Agenda

for the

Planning & Amenity Committee Meeting

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

on

Thursday, 28 September, 2017 at 7.00pm

Chairperson: Cr Laurence Evans
Councillors: Cr Alex del Porto (Mayor)  
Cr Michael Heffernan  
Cr James Long BM JP  
Cr Clarke Martin  
Cr Rob Grinter  
Cr Sonia Castelli
Members of the Gallery

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

Section 92 The Chair's Duties and Discretions

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

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

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

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

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

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

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

Your cooperation is appreciated

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

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

Membership of the Committee
All Councillors

Order of Business

1. Apologies
2. Declarations of Interest
3. Adoption and Confirmation of the minutes of previous meeting
4. Matters of Decision
   4.1 327 South Road, Brighton East Support The Grant Of A Planning Permit Application No: 2016/571/1 Ward: Central ....................... 5
   4.2 493A, 493 - 495 Highett Road, Highett Support the Grant of a Planning Permit Application No: 2016/183/1 Ward: Central .. 31
   4.3 8 Camperdown Street, Brighton East Notice of Decision to Grant a Planning Permit Application No: 2016/714/1 Ward: Northern 63
   4.4 16 Morley Crescent, HIGHETT Notice of Decision to Grant a Planning Permit Application No: 5/2017/113/1 Ward:Central .... 99
   4.5 7-9 Cowra Street, Brighton Secondary Consent - Approve Application No: 2013/770/1 Ward: Northern ......................... 129
   4.6 VCAT Report ................................................................. 167
5. Confidential Business
   Nil

Next Meetings 2017

Tuesday 17 October 2017
Thursday 2 November 2017
Tuesday 14 November 2017
Thursday 30 November 2017
Monday 11 December 2017
Thursday 21 December 2017
1. **Apologies**

2. **Declarations of Interest**

3. **Adoption and Confirmation of the minutes of previous meeting**

   3.1 Confirmation of the Minutes of the Planning & Amenity Committee Meeting held on 12 September 2017.
4. Matters of Decision

4.1 327 SOUTH ROAD, BRIGHTON EAST
SUPPORT THE GRANT OF A PLANNING PERMIT
APPLICATION NO: 2016/571/1 WARD: CENTRAL

City Planning & Community Services - Statutory Planning
File No: PSF/15/8755 – Doc No: DOC/17/200938

1. Purpose and background

To report an in-principle agreement reached by all parties at a VCAT Compulsory Conference for construction of two dwellings and alteration of an access to a road in a Road Zone Category 1. The building comprises two side by side townhouses each including four bedrooms and a double garage on a lot with an area of 790 square metres (refer Attachment 1) at 327 South Road, Brighton East (refer Attachment 2).

<table>
<thead>
<tr>
<th>Applicant</th>
<th>The North Planning Pty Ltd</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date received</td>
<td>12 September 2017</td>
</tr>
</tbody>
</table>

On 7 June 2017 Council’s Planning Department considered an application for construction of two dwellings and alteration of an access to a road in a Road Zone, Category 1. The proposal comprises two side by side townhouses each including four bedrooms and a double garage. Council’s Planning Department determined to refuse the proposal on the following grounds:

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 has lodged an appeal under Section 77 of the Planning and Environment Act 1987 with the Victorian Civil and Administrative Tribunal (VCAT) against Council’s decision to refuse to grant a planning permit.

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 façade of both dwellings generally in accordance with the Sketch Plan no.1 dated 12 September 2017.
- Resign 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.

A detailed list of all changes are noted in Attachment 3 of this report.

A set of ‘without prejudice’ amended plans were tabled at the VCAT Compulsory Conference by the applicant and are appended as Attachment 1 to this report. These plans form part of the in-principle agreement reached by all parties in addition to the conditions noted in the recommendation. These reduce the detriment to adjoining properties and therefore the application does not require to be re-advertised to original person’s notified or original objectors. It is noted that the sole objector has elected not to become a party to the appeal. The concerns raised by this objector relate to overlooking, noise, walls on boundaries and encroachment over boundaries by vegetation.

The original development plans refused by Council under delegation are included as Attachment 4.

If Council agrees to support the recommendation below then a planning permit will be issued by VCAT which contains, unchanged, all of the conditions in the recommendation section of this report. Alternatively, should Council determine to not support the issue of an amended permit, then the application will proceed to a VCAT merits hearing scheduled on 27 October 2017 for three hours.

2. **Policy implications**

Planning permit requirements

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

Clause 52.29 (Land Adjacent to a Road Zone, Category 1) – Alteration of an access to a road in a Road Zone, Category 1.

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, subject to conditions</td>
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Internal referrals

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

<table>
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<td>Arborist</td>
<td>No objection, subject to conditions</td>
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<tr>
<td>Traffic Engineer</td>
<td>No objection, subject to conditions</td>
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</table>
Drainage Engineer | No objection, subject to conditions.
Street Tree Arborist | No objection, subject to conditions.

Public notification

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

- Overlooking;
- Noise;
- Walls on boundaries; and,
- Encroachment over boundaries by vegetation.

Consultation meeting

VCAT arranged and held a Compulsory Conference on 12 September 2017. The applicant, project architect, owners, and Council representative to the VCAT proceedings were in attendance. The applicant tabled ‘without prejudice’ plans, and an in-principle agreement was reached by all parties in attendance.

The objector did not lodge a statement of grounds with the Tribunal and was therefore not a party to the proceeding.

4. **Recommendation**

That Council:

Determines to **Support** the application under the provisions of the Bayside Planning Scheme in respect of Planning Application 2016/571/1 for the land known and described as 327 South Road, Brighton East for **construction of two dwellings and alteration of access to a road in a Road Zone Category 1** in accordance with the endorsed plans and subject to the following conditions from the standard conditions:

1. Before the development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the plans (submitted with the application and advertised) prepared by Finley Roberts Design referenced Job no. 16-005, dated 9 November 2016 and Revision number A but modified to show:
   a) Redesigned front façade of both dwellings generally in accordance with the Sketch Plan no.1 dated 12 September 2017.
   b) Redesign 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.
   c) 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.
   d) A variety of materials and finishes other than render finishes to be incorporated across all elevations.
   e) All first floor windows are redesigned to comply with Standard B22 of the Bayside Planning Scheme.
f) Elevation plan showing the proposed front fence in a scale of 1:100. The overall height is to be reduced to 2.0m with a minimum of 25% transparency above 1.5 metres.

g) Revised floor plan or elevation plan to provide a consistent window schedules.

h) Deletion or relocation of the proposed spa outside the easement area.

i) The driveway of each dwelling to have brick banding along its edges.

j) The pedestrian pathways of each dwelling to be clearly identifiable and constructed out of a different material to the driveway.

k) The front porches of each dwelling to be finished with a material other than render.

l) 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.

m) An amended Landscaping Plan to replace Norway Maple with Coastal Banksia in accordance with Condition 10 of this permit.

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

All to the satisfaction of the Responsible Authority.

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

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

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

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

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

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

**Water Sensitive Urban Design**

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

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

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

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

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

Landscaping

10. Prior to the endorsement of plans pursuant to Condition 1, a detailed landscape plan to the satisfaction of the Responsible Authority must be submitted to and be endorsed by the Responsible Authority. The plan must be generally in accordance with the landscape plan drawn by Zenith Concepts, Council stamp dated 9 November 2016 and be drawn to scale with dimensions and three copies must be provided. The plan must show:

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

b) A survey including botanical names, of all existing trees on neighbouring properties where the Tree Protection Zones of such trees calculated in accordance with AS4970-2009 fall partially within the subject site.

c) 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

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

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

Tree Management and Protection Plan

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

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

The Tree Protection Plan must be in accordance with AS4970-2009, be drawn to scale and provide details of:
a) The Tree Protection Zone and Structural Root Zone for all trees to be retained on the site and for all trees on neighbouring properties where any part of the Tree Protection Zone falls within the subject site.

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

Drainage

14. 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.

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

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

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

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.

19. 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.

VicRoads

20. Prior to the occupation of the dwellings, the redundant crossover must be removed and wholly reinstated with kerb, channel, verge and footpath to the satisfaction of the Responsible Authority and at no cost to the Responsible Authority or VicRoads.

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

Permit Expiry

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

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

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 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 21.09 Transport and Access
- Clause 21.11 Local Areas
- Clause 22.06 Neighbourhood Character Policy
- Clause 22.08 Water Sensitive Urban Design
- Clause 32.09 Neighbourhood Residential Zone (Schedule 3)
- Clause 43.02 Design and Development Overlay (Schedule 3)
- Clause 52.06 Car Parking
- Clause 52.29 Land Adjacent to a Road Zone, Category 1
- 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, the individual merits of the application and whether the amended plans response to Council’s previous Grounds for Refusal.

6.1. **Amended Plans Assessment**

This report will detail how the amended plans at Attachment 1 respond to the previous Grounds for Refusal and relevant planning policies.

**Amendment to address Grounds for Refusal**

The amended plans seek to relocate the porch and entry of Dwelling 1 to the centre of the proposed building which complies with the Standard B12 – Safety and Standard B26 – Dwelling Entry. In order to accommodate this amendment, the proposed garage of Dwelling 1 has to move 500mm towards east boundary. In together with the amendment to set the garage further back of approximately 1.4m from the original position, it creates a more physical articulated front façade of the building and this staggered front setbacks of two dwellings will minimise the building dominance to the streetscape.

The proposed integrated garage door of the Dwelling 1 is of high architectural design which will further assist in breaking up the garages dominance to the streetscape. In addition, the permit condition 1d) and k) will ensure the proposal is designed to a high quality urban design outcome in terms of materials and colours which responds appropriately to either the existing or preferred neighbourhood character in responding
to the objective of Clause 22.06 as well as the Standard B1 – Neighbourhood Character.

The amended plans also seek to increase the landscaping opportunities by reducing the amount of sealed coloured concrete. The submitted Sketch no.3 (Attachment 3) demonstrates that a number of canopy trees can to be planted in the proposed garden areas. The landscaping areas in front of the proposed entry of each dwelling further assist in maintaining and enhancing the garden settings of the dwellings which complies with the objective of Clause 22.06. It is noted, Council’s arborist comment on the submitted landscape plan with no objections.

Whilst the proposed amendment has reduced the east side setback from 2m to 1.5m, it is considered to be an acceptable outcome given the rhythm of visual separation between buildings is still warranted by the proposed 11.4m front setback. The required openness of the streetscape under Clause 22.06 has been achieved by condition 1f) which requires the overall height of the front fence to be reduced to 2.0m with a minimum of 25% transparency above 1.5 metres.

Non-compliance Standard B17 – Side and Rear Setback

In order to accommodate the relocation of porch and entry for Dwelling 1, the building footprint has to encroach to the required setback by 500mm towards east boundary for the section of the proposed garage. This amendment will cause a new non-compliance issue for Standard B17 – Side and Rear Setback. The proposed 1.5m setback with an overall height of approximately 3.335m will cause less material detriments in comparison to the original proposal which is 3.015m high on boundary, therefore it deems to be acceptable. The original objection was lodged from 329 South Road specifically requested the wall on boundary element of the pergola to be deleted or presumably by the use of posts or other items.

6.2. Objections received

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

Overlooking

The objector requests, amongst other things, that the obscure windows on the eastern elevation at first floor be notated as fixed to prevent overlooking from these windows to the east. The objector has also pointed out that the ground floor plan shows the study to Dwelling 1 as having a highlight window while the elevation shows it having a normal window. These are reasonable requests and have been dealt with Condition 1e) and 1g).

The objector has also requested that window be made a highlight window. A paling fence exists between the sites at ground level to limit overlooking from this window in accordance with Standard B22.

Noise

The objector has requested the removal of certain doors from the ground floor eastern elevation. No more noise than would be expected from a residential property is likely to be transmitted from the site. It is considered that this request exceeds what is reasonable in the circumstances.

Encroachment over boundaries by vegetation

Maintenance of vegetation is the responsibility of the property. Although Council has a say over vegetation on the landscaping plan, it is not likely to object to something on size where it has sufficient soil volume to grow. The occupants could plant additional trees without objection. Nevertheless, the lack of permeable areas in the front garden has resulted in substantial vegetation being pushed to the sides of the proposed development.
Support Attachments

1. Amended Development Plans ↓
2. Site and Surrounds Imagery ↓
3. List of Amendments to Development Plans ↓
4. Refusal Development Plans ↓
ATTACHMENT 2
Site and Surrounds Imagery

Figure 1 Aerial overview of the site and surrounds

<table>
<thead>
<tr>
<th>Legend</th>
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<tbody>
<tr>
<td>Subject site</td>
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<tr>
<td>Objector(s)</td>
<td>🍃</td>
</tr>
</tbody>
</table>
Figure 2 View of subject site from the east
Figure 3 View of subject site from the west
ATTACHMENT 3
List of amendments to development plans

Sketch Plan #1 12th Sept, 2017
- Relocation of the porch and entry for Dwelling 1
- Redesigning of a new integrated garage door
- Reduction of side setback of Dwelling 1’s garage from 2m to 1.5m.

Sketch Plan #2 12th Sept, 2017
- Additional landscaping spaces are provided in the front yard.
- Party wall between two dwellings is to be moved towards west by 100mm.
- Relocation of the proposed porch and entry to the centre of the proposed building.
- Double garage to be relocated with approximately 11.4m front setback and 1.5m side setback from the east boundary.

Sketch Plan #3 12th Sept, 2017
- Introduction of crazy pavers to the front yard.
4.2 493A, 493 - 495 HIGHETT ROAD, HIGHETT
SUPPORT THE GRANT OF A PLANNING PERMIT
APPLICATION NO: 2016/183/1 WARD: CENTRAL

City Planning & Community Services - Development Services
File No: PSF/15/8755 – Doc No: DOC/17/197579

1. Purpose and background

To report an in-principle agreement reached by all parties at a VCAT Compulsory Conference for the construction of a building containing nine dwellings and a 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 (refer Attachment 1) on three lots with a combined area of 470 square metres at 493A & 493-495 Highett Road, Highett (refer Attachment 2).

<table>
<thead>
<tr>
<th>Applicant</th>
<th>Belfield Planning Consultants</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date application received</td>
<td>12 September 2017</td>
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</tbody>
</table>

At the Planning and Amenity Committee Meeting held on 19 April 2017 Council considered an application for the construction of a building containing 12 dwellings and a restaurant, a reduction in the provision of car parking and a waiver of the loading bay requirement.

Council determined to refuse the proposal on the following grounds:

1. The proposed development of the land does not comply with the design objectives, built form provisions and decision guidelines of the Design and Development Overlay Schedule 5 (DDO4) in particular
   a) The building would exceed three storeys in height, and the fourth storey would be visible from vantage points within Highett Road within 100 metres of the building.

2. The proposed development would result 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 and Clauses 15.01-2, 21.06-1.2 and 65 of the Planning Scheme.

3. The proposed reduction in car parking fails to respond to the purpose of Clause 52.06 (Car Parking) of the Bayside Planning Scheme, in particular:
   a) The proposed use fails to provide the number of car parking spaces required in accordance with Clause 52.06 and as a result will impact on the amenity of the locality by negatively impacting surrounding areas.
   b) The car parking provided in conjunction with the development would not enable easy and efficient use.
   c) The proposed development would cause a loss of amenity to residential neighbours by way of noise from the car stackers proposed for the site.

4. The proposed dwellings do not provide a satisfactory degree of internal amenity thus causing harm to future residents contrary to Clause 65 of the Planning Scheme.

The applicant lodged an appeal under Section 77 of the Planning and Environment Act 1987 with the Victorian Civil and Administrative Tribunal (VCAT) against Council’s decision to refuse to grant a planning permit.

