

Planning and Environment Act 1987

Panel Report

Yarra Planning Scheme Amendment C225

Mecwacare Residential Aged Care Facility

27 July 2018

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Panel Report pursuant to section 25 of the Act

Yarra Planning Scheme Amendment C225

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Sarah Carlisle, Chair

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List of Abbreviations

Council	Yarra City Council
DDA	<i>Disability Discrimination Act 1992 (Cth)</i>
DELWP	Department of Environment, Land, Water and Planning
GRZ	General Residential Zone
HO	Heritage Overlay
the Incorporated Document	Document titled <i>351-353 Church Street, Richmond – Incorporated Document, November 2017</i>
LPPF	Local Planning Policy Framework
NRZ	Neighbourhood Residential Zone
the Snapshot	<i>Residential Aged Care - A Snapshot of Homes in the City of Yarra in 2015</i>
SPPF	State Planning Policy Framework
the subject land	351-353 Church Street, Richmond
VPP	Victoria Planning Provisions
VCAT	Victorian Civil and Administrative Tribunal
Yarra	the municipal area of Yarra City Council

Overview

Amendment summary

The Amendment	Yarra Planning Scheme Amendment C225
Common name	Mecwacare Residential Aged Care Facility
Brief description	Site specific amendment to allow the subject land to be used and developed for an 80 bed residential aged care facility
Subject land	351-353 Church Street, Richmond
The Proponent	Mecwacare
Planning Authority	Yarra City Council
Authorisation	10 January 2018, subject to one condition: The exhibited incorporated document must be generally in accordance with the draft incorporated document revised by DELWP officers, and attached to this letter, titled '351-355 Church Street, Richmond – Incorporated Document, November 2017'.
Exhibition	26 February to 2 April 2018
Submissions	Number of Submissions: 7 Opposed: 6 Opposed: - Pasquale Vizzone - Ron and Marion Carpenter - Anne Birsa - YWCA Housing - Gaynor Taylor - Adele Heinze Support: - Urbis, on behalf of Mecwacare

Panel process

The Panel	Sarah Carlisle
Directions Hearing	8 June 2018 at Planning Panels Victoria, 1 Spring Street Melbourne
Panel Hearing	27 June 2018 at Collins Square Business Centre, 727 Collins Street Melbourne 29 June 2018 at Planning Panels Victoria
Site inspections	24 June 2018, site and surrounds, unaccompanied 3 July 2018, Richmond House interior and exterior, accompanied by Grant Divall of YWCA

Appearances

Council:

- Ms Adeline Lane of Maddocks

Mecwacare:

- Mr Chris Townsend QC and Andrew Walker of Counsel, instructed by Romy Davidov of Best Hooper

Young Womens Christian Association (YWCA):

- Ms Serena Armstrong of Counsel, instructed by Grant Divall of YWCA

Citation

Yarra PSA C225 [2018] PPV

Date of this Report

27 July 2018

Executive summary

(i) Summary

Yarra Planning Scheme Amendment C225 (the Amendment) seeks to incorporate the site specific control titled *351-353 Church Street, Richmond – Incorporated Document, November 2017* (the Incorporated Document) into the scheme, to allow the subject land to be used and developed as residential aged care facility, providing 79 to 80 beds for clients with complex needs. The Incorporated Document is intended to operate like a permit.

The subject land currently accommodates two double storey terraces (one single-fronted and one double-fronted), constructed in around 1855. The terraces have heritage value. The original terraces will be retained, and later additions (which do not have heritage value) will be demolished and replaced with a purpose built five storey building. The new additions will substantially exceed the 9 metre, two storey height limit that applies under the Neighbourhood Residential Zone.

One of the key issues was the need for additional aged care beds in Yarra, and whether the fact that the Amendment would go some way to addressing that need was sufficient justification for the built form proposed. The built form will impact the heritage terraces to be retained, and will have amenity impacts on the neighbours to the subject land.

The neighbour to the direct east of the subject land is Richmond House, a facility operated by YWCA that provides accommodation for vulnerable women, many of whom are escaping domestic violence and/or have mental health issues. YWCA expressed particular concerns in relation to the impact of the proposed development on its residents, including overshadowing, overlooking, loss of daylight, loss of privacy and ensuring safe and convenient access from Church Street to Richmond House (which is via a carriageway easement through the subject land).

Other issues raised by submitters included:

- built form issues including height and visual bulk
- heritage impacts on the retained terraces and the Church Street precinct more broadly
- impacts on the amenity of neighbouring properties (particularly in terms of overlooking)
- neighbourhood character
- the impact of the proposed aged care reforms
- the appropriateness of a site specific control under Clause 52.03
- concerns over whether the Amendment would set a precedent
- traffic and carparking issues.

The proposed Amendment will help to address a significant shortfall in the number of aged care beds required in Yarra to meet the Commonwealth Government's responsible ratios for the provision of aged care places. It will provide specialised care for clients with complex needs. While it represents a substantial built form that will have heritage and amenity impacts (including on the residents of Richmond House), the Panel concludes that on

balance, it will provide a net community benefit. The Amendment should be supported, subject to minor modifications to the design of the proposed development.

(ii) Recommendations

Based on the reasons set out in this Report, the Panel recommends that Yarra Planning Scheme Amendment C225 be adopted as exhibited subject to the following:

1. Amend the Incorporated Document to:

- a) include additional conditions addressing the recommendations of Mr Gard'ner, Mr de Young and Mr Patrick, as set out in the Panel's recommended version in Appendix B**
- b) include additional conditions requiring:**
 - further assessment by a suitably qualified person of the overlooking impacts from east facing windows in the proposed development to habitable rooms and the open space areas of Richmond House, to the satisfaction of the Responsible Authority**
 - if required by the Responsible Authority, additional screening to be applied to the east facing windows prior to occupation of those rooms, to the satisfaction of the Responsible Authority.**

1 Introduction

1.1 The Amendment

(i) Amendment description

The Amendment proposes to change the schedules to Clauses 52.03 (Specific sites and exclusions) and 81.01 (Documents incorporated in this scheme) to incorporate the site specific control titled *351-353 Church Street, Richmond – Incorporated Document, November 2017* (the Incorporated Document) to allow the subject land to be used and developed as follows:

- *Use of land for the purposes of a Residential aged care facility, as defined in Clause 74 of the planning scheme.*
- *Partial demolition of the existing heritage building.*
- *Construction of a multi-storey Residential aged care facility.*

The Amendment effectively ‘switches off’ all other controls in the scheme, but only if the land is used and developed in accordance with the Incorporated Document. The Incorporated Document operates like a permit, in that it requires the land to be used and developed in accordance with plans endorsed under the Incorporated Document, and subject to the conditions set out in the Incorporated Document.

The Amendment is required because the proposed development exceeds the mandatory maximum height of 9 metres (two storeys) that applies to the subject land under the Neighbourhood Residential Zone.

The Amendment does not change the underlying zoning of the subject land. If the subject land were to be used or developed in any way other than as allowed under the Incorporated Document, the existing zone and overlays would apply.

(ii) Purpose of the Amendment

According to the Explanatory Report for the Amendment, Yarra is experiencing a lack of supply of residential aged care facilities, and is in need of more beds to meet the predicted population increase. The Amendment will help address these shortcomings.

(iii) The subject land

The subject land is shown in Figure 1 (below). It is essentially rectangular, with a 40 metre frontage to Church Street, and a depth of about 60 metres. The total site area is about 2,417 square metres. The subject land currently accommodates two double storey terraces (one single-fronted and one double-fronted), constructed in around 1855. The terraces have:

- a small single storey addition attached to the southern side, set back about 5.7 metres from the southern boundary
- two substantial three storey additions attached to the rear, constructed in about 1940 (northern wing) and about 1970 (southern wing).

The subject land is currently used for a hotel (the Richmond Hill Hotel).

A 4.5 metre wide carriageway easement extends along the length of the northern boundary of the subject land, providing vehicle and pedestrian access to Richmond House which immediately abuts the subject land to the east.

Figure 1 The subject land



Source: Council's Part A submission with Panel annotations

(iv) Surrounds

Richmond House is owned and operated by YWCA, offering accommodation to women escaping domestic violence, women with mental health issues and women on very low incomes. Richmond House is its largest property, providing a quarter of the organisation's housing.

Richmond House has 69 small studio style rooms with ensuites, and communal areas for residents, in a six storey building. A smaller single storey building housing a main entry foyer area and office and administration areas is located on the western side of Richmond House, adjacent to the subject land.

The length of stay for residents of Richmond House varies from short term stays, to stays of 20 to 30 years. The longest current resident has lived at Richmond House since 1974. All residents are offered a periodic lease and are able to stay as long as they wish. According to YWCA, the average length of stay is between 2 and 5 years.¹

Richmond House has an open space area for residents in the south western corner and extending down the southern edge of the Richmond House site. It consists of a sunken paved area which is accessed from the basement level of Richmond House, with steps leading up to a substantial vegetable patch, and a grassed area with some wooden steps that are used by

¹ Email from YWCA to Planning Panels Victoria dated 3 July 2018.

the residents for informal seating. The open space is screened along the western and southern sides with medium to large trees and vegetation.

Richmond House's address is 345 Church Street, although it does not have direct frontage to Church Street. Its only access to Church Street is via the carriageway easement along the northern boundary of the subject land. It is also accessed via George Street.

The other immediate abuttals to the subject land are:

- 343 Church Street to the north – a two storey apartment building at the front and a four storey apartment building at the rear, accessed via a shared driveway
- 357-359 Church Street to the south – a double storey rendered heritage building with a three storey rear addition that is used for short stay accommodation.

Further afield, surrounding land uses include a mix of residential development (including single dwellings and apartment buildings of between two and six storeys), interspersed with community and non-residential uses including:

- St Stephens Anglican Church and St Ignatius Catholic Cathedral
- administrative buildings associated with the Edmund Rice Foundation and Jesuit Social Services
- a childcare centre
- a physiotherapy clinic
- Richmond Library
- schools.

The subject land is well located in terms of access to services and facilities. It is located on a tram route, close to the Swan Street and Bridge Road activity centres, and close to major hospitals (including the Epworth Hospital in Bridge Road) and specialist medical services.

1.2 Background to the proposal

Mecwacare is a not-for-profit organisation that provides residential aged care, respite care, in-home support, community programs, and disability and nursing services.

Council received an amendment request from Urbis on behalf of Mecwacare on 3 November 2016, to introduce a site-specific control that would allow construction of a new five storey facility to the rear of the terraces, providing 88 residential aged care facility beds. The request was supported by a set of architectural plans, and a number of technical reports, copies of which Council provided as attachments to its Part A submission.

Council officers undertook a preliminary assessment of the strategic and statutory planning merits of the proposal, informed by advice from urban design consultants David Lock and Associates, and heritage consultants GJM Heritage. Council's preliminary assessment identified several issues that needed to be resolved, including:

- excessive visual bulk when viewed from adjoining properties and the street
- issues relating to heritage, open space, parking, trees, environmentally sustainable design and engineering
- a better understanding of, and evidence supporting, the net community benefit offered by the proposed facility
- queries raised by DELWP in relation to the justification for the use of a site-specific control under Clause 52.03.

Council officers worked with Mecwacare over the subsequent months to refine the design to address Council's concerns. Mecwacare lodged revised plans in June and again in November 2017, which:

- reduced the scale of the facility from 88 beds to 79 beds
- increased upper level setbacks along the southern edge of the proposed new building, to better address the heritage building to the south at 357-359 Church Street
- slightly increased the setbacks along the eastern elevation (the interface with Richmond House), from 2.3 metres to 2.9 metres
- included a lower front fence
- provided three options for building finishes.

Discussions between DELWP and Mecwacare resolved DELWP's concerns around the use of Clause 52.03. In December 2017, Council resolved to seek authorisation to prepare the Amendment based on the revised design. Authorisation was granted on 10 January 2018.

