cars can enter/exit on platform.

*In case of short time use, they can park only on lower level.
Additional features are necessary. Contact supplier.

Office
Residence
Hotel
Shopping
Public Parking

**M = Multiple grid system**
- min. 2 grids is 3 cars, max. 10 grids are 19 cars.
- Car capacity: max. 2,200 kg, wheel load 550 kg
- Option: max. 2,800 kg, wheel load 700 kg
Item 4.9 – Matters of Decision

**Variant For Car Height**

**Variant 150**
- H330: 150
- H355: 150

**Variant 180**
- H390: 180

**Variant 200**
- H430: 200
- H440: 205

**Variant 205**
- H450: 205

The "car height" including roof rails, antenna and others must not exceed the mentioned max car height dimension.
Swing cabinet. The swing cabinet must placed outside the movement range of the system. The position should be adjacent to the system and provide overview to it. The size of swing cabinet is about 80 x 120 x 25 cm and in front of the cabinet must be 100 cm free space and fixed area for door opening and service operator.

Forces kN**
car version kg

<table>
<thead>
<tr>
<th></th>
<th>Grid</th>
<th>Grid*</th>
</tr>
</thead>
<tbody>
<tr>
<td>F1</td>
<td>14</td>
<td>19</td>
</tr>
<tr>
<td>F2</td>
<td>25</td>
<td>33</td>
</tr>
<tr>
<td>F3</td>
<td>23/34/45/56</td>
<td>30/45/58/72</td>
</tr>
<tr>
<td>F4</td>
<td>F3+F3</td>
<td>F3+F3</td>
</tr>
<tr>
<td>F5</td>
<td>7</td>
<td>10</td>
</tr>
</tbody>
</table>

* Option
** With car load

F3 for front span 2/34/5 raster.

F4 only when two span rasters are combined, then F4 moves to front and is force of left span F3 right + force right span F3 left (e.g. span 2 + span 3).

FOUNDRATION

Systems are fixed by heavy duty anchor bolts with a drilling drilling depth of approx. 14 cm.

Floor plate made of reinforced concrete, min thickness 18 cm, quality minimum C20/25. Chemical anchors are option for water proof concrete.

"Parking with pleasure..."
Item 4.9 – Matters of Decision

System Width

Between walls

Picture shows 3 Grids:
3 Grids = 5 spaces, min. is 2 Grids

<table>
<thead>
<tr>
<th>CLEAR SPACE WIDTH</th>
<th>W1 OUTER GRID</th>
<th>W1 INNER GRID</th>
<th>W2 OUTER GRID</th>
<th>W2 INNER GRID</th>
<th>W1 OUTER GRID</th>
<th>W1 INNER GRID</th>
<th>W2 OUTER GRID</th>
<th>W2 INNER GRID</th>
<th>TOTAL WIDTH WITH X GRIDS</th>
</tr>
</thead>
<tbody>
<tr>
<td>230</td>
<td>260</td>
<td>250</td>
<td>260</td>
<td>530</td>
<td>770</td>
<td>1020</td>
<td>1270</td>
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<td>1770</td>
</tr>
<tr>
<td>240</td>
<td>270</td>
<td>260</td>
<td>270</td>
<td>540</td>
<td>800</td>
<td>1060</td>
<td>1320</td>
<td>1580</td>
<td>1840</td>
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<tr>
<td>250</td>
<td>280</td>
<td>270</td>
<td>280</td>
<td>560</td>
<td>830</td>
<td>1100</td>
<td>1370</td>
<td>1640</td>
<td>1910</td>
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<td>270</td>
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<td>300</td>
<td>600</td>
<td>890</td>
<td>1180</td>
<td>1470</td>
<td>1760</td>
<td>2050</td>
</tr>
</tbody>
</table>

Driving lane according to regulation.

Pillars in front of parking area

Picture shows 2 Grids:
2 Grids = 3 spaces

Picture shows 4 Grids:
4 Grids = 7 spaces

Picture shows 6 Grids:
6 Grids = 11 spaces

Driving lane according to regulation.

Evenness and Tolerances (extract from DIN 18 202, table 3)

The distance between the lower flange of the pallets and the garage ground must therefore not exceed 2 cm. To adhere to the safety regulations and DIN EN 14070 recommendations and to get the necessary even ground, the tolerances of evenness to DIN 18202J. Table 3, lines 1, 2, and 3, must not be exceeded. Therefore exact levelling of the ground by the client is essential.

<table>
<thead>
<tr>
<th>Column</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
</tr>
</thead>
<tbody>
<tr>
<td>Line</td>
<td></td>
<td>0.1</td>
<td>1</td>
<td>4</td>
<td>10</td>
<td>15</td>
</tr>
<tr>
<td></td>
<td>Applicable to</td>
<td>Position deviations (limit values) in mm, for distances between measuring points, in m, spo*</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Unfinished upper surfaces of floors, subfloors and concrete bases subject to more stringent requirements, e.g. to receive floating screed, industrial floors, tile flooring and bonded screed), and finished surfaces for minor purposes (e.g. in store rooms or basements)</td>
<td>5 8 12 15 20</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Finished floors (e.g. screed as wearing courses or screed to receive a flooring, trowelled or bonded floorings)</td>
<td>2 4 10 12 15</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Note: Intermediate values shall be taken from figures 1 and 2, and shall be given to the nearest millimetre.

Tolerances in mm

The tolerances are valid for each measurement line (±1 mm per 3 m). The permissible tolerances apply to each measurement line (±1 mm per 3 m). The tolerances are valid for each measurement line (±1 mm per 3 m).
Women like it comfortable. Plain platform design.

More than ever the user requests comfort. We are proud of our platform design. The sheets are plain and this finally means very comfortable to walk and to drive on. Whatever our clients are: Old or young, male or female, they like it.

High heels of women - no problem.

The Design of Safety & Comfort

**STRONG BUT SOFT. LOW BUT STABLE**

Our soft inclination of the side sheet, which is bended out of one long piece and thus stable, lowers risks of car and wheel collision and is excellent for the safety. Even the side sheets, they are designed low and even stable, not to collide with car doors. We took orientation on the experience of guard boards, which have been lowered due to collision reasons.

**WE OFFER WHAT YOU NEED**

**CAR CAPACITY AND WHEEL LOAD**

Cars with overweight. The biggest Switzerland motorcycle association remeasured the weight of cars, which is figured out in the car registration certificate according to regulation 92/2/EEC. In most of the cases the car was heavier than stated on document. Often individual options are not calculated. Sliding roof bigger wheels, hi-tech systems, motors for seats, etc. might increase the weight, which can be up to 150 - 200 kg higher on a car like Mercedes E-Class, BMW 5 Series, Audi A6. Therefore the supplier offers a standard parking space capacity of 2,200 kg and 550 kg wheel load, option 2,800 kg and 700 kg wheel load.

**MORE COMFORT FOR PARK IN PROCESS**

The design offers recessed system columns to take profit from an increased driving lane. The driving lane and platform entry width are the deciding factors for the parking comfort. A plus of 50 cm driving lane can be equated with 10 cm parking space width. Practically the special design can increase the driving lane up to 100 cm. This can be valued like 20 cm parking place width on the left and right side of the driving lane.

Undoubtedly this valuable effect will increase the profit in the driving curve radius and thus will make the drive in process onto the parking space more convenient and comfortable.

**CONTROL SOUND EMISSIONS**

Car parking systems are sustainable, but also produce sound emissions that can affect health and care during use and operation. Compliance of sound emission is important and effects R&D, planning and execution. We differ between air borne and body sound emission. For the latter the heavy duty support as well as the hydraulic insulation are of importance. Driving noise from the platform are part of the subjective perception and affect the quality impression.

**CLEANING AND VALUE PRESERVATION**

A car parking system represents a major investment financially. Cleaning and care services can ensure a proper appearance, value preservation, function, availability and might lengthen the life time cycle. In reality one main reason for the poor and sometimes rusty look is, that the platform design is exceptionally difficult to clean and thus the necessary processes often are neglected. The supplier has developed a user friendly platform design, that provides the possibility to clean and maintain professionally.
Parking Comfort Advantage

RECESSED SYSTEM COLUMNS FOR THE SYSTEM BLOCK

The most valuable feature on this system is the recessed system columns. The system columns limits the units only in the end of the width. The system’s front span can be from 2 to 5 grids, without having difficulties by adding front columns.

In case of 10 grids total, there will be 2 x 5 grids span with 10 spaces. There will be only two recessed system columns at both end of the system. And in the middle there will be only one front column (stair shifting the sliding platform) instead of 11 in total. The system width is calculated by span combination as usual with W1, W2, W1 and does not increase total width.

This extraordinary concept is especially favorable, when it is on the open public area or when the building pillars are designed according to the conventional parking. The profit will be taken from the recessed system pillars and people will daily enjoy the parking comfort advantage.

MORE COMFORT FOR PARK IN PROCESS

The design offers recessed system columns to take profit from an increased driving lane. The driving lane and platform width are the deciding factors for the parking comfort.

A plus of 50 cm driving lane can be equated with 10 cm parking space width. Practically the special design can increase the driving lane up to 100 cm. This can be valued like 20 cm parking place width on the left and right side of the driving lane. The system provides:

- More drive in comfort
- Better curve radius
- Faster drive in process
- More safety by less collision risks (missing the front columns)
- More drive in width
- Optical and practical increased driving lane
- User oriented philosophy - Parking with pleasure -

Undoubtedly this valuable effect will increase the profit in the driving curve radius and thus will make the drive in process onto the parking space more convenient and comfortable.

Critical Comment: LIMITED USER COMFORT WHEN COLUMNS IN FRONT

Drivers still suffer today about the parking spaces had been built decades ago. Whether they are single garages, quarter garages, underground garages or parking lots. The problem is always having too narrow drive in space, either limited by the structure or the pillars. And this problem is now more serious with the today’s increased car width. The trend is to build wider pillar spans, without pillars, wide entrances and spaces without limitations.

A woman recently said: “Imagine a parking space with 230 cm width and limited on entrance with fixed columns. How to enter daily when the size of my BMW 3-series with mirrors is just 209 cm. These are just 10 cm left on each side and how to drive in from the driving lane by 90 degrees?”
**Arrangements increase Efficiency**

**WHEN THE PLOT IS SMALL - THERE ARE SOLUTIONS TO INCREASE EFFICIENCY: DOUBLE DEEP.**

With the single row arrangement, there are 3 grids and 9 spaces. Mirrored on the driving lane that will be 10 spaces, instead of 6 conventional spaces. With double deep arrangement there will be 2 x 3 grids on left side with 10 spaces and 2 x 3 grids on right side with 10 spaces, creating 20 spaces in total. The second row can be also exposed with the Parkonfor 111 levels with pit. Then there are 3 more spaces available per line. In total 26 spaces instead of 6 conventional spaces.

This solution needs additional gates, at least before the second row, to ensure no persons are inside the system.

**WHEN THE PLOT IS SMALL - THERE ARE SOLUTIONS TO INCREASE EFFICIENCY: TRIPLE DEEP.**

With the triple row arrangement, there are 3 x 3 grids and 9 spaces per line, in total 15 spaces. Mirrored on the driving lane that will be 30 spaces, instead of 6 conventional spaces. The third row can also be exposed with the Parkonfor 111, 3 levels with pit. Then there are 3 more spaces available per line. In total 36 spaces instead of 6 conventional spaces.

This solution needs additional gates, at least before the second row, to ensure no persons are inside the system.
Item 4.9 – Matters of Decision

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Figure 1. Aerial overview of the site and surrounds

<table>
<thead>
<tr>
<th>Legend</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject site</td>
</tr>
</tbody>
</table>
Figure 2. View of the subject site from the east.
Figure 3. View of the subject site from the west.
PLANNING PERMIT
2014/921/1

Responsible Authority: Bayside City Council
Planning Scheme: Bayside

Address Of The Land: No. 439 Bay Street BRIGHTON

Use and development of a four storey building (plus basement car park) containing a retail premises and 22 dwellings, a reduction in the required car parking rate and a waiver of the loading and unloading of vehicles requirement in accordance with the endorsed plans and subject to the following conditions.

The Following Conditions Apply to this Permit

1. Before the development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the plans submitted with the application but modified to show:
   a) Treatment of the eastern elevation of the retail premises.
   b) A minimum 2m wide canopy provided over the retail premise frontage.
   c) The east facing habitable room window of the 68.3m² dwelling at Level 1 to be setback a minimum 3m from the eastern boundary.
   d) The east facing habitable room window of the 65.7m² dwelling at Level 2 to be setback a minimum 3m from the eastern boundary.
   e) Obscure glazing provided to a height of 1.7m above finished floor level to the north facing windows of the northernmost dwelling on Level 1.
   f) Screening in accordance with Standard B22 of Clause 55.04-6 provided to the balcony of the northernmost dwelling on Level 1.
   g) Screening in accordance with Standard B22 of Clause 55.04-6 provided to the balcony of the west facing dwelling on Level 2.
   h) The east-west running planter boxes provided at the northern end of Level 1 and Level 2 increased in width to 1.1m.
   i) Two visitor car parking spaces provided on site generally in accordance with plan TP1.03 Rev. B dated 3/7/2015, project no. 214103 and drawn by Rothe Lowman Architects.

Date issued: 1 October 2015
Date amended: 10 February 2016

Planning and Environment Regulations 2005 Form 4

Michael Kallabah
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.
j) The provision of a south facing window from the bedroom of the dwelling located in the south-east corner of Level 2.

k) All private open space areas provided with a minimum area of 8m² and minimum depth of 6m².

l) A landscape plan in accordance with Condition 12 of this planning permit.

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

3. Prior to the commencement of development, construction drawings must be submitted to and be approved by the Responsible Authority showing the laneway connecting the subject site to Warriston Street in accordance with Council standards. Once approved, all works required to upgrade this laneway to Council standards must be undertaken by the permit holder at no cost to Council prior to the use and/or occupation of the development.

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

6. No signage is permitted along the eastern elevation of the building unless with the written consent of the Responsible Authority.

7. Bicycles must at all times be allowed to be wheeled through the corridor area between the lift and the car park and be allowed to be taken within the lift.

8. Before the use and/or occupation of the site commences or by such later date as is approved in writing by the responsible authority, all buildings and works and the conditions of this permit must be carried out and completed to the satisfaction of the Responsible Authority.