At the VCAT Compulsory Conference held on 11 September 2017, attended by the
permit applicant, Council Officers and the two objector parties to the appeal, an in-principle agreement was reached between all parties.

The outcome was to:

- Delete two dwellings on the top floor and replacement with a roof top garden at the front of the site;
- Delete a single bedroom dwelling on the second level resulting in 9 dwellings instead of the originally proposed 12 dwellings;
- Set back of the second level from the rear laneway by a minimum of 2.5m;
- Provide a 1m high acoustic barrier on top of the rear parapet;
- Provide only four dwellings on the second level;
- Provide a solid balustrade to 1.7m (plus glazing/louvers) to Level 1 and 2 Private Open Space (north -rear) and wintergarden located along the northern boundary;
- Extend the single bedroom dwelling in the middle of the site on level one over the easement to the west so as to abut the western boundary;
- Remove of all other components of the building from overhanging the easement to the west;
- Changes to the front façade and internal layouts;
- Provide a 2 storey presentation from the laneway (maximum height of 7.5m plus a 1 metres acoustic screen);
- Set the balcony/wintergarden for level 2 back by 2.5m from the rear laneway;

The agreement was that a planning permit could be issued for the proposal subject to conditions. The plans tabled at the Compulsory VCAT Conference are provided at Attachment 1 and were used to assist with discussion at the conference and in forming the recommendation outlined in section 4 of this report. These plans have been formally substituted.

If Council agrees to support the recommendation below then a planning permit will be issued by VCAT which contains, unchanged, all of the conditions contained in the recommendation of this report. It is imperative to note that the conditions tabled below cannot be varied or changed unless at the request of VCAT; any changes to these conditions will require Council to attend the two (2) day hearing date set for 16th and 17th October 2017.

The original development plans refused by Council are included as Attachment 3.

Alternatively, should Council determine to not support the issue of the permit, then the application will proceed to a VCAT merits hearing based on the original application plans.

2. Policy implications

Planning permit requirements

- Clause 34.01-4 (Commercial 1 Zone) – Construction of buildings and works.
- Clause 43.02-2 (Design and Development Overlay) – Construction of buildings and works.
- Clause 52.06 (Car Parking) – Reduction in provision of car parking.
- Clause 52.07 (Loading and Unloading of Vehicles) – Waiver of the loading bay requirement.

Planning scheme amendments

On 17 August 2017, the Bayside Drainage Development Contributions Plan was
approved. Standard permit conditions will be applied to new; multi-dwelling, commercial and non-residential development, requiring payment of a levy toward the cost of upgrading Bayside’s municipal drainage network.

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

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<td>Drainage</td>
<td>No objection, subject to conditions.</td>
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</tbody>
</table>

Public notification

The original application was advertised pursuant to Sections 52(1)(a) and (d) of the Planning and Environment Act 1987 and five (5) objections were received. The following issues were raised:

- Excessive scale of development;
- Poor internal amenity of proposed dwellings;
- Noise, waste and odours from use of rear laneway for loading vehicles and waste collection;
- Inappropriate vehicular access to the site;
- Overshadowing;
- Overlooking;
- Construction management issues;
- Noise from car stackers;
- Increase in demand for on-street car parking; and
- Noise from occupation of units.

Consultation meeting

VCAT arranged and held a Compulsory Conference on 11 June 2017. The applicant, Council representative and the two objecting parties to the VCAT proceedings were in attendance. The applicant tabled ‘without prejudice’ plans, and an in-principle agreement was reached by all parties in attendance. It is noted that the two objecting parties agreed and signed the in-principle agreement.

4. Recommendation

That Council:

Determines to Support the application under the provisions of the Bayside Planning Scheme in respect of Planning Application 2016/183/1 in respect of the land known and described as 493A & 493-495 Hightett Road, Hightett, for the 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 in accordance with the endorsed plans and subject to the following conditions:

1. Before 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 by Point Architects, Job Number 749, Drawing nos. 04, 05, 06, 07 and 10, all Revision D and dated 5 September 2017, but modified to show:
   a) Appropriate weather protection measures benefitting pedestrians on Highett Road at the front of the premises above ground floor level, such measures to be at least 1.8m deep from the edge of the building over the footpath.
   b) Car stacker system (Hercules Expanderpark 2+1) to be annotated on the plans, together with the following minimum dimensions:
      i. Minimum setback of 6.9m between the edge of the car stacker system and the northern side of the right of way;
      ii. Minimum platform length of 5.2m;
      iii. Minimum platform width of 2.4m;
      iv. Minimum vehicle clearance height of 1.8m for at least 25% of the parking supply.
   c) Minimum 20% of car parking spaces provided at ground level.
   d) A schedule of construction materials, external finishes and colours (incorporating for example paint samples), including for screens provided on the balconies and roof of the building.
   e) 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.
   f) Water Sensitive Urban Design Measures in accordance with Condition 7 of this permit.
   g) A Waste Management Plan in accordance with Condition 15 of this permit.
   h) A Construction Management Plan in accordance with Condition 17 of this permit.

All to the satisfaction of the Responsible Authority.

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

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

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

5. Noise emanating from the subject land must not exceed the permissible noise levels when determined in accordance with State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1, to the satisfaction
6. 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.

7. As part of the endorsement of plans pursuant to Condition 1, detailed plans to the satisfaction of the Responsible Authority must be submitted that 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.
   c) Design details of the water sensitive urban design stormwater treatment measures, including cross sections.

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

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

9. The use and development must be managed so that the amenity of the area is not detrimentally affected, through 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.
   d) Presence of vermin.

10. No more than 50 seats may be made available at any one time to patrons on the premises, without the prior written consent of the responsible authority.

11. 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.

12. 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.

13. The restaurant and each dwelling must be allocated with a minimum of one car parking space each.

14. 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.

15. As part of the endorsement of plans pursuant to Condition 1, a Waste Management Plan must be submitted to and approved by the Responsible Authority. The Waste Management Plan must clearly indicate that waste
collection is to be via a private contractor, not Council, and include:

a) Dimensions of storage waste areas.
b) Storm water drains in storage areas should be fitted with a litter trap.
c) The number and size of bins to be provided.
d) Facilities for bin cleaning.
e) Method of waste and recyclables collection.
f) Types of waste for collection, including colour coding and labelling of bins.
g) Hours of waste and recyclables collection (to correspond with Council Local Laws and EPA Noise Guidelines). Waste collection must not take place between 6am-10am and 3pm-7pm on weekdays.
h) Method of hard waste collection.
i) Method of presentation of bins for waste collection.
j) Strategies for how the generation of waste and recyclables will be minimised.
k) Compliance with relevant policy, legislation and guidelines.

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

16. As part of the endorsement of plans pursuant to Condition 1, a detailed public realm improvement plan must be submitted to and approved by the Responsible Authority. The plan must show:

a) The relocation of any Council assets or infrastructure affected on Highett Road as a direct result of this development.
b) Bicycle hoops on the footpath on Highett Road.
c) The provision of a bench seat in front of the property in the location of the bench shown on the ground floor plan.
d) The reinstallation of parking signs on Highett Road.
e) All to the satisfaction of the Responsible Authority.

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 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.

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.

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 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.
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 17 Economic Development
- Clause 18 Transport
- Clause 21.02 Bayside Key Issues and Strategic Vision
- Clause 21.03 Settlement and Housing
- Clause 21.06 Built Environment and Heritage
- Clause 21.07 Economic Development
- Clause 21.09 Transport and Access
- Clause 21.11 Local Areas
- Clause 22.08 Water Sensitive Urban Design
- Clause 34.01 Commercial 1 Zone
- Clause 43.02 Design and Development Overlay (Schedule 4)
- Clause 52.06 Car Parking
- Clause 52.07 Loading and unloading of vehicles
- 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, the individual merits of the application and whether the amended plans response to Council’s previous Grounds for Refusal.

6.1. **Strategic Justification**

The Planning Policy Frameworks support the intensification of development in and around public transport nodes and in activity centres. The local areas policy contains a subsection relating specifically to Highett (Clause 21.11-6) that seeks to revitalise Highett Road shopping centre as an attractive, vibrant and well used main street and community focal point that provides a wide range of local shopping, business and community services. That part of the Highett Shopping Centre to the west of the railway is to provide opportunity for a mix of retail, employment, other associated activities and residential uses in a form that complements the core of the centre located to the east of the railway, and to better link the two parts of the centre for pedestrians.

Furthermore, the policy 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 Highett, 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 broadly meets the above policy aims.

6.2. Amended Plans Assessment

This report will detail how the amended plans at Attachment 1 respond to the previous Grounds for Refusal and relevant planning policies.

Ground for Refusal 1 and 2

The amended plans seek a reduction in the number of dwellings from 12 to 9 and a reduction in height by removing of the fourth storey.

In principle, the proposed reduction in the number of dwellings and the diversity of the housing stock is supported. The precinct as a whole offers a variety of dwelling sizes and types therefore the reduction in the overall dwelling number for the subject site is an appropriate outcome for the precinct.

The amended proposal retains the low rise, neighbourhood character of the Highett Activity Centre by respecting the scale of the predominately two to three storey built form. The amended plans comply with the Design and Development Overlay – Schedule 4 for the following reasons:

- The proposed amendment reduces the proposed development to three storeys consisting of a height of 11 metre (above NGL). The only portion that exceed the 11 metres maximum is for the provision of a lift overrun which takes the maximum height to 13.5 m (above NGL);
- The above mentioned lift overrun / stairs is centrally located to the site which is 12.7 metres from Highett Road and 12.2 metres from the laneway (rear);
- The 2.5 metres beyond the 11 metres preferred height is considered to minimal as it will not be visible from any vantage points / abutting allotment nor will is cast any additional overshowing;
- The 2.5 metres stretches for a maximum of 7 metres and as mentioned above will not be visible from any vantage points / abutting allotment;
- Whist the overall height exceeds the 11 metres preferred height by 2.5 metres, the proposal is considered acceptable as the design response mitigates against the additional height and creates an appropriate transition between the abutting allotments;
- The 2.5 metre height for the lift overrun / stairs is considered to be minimal in height and is no defined as habitable, therefore is not considered a storey;
- The bulk, location and appearance of the amended development is considered to be in keeping with the character and appearance of adjacent buildings and is considered to enhance the streetscape;
- The provision of a restaurant at ground level provides a level of passive surveillance, visual interest and commercial viability located within the public realm;
- 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 amended setbacks are considered reduce the built form whilst also providing articulation, improved internal amenity and a reduction in the overall built form;
- The proposed amendments will contribute to creating a vibrant retail and residential activity centre;
- 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;

The proposed changes to the development would result in less visual bulk and would achieve a high standard of urban design. The changes not only reduce the overall height, number of storeys and dwelling numbers but as mentioned above, manage to achieve a high level of compliance with the design objectives of the DDO4.

The scale and mass of the proposed development responds to the immediate building form, provides a human scale and mitigates against previous concerns relating to visual bulk. The modification of the front facade by removing the fourth storey softens the built form and introduces additional articulation to the streetscape. The increase in setbacks mitigate against the visual bulk and a vertical emphasis to the building.

The proposed changes implement the findings of the Highett Structure Plan in relation to building height and form in that part of the Highett Activity Centre. It is considered that the proposed amendment will make a positive contribution to the area.

Generally, the overall composition of the development when read in the streetscape together is no longer as bulky and presents a better proportioned design. The scale and massing of the amended development now responds to the existing neighbourhood character.

Ground for Refusal 3

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 original development sought consent for a restaurant, 12 dwellings comprising of 5 x two bedroom and 7 x one bedroom and associated parking dispensation. The original application sought a reduction of 23 spaces.

The amended development seeks to reduce the number of dwellings from 12 to 9 comprising of 3 x two bedroom dwellings, 5 x one bedroom dwellings and associated parking dispensation.

The table for the amended development is listed below:

<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>
<th>SHORTFALL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dwelling (resident)</td>
<td>7 x 1-bedroom, 2 x 2-bedroom</td>
<td>1 space to each 1 or 2-bedroom dwelling</td>
<td>11 resident spaces</td>
<td>11</td>
<td>Nil</td>
</tr>
</tbody>
</table>
Council’s Traffic Engineer considered the original proposal and considers the reduction in car parking for the restaurant to be acceptable. The site has previously been used as a restaurant for which no off-street car parking was provided and hence, the proposal continues the status quo.

Furthermore, the premises is within walking distance to Highett Train Station and many of the abutting residents can walk to the restaurant. It is for this reason that the condition limiting the number of patrons to 50 has remained on the amended conditions.

It is imperative to note that the amended proposal no longer seeks a car parking reduction under Clause 52.06 in relation to the residential component of the development as the residential portion of the amended plans fully complies with the requirements of Clause 52.06, Car Parking with the exception of the residential visitor space.

It is considered that the waiver of the visitor car parking space and loading bay requirement are acceptable given that there is on-street parking at the front of the site and that such parking is far more convenient than access to the rear of the site would be for such vehicles. As stated earlier, the site is within an easy walk of the Highett Train Station and has good public transport accessibility. Furthermore the availability of alternative parking within the area and the likelihood that trips to this location will be multi-purpose and not solely to visit this development further support the proposed shortfall.

Traffic generated by the proposal is expected to be accommodated within the local road network. The laneway access is tight, but is preferable to providing access via the front of the site, which would have an impact on the appearance and function of the Highett Road commercial area. The laneway is sufficiently wide to enable two cars to queue for the car stackers at the same time. While the proposed waste collections from the rear of the site are not ideal, there is no other option given the constraints of the site. Consequently, a condition imposed limiting collection from occurring during the weekday AM and PM peak period’s remains on the above mentioned conditions.

The findings of the Traffic Impact Assessment Report prepare by TTM Consulting of are generally considered acceptable. Car parking allocations, car stackers specifications and waste management recommendations continue to form part of the above mentioned conditions should the application be supported.

Ground for Refusal 4

The revised plans alter the proposed layout and the above grounds for refusal are now not applicable. All balcony areas are now considered sufficient in size and dimension to provide for the reasonable recreational needs of future residents. Each habitable room is also provided with a window which is clear to the sky and an outlook. Further the development incorporates a rooftop which improves solar access and accessibility for the residents.

Support Attachments

1. Amended Development Plans ❧
2. Site and Surrounds Imagery ❧
3. Refused Development Plans ❧
Item 4.2 – Matters of Decision
Figure 1 Aerial overview of the site and surrounds

Legend

| Subject site |  ★ |
| Parties to the appeal |  ● |
Figure 2 View towards the site from the SSE

Figure 3 View of the site from the southwest (building at 491-493 Highett Road in foreground)
Figure 4 View of the rear of the site and the adjoining alleyway from the east
4.3 8 CAMPERDOWN STREET, BRIGHTON EAST
NOTICE OF DECISION TO GRANT A PLANNING PERMIT
APPLICATION NO: 2016/714/1 WARD: NORTHERN

City Planning & Community Services - Development Services
File No: PSF/15/8755 – Doc No: DOC/17/200951

1. Purpose and background
To report a planning permit application for the construction of two double storey dwellings on a lot with an area of 733 square metres (refer Attachment 1) at 8 Camperdown Street, Brighton East (refer Attachment 2).

<table>
<thead>
<tr>
<th>Applicant</th>
<th>Peter Wright &amp; Associates Pty Ltd</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date application received</td>
<td>23 June 2017 (Amended)</td>
</tr>
<tr>
<td>Statutory days expired</td>
<td>22 August 2017</td>
</tr>
</tbody>
</table>

2. Policy implications
Planning permit requirements
Clause 32.09-5 (Neighbourhood Residential Zone) – Construction of two dwellings on a lot.

