Agenda

for the

Planning & Amenity Committee Meeting

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

on

Thursday, 18 May, 2017
at 7.00pm

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

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

Section 92 The Chair's Duties and Discretions

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

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

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

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

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

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

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

Your cooperation is appreciated

Chairperson of Council
Planning & Amenity Committee Meeting

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

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

Membership of the Committee
All Councillors

Order of Business

1. Apologies

2. Declarations of Interest

3. Adoption and Confirmation of the minutes of previous meeting

4. Matters of Decision

4.1 VCAT Report ........................................................................................................... 7

4.2 3-5 THISTLE GROVE, HIGHETT NOTICE OF DECISION TO GRANT A PLANNING PERMIT APPLICATION NO. 2016/679/1 WARD: SOUTHERN ................................................................. 15

4.3 22 SUNLIGHT CRESCENT, BRIGHTON EAST NOTICE OF DECISION TO GRANT A PLANNING PERMIT APPLICATION NO. 2016/565/1 WARD: CENTRAL ..................................................... 71

4.4 29 St.Ninians Road, Brighton Notice of Decision to Grant a Planning Permit Application No: 2016/627/1 Ward: Northern. 101

4.5 1 Gray Court, Beaumaris Notice of Decision to Grant a Planning Permit Application No: 2016/561/1 Ward: Southern................. 143

4.6 23 FERGUSON STREET, BRIGHTON EAST NOTICE OF DECISION TO GRANT A PLANNING PERMIT APPLICATION NO: 2016/676/1 WARD: NORTHERN................................. 161

4.7 16 Beddoe Avenue, Brighton East Notice of Decision to Grant a Planning Permit Application No: 2016/263/1 Ward: Northern. 181

4.8 6 Snooks Court, Brighton Notice of Decision to Grant an Amended Planning Permit Application No: 2014/659/2 Ward: Northern. 233


5. Confidential Business

Nil

Next Meetings 2017

- Tuesday 13 June 2017
- Thursday 22 June 2017
- Thursday 6 July 2017
- Tuesday 18 July 2017
- Thursday 3 August 2017
- Tuesday 15 August 2017
- Tuesday 12 September 2017
- Thursday 28 September 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 9 May 2017.
4. Matters of Decision

4.1 VCAT REPORT

City Planning & Community Services - Development Services
File No: PSF/15/8755 – Doc No: DOC/17/93086

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 current performance on measures SP1, SP2 and SP3 were reported to the Council Meeting of 27 April 2017.

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 2016/17 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 Councils in Melbourne such as Port Phillip and Stonington.

The LGPRF measure does not include applications to amend VCAT issued permits (Section 87A applications) or appeals which are withdrawn by the application or objector prior to a hearing.

To date, Council has received 61 decisions, of which 2 were withdrawn. The total number of LGPRF measured decisions for the year to date is therefore 59. This table below reflects the new 2017 LGPRF reporting requirements for Council.

<table>
<thead>
<tr>
<th>LGPRF Statutory Planning Measure 4 (SP4) – Decision Quality</th>
</tr>
</thead>
<tbody>
<tr>
<td>Time period</td>
</tr>
<tr>
<td>-------------</td>
</tr>
<tr>
<td>2016/17 Q1</td>
</tr>
<tr>
<td>2016/17 Q2</td>
</tr>
<tr>
<td>2016/17 Q3</td>
</tr>
<tr>
<td>April 2017</td>
</tr>
<tr>
<td>May 2017</td>
</tr>
<tr>
<td>June 2017</td>
</tr>
<tr>
<td><strong>TOTAL DECISIONS</strong></td>
</tr>
</tbody>
</table>
Importantly the four (4) April decisions reported in Attachment 1 to this report were all agreed without a hearing.

This is referred to as being determined by mutual consent, which is a better outcome for Council and the community.

The attachment also included a summary of each case identifying the key issues for Council policy and strategy.

The decisions reported in the attached April 2017 VCAT decisions were made by the current Planning & Amenity Committee and Delegates.

In the May 2017 report, a further breakdown of the Committee and delegate decisions will be able to be provided in the new reporting format.

**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 April 2017 ↓
Considerations and implications of recommendation

Liveable community

Social
The recommendation will not have any social effects.

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

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

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

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

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

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

Links to Council policy and strategy
The decisions of the VCAT may affect Council’s capacity to achieve objectives set out in the Council Plan.
VCAT Determined Appeals from 01/04/2017 to 30/04/2017

Subject land                      32 Bridge ST, HAMPTON
Application no.                   2013.420.3
VCAT reference no.                P2071/2016
Applicant                        Enid Grace Sheehy
Referral Authority                N/A
Respondents                      Peter Wright and Associates

Before                            F. Dawson
Date of hearing                   19/05/2017
Date of order                     20/04/2017
Proposal                          The construction of two dwellings at 32 Bridge Street, Sandringham

Officer recommendation/          Notice of decision
Delegate determination
Council determination             Notice of decision
Appeal type                       Notice of Decision to Grant a Permit
Plans substituted (prior to hearing) No

VCAT determination                Varied Permit
LGPRF outcome                     N/A

Comments
The subject site is located in the Neighbourhood Residential Zone (Schedule 3) and the Design and Development Overlay (Schedule 3).
Council issued a Notice of Decision to Amend a Planning Permit for retrospective approval for the construction timber decking and BBQ areas to the rear of both dwellings.
An objector (neighbour) appealed Council’s decision to approve the amendments.
A compulsory conference was held at VCAT where no agreement could be reached between all parties. However, conversations between all parties was on-going and soon after agreements were formed between all parties. The Applicant agreed to vary the requirements of conditions to include screen planting along the common boundary to the objector’s property, alterations to existing trellis fencing and changes to canopy tree planting to the rear of both dwellings.
On that basis, a consent order was reached and Council’s decision was varied.
Subject land: 312 New ST, BRIGHTON
Application no.: 2016.379.1
VCAT reference no.: P2624/2016
Applicant: Mr Peter Aloi
Referral Authority: N/A
Respondents: B Brooker

VCAT Member: H. McM. Wright QC
Date of hearing: 05/06/2017
Date of order: 21/04/2017
Proposal: The sale and consumption of liquor and a reduction in the car parking associated with a restaurant at 312 New Street, Brighton

| 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 subject site is located within the Commercial 1 Zone.

Refusal grounds identified inadequate provision of car parking facilities provided (based on the patron capacity of the restaurant) and the adverse impact that the liquor licence hours may have on the amenity of the area.

The Applicant lodged an appeal against Council’s Refusal. A compulsory conference was held at VCAT on 19 April 2017, which was attended by the Applicant for Review, an objector party and a Council representative. The applicant resolved to reduce the number of patrons from 50 to 40 and reduce the hours that liquor may be sold and consumed on-site.

On that basis, a consent order was reached and Council’s decision was set-aside.
Subject land 1/2A Dendy ST, BRIGHTON
Application no. 2016.605.1
VCAT reference no. P135/2017
Applicant D & B Brighton Pty Ltd
Referral Authority N/A
Respondents Merv Chessells, Peter Fogarty

VCAT Member S. R. Cimino
Date of hearing 15/06/2017
Date of order 26/04/2017
Proposal Construction of a two storey building over two levels of basement, and roof decks above the first floor level, accommodating four dwellings and a front fence with a height of more than 1.2 metres in the Design and Development Overlay 1

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

VCAT determination Permit to issue
LGPRF outcome SET ASIDE
Comments

The subject site is located within the Neighbourhood Residential Zone (Schedule 3) and the Design and Development Overlay (Schedule 1).

The Applicant lodged an appeal against Council’s failure to make a decision. The application was reported to the Planning and Amenity Committee meeting on 14 March 2017, where Council advised that its position at the upcoming VCAT hearing would be to support the issue of a permit.

A compulsory conference was held at VCAT on 18 April 2017, which was attended by the Applicant for Review, two objector parties and a Council representative. All parties agreed to vary some conditions to improve landscaping, increase setbacks to the neighbours to reduce visual bulk and to improve daylight and improve overlooking screens.

On that basis, a consent order was reached and Council’s decision was set-aside.
Subject land: 28 Whyte ST, BRIGHTON
Application no.: 2016.414.1
VCAT reference no.: R528/2017
Applicant: H & V Tsindos
Referral Authority: N/A
Respondents: Dale Grant Building & Documentation

VCAT Member: N Hadjiorgiou
Date of hearing: 10/07/201
Date of order: 07/04/201
Proposal: Alterations and additions to a single dwelling on a lot less than 500 square metres

Officer recommendation/Delegate determination: Notice of decision
Council determination: Notice of decision
Appeal type: Conditions
Plans substituted (prior to hearing): No
VCAT determination: Varied Permit
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).

Council issued a Notice of Decision to Grant a Planning Permit.

An objector lodged an appeal against Council’s decision.

Prior to the hearing, all parties came to an agreement regarding the application. The Applicant agreed to the deletion of a window and erection of screen fencing along the common boundary to the objector’s property.

On that basis, a consent order was reached and Council’s decision was varied.
4.2 3-5 THISTLE GROVE, HIGHETT
NOTICE OF DECISION TO GRANT A PLANNING PERMIT
APPLICATION NO. 2016/679/1  WARD: SOUTHERN

City Planning & Community Services - Statutory Planning
File No: PSF/15/8755 – Doc No: DOC/17/77405

1. Purpose and background
To report a planning permit application for the construction of a three-storey building containing 26 dwellings and basement car parking on two lots with a combined area of 1,817 square metres (refer Attachment 1) at 3-5 Thistle Grove, Highett (refer Attachment 2).

<table>
<thead>
<tr>
<th>Applicant</th>
<th>Ratio Planning Consultants</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date application received</td>
<td>8 December 2016 (Amended)</td>
</tr>
<tr>
<td>Statutory days expired</td>
<td>6 February 2017</td>
</tr>
</tbody>
</table>

Previously refused proposals
Planning application 2011/722/1 proposed the development of a three storey apartment building on the site containing 45 dwellings, subsequently revised to 39 dwellings.

Both Council and VCAT refused this previous proposal.

VCATs decision set out that the development did not appropriately respond to the DDO or to the characteristics of the site.

The previous application proposed a basement that extended to nearly all boundaries, site coverage was at 74% and a site permeability of 7.65%.

Although the proposal was considered to have a little or no direct amenity impacts on the properties to the west, the development was considered to be an over-development due to the lack of substantial landscaping that could be provided thus not providing an acceptable addition to the garden setting of the area.

Furthermore, insufficient visitor car parking was provided.

How does the current 2016/17 proposal respond to the VCAT refusal?
This proposal has generally responded to that previous VCAT refusal by reducing the extent of basement coverage, reducing the extent of site coverage, increasing permeability, increasing side setbacks, increasing opportunities for landscaping and providing car parking in accordance with the statutory rates nominated at Clause 52.06.

Subject to conditions which will result in a 25 dwelling development with an acceptable standard of amenity, this improved 2016/17 development is recommended for approval.

Precedent from recently approved applications in Bayside
Council approved a similar scale development in Highett for 25 dwellings on a lot measuring 1,234sqm within the General Residential Zone at the Planning & Amenity Committee of 9 May 2017 (32-34 Graham Road, Hightt, application 2015/561/1).

2. Policy implications
Planning permit requirements
- Clause 32.08-6 (General Residential Zone) – Construction of two or more dwellings on a lot.
Planning scheme amendments

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

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

Better Apartments Design Standards (BADS)

The Better Apartments Design Standards (BADS) have now been introduced into Victorian Planning Schemes at Clause 58. According to that Clause, these new standards do not apply to this apartment proposal because the BADS standards can only be applied to five or more storey development in the General Residential Zone.

This proposal cannot be assessed against those guidelines, but subject to the conditions set out in this permit, the proposal is considered to have a good standard of ResCode compliance and internal amenity when considered against the BADS objectives.

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>Traffic Engineer</td>
<td>No objection, subject to conditions</td>
</tr>
<tr>
<td>Drainage Engineer</td>
<td>No objection, subject to conditions</td>
</tr>
<tr>
<td>Street Tree Arborist</td>
<td>No objection, subject to conditions</td>
</tr>
<tr>
<td>Waste Management</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 20 objections were received. The following concerns were raised:

- Parking congestion and traffic safety issues.
- Three storey development is out-of-character with the remainder of the street.
- Property devaluation.
- Overlooking.
• Overshadowing.
• General noise.
• Waste Management.
• Construction Management Issues.

A letter was also received from VicTrack in regards to the proposal, who did not object to the proposal provided certain conditions were added to any permit issued. The VicTrack conditions have been incorporated into the recommendation.

Consultation meeting

The proposed development of this site has been subject to significant public input given the previous application and VCAT appeal. Broadly, VCAT found that the previous proposal had insufficient setbacks, insufficient landscaping, and the reduction in visitor parking was unacceptable.

This application has been made with those findings in mind. Setbacks have been increased, the basement reduced in size to facilitate additional landscaping and the car parking now complies with the statutory requirement of Clause 52.06. As per the previous application, most of the objections to this application relate to the effect the development may have on traffic and parking in Highett Grove. Several of the other matters mentioned above are either not relevant planning considerations or are addressed by condition. These are discussed in further detail in the report.

It is noted that the permit applicant has provided a written response to the objections. Their comments are included in the relevant consideration in the report to follow. Following further clarification, the permit applicant has not made any objection to the inclusion of standard conditions being imposed in relation to construction and waste management issues, as well as providing a revised planting schedule.

Whilst a consultation meeting is normally preferred to hear the concerns of objectors and discuss solutions to matters, it was considered that a further consultation meeting was unlikely to resolve matters raised by objectors. The reason being is that the proposal has attempted to address the original concerns (and in the car parking example, removed the non-compliance) highlighted through the previous application. It is noted that only one of the objections received comes from a property that directly abuts the subject site.

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 2016/671/1 for the land known and described as 3-5 Thistle Grove, Highett, for the construction of a three storey residential building and a basement on two lots 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 (Moull Murray Architects, Dwg no TP.03.01 to TP.09.07, dated 30 November 2016) but modified to show:
   a) A reduction in the number of dwellings and the dwelling mix through the combination of proposed units 201 & 209 to form one x three bedroom dwelling and dwellings 101 & 109 altered so that they each form one bedroom dwellings. The floor layouts shall be generally re-aligned to
provide a greater area for a greater floorplate for Dwelling 109 and a lesser floorplate for Dwelling 101. All dwellings renumbered and the car parking spaces for each lot accordingly shown as per the renumbering.

b) The dwellings Private Open Space must be shown to meet the Private Open Space standards of B28 for both secluded private open space and total open space per dwelling.

c) The deletion of the front fence to the front communal yard and all ground floor communal boundary fences between dwellings to have a height of 1.8 metres.

d) All upper level bathrooms, ensuites, toilets and study/nooks to have provisions for a skylight (or similar) where direct daylight access is not provided. High light windows to the bathrooms of Dwellings 102, 107, 202 & 207. This does not apply where rooftop plant equipment inhibits this ability.

e) The window widths associated with all habitable room windows to have a minimum dimension of 1.2 metres.

f) The sides of the balconies to Dwellings 107 & 207 made open to the air above 1m from finished floor level. The openings shall be of the ratio 2h:1w (where \( h = \) height and \( w = \) width).

g) Each dwelling to have provisions for 6 cubic metres of externally accessible storage to comply with Standard B30 – Storage.

h) Clotheslines for each ground floor dwelling in accordance with Standard B34.

i) Adequate sight lines shown where the driveway intersects with the front footpath as per the diagram shown in AS2890.1. All structures within the sight triangle must be limited to a maximum height of 0.9m or kept clear.

j) Columns along the northern side of the basement designed in accordance with Diagram 1 of Clause 52.06 of the Planning Scheme.

k) 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.

l) Location of all plant and equipment, including hot water services and air conditioners etc. shown as being hidden from all street views. Plant equipment is to be located away from habitable room windows of dwellings and the adjoining properties habitable rooms. The plant screen on the roof shall be reduced so that it is no higher than 1200mm above roof level, unless a higher screen is required to screen a particular item of plant.

m) Any other changes required to the plans to comply with all conditions of this permit.

All to the satisfaction of the Responsible Authority.

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

k) Sufficient turning circles for the waste collection vehicles to enter and exit the site in a forward direction. Waste collection shall be by a 6.4m rear mini loader.

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

m) Compliance with relevant policy, legislation and guidelines.

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

3. Prior to the endorsement of plans pursuant to Condition 1, detailed WSUD 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 (WSUD) 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.

4. Prior to the endorsement of plans pursuant to Condition 1, a revised landscape plan to the satisfaction of the Responsible Authority must be submitted to and be endorsed by the Responsible Authority. The plan must be generally in accordance with the advertised plan prepared by Wallbrink Architecture, dwg no 1875TP1, Issue B, drawn to scale with dimensions and three copies must be provided. The plan must show:

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

b) A planting schedule of any proposed trees and shrubs, including botanical names, common names, pot sizes, sizes at maturity, and quantities of each plant. The plan shall include provision of a tree capable of reaching 10m in height at maturity in the general vicinity and in place of the four manna gums.
shown on the advertised landscape plan. It shall also include dense screen planting along rail corridor interface to assist in noise mitigation.

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.

5. 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.

6. Prior to the endorsement of plans pursuant to Condition 1, a parking management plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit. Parking operations on the site must conform to this endorsed plan. Three copies of the plan must be submitted. The plan must include:

a) Allocation of parking to individual properties and to visitors.

b) Signing of parking spaces.

c) Line marking of parking spaces.

d) Proposed access control measures such as gates, roller doors, intercoms, etc.

7. Prior to the endorsement of plans pursuant to Condition 1, an acoustic report must be submitted to and approved by the Responsible Authority to demonstrate how the dwellings will be acoustically treated to minimise noise transmission from the adjacent land uses to the satisfaction of the Responsible Authority. This shall address, amongst other items, treatment to secluded private open space areas (at all levels), windows to habitable rooms and acoustic fencing.

8. 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.

9. 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.

10. 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.
11. Before the development, detailed plans indicating, but not limited to, the method of stormwater discharge to the nominated Legal Point of Discharge (and On-Site Detention System where applicable) must be submitted to and approved by Council's Infrastructure Assets Department.

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

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

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

c) The location for the parking of all construction vehicles and construction worker vehicles during construction.

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

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

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

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

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

i) Site security.

j) Public safety measures.

k) Construction times, noise and vibration controls.

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

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

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

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


q) All contractors associated with the construction of the development must be made aware of the requirements of the Construction Management Plan.
r) Details of crane activities, if any.

13. Before the occupation of the development starts, new or altered vehicle crossing(s) servicing the development must be constructed to the satisfaction of the Responsible Authority and any existing disused or redundant crossing or crossing opening must be removed and replaced with footpath/nature strip/kerb and channel, to the satisfaction of the Responsible Authority. The area(s) set aside for vehicle parking and accessways must be constructed, drained and line marked to the satisfaction of the Responsible Authority. Such areas must be kept available for these purposes at all times.

14. Before a Certificate of Occupancy is issued by a Building Surveyor, or by any other date as is approved in writing by the Responsible Authority, all buildings and works including all landscaping must be carried out and completed to the satisfaction of the Responsible Authority.

15. Once completed, the layout of the site and the size, levels, design and location of buildings and works, screens, boundaries, fixtures and services 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.

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. 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.

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

**VicTrack Conditions – not to be altered**

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

20. Before the commencement of the development, including demolition or bulk excavation, the permit holder must contact the Rail Operator through the email address metrositeaccess@metrotrains.com.au to obtain the Rail Operator’s conditions and safety requirements for works on, over or adjacent to the railway land. The permit holder must comply with the Rail Operator’s reasonable requirements for works on, over or adjacent to the railway land.

21. Prior to the commencement of works, including demolition and bulk excavation, the permit holder must enter into all necessary construction control and indemnity agreements as required by the Rail Operator.

22. The permit holder must not, at any time, interfere with or damage any railway infrastructure (including without limitation overhead power and supporting infrastructure for trains and trams, and underground telecommunication cables). The permit holder must, at its own cost, rectify any damage to railway infrastructure, or disruption to the rail operations, arising out of or in connection with the development to the satisfaction of VicTrack and the Rail Operator within
fifteen (14) days of such damage or disruption occurring or such other time agreed by VicTrack and the Rail Operator.

23. During the construction of the development, including demolition and bulk excavation, the permit holder must:
   a) take all reasonable steps to avoid disruptions to rail operations; and
   b) comply with:
      i. the Rail Operator’s safety and environmental requirements; and
      ii. the requirements of any construction control and indemnity agreement it has entered into with the Rail Operator.

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

25. The permit holder must not, at any time:
   a) allow any drainage, effluent, waste, soil or other materials to enter or be directed to the railway land; or
   b) store or deposit any waste, soil or other materials on the railway land.

26. Any wall to be built on the common boundary between the subject land and the VicTrack land must be cleaned and finished using a graffiti proof finish at the cost of the permit holder. VicTrack, in consultation with the Rail Operator, may nominate alternative measures to be implemented, at the cost of the permit holder, to prevent or reduce the potential for graffiti. Any graffiti that appears on the wall must be removed as soon as practicable to the satisfaction of the Responsible Authority. The cost of any clean-up or removal of the graffiti from the wall must be borne by the permit holder and/or the future owners of the land.

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

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

29. The permit holder must not at any time erect lighting (permanent or temporary) that spills light onto the railway tracks or which interferes with the visibility of signals and rail lines by train drivers.

30. The permit holder must not plant any plants or tree species that are likely to cause any future overhang onto the railway land or disturbance to the railway operations.

31. The permit holder must not install, or cause to be installed, any temporary ground anchors within the railway land.

Permit Expiry

32. 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; or
   b) the development is not completed within four years of the date of this permit.

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

- This permit provides planning consent only and does not provide any other consent for building, asset protections, engineering, Referral Authority easement or any other type of consent not otherwise expressly granted.
- Occupants and their visitors will not be eligible for Council on-street parking permits.
- Subsurface water must be treated in accordance with Council’s Policy for “Discharge of Pumped Subterranean Water Associated with Basements or Below Ground Structures.
- Any walls constructed on or near the railway boundary will need to comply with the necessary Australian Standards, including the requirements for crash protection measures under AS5100.
- Building Design and Construction works are to comply with Victorian Safety (Installations) Regulations 2009 Part 3 Division 2.

5. **Council Policy**

**Council Plan 2013-2017**

Relevant strategies of the Council plan include:

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

**Bayside Planning Scheme**

- Clause 11 Settlement
- Clause 12 Environmental and Landscape Values
- Clause 13 Environmental Risks
- Clause 15 Built Environment and Heritage
- Clause 16 Housing
- Clause 18 Transport
- Clause 21.02 Bayside Key Issues and Strategic Vision
- Clause 21.03 Settlement and Housing
- Clause 21.04 Environmental and Landscape Values
- Clause 21.05 Environmental Risks
- Clause 21.06 Built Environment and Heritage
- Clause 21.09 Transport and Access
- Clause 21.10 Infrastructure
- Clause 21.11 Local Areas
- Clause 22.06 Neighbourhood Character Policy G1
- Clause 22.08 Water Sensitive Urban Design
- Clause 32.08 General Residential Zone (Schedule 1)
- Clause 43.02 Design and Development Overlay (Schedule 5)
6. **Considerations**

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

6.1. **Strategic Justification**

Clause 21.11-6 of the Planning Scheme recognises that the precinct offers opportunities for more intensive forms of development and seeks:

*To provide an opportunity for as many people as it 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.*

Furthermore, it seeks to maximise development opportunities that exist on vacant and underutilised land with respect to the precinct’s urban quality and proximity to transport and activity centres. The development is located approximately 250m walk from Highett Station and is located within the Design and Development Overlay (Schedule 5)(DDO5), with the designation that the site is a preferred medium density residential area.

The DDO has the following design objectives:

- To encourage apartment style residential redevelopment of up to three storeys in height on consolidated lots in residential areas close to the Highett Shopping Centre and Southland.
- To retain a front setback and adequate side and rear setbacks to provide space to enable landscaping sufficient to provide a garden setting for apartment complexes.
- To encourage car parking to be provided within buildings rather than at ground level, to maximise the opportunity to use ground level open space for landscaping, and communal and private open space.
- To retain the amenity of existing low density residential development by ensuring that adequate side and rear setbacks are provided to taller buildings to allow screen planting and a landscape setting, and to prevent unreasonably [sic.] overlooking, overshadowing and visual bulk.

Furthermore, the DDO states that a development on a lot greater than 1,000 square metres should not exceed nine metres in height or three storeys, or 10m where there is a slope on the land. This development slightly exceeds ten metres due to the fall in the land.

Consequently, it is considered that a substantial apartment building is appropriate for the site provided that it respects the character of the area and the preferred character envisaged by the DDO. It is considered that the building appropriates balances these competing aims.

6.3 **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 as contained in Attachment 2, in conjunction with the preferred character envisaged by the DDO.
The building’s basement is setback sufficiently from boundaries to provide for the planting of substantial vegetation at the front of the site and to provide sufficient vegetation along other boundaries. The buildings does not have any walls on boundaries, thus maintaining the visual separation from 1 Thistle Grove. The building is bulkier than others in Thistle Grove, yet this is something envisaged by the DDO. The development has a modular form which breaks-up the visual bulk of the building from the streetscape. The substantial area of the site, its interface with the railway and its proximity to the Highett Town Centre mean it is afforded more ample opportunity to develop than perhaps many other sites in the area do.

The one area where the application misses the mark, in terms of neighbourhood character, is the front wall to the communal yard. This issue is examined further under the response to the non-compliance identified with Standard B32.

### 6.4 Compliance with Clause 55 (ResCode)

An assessment against the requirements of Clause 55 is provided at Attachment 3.

Pursuant to Clause 55, a development must meet all of the objectives of this clause and should meet all of the standards of this clause.