9. The car stackers to be installed are a Wohr Combilift 543-2.0 Standard Type unless with the written consent of the Responsible Authority. The car stackers must be maintained in good working condition to the satisfaction of the Responsible Authority.

10. The amenity of the area must not be detrimentally affected by the use or development, by the:
    a) Transport of materials, goods or commodities to or from the land;
    b) Appearance of any building, works or materials;
    c) Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot,
        ash, dust, waste water, waste products, grit or oil;

Date issued: 1 October 2015
Date amended: 10 February 2016
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.
d) Presence of vermin;
e) By other circumstances.

11. Before the development starts, a Tree Management Plan must be submitted to and be approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit. The plan must provide details on how excavation impacts on trees to be retained will be managed and shall utilise information provided in both the arborist report and landscape plan to ensure retained trees are not lost as a result of construction works on the subject site to the satisfaction of the Responsible Authority.

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

The landscaping plan must show:

a) A survey (including botanical names) of all existing vegetation to be retained and/or removed.
b) Buildings and trees (including botanical names) on neighbouring properties within three metres of the boundary.
c) Details of water sensitive urban design elements to be incorporated and the plant species to be used.
d) A planting schedule of all proposed trees, shrubs and ground covers, including botanical names, common names, pot sizes, sizes at maturity, and quantities of each plant.

All species selected must be to the satisfaction of the Responsible Authority.

13. Before the use/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.

14. 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.

15. Prior to the commencement of any works, a Construction Management Plan must be submitted to and approved by the Responsible Authority. The construction management plan must address, but is not limited to:

Date issued: 1 October 2015
Date amended: 19 February 2016

Michael Kelleher
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.
PLANNING PERMIT
2014/921/1

Responsible Authority: Bayside City Council
Planning Scheme: Bayside

a) Hours of construction, control of noise and airborne matter, deliveries, vehicle access, worker car parking, damage to public assets, and contact numbers for complaints;
b) All traffic management plans for the site demolition, excavation, deliveries and other construction related activities that will affect vehicle and pedestrian traffic;
c) The location of all areas on-and/or off-site to be used for construction staff parking;
d) A parking management plan for all associated construction vehicles;
e) All site sheds, portable toilet, storage and materials, etc. must be confined to the site;
f) The covering and maintenance of all roads/storage areas/external stockpiles/or vacant areas to avoid dust nuisance to any residential and commercial premises;
g) A truck wheel-wash must be installed and used so vehicles leaving the site do not deposit mud or other materials on roadways;
h) No water containing oil, foam, grease, scum or litter will be discharged to the stormwater drainage system from the site;
i) All stored wastes are kept in designated areas or covered containers that prevent escape into the stormwater system;
j) The amount of mud, dirt, sand, soil, clay or stones deposited by vehicles on the abutting roads is minimised when vehicles are leaving the site; and
k) No mud, dirt, sand, soil, clay or stones are washed into, or are allowed to enter the stormwater drainage system.

All works must accord with the approved Construction Management Plan to the satisfaction of the Responsible Authority.

16. Before the use or occupation of the development starts, the area(s) set aside for the parking of vehicles and access lanes as shown on the endorsed plans must be:
a) Constructed;
b) Properly formed to such levels that they can be used in accordance with the plans;
c) Surfaced with an all-weather-seal coat;
d) Drained;
e) Line marked to indicate each car space and all access lanes; and
f) Clearly marked to show the direction of traffic along access lanes and driveways.

To the satisfaction of the Responsible Authority.

Date issued: 1 October 2015
Date amended: 10 February 2016

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

17. Vehicular crossing(s) must be constructed to the road to suit the proposed driveway(s) to the satisfaction of the responsible authority and any existing crossing or crossing opening must be removed and replaced with footpath, nature strip, and kerb and channel to the satisfaction of the Responsible Authority.

18. 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.

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

20. 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.

21. The legal point of discharge for the development is to the east of the property and must be connected to the existing pit at the corner of Bay Street and Warrist Street via a new outfall drain and pit/s at the cost of the permit holder and be to Council standards and be approved by Council.

22. 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.

23. 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.

24. 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.

Date issued: 1 October 2015

Date amended: 10 February 2016

Planning and Environment Regulations 2005 Form 4

Michael Killner

Signature for the Responsible Authority

Note: Under Part 4, Division 1A of the Planning and Environment Act 1987, a permit may be amended. Please check with the responsible authority that this permit is the current permit and can be acted upon.
25. This permit will expire if one of the following circumstances applies:
   a) The development is not started within two years of the date of this permit.
   b) The development is not completed within four years of the date of this permit.

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

Permit Notes

<table>
<thead>
<tr>
<th>Date</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>10 February 2016</td>
<td>As directed by VCAT, the following modifications have been made:</td>
</tr>
<tr>
<td></td>
<td>a. Condition 1b) is amended to read:</td>
</tr>
<tr>
<td></td>
<td>1b) Treatment of the eastern elevation of the retail premises.</td>
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<tr>
<td></td>
<td>b. Conditions 1a), 1k) and 1n) are deleted; and</td>
</tr>
<tr>
<td></td>
<td>c. The conditions are renumbered accordingly.</td>
</tr>
<tr>
<td>14 August 2017</td>
<td>Extension of time granted to allow commencement by 1 October 2019 and completion by 1 October 2021.</td>
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<tr>
<td>17 October 2017</td>
<td>Secondary Consent Amended Plans:</td>
</tr>
<tr>
<td></td>
<td>• Modifications to the development of the four storey building plus</td>
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<td>basement car park, which is known as 439 Bay Street, Brighton, in</td>
</tr>
<tr>
<td></td>
<td>particular:</td>
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<tr>
<td></td>
<td>Basement</td>
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<td></td>
<td>- Reconfiguration of bicycle spaces and storage areas to reduce</td>
</tr>
<tr>
<td></td>
<td>the size of basement.</td>
</tr>
<tr>
<td></td>
<td>- Reduction of the size of the proposed lift.</td>
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<tr>
<td></td>
<td>Ground Floor</td>
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<td></td>
<td>- Deletion of the substation at the north east corner and replaced</td>
</tr>
<tr>
<td></td>
<td>by landscaping.</td>
</tr>
<tr>
<td></td>
<td>- Additional gas service to be included to the Bay Street frontage.</td>
</tr>
<tr>
<td></td>
<td>- A new door to be added to the retail tenancy fronting Bay Street.</td>
</tr>
<tr>
<td></td>
<td>- Reduction of the size of the proposed lift.</td>
</tr>
</tbody>
</table>

Date issued: 1 October 2015
Date amended: 10 February 2016

Michael Nelleker
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.
## PLANNING PERMIT

**2014/921/1**

**Responsible Authority:** Bayside City Council

**Planning Scheme:** Bayside

- Glazing to the proposed retail to be offset 200mm off the east boundary
- Minor internal layout changes to the Apt1.08, Apt1.09, Apt1.07, Apt1.01 and Apt1.02.
- Increased area of the proposed Apt1.01 by reducing the size of internal hallway.
- Deletion of two doors of the internal hallway.
- Additional window to the north of the corridor

### Second Floor
- Deletion of inaccessible plantboxes to the north of Apt1.01, Apt1.06 and Apt1.07.
- Roof area of the proposed retail premises at the ground floor to be offset 200mm of the boundary.
- Redesigned plantbox of Apt2.06 to be in align with its balcony.
- Minor internal layout changes of Apt2.01- Apt2.08.
- Reduction of the size of the proposed lift.

### Third Floor
- Deletion of the plantbox to the west of the Stair area and Apt3.05.
- Deletion of the plantbox to the east of Apt3.02 and Apt3.04.
- Reduction of the size of proposed plantbox to in align with the proposed balcony of Apt3.03.
- Deletion of the proposed skylight windows above the second floor corridor.

### Roof Plan
- Deletion of the plant area and stair area.

### Elevations and other plans
- Updated elevation design incorporating different materials and finishes to North and South Elevations.
- Updated west and east elevation plans in accordance with the above listed changes.
- Updated sections and landscape plans in accordance with the above listed changes.

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**THIS PERMIT SUPERSEDES ALL OTHER PERMITS ISSUED.**

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**Date issued:** 1 October 2015

**Date amended:** 10 February 2016

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**Michael Nollekens**  
Signature for the Responsible Authority

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**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.
FORM 4

PLANNING PERMIT

IMPORTANT INFORMATION ABOUT THIS PERMIT

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

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

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

WHAT ABOUT APPEALS?
* The person who applied for the permit may apply for a review of any condition in the permit unless it was granted at the direction of the Victorian Civil and Administrative Tribunal, in which case no right of review exists.
* An application for review must be lodged within 60 days after the permit was issued, unless a notice of decision to grant a permit has been issued previously, in which case the application for review must be lodged within 60 days after the giving of that notice.
* An application for review is lodged with the Victorian Civil and Administrative Tribunal.
* An application for review must be made on an Application for Review form which can be obtained from the Victorian Civil and Administrative Tribunal, and be accompanied by the applicable fee.
* An application for review must state the grounds upon which it is based.
* An application for review must also be served on the Responsible Authority.
* Details about applications for review and the fees payable can be obtained from the Victorian Civil and Administrative Tribunal.
Item 4.9 – Matters of Decision
1. Purpose and background

To report a secondary consent application for the construction of two double storey dwellings and access to a Road Zone Category 1 on a lot with an area of 1,252 square metres (refer Attachment 1) at 139 Centre Road, Brighton East (refer Attachment 2).

Planning Permit 2015/131/1 was issued at the direction of the Victorian Civil and Administrative Tribunal (VCAT) on 16 May 2016. The permit allows the construction of two double storey dwellings and access to a Road Zone Category 1 (refer Attachment 3 and 4).

The applicant has now sought permission to amend the endorsed plans via secondary consent to show the following:

- Roof tile material changed from cement tile coloured Klavis G19 to concrete tile coloured Trungsten.
- Roof fascia, gutters & rainheads and window frame colours from Colorbond Dune to Monument.
- Windows of first floor bathrooms and ensuites to be sliding windows instead of awning windows.

2. Policy implications

Planning permit requirements

There are no primary policy matters to consider as part of this application, which seeks to amend the endorsed plans pursuant to the secondary consent provisions afforded by Condition 2 of Planning Permit 2015/131/1.

3. Stakeholder Consultation

Referrals

There were no external referrals required to be made in accordance with Clause 66 of the Bayside Planning Scheme and no internal referrals required to be made out to other council departments for comment.

Public notification

Applications made in accordance with the secondary consent provisions are not subject to the notice requirements of Section 52 of the Planning and Environment Act 1987. Therefore, the amended plans have not been advertised.

4. Recommendation

That Council:

Approve the Amended Plans in accordance with Secondary Consent Provisions of Planning Permit No. 2015/131/1 in respect of the land known and described as 139 Centre Road, Brighton East, for the construction of two double storey dwellings.

Applicant

Vijay K Verma

Date application received

2 November 2017
and access to a Road Zone Category 1 in accordance with the endorsed plans and subject to the following table being inserted at the end of the permit:

<table>
<thead>
<tr>
<th>Date</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>21 December 2017</td>
<td>Amendment to the endorsed plans under Secondary Consent:</td>
</tr>
<tr>
<td></td>
<td>• Roof tile material changed from cement tile coloured Klavis G19 to concrete tile coloured Trungsten.</td>
</tr>
<tr>
<td></td>
<td>• Roof fascia, gutters &amp; rainheads and window frame colours from Colorbond Dune to Monument.</td>
</tr>
<tr>
<td></td>
<td>• Windows of first floor bathrooms and ensuites to be sliding windows instead of awning windows.</td>
</tr>
</tbody>
</table>

5. Council Policy

There are not any primary relevant Council policy matters to consider as part of the request to consider amending plans pursuant to the secondary consent provisions afforded by the planning permission.

6. Considerations

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

The tests include the following:

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

The amendment does not result in a transformation of the proposal. The amendment would provide for alterations to the approved dwellings of a generally minor nature. The proposed colours and materials remain consistent with the character of the neighbourhood.

The scale of the overall building fabric will not change. The proposal does not alter the outcome related to site coverage, permeability, overlooking or overshadowing. From a neighbourhood character perspective, the proposal will still be an appropriate outcome.

The proposed change is considered to be minor in nature and will have no impact to the amenity of adjoining properties and will not cause material detriment to any third parties. The proposed changes do not conflict with any permit conditions, objections raised in the application for which primary consent was granted for; and, does not result in a transformation of the proposal.

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

The primary consent was issued at the direction of VCAT for the construction of two double storey dwellings and access to a Road Zone Category 1. The amendment sought under this application is considered to be consistent with the proposal and does not authorise something for which primary consent is required for under the Bayside Planning Scheme.

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

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

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

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

**Support Attachments**

1. Proposed Development Plans ↓
2. Site and Surrounds Imagery ↓
3. Original Planning Permit ↓
4. Endorsed Plans ↓
## Attachment 1

### Planning Department

**2 - NOV 2017**

Received

<table>
<thead>
<tr>
<th>Category</th>
<th>Material/Color</th>
<th>Note</th>
</tr>
</thead>
<tbody>
<tr>
<td>Front Fence</td>
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<td></td>
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<tr>
<td>Garage Doors</td>
<td>Colorbond</td>
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<tr>
<td>Windows</td>
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<tr>
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<tr>
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<tr>
<td>Fasana</td>
<td>Colorbond</td>
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<tr>
<td>Roof Areas</td>
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<td>Decks</td>
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<tr>
<td>Exterior</td>
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<tr>
<td>Balustrades</td>
<td>Colorbond</td>
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</table>
Figure 1 Aerial overview of the site and surrounds.

Legend

<table>
<thead>
<tr>
<th>Subject site</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>★</td>
</tr>
</tbody>
</table>
Figure 2 View of subject site from Centre Road - Southeast
Figure 3 View of adjoining property (1/141 Centre Road Brighton East) – East of subject site.
Figure 4 View of subject site from Centre Road – Southwest
Figure 5 View of adjoining property (137 Centre Road Brighton East) – West of subject site
PLANNING PERMIT
5/2015/131/1 (Amended)

Responsible Authority: Bayside City Council
Planning Scheme: Bayside

Address Of The Land: No. 139 Centre Road BRIGHTON EAST
The Permit Allows: Construction of two double storey dwellings and access to a Road Zone Category 1 in accordance with the endorsed plans and subject to the following conditions.

