

**YARRA CITY COUNCIL**

**Internal Development Approvals Committee**

**Agenda**

**to be held on Wednesday 21 November 2018 at  
6.30pm in Meeting Rooms 1 & 2  
at the Richmond Town Hall**

**Rostered Councillor membership**

Councillor Stephen Jolly  
Councillor Mike McEvoy  
Councillor Mi-Lin Chen Yi Mei (substitute for Cr James Searle)

**I. ATTENDANCE**

Vicky Grillakis (Co-ordinator Statutory Planning)  
Sarah Griffiths (Senior Co-ordinator Statutory Planning)  
Cindi Johnston (Governance Officer)

**II. DECLARATIONS OF PECUNIARY INTEREST AND CONFLICT OF INTEREST**

**III. CONFIRMATION OF MINUTES**

**IV. COMMITTEE BUSINESS REPORTS**

**Printed on 100% recycled paper**

***"Welcome to the City of Yarra.  
Yarra City Council acknowledges the  
Wurundjeri as the Traditional Owners  
of this country, pays tribute to all  
Aboriginal and Torres Strait Islander  
people in Yarra and gives respect to  
the Elders past and present."***



## **Guidelines for public participation at Internal Development Approval Committee meetings**

### **POLICY**

---

Council provides the opportunity for members of the public to address the Internal Development Approvals Committee.

The following guidelines have been prepared to assist members of the public in presenting submissions at these meetings:

- public submissions are limited to a maximum of five (5) minutes
- where there is a common group of people wishing to make a submission on the same matter, it is recommended that a representative speaker be nominated to present the views of the group
- all public comment must be made prior to commencement of any discussion by the committee
- any person accepting the chairperson's invitation to address the meeting shall confine himself or herself to the subject under consideration
- people making submissions shall address the meeting as a whole and the meeting debate shall be conducted at the conclusion of submissions
- the provisions of these guidelines shall be made known to all intending speakers and members of the public generally prior to the commencement of each committee meeting.

For further information regarding these guidelines or presenting submissions at Committee meetings generally, please contact the Governance Branch on (03) 9205 5110.

**Governance Branch  
2008**

## 1. Committee business reports

Item		Page	Rec. Page
1.1	PLN18/0172 - 622-642 Nicholson Street Fitzroy North - The construction of a ten storey building plus three basement levels and a roof top terrace, the use of the land as an office, medical centre, supermarket and a bottle shop, the sale of liquor for consumption off the premises, a reduction in the car parking requirement and alterations to the access to a road in a Road Zone, Category 1 by removing and altering crossovers to Nicholson Street.	5	43
1.2	115 Easey Street, Collingwood - PLN17/0655 - Full demolition of the existing dwelling and construction of three dwellings on a lot.	54	76
1.3	PLN17/0789 - 377 St Georges Road, Fitzroy North - Demolition of the existing building for the construction of a mixed-use multi-storey building, and use of the land for dwellings, with a reduction in the car parking requirement.	81	123
1.4	5 Park Drive, Clifton Hill - PLN17/0648 - Amendment to a Section 173 Agreement	131	144
1.5	37 - 39 Stewart Street - PLN16/0365.02 - Section 72 Amendment to extend the existing platform (with associated air conditioning units) on the western side of the existing building to a height of 8.3 metres.	145	157

- 
- 1.1 PLN18/0172 - 622-642 Nicholson Street Fitzroy North - The construction of a ten storey building plus three basement levels and a roof top terrace, the use of the land as an office, medical centre, supermarket and a bottle shop, the sale of liquor for consumption off the premises, a reduction in the car parking requirement and alterations to the access to a road in a Road Zone, Category 1 by removing and altering crossovers to Nicholson Street.**
- 

## **Executive Summary**

### **Purpose**

1. This report provides Council with an assessment of planning permit application PLN18/0172 which seeks approval for the construction of a ten storey building plus three basement levels and a roof top terrace, the use of the land as an office, medical centre, supermarket and a bottle shop, the sale of liquor for consumption off the premises, a reduction in the car parking requirement and alterations to access to a road in a Road Zone, Category 1 by removing and altering crossovers to Nicholson Street.
2. As detailed in the assessment section, this report recommends approval of the proposed development subject to conditions, including a reduction in the overall height of the building to eight storeys through the deletion of two levels.

### **Key Planning Considerations**

3. Key planning considerations include the following:
  - (a) Land use (Clauses 11.01, 11.02, 11.03, 17.01, 17.02, 21.04 and 32.04 of the Yarra Planning Scheme).
  - (b) Built form (Clauses 15.01, 21.05, 22.05, 22.07 and 22.10 of the Yarra Planning Scheme).
  - (c) Off-site amenity impacts (Clauses 15.01, 22.05 and 22.10 of the Yarra Planning Scheme).
  - (d) Internal amenity (Clauses 22.05 and 22.17 of the Yarra Planning Scheme).
  - (e) Car and bicycle parking (Clauses 18.01, 18.02, 21.06, 52.06 and 52.34 of the Yarra Planning Scheme).
  - (f) Licensed premises (Clauses 22.09 and 52.27).
  - (g) Access to a Road Zone (Clause 52.29).

### **Key Issues**

4. The key issues for Council in considering the proposal relate to the following:
  - (a) Strategic justification.
  - (b) Land Use.
  - (c) Built form and design.
  - (d) Equitable development.
  - (e) Off-site amenity impacts.
  - (f) Internal amenity.
  - (g) Sustainable design.
  - (h) Potentially contaminated land.
  - (i) Car and bicycle parking.

- (j) Traffic and access.
- (k) Objector concerns.

### **Submissions Received**

5. A total of 240 objections were received to the application, these can be summarised as follows:
- (a) Design and built form (including out of character, excessive height, bulk and scale and inappropriate materials and finishes).
  - (b) Overdevelopment of the site.
  - (c) Off-site amenity impacts (including overlooking, overshadowing, loss of daylight, glare from the proposed glazing, loss of views, wind impacts).
  - (d) Increase in noise (traffic, people, outdoor areas/terraces, mechanical plant equipment, etc.).
  - (e) Poor internal amenity.
  - (f) Car parking, traffic and access including impractical turn table, lack of car parking on site, increased traffic, waste management issues.
  - (g) Other (including setting a precedence, no community benefit, reduction in property values, impacts during construction).

### **Conclusion**

6. Based on the following report, the proposal is considered to comply with the relevant planning policy in the Scheme and should be supported subject to the following key recommendations:
- (a) A reduction in the overall height of the building from 10 to eight stories through the deletion of two levels.
  - (b) The eastern facade of the building with a reflectivity of no less than 0.5 or 50 per cent.
  - (c) Restriction to the size of vehicles accessing the loading bay of the building to 12.5 metres in length or less (equating to medium rigid trucks or smaller).
  - (d) Restriction to the number of loading vehicle events for trucks occurring each day, to no more than four.

**CONTACT OFFICER:**     **Nikolas Muhllechner**  
**TITLE:**                     **Principal Planner**  
**TEL:**                         **9205 5456**

- 
- 1.1 PLN18/0172 - 622-642 Nicholson Street Fitzroy North - The construction of a ten storey building plus three basement levels and a roof top terrace, the use of the land as an office, medical centre, supermarket and a bottle shop, the sale of liquor for consumption off the premises, a reduction in the car parking requirement and alterations to the access to a road in a Road Zone, Category 1 by removing and altering crossovers to Nicholson Street.**
- 

Trim Record Number: D18/177514

Responsible Officer: Senior Co-ordinator Statutory Planning

<b>Proposal:</b>	The construction of a ten storey building plus three basement levels and a roof top terrace, the use of the land as an office, medical centre, supermarket and a bottle shop, the sale of liquor for consumption off the premises, a reduction in the car parking requirement and alterations to the access to a road in a Road Zone, Category 1 by removing and altering crossovers to Nicholson Street.
<b>Existing use:</b>	Function centre operating in a four storey building.
<b>Applicant:</b>	Ratio Consultants
<b>Zoning / Overlays:</b>	Mixed Use Zone Environmental Audit Overlay
<b>Date of Application:</b>	16 March 2018
<b>Application Number:</b>	PLN18/0172

### Planning History

1. Planning permit 2363 was issued by the City of Fitzroy on 3 November 1983 and allowed the construction a building on site and the use of the premises for the purpose of a showroom, warehouse and reception room with ancillary car park.
2. Planning permit 782 was issued by the City of Fitzroy on 14 December 1989 and allowed the display of two illuminated non-advertising signs.
3. Planning permit 955 was issued by the City of Fitzroy on 1 October 1990 and allowed the use of the ground floor of the building for the purpose of a restaurant.
4. Planning permit 956 was issued by the City of Fitzroy on 1 October 1990 and allowed the use the ground floor of the building for the purpose of a reception room.
5. Planning permit 2615 was issued by the City of Fitzroy on 18 January 1994 and allowed the subdivision of the site into two (2) lots.
6. Planning permit 802 was issued on 19 February 1999 and allowed for the extension of hours of operation of receptions until 1:00am, seven days a week.
7. Planning permit 001550 was issued by Council on 6 June 2001 and allowed the construction of buildings and works to the existing reception centre and to waiver the associated car parking requirements. The permit was amended on 11 April 2002.
8. Planning permit PL07/0161 was issued on 6 August 2007 and allowed the consumption of alcohol in the covered outdoor area to the west (front) of the existing building, in conjunction with the existing liquor licence.
9. Planning permit application PL09/0455 sought approval for an extension to the office and function centre. This application lapsed as the further information was not submitted within the required timeframe.

10. Planning permit application PLN13/0442 was issued on 30 December 2013 for the use of part of the land as a place of assembly (community counselling centre) and a reduction in the associated car parking requirement.
11. Planning permit PLN15/0842 was issued on 11 January 2016 for the use of the land for an education centre and a reduction in the associated car parking requirement.

### **Background**

12. This application was received by Council on 16 March 2018. Following the submission of further information the application was advertised in July and August 2018 and 240 objections were received.
13. A consultation meeting was not held for this application as it was considered that 240 objections would not be conducive to facilitating such as meeting.

### **Lodgment of sketch plans**

14. In response to issues raised in the submitted objections, as well as issues raised by Council officers and in referral comments, a set of sketch plans prepared by Artisan Architects and dated 14 September 2018 (Attachment 4) were submitted to Council after the advertising period. The sketch plans show the following changes to the proposed development as depicted in the advertised plans:
  - (a) An indicative layout of the ground floor tenancies.
  - (b) Consolidation of the bicycle parking spaces within a designated room (basement level one).
  - (c) Increased number of visitor bicycle hoops on the Nicholson Street footpath from nine hoops to twelve hoops.
  - (d) Inclusion of a substation on basement level one in place of three car parking spaces.
  - (e) Deletion of one medical consulting suite on the first floor and increased size of the medical centre waiting area.
  - (f) Reduced height of the awning along Nicholson Street from 4 metres to 3 metres (minimum).
  - (g) Provision of square shaped columns internally above the ground floor in lieu of round shaped columns.
15. The sketch plans have not been formally substituted pursuant to Section 57A of the *Planning and Environment Act 1987* within the application material but will be referred to for discussion purposes throughout the body of this report.

### **The Proposal**

16. The application proposes the construction of a ten storey building plus three basement levels and a roof top terrace, the use of the land for office, medical centre, supermarket and a bottle shop, the sale of liquor for consumption off the premises, a reduction in the car parking requirement and alterations to the access to a road in a Road Zone, Category 1 by removing and altering crossovers to Nicholson Street.
17. The key elements of the proposed development as depicted in the plans (Attachments 2 and 3) are as follows:

#### **Use:**

- (a) Ground floor supermarket (1,390 square metres) and a bottle shop (120 square metres), as well as a lift lobby area and loading bay. The supermarket is proposed to operate 24 hours a day, seven days a week. The bottle shop is proposed to operate 9:00am to 11:00pm, seven days a week. The bottle shop is proposed to be licensed to sell liquor for the consumption off the premises.

- (b) First floor medical centre containing ten suites and a waiting area, accommodating ten medical practitioners, with operating hours between 8:00am to 10:00pm, seven days a week.
- (c) The second to ninth floors consisting of office space with a total floor area of 7,615 square metres.
- (d) The main pedestrian entrance to the lift lobby from the south of the Nicholson Street frontage, with separate entries to both the supermarket and bottle shop from Nicholson Street.
- (e) A third floor terrace that wraps around the north, west and south of the upper level built form with a total area of 400 square metres and landscaping around the perimeter.
- (f) The roof top terrace accessed via the lifts and stairwell with a communal open space of 404 square metres, landscaping around the perimeter of the open space and mechanical plant equipment.

Car Parking and Access:

- (g) Vehicle access to the basement car parking gained via a modified 6.1 metre wide crossover to Nicholson Street. All other vehicle crossovers to Nicholson Street to be reinstated as footpath and kerb and channel.
- (h) A total of 157 car parking spaces across three levels of basement, including 43 spaces on basement level one, 53 spaces on basement level two and 61 spaces on basement level 3.
- (i) A loading bay for the supermarket and bottle shop is located in the north-east corner of the site. Vehicle access to the loading bay via the north-south laneway terminating to the east of the northern boundary and accessed via Bik Lane further north. A vehicle turntable in the loading bay allows vehicles to enter and exit the loading bay in a forward direction.
- (j) On-site loading has not been provided for the office or medical centre components of the development given the nature of office use and medical centres. It is anticipated that loading associated with these uses will be infrequent and undertaken by smaller trucks/vans that can utilise car parking along Nicholson Street.
- (k) Waste collection for the supermarket and bottle shop is proposed via the loading bay in the north-west corner, while waste collection for the office use and medical centre is proposed from basement level one next to the bin storage area.
- (l) A total of 107 bicycle parking spaces provided across the three basement levels plus 18 visitor bicycle parking spaces within the footpath on Nicholson Street. End of trip facilities provided in the form of ten combined shower and change rooms across various levels of the building.

Built Form:

- (m) The construction of a ten storey building plus three basement levels and a roof top terrace.
- (n) Maximum building height of 42.671 metres to the top of the lift overrun.
- (o) Building height to the parapet of the ninth storey of 40.220 metres at the north-west corner and 39.071 metres at the south-west corner.
- (p) A three storey street wall to Nicholson Street with a height of 14.573 metres extending across the width of the site.
- (q) The third floor and above setback 6 metres from the street wall and 3 metres from both the southern and northern (side) boundaries.

- (r) To the eastern (rear) boundary, the ground floor is constructed on the boundary with a height between 5.3 metres and 6.42 metres. The first floor is setback 3.643 metres, the second floor is setback 7.643 metres, the third and fourth floors are setback 11.643 metres and the fifth to ninth floors are setback 13.643 metres.
- (s) Materials and finishes including feature timber frames, light grey precast concrete with integrated pattern, dark grey precast concrete with integrated pattern, grey and white clear glazing, brickwork finish, Colorbond monument lightweight metal cladding, Colorbond monument laser cut metal screen, Colorbond monument powdercoated metal screen, Colorbond wallaby powdercoated metal screen, Dulux domino applied finish and natural white applied finish.

**Environmental Sustainable Design:**

- (t) A 20 per cent improvement above the NCC energy efficiency requirements for heating and cooling.
- (u) A STORM report with a 101 per cent STORM score that demonstrates best practice and relies on 1,207 square metres of roof connected to a 22,000 litre rainwater tank connected to toilet flushing for 380 occupants or equivalent.
- (v) Good access to daylight to most areas in the proposed building.
- (w) Operable windows allowing access to natural ventilation to most occupied spaces.
- (x) A 14 kW solar photo voltaic array to contribute to onsite electricity demands.
- (y) Energy efficient HVAC with a minimum COP of 3.74.
- (z) Energy efficient lighting, 20 per cent improvement on NCC lighting power densities.
- (aa) Water efficient fixtures and taps.
- (bb) Water efficient landscaping.

**Existing Conditions**

**Subject Site**

- 18. The subject site (Attachment 1) is nominally rectangular in shape and located on the eastern side of Nicholson Street, approximately 24 metres north of Reid Street, in Fitzroy North. The site has a frontage to Nicholson Street of 45.55 metres, a depth along the southern boundary of 37.64 metres, a depth along the northern boundary of 41.28 metres and an overall area of approximately 1,834 square metres. The site slopes down from the rear north-east corner of the site to the front south-west corner by approximately 1.4 metres.
- 19. The subject site is currently developed with a four storey building that is primarily used as a function centre. The building has a porte cochere within its front setback, which is accessed via four crossovers to Nicholson Street. Additional car parking is accessed via the crossover to the south of the frontage, which provides access to the car park to the rear of the site at ground floor level.
- 20. The upper levels cantilever over the undercroft driveway and effectively form the porte cochere. The building provides limited fenestration to its façade, with glazed balustrades located close to the southern boundary. Landscaping, comprising shrubs and small palm trees in the ground are located around the porte cochere area.
- 21. The building is built to all its boundaries. The building steps down to the rear (east) of the site, with a boundary wall height of between 8.78 metres and 10.59 metres high along its eastern boundary.
- 22. The current liquor licence for the site is a restaurant and café liquor licence that authorises the licensee to supply liquor on the premises for consumption on the licensed premises with a maximum capacity of 936 patrons and trading hours up to 1:00am the following day, seven days a week.

23. The subject site consists of two allotments. The northern allotment is legally described as Lot 1 on Plan of Subdivision 332654X, while the southern allotment is legally described as Lot 2 on Plan of Subdivision 332654X. Both allotments have a party wall easement on their side of the common boundary between the two allotments in favour of the other allotment.
24. Lot 2 is affected by a Section 173 agreement, which requires car parking to be provided for the restaurant and reception room uses. As the two planning permits that allowed the use of the land for restaurant and reception room, respectively, could not be acted upon if this proposed development were approved and constructed, the Section 173 agreement has no bearing on this current application.

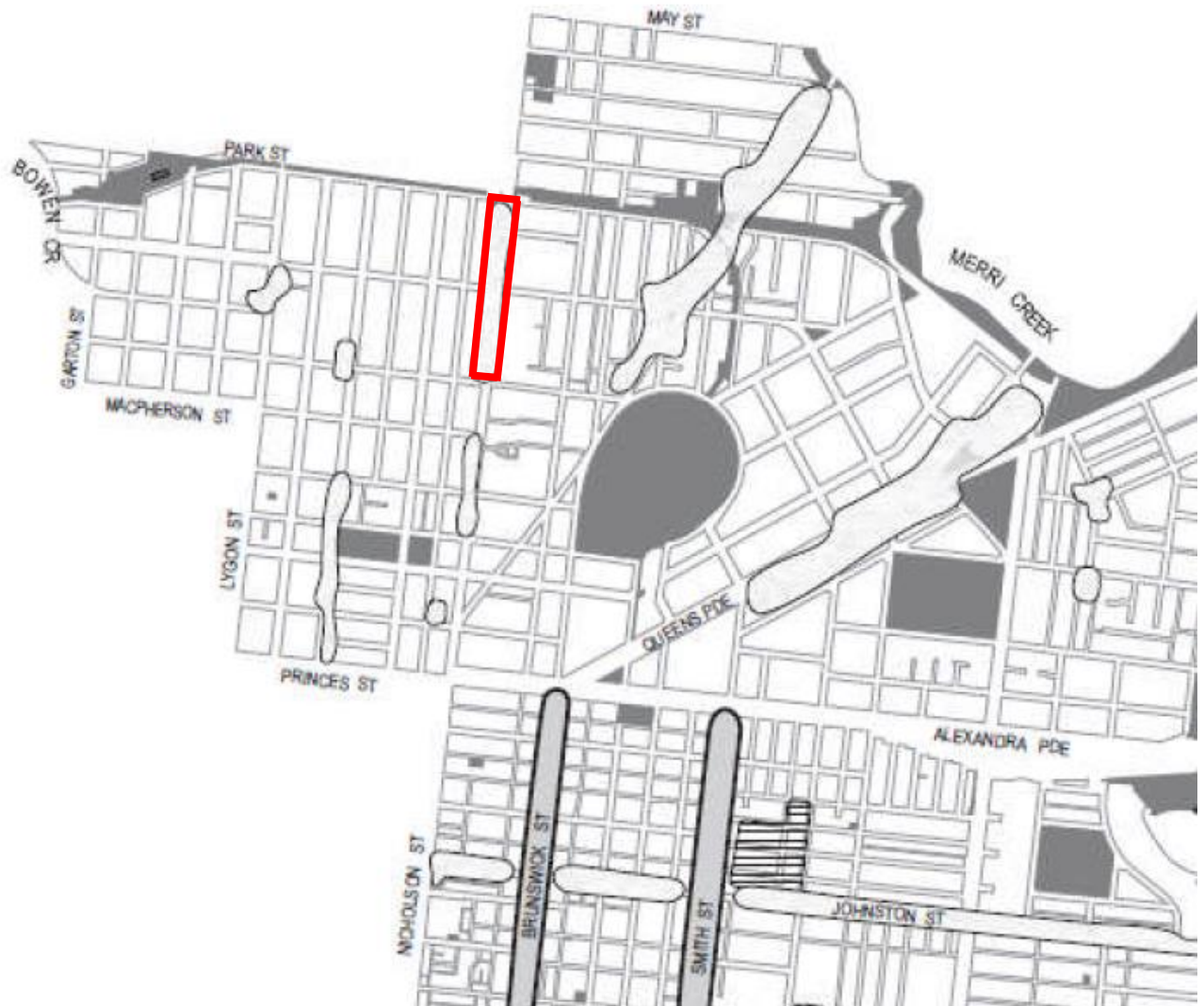


(Aerial imagery, July 2018)

#### Surrounding Land

25. The surrounding area contains a mix of uses, with predominantly commercial activity along the Nicholson Street spine and residential uses located to the east and west of the commercial spine.
26. The subject site is located within the Fitzroy North neighbourhood activity centre that includes properties on both sides of Nicholson Street between Reid Street to the south and Park Street to the north. The neighbourhood activity centre consists of a range of services and facilities, including retail, restaurants, services and offices along both sides of Nicholson Street.
27. The site is well serviced by public transport with the Nicholson Street tram line travelling in front of the site providing services between East Brunswick and St Kilda (via the city centre). The St. Georges Road tram is located approximately 430 metres away to the east and the Lygon street tram located approximately 700 metres away to the west.
28. To the immediate south of the subject site at 620 and 618 Nicholson Street is a pair of two attached single storey dwellings of the Victorian-era. The dwellings occupy approximately two-thirds of their respective sites with open space provided at the rear of the dwellings and informal car parking spaces accessed for a rear laneway.
29. Further south, at 612-616 Nicholson Street is a double storey Victorian-era commercial building located on the north-east corner with Reid Street. The ground floor is currently occupied with two separate restaurants with service areas located to the rear of the building.

30. On the south-east corner of Nicholson Street and Reid Street at 600 Nicholson Street is a five storey apartment building with a three storey street wall with a height of 15 metres and an overall height of 19.79 metres.
31. To the rear (east) of 612-616 Nicholson Street and abutting the southern portion of the rear boundary of the subject site is a 3.26 metre wide north-south laneway. The laneway commences at Reid Street in the south, extends along the rear boundaries of 612 to 620 Nicholson Street as well as the southern 10.06 metres of the rear boundary of the subject site before coming to an end at a dog leg in the rear boundary of the subject site.
32. To the east of the north-south laneway at 7-11 Reid Street is a six storey building with a height of 19.64 metres to the top of the parapet. The building contains ground floor commercial uses facing Reid Street, apartments at the rear of the ground floor and apartments on all upper floor levels. Apartments on each floor have courtyards or balconies abutting the laneway opposite the rear boundary of the subject site, separated by the width of the north-south laneway.
33. To the east of the subject site at 4 Bik Lane and to the north of the six storey building facing Reid Street is a mixed use development consisting of a seven storey apartment building opposite the subject site, with a height of 22.05 metres to the top of the parapet. Apartments are orientated facing the subject site on each floor with courtyards on the ground floor abutting the rear boundary of the subject site and balconies on the upper floors setback between 1.5 metres and 3.5 metres from the common boundary. The seven storey apartment building sits opposite the majority of the rear boundary of the subject site and extends further north, to the north-east of the subject site.
34. Further east is a four storey component of the apartment development at 4 Bik Lane, with low-rise traditional residential properties further east in Batman Street affected by a heritage overlay.
35. To the north of the subject site and west of the seven storey apartment building is a 4.1 metre wide north-south laneway that commences at Bik Lane to the north and terminates at the northern boundary of the subject site. Bik Lane connects to Nicholson Street to the west and has a road reserve width of 8 metres.
36. To the immediate north of the subject site, at 644 Nicholson Street, is a single storey brick dwelling with a large area of secluded private open space to the rear and vehicle access provided via the north-south laneway to the rear.
37. Further north, at 646 Nicholson Street, is a single storey brick commercial building built to all property boundaries that currently appears vacant, while at 648 Nicholson Street, on the south-east corner with Bik lane is a double storey brick commercial building with undercroft car parking at the front of the site and also built to all property boundaries. Further north at 650 Nicholson Street, on the north-east corner of Nicholson Street and Bik Lane, is a four storey mixed-use building with a two storey street wall.
38. To the immediate west of the site is Nicholson Street, which has a road reserve width of approximately 30 metres and is identified as a Road Zone, Category 1. Nicholson Street has two lanes of traffic in each direction, centre-of-the-road tram tracks, and kerbside parallel parking on both sides of the road. Nicholson Street runs in a north-south alignment between Bell Street in Coburg and Spring Street in the CBD.
39. On the western side of Nicholson Street, opposite the subject site, is a mix of retail, commercial and residential uses that are predominantly one to two storeys in scale. The properties on the western side of Nicholson Street are affected by Heritage Overlay (Schedule 326) which relates to the North Carlton precinct.