The non-compliant standards are discussed below:

**Housing Diversity (Standard B3)**

The proposal contains 26 two bedroom dwellings and three one bedroom dwellings.

While this aids dwelling diversity, it is considered that a development of this scale and intensity must provide at least 1 three bedroom dwelling to meet the needs of future residents including families in accordance with the Bayside Housing Strategy.

It is therefore considered appropriate to amalgamate Dwellings 201 & 209, which have sub-optimal layout, solar access and internal amenity, and re-align Dwellings 101 & 109, so that they from two one-bedroom dwellings rather than a two-bedroom and a one-bedroom dwelling.

This would result in a development of 25 dwellings in total, comprising 21 x two bedroom dwellings, 3 x one bedroom dwellings and 1 x three bedroom dwelling.

Such a merger would not impact the amount of car parking to be provided.

This has been included as a condition as a condition in the recommendation.

**Street Setback (Standard B6)**

<table>
<thead>
<tr>
<th>Street Setback</th>
<th>Required Minimum Setback</th>
<th>Proposed Minimum Setback</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>6m</td>
<td>3.75m</td>
</tr>
</tbody>
</table>

The DDO states that development should provide a minimum street setback of 6m. The minimum in this situation is 3.75m to the corner of the protruding balconies of Dwellings 107 & 207. The sides of these balconies are solid, thus emphasising the encroachments.

It is considered that the sides of these balconies should be open to the air to provide some visual transparency to and from the street and lessen the impact of these encroachments. This will also aid internal amenity in these dwellings.

There is a further encroachment to the front of the balconies of Dwellings 108 & 208, which are setback 4m. Each of these dwellings have two balconies. These encroachments are not considered to be significant and are subservient features to the overall design and bulk.

Additionally, the front wall to the central module of the building is setback 6m at ground level and 5.78m at first and second floor levels. It is considered that this encroachment will have a minimal effect on the streetscape.
It is noted that the front-most dwelling at 1 Thistle Grove is setback 4.9m from the street. Condition 1 addresses these matters.

**Building Height (Standard B7)**

<table>
<thead>
<tr>
<th>Preferred Maximum Height</th>
<th>Proposed Maximum Height</th>
</tr>
</thead>
<tbody>
<tr>
<td>10m (due to slope of land) / 3 storeys</td>
<td>10.43m / 3 storeys</td>
</tr>
</tbody>
</table>

The building height is 10.43m towards the western side of the property and 8.77m towards the eastern side of the property. The height control is implemented with reference to the number of storeys above ground level. Although the building exceeds the maximum height in terms of metres, it stays within the bounds of the limit in terms of the number of storeys.

Given the unusual shape of the site, it would be difficult to modulate the development so that it stayed under 10m in height while providing an apartment-style building.

It is considered that the development meets the intent of the DDO and that an additional 43cms on a 10m building will not have an adverse impact on the street scene or the amenity of adjacent homes.

**Side and Rear Setbacks (Standard B17)**

<table>
<thead>
<tr>
<th>Elevation</th>
<th>Required minimums</th>
<th>Proposed minimums</th>
</tr>
</thead>
<tbody>
<tr>
<td>East (side)</td>
<td>3.83m – 4.38m</td>
<td>1m</td>
</tr>
<tr>
<td>West (side)</td>
<td>5.49m</td>
<td>3.65m</td>
</tr>
</tbody>
</table>

The DDO contains a provision stating that the ground floor should be setback as per the requirements for the floors above, meaning that all levels should be setback as per the above distances, noting that in this case there is no rear boundary due to the shape of the site. Turning to the eastern elevation, this faces onto a rail reserve.

This is not a sensitive interface. Although the minimum setback along this elevation is minimal, the majority of the building is setback 4.9m or further, which is well above the required minimums.

On the western elevation, there are protrusions to a minimum distance of 3.65m, although the majority of the building on this elevation is setback 5m.

As mentioned in the VCAT decision on the previous application, the interface with the adjacent properties is not particularly sensitive, given that there is little private open space or habitable room windows along that site’s eastern elevation and therefore the proposed reduction in the side and rear setbacks is not assessed as having a demonstrable harm on the adjacent properties.

The setbacks are therefore considered to meet the ResCode objectives and cannot be varied by condition without a significant transformational redesign of the entire building.

**Internal Views (Standard B23)**

The height of the internal fences between ground level gardens have not been nominated on the plans.

A condition has been included in the recommendation requiring 1.8m high fences to be nominated on the plans.

**Private Open Space (Standard B28)**

Dwelling G08 has 37m² of Private Open Space, 3m² short of the limit. This is considered acceptable as the dwelling is only one bedroom, has 25m² of Secluded Private Open Space, in accordance with the Standard, and can make use of the Communal Yards provided on the site for other open space needs.
Dwellings 101 & 201 have balconies of 8m², but these balconies do not have suitable dimensions to allow the efficient use of those balconies.

The change to the layout of Dwelling 101 will enable a redesign of its private open space, as will the merger of Dwelling 201 with Dwelling 209.

These matters are addressed through conditions in the recommendation without being a significant transformational change to the proposal.

**Solar Access to Private Open Space (Standard B29)**

Dwellings G07, G08, 107, 108, 109, 207, 208 & 209 all have areas of Private Open Space where there is a wall on the northern side, thus limiting solar access onto these balconies. It is noted, however, that these balconies all have dual-aspects, and in some cases tri-aspects, meaning that they will receive morning or afternoon sun. In addition to this, the communal yards will receive good solar access.

The enlargement of the Private Open Space through condition 1 changes, as previously mentioned and shown in the recommendation, will improve the solar access to this space.

**Storage (Standard B30)**

Storage areas have not been nominated for each dwelling. A condition has been included in the recommendation to address this issue.

**Front Fences (Standard B32)**

The layout of fences at the front of the site is awkward. There is a front fence for the communal yard, another for the Private Open Space for Dwelling G08, and another for Dwelling G07.

Although having a front fence for the private open spaces of those dwellings may be reasonable, it is considered questionable to have additional fencing for an area that is defined for communal use.

Furthermore, it is considered that this area would be more useable were the fence to it removed, while maintaining the openness of the streetscape.

A condition has been included in the recommendation to address this issue.

**Site Services (Standard B34)**

Clotheslines have not been nominated for ground floor dwellings, in addition to the storage areas referred to earlier.

A condition has been included in the recommendation to address this issue.

### 6.5 Car parking and traffic

<table>
<thead>
<tr>
<th>Component</th>
<th>Rate Required</th>
<th>Car Parking Spaces Required</th>
<th>Car Parking Spaces Provided</th>
</tr>
</thead>
<tbody>
<tr>
<td>Resident Parking</td>
<td>1 per dwelling</td>
<td>26 (25 with conditions)</td>
<td>26</td>
</tr>
<tr>
<td>Visitor Parking</td>
<td>1 per 5 dwellings</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>31</strong></td>
<td><strong>31</strong></td>
</tr>
</tbody>
</table>

As shown in the table above, car parking has been provided at the rate required by the Planning Scheme.
The level of increased traffic generated by the proposed development will not adversely impact the local road network and Council's Traffic Engineer has raised no objection in this regard.

Council’s Traffic Engineer has requested that several minor items be attended to, which have been included as conditions in the recommendation.

6.6 Vegetation and landscaping

The application plans show the removal of all vegetation from the site. Council’s Arborist has inspected the site and found it not to contain any vegetation worthy of retention, provided that suitable plantings are provided to accompany the development to maintain the landscape character of the area. In particular, Council’s Arborist has raised concern with the planting of four manna gums in the south-eastern corner of the site, which would crowd each other and affect each other’s viability.

Council’s Arborist has recommended that these four trees be replaced with one tree capable of reach 10m in height at maturity. This has been included as a condition in the recommendation.

There is a tree at 2 Thistle Grove and another two trees in the rail reserve which have their Tree Protection Zones (TPZ) extending into the subject site. As such consideration must be given to the impact of the development upon these trees.

Council’s Arborist has advised that a Tree Protection Plan and Tree Management Plan will be required to be submitted to ensure these trees remain viable both during and post construction. A condition to this effect is included in the recommendation.

A street tree will be affected by the new access into the site. Council’s Street Tree Arborist has advised that removal of this tree is acceptable provided that a contribution is made to Council to cover the loss of amenity resultant from that removal and to allow the planting of a new tree.

Conditions addressing street matters have been included in the recommendation as a condition of the permit.

6.7 Objections received

Additional issues raised by objectors that have not been addressed in the assessment above or are not matters of ResCode compliance, are discussed below.

Property Devaluation

Property devaluation is not a legitimate planning consideration and VCAT precedent consistently rules that this is not a reason to refuse any permit application in Victoria.

Overlooking

Subject of the conditions of this permit, the future development has been designed to limit overlooking of adjoining areas of private open space and habitable windows in accordance with Standard B21 of Clause 55.

General Noise

More noise will result from the development due to increased vehicle movements on Thistle Grove, construction activity, additional residents and so on.

The Planning Policy Framework for this area plans for increased residential development and as a result, it is expected that normal residential noise will increase. This is a general trend throughout Metropolitan Melbourne and is not a reason that Council can refuse the application on.
Waste Management

A condition requiring the submission and approval of a Waste Management Plan has been included in the recommendation.

A Waste Management Plan will require on-site collection of bins, meaning that bins won’t be left on the nature strip.

Construction Management Issues

Impact from construction will be felt by residents of Thistle Grove as a result of the development.

Consequently, a condition requiring the submission and approval of a Construction Management Plan has been included in the recommendation to mitigate the impacts that can result from un-managed construction.

Support Attachments

1. Development Plans ↓
2. Site and Surrounds Imagery ↓
3. Neighbourhood Character Assessment ↓
4. Clause 55 Assessment ↓
Item 4.2 – Matters of Decision
Item 4.2 – Matters of Decision
ATTACHMENT 2
SITE AND SURROUNDS IMAGERY

Figure 1 Aerial overview of the site and surrounds

Legend

<table>
<thead>
<tr>
<th>Subject site</th>
<th>Objector(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>*</td>
<td>✅</td>
</tr>
</tbody>
</table>

- 6 objections have been received from 6 Thistle Grove.
- 8 objections have been received from the apartment block at 2 Thistle Grove.

N.B. 2 objector are not shown on this map.
Figure 2 View towards the site from the southeast

Figure 3 View towards the site from the southwest
Figure 4 View towards of the boundary between 1 & 3 Thistle Grove

Figure 5 View of the boundary between 1 & 3 Thistle Grove
ATTACHMENT 3

NEIGHBOURHOOD CHARACTER ASSESSMENT - PRECINCT G1

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. | The proposal provides for the planting of substantial vegetation, including a canopy tree in the southeastern corner of the site visible from the street. |
<p>| 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. | | The building mostly maintains a 5m setback to the western boundary, while also providing an enhanced front setback at the southeastern corner of the site, to the east of which is a fall to the train tracks. The building has sufficient setbacks to allow the planting of substantial vegetation. |
| 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 | Large, bulky buildings with poorly articulated | The building possesses a modular form that will present some visual break up to the front elevation. Although the form of the building is slightly unusual, this is more a product of |</p>
<table>
<thead>
<tr>
<th>Objectives</th>
<th>Design Responses</th>
<th>Avoid</th>
<th>Planning Officer Assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Objectives</strong></td>
<td><strong>Design Responses</strong></td>
<td><strong>Avoid</strong></td>
<td><strong>Planning Officer Assessment</strong></td>
</tr>
<tr>
<td>To maintain the openness of the streetscape.</td>
<td>- Avoid colours or other elements providing appropriate articulation.</td>
<td>front and side wall surfaces.</td>
<td>responding to the triangular shape of the site rather than some flaw of design.</td>
</tr>
<tr>
<td></td>
<td>- Use pitched roof forms with eaves.</td>
<td></td>
<td>The fencing to the communal yard at the front will present awkwardly to the streetscape, with one fence immediately behind another, thus providing very little openness to the streetscape. There is scope here to provide a communal open space that opens onto the street and increases its usability, rather than providing an area of communal open space that is isolated from the dwellings and not easy to access. Removal of this part of the fence is recommended and has been addressed by condition. Alternatively, the applicant could have looked into providing a dwarf wall along the front boundary to delineate public from private land while still maintaining the openness of the streetscape.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## ATTACHMENT 4
### 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 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 subject site is appropriately located with regard to services and facilities to support two dwellings.</td>
</tr>
<tr>
<td>Residential development is consistent with housing policies in the SPPF, LPPF including the MSS and local planning policies. Support medium densities in areas to take advantage of public transport and community infrastructure and services.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B3 Dwelling Diversity</strong></td>
<td>No</td>
<td>The proposal provides for 3 one bedroom dwellings and 23 two bedroom dwellings.</td>
</tr>
<tr>
<td>Encourages a range of dwelling sizes and types in developments of ten or more dwellings.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B4 Infrastructure</strong></td>
<td>Yes</td>
<td>Any upgrades required will be the responsibility of the developer.</td>
</tr>
<tr>
<td>Provides appropriate utility services and infrastructure without overloading the capacity.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B5 Integration with the Street</strong></td>
<td>Yes</td>
<td>The dwellings appropriately address the street and entries are clearly identifiable from either the streetscape or the common pedestrian access.</td>
</tr>
<tr>
<td>Integrate the layout of development with the street.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B6 Street Setback</strong></td>
<td>No</td>
<td>Minimum: 6m Proposed: 3.75m</td>
</tr>
<tr>
<td>The setbacks of buildings from a street respect the existing or preferred neighbourhood character and make efficient use of the site.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
**B7 Building Height**
Building height should respect the existing or preferred neighbourhood character

| Required: 10m |
| Proposed: 10.41m |

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

| Maximum: 50% |
| Proposed: 50% |

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

| Minimum: 20% |
| Proposed: 22% |

**B10 Energy Efficiency**
Achieve and protect energy efficient dwellings and residential buildings.
Ensure orientation and layout reduces fossil fuel energy use and makes appropriate use of daylight and solar energy.

| The proposal provides appropriate solar access to the dwellings. |

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

| N/A |

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

| No safety issues are considered to be likely to arise. |

**B13 Landscaping**
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.

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

<table>
<thead>
<tr>
<th>Yes</th>
<th>Appropriate vehicular access is provided.</th>
</tr>
</thead>
</table>

**Maximum:** 33% of street frontage  
**Proposed:** 10% of street frontage

---

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

<table>
<thead>
<tr>
<th>Yes</th>
<th>The proposed car parking areas are appropriately located.</th>
</tr>
</thead>
</table>

---

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

<table>
<thead>
<tr>
<th>No</th>
<th>Refer report and table below. Areas of non-compliance are underlined.</th>
</tr>
</thead>
</table>

---

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

<table>
<thead>
<tr>
<th>Yes</th>
<th>No walls on boundaries are proposed.</th>
</tr>
</thead>
</table>

---

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

<table>
<thead>
<tr>
<th>Yes</th>
<th>The proposal is well setback from property boundaries to ensure daylight to existing windows is maintained.</th>
</tr>
</thead>
</table>

---

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

<table>
<thead>
<tr>
<th>Yes</th>
<th>No north facing windows on adjoining properties are affected.</th>
</tr>
</thead>
</table>

---

**B21 Overshadowing Open Space**
Ensure buildings do not

<p>| Yes | Shadow diagrams submitted with the application demonstrate that at least 75%/40m² of adjoining dwellings secluded private open space receives at |</p>
<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Decision</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.2</td>
<td>B22 Overlooking</td>
<td>Yes</td>
<td>Various techniques have been utilised to ensure that direct lines of sight into the private open space of dwellings at 1 Thistle Grove have been limited.</td>
</tr>
<tr>
<td></td>
<td>Limit views into existing secluded private open space and habitable room windows.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.2</td>
<td>B23 Internal Views</td>
<td>No</td>
<td>Internal fences are shown at ground level, but their heights are not nominated. Addressed by condition. Planter boxes have been provided to the balconies at first and second levels that are above ground floor gardens to limit internal overlooking.</td>
</tr>
<tr>
<td></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></td>
<td></td>
</tr>
<tr>
<td>4.2</td>
<td>B24 Noise Impacts</td>
<td>Yes</td>
<td>The development is not expected to generate any noise above that typically expected from a residential building.</td>
</tr>
<tr>
<td></td>
<td>Protect residents from external noise and contain noise sources in developments that may affect existing dwellings.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.2</td>
<td>B25 Accessibility</td>
<td>Yes</td>
<td>Entries are easily accessible for people with limited mobility. The development could be retrofitted to accommodate people with limited mobility in the future if required.</td>
</tr>
<tr>
<td></td>
<td>Consider people with limited mobility in the design of developments.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.2</td>
<td>B26 Dwelling Entry</td>
<td>Yes</td>
<td>The entry to the building is easily identifiable from the street.</td>
</tr>
<tr>
<td></td>
<td>Provide a sense of identity to each dwelling.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.2</td>
<td>B27 Daylight to New Windows</td>
<td>Yes</td>
<td>All habitable windows have direct access to daylight.</td>
</tr>
<tr>
<td></td>
<td>Allow adequate daylight into new habitable room windows.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| 4.2  | B28 Private Open Space | No | Ground Floor  
Minimum: 25m² secluded, 40m² overall  
Proposed: Dwelling G08 has 37m² of POS.  
Upper Floors  
Minimum: 8m² balcony with min dimension of 1.6m  
Proposed: Dwellings 101 & 201 have 8m² but have insufficient minimum dimensions. |
<p>|      | Provide reasonable recreation and service needs of residents by adequate pos. | | |
| 4.2  | B29 Solar Access to Open Space | No | Dwellings G07, G08, 107, 108, 109, 207, 208 &amp; 209 have areas of private open space on the south side of walls. These areas all do have dual aspects, meaning that they will receive either morning or afternoon sun, and in some cases, both. |
|      | Allow solar access into the secluded private open space of new dwellings/buildings. | | |
| 4.2  | B30 Storage | No | Storage areas to each dwelling have not been properly defined. Addressed by condition. |
|      | Provide adequate storage facilities for each dwelling. | | |</p>
<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Decision</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>B31 Design Detail</td>
<td>Encourage design detail that respects the existing or preferred neighbourhood character.</td>
<td>Yes</td>
<td>Refer Attachment 3.</td>
</tr>
</tbody>
</table>
| B32 Front Fences | Encourage front fence design that respects the existing or preferred neighbourhood character.                                                                                                                                                    | No       | Required: 1.2m  
Proposed: 1.5m  
Partly addressed by condition.                                                                                                           |
| B33 Common Property | Ensure car parking, access areas and other communal open space is practical, attractive and easily maintained. Avoid future management difficulties in common ownership areas.                                                                                                      | Yes      | The areas of common property should be capable of effective management utilising appropriate techniques through the subdivision process. |
| B34 Site Services | Ensure site services and facilities can be installed and easily maintained and are accessible, adequate and attractive.                                                                                                                                                  | No       | Clotheslines for ground floor dwellings and storage areas for each dwelling have not been nominated on the plans. Addressed by condition. |
4.3 22 SUNLIGHT CRESCENT, BRIGHTON EAST
NOTICE OF DECISION TO GRANT A PLANNING PERMIT
APPLICATION NO. 2016/565/1  WARD: CENTRAL

City Planning & Community Services - Statutory Planning
File No: PSF/15/8755 – Doc No: DOC/17/77430

1. Purpose and background

To report a planning permit application for the construction of two double storey dwellings with basement car parking and variation to a restrictive covenant (instrument no. 2059983) to allow the construction of a second dwelling on the lot of 650 square metres (refer Attachment 1) at 22 Sunlight Crescent, Brighton East (refer Attachment 2).

<table>
<thead>
<tr>
<th>Applicant</th>
<th>Keen Planning</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date application received</td>
<td>2 December 2016 (Amended)</td>
</tr>
<tr>
<td>Statutory days expired</td>
<td>31 January 2016</td>
</tr>
</tbody>
</table>

2. Policy implications

Planning permit requirements
Clause 32.09-5 (Neighbourhood Residential Zone) – Construction of two or more dwellings on a lot.
Clause 52.02 (Easements, Restrictions and Reserves) – Vary a restriction.

Planning scheme amendments
Planning Scheme Amendment C139 has been prepared by Council and requires development to provide a financial contribution for drainage in this area. Council has adopted Amendment C139 and has submitted it to the Minister for Planning for approval. Whilst the Amendment is now considered 'seriously entertained', the Minister has not yet made a decision on the Amendment.
Planning Scheme Amendment C153 has been initiated by Council and proposes to modify the boundaries of the Special Building Overlay (SBO) and remove the Land Subject to Inundation Overlay from the Bayside Planning Scheme. The public exhibition process concluded on 16 January 2017 and a report considering submissions will be presented to Council early in 2017. Case law confirms that proposed amendments to Planning Schemes are not considered to be 'seriously entertained' and applied in the assessment of permit applications until such time as they have progressed beyond a Panel and adopted. As such, there is no statutory weight which can be given to Amendment C153. As is this case now, the site will not be located within the area covered by the SBO.

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

Public notification
The application was advertised pursuant to Sections 52(1)(a) and (d) of the Planning and Environment Act 1987 and seven objections were received. The following concerns were raised:
- Removal of covenant would result in loss of amenity;
- Property devaluation;
- Increased density;
- Overlooking;
- Parking congestion and traffic safety issues;
- Loss of vegetation; and,
- Construction issues (excavation).

Consultation meeting
The applicant declined the offer of a consultation meeting. No meeting was held.

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 2016/565/1 for the land known and described as 22 Sunlight Crescent, Brighton East, for the construction of two double storey dwellings with basement car parking and variation to a restrictive covenant (instrument no. 2059983) in accordance with the endorsed plans and subject to the following conditions from the standard conditions:

1. Before the use and/or development start/s, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the advertised plans (drawn by AYCH, drawing no. 1-10, Rev C, dated 28 Nov 2016) but modified to show:
   a) The porches to each dwelling setback 2m from the side boundaries and located in front of the entry door to each dwelling, and consequent changes to the driveway and entry paths.
   b) Wrought-iron, black balustrade or other decorative feature in place of the glass balustrade at ground level at the front of the western dwelling.
c) The crossover widened to 3.6m and a consequent revised driveway layout. The additional width must be extracted from the eastern side of the crossover.

d) Sight lines in accordance with AS2890.1 where the driveway intersects with the footpath.

e) AHD levels shown for the driveway ramp at each grade changing point.

f) A cross-section showing the headroom at the entrance to, and throughout, the basement. The minimum headroom is 2.2m as per AS2890.1.

g) Details of the vehicle turntable manufacturer notated on the plans.

h) Adequate clearance provided around the turntable in accordance with the manufacturer specifications.

i) Location of all plant and equipment, including hot water services and air conditioners etc. Plant equipment is to be located away from habitable room windows of dwellings and the adjoining properties habitable rooms.

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

k) Water sensitive urban design measures in accordance with Condition 8 of this permit.

l) A Landscaping plan in accordance with Condition 12 of this permit.

m) A Tree Management Plan and Tree Protection Plan in accordance with Condition 15 of this permit.

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 down 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 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, 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.

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

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

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

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

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

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

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

   e) Details of surface finishes of pathways and driveways.

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

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

15. 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 Management Plan must be generally in accordance with the principles set out in the submitted Arboricultural Assessment and Report by Glenn Waters, dated 27 October 2016.

The Tree Protection Plan must be in accordance with AS4970-2009, be drawn to scale and provide details of:

a) The Tree Protection Zone and Structural Root Zone for all trees to be retained on the site and for all trees on neighbouring properties where any part of the Tree Protection Zone falls within the subject site.

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

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

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

18. Soil excavation must not occur within 3.0m from the edge of the Liquidambar styraciflua (Liquidamber) street tree asset’s stem at ground level.

19. 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 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, Protection of trees on development sites. 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. Prior to soil excavation for a Council-approved crossover within the TPZ, a trench must be excavated along the line of the crossover adjacent to the tree using root-sensitive, non-destructive techniques. Any installation of services and drainage with the TPZ must be undertaken using root-sensitive, non-destructive techniques.

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

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

Variation of Restriction

22. Within 60 days of the date of this permit, a plan of variation of restriction must be submitted to the Responsible Authority for certification.

23. Prior to the commencement of the development, the certified plan variation of restriction must be lodged with the Office of Titles for registration in accordance with Section 23 of the Subdivision Act 1988. A copy of the registered plan must be submitted to Council within 14 days of registration.
Permit Expiry

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

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

Permit notes:

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

- Council records indicate that there is a 3.05m wide drainage and sewerage easement along the northern property boundary as indicated on the drawings provided. The plans indicate no proposals to encroach into the easement with any buildings or structures of note. Proposals to be built over the easement will require Build Over Easement consent from the Responsible Authority(s).

5. Council Policy

**Council Plan 2013-2017**

Relevant strategies of the Council plan include:

- 3.1.1 Developing planning strategies and policies with our community that enhance Bayside’s liveability along with its natural and built environment.

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

**Bayside Planning Scheme**

- Clause 11 Settlement
- Clause 12 Environmental and Landscape Values
- Clause 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 21.06 Built Environment and Heritage
- Clause 22.06 Neighbourhood Character Policy D2
- Clause 22.08 Water Sensitive Urban Design
- Clause 32.09 Neighbourhood Residential Zone (Schedule 3)
- Clause 43.02 Design and Development Overlay (Schedule 3)
- Clause 52.06 Car Parking
- Clause 55 Two or More Dwellings on a Lot
- Clause 65 Decision Guidelines
6. **Considerations**

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

6.1. **Covenant Variation**

Covenant 2059983 contains prohibitions stating that:

- (a) *That he or they will not erect or permit to be erected on the lot hereby transferred any building other than one dwelling house or private residence constructed of brick or concrete with roof of tiles or slate.*

- (b) *That he or they will not at any time excavate carry away or remove or permit to be excavated carried away or removed any marl clay stone gravel or sand from the said lot hereby transferred except for the purpose of excavating for the foundation of any building to be erected thereon.*

The applicant proposes to alter the wording of part (a) by removing the words *one dwelling house* and replacing them with the words *two dwelling houses*.