The Following Conditions Apply To This Permit:

1. Before the development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the responsible authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with plans received by Council on 30 November 2015 but modified to show:

   (a) Provision of screening measures to the east facing windows in Bedrooms 3 and 4 of Dwelling 1 in accordance with Standard B22 of Clause 55.04-6 of the Bayside Planning Scheme.

   (b) deleted

   (c) deleted

   (d) Notation of the removal of the existing redundant crossover.

   (e) deleted

   (f) deleted

   (g) deleted

   (h) The following modifications to the rear wing wall, at first floor level:

       - The extension of the wall from the rear elevation of Bedroom 1 of Dwelling 2 reduced to a length of one (1) metre; and

       - The wall lowered to a maximum of 1.7 metres high above the finished floor level of Bedroom 1 in Dwelling 2

   (i) Minimum vehicle turning circles and the balance of the frontage landscaped.

   (j) Location of hotwater systems, etc. which are proposed to be located externally identified on the plans and located so as to not impact upon the general amenity of the immediate area.

   (k) Fully dimensioned site plan that shows all road assets including pits, trees, power poles and new crossing location. Clear dimensions and offsets from assets are required to be shown on the plans.

   (l) A notation that no solid objects or landscaping over 900mm in height are located in the eastern exit sight triangle.

   (m) A Landscaping Plan in accordance with Condition 7of this permit.

   (n) Any alterations arising from the Tree Protection Plan / Statement in accordance with Condition 8 of this permit.

Date issued: 22 December 2015
Date Amended: 16 May 2016

Arthur Vatsakis
Statutory Planner Coordinator
Signed by: Ayati Detry

Planning and Environment Regulations 2005 Form 4

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

Traffic

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

Landscaping

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

   The plan must show:
   a) A survey including botanical names of all existing vegetation to be retained and/or removed
   b) Buildings and trees including botanical names on neighbouring properties within three metres of the boundary.
   c) Details of surface finishes of pathways and driveways
   d) A planting schedule of all proposed trees, shrubs and ground covers, including botanical names, common names, pot sizes, sizes at maturity, and quantities of each plant
   e) Landscaping and planting within all open areas of the site.
   f) One canopy tree in the middle of the front setback capable of reaching minimum dimensions at maturity of 12 meters in height and 8 meters in canopy width

OR

One tree in each of the front setbacks capable of reaching minimum dimensions at maturity of 10 meters in height and a canopy width of 6 metres.

Date issued: 22 December 2015
Date Amended: 16 May 2016

Arthur Vatzakis
Statutory Planning Coordinator
Signed by: Avani Detry

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

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

7. Prior to the commencement of a Tree Protection Plan/Statement for Tree 21 - Fraxinus angustifolia (Desert Ash) growing in No. 141 Centre Road that is to the satisfaction of the Responsible Authority. The Tree Protection Plan/Statement must include the following:
   - Tree Protection Methodology for construction period in accordance with AS4970
   - Provision of clear and precise instructions for the site manager on the manner in which the protected vegetation will be protected.
   - A plan that accurately locates all vegetation to be retained/protected with their TPZs identified;
   - A plan that accurately locates the location of tree protection fencing and/or ground protection;
   - A plan that accurately locates the proposed built form and all services. Services are to be located outside a TPZ or to be bored under the TPZ;
   - A plan that accurately identifies finished levels for outdoor areas
   - A plan that accurately locates footing systems and surfaces inside a TPZ;
   - The plan must specify clear time frames as to when these measures must be implemented and removed and clear direction on what actions must not occur inside the area defined as a Tree Protection Zone.

8. 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.

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

**Street Tree**

10. Before the development starts a fee of $3,990.55 must be paid to Council for the removal of the two existing street trees. The costs associated with the removal and replacement of the existing street trees has been determined in accordance with Council's current policy for the removal of street trees. The 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 trees 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.
PLANNING PERMIT
5/2015/131/1 (Amended)

Responsible Authority: Bayside City Council
Planning Scheme: Bayside

Drainage
11. 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.

12. 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.

13. 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.

14. 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.

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

Vic Roads
16. Provision for vehicles to enter and exit the site in a forward direction must be available at all times to the satisfaction of the Responsible Authority.

17. Before the use of the permitted development, the driveway and crossover must be constructed in accordance with the approved plan to the satisfaction of the Responsible Authority.

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

The Responsible Authority may extend the periods referred to above if a request is made in writing:-
   ➢ Before the permit expires; or

Date issued: 22 December 2015
Date Amended: 16 May 2016

Planning and Environment Regulations 2005 Form 4

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

5/2015/131/1 (Amended)

<table>
<thead>
<tr>
<th>Responsible Authority:</th>
<th>Bayside City Council</th>
</tr>
</thead>
<tbody>
<tr>
<td>Planning Scheme:</td>
<td>Bayside</td>
</tr>
</tbody>
</table>

- Within 6 months afterwards if development has not commenced; or
- Within 12 months afterwards if the development has lawfully commenced.

**Permit Notes**

- A permit must be obtained from Council for all vehicular crossings. These must be constructed under Council's supervision for which 24 hours notice is required.
- Building approval must be obtained prior to the commencement of the above approved works.
- Prior to commencement of any building works, an Asset protection Application must be taken out. This can be arranged by calling Asset Protection Administrator, Mon-Fri 9:00am to 1:00pm on 9599 4638.

(a) Permits to be acquired

i. 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.

ii. 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.

<table>
<thead>
<tr>
<th>Date Amended</th>
<th>Details</th>
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<tbody>
<tr>
<td>16 May 2016</td>
<td>As directed by VCAT conditions have been amended as follows:</td>
</tr>
<tr>
<td></td>
<td>(a) Conditions 1(b), (c), (e), (f) and (g) are deleted.</td>
</tr>
<tr>
<td></td>
<td>(b) Condition 1(a) is amended to read:</td>
</tr>
<tr>
<td></td>
<td>Provision of screening measures to the east facing windows in Bedrooms 3 and 4 of Dwelling 1 in accordance with Standard B22 of Clause 55.04-6 of the Bayside Planning Scheme.</td>
</tr>
<tr>
<td></td>
<td>(c) Condition 1(h) is amended to read:</td>
</tr>
<tr>
<td></td>
<td>The following modifications to the rear wing wall, at first floor level:</td>
</tr>
<tr>
<td></td>
<td>- The extension of the wall from the rear elevation of Bedroom 1 of Dwelling 2 reduced to a length of one (1) metre; and</td>
</tr>
<tr>
<td></td>
<td>- The following modifications to the rear wing wall, at first floor level: the wall lowered to be a maximum of 1.7 metres height above the finished floor level of Bedroom 1 in Dwelling 2.</td>
</tr>
<tr>
<td></td>
<td>(d) Condition 1(i) is amended to read:</td>
</tr>
<tr>
<td></td>
<td>A notation that no solid objects or landscaping over 900mm in height are located in the eastern exit sight triangle.</td>
</tr>
</tbody>
</table>

**THIS PERMIT SUPERSEDES ALL OTHER PERMITS ISSUED.**

**Date issued:** 22 December 2015

**Date Amended:** 16 May 2016

Arthur Vatsakis
Statutory Planning Coordinator
Signed by: Avani Dentsly

Note: Under Part 4, Division 1IA 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.
Item 4.10 – Matters of Decision
<table>
<thead>
<tr>
<th>Responsible Authority</th>
<th>Condition 1</th>
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<tr>
<td>Bayside City Council</td>
<td>Condition A</td>
<td>Condition B</td>
<td>Condition C</td>
<td>Condition D</td>
<td>Condition E</td>
<td>Condition F</td>
<td>Condition G</td>
<td>Condition H</td>
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</tr>
</tbody>
</table>

**Notes:**
- Condition A: Description of Condition A
- Condition B: Description of Condition B
- Condition C: Description of Condition C
- Condition D: Description of Condition D
- Condition E: Description of Condition E
- Condition F: Description of Condition F
- Condition G: Description of Condition G
- Condition H: Description of Condition H
- Condition I: Description of Condition I
Item 4.10 – Matters of Decision
1. **Purpose and background**

To report a secondary consent application for the construction of two (2) double storey side-by-side dwellings and removal of vegetation in a Vegetation Protection Overlay on a lot of 380.85 square metres (refer Attachment 1) at 66 Red Bluff Street, Black Rock (refer Attachment 2).

<table>
<thead>
<tr>
<th>Applicant</th>
<th>Julie Di Pietrantonio</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date application received</td>
<td>6 November 2017</td>
</tr>
</tbody>
</table>

Planning Permit 2010/170/1 was issued on 21 September 2010 by the Planning and Amenity Committee and amended at the direction of the Victorian Civil and Administrative Tribunal (VCAT) on 15 March 2011. Plans were endorsed by Council on 21 April 2011. A number of secondary consent approvals have since followed.

The current applicant has now sought permission to amend the endorsed plans via secondary consent to show the following:

- Carport wall and parapet external finish to be changed from existing to Dulux "Mansard Stone" 30YY 20/029 or Dulux Raku;
- Spotted Gum timber pillars added between carport and dwelling, and porch area;
- Part of the existing front balcony wall to be replaced with glass panel; and
- Replacement of 2000mm wide aluminium sliding doors with 3000mm wide 3 door bi-fold system to match existing at rear elevation.

2. **Policy implications**

**Planning permit requirements**

There are no primary policy matters to consider as part of this application, which seeks to amend the endorsed plans pursuant to the secondary consent provisions afforded by Condition 2 of Planning Permit 2010/170/1.

3. **Stakeholder Consultation**

**External referrals**

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

**Public notification**

Applications made in accordance with the secondary consent provisions are not subject to the notice requirements of Section 52 of the *Planning and Environment Act 1987*. Therefore, the amended plans have not been advertised.

4. **Recommendation**

That Council:

**Approve** the Amended Plans in accordance with Secondary Consent Provisions of Planning Permit No. 2010/170/1 in respect of the land known and described as 66 Red Bluff Street, Black Rock.
Bluff Street, Black Rock, for the construction of two (2) double storey side-by-side dwellings and removal of vegetation in a Vegetation Protection Overlay in accordance with the endorsed plans and subject to the following changes:

<table>
<thead>
<tr>
<th>Date</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>21 December 2017</td>
<td>Amendment to the endorsed plans under Secondary Consent:</td>
</tr>
<tr>
<td></td>
<td>• Carport wall and parapet external finish to be changed from existing to Dulux “Mansard Stone” 30YY 20/029 or Dulux Raku.</td>
</tr>
<tr>
<td></td>
<td>• Spotted Gum timber pillars added between carport and dwelling, and porch area;</td>
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<tr>
<td></td>
<td>• Part of the existing front balcony wall to be replaced with glass panel</td>
</tr>
<tr>
<td></td>
<td>• Replacement of 2000mm wide aluminium sliding doors with 3000mm wide 3 door bi-fold system to match existing at rear elevation.</td>
</tr>
</tbody>
</table>

5. Council Policy
Council Plan 2013-2017

There are not any primary relevant Council policy matters to consider as part of the request to consider amending plans pursuant to the secondary consent provisions afforded by the planning permission.

6. Considerations

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

The tests include the following:

6.1. Does the proposed amendment result in transformation of the proposal?

The amendment does not result in a transformation of the proposal, as it provides for minor alterations to the front façade, all which are attractive additions that would complement the streetscape.

The scale of the overall building fabric will not change. The proposal does not alter the outcome related to site coverage, permeability, overlooking or overshadowing. From a neighbourhood character perspective, the proposal is still an appropriate outcome.

The proposed change is considered to be minor in nature and will have no impact to the amenity of adjoining properties and will not cause material detriment to any third parties. The proposed changes do not conflict with any permit conditions, objections raised in the application for which primary consent was granted for; and, does not result in a transformation of the proposal. It is noted that the reason why the amendment is sought is to reflect actual plantings on site.

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

The primary consent was issued on 21 September 2010 by the Planning Committee and amended by VCAT on 15 March 2011, for the construction of two (2) double storey dwellings with basement, removal of vegetation in a Vegetation Protection Overlay and construction of roof decks in a Design and Development Overlay 1. The amendment sought under this application is considered to be consistent with the proposal and does
not authorise something for which primary consent is required for under the Bayside Planning Scheme.

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

Having regard to the development and the purpose of the planning controls under which the permit was granted, the proposed amendment is considered inconsequential as there has been no material change to the nature of the planning controls and policies affecting the land. It is considered that the changes are appropriate, as the alterations proposed are for changes in materials for the façade and the replacement of a ground floor door at the rear elevation. The proposal will not detrimentally impact on the amenity of adjoining properties nor cause material detriment to any third parties.

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

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

**Support Attachments**

1. Proposed Development Plan ⇩
2. Site and Surrounds Imagery ⇩
3. Original Planning Permit ⇩
4. Endorsed Plans ⇩
Proposed 66 RED BLUFF STREET, BLACK ROCK
Proposed Alterations October 2017

66 RED BLUFF STREET, BLACK ROCK
Proposed Alterations October 2017

Proposed

exterior, brick, interior design
ATTACHMENT 2
Site and Surrounds Imagery

Figure 1 Aerial overview of the site and surrounds

<table>
<thead>
<tr>
<th>Legend</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject site</td>
</tr>
</tbody>
</table>
View to Site from Red Bluff Street North
View to Site from Red Bluff Street (Northeast)
PLANNING PERMIT
2010/170/1

Responsible Authority: Bayside City Council
Planning Scheme: Bayside

Address Of The Land: No. 64 Red Bluff Street BLACK ROCK

The Permit Allows: Construction of two (2) double storey side-by-side dwelling and removal of vegetation in a Vegetation Protection Overlay in accordance with the endorsed plans and subject to the following conditions.