This report has necessarily been somewhat brief in its discussion of the background to the Amendment. Council's Part A submission, including the detailed chronology provided by Council and the comprehensive set of annexures to the Part A submission, demonstrate to the Panel that a significant amount of work has gone into the development of the Amendment, both from Council and from Mecwacare. The proposal has been closely scrutinised by Council officers, in terms of the built form and heritage outcomes, the strategic justification for the Amendment, and how the Amendment relates to the need for aged care beds in Yarra. The design has been significantly refined through this process, including by reducing the overall scale of the proposed new addition, and providing significantly increased setbacks to the heritage building to the south of the subject land.

Council and Mecwacare are to be commended in relation to the cooperative and comprehensive approach they have taken in relation to the development of the Amendment and the refinement of the design of the proposed facility.

1.3 Revised documentation

The exhibited Amendment included the Incorporated Document, and a set of architectural plans for the proposed development as a reference document.

(i) Architectural plans

The architectural plans were prepared by CHT Architects, and included a photomontage of the proposed development, a survey plan, existing and proposed site plans, demolition plans, proposed floor plans, elevations and sections, shadow diagrams in plan, section and elevation views, and overlooking diagrams. The exhibited plans were Revision C (Revisions A and B reflected the pre-exhibition changes made following Council's preliminary assessment of the proposed design).

On 14 June 2018, prior to the Hearing commencing, Mecwacare circulated a Hearing Booklet that provided updated plans (Revision D), along with some additional information requested by the Panel (including a cadastral plan, aerial photographs and site context plans which better demonstrated the context of the site and its relationship with adjacent built form, and

plans demonstrating site opportunities and constraints). On 22 June, Mecwacare circulated a revised copy of the Hearing Booklet that included shadow diagrams that had been inadvertently omitted from the version circulated on 14 June.

There was no suggestion from any party that the changes made in the Revision D plans were such that further notification was required. The changes reduce the impacts of the proposed development on third parties, rather than increase the impacts. Accordingly, the Panel does not consider that any further notification is required.

The Panel's assessment has proceeded on the basis of the updated plans in the Hearing Booklet (22 June version), specifically the Revision D plans. It notes that each of the expert witnesses had reviewed and based their evidence on the Revision D plans.

(ii) The Incorporated Document

The exhibited version of the Incorporated Document is dated November 2017. Several updated versions of the Incorporated Document were provided to the Panel at various stages of the proceeding (all were still dated November 2017), including:

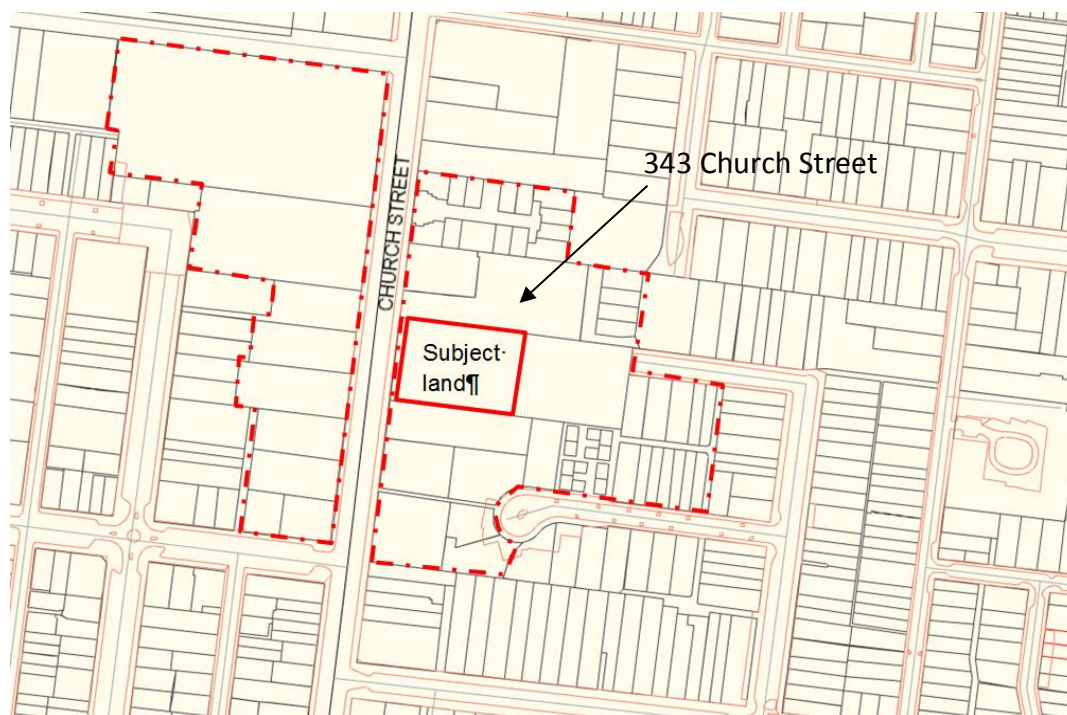
- a version updated by Urbis (for Mecwacare) to include a condition that amended plans be submitted including an updated finishes schedule which is to provide white or pale finishes to the elevations (Attachment 37 to Council's Part A submission)
- a pre-Hearing version received following the Directions Hearing and prior to the Hearing, updated by Best Hooper (for Mecwacare) including (among other changes):
 - reference to the Revision D plans in the Hearing Booklet, rather than the exhibited Revision C plans
 - changes recommended by Mr de Young in relation to access and parking arrangements
- Council's amended version tabled at the Hearing (as Appendix 1 to Council's Part B submission)
- a post-Hearing version submitted on 2 July 2018, updated by Best Hooper with Council's agreement, including (among other things):
 - changes recommended by Mr Gardner
 - further changes recommended by Mr de Young
 - changes recommended by Mr Patrick.

The Panel has provided a track changes version of the Incorporated Document reflecting its conclusions and recommendations set out in this Report. This is tracked against the exhibited version, and takes into account each of the revised versions referred to above.

1.4 Procedural issues

(i) Notification

Some of the submissions made to Council raised concerns over whether owners (as opposed to occupiers) of the apartment buildings at 343 Church Street had been notified. Council confirmed in its Part A submission that direct notification was given to all owners and occupiers of the properties identified in Figure 2 (below), including the owners of the apartments at 343 Church Street.

Figure 2 Extent of direct notification of the Amendment

Source: Council's Part A submission with Panel's annotations

(ii) Material presented by YWCA

Mr Divall, Housing Development Manager at YWCA, attended the Directions Hearing on behalf of YWCA. He was not represented at that time, and had indicated that he did not intend to call any expert witnesses.

Late on 22 June 2018, Planning Panels Victoria received an email from Mr Divall indicating that YWCA would be represented by Ms Armstrong of Counsel at the hearing, and that it intended to rely on:

- material prepared by DKO Architecture which included a shadow analysis of the proposed development and an analysis of the extent to which the proposed development failed to comply with the side and rear setback requirements in Clause 55 (ResCode)
- a report being prepared by Sandra Rigo of Hansen Partnership.

The email was received two clear business days before the commencement of the Hearing. The DKO material was attached to the email, but Ms Rigo's report was not (and was not circulated until late on the evening before the commencement of the Hearing).

The Panel raised the email and the material that YWCA sought to rely on as preliminary matters at the commencement of the Hearing.

Both Council and Mecwacare expressed concern that they had not had the opportunity to review or respond to the material circulated by YWCA, and that if YWCA sought to rely on that material as evidence, they would need an opportunity to respond to the material, including through calling further expert evidence of their own if that was thought necessary.

Ms Armstrong indicated that she did not intend to call the authors of the material, and that the material was being presented as submission rather than as evidence. However her written submissions presented at the hearing indicated that YWCA sought to rely on the material to establish certain matters. For example, the submission at paragraph 51 states:

The YWCA relies upon the material prepared by Ms Rigo and DKO to establish that the visual bulk, height, massing and loss of privacy will have an unacceptable impact upon the amenity of the residents of Richmond House.

The Panel indicated that it would accept the material, but that it would be treated as submission rather than evidence, and it would be weighted accordingly.

(iii) Site inspections

The Panel conducted an unaccompanied site inspection of the subject site and the surrounding area prior to the Hearing, on 24 June 2018. The site inspection was conducted from the public realm only, which included walking the length of the carriageway easement which allowed a detailed inspection of the interfaces of the subject land with the apartments to the north at 343 Church Street, and Richmond House to the east.

The email from YWCA dated 22 June 2018 requested that the Panel conduct a site inspection of the interior and exterior Richmond House. The site inspection occurred on 3 July 2018, shortly after the Hearing concluded. The Panel was accompanied by Mr Divall on the site inspection. The Panel was able to inspect an unoccupied private room in Richmond House, several communal areas including kitchens and living areas with windows looking toward the subject site, the communal open space area in the south west corner of the site, and the access arrangements in and out of Richmond House (from the carriageway easement through the subject site, and from George Street). All parties were invited to attend, although none chose to do so.

1.5 Issues dealt with in this Report

The key issues for the Council and Mecwacare were:

- strategic justification for the Amendment, including the need for additional aged care beds in Yarra
- the impact of the proposed aged care reforms
- the appropriateness of a site specific control under Clause 52.03
- built form and heritage issues.

The key issues for YWCA were:

- excessive height and insufficient setbacks along the eastern boundary of the subject land (the shared boundary with Richmond House)
- overlooking
- overshadowing of the open space area at Richmond House
- the steep grading, increased traffic and proposed design of the access to the rear carpark (which utilises the carriageway easement)
- the appropriateness of a site specific control under Clause 52.03.

The key issues raised by other submitters were:

- built form issues including height and visual bulk

- overlooking
- heritage issues
- neighbourhood character
- concerns over whether the Amendment would set a precedent
- traffic and carparking issues.

All submissions referred to the Panel remained unresolved, with the exception of Mecwacare's supporting submission.

The Panel considered all written submissions made in response to the exhibition of the Amendment, observations from site visits, and submissions, evidence and other material presented to it during the Hearing. The Panel has reviewed a large volume of material, and has had to be selective in referring to the more relevant or determinative material in the Report.

This Report deals with the issues under the following headings:

- planning context
- need (including net community benefit)
- heritage
- built form and amenity impacts
- other matters:
 - Clause 52.03 as an appropriate tool (including whether the Amendment will set a precedent)
 - traffic and parking issues (including the carriageway easement)
 - landscaping.

2 Planning context

Council provided a response to the Strategic Assessment Guidelines as part of the Explanatory Report. The Panel has reviewed Council's response and the policy context of the Amendment, and has made a brief appraisal of the relevant zone and overlay controls and other relevant planning strategies.

2.1 Policy framework

(i) State Planning Policy Framework

Council submitted that the Amendment is supported by the following clauses in the State Planning Policy Framework:

Clause 10.01 (Integrated decision making), which requires planning authorities and responsible authorities to endeavour to integrate the range of relevant policies and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations.

Clause 11.06-2 (Housing choice), which seeks to provide housing choice close to jobs and services. Strategies include:

- facilitate increased housing in established areas and areas with appropriate infrastructure
- provide certainty about the scale of growth in the suburbs by prescribing appropriate height and site coverage provisions for different areas
- facilitate diverse housing that offers choice and meets changing household needs.

Clause 11.06-5 (Neighbourhoods), which seeks to create a city of inclusive, vibrant and healthy neighbourhoods that promote strong communities, healthy lifestyles and good access to local services and jobs. Strategies include:

- create mixed-use neighbourhoods at varying densities that offer more choice in housing, create opportunities for local businesses and jobs and deliver better access to services and facilities
- ensure social infrastructure is accessible.

Clause 19.02-1 (Health facilities), which seeks to integrate health facilities with local and regional communities. Strategies include:

- facilitate the location of health-related facilities (including aged care facilities) with consideration given to demographic trends, existing and future demand requirements and the integration of services into communities
- provide adequate car parking facilities for staff and visitors.

Mr Biacsi, who gave planning evidence for Mecwacare, highlighted a number of other provisions of the SPPF, including **Clause 16.02-3 (Residential aged care facilities)**, and **Clause 16.02-4 (Design and location of residential aged care facilities)**. These clauses seek to facilitate the timely development of residential aged care facilities to meet existing and future needs, and to encourage well-designed and appropriately located residential aged care facilities.