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

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

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

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

The objections received are not from beneficiaries of the covenant.

It is noted that a previous application to remove the covenant was refused by Council (ref no. 2015/5403/1). That application differed to this one in that it sought to remove the covenant in its entirety and did not provide details as to what development may be sought following such removal. Council could not confidently find in favour of the above test as a result.

In this application being reported, the covenant is to be varied, allowing two dwellings and detailed development plans have been submitted.

In the absence of an objection from a beneficiary, it is considered acceptable in this instance to allow the variation to the covenant given that the application is generally compliant with the Bayside Planning Scheme, and in particular neighbourhood character and the objectives and standards of Clause 55.

The Planning Scheme seeks to provide additional accommodation in established areas. In this case, being part of the Neighbourhood Residential Zone, only a limited contribution is expected to be made. Limiting the potential development of the site to two dwellings appropriately balances both of the above aims. The development itself is generally compliant with Clause 55. The building form has a generous front setback thus allowing suitable landscaping in the front garden, while also maintaining the large tree at the rear of the premises.
A map of the beneficiaries to the covenant is contained at Attachment 2. As the application is considered acceptable with reference to the remaining grounds of consideration, it is considered that the above test is also satisfied.

6.2. Neighbourhood Character

The site is located within Neighbourhood Character Precinct D2 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 features a generous front setback with a significant area reserved for front garden space able to contain substantial vegetation. The building features appropriate side and rear setbacks and presents an elevation to the streetscape that, with minor variation, will be an attractive addition to the streetscape. The mature Norfolk Pine at the rear of the site, which has a high amenity value, will be retained and continue to provide benefit to the garden setting of the area. One aspect of the development that can be improved relates to the porches, which could be moved to the front of the dwellings to provide visual separation sought by the policy. A condition is included in the recommendation requiring this.

6.3. 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:

Front Setback (Standard B6)

<table>
<thead>
<tr>
<th>Required Front Setback</th>
<th>Proposed Front Setback</th>
</tr>
</thead>
<tbody>
<tr>
<td>9m</td>
<td>8.82m</td>
</tr>
</tbody>
</table>

The front setback should be 9m. The nearest part of the building is 8.82m, which is the front of the balcony of the western dwelling. The remainder of the building is setback more than 9m, and the ground floor is setback some 13.7m. Consequently, it is considered that the building responds appropriately to neighbourhood character, in which there is no uniform setback.

Side and Rear Setbacks (Standard B17)

<table>
<thead>
<tr>
<th></th>
<th>Ground Floor</th>
<th>First Floor</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Required</td>
<td>Proposed</td>
</tr>
<tr>
<td>East (side)</td>
<td>0m or 2m</td>
<td>0m or 2m</td>
</tr>
<tr>
<td>West (side)</td>
<td>0m or 2m</td>
<td>0m or 2m</td>
</tr>
<tr>
<td>North (rear)</td>
<td>0m or 3m</td>
<td>7m</td>
</tr>
</tbody>
</table>

The front portion of the first floor is within the applicable side setbacks for each dwelling. This is not expected to harm the amenity of the dwelling to the east which, at the time of lodgement of the application, had a carport on the west side of that particular lot. A new dwelling is currently under construction on that site. The western side of that dwelling contains predominantly service rooms rather than any outlook from habitable room windows.

In terms of the encroachment on the western side, it is noted that the adjoining neighbour on the west side did not raise any objection in relation to the side setbacks despite raising several concerns with the development on other grounds.
Internal Views (Standard B23)

The height of the dividing fence between the secluded private open spaces at the rear of each of the dwellings has not been specified. A condition has been included in the recommendation requiring a 1.8m high fence to be designated on the plans.

Design Detail (Standard B31)

It is considered that the glass balustrade at the front of the dwelling at ground level could be changed to wrought iron, or other such material, to provide a material that is complementary to, but has stronger visual appeal than, the proposed front fence. This has been included as a condition in the recommendation.

6.4. Car parking and traffic

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

The level of increased traffic 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.

6.5. Street Tree

The tree located within the nature strip is proposed for retention. Council’s Street Tree Arborist has advised that the proposed vehicle crossing will not impact the tree’s health and stability provided that suitable tree management measures are implemented. Conditions included in the recommendation address this matter accordingly.

6.6. Vegetation & Landscaping

There are two trees on the site that are affected by the development. The most valuable of these trees is a mature Norfolk Pine that is of high amenity value located at rear of the site in the north-western corner. Council’s Arborist has advised that it is worthy of retention. The development has been designed to prevent an encroachment into its Tree Protection Zone of more than 10%, as per the relevant Australian Standard.

Council’s Arborist has advised that the other tree on-site, and vegetation in general, is not worthy of retention provided that appropriate replacement planting is provided.

Council’s Arborist has reviewed the submitted landscape plan and advised that it is considered acceptable. There is sufficient garden area to provide for appropriate planting opportunities.

6.7. Objections received

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

Variation of covenant would set precedent resulting in loss of amenity

Each application is considered on its merits.

Property devaluation

This is not a planning consideration.
Increased density

The proposed increase in density is not significant and can be absorbed by the neighbourhood. The State Government recently re-asserted its commitment to provide 70% of new dwellings in existing suburbs, meaning that developments such as this are important in providing additional sources of accommodation.

Overlooking

Windows with the potential to overlook secluded private open space or the habitable room windows of adjoining dwellings have been screened in accordance with Standard B21 of Clause 55.

Construction issues (excavation)

This is not a planning consideration. It is dealt with by way of the Building Regulations.

Support Attachments

1. Development Plans ↓
2. Site and Surrounds Imagery ↓
3. Neighbourhood Character Assessment Precinct D2 ↓
4. Clause 55 (ResCode) Assessment ↓
Item 4.3 – Matters of Decision
ATTACHMENT 2
SITE AND SURROUNDS IMAGERY

Figure 1 Aerial overview of the site and surrounds

<table>
<thead>
<tr>
<th>Legend</th>
<th>Symbol</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject site</td>
<td>⭐</td>
</tr>
<tr>
<td>Objector(s)</td>
<td>⬤</td>
</tr>
<tr>
<td>Covenant beneficiaries</td>
<td>▲</td>
</tr>
</tbody>
</table>
Figure 2 View towards the site from the southeast

Figure 3 View towards the site from the southwest
ATTACHMENT 3
NEIGHBOURHOOD CHARACTER ASSESSMENT – PRECINCT D2

Preferred Future Character Statement

The simple, articulated dwellings sit within landscaped gardens. Buildings are occasionally built to the side boundary; however the overall impression of the streetscape is of buildings within a garden setting due to the regular front setbacks and additional tree planting within the area. New buildings blend with the existing, by following these patterns and using materials that harmonise, where brick colours are consistent in a street. Front fences are low or open retaining the openness of the streetscape and view of the front gardens. On properties that adjoin the golf course, buildings are sited and designed so as not to overwhelm the open space. Consistent street tree planting has assisted in unifying the appearance of 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 existing 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.  
Loss of front garden space | Utilising only a single driveway results in substantial space within the front garden being available for garden area and landscaping. Notably, the large Norfolk Pine in the northwestern corner of the site will be retained, which makes a visual contribution to not only the streetscape but the area of public open space to the rear. |
<p>| 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. |                                                                 | Although the development is of a boundary-to-boundary nature, those parts that are boundary-to-boundary are setback recessed significantly from the front elevation. The visual impact of this on the streetscape will not be particularly discernible. |</p>
<table>
<thead>
<tr>
<th>Objectives</th>
<th>Design Responses</th>
<th>Avoid</th>
<th>Planning Officer Assessment</th>
</tr>
</thead>
</table>
| To ensure that buildings do not dominate the streetscape.                 | - Incorporate articulated roof forms, plan form and wall surfaces in new buildings visible from the street.  
- Recess second storey elements from the front façade.                   | Large bulky buildings with poorly articulated front or side wall surfaces.                      | The development is set well back from the street and won’t dominate the streetscape, despite the first floor protruding forward of the ground floor. |
| To reflect the building materials in locations where there is a particular consistency. | - Where consistent brick colours are present in the streetscape, use similar tonings in the colours of new buildings. | Brightly coloured external building materials in areas of consistent brick materials.            | Recent development on Sunlight Crescent has altered the character of the dwellings on the street and diluted any uniformity that was previously evident. The range of materials proposed appear generally suitable in this instance. |
| To maintain the openness of the streetscape.                             | - Provide open style front fencing, other than along heavily trafficked roads. Where no front fencing predominates, use vegetation as an alternative. | High, solid fencing.                                                                            | The application proposes a visually transparent front fence of 1.2m in height that will maintain the openness of the streetscape. |
| To encourage development that responds to its location adjacent to the golf course. | - Where development directly borders the golf course, recess upper levels from the boundary nearest the open space. | Poorly articulated or dominating development fronting the golf course.                          | The application does not adjoin a golf course.                                              |
## ATTACHMENT 4
### 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 Attachment 2.</td>
</tr>
<tr>
<td>Design respects existing neighbourhood character or contributes to a preferred neighbourhood character. Development responds to features of the site and surrounding area.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B2 Residential Policy</strong></td>
<td>Yes</td>
<td>The subject site is appropriately located with regard to services and facilities to support two dwellings.</td>
</tr>
<tr>
<td>Residential development is consistent with housing policies in the SPPF, LPPF including the MSS and local planning policies. Support medium densities in areas to take advantage of public transport and community infrastructure and services.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><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>Any upgrades required will be the responsibility of the developer.</td>
</tr>
<tr>
<td>Provides appropriate utility services and infrastructure without overloading the capacity.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B5 Integration with the Street</strong></td>
<td>Yes</td>
<td>The dwellings appropriately address the street and entries are clearly identifiable from either the streetscape or the common pedestrian access.</td>
</tr>
<tr>
<td>Integrate the layout of development with the street.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B6 Street Setback</strong></td>
<td>No</td>
<td>Minimum: 9m</td>
</tr>
<tr>
<td>The setbacks of buildings from a street respect the existing or preferred neighbourhood character and make efficient use of the site.</td>
<td>Proposed: 8.82m</td>
<td></td>
</tr>
<tr>
<td>Item</td>
<td>Matters of Decision</td>
<td></td>
</tr>
<tr>
<td>------</td>
<td>---------------------</td>
<td></td>
</tr>
<tr>
<td><strong>B7 Building Height</strong></td>
<td>Building height should respect the existing or preferred neighbourhood character &lt;br&gt;Yes</td>
<td><strong>Required:</strong> 8m &lt;br&gt;<strong>Proposed:</strong> 6.9m</td>
</tr>
<tr>
<td><strong>B8 Site Coverage</strong></td>
<td>Site coverage should respect the existing or preferred neighbourhood character and respond to the features of the site. &lt;br&gt;Yes</td>
<td><strong>Maximum:</strong> 50% &lt;br&gt;<strong>Proposed:</strong> 47%</td>
</tr>
<tr>
<td><strong>B9 Permeability</strong></td>
<td>Reduce the impact of stormwater run-off on the drainage system and facilitate on-site stormwater infiltration. &lt;br&gt;Yes</td>
<td><strong>Minimum:</strong> 20% &lt;br&gt;<strong>Proposed:</strong> 29%</td>
</tr>
<tr>
<td><strong>B10 Energy Efficiency</strong></td>
<td>Achieve and protect energy efficient dwellings and residential buildings. Ensure orientation and layout reduces fossil fuel energy use and makes appropriate use of daylight and solar energy. &lt;br&gt;Yes</td>
<td>The proposal provides appropriate solar access to the dwellings.</td>
</tr>
<tr>
<td><strong>B11 Open Space</strong></td>
<td>Integrate layout of development with any public and communal open space provided in or adjacent to the development. &lt;br&gt;Yes</td>
<td>The northern elevations provide a suitable level of passive surveillance of the public open space to the north.</td>
</tr>
<tr>
<td><strong>B12 Safety</strong></td>
<td>Layout to provide safety and security for residents and property. &lt;br&gt;Yes</td>
<td>No safety issues are considered to be likely to arise.</td>
</tr>
<tr>
<td><strong>B13 Landscaping</strong></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. &lt;br&gt;Yes</td>
<td>Refer Section 6.5.</td>
</tr>
</tbody>
</table>
**B14 Access**
Ensure the safe, manageable and convenient vehicle access to and from the development.
Ensure the number and design of vehicle crossovers respects neighbourhood character.

| Yes | Appropriate vehicular access is provided.  
**Maximum**: 33% of street frontage  
**Proposed**: 20% of street frontage |

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

| Yes | The proposed car parking areas are appropriately located. |

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

| No | Refer report and table below. Areas of non-compliance are underlined. Refer report. |

**Ground Floor** | **First Floor**
--- | ---
| **Required** | **Proposed** | **Required** | **Proposed** |
| East (side) | 0m or 2m | 0m or 2m | 3.74m – 3.98m | 3m – 4m |
| West (side) | 0m or 2m | 0m or 2m | 3.68m – 3.98m | 3m – 4m |
| North (rear) | 0m or 3m | 7m | 4.62m | 7.08m |

**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**: 3.45m  
**Maximum Average Height**: 3.2m  
**Proposed**: 2.93m  
**Maximum Length**: 18m  
**Proposed**: 10.2m |

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

| Yes | There is one habitable room window at 24 Sunlight Crescent that is near a proposed wall. There is currently a verandah to the boundary in the position where that proposal wall is located, meaning that the proposed situation will be no different to the existing situation. |

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

| Yes | No north facing windows on adjoining properties are affected. |

**B21 Overshadowing Open Space**

<p>| Yes | Shadow diagrams submitted with the application demonstrate that at least 75%/40m² of adjoining dwellings secluded private open space receives |</p>
<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Requirement</th>
<th>Decision</th>
<th>Reason</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.3</td>
<td>Ensure buildings do not significantly overshadow existing secluded private open space.</td>
<td>at least five hours of sunlight between 9am and 3pm on 22 December.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>B22</td>
<td><strong>Overlooking</strong>&lt;br&gt;Limit views into existing secluded private open space and habitable room windows.</td>
<td>Yes</td>
<td>All side windows are either highlight windows with sill heights of 1.7m above ground level or have external screening applied to limit overlooking in accordance with the Standard.</td>
<td></td>
</tr>
<tr>
<td>B23</td>
<td><strong>Internal Views</strong>&lt;br&gt;Limit views into existing secluded private open space and habitable room windows of dwellings and residential buildings within the same development.</td>
<td>No</td>
<td>Ground level dividing fencing needs to be specified as having a height of 1.8m in accordance with the Standard. Addressed by condition.&lt;br&gt;The building design appropriately limits internal overlooking from the rear, first floor windows.</td>
<td></td>
</tr>
<tr>
<td>B24</td>
<td><strong>Noise Impacts</strong>&lt;br&gt;Protect residents from external noise and contain noise sources in developments that may affect existing dwellings.</td>
<td>Yes</td>
<td>The development will not generate any noise above that typically expected from a residential building.</td>
<td></td>
</tr>
<tr>
<td>B25</td>
<td><strong>Accessibility</strong>&lt;br&gt;Consider people with limited mobility in the design of developments.</td>
<td>Yes</td>
<td>Entries are easily accessible for people with limited mobility. The development could be retrofitted to accommodate people with limited mobility in the future if required.</td>
<td></td>
</tr>
<tr>
<td>B26</td>
<td><strong>Dwelling Entry</strong>&lt;br&gt;Provide a sense of identity to each dwelling.</td>
<td>Yes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>B27</td>
<td><strong>Daylight to New Windows</strong>&lt;br&gt;Allow adequate daylight into new habitable room windows.</td>
<td>Yes</td>
<td>All habitable windows have direct access to daylight.</td>
<td></td>
</tr>
<tr>
<td>B28</td>
<td><strong>Private Open Space</strong>&lt;br&gt;Provide reasonable recreation and service needs of residents by adequate pos.</td>
<td>Yes</td>
<td>Minimum: 25m² secluded, 40m² overall&lt;br&gt;Proposed: 53m² SPOS for each dwelling plus additional areas of POS</td>
<td></td>
</tr>
<tr>
<td>B29</td>
<td><strong>Solar Access to Open Space</strong>&lt;br&gt;Allow solar access into the secluded private open space of new dwellings/buildings.</td>
<td>Yes</td>
<td>Appropriate solar access to the private open space areas is provided.</td>
<td></td>
</tr>
<tr>
<td>B30</td>
<td><strong>Storage</strong>&lt;br&gt;Provide adequate storage facilities for each dwelling.</td>
<td>Yes</td>
<td>Appropriate storage areas are located in the basement.</td>
<td></td>
</tr>
<tr>
<td>B31</td>
<td><strong>Design Detail</strong>&lt;br&gt;Encourage design detail that respects the existing or preferred neighbourhood character.</td>
<td>No</td>
<td>Refer Section . Addressed by condition.</td>
<td></td>
</tr>
</tbody>
</table>
| B32 Front Fences | Yes | **Required:** 1.2m  
**Proposed:** 1.2m |
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></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>Yes</th>
<th>The common property is consists of the driveway and front garden and should be capable of effective management through the subdivision process.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ensure car parking, access areas and other communal open space is practical, attractive and easily maintained. Avoid future management difficulties in common ownership areas.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>B34 Site Services</th>
<th>Yes</th>
<th>Plans show clotheslines, mailboxes and storage areas as required. Space for meters has been provided alongside the entries of each dwelling.</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>
<td></td>
</tr>
</tbody>
</table>
1. Purpose and background

To report a planning permit application for alterations and additions to an existing permitted single dwelling with a basement on a lot more than 500sqm. This application only seeks consent for the construction of an additional storey within an attic-style roof in the Design and Development Overlay 1 (DDO1) at 29 St. Ninians Road, Brighton (refer Attachment 2). The existing home was built more than 30 years ago and has existing use and development rights.

The reason that the proposed attic requires a planning permission is because the height of the basement at 1.3m does not exempt this roof storey from requiring a permit under the DDO1. The additional storey is shown on the plans at Attachment 1. The application cannot give consideration to any planning or design matters related to the existing home, but the future Building Surveyor will be required to assess the entire dwelling before issuing any building permit.

<table>
<thead>
<tr>
<th>Applicant</th>
<th>Mr and Mrs Cushen</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date application received</td>
<td>27 January 2017 (Amended)</td>
</tr>
<tr>
<td>Statutory days expired</td>
<td>29 March 2017</td>
</tr>
</tbody>
</table>

2. Policy implications

Planning permit requirements

Clause 43.02-2 (Design and Development Overlay Schedule 1) – Buildings and works not otherwise exempt.

Planning scheme amendments

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

Planning Scheme Amendment C153 has been initiated by Council and proposes to modify the boundaries of the Special Building Overlay (SBO) and remove the Land Subject to Inundation Overlay from the Bayside Planning Scheme. The public exhibition process will conclude on 16 January 2017 and a report considering submissions will be presented to Council early in 2017. Case law confirms that proposed amendments to Planning Schemes are not considered to be ‘seriously entertained’ and applied in the assessment of permit applications until such time as they have progressed beyond a Panel and Adopted.

As such, there is no statutory weight which can be given to Amendment C153. It is noted that the subject site is not within the SBO area and is not proposed to be included in the SBO area.
3. **Stakeholder Consultation**

   **External referrals**

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

   **Internal referrals**

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

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

   **Public notification**

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

   - Overlooking,
   - Visual bulk,
   - Protection of boundary wall on neighbouring property,
   - Request for proposal site to be surveyed,
   - Protection of existing street trees,
   - Proposed setback at attic and roof level to be maintained,
   - Proposed third level is not an attic, and
   - Does not comply with ResCode height and setback standards.

   **Resident Consultation meeting**

   A consultation meeting was held on 1 February 2017 between the permit applicant and the three (3) objectors. One of the objectors was unable to attend personally, but was represented at the meeting by a family member.

   As a result of this meeting no objections were withdrawn and 3 remain outstanding.

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 2016/627/1** for the land known and described as **29 St Ninians Road, Brighton**, for the **alterations and additions to an existing dwelling, including the construction of an attic level in the Design and Development Overlay 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 (Drawing No.TP2101 to TP2105, TP3101 to TP3104, TP4101 to TP4103 and TP6101 dated 15/9/2016) but modified to show:

      a) Screening or other complaint treatment to prevent overlooking of the private
open space of No.27 St Ninians Road within 9 metres measured from a 45 degree plane from the western facing glazing at attic level, to the satisfaction of the Responsible Authority.

b) A Landscape plan in accordance with Condition 7 of this permit.

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

3. The flat roof adjacent to the windows at attic level must not be used as a roof terrace or balcony without the prior written consent of the Responsible Authority.

4. 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.

5. 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.

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. 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 drawn to scale with dimensions and three copies must be provided. The plan must show:
   a) A planting schedule of all proposed trees and shrubs, including botanical names, common names, pot sizes, sizes at maturity, and quantities of each plant. The planting must include indigenous and coastal species.
   b) Landscaping and/or planting within all areas of the site not covered by buildings or hard surfaces.
   c) Details of surface finishes of pathways and driveways.

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. 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.

10. 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.

11. Council records indicate that there is a 2.0m wide drainage and sewerage easement along the northern property boundary as indicated on the drawings provided. The plans indicate no proposals to encroach into the easement with any buildings or structures of note. Proposals to be built over the easement will require Build Over Easement consent from the Responsible Authority/Authorities.

12. This permit will expire if one of the following circumstances applies:
   a) The development is not started within two years of the date of this permit.
   b) The development is not completed within four years of the date of this permit.
In accordance with Section 69 of the Planning and Environment Act 1987, a request may be submitted to the Responsible Authority within the prescribed timeframes for an extension of the periods referred to in this condition.

**Permit Notes:**

- This permit application was not assessed against the provisions of Clause 54 – One Dwelling on a Lot (ResCode) of the Bayside Planning Scheme. It is the responsibility of the applicant/owner to appoint a Registered Building Surveyor to determine compliance of the endorsed plans associated with the issue of this Planning Permit against Part 4 of the Building Regulations 2006. Non-compliance with any regulation will require dispensation from Council’s Building Department.
- 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.
- Subsurface water must be treated in accordance with Council’s Policy for “Discharge of Pumped Subterranean Water Associated with Basements or Below Ground Structures.

5. **Council Policy**
   **Council Plan 2013-2017**
   
   Relevant strategies of the Council plan include:
   
   - 3.1.1 Developing planning strategies and policies with our community that enhance Bayside’s liveability along with its natural and built environment.
   - 3.1.3 Advocating Council’s planning and urban design objectives.

**Bayside Planning Scheme**

- Clause 11 Settlement
- Clause 12 Environmental and Landscape Values
- Clause 15 Built Environment and Heritage
- Clause 16 Housing
- Clause 21.02 Bayside Key Issues and Strategic Vision
- Clause 21.03 Settlement and Housing
- Clause 21.04 Environmental and Landscape Values
- Clause 21.06 Built Environment and Heritage
- Clause 22.06 Neighbourhood Character Policy (C2)
- Clause 32.09 Neighbourhood Residential Zone
- Clause 43.02 Design and Development Overlay (Schedule 1)
- 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 C2 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 existing separation from the side boundaries would be maintained and the footprint and siting of the building is considered to provide sufficient space to establish a meaningful level of vegetation and planting.

The proposal makes use of a contemporary design that opens up to the coastal foreshore and is consistent with the scale and high level of visual interest of properties adjoining the coastal foreshore. The large amount of glazing facing the foreshore, punctuated by the first floor parapet and gable end of the attic would provide a lightness of structure.

The range of materials and muted colour tones is considered to sit comfortably in the surrounds of adjacent contemporary properties and the coastal setting. The proposal would add additional interest to the already varied roof forms in the area. In the context of the surrounding scale of roof forms, in particular at No.23 St Ninians St, the scale of the proposed roof would not appear discordant in the existing highly built up context.

6.2. **Design and Development Overlay Schedule 1 (DDO1)**

Pursuant to Clause 43.02-2, a permit is required to construct a building or carry out works unless a schedule to the overlay specifically states a permit is not required. Given the proposal is two storeys and an additional attic level is proposed, it does not fall within the exemptions of Design and Development Overlay 1 (DDO1) and therefore triggers the requirement for a permit. Buildings and works must be constructed in accordance with the permit requirements prescribed under Clause 2 of the DDO1.

**Permit Requirements**

The DDO1 states that buildings and works must not exceed two storeys excluding an attic or basement. A roof containing an attic must match typical roof details of the surrounding neighbourhood in terms of roof pitch and form and any windows in the roof must be dormer windows, mounted flush to the roof, recessed or of minimal dimensions.

The DDO1 defines an attic as a space within a building, contained wholly within the roof pitch, is not immediately enclosed by vertical external walls, may contain dormer windows, recessed windows, or skylights and does not contribute materially to the scale and mass of the building form. The following factors are identified in the overlay as being indicative of an attic:

- A space which is wholly contained / enclosed within a roof space.
- A space which is not bordered by any vertical external walls except gable walls.
- A space which is relatively small in scale in relation to the scale of the remaining built form.
- The presence of dormer style windows or skylights.
- Does not contribute significantly to the building form.
- A space or series of spaces which in total occupy an area no greater than half the floor area of the storey below.
The proposal would present to and be most visible from the coastal reserve and would only be visible in views from the end of St. Ninians Road and immediately adjacent properties. Therefore the most relevant properties to consider in determining typical roof details of the surrounding neighbourhood are those visible from the coastal reserve in the vicinity of the subject site and the immediately surrounding properties on St Ninians Road and Glyndon Ave. The neighbourhood surrounding the subject site contains an eclectic mix of differing roof pitch, forms and scales. There are a number of flat roofs behind parapets, cantilevered projecting roofs, large pitched roofs, notably No.23 and 24 St Ninians Road and 19 Glyndon Ave, and a butterfly roof form at No.8 Shandford Avenue. In this context, the proposed pitched roof form and scale could not be described as out of keeping with the robust built forms of the immediate surrounds.