The Following Conditions Apply to this Permit

1. Before the development starts, amended plans to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the endorsed plans and subject to the conditions contained in the notice of decision to grant a permit issued by the responsible authority on the 21 September 2010 modified as follows:
   a) Screen planting on the eastern boundary to diminish the visual bulk of the first floor.
   b) Patio paving to be reduced at the rear and side of both townhouses by the provision of soft landscaping necessary for the provision of two canopy trees in the rear and landscaping on the east boundary of dwelling 1 necessary to screen the dwelling.
   c) The proposed driveways for both townhouses reduced to three metres and centred on the existing crossover for dwelling one (the eastern dwelling) and the proposed new crossover for dwelling 2.
   d) The proposed new vehicle crossing for townhouse 2 (the western townhouse) must be shown in accordance with Condition 7 of this permit.
   e) Each unit must have access to 6 cubic metres of externally accessible, secure storage space.
   f) The carports for both townhouses must be reduced to single carports and the carport for dwelling two (western dwelling) to have a side setback of at least two metres from the side boundary.
   g) The single carports must be a minimum of 6m in length and 3.5m wide with all dimensions shown on the ground floor plan.
   h) A Schedule of Materials and Finishes to show a greater variety to break up the side elevations.
   i) Screening to front and rear balconies to comply with Standard B22 of the Bayside Planning Scheme.
   j) Gravel driveway to be replaced by other permeable surface.
   k) Openable windows to be introduced above 1.7m of finished floor level along the eastern elevation of townhouse 1 and the western elevation of townhouse 2.
   l) A transition from the pitch roof form to the flat roof.

Date issued: 15 March 2011

Planning and Environment Regulations 2005 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.
m) Front fences to be no more than 1.2m.

n) Tree protection measures must be shown in accordance with Condition 4 of this permit.

o) A landscape plan in accordance with Condition 5 of this permit.

p) Water sensitive urban design measures in accordance with Condition 10 of this permit.

q) Reduction in the height of the main roof line by 1.8 metres.

r) Deletion of the balcony and sloping roof shown on the south elevation and reduction of glazed door and window areas.

s) Replacement of glass balustrading on north elevation with sol rendered panels of same height with colour matching external walls.

t) Roofing to carports to be flat metal decking.

u) Deletion of external timber doors shown on east and west elevations.

v) Rearrangement of internal partitions as shown on the first floor to include studies with casement windows on the east and west elevations, with minimum sill heights above floor level of 1.7 metres.

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

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

4. Before the development (including demolition) starts, the applicant must submit a report detailing tree protection in accordance with Australian Standard 4970: Protection of Trees on Development Sites.

5. Before the development starts, a landscape plan to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. Planting to consist of mainly native and indigenous vegetation with provision of four (4) canopy trees, two (2) in the front and (2) in the rear. When approved, the plan will be endorsed and will then form part of the permit. The plan must be drawn to scale with dimensions and three copies must be provided. The plan must show:
   a) A survey (including botanical names) of all existing vegetation to be retained and/or removed
   b) Buildings and trees (including botanical names) on neighbouring properties within three metres of the boundary
   c) Details of surface finishes of pathways and driveways

Date issued: 15 March 2011
Planning and Environment Regulations 2005 Form 4

Note: Under Part 4, Division 1A of the Planning and Environment Act 1987, a permit may be amended. Please check with the responsible authority that this permit is the current permit and can be acted upon.
PLANNING PERMIT
2010/170/1

Responsible Authority: Bayside City Council
Planning Scheme: Bayside

- d) A planting schedule of all proposed trees, shrubs and ground covers, including botanical names, common names, pot sizes, sizes at maturity, and quantities of each plant
- e) Landscaping and planting within all open areas of the site
- f) Details of screen planting to be installed on the eastern boundary of dwelling one. All species selected must be to the satisfaction of the responsible authority.

6. Vehicular crossings must be constructed to the road to suit the proposed driveways to the satisfaction of the Responsible Authority and any existing crossing or crossing opening must be removed and replaced with footpath, nature strip, and kerb and channel to the satisfaction of the Responsible Authority.

7. Before the development starts, the proposed vehicular crossing of townhouse 2 must meet approval of South East Water. An existing sewer pit impacts on the proposed driveway for townhouse 2 (the western townhouse), and any costs associated with repositioning the pit must be borne by the applicant.

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

9. Before the 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. Before the commencement of works, detailed plans to the satisfaction of the Responsible Authority must be submitted to and be approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be in accordance with the guidelines outlined in Clause 22.10 of the Bayside Planning Scheme and must show:-
- a) The type of water sensitive urban design stormwater treatment measures to be used;
- b) The location of the water sensitive urban design stormwater treatment measures in relation to buildings, sealed surfaces and landscaping areas;
- c) Design details of the water sensitive urban design stormwater treatment measures, including cross sections.

These plans must be accompanied by a report from an industry accepted performance measurement tool, which details the treatment performance achieved and demonstrates the level of compliance with the Urban Stormwater Best Practice Environmental Management Guidelines, CSIRO 1999.
The water sensitive urban design stormwater treatment system as shown on the endorsed plan must be retained and maintained at all times in accordance with the Urban Stormwater - Best Practice Environmental Management Guidelines, CSIRO 1999, to the satisfaction of the Responsible Authority.

11. The applicant must bear all costs associated with the removal and replacement of the street tree in accordance with Council's adopted policy. Before works start a fee must be paid to the Responsible Authority. The Responsible Authority must undertake the removal and replacement of the street tree. The replacement planting is at the discretion of the Responsible Authority. A minimum of two (2) weeks prior to when the tree is to be removed please contact Council's Parks Arborist on (03) 9599 4444.

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

- The development is not started within two years of the date of this permit.
- The development is not completed within four years of the date of this permit.

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

Permit Notes

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

- Building approval must be obtained prior to the commencement of the above approved works.

- Reticulated sewerage must be provided to the requirements of the Sewerage Authority.

- Prior to commencement of any building works, an Asset protection Application must be taken out. This can be arranged by calling Council’s Asset Protection Administrator on 9599 4444.
**Permit Notes**

<table>
<thead>
<tr>
<th>Date</th>
<th>Change to permit</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 August 2011</td>
<td>Secondary Consent to Amend the Plans:</td>
</tr>
<tr>
<td></td>
<td>• Increase in wall height by 140mm</td>
</tr>
<tr>
<td></td>
<td>• Increase of height of lower roof facia by 100mm</td>
</tr>
<tr>
<td></td>
<td>• Reduction in overall height by 350mm</td>
</tr>
<tr>
<td></td>
<td>• Rear and side ground floor bifolding doors replaced by 4000mm wide sliding doors</td>
</tr>
<tr>
<td></td>
<td>• First floor side bedroom windows changed to 1800mm wide and 700mm glazed</td>
</tr>
<tr>
<td></td>
<td>• Inclusion of additional steel columns to support carport roofs / decks</td>
</tr>
<tr>
<td></td>
<td>• Inclusion of 200mm thick brick wall below east carport roof on boundary to support roof structure (required for fire rating).</td>
</tr>
<tr>
<td></td>
<td>• Internal reconfiguration of the first floor bathrooms</td>
</tr>
<tr>
<td>13 June 2012</td>
<td>1. Conditions in the permit are amended as follows:</td>
</tr>
<tr>
<td></td>
<td>a) Condition 1(q) is amended to read:</td>
</tr>
<tr>
<td></td>
<td>Reduction in the height of the main roof line by 1.8 metres.</td>
</tr>
<tr>
<td></td>
<td>b) New conditions included as follows:</td>
</tr>
<tr>
<td></td>
<td>(r) Deletion of the balcony and sloping roof shown on the south elevation and reduction of glazed door and window areas.</td>
</tr>
<tr>
<td></td>
<td>(s) Replacement of glass balustrading on north elevation with solid rendered panels of same height with colour matching external walls.</td>
</tr>
<tr>
<td></td>
<td>(t) Roofing to carports to be flat metal decking.</td>
</tr>
<tr>
<td></td>
<td>(u) Deletion of external timber doors shown on east and west elevations.</td>
</tr>
<tr>
<td></td>
<td>(v) Rearrangement of internal partitions as shown on the first floor to include studies with casement windows on the east and west elevations, with minimum sill heights above floor level of 1.7 metres.</td>
</tr>
<tr>
<td></td>
<td>c) Conditions in the permit are renumbered accordingly.</td>
</tr>
</tbody>
</table>
**Planning Permit**

<table>
<thead>
<tr>
<th>Date</th>
<th>Secondary Consent to Amend Plans:</th>
</tr>
</thead>
</table>
| 21 November 2013 | • Ground Floor Plan Amended October 2013;  
                       • First Floor Plan Amended October 2013;   
                       • Elevation 'A' and Front fence elevation Amended September 2013;  
                       • Elevations and Section Amended October 2013;  
                       • Landscape Plan Amended October 2013; and  
                       • Stormwater Treatment Plan Amended October 2013. |
| 14 August 2014   | • The front driveway gates changed to swinging in lieu of sliding;  
                       • The front pedestrian gates recessed by 0.5 metre from the frontage;  
                       • The pathways on the sides of each dwelling altered to concrete pavers surrounded by Beiger River gravel in lieu of a continuous concrete path; and  
                       • The setback of the deck on the side of dwelling 2 increased from 0.5 metre to 1.2 metres from the western boundary. |

**THIS PERMIT SUPERSEDES ALL OTHER PERMITS ISSUED**
Item 4.11 – Matters of Decision
4.12 VCAT REPORT

City Planning & Community Services - Development Services
File No: PSF/15/8755 – Doc No: DOC/17/224786

1. Executive summary

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

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

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

Council has a target for 2017/18 that 50% of all Planning & Amenity Committee and Delegated Officer decisions should not be set aside by VCAT. This is comparable with other inner urban Council’s in Melbourne such as Port Phillip and Stonnington.

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

For the 2017/18 financial year, Council has received 48 decisions, of which 5 have been withdrawn and 1 was struck out. The total number of LGPRF measured decisions for the year to date is therefore 42. This table below reflects the new 2017/18 LGPRF reporting requirements for Council.

<table>
<thead>
<tr>
<th>Time period</th>
<th>Decisions where the Council Delegate or Committees decision has been overturned or ‘Set Aside’</th>
<th>Decisions where the Council Delegate or Committees decision has been agreed with, either having been entirely ‘affirmed’ or the conditions of the permit ‘varied’</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 2017</td>
<td>6</td>
<td>3</td>
</tr>
<tr>
<td>August 2017</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>September 2017</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>October 2017</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>November 2017</td>
<td>4</td>
<td>6</td>
</tr>
<tr>
<td>December 2017</td>
<td>Not yet reported</td>
<td>Not yet reported</td>
</tr>
<tr>
<td>TOTAL DECISIONS</td>
<td>22</td>
<td>20</td>
</tr>
</tbody>
</table>

LGPRF Result

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>50%</td>
<td>45%</td>
</tr>
</tbody>
</table>

Attachments 1, 2 and 3 included provides a summary of each case identifying the key issues for Council policy and strategy.
The decisions reported in the attached September, October and November 2017 VCAT Report that were not determined by the current Councillor group are:

- 1 Waverley Street, Brighton East (determined 11 October 2016).

2. **Recommendation**

   That the report on the VCAT decisions on the planning applications handed down during September, October and November 2017 be received and noted.

**Support Attachments**

1. VCAT Determinations - September 2017
2. VCAT Determinations - October 2017
3. VCAT Determinations - November 2017
VCAT Determined Appeals from 01/09/2017 to 30/09/2017

<table>
<thead>
<tr>
<th>Subject land</th>
<th>10 Beach RD, HAMPTON</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application no.</td>
<td>2016 274 1</td>
</tr>
<tr>
<td>VCAT reference no.</td>
<td>P1385/2017</td>
</tr>
<tr>
<td>Applicant</td>
<td>Valerie Abdou</td>
</tr>
<tr>
<td>Referral Authority</td>
<td>N/A</td>
</tr>
<tr>
<td>Respondents</td>
<td>N/A</td>
</tr>
<tr>
<td>VCAT Member</td>
<td>E A Bonsz</td>
</tr>
<tr>
<td>Date of hearing</td>
<td></td>
</tr>
<tr>
<td>Date of order</td>
<td>25/09/2017</td>
</tr>
<tr>
<td>Proposal</td>
<td>Construction of two double storey dwellings with a roof area and basement car parking and alteration of the vehicle access to a Road Zone Category 1.</td>
</tr>
<tr>
<td>Officer recommendation/Delegate determination</td>
<td>Refusal</td>
</tr>
<tr>
<td>Council determination</td>
<td>Refusal to Grant a Permit</td>
</tr>
<tr>
<td>Appeal type</td>
<td>No</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>Permit to Issue</td>
</tr>
<tr>
<td>LGPRF outcome</td>
<td>SET ASIDE</td>
</tr>
</tbody>
</table>
COMMENTS:

The subject site is located within the Neighbourhood Residential Zone 3, and is affected by the Development Contributions Overlay 1.

The Applicant lodged an appeal against Council’s refusal to grant a permit.

Council refused the application on the grounds that the proposed development didn’t meet the objectives of Clause 22.06 (Neighbourhood Character Policy, Precinct E2) and had several non-compliances with Clause 55 (ReCode).

The applicant at The Tribunal amended the plans and addressed all the grounds of refusal. This included full compliance with Clause 55 and providing sufficient room for landscaping along with a redesign of the dwelling that reached a high level of compliance with the Neighbourhood Character Policy, Precinct E2. The Tribunal and Council advised that a consent order agreeing to all the changes could be reached.

On the above basis, the Tribunal overturned Council’s Refusal and issued a permit.
<table>
<thead>
<tr>
<th>Subject land</th>
<th>427 - 455 Hampton ST, HAMPTON</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application no.</td>
<td>2016 390.1</td>
</tr>
<tr>
<td>VCAT reference no.</td>
<td>P2118/2016</td>
</tr>
<tr>
<td>Applicant</td>
<td>Hampton Beach Pty Ltd</td>
</tr>
<tr>
<td>Referral Authority</td>
<td>Vic Roads: Metro South East Region, Melbourne Water</td>
</tr>
<tr>
<td>Respondents</td>
<td>D J Kern, L Peterswald, S Peterswald, N Taylor, N &amp; J Sgobino, Ms M Campbell, O Smith, B Mutmer &amp; Others, J R Nightingale, J Bissland, D &amp; J</td>
</tr>
<tr>
<td>VCAT Member</td>
<td>Laurie Hewet</td>
</tr>
<tr>
<td>Date of hearing</td>
<td>04/05/2017</td>
</tr>
<tr>
<td>Date of order</td>
<td>27/09/2017</td>
</tr>
<tr>
<td>Proposal</td>
<td>Construction of mixed use building and a consequent reduction in the standard car and bicycle requirements and alteration (removal) of access to a road</td>
</tr>
</tbody>
</table>

**Officer recommendation/ Delegate determination**
- Not support

**Council determination**
- Not support

**Appeal type**
- Failure to Grant a Permit

**Plans substituted (prior to hearing)**
- Yes

**VCAT determination**
- No Permit to Issue

**LGPRF outcome**
- AFFIRMED
COMMENTS:

This application proposed the construction of a seven storey building comprising 87 apartments above a basement car park. Three storey townhouses, a restaurant, supermarket and office were also proposed.