Clause 16.02-4 recognises that residential aged care facilities contribute to housing diversity and choice, and are an appropriate use in a residential area. It also recognises that residential aged care facilities are different to dwellings in their purpose and function, and will have a different built form (including height, scale and mass).

Strategies in Clauses 16.02-3 and 16.02-4 include:

- encourage planning for housing that delivers an adequate supply of redevelopment opportunities for residential aged care facilities, and that enables older people to live in appropriate housing in their local community
- provide for a mix of housing for older people with appropriate access to care and support services
- ensure that residential aged care facilities are located in residential areas, activity centres and urban renewal precincts, close to services and public transport
- ensure that residential aged care facilities are designed to respond to the site and its context, and that they aspire to high urban design and architectural standards.

Clause 16.02-3 states:

Planning must consider as relevant:

- *Commonwealth Government's Responsible ratios for the provision of aged care places under the Aged Care Act 1997.*

(ii) Plan Melbourne

Plan Melbourne is the Victorian Government's planning strategy to guide the development of Melbourne to 2050. It is a reference document within the SPPF and was updated by the *Plan Melbourne Five Year Implementation Plan 2017–2050* in March 2017. It underpins the strategic policy provided by Clauses 9 and 11 of the SPPF.

Relevant Directions in Plan Melbourne include:

- **Direction 2.1** seeks to manage the supply of new housing in the right locations to meet population growth and create a sustainable city.
- **Direction 2.5** seeks to provide greater choice and diversity of housing, specifically including low-cost residential aged care.
- **Direction 4.4** seeks to respect Melbourne's heritage as we build for the future. Direction 4.4 is supported by Policy 4.4.1, which supports the recognition of the value of heritage when managing growth and change.

Mr Biacsi noted that Action 31 in the *Plan Melbourne Implementation Plan* focuses on the need to streamline approvals processes for specific housing types including residential aged care facilities to ensure that future community needs are met.

(iii) Homes for Victorians

In March 2017, the Victorian Government released *Homes for Victorians* to provide certainty in planning and housing supply and to coordinate cross-government issues to achieve housing affordability, access and choice. *Homes for Victorians* complements *Plan Melbourne*, which focuses on the need to streamline approval processes for specific housing types including residential aged care facilities to ensure that future community needs are met.

(iv) Local Planning Policy Framework

Council submitted that the Amendment supports the following local planning objectives:

Clause 21.04-1 (Accommodation and housing), which seeks to accommodate forecast increases in population, retain a diverse population and household structure, and reduce potential amenity conflicts between residential and other uses.

Clause 21.04-4 (Community facilities, hospitals and medical services), which seeks to provide community services that meet the needs of a diverse and changing community, and provide accessible community services.

Clause 22.02 (Development guidelines for sites subject to the Heritage Overlay), which provides detailed guidance for the protection and enhancement of the municipality's heritage. Clause 22.02 encourages new alterations and additions to a heritage place to (among other things):

- be visually recessive and not dominate the heritage place
- be distinguishable from the original historic fabric
- not remove, cover, damage or change original historic fabric, or obscure views of principle façades
- encourage similar façade heights to the adjoining contributory elements in the street
- minimise the visibility of new additions by locating additions towards the rear of the site, and within the envelope created by projected sight lines described in the figures in Clause 22.02 (the 'sight line test').

Mr Biacsi highlighted a number of other relevant local policies, including:

- Clause 21.05 – Built Form
- Clause 21.08 – Neighbourhoods
- Clause 22.17 – Environmentally Sustainable Development.

(v) Other relevant planning strategies or policies**Responsible ratios for the provision of aged care places**

Clause 16.02-3 of the SPPF requires planning to consider the Commonwealth Government's responsible ratios for the provision of aged care places under the *Aged Care Act 1997* (Cth). These ratios are nation-wide future targets for residential aged care beds, set by the Federal Department of Health. The target set in 2016 was 80 aged care places per 1,000 people aged 70 and over². Translated to Yarra, this target requires 610 beds by 2025 (based on projected population and demographics).

Residential Aged Care - A Snapshot of Homes in the City of Yarra in 2015

Council officers in Aged and Disability Services prepared a document titled *Residential Aged Care - A Snapshot of Homes in the City of Yarra in 2015* (the Snapshot)³. The Snapshot notes that there is significant demand in the Richmond area for quality residential aged care, with

² 2016-2017 Report on the Operation of the Aged Care Act 1997, published by the Federal Department of Health.

³ Attachment 40 to Council's Part A submission.

ageing residents of the numerous public housing units in the area needing aged care with specialised capability in caring for those with complex needs.

Other documents

Mr Biacsi highlighted a number of additional strategic documents as being relevant, including:

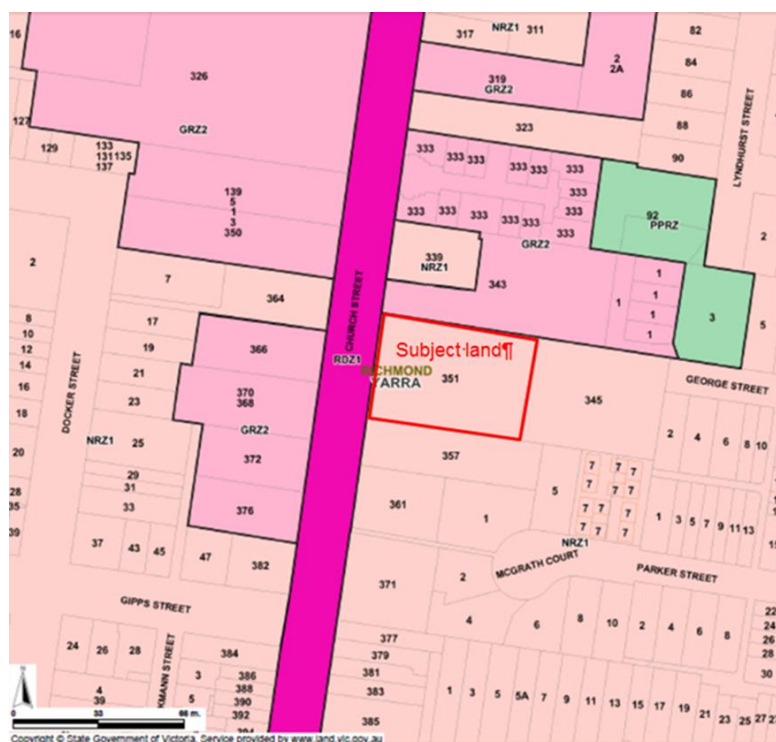
- *Urban Design Guidelines for Victoria* (DELWP, 2017)
- *City of Yarra Review of Heritage Overlay Areas 2007* (Graeme Butler and Associates)
- *City of Yarra, Heritage Gaps, Review One 2013*
- *Heritage Gap Study: Review of Central Richmond, Stage 2 Final Report*, November 2014
- *City of Yarra Review of Heritage Overlay Areas 2007*, Appendix 8.

2.2 Planning scheme provisions

(i) Zones

Figure 3 shows the zoning of the subject land and surrounding area.

Figure 3 Zoning plan of subject land and surrounds



Source: Council's Part A submission

The subject land is zoned Neighbourhood Residential Zone Schedule 1 (NRZ1). The Amendment does not propose to change this. The purposes of the NRZ include:

- *To recognise areas of predominantly single and double storey residential development.*
- *To manage and ensure that development respects the identified neighbourhood character, heritage, environmental or landscape characteristics.*

Clause 43.01-5 of the HO contains decision guidelines that must be considered before deciding on a permit application in the HO. While not strictly relevant to a planning scheme amendment (as opposed to a permit application), they include:

- *The significance of the heritage place and whether the proposal will adversely affect the natural or cultural significance of the place.*
- *Any applicable statement of significance, heritage study and any applicable conservation policy.*
- *Whether the location, bulk, form or appearance of the proposed building will adversely affect the significance of the heritage place.*
- *Whether the location, bulk, form and appearance of the proposed building is in keeping with the character and appearance of adjacent buildings and the heritage place.*
- *Whether the proposed works will adversely affect the significance, character or appearance of the heritage place.*

(iii) Other provisions

The ResCode provisions in Clause 55 apply to residential buildings, which include residential aged care facilities. Clause 55 is not strictly applicable in this case, as the proposed development is more than four storeys (and the proposed Amendment seeks to ‘switch off’ Clause 55 in any event). Nevertheless, the submissions and evidence addressed the extent to which the proposed development complies with ResCode. Non-compliances include Standard B17 (side and rear setbacks).

2.3 The proposed aged care reforms

In July 2016, the *Managing Residential Development Advisory Committee – Residential Zones Review* identified the need for residential zones to provide greater support and flexibility for the development of residential aged care facilities. The Committee concluded that:

- There is strong planning policy support at a State level to facilitate residential aged care facilities and to enable ‘ageing in place’.
- The maximum building height controls in the current suite of residential zones do not support State planning policy support for facilitating residential aged care facilities.
- Residential aged care facilities should be excluded from mandatory maximum building height requirements and some ResCode requirements.

The Minister for Planning has requested DELWP to prepare draft changes to the VPP to support appropriately designed and located residential aged care facilities in established residential areas, to cater for an ageing population. DELWP issued an advisory note in December 2017 titled *Facilitating residential aged care facilities – proposed reforms to the VPP*. The advisory note indicates that reforms are proposed to:

- relocate the definition of ‘Residential aged care facility’ from under ‘Residential Building’ to under ‘Accommodation’
- introduce a new Particular Provision at Clause 52 dealing with residential aged care facilities.

Under the draft Particular Provision, a residential aged care facility will require a planning permit for buildings and works. If the development meets a number of requirements aimed

at reducing amenity impacts on neighbours, the Particular Provision will override other provisions in the scheme, including maximum building heights that might apply under the relevant zone. The requirements that must be met under the Particular Provision (as currently drafted) relate to:

- maximum building heights (which are not to exceed 13.5 metres or four storeys)
- several ResCode standards, including:
 - Standards B6 and B17 (street setbacks and side and rear setbacks)
 - Standards B19, B20 and B24 (daylight to new and existing windows, and north facing windows)
 - Standard B21 (overshadowing open space)
 - Standard B22 (overlooking)
 - Standard B24 (noise impacts)
- maximum front fence height
- car parking (which must be provided at 0.3 car spaces to each lodging room)
- site coverage requirements (which must be no more than 80 per cent)
- entry and access requirements.

The Particular Provision exempts permit applications for a residential aged care facility from third party notice and review rights.

The Particular Provision will not override the requirements in a HO.

Consultation on the draft reforms ended in February 2018, and consultation feedback is now being considered by DELWP.

2.4 Discussion

It is well recognised in the policy framework that residential aged care facilities constitute important social infrastructure needed to contribute to housing choice and to allow people to age in their local communities. The policy framework supports the integration of residential aged care facilities in residential areas that are close to transport and services. The subject land is in a good location, within close proximity to two activity centres, well serviced by public transport, and accessible to hospitals and other specialist medical facilities.

Clause 11.06-2 seeks to provide certainty about the scale of growth in the suburbs by prescribing appropriate height and site coverage provisions for different areas. One of the ways this is achieved in the area surrounding the subject land is by prescribing a mandatory maximum height of 9 metres (two storeys) in both the NRZ1 and the GRZ2. On one view, the proposed Amendment could undermine this certainty by allowing a building substantially in excess of the prescribed height limits.

The policy framework requires decisions in relation to residential aged care facilities to take account of demographic trends, existing and future demand requirements and the need to integrate services into communities. Demographic trends and the need for aged care beds in this location are considered in detail in Chapter 3. The policy framework specifically recognises the need for residential aged care facilities to respond to the site and its context, and to aspire to high urban design and architectural standards. The built form of this particular proposal also needs to respond to the heritage values of the site and the surrounding area. These issues are explored in Chapters 4 and 5.