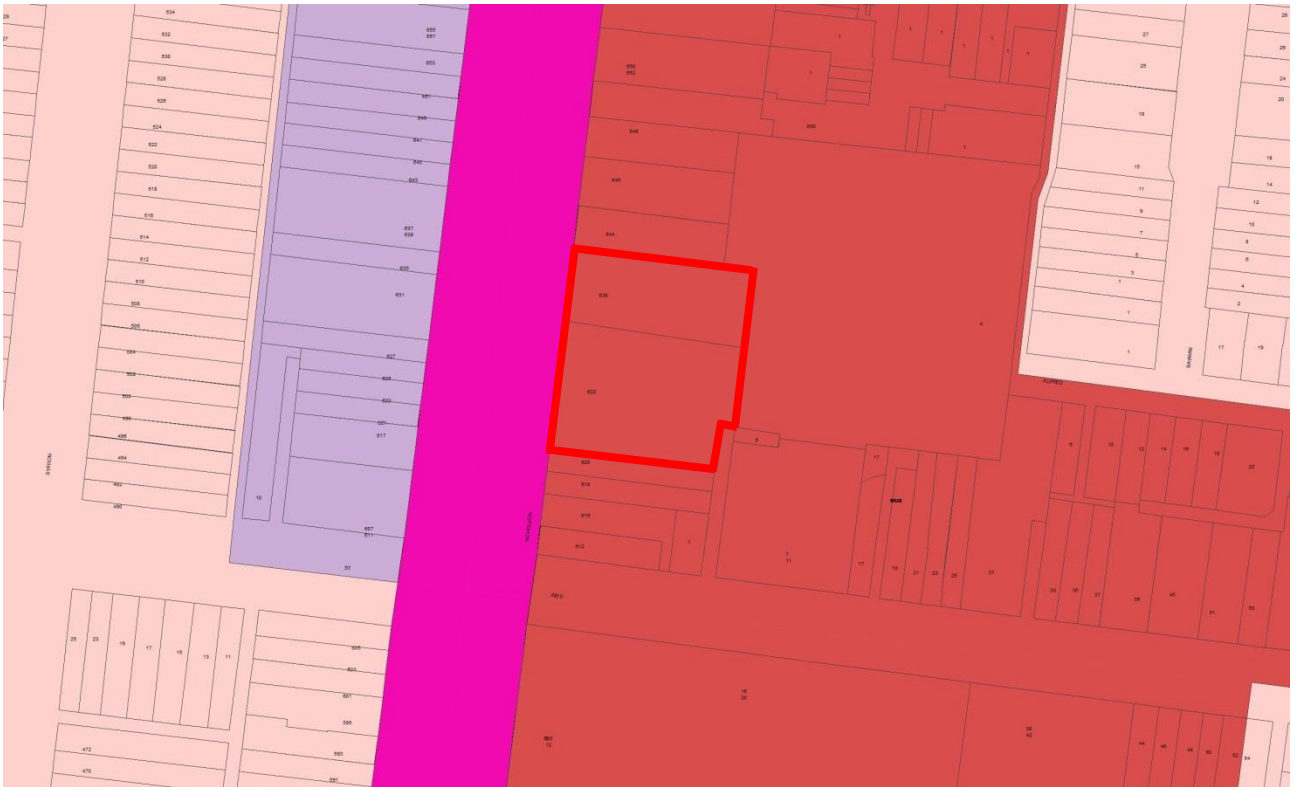
(Nicholson Street, Fitzroy North activity centre location)

## Planning Scheme Provisions

### Zoning

#### *Clause 32.04 – Mixed Use Zone*

40. Pursuant to Clause 32.04-1 of the Yarra Planning Scheme (the Scheme), an office and a medical centre are section 1 uses provided the floor area does not exceed 250 square metres. A shop (including a supermarket and a bottle shop) is a section 1 use provided the floor area does not exceed 150 square metres.
41. As the proposed office component exceeds 250 square metres, the medical centre exceeds 250 square metres and the combined floor area of the supermarket and the bottle shop exceed 150 square metres, all of the proposed uses within the building default to section 2 uses which require a planning permit.
42. Pursuant to Clause 32.04-8 of the Scheme, a planning permit is required to construct a building or construct or carry out works for any use in section 2.



(Zoning map)

### Overlay

#### *Clause 45.03 – Environmental Audit Overlay*

43. Pursuant to Clause 45.03-1 of the Scheme, before a sensitive use (residential use, child care centre, pre-school centre or primary school) commences or before the construction or carrying out of buildings and works in association with a sensitive use commences, either:
  - (a) A certificate of environmental audit must be issued for the land in accordance with Part IXD of the Environment Protection Act 1970, or
  - (b) An environmental auditor appointed under the Environment Protection Act 1970 must make a statement in accordance with Part IXD of that Act that the environmental conditions of the land are suitable for the sensitive use.
44. As the proposed development does not include a sensitive use, the requirements of this overlay do not apply.
45. Issues pertaining to potentially contaminated land will be discussed in more detail in the assessment section of this report.

### Particular Provisions

#### *Clause 52.06 – Car Parking*

46. Pursuant to Clause 52.06-2 of the Scheme, the car parking spaces required under Clause 52.06-5 of the Scheme must be provided on the land. Clause 52.06-3 requires a planning permit to reduce the requirement to provide the number of car parking spaces required under this clause.
47. Pursuant to Clause 52.06-5 of the Scheme, the car parking requirements for the proposed development are taken from column B of table 1 as the land is identified as being within the Principal Public Transport Network Area as shown on the *Principal Public Transport Network Area Maps (State Government of Victoria, 2018)*. The car parking requirements are as follows:

Use:	Rate:	Spaces required:	Spaces proposed:	Reduction sought:
Supermarket (1,390 sqm)	5 to each 100 sqm of leasable floor area	69	42	27
Bottle shop (120 sqm)	3.5 to each 100 sqm of leasable floor area	4	4	0
Medical centre (1,352 sqm)	3.5 to each 100 sqm of leasable floor area	47	23	24
Office (7,615 sqm)	3 to each 100 sqm of net floor area	228	88	140
<b>TOTAL</b>		<b>348</b>	<b>157</b>	<b>191</b>

48. With a shortfall of 191 car parking spaces, this application therefore seeks a reduction in the car parking requirement of the Scheme associated with the supermarket, medical centre and office uses within the proposed building.

*Clause 52.27 – Licensed Premises*

49. Pursuant to clause 52.27 of the Scheme, a planning permit is required to use land to sell or consume liquor if a licence is required under the *Liquor Control reform Act 1998*. The requirement to obtain a planning permit is therefore triggered under Clause 52.27 of the Scheme. Before deciding on an application, the Responsible Authority must consider the following, as appropriate:
- (a) The Municipal Planning Strategy and the Planning Policy Framework.
  - (b) The impact of the sale or consumption of liquor permitted by the liquor licence on the amenity of the surrounding area.
  - (c) The impact of the hours of operation on the amenity of the surrounding area.
  - (d) The impact of the number of patrons on the amenity of the surrounding area.
  - (e) The cumulative impact of any existing licensed premises and the proposed licensed premises on the amenity of the surrounding area.

*Clause 52.29 – Land Adjacent to a Road Zone, Category 1*

50. Pursuant to Clause 52.29 of the Scheme, a planning permit is required create or alter access to a road in a Road Zone, Category 1. Nicholson Street is in a Road Zone, Category 1 and the proposal seeks to remove and alter vehicle access points from Nicholson Street. A planning permit is therefore required to remove and alter access to Nicholson Street.
51. An application to create or alter access to a road declared as a freeway or arterial road under the Road Management Act 2004 or land owned by the Roads Corporation for the purpose of a road must be referred to the Roads Corporation under section 55 of the *Planning and Environment Act 1987*. In this instance Vic Roads are the relevant referral.

*Clause 52.34 – Bicycle Facilities*

52. Pursuant to Clause 52.34-1 of the Scheme, a new use must not commence until the required bicycle facilities and associated signage has been provided on the land. The bicycle parking requirements prescribed at Clause 52.34-3 are summarised in the table below:

Use:	Employee Rate:	Spaces required:	Visitor/Shopper Rate:	Spaces required:
Shop, including supermarket and bottle shop (1,510 sqm)	1 to each 600 sqm of leasable floor area if the leasable floor area exceeds 1,000 sqm	3	1 to each 500 sqm of leasable floor area if the leasable floor area exceeds 1,000 sqm	3
Medical centre (10 practitioners)	1 to each 8 practitioners	1	1 to each 4 practitioners	3
Office (7,615 sqm)	1 to each 300 sqm of net floor area if the net floor area exceeds 1,000 sqm	25	1 to each 1,000 sqm of net floor area if the net floor area exceeds 1,000 sqm	8
<b>TOTAL</b>		<b>29</b>		<b>13</b>

53. As 107 on-site bicycle parking spaces are proposed within the development and 42 spaces are required by the Scheme, the application exceeds the bicycle parking spaces requirement by 65 spaces.
54. End of trip facilities (i.e. showers or change rooms) are required by the Scheme. Further, the Scheme prescribes that when five or more employee bicycle spaces are required, one shower is required for the first five employee bicycle spaces, plus another shower to each ten employee bicycle spaces thereafter. Additionally, one change room or direct access to a communal change room is required to each shower. The change room may be a combined shower and change room.
55. As the Scheme requires 29 employee bicycle parking spaces, three showers with change rooms are also required. As the proposed development incorporates ten combined shower and change rooms, the application exceeds the requirements of Clause 52.34 of the Scheme by seven showers.

#### General Provisions

##### *Clause 65 – Decision Guidelines*

56. The decision guidelines outlined at Clause 65 of the Scheme are relevant to all applications. Because a permit can be granted does not imply that a permit should or will be granted. Before deciding on an application, the Responsible Authority must consider a number of matters. Amongst other things, the Responsible Authority must consider the Municipal Planning Strategy and the Planning Policy Framework, as well as the purpose of the zone, overlay or any other provision.

##### Planning Policy Framework (PPF)

57. The following PPF provisions of the Scheme are relevant:

##### *Clause 11.01-1R – Settlement – Metropolitan Melbourne*

58. The relevant strategies of this Clause are:
  - (a) Develop a network of activity centres linked by transport; consisting of Metropolitan Activity Centres supported by a network of vibrant major and neighbourhood activity centres of varying size, role and function.

- (b) Create mixed-use neighbourhoods at varying densities, including through the development of urban-renewal precincts, that offer more choice in housing, create jobs and opportunities for local businesses and deliver better access to services and facilities.

*Clause 11.02-1S – Supply of Urban land*

59. The objective of this Clause is:

- (a) To ensure a sufficient supply of land is available for residential, commercial, retail, industrial, recreational, institutional and other community uses.

*Clause 11.03-1S – Activity Centres*

60. The objective of this Clause is:

- (a) To encourage the concentration of major retail, residential, commercial, administrative, entertainment and cultural developments into activity centres that are highly accessible to the community.

*Clause 11.03-1R – Activity Centres – Metropolitan Melbourne*

61. The relevant strategy of this Clause is:

- (a) Locate new small scale education, health and community facilities that meet local needs in or around neighbourhood activity centres.

*Clause 13.04-1S – Contaminated and Potentially Contaminated Land*

62. The objective of this Clause is:

- (a) To ensure that potentially contaminated land is suitable for its intended future use and development, and that contaminated land is used safely

*Clause 13.05-1S – Noise Abatement*

63. The objective of this Clause is:

- (a) To assist the control of noise effects on sensitive land uses.

*Clause 13.07-1S – Land Use Compatibility*

64. The objective of this Clause is:

- (a) To safeguard community amenity while facilitating appropriate commercial, industrial or other uses with potential off-site effects.

*Clause 15.01-1S – Urban Design*

65. The objective of this Clause is:

- (a) To create urban environments that are safe, healthy, functional and enjoyable and that contribute to a sense of place and cultural identity.

*Clause 15.01-1R – Urban Design – Metropolitan Melbourne*

66. The objective of this Clause is:

- (a) To create a distinctive and liveable city with quality design and amenity.

*Clause 15.01-2S – Building Design*

67. The objective of this Clause is:

- (a) To achieve building design outcomes that contribute positively to the local context and enhance the public realm.

*Clause 15.01-4R – Healthy Neighbourhoods – Metropolitan Melbourne*

68. The strategy of this Clause is:

- (a) Create a city of 20 minute neighbourhoods that give people the ability to meet most of their everyday needs within a 20 minute walk, cycle or local public transport trip from their home.

*Clause 15.01-5S – Neighbourhood Character*

69. The objective of this Clause is:

- (a) To recognise, support and protect neighbourhood character, cultural identity, and sense of place.

*Clause 15.02-1S – Energy and Resource Efficiency*

70. The objective of this Clause is:

- (a) To encourage land use and development that is energy and resource efficient, supports a cooler environment and minimises greenhouse gas emissions.

*Clause 17.01-1S – Diversified Economy*

71. The objective of this Clause is:

- (a) To strengthen and diversify the economy.

*Clause 17.02-1S – Business*

72. The objective of this Clause is:

- (a) To encourage development that meets the community's needs for retail, entertainment, office and other commercial services.

*Clause 18.01-1S – Land Use and Transport Planning*

73. The objective of this Clause is:

- (a) To create a safe and sustainable transport system by integrating land use and transport.

*Clause 18.01-2S – Transport System*

74. The objective of this Clause is:

- (a) To coordinate development of all transport modes to provide a comprehensive transport system.

*Clause 18.02-1S – Sustainable Personal Transport*

75. The objective of this Clause is:

- (a) To promote the use of sustainable personal transport.

*Clause 18.02-1R – Sustainable Personal Transport – Metropolitan Melbourne*

76. The relevant strategy of this Clause is:

- (a) Improve local travel options for walking and cycling to support 20 minute neighbourhoods.

*Clause 18.02-2S – Public Transport*

77. The objective of this Clause is:

- (a) To facilitate greater use of public transport and promote increased development close to high-quality public transport routes.

*Clause 18.02-2R – Principal Public Transport Network*

78. The relevant strategy of this Clause is:

- (a) Maximise the use of existing infrastructure and increase the diversity and density of development along the Principal Public Transport Network, particularly at interchanges, activity centres and where principal public transport routes intersect.

*Clause 18.02-4S – Car Parking*

79. The objective of this Clause is:

- (a) To ensure an adequate supply of car parking that is appropriately designed and located.

*Clause 19.02-1S – Health Facilities*

80. The objective of this Clause is:

- (a) To assist the integration of health facilities with local and regional communities.

*Clause 19.02-1R – Health Facilities – Metropolitan Melbourne*

81. The relevant strategy of this Clause is:

- (a) Ensure health precincts are well serviced by community services.

*Clause 19.03-4S - Stormwater*

82. The objective of this Clause is:

- (a) To reduce the impact of stormwater on bays, water bodies and catchments.

Local Planning Policy Framework (LPPF)

83. The following LLPF provisions of the Scheme are relevant:

*Clause 21.04-2 – Activity Centres*

84. The relevant objectives of this Clause are:

- (a) To maintain a balance between local convenience and regional retail roles in Yarra's activity centres.
- (b) To maintain the long term viability of activity centres.

*Clause 21.04-4 – Community Facilities, Hospitals and Medical Services*

85. The relevant objectives of this Clause are:

- (a) To provide community services that meet the needs of a diverse and changing community.
- (b) To provide accessible community services.

*Clause 21.05-2 – Urban Design*

86. The relevant objectives of this Clause are:

- (a) To reinforce the existing urban framework of Yarra.
- (b) To retain Yarra's identity as a low-rise urban form with pockets of higher development.
- (c) To retain, enhance and extend Yarra's fine grain street pattern.
- (d) To create an inner city environment with landscaped beauty.
- (e) To ensure that new development contributes positively to Yarra's urban fabric.
- (f) To enhance the built form character of Yarra's activity centres.

*Clause 21.05-3 – Built Form Character*

87. The relevant objectives of this Clause are:

- (a) To maintain and strengthen the identified character of each type of identified built form within Yarra.

*Clause 21.05-4 – Public Environment*

88. The relevant objectives of this Clause are:

- (a) To provide a public environment that encourages community interaction and activity.

*Clause 21.06 – Transport*

89. The relevant objectives of this Clause are:
- (a) To provide safe and convenient pedestrian and bicycle environments.
  - (b) To facilitate public transport usage.
  - (c) To reduce the reliance on the private motor car.
  - (d) To reduce the impact of traffic.

*Clause 21.07 – Environmentally Sustainable Development*

90. The relevant objectives of this Clause are:
- (a) To promote environmentally sustainable development.
  - (b) To improve the water quality and flow characteristics of storm water run-off.

*Clause 21.08-8 – North Fitzroy*

91. Clause 21.08-8 describes the North Fitzroy area in the following way:
- (a) North Fitzroy is known for the beautiful Edinburgh Gardens which combine open space, sportsgrounds, barbecue area, gardens with long-established European elm trees, skate bowl, tennis and basketball courts, bandstand, bowling greens and bocce links, remnants of the old Melbourne rail loop, and a heritage listed grandstand.
  - (b) The neighbourhood is largely residential. The northern part of North Fitzroy has a low density residential character consisting of late Victorian and early Edwardian double fronted dwellings. Further south dwellings are more likely to be single fronted and one or two storeys.
92. Within Figure 19 of Clause 21.08-8, the site is located within the Nicholson Street neighbourhood activity centre. Figure 20 of Clause 21.08-8 shows the site as being within category 3 area relating to non-residential areas where the objective is to *‘improve the interface of development with the street’*.

Relevant Local Policies

*Clause 22.05 – Interface Uses Policy*

93. This policy applies to applications for use or development within Mixed Use Zones (amongst others). The relevant objective of this clause is to ensure that residential uses located within or near commercial centres or near industrial uses enjoy a reasonable level of amenity. It is policy that:
- (a) New non-residential use and development within Business (now Commercial) and Mixed Use and Industrial Zones are designed to minimise noise and visual amenity impacts upon nearby, existing residential properties.

*Clause 22.07 – Development Abutting Laneways*

94. This policy applies to applications for development that is accessed from a laneway or has laneway abuttal. The objectives of this policy include to provide an environment which has a feeling of safety for users of the laneway, to ensure that development along a laneway acknowledges the unique character of the laneway, to ensure that where development is accessed off a laneway, all services can be provided to the development and to ensure that development along a laneway is provided with safe pedestrian and vehicular access.

*Clause 22.09 – Licensed Premises*

95. This policy applies to an application under Clause 52.27 for the sale and consumption of liquor. The objectives of this clause are:
- (a) To protect the amenity of nearby properties and areas by effectively managing the location, size, operation and hours of licensed premises.
  - (b) To encourage best practice venue design and venue operation for licensed premises.

- (c) To protect residential and other commercial uses from excess noise, traffic and car parking issues.
- (d) To provide for daytime trade and active street frontages in retail strips, while providing reasonable commercial opportunities for the trading of licensed premises.

*Clause 22.10 – Built Form and Design Policy*

96. The policy applies to all new development not included in a heritage overlay and comprises ten design elements that address the following issues: urban form and character; setbacks and building heights; street and public space quality; environmental sustainability; site coverage; on-site amenity; off-site amenity; landscaping and fencing; parking, traffic and access; and service infrastructure.

*Clause 22.16 – Stormwater Management (Water Sensitive Urban Design)*

97. This policy applies to applications for new buildings. The policy aims to achieve best practice water quality performance objectives, to promote the use of water sensitive urban design, including stormwater re-use, and to mitigate the detrimental effect of development of downstream waterways.

*Clause 22.17 – Environmentally Sustainable Development*

98. This policy applies to commercial development with more than 1,000 square metres. The overarching objective is that development should achieve best practice in environmentally sustainable development from the design stage through to construction and operation. The considerations are energy performance, water resources, indoor environment quality, storm water management, transport, waste management and urban ecology.

Other Documents

*Urban Design Guidelines for Victoria (DELWP)*

99. These are policy guidelines within the Planning Policy Framework of the Victoria Planning Provisions which where relevant, must be considered when assessing the design and built form of new development. The guidelines use best practice knowledge and advice underpinned by sound evidence.

**Advertising**

100. The application was advertised under the provisions of Section 52 of the *Planning and Environment Act (1987)* by 1,010 letters sent to surrounding owners and occupiers and by two signs both displayed on the Nicholson Street frontage of the site.
101. Council received 240 objections to the application, the grounds of which can be summarised as follows:
- (a) Design and built form (including out of character, excessive height, bulk and scale and inappropriate materials and finishes).
  - (b) Overdevelopment of the site.
  - (c) Off-site amenity impacts (including overlooking, overshadowing, loss of daylight, glare from the proposed glazing, loss of views, wind impacts).
  - (d) Increase in noise (traffic, people, outdoor areas/terraces, mechanical plant equipment, etc.).
  - (e) Poor internal amenity.
  - (f) Car parking, traffic and access including impractical turn table, lack of car parking on site, increased traffic, waste management issues.
  - (g) Other (including setting a precedence, no community benefit, reduction in property values, impacts during construction).
102. A consultation meeting was not held due to the large number of objections received.

103. In response to the issues raised in the objections, as well as issues raised by Council officers and in referral comments, a set of sketch plans prepared by Artisan Architects and dated 14 September 2018 (Attachment 4) were submitted to Council on the 21 September 2018, after the advertising period. The sketch plans show the following changes to the proposed development as depicted on the advertised plans:
- (a) An indicative layout of the ground floor tenancies.
  - (b) Consolidation of the bicycle parking spaces within a designated room (basement level one).
  - (c) Increased number of visitor bicycle hoops on the Nicholson Street footpath from nine hoops to twelve hoops.
  - (d) Inclusion of a substation on basement level one in place of three car parking spaces.
  - (e) Deletion of one medical consulting suite on the first floor and increased size of the medical centre waiting area.
  - (f) Reduced height of the awning along Nicholson Street from 4 metres to 3 metres (minimum).
  - (g) Provision of square shaped columns internally above the ground floor in lieu of round shaped columns.
104. Given that the sketch plans have not been formally substituted pursuant to clause Section 57A, they do not form part of the application documents and were not re-advertised. However, the sketch plans but will be referred to for discussion purposes in the assessment section of this report.

### **Referrals**

105. The referral comments are based on the advertised plans and, where required, additional referral comments were sought on the submitted sketch plans.

#### External Referrals

106. The advertised plans and application documents were referred to the following authority:
- (a) VicRoads (Attachment 6).
107. Referral responses/comments have been included as attachments to this report.

#### Internal Referrals

108. The advertised plans and application documents were referred to the following units within Council and external consultants:
- (a) Engineering services unit (Attachment 7).
  - (b) ESD advisor (Attachment 8), including additional comments on sketch plans.
  - (c) Urban design unit (Attachment 9).
  - (d) Streetscapes and natural values (Attachment 10).
  - (e) Strategic transport unit (Attachment 11), including additional comments on sketch plans.
  - (f) Acoustic consultant (SLR Consulting Australia) (Attachment 12), including comments on sketch plans.
  - (g) Urban design consultant (Hansen Partnership) (Attachment 13).
109. Referral comments have been included as attachments to this report.

### **OFFICER ASSESSMENT**

110. The primary considerations for this application are as follows:
- (a) Strategic justification.

- (b) Land Use.
- (c) Built form and design.
- (d) Equitable development.
- (e) Off-site amenity impacts.
- (f) Internal amenity.
- (g) Sustainable design.
- (h) Potentially contaminated land.
- (i) Car and bicycle parking.
- (j) Traffic and access.
- (k) Objectors' concerns.

Strategic Justification

- 111. The subject site is located within the Mixed Use Zone (MUZ), a zone that encourages a range of residential, commercial, industrial and other uses which complement the mixed-use function of the locality and housing at higher densities. The office, supermarket, bottle shop and medical centre uses due to the proposed floor spaces, all require a planning permit to operate within the zone. Similarly, a planning permit is also required to construct a building or construct or carry out works for a use in section 2.
- 112. In regard to the proposed building and works, State and Local policies encourage the concentration of development in and around activity centres and intensifying development on sites well connected to public transport, ensuring the efficient use of existing infrastructure.
- 113. Council's local policy at Clause 22.10 of the Scheme outlines high level urban design guidance for future built form, which supplements State and Local policy that seeks to increase the number and diversity of employment opportunities within and around activity centres.
- 114. The application proposes the construction of a ten storey building containing a mix of uses (office and retail) on a site which is underutilised with reference to its physical and policy context. The zoning of the land supports development which provides a range of residential, commercial, industrial and other uses. Council's Municipal Strategic Statement (MSS) identifies the site as being within the Nicholson Street activity centre (Clauses 21.03 and 21.08-8) and the site has many of the attributes of a strategic redevelopment site. These include the overall size of the site, frontage to a major arterial road, proximity to a regionally significant transport corridor and proximity to services and transportation within the surrounding area. The proposal is considered to be generally consistent with the purpose of the zone and strategic incentives set out in the Scheme for this area that encourage intensification of uses and the provision of employment opportunities.
- 115. The subject site is well connected to public transport infrastructure, with the Nicholson Street tram line located immediately in front of the site, and the tram lines along St. Georges Road and Lygon Street located within walking distance (430 metres and 700 metres respectively), encouraging the use of alternative modes of transport to and from the site, rather than full reliance on motor vehicles. This is encouraged and supported by both State and local policies, at Clause 18.02 (Movement Networks), Clause 21.06-3 (Transport) and Clause 21.07 (Environmental Sustainability) of the Scheme.
- 116. Overall, and in a strategic sense, the proposed construction of a multi-storey office building with ground floor retail uses is consistent with the relevant State and local policies (Clauses 11.03, 17.02, 21.04-2 and 21.04-3 of the Scheme) and the purpose of the Mixed Use Zone.
- 117. That said, however, the policy support for more intensive development needs to be balanced with built form guidance at Clauses 15.01, 21.05-2 and 22.10 of the Scheme which call for development that appropriately responds to the surrounding context and urban character.

118. While the surrounding area is expected to undergo a substantial level of change as a result of the zoning of the land, strategic location and access to services and transport, consideration of the off-site amenity impacts and the scale of the development (taking into account the expected future character of the area) are all relevant considerations in the assessment of this proposal.
119. As will be discussed in more detail within this report, the height of the proposed development, at ten storeys in both the advertised plans and the sketch plans, does not adequately respond to the surrounding context, the existing or emerging character or the residential interface to the rear. However, subject to a condition requiring a reduction in the overall height of the proposed building from ten to eight storeys, through the deletion of two levels, the proposed development would more appropriately respond to the surrounding context and the existing and emerging character.
120. The proposed development enjoys strong strategic support at both State and local level. The site is within an area where a change in the environment is encouraged and is achieved through the mix of uses proposed. Subject to conditions including the deletion of two levels, the proposed development is considered to achieve the various land use and development objectives outlined earlier in this report.

#### Land Use

121. As detailed at paragraphs 40 and 41 of this report, the office, medical centre, supermarket and bottle shop all require a planning permit to operate within the Mixed Use Zone given their floor space sizes. The purpose of the Mixed Use Zone includes *to provide for a range of residential, commercial, industrial and other uses which complement the mixed-use function of the locality* and to *provide for housing at higher densities*.
122. The proposed uses, while all section 2 uses within the Mixed Use Zone, are considered appropriate given the purpose of the zone which ultimately supports mix use development and a range of residential, commercial, industrial and other uses which complement the locality. In this instance, the subject site is located within a neighbourhood activity centre where the proposed uses within the building would complement the already mixed-use function of the area.
123. Additionally, the proposed office, medical centre, supermarket and bottle shop uses are not considered to cause any unreasonable off-site amenity impacts to the surrounding area, subject to appropriate conditions relating to their operation.
124. Overall, the proposed mix of uses proposed within the development is considered to respond to the locational attributes of the site and the policy direction in the Scheme that encourages the concentration of major retail, residential, commercial, administrative, entertainment and cultural developments into activity centres. The proposed uses, subject to conditions restricting hours of operation and loading to acknowledge the residential interface to the rear, are therefore considered appropriate for the subject site and are supported.

#### Built Form and Design

125. In considering the design and built form of the proposed development, the most relevant aspects of the Scheme are found at Clause 15 (Built Environment and Heritage), Clause 21.05 (Built Form), Clause 22.07 (Development Abutting Laneways) and Clause 22.10 (Design and Built Form). As supplementary guidance, the *Urban Design Guidelines for Victoria* (prepared by Department of Environment, Land, Water and Planning) 2017 are also relevant. These provisions and guidelines all seek a development outcome that responds to the existing or preferred neighbourhood character and provides a contextual urban design response reflective of the aspirations for the area. Particular regard must be given to the acceptability of the design in terms of height and massing, street setbacks, relationship to adjoining buildings, views and roof forms.

126. The proposal is generally considered to be consistent with all relevant built form and decision guidelines. However, the height of the proposed development at ten storeys does not adequately respond to the surrounding context which includes apartment buildings up to seven storeys in height. Subject to a reduction in the overall height of the building to eight storeys through the deletion of two levels (which has been recommended by Council's urban design consultant), the proposal can adequately respond to the surrounding context and achieve a built form outcome that better responds to the emerging character.