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>No objection, subject to conditions.</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>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 four objections were received. The following concerns were raised:
- Development does not respond to existing and preferred neighbourhood character;
- Overlooking;
- Overshadowing;
- Overdevelopment;
- Schedule of construction materials, colours and finishes; and
- Noise associated with services.
Consultation meeting

A consultation meeting was held on 28 April 2017 attended by the permit applicant and four objectors. As a result of this meeting no objections were withdrawn.

In response to concerns raised at the meeting the applicant submitted amended plans which introduced a number of changes. The amended plans at ground floor level generally reduce the front and rear setbacks to facilitate an increased in the side setbacks to the kitchen / living / meals and alfresco areas and provide for improved landscaping opportunities. At first floor level, the front, side and rear setbacks have increased and as a result provide a higher level of compliance with Standard B21, Overshadowing. The amended plans also detail screening measures in accordance with Standard B22, Overlooking and reduced decking areas to accommodate canopy tree planting.

The amended plans have been circulated to all objectors. No objections have been withdrawn. No additional comments have been received at the time of publication.

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 2016/714/1 for the land known and described as 8 Camperdown Street, Brighton East, for the construction of two dwellings on a lot in accordance with the endorsed plans and subject to the following conditions from the standard conditions:

1. Before the development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the plans date stamped 23 June 2017 but modified to show:

   a) The western elevation corrected to accurately reflect the cantilevering window frame to Bedroom 2.

   b) Screening measures to the south facing first floor windows associated with Bedroom 3 of Dwelling 1 and 2 to demonstrate compliance with Standard B23, Internal Views of the Bayside Planning Scheme.

   c) All site services to be located on plans, including bins, air conditioning, hot water systems, clothes lines and mail boxes. Plant and equipment should be located sensitively in relation to habitable room windows on the subject site and neighbouring properties.

   d) The driveway to Dwelling 2 where it intersects with the footpath is to be 3m wide with 0.8m offset from the eastern property boundary.

   e) The existing crossover to Dwelling 2 is to be removed. A 3m wide new crossover is to be constructed with 0.8m offset from the eastern property boundary along with a 0.8m wide new separator in between the new and neighbouring crossover.

   f) A schedule of construction materials, external finishes and colours (incorporating for example paint samples).

   g) The impact, if any the proposed vehicle crossing will have Council assets such as pits and trees, power poles etc. Such items must be accurately shown on the plan.
h) An amended landscape plan in accordance with Condition 8 of this permit.

i) A Tree Protection and Management Plan in accordance with Condition 11 of this permit.

j) Any changes to the development required to facilitate the recommendation of the Tree Protection and Management Plan outlined at Condition 11 of this permit.

k) Drainage Contributions Levy Charge in accordance with Condition 18 of this permit.

l) All to the satisfaction of the Responsible Authority.

2. The development as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.

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

4. No plant, equipment, services or architectural features other than those shown on the endorsed plans are permitted above the roof level of the 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. The walls on the boundary of the adjoining properties shall be cleaned and finished to the satisfaction of the Responsible Authority.

7. 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.

8. Prior to the endorsement of plans pursuant to condition 1, an amended landscape plan to the satisfaction of the Responsible Authority must be submitted to and be endorsed by the Responsible Authority. The plan must be generally in accordance with the landscape concept plan drawn by Faulkner and Chapman Landscape Design and dated 15 June 2017 and be drawn to scale with dimensions and three copies must be provided. The plan must show:

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

   b) A survey, including botanical names, of all existing protected vegetation to be removed from the site.

   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) Details of surface finishes of pathways and driveways

   g) The planting of one tree capable of reaching 14 m at maturity in the front
set back of Unit 1.

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

i) The planting of one tree capable of reaching 12 m at maturity in the rear set back of Unit 2.

j) The planting of one tree capable of reaching 8 m at maturity in the rear set back of Unit 1.

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

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

11. 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 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) 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.

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

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

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

14. Before the development starts, the tree protection fencing is to be established around the Corymbia ficifolia (Red Flowering Gum) street tree prior to demolition and maintained until all works on site are complete. The fencing is to be constructed and secured so its positioning cannot be modified by site workers. The fencing is to encompass the entire nature strip under the drip line of the tree. The Tree Protection Zone is to be established and maintained in accordance with AS 4970-2009. During construction of the crossover, tree protection fencing may be reduced to the edge of the Council approved crossover to facilitate the construction of the crossover.

15. 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.

16. 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.

17. 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.

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.

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

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

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

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

Permit notes
- 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 D4)
• Clause 22.08  Water Sensitive Urban Design
• Clause 32.09  Neighbourhood Residential Zone (Schedule 3)
• Clause 43.02  Design and Development Overlay (Schedule 3)
• Clause 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. Neighbourhood character

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

The proposal is considered to achieve a sense of visual separation and will maintain the street rhythm along Camperdown Street. The proposed landscaping is considered acceptable subject to conditions requiring a sufficient level of trees and vegetation across the site, conditions of approval are recommended for two canopy trees in the front setback and two in the rear setback of the development site. This will ensure the proposal respects and enhances the landscape character of the neighbourhood.

The built form presents a range of materials and projecting/recessed elements that reduces any perception of visual bulk and also providing visual interest in the street scene. The proposal features flat roofs and sits comfortably adjacent to single and double storey dwellings. The design is considered to be well resolved and would maintain the openness of the streetscape.

6.2. Compliance with Clause 55 (ResCode)

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

Side and Rear Setbacks (Standard B17)

<table>
<thead>
<tr>
<th></th>
<th>Ground floor</th>
<th>First Floor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requirement</td>
<td>Proposed</td>
<td>Requirement</td>
</tr>
<tr>
<td>East (side)</td>
<td>0, 2m</td>
<td>0, 1m and 2m</td>
</tr>
<tr>
<td>West (side)</td>
<td>0, 2m</td>
<td>1m and 2m</td>
</tr>
<tr>
<td>South (rear)</td>
<td>0, 3m</td>
<td>8.4m and 8.43m</td>
</tr>
</tbody>
</table>
The proposal seeks to vary the ground floor side setbacks to the east and west boundaries. A 1 metre side setback is proposed to the laundry, kitchen, meals and living area to Dwelling 1 in lieu of 2 metres. A 1 metre side setback is proposed to the kitchen, meals and family rooms of Dwelling 2 in lieu of 2 metres.

These variations are considered acceptable as it will not result in any amenity impacts to the adjoining properties. It is noted that several trees are located along the common boundaries and are required to be protected and therefore the side setbacks at these locations may be required to increase to accommodate tree protection measures.

The proposal would vary the side setbacks at first floor in relation to the northern and southern boundaries. The objective of the standard is to ensure the height and setback of a building from a boundary respects the existing or preferred neighbourhood character and limits the impact on the amenity of existing dwellings.

The first floor side setback variations of dwelling 2 would vary the east side setback from 0.85 metres to 1.45 metres. The greatest variations are sought to the ensuite of bedroom 1 and bedroom 2 which extend for a length of 2 metres and 4 metres respectively. The variations are considered acceptable as there is no resultant amenity impacts through overshadowing and the proposed articulation ensures the built form does not present as visually bulky.

The first side setback variations of dwelling 1 would vary the west side setback from 0.5 metres to 1.7 metres. The proposed variations do not result in amenity impacts to the adjoining double storey dwelling at 6 Camperdown Street. The non-compliances are locate opposite a garage, shed and a service area. Further to this the proposed setbacks continue to ensure that an unreasonable level of amenity impacts do not result through overlooking, overshadowing or solar access. Further to this the western facade is appropriately articulated to break-up the horizontality of this façade.

The first floor side setbacks to both dwellings would contribute to a regular rhythm of the streetscape. Given all the above, subject to an increased setback as recommended conditions in response to tree protection measures, the proposal is considered to respect the existing and preferred neighbourhood character and would limit amenity impacts on neighbouring properties. The proposal is considered to achieve the objective of the standard.

**Internal Views (Standard B23)**

The proposed first floor south facing (rear) windows provide views into the secluded areas of private open space of the proposed adjoining dwelling. A condition has been included requiring screening measures to demonstrate compliance with this standard.

**6.3. Car parking and traffic**

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

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

**6.4. Street tree**

Council’s Open Space Arborist has reviewed the application and advises there is a *Corymbia ficifolia* (Red Flowering Gum) street tree fronting the property. The Open Space Arborist advises the location of the proposed vehicle crossing will not impact the tree’s health and stability provided a setback of 2 metres can be achieved. The site plan submitted in support of the application locates the street tree a minimum of 3.2 metres from the closest crossover to the property. The requirements of Council’s Traffic
Engineer does not result in any conflicts. A condition of approval is recommended to reflect the Council’s Open Space Arborist’s advice.

6.5. Vegetation & Landscaping

There are no trees on the subject site; the site includes ten medium to large shrubs. The vegetation on site provides low levels of amenity to immediate area. It is proposed to remove all shrubs on the site. A landscape plan has been prepared and reviewed by Council’s Arborist who offers no objection subject to the inclusion of canopy trees within the front and rear setbacks of each property.

There are three trees and approximately 21 shrubs in close proximity to the boundary. The Tree Protection Zones (TPZ) of the trees extend into the subject site. The outdoor BBQ of Unit 2 and the associated infrastructure is inside the Tree Protection Zone and Structural Root Zone of the Agonis flexuosa located on the property to the west of the subject site. A Tree Protection and Management Plan has been included as a planning permit condition. It is noted that the permit applicant has provided this at part of the amended material and Council’s Arborist is generally satisfied subject to conditions.

6.6. Objections received

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

Overdevelopment

Overdevelopment is a commonly used expression to dismiss development proposals which seek to remove existing buildings and to introduce new built forms into particular neighbourhoods. An assessment against State and local planning policies and the provisions of Clause 55 included in this report demonstrates that this proposal is not an overdevelopment despite being more intensive than what existed before.

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.

Support Attachments

1. Development plans ↓
2. Site and Surrounds Imagery ↓
3. Neighbourhood Character Assessment (Precinct D4) ↓
4. Clause 55 (ResCode) Assessment ↓
5. Corrected Shadowing Diagrams ↓
Item 4.3 – Matters of Decision

Planning & Amenity Committee Meeting - 28 September 2017

Attachment 1

TOWN PLANNING APPLICATION

proposed dual occupancy

8 CAMPERDOWN ST, BRIGHTON EAST

AUSTRAL INTERNATIONAL REAL ESTATE PTY LTD

LOCALITY PLAN

PEYKER WRIGHT
ATTACHMENT 2
Site and Surrounds Imagery

Figure 1: Aerial overview of the site and surrounds

Legend

<table>
<thead>
<tr>
<th>Subject site</th>
<th>▫</th>
</tr>
</thead>
<tbody>
<tr>
<td>Objectors</td>
<td>●</td>
</tr>
</tbody>
</table>
Figure 2: View looking south to 8 Camperdown Street, Brighton.
Figure 3: View looking south to 6 Camperdown Street, Brighton with the subject site to the left of the photograph.

Figure 4: View looking south to 10 Camperdown Street, Brighton with the subject site.
Figure 4: View looking south to 4 Carpenter Street.
Figure 5: View looking south to No. 12 Normanby Street

Item 4.3 – Matters of Decision
ATTACHMENT 3
Neighbourhood Character Policy (Precinct D4)

Preferred Future Character

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

Precinct Guidelines

<table>
<thead>
<tr>
<th>Objectives</th>
<th>Design Responses</th>
<th>Avoid</th>
<th>Planning Officer Assessment</th>
</tr>
</thead>
</table>
| To maintain and enhance the garden settings of the dwellings and rhythm of front boundary setbacks. | • Prepare a landscape plan to accompany all applications for new dwellings that includes substantial trees and shrubs.  
• Retain large trees wherever possible.  
• Buildings should be sited to allow space for the planting of trees and shrubs. | Lack of landscaping and substantial vegetation.  
Removal of large trees. | Responds  
Council’s arborist has reviewed the proposed landscaping and notes that there are no trees on the subject site, only ten shrubs which provide a low level of amenity to the area.  
The dwellings are sited on site to maximise landscaping opportunities and to facilitate some planting within the side setbacks and canopy tress within the rear setback.  
The amended plans include a landscape plan and Tree Management Plan which are generally considered satisfactory and responsive to this objective. See Section 6.5 of this report for further discussion. |

| To maintain the rhythm of visual separation between buildings. | • Buildings should be sited to create the appearance of space between buildings and accommodate substantial vegetation. | | Responds  
The proposal maintains visual separation and the street rhythm with adjoining properties. A 2 metre side setback is |
### Objectives

<table>
<thead>
<tr>
<th>Design Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>To minimise the dominance of car parking structures in the streetscape.</td>
</tr>
<tr>
<td>• Locate garages and carports behind the line of the dwelling.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Avoid</th>
</tr>
</thead>
<tbody>
<tr>
<td>Car parking structures that dominate the façade or view of the dwelling.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Planning Officer Assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>The proposed garages are located 9.44 metres and 9.54 metres from the front setback, in excess of the requirements of Standard B6, Street setback. Whilst the garages sit 1 metre forward of the dwelling entries the porches extend into the front setback creating a focal point and ensuring the garages do not dominate the streetscape. The garages present timber cladding to the streetscape with the framed windows to</td>
</tr>
<tr>
<td>Objectives</td>
</tr>
<tr>
<td>---------------------------------------------------------------------------</td>
</tr>
<tr>
<td>To ensure that buildings and extensions do not dominate the streetscape.</td>
</tr>
<tr>
<td></td>
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<td></td>
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<td></td>
</tr>
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<td></td>
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<td></td>
</tr>
<tr>
<td>To maintain the openness of the streetscape and the views into front gardens.</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 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>B5 Integration with the Street</strong></td>
<td>Yes</td>
<td>The development will integrate appropriately with the street. The proposed building has a setback in excess of 9 metres from Camperdown Street.</td>
</tr>
</tbody>
</table>
storey dwellings. The building has been appropriately articulated to provide a well composed design and incorporates clearly identifiable entries and recessive car parking structures. See Neighbourhood Character assessment for further discussion.

<table>
<thead>
<tr>
<th>B6 Street Setback</th>
<th>Yes</th>
<th>Requirement: 8.9m</th>
<th>Proposed: 9.44m and 9.58m at ground floor level. 9.05m, 10.44m and 10.54m at first floor level.</th>
</tr>
</thead>
<tbody>
<tr>
<td>B7 Building Height</td>
<td>Yes</td>
<td>Maximum: 9m</td>
<td>Proposed: 7.62m</td>
</tr>
<tr>
<td>B8 Site Coverage</td>
<td>Yes</td>
<td>Maximum: 50%</td>
<td>Proposed: 49.8%</td>
</tr>
<tr>
<td>B9 Permeability</td>
<td>Yes</td>
<td>Minimum: &gt;20%</td>
<td>Proposed: 35.9%</td>
</tr>
<tr>
<td>B10 Energy Efficiency</td>
<td>Yes</td>
<td>All habitable areas, including habitable rooms and secluded private open space areas have been located to maximise solar access and no habitable rooms rely on secondary light sources. Due to the site orientation, the secluded private open space is to the south of the dwellings. The areas of secluded private open space are sufficiently offset from the rear façade to ensure sufficient solar access.</td>
<td></td>
</tr>
<tr>
<td>B11 Open Space</td>
<td>N/A</td>
<td></td>
<td></td>
</tr>
<tr>
<td>B12 Safety</td>
<td>Yes</td>
<td>The pedestrian entry point is clearly recognisable while upper levels allow for the passive surveillance of the street.</td>
<td></td>
</tr>
<tr>
<td>B13 Landscaping</td>
<td>Yes</td>
<td>The siting of the development creates sufficient opportunities for meaningful landscaping subject to conditions. A condition of permit will require an</td>
<td></td>
</tr>
</tbody>
</table>
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.

amended landscape plan to be submitted to the satisfaction of the Responsible Authority.
See Section 6.5 of the report for further discussion.