The Panel concludes in Chapter 3 that there is a clear need for the proposed facility, to address a current shortfall in residential aged care places in Yarra. The Panel concludes in Chapters 4 and 5 that the proposal represents an acceptable outcome in built form and heritage terms, subject to minor modifications to the design of the building. On balance, the Panel considers that the Amendment represents a net community benefit and should be supported.

DELWP's authorisation letter⁴ encouraged Council and any Panel appointed to consider the proposed aged care reforms. The reforms (if passed) would not facilitate the proposed development because:

- it exceeds the maximum building height of 13.5 metres (four storeys)
- it does not comply with the side and rear setback standards in ResCode.

Clause 16.02-4 recognises that residential aged care facilities are different to dwellings in their purpose and function, and will have a different built form (including height, scale and mass) to other forms of residential development. The Particular Provision proposes a four storey maximum height limit for residential aged care facilities – the same as the height limit in the Residential Growth Zone. The Particular Provision would import a number of the built form requirements from ResCode (in particular the street setback and side and rear setback provisions).

The Panel observes in passing that if the Particular Provision was adopted in its current form, the built form outcomes contemplated under the Particular Provision would not be significantly different from the built form that could reasonably be expected under some of the residential zones, and under Clause 55.

It is not the Panel's role to make recommendations to DELWP in relation to the proposed aged care reforms. However these are matters that Council may wish to draw to the attention of DELWP in the context of the working group that has been established to progress the reforms.

2.5 Conclusion and recommendation

The Panel concludes that the Amendment is supported by, and implements the relevant sections of the State and Local Planning Policy Framework. The Amendment is well founded and strategically justified, and achieves a net community benefit. The Amendment should proceed, subject to addressing the more specific issues raised in submissions as discussed in the following chapters.

The Panel recommends:

- 1. Adopt Amendment C225 to the Yarra Planning Scheme as exhibited, but with the changes to the Incorporated Document contained in the Panel's recommended version in Appendix B.**

⁴ Attachment 25 to Council's Part A submission.

3 Need

3.1 The issue

As noted in Chapter 2.1(v), the Commonwealth’s responsible ratios for the provision of aged care places require 610 aged care beds to be provided in Yarra by 2025 based on projected population and demographics. The Snapshot identifies that as at 2015, Yarra had a shortfall of 166 beds, and that the shortfall is expected to grow to 306 beds by 2025. This represents a shortfall of almost 50 per cent of the beds required under the Commonwealth’s responsible ratios in 2025.

The issue is not so much whether there is a need for additional residential aged care beds in Yarra – that was uncontested – but rather whether the need is sufficient to justify the proposed development.

3.2 Submissions

Council’s Part B submission comprehensively addressed the need for additional aged care beds in Yarra. It submitted that the number of residential aged care beds in Yarra has decreased between 2007 (433 beds) and 2015 (304 beds), despite the population of Yarra growing during that period. This has contributed to the predicted shortfall of 306 beds by 2025. An additional 201 beds have been recently approved⁵, but even if these beds are all built, Yarra will still have a shortfall of 109 beds by 2025.

Council submitted that Yarra lacks facilities that cater specifically for high needs groups, including CALD (culturally and linguistically diverse) clients, veterans, the LGBTI community and people with advanced dementia – all groups which the proposed facility will cater for. Council’s Part B submission stated:

As stated in the Council reports of December 2017 and May 2018, the conclusion was formed by Council based on the information provided by Mecwacare [in response to Council’s initial assessment of the proposal] that there will be a strong focus on supporting people from disadvantaged and lower socio-economic backgrounds and from within at risk or high need cohorts ...

Mecwacare submitted that the need at the local level is “compelling”, and supports the conclusion that the proposal achieves a net community benefit and is strategically justified:

There can be no doubt that the proposed development fulfils an important social need. Mecwacare is a not for profit association, proposing subsidised accommodation for some of the most vulnerable people in our society.

Mecwacare submitted that the proposed development fits within a ‘middle ground’ in terms of a need analysis. On one hand, residential aged care facilities are not so ubiquitous in Yarra that need becomes irrelevant (a matter solely for the market, rather than the planning

⁵ A new 127 bed facility in Clifton Hill, to be operated by TLC Aged Care Pty Ltd, and an expansion of the Brotherhood of St Laurence’s Sambell Lodge facility (also in Clifton Hill), from 43 beds to 117 beds.

system). On the other hand, the need is not so high as to justify outweighing other important and ordinarily decisive planning considerations.

Mecwacare referred the Panel to a number of VCAT decisions which provide guidance on how need should be considered in these ‘middle ground’ scenarios. They included *Brotherhood of St Laurence v Yarra CC* [2016] VCAT 1648, which noted the additional community benefit provided by an aged care facility providing subsidised beds run by a not for profit organisation, compared to a commercial operation.

Mecwacare submitted that, based on the principles outlined in these cases, even if the proposed development was not seen as delivering acceptable built form or amenity outcomes (which Mecwacare did not concede), *“the need for the development is such that the Amendment achieves an appropriate balance in responding to urban character and its residential interfaces and achieves a net community benefit”*.

YWCA acknowledged the need for residential aged care facilities, and that this is a relevant consideration in favour of the proposal, but *“need alone is not determinative and must be balanced against other relevant planning considerations”*. It submitted that need does not give proponents ‘carte blanche’. YWCA referred the Panel to a number of VCAT cases in which the need for residential aged care facilities was found not to outweigh other planning considerations, including the following passage from *TLC Aged Care Pty Ltd v Yarra CC* [2015] VCAT 435:

In planning terms, the need for aged care is not a high priority, urgent or a game changer. This building is not required to land helicopters next to a hospital so lives can be saved, or to accommodate a world class research in association with a leading university. It is not required to do research into, or to develop solutions to urgent environmental issues. While its social benefits are positive, they do not have the priority or urgency to outweigh adverse built form, heritage or amenity considerations ...

YWCA submitted that no evidence was led that suggests the proposal could not proceed with fewer beds and greater setbacks. It submitted that the application materials have not identified the circumstances of Richmond House and the important community need that it fulfils:

In terms of net community benefit, the quality of accommodation offered by Richmond House should be recognised, as should the need for such accommodation, being affordable, serving vulnerable, disadvantaged women in a convenient location that can meet their needs ... There is strong support in the scheme for affordable housing, as well as for the provision of crisis accommodation including accommodation that serves women escaping from family violence.

3.3 Discussion

The Panel is satisfied on the basis of submissions and the data contained in the Snapshot that there is a significant shortfall in the number of residential aged care beds in Yarra, particularly those catering for higher needs individuals. It is also satisfied that the proposed development will go some way to addressing that need.

Need must be balanced against other important planning considerations, including (in this case) the amenity impacts of the proposed development on its neighbours, the impacts on the neighbourhood more broadly, the social impacts on the residents of Richmond House, and the impacts on the heritage values of the site and the Church Street Precinct. These (and other) issues are explored in more detail in the following chapters.

The proposed Amendment will help to address an important community need for specialised subsidised aged care beds for clients with complex needs. It will help to address a significant shortfall in the number of aged care beds required in Yarra to meet the Commonwealth Government's responsible ratios for the provision of aged care places. The proposed development will have amenity impacts on neighbouring properties, including Richmond House which also provides important social infrastructure that delivers a significant community benefit. On balance, the Panel considers that, subject to the minor modifications recommended in the following Chapters, approving the Amendment will deliver a net community benefit, and the Amendment should be supported.

3.4 Conclusions

The Panel concludes:

- There is a clear need for additional aged care beds in Yarra to address a significant predicted shortfall in the number of beds required to meet the Commonwealth Government's responsible ratios for the provision of aged care places.
- The Amendment will, subject to the minor modifications recommended in the following Chapters, deliver a net community benefit and should be supported.

4 Heritage

4.1 The issue

The proposal involves demolishing the side and rear additions to the terraces, and constructing a substantial new five storey addition immediately behind the terraces. It will have impacts on the heritage values of the terraces, and the Church Street Precinct more broadly. The issue is whether these impacts are acceptable, and whether modifications are required to the proposed design to help ameliorate these impacts.

Figure 5 Photomontage of the proposed development



Source: *Mecwacare Hearing Booklet*.

4.2 Evidence and submissions

Submissions raised concerns about the heritage impacts of the proposed development, both on the site itself and on the broader Church Street Precinct. Submitters expressed the view that the proposed additions would undermine the integrity of the HO, overwhelm the retained terraces on the site, and compete with nearby heritage buildings including St Ignatius Church.

Relying on the evidence of Mr Gard'ner, Council expressed no concerns about the extent of proposed demolition, although it noted that Mr Gard'ner regards the extent of demolition as the maximum that can be considered appropriate. Council submitted that it supports the new built form in principle, but urged the Panel to adopt the recommendations of Mr Gard'ner aimed at reducing the heritage impacts.

According to Mr Gard'ner, the external appearance of the terraces has remained largely intact since their construction in the 1850s, apart from paint changes and some alterations to the verandas. His view was that, on balance, the proposed development represents an acceptable heritage outcome. He considered that the increased setbacks along the southern

boundary of the proposed development made prior to exhibition represented an appropriate response to the neighbouring heritage building at 357-359 Church Street.

Clause 22.02 (Development guidelines for sites subject to the Heritage Overlay) includes a 'sight line test' which encourages new additions to be located within the envelopes described in the clause to reduce their visibility. Mr Gard'ner acknowledged that the proposed development does not comply with the sight line test. However, he considered that the heritage outcomes were nonetheless acceptable given that the elements that do not comply with the sight line test, namely the upper levels of the new addition, are substantially set back (33.5 metres) from Church Street.

Mr Gard'ner noted that the Church Street Precinct (HO315) is relatively contained, and only extends to a depth of about one property on each side of the street. He noted that there is substantial variation in built form within the Precinct, including a contemporary four storey apartment development immediately opposite the subject site.

Mr Gard'ner made a series of specific recommendations aimed at reducing the heritage impacts of the new addition. These included adopting Option 1 in the Material Schedule Options contained in the Hearing Booklet (pictured in Figure 5 above). Options 2 and 3 presented variations on Option 1, both involving lighter coloured cladding. Mr Gard'ner's evidence was that the dark grey cladding in Option 1 will provide greater contrast, and a more neutral and recessive backdrop, to the retained heritage fabric than either Options 2 or 3.

Other recommendations made by Mr Gard'ner were:

- delete the glazed airlock structure shown on the plans at the front entry of the heritage buildings
- require a materials and finishes schedule to the satisfaction of the Responsible Authority
- require a colour scheme for all external elements of the retained heritage fabric, based on historic paint analysis, to the satisfaction of the Responsible Authority
- require a schedule of conservation works to be prepared by a suitably qualified heritage architect
- require completion of the conservation works to the satisfaction of the Responsible Authority prior to the development being occupied
- require a Construction Management Plan for the protection, temporary support, retention and/or reinstatement of the existing chimneys and roof form of the retained heritage buildings.

Mr Gard'ner also expressed concern that the Revision C plans exhibited with the Amendment (and the Revision D plans contained in the Hearing Booklet) appeared to show window openings encroaching into the retained masonry wall on the northern elevation of the terraces. His evidence was that this wall should be retained intact, and that the encroaching windows should be deleted.

Mecwacare submitted that the heritage impacts of the proposed development had been extensively considered by a number of experts, including Lovell Chen and the peer reviews undertaken by Mr Gard'ner and Mr Raworth. David Lock and Associates and Mr Biacsi had also considered the proposal in terms of a general planning assessment and impacts on

neighbourhood character, which overlapped with the heritage impacts. All experts have concluded that the impacts of the proposal are acceptable.

Mecwacare retained Mr Raworth to prepare an expert witness report which it tabled at the Hearing. Mecwacare did not call Mr Raworth to present evidence. Mr Raworth's report concluded that the proposed development is acceptable on heritage grounds. He did not recommend any specific changes to the plans or Incorporated Document, and did not address Mr Gard'ner's recommended changes to the plans and the Incorporated Document.