The roof would contain a single dormer, flush with the northern roof slope. The dormer would be appropriately sized in the context of the roof slope and would be set up from the eaves and well down from the ridge. Both gable ends would feature glazing recessed back from the eave line.

The proposed extension at second floor level is wholly enclosed within the roof space and is not bordered by any vertical walls except the two gable ends. In addition, the total enclosed floor area at the attic level would be 93.66m², including the storage areas, staircase and void over the floor below and the total enclosed floor area of the proposed first floor would be 195.4m². As such the proposed attic level would occupy 47.9% of the floor area of the storey below.

The proposed second floor level is suitably proportioned in relation to the remainder of the dwelling to appear as a roof form and in this context does not add significant scale to the overall built form. Further to this, the proposed second floor level is comparatively small in scale when viewed in the surrounds of the existing properties fronting the coastal reserve.

The proposed extension above the second floor level is considered to meet all of the above factors and as such is considered to be an attic level for the purposes the DDO1. Therefore the proposal is considered to comply with the mandatory permit requirement for a building to be no greater than two storeys excluding an attic.

Assessment

As discussed above, the proposal would be visible from the coastal foreshore as well as from surrounding properties and in medium range views from the northern end of St Ninians Road. The primary views of the proposal site are from the coastal foreshore and neighbouring properties and as such the built form character of most relevance in assessing the proposal are the surrounding properties along the coastal foreshore and neighbouring properties.

In this context the surrounding environs can be characterised by substantial and robust buildings that are generally two storeys in height and contemporary in design. Typical materials including masonry and render, particularly at lower levels, glazing and standing seam metal cladding. Dwellings open up to the coastal foreshore with a large amount of glazing and large balconies to maximise the views toward the bay and city. A number of roof decks are clearly visible; however do not add significantly to the appearance or high level bulk of the properties. Brick and masonry walls front the coastal foreshore providing a clear delineation of the public and private realm, and a degree of privacy for these dwellings.
The proposal would construct an attic level above the existing two storey structure and a first floor addition with car parking underneath. Both extensions would be integrated into the alterations to the existing dwelling. The contemporary design of the proposed attic level and first floor extension would sit comfortably in the context of the surrounding built form. The proposed dwelling, in terms of both height and design would appear comparatively diminutive in the context of larger and bulkier neighbouring properties. The separation of buildings as viewed from the coastal foreshore would also be maintained.

The proposal would add visual interest to the existing level of varied built form and the proposed roof form would not appear discordant in the highly built up surrounds. The proposed materials, particularly the standing seam metal cladding and the rough sawn shiplap timber, draw from the palate of materials evident at surrounding properties. Overall the proposal is considered to be comfortably in keeping with the character of the area. It is in this context that the development cannot be considered to have a significant or detrimental impact on the coastal environment.

The decision guidelines of the DDO1 require consideration of whether proposed works would improve the amenity of the area. No.27 St Ninians Road has a number of side facing windows adjacent to the subject site and the outlook and primary private open space of No.31 St Ninians Road faces the subject site.

While the applicant argues an existing use right is afforded the side facing windows at first floor level, Council has received legal advice that there is no relevant existing use right in this instance. It is clear that no planning permit trigger exists for the proposal under the Neighbourhood Residential Zone and the only trigger is the DDO1 for buildings and works not otherwise exempt. Clause 2 of the DDO1 exempts buildings with a height of not more than 2 storeys provided that each storey is less than 3.5 metres measured from the floor level to the finished floor level of the floor above or if there is not floor above, to the ceiling. The proposed attic level is therefore the aspect of the development that triggers the requirement for a planning permit. Therefore if the attic level was not proposed the north and south facing first floor windows and side entrances could be constructed without the need for a planning permit. This is further discussed in Section 6.6 of this report.

The proposed attic level would slope away from the adjacent windows at No.27 St Ninians Road and would not significantly worsen any visual bulk impacts on this neighbouring property. The proposed western facing windows at attic level would be within 9 metres measured at a 45 degree plane of the private open space of No.27 St Ninians Road. While the provisions of Clause 54 of the Bayside Planning Scheme do not technically apply, it is considered appropriate to use the 9 metre distance and 45 degree angle of Standard A15 to assess potential amenity impacts of the proposed attic level.

The applicant has demonstrated that the sloping roof of the attic and the flat roof of the floor below would obscure some of the overlooking of this adjoining private open space; however would still enable a view of the neighbouring open space within 9 metres measured from a 45 degree plane. A condition of approval is recommended to address this. Screening or other complaint treatment to prevent overlooking of the private open space of No.27 St Ninians Road within 9 metres measured from a 45 degree plane from the western facing glazing at attic level will be required to be shown on the plans before a building permit can be issued, and the attic will be required to be built with this screening.

The first floor extension will sit 1.72 metres above the adjoining structure at No.31 St Ninians Road and while being visible from the western aspect of the neighbouring dwelling and its primary private open space, the first floor extension is not considered to have an unreasonable visual bulk impact on this neighbouring property. The ridge of the proposed attic level would rise to an additional 4.66 metres above the first floor extension; however given the distance from the private open space and western facing
windows of No.31 St Ninians Road, the attic level would not have a significant visual bulk or dominance impact on this property.

The eastern facing windows at attic level would be in excess of the 9 metres from the private open space of No.32 St Ninians Road. To the north the subject site adjoins the private open space of No.25 and 6/23 Glyndon Ave; however the proposal would not have an unreasonable amenity impact on either of these properties.

A significant level of mature vegetation and planting is present for property frontages to St Ninians Road and Glyndon Avenue; however property frontages to the coastal foreshore have limited vegetation, presumably to enhance views of the bay. Vegetation which does exist tends to be exotic and well-manicured. The coastal foreshore tends to be well vegetated where it meets the boundary walls of these private properties.

While no landscape plan has been submitted in support of the application, the existing drainage easement along western and north boundary adjacent to existing dwelling ensures sufficient space is retained to accommodate a meaningful level of vegetation on site. A condition of approval is recommended to require a landscape plan with indigenous and coastal species as sought by the preferred future character statement, objectives and design responses.

A decision guideline of the DDO1 requires consideration of the Bayside Coastal Strategy 1997 in assessing this application. The strategy contains a number of landscape and urban design aims and strategies, the most pertinent of which are the urban character aims which include ensuring structures are sited and designed to complement the surrounding landscape and environment and to ensure consistency of application along the whole of the foreshore. The proposal maintains the consistent building line of properties adjoining the coastal foreshore and as discussed above is considered to comfortably fit within the character of the surrounding built environment. The proposal is considered to largely align with the Bayside Coastal Strategy.

6.3. **Car parking and traffic**

Pursuant to Clause 52.06-1, a proposal to extend an existing dwelling or construct a single dwelling in the Neighbourhood Residential Zone on a lot larger than 500 square metres is exempt from car parking requirements under Clause 52.06.

6.4. **Vegetation & Landscaping**

Council’s Arborist has visited the site and advises there is no noteworthy vegetation within the site and no vegetation on adjacent properties that is likely to be impacted during the proposed development.

No landscape plan has been submitted in support of the application; however sufficient space is retained in the setback from the western boundary to accommodate a meaningful level of planting.

The preferred future character statement for the rear includes the preparation of a landscape plan as a design response for all applications for new dwellings. The application is an extension to an existing partially demolishing dwelling and as such no requirement for a landscape plan exists.

6.5. **Section 173**

The title for the site is burdened by a Section 173 agreement. Clause 3.1 of the agreement specifies that notwithstanding any rights conferred by the Planning Scheme, except with the consent of Council, the development of the lots must be in accordance with the approved building envelope authorised by the original permit the Planning Permit and the conditions of the Planning Permit.
Pursuant to Condition 9(a) of the permit, the plan of subdivision requires a 4.5 metre setback from the western site boundary to be clear of all above ground buildings. The proposal includes stairs, a small landing with glazed handrail and a spa that would intrude within the 4.5 metre setback from the western site boundary.

Only the glazed handrail would be visible above the existing boundary wall from the coastal foreshore. The proposal is not considered to visually interrupt the setback from the western boundary as viewed from the coastal foreshore and therefore the incursion of the stairs, landing and spa within the setback is considered acceptable.

6.6. Objections received

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

Property Survey

An objector has requested conditions to survey the property to ensure construction takes place within the property boundaries and to protect neighbouring properties during construction. A survey of the property has been undertaken and submitted in support of the application.

Non-compliance with ResCode (i.e. setbacks, overlooking)

An objection has been made on the basis the proposal fails to comply with the ResCode height, setback and overlooking standards. The site is located within the Neighbourhood Residential Zone and is in excess of 500 square metres in site area.

No planning permit is required for buildings and works for a single dwelling on a lot above 500 square metres and as such an assessment against the Clause 54 (ResCode) standards is not applicable. The existing building does not require a permit and cannot be reassessed here.

A determination by the relevant building surveyor will need to be made in terms of whether the development must be assessed under Part 4 of the Building Regulations. A permit note is recommended that expressly states that no Clause 54 assessment has been undertaken in relation to this permit application, but the future private building surveyor will be required to ensure that the whole building meets the relevant building standards to protect the amenity of adjacent residents.

Protection of street trees

An objector has requested further details regarding the protection of a number of street trees during construction of the driveway and crossover. No alterations to the driveway or crossover have been included in the application.

Further to the discussion under the non-compliance with ResCode objection above, the only permit trigger for the application is the Design and Development Overlay 1. An application for a vehicle crossing permit has been made in relation to the site which is the correct mechanism to address any impact on existing street trees.

Support Attachments

1. Development Plans
2. Site Imagery and Surrounds
3. Neighbourhood Character (Precinct C2) Assessment
Item 4.4 – Matters of Decision
Item 4.4 – Matters of Decision
ATTACHMENT 3
Site and Surrounds Imagery

Figure 1 Aerial overview of the site and surrounds

<table>
<thead>
<tr>
<th>Legend</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject site</td>
<td>★</td>
</tr>
<tr>
<td>Objector(s)</td>
<td>●</td>
</tr>
</tbody>
</table>

It is noted objections were received from both No.27 and 27A St Ninians Road
Figure 2 View towards the site from St Ninians Road

Figure 3 View towards the site from the coastal reserve
Figure 4 View from Southeast towards site from coastal reserve (No.25 St Ninians Road in foreground)

Figure 5 View of No.27 St Ninians Road from coastal reserve
Figure 6 View of No.23 St Ninians Road from coastal reserve

Figure 7 View of 1/2 Shandford Avenue from coastal reserve
ATTACHMENT 3
Neighbourhood Character Policy (Precinct C2)

Preferred Future Character

The dwellings provide a visually interesting and attractive built form interface with the foreshore reserve. There is a clear distinction between the public and private domain and dwellings may overlook the foreshore, but do not dominate the pedestrian or cyclist space. The dwelling styles reflect the coastal setting through their design, details and finishes. The planting of indigenous and other typical coastal vegetation around the dwellings creates a linkage between the private space and the foreshore reserve.

Precinct Guidelines

<table>
<thead>
<tr>
<th>Objectives</th>
<th>Design Responses</th>
<th>Avoid</th>
<th>Planning Officer Assessment</th>
</tr>
</thead>
</table>
| To strengthen the coastal character of the area through the appropriate planting of coastal species. | • Prepare a landscape plan to accompany all applications for new dwellings that utilises appropriate indigenous and other coastal species.  
• Use landscaping materials and plants within the beachside setback that contribute to the coastal character and amenity of the foreshore reserve. | Lack of landscaping and landscaping inappropriate to the coastal setting.  
Planting of environmental weeds. | It is noted sufficient space is retained around the existing building footprint to accommodate a meaningful level of vegetation and planting, particularly in the drainage easement surrounding the dwelling. While the neighbourhood character policy only requires a landscape plan for new dwellings, the Design and Development Overlay 1 decision guidelines require the consideration of the proposed landscaping. As such it is considered appropriate to require a landscape plan that features a level of indigenous and coastal species appropriate to the area. |
| To encourage the spacing of buildings to allow for visual permeability of the built | • Buildings should be sited to allow views between buildings and allow space for substantial vegetation, including trees and shrubs. | Dwellings that overwhelm the foreshore reserve. | Responds  
The existing separation from the side boundaries would be maintained by the proposal. The footprint and siting of the building is considered to provide sufficient space to |
<table>
<thead>
<tr>
<th>Objectives</th>
<th>Design Responses</th>
<th>Avoid</th>
<th>Planning Officer Assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>form and planting of vegetation</td>
<td></td>
<td></td>
<td>establish a meaningful level of vegetation and planting.</td>
</tr>
<tr>
<td>To minimise the dominance of car parking facilities, driveways and crossovers.</td>
<td>• Locate garages and car ports at or behind the line of the dwelling.</td>
<td>Car parking facilities that dominate the facade or view of the dwelling.</td>
<td>Responds</td>
</tr>
<tr>
<td></td>
<td>• Minimise hard paving in front yards.</td>
<td></td>
<td>The location of the garage would not be visible from St Ninians Road or the coastal foreshore and would not dominate any views of the dwelling. Hard paving in the front yard is limited to the area required for the driveway.</td>
</tr>
<tr>
<td></td>
<td>• Underground car parking accessed from the front of the site should only be provided where other options are not possible due to site constraints, the garage doors do not dominate the façade and the front setback area is retained as predominantly garden space.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>To encourage contemporary architectural responses to the coastal location.</td>
<td>• New buildings should be individually designed to respond to the characteristics of the coastal location and the site.</td>
<td></td>
<td>Responds</td>
</tr>
<tr>
<td></td>
<td>• Articulate the form of buildings and elements, particularly front facades and include elements that contribute to a lightness of structure such as balconies, verandahs, non-reflective glazing and light-transparent balustrading.</td>
<td></td>
<td>The proposal makes use of a contemporary design that opens up to the coastal foreshore and is consistent with the scale and high level of visual interest of properties adjoining the coastal foreshore. The large amount of glazing facing the foreshore, punctuated by the first floor parapet and gable end of the attic would provide a lightness of structure. The proposed dormer window is suitably located and proportioned in relation to the roof slope.</td>
</tr>
<tr>
<td>To use building materials and finishes</td>
<td>• Use a mix of materials, including masonry, timber, other nonmasonry</td>
<td>Large areas of masonry materials or render on external wall surfaces.</td>
<td>Responds</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>The proposal employs a variety of materials including standing seem metal cladding, vertical timber cladding, colorbond roofing, natural</td>
</tr>
<tr>
<td>Objectives</td>
<td>Design Responses</td>
<td>Avoid</td>
<td>Planning Officer Assessment</td>
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<td>------------------------------------------------------------------------------------------------</td>
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<tr>
<td>That complement the coastal setting.</td>
<td>wall materials, or render, in building design.</td>
<td>Heavy design detailing (eg. Large masonry columns and piers, solid balustrading)</td>
<td>concrete and glazing. The use of masonry and heavy design detailing is limited. The range of</td>
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<td>materials and muted colour tones is considered to sit comfortably in the surrounds of adjacent</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>contemporary properties and the coastal setting.</td>
</tr>
<tr>
<td>To ensure that the tops of buildings provide an interesting skyline.</td>
<td>• Articulate the massing of roof forms.</td>
<td>Large, unbroken rooflines.</td>
<td>Responds</td>
</tr>
<tr>
<td></td>
<td></td>
<td>High pitched or mansard roofs with dormer windows.</td>
<td>The proposal would add additional interest to the already varied roof forms in the area. In</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>the context of the surrounding scale of roof forms, in particular at No.23 St Ninians St, the</td>
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<td></td>
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<td></td>
<td>scale of the proposed roof would not appear discordant in the existing highly built up context.</td>
</tr>
<tr>
<td>To maintain a clear distinction between the public and private domain.</td>
<td>• Provide a fence or landscaping treatment to delineate the property boundary fronting the foreshore reserve.</td>
<td>Lack of distinction between public and private spaces along the foreshore.</td>
<td>Responds</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>An existing brick boundary wall clearly delineates the subject site from the coastal reserve.</td>
</tr>
</tbody>
</table>

Item 4.4 – Matters of Decision  

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4.5 1 GRAY COURT, BEAUMARIS
NOTICE OF DECISION TO GRANT A PLANNING PERMIT
APPLICATION NO: 2016/561/1  WARD: SOUTHERN

City Planning & Community Services - Development Services
File No: PSF/15/8755 – Doc No: DOC/17/31034

1. Purpose and background
To report a planning permit application for the removal of native vegetation, comprising
the removal of seven (7) trees on a lot with an area of 750 square metres (refer
Attachment 1) at 1 Gray Court, Beaumaris (refer Attachment 2).

While no planning permit application for development has been lodged for this site and
the application is solely for the removal of the vegetation at this stage, the proposed
replacement plantings are considered to be appropriate when assessed against relevant
neighbourhood character provisions. Moreover, were a planning permit application to be
lodged for the development of the land in the future, it would be subject to an assessment
against (amongst other things) Clause 22.06 (Neighbourhood Character) and Clause
55.03-8 (Landscaping objectives) of the Bayside Planning Scheme, that require
assessment specifically to the landscape qualities of the site and surrounding area. The
application for the removal of the trees can therefore be considered on its own.

<table>
<thead>
<tr>
<th>Applicant</th>
<th>Martin Harris</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date application received</td>
<td>16 December 2016 (Amended)</td>
</tr>
<tr>
<td>Statutory days expired</td>
<td>14 March 2017</td>
</tr>
</tbody>
</table>

2. Policy implications

Planning permit requirements
Clause 42.02-2 (Vegetation Protection Overlay) – Remove, destroy or lop any vegetation
native to Australia.

Planning scheme amendments
Planning Scheme Amendment C153 has been initiated by Council and proposes to
modify the boundaries of the Special Building Overlay (SBO) and remove the Land
Subject to Inundation Overlay from the Bayside Planning Scheme. The public exhibition
process will conclude on 16 January 2017 and a report considering submissions will be

Case law confirms that proposed amendments to Planning Schemes are not considered
to be ‘seriously entertained’ and applied in the assessment of permit applications until
such time as they have progressed beyond a Panel and adopted. As such, there is no
statutory weight which can be given to Amendment C153. This amendment does not
impact the site.

3. Stakeholder Consultation

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

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

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

Public notification

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

- Removal of seven trees is unnecessary and unjustified,
- Removal of vegetation to accommodate development on site,
- Inconsistent with VPO3,
- Inconsistent with Neighbourhood Character,
- If approved, trees should be replaced at a ratio of one for one, and
- Location of the proposed replacement planting is inappropriate.

Consultation meeting

The applicant declined a consultation meeting noting that successful mediation would be unlikely given that amended plans had already been submitted in an attempt to address objector concerns.

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 2016/561/1 for the land known and described as 1 Gray Court, BEAUMARIS, for the removal of native vegetation in accordance with the endorsed plans and subject to the following conditions from the standard conditions:

1. The vegetation removal as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
2. Unless with the further consent of the Responsible Authority, planting in accordance with the endorsed plan must be undertaken within 18 months of the date of this permit.
3. The landscaping shown on the endorsed plans must be maintained to the satisfaction of the Responsible Authority.
4. This permit will expire if the vegetation removal is not completed within two years of the date of this permit.
   The Responsible Authority may extend the period referred to if a request is made in writing before the permit expires, or within six months afterwards.

PERMIT NOTES:

- Any future use or development proposal on this site will be assessed against the Bayside Planning Scheme having particular regard to landscape and neighbourhood character objectives.
5. **Council Policy**

**Council Plan 2013-2017**

Relevant strategies of the Council plan include:

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

**Bayside Planning Scheme**

- Clause 11  Settlement
- Clause 12  Environmental and Landscape Values
- Clause 13  Environmental Risks
- Clause 14  Natural Resource Environment
- Clause 15  Built Environment and Heritage
- 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 22.06  Neighbourhood Character Policy
- 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 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 H4 and the proposal is considered to demonstrate an acceptable level of compliance with the preferred future character statement and relevant precinct guidelines.

Specifically, the proposed replacement planting that forms part of the application includes indigenous species to replace the vegetation proposed for removal consistent with the character of the neighbourhood. These replacement plantings will enhance Bayside’s landscaped character in accordance with the objectives.

As such, taking a holistic view of the application that includes consideration of the poor health of the existing vegetation and the proposed replacement planting, the proposal is considered to be acceptable from a neighbourhood character perspective.

6.2. **Vegetation & Landscaping**

The objectives of the VPO3 are to retain the amenity, aesthetic character and habitat value of native vegetation by preventing the loss of native (particularly indigenous) vegetation and promoting the regeneration and replanting of indigenous species in the Beaumaris and Black Rock area.
The objectives of the VPO3 must be considered in association with the other statutory controls governing the site and relevant State and Local Planning Policies. This includes the overarching purposes of the relevant zone and overlays and the need to ensure decisions reflect broader strategic policy objectives. Such strategic policy objectives include encouraging urban consolidation and the efficient use of established residential land to reduce the outward expansion of the metropolitan area.

The application plans show the removal of sixteen (16) trees from the site including seven (7) trees protected by the VPO3. The table below identifies those trees protected by the VPO3, those protected by the Local Law and those which are not protected by any statutory mechanism. Indigenous trees are marked with a '*'.

<table>
<thead>
<tr>
<th>VPO3 protected trees</th>
<th>Local Law protected trees</th>
<th>Trees not protected</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proposed for removal</td>
<td>Proposed for retention</td>
<td>Proposed for removal</td>
</tr>
<tr>
<td>Tree 1, 2, 3, 4, 5, 8, 9</td>
<td>Tree 10</td>
<td>-</td>
</tr>
<tr>
<td>Tree 7, 11, 12, 13, 14, 15, 16, 17</td>
<td>-</td>
<td>Tree 6, -</td>
</tr>
</tbody>
</table>

From an arboriculture perspective Council’s Arborist has reviewed the application and advises that with the exception of Trees 8 and 9, all of the trees proposed for removal are in poor health, with Trees 8 and 9 being in fair health. Further detail of each tree is provided in Attachment 4.

An assessment against the decision guidelines of the VPO3 is provided at Attachment 4. Importantly, the proposed extent of vegetation removal is considered to be acceptable when assessed against the decision guidelines of the VPO3. The character of the area, including the extent of indigenous vegetation present, will be maintained once replacement plantings are undertaken. The proposed vegetation removal will also not impact on the overall quality of habitat within the broader area and the extent of removal is justified when considered against the level of proposed replanting. Therefore the proposed vegetation removal is considered to comply with the objectives of the VPO3.

There is one (1) mature Corymbia ficifolia (Red-flowering Gum) located in the Gray Court front setback. Council’s Arborist advised that this tree is in good health with good structure, provides a high level of amenity to the neighbourhood and has a long useful life expectancy. This tree is identified as Tree 10 on the landscape plan prepared by Nan Herzberg, dated December 2016 and is marked to be retained. Importantly, the removal of this tree was raised as a concern by an objector to the application and as such, its retention will address this concern.

In addition to the above assessment, Council’s Arborist has reviewed the proposed replacement planting and advised that it is considered acceptable. Specifically, Council’s Arborist advised that the applicant’s proposal to plant three (3) Eucalyptus pauciflora, two (2) Acacia implexa and one (1) Acacia melanoxylon provides for suitable canopy replacement for the six (6) trees and one (1) fern proposed for removal.

Finally, the statement of significance and objectives of Clause 42.02 - Vegetation Protection Overlay (Schedule 3) identify the need to retain the amenity and aesthetic character of native vegetation in the area. Given the arborist’s classification of the subject trees as having either a low or moderate retention and amenity value, and replacement planting, it is considered that removal of the trees would not adversely affect these objectives.
6.3. **Objections received**

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

**Removal of vegetation to accommodate development on site**

No planning permit application for development has been lodged, however the proposed replacement plantings are considered to be appropriate when assessed against relevant neighbourhood character provisions. Moreover, were a planning permit application to be lodged for the development of the land it would be subject to an assessment against (amongst other things) Clause 22.06 (Neighbourhood Character) and Clause 55.03-8 (Landscaping objectives) of the Bayside Planning Scheme, that speak specifically to the landscape qualities of the site and surrounding area.

**Location of the proposed replacement planting is inappropriate**

The replacement plantings are proposed to be located primarily along the frontages to Gray Court and Haydens Road, rather than along the side and rear setbacks. This is considered to be acceptable given the contribution that these plantings will make to the streetscape and character of the area, as a result of their visibility.

**Support Attachments**

1. Landscape Plan
2. Site and Surrounds Imagery
3. VPO3 Assessment
Figure 1. Aerial overview of the site and surrounds

Legend

| Subject site | ⭐ |

Objectors not shown

14 Gramatan Avenue BEAUMARIS

Beaumaris Conservation Society Inc.