<table>
<thead>
<tr>
<th>B14 Access</th>
<th>Yes</th>
<th>An appropriate access off Camperdown Street has been provided. Standard traffic conditions are included as permit conditions. See Section 6.4 of the report for further discussion.</th>
</tr>
</thead>
<tbody>
<tr>
<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></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>B15 Parking Location</th>
<th>Yes</th>
<th>On site car parking is provided in the form a single and double garage. Standard traffic conditions are included as permit conditions. Refer to Section 6.4 of the report for further discussion.</th>
</tr>
</thead>
<tbody>
<tr>
<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></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.</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>First Floor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requirement</td>
<td>Proposed</td>
</tr>
<tr>
<td><strong>East (side)</strong></td>
<td>0, 2m</td>
</tr>
<tr>
<td></td>
<td>0, 2m</td>
</tr>
<tr>
<td><strong>West (side)</strong></td>
<td>0, 2m</td>
</tr>
<tr>
<td></td>
<td>0, 3m</td>
</tr>
<tr>
<td><strong>South (rear)</strong></td>
<td>0, 3m</td>
</tr>
<tr>
<td>Item</td>
<td>Description</td>
</tr>
<tr>
<td>------</td>
<td>-------------</td>
</tr>
<tr>
<td><strong>B18 Walls on Boundaries</strong></td>
<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>
</tr>
<tr>
<td><strong>B19 Daylight to Existing Windows</strong></td>
<td>Allow adequate daylight into existing habitable room windows.</td>
</tr>
<tr>
<td><strong>B20 North Facing Windows</strong></td>
<td>Allow adequate solar access to existing north-facing habitable room windows.</td>
</tr>
<tr>
<td><strong>B21 Overshadowing Open Space</strong></td>
<td>Ensure buildings do not significantly overshadow existing secluded private open space.</td>
</tr>
<tr>
<td>Item</td>
<td>Description</td>
</tr>
<tr>
<td>------</td>
<td>-------------</td>
</tr>
<tr>
<td>B22 Overlooking</td>
<td>Limit views into existing secluded private open space and habitable room windows.</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>
</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>
</tr>
<tr>
<td>B25 Accessibility</td>
<td>Consider people with limited mobility in the design of developments.</td>
</tr>
<tr>
<td>B26 Dwelling Entry</td>
<td>Provide a sense of identity to each dwelling/residential building.</td>
</tr>
<tr>
<td>B27 Daylight to New Windows</td>
<td>Allow adequate daylight into new habitable room windows.</td>
</tr>
<tr>
<td>Item</td>
<td>Description</td>
</tr>
<tr>
<td>------</td>
<td>-------------</td>
</tr>
</tbody>
</table>
| B28 Private Open Space | Provide reasonable recreation and service needs of residents by adequate private open space. | Yes | **Minimum:**<br>25m² secluded, 40m² overall with a minimum dimension of 3 m.  
**Proposed:**<br>Dwelling 1 is provided with a total of 38.5 square metres of secluded private open space and an additional 25.1 square of private open space in the front setback.  
Dwelling 2 is provided with a total of 42.8 square metres of secluded private open space and 29 square metres of private open space in the front setback.  
It is noted Clause 32.09-4 of the Bayside Planning Scheme requires a minimum garden area at ground level of 35% of the site area. This equates to 256.55 square metres.  
A total of 290.45 square metres is provided. This equates to 39.6% and therefore exceeds the minimum garden area size. |
| B29 Solar Access to Open Space | Allow solar access into the secluded private open space of new dwellings/buildings. | Yes | Appropriate solar access to the areas of secluded private open space are provided.  
Due to the southern orientation of the site it is inherently difficult to ensure a high level of solar access |
| B30 Storage | Provide adequate storage facilities for each dwelling. | Yes | Designated storage areas are provided within the garage and have a minimum volume of 6 cubic metres. It is noted this volume has not been dimensioned on the architectural drawings. |
| B31 Design Detail | Encourage design detail that respects the existing or preferred neighbourhood character. | Yes | Refer to Section 6.2 of the report for further discussion. |
| B32 Front Fences | Encourage front fence design that respects the existing or preferred neighbourhood character. | N/A | A front fence has not been proposed. |
| B33 Common Property | Ensure car parking, access areas and other communal open space is practical, attractive and easily maintained.  
Avoid future management difficulties in common ownership areas. | N/A | No areas of common property are proposed. |
**B34 Site Services**
Ensure site services and facilities can be installed and easily maintained and are accessible, adequate and attractive.
Avoid future management difficulties in common ownership areas.

| Yes | All appropriate site services can be easily catered for on-site. Mails boxes are shown to adjoin the vehicular accesses. A condition has been included requiring the location of solar hot water systems and air conditioning units to be located away from habitable room windows. It is noted that the heating cooling units are denoted on the ground floor plan. These are considered to be appropriately located but not shown on the elevations. |
4.4 16 MORLEY CRESCENT, HIGHTET
NOTICE OF DECISION TO GRANT A PLANNING PERMIT
APPLICATION NO: 5/2017/113/1 WARD:CENTRAL

City Planning & Community Services - Development Services
File No: PSF/15/8755 – Doc No: DOC/17/183940

1. Purpose and background
To report a planning permit application for the construction of two double storey dwellings
on a lot with an area of 657.37 square metres (refer Attachment 1) at 16 Morley crescent,
Hightett (refer Attachment 2).

<table>
<thead>
<tr>
<th>Applicant</th>
<th>Strait-Line</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date application received</td>
<td>18 April 2017</td>
</tr>
<tr>
<td>Statutory days expired</td>
<td>29 July 2017</td>
</tr>
</tbody>
</table>

2. Policy implications
Planning permit requirements
Clause 32.09-6 (Neighbourhood Residential Zone) – Construction of two dwellings on a
lot.

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>No objection, subject to conditions.</td>
</tr>
<tr>
<td>Drainage</td>
<td>No objection, subject to conditions.</td>
</tr>
<tr>
<td>Traffic</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 two objections were received. The content of the objections is
summarised as follows:
- Health concerns;
- Overshadowing;
- Boundary wall;
- Overdevelopment;
- Parking and traffic volumes;
- Visual bulk; and
- Neighbourhood character.
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 2017/113/1** for the land known and described as **16 Morley Crescent, Highett**, for the **construction of two double storey dwellings** 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 Council date stamped 18 April 2017 (TP01, TP02, TP06, TP07, TP08) and 13 June (TP01, TP02, TP03, Landscape Plan) but modified to show:
   a) The setback of Dwelling 1 to be increased to 8m.
   b) The garage to dwelling 1 setback 2.0m from the east boundary.
   c) The length of both garages increased to a depth of 6m, and not result in any change to the front or rear setbacks.
   d) All pedestrian doors to be provided outwards from the garages.
   e) The driveway grade for dwelling 1 as not exceeding 1 in 16 in accordance with AS2890.1 for car parking.
   f) The existing crossover (to the east) to be removed and replaced with a new 3.0m wide crossover.
   g) The driveway for dwelling 1, where it intersects with the footpath and the new crossover to be a minimum of 3m wide with a 1.5m offset from the eastern property boundary.
   h) The driveway for dwelling 2, where it intersects with the footpath and the new crossover to be 3m wide and to have a 1m offset from the western property boundary.
   i) The new crossovers to be constructed with a separator with adjoining crossover.
   j) Adequate sight lines must be provided where each driveway intersects with the front footpath as per the diagram shown in the AS2890.1, and all structures and foliage within the splay kept to a maximum height of 0.90m.
   k) Demonstration of (or alteration to show) compliance with the overlooking Standard B22 with respect to the rear deck of dwelling 2.
   l) An updated landscape plan to reflect the built form changes required through conditions 1 (a) to (i).
   m) Water sensitive urban design measures in accordance with Condition 15.
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. Prior to endorsement of the plans required under Condition 1 of this permit, the permit holder must pay a drainage levy in accordance with the amount specified under the Bayside Drainage Development Contributions Plan. The levy amount payable will be adjusted to include the Building Price Index applicable at the time of payment.

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

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

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

6. 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.

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

8. 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.

9. Council records indicate that there is a 1.83m wide drainage and sewerage easement along the southern property boundary as indicated on the drawings provided. The plans indicate no proposals to encroach into the easement with any buildings or structures of note. Proposals to be built over the easement will require Build Over Easement consent from the Responsible Authority/Authorities.

10. 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.

11. All plant and equipment to be located away from habitable room windows of the dwellings and the adjoining properties habitable rooms.

12. 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.

13. 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.

14. The walls on the boundary of the adjoining properties shall be cleaned and finished to the satisfaction of the Responsible Authority.
15. 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.

16. 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.

17. 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.

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.

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:

- The applicant must clearly identify what impact, if any, the proposed vehicle crossings will have Council assets such as pits and trees, power poles etc. Such items must be accurately shown on the plan.

- 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.

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

- 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.

- The existing street tree/s must not be removed or damaged.
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.
- 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 12 Environmental and Landscape Values
- Clause 13 Environmental Risks
- Clause 14 Natural Resource Environment
- 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 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 43.02 Design and Development Overlay (Schedule 3)
- Clause 52.06 Car Parking
- Clause 55 Two or more dwellings on a lot
- Clause 65 Decision Guidelines

6. Considerations

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

The site is located within Neighbourhood Character Precinct G1 and the proposal is considered to demonstrate a high level of compliance with the preferred future character statement and precinct guidelines.

The proposed development utilises a number of materials and finishes, whilst incorporating recessed elements at the ground and first floors. This, with the addition of substantial landscaping and symmetrical roof form, assist to appropriately integrate the dwellings into the immediate surrounds.

Notwithstanding the above, some minor increase in front and side setbacks will be required through condition to ensure an appropriate response to streetscape character.

Subject to conditions, it is considered that the proposal suitably addresses precinct guidelines.

A more detailed assessment against the precinct guidelines are provided in Attachment 3.

6.2. **Compliance with Clause 55 (ResCode)**

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

**Street Setback (Standard B6)**

<table>
<thead>
<tr>
<th>Required</th>
<th>Proposed</th>
<th>Variation</th>
</tr>
</thead>
<tbody>
<tr>
<td>9m</td>
<td>7.5m (Dwelling 1)</td>
<td>1.5m</td>
</tr>
<tr>
<td></td>
<td>8.0m (Dwelling 2)</td>
<td>1.0m</td>
</tr>
</tbody>
</table>

The setback required is 9m, however the applicants have proposed a setback of 7.5m for dwelling 1 and 8m for dwelling 2.

To improve integration with the streetscape, it is recommended to increase the setback of Dwelling 1 to 8m, which is in line with the setback of Dwelling 2, and would match the setback of the existing dwelling on the lot (which is being demolished).

Full compliance with the front setback provisions would be difficult as the lot is constrained by the irregular dimensions (increased width and reduced depth). The generous landscape areas within the front setback would assist in reducing the prominence of the building.

**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>East (side)</td>
<td>0m or 2m</td>
</tr>
<tr>
<td>West (side)</td>
<td>0m or 2m</td>
</tr>
<tr>
<td>South (rear)</td>
<td>0m or 3m</td>
</tr>
</tbody>
</table>

The application plans show minor non-compliance areas at the ground floor eastern setback of dwelling 1 (0.47m) and first floor western setback of dwelling 2 (0.20m).

Given the generous width of the lot, there is no reason why the side setback should not comply and this will be required through condition (i.e. garage to dwelling 1 would require an increased setback to 2.0m).
The minor dispensation at the first floor west interface is acceptable as the adjacent interface comprises a shared driveway of the unit development at No.14 Morley Avenue. In relation to habitable room windows of this same development to the west, whilst these are impacted by some overshadowing, this is only present for a small portion of the morning and the siting of the proposed dwellings is compliant with the associated Standard B19 (Daylight to existing windows).

In addition to this, the applicant has proposed screening to windows and sill heights of 1.70m, which comply with Standard B22 (Overlooking). As such it is considered that the reduced western setback is minor will not impact the amenity of neighbouring dwellings.

**Solar Access to Open Space**

Whilst the first floor setbacks do not comply with the standard (the required setback from the rear boundary would be approx. 8.0m), it would be virtually impossible to provide sunlight to the rear deck areas due to their orientation.

Shadow diagrams indicate a sufficient amount of sunlight to each open space area, and given that this non-compliance affects internal amenity only (rather than neighbouring amenity) it is an acceptable outcome given the difficulties associated with the site constraints (namely its orientation and minimal depth).

### 6.3. Car parking and traffic

Both dwellings have been provided with two car parking spaces in accordance with Clause 52.06 (Car Parking) of the Bayside Planning Scheme. In addition to this, the application has been referred to Council’s traffic engineer, who has no objection, subject to conditions. These have been included as per Condition 1 of the permit.

The development is likely to result in a marginal increase in traffic (that associated with one additional dwelling), 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

The applicants have submitted a landscape plan which has been assessed by Council’s Arborist, who has no objection, subject to conditions. The landscape plans shows the removal of five (5) trees form site, and replacement plantings of trees, shrubs and bushes.

Council’s Arborist in their assessment have determined that the trees proposed for removal have low amenity value due to their species and minimal size, no trees within the site are protected under Local Law.

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

The Lightwood (*Acacia implexa*), proposed to be located within the front setbacks of each dwelling, have been assessed as being satisfactory and no further landscape plan is required. Further to this, Council’s Arborist has assessed trees on neighbouring properties, and have determined that these will not be negatively impacted by the proposed development. Conditions however, have been included, which relate to the completion and maintenance of landscaping. These have been added to the planning permit.
6.5. **Objections received**

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

**Health concerns**

The objector has raised concerns regarding the health of her daughter in relation to building works. Whilst this is a genuine concern, the impact of construction, in relation to dust and debris is not a consideration under the *Planning and Environment Act 1987*. The applicants have however noted this concern and sent correspondence to Council and the objector stating they will endeavour to keep dust and debris to a minimum as much as is practicable.

**Overshadowing**

Overshadowing diagrams indicate compliance with Standard B21 (Overshadowing) of the Bayside Planning Scheme. In addition to this, shadow diagrams submitted with the application show overshadowing of 16 Morley Crescent to not impact any private open space whilst the overshadowing at 18 Morley Crescent is contained within the existing fence shadow (i.e. no additional impact over and above the existing scenario).

**Boundary wall**

The applicants have proposed to remove an adjoining wall that is currently located to the rear between dwellings and replace this with a 1.95 metre paling fence. Adjoining boundary fences are not a consideration under the *Planning and Environment Act 1987*, and is a civil matter between neighbours.

**Overdevelopment**

The proposed development of two dwellings on the site is appropriate to the zoning and consistent with local and state government planning policy.

**Visual bulk**

As per previous comments, the setback for dwelling 1 will be required to be set back a further 0.50m to be in keeping with the existing setback. In addition to this, the first floor has been recessed and canopy plantings are proposed to be located within the front setback. As such it is considered that the design response is suitable and in keeping with the provisions of the Bayside Planning Scheme.

**Support Attachments**

1. Development Plans
2. Site and Surrounded Imagery
3. Neighbourhood Character Policy (Precinct G1)
4. ResCode Assessment (Clause 55)
ATTACHMENT 2
Aerial Surrounds and Imagery

Figure 1: Aerial overview of the site and surrounds.