This Application for Review was lodged pursuant to Section 79 of the Planning and Environment Act 1987 to review the failure of the Responsible Authority to grant a permit within the prescribed time.

Council’s opposition to the proposed was based around the height and scale of the building and the extent to which the built form failed to reflect the policy and strategic outcomes specified in the Hampton Major Activity Centre framework.

Having considered the proposal, the Tribunal concluded that the principal issue in this case related to the acceptability of the proposal’s built form assessed against the outcomes encouraged by the Design and Development Overlay Schedule 12 (DDO12). The Tribunal advised that the proposal failed to meet the DDO12 and that the height and scale of the proposal achieved an outcome that does not assist in achieving the design objectives and built form outcomes specified for the MAC in the DDO12.

Subsequently, the Tribunal affirmed the position of Council and no permit was granted.
Subject land: 4 Chavasse ST, BRIGHTON
Application no.: 2016.449.1
VCAT reference no.: P11509/2017
Applicant: Fiona and Ryan Wilson
Referral Authority: N/A
Respondents: N/A

VCAT Member: M Baird
Date of hearing: 04/09/2017
Date of order: 04/09/2017
Proposal: Construction of one new three storey dwelling on a lot less than 500 square metres within the Design and Development Overlay and Special Building Overlay and a front fence of 1.8 metres in height

Officer recommendation/ Delegate determination: Permit granted
Council determination: Not applicable
Appeal type: Conditions
Plans substituted (prior to hearing): No
VCAT determination: Varied Permit
LGPRF outcome: AFFIRMED
COMMENTS:

The subject site is located within the General Residential Zone (Schedule 2), Design and Development Overlay (Schedule 11) and a Special Building Overlay.

On 5 May 2017 Council issued a planning permit for the construction of one new three storey dwelling on a lot less than 500 square metres within the Design and Development Overlay and Special Building Overlay and a front fence of 10.8 metres in height. The permit was approved subject to a number of conditions. The applicant sought a review of the imposition of Conditions 1(a), (b) and (e) on the permit.

Condition 1(a) of the permit required the development plans to be modified to show the rear boundary setbacks at ground and first floor level increased by 1 metre to meet Standard A10 of the Bayside Planning Scheme in the interests of respecting the existing and preferred neighbourhood character.

Condition 1(b) of the permit required the development plans to be modified to show the rear parapet associated with the family room reduced to a height of 4 metres to meet Standard A11 of the Bayside Planning Scheme in the interests of respecting the existing and preferred neighbourhood character.

Condition 1(e) of the permit required the development plans to be modified to show a schedule to construction materials in the interests of respecting the existing and preferred character of the area.

An oral decision with reasons was provided at the hearing.

Accordingly the Tribunal directed that planning permit 2016/449/1 contain the conditions set out in planning permit 2016/449/1 issued by the Responsible Authority on 5 May 2017 but modified to delete Conditions 1(a), (b) and (e) and consequently the renumbering of the conditions of the permit. Furthermore, that the Responsible Authority issued a modified permit.
<table>
<thead>
<tr>
<th>Subject land</th>
<th>1 Nautilus ST, BEAUMARIS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application no.</td>
<td>2016.60.1</td>
</tr>
<tr>
<td>VCAT reference no.</td>
<td>P489/2016</td>
</tr>
<tr>
<td>Applicant</td>
<td>Matthew Salisbury</td>
</tr>
<tr>
<td>Referral Authority</td>
<td>N/A</td>
</tr>
<tr>
<td>Respondents</td>
<td>John Alway and Betty Commaford</td>
</tr>
<tr>
<td>VCAT Member</td>
<td>K Paterson</td>
</tr>
<tr>
<td>Date of hearing</td>
<td>06/09/2017</td>
</tr>
<tr>
<td>Date of order</td>
<td>06/09/2017</td>
</tr>
<tr>
<td>Proposal</td>
<td>Construction of two double storey dwellings and the removal of vegetation within a VPO3</td>
</tr>
<tr>
<td>Officer recommendation/</td>
<td>Notice of decision</td>
</tr>
<tr>
<td>Delegate determination</td>
<td></td>
</tr>
<tr>
<td>Council determination</td>
<td>Notice of decision</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>AFFIRMED</td>
</tr>
</tbody>
</table>
COMMENTS:

The site is located within the Neighbourhood Residential Zone, Design and Development Overlay and the Vegetation Protection Overlay.

The application was supported (manager delegation) subject to conditions of permit.

The permit applicant lodged a review of Conditions of Permit with VCAT.

At the hearing the Tribunal determined to vary Council’s conditions requirement of a blanket 2.0 metre side boundary setback for the development. The Tribunal found that only the family/meals area required a 2.0 metres setback, as this was the area with the most sensitive interface.

To offset the variation to the built form requirements, the Tribunal required a greater level of post-construction landscaping across the site to ensure an appropriate landscaping outcome.
Subject land  
14 Agnes ST, BEAUMARIS

Application no.  
2016.228.1

VCAT reference no.  
P573/2017

Applicant  
Jura Construction Pty Ltd

Referral Authority  
Melbourne Water

Respondents  
Beaumaris Conservation Society

VCAT Member  
M Carew

Date of hearing  
07/09/2017

Date of order  
07/09/2017

Proposal  
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

| Officer recommendation/Delegate determination | Notice of decision |
| Council determination | Notice of decision |
| Appeal type | Conditions |
| Plans substituted (prior to hearing) | No |
| VCAT determination | Varied Permit |
| LGPRF outcome | AFFIRMED |
COMMENTS:

The site is located within the Neighbourhood Residential Zone and is affected by the Special Building Overlay and the Vegetation Protection Overlay.

A Planning Permit was issued (Planning and Amenity Committee), with the Permit Applicant lodging a review of Planning Permit conditions.

The conditions are required to ensure that the neighbourhood character is respected and that vegetation can be protected in accordance with the Vegetation Protection Overlay. The Beaumaris Conservation Society supported the Council's position.

In determining the application the Tribunal found that the built form of the development did not need to be amended to accommodate the successful retention of the Tree. In lieu, the Tribunal found that a Tree Management Plan was required to adequately ensure the successful retention of the tree, while also ensuring an appropriate built form outcome.
Subject land: 41 North RD, BRIGHTON
Application no.: 2016.492.1
VCAT reference no.: P937/2017
Applicant: Taylor May Kayes & Laura Elizabeth Kayes
Referral Authority: N/A
Respondents: N/A

VCAT Member: Frank Dawson
Date of hearing: 22/09/2017
Date of order: 22/09/2017
Proposal: Construction of two dwellings, a front fence exceeding a height of 1.2 metres, variation of a covenant and widening of a crossover on a Road Zone Category 1

Officer recommendation/ Delegate determination: Refusal
Council determination: N/A
Appeal type: Refusal to Grant a Permit
Plans substituted (prior to hearing): No

VCAT determination: Permit to Issue
LGPRF outcome: SET ASIDE
COMMENTS:

The subject site is located within the Neighbourhood Residential Zone 3, and is affected by the Design and Development Overlay (Schedule 3).

The Applicant lodged an appeal against Council's refusal to grant a permit Council on the grounds that the proposal would not retain the sense of spaciousness in the area nor provide adequate space for front gardens, would result in physical domination of the streetscape, did not provide for a visually attractive built form, and would lead to severe impacts on the adjacent street tree. It also failed to comply with various Objectives and Standards of Clause 55 of the Bayside Planning Scheme.

The Applicant and Council negotiated an improved outcome, and amended plans were agreed upon. Subsequently, the Tribunal made a Consent Order, set aside the RA's decision and issued a permit reflecting the agreement reached by the RA and the Applicant. The permit was issued 22 September 2017.

The Tribunal, therefore, with the tacit agreement of Council and the Applicant, set aside Council's Refusal.
Subject land 123 - 127 Martin ST, BRIGHTON
Application no. 2016.144.1
VCAT reference no. P1161/2017
Applicant Grace (Aust) Investments Pty Ltd
Referral Authority N/A
Respondents Dr M Peplow

VCAT Member Mi Deidun
Date of hearing 25/09/2017
Date of order 25/09/2017
Proposal Part demolition of the existing buildings; To construct a building
and construct or carry out works; Reduction of the standard car
parking requirement and waiver of the requirement for a loading bay

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

VCAT determination Permit to Issue
LGPRF outcome SET ASIDE
COMMENTS:

The subject site is located within a Commercial 1 Zone and is affected Heritage Overlay, Schedule 749.

The application originally proposed partial demolition of heritage buildings and construction of a four storey building with basement car parking in a Heritage Overlay. The building comprised two shops and three offices at ground level, 27 residential properties on upper floor levels, a reduction in the required car parking rate and a waiver of the loading and unloading facilities. This application was reported to the Planning and Amenity Committee meeting on 18 April 2017 with a recommendation to issue a Notice of Decision, subject to conditions.

The Planning and Amenity Committee determined to refuse the planning permit application on six grounds relating to excessive building height, building massing and relation with adjoining heritage buildings, waiver of car parking and loading bays, overlooking and internal amenity concerns.

The applicant subsequently submitted an application for review pursuant to Section 77 of the Planning and Environment Act. A Compulsory Conference was attended by the applicant, Council officers and one objecting party on 10 August 2017. An in-principle agreement reached by all parties to amend the proposal to:

- Add one additional level of basement car parking to increase the number of spaces from 37 to 44 spaces and provide independent access (deletion of car stackers) and relocate the basement car parking access.
- Reduce the number of dwellings from 27 to 15.
- Alter the western façade to amend screening and increase setbacks with 83 Asling Street.
- Reduce the balcony sizes to apartments fronting Martin Street at Second Floor Level to improve solar access to dwellings below; and
- Increase the street setback to the Third Floor Level from 5.5 metres to 7 metres to ensure visibility from Martin Street and surrounding vantage points is minimal.

The development was formally amended and reported back to the Planning and Amenity Committee meeting on 12 September 2017 with a recommendation to support. Councillors determined to support the amendments subject to conditions.

Notwithstanding Council’s support the application, the applicant sought to vary a condition relating to car parking allocations.

The application proceed to a VCAT Hearing on 25 September 2017 and the matters were limited to the car parking allocations. Member Michael Deidun determined that the proposed condition imposed in respect of car parking allocations be set aside.
VCAT Determined Appeals from 01/10/2017 to 31/10/2017

<table>
<thead>
<tr>
<th>Subject land</th>
<th>20 Cullinane ST, BLACK ROCK</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application no.</td>
<td>2013.779.1</td>
</tr>
<tr>
<td>VCAT reference no.</td>
<td>P2450/2016</td>
</tr>
<tr>
<td>Applicant</td>
<td>MR B Duysart</td>
</tr>
<tr>
<td>Referral Authority</td>
<td>N/A</td>
</tr>
<tr>
<td>Respondents</td>
<td>P Savage, R Byers</td>
</tr>
<tr>
<td>VCAT Member</td>
<td>Bill Siboni</td>
</tr>
<tr>
<td>Date of hearing</td>
<td>01/08/2017</td>
</tr>
<tr>
<td>Date of order</td>
<td>17/10/2017</td>
</tr>
<tr>
<td>Proposal</td>
<td>Construction of two dwellings on a lot with roof top decks and associated vegetation removal</td>
</tr>
</tbody>
</table>

| Officer recommendation/Delegate determination | Refusal |
| Council determination                          | Not applicable |
| Appeal type                                     | Refusal to Grant a Permit |
| Plans substituted (prior to hearing)           | No |
| VCAT determination                             | No Permit to issue |
| LGPRF outcome                                   | AFFIRMED |
COMMENTS:

The Tribunal in an Order dated 17 October 2017 upheld Council’s Refusal to grant a planning permit for the construction of two (2) double storey dwellings over a basement carpark at the subject site known as No. 20 Cullinane Street, Black Rock.

Council was opposed to this development because of its concerns relating to neighbourhood character, landscaping and design detail. The Tribunal did not share the Council’s concern that the proposed development lacked suitable recession of the upper elements in the front façade and the absence of a pitched roof which would result in pronounced and adverse visual bulk to the streetscape. The Tribunal held that the façade’s massing as a whole was an acceptable response to the streetscape and wider neighbourhood as well as the flat roof.

However in refusing this development, the Tribunal held that the Applicant had not established with any certainty that the proposed development would not adversely affect the viability of the Mature Poplar on the adjoining property at No. 552 Balcombe Road. It stated that its Interim Order of 28 August 2017 provided the Applicant with the opportunity to undertake the opportunity of a tree root investigation which was not taken up. In the absence of this crucial information demonstrating that the tree would remain viable post construction, it would not be appropriate for the Tribunal to grant a planning permit.
| Subject land | 1 Waverley ST, BRIGHTON EAST |
| Application no. | 2016-58.1 |
| VCAT reference no. | P2511/2016 |
| Applicant | Wenmei Liu |
| Referral Authority | N/A |
| Respondents | J Baragwanath and others |
| VCAT Member | Bill Sibonis |
| Date of hearing | 15/08/2017 |
| Date of order | 04/10/2017 |
| Proposal | Construction of two double storey dwellings |
| Officer recommendation/Delegate determination | Refusal |
| Council determination | Refusal |
| Appeal type | Refusal to Grant a Permit |
| Plans substituted (prior to hearing) | Yes |
| VCAT determination | No Permit to issue |
| LGPRF outcome | AFFIRMED |
COMMENTS:

The Tribunal upheld Council's Refusal to grant a planning permit for the construction of two double storey dwellings at the subject site in an Order dated 4 October 2017. The key issue before the Tribunal was whether or not the proposed development would contribute to the Preferred Neighbourhood Character for Precinct D4 as outlined at Clause 22.06 of the Bayside Planning Scheme.

The Tribunal noted that the Preferred Future Character Statement states that developments should be sited within garden settings and built from should not be a dominant element in the streetscape. The Tribunal held that the proposed development could not appropriately address these characteristics and it would be at odds with both the existing and preferred neighbourhood character.