Address Witheld
Figure 2. View towards the front of the subject site

Figure 3. View north along Haydens Road, showing the eastern boundary of the site.
Figure 4. View west towards Gray Court, showing existing vegetation.
### ATTACHMENT 3
#### Decision Guidelines
#### Vegetation Protection Overlay (Schedule 3)

<table>
<thead>
<tr>
<th>Decision Guideline</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>The impact the vegetation removal would have on the character of the area</strong></td>
<td>There is a significant amount of vegetation on site, however Council’s Arborist has advised that the majority of this vegetation has a <em>low</em> retention value. Within the area there is a significant amount of native and non-native vegetation in both the public and private realm. In particular, well-vegetated front setbacks and nature strip plantings contribute to the character of the area. In this context, the proposed removal of vegetation will be addressed by replacement plantings which will, over time, play an important role in shaping the bushy, garden character of the area.</td>
</tr>
<tr>
<td><strong>The impact the vegetation removal would have on the presence of indigenous species in the locality</strong></td>
<td>Two (2) indigenous trees are proposed to be removed, however the replacement landscape plan that has been submitted as part of the application includes six (6) indigenous replacements. Accordingly, the impact of the proposal on the presence of indigenous species in the locality is considered to be acceptable given the replacement plantings.</td>
</tr>
<tr>
<td><strong>The impact the vegetation removal would have on the appearance of development.</strong></td>
<td>The applicant has indicated that the proposed removal of vegetation is required in order to facilitate development onsite. No planning permit application has been lodged for the development of the site. Notwithstanding this, the proposed removal is considered to be acceptable due to the poor health of the vegetation and the proposed replacement planting that will enhance both the existing and any future development onsite, once these replacements grow to maturity.</td>
</tr>
<tr>
<td><strong>The impact the vegetation removal would have on the habitat quality of any remaining vegetation and the fragmentation of wildlife corridors.</strong></td>
<td>At present, there is no fauna evident in the trees proposed for removal. Specifically, the trees are largely in poor health and there is no evidence to suggest the proposed tree removal would impact on local fauna.</td>
</tr>
<tr>
<td><strong>Any proposal to regenerate or plant indigenous vegetation on the site.</strong></td>
<td>The replacement plantings proposed are considered to be acceptable by Council’s Arborist, who noted that the planting of three (3) <em>Eucalyptus pauciflora</em>, two (2) <em>Acacia implexa</em> and one (1) <em>Acacia melanoxylon</em> will provide for suitable canopy replacement.</td>
</tr>
</tbody>
</table>
Tree profile

<table>
<thead>
<tr>
<th>Tree no.:</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Name/species:</td>
<td>Leptospermum petersonii</td>
</tr>
<tr>
<td>Origin:</td>
<td>Indigenous</td>
</tr>
<tr>
<td>Height:</td>
<td>5 metres</td>
</tr>
<tr>
<td>Useful Life Expectancy:</td>
<td>Less than 5 years</td>
</tr>
<tr>
<td>Retention value:</td>
<td>Low</td>
</tr>
<tr>
<td>Tree no.:</td>
<td>2</td>
</tr>
<tr>
<td>----------------</td>
<td>------------</td>
</tr>
<tr>
<td>Name/species:</td>
<td><em>Callistemon viminalis</em></td>
</tr>
<tr>
<td>Origin:</td>
<td>Native</td>
</tr>
<tr>
<td>Height:</td>
<td>4 metres</td>
</tr>
<tr>
<td>Useful Life Expectancy:</td>
<td>Less than 5 years</td>
</tr>
<tr>
<td>Retention value:</td>
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Item 4.5 – Matters of Decision
<table>
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<tr>
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<tbody>
<tr>
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</tr>
<tr>
<td>Origin:</td>
<td>Indigenous</td>
</tr>
<tr>
<td>Height:</td>
<td>5 metres</td>
</tr>
<tr>
<td>Useful Life Expectancy:</td>
<td>Less than 5 years</td>
</tr>
<tr>
<td>Retention value:</td>
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</tr>
<tr>
<td>Tree no.</td>
<td>4</td>
</tr>
<tr>
<td>-------------</td>
<td>------------</td>
</tr>
<tr>
<td>Name/species</td>
<td><em>Melaleuca armillaris</em></td>
</tr>
<tr>
<td>Origin</td>
<td>Native</td>
</tr>
<tr>
<td>Height</td>
<td>6 metres</td>
</tr>
<tr>
<td>Useful Life Expectancy</td>
<td>5 – 10 years</td>
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<td>Retention value</td>
<td>Low</td>
</tr>
<tr>
<td>Tree no.:</td>
<td>5</td>
</tr>
<tr>
<td>----------------</td>
<td>--------------------</td>
</tr>
<tr>
<td>Name/species:</td>
<td>Callistemon sp.</td>
</tr>
<tr>
<td>Origin:</td>
<td>Native</td>
</tr>
<tr>
<td>Height:</td>
<td>7 metres</td>
</tr>
<tr>
<td>Useful Life Expectancy:</td>
<td>Less than 5 years</td>
</tr>
<tr>
<td>Retention value:</td>
<td>Low</td>
</tr>
<tr>
<td>Tree no.:</td>
<td>8</td>
</tr>
<tr>
<td>----------</td>
<td>---</td>
</tr>
<tr>
<td>Name/species:</td>
<td><em>Syzygium paniculatum</em></td>
</tr>
<tr>
<td>Origin:</td>
<td>Native</td>
</tr>
<tr>
<td>Height:</td>
<td>7 metres</td>
</tr>
<tr>
<td>Useful Life Expectancy:</td>
<td>Less than 5 years</td>
</tr>
<tr>
<td>Retention value:</td>
<td>Low</td>
</tr>
<tr>
<td>Tree no.:</td>
<td>9</td>
</tr>
<tr>
<td>-----------</td>
<td>---</td>
</tr>
<tr>
<td>Name/species:</td>
<td><em>Dicksonia antarctica</em></td>
</tr>
<tr>
<td>Origin:</td>
<td>Native</td>
</tr>
<tr>
<td>Height:</td>
<td>2.5 metres</td>
</tr>
<tr>
<td>Useful Life Expectancy:</td>
<td>Less than 10 years</td>
</tr>
<tr>
<td>Retention value:</td>
<td>Low</td>
</tr>
</tbody>
</table>
Definitions

The retention value of a tree considers the tree as a whole including its health, structure, amenity value and life expectancy. The criteria for high, medium and low retention value trees are:

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

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

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

To report a planning permit application for the extension of one dwelling, comprising a first floor addition to an existing dwelling (refer Attachment 1) on a lot with an area of 411 square metres at 23 Ferguson Street, Brighton East (refer Attachment 2).

<table>
<thead>
<tr>
<th>Applicant</th>
<th>Scott Ellis (Ausdraft Pty Ltd)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date application received</td>
<td>2 December 2016 (Amended)</td>
</tr>
<tr>
<td>Statutory days expired</td>
<td>22 February 2017</td>
</tr>
</tbody>
</table>

2. **Policy implications**

**Planning permit requirements**

Clause 32.09-4 (Neighbourhood Residential Zone) – Extend one dwelling on a lot of less than 500 square metres.

**Planning scheme amendments**

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

3. **Stakeholder Consultation**

**External referrals**

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

**Internal referrals**

The application was not referred to any Council departments for comment.

**Public notification**

The application was advertised pursuant to Section 52(1)(a) and (d) of the Planning and Environment Act 1987 and three (3) objections were received. The following concerns were raised:

- Two storey development lacks consistency with the existing streetscape;
- Overlooking and privacy concerns;
- Proposed height is inappropriate and will set a precedent for the area;
- Property devaluation;
- Loss of natural light and overshadowing (including potential impacts on solar panels);
• Loss of westerly breezes;
• Shadows on the Agnew Street footpath will increase tripping hazards;
• Degradation of the historic character of the area;
• Neighbourhood character;
• Proposed height exceeds the allowable 8 metres;
• Side setbacks;
• Loss of light to existing habitable room windows;
• Increase in noise;
• Deterioration of weatherboards, increased energy consumption and dampness as a result of a loss of sunlight to the adjoining property; and
• Application plans are inaccurate in some areas and do not represent the slope of the land.

Consultation meeting
The applicant declined a consultation meeting, noting that the objections raised were unlikely to be resolved through the mediation process.

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 2016/676/1 for the land known and described as 23 Ferguson Street, Brighton East for the extension of one dwelling on a lot of less than 500 square metres in accordance with the endorsed plans and subject to the following conditions:

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

2. 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.

3. 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.

4. 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 2013-2017**

   Relevant strategies of the Council plan include:

   - 3.1.1 Developing planning strategies and policies with our community that enhance Bayside’s liveability along with its natural and built environment.

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

**Bayside Planning Scheme**

- Clause 11 Settlement
- Clause 12 Environmental and Landscape Values
- Clause 15 Built Environment and Heritage
- Clause 16 Housing
- Clause 21.02 Bayside Key Issues and Strategic Vision
- Clause 21.03 Settlement and Housing
- Clause 21.04 Environmental and Landscape Values
- Clause 21.06 Built Environment and Heritage
- Clause 22.06 Neighbourhood Character Policy
- Clause 22.08 Water Sensitive Urban Design
- Clause 32.09 Neighbourhood Residential Zone 3
- Clause 43.02 Design and Development Overlay (Schedule 3)
- Clause 54 One Dwelling on a Lot
- Clause 65 Decision Guidelines

6. **Considerations**

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

4.1. **Neighbourhood character**

   The site is located within Neighbourhood Character Precinct D3 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 2.

   Specifically, the proposed first floor addition will retain the existing dwelling footprint and façade at ground floor meaning that the area available for landscaping will not be reduced and the garden setting of the dwelling will be retained. Additionally, adequate visual separation between dwellings is maintained through acceptable setbacks from the side and rear boundaries, at first floor level. The proposed first floor addition will continue the architectural style of the existing dwelling and will provide for a built form that is consistent with the neighbourhood character, which is quite varied throughout this area (particularly along Ferguson Street). Finally, the use of weatherboard cladding and a pitched roof form provides for a consistent design response that will successfully integrate with the existing dwelling and streetscape.
4.2. **Compliance with Clause 55 (ResCode)**

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

**Side and rear setbacks (Standard A10)**

The eastern and western first floor setbacks from the side boundaries fail to comply with the requirements of Standard A10, as varied by the Schedule to the Neighbourhood Residential Zone.

Specifically, to the east, the first floor setback ranges between 1.26 metres - 2.699 metres in lieu of the 2.905 metres - 4.6 metres required. Accordingly, the applicant is proposing to vary the standard by 1.645 metres at the stairwell and 1.491 metres across the remaining elevation. This elevation is located adjacent to the dwelling at No. 25 Ferguson Street, which is a two-storey weatherboard dwelling (single storey street façade with two storey extension at the rear) with a number of first floor windows with outlook to the subject site. The proposed first floor setbacks are considered to be acceptable due to the existing side setbacks of both 23 and 25 Ferguson Street, which also vary Standard A10 (the setbacks proposed at the subject site are significantly greater than that of the upper floor extension to No.25). As such, the proposed setbacks are considered to be in keeping with existing neighbourhood character and would not pose an unreasonable amenity impact upon the adjacent neighbour as setbacks are in keeping with long established patterns. Importantly, windows along this façade would be highlight windows and hence no overlooking would occur.

To the west, a first floor setback of 4.226 metres is required from Agnew Street. The plans indicate a setback of 2.074 metres from the western side boundary, which varies the requirements of Standard A10 by 2.152 metres. Given the site's location on a corner and the presentation of this elevation to the street, it is not anticipated that this non-compliant setback will result in unreasonable amenity impacts to adjoining properties or the streetscape.

<table>
<thead>
<tr>
<th></th>
<th><strong>Ground Floor</strong></th>
<th><strong>First Floor</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>Required</strong></td>
<td><strong>Proposed</strong></td>
</tr>
<tr>
<td><strong>East (side)</strong></td>
<td>0m or 2m</td>
<td>0m – 1.224 m</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(existing)</td>
</tr>
<tr>
<td><strong>West (side)</strong></td>
<td>0m or 2m</td>
<td>1.073m</td>
</tr>
<tr>
<td><strong>South (rear)</strong></td>
<td>0m or 3m</td>
<td>14.757m</td>
</tr>
</tbody>
</table>
4.3. **Objections received**

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

**Two storey development lacks consistency with the existing streetscape**

While the majority of properties on along Ferguson Street present a single storey form there are examples of dwellings with first floor elements within the immediate area. Specifically, the adjoining property at 25 Ferguson Street contains a first floor element towards the rear of the site, along with numerous other dwellings in both directions further along the street (some of which are quite bulky two storey forms). Moreover, the appropriateness of the first floor addition has been assessed against the provisions of Clause 22.06 (Neighbourhood Character Policy) of the Bayside Planning Scheme and is discussed in section 6.1 of this report, where the addition was considered to be acceptable.

**Loss of natural light and overshadowing (including potential impacts on solar panels)**

The impacts of the proposal have been assessed against the amenity based standards of Clause 54 (ResCode) and is acceptable. The applicant has provided shadow diagrams demonstrating additional shadow cast by the proposed works. At 9:00am, the additional shadow will fall over Agnew Street, while at 12:00pm the extent of shadow will be contained within the subject site’s boundary. The shadow cast at 3:00 pm will fall across the building form of 25 Ferguson Street and does not fall onto the secluded private open space of this dwelling. The proposal has been assessed as compliant with the requirements of Clause 54.04-5 (Standard A14) and will not unreasonably overshadow the secluded private open space of adjoining dwellings. Further to this, the potential impacts the proposal on the (yet to be installed) solar panels at 25 Ferguson Street has not been considered as part of the assessment, as regard is only given to the actually existing site context.

**Overlooking and privacy concerns**

The first floor addition has been assessed for overlooking into the adjoining properties and is considered acceptable. All windows on the eastern side of the first floor addition have been treated with a minimum 1.7m sill height above the finished floor level. The southern and western interfaces of the addition have outlook to Ferguson Street and Agnew Street respectively, and are therefore not considered to require screening. In relation to the north facing first floor windows, bedroom 4 overlooking arc demonstrates views within 9m from this window are contained within the subject land. The proposal complies in full with the requirements of Clause 54 – Standard A15 of the Bayside Planning Scheme.

**Proposed height is inappropriate and will set a precedent for the area**

As discussed in the body of this report, it is not considered that the proposed height is inappropriate. Specifically, the application proposes a maximum overall height of 7.991 metres and is permitted under the provisions of the Neighbourhood Residential Zone (Schedule 3), which allows for a maximum building height of 8 metres at time of lodgement (which has now been increased to 9m). It is acknowledged that neighbourhood character is expected to change over time and that this addition will form part of the emerging neighbourhood character and is considered to be acceptable.
Property devaluation

The impact of the proposal on property values is not a planning consideration and has not been discussed or addressed in the body of this report. Rather, the impact of the proposal has been discussed in relation to the potential impacts on the amenity of adjoining properties and neighbourhood character.

Shadows on the Agnew Street footpath will increase tripping hazards

The shadow diagrams submitted with the application indicate that some shadow will be cast over the Agnew Street footpath, at 9am. However, in applying the overshadowing objective consideration is limited to the impacts of shadowing on secluded private open space of existing properties and as such, the impact of the proposal on the footpath has not been considered as part of this application.

Degradation of the historic character of the area

Neither the subject site nor any of the properties surrounding the site are covered by a Heritage Overlay and as such, the application has not been assessed against the heritage provisions contained within the Bayside Planning Scheme. Despite this, it is acknowledged that the prevailing neighbourhood character contains many 1890s single storey weatherboard dwellings within the streetscape(s). The proposed first floor addition is respectful of these significant elements of neighbourhood character and has successfully incorporated weatherboard and a pitched roof form to reflect these elements in the streetscape. For these reasons, it is considered that the addition will fit comfortably within the streetscape and will respect (rather than mimic – which is not a requirement) the character of the area.

Loss of light to existing habitable room windows

The shadow diagrams submitted with the application indicate that there will be overshadowing of the habitable room windows of 25 Ferguson Street at 3pm (and perhaps an hour or so earlier than this). This overshadowing is considered to be acceptable as the proposal complies with Standard A12 – Daylight to existing windows, of the Bayside Planning Scheme and will allow for adequate daylight into the habitable room windows of 25 Ferguson Street.

Increase in noise

The proposal is not expected to generate noise above that which would be expected in a residential context. Specifically, no plant equipment is proposed to be installed and the site will be continued to be used for the purpose of a dwelling.

Loss of westerly breezes

The impact of the proposal on westerly breezes reaching 25 and 29 Ferguson Street has not been assessed as part of this proposal as there are no provisions contained within Clause 54 (ResCode) of the Bayside Planning Scheme to measure the impact of the proposed addition in this regard. As such, this cannot be considered as part of the application.
Deterioration of weatherboards, increased energy consumption and dampness as a result of a loss of sunlight

The impact of the proposal on the energy efficiency of 25 Ferguson Street has been assessed against Standard A7 (Energy efficiency protection) of the Bayside Planning Scheme and it is not considered that the siting and design of the proposed addition will result in an unreasonable reduction in the energy of existing dwellings on adjoining lots. Moreover, the potential loss of sunlight resulting from the addition has been assessed in accordance with Standard A12 (Daylight to existing windows) and A14 (Overshadowing open space) and is acceptable.

Application plans are inaccurate in some areas and do not represent the slope of the land

The plans have been drawn in accordance with a survey prepared by a certified land surveyor. Further, following an inspection of the site it is considered that enough information has been provided to allow for an accurate assessment of the proposal.

Support Attachments
1. Development Plans ↓
2. Site and Surrounds Imagery ↓
3. Neighbourhood Character Assessment ↓
4. Clause 54 Assessment ↓
Figure 1. Aerial overview of the site and surrounds

<table>
<thead>
<tr>
<th>Legend</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Subject site</td>
<td>★</td>
</tr>
<tr>
<td>Objectors</td>
<td>●</td>
</tr>
</tbody>
</table>
Figure 2. View towards the front of the subject site

Figure 3. View toward the subject site, showing the interface with Agnew Street.
ATTACHMENT 3
Neighbourhood Character Assessment
Precinct D3

Neighbourhood Character Precinct D3
Preferred Future Character Statement

The dwellings sit within established gardens with occasional canopy trees. The area retains a proportion of pre WW2 dwellings, along with new complementary development. Buildings do not dominate the streetscape, with second storeys recessed from the front, simple detailing and articulated front wall facades. The frequent use of weatherboard creates a sense of lightness in the streetscapes and this is strengthened by the use of low to medium front fences of open styles.

Precinct Guidelines

<table>
<thead>
<tr>
<th>Objectives</th>
<th>Design Responses</th>
<th>Avoid</th>
<th>Planning Officer Assessment</th>
</tr>
</thead>
</table>
| To encourage the retention of dwellings that contribute to the valued character of the Precinct in the design of development proposals. | • Attempt to retain wherever possible intact and good condition dwellings that contribute to the valued character of the Precinct in designing new development.  
• Alterations and extensions should retain the front of these dwellings. | Demolition of dwellings that contribute to the valued character of the Precinct. | Responds  
The proposal incorporates the retention of the existing ground floor dwelling. As such, this dwelling will continue to contribute to the character of the streetscape. |
| To maintain and enhance the garden settings of the dwellings. | • Prepare a landscape plan to accompany applications for new dwellings that includes substantial trees and shrubs.  
• Buildings should be sited to allow space for the planting of trees and shrubs. | Lack of landscaping and substantial vegetation. | Responds  
The available area for landscaping will not be reduced as a result of the proposed addition. Therefore, the garden setting of the dwelling will be retained. |
| 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  
Adequate visual separation is maintained through acceptable setbacks from the side |
<table>
<thead>
<tr>
<th>Objectives</th>
<th>Design Responses</th>
<th>Avoid</th>
<th>Planning Officer Assessment</th>
</tr>
</thead>
</table>
| **To minimise the loss of front garden space and the dominance of car parking structures.** | • Locate garages and carports behind the line of the dwelling.  
• Minimise paving in front garden areas including driveways and crossovers.                                                                                                             | Car parking structures that dominate the façade or view of the dwelling.  
Front setbacks dominated by impervious surfaces.                                                                                                                                            | **Responds**  
No change is proposed to the front garden space and the existing carport on the north-eastern corner of the lot, to the rear of the dwelling will be retained. This will ensure that the front setback is retained as garden space.                                             |
| **To ensure that buildings and extensions do not dominate the streetscape.**    | • Recess second storey elements from front façade.  
• 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 colours or other elements providing appropriate articulation. | Large bulky buildings with poorly articulated front wall facades.  
Period reproduction detailing.                                                                                                                                                                   | **Responds**  
The proposed first floor will continue the architectural style of the existing dwelling and will provide for a built form that is consistent with the prevailing neighbourhood character. The addition is proposed to be setback behind the ground floor façade of the existing dwelling and as a result, the proposal will not dominate the streetscape. Additionally, the proposed pitched roof form reflects the dominant roof form in the area, while the gables add articulation and when combined with the proposed roof shape represents a respectful response to the existing streetscape conditions. |
| **To reflect the lightness of the streetscape through the use of appropriate building materials and finishes.** | • Incorporate weatherboard or a combination of masonry and non-masonry wall materials where possible, or render or paint large brick surfaces.                                                                 | Heavy design detailing. (eg. Large brick piers or columns)                                                                                                                                                                                   | **Responds**  
The proposed first floor addition will continue the use of weatherboard cladding to provide a consistent design response that will integrate with the existing streetscape conditions.                                                                                           |
<table>
<thead>
<tr>
<th>Objectives</th>
<th>Design Responses</th>
<th>Avoid</th>
<th>Planning Officer Assessment</th>
</tr>
</thead>
</table>
| To maintain the openness of the streetscape. | - Front fences should be open, other than along heavily trafficked roads. | High and solid front fences. | Responds  
The existing front fence is not proposed to be changed. |
| | | Excessive use of render on external wall surfaces. | dwelling. Additionally, the proposed use of weatherboard with pitched roof tile responds to the existing streetscape, where these are prominent features as seen in the workers cottages on the northern side of Ferguson Street. |
## ATTACHMENT 4
### ResCode Assessment
#### Clause 54

<table>
<thead>
<tr>
<th>Title and Objective</th>
<th>Complies with Standard?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A1 Neighbourhood Character</strong></td>
<td>Yes</td>
<td>Refer to section 6.1 of report.</td>
</tr>
<tr>
<td>Design respects existing neighbourhood character or contributes to a preferred neighbourhood character. Development responds to features of the site and surrounding area.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>A2 Integration with Street</strong></td>
<td>Yes</td>
<td>It is considered that the proposed addition will sit comfortably within its surrounds. While the first floor addition will be visible from two street frontages, the use of weatherboard and terracotta tiles for the roofing will ensure the new addition is respectful of the character of the existing dwelling and that of the broader surrounds.</td>
</tr>
<tr>
<td>Integrate the layout of development with the street.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>A3 Street Setback</strong></td>
<td>Yes</td>
<td>No change to the ground floor front setback, which is currently <strong>5.8 metres</strong>. At first floor, the addition is sited behind the existing dwelling line, <strong>12.016 metres</strong> from the street.</td>
</tr>
<tr>
<td>Setbacks of buildings from a street respect the existing or preferred neighbourhood character and make efficient use of the site</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| **A4 Building Height** | Yes | **Required:** 8m  
**Proposed:** 7.991m |
| Building height respects the existing or preferred neighbourhood character. | | |
| **A5 Site Coverage** | Yes | **Maximum:** 50%  
**Proposed:** 42.7% |
| Site coverage should respect the existing or preferred neighbourhood character and respond to the features of the site. | | |
| **A6 Permeability** | Yes | **Minimum:** 20%  
**Proposed:** 57.3% |
| Reduce the impact of stormwater run-off on the drainage system and | | |
facilitate on-site stormwater infiltration.

**A7 Energy Efficiency**
Achieve and protect energy efficient dwellings.
Ensure the development's orientation and layout reduce fossil fuel energy use and makes appropriate use of daylight and solar energy.

Yes
The proposal provides appropriate solar access to the dwelling. Specifically, all new habitable rooms at first floor will have windows to achieve daylight access. The addition has been designed to minimise the need for screening, so as not to compromise daylight access to new habitable rooms.

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

Not applicable
No vegetation is proposed to be removed.

**A10 Side and Rear Setbacks**
Ensure the height and setback of a building from a boundary respects the existing or preferred neighbourhood character and limits the impact on the amenity of existing dwellings.

No
Refer report and table below. Areas of non-compliance are underlined and justified within the body of the report.

<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></td>
<td></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>

**A11 Walls on Boundaries**
Ensure the location, length and height of a wall on a boundary respects the existing or preferred neighbourhood character and limits the impact on the amenity of existing dwellings.

N/A
No Change

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

Yes
The proposal is well setback from property boundaries to ensure daylight to existing windows is maintained.
<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Decision</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>A13</td>
<td>North Facing Windows</td>
<td>Yes</td>
<td>No north facing windows on adjoining properties are affected.</td>
</tr>
<tr>
<td></td>
<td>Allow adequate solar access to existing north-facing habitable room windows.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A14</td>
<td>Overshadowing Open Space</td>
<td>Yes</td>
<td>Shadow diagrams submitted with the application demonstrate that at least 75%/40m² of adjoining dwellings secluded private open space receives at least five hours of sunlight between 9am and 3pm on 22 December.</td>
</tr>
<tr>
<td></td>
<td>Ensure buildings do not unreasonably overshadow existing secluded private open space.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A15</td>
<td>Overlooking</td>
<td>Yes</td>
<td>There are no habitable room windows within 9 metres of adjoining private open space or adjoining properties’ habitable room windows. Notwithstanding this, the windows in the proposed east elevation have incorporated sill heights of 1.7 metres. At ground floor, existing boundary fences provide a visual barrier that prevents unreasonable overlooking.</td>
</tr>
<tr>
<td></td>
<td>Limit views into existing secluded private open space and habitable room windows</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A16</td>
<td>Daylight to New Windows</td>
<td>Yes</td>
<td>All habitable windows have direct access to daylight.</td>
</tr>
<tr>
<td></td>
<td>Allows adequate daylight into new habitable room windows.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A17</td>
<td>Private Open Space</td>
<td>Yes</td>
<td>Minimum: 25m² secluded, 40m² overall Proposed: 151m² secluded, 245m² overall</td>
</tr>
<tr>
<td></td>
<td>Provide adequate private open space for the recreation and service needs of residents.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A18</td>
<td>Solar Access to Open Space</td>
<td>Yes</td>
<td>Appropriate solar access to the private open space areas is provided.</td>
</tr>
<tr>
<td></td>
<td>Allow solar access into secluded private open space of a new dwelling.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A19</td>
<td>Design Detail</td>
<td>Yes</td>
<td>Refer Attachment 2.</td>
</tr>
<tr>
<td></td>
<td>Encourage design detail that respects the existing or preferred neighbourhood character.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A20</td>
<td>Front Fences</td>
<td>Yes</td>
<td>No changes are proposed to the existing front fence arrangement.</td>
</tr>
<tr>
<td></td>
<td>Encourage front fence design that respects the exiting or preferred neighbourhood character.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
4.7 16 BEDDOE AVENUE, BRIGHTON EAST
NOTICE OF DECISION TO GRANT A PLANNING PERMIT
APPLICATION NO: 2016/263/1 WARD: NORTHERN

City Planning & Community Services - Development Services
File No: PSF/15/8755 – Doc No: DOC/17/78750

1. Purpose and background
To report a planning permit application for the construction of two dwellings on a lot and
the construction of a front fence exceeding a height of 1.2 metres on a lot with an area
of 444.57 square metres (refer Attachment 1) at 16 Beddoe Street, Brighton East (refer
Attachment 2).