#### *Street Wall*

127. The relationship between street width and building height is important for defining the character of a place. In this instance, there are no specific controls in the Scheme or otherwise that provide guidance for an appropriate street wall height for the subject site. However, Clause 21.05-4 of the Scheme aims to ensure that buildings have a human scale at street level. Human scale is the practice of measuring and designing things to match the physical and cognitive characteristics of humans.
128. Additionally, the *Urban Design Guidelines for Victoria* (prepared by Department of Environment, Land, Water and Planning, 2017) seek to ensure that building scale and form supports the context and preferred future character of an activity centre, achieved by using the building height and setbacks to frame the street space as a public space and utilising a podium and tower form to create a pedestrian scale at street level.
129. The proposal incorporates a three storey street wall height of 14.573 metres to Nicholson Street. The surrounding built form context includes a mix of street wall heights. To the immediate south are single storey dwellings with 4.6 metre setbacks from the street, beyond which are double storey commercial buildings constructed to the street frontage. On the south-east corner of Nicholson Street and Reid Street is a five storey apartment building with a three storey, 15 metre high street wall. To the immediate north of the subject site is a single storey dwelling setback from the street by 4.3 metres, while further north are single and double storey commercial buildings constructed to the street frontage. Further north, on the north-east corner of Nicholson Street and Bik Lane, is a four storey mixed-use building with a two storey street wall.
130. The proposed three storey street wall to Nicholson Street, at a height of 14.573 metres, is considered acceptable due to the varied nature of street walls along this section of Nicholson Street. It is also generally consistent with the three storey street wall height of the five storey apartment building on the south-east corner of Nicholson Street and Reid Street, albeit it the proposed street wall height being marginally lower.
131. Additionally, Nicholson Street has a width of 30 metres which using proposed street wall height, would equate to street wall height to street width ratio of 2:1. It is considered that this would therefore not unduly impact on the streetscape character along this section of Nicholson Street. Overall, the proposed three storey street wall height is considered appropriate for the subject site and in the submitted form.

#### *Upper Level Setbacks*

132. The *Urban Design Guidelines for Victoria* (prepared by Department of Environment, Land, Water and Planning, 2017) call for the upper levels of tall buildings to be setback to create a pedestrian scale at street level. Pedestrian scale means the use of human proportioned architectural features and site design elements clearly oriented to pedestrian activity.
133. The proposal includes a 6 metre setback above the three storey 14.573 metre high street wall. This, combined with a reduced height of the building from ten to eight storeys (as will be discussed in more detail later in this report), is considered appropriate to achieve a more visually recessive built form that will not unreasonably dominate the streetscape or more distant views to the subject site from the surrounding area.
134. The proposed 6 metre upper level setback, combined with the reduced building height to eight storeys, will reduce the visibility of the upper levels and enhance the prominence of the street wall as the principal built form reference from Nicholson Street.

135. It is acknowledged that even with an eight storey building, the building will be visible in more distant views, especially given that the tallest building within at least 200 metres of the subject site is currently 22.05 metres (seven storeys). However, future development is anticipated and expected to occur either side of the subject site along Nicholson Street over time, due to the locational attributes and policy within the PPF and LPPF which is similar to the policy relevant to the subject site and lots along the Nicholson Street spine. The fact that, if approved, this will be the first tall building developed in Nicholson Street alongside some single storey built form, is not in itself a reason to refuse the application.

*Height*

136. In terms of the built form context, the area is generally defined by the one to three storey hard edged development along Nicholson Street, as well as some low-rise residential development dispersed within the surrounding area. In terms of recent developments, a seven storey apartment building has been constructed to the immediate east of the site at 4 Bik Lane, while at 7-11 Reid Street there is a six storey mixed-use building to the immediate south-east. Additionally, a five storey apartment building has been constructed at 600 Nicholson Street.
137. Physically, the subject site provides opportunities in the form of the mixed use zoning of the land and its overall size supporting its consideration as a redevelopment site, as well as constraints due to the proximity of nearby dwellings.
138. The proposed development is for a ten storey building with a maximum height of 42.671 metres to the top of the lift overrun and a height to the parapet of 40.220 metres. The building incorporates setbacks above the street wall of 6 metres to the west, and a minimum of 3 metres to the north and south (side) boundaries. On the rear (eastern) boundary, the proposed development adopts a stepped setback progressively stepping away from the rear boundary and the apartment buildings constructed thereon.
139. The Scheme has no specific height limits for the subject site. Clause 22.10-3.3 of the Scheme aims to ensure that *the height of new development is appropriate to the surrounding context and respects the prevailing pattern of heights of the area where this is a positive contribution to neighbourhood character*. Most relevantly, Clause 21.05-2 of the Scheme states that *development on strategic development sites or within activity centres should generally be no more than five to six storeys unless it can be demonstrated that the proposal can achieve specific benefits, such as:*
- (a) Significant upper level setbacks.
  - (b) Architectural design excellence.
  - (c) Best practice environmental sustainability objectives in design and construction.
  - (d) High quality restoration and adaptive re-use of heritage buildings.
  - (e) Positive contribution to the enhancement of the public domain.
  - (f) Provision of affordable housing.
140. In relation to the 'specific benefits' listed above, the following assessment is provided.
- (a) It is clear that the proposed development has significant upper level setbacks which will provide good levels of internal amenity for the majority of the internal spaces, albeit non-residential. In terms of architectural design excellence, Council's urban design consultant considers the proposal to demonstrate *'a generally satisfactory degree of elegance in its contemporary architectural response'*, which may suggest that architectural design excellence has been achieved in this instance. The proposal will also meet Council's environmental sustainability objectives at Clauses 21.07 and 22.17, subject to conditions on any permit issued. This will be discussed later in this report.

- (b) The subject site is not a heritage building and therefore the adaptive re-use of heritage buildings is not required or relevant to this application. The proposal incorporates an active frontage to Nicholson Street which is supported by Council's urban design consultant, who states that this is *'a positive improvement to the presently vehicle-oriented frontage of the existing building via its four crossovers and porte-cochere'*, resulting in a positive contribution to the enhancement of the public realm.
  - (c) As noted by the Tribunal in *Zak Group Pty Ltd v Yarra CC [2017] VCAT 1124*, *'we need to recognise that the proposed predominant land use of office floor space represents a significant benefit to the broader community'* (paragraph 11). This is a relevant consideration as the decision making role is tasked with considering whether a proposal will achieve a net community benefit.
141. Overall, and on balance, it is considered that the proposed development meets a number of the criteria to allow a building that exceeds the five to six storey preferred height limit for development within an activity centre.
  142. As detailed above, it is clear that the subject site is capable of accommodating a taller built form outcome. However, the proposed building at ten storeys reaches an overall height that is greater than that envisioned in the relevant provisions of Clause 21.05-2 for future development within activity centres and the question arises as to how to best temper overall height with surrounding context.
  143. In relation to the issue of an appropriate height for the proposed building, Council's urban design consultant noted that, with the development at *'4 Bik Lane providing transition down to the low scale, heritage protected Batman Street, the proposed ten storey form results in too steep of a transition from the east'*. Additionally, it was commented that *'it is unlikely in the future that the opposite side of the street will also accommodate upwards of ten storey development unless significant land amalgamation is achieved'*. Thus, Council's urban design consultant does *'not agree that a ten storey development is of a sufficient scale to the Nicholson Streetscape at this location'*.
  144. Furthermore, Council's urban design consultant observed that *'east of the subject site there is an existing precedent of built form transition down to properties fronting Batman Street within the NRZ1'* where there is a height limit of two storeys. This results in the proposed ten storey building being *'significant in the visual setting of the heritage pocket'* and that the *'removal of two storeys is likely to lessen this impact and be reasonably screened behind existing buildings of 4 Bik Lane'*.
  145. Council's urban design consultant also noted that the *'rising ten storey tower form above the podium is likely to be... dominant to the pedestrian experience from the streetscape on Nicholson Street opposite the subject site'*. Overall, it was recommended that *'the building is reduced to eight storeys to provide a smoother transition to the east, secure the long term streetscape scale of Nicholson Street, and provide a scale proportionate between the street width (30 metres) and the overall building height'*.
  146. For the above reasons, the overall design of the proposed development is considered to adequately respond to the existing and emerging character of this section of Nicholson Street, subject to a reduced height of eight storeys. Therefore, a condition contained within the recommendation section of this report reflects that requirement.
  147. It is considered that the overall design response and presentation of the building to the street will not dramatically change with the loss of two floors given that the design, rhythm of the building from the fourth to the seventh floors is fairly consistent.

*Architectural quality*

148. The proposed development is considered to be of a high architectural quality and, in that regard, responds to the design objectives of Clause 15.01 of the Scheme. The contemporary design is appropriate and responds to the existing and emerging character of this part of Nicholson Street, as confirmed by Council's urban design consultant who noted that the *'street wall successfully implements a rhythm consistent to that of one to three storey terrace buildings located along village strips'* and that the *'proposal utilises a range of materials to successfully create a vertical flow across the wide frontage, both at the podium and upper levels'*.

#### *Street Level Interface*

149. At the ground floor, the proposal will activate Nicholson Street by way of a retail premises to the majority of the ground floor facade. The location of service cabinets predominantly away from the ground floor façade is a positive element of the proposal and will ensure an active ground level frontage and a design which facilitates street level activity.
150. The Nicholson Street frontage has supermarket and bottle shop frontages as well as the office/medical centre entrance lobby. The depth of the lobby has been minimised compared to its 3 metre width to ensure no substantial areas for concealment and minimising potential hiding places that undermine the safety of the street.
151. In relation to the proposed canopy over the Nicholson Street footpath, Council's urban design consultant recommended that it be *'lowered from its proposed height of 4.0 metres - 4.8 metres down to at least 3.0 metres to enhance the pedestrian scale in front of the building and provide genuine climate control and protection from rain/wind'*. The sketch plans show a lowered canopy with a minimum clearance of 3 metres achieving the desired outcome. Therefore, a condition will require amended plans that reflect the changes detailed in the sketch plans.
152. Objective 3.1.5 of the Urban Design Guidelines for Victoria (UDGV) aims to ensure comfortable and enjoyable public spaces. Taller buildings invariably create challenging wind conditions at street level and, specifically, the guidelines seek to protect public spaces from strong winds. These include down drafts and wind tunnel effects. Measures to reduce the impact of these effects should be considered.
153. The proposed development incorporates a stepped building form and articulation of the building mass to reduce wind turbulence at ground level of both the Nicholson Street frontage and the rear boundary, with the proposed canopy further reducing any adverse wind impacts.
154. The proposed development also seeks to retain and alter the northern most vehicle crossover to Nicholson Street for vehicle access to the three basement levels of car parking. Additionally, the remaining three crossovers are proposed to be removed and kerb and channel and footpath reinstated.
155. In relation to the vehicle access from Nicholson Street, Council's urban design consultant noted that *'while the proposal will contain basement access from Nicholson Street and a higher volume of vehicular traffic, it will be contained to a single crossover replacing the existing four. This presents a considerable enhancement to the street interface'*.
156. With regard to public realm improvements, Council's urban design unit commented that *'given the scale and type of development further opportunities for public amenity should be explored, particularly in relationship to street furniture'*. The sketch plans show street furniture and bicycle hoops with the Nicholson Street footpath. Conditions contained within the recommendation section of this report therefore require the street furniture and bicycle hoops to be constructed at the permit holder's cost and to Council's satisfaction.

#### *Laneway Interface*

157. Council's local policy at Clause 22.07 relates to development abutting laneways. Relevantly, the policy seeks to provide an environment which has a feeling of safety for users of the laneway and to ensure that development along a laneway acknowledges the unique character of the laneway. The policy specifically calls for development that respects the scale of the surrounding built form.
158. Additionally, Council's local policy at Clause 22.10 in relation to built form and design states that new development which abuts a laneway should not affect the amenity of neighbouring residential properties. Clause 22.10-3.3 seeks new development which abuts a laneway to be no higher than two storeys and should not affect the amenity of neighbouring residential properties.
159. The proposal development incorporates a two storey wall on both laneway frontages, with a height of 8.89 metres on the northern laneway and 10 metres on the southern laneway. This is consistent with the policy direction for wall heights on laneways.

#### *Site Services*

160. Site services and related enclosures for waste disposal and recycling, mail and deliveries and water and energy metering are necessary elements in any development. It is important, however, that these elements are assimilated in a subdued way into the design while still meeting the size and location requirements of service authorities.
161. The ground floor façade of the proposed development presents to a 45.55 metre wide Nicholson Street frontage and incorporates minimal service cabinets facing the street. To Nicholson Street frontage, the fire booster cupboard is located next to the office/medical centre entrance lobby and is the only service cabinet facing the street. The minimal amount of service cabinets facing the street is considered an appropriate design outcome consistent with Clause 22.10-3.11 of the Scheme, minimising the visual impact of these items.
162. However, the operability of the fire booster cupboard doors are not shown on the plans. To ensure the doors do not encroach on the public footpath area, they should swing 180 degrees and latch on to the building. Similarly, the door providing access to the rear laneway in the south-east corner of the site should also swing 180 degrees and latch on to the building. The recommendation section of this report includes a condition to ensure these requirements are met and shown on plans.
163. The remainder of the building services are appropriately located within the basement, on the ground floor or on the roof top, largely concealed from view and obscured from the public domain. This is also considered an appropriate design outcome that is consistent with Clause 22.10-3.11 relating to service infrastructure.

#### *Landscaping*

164. Landscaping is not a typical feature of commercial buildings along Nicholson Street. However, the proposal includes landscaping around the perimeter of the third floor terrace and the rooftop terrace. To ensure the landscaping is implemented and maintained, a condition contained within the recommendation section of this report requires a landscape plan to show all plantings details, satisfying objectives at Clauses 22.10-3.2 and 22.10-3.9.
165. In relation to the street trees in front of the site, Council's streetscapes and natural values unit recommend that a tree protection management report be submitted to ensure the trees are protected and that a bond should be applied to the value of the two street trees. Conditions contained within the recommendation section of this report will ensure that these requirements are met.

#### Equitable Development

166. To ensure the fair, orderly, economic and sustainable development of land, matters of equitable development must be considered in accordance with the objectives of planning in Victoria as set out in Section 4(1) of the *Planning and Environment Act 1987*. Objective 5.1.3 of the *Urban Design Guidelines for Victoria* also seeks to ensure buildings provide equitable access to daylight and sunlight.

167. Council's urban design consultant recommended that *'the applicant demonstrates how equitable development is achieved to potential podium levels of neighbouring sites'*. Supplementary information submitted with the sketch plans show the potential equitable development of the two neighbouring sites (north and south) at the podium level of the proposed development, for both residential and commercial scenarios. On review of the supplementary information submitted with the sketch plans, Council's urban design consultant is now satisfied that the *'equitable development outcomes are acceptable'*.

#### Off-site Amenity Impacts

168. The policy framework for amenity considerations is at clause 22.05 (Interface Uses Policy) and Clause 22.10 of the Scheme. Policy at Clause 22.10-3.8 of the Scheme seeks to ensure that new development does not prejudice the rights of adjoining and/or nearby land users (especially residents) to enjoy solar access, privacy, and acceptable noise levels, although this should be tempered with amenity expectations for residential properties at mixed-use interface locations.
169. Additionally, where private open space and/or windows to adjoining residential properties are unreasonably affected, Clause 22.05-4.2 calls for non-residential development to have appropriate setbacks from boundaries to address loss of daylight, overshadowing and visual bulk impacts.
170. The subject site is located within the Mixed Use Zone and properties to the north, east and south are also within the Mixed Use Zone (refer to the zoning map earlier in this report). The appropriateness of amenity impacts including visual bulk, shadowing and overlooking need to be considered within their strategic context, with the site being located within a Mixed Use Zone. The purpose of the zone includes to provide for a range of residential, commercial, industrial and other uses which complement the mixed-use function of the locality and to provide for housing at higher densities.
171. The local character shows a high level of site coverage and boundary-to-boundary development, within the subject site and those surrounding it that are also within the Mixed Use Zone. There would be an expectation within this area that buildings would include on boundary walls and limited setbacks, particularly as this area is earmarked for mixed-use development.

#### *Visual Bulk*

172. The proposed development improves the immediate interface at the eastern boundary of the site. The existing building will be completely demolished and replaced with a wall on the common boundary with 4 Bik Lane at a height of 5.3 metres and 6.28 metres at the north-east and south-east corners, respectively. This equates to a reduction in the height of the wall on the boundary at these points of approximately 5.2 metres.
173. The proposed development provides generous setbacks from the eastern site boundary as the building rises. The first floor setback is approximately 3 metres, the second floor setback 7.6 metres, the third and fourth floors setback 11.6 metres and the fifth floor and above all setback 13.6 metres.
174. Combined with the recommendation to reduce the overall height of the building to eight storeys, the visual bulk impacts on the sensitive interface to the east (being a seven storey apartment building) are considered reasonable in this instance.

#### *Overshadowing*

175. Policy at Clause 22.10-3.8 of the Scheme seeks to ensure that *new development does not substantially overshadow adjoining residential private open space*. The amenity impacts associated with the proposal must be measured in the context of the future development of the land and that the zoning of the land seeks to provide for a range of residential, commercial, industrial and other uses which complement the mixed-use function of the locality and provide for housing at higher densities.

176. The subject site has a sensitive interface with land in the Mixed Use Zone to the north, south and east. The proposed development will obviously not overshadow the property to the north at 644 Nicholson Street.
177. The land to the south at 620 Nicholson Street will not receive any additional overshadowing due to the existing levels of overshadowing already occurring on that site because of the existing building on the subject site and those surrounding it.
178. Further south at 618 Nicholson Street, the proposed development will reduce the amount of shadow at 10:00am and 11:00am, but increase shadow from 12:00pm resulting in the rear yard at 618 Nicholson Street being completely in shade after 1:00pm. This is reasonable and consistent with the policy objective because higher density development is encouraged to occur in this location.
179. Further, and as commented by Council's urban design consultant, *'in this Mixed Use Zone, change in the future is likely to occur at 618-620 Nicholson Street. Therefore, there is less concern regarding overshadowing to the rear yards in their current dilapidated state'*. The approval of a six storey building (planning permit PL03/0687 albeit now expired), at 612-620 Nicholson Street, is evidence that change and a higher built form is likely to occur on the land to the south.
180. In relation to the apartments to the east (4 Bik Lane) and south-east (7-11 Reid Street), the shadow diagrams submitted show that the secluded private open space (courtyards, balconies, etc.) of the apartments will be affected in various ways. Some apartments will receive more shadowing, while others will receive less shadowing at various times of the day. Notable, the ground floor apartments at 4 Bik Lane adjoining the common boundary with the subject site will all receive more sunlight with no additional overshadowing on the Equinox.
181. While the proposed development does result in additional overshadowing, as detailed in the Shadow Analysis table in Attachment 2, these are generally modest increases at varying times of the day. The amount of additional overshadowing to the secluded private open spaces is considered acceptable for an interface between land within the Mixed Use Zone and within an activity centre, where higher densities are encouraged and directed by planning policy.
182. Moreover, both of the proposed developments at 4 Bik lane and 7-11 Reid Street have failed to adequately allow for an equitable development scenario for the subject site. This is evidenced by the lack of additional setbacks to the upper floor in both developments from the common boundary with the subject site, while the proposed development gradually steps away from the common boundary. this results in significant upper level setbacks in the proposed development, with the first floor setback 3.643 metres, the second floor setback 7.643 metres, the third and fourth floors setback 11.643 metres and the fifth to ninth floors setback 13.643 metres.
183. The officer recommendation to reduce the overall height of the building from ten to eight storeys, reducing the building height by approximately 7.6 metres, will also assist with reducing the overshadowing impact of the proposed development to some extent, specifically in the afternoon. This reduction in height will benefit residents to the east and south-east of the proposed development.

#### *Daylight Access*

184. The *Urban Design Guidelines for Victoria* call for buildings in activity centres to provide equitable access to daylight (Objective 5.1.3), while Clause 22.10-3.8 seeks to ensure that new development does not adversely impact on the amenity of adjoining residential properties in terms of daylighting to habitable rooms.
185. Council's ESD advisor commented that the *'impact on adjoining dwellings (west facing 4 Bik Lane) will be severe'* and recommended *'greater setbacks from habitable windows, to ensure adequate daylight'*, suggesting that *'daylight modelling to demonstrate adjoining dwellings will have adequate daylight'* should be provided.

In response to this comment, additional daylight modelling was prepared by Simpson Kotzman Consulting Engineers (Attachment 5) for the apartments at 4 Bik Lane and 7-11 Reid Street currently receiving the least daylight were and submitted to Council.

186. On review of this daylight modelling, Council's ESD advisor acknowledged that *'the existing standard of access to daylight in the adjoining dwellings does not meet our daylight standards'* and that the *'existing outlook of the lower level dwellings is very poor'*. However, Council's ESD advisor further noted that *'this does not justify reducing the standard of daylight further'* and they recommended that:
  - (a) *the proposed development is reduced in height by two levels or more to improve the impact to daylight; and*
  - (b) *the facade of the proposed development has a reflectivity of no less than 0.5, or 50 per cent, as recommended in the Simpson Kotzman report.*
187. The recommendations of Council's ESD advisor are supported and the suggested changes would result in a design response that is consistent with policy at Clause 22.10-3.8 and Clause 22.05-4.2. Therefore, Conditions contained within the recommendation section of this report will require a reduced building height to eight storeys through the deletion of two levels and that the eastern facade to have a reflectivity of no less than 0.5 or 50 per cent.
188. To complement the above measures, Council's ESD advisor also recommended that an additional setback be provided on the proposed ground floor supermarket level to match the first floor setback of 3.643 metres from the eastern (rear) site boundary. However, the existing wall on the common boundary with 4 Bik Lane, at a height of between 10.49 metres and 11.48 metres, is higher than the 5.3 metre to 6.28 metre high proposed wall on the common boundary.
189. Given the existing site conditions (i.e. the height of the existing on-boundary wall along the eastern (rear) site boundary), the proposed transitioning of the building from the east and the resulting 'tiered' presentation of the building when viewed from the adjoining properties to the east at 4 Bik Lane and 7-11 Reid Street, it was considered unreasonable for this final recommendation of Council's ESD advisor to be included as a planning permit condition.

#### *Overlooking*

190. Clause 22.10-3.8 of the Scheme seeks to ensure that new development does not prejudice the rights of adjoining and/or nearby land users (especially residents) to enjoy privacy. It is also noted that planning policy does not seek to eliminate overlooking, simply minimise unreasonable overlooking.
191. More specifically, Clause 55.04-6 of the Scheme, while strictly not applicable to this application, seeks to limit views into existing secluded private open space and habitable room windows. Specifically, views to the secluded private open space or habitable room windows within a 9 metre radius should be screened to a height of 1.7 metres above the finished floor level.
192. In order to minimise the overlooking concerns to the apartment buildings to the east, all windows on the eastern elevation at the first, second, third and fourth floors have been designed with a sill height of 1.7 metres. This is considered adequate to minimise any unreasonable overlooking and would be compliant with Clause 55.04-6 of the Scheme, even though it is not strictly applicable.
193. From the fifth floor of the building and above, the horizontal distance between the proposed windows and the eastern site boundary reaches 13.6 metres where it adjoins the common boundary with 4 Bik Lane and 10 metres where it adjoins the laneway to the south-east. These distances alone negate the need to incorporate any overlooking measures from the fifth floor and above, based on the more stringent requirement of Clause 55.04-6 of the Scheme.

194. Additionally, given the use of the upper floors of the building as office space and the normal business hours that follow, combined with dwelling occupiers typically being active and away from the home during the day, the extent of conflict between the two uses will be further reduced.

*Noise*

195. Clause 13.05 of the Scheme aims to ensure that development is not prejudiced and community amenity is not reduced by noise emissions. Clause 22.05 of the Scheme seeks to ensure new commercial development is adequately managed having regard to its proximity to residential uses.
196. The submitted acoustic report outlines the existing noise environment, the applicable noise criteria and recommendations to ensure appropriate measures are in place to minimise noise impacts. The report details the impacts from trucks accessing the proposed supermarket loading bay, identifies the potential for a SEPP N-1 exceedance and provides advice for managing impacts. Measures to control noise include the restriction of deliveries to the SEPP N-1 defined day period only, the requirement for the loading bay roller door to be closed during deliveries and the need to control truck idling in the lane outside the loading bay.
197. Council's acoustic consultant reviewed the submitted acoustic report and concluded that *'these measures are all appropriate and, if adequately implemented, could be expected to control noise to a reasonable and potentially compliant noise level'*. That said they suggest the following additional controls:
- (a) Truck deliveries are not to take place outside the hours of 7:00am to 6:00pm weekdays and 7:00am to 1:00pm, Saturdays (van deliveries may be acceptable during the SEPP N-1 defined evening period).
  - (b) Trucks accessing the loading bay are to be 12.5 metres long or less (medium rigid trucks or smaller).
  - (c) A noise management plan for the supermarket is to be prepared. The plan should include a delivery procedure that will eliminate the need for trucks to idle in the lane outside the delivery dock, and in Bik Lane if there are overlooking residences.
  - (d) Signage is to be provided outside the loading bay to the effect that trucks are not to idle in the laneway.
  - (e) Noise from deliveries, including truck movements in the lane outside the loading bay, is to comply with SEPP N-1.
  - (f) The roller door proposed for installation on the project is to be reviewed and approved by the acoustical consultant to ensure that it will control noise from the loading bay to SEPP N-1 compliant levels.
198. To ensure that noise from loading activities associated with supermarket and bottle shop is reasonable, conditions contained within the recommendation section of this report to be included on any planning permit issued will reflect all of the above recommendations of Council's acoustic consultant.
199. Additionally, the submitted acoustic report notes that *'it is typical to have only one or two deliveries by large trucks over the course of any day with occasional deliveries by small trucks and utes'*, resulting in compliance with SEPP N-1 being adequate to account for deliveries and that application of an Lmax target, as suggested by Council's acoustic consultant, is not necessary given there is only likely to be one or two large truck deliveries per day.
200. Council's acoustic consultant confirmed that *'the frequency of the events is a reasonable consideration in this assessment'* and that *'provided there are only a few large deliveries per day, and assuming the truck size limit is implemented, this requirement could be omitted'*.

Therefore, conditions contained within the recommendation section of this report will limit the number of loading vehicles events per day for trucks and the size of trucks accessing the loading bay.

201. A large amount of mechanical plant equipment will likely be required for the proposed development and some of this equipment is currently proposed to be installed in close proximity to dwellings. Due to the proximity of residential properties to the proposed mechanical plant equipment, Council's acoustic consultant recommends that *'a full mechanical review be conducted by a suitably qualified acoustical consultant during the detailed design phase of the project to ensure that SEPP N-1 noise limits are not exceeded'* and that *'post compliance noise testing is recommended'*.
202. Conditions contained within the recommendation section of this report will reflect this recommendation and therefore require the full mechanical review and post testing be conducted, which will be subject to further Council review to ensure compliance is achieved.

#### *Hours of Operation*

203. The supermarket is proposed to operate 24 hours a day, seven days a week, while the bottle shop is proposed to operate 9:00am to 11:00pm, seven days a week. The medical centre is proposed to operate between 8:00am to 10:00pm, seven days a week. No operating hours have been specified for the office component.
204. In relation to the proposed operating hours for the bottle shop, it is acknowledged that Clause 22.09 of the Scheme recommends that *licensed premises in a Mixed Use Zone should not provide for the sale and consumption of liquor beyond 10:00pm, unless the responsible authority is satisfied that it will not adversely affect the amenity of the area*. While seeking an additional one hour more than the 10:00pm recommended in the policy, this is considered reasonable given that the subject site is located on a main road and within an activity centre, all pedestrian movement will occur at the front of the premises on Nicholson Street, and the purpose of the liquor licence is for customers to consume liquor off the premises.
205. Further, the current restaurant and its cafe liquor licence allows the serving of alcohol of patrons on the premises until 1:00am the following day, seven days a week. Overall, the proposed operating hours of the bottle shop will therefore not adversely affect the amenity of the area.
206. In relation to the medical centre, the proposed hours are considered reasonable given the nature of the use and their likely potential impacts on nearby dwellings.
207. The proposed operation of the supermarket 24 hours a day, seven days a week is considered reasonable given the location on a major arterial road in an activity centre and the entrance located on Nicholson Street, away from the sensitive interfaces to the rear. Additionally, the restrictions on delivery times to and from the supermarket that will be included as conditions of the planning permit, combined with the requirement for the submission of a noise management plan for the supermarket, will seek to ensure no unreasonable impacts on the surrounding area as a result of this use within the building.
208. With regard to the office component, no operating hours were specified in the application. To ensure no unreasonable impacts on the adjoining residential properties from potential light spill from office lights, the operating hours will be restricted by way of permit conditions, to a certain extent. Balancing the fact that the building is in the Mixed Use Zone and will interface with multiple dwellings at the rear, and based on the hours sought for the medical centre use within the building, it is considered reasonable and appropriate for a permit condition to restrict the operating hours for the office to 8:00am to 10:00pm, seven days a week.
209. Conditions contained within the recommendation section of this report reflect the above mentioned operating hours for each use.