The Tribunal found that the large dwellings with their strong rectilinear form would be discordant in this more traditional homogenous area. Another failing of the design was the lack of any meaningful attempt to recess the upper levels. As a consequence the development would dominate both streetscapes. Finally, the Tribunal noted that any proposed landscaping could not "mask or obscure what is otherwise an unacceptable design response."

In conclusion, the Tribunal held that the proposal's failure to respond acceptably to the preferred character in respect of its massing and the prominence of the first floor elements results in a dominant built from which was sufficient justification for the Tribunal to refuse this development a planning permit.
<table>
<thead>
<tr>
<th>Subject land</th>
<th>14/427 - 455 Hampton ST, HAMPTON</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application no.</td>
<td>2016.784.1</td>
</tr>
<tr>
<td>VCAT reference no.</td>
<td>P719/2017</td>
</tr>
<tr>
<td>Applicant</td>
<td>See Pickle Pty Ltd (ATF The See Pickle Trust)</td>
</tr>
<tr>
<td>Referral Authority</td>
<td>N/A</td>
</tr>
<tr>
<td>Respondents</td>
<td>T Harkin &amp; J Bryant, D &amp; J Riley, G De Biase &amp; Others, P Novaccco, J Hayes, J &amp; I Besland &amp; Others, J Balmer, J Ramsey Nightingale</td>
</tr>
<tr>
<td>VCAT Member</td>
<td>M Baird &amp; L Nervecna</td>
</tr>
<tr>
<td>Date of hearing</td>
<td>21/08/2017</td>
</tr>
<tr>
<td>Date of order</td>
<td>02/10/2017</td>
</tr>
<tr>
<td>Proposal</td>
<td>Use of the land for accommodation, construction of a seven-storey building (plus plant and services of 1.7m high), over two basement levels, containing 32 dwellings and two shops, alteration of access to a road in a Road Zone, Category 1, and a reduction in the provision of car parking and loading bays</td>
</tr>
</tbody>
</table>

**Officer recommendation/ Delegate determination**
- Refusal

**Council determination**
- Not applicable

**Appeal type**
- Refusal to Grant a Permit

**Plans substituted (prior to hearing)**
- Yes

**VCAT determination**
- No permit to issue

**LGPRF outcome**
- AFFIRMED
COMMENTS:

The subject site is located within a Commercial 1 Zone and subject to Design and development Overlay (Schedule 12).

The Applicant lodged an appeal against Council’s refusal to grant a planning permit for the use of the land for accommodation, construction of a seven-storey over two basement levels, containing 32 dwellings and two shops, alteration of access to a road in a Road Zone, Category 1, and a reduction in the provision of car parking and loading bays.

Council refused the application on multiple grounds including the proposal exceeding the preferred four storey building height, unreasonable visual amenity impacts, poor internal amenity and the proposed works not facilitating future equitable development to adjoining properties.

The applicant formally amended the plans to be considered at the Tribunal. The amended plans included a reduction in the overall building height to six storeys with roof decks containing 31 apartments. The amended plans did not respond to Council’s concerns and continued to be not supported by Council.

The Tribunal determined that the variations to DDO12’s height and setback requirements in this design response did not achieve the design objectives and built form outcomes, rather, the departures produced an outcome that is incompatible with the preferred future character and would not enhance the valued character. Aspects of the internal amenity of proposed units were also of concern. These findings weighed against a permit issuing. That is the case even though there are some positive, acceptable and neutral outcomes and even though the Tribunal accepted that the proposal improves on the existing permitted five storey building on the subject land in some respects.

On the above basis, the Tribunal affirmed Council’s Refusal.
Subject land               493A Highett RD, HIGHETT
Application no.            2016.183.1
VCAT reference no.         P1340/2017
Applicant                 DFQ Properties
Referral Authority        N/A
Respondents               J Ellis, T Clarke

VCAT Member               S. R. Cimino
Date of hearing           31/08/2017
Date of order             05/10/2017
Proposal                  Construction of a building containing nine (9) dwellings and one (1)
                          restaurant, a reduction in car parking under Clause 52.06 of the
                          Bayside Planning Scheme and reduction in the provision of a loading
                          bay required under Clause 52.07 of the Bayside Planning Scheme

Officer recommendation/   Refusal
Delegate determination    
Council determination     Refusal
Appeal type               Refusal to Grant a Permit
Plans substituted         Yes
(prior to hearing)
VCAT determination        Permit to Issue
LGPRF outcome             SET ASIDE
COMMENTS:

The subject site is located within a Commercial 1 Zone, and is effected by both the Design and Development Overlay Schedule 4 and the Development Contribution Overlay – Schedule 1.

The Applicant lodged an appeal against Council’s refusal to grant a permit.

Council refused the application on the grounds that the proposed development didn’t meet the objectives of the Design and Development Overlay Schedule 4 (DDO4) as it exceeded three stories. Furthermore the Council refused the development as it resulted in excessive visual bulk and would not achieve a high standard of urban design, thus causing harm to the amenity of neighbours and the locality contrary to the objectives of the DDO4. The final ground of refusal was the proposed development fails to comply with the requirements of Clause 52.06 – Car Parking.

The applicant at The Tribunal amended the plans and addressed all the grounds of refusal. This included full compliance with Clause 55, reduction from four stories to three, reduction in the number of units from 12 to 9 thus providing sufficient car parking. The amended design was considered to be in full compliance with the objectives of the Design and Development Overlay Schedule 5 (DDO4). The Tribunal and Council advised that a consent order agreeing to all the changes could be reached.

On the above basis, the Tribunal overturned Council’s Refusal and issued a permit.
<table>
<thead>
<tr>
<th>Subject land</th>
<th>327 South RD, BRIGHTON EAST</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application no.</td>
<td>2016-571.1</td>
</tr>
<tr>
<td>VCAT reference no.</td>
<td>P1434/2017</td>
</tr>
<tr>
<td>Applicant</td>
<td>327 South Investments</td>
</tr>
<tr>
<td>Referral Authority</td>
<td>N/A</td>
</tr>
<tr>
<td>Respondents</td>
<td>N/A</td>
</tr>
</tbody>
</table>

| VCAT Member                          | S. R. Cimino                |
| Date of hearing                       | 12/09/2017                  |
| Date of order                         | 05/10/2017                  |
| Proposal                              | Construction of two double storey dwellings and alteration of access to a road in a Road Zone Category 1 |

| Officer recommendation/               | Refusal                     |
| Delegated determination              |                             |
| Council determination                 | Not applicable              |
| Appeal type                           | Refusal to Grant a Permit   |
| Plans substituted                     | No                          |
| (prior to hearing)                    |                             |
| VCAT determination                    | Permit to Issue             |
| LGPF outcome                          | SET ASIDE                   |
COMMENTS:

The subject site is located within the Neighbourhood Residential Zone 3, and is affected by both the Design and Development Overlay (Schedule 3) and the Development Contribution Plan Overlay (DCPO1).

The Applicant lodged an appeal against Council’s refusal to grant a permit. Council refused the application on the grounds that

1. The proposed development fails to deliver a high quality urban design outcome and does not respond appropriately to either the existing or preferred neighbourhood character.

2. The proposed development fails to respond to the objectives of Clause 22.06 (Neighbourhood Character Policy) of the Bayside Planning Scheme and the associated Precinct Guidelines (Precinct E3).

3. The proposed development fails to comply with the following objectives and standards of Clause 55 of the Bayside Planning Scheme:
   a) Standard B1 – Neighbourhood character
   b) Standard B5 – Integration with the street
   c) Standard B12 – Safety
   d) Standard B13 – Landscaping
   e) Standard B26 – Dwelling Entry
   f) Standard B31 – Design Detail
   g) Standard B32 – Front Fences

The applicant tabled an amended plan at the VCAT Compulsory Conference held on 12 September 2017, attended by the permit applicant, project architect, owners and Council officer an in-principle agreement was reached between all parties.

The outcome was to:

- Redesigned front facade of both dwellings generally in accordance with the Sketch Plan no.1 dated 12 September 2017.
- Reserve of the garage and entry to dwelling 1 and modifications to front setback of both dwellings to incorporate greater landscaping opportunities generally in accordance with the Sketch Plan no. 2 dated 12 September 2017.
- A minimum of 1.5m east side setback from the proposed garage of the Dwelling 1 generally in accordance with the Sketch Plan no. 2 dated 12 September 2017.
- A variety of materials and finishes other than render finishes to be incorporated across all elevations.
- All first floor windows are redesigned to comply with Standard B22 of the Bayside Planning Scheme.
- The overall height of front fence is to be reduced to 2.0m with a minimum of 25% transparency above 1.5 metres.

An agreement was reached and supported by Council’s Committee on 28 September 2017. On the above basis, the Tribunal set Council’s Refusal aside and a permit was issued.
<table>
<thead>
<tr>
<th>Subject land</th>
<th>56 Haydens RD, BEAUMARIS</th>
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</thead>
<tbody>
<tr>
<td>Application no.</td>
<td>2017.161.1</td>
</tr>
<tr>
<td>VCAT reference no.</td>
<td>P1189/2017</td>
</tr>
<tr>
<td>Applicant</td>
<td>Josphen Linden</td>
</tr>
<tr>
<td>Referral Authority</td>
<td>N/A</td>
</tr>
<tr>
<td>Respondents</td>
<td>N/A</td>
</tr>
<tr>
<td>VCAT Member</td>
<td>Philip Martin</td>
</tr>
<tr>
<td>Date of hearing</td>
<td>14/09/2017</td>
</tr>
<tr>
<td>Date of order</td>
<td>03/10/2017</td>
</tr>
<tr>
<td>Proposal</td>
<td>The removal of a tree on land affected by a Vegetation Protection Overlay Schedule 3</td>
</tr>
</tbody>
</table>

**Officer recommendation/ Delegate determination**: Refusal

**Council determination**: Not applicable

**Appeal type**: Refusal to Grant a Permit

**Plans substituted (prior to hearing)**: No

**VCAT determination**: Permit to Issue

**LGPRF outcome**: N/A
COMMENTS:

The subject site is located within the Neighbourhood Residential Zone 3, and is affected by both the Design and Development Overlay (Schedule 3) and the Vegetation Protection Overlay (Schedule 3).

The Applicant lodged an appeal against Council's refusal to grant a permit.

Council refused the application on the grounds that the removal of the *Eucalyptus botryoides* (Mahogany Gum) was not consistent with the objectives of Clause 42.02 which seeks which seeks to prevent the loss of native vegetation and preserve existing trees. Also, the identified structural issues outlined by the applicant could have been rectified through other methods without the need to remove the tree. The methods that Council saw to be effective in addressing the structural issues were replacing the paved area with some form of wooden deck and/or pruning problematic areas of the tree.

The Tribunal determined that the removal of the *Eucalyptus botryoides* (Mahogany Gum) would not detract from the existing amenity, aesthetic character and habitat value of Australian native vegetation and indigenous vegetation in particular the Beaumaris and Black Rock area.

Notwithstanding the above, the Tribunal held that the tree proposed for removal is not an indigenous specie and effectively replacing the tree with an indigenous species will be a good outcome. It was also held by the Tribunal that because there are two of the *Eucalyptus botryoides* (Mahogany Gum) with a similar size and in the same location removing one will not impact negatively on the existing amenity.

Further the Tribunal noted that the structural issues outline by the applicant are of great consideration. Exploring a number of method to resolve the problems was felt by the Tribunal a burden which they felt was unreasonable due to the financial impact that will occur on the applicant.

On the above basis, the Tribunal set aside Council's Refusal.
<table>
<thead>
<tr>
<th>Subject land</th>
<th>13 Hornby ST, BEAUMARIS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application no.</td>
<td>2015.238.1</td>
</tr>
<tr>
<td>VCAT reference no.</td>
<td>P38/2017</td>
</tr>
<tr>
<td>Applicant</td>
<td>Vicon Homes Pty Ltd</td>
</tr>
<tr>
<td>Referral Authority</td>
<td>N/A</td>
</tr>
<tr>
<td>Respondents</td>
<td>Mr W Purfschert</td>
</tr>
<tr>
<td>VCAT Member</td>
<td>Michelle Blackburn</td>
</tr>
<tr>
<td>Date of hearing</td>
<td>10/10/2017</td>
</tr>
<tr>
<td>Date of order</td>
<td>11/10/2017</td>
</tr>
<tr>
<td>Proposal</td>
<td>Construction of two, double storey dwellings; Removal of vegetation</td>
</tr>
</tbody>
</table>

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

The subject site is located within the Neighbourhood Residential Zone – Schedule 3 and is affected by the Vegetation Protection Overlay – Schedule 3.

The Applicant lodged an appeal against Council’s refusal to grant a permit.

Council refused the application on the grounds that the built form and lack of meaningful landscaping failed to comply with the existing and preferred character of the area, the development provided for a poor relationship to Hornby Street and poor linkages between the public and private realm, and the development proposed excessive vegetation removal and hard paving. It also failed to comply with Standard B17 – Side and Rear Setbacks, Standard B26 – Dwelling Entry and Standard B31 – Design Detail.

Amended plans were substituted for the application plans at the hearing. Those plans resolved the majority of the concerns of the Council and the respondent in respect of the proposal.

On the above basis, the Tribunal set aside Council’s refusal of the application and determined that a permit should issue.
Subject land: 2 Banks AVE, HAMPTON
Application no.: 2016.242.1
VCAT reference no.: P868/2017
Applicant: Les & Kay Vais
Referral Authority: N/A
Respondents: Mark Russell, Catherine Rickett

VCAT Member: G Rundell
Date of hearing: 10/10/2017
Date of order: 25/10/2017
Proposal: Extension of an existing dwelling and construction of an additional dwelling on a lot

Officer recommendation/ Delegate determination: Refusal
Council determination: Not applicable
Appeal type: Refusal to Grant a Permit
Plans substituted (prior to hearing): Yes
VCAT determination: No Permit to issue
LGPRF outcome: AFFIRMED
COMMENTS:

The subject site is located within the Neighbourhood Residential Zone (Schedule 3) and the Design and Development Overlay (Schedule 3).