<table>
<thead>
<tr>
<th>Applicant</th>
<th>Ratio Consultants Pty Ltd</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date application received</td>
<td>7 April 2016</td>
</tr>
<tr>
<td>Statutory days expired</td>
<td>24 July 2016</td>
</tr>
</tbody>
</table>

2. Policy implications
Planning permit requirements
Clause 32.09-5 (Neighbourhood Residential Zone Schedule 3) – Construction of two
dwellings on a lot and a front fence exceeding a maximum height of 1.2 metres.
Clause 44.05-1 (Special Building Overlay) – Construct a building or construct or carry
out works.

Planning scheme amendments
Planning Scheme Amendment C139 has been prepared by Council and requires
development to provide a financial contribution for drainage in this area. Council has
adopted Amendment C139 and has submitted it to the Minister for Planning for approval.
Whilst the Amendment is now considered ‘seriously entertained’, the Minister has not yet
made a decision on the Amendment.
Planning Scheme Amendment C153 has been initiated by Council and proposes to
modify the boundaries of the Special Building Overlay (SBO) and remove the Land
Subject to Inundation Overlay from the Bayside Planning Scheme. The public exhibition
process concluded on 16 January 2017 and a report considering submissions will be
presented to Council early in 2017. Case law confirms that proposed amendments to
Planning Schemes are not considered to be ‘seriously entertained’ and applied in the
assessment of permit applications until such time as they have progressed beyond a
Panel and adopted. As such, there is no statutory weight which can be given to
Amendment C153. It should be noted that the subject site is located within the proposed
additions to the SBO area.

3. Stakeholder Consultation
External referrals
The application was referred to the following authorities:

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

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

<table>
<thead>
<tr>
<th>Internal Referral</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arborist</td>
<td>No objection, subject to conditions.</td>
</tr>
<tr>
<td>Traffic Engineer</td>
<td>Concerns raised regarding vehicle movements and safety.</td>
</tr>
<tr>
<td>Drainage 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 five objections were received. The following concerns were raised:

- Inconsistent with Neighbourhood Character;
- Non-compliance with Rescode;
- Landscaping;
- Devaluation of property;
- Noise disturbance;
- Increased health concerns;
- Structural integrity concerns;
- Overdevelopment of the site; and
- Increased car parking congestion.

Consultation meeting

A consultation meeting was held on 12 September 2016 attended by the permit applicant and three objectors. No objections were withdrawn following this meeting.

4. Recommendation

That Council:

Issues a **Notice of Decision to Grant a Permit** under the provisions of the Bayside Planning Scheme in respect of **Planning Application 2016/263/1** for the land known and described as **16 Beddoe Avenue, Brighton East**, for the **construction of two dwellings on a lot and the construction of a front fence exceeding a height of 1.2 metres** 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, prepared by Frazer Paxton Architects Pty Ltd and Council date stamped 9 June 2016, but modified to show:

   a) The proposed front setback increased to comply with the requirements of Standard B6 of the Bayside Planning Scheme with no subsequent changes to the built form.
b) The height of the proposed boundary walls reduced to comply with Standard B18 of the Bayside Planning Scheme.

c) Adequate sightlines to be demonstrated on the plans in accordance with the Design standards for car parking pursuant to Clause 52.06-8 of the Bayside Planning Scheme.

d) Water sensitive urban design measures in accordance with Condition 6 of this permit.

e) A Landscaping Plan in accordance with Condition 9 of this permit.

f) A Tree Management and Protection Plan in accordance with Condition 12 of this permit.

g) Any changes as required by Melbourne Water conditions 18-30 of this permit.

All to the satisfaction of the Responsible Authority.

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

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

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

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

Water Sensitive Urban Design

6. 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.

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

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

**Landscaping**

9. Prior to the endorsement of plans pursuant to Condition 1, a detailed landscape plan generally in accordance with the concept landscape plans submitted with the application (TP10 and TP11) must be submitted to and be endorsed by the Responsible Authority. The plan/s must be drawn to scale with dimensions and three copies must be provided. The plan/s must be modified to show:

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

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

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

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

   e) Details of surface finishes of pathways and driveways.

   f) Provision of a tree located within the front setback of the subject site, capable of reaching a height of 14 metres at maturity.

10. 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.

11. 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.

12. 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.

13. 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 to the Responsible Authority.
14. 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.

Melbourne Water Conditions (17 – 20)

15. The dwellings must be constructed with finished floor levels set no lower than 16.13 metres to Australian Height Datum (AHD), which is 300mm above the applicable flood level of 15.83m to AHD.

16. The garages must be constructed with finished floor levels set no lower than 15.98 metres to AHD, which is 150mm above the applicable flood level of 15.83m to AHD.

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

18. Imported fill must be kept to a minimum on the property and only be used for the sub floor areas of the dwellings, garage and driveway ramps.

19. Any new fences along the northern boundary must be of an open style of construction to allow for the passage of overland flow.

20. Pollution and sediment laden runoff shall not be discharged directly or indirectly into Melbourne Water’s drains or waterways.

Drainage

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

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

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

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

25. Before the development begins, detailed plans indicating the method of stormwater discharge the nominated Legal Point of Discharge (and Stormwater Detention Systems where applicable) must be approved by Council’s Infrastructure Assets department.
26. The driveway / parking areas / paved courtyards / paths and ‘pervious’ pavements must be graded / drained to prevent stormwater discharge onto the front footpath and into adjacent properties.

**Permit Expiry**

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

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

**Permit Notes**

- 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.
- Construction of any fence / wall / letterbox structures may necessitate removal / damage of some sections of footpath. If this is the case, a ‘Road Opening Permit’ must be obtained to facilitate such work.
- A ‘Road Opening / Stormwater Tapping Permit’ is to be obtained from the Infrastructure Department prior to the commencement of the connection to the Council Drain / kerb / channel.

**Melbourne Water Notes**

- For a storm event with a 1% chance of occurrence in any one year, the applicable floor level for the property is 15.83 metres to Australian Height Datum (AHD).
- If further information is required in relation to Melbourne Water’s permit conditions shown above, please contact Melbourne Water on 9679 7517, quoting Melbourne Water’s reference 267524.
- For the purpose of the Building Code of Australia – Building in Flood Hazard Areas, Melbourne Water has determine that during a flood event that has a probability of occurrence of 1% in any one years, the maximum flow rate of flood water (velocity) will be below 1.5 metres per second.

5. **Council Policy**

**Council Plan 2013-2017**

Relevant strategies of the Council plan include:

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

**Bayside Planning Scheme**

- Clause 11 Settlement
- Clause 12 Environmental and Landscape Values
- Clause 15 Built Environment and Heritage
- Clause 16 Housing
- Clause 21.02 Bayside Key Issues and Strategic Vision
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 D2 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 proposed development includes a linear form which encompasses two, double storey dwellings. This outcome works positively to reduce the extent of built form featured across the site and achieves an outcome that largely presents as a single dwelling in the street.

The spacing of the development allows for suitable planting, subject to conditions, to soften the overall built form and to ensure the development works to respond to the existing and preferred landscape character of the precinct.

Concerns have been raised in regards to the suitability of the proposed design response in its context. The contemporary design of the development however is largely respectful of the existing character of the area, which features a variety of modern, contemporary and post war dwellings. The proposal as viewed in the streetscape is also setback from the side boundaries to maintain the visual separation found within the neighbourhood.

The use of timber, exposed brick and copper mesh suitably responds to the existing character of the area while promoting an innovative design outcome within the street. Subject to conditions, the development will integrate appropriately within the street and is acceptable having regards to neighbourhood character.

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:
Standard B6 (Street Setbacks)

<table>
<thead>
<tr>
<th>Required</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.91 metres</td>
<td>6.3 metres</td>
</tr>
</tbody>
</table>

The proposal includes a front setback of 6.3 metres which fails to meet the minimum front setback requirement of 7.91 metres. In considering a variation to the numerical setback requirement, Clause 55.03-1 seeks to ensure that the setbacks of buildings from a street respect the existing or preferred neighbourhood character and make efficient use of the site.

An assessment of the front setbacks of properties in the immediate context notes that there is a consistent pattern of built form spacing and front setbacks, particularly along the southern side of Beddoe Avenue. The only exception to this pattern is the encroachment of the first floor level of 14 Beddoe Avenue to the west of the site which cantilevers beyond the ground floor level. This setback has been used as a reference point to incorporate the varied front setback within this application.

In light of the existing character of the area, compliance with the front setback requirement is required as a condition of permit to ensure that the siting of the built form will integrate appropriately within its context. It is also considered that compliance with the front setback requirement will not unreasonably compromise the internal layout of the proposed development.

Standard B8 (Site Coverage)

The proposed calculated site coverage of the overall development at 50.2% exceeds the maximum allowable requirement of 50%. While the application only marginally exceeds the allowable site coverage, the above requirement to reduce the built form to meet the street setback requirement will subsequently ensure that the site coverage of the overall development will comfortably comply with this standard.

Standard B15 (Parking Location)

Council’s Traffic Engineer has reviewed the proposed development and advised that the location of the garages raises access and safety concerns for future occupants. A detailed assessment of the traffic considerations of this application is provided in Section 6.3 of the report.

Standard B17 (Side and Rear Setbacks)

<table>
<thead>
<tr>
<th>Ground Floor</th>
<th>First Floor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Required</td>
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<tr>
<td>east (side)</td>
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<tr>
<td>west (side)</td>
<td>0m or 2m</td>
</tr>
<tr>
<td>South (rear)</td>
<td>3m</td>
</tr>
</tbody>
</table>

The proposal includes a minor variation to the setback requirements of the standard. The ground floor western wall setback of 1.93 metres associated with Dwelling 2 falls marginally short of the 2 metre requirement. This wall is associated with the hallway of the dwelling and has been designed to allow for sufficient space for the lap pool which is constructed along the western boundary. This variation is supported as it is considered that sufficient spacing is proposed to alleviate visual bulk to the adjoining property while ensuring any unreasonable amenity impacts are avoided.
The remaining ground floor wall is setback 2 metres and complies with the standard. The first floor eastern and western setbacks similarly fall short of the required setback. The first floor eastern wall proposes a setback of 3.1 metres from the boundary in lieu of a varied setback of 3.3 metres – 3.5 metres. The proposed wall is separated by a 2 metre high paling boundary fence which is followed by a driveway and brick garage to 18 Beddoe Avenue. In light of this interface, the proposed variation measured between 200mm-400mm can be supported. It is also considered that compliance with the setback requirements would reduce the internal amenity of the subject site.

The proposed western wall is setback 3.36 metres from the boundary, which falls short of the 3.5 metre maximum setback requirement. The proposed wall is largely compliant however in light of the slope of the land, a small area of non-compliance towards the rear of the site is provided. In considering the amenity impacts, the wall is located opposite a service walkway provided rear access to the site from the garage. This area of the site is not the primary secluded private open space for the adjoining western property and as such, a variation is supported. Due to the narrow width of the site, compliance with the side and rear setback requirements would be difficult to achieve. However it is considered that the proposal adopts a suitable design, responding to the site opportunities and constraints without unreasonably compromising the amenity of the adjoining properties.

Standard B18 (Walls on Boundaries)
The garages to each dwelling are constructed along the eastern and western boundaries of the site. Each wall comfortably complies with the length requirement of the standard. The garage and ensuite to Dwelling 1 will be constructed along the western boundary for a length of 8.3 metres which the maximum allowable length of 12.7 metres. The garage to Dwelling 2 will be constructed along the boundary for a length of 6.3 metres and complies with the maximum allowable length of 12.7 metres. The proposed average height of 3.278 metres associated with each boundary wall slightly exceeds the 3.2 metre average requirement of the standard. A condition of permit is included to reduce the average height to comply with this requirement.

Standard B30 (Storage)
The proposed plans include the provision of above bonnet storage in each garage. The location and size of the storage facilities fails to meet the requirements of the standard which seek to require a minimum of 6 cubic metres of externally accessible, secure storage space. A condition of permit is included to ensure to meet these requirements.

Standard B32 (Front fences)
It is proposed to construct a new timber batten front fence with a height ranging between 900mm and 1.8 metres. The standard requires a maximum height of 1.2 metres and therefore the proposal fails to meet this requirement. Clause 55.06-2 seeks to encourage front fences that respect the existing or preferred character of the area. Having reviewed the streetscape character and front fences within the immediate area, it is noted that there is no strong consistency in design or height of fences, with some ranging from low, solid brick fencing to high timber pickets. The proposed design itself is considered acceptable as it will allow for reasonable privacy for occupants of the site while ensuring suitable transparency is provided to ensure slight views to the site. The proposed front fence is supported in its current form. Sightline design requirements in accordance with Clause 52.06-8 may alter the final design outcome of the proposed fence.

6.3. Car parking and traffic
Pursuant to the car parking requirements at Clause 52.06, a dwelling requires car parking to be provided at a rate of 1 car space per one or two bedroom dwellings and 2 car spaces per three or more bedroom dwellings.
Dwelling 1 comprises three bedrooms and is afforded two car parking spaces in the form of a double garage. Dwelling 2 comprises two bedrooms and has one on site car parking space in the form of a single garage. The proposed on site car parking meets the requirements of Clause 52.06-5.

The application proposes vehicle access via the existing single crossover within the north eastern corner of the site. A common driveway to each garage is proposed along the eastern boundary.

The application was referred to Council’s Traffic Engineer who expressed concerns in relation to the design detailing of the vehicle layout. The following comments were provided:

“There is an issue with vehicle access to Unit 2 as no turnaround area provided to enable the site egress in a forward manner. As a result, this vehicle would require to reverse a considerable distance which is not considered convenient nor efficient. There is also a traffic conflict on the driveway as the common driveway will be shared by two separate units.

To alleviate the above concerns, it is recommended that the single garage be relocated beside the double garage (i.e. swap the garage and bedroom). The single garage would have to be made slightly wider along with a wider door opening due to narrow width of the property.

The applicant should be requested to provide swept-path diagrams using auto turn for both access and egress.”

In addition to the above, it was also requested that adequate sightlines must be provided and the existing crossover should be replaced and redesigned to 3 metres as per Council’s vehicle crossing policy. The provision of sightlines is included as a condition of permit however the request to reconstruct the existing crossover is considered unnecessary in this instance as the application seeks to utilise the existing crossover which currently provides suitable access to the site.

The applicant has been provided with Council’s comments in relation to the egress of vehicles. A revised design response was not provided by the applicant. While an alternative design is requested by Council’s Traffic Engineer, a condition requiring the redesign of the application to accommodate the above considerations will compromise the existing functional layout of the application.

In addition, given the site will only accommodate two dwellings, it is unlikely there will be a conflict of vehicles exiting the site. Alternatively, there may be opportunities for future residents to reverse onto Beddoe Avenue instead of exiting in a forward direction. As such, the design in its current form is supported subject to conditions.

Concerns have been raised in relation to increased car parking congestion however it is considered that the proposed development will not unreasonably impact on the car parking network in the street. In addition, car parking congestion was not raised as a concern by Council’s Traffic Engineer.

6.4. Vegetation & Landscaping

From an arboriculture perspective Council’s Arborist has reviewed the application, visited the site and advises that the vegetation on site is mostly juvenile and semi-mature self-sown trees that provide little to no amenity to the local area.

With regards to the existing vegetation on adjoining sites, the Magnolias on the west boundary and the Lilly Pillys on the south boundary will not be impacted by the built form. The Dessert Ash in the eastern property should have limited root growth into the subject site.
Council’s Arborist has raised no significant concern with the concept landscaping provided with the application. However Council’s Arborist has requested the provision of a landscape plan showing a tree capable of reaching a height of 14 metres at maturity provided in the front setback. The preparation of a Tree Management Plan has also been requested. These requirements are included on the condition of permit.

Concerns have been raised that the proposed landscaping is inconsistent with the existing and preferred character of the area. However it is considered that the proposed spacing and built form design creates reasonable landscaping opportunities on the site to ensure generous replanting can be provided particularly within the front setback subject to conditions requiring the planting of a canopy tree and additional landscaping within the front setback. In addition, the built form will incorporate a green roof which will work to enhance the landscaped character of the area. A ground floor landscaping plan and roof plan are required as a condition of approval.

6.5. Objections received

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

Devaluation of property

The impact on surrounding property values is not a material consideration and will not form part of this assessment.

Increased health concerns

Health concerns associated with a planning application is not a material consideration and cannot form part of this assessment.

Structural integrity concerns

A building permit will be required which will ensure the structure of the development is satisfactory.

Support Attachments

1. Development Plans
2. Site and Surrounds Imagery
3. Neighbourhood Character Assessment
4. Clause 55 Assessment
Item 4.7 – Matters of Decision
Item 4.7 – Matters of Decision
ATTACHMENT 2
Site and Surrounds Imagery

Figure 1 Aerial overview of the site and surrounds

<table>
<thead>
<tr>
<th>Legend</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject site</td>
<td>⭐️</td>
</tr>
<tr>
<td>Objetor(s)</td>
<td>🔴</td>
</tr>
</tbody>
</table>
Figure 1. View of the subject site viewed from Beddoe Avenue, Brighton East.

Figure 2. View of the subject site (shown left) and No. 16 Beddoe Avenue (shown right).
Figure 3. View of 14 Beddoes Avenue, Brighton East.

Figure 4. View of 25 Beddoes Avenue located north east of the subject site.
Figure 5. View of 10 and 12 Beddoe Avenue, Brighton East to the west of the subject site.
ATTACHMENT 3
Neighbourhood Character Policy (Precinct D2)

Preferred Future Character

The simple, articulated dwellings sit within landscaped gardens. Buildings are occasionally built to the side boundary; however the overall impression of the streetscape is of buildings within a garden setting due to the regular front setbacks and additional tree planting within the area. New buildings blend with the existing, by following these patterns and using materials that harmonise, where brick colours are consistent in a street. Front fences are low or open retaining the openness of the streetscape and view of the front gardens. On properties that adjoin the golf course, buildings are sited and designed so as not to overwhelm the open space. Consistent street tree planting has assisted in unifying the appearance of 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 existing 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.  
Loss of front garden space | The development promotes sufficient landscaping opportunities. A landscape plan has been required as a condition of permit. The landscape plan must include the provision of canopy trees within the front and rear setbacks, while also demonstrating suitable shrubs and ground covers consistent with the existing and preferred character of the area. |
<p>| 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. |  | Appropriate built form spacing is provided which promotes adequate visual separation of built form in the street. |
| To ensure that buildings do not dominate the streetscape. | • Incorporate articulated roof forms, plan form and wall surfaces in new buildings visible from the street. | Large bulky buildings with poorly articulated front or side wall surfaces. | The proposal includes a front setback of 6.3 metres which fails to meet the minimum front setback requirement of 7.91 metres. In light of the existing character of the area, compliance with the front setback |</p>
<table>
<thead>
<tr>
<th>Objectives</th>
<th>Design Responses</th>
<th>Avoid</th>
<th>Planning Officer Assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>To reflect the building materials in locations where there is a particular consistency.</td>
<td>• Where consistent brick colours are present in the streetscape, use similar tonings in the colours of new buildings.</td>
<td>Brightly coloured external building materials in areas of consistent brick materials.</td>
<td>The use of timber, exposed brick and copper mesh suitably responds to the existing character of the area while promoting an innovative design outcome within the street.</td>
</tr>
<tr>
<td>To maintain the openness of the streetscape.</td>
<td>• Provide open style front fencing, other than along heavily trafficked roads. Where no front fencing predominates, use vegetation as an alternative.</td>
<td>High, solid fencing.</td>
<td>It is proposed to construct a new timber batten front fence with a height ranging between 900mm and 1.8 metres. The standard requires a maximum height of 1.2 metres. The streetscape character and front fences within the immediate area, it is noted that there is no strong consistency in design or height of fences, with some ranging from low, solid brick fencing to high timber pickets. The proposed design itself is considered acceptable as it will allow for reasonable privacy for occupants of the site while ensuring suitable transparency is provided to ensure slight views to the site.</td>
</tr>
<tr>
<td>To encourage development that responds to its location adjacent to the golf course.</td>
<td>• Where development directly borders the golf course, recess upper levels from the boundary nearest the open space.</td>
<td>Poorly articulated or dominating development fronting the golf course.</td>
<td>N/A</td>
</tr>
</tbody>
</table>
## ATTACHMENT 4
### BAYSIDE PLANNING SCHEME – CLAUSE 55

<table>
<thead>
<tr>
<th>Title and Objective</th>
<th>Complies with Standard?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>B1 Neighbourhood Character</strong></td>
<td>Yes</td>
<td>Refer report.</td>
</tr>
<tr>
<td>Design respects existing neighbourhood character or contributes to a preferred neighbourhood character. Development responds to features of the site and surrounding area.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B2 Residential Policy</strong></td>
<td>Yes</td>
<td>The subject site is appropriately located with regard to services and facilities to support two dwellings.</td>
</tr>
<tr>
<td>Residential development is consistent with housing policies in the SPPF, LPPF including the MSS and local planning policies. Support medium densities in areas to take advantage of public transport and community infrastructure and services.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><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>Any upgrades required will be the responsibility of the developer.</td>
</tr>
<tr>
<td>Provides appropriate utility services and infrastructure without overloading the capacity.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B5 Integration with the Street</strong></td>
<td>Yes</td>
<td>The dwellings appropriately address the street and entries are clearly identifiable from the streetscape. Dwelling 1 has a dedicated pedestrian access path from Beddoe Avenue. The dwelling entry to Dwelling 2 is via the common driveway and while not ideal, safety measures are provided by providing a separated pedestrian entry to the dwelling.</td>
</tr>
<tr>
<td>Integrate the layout of development with the street.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Item</td>
<td>Description</td>
<td>Decision</td>
</tr>
<tr>
<td>------</td>
<td>-------------</td>
<td>----------</td>
</tr>
<tr>
<td>B6 Street Setback</td>
<td>The setbacks of buildings from a street respect the existing or preferred neighbourhood character and make efficient use of the site.</td>
<td>No</td>
</tr>
<tr>
<td>B7 Building Height</td>
<td>Building height should respect the existing or preferred neighbourhood character</td>
<td>Yes</td>
</tr>
<tr>
<td>B8 Site Coverage</td>
<td>Site coverage should respect the existing or preferred neighbourhood character and respond to the features of the site.</td>
<td>No</td>
</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>
</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>
</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>
</tr>
<tr>
<td>B12 Safety</td>
<td>Layout to provide safety and security for residents and property.</td>
<td>Yes</td>
</tr>
<tr>
<td>B13 Landscaping</td>
<td>To provide appropriate landscaping. To encourage: Development that respects the landscape character of the neighbourhood.</td>
<td>Yes</td>
</tr>
</tbody>
</table>
Development that maintains and enhances habitat for plants and animals in locations of habitat importance. The retention of mature vegetation on the site.