<table>
<thead>
<tr>
<th>Legend</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject site</td>
<td>🌟</td>
</tr>
<tr>
<td>Objector(s)</td>
<td>⬜</td>
</tr>
</tbody>
</table>
Figure 2: Subject site viewed from the north west.

Figure 3: Subject site viewed from the north east.
### ATTACHMENT 3

**Neighbourhood Character Policy (Precinct H3)**

#### Preferred Future Character Statement

The well-articulated dwellings sit within landscaped gardens, some with established trees. New buildings are frequent and are designed to respond to the site, and include a pitched roof form to reflect the dominant forms in the area. Buildings are occasionally built to the side boundary, however the overall impression of the streetscape is of buildings within garden settings due to the regular front setbacks, well vegetated front yards and additional street tree planting in the area.

#### Precinct Guidelines

<table>
<thead>
<tr>
<th>Objectives</th>
<th>Design Responses</th>
<th>Avoid</th>
<th>Planning Officer Assessment</th>
</tr>
</thead>
</table>
| To maintain and enhance the garden settings of the dwellings. | - Prepare a landscape plan to accompany all applications for new dwellings that includes substantial trees and vegetation.  
- Retain large, established trees and provide for the planting of new trees wherever possible.  
- Buildings should be sited to allow space for the planting of trees and shrubs. | Lack of landscaping and substantial vegetation.  
Removal of large trees.  
Planting of environmental weeds. | Responds  
A landscape plan, which includes substantial plantings and the addition of canopy trees, has been submitted with the application. This has been assessed by Council’s Arborist as being generally in accordance with precinct guidelines. |
| To maintain the rhythm of visual separation between buildings. | - Buildings should be sited to create the appearance of space between buildings and accommodate substantial vegetation. |  | Responds  
The dwellings have been designed and sited so as to present as a single dwelling. In addition to this, space between dwellings has been maintained at ground and first floor to the east and at the first floor to the west, with the setback at this level providing a suitable transition to the adjoining single storey dwelling. |
| To ensure that new buildings provide an articulated and interesting façade to the street. | - Incorporate design elements into the front façade design of new dwellings such as recessed portions, projecting elements behind the front setback line, combinations of materials, textures or | Large, bulky buildings with poorly articulated front and side wall surfaces. | Responds  
The proposal utilises a number of finishes and materials, whilst additionally incorporating recessed elements at the ground and first floors. |
<table>
<thead>
<tr>
<th>Objectives</th>
<th>Design Responses</th>
<th>Avoid</th>
<th>Planning Officer Assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>colours or other elements providing appropriate articulation.</td>
<td>which are considered appropriate to the prevailing streetscape. In addition to this the use of symmetrical pitched roofs assists to integrate the dwellings into the immediate surrounds by presenting as one dwelling.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Use pitched roof forms with eaves.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>To maintain the openness of the streetscape.</td>
<td></td>
<td>High, solid front fencing.</td>
<td>Responds</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>There is no front fence proposed.</td>
</tr>
</tbody>
</table>

Item 4.4 – Matters of Decision
# ATTACHMENT 4
## ResCode (Clause 55) Assessment

<table>
<thead>
<tr>
<th>Title and Objective</th>
<th>Complies with Standard?</th>
<th>Requirement and Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>B1 Neighbourhood Character</strong></td>
<td>Yes</td>
<td>Refer to Attachment 3.</td>
</tr>
<tr>
<td>Design respects existing 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 construction of two dwellings on a lot is appropriate to the zone and consistent with local and state planning policy.</td>
</tr>
<tr>
<td>Residential development is consistent with housing policies in the SPPF, LPPF including the MSS and local planning policies. Support medium densities in areas to take advantage of public transport and community infrastructure and services.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B3 Dwelling Diversity</strong></td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>Encourages a range of dwelling sizes and types in developments of ten or more dwellings.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B4 Infrastructure</strong></td>
<td>Yes</td>
<td>The dwellings will make use of existing infrastructure servicing the site. The developer will be responsible for upgrading this infrastructure if necessary to accommodate the development.</td>
</tr>
<tr>
<td>Provides appropriate utility 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>Both dwellings are appropriately orientated to the street and provided with pedestrian and vehicular access.</td>
</tr>
<tr>
<td>Integrate the layout of development with the street</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| **B6 Street Setback** | No | **Dwelling 1:**
| The setbacks of buildings from a street respect the existing or preferred neighbourhood character and make efficient use of the site. | **Required:** 9m  
**Proposed:** 7.5m |  
**Dwelling 2:**
| **Required:** 9m  
**Proposed:** 8m | Refer report. | |
| **B7 Building Height** | Yes | Maximum: 9m  
**Dwelling 1:** 7.67m | |
<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Decision</th>
<th>Proposed</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.4</td>
<td>Building height should respect the existing or preferred neighbourhood character.</td>
<td>Maximum: 9m  Dwelling 2: 7.67m</td>
<td>Yes</td>
<td></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>Yes</td>
<td>Maximum: 50%  Proposed: 49%</td>
<td></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%  Proposed: 40%</td>
<td></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>South facing living areas have been designed to allow adequate levels of daylight whilst first floor living areas have been located to the north.</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>Entrances are appropriately orientated to the street.</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. The retention of mature vegetation on the site.</td>
<td>Yes</td>
<td>Refer to report.</td>
<td></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>
<td>Maximum: 40% of street frontage  Proposed: 34%</td>
<td></td>
</tr>
</tbody>
</table>
**B15 Parking Location**

Provide resident and visitor vehicles with convenient parking.

Avoid parking and traffic difficulties in the development and the neighbourhood.

Protect residents from vehicular noise within developments.

| Yes | On site car parking has been provided as per Clause 52.06 (Car Parking) of the Bayside Planning Scheme. |

**B17 Side and Rear Setbacks**

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

| No | Refer to table below and report. Non-compliances are underlined below. |

<table>
<thead>
<tr>
<th></th>
<th>Ground Floor (Dwelling 1)</th>
<th>First Floor (Dwelling 1)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>East (side)</strong></td>
<td>0m or 2m</td>
<td>1.53 – 2m</td>
</tr>
<tr>
<td><strong>West (side)</strong></td>
<td>0m or 2m</td>
<td>n/a</td>
</tr>
<tr>
<td><strong>South (rear)</strong></td>
<td>0m or 3m</td>
<td>6m</td>
</tr>
</tbody>
</table>

| Ground Floor (Dwelling 2) | First Floor (Dwelling 2) |
|---|---|---|---|---|
| **East (side)** | 0m or 2m | n/a | 3.02m – 3.68m | n/a |
| **West (side)** | 0m or 2m | 2m | 3.74m | 3.48m |
| **South (rear)** | 0m or 3m | 5.50m | 4.97m | 6.19m |

**B18 Walls on Boundaries**

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

| Yes | Maximum Height: 3.6m  
Proposed: 3.20m  
Maximum Average Height: 3.2m  
Proposed: 3.2m  
Maximum Length: 15.12m  
Proposed: 6m |

**B19 Daylight to Existing Windows**

Allow adequate daylight into existing habitable room windows.

| Yes | The proposed application complies with Standard B19 and all habitable room windows maintain a minimum area of 3 square metres and a minimum dimension of 1 metre clear to the sky. |

**B20 North Facing Windows**

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

| Yes | No north facing windows are impacted. |

**B21 Overshadowing Open Space**

Ensure buildings do not significantly overshadow existing secluded private open space.

<p>| Yes | Shadow diagrams submitted with the application demonstrate that at least 75% of adjoining dwellings secluded private open space receives at least five hours of sunlight between 9am and 3pm on 22 December. |</p>
<table>
<thead>
<tr>
<th><strong>B22 Overlooking</strong></th>
<th><strong>Yes</strong></th>
<th>Limit views into existing secluded private open space and habitable room windows.</th>
<th>All windows comply, and are obscure glazed or have sill heights of 1.70m. There is some doubt as to whether the rear deck to dwelling 2 complies and this will be addressed through condition.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>B23 Internal Views</strong></td>
<td><strong>Yes</strong></td>
<td>Limit views into existing secluded private open space and habitable room windows of dwellings and residential buildings within the same development.</td>
<td>All habitable room windows have been sited and screened appropriately to avoid overlooking of the other dwellings private open space in accordance with this Standard.</td>
</tr>
<tr>
<td><strong>B24 Noise Impacts</strong></td>
<td><strong>Yes</strong></td>
<td>Protect residents from external noise and contain noise sources in developments that may affect existing dwellings.</td>
<td>The level of noise associated with the two dwellings is not anticipated to exceed that expected of a residential use.</td>
</tr>
<tr>
<td><strong>B25 Accessibility</strong></td>
<td><strong>Yes</strong></td>
<td>Consider people with limited mobility in the design of developments.</td>
<td>Both dwelling entries are accessible for people with limited mobility and both dwellings accommodate ground floor bedrooms.</td>
</tr>
<tr>
<td><strong>B26 Dwelling Entry</strong></td>
<td><strong>Yes</strong></td>
<td>Provide a sense of identity to each dwelling/residential building.</td>
<td></td>
</tr>
<tr>
<td><strong>B27 Daylight to New Windows</strong></td>
<td><strong>Yes</strong></td>
<td>Allow adequate daylight into new habitable room windows.</td>
<td>All habitable windows will open out onto a space clear to the sky.</td>
</tr>
</tbody>
</table>
| **B28 Private Open Space** | **Yes** | Provide reasonable recreation and service needs of residents by adequate private open space. | **Minimum**: 25m² secluded, 40m² overall  
**Dwelling 1**: 54m² secluded, 93m² overall  
**Dwelling 2**: 50m² secluded, 80m² overall |
<p>| <strong>B29 Solar Access to Open Space</strong> | <strong>No</strong> | Allow solar access into the secluded private open space of new dwellings/buildings. | Whilst the first floor setbacks do not comply, it would be virtually impossible to provide sunlight to the rear deck areas due to their orientation. Shadow diagrams indicate a sufficient amount of sunlight to each open space area, and given that this non-compliance affects internal amenity only (rather than neighbouring amenity) it is an acceptable outcome given the difficulties associated with the site constraints namely its orientation and minimal depth). |
| <strong>B30 Storage</strong> | <strong>Yes</strong> | Provide adequate storage facilities for each dwelling. | Both dwelling have been allocate 6m³ of storage space. |</p>
<table>
<thead>
<tr>
<th>B31 Design Detail</th>
<th>Yes</th>
<th>Refer to Attachment 3.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Encourage design detail that respects the existing or preferred neighbourhood character.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>B32 Front Fences</th>
<th>Yes</th>
<th>No front fence is proposed.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Encourage front fence design that respects the existing or preferred neighbourhood character.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>B33 Common Property</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ensure car parking, access areas and other communal open space is practical, attractive and easily maintained.</td>
<td></td>
</tr>
<tr>
<td>Avoid future management difficulties in common ownership areas.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>B34 Site Services</th>
<th>Yes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ensure site services and facilities can be installed and easily maintained and are accessible, adequate and attractive.</td>
<td></td>
</tr>
<tr>
<td>Avoid future management difficulties in common ownership areas.</td>
<td></td>
</tr>
<tr>
<td>Bin enclosures have been provided and are easily accessed and sufficient space has been allocated for clothes lines, hot water services etc.</td>
<td></td>
</tr>
</tbody>
</table>
1. Purpose and background

To report a secondary consent application for the construction of a three-storey building containing not more than 43 dwellings and a reduction of 1 visitor car parking space on a lot with an area of 2093 square metres (refer Attachment 1) at 7-9 Cowra Street, Brighton (refer Attachment 2).

<table>
<thead>
<tr>
<th>Applicant</th>
<th>SAC Building Workshop Pty Ltd</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date application received</td>
<td>23 August 2017 (Amended plans received)</td>
</tr>
</tbody>
</table>

Planning Permit No. 2013/0770/1 was issued at the direction of the Victorian Civil and Administrative Tribunal on 20 October 2014 for 7 – 9 Cowra Street, Brighton. The permit allowed the construction of a three storey building containing not more than 39 dwellings, reduction of visitor parking and variation to an easement. Plans endorsed as part of the permit were approved by Council on 19 August 2015.

Following an application made pursuant to Section 87A an amended planning permit was issued at the direction of the Tribunal on the 9 September 2016. The permit allows the construction of a three storey building containing not more than 43 dwellings and a reduction in 1 visitor car parking space. Plans were endorsed as part of the permit on the 16 December 2016.

The applicant has now sought permission to amend the endorsed plans as follows:

- Reconfiguration of ground, first and second floor level including reduction in total number of units to 40 (three less than approved) and associated alterations in fenestration and balconies;
- Reconfiguration of both basement levels, including an increase in residential parking by eight spaces (56 in total), storage areas reduced by eight (43 in total), and basement setback to boundary with No.1 Oakwood Ave reduced by 1.3 metres;
- Increase in thickness of first and second floor slabs and associated increase in overall height of building by 300mm.
- Minor alterations to setbacks at ground, first and second floor level. The setbacks would predominately increase. The setback of the balcony associated with apartment 1.07 from the western boundary would decrease by 90mm.
- Minor alterations to planting schedule in landscape plan;
- Patterned precast concrete panels omitted for render in a similar tone.

It is noted construction of the development has commenced. As such the basement levels, ground and first floor have been constructed and this aspect of the proposal is retrospective.

2. Policy implications

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 2013/770/1.
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 to other Council departments for comment.

Public notification

Applications made in accordance with the provisions of Secondary Consent are not subject to the notice requirements of Sections 52(1)(a), (b) and (d) of the Planning and Environment Act 1987. Therefore, these changes to the plans cannot be advertised.

4. Recommendation

That Council:

Approve the Amended Plans in accordance with the Secondary Consent provisions of Planning Permit No. 2013/770/1 for the land known and described as 7-9 Cowra Street, Brighton issued for the construction of a three-storey building containing not more than 43 dwellings and a reduction of 1 visitor car parking space and the following table be added at the end of the permit:

<table>
<thead>
<tr>
<th>Date</th>
<th>Amendments</th>
</tr>
</thead>
<tbody>
<tr>
<td>28 September 2017</td>
<td>Secondary Consent Amended Plans</td>
</tr>
<tr>
<td></td>
<td>• Reconfiguration of ground, first and second floor level including reduction in total number of units to 40 (three less than approved) and associated alterations in fenestration and balconies;</td>
</tr>
<tr>
<td></td>
<td>• Reconfiguration of both basement levels, including an increase in residential parking by eight spaces (56 in total), storage areas reduced by eight (43 in total), and basement setback to boundary with No.1 Oakwood Ave reduced by 1.3 metres;</td>
</tr>
<tr>
<td></td>
<td>• Increase in thickness of first and second floor slabs and associated increase in overall height of building by 300mm.</td>
</tr>
<tr>
<td></td>
<td>• Minor alterations to setbacks at ground, first and second floor level. The setbacks would predominately increase. The setback of the balcony associated with apartment 1.07 from the western boundary would decrease by 90mm.</td>
</tr>
<tr>
<td></td>
<td>• Minor alterations to planting schedule in landscape plan;</td>
</tr>
<tr>
<td></td>
<td>• Patterned precast concrete panels omitted for render in a similar tone.</td>
</tr>
</tbody>
</table>

Sheets 2 to 16 (of 16) are superseded and sheets 17 added.

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 The proposed amendment does not result in a transformation of the proposal.

While the proposed plans contain a significant number of amendments, none of these would transform the original approval. The proposal would amalgamate a number of units which would reduce the overall proposal to 40, while the total number of resident’s car parks would increase to 56. This would significant exceed the minimum requirement pursuant to Clause 52.06 of the Bayside Planning Scheme.