On 24 February 2017 Council determined to refuse to grant a planning permit (ref: 5/2016/242/1) to develop a two storey dwelling to the rear of the existing two storey dwelling of 2 Banks Avenue, Hampton on the grounds that the development failed to respond to the objectives of Clause 22.06 (Neighbourhood Character Policy, Precinct E3). Furthermore that it did not comply with the Objectives and Standards of Clause 55 of the Bayside Planning Scheme, in particular Standard B1 (Neighbourhood Character), Standard B6 (Street setback), Standard B17 (Side and Rear Setbacks) and Standard B18 (Walls on Boundaries).

The permit applicant lodged an appeal under Section 77 of the Planning & Environment Act 1987 to review the refusal to grant the planning permit application.

In advance of the hearing on the matter, which was heard by the Tribunal on 10 October 2017, the applicant circulated without prejudice plans making changes to the footprint of the proposed dwelling and to parking and garden facilities associated with the existing and proposed dwellings on the site.

On their review of the plans Council concluded that their grounds of refusal remained in contention, raising also, one further grounds of refusal, Ground 2e. That further ground of refusal being that "by virtue of its orientation and positioning the private open space to the south of the proposed dwelling would be significantly overshadowed and would not provide any useful amenity space for the occupants of the proposed dwelling", not complying with Standard B28 (Open Space) of Clause 55 of the Bayside Planning Scheme.

In considering its decision, the Tribunal referred to the following key issues:

- Does the development respond to its built form and policy contexts?
- Would the development provide acceptable amenity for its neighbours?
- Would the development provide acceptable amenity for its future residents?

Whilst the Tribunal acknowledged that the site can readily accommodate two dwellings, the failures in the design arise from the decision to retain the existing dwelling, compromising the second dwelling in terms of space around it, its secluded open space, setbacks to boundaries and its driveway access.

The Tribunal considered the poor landscape response, the placement of car parking within the front setback of the existing dwelling, the reliance of the proposed dwelling to have walls on boundaries fatal to the proposal and as a consequence the development failed to maintain and enhance the preferred character of the area.

It was further considered that development would provide acceptable amenity for its neighbours and future residents as the first floor south elevation of the proposed dwelling would be setback 3.65 metres from the mutual boundary of the property with the 91A Linacre Road to the south, complying with the generous requirements of Standard B17 as varied by the Schedule to the zone. Furthermore that two storey built form to the rear of a site is common place and was not determinative in the review.

No matters of internal amenity contributed to the Tribunal's decision.

The Tribunal affirmed Council's decision and directed that the notice of refusal issued by the Responsible Authority on 24 February 2017 be amended to add the further grounds of refusal, ground 2e, the terms of which are stated above.

An amended refusal to grant a planning permit was issued by Council on 25 October 2017.
Subject land: 25 Crisp ST, HAMPTON
Application no.: 2016.497.1
VCAT reference no.: P1684/2017
Applicant: Archer Developments Pty Ltd
Referral Authority: N/A
Respondents: Matthew Dusting, Andrew Esplan, Glenys and Mark Melvin

VCAT Member: Nicholas Hadjigeorgiou
Date of hearing: 10/10/2017
Date of order: 27/10/2017
Proposal: Development of two or more dwellings on a lot in the General Residential Zone, total number of apartment must not exceed 16; Construction of a front fence greater than 1.5m within 3m of the frontage and construction of building and works within the Design

Officer recommendation/ Delegation determination: Refusal
Council determination: Refusal
Appeal type: Refusal to Grant a Permit
Plans substituted (prior to hearing): No
VCAT determination: Permit to Issue
LGPRF outcome: SET ASIDE
COMMENTS:

The subject site is located within the General Residential Zone 2, and is affected by both the Design and Development Overlay (Schedule 12) and the Development Contributions Plan Overlay (Schedule 1).

The Applicant lodged an appeal against Council's refusal to grant a permit.

Council refused the application at the Planning and Amenity Meeting of 6 July 2017, on the grounds relating to excess bulk, inadequate boundary setbacks and an inappropriate response to the neighbourhood character.

At the compulsory conference held on 10 October 2017, amended plans were tabled and consented to by all parties to the proceeding. The adoption of the plans and recommendation was ratified at the Planning and Amenity Committee meeting of 17 October 2017.

On the above basis, the Tribunal set aside Council's Refusal and directed that a planning permit issue in accordance with the agreements reached at the compulsory conference.
<table>
<thead>
<tr>
<th>Subject land</th>
<th>26 Luxmoore ST, CHELTENHAM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application no.</td>
<td>2016.534.1</td>
</tr>
<tr>
<td>VCAT reference no.</td>
<td>P1651/2017</td>
</tr>
<tr>
<td>Applicant</td>
<td>Adam Daniels</td>
</tr>
<tr>
<td>Referral Authority</td>
<td>N/A</td>
</tr>
<tr>
<td>Respondents</td>
<td>N/A</td>
</tr>
</tbody>
</table>

| VCAT Member           | Cindy Wilson                |
| Date of hearing       | 16/10/2017                  |
| Date of order         | 17/10/2017                  |
| Proposal              | Construction of two dwellings |

| Officer recommendation/Delegate determination | Notice of decision          |
| Council determination               | Not applicable              |
| Appeal type                         | Conditions                  |
| Plans substituted (prior to hearing)| No                         |
| VCAT determination                  | Varied Permit to Issue      |
| LGPRF outcome                       | AFFIRMED                    |
COMMENTS

The applicant sought to amend the planning permit conditions associated with the construction of two dwellings on a lot under Section 80 Planning and Environment Act 1987.

Conditions 1b, 1c, 1d, 1e, 1h, 1j, 1m, 1n relate to the built form and conditions 7 and 11 that relate to the reconstruction of crossovers and completion of landscaping prior to occupation were disputed.

Condition 1b sought to protect residents from vehicular noise within the development to accord with Standard B15: Parking Location. The option of the provision of acoustic glazing to meet the objective of the standard was added to the condition and is considered an acceptable outcome.

Condition 1c, 1d and 1e required the built form of the two dwellings to be reduced to ensure that the secluded private open space to the rear dwelling accorded with Standard B29: Solar access to open space objective of the Bayside Planning Scheme. The combination of the free conditions were to also reduce the visual impact as a result of the cantilevered first floor to the rear dwelling. Whilst recognising that the amenity outcome of the affected SPOS was not acceptable, the Tribunal found that full compliance with the standard was not required and that visual impacts were confined internally. As such, the aforementioned condition was varied and Condition 1e deleted.

Condition 1h and 1j sought to reduce streetscape impact of the dwellings. Relating to the presentation of internal fencing to the streetscape and design detail to reduce the visual dominance of the two driveways, the tribunal found that the intent of 1h could be met with an open style of fencing and as such the condition was amended. Condition 1j required the provision of brick banding along both sides of the vehicle accessway for its entire length with decorative paving interspersed. The Tribunal found the condition was onerous and supported the application to delete it.

Condition 1(l) and (m) sought the reconstruction and realignment of the crossovers. The appeal to these conditions were abandoned at the commencement of the hearing.

Conditions 7 and 11 were upheld by the Tribunal. The Member noted that Council and immediate owners/occupiers could not bear the burden of any impacts that may arise as a result of the deletion of these standard conditions.

On that basis, the Tribunal directed that the Conditions be amended and a varied planning permit was issued on 17 October 2017.
VCAT Determined Appeals from 01/11/2017 to 30/11/2017

<table>
<thead>
<tr>
<th>Subject land</th>
<th>132 Bluff RD, BLACK ROCK</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application no.</td>
<td>2016/711</td>
</tr>
<tr>
<td>VCAT reference no.</td>
<td>P803/2017</td>
</tr>
<tr>
<td>Applicant</td>
<td>Sian Asbury of Lowe Design Pty Ltd</td>
</tr>
<tr>
<td>Referral Authority</td>
<td>Vic Roads</td>
</tr>
<tr>
<td>Respondents</td>
<td></td>
</tr>
</tbody>
</table>

| VCAT Member         | Jane Tart                |
| Date of hearing     | 09/10/2017               |
| Date of order       | 16/11/2017               |
| Proposal            | Development of the land for four dwellings, removal of native vegetation and alterations to an accessway off a Road Zone, Category 1 |

| Officer recommendation/ Delegate determination | Refusal |
| Council determination | Not applicable |
| Appeal type | Refusal to Grant a Permit |
| Plans substituted (prior to hearing) | Yes |
| VCAT determination | Permit to issue |
| LGPRF outcome | SET ASIDE |
COMMENTS:

The subject site is located within the Neighbourhood Residential Zone 3, and is affected by the Vegetation Protection Overlay 3, Design and Development Overlay 3 and the Development Contributions Plan Overlay 1.

The Applicant lodged an appeal against Council’s refusal to grant a permit.

Council refused the application on the grounds relating to excess size and scale, inappropriate response to neighbourhood character including the landscape character, and numerous non-compliance with ResCode Standards.

Amended plans were circulated prior to the hearing, addressing many of the reasons for refusal though not going far enough to gain Council support.

The Tribunal ultimately determined that the non-compliances that remained after the substitution of plans did not warrant refusal of the application, and that the proposed built form would be an appropriate addition to this area.

On the above basis, the Tribunal set aside Council’s decision and directed that a planning permit issue.
<table>
<thead>
<tr>
<th>Subject land</th>
<th>12 North RD, BRIGHTON</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application no.</td>
<td>2016.429.1</td>
</tr>
<tr>
<td>VCAT reference no.</td>
<td>P982/2017</td>
</tr>
<tr>
<td>Applicant</td>
<td>Bruce Hamilton</td>
</tr>
<tr>
<td>Referral Authority</td>
<td>Adapt Architecture Pty Ltd</td>
</tr>
<tr>
<td>Respondents</td>
<td></td>
</tr>
<tr>
<td>VCAT Member</td>
<td>Tracey Bilston-McGillen</td>
</tr>
<tr>
<td>Date of hearing</td>
<td>17/10/2017</td>
</tr>
<tr>
<td>Date of order</td>
<td>13/11/2017</td>
</tr>
<tr>
<td>Proposal</td>
<td>Construction of two double storey dwellings with basement car parking</td>
</tr>
<tr>
<td>Officer recommendation/</td>
<td></td>
</tr>
<tr>
<td>Delegate determination</td>
<td>Notice of decision</td>
</tr>
<tr>
<td>Council determination</td>
<td>Notice of decision</td>
</tr>
<tr>
<td>Appeal type</td>
<td>Notice of Decision to Grant a Permit</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>Permit to issue</td>
</tr>
<tr>
<td>LGPRF outcome</td>
<td>AFFIRMED</td>
</tr>
</tbody>
</table>
COMMENTS:

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

An objection lodged an appeal against Council’s Notice of Decision to Grant a Planning Permit for two double storey dwellings with basement car parks. The Statement of Grounds lodged with the Tribunal listed visual bulk and overshadowing and loss of view and amenity as reasons for the appeal.

The Tribunal determined that the proposed development complies with the side setbacks requirements of Clause 55 with the exception of two first floor areas towards the front of the dwelling, away from the objector’s property. The Tribunal was persuaded that the proposed development in terms of visual bulk was acceptable given the compliant setbacks from the objector’s boundary.

The Tribunal found that the proposed level of additional overshadowing was compliant with Clause 55.04-5 of the Bayside Planning Scheme and would not result in an unreasonable impact on the objector’s private open space. In terms of the loss of outlook, the Tribunal determined that the planning scheme does not protect outlooks, the exception being protection of views in coastal areas. The proposed development is generally compliant with the required setbacks and subject to an additional condition in relation to landscaping has been addressed appropriately.

The Tribunal directed that a Planning Permit be issued subject to two amended conditions.
### Item 4.12 – Matters of Decision

#### Subject land
23 Ferguson ST, BRIGHTON EAST

#### Application no.
2016 678.1

#### VCAT reference no.
P1381/2017

#### Applicant
A and A Zielinski

#### Referral Authority
N/A

#### Respondents
S McMillan

#### VCAT Member
E. A Bensz

#### Date of hearing
23/10/2017

#### Date of order
06/11/2017

#### Proposal
Extension of one dwelling on a lot of less than 500 square metres

#### Officer recommendation/
Delegate determination
Notice of decision

#### Council determination
Notice of decision

#### Appeal type
Conditions

#### Plans substituted
No

#### (prior to hearing)

#### VCAT determination
Permit to Issue

#### LGPRF outcome
AFFIRMED
COMMENTS:

The subject site is located within the Neighbourhood Residential Zone 3, and is affected by both the Design and Development Overlay (Schedule 3) and the Development Contributions Plan Overlay (Schedule 1).

The Applicant lodged an appeal against condition 1(a) of the planning permit. The condition required compliance with standard A10 for the eastern first floor setback and was introduced to the permit by Councillors at the planning and amenity committee meeting of 18 May 2017.

The Tribunal determined that the condition would severely compromise the usability of the first floor, and amended the condition such that the setback from the boundary was increased, but not to level sought under the original condition.

On the above basis, the Tribunal varied Council's decision and directed a modified planning permit be issued.
Subject land: 1 Reynolds ST, HAMPTON EAST
Application no.: 2016.596.1
VCAT reference no.: P1793/2017
Applicant: Reynolds Street Developments Pty Ltd
Referral Authority: N/A
Respondents: S Lakridis, B De Michellis, D Hughes, B Molinaro, M Iida, M Plandakis

VCAT Member: Nicholas Hadjigeorgiou
Date of hearing: 25/10/2017
Date of order: 14/11/2017
Proposal: Construction of a multi storey development

<table>
<thead>
<tr>
<th>Officer recommendation/ Delegate determination</th>
<th>Notice of decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Council determination</td>
<td>Refusal</td>
</tr>
<tr>
<td>Appeal type</td>
<td>Refusal to Grant a Permit</td>
</tr>
<tr>
<td>Plans substituted (prior to hearing)</td>
<td>No</td>
</tr>
<tr>
<td>VCAT determination</td>
<td>Permit to be Issued</td>
</tr>
<tr>
<td>LGPRF outcome</td>
<td>SET ASIDE</td>
</tr>
</tbody>
</table>
COMMENTS:

The subject site is located within the Residential Growth Zone 1, and is affected by both the Design and Development Overlay (Schedule 2) and the Development Contributions Plan Overlay (Schedule 1).

The Applicant lodged an appeal against Council's refusal to grant a permit.

Council refused the application at the planning and amenity committee meeting of 18 July 2017, on grounds generally relating to excessive size and scale, and inadequate visitor car parking.