#### Internal Amenity

210. Council's local policies at Clause 22.10-3.7 relating to on-site amenity and Clause 22.17 relating to sustainable design provide useful guidance with regard to on-site amenity for non-residential uses. Generally, these policies aim to ensure that new development optimises amenity for future occupants and improves the amenity and liveability of new development.

*Daylight and Ventilation*

211. The proposed development is considered to provide an acceptable level of amenity and indoor environmental quality consistent with objectives of these policies. Specifically, this is achieved through good access to daylight for the office space, medical centre and retail premises, compliant with the Built Environment Sustainability Scorecard's minimum standard for non-residential development.
212. In relation to ventilation, Council's ESD advisor noted that the proposed development provides *'operable windows allowing access to natural ventilation to most occupied spaces'*, thus achieving an appropriate level of ventilation.

*Circulation Spaces*

213. The main pedestrian entrance to the proposed building is from the south of the Nicholson Street frontage, with a separate entrance provided to both the supermarket and the bottle shop from Nicholson Street. This provides an appropriate level of transition in to and out of the proposed building.
214. The main pedestrian entrance from Nicholson Street provides access to the lift core and stair well. The entrance and lift lobby area is provided with adequate sightlines from the street so people can see both in and out when entering or leaving. The entries to the lift lobby and ground floor retail premises are considered to be well located.
215. Council's urban design consultant queries *'whether the size of the reception/waiting area on Level 1 is adequate for servicing 10 medical suites, noting that at least one seat would be necessary per suite'*. The sketch plans delete one of the medical suites on the first floor creating a larger reception/waiting area for the medical centre, which is considered to be a positive outcome from a functional layout perspective. A condition will therefore require amended plans to show this design change, in accordance with the sketch plans.

Sustainable Design

216. Council's local policies at Clause 22.16 and Clause 22.17 call for best practice water quality performance objectives and best practice in environmentally sustainable development from the design stage through to construction and operation. The submitted sustainability management plan prepared by Simpson Kotzman provides an overview of the sustainability initiatives in the proposed development.
217. Council's ESD advisor has reviewed the application and sustainability management plan, and found that the standard of environmental sustainable design does not currently meet Council's requirements, raising the following as improvement opportunities for the proposed development:
- (a) Impact on adjoining dwellings (west facing 4 Bik Lane) will be severe. Recommend greater setbacks from habitable windows, to ensure adequate daylight. Please provide daylight modelling to demonstrate adjoining dwellings will have adequate daylight and create greater setbacks if necessary.
  - (b) No shading to windows exposed to summer heat gain. Reliance on high performance glazing only. Recommend that the architect consider external shading systems to reduce heat gain, rather than rely on glazing. If not, please include the SGHC proposed including the minimum visual light transmittance of 60 per cent noted in the sustainable management plan and demonstrate that the 20 per cent cooling load reduction can be met.
  - (c) All bicycle parking is sub-surface and not easy to access. Recommend relocating all bicycle parking closer to the ground floor entrance, with at least some space on ground floor itself.

- (d) The green travel plan has no performance targets, monitoring or reporting components and is therefore not satisfactory. Please update and revise to be a proper green travel plan with performance targets and monitoring and reporting components included.
  - (e) Strongly recommend comprehensive commissioning and tuning of all major appliances and services.
  - (f) Strongly recommend that an environmental management plan be developed by the building contractor to monitor and control activities undertaken during construction.
218. Of the above mentioned improvement opportunities, the applicant has committed to addressing (b), (d), (e) and (f) through a revision of the sustainability management plan and these are included as conditions in the recommendation section of this report.
219. In relation to the location of bicycle parking mentioned in point (c) above, the sketch plans consolidate and relocate the basement bicycle parking to basement level one in a secure compound. While this is not at ground floor as recommended by Council's ESD advisor, the relocation is considered appropriate given the proposed ground floor layout that provides an active frontage to Nicholson Street and the space required for the 101 bicycle parking spaces within the compound. A condition contained within the recommendation section of this report therefore requires amended plans in accordance with the sketch plans to show the consolidation and relocation of the bicycle parking spaces.
220. In relation to the impacts on the adjoining dwellings at point (a) above, this was discussed in more detail earlier in this report at paragraphs 187 to 192. In summary, it is considered that given the existing conditions and the recommended reduction in the overall building height to eight storeys combined with the mixed use zoning of the subject site and the surrounding properties, the impacts will not be unreasonable.
221. Overall, from an environmentally sustainable design perspective, the proposed development is able to achieve Council's best practice standards, subject to conditions which are contained within the recommendation section of this report.

#### Potentially Contaminated Land

222. The General Practice Note – Potentially Contaminated Land (June 2005) is designed to provide guidance on identifying land that is potentially contaminated, the appropriate level of assessment of contamination for a planning permit and applying appropriate conditions.
223. The subject site is located within the Mixed Use Zone. While the proposed uses (office, medical centre, supermarket and bottle shop) are not specifically considered 'sensitive' uses under the provisions of the Environmental Audit Overlay that would usually trigger the need to submit an environment assessment report, the site is affected by the Environmental Audit Overlay and it is anticipated that the proposed development will result in increased activity on the site. Further, the site has a history of industrial use as evidenced by the existence of the Environmental Audit Overlay.
224. For these reasons, the recommendation section of this report will require conditions on any permit issued for a site assessment to determine if either a Certificate or Statement of Environmental Audit is required for the proposed development.

#### Car and Bicycle Parking

##### *Car Parking*

225. The development, as shown in the advertised plans, is seeking a car parking reduction of 191 car parking spaces, as detailed in the table in the Particular Provisions section earlier in the report. It is noted that the overall car parking reduction sought in the sketch plans is 197, as six car parking spaces were lost with the consolidation and relocation of the bicycle parking spaces to the basement level one and the inclusion of the substation.
226. The proposal includes 157 on-site car parking spaces within the development as depicted in the advertised plans, with 45 spaces allocated to the supermarket, 23 allocated to the medical centre and 89 allocated to the office space.

The sketch plans show 151 car parking spaces, reducing the supermarket and office allocation to 42 and 86 car parking spaces, respectively. The proposed development also contains 107 on-site bicycle parking spaces.

227. For an application that seeks to reduce the number of car parking spaces required for the proposed development, the car parking demand assessment required by Clause 52.06-7 of the Scheme considers the following matters, as relevant.
228. In relation to the office component, car parking *'associated with office type developments is generally long-stay parking for employees and short term parking (say up to two hours' duration) for customers and clients'*, as noted by Council's engineering services unit. The actual car parking demand generated by the office is expected to be lower than the statutory car parking rate of 3 spaces per 100 square metres of floor space, since the area has good access to public transport services.
229. The proposed office use for the development would have an on-site car parking provision of 1.04 spaces per 100 square metres of floor area. Council's engineering services unit has noted that *'in nearby Collingwood, a number of developments have been approved with reduced office rates'* similar to that proposed in this application.
230. The proposed on-site office car parking rate of 1.04 spaces is therefore *'considered appropriate, having regard to the site's good accessibility to public transport services and proximity to Melbourne'*, according to Council's engineering services unit.
231. The proposed supermarket would be providing on-site car parking at a rate of 3.02 car parking spaces per 100 square metres. Car parking demand rates for supermarkets vary, depending on location and size. Council has approved supermarkets with car parking rates ranging between 1.4 space and 1.65 spaces, in Cremorne and Fitzroy, respectively.
232. While the proposed supermarket is nearly double the size of the two examples mentioned above, *'the proposed supermarket is not large in scale and is not expected to be a high generator of car parking'* according to Council's engineering services unit. The rate of 3.02 car parking spaces per 100 square metres of floor area is therefore considered appropriate.
233. The proposed medical centre would be provided with 23 car parking spaces. Most likely these spaces would be used by the practitioners or staff and some patients. Council's engineering services unit agree *'that the medical centre would likely serve the local residential area'* and that *'any possible parking overflow from the medical centre would be patient parking'*.
234. The availability of public transport in the locality of the land is also of relevance to the car parking demand assessment. As noted by Council's engineering services unit, *'the site is within walking distance of tram services operating along Nicholson Street and St. Georges Road-Brunswick Street'* and *'bus services can be accessed from Reid Street'*. Further, *'customers, clients and patients to the development might combine their visit by engaging in other activities or business whilst in the area'*.
235. Clause 52.06-7 of the Scheme lists a number of considerations for deciding whether the required number of car parking spaces should be reduced. For the subject site, the considerations for providing fewer car parking spaces than the likely car parking demand are discussed below:
  - (a) The applicant's traffic consultant has conducted on-street car parking occupancy surveys in the surrounding area. The survey area encompassed both sides of Nicholson Street, Reid Street and sections of Richardson Street, Station Street and Salisbury Crescent. Council's engineering services unit consider *'the extent and times of the survey are considered satisfactory'*. An inventory ranging from 208 to 225 publicly available car parking spaces were identified. The results of the survey indicate that there were no fewer than 58 car parking spaces vacant (both days). Based on these results, *'any short-stay parking overflow from the site could be accommodated on-street'*, according to Council's engineering services unit.

- (b) As also noted by Council's engineering services unit, *'the proposed development is considered to be in line with the objectives contained in Council's Strategic Transport Statement'*. The site is ideally located with regard to sustainable transport alternatives and the reduced provision of on-site car parking would potentially discourage private motor vehicle ownership and use.
- (c) The existing building operated as a function centre (place of assembly) with a maximum permitted number of 590 patrons and an on-site car parking for 45 car parking spaces. The function centre use would have had a statutory car parking requirement of 177 spaces, with 132 spaces accommodated off-site. As commented by Council's engineering services unit, *'the car parking deficiency of the function centre would be greater than that of the proposed development'*.

236. From a traffic engineering perspective, a reduction of the car parking requirement associated with the office, supermarket, bottle shop and medical centre uses *'is considered appropriate in the context of the development and the surrounding area'* from the perspective of Council's engineering services unit. Additionally, *'any short-stay car parking overflow could be accommodated on-street'*. Council's engineering services unit *'has no objection to the reduction in the car parking requirement for this site'*.

#### *Bicycle Parking*

- 237. The proposed development is required to provide 29 employee bicycle parking spaces and 13 visitor bicycle spaces. The proposal includes 107 on-site bicycle parking spaces.
- 238. Through the provision of these surplus spaces, the proposal has responded to the importance that State and local policies place on encouraging low energy forms of transport such as Clauses 15.02-1S, 18.02-1S, 18.02-1R and 21.06. This is a development where the use of bicycles can take precedence over the use of private motor vehicles due to the proximity of services and employment opportunities and higher density residential development, which will encourage the use of bicycles in this development.
- 239. The bicycle parking is shown to be located across all three basement levels. However, responding to concerns with this aspect of the proposal from Council's ESD advisor, strategic transport unit and urban design consultant, the sketch plans submitted show bicycle parking to be consolidated and relocated to the basement level one in a secure compound. This is considered a positive outcome and a condition contained within the recommendation section of this report will therefore requires amended plans to show bicycle parking consolidated and relocated to basement level one in accordance with the sketch plans.
- 240. Pursuant to the Australian Standard AS2890.3 - 2015, at least 20 per cent of bicycle parking spaces should be ground level bicycle hoops, with a maximum of 80 per cent Ned Kelly style hanging hoops. As the bicycle parking spaces shown on the sketch plans incorporate 79 Ned Kelly style hanging hoops and 22 horizontal spaces, this requirement is considered to be met and the condition requiring amended plans that reflect the changes in the sketch plans will achieve this outcome.
- 241. In relation to visitor bicycle parking, Council's strategic transport unit has recommended a minimum of 23 visitor bicycle parking spaces be provided. The Scheme requires 13 visitor bicycle parking spaces. The sketch plans show twelve visitor bicycle hoops (each able to accommodate two parked bicycles) within the Nicholson Street footpath, meeting the requirement for visitor bicycle parking spaces.
- 242. However, to avoid clutter on the footpath, Council's urban design unit recommended providing a maximum of four ground level bicycle hoops (providing eight bicycle parking spaces) in front of the site. A condition contained within the recommendation section of this report therefore requires amended plans in accordance with the sketch plans with a maximum of four ground level bicycle hoops within the footpath and the remaining visitor bicycle parking spaces on the ground floor near the lobby area, visible from the public realm.

#### Traffic and Access

##### *Traffic Generation*

243. The applicant's traffic consultant estimates that *'it is anticipated that the development will generate traffic at a rate of 164 vehicles per hour during the morning peak hour periods and 244 vehicles per hour during the afternoon peak hour periods'*, as noted in traffic impact report submitted with the application.
244. The additional traffic generated by the proposed development will flow directly onto Nicholson Street and the surrounding road network. The surrounding road network has the ability to accommodate the expected increase in traffic volumes associated with the proposed development. The site access is limited to left-in/left-out movements only, which will ensure vehicles exiting the site will be able to do so in a safe manner during peak times.
245. Given the nature of the surrounding road network, the estimated traffic generation of the proposed development is not expected to have an adverse impact on the operation of the surrounding road network. Additionally, VicRoads has not objected to the proposal, subject to conditions which are included in the recommendation section of this report.

#### *Vehicle Access*

246. The proposed basement car parking will be serviced from an altered crossover to the north of the Nicholson Street frontage. Vehicles would enter and exit the basement car parking directly from Nicholson Street, utilising left in and left out movements only.
247. Council's engineering services has reviewed the access arrangements, noting that the vehicle entrance off Nicholson Street has a width of 6.1 metres which satisfies the relevant standard. Additionally, a minimum headroom clearance of 2.2 metres has been provided and the ramp grades and changes of grade also satisfy the relevant standard.
248. A sight triangle has also been provided for the exit lane of the vehicle entrance, with Council's engineering services unit noting that *'although clear glazing is to be provided at the bottle shop, adjacent to the exit lane of the accessway, it is recommended that a convex mirror be installed on the north side of the entrance in order to optimise visibility of pedestrians'*. A condition contained within the recommendation section of this report therefore requires the convex mirror to be shown on amended plans. It is noted that the sketch plans erroneously show the convex mirror on the south side of the entrance.
249. The application was referred to VicRoads under Clause 52.29-4 of the Scheme as the proposal seeks to alter and remove crossovers to a road in a Road Zone, Category 1 (Nicholson Street). VicRoads *'does not object to the proposal in its current form subject to certain conditions being met'*. The recommendation section of this report therefore includes all of the conditions required by VicRoads, which include the following:
  - (a) The installation of signs, line marking, painted arrows and associated road works permitting only 'left turn in' and 'left turn out' vehicular access from Nicholson Street to the satisfaction of and at no cost to VicRoads.
  - (b) Modification or removal of any existing car parking spaces and associated road works on the east side of Nicholson Street to accommodate the new vehicular access arrangement.
  - (c) All disused or redundant vehicle crossings (along Nicholson Street) must be removed and the area reinstated to kerb, channel and footpath to the satisfaction of and at no cost to VicRoads prior to the occupation of the building hereby approved.
  - (d) The owner of the land must enter into an agreement for the elements of the approved development that project more than 300mm beyond the land's Nicholson Street boundary (i.e. canopies, fixed shading devices, awnings, etc.), to indemnify the Crown in relation to any claim or liability arising from the projections with the Nicholson Street reserve.
250. Additionally, VicRoads notes that *'the proposal provides a transparent window within the north-west corner of the bottle shop consistent with the required dimensions of a pedestrian sight triangle'*.

VicRoads consider that *'this building treatment will adequately provide departing motorists an unobstructed view of pedestrians walking along the Nicholson Street footpath'*.

251. In addition to the clear glazed window/s, VicRoads *'supports Council's requirement to provide the installation of a convex mirror on the north side of the vehicular access in order to optimise visibility of pedestrians'*.

#### *Car Parking Layout*

252. Council's engineering services unit has recommended that the accessible car parking space shared area located on basement levels one and two be line marked and hatched and that the dimensions for the internal ramped accessways, clearance to walls and ramp grades and changes of grade be shown on the plans. The sketch plans show all the relevant items, therefore a condition contained within the recommendation section of this report will require amended plans in accordance with the sketch plans.
253. Based on the reduced overall height of the building to eight storeys there will be a loss of approximately 1,696 square metres of floor space for the office use. For this amount of office floor space, the Scheme requires 50 car parking spaces, while the office car parking rate proposed in this application (1.04 spaces per 100 square metres of floor area) requires 17 car parking spaces.
254. As such, with the deletion of two levels as per the condition requirement and the loss of 1,696 square metres of floor space, there would technically be a surplus of 17 car parking spaces on site. There is therefore an opportunity to reconfigure the basement layout to improve circulation and access to car parking spaces. In other words, it allows the layout of the basement car parking to be improved by removing difficult car parking spaces and removing dead end aisles. An improved car parking layout is considered to be more important than surplus car parking spaces in this location where alternative forms of transport should be encouraged.
255. Therefore, a condition contained within the recommendation section of this report requires a reduction in the number of car parking spaces that is equal to the reduction in the office floor space (using the office car parking rate proposed in this application) as a result of the deletion of two floors and requires improvements to the layout of the basement car parking (e.g. removing difficult car parking spaces and removing dead end aisles).

#### *Loading and Unloading*

256. Clause 65.01 of the Scheme requires the Responsible Authority to consider, amongst other things, the adequacy of loading and unloading facilities and any associated amenity, traffic flow and road safety impacts. The provision of a loading bay is generally a consideration when an application involves the manufacture, servicing, storage or sale of goods or materials. The proposal includes a supermarket and a bottle shop on the ground floor and the provision of a loading bay is therefore a relevant consideration for this application.
257. A loading bay is proposed for the supermarket and bottle shop, located in the north-east corner of the site and accessed via the north-south laneway connecting to Bik Lane further north. Council's engineering services unit support the location of the loading bay and note that *'the proposed loading area for the site is accessed via Bik Lane, a Council controlled public road. The swept path diagrams for an 8.8 metre long medium rigid vehicle entering and exit the loading area via Bik Lane and Nicholson Street are considered satisfactory'*.
258. The internal dimensions of the loading bay and the diameter and clearances were not shown on the advertised plans, however they are shown on the sketch plans and the relevant dimensions as required by Council's engineering services unit. A condition contained within the recommendation section of this report will therefore require amended plans in accordance with the sketch plans. Subject to the condition, the design of the proposed loading bay has the support of Council's engineering services unit.
259. In relation to the type of truck and deliveries, this is assessed under noise section (paragraphs 195 to 202) of this report.

### *Civil Works*

260. Council's engineering services unit has recommended the inclusion of a number of conditions relating to civil works and road protection, impacts on assets, vehicle crossings and drainage. Many of these have either been included as notes on the permit or can be required by way of condition.

### *Waste Management*

261. The submitted waste management plan outlines the waste management practices for the proposed development, which include a private waste contractor to collect all waste streams for commercial waste for all of the proposed uses within the building.
262. The waste collection point is located within the loading bay for the supermarket and on basement level one for the medical centre and office, adjoining the bin storage room.
263. Council's city works branch has reviewed the application and the waste management plan and recommended that clarification on the sizes of the waste storage areas be provided and that swept path diagrams showing how the waste collection vehicles access the waste collection points be included in the waste management plan.
264. As such, a condition contained within the recommendation section of this report will require these recommendations be met, noting that the swept path diagrams for both collection points have been submitted as part of the traffic report and Council's engineering services unit has found them to be satisfactory.

### Objector's Concerns

265. The majority of the issues which have been raised by the objectors have been addressed within this report, as outlined below:
- (a) Design and built form, including out of character, excessive height, bulk and scale and the materials and finishes are inappropriate (paragraphs 125 to 163).
  - (b) Off-site amenity impacts including overlooking, overshadowing, loss of daylight, glare from the proposed glazing, wind impacts (paragraphs 168 to 194).
  - (c) Increase in noise (traffic, people, outdoor areas/terraces, mechanical plant equipment, etc.) (paragraphs 195 to 202).
  - (d) Poor internal amenity (paragraphs 210 to 221).
  - (e) Car parking, traffic and access including turn table impractical, lack of car parking, increased traffic, waste management issues (paragraphs 225 to 264).
  - (f) No community benefit (paragraphs 139 to 141).
266. Outstanding concerns raised in the objections are discussed below, and relate to:
- (a) Overdevelopment of the site.  
  
Overdevelopment is a commonly used expression to dismiss development proposals which seek to remove existing buildings and to introduce significant new built form into particular neighbourhoods. An assessment against State and local planning policies and other relevant guidelines has demonstrated that the proposal is not an overdevelopment despite being more intensive than what existed before. For the reasons advanced in earlier in this report, the proposed development is not considered to be an overdevelopment of the site.
  - (b) Loss of views.  
  
While the Victorian Civil and Administrative Tribunal have recognised that views can be a relevant amenity consideration, it has also held that there is no right to a view and that the weight to be given to the amenity impact of loss of views is diminished where no planning control applies encouraging retention or sharing of views. There is no specific policy, provision or local policy control regarding views within the Yarra Planning Scheme.

In this context, it is not considered that the extent of loss of view in this case is not reasonable, particularly considering the built form expectations envisaged in a neighbourhood activity centre with an emerging character of higher densities.

- (c) Will set a precedent.

Future planning permit applications on this site or neighbouring and nearby land will be assessed against relevant planning policy and site conditions, based on their own merits and relevant planning policy at the time of assessment. The possibility of setting an undesirable precedent cannot be substantiated.

- (a) Reduction in property values.

The Victorian Civil and Administrative Tribunal and its predecessors have generally found claims that a proposal will reduce property values are difficult, if not impossible, to gauge and of no assistance to the determination of a planning permit application. It is considered the impacts of a proposal are best assessed through an assessment of the amenity implications rather than any impacts upon property values. This report provides a detailed assessment of the amenity impacts of this proposal.

- (a) Impacts during construction.

Concern has been raised in relation to damage of the adjoining buildings and public property during construction. Protection of adjoining properties during construction is not a matter that can be addressed through the planning permit process. However, the developer has obligations under the Building Act 1993 to protect adjoining property from potential damage. It is the responsibility of the relevant building surveyor to require protection work as appropriate. Council's local laws require an asset protection permit to be obtained to ensure infrastructure assets within the road reserve are protected or repaired if damaged. A condition contained in the recommendation section of this report also requires a construction management plan to be submitted outlining the measures to be put in place during the construction phase to minimise impacts on the surrounding area.

## Conclusion

267. The proposed development is considered to demonstrate a high level of compliance with policy objectives contained within the State and Local Planning Policy Framework. Notably, the proposal achieves the State Government's urban consolidation objectives and Council's preference to direct higher density development in activity centres or on strategic redevelopment sites.
268. While the proposed development will result in some off-site amenity impacts on the apartments to the east and south-east in terms of overshadowing and visual bulk, these impacts are not considered unreasonable given the physical and policy context for this site. It is also acknowledged that some apartments will receive less overshadowing as a result of the reduced height of the wall on the common boundary with 4 Bik Lane, while the recommended reduction in height from ten to eight storeys will also lessen the impact of the proposed development.
269. Overall and on balance, the proposal, subject to conditions outlined in the recommendation section below including a height reduction from ten to eight storeys through the deletion of two levels, is considered to be an acceptable planning outcome that demonstrates compliance with the relevant Council policies.

## RECOMMENDATION

That having considered all objections and relevant planning policies, the Committee resolves to issue a Notice of Decision to Grant a Planning Permit PLN18/0172 for the construction of an eight storey building plus three basement levels and a roof top terrace, the use of the land as an office, medical centre, supermarket and a bottle shop, the sale of liquor for consumption off the premises, a reduction in the car parking requirement and alterations to the access to a road in a Road Zone, Category 1 by removing and altering crossovers to Nicholson Street at 622-642 Nicholson Street, Fitzroy North, subject to the following conditions:

### Amended Plans

1. Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of this permit. The plans must be drawn to scale with dimensions, and three copies must be provided. The plans must be generally in accordance with the decision plans prepared by Artisan Architects, numbered TP00-TP19, all revision A and dated 30 May 2018 but modified to show:
  - (a) the changes shown in the sketch plans prepared by Artisan Architects, numbered TP01-TP18 (all revision B and dated 14 September 2019) which generally show:
    - (i) an indicative layout of the ground floor tenancies;
    - (ii) consolidated bicycle parking spaces within a designated room on basement level one;
    - (iii) a substation on basement level one in place of three car parking spaces;
    - (iv) deletion of one medical consulting suite on the first floor and increased size of the medical centre waiting area;
    - (v) reduced height of the awning along Nicholson Street to a minimum of 3 metres; and
    - (vi) square columns provided internally above the ground floor in lieu of round columns;

And further modified to show the following changes:

- (b) The deletion of two levels.
- (c) The eastern facade with a reflectivity of no less than 0.5 or 50 per cent.
- (d) Any doors, including service cabinet or meter room doors that open outwards over public land as able to swing 180 degrees and be latched to the building when opened or serviced.
- (e) The number of car parking spaces to equate to the reduced floor space as a result of condition 1(b) of this permit, which would equate to a reduction of approximately 17 on site car parking spaces for the office use.
- (f) Improvements to the layout and circulation of the basement car parking (e.g. removing difficult car parking spaces, removing dead end aisles).
- (g) A convex mirror installed on the north side of the Nicholson Street vehicle entrance in order to optimise visibility of pedestrians.
- (h) A minimum of eight visitor bicycle parking hoops internal to the building, on the ground floor near the lobby area, and visible from the public realm.
- (i) A maximum of four bicycle parking hoops external to the building, in front of the site on the Nicholson Street footpath.
- (j) Any requirement of the amended sustainable management plan required by condition 9 of this planning permit (where relevant to show on plans).
- (k) Any requirement of the acoustic report required by condition 7 of this planning permit (where relevant to show on plans).

2. The use and development as shown on the endorsed plans must not be altered (unless the Yarra Planning Scheme specifies that a permit is not required) without the prior written consent of the Responsible Authority.

### **Landscaping**

3. Before the development commences, a landscape plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the landscape plan will be endorsed and will form part of this permit. The landscape plan must:
  - (a) Show the type, location, quantity, height at maturity and botanical names of all proposed plants.
  - (b) Indicate the location of all areas to be covered by lawn or other surface materials.
  - (c) Provide a specification of works to be undertaken prior to planting.
  - (d) Details of raised garden beds.
  - (e) Planting details, including proposed planting media, climbing frames, irrigation and drainage.

to the satisfaction of the Responsible Authority.

4. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, 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.
  - (c) Replacing any dead, diseased, dying or damaged plants.

to the satisfaction of the Responsible Authority.

5. Before the development commences, a tree management plan to the satisfaction of the Responsible Authority must be prepared by a suitably qualified arborist and must be submitted to and approved by the Responsible Authority. When approved the tree management plan will be endorsed and will form part of this permit. The tree management plan must make recommendations for:
  - (a) The protection of the two plane street trees in front of the site on Nicholson Street:
    - (i) pre-construction;
    - (ii) during construction; and,
    - (iii) post construction.
  - (b) The provision of any barriers.
  - (c) Any pruning necessary.
  - (d) Watering and maintenance regimes.

to the satisfaction of the Responsible Authority.