The varied setbacks, overall height, alterations to fenestration and balconies associated with the internal reconfiguration, alterations to the landscape plan and materials schedule are not significant alterations when considered in the context of the overall approval. The amendment is generally consistent with the approved development and does not result in a transformation of the proposal.

6.2 The proposed amendment does not 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 a three storey building containing not more than 43 dwellings and the reduction of one (1) visitor car parking space. The amendment sought under this application is consistent with the proposal and does not authorise something for which further primary consent is required under the Planning Scheme.

6.3 The proposed amendment is of no consequence having regard to the purpose of a planning control under which the permit was granted.

The proposal site is located within the General Residential Zone and Design and Development Overlay 10. The original development triggered a permit requirement under both of these provisions.

The purpose of the General Residential Zone is as follows:

- To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- To encourage development that respects the neighbourhood character of the area.
- To encourage a diversity of housing types and housing growth particularly in locations offering good access to services and transport.

The State and Local planning policy framework broadly encourages the concentration and consolidation of residential development in the area surrounding the Bay Street Major Activity Centre. The amended proposal is considered to accord with this purpose. The proposed amendments would also improve the dwelling diversity achieved by the development.

The proposed amendments to the building would not significantly alter the appearance of the building and its contribution to the streetscape. The existing vegetation, particularly canopy trees, are a strong determinant of the character of an area. The amended plans show both levels of the basement extending 1.3 metres closer to a Cypress (\textit{Cupressus spp}) located at No.1 Oakwood Ave. While this appears to extend into the Tree Protection Zone of the Cypress, it is noted the basement element of the development is already constructed and this aspect of the proposal is retrospective.
The proposed amendments would alter a number of setbacks at first and second floor level and the increasing the slab thickness would increase the overall height of the building. A number of fenestration amendments and changes to balconies are also proposed in connection with the internal reconfiguration and amalgamation of units.

Generally the amendments would increase setbacks to the boundaries. The exception to this being the setback to the balcony associated with unit A1.02 which would be 4.895 metres (a decrease of 90mm). Given the setback of the remainder of the first floor would be increasing between 50mm to 90mm, the overall result of the amendments would not unreasonably impact on the amenity of neighbouring properties. The alterations to the first and second floor slab, required for structural reasons, would increase the overall height of the proposal by 300mm. Given the scale of the development, this amendment is considered minor. All additional fenestration or alterations to the balconies would be appropriately screened where required in accordance with Standard B22. The proposed amendments would limit any amenity impacts on neighbouring properties. The proposed amendments are considered to be of no consequence having regarding to the purpose of the General Residential Zone.

The purpose of the Design and Development Overlay is as follows:

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

The amended proposal would exceed to an overall height of 10.95 metres, which accords with the 11 metre maximum height specified in the Design and Development Overlay. The proposed amendments would not alter the contribution the approved development would make to the character of the area or the safety and activity of the street scene. The proposed amendments to the development and the landscape plan would not detract from the strong landscape character sought for the precinct. The proposed amendments are considered to be of no consequence having regarding to purpose of the Design and Development Overlay 10.

The original development proposed a shortfall of one (1) visitor car parking space and as such triggered a permit requirement under Clause 52.06. The purpose of this provision is to ensure the provision of an adequate level of car parking, to ensure car parking does not adversely affect the amenity of the locality and to ensure the design and location of car parking is of a high standard. The proposal would continue to exceed the resident car parking required and have a shortfall of a single visitor parking space as originally approved. The proposed reconfigured basement parking layout is considered acceptable. The proposed amendment would be of no consequence having regard to the purpose of the parking provisions contained in Clause 52.06 of the Bayside Planning Scheme.

6.4 The proposed amendment is not contrary to a specific requirement (or condition of the permit) as distinct from an authorisation within the permit, which itself cannot be altered by consent.

The proposed amendments to the endorsed plans will not contravene any specific requirement or condition of the permit.
Support Attachments

1. Proposed amended plans ↓
2. Site surrounds and imagery ↓
3. Previously endorsed plans ↓
ATTACHMENT 2
Site and Surrounds Imagery

Figure 1 Aerial overview of the site and surrounds

<table>
<thead>
<tr>
<th>Legend</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject site</td>
<td>🟠</td>
</tr>
</tbody>
</table>
Figure 2 View of subject site from Cowra Street

Figure 3 View of subject site from Cowra Street (Note Cypress at No.1 Oakwood Ave in background)
4.6 VCAT REPORT

City Planning & Community Services - Development Services
File No: PSF/15/8755 – Doc No: DOC/17/199565

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 20 decisions, of which 4 were withdrawn and 1 was struck out. The total number of LGPRF measured decisions for the year to date is therefore 15. This table below reflects the new 2017/18 LGPRF reporting requirements for Council.

<table>
<thead>
<tr>
<th>LGPRF Statutory Planning Measure 4 (SP4) – Decision Quality</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Time period</strong></td>
</tr>
<tr>
<td>July 2017</td>
</tr>
<tr>
<td>August 2017</td>
</tr>
<tr>
<td>September 2017</td>
</tr>
<tr>
<td>October 2017</td>
</tr>
<tr>
<td>November 2017</td>
</tr>
<tr>
<td>December 2017</td>
</tr>
<tr>
<td><strong>TOTAL DECISIONS</strong></td>
</tr>
<tr>
<td><strong>LGPRF Result</strong></td>
</tr>
</tbody>
</table>
The attachment included provides a summary of each case identifying the key issues for Council policy and strategy.

The decisions reported in the attached July and August 2017 VCAT Report that were not determined by the current Councillor group are:

- 257 Bay Road, Cheltenham, and
- 739 – 743 Hawthorn Road, Brighton East.

2. **Recommendation**
   
   That the report on the VCAT decisions on the planning applications handed down during the previous month be received and noted.

**Support Attachments**

1. VCAT Decisions - July & August ▼
VCAT Determined Appeals from 01/07/2017 to 31/08/2017

<table>
<thead>
<tr>
<th>Subject Land</th>
<th>257 Bay RD, CHELTENHAM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application no.</td>
<td>2016.609.1</td>
</tr>
<tr>
<td>VCAT reference no.</td>
<td>P2048/2016</td>
</tr>
<tr>
<td>Applicant</td>
<td>YG Construction &amp; Development</td>
</tr>
<tr>
<td>Referral Authority</td>
<td>N/A</td>
</tr>
<tr>
<td>Respondents</td>
<td>Ross Newton OAM, Jeff Sharp, David Rowley, Trish Boase, William Meares, George &amp; Nicky Hilaris</td>
</tr>
</tbody>
</table>

**VCAT Member**  
D Cook

**Date of hearing**  
09/05/2017

**Date of order**  
28/07/2017

**Proposal**  
Construction of a mixed use development under the DDO and Commercial 1 Zone; Use of the land for dwellings; Reduction in car parking and Waiver of loading bay requirement

**Officer recommendation/ Delegate 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 planning application proposed the construction of a three storey, mixed use development comprising two offices, one food and drink premises and 14 dwellings. A waiver of 14 car spaces were also sought.

The subject site is located within the Commercial 1 and the Design and Development Overlay, Schedule 2 (DDO2).

The application was recommended for approval by Council planning officers, however was refused by the Planning and Amenity Committee on grounds relating to non-compliance with ResCode, the DDO2, and inadequate car parking.

The applicant relied on amended plans at the hearing which demonstrated a reduction in the office areas and reconfigured the on-site car parking. The result was a reduction in the number of car spaces being waived from 14 to 8.

The tribunal ultimately found that the locational attributes of the site and applicable planning controls supported a building of this scale and form. The most contentious aspect related to height (DDO2 encouraged two storeys), and whilst VCAT determined that a three storey scale was acceptable for this site, permit conditions were imposed to provide greater setbacks in part.

The waiver of parking was deemed acceptable based on empirical evidence, new on street spaces being proposed through removal of existing crossovers, and the sites location in an activity centre with good access to public transport.

On that basis, the Tribunal set aside Council's Refusal and directed Council to issue a Planning Permit.
<table>
<thead>
<tr>
<th>Subject land</th>
<th>551 Hampton ST, HAMPTON</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application no.</td>
<td>2016.667.1</td>
</tr>
<tr>
<td>VCAT reference no.</td>
<td>P2625/2016</td>
</tr>
<tr>
<td>Applicant</td>
<td>Samal Pty Ltd</td>
</tr>
<tr>
<td>Referral Authority</td>
<td>N/A</td>
</tr>
<tr>
<td>Respondents</td>
<td>Paul Novacco &amp; Others, Owen Smith</td>
</tr>
<tr>
<td>VCAT Member</td>
<td>J A Bennett</td>
</tr>
<tr>
<td>Date of hearing</td>
<td>05/06/2017</td>
</tr>
<tr>
<td>Date of order</td>
<td>15/08/2017</td>
</tr>
<tr>
<td>Proposal</td>
<td>Use and development of a four storey building containing two commercial premises and 12 dwellings, a reduction in the required car parking rate and waiver of the loading and unloading of vehicles requirement</td>
</tr>
</tbody>
</table>

| Officer recommendation/ Delegate determination | Not support |
| Council determination                          | Not applicable |
| Appeal type                                    | Failure to Grant a Permit |
| Plans substituted (prior to hearing)           | Yes |
| VCAT determination                             | No permit to issue |
| LGPRF outcome                                  | AFFIRMED |
Comments:

The application was lodged with Council on 10 October 2016 for the use and development of a four storey building containing two commercial premises and 12 dwellings, a reduction in the required car parking rate and waiver of the loading and unloading of vehicles requirement.

Located in the Commercial 1 Zone, the subject site is affected by the Design and Development Overlay, Schedule 12 (DDO12).

The applicant applied to the Tribunal on 20 January 2017 for an application under section 79 of the Planning and Environment Act 1987 to review Council's failure to grant a permit within the prescribed time.

This is the second appeal for the review site, the previous been Planning Permit Application (2015/464/1) that affirmed Council's refusal to grant a permit (Samal Pty Ltd v Bayside CC (2016)).

Council formed the position to not support the proposed application including the proposal depicted by the amended plans filed with Tribunal.

The grounds of not support related to the proposal's failure to comply with various policy pertaining to the Hampton Street Major Activity Centre (MAC) (Clause 21.11-4), non-compliance with the Design and Development Overlay, Schedule 12, loading and unloading of vehicles, and internal amenity.

In affirming Council's position, the Tribunal highlighted that the DDO12 provisions are not mandatory requirements and noted the strong policy support for intensive built form on land within the Hampton Street MAC.

However, the Tribunal established that in exceeding the preferred building height of 11 metres (or 3 storeys as applicable to Precinct C), the proposal did not demonstrate the benefits in exceeding the preferred building height on the review site.

The Tribunal found that the proposal's four storey building did not provide an appropriate transition from neighbouring properties. Additionally, the built form outcomes sought by the relevant provisions of the Bayside Planning Scheme, site context, policy and built form outcomes sought were not acceptable.

On the basis that there was no net community benefit in approving the proposed development due to the inconsistencies with the strategic context set out in the relevant planning provisions for the site, the Tribunal directed that no Planning Permit be issued.
### Item 4.6 – Matters of Decision

**Subject land**
739 - 743 Hawthorn RD, BRIGHTON EAST

**Application no.**
2014.514.1

**VCAT reference no.**
P2126/2016

**Applicant**
Melbourne Montessori School

**Referral Authority**
N/A

**Respondents**
Tania Cossich

**VCAT Member**
M Baird

**Date of hearing**
13/06/2017

**Date of order**
18/07/2017

**Proposal**
The use of the land for a childcare centre, kindergarten, primary school, secondary school, to construct and carry out works and a reduction in the car parking requirements

**Officer recommendation/ Delegate determination**
Refusal

**Council determination**
Refusal

**Appeal type**
Refusal to Grant a Permit

**Plans substituted (prior to hearing)**
Yes

**VCAT determination**
Permit to Issue

**LGPRF outcome**
SET ASIDE
Comments:

The application proposed the use and development of the subject land for the purposes of the Melbourne Montessori School.

The application sought approval for 193 students, 16 staff at any one time, and 17 on-site car parking spaces. Buildings and works also included the installation of three portable buildings and improved access arrangements to separate vehicles and pedestrians.

Council issued a Refusal to Grant a Planning Permit under delegation on 17 August 2016 in relation to car parking, provision of inadequate information to enable an appropriate assessment and the proposal’s failure to comply with Clause 21.10-1 (Community and educational facilities).

The permit applicant submitted an Application for Review pursuant to Section 77 of the Planning and Environment Act 1987.

In considering its decision, the Tribunal referred to the following key issues:

- Whether the proposed land uses are acceptable.
- Whether the lack of a master plan for the future development of the School is a reason to refuse the proposal and whether there is insufficient certainty and clarity about the proposal.
- Whether the amount of on-site car parking is acceptable and whether overflow parking into the public realm is also acceptable.
- Whether the proposal results in unacceptable traffic congestion and management issues.
- Whether the proposal would cause unacceptable amenity impacts to abutting and neighbouring properties.
- Whether other concerns about the proposal warrant refusal of a permit.

Broadly, the Tribunal considered that the manoeuvrability, pedestrian access arrangements, swept paths were all acceptable, and that the proposal would not cause unreasonable loss of amenity, subject to conditions.

The Tribunal, in its Order dated 18 July 2017 set aside the decision of the responsible authority and determined to grant a planning permit subject to conditions.

The permit allows the ‘use of the land for a childcare centre, kindergarten, primary school, secondary school, to construct and carry out works and a reduction in the car parking requirements’.

Planning Permit 5/2014/514/1 was issued by Council on 18 July 2017.
<table>
<thead>
<tr>
<th>Subject land</th>
<th>25 Glencairn AVE, BRIGHTON EAST</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application no.</td>
<td>2016.277.1</td>
</tr>
<tr>
<td>VCAT reference no.</td>
<td>P2279/2016</td>
</tr>
<tr>
<td>Applicant</td>
<td>Christopher Kortge</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>M Blackburn</td>
</tr>
<tr>
<td>Date of hearing</td>
<td>21/06/2017</td>
</tr>
<tr>
<td>Date of order</td>
<td>02/08/2017</td>
</tr>
<tr>
<td>Proposal</td>
<td>Construction of two dwellings on a lot</td>
</tr>
</tbody>
</table>

| Officer recommendation/ Delegate determination | Refusal |
| 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 site is located within the Neighbourhood Residential Zone Schedule 3 and is covered by the Design and Development Overlay Schedule 3.

The application proposed the construction of two, double storey dwellings on a lot.

Following a preliminary assessment of the application, the Planning Officer raised significant concerns with the proposed development, having regard to the boundary to boundary form, site coverage, landscaping, design detail, the streetscape interface and the proposal’s non-compliance with Clause 55 (ResCode).

The permit applicant failed to address Council’s concerns and subsequently, Council issued a Refusal to Grant a Planning Permit on 14 October 2016.

The permit applicant lodged an Application for Review pursuant to Section 77 of the Planning and Environment Act 1987.

Prior to the hearing scheduled for the 21 June 2017, the permit applicant circulated without prejudice amended plans which demonstrated a variety of changes in response to Council’s original concerns.

The Tribunal considered the amended plans demonstrated an appropriate response to the neighbourhood character of the area having regard to both the existing and preferred character and adopt a suitable streetscape interface. While the proposal failed to meet the numerical side and rear setbacks of Standard B17, the Tribunal considered that the proposed setbacks achieved the character objectives of Clause 55.04-1.

Consequently, the Tribunal, in its Order dated 2 August 2017 determined to grant a permit in respect of Planning Permit Application 5/216/277/1 and the decision of the responsible authority was set aside.