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

| Yes | Refer report. Appropriate vehicular access is provided. |

**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.

| No | Refer report. Council’s Traffic Engineer has raised concerns in regards to the location of the garage to Dwelling 2. |

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

| No | Refer to the table below. Non-compliance areas are underlined. |

<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>3m</td>
</tr>
</tbody>
</table>

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

<p>| Yes | The garages to each dwelling are constructed along the eastern and western boundaries of the site. Each wall comfortably complies with the requirement of the standard. The garage and ensuite to Dwelling 1 will be constructed along the western boundary for a length of 8.3 metres which the maximum allowable length of 12.7 metres. |</p>
<table>
<thead>
<tr>
<th>Item</th>
<th>Decision</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.7</td>
<td></td>
<td>The garage to Dwelling 2 will be constructed along the boundary for a length of 6.3 metres and complies with the maximum allowable length of 12.7 metres. The proposed height of 3.2 metres complies with the height requirements of this standard.</td>
</tr>
<tr>
<td>B19</td>
<td>Yes</td>
<td>The proposal is well setback from property boundaries to ensure daylight to existing windows is maintained.</td>
</tr>
<tr>
<td>B20</td>
<td>N/A</td>
<td>There are no existing north facing habitable room windows within 3 metres of the boundary of an adjoining lot.</td>
</tr>
<tr>
<td>B21</td>
<td>Yes</td>
<td>Shadow diagrams submitted with the application demonstrate that at least 75%/40m² of adjoining dwellings secluded private open space receives at least five hours of sunlight between 9am and 3pm on 22 September.</td>
</tr>
<tr>
<td>B22</td>
<td>Yes</td>
<td>Boundary fencing along the eastern, western and southern boundaries will prevent overlooking at ground floor level. Mesh has been incorporated into the overall design of the development and will have a minimum transparency of 25%. This will also work to alleviate unreasonable overlooking from the first floor habitable room windows of each dwelling in accordance with the standard. A notation is included as a condition of permit to require all elevations and the first floor plan to include a notation to this effect.</td>
</tr>
<tr>
<td>B23</td>
<td>Yes</td>
<td>As above.</td>
</tr>
<tr>
<td>B24</td>
<td>Yes</td>
<td>The development will not generate any noise above that typically expected from a residential building.</td>
</tr>
<tr>
<td>B25</td>
<td>Yes</td>
<td>Entries are easily accessible for people with limited mobility. The development also includes lifts for both dwellings and could be retrofitted to</td>
</tr>
<tr>
<td>Item</td>
<td>Description</td>
<td>Requirement</td>
</tr>
<tr>
<td>------</td>
<td>-------------</td>
<td>-------------</td>
</tr>
<tr>
<td>B26 Dwelling Entry</td>
<td>Provide a sense of identity to each dwelling.</td>
<td>Yes</td>
</tr>
<tr>
<td>B27 Daylight to New Windows</td>
<td>Allow adequate daylight into new habitable room windows.</td>
<td>Yes</td>
</tr>
</tbody>
</table>
| B28 Private Open Space | Provide reasonable recreation and service needs of residents by adequate pos. | Yes | Minimum: 25m² secluded, 40m² overall 
Proposed: 
Dwelling 1: 61m²  
Dwelling 2: 76m² |
| 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 private open space areas is provided. |
| B30 Storage | Provide adequate storage facilities for each dwelling. | No | Storage is provided in the form of above bonnet storage in each garage. A condition of permit will require sufficient external storage in accordance with the requirements of this standard. |
| B31 Design Detail | Encourage design detail that respects the existing or preferred neighbourhood character. | Yes | Refer Attachment 1. |
| B32 Front Fences | Encourage front fence design that respects the existing or preferred neighbourhood character. | No | Refer report. |
| B33 Common Property | Ensure car parking, access areas and other communal open space is practical, attractive and easily maintained. Avoid future management difficulties in common ownership areas. | Yes | The proposed vehicle access is considered an acceptable design response for this site. |
| B34 Site Services | Ensure site services and facilities can be installed and operated and maintained. | Yes | Plans show mailboxes, meters and bin storage. |
| easily maintained and are accessible, adequate and attractive. |   |   |
4.8  6 SNOOKS COURT, BRIGHTON
NOTICE OF DECISION TO GRANT AN AMENDED PLANNING PERMIT
APPLICATION NO: 2014/659/2 WARD: NORTHERN

City Planning & Community Services - Development Services
File No: PSF/15/8755 – Doc No: DOC/17/83655

1. Purpose

To report a planning permit application for a Section 72 Amendment to Planning Permit 2014/659/2 issued 19 October 2015 for the alterations and additions to existing dwelling including two storey additions and a front fence exceeding a height of 1.2 metres (refer Attachment 1) at 6 Snooks Court, Brighton (refer Attachment 2).

<table>
<thead>
<tr>
<th>Applicant</th>
<th>TASC Group</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date application received</td>
<td>29 June 2016</td>
</tr>
<tr>
<td>Statutory days expired</td>
<td>28 August 2016</td>
</tr>
</tbody>
</table>

This application seeks approval for the following changes and as demonstrated in the plans at Attachment 1:

Changes to elevations

- Ground floor alterations to windows – removal of existing rear (east facing window) and replaced with a wider window;
- Addition of a window to the pantry (south elevation);
- Alterations to family room window from wholly obscure glazing to 1.7m high obscure glaze with clear glazing atop (north elevation);
- Alteration to the Juliette balconies from a straight style design to a curved style balconies; and
- Alteration to the carport to remove the door to create an open style carport.
- Changes to colour and material scheme (sandstone tiling to grey rendered concrete).

Changes to the built form

- Alteration to existing ground floor level (raised 150mm), no change to maximum building height; and
- Increased front setback of the feature piers at the front of the building from 7.05m to 7.37m

Changes to fence and landscape

- Alteration to front fence from a straight and closed style front fence to an open curved style; and
- Alteration to the width of the swimming pool from 2m to 2.5m.

It is also noted that some additional demolition of the original dwelling walls has occurred, though this is of no consequence to the planning merits of the proposal as the original building was not protected under any planning control (heritage overlay or neighbourhood character overlay).
2. **Background**

Planning Application 2014/659/1 was issued on 19 October 2015 for the alterations and additions to existing dwelling including two storey additions and a front fence exceeding a height of 1.2 metres.

Endorsed plans have not yet been issued for the development, however all changes required at condition 1 of the original permit have been incorporated into the plans associated with this amendment (required changes were relatively minor).

3. **Policy implications**

**Planning permit requirements**

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

**Original planning permit requirement**

Clause 32.09-5 (Neighbourhood Residential Zone) – construction of an addition to a dwelling on a lot less than 500 square metres and construct a front fence exceeding a height of 1.2 metres. Primary consent was obtained through this permit, now proposed to be amended.

Clause 44. 04 - (Special Building Overlay) – carry out works of a building in a Special Building Overlay (SBO). Primary consent was obtained through this permit, now proposed to be amended.

**Planning scheme amendments**

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

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

4. **Stakeholder Consultation**

**External referrals**

There were no external referrals required to be made in accordance with Clause 66 of the Bayside Planning Scheme. The proposed changes were not considered to be of such scale to warrant re-referral to Melbourne Water – each of their original conditions would remain valid on the permit.

**Internal referrals**

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

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

- Increase to the height of the built form;
- Living room screen should remain obscure glazed rather than external screen;
- Drainage and flooding issues;
- Request construction management plan and tree management plan;
- Concerns regarding protection of existing trees.

Consultation meeting

A consultation meeting was held on 22 November 2016 attended by the permit applicant and three objectors. As a result of this meeting one objection was withdrawn. Therefore, three objections remain.

_Note: The original advertising documentation erroneously included a minor increase in the overall height of the buildings of 100mm. Further review of the plans reveals that the overall height of the building is to remain the same._

5. Recommendation

That Council:

Issues a **Notice of Decision to Amend a Permit** under the provisions of the Bayside Planning Scheme in respect of **Planning application 2014/659/2** for the land known and described as **6 Snooks Court, Beaumaris**, for the **alterations and additions to existing dwelling including two storey additions and a front fence exceeding a height of 1.2 metres** 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 draft plans received at Council on 3 August 2015 but modified to show:
   a) Screening of the first floor north elevation family room window in accordance with Standard A15 of Res Code.
   b) Pedestrian doors to the carport to open outward.
   c) Provision of a new 4.5 metre wide vehicle crossing with 0.4 metre offset from the south boundary. The location of the northern edge of the existing crossing must remain unchanged.
   d) Visibility splays in accordance with Design Standard 1 of Clause 52.06-8 of the Bayside Planning Scheme
   e) All pool equipment to be identified on the plans and not located anywhere between the proposed building and the southern site boundary or to the east side of the proposed pool / spa to the satisfaction of the Responsible Authority.
f) A 2 metre high, fixed obscure glass privacy screen to the south and east elevations of the first floor balcony.

g) A landscape plan in accordance with Condition 3 of the permit.

h) All plant and equipment (including air conditioning units, heating units, hot-water systems, etc.) which is proposed to be located externally identified on the plans.

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

3. Before the development starts, a landscape plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit. The plan must be drawn to scale with dimensions and three copies must be provided. The landscaping plan must show:

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

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

   c) Details of surface finishes of pathways and driveways;

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

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

   f) Tree protection zones for all trees on neighbouring sites where these intrude into the subject site.

   g) A canopy tree located in the front setback capable of reaching a minimum height of 6m and a minimum width of 4m.

4. Prior to commencement of the development, a Tree Protection Methodology Report (in accordance with AS 4970-2009 Protection of Trees on Development Sites) must be submitted to, and approved by the Responsible Authority in order to adequately protect the 2 Ulmus procera (English Elm) trees located at 2 Sheridan Court. The report must demonstrate that the Elms will remain viable post construction through the provision of a site specific tree protection methodology and must provide clear and precise instruction for the site manager on how the vegetation will be protected. A valid tree protection methodology will include, as a minimum:

   - a plan that accurately locates all vegetation to be retained/protected with their TPZs identified;

   - a plan that accurately locates the location of tree protection fencing and/or ground protection;

   - a plan that accurately locates the proposed built form and all services. Services are to be located outside a TPZ or to be bored under the TPZ;

   - a plan that accurately identifies finished levels for outdoor areas;

   - a plan that accurately locates footing systems and surface details of all works inside a TPZ;

   - a legend and north point;
• clear time frames as to when these must be installed and when they can be removed;
• clear direction on what actions must not occur inside the area defined as a Tree Protection Zone.

The tree protection measures outlined in the report must be adhered to before, during and after construction.

5. Tree Protection Fencing is to be established around the street trees prior to demolition and maintained until all works on site are complete.
   a) The fencing is to be constructed and secured so its positioning cannot be modified by site workers.
   b) The fencing is to encompass the entire naturestrip under the dripline of the tree.
   c) The Tree Protection Zone is to be established and maintained in accordance with Australian Standards 4970 Protection of trees on development sites.
   d) During construction of the crossover, tree protection fencing may be reduced to the edge of the Council approved crossover to facilitate the construction of the crossover.

6. Root pruning within the TPZ (Tree Protection Zone)
   a) Prior to soil excavation, a trench along the line of the proposed crossover must be dug by hand.
   b) All affected roots must be correctly pruned according to AS 4373-2007.

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

8. 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.

9. 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.

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

11. Stormwater discharge must be retained for the portion above the discharge calculated using a Coefficient of Runoff of 0.35. The development is to have a Stormwater Detention System installed, the design capacity of which is to be to the satisfaction of the Responsible Authority. The stormwater detention system is to include the runoff collected from the existing dwelling.

12. Any seepage/agricultural drainage water must be filtered to rain water clarity and must be pumped to the nearest Council Drain/Pit and not be discharged to the kerb and channel unless directed otherwise.

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

14. The driveway / parking areas / paved courtyards / paths and any 'pervious' pavers must be graded / drained to prevent stormwater discharge onto the front footpath and into adjacent properties.

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

Melbourne Water Conditions (No.s 16-24)

16. No polluted and / or sediment laden runoff is to be discharged directly or indirectly into Melbourne Water's drains or watercourses.

17. The dwelling must be set back a minimum of 4.3 metres from the northern property boundary to allow for the passage of overland flows.

18. The extended ground floor must be constructed no lower than the existing ground floor level.

19. The carport must be of an open style of construction and must remain open for the life of the structure.

20. The coping of the spa must be no greater than 150mm above the natural surface level of the site.

21. Excavated material from the site is to be removed and not stored or redistributed on site.

22. Any new fencing must be of an open style of construction to allow for the passage of floodwaters/overland flow.

23. All open space within the property must be set at the existing natural surface level so as not to obstruct the passage of overland flows, and no retaining walls are to be used in the development of the land.

24. Imported fill must be kept to a minimum on the property and must only be used for the sub floor area of the dwelling.

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

   The Responsible Authority may extend the periods referred to above if a request is made in writing:
   - Before the permit expires; or
   - Within 6 months afterwards if development has not commenced; or
   - Within 12 months afterwards if the development has lawfully commenced

Permit Notes
- A permit must be obtained from Council for all vehicular crossings.
- These must be constructed under Council's supervision for which 24 hours notice is required.
- Building approval must be obtained prior to the commencement of the above approved works.
- Consultation should take place with Council respect of the removal of the vehicular crossing and reinstatement works.
- Reticulated sewerage must be provided to the requirements of the Sewerage Authority.
- Prior to commencement of any building works, an Asset protection Application must be taken out. This can be arranged by calling Asset Protection Administrator, Mon-Fri 9:00am to 1:00pm on 9599 4638.
- The applicable flood level for the property is 8.3 metres to Australian Height Datum.
- If further information is required in relation to Melbourne Water’s permit conditions shown above, please contact Melbourne Water on 9679 7517, quoting Melbourne Water’s reference 234677.

<table>
<thead>
<tr>
<th>Date</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>18 May 2017</td>
<td>Amendment to the permit under Section 72 of the Planning and Environment Act 1987 to include the following changes to the plans:</td>
</tr>
<tr>
<td></td>
<td>- Ground floor alterations to windows – removal of existing rear (east facing window) and replaced with a wider window;</td>
</tr>
<tr>
<td></td>
<td>- Addition of a window to the pantry (south elevation);</td>
</tr>
<tr>
<td></td>
<td>- Alterations to family room window from wholly obscure glazing to 1.7m high obscure glaze with clear glazing atop (north elevation);</td>
</tr>
<tr>
<td></td>
<td>- Alteration to the Juliette balconies from a straight style design to a curved style balconies;</td>
</tr>
<tr>
<td></td>
<td>- Alteration to the carport to remove the door to create an open style carport.</td>
</tr>
<tr>
<td></td>
<td>- Changes to colour and material scheme (sandstone tiling to grey rendered concrete).</td>
</tr>
<tr>
<td></td>
<td>- Alteration to existing ground floor level (raised 150mm), no change to maximum building height;</td>
</tr>
<tr>
<td></td>
<td>- Increased front setback of the feature piers at the front of the building from 7.05m to 7.37m</td>
</tr>
<tr>
<td></td>
<td>- Alteration to front fence from a straight and closed style front fence to an open curved style;</td>
</tr>
<tr>
<td></td>
<td>- Alteration to the width of the swimming pool from 2m to 2.5m.</td>
</tr>
</tbody>
</table>
6. **Council Policy**

Council Plan 2013-2017

Relevant strategies of the Council plan include:

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

**Bayside Planning Scheme**

- Clause 11 Settlement
- Clause 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 21.11 Local Areas
- Clause 22.06 Neighbourhood Character Policy
- Clause 32.09 Neighbourhood Residential Zone (Schedule 3)
- Clause 43.02 Design and Development Overlay (Schedule 3)
- Clause 44.05 Special Building Overlay
- Clause 54 One dwelling on a lot
- Clause 64 Decision Guidelines

7. **Considerations**

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

7.1. **Neighbourhood character**

The site is located within Neighbourhood Character Precinct B1 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 amended development maintains the originally approved setbacks from all property boundaries to allow space for the planting of trees and shrubs and to create the appearance of space between buildings and to soften the appearance of the built form. The amended development is generally contained within the building envelope approved under the permit. The amended development would show the same level of compliance with the surrounding neighbourhood character, with the revised materials proposed still being acceptable for this neighbourhood (the remaining changes are largely inconsequential from a neighbourhood character perspective).

7.2. **Changes to elevations and facade**

Alterations to increase the size of the ground floor window (east elevation) is considered acceptable because there is a 2 metre high boundary fence limiting any overlooking to adjoining property. The proposed alteration of a window to the pantry at ground floor level (south elevation) is acceptable as it contains a very high sill (approx. 1.9m) and hence overlooking would not be possible.
The revised screening mechanism of the north facing family room window from wholly obscured glazed, to obscure glazed to 1700mm complies with the overlooking standard of clause 54 and hence is acceptable.

Alteration to the Juliette balconies from a straight style to a curved style is appropriate as it provide articulation to the front façade.

The alteration to remove the carport door to create an open style carport is a response to Melbourne Water Condition 19 of the original approved Permit (and also to remove the need for a fire rated wall). The alterations have met the requirement under Condition 19 and are considered acceptable.

7.3. **Changes to the built form**

The increase height of floor level by 150mm is acceptable and does not create any overlooking issues. The overall height of the building remains the same and hence there is no change to the overall scale of the building.

7.4. **Car parking and traffic**

Parking and traffic provision will not be impacted by the proposed amendment.

7.5. **Street tree removal**

No street trees will be impacted by the proposal.

7.6. **Vegetation & Landscaping**

Alteration to the front fence from a straight closed style fence to a curved open style fence at the northern boundary is considered acceptable. The proposed fence has responded to Melbourne Water Condition 22 and has maintained the openness of the streetscape and thus complies with the Bayside Planning Scheme.

The construction of the swimming pool was approved in the original permit and the proposed alterations to the width of the swimming pool from 2m to 2.5m are considered minor. The proposed alterations are acceptable as they will maintain the garden setting of the dwelling and will not have an impact on tree to adjoining property at 2 Snooks Court.

7.7. **Objections received**

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

**Overlooking**

The application has been assessed and does not present overlooking looking to adjoining properties. The proposed alteration of the obscure glazing to the north elevation to external screen at a height of 1.7 metre complies with Standard A15 of the Bayside Planning Scheme.

**Drainage and flooding issues**

The consideration of this planning application regarding drainage and flooding has been assessed under the original approved permit. It is considered that the proposed amendment do not require a reassessment.

**Request for a Construction Management Plan**

A construction management plan was not considered to be necessary for the construction of one dwelling on this site (in the approval of the original planning permit). The changes to the plans sought under this amendment would not change this position. It will ultimately be the responsibility of the relevant building surveyor to ensure that works are carried out in accordance with the relevant regulations relating to site condition and protection of neighbouring properties and assets.
Request for a Tree Management Plan.

Three conditions are already in place to ensure protection of trees – conditions 3 (Landscape Plan), 4 (Tree Protection Methodology Report) and 5 (Tree Protection Fencing). These controls will be adequate to protect existing vegetation and including another condition seeking the same, or very similar protection mechanisms would be unreasonably onerous and unnecessary.

Support Attachments
1. Development Plans ⇓
2. Imagery and Surrounds ⇓
3. Neighbourhood Character Assessment ⇓
4. Clause 54 Assessment ⇓
PLANNING PERMIT
2014/659/1

Responsible Authority: Bayside City Council
Planning Scheme: Bayside

Address Of The Land: No. 6 Snooks Court BRIGHTON

The Permit Allows: Alterations and additions to existing dwelling including two storey addition and a front fence exceeding a height of 1.2 metres in accordance with the endorsed plans and subject to the following conditions.

The Following Conditions Apply To This Permit:

1. Before the development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the draft plans received at Council on 3 August 2015 but modified to show:
   a) Screening of the first floor north elevation family room window in accordance with Standard A15 of Res Code.
   b) Pedestrian doors to the carport to open outward.
   c) Provision of a new 4.5 metre wide vehicle crossing with 0.4 metre offset from the south boundary. The location of the northern edge of the existing crossing must remain unchanged.
   d) Visibility splay in accordance with Design Standard 1 of Clause 52.06-8 of the Bayside Planning Scheme
   e) All pool equipment to be identified on the plans and not located anywhere between the proposed building and the southern site boundary or to the east side of the proposed pool / spa to the satisfaction of the Responsible Authority.
   f) A 2 metre high, fixed obscure glass privacy screen to the south and east elevations of the first floor balcony.
   g) A landscape plan in accordance with Condition 3 of the permit.
   h) All plant and equipment (including air conditioning units, heating units, hot-water systems, etc.) which is proposed to be located externally identified on the plans.

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

3. Before the development starts, a landscape plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit. The plan must be

Date issued: 19 October 2015
Planning and Environment Regulations 2005 Form 4

Signature for the Responsible Authority

Note: Under Part 4, Division 1A of the Planning and Environment Act 1987, a permit may be amended. Please check with the responsible authority that the current permit is the current permit and can be acted upon.
drawn to scale with dimensions and three copies must be provided. The landscaping plan must show:

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

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

c) Details of surface finishes of pathways and driveways;

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

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

f) Tree protection zones for all trees on neighbouring sites where these intrude into the subject site.

g) A canopy tree located in the front setback capable of reaching a minimum height of 6m and a minimum width of 4m.

4. Prior to commencement of the development, a Tree Protection Methodology Report (in accordance with AS 4970-2009 Protection of Trees on Development Sites) must be submitted to, and approved by the Responsible Authority in order to adequately protect the 2 Ulmus procera (English Elm) trees located at 2 Sheridan Court. The report must demonstrate that the Elms will remain viable post construction through the provision of a site specific tree protection methodology and must provide clear and precise instruction for the site manager on how the vegetation will be protected. A valid tree protection methodology will include, as a minimum:

- a plan that accurately locates all vegetation to be retained/protected with their TPZs identified;
- a plan that accurately locates the location of tree protection fencing and/or ground protection;
- a plan that accurately locates the proposed built form and all services. Services are to be located outside a TPZ or to be bored under the TPZ;
- a plan that accurately identifies finished levels for outdoor areas;

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a plan that accurately locates footing systems and surface details of all works inside a TPZ;
a legend and north point;
clear time frames as to when these must be installed and when they can be removed;
clear direction on what actions must not occur inside the area defined as a Tree Protection Zone.

The tree protection measures outlined in the report must be adhered to before, during and after construction.

5. Tree Protection Fencing is to be established around the street trees prior to demolition and maintained until all works on site are complete.
   a) The fencing is to be constructed and secured so its positioning cannot be modified by site workers.
   b) The fencing is to encompass the entire nature strip under the dripline of the tree.
   c) The Tree Protection Zone is to be established and maintained in accordance with Australian Standards 4970 Protection of trees on development sites.
   d) During construction of the crossover, tree protection fencing may be reduced to the edge of the Council approved crossover to facilitate the construction of the crossover.

6. Root pruning within the TPZ (Tree Protection Zone)
   a) Prior to soil excavation, a trench along the line of the proposed crossover must be dug by hand.
   b) All affected roots must be correctly pruned according to AS 4373-2007.

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

8. 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.

9. 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.
10. The applicant must apply for the nominated legal point of discharge for the development where stormwater run-off must be collected and free drained to Council’s drainage assets to Council’s standards.

11. Stormwater discharge must be retained for the portion above the discharge calculated using a Coefficient of Runoff of 0.35. The development is to have a Stormwater Detention System installed, the design capacity of which is to be to the satisfaction of the Responsible Authority. The stormwater detention system is to include the runoff collected from the existing dwelling.

12. Any seepage/agricultural drainage water must be filtered to rain water clarity and must be pumped to the nearest Council Drain/Pit and not be discharged to the kerb and channel unless directed otherwise.

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

14. The driveway / parking areas / paved courtyards / paths and any 'pervious' pavers must be graded / drained to prevent stormwater discharge onto the footpath and into adjacent properties.

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

Melbourne Water Conditions (No.s 16-24)

16. No polluted and / or sediment laden runoff is to be discharged directly or indirectly into Melbourne Water’s drains or watercourses.

17. The dwelling must be set back a minimum of 4.3 metres from the northern property boundary to allow for the passage of overland flows.

Date issued: 19 October 2015

Planning and Environment Regulations 2005 Form 4

Signature for the Responsible Authority

Note: Under Part 4, Division 1A of the Planning and Environment Act 1987, a permit may be amended. Please check with the responsible authority that this permit is the current permit and can be acted upon.
18. The extended ground floor must be constructed no lower than the existing ground floor level.

19. The carport must be of an open style of construction and must remain open for the life of the structure.

20. The coping of the spa must be no greater than 150mm above the natural surface level of the site.

21. Excavated material from the site is to be removed and not stored or redistributed on site.

22. Any new fencing must be of an open style of construction to allow for the passage of floodwaters/overland flow.

23. All open space within the property must be set at the existing natural surface level so as not to obstruct the passage of overland flows, and no retaining walls are to be used in the development of the land.

24. Imported fill must be kept to a minimum on the property and must only be used for the sub floor area of the dwelling.

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

The Responsible Authority may extend the period referred to above if a request is made in writing:
   ➢ Before the permit expires; or
   ➢ Within 6 months afterwards if development has not commenced; or
   ➢ Within 12 months afterwards if the development has lawfully commenced

Permit Notes

- A permit must be obtained from Council for all vehicular crossings. These must be constructed under Council's supervision for which 24 hours notice is required.
- Building approval must be obtained prior to the commencement of the above approved works.

Date issued: 19 October 2015

Planning and Environment Regulations 2005 Form 4

Signature for the Responsible Authority

Note: Under Part 4, Division 1A of the Planning and Environment Act 1987, a permit may be amended. Please check with the responsible authority that this permit is the current permit and can be acted upon.
- Consultation should take place with Council respect of the removal of the vehicular crossing and reinstatement works.
- Reticulated sewerage must be provided to the requirements of the Sewerage Authority.
- Prior to commencement of any building works, an Asset protection Application must be taken out. This can be arranged by calling Asset Protection Administrator, Mon-Fri 9:00am to 1:00pm on 9599 4638.

The applicable flood level for the property is 8.3 metres to Australian Height Datum.

If further information is required in relation to Melbourne Water's permit conditions shown above, please contact Melbourne Water on 9679 7517, quoting Melbourne Water’s reference 234677.