4.3 Discussion

It is clear that heritage impacts have been carefully considered through the development of the proposed Amendment. Mecwacare submitted advice from heritage consultants Lovell Chen in support of the request for the Amendment, and Council sought advice from Mr Gard'ner at various points during the development of the draft Amendment. Significant changes were made to the design of the building prior to exhibition, including a substantial increase in the upper level setbacks along the southern side to better address the adjacent heritage building at 357-359 Church Street.

Since the Hearing, Mecwacare has agreed to a number of changes to the conditions of the Incorporated Document to address Mr Gard'ner's specific concerns about the impact of the new additions on the retained heritage fabric, including removing the airlock, removing encroachments into the retained masonry wall, and conservation works to the existing terraces. It has also agreed with Mr Gard'ner's recommendations that Option 1 (for materials and finishes) be required for the sections of the new additions that are visible from Church Street. The Panel is satisfied that these various measures will further reduce the heritage impacts of the proposed additions, and that those impacts will be acceptable.

In terms of heritage impacts on the broader Church Street Precinct, there is already significant variation in built form typologies within the precinct. The Panel accepts the evidence of Mr Gard'ner that the significant setback of the new additions from the Church Street frontage will mean that the proposed development will not unduly affect adjacent and nearby heritage buildings, including the heritage building at 357-359 Church Street and the group of ecclesiastical buildings clustered around St Ignatius Church, or the heritage values of the Church Street precinct more broadly.

At the Panel's request, Mecwacare submitted a revised version of the Incorporated Document on 2 July 2018 after the Hearing had concluded, indicating what changes it was prepared to accept in light of the evidence presented and submissions made at the Hearing. These changes (which were agreed with Council) included all of Mr Gard'ner's recommendations:

- condition 4.2.1(g) provides for the intact retention of the full length of the solid masonry wall on the north elevation of the terraces
- condition 4.2.1(h) provides for the deletion of the glazed airlock structure
- condition 4.2.1(i) provides for a schedule of colours for all external heritage fabric
- condition 4.2.1(j) provides for a schedule of colours and materials for the new built form consistent with Option 1 for elements visible from Church Street (some flexibility is provided for in the other facades)
- conditions 4.2.1(k), 4.2.27 and 4.2.28 provide for the preparation and implementation of the conservation works schedule

- condition 4.2.1(l) provides for the deletion of window opening encroaching into the masonry wall on the northern elevation
- conditions 4.2.1(h), 4.2.27 and 4.2.28 provide for protection of the chimneys, roof form and other retained elements of the heritage fabric during construction.

The Panel is satisfied that the Incorporated Document in the form provided on 2 July 2018 addresses the recommendations and concerns of Mr Gard'ner, and represents an acceptable outcome in heritage terms.

4.4 Conclusion and recommendation

The Panel concludes:

- Subject to the adoption of Mr Gard'ner's recommendations, the proposed development represents an acceptable outcome in heritage terms.

The Panel recommends:

- 2. Amend the Incorporated Document to include additional conditions addressing the recommendations of Mr Gard'ner, as set out in the Panel's recommended version in Appendix B.**

5 Built form and amenity impacts

The key built form issues are:

- height, setbacks and visual bulk
- overlooking
- overshadowing.

5.1 Height, setbacks and visual bulk

(i) Evidence and submissions

Several submissions raised concerns about the proposed height of the new additions, noting that they are significantly taller than the mandatory 9 metre, two storey height limits that apply to the site and surrounding areas under the NRZ1 and the GRZ2, and significantly taller than the height of surrounding buildings.

YWCA submitted that the visual bulk, height, massing and loss of privacy will have unacceptable impacts on the amenity of Richmond House residents. It submitted that the proposal significantly exceeds the profile under Standard B17 in ResCode, and that no attempt has been made to provide a meaningful break or setback to the rear façade to moderate visual impacts from Richmond House, or to respect the sense of openness created by the separation of Richmond House from the existing buildings on the subject site. It submitted that *“unlike the subject site’s interface to the south, no attempt has been made to taper away from the boundary to reflect the increased height”*.

YWCA submitted that the rear setback should be increased to 4.5 metres to afford equitable development rights. It submitted that Richmond House is YWCA’s most significant landholding, and that future development is contemplated by the YWCA and should be protected. It submitted that the rear setback should be increased at least as far as grid line 5 on the architectural plans, to reduce the impacts of the proposed development on the Richmond House residents in terms of visual bulk, loss of privacy and loss of daylight. It is not clear how grid line 5 relates to the 4.5 metre setback sought by YWCA.

Council submitted that the massing of the new built form to the rear of the subject land is largely acceptable, given the substantial setback from Church Street and the highly variable built form in the surrounding area, including the six storey Richmond House to the immediate east of the subject land.

Council retained David Lock and Associates to provide advice on the built form of the proposed development prior to the Amendment being exhibited. A memorandum from David Lock and Associates dated 26 July 2017⁶ concluded that the proposed additional height would not have adverse character impacts on this part of Church street, although it could adversely impact the visual amenity of the immediate neighbours (Richmond House, the apartments at 343 Church Street, and the short stay accommodation at 357-359 Church Street). David Lock and Associates recommended increased setbacks along the northern and southern

⁶ Attachment 18 to Council’s Part A submission.

boundaries to more closely accord with the setbacks required under Standard B17 in ResCode, changes to eliminate overlooking impacts to the north and south, and shadow studies to further determine the extent of overshadowing impacts. This resulted in revisions to the plans (reflected in the exhibition version) which David Lock and Associates regarded as appropriate.⁷

Council pointed to the recently introduced Apartment Design Guidelines for Victoria (DELWP, 2017), which seek to ensure that setbacks respond to the urban context, ensure adequate amenity, and are responsive to adjoining built form and height to deliver adequate daylight, privacy and outlook for dwellings. It submitted that while the Apartment Design Guidelines provide useful guidance, an assessment of the built form of the proposed development needs to have regard to Clause 16.02-4 of the planning scheme, which recognises that residential aged care facilities have different built form (including height, scale and mass) to other forms of residential development. Council submitted that *“the Panel ought not apply the Standard B17 envelope slavishly (in particular, in a way which gives no due consideration to other relevant matters weighing on the planning merits of the proposal)”*.

Council accepted that the proposed built form will have amenity impacts on the studios located along the western elevation of Richmond House and the open space in the south west corner of the Richmond House site (including by overshadowing), but that it *“does not consider that changes are warranted to the Revision D plan set in light of the strong net community benefit to be delivered by the development ...”*.

Mecwacare submitted that any assessment of the built form and amenity impacts of the proposed development *“must have regard to the very strong strategic planning policy support for subsidised aged care accommodation, and the pressing need for that accommodation”*. It submitted that any reduction in heights, or increases in setbacks, will result in a substantial reduction in the number of aged care beds that could be provided, potentially making the project unviable.

Relying on evidence from Mr Biacsi, Mecwacare submitted that the proposed development represents a high quality architectural design response, employing a neutral, restrained contemporary form and finishes. The new addition has a substantial setback from Church Street, and visual bulk when viewed from Church Street will be minimised due to a combination of the increasing setbacks of upper levels, the lightweight structure proposed, the screening provided by the heritage terraces, and the screening provided by the substantial existing trees in the front setback of the subject site that are to be retained. It provided photomontages of the proposed development, prepared by Orbit Visualisation, to demonstrate this point.

Mr Biacsi’s evidence was that the nature of the site, its size and context are such that it is capable of accommodating substantial built form significantly in excess of the two storey height limit that applies under the NRZ. His evidence was that the design is to be *“commended”* in terms of architectural merit and urban design response. He was generally satisfied that the height, siting and scale of the building represents an appropriate design response to the site and surrounds, that will not be out of context.

⁷ Council’s Part B submission at [92].

In response to questions from the Panel, Mecwacare explained that the relatively generous floor to floor heights of 3.4 metres are required to accommodate plumbing and other services that cannot be co-located because the bathrooms are not vertically aligned (as a result of the raked setbacks on the southern side of the development). Relatively generous floor to ceiling heights are also required to avoid steps and hobs for showers and balconies. It explained that the original proposal involved floor to floor heights of 3.6 metres, which had been reduced following Council's preliminary assessment of the plans.

Mecwacare acknowledged that the proposed development will obscure views of the CBD from the upper levels of Richmond House. It submitted that the upper levels of Richmond House will continue to have outlook, and that outlook and views would still be interrupted even if the proposed development had increased setbacks. It submitted that in any case, the residents of Richmond House have *"no legal right to these views, and no legitimate expectation that they will be retained"*.

In relation to the issue of equitable development rights, Mecwacare submitted that YWCA's submission that there should be a 4.5 metre setback along the eastern boundary of the subject land (to match the 4.5 metre setback on the Richmond House site) *"conveniently ignores the different strategic expectations that apply for the provision of aged care accommodation, and the social housing provided by the YWCA. It also ignores the prospect that any development of the YWCA site could orient windows to the north and south, if necessary."*

(ii) Discussion

The proposed new additions will be significantly taller than the mandatory 9 metre, two storey height limits that apply under the NRZ1 and the GRZ2. The Panel does not consider that this constitutes an unacceptable outcome, or will unacceptably impact on the neighbourhood character. The additions are substantially set back from the Church Street frontage, and will be substantially screened by the terraces and existing trees. There is already significant variation in building heights in this section of Church Street, including the six storey YWCA building, the four storey apartments opposite the subject land, and St Ignatius Church.

ResCode does not apply to the proposed development, and can provide no more than a guide as to what might constitute an acceptable built form. Regard must also be had to the recognition in Clause 16.02-4 that residential aged care facilities are different to dwellings in their purpose and function, and will have a different built form (including height, scale and mass).

The reduced heights and increased setbacks sought by YWCA would result in a substantial reduction in the number of aged care beds that could be provided. The Panel does not consider that this is justified, and considers that the proposed setbacks, including to Richmond House, are adequate. It accepts the evidence of Mr Biacsi in this regard.

The Panel acknowledges that the height and setback of the proposed development will reduce the amount of daylight to some windows on the western façade of Richmond House, and will obscure views of the CBD from the upper levels of Richmond House. However the Panel observed on its accompanied site inspection that some outlook toward St Ignatius will still be available. The Panel considers that on balance, greater community benefit will be

achieved by delivering additional aged care beds for clients with complex needs, than reducing the size of the development in order to preserve the daylight to, and outlook from, Richmond House.

(iii) Conclusion

The Panel concludes:

- The overall built form and siting of the proposed development, including heights and setbacks, are appropriate.

5.2 Overlooking

(i) Evidence and submissions

Submissions from the owners and occupiers of the apartments at 343 Church Street raised concerns about the potential for overlooking from the proposed development.

YWCA submitted that the communal and open spaces along the western and southern sides of Richmond House fulfil an extremely important social function:

All living and dining areas are shared, communal facilities, as are all outdoor spaces. This outdoor space is valued as a calm, reflective space for the women in residence. The shared spaces within the facility contribute to a strong collective sensibility amongst residents. Sharing these spaces safely and respectfully is vitally important for facilitating healing through social connection. The space is secure, as the grounds are fenced and access requires admission by someone already in the building or through the use of an electronic pass. Security and the need for safe, personal space, is very important for women who have experienced family violence.

YWCA submitted that the sense of overlooking will be significantly greater than is currently the case. The residents of Richmond House are vulnerable people for whom a sense of privacy and security is vital. It expressed particular concerns about overlooking of the open space areas within the Richmond House site, and the lack of screening on the upper levels of the proposed development.

Council submitted that the advice provided by David Lock and Associates indicated overlooking concerns had been addressed by revisions made to the plans prior to exhibition of the Amendment.

Relying on evidence of Mr Biacsi, Mecwacare submitted that appropriate measures have been taken to address the impacts of overlooking to all neighbours.

On the eastern elevation (facing toward Richmond House), opaque glass is proposed to a height of 1700mm on those windows on the ground and first floor levels that are directly opposite habitable rooms in Richmond House. Other windows on the eastern elevation are not proposed to be screened. Refer to TP21 in the Revision D plans. Mr Biacsi's evidence was that no further screening is required because:

- the unscreened lower level windows would have views past the Richmond House accommodation building, rather than into habitable rooms in Richmond House

- the upper level windows opposite the Richmond House accommodation building are a substantial distance (more than 9 metres) from habitable windows in Richmond House.