At the consultation meeting, amended plans were circulated, and agreed to by all parties to the appeal. A consent order was prepared, and ultimately ratified by Councillors at the planning and amenity committee meeting of 2 November 2017.

On the above basis, the Tribunal set aside Council's refusal and directed that a planning permit issue subject to agreed conditions and associated plan changes.
Subject land: 133 Thomas ST, BRIGHTON EAST
Application no.: 2004.261.2
VCAT reference no.: P1323/2017
Applicant: T & V Developments
Referral Authority: N/A
Respondents: Matthew Murphy, Richard Silfierz

VCAT Member: Michelle Blackburn
Date of hearing: 31/10/2017
Date of order: 01/11/2017
Proposal:
Alterations and additions to food and drink premises and dwelling and
the construction of two(2) additional dwellings with car parking in a
Design and Development Overlay 2

Officer recommendation/
Delegate determination: Refusal
Council determination: Not applicable
Appeal type: Refusal Amended Permit
Plans substituted
(prior to hearing): Yes
VCAT determination: Amended Permit to Issue
LGPRF outcome: SET ASIDE
COMMENTS:

The subject site is located within The Commercial 1 Zone, and is affected by the Design and Development Overlay (schedule 2) and Development Contributions Plan Overlay (Schedule 1).

The Applicant lodged an appeal against Council's refusal to grant a permit.

Council refused the application on grounds relating to offsite amenity impacts (by noise, vibrations and visual sense) associated with the installation of an exhaust system that was erected without a planning permit.

Amended plans were submitted prior to the VCAT hearing, including a detailed acoustic submission that sought to address the amenity impacts that resulted from the works. The Tribunal determined that subject to these changes and additional conditions, the resulting outcome would be an accepted one.

On the above basis, the Tribunal set aside Council's Refusal and directed that a planning permit issue subject to conditions.
<table>
<thead>
<tr>
<th>Subject land</th>
<th>29 Tulip GVE, CHELTENHAM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application no.</td>
<td>2017.183.1</td>
</tr>
<tr>
<td>VCAT reference no.</td>
<td>P2313/2017</td>
</tr>
<tr>
<td>Applicant</td>
<td>Frank Bruce Kiloh</td>
</tr>
<tr>
<td>Referral Authority</td>
<td>N/A</td>
</tr>
<tr>
<td>Respondents</td>
<td>C A Wells</td>
</tr>
<tr>
<td>VCAT Member</td>
<td>Alison Slattery</td>
</tr>
<tr>
<td>Date of hearing</td>
<td>01/11/2017</td>
</tr>
<tr>
<td>Date of order</td>
<td>01/11/2017</td>
</tr>
<tr>
<td>Proposal</td>
<td>Addition of ground and first floor extension to an existing dwelling (on a lot less than 500 square metres)</td>
</tr>
<tr>
<td>Officer recommendation/Delegate determination</td>
<td>Notice of decision</td>
</tr>
<tr>
<td>Council determination</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Appeal type</td>
<td>Notice of Decision to Grant a Permit</td>
</tr>
<tr>
<td>Plans substituted</td>
<td>No</td>
</tr>
<tr>
<td>(prior to hearing)</td>
<td></td>
</tr>
<tr>
<td>VCAT determination</td>
<td>Appeal Withdrawn</td>
</tr>
<tr>
<td>LGPRF outcome</td>
<td>N/A</td>
</tr>
</tbody>
</table>
COMMENTS:

Following Council’s determination to issue a Notice of Decision to Grant a Planning Permit for
ground and first floor extensions to the dwelling of 29 Tulip Grove, Cheltenham, the objector to the
application sought a review of Council’s decision pursuant to Section 82 of the Planning &

A statement of grounds was not provided to Council by the appeal applicant.

The appeal was withdrawn by the appellant with the date of the hearing for the matter vacated.

Planning permit 2017/183/1 was issued by Council on 1 November 2017.
<table>
<thead>
<tr>
<th>Subject land</th>
<th>19 - 25 Donald ST, HIGHETT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application no.</td>
<td>2015/675.1</td>
</tr>
<tr>
<td>VCAT reference no.</td>
<td>P1007/2017</td>
</tr>
<tr>
<td>Applicant</td>
<td>Audrey Bujidoss</td>
</tr>
<tr>
<td>Referral Authority</td>
<td></td>
</tr>
<tr>
<td>Respondents</td>
<td>Dean Clarke</td>
</tr>
</tbody>
</table>

| VCAT Member       | K Birtwistle                |
| Date of hearing   | 03/11/2017                  |
| Date of order     | 03/11/2017                  |
| Proposal          | Use of the land for a childcare centre, buildings and works and display of business identification signage |

| Officer recommendation/ Delegate determination | Notice of decision |
| Council determination                              | Notice of decision |
| Appeal type                                        | Notice of Decision to Grant a Permit |
| Plans substituted (prior to hearing)              | No                   |
| VCAT determination                                | Permit to Issue      |
| LGPRF outcome                                     | AFFIRMED             |
COMMENTS:

The applicant for review (s82 objector appeal) did not show up on the day and the member had to conclude the meeting to affirm Council’s decision. No merits hearing was conducted.
<table>
<thead>
<tr>
<th>Subject land</th>
<th>2 Small ST, HAMPTON</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application no.</td>
<td>2016/737.1</td>
</tr>
<tr>
<td>VCAT reference no.</td>
<td>P1098/2017</td>
</tr>
<tr>
<td>Applicant</td>
<td>Tyse Pty Ltd ATF Chambers Family</td>
</tr>
<tr>
<td>Referral Authority</td>
<td></td>
</tr>
<tr>
<td>Respondents</td>
<td></td>
</tr>
<tr>
<td>VCAT Member</td>
<td>Joel Templar</td>
</tr>
<tr>
<td>Date of hearing</td>
<td>10/11/2017</td>
</tr>
<tr>
<td>Date of order</td>
<td>24/11/2017</td>
</tr>
<tr>
<td>Proposal</td>
<td>Reduction in the number of car parking spaces in association with an as-of-right use in a Commercial 1 Zone</td>
</tr>
<tr>
<td>Officer recommendation/</td>
<td>Refusal</td>
</tr>
<tr>
<td>Delegate determination</td>
<td></td>
</tr>
<tr>
<td>Council determination</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Appeal type</td>
<td>Refusal to Grant a Permit</td>
</tr>
<tr>
<td>Plans substituted (prior to hearing)</td>
<td>No</td>
</tr>
<tr>
<td>VCAT determination</td>
<td>Permit to Issue</td>
</tr>
<tr>
<td>LGPRF outcome</td>
<td>SET ASIDE</td>
</tr>
</tbody>
</table>
COMMENTS:

Planning Permit Application No. 2016/737/1 was lodged with Council on 11 November 2016. The applicant sought permission to construct and carry out works, display of internally illuminated signs in excess of 1.5 m²; the use of the land to sell and consume liquor and a reduction of fifty-three (53) car spaces associated with the use of the land as a restaurant/café for 133 patrons (as of right).

Located in the Commercial 1 Zone, the subject site is affected by the Design and Development Overlay, Schedule 12 and the Development Contributions Plan Overlay Schedule.

The site is located on the western edge of the Hampton Major Activity Centre and its immediate interfaces to the northeast, west and south are residentially zoned.

A request for further information was sent to the Applicant and the Application was amended before notice was given. Subsequently, the development proposal and plans were modified and all previous Planning Permit permissions sought bar the reduction in car parking were abandoned. The proposed number of patrons was reduced from 133 patrons to 114 patrons (reduction of 45 spaces) and 7 day trading was proposed between the hours of 6am and 7 pm.

The Application was not advertised as pursuant to Clause 52.06-4 of Bayside City Council’s Planning Scheme, the Application is exempt from notice requirements of Section 52(1)(a), (b) and (d), the decision requirements of Section 64(1), (2) and (3) and the review rights of Section 62(1) of the Planning and Environment Act 1987.

Council considered the Application under delegation and determined to refuse the Application. The grounds of refusal related to the impacts that the reduction of car parking would have on the availability of car parking in the residential and commercial areas surrounding the site including amenity impacts as a result of increased traffic generation proximate to the site.

The Applicant applied to Tribunal on 13 June 2017 to review Council’s refusal to grant a permit pursuant to section 77 of the Planning and Environment Act 1987.

As a result of the hearing on 10 November 2017, the Tribunal set aside Council’s decision and directed that a Planning Permit be issued.

The Tribunal found that whilst there would be some impacts as a result of overflow to the surrounding residential areas, they were not unacceptable, citing the adequate provision of on-street, public car parking and noting the lack of tightly restricted parking and absence of ‘permit only’ spaces within the surrounding residential area.

The Tribunal highlighted the number of decisions that emphasise the need for car parking reductions to be assessed as a centre-based approach in MAC’s, rather than on a site-by-site basis, emphasising that uses should not be prevented from establishing in MAC’s due to a lack of car parking.

On the basis that no overspill to residential areas as a result of commercial uses should occur, the Tribunal contended that Council should revise the existing car parking restrictions in the surrounding residential network.

Furthermore, the Tribunal found that there was a net community benefit in approving the car parking reduction as the associated use would create employment, provide community services and activate this edge of the MAC.
Subject to conditions pertaining to the provision of bicycle spaces and limiting the number of patrons on site to 114, the Tribunal directed that a Planning Permit be issued.
<table>
<thead>
<tr>
<th>Subject land</th>
<th>3 Thistle GVE, HIGHTT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application no.</td>
<td>2016/679.1</td>
</tr>
<tr>
<td>VCAT reference no.</td>
<td>P1612/2017</td>
</tr>
<tr>
<td>Applicant</td>
<td>Real Estate Concepts</td>
</tr>
<tr>
<td>Referral Authority</td>
<td></td>
</tr>
<tr>
<td>Respondents</td>
<td></td>
</tr>
<tr>
<td>VCAT Member</td>
<td>Alison Glynn</td>
</tr>
<tr>
<td>Date of hearing</td>
<td>16/11/2017</td>
</tr>
<tr>
<td>Date of order</td>
<td>16/11/2017</td>
</tr>
<tr>
<td>Proposal</td>
<td>Construction of a three storey residential building and a basement on two lots</td>
</tr>
<tr>
<td>Officer recommendation/</td>
<td>Notice of decision</td>
</tr>
<tr>
<td>Delegate determination</td>
<td>Notice of decision</td>
</tr>
<tr>
<td>Council determination</td>
<td>Conditions</td>
</tr>
<tr>
<td>Appeal type</td>
<td>No</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>Permit to Issue</td>
</tr>
<tr>
<td>LGPRF outcome</td>
<td>AFFIRMED</td>
</tr>
</tbody>
</table>
COMMENTS:

The subject site is located within a General Residential Zone 1, and is effected by both the Design and Development Overlay Schedule 5 and the Development Contribution Overlay – Schedule 1.

The Applicant lodged an appeal against Council’s Notice of Decision.

Council’s Planning and Amenity Committee decided to issue a Notice of Decision including two conditions to increase the setbacks to comply with the relevant standards as listed in the Bayside Planning Scheme (Condition 1n) and 1o) to further protect the amenity of the neighbourhood.

Following the VCAT appeal, the applicant submitted a set of 'Without Prejudice' amended plans to Council for discussion on 5 October 2017. An in-principle agreement was reached between all parties to discharge the Condition 1n) and 1o) from the permit given the amended plan has significant improvements which fulfilled Council’s issues.

The application was reported back to Planning and Amenity Committee on 2 November 2017 and the Committee supported to reach a consent order.

On the above basis, the Tribunal varied Council’s Notice of Decision to discharge the Condition 1n) and 1o).
Item 4.12 – Matters of Decision

Subject land: 438 Beach RD, BEAUMARIS
Application no.: 2016 472 1
VCAT reference no.: P1867/2017
Applicant: Greg Ioannos
Referral Authority: Win Van Den Bossche

VCAT Member: Carol Daicic
Date of hearing: 21/11/2017
Date of order: 21/11/2017
Proposal: Alterations and additions to a single dwelling on a lot less than 500 square metres

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

VCAT determination: Varied Permit to Issue
LGPRF outcome: AFFIRMED
COMMENTS:

The subject site is located within the Neighbourhood Residential Zone Schedule 3 and is affected by the Design and Development Overlay Schedule 1, Vegetation Protection Overlay Schedule 3 and the Development Contributions Plan Overlay Schedule 1.

The Applicant lodged an appeal against conditions 1(a), 1(b), 1(c), 1(d), conditions 5 and 6 of the planning permit. The conditions required specific landscaping, an increase in site permeability from 18% to 20%, removal of all reference to boundary fencing and the front balcony to be screened to meet Standard A15 facing 437 Beach Road. Condition 1(d) was introduced to the permit by Councillors at the planning and amenity committee meeting of 13 June 2017.

The Tribunal partially varied the landscaping conditions to reflect the existing site conditions. The Tribunal deleted the permeability conditions as the Member considered that the objective was met at 18% site permeability. The condition requiring the removal of boundary fencing was upheld. The screening condition was removed as the Tribunal found that 437 Beach Road was already overlooked excessively from existing windows.

On the above basis, the Tribunal varied Council's decision and directed a modified planning permit be issued.
Subject land: 29 St Ninians RD, BRIGHTON
Application no.: 2016.627.1
VCAT reference no.: P1310/2017
Applicant: Rowen Findlay
Referral Authority: Nicholson Planning & Development
Respondents:

VCAT Member: Susan Whitney
Date of hearing: 27/11/2017
Date of order: 27/11/2017
Proposal: construction of an attic level in the Design and Development Overlay
1
Alterations and additions to an existing dwelling, including the

Officer recommendation/ Delegate determination: Notice of decision
Council determination: Notice of decision
Appeal type: Notice of Decision to Grant a Permit
Plans substituted (prior to hearing): No
VCAT determination: Permit to Issue
LGPRF outcome: AFFIRMED
COMMENTS:

The site is located within the Neighbourhood Residential Zone and the Design and Development Overlay, Schedule 1.

While on public notice (advertising) the application received three written objections.

Council determined to support the application and issued a Notice of Decision to Grant a Planning Permit at the Planning and Amenity Committee dated 18 May 2017.

Subsequent to that, an objector lodged a Review of Council’s determination with VCAT.

The permit applicant, Council officers and the applicant for review (objector) successfully mediated the concerns of the application and reached a consent order. Therefore, no hearing was required.
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