Planning Permit 5/2016/277/1 was issued by Council on 2 August 2017 subject to conditions.
**Subject land** | 196 Beach RD, BLACK ROCK  
**Application no.** | 2015.568.1  
**VCAT reference no.** | P2340/2016  
**Applicant** | Mukhtiar and Sukhbir Dosanjh. and Peter and Valerie Boyd  
**Referral Authority** | VicRoads  
**Respondents** | Mushan Design Studio Pty Ltd  

| **VCAT Member** | M Carew  
| **Date of hearing** | 26/06/2017  
| **Date of order** | 07/07/2017  
| **Proposal** | Construction of a dwelling on a lot less than 500m2 and Alteration of access to a Road Zone- Category 1  

| **Officer recommendation/ Delegate determination** | Notice of decision  
| **Council determination** | Notice of decision  
| **Appeal type** | Conditions  
| **Plans substituted (prior to hearing)** | No  
| **VCAT determination** | Varied Permit  
| **LGPRF outcome** | AFFIRMED
Comments:

Following Council’s determination to issue a Notice of Decision to Grant a Permit, the neighbours on either side of the site sought a review of Council’s decision pursuant to section 82 of the Planning and Environment Act 1987.

The Objector sought an increased front setback for the proposed development to provide a greater transition to her property. However, the Tribunal held that as the proposed front setback was fully compliant with Clause 54 of the Bayside Planning Scheme, the proposed setback was acceptable. Although the first floor setback on the southern side did not comply with the varied Standard A10 under the Schedule 3 to the Neighbourhood Residential Zone the Tribunal held that this was appropriate as it complied with the default A10 Standard and noted that varied setbacks are commonly found in the area.

The Tribunal held that “a small allotment of narrow width which presents a challenge to balance the amenity of neighbours with reasonable sharing of development opportunities” (paragraph 17).

The Tribunal dismissed the Objector’s claims that the proposal would result in an unacceptable loss of solar access to her north facing windows. It held that the Objectives of solar access are met because the Objector’s property had access to west facing windows to the street. The Tribunal directed a permit to be issued.
Subject land | 5 Arranmore AVE, BLACK ROCK  
Application no. | 2016.225.1  
VCAT reference no. | P2674/2016  
Applicant | Mr Kenneth Nicholls  
Referral Authority | N/A  
Respondents | N/A  

VCAT Member | B Sibonis  
Date of hearing | 05/07/2017  
Date of order | 17/08/2017  
Proposal | The construction of two, two-storey dwellings (plus basement); and the removal of native vegetation  

Officer recommendation/ Delegation determination | Refusal  
Council determination | Refusal  
Appeal type | Refusal to Grant a Permit  
Plans substituted (prior to hearing) | Yes  
VCAT determination | Permit to Issue  
LGPRF outcome | SET ASIDE
Comments:

Council refused this development for a planning permit on neighbourhood character grounds as well as non-compliance with Clause 55 and inadequate opportunity for the establishment and maintenance of vegetation. The Applicant substituted Amended Plans at the hearing and as a result Council no longer pursued certain grounds in relation to Clause 55 requirements.

The Tribunal held that the key matter for its determination was whether the development would contribute to the preferred neighbourhood character. Council was opposed to the 6.25 metre front setback which did not comply with the minimum front setback of 7.6 metres and proposed a solution consisting of a permit condition requiring an average setback of 6.8 metres. The Tribunal agreed and imposed a condition to this effect.

The Tribunal in its findings held that there are several examples in Arranmore Avenue and nearby Ardoyne Street with expansive areas of paving and/or two driveways in the front setback. Thus, it held the proposal would not be out of keeping with this context. The proposed landscaping would be reflective on what currently exists on other sites and once established this landscaping would represent an acceptable response to this character. With respect to the retention of the large Coastal Banksia in the rear setback of the subject site, the Applicant agreed at the hearing to delete the swimming pool associated with Dwelling 2 to ensure its retention. This matter is addressed by a Condition of permit.
Subject land: 1/411 St Kilda ST, BRIGHTON
Application no.: 2016.272.1
VCAT reference no.: P338/2017
Applicant: N/A
Referral Authority: N/A
Respondents: N/A

VCAT Member: S Whitney
Date of hearing: 06/07/2017
Date of order: 21/07/2017
Proposal: Construction of a two storey building containing two dwellings incorporating a roof deck and the creation of a new access to a road in a Road Zone, Category 1 (St Kilda St)

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:

Council had refused this development despite the substitution of Amended Plans at the hearing on the basis of inconsistency with neighbourhood character and non-compliance with the Standards and Objectives of Clause 55 of the Bayside Planning Scheme including site coverage and walls on boundaries.

The Tribunal stated that the key area for its determination was whether the proposal would contribute to the preferred neighbourhood character. The Tribunal accepted Council’s argument that the eclectic design of the current proposal with its disparate angled façade elements did not contribute positively to the preferred future character for Precinct C1. The Tribunal held that “the proposal would constitute a jarring intrusion into the streetscape of both St Kilda Street and Dawson Avenue.” Although the Tribunal observed the eclectic nature of some of the built form in the area, the surrounding properties had sufficiently sized front setbacks so as to retain a sense of spaciousness in the area and allow for the planting of substantial trees thereby minimising the dominance of the built form.

The Tribunal found that the 3 metre front setback to Dawson Street which is non-compliant with the Planning Scheme would contribute to making the development out of character in the area. The Tribunal acknowledged that the design which utilised a number of design features and a variety of materials and finishes despite creating visual interest did not do enough to lessen the prominence of the development in the streetscape.

The Tribunal held that the site’s location on a corner and with an abutment to a Road Zone Category 1, did not justify the extent of the development proposed. Finally, the Tribunal held that the proposed landscaping was insufficient to provide enough relief from the built form and comply with Clause 22.06.
<table>
<thead>
<tr>
<th><strong>Subject land</strong></th>
<th>7 Raymond CRT, BRIGHTON EAST</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Application no.</strong></td>
<td>2016.302.1</td>
</tr>
<tr>
<td><strong>VCAT reference no.</strong></td>
<td>P692/2017</td>
</tr>
<tr>
<td><strong>Applicant</strong></td>
<td>Dragan Jovanovic</td>
</tr>
<tr>
<td><strong>Referral Authority</strong></td>
<td>N/A</td>
</tr>
<tr>
<td><strong>Respondents</strong></td>
<td>Robyn Quilliam-Taylor</td>
</tr>
</tbody>
</table>

| **VCAT Member** | S Whitney |
| **Date of hearing** | 10/07/2017 |
| **Date of order** | 10/07/2017 |
| **Proposal** | Construction of two dwellings on a lot and in a Special Building Overlay |

| **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), Design and Development Overlay (Schedule 3) and a Special Building Overlay.

On 22 March 2017 a Notice of Decision was issued by Council for the construction of two dwellings on a lot within a Special Building Overlay. The permit was approved subject to a number of conditions. The applicant sought a review of the imposition of Conditions 1b, 1c and 6 on the Notice of Decision.

Condition 1b) of the permit required that the development plans be modified to show the garage of Unit 2 setback a minimum of 8.49 metres from the street to meet the objectives of Standard B8 of the Bayside Planning Scheme.

Condition 1c) of the permit required that the development plans be modified to show Unit 1 setback a minimum of 2 metres from the southern boundary to meet Standard B8 of the Bayside Planning Scheme in the interests of respecting the existing and preferred neighbourhood character.

Condition 6 of the permit required the walls on the adjoining properties to be cleaned and finished to the satisfaction of the Responsible Authority in the interests of protecting the character and amenity of the area.

An oral decision with reasons was provided at the hearing.

Accordingly, the Tribunal directed that planning permit 2016/302/1 contain the conditions set out in planning permit 2016/302/1 issued by the Responsible Authority on 22 March 2017 but modified to delete Condition 1b, 1c and 6 and consequently the renumbering of the conditions of the permit. Furthermore, that the Responsible Authority issue a modified permit
### Subject land
424 - 426 New ST, BRIGHTON

### Application no.
2013.390.4

### VCAT reference no.
P130/2017

### Applicant
Flying Monkey Pty Ltd

### Referral Authority
N/A

### Respondents
James Morrissy

### VCAT Member
G Code

### Date of hearing
21/07/2017

### Date of order
21/07/2017

### Proposal
Construction of a 3 storey building to comprise of a cafe, office and dwelling, reduction of car parking requirements associated with the cafe and waiving of loading bay requirements.

### Officer recommendation/
Delegate determination
Refusal

### Council determination
Refusal

### Appeal type
Refusal to Grant a Permit

### Plans substituted
No

### (prior to hearing)

### VCAT determination
Amended Permit issued

### LGPRF outcome
SET ASIDE
Comments:

A Planning Permit was originally approved authorising the construction of a three storey building comprising a café, an office and a dwelling.

An amended planning application was subsequently lodged for the provision of a liquor licence to be associated with the café.

The amended application was refused by the Planning and Amenity Committee on grounds relating to the impact of the liquor licence on the amenity of the surrounding area.

The permit applicant lodged an appeal against Council’s refusal. An objector (to the rear of the site) was a party to the appeal.

The Tribunal determined that the liquor licence was an appropriate outcome for the site and would not unreasonably compromise the residential amenity of surrounding properties.

The Tribunal acknowledged the incarnations of the proposal since the original approval (including enforcement action), however this was not relevant to the liquor licence application.

On that basis, the Tribunal set aside Council’s Refusal and directed Council to issue an Amended Planning Permit.
<table>
<thead>
<tr>
<th>Subject land</th>
<th>292 Bay ST, BRIGHTON</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application no.</td>
<td>2016.716.2</td>
</tr>
<tr>
<td>VCAT reference no.</td>
<td>P1527/2017</td>
</tr>
<tr>
<td>Applicant</td>
<td>Oliver Lesage</td>
</tr>
<tr>
<td>Referral Authority</td>
<td>N/A</td>
</tr>
<tr>
<td>Respondents</td>
<td>Le Pham, Manory Properties Pty Ltd</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>VCAT Member</th>
<th>D Cook</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of hearing</td>
<td>04/08/2017</td>
</tr>
<tr>
<td>Date of order</td>
<td>22/08/2017</td>
</tr>
<tr>
<td>Proposal</td>
<td>Partial demolition and buildings and works in a C1Z and Heritage Overlay(installation of an air conditioner)</td>
</tr>
</tbody>
</table>

| Officer recommendation/ Delegate determination | Amended permit granted                      |
| Council determination            | Not applicable                              |
| Appeal type                      | Amend a Permit                              |
| Plans substituted (prior to hearing) | No                                         |
| VCAT determination              | Struck Out                                  |
| LGPRF outcome                   | N/A                                        |
Comments:

The applicant applied to the Tribunal to amend a planning permit allowing buildings and works for external air-conditioning units and support structures.

The building on the subject land is used as a restaurant. Mr Lesage is an adjacent residential landowner who has applied to amend or cancel a planning permit which allows buildings and works for the installation of external air conditioning/heating units on the subject land.

The objectors’ primary concerns was in relation to the impacts of noise, heat and vibration and considers that the location and/or treatment of the units are inappropriate. He sought an order amending / cancelling the permit to require permanent acoustic treatment of the plant and equipment itself, or the relocation of the units (if the former could not be achieved). Furthermore, Mr Lesage advised that material misstatement or concealment of fact in respect of the application for permit since it was not disclosed that the units had already been constructed.

Mr Lesage alleged that there has been a substantial failure to comply with conditions of the permit. Condition 1(d) requires all external plant and equipment to be acoustically treated or placed in soundproof housing to reduce noise to a level considered satisfactory by the responsible authority. It is noted that the common boundary (timber paling) fence has been treated with a form of acoustic foam.

Council considered that the requirements of the permit and amended plans have been met, including compliance with State Environment Protection Policy No. N-1 (SEPP N-1) – noise condition stipulated by the EPA. The permit holder likewise submitted that the works comply with plans endorsed under the permit and relevant standards.

The Tribunal struck the matter out and ruled that Council had followed due process and that the development met all the requirements stipulated within the planning permit.
<table>
<thead>
<tr>
<th>Subject land</th>
<th>85 Werre ST, BRIGHTON</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application no.</td>
<td>2016.237.1</td>
</tr>
<tr>
<td>VCAT reference no.</td>
<td>P205/2017</td>
</tr>
<tr>
<td>Applicant</td>
<td>Katherine and James Ferguson</td>
</tr>
<tr>
<td>Referral Authority</td>
<td>N/A</td>
</tr>
<tr>
<td>Respondents</td>
<td>Design &amp; Project Planning</td>
</tr>
<tr>
<td>VCAT Member</td>
<td>G Code</td>
</tr>
<tr>
<td>Date of hearing</td>
<td>10/08/2017</td>
</tr>
<tr>
<td>Date of order</td>
<td>14/07/2017</td>
</tr>
<tr>
<td>Proposal</td>
<td>Alterations and additions to an existing dwelling on a lot less than 500 square metres</td>
</tr>
</tbody>
</table>

**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**
- Appeal Withdrawn

**LGPRF outcome**
- N/A
Comments:

The subject site is located within the Neighbourhood Residential Zone (Schedule 3) and the Design and Development Overlay (Schedule 3).

An objector lodged an appeal against Council’s Notice of Decision to Grant a Planning Permit. The statement of grounds lodged with the Tribunal listed non-compliant side setbacks, overshadowing and neighbourhood character as reasons for the appeal.

The objector applied to withdraw the appeal in the interests of maintaining good relationships with their neighbours. On this basis, the appeal was withdrawn by the Tribunal and the planning permit was granted.
<table>
<thead>
<tr>
<th>Subject land</th>
<th>14 Normanby ST, BRIGHTON</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application no.</td>
<td>2014.72.1</td>
</tr>
<tr>
<td>VCAT reference no.</td>
<td>P2332/2014</td>
</tr>
<tr>
<td>Applicant</td>
<td>Marko Pintar</td>
</tr>
<tr>
<td>Referral Authority</td>
<td>refer above</td>
</tr>
<tr>
<td>Respondents</td>
<td>Herman and Marla Borenstein, Anthony and Dora Couttie, Melbourne Water Corporation</td>
</tr>
<tr>
<td>VCAT Member</td>
<td>H Gibson AM</td>
</tr>
<tr>
<td>Date of hearing</td>
<td>14/08/2017</td>
</tr>
<tr>
<td>Date of order</td>
<td>21/07/2017</td>
</tr>
<tr>
<td>Proposal</td>
<td>Demolition of existing dwelling and construction of a double storey apartment building with attic and basement parking consisting of 3 apartments</td>
</tr>
</tbody>
</table>

**Officer recommendation/ Delegate determination:** Refusal

**Council determination:** Refusal

**Appeal type:** Amend 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 a Special Building Overlay, Design and Development (Overlay Schedule 1) and Heritage Overlay (661).

The Applicant lodged a Section 77 application to review Council decision to refuse a permit.

This matter was heard by the Tribunal in 2015. By Order dated 30 November 2015, the Tribunal set aside the Council’s decision and directed the issue of a permit (Pintar v Bayside CC [2015] VCAT 1880). The permit was issued by the Council and plans were endorsed under the permit. The matter was the subject of an appeal to the Supreme Court which set aside the Tribunal’s decision and the proceeding remitted to the Tribunal differently constituted to be determined according to law (Couttie v Bayside Council and Ors [2016] VSC 772).

On being remitted, the proceeding was the subject of a compulsory on 20 June 2017. At that compulsory conference, the parties reached in principle agreement.

Given the nature of the changes to the development the Tribunal Member directed notice of amended plans be given. Subsequent to the compulsory conference, notice of amended plans was given.