On the northern elevation (facing the apartments at 343 Church Street), a variety of screening techniques are proposed to windows on the first three levels. Upper level windows are not proposed to be screened. Refer to TP20 in the Revision D plans. Mr Biacsi's evidence was that no further screening is required because:

- the proposed screening would appropriately manage overlooking from the lower level windows
- screening was not required to the upper level windows because views toward habitable windows in the neighbouring apartments were on a sharp downward angle, allowing limited (if any) views into the rooms.

(ii) Discussion

The Panel accepts the submissions of YWCA regarding the important social function of the communal and open spaces along the western and southern sides of Richmond House. It accepts that many of the Richmond House residents have escaped difficult, violent situations, and that it is vitally important that they feel safe and secure at Richmond House.

The Panel largely accepts the evidence of Mr Biacsi that overlooking will be appropriately managed by the screening techniques depicted on the Revision D plans. However it is not entirely persuaded that overlooking impacts on Richmond House have been fully and appropriately addressed.

The overlooking diagrams contained in the Revision D plans provide an analysis of the overlooking impacts of the proposed development to the north (the apartments at 343 Church Street), and to the south (the short stay accommodation at 357-359 Church Street). No diagrams were presented to the Panel analysing the overlooking impacts to the east (Richmond House).

The Panel acknowledges the substantial separation between the proposed development and the Richmond House accommodation building. It also acknowledges that the overlooking standards in ResCode (B22) do not apply. Nevertheless, the Panel considers that the particular circumstances of the Richmond House residents, including their concerns about privacy, safety and security, warrant additional consideration of overlooking impacts. In the absence of an applicable standard, overlooking impacts must be reasonable, having regard to the particular circumstances of the Richmond House residents.

Council raised no concerns at the Hearing in relation to the overlooking impacts on Richmond House. It pointed to advice that it had received from David Lock and Associates that indicated that their overlooking concerns had been appropriately addressed. However, any consideration of the overlooking impacts on Richmond House undertaken by Council or David Lock and Associates prior to the hearing could not have taken into account the particular circumstances of Richmond House residents raised in YWCA's submissions.

Accordingly, the Panel recommends that further assessment be undertaken of the overlooking impacts on habitable rooms and the open space areas of Richmond House. The assessment should be undertaken by a suitably qualified person, to Council's satisfaction. If

after considering the assessment, Council considers that further screening or other techniques are required to reduce overlooking impacts to a reasonable level, those techniques should be applied prior to occupation of the east facing rooms in the proposed development.

These matters can be dealt with by way of secondary consent conditions in the Incorporated Document. The Panel has included suitable conditions in its recommended version of the Incorporated Document in Appendix B.

(iii) Conclusions

The Panel concludes:

- Further assessment of the overlooking impacts on Richmond House are required.
- Overlooking treatments reflected in the Revision D plans are otherwise appropriate.

(iv) Recommendations

The Panel recommends:

- 3. Amend the Incorporated Document to include additional conditions requiring:**
 - a) further assessment by a suitably qualified person of the overlooking impacts from east facing windows in the proposed development to habitable rooms and the open space areas of Richmond House, to the satisfaction of the Responsible Authority**
 - b) if required by the Responsible Authority, additional screening to be applied to the east facing windows prior to occupation of those rooms, to the satisfaction of the Responsible Authority.**

5.3 Overshadowing

(i) Evidence and submissions

YWCA submitted that an increased setback is required to the eastern boundary of the subject site to prevent unacceptable overshadowing of the open space on the Richmond House site. It submitted that overshadowing is of particular concern given the residents of Richmond House are housed in small bedrooms, with no access to balconies and the majority of them have mental health issues. *“The ability to access sunlight and outdoor space and to meet with other residents in an area that can encourage interaction as well as calm reflection is essential.”*

YWCA submitted that the development would result in well under the five hours of direct sunlight that would be required if ResCode Standard B21 were applied, and would reduce sunlight to the windows of the bedrooms and communal dining and living spaces located on the western side of Richmond House.

Mecwacare submitted that the ResCode standards do not apply to the proposed development, and that in any event, the open space area at Richmond House is not private open space associated with a dwelling.

Mecwacare’s architects prepared a detailed overshadowing study which compared the overshadowing caused by the proposed development to the overshadowing caused by

existing buildings on the subject land, and existing buildings on the Richmond House site. Mecwacare submitted that the study demonstrates that:

- while the open space at Richmond House will be affected by overshadowing from the proposed development, this will not occur until around 1pm
- direct sunlight to the open space at Richmond House is already compromised by the existing buildings on the Richmond House site (more so than the overshadowing that would be caused by the proposed development)
- the north west corner of the Richmond House site will receive six hours of full sun between 9am and 3pm at the equinox.

It submitted that in a densely populated inner city environment, this is reasonable, especially considering the substantial community benefits to be delivered by the proposed development.

Mr Biacsi considered the shadow diagrams prepared by DKO Architects, and those prepared by Mecwacare's architects. He noted that the diagrams demonstrate that both Richmond House and 357-359 Church Street to the south will be affected by shadowing, but that the impacts are reasonable. He noted that much of the open space in Richmond House is below ground level, and is substantially affected by the existing buildings on Richmond House.

Mr Biacsi noted that there are other opportunities for open space at Richmond House provided by its relatively open aspects to the north and east. He noted that the original design for Richmond House contemplated a rooftop sundeck, although Ms Armstrong submitted that this is not a viable option due to safety concerns.

(ii) Discussion

The Panel accepts the importance of Richmond House residents having access to quality open space in a safe and secure environment. It understands the rationale of locating the open space in the south west corner of the Richmond House site, as this is a secure location, protected by the administration building, and shielded from views from the street.

However on balance, the Panel does not consider that the built form of the proposed development should be modified to reduce the overshadowing of the Richmond House open space. As noted above, if the proposed development were to be set back (or its height reduced) to the extent sought by YWCA, there would be a substantial loss in the number of aged care beds available. The Panel considers that on balance, greater community benefit will be achieved by delivering additional aged care beds for clients with complex needs, rather than by the substantial reduction in built form required to prevent overshadowing of the Richmond House open space.

(iii) Conclusion

The Panel concludes:

- The extent of overshadowing to the Richmond House open space is acceptable, having regard to the community benefit that will be delivered by the proposed development.

6 Other matters

6.1 Clause 52.03 as an appropriate planning tool

(i) The issue

The purposes of Clause 52.03 (Specific sites and exclusions) include:

- *To provide in extraordinary circumstances specific controls designed to achieve a particular land use and development outcome.*

The issue is whether there are 'extraordinary circumstances', whether Clause 52.03 is the appropriate planning tool, and whether the Amendment will set a precedent for exceeding the height limit in the NRZ.

(ii) Evidence and submissions

Council submitted that Clause 52.03 is an appropriate tool that has a number of benefits. It represents the totality of the rights and controls which apply to the subject land for the purposes of the proposal, it ties the ability to exceed the height limit in the NRZ to the use and development of the land for a residential aged care facility, and all required planning permissions for the proposal are contained within a single control.

Mecwacare submitted that the use of Clause 52.03 acknowledges the institutional role of the site, and the institutional built form expectations of the site. Mr Biacsi's evidence was that Clause 52.03 was an appropriate tool, especially given that it does not interfere with the underlying zoning that applies, and only allows the height limit and other requirements in the NRZ to be exceeded if the land use issued and developed for a residential aged care facility in accordance with plans approved under the Incorporated Document, and the conditions contained in the Incorporated Document.

YWCA submitted that:

There simply does not appear to be 'extraordinary circumstances' that justify the use of the control in the present circumstances. The importance of providing residential aged care facilities is not disputed by the YWCA, but it is hardly constitutes 'extraordinary circumstances' even if a specific need or projected shortfall is established for the City of Yarra.

Council responded to this by submitting that a review of relevant panel reports (including Yarra Ranges C129 and Manningham C95) confirms that the reference to 'extraordinary circumstances' in the purposes of Clause 52.03 is not intended to operate as a test that must be strictly complied with before the tool can be employed. It submitted that in this case, Clause 52.03 is an appropriate tool because:

- it will deliver a net community benefit
- it has been well recognised (including by the Managing Residential Development Advisory Committee) that the present residential zones are not optimal in their treatment of residential aged care facilities
- the State Government has not yet created a pathway to allow the proposal to be assessed on its merits and potentially granted a permit.

(iii) Discussion

The Panel agrees that Clause 52.03 is a suitable tool to facilitate the proposed development, given there is recognition that the current suite of residential zones do not deal adequately with residential aged care facilities. To the extent that 'extraordinary circumstances' may be appropriate to justify the use of Clause 52.03, the Panel considers that this situation constitutes extraordinary circumstances'. The proposed development would effectively be prohibited under the NRZ. The only alternative to Clause 52.03 would be to rezone the land. The Panel considers that the better outcome is to leave the existing zoning intact, and to allow the requirements of the zone to be exceeded only if the land is used and developed for a residential aged care facility, and only in accordance with the Incorporated Document. It notes that any concerns DELWP originally had in relation to the use of Clause 52.03 have been resolved.

The Panel does not consider that the Amendment will set a precedent for exceedances of the height limit in the NRZ. Clause 52.03 is, by its nature, a 'bespoke' and site specific tool that is used to address extraordinary circumstances.

(iv) Conclusion

The Panel concludes:

- Clause 52.03 is an appropriate tool.

(v) Technical drafting matters

The Panel notes two technical drafting matters in relation to the Incorporated Document. These matters were not raised at the hearing. Accordingly, the Panel notes them for further consideration by Council, but makes no formal findings or recommendations about these matters.

Firstly, the Incorporated Document provides in clause 1 that the plans form part of the Incorporated Document. The Incorporated Document does not include a condition whereby Council can approve amendments to the plans by way of secondary consent. It is possible that, with the current drafting of the Incorporated Document, once the plans are endorsed, any future amendment to the plans would require a planning scheme amendment.

Secondly, clause 4.1 of the Incorporated Document provides (Panel's emphasis):

Despite any provision to the contrary, or any inconsistent provision in the Scheme, no planning permit is required for, and no planning provision in the planning scheme operates to prohibit, control, or restrict the use or development (excluding subdivision) of the land for the purposes of a Residential aged care facility in accordance with the conditions in Clause 4.2 of this document, except as otherwise agreed to by the responsible authority.

The use and development includes the following use and development:

- *Use of land for the purposes of a Residential aged care facility, as defined in Clause 74 of the planning scheme.*
- *Partial demolition of the existing heritage building.*
- *Construction of a multi-storey Residential aged care facility.*

The Panel understands, based on Council's submissions, that the intent is for the Incorporated Document to 'package up' all of the permissions that would otherwise be required under any provisions of the scheme for the proposed development. The Incorporated Document clearly allows demolition of the additions to the terraces, but Clause 43.01-1 of the HO also requires a permit for:

- external alterations to a building by structural work, rendering, sandblasting or in any other way
- works, repairs and routine maintenance which change the appearance of a heritage place or which are not undertaken to the same details, specifications and materials.

The Panel notes that there is a possibility that the conservation works contemplated under condition 4.2.29 of the Incorporated Document could alter the external appearance of the heritage terraces. While the conservation works will be undertaken "*in accordance with the conditions in Clause 4.2*", there may be some doubt as to whether they would be undertaken "*for the purposes of a Residential aged care facility*" (rather than for the purpose of conserving the heritage terraces).

6.2 Traffic and parking issues

(i) The issue

The issues are:

- the suitability of the proposed access to the rear carpark on the subject land, which utilises the carriageway easement that provides access to Richmond House
- traffic impacts
- parking.