6. Before the development starts, the permit holder must provide a bond to the Responsible Authority for the two plane street trees in front of the site on Nicholson Street. The bond:
  - (a) is to be to the value of the \$21,000.00 for Tree ID 3073 and \$30,241.00 for Tree ID 3071.
  - (b) must be provided in a manner, and on terms, to the satisfaction of the Responsible Authority;
  - (c) may be held by the Responsible Authority until the buildings and works are completed to the satisfaction of the Responsible Authority; and
  - (d) may be applied by the Responsible Authority to allow for a large replacement planting(s) and costs associated with establishment and maintenance or to offset the cost of repairing any damage incurred to the trees during construction.

Once the buildings and works are completed to the satisfaction of the Responsible Authority, any portion of the bond which has not been applied by the Responsible Authority will be refunded to the permit holder.

### **Acoustic Report**

7. Before the development commences, an acoustic report to the satisfaction of the Responsible Authority must be prepared by a suitably qualified acoustic engineer and must be submitted to and approved by the Responsible Authority. When approved, the acoustic report will be endorsed and will form part of this permit. The acoustic report must be generally in accordance with the technical memo prepared by Octave Acoustics and dated 15 March 2018, but modified to ensure/include the following:
  - (a) Truck deliveries are not to take place outside the hours of 7:00am to 6:00pm weekdays and 7:00am to 1:00pm, Saturdays (van deliveries may be acceptable during the SEPP N-1 defined evening period).
  - (b) Trucks accessing the loading bay are to be 12.5 metres long or less (medium rigid trucks or smaller).
  - (c) A noise management plan for the supermarket is to be prepared. The plan should include, but not limited to, a delivery procedure that will eliminate the need for trucks to idle in the lane outside the delivery dock, and/or in Bik Lane if there are overlooking residences.
  - (d) Signage is to be provided outside the loading bay to the effect that trucks are not to idle in the laneway.
  - (e) Noise from deliveries, including truck movements in the lane outside the loading bay, is to comply with SEPP N-1.
  - (f) The roller door proposed for installation on the project is to be reviewed to ensure that it will control noise from the loading bay to SEPP N-1 compliant levels.
  - (g) A full mechanical review be conducted to ensure that SEPP N-1 noise limits are not exceeded.
  - (h) Post compliance noise testing is undertaken.
8. The provisions, recommendations and requirements of the endorsed acoustic report must be implemented and complied with to the satisfaction of the Responsible Authority.

### **Sustainable Management Plan**

9. Before the development commences, 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 permit. The amended sustainable management plan must be generally in accordance with the sustainable management plan prepared by Simpson Kotzman Consulting Engineers and dated 1 June 2018, but modified to include or show:
  - (a) Consider external shading systems to reduce heat gain, rather than rely on glazing. If not, please include the SGHC proposed including the minimum visual light transmittance of 60 per cent noted in the sustainable management plan and demonstrate that the 20 per cent cooling load reduction can be met.
  - (b) Comprehensive commissioning and tuning of all major appliances and services.
  - (c) An environmental management plan be developed by the building contractor to monitor and control activities undertaken during construction.
10. Prior to the occupation of the development approved under this planning permit, a report from the author of the sustainable management plan, approved pursuant to this permit, or similarly qualified person or company, must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm that all measures specified in the sustainable management plan have been implemented in accordance with the approved plan.

11. 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 Plan**

12. Before the development commences, an amended waste management plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended waste management plan will be endorsed and will form part of this permit. The amended waste management plan must be generally in accordance with the waste management plan prepared by Leigh Design and dated 27 June 2018, but modified to include:
  - (a) More specificity regarding the sizes of the waste storage areas.
  - (b) The inclusion of swept path diagrams showing how the truck intends to get to both storage areas.
13. The provisions, recommendations and requirements of the endorsed waste management plan must be implemented and complied with to the satisfaction of the Responsible Authority.

#### **Green Travel Plan**

14. Before the use commences, an amended green travel plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended green travel plan will be endorsed and will form part of this permit. The amended green travel plan must be generally in accordance with the green travel plan prepared by Simpson Kotzman Consulting Engineers, forming Appendix D of the sustainable management plan and dated 1 June 2018, but modified to include or show:
  - (a) A description of the location in the context of alternative modes of transport.
  - (b) Employee welcome packs (e.g. provision of Myki/transport ticketing).
  - (c) Sustainable transport goals linked to measurable targets, performance indicators and monitoring timeframes.
  - (d) Performance targets and monitoring and reporting components.
  - (e) A designated 'manager' or 'champion' responsible for coordination and implementation.
  - (f) Details of bicycle parking and bicycle routes.
  - (g) Details of green travel plan funding and management responsibilities.
  - (h) The types of bicycle storage devices proposed to be used for employee, guest and visitor spaces (i.e. hanging or floor mounted spaces).
  - (i) The types of lockers proposed within the change-room facilities, with at least 50 per cent of lockers providing hanging storage space.
  - (j) Security arrangements to access the employee bicycle storage spaces.
  - (k) Signage and wayfinding information for bicycle facilities and pedestrians pursuant to Australian Standard AS2890.3.
  - (l) A minimum 40A single phase electrical sub circuit should be installed to the car park areas for 'EV readiness'.
  - (m) Provisions for the green travel plan to be updated not less than every five years.
15. The provisions, recommendations and requirements of the endorsed Green Travel Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

#### **Potentially Contaminated Land**

16. Before either the construction of the development authorised by this permit or the use authorised by this permit commence, an assessment of the land to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The assessment must be prepared by an environmental professional with suitable qualifications to the satisfaction of the Responsible Authority and must include:
  - (a) A description of previous land uses and activities on the land.
  - (b) An assessment of the level, nature and distribution of any contamination within, or in close proximity to, the land.

- (c) Details of any provisions, recommendations and requirements (including but not limited to, clean up, construction, ongoing maintenance or monitoring) required to effectively address and manage any contamination within the land.
  - (d) Recommendations as to whether the land is suitable for the use for which the land is proposed to be developed and whether an Environmental Auditor should be appointed under section 53S of the *Environment Protection Act 1970* (**EP Act**) to undertake an Environmental Audit in accordance with the provisions of the EP Act.
17. If the assessment required by condition 16 does not result in a recommendation that an environmental auditor be appointed under section 53S of the EP Act to undertake an environmental audit in accordance with the provisions of the EP Act, all provisions, recommendations and requirements of the assessment must be implemented and complied with to the satisfaction of the Responsible Authority.
18. If the assessment required by condition 16 results in a recommendation that an environmental auditor be appointed under section 53S of the EP Act to undertake an environmental audit in accordance with the provisions of the EP Act, before the construction of the development authorised by this permit or the use authorised by this permit commence, the environmental auditor appointed under section 53S of the *Environment Protection Act 1970* (EP Act) must undertake an environmental audit in accordance with the provisions of the EP Act and issue:
- (a) a Certificate of Environmental Audit for the land in accordance with section 53Y of the EP Act (**Certificate**); or
  - (b) a Statement of Environmental Audit for the land in accordance with section 53Z of the EP Act (Statement),
- and the Certificate or Statement must be provided to the Responsible Authority.
19. If, pursuant to condition 18, a Statement is issued:
- (a) the:
    - use; and
    - development,
 authorised by this permit must not be undertaken unless the Statement clearly states that the land is suitable for the sensitive use for which the land is being developed;
  - (b) the development authorised by this permit must not be undertaken until compliance is achieved with the terms and conditions that the Statement states must be complied with before the development commences (**development pre-commencement conditions**);
  - (c) the use authorised by this permit must not be undertaken until compliance is achieved with all terms and conditions that the Statement states must be complied with before the use commences (**use pre-commencement conditions**);
  - (d) before the construction of the development authorised by this permit commences, a letter prepared by the Environmental Auditor appointed under section 53S of the EP Act which states that the development pre-commencement conditions have been complied with must be submitted to the responsible authority.
  - (e) before the use authorised by this permit commences, a letter prepared by the Environmental Auditor appointed under section 53S of the EP Act which states that the use pre-commencement conditions have been complied with must be submitted to the responsible authority;
  - (f) if any term or condition of the Statement requires any ongoing maintenance or monitoring, the owner of the land (or another person in anticipation of becoming the owner) must enter into an agreement with the Responsible Authority pursuant to section 173 of the *Planning and Environment Act 1987* (**Agreement**). The Agreement must:
    - (i) provide for the undertaking of the ongoing maintenance and monitoring as required by the Statement; and
    - (ii) be executed before the sensitive use for which the land is being developed commences; and

- (g) the owner of the land, or other person in anticipation of becoming the owner, must pay all costs and expenses (including legal expenses) of, and incidental to, the Agreement (including those incurred by the Responsible Authority).

### **Supermarket**

- 20. The supermarket use authorised by this planning permit may operate 24 hours a day, seven days a week.

### **Bottle Shop**

- 21. Except with the prior written consent of the Responsible Authority, the bottle shop use authorised by this planning permit may only operate between the hours of 9:00am to 11:00pm, seven days a week.

### **Medical Centre**

- 22. Except with the prior written consent of the Responsible Authority, the medical centre use authorised by this planning permit may only operate between the hours of 8:00am to 10:00pm, seven days a week.
- 23. Except with the prior written consent of the Responsible Authority, no more than ten practitioner(s) are permitted to operate from the land at any one time.
- 24. All infectious waste must be removed by a commercial waste contractor which holds an appropriate commercial waste licence to the satisfaction of the Responsible Authority.

### **Office**

- 25. Except with the prior written consent of the Responsible Authority, the office use authorised by this planning permit may only operate between the hours of 8:00am to 10:00pm, seven days a week.

### **Loading and Unloading**

- 26. Truck deliveries are not to take place outside the hours of 7:00am to 6:00pm weekdays and 7:00am to 1:00pm, Saturdays (van deliveries may be acceptable during the SEPP N-1 defined evening period).
- 27. Trucks accessing the loading bay are to be 12.5 metres long or less (medium rigid trucks or smaller).
- 28. Except with the prior written consent of the Responsible Authority, no more than four loading vehicle events for trucks may occur per day.

### **General**

- 29. The amenity of the area must not, to the satisfaction of the Responsible Authority, be detrimentally affected by the development and uses, including through:
  - (a) The transport of materials, goods or commodities to or from land.
  - (b) The appearance of any buildings, works or materials.
  - (c) The emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil.
  - (d) The presence of vermin.
- 30. The uses and development must comply at all times with the State Environment Protection Policy — Control of Noise from Commerce, Industry and Trade (SEPP N-1).
- 31. The uses and development must comply at all times with the State Environment Protection Policy — Control of Music Noise from Public Premises (SEPP N-2).

32. 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 pedestrian and vehicular entrances must be provided on the subject site. Lighting must be:
  - (a) located;
  - (b) directed;
  - (c) shielded; and
  - (d) of limited intensity,to the satisfaction of the Responsible Authority.
33. All buildings and works must be maintained in good order and appearance to the satisfaction of the Responsible Authority.
34. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, all new on-boundary walls must be cleaned and finished to the satisfaction of the Responsible Authority.
35. Before the building is occupied, any wall located on a boundary facing public property must be treated with a graffiti proof finish to the satisfaction of the Responsible Authority.
36. 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.
37. Except with the prior written consent of the Responsible Authority, demolition or construction works must not be carried out:
  - (a) Monday to Friday (excluding public holidays) before 7:00am or after 6:00pm.
  - (b) Saturdays and public holidays (other than ANZAC Day, Christmas Day and Good Friday) before 9:00am or after 3:00pm.
  - (c) Sundays, ANZAC Day, Christmas Day and Good Friday at any time.
38. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, the area set aside on the endorsed plans for the car parking spaces, access lanes, driveways and associated works must be:
  - (a) Constructed and available for use in accordance with the endorsed plans.
  - (b) Formed to such levels and drained so that they can be used in accordance with the endorsed plans.
  - (c) Treated with an all-weather seal or some other durable surface.
  - (d) Line-marked or provided with some adequate means of showing the car parking spaces.

to the satisfaction of the Responsible Authority.

### **Civil Works**

39. 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:
  - (a) at the permit holder's cost; and
  - (b) to the satisfaction of the Responsible Authority.
40. Before the buildings is occupied, or by such later date as approved in writing by the Responsible Authority, footpath along the property's Nicholson Street road frontage must be stripped and re-sheeted:
  - (a) in accordance with any requirements or conditions imposed by Council;
  - (b) with a cross-fall of 1 in 40 or unless otherwise specified by Council;
  - (c) at the permit holder's cost; and
  - (d) to the satisfaction of the Responsible Authority.

41. Before the buildings is occupied, or by such later date as approved in writing by the Responsible Authority, the existing vehicle crossing to the north of the site's Nicholson Street road frontage must be demolished and reconstructed:
  - (a) at the permit holder's cost;
  - (b) in accordance with VicRoads and Council's requirements and specifications;
  - (c) with any utility service pit lids located within the new vehicle crossing to be of a heavy duty type; and
  - (d) to satisfy the ground clearance requirements for the B99 design vehicle.
42. Before the buildings is occupied, or by such later date as approved in writing by the Responsible Authority, the redundant vehicular crossings on Nicholson Street must be demolished and re-instated as standard footpath and kerb and channel:
  - (a) at the permit holder's cost; and
  - (b) to the satisfaction of the Responsible Authority and VicRoads.
43. Any services poles, structures or pits that interfere with the proposal must be adjusted, removed or relocated at the permit holder's expense after seeking approval from the relevant authority.
44. Any damaged roads, footpaths and other road related infrastructure adjacent to the development site as a result of the construction works, including trenching and excavation for utility service connections, must be reconstructed to Council's satisfaction and at the developer's expense.
45. Upon the completion of all building works and connections for underground utility services, or by such later date as approved in writing by the Responsible Authority, all redundant property drains must be removed and Council assets reinstated to Council's satisfaction and at the permit holder's cost.
46. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, the proposed bicycle parking spaces located on the Nicholson Street footpath in front of the site must be constructed:
  - (a) in accordance with any requirements or conditions imposed by Council;
  - (b) at the permit holder's cost; and
  - (c) to the satisfaction of the Responsible Authority.
47. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, the proposed street furniture located on the Nicholson Street footpath in front of the site must be constructed:
  - (d) in accordance with any requirements or conditions imposed by Council;
  - (e) at the permit holder's cost; and
  - (f) to the satisfaction of the Responsible Authority.

#### **Construction Management Plan**

48. Before the 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 permit. The plan must provide for:
  - (a) A pre-conditions survey (dilapidation report) of the land and all adjacent 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) stormwater contamination from run-off and wash-waters.
  - (v) sediment from the land on roads.
  - (vi) washing of concrete trucks and other vehicles and machinery.
  - (vii) spillage from refuelling 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.
- (q) If any existing public lighting assets require temporary disconnection, alternative lighting must be provided to maintain adequate lighting levels. A temporary lighting scheme can only be approved by Council and relevant power authority.
- (r) Existing public lighting could only be disconnected once temporary alternative lighting scheme becomes operational.
- (s) A temporary lighting scheme must remain operational until a permanent lighting scheme is reinstated.
- (t) Any site-specific requirements.

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.

49. During the construction:

- (a) Any stormwater discharged into the stormwater drainage system must be in compliance with Environment Protection Authority guidelines;
- (b) Stormwater 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 stormwater drainage system;
- (c) Vehicle borne material must not accumulate on the roads abutting the land;

- (d) The cleaning of machinery and equipment must take place on the land and not on adjacent footpaths or roads; and
- (e) All litter (including items such as cement bags, food packaging and plastic strapping) must be disposed of responsibly.

50. The provisions, recommendations and requirements of the endorsed construction management plan must be implemented and complied with to the satisfaction of the Responsible Authority.

**VicRoads Conditions (conditions 51 and 52)**

51. Before the use approved by this permit commences the following must be completed at no cost to and to the satisfaction of the Responsible Authority and or the Roads Corporation:
- (a) The installation of signs, line marking, painted arrows and associated road works permitting only “left turn in” and “left turn out” vehicular access from Nicholson Street to the satisfaction of and at no cost to VicRoads.
  - (b) Modification or removal of any existing car parking spaces and associated road works on the east side of Nicholson Street to accommodate the new vehicular access arrangement.
  - (c) All disused or redundant vehicle crossings (along Nicholson Street) must be removed and the area reinstated to kerb, channel and footpath to the satisfaction of and at no cost to VicRoads prior to the occupation of the building hereby approved.
52. Prior to the commencement of the development, the owner of the land must enter into an agreement with the Department of Environment, Land, Water and Planning (DELWP) pursuant to Section 138 (A) of the *Land Act 1958* for the elements of the approved development that project more than 300mm beyond the land’s Nicholson Street boundary (i.e. canopies, fixed shading devices, awnings, etc.), to indemnify the Crown in relation to any claim or liability arising from the projections with the Nicholson Street reserve. This condition does not apply where written confirmation is obtained from DELWP that the above agreement is not required.

**Permit Expiry**

53. This permit will expire if:
- (a) the development is not commenced within two years of the date of this permit;
  - (b) the development is not completed within four years of the date of this permit; or
  - (c) the use is not commenced within five years of the date of this permit.

The Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires or within six months afterwards for commencement or within twelve months afterwards for completion.

**Notes:**

A building permit may be required before development is commenced. Please contact Council’s building services on 9205 5095 to confirm.

Provision must be made for drainage of the site to a legal point of discharge. Please contact Council’s building services on 9205 5585 for further information.

Only roof runoff, surface water and clean groundwater seepage from above the water table can be discharged into Council drains.

Contaminated ground water seepage into basements from above the water table must be discharged to the sewer system through a trade waste agreement with the relevant authority or in accordance with EPA guidelines.

Contaminated groundwater from below the water table must be discharged to the sewer system through a trade waste agreement from the relevant sewer authority.

Council will not permit clean groundwater from below the groundwater table to be discharged into Council's drainage system. Basements that extend into the groundwater table must be waterproofed/tanked.

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 Council property will be accepted.

No parking restriction signs or line-marked on-street parking bays are to be removed, adjusted, changed or relocated without approval or authorisation from Council's parking management unit and construction management branch.

Any on-street parking reinstated as a result of development works must be approved by Council's parking management unit.

The removal of any kerbside parking sensors and any reinstatement of parking sensors will require the permit holder to pay Council the cost of each parking sensor taken out from the kerb/footpath/roadway. Any costs associated with the reinstatement of road infrastructure due to the removal of the parking sensors must also be borne by the permit holder.

All future employees and occupiers working within the development approved under this permit will not be permitted to obtain employee or visitor car parking permits.

The applicant must liaise with Council's open space unit for the protection of the street trees in the vicinity of the site.

Overhead power lines run along the east side of Nicholson Street, close to the property boundary. The developer needs to ensure that the building has adequate clearances from overhead power cables, transformers, substations or any other electrical assets where applicable. Energy Safe Victoria has published an information brochure, *Building design near powerlines*, which can be obtained from their website.

#### **VicRoads Notes:**

Separate consent may be required from VicRoads (the Roads Corporation) under the Road Management Act 2004 for buildings and works undertaken outside the title boundary within a Road Zone Category 1 (Nicholson Street). Please contact VicRoads prior to commencing any works.

**CONTACT OFFICER:**     **Nikolas Muhllechner**  
**TITLE:**                     **Principal Planner**  
**TEL:**                        **9205 5456**

#### **Attachments**

- 1    PLN18/0172 - 622-642 Nicholson Street Fitzroy North - Subject Land Map
- 2    PLN18/0172 - 622-642 Nicholson Street Fitzroy North - Advertised Plans Part 1
- 3    PLN18/0172 - 622-642 Nicholson Street Fitzroy North - Advertised Plans Part 2
- 4    PLN18/0172 - 622-642 Nicholson Street Fitzroy North - Sketch Plans
- 5    PLN18/0172 - 622-642 Nicholson Street Fitzroy North - Neighbouring Property Daylight Analysis Report
- 6    PLN18/0172 - 622-642 Nicholson Street Fitzroy - VicRoads Referral Comments
- 7    PLN18/0172 - 622 - 642 Nicholson Street Fitzroy North - Engineering Referral Comments
- 8    PLN18/0172 - 622-642 Nicholson Street Fitzroy North - ESD Referral Comments
- 9    PLN18/0172 - 622-642 Nicholson Street Fitzroy North - Urban Design Unit Referral Comments
- 10   PLN18/0172 - 622-642 Nicholson Street Fitzroy North - Streetscapes and Natural Values Referral Comments
- 11   PLN18/0172 - 622-642 Nicholson Street Fitzroy North - Strategic Transport Comments
- 12   PLN18/0172 - 622-642 Nicholson Street Fitzroy North - Acoustic Referral Comments
- 13   PLN18/0172 - 622-642 Nicholson Street Fitzroy North - Urban Design Consultant Referral Comments

---

**1.2      115 Easey Street, Collingwood - PLN17/0655 - Full demolition of the existing dwelling and construction of three dwellings on a lot.**

---

## **Executive Summary**

### **Purpose**

1. This report provides an assessment of planning permit application PLN17/0655 at No. 115 Easey Street in Collingwood for the full demolition of the existing dwelling and construction of three dwellings and recommends approval, subject to conditions.

### **Key Planning Considerations**

2. Key planning considerations include:
  - (a) Built form (Clauses 15.01 and Clause 21.05);
  - (b) Heritage (Clauses 15.03, 21.05-1 and 22.02); and
  - (c) Rescode (Clause 55).

### **Key Issues**

3. The key issues for Council in considering the proposal relate to:
  - (a) Planning Policy Framework and Local Planning Policy Framework;
  - (b) Heritage;
  - (c) Clause 55 (ResCode); and
  - (d) Objector concerns.

### **Submissions Received**

4. A total of eight (8) objections were received to the application. These can be summarised as:
  - (a) Height and appearance out of character in heritage streetscape;
  - (b) Additional strain on on-street car parking, including visitors to site;
  - (c) Structural issues;
  - (d) Noise from car park;
  - (e) Overdevelopment of the site;
  - (f) Off-site amenity impacts (overlooking, overshadowing, lack of green spaces and visual bulk); and
  - (g) Impact on trees.

### **Conclusion**

5. Based on the following report, the proposal is considered to comply with the relevant planning policy and should therefore be supported subject to the following key recommendations:
  - (a) Amendment to basement to reduce impact on trees;
  - (b) Provision of revised arborist report demonstrating the Tasmanian Blue Gum at No.116 Sackville Street will not be detrimentally impacted by the proposed development; and
  - (c) Changes to façade finishes and balcony size.

**CONTACT OFFICER:**    **Laura Condon**  
**TITLE:**                    **Senior Statutory Planner**  
**TEL:**                      **92055016**

---

**1.2 115 Easey Street, Collingwood - PLN17/0655 - Full demolition of the existing dwelling and construction of three dwellings on a lot.**

---

Trim Record Number: D18/184864

Responsible Officer:

<b>Proposal:</b>	Full demolition of the existing dwelling and construction of three dwellings on a lot.
<b>Existing use:</b>	Dwelling
<b>Applicant:</b>	Neil Fletcher Design
<b>Zoning / Overlays:</b>	Neighbourhood Residential Zone (Schedule 1) Heritage Overlay (Schedule 321) Special Building Overlay
<b>Date of Application:</b>	15 August 2017
<b>Application Number:</b>	PLN17/0655

### Background

1. The application was received by Council on 15 August 2017, with additional information received on November 2017. The application was subsequently advertised in November 2017. Six (6) objections were received.

#### Lodgement of S57A plans

2. In response to objector and officer concerns, revised section 57A amended plans were lodged on 8 June 2018 and were subsequently advertised. A further two (2) objections were received, resulting in a total of eight (8) objections. Two (2) existing objectors provided further submissions confirming their continued objection to the development.
3. These plans showed the following changes:
  - (a) Reduced the number of dwellings from 4 to 3;
  - (b) Increased the setback of the basement from the rear boundary from 1.35-1.73m to 2m-2.2m;
  - (c) Increased the setback of the basement from the front boundary from approx. 4m to 4m-6m.
  - (d) Reduced the number of car spaces from 4 to 3 (with deletion of vehicle turn table);
  - (e) Changed setbacks from the front boundary from 4.89m to 3.5m (façade) to 5m (garage door) at ground floor and 3.7m (balcony) and between 5.7m-5.9m (façade) at first floor;
  - (f) Increased the setback of the ground and first floor from the rear boundary from an average of 1.6m to an average of 3.2m;
  - (g) Changed setbacks to the east boundary from a minimum of 1m to between 0m-2.1m;
  - (h) Changed setbacks to the west boundary from a minimum of 0m to between 1m-3.6m;
  - (i) Reduction in maximum height from 6.95m to 6.85m;
  - (j) Changed wall materials from render and zincalume to render and wooden cladding, with the garage door changed from a roller door to a perforated steel door;
  - (k) Changed window form; and
  - (l) Balconies repositioned.
4. These plans now form the decision plans.

### The Proposal

5. The proposal is for the full demolition of the existing dwelling and construction of three (3) dwellings. The proposal can be described as follows:

- (a) Demolition of the dwelling and front fence including part of the western fence (retaining other fences);
- (b) Construction of 3 dwellings on site with Dwelling 1 and 2 having two bedrooms each at ground floor and Dwelling 3 have a living/kitchen area and private open space;
- (c) Dwellings 1 and 2 have living/kitchen areas and a balcony (10.4 and 8.5sqm) at first floor with Dwelling 3 having 2 bedrooms;
- (d) The dwellings would have a maximum height of 6.85m;
- (e) The basement would have setbacks from the rear boundary of 2m-2.2m, from the front boundary of 4m and 6m and would be built to the east and west boundaries. The basement accommodates 3 car spaces, 3 storage areas measuring 5 cubic metres each, a stair to ground level and 6 bicycle racks. The car spaces will be accessed via a car lift on the east side of the basement;
- (f) The ground floor would have setbacks from the front boundary of 3.5m and 5m, east boundary of 1.1m and 1.5m, west boundary of 1m-2m and an average of 3.2m to the rear boundary;
- (g) The first floor would have setbacks from the front boundary of 3.7m (balcony) and 5.7m and 5.9m (façade), east boundary of 1m-2.1m, west boundary of 1.71m-3.6m and an average of 3.2m to the rear boundary;
- (h) Wall materials would include render and wooden cladding, with a garage door of perforated steel.
- (i) A 0.9m high timber picket fence is proposed to the front boundary with the rendered letterbox enclosure also forming part of the fence. A 0.9m high rendered meters enclosure is located behind the letterboxes. The bin storage area would be enclosed by an approx. 1.3m high render wall located behind the meters enclosure. The front fence does not extend across the proposed driveway.

## Existing Conditions

### Subject Site

6. The subject site is located on the south side of Easey Street, midway between Hoddle Street to the east and Gold Street to the west. The site has east and west boundaries of approx 29.8m long and a front boundary of 10.11m and rear boundary of 9.52m, with a total area of 297.4sqm. The site is occupied by a single storey weatherboard dwelling that is graded 'contributory' to the heritage overlay. The dwelling has a 4m setback to Easey Street with the rear open space being 6m and 9m in length.