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Date issued: 19 October 2015

Planning and Environment Regulations 2005 Form 4

Signature for the Responsible Authority

Note: Under Part 4, Division 1A of the Planning and Environment Act 1987, a permit may be amended. Please check with the responsible authority that this permit is the current permit and can be acted upon.
ATTACHMENT 2
Aerial Surrounds and Imagery

Aerial overview of the site and surrounds

<table>
<thead>
<tr>
<th>Legend</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject site</td>
<td>⭐</td>
</tr>
<tr>
<td>Objector(s)</td>
<td>●</td>
</tr>
<tr>
<td>Withdrawn</td>
<td>▲</td>
</tr>
</tbody>
</table>
Figure 2 View towards the site from the west – front elevation of subject site

Figure 3 View towards the site from the northwest.
ATTACHMENT 3
Neighbourhood Character Policy (Precinct B1)

Neighbourhood Character Precinct

Preferred Future Character Statement

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

Precinct Guidelines

<table>
<thead>
<tr>
<th>Objectives</th>
<th>Design Responses</th>
<th>Avoid</th>
<th>Planning Officer Assessment</th>
</tr>
</thead>
</table>
| To encourage the retention of dwellings that contribute to the valued character of the Precinct in the design of development proposals. | • Attempt to retain wherever possible intact and good condition dwellings that contribute to the valued character of the Precinct in designing new development.  
• Alterations and extensions to should retain the front of these dwellings. | Demolition of dwellings that contribute to the valued character of the Precinct. | Some minor additional demolition of walls to the existing dwelling has occurred, however this is of little consequence as the vast majority of the dwelling was always approved for demolition and the proposed dwelling bears no resemblance to that which existed previously. |
| To maintain and enhance the garden settings of the dwellings. | • Retain large trees wherever possible.  
• Prepare a landscape plan to accompany all applications for new dwellings that includes substantial trees and shrubs. | Lack of landscaping and substantial vegetation.  
Removal of large canopy trees. | No change |
| To maintain the rhythm of spacious visual separation between buildings and provide space for front gardens. | • Buildings should be sited to allow space for the planting of trees and shrubs.  
• Buildings should be sited to create the appearance of space between buildings and accommodate substantial vegetation. | Lack of front garden space | No change |
<table>
<thead>
<tr>
<th>Objectives</th>
<th>Design Responses</th>
<th>Avoid</th>
<th>Planning Officer Assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>To minimise the dominance of car parking facilities, driveways and crossovers.</td>
<td>- Locate garages and car ports behind the line of the dwelling.</td>
<td>Car parking facilities that dominate the facade or view of the dwelling.</td>
<td>No change</td>
</tr>
<tr>
<td></td>
<td>- Provide vehicular access from a rear laneway where possible, while maintaining pedestrian access from the street frontage</td>
<td>Dominance of crossovers and driveways.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Provide a maximum of one single-width crossover per typical property frontage, where no alternative is available.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>To ensure new development respects the dominant buildings forms and scale of buildings in the Precinct, through the use of innovative architectural responses.</td>
<td>- Recess upper storey elements from the front façade.</td>
<td>Large bulky buildings with flat, poorly articulated wall surfaces.</td>
<td>No change</td>
</tr>
<tr>
<td></td>
<td>- Articulate the form of buildings and elevations, particularly front facades.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>To respect the identified heritage qualities of adjoining buildings.</td>
<td>- Where adjoining an identified heritage building, reflect the dominant building form, height, materials and massing of the heritage building/s, of the heritage building/s in the new building design.</td>
<td>Imitation or reproduction of historic building styles and detailing.</td>
<td>The development is not abutting heritage building.</td>
</tr>
<tr>
<td>To reflect the building materials in locations where there is particular consistency.</td>
<td>- Where consistent materials are used in the streetscape, use similar tonings in the colours of new buildings.</td>
<td>Excessive use of render on external walls.</td>
<td></td>
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<tr>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>To maintain the openness of the streetscape.</td>
<td>- Provide open style front fences appropriate to the building era.</td>
<td>High, solid front fencing.</td>
<td>The proposal proposes to alter the front fence from a straight solid style front fence to an open style curved front fence to the northern boundary. This is considered acceptable because the fence maintains the openness of the streetscape.</td>
</tr>
</tbody>
</table>

Item 4.8 – Matters of Decision
## ATTACHMENT 4

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

<table>
<thead>
<tr>
<th>Title and Objective</th>
<th>Complies with Standard?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A1 Neighbourhood Character</strong></td>
<td>Yes</td>
<td>Refer section 7.1 of the report.</td>
</tr>
<tr>
<td>Design respects existing neighbourhood character or contributes to a preferred neighbourhood character. Development responds to features of the site and surrounding area.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>A2 Integration with Street</strong></td>
<td>Yes</td>
<td>No change from what the original permit allows.</td>
</tr>
<tr>
<td>Integrate the layout of development with the street.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>A3 Street Setback</strong></td>
<td>No</td>
<td>Minimum: 9m</td>
</tr>
<tr>
<td>Setbacks of buildings from a street respect the existing or preferred neighbourhood character and make efficient use of the site.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Proposed: 7.5 m No change</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>A4 Building Height</strong></td>
<td>Yes</td>
<td>Required: 8m</td>
</tr>
<tr>
<td>Building height respects the existing or preferred neighbourhood character.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Proposed: 7.91m No Change</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>A5 Site Coverage</strong></td>
<td>Yes</td>
<td>Maximum: 50%</td>
</tr>
<tr>
<td>Site coverage should respect the existing or preferred neighbourhood character and respond to the features of the site.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Proposed: 49.39 No change</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>A6 Permeability</strong></td>
<td>Yes</td>
<td>Minimum: 20%</td>
</tr>
<tr>
<td>Reduce the impact of stormwater run-off on the drainage system and facilitate on-site stormwater infiltration.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Proposed: No change</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>A7 Energy Efficiency</strong></td>
<td>Yes</td>
<td>No change from what the original permit allows.</td>
</tr>
<tr>
<td>-------------------------</td>
<td>-----</td>
<td>-------------------------------------------------</td>
</tr>
<tr>
<td>Achieve and protect energy efficient dwellings.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ensure the development's orientation and layout reduce fossil fuel energy use and makes appropriate use of daylight and solar energy.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>A8 Significant Trees</strong></th>
<th>Yes</th>
<th>No change from what the original permit allows.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Development respects the landscape character of the neighbourhood and retains significant trees on site.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>A10 Side and Rear Setbacks</strong></th>
<th>Yes</th>
<th>No change from what the original permit allows.</th>
</tr>
</thead>
<tbody>
<tr>
<td>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.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>A11 Walls on Boundaries</strong></th>
<th>No</th>
<th>Maximum Height: 3.6m</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Proposed</strong></td>
<td>Maximum Average Height: 3.3m</td>
<td></td>
</tr>
<tr>
<td>Maximum Length: -</td>
<td>Proposed: No change from what the original permit allows</td>
<td></td>
</tr>
<tr>
<td><strong>Proposed</strong></td>
<td>Proposed: No change from what the original permit allows</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>A12 Daylight to existing windows</strong></th>
<th>Yes</th>
<th>No change from what the original permit allows.</th>
</tr>
</thead>
<tbody>
<tr>
<td>To allow adequate daylight into existing habitable room windows.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Ground Floor</strong></th>
<th><strong>First Floor</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Required</strong></td>
<td><strong>Proposed</strong></td>
</tr>
<tr>
<td>North (side)</td>
<td>0m or 2m</td>
</tr>
<tr>
<td>South (side)</td>
<td>0m or 2m</td>
</tr>
<tr>
<td>East (rear)</td>
<td>0m or 3m</td>
</tr>
<tr>
<td>Item</td>
<td>Description</td>
</tr>
<tr>
<td>------</td>
<td>-------------</td>
</tr>
<tr>
<td>A13</td>
<td>North Facing Windows</td>
</tr>
<tr>
<td></td>
<td>Allow adequate solar access to existing north-facing habitable room windows.</td>
</tr>
<tr>
<td>A14</td>
<td>Overshadowing Open Space</td>
</tr>
<tr>
<td></td>
<td>Ensure buildings do not unreasonably overshadow existing secluded private open space.</td>
</tr>
<tr>
<td>A15</td>
<td>Overlooking</td>
</tr>
<tr>
<td></td>
<td>Limit views into existing secluded private open space and habitable room windows</td>
</tr>
<tr>
<td>A16</td>
<td>Daylight to New Windows</td>
</tr>
<tr>
<td></td>
<td>Allows adequate daylight into new habitable room windows.</td>
</tr>
<tr>
<td>A17</td>
<td>Private Open Space</td>
</tr>
<tr>
<td></td>
<td>Provide adequate private open space for the recreation and service needs of residents.</td>
</tr>
<tr>
<td>A18</td>
<td>Solar Access to Open Space</td>
</tr>
<tr>
<td></td>
<td>Allow solar access into secluded private open space of a new dwelling.</td>
</tr>
<tr>
<td>A19</td>
<td>Design Detail</td>
</tr>
<tr>
<td></td>
<td>Encourage design detail that respects the existing or preferred neighbourhood character.</td>
</tr>
<tr>
<td>A20</td>
<td>Front Fences</td>
</tr>
<tr>
<td></td>
<td>Encourage front fence design that respects the exiting or preferred neighbourhood character.</td>
</tr>
</tbody>
</table>
1. **Purpose and background**

   To report a secondary consent application to allow:
   
   - Relocation of the existing solar panels from the north and east of the roof to propose two new rows of five panels one to the north-west and one to the south-east; and,
   
   - Inclusion of two A/C units to the north-east of the terrace with 800mm high louver screening.

   on a lot with an area of 363 square metres (refer Attachment 1) at 398 New Street, Brighton (refer Attachment 2).

   Planning permit 2015/679/1 was issued at the direction of the Victorian Civil and Administrative Tribunal (VCAT) on 28 October 2016. The permit allows the alterations and additions of a single dwelling on a lot less than 500 square metres in the Neighbourhood Residential 3 Zone (refer Attachment 3). No previous plans have been endorsed.

<table>
<thead>
<tr>
<th>Applicant</th>
<th>Mrs LV &amp; Mr S Czyczelis</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date application received</td>
<td>1 March 2017</td>
</tr>
</tbody>
</table>

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 2015/679/1.

3. **Stakeholder Consultation**

   **Referrals**

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

   **Internal referrals**

   The application was not referred to any Council departments for comment.

   **Public notification**

   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. 2015/679/1 issued for **the alterations and additions of a single dwelling on a lot less than 500 square metres in the Neighbourhood Residential 3 Zone** 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>9 May 2017</td>
<td>Secondary Consent Amended Plans</td>
</tr>
<tr>
<td></td>
<td>• Relocation of the existing solar panels from</td>
</tr>
<tr>
<td></td>
<td>the north and east of the roof to propose two</td>
</tr>
<tr>
<td></td>
<td>rows of five panels one to the north-west and</td>
</tr>
<tr>
<td></td>
<td>one to the south-east; and,</td>
</tr>
<tr>
<td></td>
<td>• Inclusion of two A/C units to the north-east</td>
</tr>
<tr>
<td></td>
<td>of the terrace with 800mm high louver screening.</td>
</tr>
</tbody>
</table>

5. **Council Policy**

There are not any primary relevant Council policy matters to consider as part of the request to consider amending plans pursuant to the secondary consent provisions afforded by the planning permission.

6. **Considerations**

The Victorian Civil and Administrative Tribunal have set out, on a number of occasions, the principles, or tests, of Secondary Consent (e.g. Westpoint Corporation P/L v Moreland CC [2005] and Oz Property Group P/L v Moonee Valley CC [2014]).

The tests include the following:

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

The proposed amendments pertain to design changes to relocate the existing solar panels and include two A/C units to the east of the terrace. The proposed changes are considered to be minor in nature and will have limited impact to the amenity of adjoining properties and will not cause material detriment to any third parties. The proposed changes do not conflict with any permit conditions, objections raised in the application for which primary consent was granted for and do not result in a transformation of the proposal. The changes comply with the relevant Planning Scheme policies including Neighbourhood Character, pertain appropriate areas of landscaping and does not increase site coverage.

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 alterations and additions of a single dwelling on a lot less than 500 square metres in the Neighbourhood Residential 3 Zone. The amendments sought under this application are consistent with the proposal and do not authorise something for which 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.

Having regards to the development and the purpose of the planning controls under which the permit was granted, the proposed amendment is considered inconsequential as there has been no material change to the nature of the planning controls and policies affecting the land. It is considered that the changes are appropriate, will not detrimentally impact on the amenity of adjoining properties nor cause material detriment to any third parties.

6.4 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 and remains compliant with the relevant objectives and standards of the Bayside Planning Scheme.

Support Attachments

1. Proposed Development Plans ↓
2. Site and Surrounds Imagery ↓
3. 15/0679 Planning Permit ↓
Item 4.9 – Matters of Decision
Item 4.9 – Matters of Decision
Attachment 2
Site and Surrounds Imagery

Figure 1 Aerial overview of the site and surrounds

<table>
<thead>
<tr>
<th>Legend</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject site</td>
</tr>
</tbody>
</table>
Item 4.9 – Matters of Decision

- View of the front of 398 New Street, Brighton (subject site)

- View of the front of the subject site and the interface with 396 New Street, Brighton
View towards 396 New Street, Brighton (south) from the rear of the subject site
PLANNING PERMIT
5/2015/679/1

Address Of The Land: No. 398 New Street BRIGHTON

The Permit Allows: Alterations and additions of a single dwelling on a lot less than 500 square metres in the Neighbourhood Residential 3 Zone in accordance with the endorsed plans and subject to the following conditions.

The Following Conditions Apply To This Permit:

1. Before the use and/or development start/s, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the plans but modified to show:
   a) Provision of overlooking screens to the south and east of the terrace in accordance with Standard A15 of Clause 54 of the Bayside Planning Scheme.

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

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

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

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

6. Before occupation, screening of windows and roof terraces including fixed privacy screens be designed to limit overlooking as required by Standard A15 and be installed and maintained to the satisfaction of the Responsible Authority thereafter for the life of the building.

7. 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.

Date issued: 28 October 2016

Sarah Collins
Signature for the Responsible Authority

Note: Under Part 4, Division 1A of the Planning and Environment Act 1987, a permit may be amended. Please check with the responsible authority that this permit is the current permit and can be acted upon.
In accordance with Section 69 of the Planning and Environment Act 1987, a request may be submitted to the Responsible Authority within the prescribed timeframes for an extension of the periods referred to in this condition.

**Permit Notes**

- This permit does not constitute any authority to carry out any building works or occupy the building or part of the building unless all relevant building permits are obtained.
- Prior to commencement of any building works, an Asset protection Application must be taken out. This can be arranged by calling Asset Protection Administrator on 9599 4638.
- Council records indicate that there is no easement within the property.
- The existing street tree/s must not be removed or damaged.

**Date issued:** 28 October 2016

Sarah Collins
Signature for the Responsible Authority

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

### Important Information About This Permit

**What has been decided?**
The Responsible Authority has issued a permit.
(Note: This is not a permit granted under Division 5 or 6 of Part 4 of the Planning and Environment Act 1987.)

### When Does a Permit Begin?
A permit operates:
- from the date specified in the permit; or
- if no date is specified, from:
  - (i) the date of the decision of the Victorian Civil and Administrative Tribunal, if the permit was issued at the direction of the Tribunal;
  - (ii) the date on which it was issued, in any other case.

### When Does a Permit Expire?
1. A permit for the development of land expires if:
   - the development or any stage of it does not start within the time specified in the permit; or
   - the development requires the certification of a plan of subdivision or consolidation under the Subdivision Act 1968 and the plan is not certified within two years of the issue of the permit, unless the permit contains a different provision; or
   - the development or any stage is not completed within the time specified in the permit, or, if no time is specified, within two years after the issue of the permit or in the case of a subdivision or consolidation within 5 years of the certification of the plan of subdivision or consolidation under the Subdivision Act 1988.
2. A permit for the use of land expires if:
   - the use does not start within the time specified in the permit, or if no time is specified, within two years after the issue of the permit; or
   - the use is discontinued for a period of two years.
3. A permit for the development and use of land expires if:
   - the development or any stage of it does not start within the time specified in the permit; or
   - the development or any stage of it is not completed within the time specified in the permit, or, if no time is specified, within two years after the issue of the permit; or
   - the use does not start within the time specified in the permit, or, if no time is specified, within two years after the completion of the development; or
   - the use is discontinued for a period of two years.
4. If a permit for the use of land or the development and use of land or relating to any of the circumstances mentioned in section 6A(2) of the Planning and Environment Act 1987, or to any combination of use, development or any of those circumstances requires the certification of a plan under the Subdivision Act 1988, unless the permit contains a different provision:
   - the use or development of any stage is to be taken to have started when the plan is certified; and
   - the permit expires if the plan is not certified within two years of the issue of the permit.
5. The expiry of a permit does not affect the validity of anything done under that permit before the expiry.

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

   To report a secondary consent application to allow for the provision of a 0.3 m x 0.9 m window to the ensuite located along the north-western elevation (refer Attachment 1), on a lot with an area of 342 square metres at 36 Nepean Highway, Brighton (refer Attachment 2).

   Planning Permit 2014/939/1 was issued at the direction of the Victorian Civil and Administrative Tribunal (VCAT) on 24 May 2016 (refer Attachment 3). The permit allows the construction of a second dwelling on the land and the subdivision of land into two lots. Plans have been endorsed (refer to Attachment 4) and works are nearing completion.

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 2014/939/1.

3. Stakeholder Consultation

   Referrals

   There were no external referrals requires to be made in accordance with Clause 66 of the Bayside Planning Scheme and no internal referrals required to be made to other Council departments for comment.

   Public notification

   Applications made in accordance with the 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. 2014/939/1 issued for the construction of a second dwelling on the land and the subdivision of land into two lots 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>18 May 2017</td>
<td>Secondary Consent Amended Plans</td>
</tr>
<tr>
<td></td>
<td>• Provision of a 0.3 m x 0.9 m window to the ensuite located along the north-western elevation.</td>
</tr>
</tbody>
</table>
5. **Council Policy**

There are not any primary relevant Council policy matters to consider as part of the request to consider amending plans pursuant to the secondary consent provisions afforded by the planning permission.

6. **Considerations**

The Victorian Civil and Administrative Tribunal have set out, on a number of occasions, the principles, or tests, of Secondary Consent (e.g. Westpoint Corporation P/L v Moreland CC [2005] and Oz Property Group P/L v Moonee Valley CC [2014]).

The tests include the following:

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

The proposed amendment pertains to design changes to the bathroom located along the north-western elevation (street frontage - Nepean Highway). The small window (0.3 m x 0.9 m) faces the Nepean Highway with no direct views within 9 metres; is located 2 metres above floor level; and, is not a habitable room, therefore no overlooking is anticipated.

The proposed change is considered to be minor in nature and will have no impact to the amenity of adjoining properties and will not cause material detriment to any third parties. The proposed changes do not conflict with any permit conditions, objections raised in the application for which primary consent was granted for; and, does not result in a transformation of the proposal. It is noted that the reason why the amendment is sought is to meet building requirements.

**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 second dwelling on the land and the subdivision of land into two lots. The amendment sought under this application is considered to be consistent with the proposal and does not authorise something for which primary consent is required for under the Bayside Planning Scheme.

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

Having regard to the development and the purpose of the planning controls under which the permit was granted, the proposed amendment is considered inconsequential as there has been no material change to the nature of the planning controls and policies affecting the land. It is considered that the changes are appropriate, will not detrimentally impact on the amenity of adjoining properties nor cause material detriment to any third parties.

**6.4 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 and remains compliant with the relevant objectives and standards of the Bayside Planning Scheme.
Support Attachments

1. Development Plans ↓
2. Site & Surrounds Imagery ↓
3. Planning Permit 2014/939/1 ↓
4. Endorsed Plans to Planning Permit 2014/939/1 ↓
Item 4.10 – Matters of Decision
**ATTACHMENT 2**  
Site and Surrounds Imagery

*Figure 1 Aerial overview of the site and surrounds*

<table>
<thead>
<tr>
<th>Legend</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject site</td>
</tr>
</tbody>
</table>
Figure 2 View from Nepean Highway
PLANNING PERMIT
2013/430/1

Address Of The Land: No. 36 Nepean Highway BRIGHTON
The Permit Allows: Alterations and additions to an existing dwelling on a lot less than 500 square metres in accordance with the endorsed plans and subject to the following conditions.

The Following Conditions Apply To This Permit:

1. Before the development starts, amended plans to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the plans dated 20 May 2014 but modified to show:
   a) A schedule of all external materials and finishes to be provided showing the materials, colours and finishes of all external walls, roof, fascias, window frames and paving.
   b) All plant and equipment (including air conditioning units, heating units, hotwater systems, etc.) which is proposed to be located externally identified on the plans.
   c) Details of window screening treatment to ensure compliance with Clause 54.04-6 Standard A15 (Overlooking) of the Bayside Planning Scheme.
   d) A landscape plan in accordance with condition 6 of this permit showing:
      i. 1 tree capable of growing to a mature height of 14 metres; or
      ii. 2 trees, one capable of growing to a mature height of 10 metres and one capable of growing to a mature height of 12 metres.
   e) The deletion of the north-western roller door associated with the boat storage area.
   f) The north-west property boundary fence to have a minimum height of 1.8 metres.
   g) A minimum 6 metre wide opening is to be provided where the rear driveway intersects with the Right of Way.
   h) The car spaces must be at least 6 metres wide and 5.4 metres long.
   i) The roller door must be setback at least 1 metre from the rear property boundary.

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

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

4. All pipes, fixtures, fittings and vents servicing any building on the site must be concealed in service ducts or otherwise hidden from view to the satisfaction of the responsible authority.

Date issued: 9 September 2014

Planning and Environment Regulations 2005 Form 4

Note: Under Part 4, Division 1A of the Planning and Environment Act 1987, a permit may be amended. Please check with the responsible authority that this permit is the current permit and can be acted upon.
IMPORTANT INFORMATION ABOUT THIS NOTICE

WHAT HAS BEEN DECIDED?

The responsible Authority has issued a permit.

WHEN DOES A PERMIT BEGIN?

A permit operates:
- from the date specified in the permit, or
- if no date is specified, from:
  a) the date of the decision of the Victorian Civil and Administrative Appeals Tribunal, if the permit was issued at the direction of the Tribunal, or
  b) the date on which it was issued, in any other case.

WHEN DOES A PERMIT EXPIRE?

1. A permit for the development of land expires if—
   - the development or any stage of it does not start within the time specified in the permit, or
   - the development requires the certification of a plan of subdivision or consolidation under the Subdivision Act 1985 and the plan is not certified within two years of the issue of the permit, unless the permit contains a different provision, or
   - the development or any stage is not completed within the time specified in the permit, or, if no time is specified, within two years after the issue of the permit or in the case of a subdivision or consolidation within 5 years of the certification of the plan of subdivision or consolidation under the Subdivision Act 1985.

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

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

4. If a permit for the use of land or the development and use of land or relating to any of the circumstances mentioned in section 6AE(2) of the Planning and Environment Act 1987, or to any combination of use, development or any of those circumstances requires the certification of a plan under the Subdivision Act 1985, unless the permit contains a different provision—
   - the use or development of any stage is to be taken to have started when the plan is certified; and
   - the permit expires if the plan is not certified within two years of the issue of the permit.

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

WHAT ABOUT APPEALS?

The person who applied for the permit may appeal against any condition in the permit unless it was granted at the direction of the Victorian Civil and Administrative Appeals Tribunal where, in which case no right of appeal exists.

An appeal must be lodged within 60 days after the permit was issued, unless a Notice of Decision to grant a permit has been issued previously, in which case the appeal must be lodged within 60 days after the giving of that notice.

An appeal is lodged with the Victorian Civil and Administrative Appeals Tribunal.

An appeal must be made on a Notice of Appeal form which can be obtained from the Victorian Civil and Administrative Appeals Tribunal, and be accompanied by the prescribed fee.

An appeal must state the grounds upon which it is based.

An appeal must also be served on the Responsible Authority.

Details about appeals and the fees payable can be obtained from the Victorian Civil and Administrative Appeals Tribunal.
5. 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.

6. Before the development starts, a landscape plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit. The plan must be drawn to scale with dimensions and three copies must be provided. The landscaping plan must show:
   a) A survey (including botanical names) of all existing vegetation to be retained and/or removed;
   b) Buildings and trees (including botanical names) on neighbouring properties within three metres of the boundary;
   c) Details of surface finishes of pathways and driveways;
   d) A planting schedule of all proposed trees, shrubs and ground covers, including botanical names, common names, pot sizes, sizes at maturity, and quantities of each plant;
   e) Landscaping and planting within all open areas of the site including canopy tree planting within the front setback;
   f) Landscaping within the splay required by Condition 11 to be no higher than 1 metre upon maturity; and
   g) Planting within easements to be of an appropriate species to minimise impacts upon any assets in the easement.

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

8. The landscaping shown on the endorsed plans must be maintained to the satisfaction of the Responsible Authority.

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

   The Responsible Authority may extend the periods referred to above if a request is made in writing:
   ➢ Before the permit expires; or
   ➢ Within 6 months afterwards if development has not commenced; or
   ➢ Within 12 months afterwards if the development has lawfully commenced.

Permit Notes

- Building approval must be obtained prior to the commencement of the above approved works.

Date issued: 9 September 2014

Planning and Environment Regulations 2005 Form 4

Signature for the Responsible Authority

Note: Under Part 4, Division 1A of the Planning and Environment Act 1987, a permit may be amended. Please check with the responsible authority that this permit is the current permit and can be acted upon.
IMPORTANT INFORMATION ABOUT THIS NOTICE

WHAT HAS BEEN DECIDED?

- The responsible Authority has issued a permit.

WHEN DOES A PERMIT BEGIN?

A permit operates:
- from the date specified in the permit, or
- if no date is specified, from:
  a) the date of the decision of the Victorian Civil and Administrative Appeals Tribunal, if the
     permit was issued at the direction of the Tribunal, or
  b) the date on which it was issued, in any other case.

WHEN DOES A PERMIT EXPIRE?

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

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

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

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

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

WHAT ABOUT APPEALS?

- The person who applied for the permit may appeal against any condition in the permit unless it
  was granted at the direction of the Victorian Civil and Administrative Appeals Tribunal where, in
  which case no right of appeal exists.
- An appeal must be lodged within 60 days after the permit was issued, unless a Notice of
  Decision to grant a permit has been issued previously, in which case the appeal must be lodged
  within 60 days after the giving of that notice.
- An appeal is lodged with the Victorian Civil and Administrative Appeals Tribunal.
- An appeal must be made on a Notice of Appeal form which can be obtained from the Victorian
  Civil and Administrative Appeals Tribunal, and be accompanied by the prescribed fee.
- An appeal must state the grounds upon which it is based.
- An appeal must also be served on the Responsible Authority.
- Details about appeals and the fees payable can be obtained from the Victorian Civil and
  Administrative Appeals Tribunal.
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