(ii) Evidence and submissions

YWCA submitted that one of its key objectives is to ensure ongoing safe, convenient access for its residents and visitors to Church Street (including the Church Street tram service) via the carriageway easement. It submitted that its residents are more likely to have a disability, to be older or infirm and are highly reliant upon pedestrian access utilising the carriageway easement.

YWCA submitted that the proposed access arrangements were not safe and convenient, given the steep gradient of the driveway (shown on the exhibited plans as between 1:5 and 1:8), the lack of separation of pedestrians and traffic, and the fact that the access is not compliant with the standards under the *Disability Discrimination Act 1992* (Cth) (DDA). YWCA requested that the access arrangements be altered to provide:

- a footpath that provides safe, DDA compliant pedestrian access with handrails
- appropriate lighting and signage
- changes to the grade to ensure pedestrian, bicycle and vehicular access to Richmond House is not compromised.

YWCA submitted that consideration should be given to the relocation of the basement so that it has a southern access point, rather than utilising the carriageway easement.

Other submitters raised concerns in relation to traffic generated by the proposed development increasing congestion on Church Street, parking concerns (particularly for visitors to the site, and for ambulances), and concerns about the safety of vehicles entering and exiting the site via the existing crossover (which serves the existing driveway located on the carriageway easement).

Mr de Young gave traffic evidence for Mecwacare. He assessed the traffic impacts of the proposed development, and concluded that impacts would be minimal, and well within the existing capacity of the surrounding street network. He considered that the proposed parking arrangements for the development were acceptable, subject to some minor adjustments to the carpark layout and a small increase in the number of bicycle spaces for staff. The loading and unloading arrangements were acceptable, including for ambulances, which could pick up or drop off patients from the street, from the disabled spaces proposed to be provided near the vehicle entrance to the subject land off Church Street, and possibly in the unloading bay in the carpark. He also considered that the entry into the subject land from Church Street was appropriate, and provided adequate sight lines for vehicles entering and leaving the subject land.

Mr de Young acknowledged the concerns raised by YWCA in relation to the carriageway easement, and provided an amended plan which demonstrated that most of its concerns could be addressed, including by providing signage that indicated that the access way is a shared zone (with an appropriate speed limit), lane markings for pedestrians and vehicles, and a pedestrian hand rail along the northern façade of the proposed development. His evidence was that DDA compliant gradients could not be achieved within the subject land, due to the slope of the land, but that the gradients could be made less steep.

(iii) Discussion

The Panel accepts Mr de Young's evidence that the traffic and parking impacts of the proposal are acceptable, subject to minor modifications to the carpark layout and the provision of three additional staff bicycle spaces.

The Panel appreciates Mr de Young's candour in his response to the concerns raised by YWCA. He has recommended adjustments to the access arrangements via the carriageway easement that address YWCA's concerns as far as is practicable. The Panel agrees with Mr de Young that the proposed gradient of the driveway should be adjusted to be less steep, and appreciates the cooperative approach from Mecwacare in accepting Mr de Young's recommendations.

Mr de Young's recommendations are reflected in the revised version of the Incorporated Document submitted by Mecwacare (and agreed by Council) on 2 July 2018 (and in the Panel's recommended version in Appendix B).

(iv) Conclusions

The Panel concludes:

- The access arrangements via the carriageway easement should be modified in accordance with Mr de Young's recommendations in response to concerns raised by YWCA, including to lessen the gradient of the driveway and to provide a hand rail for pedestrians.

- The proposed development will have minimal impacts on traffic and parking in the surrounding streets.
- The entry point into the subject land is appropriately located and designed with suitable sight lines.
- The proposed parking arrangements are appropriate, subject to minor modifications in accordance with Mr de Young's recommendations.

(v) Recommendation

The Panel recommends:

- 4. Amend the Incorporated Document to include additional conditions addressing the recommendations of Mr de Young, as set out in the Panel's recommended version in Appendix B.**

6.3 Landscaping

(i) Evidence and submissions

YWCA raised concerns about the impact of the proposed development on trees that are within the Richmond House site, planted close to the boundary. It submitted that a tree management plan should be required, or a condition requiring replacement trees of a suitable height.

Mecwacare retained Mr Patrick to prepare a landscape plan, and Tree Logic to prepare a Tree Management Plan to support the request for the Amendment. Mr Patrick also provided expert evidence at the Hearing.

Mr Patrick's evidence was that the substantial trees in the front setback of the subject land should be retained, as they are large and healthy specimens that provide shade to the front garden area, and screening of the proposed development from Church Street. His evidence was that the landscape plan should provide for permeable decking around the existing oak tree in the front setback, to best protect its root system and ensure its ongoing health. While the original landscape plan provided for planter boxes on the roof terrace located immediately behind the retained heritage buildings, he recommended their removal to address concerns from the heritage consultants that planting on the roof terrace could potentially detract from the heritage buildings.

Mr Patrick's evidence was that the eastern and southern setbacks provided sufficient room for a row of screening plants along each boundary, which would help to soften the appearance of the new additions from the neighbouring properties. He recommended evergreen species along the bulk of the eastern boundary (Pinnacle lilly-pilly) that is robust, fast growing and would likely reach a height of approximately 8 meters, providing screening of the proposed development from the open space and lower level windows of Richmond House.

Mr Patrick was of the view that the existing lilly-pillies on the Richmond House site would be unlikely to be significantly impacted by construction works on the subject land, given they have good tolerance to root damage, and the limited extent to which works are proposed

within the Tree Protection Zones for these trees. He agreed that the Tree Management Plan should include measures to protect these trees during construction.

(ii) Discussion

The Panel accepts the evidence of Mr Patrick that the proposed landscaping plan is appropriate, as is the Incorporated Document subject to minor modifications relating to permeable decking around the oak tree in the front setback, removal of the planter boxes on the roof terrace, adjustments to the Tree Management Plan to ensure protection of the vegetation on the Richmond House site, and irrigation of the new planting along the eastern boundary to help ensure the screen planting along the Richmond House boundary establishes successfully.

(iii) Conclusion

The Panel concludes:

- Subject to minor modifications to address the recommendations of Mr Patrick, the proposed landscape plan, and conditions of the Incorporated Document relating to landscaping, are appropriate.

(iv) Recommendation

The Panel recommends:

- 5. Amend the Incorporated Document to include additional conditions addressing the recommendations of Mr Patrick, as set out in the Panel's recommended version in Appendix B.**

Appendix A Document list

No.	Date	Description	Provided by
1	27/6/18	Council Part B submission	A Lane, Maddocks
2	27/6/18	Attachments to Council's Part B submission	A Lane
3	27/6/18	Plan showing location of submitters	A Lane
4	27/6/18	Written submission, YWCA	S Armstrong
5	27/6/18	<i>TLC Aged Care Pty Ltd v Yarra CC</i> [2015] VCAT 1601	S Armstrong
6	27/6/18	Town Planning Report prepared by S Rigo of Hansen Partnership	S Armstrong
7	27/6/18	Shadow Study prepared by DKO Architects	S Armstrong
8	27/6/18	Confidential document	S Armstrong
9	27/6/18	Conditions prepared by YWCA for discussion	S Armstrong
10	29/6/18	Written submission, Mecwacare	C Townsend
11	29/6/18	<i>Residential Aged Services Pty Ltd v Stonnington CC</i> [2015] VCAT 1601	C Townsend
12	29/6/18	Shadow study prepared by CHT Architects	A Biacsi, Contour
13	29/6/18	Revised plans showing alternative design of access via carriageway easement	T de Young, GTA Consultants
14	29/6/18	Email from P Mollison to E Skurrie dated 4 October 2017	C Townsend

Appendix B Panel recommended version of the Incorporated Document

351-353 Church Street, Richmond

Incorporated Document

~~November 2017~~ [July 2018](#)

This document is an incorporated document in the Yarra Planning Scheme pursuant to section 6(2)(j) of the *Planning and Environment Act 1987*.

This document was incorporated into the Yarra Planning Scheme via Yarra Planning Scheme Amendment C225.

1. INTRODUCTION

This document is an incorporated document at Clauses 52.03 and 81.01 of the Yarra Planning Scheme (planning scheme) pursuant to section 6(2)(j) of the *Planning and Environment Act 1987*.

The land identified in Clause 3 of this document may be used and developed in accordance with the specific control in Clause 4 of this document.

The control in this document prevails over any contrary or inconsistent provision in the planning scheme.

The incorporated document includes plans endorsed under the incorporated document.

2. PURPOSE

The purpose of the control in this document is to allow the use and development of land for the purposes of a Residential aged care facility.

3. LAND TO WHICH THIS DOCUMENT APPLIES

The control in this document applies to land at 351-353 Church Street, Richmond and is described in Certificate of Title Volume 09441 Folio 758 on Plan of Subdivision 138330.

4. CONTROL

4.1 EXEMPTION FROM PLANNING SCHEME REQUIREMENTS

Despite any provision to the contrary, or any inconsistent provision in the Scheme, no planning permit is required for, and no planning provision in the planning scheme operates to prohibit, control, or restrict the use or development (excluding subdivision) of the land for the purposes of a Residential aged care facility in accordance with the conditions in Clause 4.2 of this document, except as otherwise agreed to by the responsible authority.

The use and development includes the following use and development:

- Use of land for the purposes of a Residential aged care facility, as defined in Clause 74 of the planning scheme.
- Partial demolition of the existing heritage building.
- Construction of a multi-storey Residential aged care facility.

4.2 CONDITIONS

The use and development permitted by this document must be undertaken in accordance with the following conditions:

Amended plans

- 4.2.1. 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 form part of this incorporated document. 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 [TP03-TP14, TP21, TP25, TP26 and TP41-TP45, all Rev D, prepared by CHT Architects prepared by CHT Architects, 'MECWACARE 351 Church Street, Richmond', Revision C – plan numbers TP00 to TP44 \(dated 4 November 2017\)](#) but modified to show:
- a) ~~Changes~~ [Any changes](#) required by the Landscape Plan in condition 4.2.6
 - b) Any changes required by the SMP in condition 4.2.9.
 - c) [The internal driveway connection with the basement ramp modified to accommodate two-way simultaneous traffic movement.](#)
 - d) [An additional three basement bicycle spaces for staff.](#)
 - e) [The driveway designed as a “shared zone” with suitable signage.](#)
 - f) [Double rooms, if needed.](#)
 - g) [Any updates to elevations necessary to make the elevations consistent with floor plans, including to show the retention of solid masonry wall to the full length of the north elevation of the retained heritage building.](#)
 - h) [Deletion of the glazed airlock shown at the building frontage on TP09.](#)
 - i) [A schedule of colours for all external heritage fabric including render, ironwork and joinery supported by a report undertaken by a suitably qualified heritage consultant. The selected colour scheme should be consistent with an identified historical colour scheme that is based on paint analysis and research.](#)
 - j) [A schedule of colours and materials for all new buildings and works showing:](#)
 - i. [A colour and materials selection for new buildings and works visible from Church Street and as a backdrop to the heritage building. These colours should be generally consistent with option 1 \(pages 58 and 59\) of the Panel Hearing Booklet, Yarra Planning Scheme Amendment C225, 351-353 Church Street, Richmond, and prepared by CHT Architects, dated June 2018.](#)
 - ii. [A colour and materials selection for new buildings and works for the east elevation and rear side elevations.](#)
 - k) [Any changes required by the Conservation Works Plan in condition 4.2.29.](#)
 - l) [Deletion of window openings where they are shown to encroach into the existing external heritage fabric on the north elevation of TP20.](#)

- m) The carriageway grade, line marking and hand rail to be designed generally in accordance with plans TP09 and TP81, Rev E with the addition of lighting to the carriageway area.

- 4.2.2. The development shown on the endorsed plans must not be altered without the prior written consent of the responsible authority.
- 4.2.3. Without the prior written consent of the responsible authority, no more than 80 single and/or double lodging rooms are permitted on the land at any one time.
- 4.2.4. Finished floor levels shown on the endorsed plans must not be altered or modified without the prior written consent of the responsible authority.