### Surrounds

7. To the immediate west of the subject site is No 113 Easey Street, a single storey 1960's era redbrick dwelling listed as 'non-contributory' under the heritage overlay. The eastern wall is setback between 1.5m and 3.8m from the shared boundary with a car space located in the wider setback and 5 habitable room windows. Private open space is located to the rear with an outbuilding located in the south-east corner.
8. To the immediate rear of No 113 Easey Street is No.116 Sackville Street (a single storey 'contributory' dwelling) which has a large Tasmanian Blue Gum tree in the north-east corner of its open space and adjacent to the rear boundary of the subject site. To the immediate rear of the subject site is No.118 Sackville Street (a single storey 'non-contributory' dwelling) with private open space measuring 11m in length.
9. To the immediate east of the subject site is No 117-119 Easey Street, a single storey 'non-contributory' 1960's era redbrick dwelling. The building has a western wall which is setback 2.5m from the shared boundary, with 1 habitable window on its west wall facing the subject site. Private open space is located to the rear and measures 9m in length with a shed located in the south-east corner of the open space (shed incorrectly shown on the plans in the south-west corner).

## Planning Scheme Provisions

### Zoning

#### *Neighbourhood Residential Zone (Schedule 1)*

10. The subject site is zoned Neighbourhood Residential Zone (Schedule 1). The following provisions apply:
  - (a) Pursuant to Clause 32.09-6, a planning permit is required to construct two or more dwellings on a lot.
  - (b) Pursuant to Clause 32.09-9, a building used as a dwelling or residential building must not exceed the height of 9 metres and the building must contain no more than 2 storeys at any point.
  - (c) Pursuant to Clause 32.09-4, a dwelling or residential building on a lot of 400sqm or greater must provide the minimum garden area requirements. With the site measuring 297.4sqm this clause is not applicable to the current application.

### Overlays

#### *Heritage Overlay (HO321- Gold Street Precinct)*

11. Clause 43.01-1 (Heritage Overlay) states that a planning permit is required to demolish or remove a building and construct a building or construct or carry out works.

#### *City of Yarra Review of Heritage Areas 2007 Appendix 8 (Revised May 2018)*

12. The building on the subject site is located within Schedule 321 and identified as 'contributory' to this precinct as outlined in the incorporated document.

#### *Special Building Overlay*

13. Pursuant to Clause 44.05-2 of the Scheme, a planning permit is required to construct a building or construct or carry out works.
14. Pursuant to clause 44.05-6 an application must be referred to the relevant floodplain management authority under Section 55 of the Act. Melbourne Water is the relevant Referral Authority.

### Particular Provisions

#### *Clause 52.06 – Car Parking*

15. Pursuant to Clause 52.06-2, the car parking spaces required under Clause 52.06-5 must be provided on the land. Clause 52.06-3 requires a planning permit to reduce the number of car parking spaces required under this clause.
16. The Clause 52.06-5 requirements, the proposal provision and the subsequent shortfall are shown below:

Land Use	Rate	No. of dwellings proposed	Spaces required	Spaces proposed	Reduction sought
Dwelling	1 car space to each 2 bedroom dwelling.	3	3	3	0

#### *Clause 55 – Two or more dwellings on a lot and residential buildings*

17. Pursuant to clause 55 of the Scheme this provision applies to an application to construct or extend two or more dwellings on a lot within the General Residential Zone. A development must meet the objectives of Clause 55 but does not need to meet the standard.

General Provisions

*Clause 65 – Decision guidelines*

18. The Decision Guidelines outlined at Clause 65 of the Scheme are relevant to all applications. Because a permit can be granted does not imply that a permit should or will be granted. Before deciding on an application, the Responsible Authority must consider a number of matters.
19. Amongst other things, the Responsible Authority must consider the relevant State Planning Policy Frameworks, Local Planning Policy Frameworks and any Local Policy, as well as the purpose of the Zone, Overlay or any other Provision

State Planning Policy Framework (SPPF)

*Clause 15.01-1S – Urban Design*

20. The relevant objective of this clause is:
- (a) *To create urban environments that are safe, functional and provide good quality environments with a sense of place and cultural identity.*

*Clause 15.01-2S – Building Design*

21. The relevant objective of this clause is:
- (a) *To achieve building design outcomes that contribute positively to the local context and enhance the public realm.*

*Clause 15.01-5S – Neighbourhood Character*

22. The relevant objective of this clause is:
- (a) *To recognise, support and protect neighbourhood character, cultural identity, and sense of place.*

*Clause 15.02 – Sustainable Development*

23. The objective of this clause is:
- (a) *To encourage land use and development that is energy and resource efficient, supports a cooler environment and minimises greenhouse gas emissions.*

*Clause 15.03 Heritage*

*Clause 15.03-1S – Heritage conservation*

24. The objective of this clause is:
- (a) *To ensure the conservation of places of heritage significance.*
25. Strategies include:
- (a) *Identify, assess and document places of natural and cultural heritage significance as a basis for their inclusion in the planning scheme.*
- (b) *Provide for the protection of natural heritage sites and man-made resources.*

- (c) *Provide for the conservation and enhancement of those places that are of aesthetic, archaeological, architectural, cultural, scientific or social significance.*
- (d) *Encourage appropriate development that respects places with identified heritage values.*
- (e) *Retain those elements that contribute to the importance of the heritage place.*
- (f) *Encourage the conservation and restoration of contributory elements of a heritage place.*
- (g) *Ensure an appropriate setting and context for heritage places is maintained or enhanced.*
- (h) *Support adaptive reuse of heritage buildings where their use has become redundant.*

*Clause 16.01 Residential Development*

*Clause 16.01-1S – Integrated housing*

26. The objective of this clause is *'to promote a housing market that meets community needs'*.

*Clause 16.01-1R – Integrated housing- Metropolitan Melbourne*

27. Strategies for this clause are:

- (a) *Provide certainty about the scale of growth by prescribing appropriate height and site coverage provisions for different areas.*
- (b) *Allow for a range of minimal, incremental and high change residential areas that balance the need to protect valued areas with the need to ensure choice and growth in housing.*

*Clause 16.01-2S Location of residential development*

28. The objective of this clause is:

- (a) *To locate new housing in designated locations that offer good access to jobs, services and transport.*

29. Relevant strategies for this clause are:

- (a) *Increase the proportion of new housing in designated locations within established urban areas and reduce the share of new dwellings in greenfield and dispersed development areas.*
- (b) *Encourage higher density housing development on sites that are well located in relation to jobs, services and public transport.*
- (c) *Ensure an adequate supply of redevelopment opportunities within established urban areas to reduce the pressure for fringe development.*
- (d) *Facilitate residential development that is cost effective in infrastructure provision and use, energy efficient, water efficient and encourages public transport use.*
- (e) *Identify opportunities for increased residential densities to help consolidate urban areas.*

*Clause 16.01-2R – Housing opportunity areas- Metropolitan Melbourne*

30. Relevant strategies for this clause are:

- (a) *Identify areas that offer opportunities for more medium and high density housing near employment and transport in Metropolitan Melbourne.*
- (b) *Manage the supply of new housing to meet population growth and create a sustainable city by developing housing and mixed use development opportunities in locations that are:*
  - (i) *In and around the Central City.*

- (ii) *Urban-renewal precincts and sites.*
- (iii) *Areas for residential growth.*
- (iv) *Areas for greyfield renewal, particularly through opportunities for land consolidation.*
- (v) *Areas designated as National Employment and Innovation Clusters.*
- (vi) *Metropolitan activity centres and major activity centres.*
- (vii) *Neighbourhood activity centres - especially those with good public transport connections.*
- (viii) *Areas near existing and proposed railway stations that can support transit oriented development.*
- (c) *Facilitate increased housing in established areas to create a city of 20 minute neighbourhoods close to existing services, jobs and public transport.*

*Clause 16.01-3S – Housing diversity*

31. The objective of this clause is 'to provide for a range of housing types to meet increasingly diverse needs'.
32. Strategies of this policy are:
- (a) *Ensure housing stock matches changing demand by widening housing choice.*
  - (b) *Facilitate diverse housing that offers choice and meets changing household needs through:*
    - (i) *A mix of housing types.*
    - (ii) *Adaptable internal dwelling design.*
    - (iii) *Universal design.*
  - (c) *Encourage the development of well-designed medium-density housing that:*
    - (i) *Respects the neighbourhood character.*
    - (ii) *Improves housing choice.*
    - (iii) *Makes better use of existing infrastructure.*
    - (iv) *Improves energy efficiency of housing.*
  - (d) *Support opportunities for a range of income groups to choose housing in well-serviced locations.*
  - (e) *Ensure planning for growth areas provides for a mix of housing types through a variety of lot sizes, including higher housing densities in and around activity centres.*

*Clause 16.01-3R – Housing diversity - Metropolitan Melbourne*

33. The strategy of this policy is:
- (a) *Create mixed-use neighbourhoods at varying densities that offer more choice in housing*

*Clause 16.01-4S – Housing affordability*

34. The objective of this clause is 'to deliver more affordable housing closer to jobs, transport and services'.

*Clause 18.01 – Integrated Transport*

35. The objective (clause 18.01-1S) of this clause is:
- (a) *To create a safe and sustainable transport system by integrating land use and transport.*

Local Planning Policy Framework (LPPF)

*Clause 21 – Municipal Strategic Statement (MSS)*

*Clause 21.03 – Vision*

36. Clause 21.03 of the Scheme outlines strategic objectives for land use, built form, transport and environmental sustainability within the City. Strategies to achieve the objectives are set out in the following clauses of the MSS.

*Clause 21.04 – Land use*

*Clause 21.04-1 – Accommodation and Housing*

37. The objectives of this clause are:
- (a) *To accommodate forecast increases in population.*
  - (b) *To retain a diverse population and household structure.*
  - (c) *To reduce potential amenity conflicts between residential and other uses.*

*Clause 21.05 Built form*

*Clause 21.05-1 Heritage*

38. This clause acknowledges that new development can still proceed whilst paralleling the objective to retain the nineteenth century character of the City. Conservation areas seek to conserve the City's heritage places whilst managing an appropriate level of change.
39. Relevant objectives include:
- (a) *Objective 14 To protect and enhance Yarra's heritage places:*
    - (i) *Strategy 14.1 Conserve, protect and enhance identified sites and areas of heritage significance including pre-settlement ecological heritage.*
    - (ii) *Strategy 14.2 Support the restoration of heritage places.*
    - (iii) *Strategy 14.3 Protect the heritage skyline of heritage precincts.*
    - (iv) *Strategy 14.4 Protect the subdivision pattern within heritage places.*
    - (v) *Strategy 14.6 Protect buildings, streetscapes and precincts of heritage significance from the visual intrusion of built form both within places and from adjoining areas.*
    - (vi) *Strategy 14.8 Apply the Development Guidelines for Heritage Places policy at clause 22.02.*

*Clause 21.05-2 – Urban design*

40. This clause incorporates the following relevant objectives:
- (a) *Objective 16 - To reinforce the existing urban framework of Yarra; and*
  - (b) *Objective 20 - To ensure that new development contributes positively to Yarra's urban fabric.*

*Clause 21.07 – Environmental Sustainability*

41. The relevant objectives of this clause are:
- (a) *To promote environmentally sustainable development.*
  - (b) *To improve the water quality and flow characteristics of storm water run-off.*

*Clause 21.08 Neighbourhoods*

42. Clause 21.08-5 describes this area as follows:
- (a) *Much of Collingwood is industrial in character with the residential precincts surrounded by or interspersed with industrial buildings.*

#### Relevant Local Policies

##### *Clause 22.02 – Development Guidelines for Sites Subject to the Heritage Overlay*

43. This policy applies to all new development included in a heritage overlay. The relevant objectives of this clause includes to conserve Yarra's natural and cultural heritage, to conserve the historic fabric and maintain the integrity of places of cultural heritage significance, to retain significant view lines to, and vistas of, heritage places and to preserve the scale and pattern of streetscapes in heritage places.
44. The relevant policies with regards to demolition/removal of a building of this clause are:
- (a) *Generally encourage the retention of a building in a heritage place, unless:*
    - (i) *The building is identified as being not contributory*
    - (ii) *The building is identified as a contributory building, and*
      - *New evidence has become available to demonstrate that the building does not possess the level of heritage significance attributed to it in the incorporated document, City of Yarra Review of Heritage Areas 2007 Appendix 8 (as updated from time to time) and*
      - *The building does not form part of a group of similar buildings.*
  - (b) *Encourage the removal of inappropriate alterations, additions and works that detract from the cultural significance of the place.*
  - (c) *Generally discourage the demolition of part of an individually significant or contributory building or removal of contributory elements unless:*
    - (i) *That part of the heritage place has been changed beyond recognition of its original or subsequent contributory character(s).*
    - (ii) *For individually significant building or works, it can be demonstrated that the removal of part of the building or works does not negatively affect the significance of the place.*
45. The relevant policies with regards to alterations and additions of a building of this clause are:
- (a) *Encourage the design of new development and alterations and additions to a heritage place or a contributory element to a heritage place to:*
    - (i) *Respect the pattern, rhythm, orientation to the street, spatial characteristics, fenestration, roof form, materials and heritage character of the surrounding historic streetscape;*
    - (ii) *Be articulated and massed to correspond with the prevailing building form of the heritage place or contributory elements to the heritage place;*
    - (iii) *Be visually recessive and not dominate the heritage place;*
    - (iv) *Be distinguishable from the original historic fabric;*
    - (v) *Not remove, cover, damage or change original historic fabric;*
    - (vi) *Not obscure views of principle façades;*
    - (vii) *Consider the architectural integrity and context of the heritage place or contributory element.*
  - (b) *Encourage setbacks from the principal street frontage to be similar to those of adjoining contributory buildings; where there are differing adjoining setbacks, the greater setback will apply.*
  - (c) *Encourage similar façade heights to the adjoining contributory elements in the street. Where there are differing façade heights, the design should adopt the lesser height.*
  - (d) *Minimise the visibility of new additions by:*

- (i) *Locating ground level additions and any higher elements towards the rear of the site;*
  - (ii) *Encouraging ground level additions to contributory buildings to be sited within the 'envelope' created by projected sight lines (see Figure 1);*
  - (iii) *Encouraging upper level additions to heritage places to be sited within the 'envelope' created by projected sight lines (for Contributory buildings refer to Figure 2 and for Individually significant buildings refer to Figure 3);*
  - (iv) *Encouraging additions to individually significant places to, as far as possible, be concealed by existing heritage fabric when viewed from the front street and to read as secondary elements when viewed from any other adjoining street.*
- (e) *Discourage elements which detract from the heritage fabric or are not contemporary with the era of the building such as unroofed or open upper level decks or balconies, reflective glass, glass balustrades and pedestrian entrance canopies.*

*Clause 22.16 – Stormwater Management (Water Sensitive Urban Design)*

46. This policy applies to new buildings. The objective of this clause is:

- (a) *To achieve the best practice water quality performance objectives set out in the Urban Stormwater Best Practice Environmental Management Guidelines, CSIRO 1999 (or as amended).*

*Clause 22.17 – Environmentally Sustainable Design*

47. This policy applies throughout the City of Yarra to residential and non-residential development that requires a planning permit. The overarching objective is that development should achieve best practice in environmentally sustainable development from the design stage through to construction and operation. The considerations are energy performance, water resources, indoor environment quality, storm water management, transport, waste management and urban ecology.

**Advertising**

48. The application was received by Council on 15 August 2017, with additional information received on November 2017. The application was subsequently advertised on November 2017 and 6 objections were received.

Lodgement of S57A plans

49. In response to objector and officer concerns, revised section 57A amended plans were lodged on 8 June 2018, with these plans subsequently advertised in June 2018. A further two (2) objections were received resulting in a total of eight (8) objections. A planning consultation meeting was held on the 24 July 2018 and was attended by the applicant, 3 objectors and Council officers. No resolutions were reached at the meeting.

50. The grounds of the eight (8) objections are summarised as follows:

- (a) Height and appearance out of character in heritage streetscape;
- (b) Additional strain on on-street car parking, including visitors to site;
- (c) Structural issues;
- (d) Noise from car park;
- (e) Overdevelopment of the site;
- (f) Off-site amenity impacts (overlooking, overshadowing, lack of green spaces and visual bulk); and
- (g) Impact on trees.

**Referrals**

### External Referrals

51. The application was required to be referred to Melbourne Water who were supportive of the application subject to conditions requiring the floor levels at the site be above the applicable flood level. Their comments are included as an attachment to this report, with their conditions included in the officer recommendation.

### Internal Referrals

52. The following internal referrals were made:
- (a) Engineering Services Unit.
  - (b) Heritage advisor.
  - (c) Open Space.
53. Referral responses are contained in the appendices to this report.

## **OFFICER ASSESSMENT**

54. The key issues for Council in considering the proposal relate to:
- (a) Planning Policy;
  - (b) Heritage;
  - (c) Clause 55 (ResCode); and
  - (d) Objector concerns.

### Planning Policy

55. When assessed against the Planning Policy Framework and Local Planning Policy Frameworks (PPF & LPPF), there is strategic support for the development with regards to its location within proximity to the Smith Street Activity Centre (AC) (550m to west) and within the Neighbourhood Residential Zone (NRZ1). The purposes of the NRZ are as follows:
- (a) *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
  - (b) *To recognise areas of predominantly single and double storey residential development.*
  - (c) *To manage and ensure that development respects the identified neighbourhood character, heritage, environmental or landscape characteristics.*
56. It considered that the proposed development fulfils these objectives, and allows for modern medium sized development within an inner-city context that is ideally located to take advantage of existing public transport services including tram services available along Smith Street (550m west), buses along Hoddle Street (170m east) and Johnston Street (140m south) and Victoria Park Train Station (300m east).
57. Clause 11 of the Scheme aims for an increase in diversity of choice, economic viability, accessibility and land use and transport integration, whilst facilitating sustainable development that takes full advantage of existing settlement patterns. The future residents of the dwellings will use the services available in the nearby commercial environments on Smith Street, Brunswick Street and Johnston Street.
58. The development also accords with a number of key strategic policies within the Scheme, in particular clause 15.01-1S and 18.01-1S, by providing higher density housing with connections to public transport/cycling networks and by increasing and consolidating the supply and diversity of housing in existing urban areas. For all of the reasons outlined above, the proposal is considered to achieve sufficient compliance with the relevant planning policies.

59. Pursuant to clause 52.06 of the Scheme, the development is required to provide a total of 3 car spaces, with 3 provided. Despite compliance with this standard, objectors have raised concerns that insufficient on-site car parking has been provided particularly for visitors. As the Scheme does not require visitor spaces it is not reasonable to require additional on-site car spaces. Encouraging the use of public transport as well as walking and cycling as modes of transport is central to Council policy objectives relating to sustainable transport. Forcing developments to provide additional parking, as set out in the Scheme, will not encourage achieving the objectives of sustainable transport that are outlined in clauses 18.02 and 21.06 of the Scheme. Further residents will not be eligible for on-street resident or visitor parking permits which will ensure the development will not place undue strain on existing on-street car parking. The applicant would be reminded of this via a note.

### Heritage

60. The following section will consider the design response to relevant Local policy, including the advice of Council's Heritage advisor. In considering the design and built form of the proposed development, the most relevant aspects of the Scheme are provided at Clause 15 (Built Environment and Heritage), Clause 21.05 (Built Form) and Clause 22.02 (Development Guidelines for Sites subject to the Heritage Overlay). The site is categorised as contributory to the heritage overlay.

### *Demolition*

61. It is proposed to demolish the existing dwelling. Council's heritage advisor has not supported this stating the dwelling retains enough of its original contributory features (predominately the roof form and the weatherboard side walls) to allow for its retention and restoration. Clause 22.02 policy objectives stipulate the poor condition of a dwelling should not in itself be justification to allow for the removal of a contributory building. As outlined by Council's heritage advisor the contributory dwelling has been significantly altered externally. The roof form and associated chimney are the only visible contributory features. As shown in the following images provided by Council's heritage advisor, alterations to the façade include a weatherboard parapet that obscures views to the roof from, enlarged windows and modern verandah.

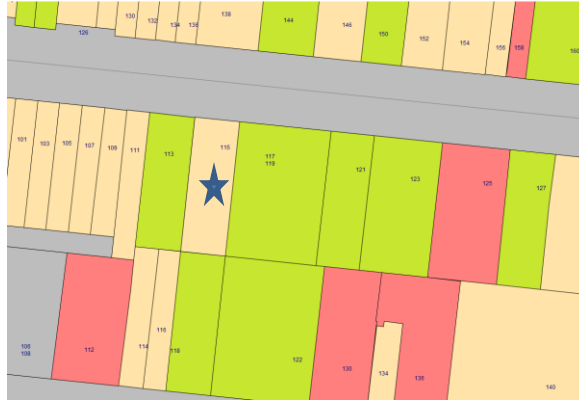


*Above: View towards subject site from the north-east.*

62. The applicant submitted a report by a heritage expert (Peter Andrew Barrett) who supported the proposed demolition based on the following clause 22.02 policy objective:
- (a) *Generally encourage the retention of a building in a heritage place, unless:*
    - (i) *The building is identified as a contributory building, and*

- *New evidence has become available to demonstrate that the building does not possess the level of heritage significance attributed to it in the incorporated document, City of Yarra Review of Heritage Areas 2007 Appendix 8 (as updated from time to time) and*
- *The building does not form part of a group of similar buildings.*

63. The following images show the mix of contributory (in brown), individually significant heritage dwellings (in red) and non-contributory dwelling (in green). The dwelling is located within in a row of four non-contributory dwellings.



64. The applicant's heritage expert argues the dwelling is located in a row of 4 non-contributory dwellings, demolition can be justified in line with the above policy as the dwelling "does not from part of a group of similar buildings".
65. Council's heritage advisor has responded to this argument by the applicant's heritage expert by stating the majority of the dwellings in the heritage precinct are contributory dwellings. Council's heritage advisor argues the loss of the dwelling would negatively impact the precinct. However, the policy objective above does not point to taking a broader view of the heritage area but directs considerations to its immediate context. Furthermore, the precinct includes a large area bounded by Alexandra Parade, Hoddle Street, Sackville Street and Wellington Street with the subject site located toward the precinct's southern edge.



Above: View towards subject site from across Easey Street.

66. Whilst the dwelling has a contributory grading, the modifications to the dwelling include an altered façade with an added parapet which obscures views of the roof, enlarged front windows and a modern verandah. As a result, this dwelling does not present a strong example of a contributory dwelling.

Further to this, the removal of this heavily modified contributory dwelling located in a row of 4 non-contributory dwellings would not create a gap in a row of contributory/individually significant buildings and so its demolition would not interrupt the rhythm of the heritage streetscape. For these reasons, support is recommended for the proposed demolition as it is considered to satisfy the above policy objectives.

### Buildings and works

67. In relation to the proposed dwellings and their presentation to the heritage streetscape, the following policy objectives apply:
  - (i) *Respect the pattern, rhythm, orientation to the street, spatial characteristics, fenestration, roof form, materials and heritage character of the surrounding historic streetscape;*
  - (ii) *Be articulated and massed to correspond with the prevailing building form of the heritage place or contributory elements to the heritage place;*
  - (iii) *Be visually recessive and not dominate the heritage place;*
  - (iv) *Be distinguishable from the original historic fabric;*
  - (v) *Not remove, cover, damage or change original historic fabric;*
  - (vi) *Not obscure views of principle façades;*
  - (vii) *Consider the architectural integrity and context of the heritage place or contributory element.*
- (b) *Encourage setbacks from the principal street frontage to be similar to those of adjoining contributory buildings; where there are differing adjoining setbacks, the greater setback will apply.*
- (c) *Encourage similar façade heights to the adjoining contributory elements in the street. Where there are differing façade heights, the design should adopt the lesser height.*
68. The height, front and side setbacks have been designed to complement the heritage streetscape. The height is comparable to other double storey dwellings in the street (see No. 121 Easey Street) and the dwellings are setback so they will not block views to other heritage dwellings. The side setbacks allow the new dwellings to have a slim/vertical form that will not appear overly dominating in the streetscape. Council's heritage advisor has also not opposed these aspects of the proposal.
69. Council's heritage advisor also provided suggestions based on the original application plans in relation to window forms, materials and front fence. The section 57A amended plans changed the window forms, wall materials and front fence in line with the advice of Council's heritage advisor. Council's heritage advisor has reviewed these plans, and while maintaining the dwelling should be retained, support has been provided for the proposed revised design subject to the following minor modifications:
  - (a) *The proposed 900mm high timber picket fence is supported. However, the fence should extend across the entire site, including a gate across the driveway. Including a gate in this location would help to 'contain' the non-contributory site, making it more visually recessive, and retain a traditional vista within the streetscape where car parking and driveways are not an original feature.*
  - (b) *The proposed perforated mesh garage door would be highly contemporary and out of character with the traditional streetscape. It is strongly recommended that the perforated mesh garage door be substituted for a matte finished material such as timber.*
  - (c) *The new proposal includes an open balcony at the front of the building. Whilst enclosed upper level verandahs are traditional for double storey terraces (as per 121 Easey Street), large open balconies with reflective materials are not and detract from surrounding contributory fabric – especially once furniture and activity occupy the balcony.*

*It is strongly recommended that the street-facing balcony be deleted from dwelling 1; or reduced in size (8sqm max) and the balustrade material changed to timber to complement façade cladding and conceal furniture/activity behind.*

70. Conditions will address these items including the balcony being reduced in size to 8sqm (given the minimum area required for open space is 8sqm). The overall built form is considered acceptable from a heritage perspective, subject to conditions. For all of the reasons outlined above, the proposed development is considered to present an appropriate design response to the surrounding heritage character.

Clause 55 (Rescode)

71. Clause 55 (ResCode) provides an assessment tool for the appropriateness of the design of two or more dwellings on a lot. Given the site's location within a built-up inner-city residential area, strict application of the standard is not always appropriate. The relevant test is whether the proposal meets the objectives. The following provides an assessment against the relevant standards of ResCode and shows the proposal achieves a reasonable level of compliance with relevant objectives.

*Standard B1 – Neighbourhood Character*

72. This standard encourages proposed development to respond to the existing neighbourhood character or to contribute to a preferred neighbourhood character of the area. An assessment of the proposed development in relation to neighbourhood character has been carried out in the previous *Heritage Assessment* and found the proposal provides an appropriate design response to respect both the existing and preferred neighbourhood character.

*Standard B2 – Residential Policy*

73. As discussed previously the proposal achieves a reasonable level of consistency with State and Local planning policies contained within the Scheme, including relevant components of the MSS. Accordingly, the proposed development is considered to adequately respond to the requirements of this Standard.

*Standard B3 – Dwelling Diversity*

74. This standard seeks, “to encourage a range of dwelling sizes and types in developments of ten or more dwellings”. Accordingly, this standard is not applicable to this development.

*Standard B4 – Infrastructure*

75. The development is located within an existing established residential area. It is not expected the dwellings would overload the utility services and infrastructure. The proposed development would be readily connected to the required utility services and infrastructure which are present at the site.
76. Furthermore, the application has been referred to Council's Engineering Services Unit who has not objected to this aspect of the proposed development. As such the site is considered capable of supporting the proposed dwellings.

*Standard B5 – Integration with the street*

77. Dwelling 1 will be oriented to Easey Street and will allow for passive surveillance to the main street frontage in compliance with policy objectives.

*Standard B6 – Street setback*

78. Under the above standard a front setback of 4.5 metres is required. A ground floor setback of 3.5m (façade) to 5m (garage door) is proposed in partial compliance with the standard. However, the aerial photograph provided in the Site and *Surrounds* section demonstrates that the heritage dwellings in the area have much smaller setbacks, thus the reduced setback of the façade will not appear out of character.

*Standard B7 – Building height*

79. The total overall building height of 6.85 metres is proposed with a maximum of 2 storeys. This is in accordance with the maximum 9 metres prescribed by the standard and the 9 metres mandatory height control of the Neighbourhood Residential Zone – Schedule 1.

*Standard B8 – Site coverage*

80. The site coverage is proposed to increase to approximately 58%, which is less than the maximum 60% recommended by the standard.