Generally the amendments to the plans included the relocation of a driveway, modified front fence detailing, modified side fencing details and a minor increase in side setbacks. No new parties arise following the giving of notice. Rather, a number of parties to the proceeding sought leave to withdraw from the proceeding.

The in-principle agreement reached at the Compulsory Conference was reported to the Planning and Amenity Committee on 18 July 2017 were Council formed a position to support the application. The Tribunal issued an order to grant a planning permit on 21 July 2017.
<table>
<thead>
<tr>
<th>Subject land</th>
<th>61 Dendy ST, BRIGHTON</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application no.</td>
<td>2016.249.1</td>
</tr>
<tr>
<td>VCAT reference no.</td>
<td>1069/2017</td>
</tr>
<tr>
<td>Applicant</td>
<td>Nagasal Vithal Ravavarapu</td>
</tr>
<tr>
<td>Referral Authority</td>
<td>N/A</td>
</tr>
<tr>
<td>Respondents</td>
<td>Alan Breidahl</td>
</tr>
<tr>
<td>VCAT Member</td>
<td>T Bilston-McGillen</td>
</tr>
<tr>
<td>Date of hearing</td>
<td>15/08/2017</td>
</tr>
<tr>
<td>Date of order</td>
<td>15/08/2017</td>
</tr>
<tr>
<td>Proposal</td>
<td>The construction of two dwellings on a lot and a fence in a Special Building overlay</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 to Issue</td>
</tr>
<tr>
<td>LGPRF outcome</td>
<td>AFFIRMED</td>
</tr>
</tbody>
</table>

Item 4.6 – Matters of Decision
Comments:

The applicant sought to amend the planning permit conditions associated with the construction of two dwellings on a lot and a fence in a Special Building Overlay.

Condition 1(a) required the ground floor front setback of dwelling 1 and 2 to be increased to a minimum of 6.6 metres to ensure compliance with Standard B6, Street Setback of the Bayside Planning Scheme.

Council considered that the proposed setback of 4.5 metres – 5 metres did not respect the existing and preferred character evident in the streetscape.

To maintain the proposal’s recessed design, Condition 1(b) supplemented 1(a) by requiring that the first floor front setback of the dwellings to be increased to a minimum of 1.5 metres behind the front wall of the ground floor with no further modifications to the associated balconies and built form.

Plans were circulated by the Applicant prior to the hearing. The plans demonstrated an increased setback, however, as the plans had no formal status (there is no mechanism to circulate plans subject to an Appeal lodged under Section 80 of the Planning and Environment Act 1987) Council could not consider them. As such, Council continued to support the imposition of condition 1(a) and (b) at the hearing that was attended by one party.

The Tribunal decided to consider the circulated plans and found that the proposed setbacks relevant to Condition 1(a) and (b) would provide an acceptable amenity outcome. The Member maintained that the decrease in balcony width would not significantly impact upon the presentation of the dwelling in the streetscape.

On that basis, the Tribunal directed that the conditions be amended to reflect the circulated plans.
<table>
<thead>
<tr>
<th>Subject land</th>
<th>339 New ST, BRIGHTON</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application no.</td>
<td>2009.487.3</td>
</tr>
<tr>
<td>VCAT reference no.</td>
<td>P324/2017</td>
</tr>
<tr>
<td>Applicant</td>
<td>Daniel Surfitt</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       | M Deidun             |
| Date of hearing   | 17/08/2017           |
| Date of order     | 11/08/2017           |
| Proposal          | The use of the site for a medical centre and associated dispensation for car parking, buildings and works in a Heritage Overlay and display of business identification signage |

| Officer recommendation/ Delegate determination | Refusal |
| Council determination                          | Refusal |
| Appeal type                                    | Refusal Amended Permit |
| Plans substituted (prior to hearing)           | No |
| VCAT determination                            | Amended Permit to Issue |
| LGPRF outcome                                  | SET ASIDE |
Comments:

The subject site is located within the Neighbourhood Residential Zone (Schedule 3) and the Design and Development Overlay (Schedule 3), the Special Building Overlay and the Heritage Overlay (Schedule 756).

The Applicant lodged an appeal against Council’s refusal to grant an amendment to a planning permit.

Council refused the application to amend a planning permit on the grounds that the proposed advertising signs failed to comply with the decision guidelines of the Heritage Overlay and the Advertising Signs particular provision. The location and bulk of the proposed signage was considered not in keeping with the character of the area, was considered to adversely affect the significance of the heritage place and was considered to result in a negative cumulative impact of signs resulting in visual disorder and clutter.

Council and the applicant settled the matter under consent on 11 August 2017 following an in-person meeting at the Council offices. Officers negotiated an outcome that achieved signage that sufficiently balanced the significance of the heritage precinct with the guidelines of the advertising signs particular provision. The removal of a number of the non-compliant signs was considered an empathetic response to the significance of the Hayball Court heritage precinct.

On this basis, the Tribunal set aside Council’s refusal and directed that an amended permit be issued.
<table>
<thead>
<tr>
<th>Subject land</th>
<th>161 North RD, BRIGHTON</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application no.</td>
<td>2016.597.1</td>
</tr>
<tr>
<td>VCAT reference no.</td>
<td>P697/2017</td>
</tr>
<tr>
<td>Applicant</td>
<td>Alla Pudel</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>S R Cimo</td>
</tr>
<tr>
<td>Date of hearing</td>
<td>17/08/2017</td>
</tr>
<tr>
<td>Date of order</td>
<td>26/07/2017</td>
</tr>
<tr>
<td>Proposal</td>
<td>Buildings and works associated with a section 2 use (Medical centre) and alter access to a Road Zone Category 1</td>
</tr>
</tbody>
</table>

**Officer recommendation/ Delegate determination**
- Support

**Council determination**
- Not applicable

**Appeal type**
- Failure to Grant a Permit

**Plans substituted**
- No

**VCAT determination**
- Permit to issue

**LGPRF outcome**
- SET ASIDE
Comments:

The proposal was for buildings and works associated with a section 2 use (Medical Centre) and alter access to a Road Zone Category 1 on a lot with an area of 753 square metres at 161 North Road, BRIGHTON. No parking dispensation was sought.

The applicant has lodged an appeal under Section 79 of the Planning and Environment Act 1987 with the Victorian Civil and Administrative Tribunal (VCAT) against Bayside City Council’s failure to make a decision within prescribed time.

Prior to the compulsory conference, Council met with the applicant in order to address Councils’ concerns with the application (setbacks along the western boundary).

At the VCAT Compulsory Conference, an in-principle agreement was reached between the participating parties. The outcome was to increase the western setback of the first floor to 3.5 metres and 4 metre (increased from between 1.9 metres and 3.0 metres).

The in-principle agreement was taken to Council meeting of 18 July 2017. Council determined to support the application on the date stated above.

VCAT affirmed Council’s decision and directed that a Planning Permit be issued.
Subject land: 10 Meredith ST, SANDRINGHAM
Application no.: 2016.589.1
VCAT reference no.: P867/2017
Applicant: Raft Development Group Pty Ltd
Referral Authority: N/A
Respondents: N/A

VCAT Member: M Deidun
Date of hearing: 30/08/2017
Date of order: 21/07/2017
Proposal: Construction of two dwellings on a lot

Officer recommendation/
Delegate determination: Support
Council determination: Support
Appeal type: Failure to Grant a Permit
Plans substituted (prior to hearing): No

VCAT determination: Permit to issue
LGPRF outcome: SET ASIDE
Comments:

The application was lodged with Council on 8 September 2016 for the construction of two dwellings on a lot.

Located in the Neighbourhood Residential Zone, Schedule 3, the subject site is affected by the Design and Development Overlay, Schedule 3 and is situated opposite the Tjilatjirrin Reserve (Tulip Street Reserve).

The applicant applied to the Tribunal on 5 May 2017 for a review of Council’s failure to determine the application within the prescribed time pursuant to Section 79 of the Planning and Environment Act 1987.

Council formed the position to support the proposed application subject to conditions. The conditions sought to mitigate the areas of non-compliance with ResCode (Clause 55 of the Bayside Planning Scheme) that included site coverage, setbacks and design detail. Critically, the removal of a Liquidambar (Liquidambar styraciflua) located in the front setback exasperated the proposals non-compliance with Neighbourhood Character including impacts to the treed streetscape and Landscaping objectives.

The Compulsory Conference was held on 14 July 2017. No statement of grounds were lodged. An outcome was mediated with the applicant that resulted in a consent order. Subsequently, a Planning Permit was issued on 21 July 2017 subject to conditions. The conditions addressed all areas of non-compliance with the Bayside Planning Scheme. The removal of the Liquidambar was permitted on the condition that replacement planting included one Coastal Banksia in the front setback at a minimum height of 3.2 metres at planting and the planting of two indigenous trees in the rear with a minimum height of 3.0 metres at planting.
Subject land: 204 New ST, BRIGHTON
Application no.: 2016.648.1
VCAT reference no.: P504/2017
Applicant: Hanpro properties pty ltd
Referral Authority: N/A
Respondents: Judith Harold; Barbara Pardoissen

VCAT Member: L Hewet
Date of hearing: 14/09/2017
Date of order: 21/07/2017
Proposal: Buildings and works to construct a two storey addition and a roof deck to the existing building and the reduction in car parking associated with the use of the building as an office

Officer recommendation/
Delegate determination: Refusal
Council determination: Not applicable
Appeal type: Refusal to Grant a Permit
Plans substituted (prior to hearing): No
VCAT determination: Appeal Withdrawn
LGPRF outcome: N/A
Comments:

The subject site is located within a Commercial 1 Zone. The site is not covered by any overlays.

Planning permission was sought to construct buildings and works which included part demolition of the existing shop at the ground floor level, construction of a new office, addition of a car stacker from the existing ROW at the rear of the site, a first floor extension and construction of a deck.

A hearing date was set on 14 September 2017 to consider the merits of the proposal.

On 10 July 2017, the applicant applied to withdraw the application. This was granted by VCAT on 21 July 2017.

The applicant advised that they were no longer pursuing the application and the following reason was provided:

“Our client is now considering other development options and no longer wants to pursue this current permit.”

As such, Council’s decision to refuse the application stands.
<table>
<thead>
<tr>
<th>Subject land</th>
<th>16 and 17 Beach RD, BEAUMARIS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application no.</td>
<td>2016.587.1</td>
</tr>
<tr>
<td>VCAT reference no.</td>
<td>P836/2017</td>
</tr>
<tr>
<td>Applicant</td>
<td>Victoria Five Holding</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>M Baird</td>
</tr>
<tr>
<td>Date of hearing</td>
<td>11/10/2017</td>
</tr>
<tr>
<td>Date of order</td>
<td>07/07/2017</td>
</tr>
<tr>
<td>Proposal</td>
<td>Subdivision of land into three (3) Lots</td>
</tr>
</tbody>
</table>

| Officer recommendation/Delegated determination | Notice of decision |
| Council determination | Not applicable |
| Appeal type          | Conditions         |
| Plans substituted (prior to hearing) | No |
| VCAT determination   | Appeal Withdrawn   |
| LGPRF outcome        | N/A                |
Comments:
An appeal against conditions of the Planning Permit was lodged by the permit applicant, simultaneously with the applicant lodging an application to amend the Planning Permit.

The Planning Permit was approved by delegation, with no objections being received.

The VCAT appeal and the amended application both sought the identical outcome (deletion of two conditions).

The planning officer was able to deal with the amended planning application swiftly and issue a determination (Amended Planning Permit). Subsequent to that, the permit applicant withdraw the VCAT appeal with the hearing for the matter vacated.
<table>
<thead>
<tr>
<th>Subject land</th>
<th>31 Alicia ST, HAMPTON</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application no.</td>
<td>2016.586.1</td>
</tr>
<tr>
<td>VCAT reference no.</td>
<td>P778/2017</td>
</tr>
<tr>
<td>Applicant</td>
<td>Amanda Lawrence</td>
</tr>
<tr>
<td>Referral Authority</td>
<td>N/A</td>
</tr>
<tr>
<td>Respondents</td>
<td>Andrew Grant, Evan &amp; Jane Packer, Henry Bode</td>
</tr>
<tr>
<td>VCAT Member</td>
<td>E A Bensz</td>
</tr>
<tr>
<td>Date of hearing</td>
<td>23/10/2017</td>
</tr>
<tr>
<td>Date of order</td>
<td>22/08/2017</td>
</tr>
<tr>
<td>Proposal</td>
<td>Construction of a three storey building comprising three dwellings over basement car parking, in a General Residential Zone (Schedule 2) and Design and Development Overlay (Schedule 12)</td>
</tr>
</tbody>
</table>

| Officer recommendation/ Delegate 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 application proposed the construction of a three storey building, comprising three dwellings and basement car parking.

The subject site is located within the General Residential Zone Schedule 2 and the Design and Development Overlay Schedule 12.

Council issued a Refusal to Grant a Planning Permit under delegation on 16 March 2017. This was based on the proposal’s failure to achieve compliance with Clause 22.06 (Neighbourhood Character Policy) and Clause 55 (ResCode) of the Bayside Planning Scheme.

The applicant lodged an appeal pursuant to Section 77 of the Planning and Environment Act 1987 with the Victorian Civil and Administrative Tribunal (VCAT) against Council’s decision to refusal to grant a planning permit.

A Compulsory Conference was held on 6 July 2017 attended by the permit applicant, Council Officers and the three parties to the appeal (two in attendance and one represented by one of the attendees).

The outcome of the Compulsory Conference was that an in-principle agreement was reached in response to the without prejudice plans and to include the following additional changes:

- **Deletion of the proposed roof deck and associated access points;**
- **Relocation of 6 air conditioning units from the roof to the basement level;**
- **Provision of 2 canopy trees within the front setback and 1 canopy tree within the rear setback;**
- **All side and rear setbacks amended to achieve compliance with Standard B17 (Side and Rear Setbacks) of Clause 55;**
- **The proposed front fence to achieve a minimum 70% permeability; and**
- **The display of a variety of materials and finishes.**

This agreement was subject to support from Council having regard to the amended plans and the amended permit conditions.

The in-principle agreement was reported to the 15 August 2017 Planning & Amenity Committee Meeting.

Council determined to support the agreement reached by all parties at the VCAT Compulsory Conference in respect of Planning Application 2016/586/1.

The merits hearing scheduled was subsequently vacated.
Subject land: 329 - 345 Bay RD, CHELTENHAM
Application no.: 2016.442.1
VCAT reference no.: P1245/2017
Applicant: Bricktop Trumen No 9 Pty Ltd
Referral Authority: N/A
Respondents: N/A

VCAT Member: I Potts
Date of hearing: 01/12/2017
Date of order: 17/08/2017
Proposal:
To use and develop the land for a child care centre, restricted retail premises, storage units, warehouse, industry, reduce the car parking required under Clause 52.06, reduce the loading and unloading requirements of Clause 52.07, removal of native vegetation under Clause 52.17 and to alter an accessway to Road Zone Category 1 under the Bayside Planning Scheme

Officer recommendation/ Delegate determination: Permit granted
Council determination: Permit granted
Appeal type: Conditions
Plans substituted (prior to hearing): No
VCAT determination: Appeal Withdrawn
LGPRF outcome: N/A
Comments:

A Planning Permit was issued on 4 April 2017 under delegation. An appeal against conditions of the Planning Permit was lodged by the permit applicant, simultaneously with the applicant lodging an application to amend the Planning Permit.

The VCAT appeal and the amended application both sought separate outcomes. In an attempt to expedite the processing of the amended application, the permit applicant withdrew the VCAT appeal with the hearing for the matter vacated.
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