Ongoing architect involvement

- 4.2.5. As part of the ongoing consultant team, CHT Architects or an architectural firm to the satisfaction of the responsible authority must be engaged to:
- a) oversee design and construction of the development; and
 - b) ensure the design quality and appearance of the development is realised as shown in the endorsed plans or otherwise to the satisfaction of the responsible authority.

Landscaping

- 4.2.6. Before the development starts, ~~an amended~~ a Landscape Plan to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. When approved, the ~~amended~~ Landscape Plan will be endorsed and will form part of this Incorporated Document. The amended Landscape Plan must be generally in accordance with the Landscape Plan L-TP01 prepared by John Patrick Landscape Architects Pty Ltd (~~revisions c~~) and dated ~~23 May 2017~~ June 2018 but modified to include (or show):

~~a) The location of the proposed "lightweight planter box".~~

~~ba)~~ Ground level

- i. Permeable paving (which may include decking) surrounding the Oak tree to ensure the roots are able to receive sufficient water.

~~ii. Delete the two eastern-most trees from the line of Capital Pears along the southern boundary.~~

~~b) Level 2~~

~~i. Plans for the level 2 rooftop terrace.~~

- 4.2.7. Before the building is occupied or by such later date as is approved by the responsible authority in writing, the landscaping works shown on the endorsed Landscape Plan must be carried out and completed to the satisfaction of the responsible authority. The landscaping shown on the endorsed Landscape Plan must be maintained by:

- a) implementing and complying with the provisions, recommendations and requirements of the endorsed Landscape Plan;
- b) not using the areas set aside on the endorsed Landscape Plan for landscaping for any other purpose; and
- c) replacing any dead, diseased, dying or damaged plants,

to the satisfaction of the responsible authority.

- 4.2.8. A cash bond for \$5,000 plus a non-refundable 5% service charge of \$250 shall be lodged with the Responsible authority prior to the approval of the Landscape Plan to ensure the completion and establishment of landscaped areas. This cash bond will only be refunded upon the expiry of a 13 week establishment period, beginning when the Responsible authority is satisfied with the completed landscaping works, and provided that the landscaped areas are being maintained to the satisfaction of the responsible authority.

ESD Report

- 4.2.9. Before the development starts, an amended Sustainable Management Plan to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. When approved, the amended Sustainable Management Plan will be endorsed and will form part of this Incorporated Document. The amended Sustainable Management Plan must be generally in accordance with the Sustainable Management Plan prepared by Sustainable Built Environments Pty Ltd and dated 23/11/2016, but modified to include or show:

- a) The relevant changes to the endorsed plans
- b) All relevant ESD features described and detailed in the SMP should be marked on an updated set of architectural drawings and landscape plans, including:
 - i. The 5m² of raingardens, and
 - ii. The 25 kW solar PV array.

- 4.2.10. The provisions, recommendations and requirements of the endorsed Sustainable Management Plan must be implemented and complied with to the satisfaction of the Responsible authority.

Waste Management

- 4.2.11. The provisions, recommendations and requirements of the endorsed Waste Management Plan must be implemented and complied with to the satisfaction of the Responsible authority.

- 4.2.12. Rubbish, including bottles and packaging material, must at all times be stored within the building and screened from external view. All waste collection and recycling collection is to be undertaken in accordance with Yarra City Council's Local Law No. 3.

Car Parking and Traffic

4.2.13. The car parking area must be used for no other purpose to the satisfaction of the Responsible authority.

Vehicle crossings and accessways

4.2.14. Before the building is occupied, or by such later date as approved in writing by the Responsible authority, any new vehicle crossing must be constructed:

- a) in accordance with any requirements or conditions imposed by Yarra City Council;
- b) at the permit holder's cost; and
- c) to the satisfaction of the responsible authority.

Drainage

4.2.15. Areas must be provided inside the property line and adjacent to the footpath to accommodate pits and meters. No private pits, valves or meters on Yarra City Council property will be accepted.

Construction

4.2.16. Before the building is occupied, or by such later date as approved in writing by the Responsible authority, any damage to Council infrastructure resulting from the development must be reinstated (including by the re-sheeting of the entire Church Street footpath for the width of the property frontage if required by the responsible authority):

- a) at the permit holder's cost; and
- b) to the satisfaction of the responsible authority.

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

Amenity

4.2.18. Any noise emanating from the development including plant and other equipment, must comply with the State Environment Protection Policy or any other standard recommended by the Environment Protection Authority (EPA), to the satisfaction of the responsible authority.

Privacy screens

4.2.19. Before the building is occupied, or by such later date as approved in writing by the responsible authority, all screening and other measures to prevent overlooking as shown on the endorsed plans must be installed to the satisfaction of the responsible authority. Once installed the screening and other measures must be maintained to the satisfaction of the responsible authority.

- 4.2.20. Before the building is occupied, further assessment must be undertaken by a suitably qualified person of the extent of potential overlooking from the unscreened east facing windows in the proposed development, to habitable rooms in the western façade of Richmond House (at 345 Church Street Richmond), and the open space area in the south west corner of Richmond House, to the satisfaction of the responsible authority.
- 4.2.21. If, after considering the further assessment referred to in condition 4.2.20, the responsible authority considers that the overlooking impacts are not reasonable, screening or other suitable techniques must be applied to the relevant east facing windows in the proposed development to reduce the overlooking impacts on the parts of Richmond House referred to in condition 4.2.20 to an acceptable level, to the satisfaction of the responsible authority. The screening or other suitable technique must be applied to the relevant east facing windows in the proposed development prior to occupation of the relevant rooms.

Tree Management Plan

- 4.2.22. Before the development starts, an amended Tree Management Plan to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. When approved, the amended Tree Management Plan will be endorsed and will form part of this Incorporated Document. The amended Tree Management Plan must be generally in accordance with the Tree Management Plan prepared by Tree Logic and dated 20 October 2015 and supplemented by an addendum report dated 11 November 2017, but modified to include (or show):
- a) any changes resulting from the endorsed plans
 - b) any changes resulting from the endorsed Landscape Plans
 - c) any construction techniques required to protect vegetation within the property at 345 Church Street
 - d) drip irrigation for the trees located along the eastern boundary.
- 4.2.23. The provisions, recommendations and requirements of the endorsed Tree Management Plan must be complied with and implemented to the satisfaction of the responsible authority.

Lighting

- 4.2.24. Before the building is occupied, or by such later date as approved in writing by the Responsible authority, external lighting capable of illuminating access to the basement car park, pedestrian walkway, and building entrances must be provided within the property boundary. Lighting must be:
- a) located;
 - b) directed;
 - c) shielded; and
 - d) of limited intensity,

to the satisfaction of the responsible authority.

Construction Management Plan

4.2.25. Before development commences, a Construction 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 form part of this Incorporated Document. The plan must provide for:

- a) a pre-conditions survey (dilapidation report) of the land and all adjacent Yarra City Council roads frontages and nearby road infrastructure;
- b) works necessary to protect road and other infrastructure;
- c) remediation of any damage to road and other infrastructure;
- d) containment of dust, dirt and mud within the land and method and frequency of clean up procedures to prevent the accumulation of dust, dirt and mud outside the land;
- e) facilities for vehicle washing, which must be located on the land;
- f) the location of loading zones, site sheds, materials, cranes and crane/hoisting zones, gantries and any other construction related items or equipment to be located in any street;
- g) site security;
- h) management of any environmental hazards including, but not limited to:
 - i. contaminated soil;
 - ii. materials and waste;
 - iii. dust;
 - iv. storm-water contamination from run-off and wash-waters;
 - v. sediment from the land on roads;
 - vi. washing of concrete trucks and other vehicles and machinery; and
 - vii. spillage from re-fueling cranes and other vehicles and machinery;
- i) the construction program;
- j) preferred arrangements for trucks delivering to the land, including delivery and unloading points and expected duration and frequency;
- k) parking facilities for construction workers;
- l) measures to ensure that all work on the land will be carried out in accordance with the Construction Management Plan;

- m) an outline of requests to occupy public footpaths or roads, or anticipated disruptions to local services;
- n) an emergency contact that is available for 24 hours per day for residents and the responsible authority in the event of relevant queries or problems experienced;
- o) the provision of a traffic management plan to comply with provisions of AS 1742.3-2002 Manual of uniform traffic control devices - Part 3: Traffic control devices for works on roads;
- p) a Noise and Vibration Management Plan showing methods to minimise noise and vibration impacts on nearby properties and to demonstrate compliance with Noise Control Guideline 12 for Construction (Publication 1254) as issued by the Environment Protection Authority in October 2008. The Noise and Vibration Management Plan must be prepared to the satisfaction of the Responsible authority. In preparing the Noise and Vibration Management Plan, consideration must be given to:
 - i. using lower noise work practice and equipment;
 - ii. the suitability of the land for the use of an electric crane;
 - iii. silencing all mechanical plant by the best practical means using current technology;
 - iv. fitting pneumatic tools with an effective silencer;
 - v. other relevant considerations; and
 - vi. any site-specific requirements.
- q) any storm-water discharged into the storm-water drainage system must be in compliance with Environment Protection Authority guidelines;
- r) storm-water drainage system protection measures must be installed as required to ensure that no solid waste, sediment, sand, soil, clay or stones from the land enters the storm-water drainage system;
- s) vehicle borne material must not accumulate on the roads abutting the land;
- t) the cleaning of machinery and equipment must take place on the land and not on adjacent footpaths or roads;
- u) all litter (including items such as cement bags, food packaging and plastic strapping) must be disposed of responsibly; and
- v) [any recommendations set out in condition 4.2.29.](#)

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

- 4.2.27. The provisions, recommendations and requirements of the endorsed Construction Management Plan must be implemented and complied with to the satisfaction of the responsible authority.

Construction hours and noise

- 4.2.28. Except with the prior written consent of the responsible authority, demolition or construction works must not be carried out:
- a) Monday-Friday (excluding public holidays) before 7 am or after 6 pm;
 - b) Saturdays and public holidays (other than ANZAC Day, Christmas Day and Good Friday) before 9 am or after 3 pm; or
 - c) Sundays, ANZAC Day, Christmas Day and Good Friday at any time.

Conservation Works Plan

- 4.2.29. Before the development commences, a conservation works plan for works to external heritage fabric must be prepared by a suitably qualified heritage architect and must be submitted to and approved by the Responsible Authority. When approved, the conservation works plan will be endorsed and will form part of this Incorporated Document. The conservation works plan must include provision for the protection, temporary support, retention and/or reinstatement of the existing chimneys, roof form and other retained heritage elements during demolition, excavation and construction works.
- 4.2.30. The provisions, recommendations and requirements of the endorsed conservation works plan must be implemented and complied with to the satisfaction of the responsible authority and all works must be completed prior to the occupation of the development or the grant of permission for occupancy authorised under the Building Act 1993.

5. EXPIRY

The control in this document expires if any of the following circumstances apply:

- The development allowed by the controls is not commenced within two (2) years from the date of approval of Amendment C225 to the Yarra Planning Scheme.
- The development allowed by the controls is not completed within four (4) years from the date of approval of Amendment C225 to the Yarra Planning Scheme.

The responsible authority may extend the periods referred to if a request is made in writing before the control expires or within 6 months afterwards for the commencement of the development, or within twelve months afterwards for the completion of the development.

Notes:

- The site must be drained to the legal point of discharge to the satisfaction of the responsible authority. Please contact Yarra City Council's Building Services on 9205 5585 for further information.
- A building permit may be required before development is commenced. Please contact Yarra City Council's Building Services on 9205 5585 to confirm.
- A local law permit (e.g. Asset Protection Permit, Road Occupation Permit) may be required before development is commenced. Please contact Yarra Council's Construction Management Branch on Ph. 9205 5585 to confirm.
- All future property owners, residents, business owners and employees within the development approved under this permit will not be permitted to obtain resident, employee or visitor parking permits.
- A local law permit may be required for tree removal. Please contact Yarra City Council's Compliance Branch on 9205 5166.
- A vehicle crossing permit is required for the construction of the vehicle crossing(s). Please contact Yarra City Council's Construction Management Branch on 9205 5585 for further information.

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