*Standard B9 – Permeability*

81. A site permeability of approx. 33% of permeable surfaces is achieved within the front and rear setbacks (and outside the basement area), and exceeds the 20% recommended by the standard. However the plans do not clearly show the position of permeable surfaces. A condition will require this detail.

*Standard B10 – Energy efficiency, Clause 22.16 – Stormwater Management (Water Sensitive Urban Design) and Clause 22.17 – Environmentally Sustainable Design*

82. A Sustainable Design Assessment (SDA) has been submitted with the application. It outlines the following proposed ESD features:

- (a) LED lighting throughout;
- (b) Minimum average 6.0 NatHERS rating;
- (c) 5 star gas instantaneous solar boosted hot water system;
- (d) 5 star electric heating and cooling systems;
- (e) 4 star WELS rated toilets;
- (f) 3 star WELS rated shower heads;
- (g) 1000ltr water tank per dwelling;
- (h) Raingardens;
- (i) 100% STORM score;
- (j) Double glazing to all habitable rooms;
- (k) Secure bicycle parking;
- (l) Low VOC paints;
- (m) Refuse 80% of construction waste;
- (n) 75% IEQ score; and
- (o) 50% BESS score.

83. The BESS and STORM score comply with the Best Practice Standards outlined in Clause 22.16 – *Stormwater Management (Water Sensitive Urban Design)* and Clause 22.17 – *Environmentally Sustainable Design* and so the proposal is acceptable from an ESD perspective. However, the plans do not detail the position of the water tanks or raingardens. This will be required by way of conditions.

*Standard B11 – Open Space*

84. Not applicable. No communal open space is proposed.

*Standard B12 – Safety*

85. The pedestrian entry to Dwelling 1 will be located along Easey Street and will be clearly visible from the street, with a pathway leading up to the door entry. The entries to Dwellings 2 and 3 are serviced by a pathway along the eastern boundary. The pathway will be illuminated by in-paving lights providing a clear line of sight to the entrances at night. There are no conflicts between the vehicle access and pedestrian accesses given they are separated from each other.

*Standard B13 - Landscaping*

86. Landscaping including two canopy trees is proposed in the front and rear setback and so the proposal is acceptable in this regard. A landscape plan has been provided detailing this along with other plantings. A condition will ensure the landscaping will be provided.
87. The objectives of this standard also requires the following:
  - (a) *The development should provide for the retention or planting of trees, where these are part of the character of the neighbourhood.*
88. As mentioned in the *Site and Surrounds* assessment, to the rear and west of the subject site is number No.116 Sackville Street which had a large Tasmanian Blue gum in the north-east corner of its open space and adjacent to the rear boundary of the subject site. The applicant has provided an arborist report which details 18% of the tree protection zone (TPZ) will be impacted by the proposed basement (Constructive Arboriculture dated August 2018). The report concludes '*due to the heavily lopped structure of the tree, the facilitation of the construction proposal is not expect to diminish the tree's anchorage or impact upon the tree's existing vigour. The tree is considered to suitably distanced from areas of proposed construction and will not be adversely impacted upon in the event that the tree is retained*'. The applicant also submitted a letter from State Wide Trees Pty Ltd dated 5<sup>th</sup> September 2018 which states the tree exhibits numerous storm damaged limbs and has extensive fungal decay concluding the tree has a limited life span and the environmental value of retaining the tree is low.
89. Council's arborists have reviewed these documents and have indicated the tree is likely to be significantly impacted by the proposed basement construction. Council's arborist has indicted the relevant standard (AS4970-2009 *Protection of Trees on Development Sites*) allows for 10% incursion in the TPZ. Any intrusions beyond this requires detailed analysis of the roots located outside the 10% area with an arborist report required to detail how these roots will be managed/sensitively cut etc, with a view to demonstrating that the viability of the tree will be assured.
90. However, this information has not been provided. The applicant instead wishes to pursue a civil process to remove the tree. As this process has not yet been finalised, officers must assess the proposal based on existing conditions and consider the impact of the proposal on this significant tree. The tree is not listed on *Council's Significant Tree Register* but would be defined as significant under Council's Local Law (with a local law permit required for its removal). In the absence of information demonstrating the viability of the tree, officers cannot reasonably support the construction of the basement in such close proximity to the tree.
91. For this reason, a condition will require an arborist report is provided to demonstrate the basement construction will comply with AS4970-2009 (*Protection of Trees on Development Sites*). Given this is may result in the basement needing to be replaced by a much smaller basement located away from the tree, officers explored with Council's engineers whether a car stacker / shuffle systems could be reasonably accommodated at the site.

Council's traffic engineers have indicated the current basement/car lift structure could be reasonably modified to accommodate an underground 3 vehicle car stacker or car shuffle system (if necessary), without altering the height and size of the garage or significantly altering the vehicle access. The applicant has indicated a preference to construct the basement as proposed, but given the impact of the basement on the tree, this cannot be supported.

92. The construction of the ground floor within the TPZ of the tree can employ pier and beam foundations instead of traditional trenching foundation methods to protect the tree. To ensure appropriate methods are employed, a condition will require an amended arborist report. Council's arborist also requested the original design be amended to allow for canopy tree planting. The section 57A amended plans allow for a reduction in building and basement footprint to allow for planting of a canopy tree in the front and rear setback (shown on the landscape plan), therefore no further condition is required.
93. Council's arborist allows raised concerns the basement would impact more than 10% of the TPZ of 3 Palm Cocos on the shared boundary at No.113 Easey Street. However as these Palm Cocos have DHB (Diameter at breast height) of less than 400mm, their removal does not require a Local Law permit. Further the applicant's arborist report indicates that due to the small size and immaturity of these trees, they are unlikely to be detrimentally impacted by the current proposal.

*Standard B14 – Access*

94. This standard encourages the number and design of vehicle crossovers to respect the character of the area through minimising the width of crossover to a maximum of 40% of the frontage. In compliance, the crossover will occupy 30% of the Easey Street frontage.

*Standard B15 – Parking location*

95. In compliance, the garages are accessible to the dwellings via a stairs to the ground floor pathway, ensuring reasonable and convenient access. The garage door ensures the parking areas would be reasonably secure.

*Standard B17 – Side and rear setbacks*

96. This standard stipulates the following:
- "A new building not on or within 200mm of a boundary should be set back from side or rear boundaries:*
- (a) *At least the distance specified in a schedule to the zone, or*
  - (b) *If no distance is specified in a schedule to the zone, 1 metre, plus 0.3 metres for every metre of height over 3.6 metres up to 6.9 metres, plus 1 metre for every metre of height over 6.9 metres".*
97. The relevant ground floor walls with a maximum height 3.3m and a minimum setback 1m comply with the standard. The following table identifies the compliant first floor walls and the variations required:

<b>Boundary</b>	<b>Setback required</b>	<b>Setback provided</b>	<b>compliance</b>
First floor south 6.65m high	1.9m	3.2m-3.4m	Yes
West wall 6.65m-6.85m	1.9m-1.97m	1.9m and 2.1m	Yes
East wall 6.65m-6.85m	1.9m-1.97m	1.71m, 1.92m, 2.25m and 3.6m	Partial

98. The only non-compliance is the eastern wall of the living area for dwelling 1 which falls short of the standard by only 0.19m. This minor variation is considered acceptable as it is not located opposite any habitable room windows or private open space on the neighbouring site and so will not generate unreasonable offsite visual bulk impacts.
99. The setback of the balcony screens to dwelling 1 satisfy the standard. The balcony screen to dwelling 2 has a maximum height of 4.5m and a required setback of 1.27m. A setback of 1m is proposed. As this screen will be opaque glazing it will not present unreasonable visual bulk or loss of daylight to the windows opposite. Also the balcony is off-centre from both windows allowing for views beyond the balcony screen. For this reason, the non-compliance is considered acceptable.

*Standard B18 – Walls on boundaries*

100. This standard stipulates the following:

*'The height of a new wall constructed on or within 200mm of a side or rear boundary or a carport constructed on or within 1 metre of a side or rear boundary should not exceed an average of 3.2 metres with no part higher than 3.6 metres unless abutting a higher existing or simultaneously constructed wall.'*

*A new wall constructed on or within 200mm of a side or rear boundary of a lot or a carport constructed on or within 1 metre of a side or rear boundary of lot should not abut the boundary for a length greater than 10 metres plus 25 per cent of the remaining length of the boundary of an adjoining lot'.*

101. The ground floor western boundary wall of dwelling 3 satisfies this standard at a height of 3.2m and length of 5.7m.

*Standard B19 – Daylight to existing windows*

102. This standard stipulates the following:

*Buildings opposite an existing habitable room window should provide for a light court to the existing window that has a minimum area of 3 square metres and minimum dimension of 1 metre clear to the sky. The calculation of the area may include land on the abutting lot. Walls or carports more than 3 metres in height opposite an existing habitable room window should be set back from the window at least 50 per cent of the height of the new wall if the wall is within a 55 degree arc from the centre of the existing window.*

103. The ground floor walls comply with this standard. Based on a maximum wall height of 6.85m for first floor walls, a minimum separation of 3.42m is required to habitable room windows opposite. The proposal complies with this standard.

*Standard B20 – North-facing windows*

104. This standard stipulates the following:

*'If a north-facing habitable room window of an existing dwelling is within 3 metres of a boundary on an abutting lot, a building should be setback from the boundary 1 metre, plus 0.6 metres for every metre of height over 3.6 metres up to 6.9 metres, plus 1 metre for every metre of height over 6.9 metres, for a distance of 3 metres from the edge of each side of the window'.*

105. There are no north-facing windows located within 3m for the subject site.

*Standard B21 – Overshadowing*

106. In non-compliance with the standard the adjoining properties private open space will not receive a minimum of 40sqm in full sun for a minimum of 5 hours sunlight between 9am and 3pm. Additional shadow moves off No 113 Easey Street by just after 10am (approx. 6sqm additional shadow at 9am reduced to 1sqm by 10am) and with no effect to No 117-119 Easey Street until after 2pm (additional 10sqm at 3pm). As the extent of shadowing is limited to short periods of time, the additional shadowing is considered acceptable, particularly as these yards will receive reasonable sunlight access throughout the day.
107. Shadowing to the south will largely be contained within existing fence line shadows apart from at 10am where No. 118 Sackville Street will receive 2.5sqm additional shadow and No. 116 Sackville Street will receive approx. 2sqm additional shadow. As these properties are unaffected for the remainder of the day, this additional shadow is considered acceptable. The application shadow plans do not show the shadow from some existing fences or existing neighbouring dwellings and sheds. However the officer assessment has calculated these existing shadows.

*Standard B22 – Overlooking*

108. The above standard requires that any habitable room windows or balconies be located or designed to avoid direct views into the secluded private open space and habitable room windows of an existing dwelling within a horizontal distance of 9 metres and a 45 degree arc.
109. Along the ground floor, 1.8m and 1.9m paling fences are provided to the south and east boundary, in compliance with the standard. The existing western fence is 1.6m and therefore will not prevent overlooking from ground floor habitable windows. This will be addressed by condition. East, west and south-facing balcony screens and windows are either 1.7m high opaque screens/fixed glazing or have sill heights of 1.7m in compliance, apart from the east-facing living windows of Dwelling 1. A condition will require these windows demonstrate compliance with the standard.

*Standard B23 – Internal views*

110. Given the layout of the proposed dwellings, no internal overlooking within the development will be available.

*Standard B24 – Noise impacts*

111. The dwellings are not located in close proximity to existing noise sources and it is not considered necessary to require additional acoustic treatments for the proposed dwellings. With no large plant areas proposed, it is not necessary to require to protect nearby dwellings (especially as the use as dwellings do not require a planning permit). Objectors have raised noise from the basement car park as a concern. However mechanical car systems are designed to meet the relevant EPA noise requirements and so are not considered to have unreasonable noise impacts.

*Standard B25 – Accessibility*

112. With the dwellings having ground floor entries, they should be easily accessible to people with limited accessibility, in compliance with policy objectives.

*Standard B26 – Dwelling entry*

113. All entries provide a sense of shelter and address and will be easily identifiable from Easey Street.

*Standard B27 – Daylight to new windows*

114. The above standard requires all habitable room windows to face an “*outdoor space clear to the sky or a light court with a minimum area of 3 square metres and minimum dimension of 1 metre clear to the sky*”. The position of all new windows satisfies this standard.

*Standard B28 – Private open space*

115. Standard B28 generally requires that:

*..a dwelling or residential building should have private open space consisting of:*

- (a) *An area of 40 square metres, with one part of the private open space to consist of secluded private open space at the side or rear of the dwelling or residential building with a minimum area of 25 square metres, a minimum dimension of 3 metres and convenient access from a living room, or*
- (b) *A balcony of 8 square metres with a minimum width of 1.6 metres and convenient access from a living room, or*
- (c) *A roof-top area of 10 square metres with a minimum width of 2 metres and convenient access from a living room.*

116. The proposal complies with this standard with a minimum of 8sqm provided to each dwelling (with dwelling 1 balcony to be reduced to 8sqm as requested by Council’s heritage advisor).

*Standard B29 – Solar access to open space*

117. The open spaces to dwellings will have an outlook to the front (north boundary), side (western boundary) and rear (southern boundary) in the form of a ground floor rear courtyard and first floor balconies. The position of the first floor balconies comply with the standard. In order to satisfy this standard, the ground floor open space should have a minimum depth of 8m opposite the southern wall, with a minimum depth of 3m proposed. However, with the open space also having an eastern and western outlook, it will receive adequate sunlight and is acceptable for this reason.

*Standard B30 – Storage*

118. The standard requires that all dwellings are provided with 6 cubic metres of externally accessible storage. Storage areas in the basement measure 5 cubic metres each. As the basement is to be amended, a condition will require that compliant storage areas are provided.

*Standard B31 – Design detail*

119. This standard requires material details, façade articulation and garage presentation respect the existing character of the area. These issues have been discussed in detail in the report. That assessment demonstrates the proposal complies with the design detail objectives of this standard, subject to conditions outlined in the *Heritage* assessment.

*Standard B32 – Front fences*

120. A 0.9m high front fence is proposed, in compliance with the maximum 1.5m height recommended by the standard. However the fence does not extend across the driveway. Council’s heritage advisor has requested the fence extend across the driveway. A condition will address this.

*Standard B33 – Common property*

121. The common property is appropriately located to ensure its efficient management, in compliance with the standard.

*Standard B34 – Site Services*

122. There is bin storage and meters enclosures proposed, in compliance with the standard.

*Standard B35 –B49. Energy efficiency*

123. Not applicable- only relevant to apartment developments.

Engineering and Melbourne Water/Special Building Overlay.

124. The engineers have indicated that the increase in floor level from the currently proposed 20.04 AHD (as requested by Melbourne Water-20.17AHD) can be achieved without detrimentally impacting the operation of the parking facilities, subject to the applicant demonstrating vehicles will not bottom out. Melbourne Water also required the same minimum level for the dwellings. With 20.25 AHD proposed, the dwellings already satisfy this requirement.
125. Council's engineers have recommended the following items be provided for the amended basement:
- (a) 3 car spaces,
  - (b) swept paths provided to show a B99 design vehicle can enter and exit the garage from Easey Street with existing on-street car parking depicted;
  - (c) the grade of the driveway be a maximum of 1:10 for the first 5m inside the property;
  - (d) a 1:20 scale cross section of the vehicle crossing, access ramp and vehicle parking entry area to demonstrate that a B99 design vehicle will not bottom out and in accordance and in accordance with Melbourne Water floor level requirements;
  - (e) demonstrate that a B85 design vehicle can enter and exit the spaces;
  - (f) the entry platform to have a minimum width of 2.4m and provide the model specification/data sheet for relevant vehicle lifting/vehicle storage equipment.
126. The engineers have also requested standard conditions in relation to the following items:
- (a) The footpath to the front of the site be re-instated after construction;
  - (b) The crossover to be built to Council satisfaction; and
  - (c) The applicant must gain the relevant approvals from the relevant authorities to remove and relocate the power pole to the front of the site.

Objector Concerns

127. The objections received raised the following (summarised) concerns with the proposal:

- (a) Height and appearance out of character in heritage streetscape;
  - (i) This issue has been discussed in detail between paragraphs 67-70.
- (b) Additional strain on on-street car parking, including visitors to site;
  - (i) As a car parking reduction is not required (with 3 on-site car spaces to be provided), it is considered the proposal will not result in excessive additional pressure on available on-street parking spaces. To further address this issue, a note will ensure the dwellings are not issued with on-street resident or visitor parking permits.
- (c) Structural issues;
  - (i) Structural impacts to neighbouring properties are considered as part of the building permit process and are not a relevant planning matter.

- (d) Noise from car park;
  - (i) This issue has been discussed in detail at paragraph 111.
- (e) Overdevelopment of the site,
  - (i) This issue has been discussed in detail throughout the Clause 55 assessment between paragraphs 71-120.
- (f) Off-site amenity impacts (overlooking, overshadowing, lack of green spaces and visual bulk); and
  - (i) These issues has been discussed in detail between paragraph 86-93, 96-101 and 106-109.
- (g) Impact on trees.
  - (i) This issue has been discussed in detail between paragraphs 86-93.

## Conclusion

128. The proposal, subject to conditions outlined in the recommendation below, is an acceptable planning outcome that demonstrates compliance with the relevant Council policies. Based on the report, the proposal is considered to generally comply with the relevant policies of the Yarra Planning Scheme and is recommended for approval subject to conditions.

## RECOMMENDATION

That having considered all objections and relevant planning policies, the Committee resolves to issue a Notice of Decision to Grant Planning Permit PLN17/0655 for full demolition of the existing dwelling and construction of three dwellings on a lot at No.115 Easey Street, Collingwood, subject to the following conditions:

1. Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the decision plans provided to Council on the 8 June 2018 (by Neil Fletcher Design Pty Ltd sheet 4, 5, 6, 7 of 9 and 1 of 1, all issue E and dated 07/08/2017) but amended to include the following:
  - (a) Demolition plan to include removal of the front fence and side return;
  - (b) The balcony to Dwelling 1 to be reduced to 8sqm and to have a solid appearance with a wooden cladding finish;
  - (c) The 0.9m front fence to extend across the driveway;
  - (d) The garage door to be a solid and matt finish (eg timber or similar);
  - (e) The position and capacity of the rainwater gardens and 1000ltr water tanks (for each dwelling) to be notated on the plans;
  - (f) A minimum of 6 cubic metres of externally accessible storage units;
  - (g) Location and extent of permeable surfaces in compliance with Standard B9 (*Permeability*) of clause 55 of the Yarra Planning Scheme;
  - (h) The proposed first floor east-facing living room windows of Dwelling 1 and the western boundary fence to demonstrate compliance with Standard B22 (*Overlooking*) of clause 55 of the Yarra Planning Scheme;
  - (i) Amended basement to show the following:
    - (i) its position to comply with AS4970-2009 (*Protection of Trees on Development Sites*) in relation to the Tasmanian Blue Gum at No.116 Sackville Street and in compliance with condition 13;
    - (ii) 3 car spaces with no increase in height or size of the garage entry permitted;

- (iii) swept paths provided to show a B99 design vehicle can enter and exit the garage from Easey Street with existing on-street car parking depicted;
  - (iv) the grade of the driveway be a maximum of 1:10 within 5m of the front boundary;
  - (v) a 1:20 scale cross section of the vehicle crossing, access ramp and vehicle parking entry area to demonstrate that a B99 design vehicle will not bottom out and in accordance with the requirements of conditions 7 a) and c);
  - (vi) if car stacker system is used, details of the manufacturer's specifications and model type;
  - (vii) demonstrate that a B85 design vehicle can enter and exit the spaces;
  - (viii) the entry platform to the car lift to have a minimum width of 2.4m and provide the model specification/data sheet for relevant vehicle lifting/vehicle storage equipment.
2. The development as shown on the endorsed plans must not be altered (unless the Yarra Planning Scheme specifies that a permit is not required) without the prior written consent of the Responsible Authority.

### Engineering

3. 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 Easey 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. Prior to the completion of the development, subject to the relevant authority's consent, the relocation of any service poles, street signs/line-markings, service structures or service/telecommunication pits necessary to facilitate the development must be undertaken:
- (a) at the permit holder's cost; and
  - (b) to the satisfaction of the Responsible Authority.

### Melbourne Water (5-9)

5. Prior to the endorsement of plans, amended plans must be submitted to Council and Melbourne Water addressing Melbourne Water's conditions. Plans must be submitted with surface and floor levels to Australian Height Datum (AHD) and must be modified to show:
- (a) The entrance to the car lift must incorporate a flood proof apex and associated bunding set no lower than 20.17 metres to AHD.
6. The dwellings (including the entrance to the basement stairs) must be constructed with finished floor levels set no lower than 20.17 metres to AHD, which is 300mm above the applicable flood level of 19.87 metres to AHD.
7. The entrance to the car lift must incorporate a flood proof apex and associated bunding set no lower than 20.17 metres to AHD, which is 300mm above the applicable flood level of 19.87 metres to AHD.
8. Prior to the issue of an Occupancy Permit, a certified survey plan, showing finished floor levels (as constructed) reduced to the Australian Height Datum, must be submitted to Melbourne Water to demonstrate that the floor levels have been constructed in accordance with Melbourne Water's requirements.
9. Imported fill must be kept to a minimum on the property and only be used for the sub floor areas of the dwellings and driveway ramp.

General

10. The provisions, recommendations and requirements of the endorsed Sustainable Design Assessment (SDA) generally in accordance with the SDA prepared by Eco Results dated 25<sup>th</sup> October 2017 must be implemented and complied with to the satisfaction of the Responsible Authority.
11. The provisions, recommendations and requirements of the endorsed Landscape Plan generally in accordance with the Landscape Plan prepared by Neil Fletcher Design (Sheet 1 of 1 : Amendment No. E) dated 7<sup>th</sup> June 2017 must be implemented and complied with to the satisfaction of the Responsible Authority.
12. Before the buildings are occupied, or by such later date as approved in writing by the Responsible Authority, 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,
  - (d) to the satisfaction of the Responsible Authority.
13. An arborist report must be prepared by a suitably qualified Arborist and must be submitted to and approved by the Responsible Authority. The arborist report must make recommendations for the protection of the Tasmanian Blue Gum to the rear of No. 116 Sackville Street, Collingwood as follows:
  - (a) pre-construction; during construction; and post construction;
  - (b) demonstrate the position of the basement required by condition 1g) will comply with AS4970-2009 (Protection of Trees on Development Sites),
  - (c) demonstrate appropriate construction methods for the ground floor footings,
  - (d) the provision of any barriers;
  - (e) any pruning necessary; and
  - (f) watering and maintenance regimes.
14. The provisions, recommendations and requirements of the endorsed Arborist Report must be implemented and complied with to the satisfaction of the Responsible Authority.
15. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, the car lift and any car stacker systems (if applicable) must be installed in accordance with the manufacturer's specifications by a suitably qualified person. The car lift and any car stacker systems must be maintained thereafter to the satisfaction of the Responsible Authority.
16. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, external lighting capable of illuminating the pedestrian entry areas 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.
17. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, all new on-boundary walls must be cleaned and finished to the satisfaction of the Responsible Authority.

18. Before the development 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.
19. All buildings and works must be maintained in good order and appearance to the satisfaction of the Responsible Authority.
20. 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.
21. This permit will expire if:
  - (a) the development is not commenced within two years of the date of this permit; or
  - (b) the development is not completed within four years of the date of this permit.The Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires or within six months afterwards for commencement or within twelve months afterwards for completion.

Notes:

A building permit may be required before development is commenced. Please contact Council's Building Services on 9205 5585 to confirm.

This site is subject to a Heritage Overlay. A planning permit may be required for any external works.

Provision must be made for drainage of the site to a legal point of discharge. Please contact Council's Building Services on 9205 5585 for further information.

All future residents and occupiers residing within the development approved under this permit will not be permitted to obtain resident or visitor parking permits.

A local law permit (e.g. Asset Protection Permit, Road Occupation Permit) may be required before development is commenced. Please contact Council's Construction Management Branch on Ph. 9205 5585 to confirm.

A vehicle crossing permit is required for the construction of the vehicle crossing. Please contact Council's Construction Management Branch on 9205 5585 for further information.

**CONTACT OFFICER:** Laura Condon  
**TITLE:** Senior Statutory Planner  
**TEL:** 92055016

**Attachments**

- 1 PLN17/0655 - 115 Easey Street, Collingwood - Subject site.
- 2 PLN17/0655 - 115 Easey Street, Collingwood - Decision plans.
- 3 PLN17/0655 - 115 Easey Street, Collingwood - Council's Heritage advice(original application 4 dwellings).

- 4 PLN17/0655 - 115 Easey Street, Collingwood - Council's Heritage advice(decision plans 3 dwellings).
- 5 PLN17/0655 - 115 Easey Street, Collingwood - Applicant's Heritage expert report.
- 6 PLN17/0655 - 115 Easey Street, Collingwood - Council's Arborist comments.
- 7 PLN17/0655 - 115 Easey Street, Collingwood - Applicant's Arborist report.
- 8 PLN17/0655 - 115 Easey Street, Collingwood - Combined Engineering comments.
- 9 PLN16/1116 - 115 Easey Street, Collingwood - Melbourne Water comments.

- 
- |            |   |
|------------|---|
| <b>1.3</b> | <b>PLN17/0789 - 377 St Georges Road, Fitzroy North - Demolition of the existing building for the construction of a mixed-use multi-storey building, and use of the land for dwellings, with a reduction in the car parking requirement.</b> |
|------------|---|
- 

## **Executive Summary**

### **Purpose**

1. This report provides Council with an assessment of Planning Permit Application PLN17/0789 which affects the land at 377 St Georges Road, Fitzroy North and recommends approval, subject to conditions.

### **Key Planning Considerations**

2. Key planning considerations include:
  - (a) Land Use (Clauses 22.05 and 34.01);
  - (b) Built form and heritage (Clauses 15.01, 15.03, 21.05 and 22.02);
  - (c) Internal amenity (Clause 58);
  - (d) Off-site amenity impacts (Clauses 15.01 and 22.05);
  - (e) Car parking (Clauses 18.02, 21.06 and 52.06).

### **Key Issues**

3. The key issues for Council in considering the proposal relate to:
  - (a) Strategic context/Land Use;
  - (b) Built form, design and heritage;
  - (c) Clause 58;
  - (d) Off-site amenity impacts;
  - (e) Car parking, bicycle parking & traffic;
  - (f) Other matters;
  - (g) Objector concerns.

### **Submissions Received**

4. A total of 7 objections were received to the application. Issues raised in these objections can be summarised as follows:
  - (a) Excessive building height;
  - (b) Overshadowing;
  - (c) Overlooking;
  - (d) Inappropriate response to heritage area;
  - (e) Traffic issues along laneway and possible conflict with pedestrian movements;
  - (f) Stress on existing car parking;
  - (g) Additional demand on local infrastructure; and
  - (h) Increase in vacant shops.

### **Conclusion**

5. Based on the following report, the proposal is considered to comply with the relevant planning policy and should therefore be supported subject to the following key recommendations:
  - (a) The colour of the third and fourth-floor east-facing balcony details and roofing amended to off-white, to match the colour of the proposed side boundary walls;
  - (b) The fourth-floor balcony roof of Unit 402 reduced in depth, to a maximum depth of 1.5m from the building façade;

- (c) The black vertical architectural battens on the northern and southern side of the third and fourth-floor east-facing balconies removed.

**CONTACT OFFICER:** Lara Fiscalini  
**TITLE:** Senior Statutory Planner  
**TEL:** 9205 5372

---

**1.3 PLN17/0789 - 377 St Georges Road, Fitzroy North - Demolition of the existing building for the construction of a mixed-use multi-storey building, and use of the land for dwellings, with a reduction in the car parking requirement.**

---

Trim Record Number: D18/176676

Responsible Officer: Coordinator Statutory Planning

<b>Proposal:</b>	Demolition of the existing building for the construction of a mixed-use multi-storey building, and use of the land for dwellings, with a reduction in the car parking requirement.
<b>Existing use:</b>	Office
<b>Applicant:</b>	Kick Holdings Pty Ltd
<b>Zoning / Overlays:</b>	Commercial 1 Zone (C1Z) Heritage Overlay (HO327 – North Fitzroy Heritage Precinct)
<b>Ward:</b>	Nicholls
<b>Date of Application:</b>	20/09/2017
<b>Application Number:</b>	PLN17/0789

### Planning History

1. Planning Permit PLN13/1016 was issued on 25 March 2014 for *demolition and replacement of advertising signage*.
2. Planning Permit PLN13/0806 was issued on 9 October 2013 for *display of business identification signage*.

### Planning Scheme Amendments

#### *Amendment VC148*

3. Planning Scheme Amendment VC148 made changes to the Victorian Planning Provisions (VPP) and all Planning Schemes arising from the Victorian Government's Smart Planning Program. Amendment VC148 was gazetted on 31 July 2018 and now forms part of the Yarra Planning Scheme (the Scheme). The assessment of this application is therefore against the provisions of the Scheme after the introduction of VC148.
4. The changes affecting this application as a result of the amendment relate to the calculation of the statutory car parking rate at Clause 52.06 (Car Parking) for the proposed 'shop' use at ground floor and the removal of the residential visitor car parking requirement. These changes will be discussed later within this assessment.

### Background

5. The application was submitted on 20 September 2018, with amended plans submitted under Section 50 of the *Planning and Environment Act 1987* (the Act) on 24 November 2017. These plans were advertised and 7 objections were received. Concurrently, the plans were referred internally to a number of Council departments and a Planning Consultation Meeting was held on 3 April 2018, attended by the Applicant, Objectors and Planning Officers.
6. Following this meeting, in response to the objections and Council's referral comments, the Applicant submitted a set of amended plans under Section 57A of the Act on 12 June 2018. These plans (dated 30/05/2018) included the following changes to the development;

- (a) The proposed demolition plan amended to include reference only to the area of building to be demolished;
  - (b) The design of the ground floor glazing within the façade altered to include a consistent stallboard beneath the windows;
  - (c) The reference to the ground floor 'shop' altered to 'commercial'; with the floor area reduced from 135sqm to 130sqm;
  - (d) A section of brick wall added in front of the pedestrian entrance, along the front boundary, with the overall width of the pedestrian entrance increased from 2m to 2.6m (with this width including the wing wall in front of the entrance);
  - (e) Amended design of the first and second-floor façade to provide a more solid brick streetwall, with a degree of brickwork 'wrapping' around the north and south elevations at these levels. Vertical windows are provided within the first-floor facade, with a cantilevered section of brickwork extending along the second-floor level;
  - (f) The streetwall height increased from 10.25m to 10.8m, with matching height increases affecting the front sections of the northern and southern boundary walls;
  - (g) The setback of the third-floor balcony increased from 5.515m to 5.660m from the rear (western) boundary, with the depth of this balcony reduced from 2.410m to 2.28m;
  - (h) The west-facing window designs at third and fourth levels altered.
7. The amended plans were advertised on 26 July 2018. No further objections were received, ensuring that the overall number of objector parties remain at 7.
8. As a further response to Council's concerns about the appearance of the two upper-most levels and their presentation to St Georges Road, the Applicant submitted amended sketch renders on 24 October 2018. These renders altered the colour of the balcony detailing and roofing at these levels from black to off-white, removed a series of the black vertical battens adjacent to these balconies and reduced the depth of the roof above the fourth-floor east-facing balcony to a maximum of 1.5m.
9. The sketch plans will be referenced throughout this assessment, are attached to this agenda and were sent to all objector parties with the invitation to this meeting.

## **The Proposal**

10. The application is for full demolition of the existing building for the construction of a mixed-use multi-storey building with a reduction in the car parking requirement. In summary, the following works are proposed;
- (a) Full demolition of the existing double-storey building;
  - (b) Construction of a five-storey building, containing a commercial space at ground level addressing St Georges Road, and 12 dwellings above (8 x 2 bedroom dwellings and 4 x 3 bedroom dwellings);
  - (c) The building will have a triple-storey streetwall built hard-edge to the front boundary to a height of 10.8m, with the two upper-most levels set back between 3.2m and 5.7m from the facade;
  - (d) The building will abut the rear laneway to a height of 8.6m;
  - (e) The overall height of the building will be 16.7m;
  - (f) The principal balconies will range in size from 9.5sqm to 28sqm.

### *Ground level*

- (g) The majority of street frontage will be dedicated to commercial use.
- (h) A residential entrance will be located on the southern side of the St Georges Road façade, with a central lobby, bicycle parking, storage, waste refuse room and car parking at this level;
- (i) An awning will extend above the footpath for the full length of the site (located 3.1m above the St Georges Road footpath);
- (j) The ground floor will abut all four boundaries;

- (k) A total of 13 car parking spaces will be provided at the rear of the site, in the form of two car stacking systems, with direct access from the adjacent laneway;

*First-floor*

- (l) The first-floor will contain 4 x 2 bedroom dwellings and will be largely constructed to all boundaries, with the exception of 1.2m setbacks from the northern and southern boundaries adjacent to the living areas of the four dwellings;
- (m) Balconies will abut the front and rear boundaries, with each dwelling provided with a secondary balcony in the middle of the site;

*Second-floor*

- (n) The second-floor will contain 4 x 2 bedroom dwellings and will be largely constructed to all boundaries, with the exception of 1.2m setbacks from the northern and southern boundaries adjacent to the living areas and balconies of the four dwellings;
- (o) Balconies will abut the front and rear boundaries, with central lightcourts set back 3m from the northern and southern boundaries (above the first-floor balconies);

*Third & Fourth-floors*

- (p) The third and fourth floors will have consistent envelopes, layouts and setbacks from the boundaries, with each level containing 2 x 3 bedroom dwellings;
- (q) The east-facing dwellings will have curved balconies, setback between 3.28m and 5.74m from St Georges Road. These balconies will be covered in a similarly curved roof-form and will wrap around the southern side of the façade;
- (r) The southern dwellings at the front of the site will abut the southern boundary for a length of 8.74m, with the northern dwellings abutting the northern boundary for a length of 9m;
- (s) The west-facing dwellings will be set back 5.66m from the rear boundary, with the southern dwellings at the rear of the site abutting the southern boundary for a length of 9.2m and the northern dwellings abutting the northern boundary for a length of 8.7m;
- (t) Both of these levels will have central lightcourts set back 3m from the side boundaries, located directly above the first-floor balconies;

*Materials and finishes*

- (u) The streetwall and limited sections of the side walls will be constructed of red facebrick;
- (v) The remaining walls will predominantly be rendered (off-white), with a central vertical section of wall on the southern elevation composed of black metal cladding;
- (w) A vertical green wall is proposed on the northern lightcourt elevation;
- (x) The balcony roofs at the upper levels will be black metal cladding, with vertical battens also composed of black metal cladding attached to the southern and northern side of the third and fourth-floor balconies;
- (y) Balustrades will be clear glazing, with horizontal metal privacy screening attached to the west-facing balconies at first and second-floor;
- (z) The above-footpath awning will be composed of black metal cladding.

*Other matters*

- (aa) The original set of advertised plans specified that the commercial use would be a 'shop'. The Applicant has confirmed that it is intended to use the space as a shop, with the removal of this notation a mistake at the time of the submission of the 57A amended plans. This assessment will recognise this space as a 'shop' and will alter the notation on the plan via condition, if a planning permit is to issue.
- (bb) The demolition plan and proposed ground floor plan incorrectly reference the subject building and the adjacent buildings along St Georges Road as 'dwellings'. These buildings all contain commercial uses. Correct notations on the plans can be provided via a condition, if a planning permit is to issue.

## Existing Conditions

### Subject Site

11. The subject site is located on the western side of St Georges Road, approximately 25m to the north of Barkly Street, in North Fitzroy. The site has an angled street frontage of 12m along St Georges Road, with a maximum depth of 46.7m, yielding an overall site area of approximately 473.5sqm. The site has a secondary frontage with a bluestone laneway along its rear (western) boundary. This laneway extends from Barkly Street in the south to Clauscen Street in the north.
12. The site is occupied by a double-storey, modern, rendered building, constructed hard-edged to the St Georges Road boundary at both levels. Two pedestrian entrances (one recessed) are located at ground level. The building extends along both side boundaries for its entire length and covers approximately 75% of the site, with the rear of the building reducing to single-storey in scale. An open area is located at the rear of the land, providing space for four car parking spaces. There is no fencing surrounding the car park, with vehicle access provided from the adjacent laneway. These details are demonstrated in Figures 1 & 2 below.

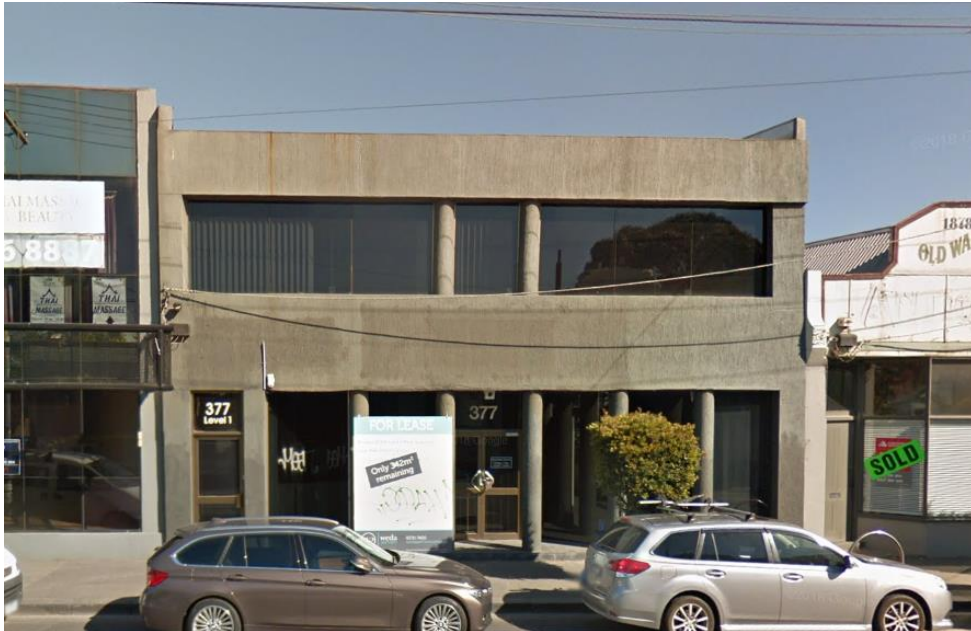


Figure 1 - Subject site viewed from St Georges Road



Figure 2 – subject site viewed from the rear laneway

### Surrounding Land

13. The subject site is located within the North Fitzroy Neighbourhood Activity Centre (NAC) and is surrounded by commercial sites to the east, north and south (within the C1Z). Built form scale within the activity centre is predominantly double-storey in height, with a mixture of traditional and contemporary designs. Land to the west is located within the Neighbourhood Residential Zone (NRZ) and contains dwellings addressing Barkly Street. Barkly Street can be characterised by mostly single-storey, masonry inter-war, Edwardian and Victorian-era dwellings.
14. The site is located within proximity to the following public transport options and areas of open space;
  - (a) Rushall Railway Station and Merri Railway Station – 750m & 800m to the east respectively;
  - (b) Tram Routes No. 11 & 112 (West Preston) directly in front of the site;
  - (c) Tram Route No. 96 (East Brunswick) along Nicholson Street, approximately 900m to the west of the site;
  - (d) A number of bus routes operate along Holden Street (50m to the south), including Nos. 506, 250, 251 & 504 to Moonee Ponds, Northland, Brunswick and the CBD;
  - (e) The Merri Creek parklands.



Figure 3: Site and surrounds

15. The immediate interface with the site is as follows;
 

*North*
16. No. 379 St Georges Road, immediately to the north, is a single-storey heritage building composed of a shopfront and dwelling façade. The shopfront, which abuts the subject site, is constructed hard-edge to the St Georges Road boundary, with the dwelling façade to its north set back an average of 4m from this interface. This building is classified as ‘individually significant’ within the North Fitzroy Heritage Precinct.

17. Planning Permit PLN18/0078 was issued on 17 October 2018 for signage relating to the use of the land as a medical centre. It is unclear whether the medical centre has commenced operating on the land, with the site currently appearing to be vacant.
18. Offices and commercial premises are located further to the north along St Georges Road, with Clauscen Street 50m to the north of the site. This street is a local residential street, containing single and double-storey dwellings within the NRZ. Sites on the southern side of Clauscen Street (Nos. 220 – 226) are within proximity to the rear of the subject land, being located on the north-west side of the laneway.
19. Higher elements of built form are located further to the north along St Georges Road, with a six-storey building at No. 392 St Georges Road, approximately 50m to the north-east of the site. Views to this building are available from the subject site and within the surrounding section of streetscape along St Georges Road. A second six-storey development directly adjacent to this building has also been approved at No. 378-390 St Georges Road (Planning Permit PLN16/0741 issued on 8 February 2018). Construction of this building has not yet commenced.

#### *South*

20. No. 373-375 St Georges Road, immediately to the south, has most recently operated as an office and is currently vacant. This building is double-storey in scale, constructed circa 1980, with both levels of the façade built hard-edge to the front boundary. The building has a similar scale to the subject building and is constructed along both side boundaries, with at-grade car parking at the rear.
21. Further to the south are two single-storey commercial premises, operating as cafes, with Barkly Street approximately 25m to the south of the subject land. This street is a local residential street, containing single and double-storey dwellings within the NRZ

#### *East*

22. Built form opposite the site, to the east, is single and double-storey in scale and contains offices and a medical centre.

#### *West*

23. To the west, on the opposite side of the laneway, is a single-storey dwelling addressing Barkly Street. The section of land directly opposite the subject site contains a shed and open-air car parking space, with SPOS for this dwelling located on the western side of the site. Additional outbuildings extend along the northern boundary of this land. There are no habitable room windows (HRW) directly opposite the subject site within this dwelling.
24. The laneway is utilised for vehicle access, and largely services sites addressing St Georges Road. There are no dwelling entrances adjacent to the laneway.

### **Planning Scheme Provisions**

#### Zoning

##### *Commercial 1 Zone*

25. Pursuant to Clause 34.01-1 of the Scheme, the use of the land as a 'shop' does not require a planning permit.

26. Pursuant to Clause 34.01-1 of the Scheme, the use of the land for 'accommodation' requires a planning permit, as the frontage at ground level associated with the dwelling use exceeds 2m in width.
27. Pursuant to Clause 34.01-4 of the Scheme, a planning permit is required to construct a building.
28. Pursuant to Clause 34.01-8 of the Scheme, the objectives, standards and decision guidelines of Clause 58 apply.

*Road Zone Category 1 (RDZ1)*

29. Pursuant to Clause 36.04-2 of the Scheme, a planning permit is required to construct or carry out works for a use in Section 2 of Clause 36.04-1. As the proposed canopy above the St Georges Road footpath is located within the Road Zone Category 1 (RDZ1) and is associated with a shop and accommodation (which are Section 2 uses within this zone) a planning permit is required for these works.
30. Decision Guidelines at Clause 36.04-3 state that before deciding on an application, the responsible authority must consider (amongst other matters) the views of the relevant road authority. The application was informally referred to VicRoads for comment, with this discussed later within this report.

Overlays

*Heritage Overlay (HO327 – North Fitzroy Heritage Precinct)*

31. Pursuant to Clause 43.01-1 of the Scheme, a planning permit is required to demolish and construct a building. No paint controls or internal controls apply to this heritage precinct.

*City of Yarra Review of Heritage Areas 2007 Appendix 8 (as updated from time to time)*

32. The building on the subject site is located within the North Fitzroy Heritage Precinct (Schedule 327) and identified as 'non-contributory' to this precinct as outlined in the incorporated document.

Particular Provisions

*Clause 52.06 - Car Parking*

33. Pursuant to Clause 52.06-2, the car parking spaces required under Clause 52.06-5 must be provided on the land. Clause 52.06-3 requires a planning permit to reduce the number of car parking spaces required under this clause.
34. The introduction of Amendment VC148 altered Clause 52.06 so that the car parking rates of Column B applies if any part of the land is identified as being within the Principal Public Transport Network Area. The subject site is within this area and therefore the Column B car parking rates apply to this planning permit application.
35. This change reduces the statutory car parking rate for a shop from 4 to 3.5 spaces to each 100sqm. The Amendment also removed the requirement to provide visitor car parking spaces for developments providing 5 or more dwellings.
36. The Clause 52.06-5 requirements, the proposal provision and the subsequent shortfall are shown below:

Proposed Use	Quantity/ Size	Statutory Parking Rate	No. of Spaces Required	No. of Spaces Allocated	Reduction required
Two-bedroom dwellings	8	1 space to each dwelling	8	12 (1 for each dwelling)	0
Three-bedroom dwelling	4	2 spaces to each dwelling	8		4
Shop (Retail)	130m <sup>2</sup>	3.5 spaces to each 100 m <sup>2</sup> of leasable floor area	4	1	3
Total			20	13	7

37. In this instance a planning permit is required to reduce the statutory requirement by 7 spaces; 1 space each for the 4 x 3-bedroom dwellings and 3 spaces for the shop.

*Clause 52.34 Bicycle Facilities*

38. Pursuant to Clause 52.34-1, a new use must not commence until the required bicycle facilities and associated signage has been provided on the land.
39. The Clause 52.34-5 requirements are shown below:

Use	Rate	No. required	No. provided
Dwelling	For residents – in developments of four or more storeys, 1 to each 5 dwellings.	2	14
	For visitors – in developments of four or more storeys, 1 to each 10 dwellings.	1	
Shop	For employees – 1 to each 600sqm of leasable floor area if the leasable floor area exceeds 1000sqm.	0	
	For shoppers – 1 to each 500sqm of leasable floor area if the leasable floor area exceeds 1000sqm.	0	
<b>Totals</b>		<b>3</b>	<b>14</b>

40. A total of 14 on-site bicycle parking spaces are proposed, with 6 spaces provided in horizontal format. This exceeds the statutory requirement outlined above. The application does not specify the allocation of these bicycles spaces, therefore they are assumed to be a shared resource available to both residents and residential visitors to the development. To ensure that the requirement is met, and 1 visitor parking space is provided, a condition of a planning permit could specify that at least 1 space is designated for visitor bicycle parking.
41. Table 3 to Clause 52.34-5 states that for any use listed in Table 1 of this clause (which includes a shop) 1 change room or direct access to a communal change room (with shower) should be provided for shop employees. There is a separate bathroom provided for the shop, however no shower is proposed.

*Clause 58 - Apartment developments*

42. This clause applies as the development is for the construction of an apartment development. A development should meet all the standards and must meet all the objectives.

General Provisions

### *Clause 65 Decision Guidelines*

43. The decision guidelines outlined at Clause 65 of the Scheme are relevant to all applications. This clause notes *'because a permit can be granted does not imply that a permit should or will be granted. The responsible authority must decide whether the proposal will produce acceptable outcomes in terms of the decision guidelines of this clause'*.

### *Clause 65.01 Approval of an application or plan*

44. *Before deciding on an application or approval of a plan, the responsible authority must consider, as appropriate:*
- (a) *The matters set out in section 60 of the Act.*
  - (b) *The Municipal Planning Strategy and the Planning Policy Framework.*
  - (c) *The purpose of the zone, overlay or other provision.*
  - (d) *Any matter required to be considered in the zone, overlay or other provision.*
  - (e) *The orderly planning of the area.*
  - (f) *The effect on the amenity of the area.*
  - (g) *The proximity of the land to any public land.*
  - (h) *The adequacy of loading and unloading facilities and any associated amenity, traffic flow and road safety impacts.*

### Planning Policy Framework (PPF)

### *Clause 11 Settlement*

45. This clause notes that;
- (a) *Planning is to facilitate sustainable development that takes full advantage of existing settlement patterns and investment in transport, utility, social, community and commercial infrastructure and services.*

### *Clause 11.01-1R Settlement - Metropolitan Melbourne*

46. A relevant strategy of this clause is to;
- (a) *Develop a network of activity centres linked by transport; consisting of Metropolitan Activity Centres supported by a network of vibrant major and neighbourhood activity centres of varying size, role and function.*

### *Clause 11.03-1S Activity Centres*

47. The objective of this clause is:
- (a) *To encourage the concentration of major retail, residential, commercial, administrative, entertainment and cultural developments into activity centres that are highly accessible to the community.*

### *Clause 13.05-1S Noise abatement*

48. The objective of this clause is:
- (a) *To assist the control of noise effects on sensitive land uses.*

### *Clause 13.07-1S Land use compatibility*

49. The objective of this clause is:
- (a) *To safeguard community amenity while facilitating appropriate commercial, industrial or other uses with potential off-site effects.*

### *Clause 15 Built Environment and Heritage*

50. This clause notes that;
- (a) *Planning is to recognise the role of urban design, building design, heritage and energy and resource efficiency in delivering liveable and sustainable cities, towns and neighbourhoods.*
  - (b) *Planning must support the establishment and maintenance of communities by delivering functional, accessible, safe and diverse physical and social environments, through the appropriate location of use and development and through high quality buildings and urban design.*

*Clause 15.01-1S Urban design*

51. The objective of this clause is:
- (a) *To create urban environments that are safe, healthy, functional and enjoyable and that contribute to a sense of place and cultural identity.*

*Clause 15.01-2S Building design*

52. The objective of this clause is:
- (a) *To achieve building design outcomes that contribute positively to the local context and enhance the public realm.*

*Clause 15.01-4R Healthy neighbourhoods - Metropolitan Melbourne*

53. The strategy of this clause is to:
- (a) *Create a city of 20 minute neighbourhoods that give people the ability to meet most of their everyday needs within a 20 minute walk, cycle or local public transport trip from their home.*

*Clause 15.01-4S Healthy neighbourhoods*

54. The objective of this clause is:
- (a) *To achieve neighbourhoods that foster healthy and active living and community wellbeing.*

*Clause 15.01-5S Neighbourhood character*

55. The objective of this clause is:
- (a) *To recognise, support and protect neighbourhood character, cultural identity, and sense of place.*

*Clause 15.02 Sustainable Development*

*Clause 15.02-1S Energy and resource efficiency*

56. The objective of this clause is:
- (a) *To encourage land use and development that is energy and resource efficient, supports a cooler environment and minimises greenhouse gas emissions.*

*Clause 15.03 Heritage*

*Clause 15.03-1S Heritage conservation*

57. The objective of this clause is:
- (a) *To ensure the conservation of places of heritage significance.*

*Clause 16 Housing*

58. This clause notes that:
- (a) *Planning should provide for housing diversity, and ensure the efficient provision of supporting infrastructure.*
  - (b) *Planning should ensure the long term sustainability of new housing, including access to services, walkability to activity centres, public transport, schools and open space.*

*Clause 16.01 Residential Development*

*Clause 16.01-1S Integrated housing*

59. The objective of this clause is to:
- (a) *To promote a housing market that meets community needs.*
60. The relevant strategy is to:
- (a) *Increase the supply of housing in existing urban areas by facilitating increased housing yield in appropriate locations, including under-utilised urban land.*

*Clause 16.01-1R Integrated housing - Metropolitan Melbourne*

61. Strategies of this clause aim to:
- (a) *Provide certainty about the scale of growth by prescribing appropriate height and site coverage provisions for different areas.*
  - (b) *Allow for a range of minimal, incremental and high change residential areas that balance the need to protect valued areas with the need to ensure choice and growth in housing.*

*Clause 16.01-2R Housing opportunity areas - Metropolitan Melbourne*

62. Strategies of this clause include the following;
- (a) *Identify areas that offer opportunities for more medium and high density housing near employment and transport in Metropolitan Melbourne.*
  - (b) *Manage the supply of new housing to meet population growth and create a sustainable city by developing housing and mixed use development opportunities in locations that are:*
    - (i) *In and around the Central City.*
    - (ii) *Urban-renewal precincts and sites.*
    - (iii) *Areas for residential growth.*
    - (iv) *Areas for greyfield renewal, particularly through opportunities for land consolidation.*
    - (v) *Areas designated as National Employment and Innovation Clusters.*
    - (vi) *Metropolitan activity centres and major activity centres.*
    - (vii) *Neighbourhood activity centres - especially those with good public transport connections.*
    - (viii) *Areas near existing and proposed railway stations that can support transit-oriented development.*
  - (c) *Facilitate increased housing in established areas to create a city of 20 minute neighbourhoods close to existing services, jobs and public transport.*
  - (d) *Direct new housing to areas with appropriate infrastructure.*

*Clause 16.01-2S Location of residential development*

63. The objective of this clause is:
- (a) *To locate new housing in designated locations that offer good access to jobs, services and transport.*
64. Strategies aim to:

- (a) *Increase the proportion of new housing in designated locations within established urban areas and reduce the share of new dwellings in greenfield and dispersed development areas.*
- (b) *Encourage higher density housing development on sites that are well located in relation to jobs, services and public transport.*
- (c) *Ensure an adequate supply of redevelopment opportunities within established urban areas to reduce the pressure for fringe development.*
- (d) *Facilitate residential development that is cost effective in infrastructure provision and use, energy efficient, water efficient and encourages public transport use.*
- (e) *Identify opportunities for increased residential densities to help consolidate urban areas.*

*Clause 16.01-3R Housing diversity - Metropolitan Melbourne*

65. The strategy of this clause is to:

- (a) *Create mixed-use neighbourhoods at varying densities that offer more choice in housing.*

*Clause 16.01-3S Housing diversity*

66. The objective of this clause is:

- (a) *To provide for a range of housing types to meet diverse needs.*

67. Relevant strategies aim to;

- (a) *Ensure housing stock matches changing demand by widening housing choice.*
- (b) *Facilitate diverse housing that offers choice and meets changing household needs through:*
  - (i) *A mix of housing types.*
  - (ii) *Adaptable internal dwelling design.*
  - (iii) *Universal design.*
- (c) *Encourage the development of well-designed medium-density housing that:*
  - (i) *Respects the neighbourhood character.*
  - (ii) *Improves housing choice.*
  - (iii) *Makes better use of existing infrastructure.*
  - (iv) *Improves energy efficiency of housing.*
- (d) *Support opportunities for a range of income groups to choose housing in well-serviced locations.*
- (e) *Ensure planning for growth areas provides for a mix of housing types through a variety of lot sizes, including higher housing densities in and around activity centres.*

*Clause 17.02 Commercial*

*Clause 17.02-1S Business*

68. The relevant objective of this clause is:

- (a) *To encourage development that meets the communities' needs for retail, entertainment, office and other commercial services.*

69. Relevant strategies include:

- (a) *Locate commercial facilities in existing or planned activity centres.*
- (b) *Provide new convenience shopping facilities to provide for the needs of the local population in new residential areas and within, or immediately adjacent to, existing commercial centres.*
- (c) *Provide small scale shopping opportunities that meet the needs of local residents and workers in convenient locations.*

*Clause 18.01 Integrated Transport*

*Clause 18.01-1S Land use and transport planning*

70. The objective of this clause is:  
(a) *To create a safe and sustainable transport system by integrating land use and transport.*

*Clause 18.02 Movement Networks*

*Clause 18.02-1S Sustainable personal transport*

71. The objective of this clause is:  
(a) *To promote the use of sustainable personal transport.*

*Clause 18.02-2R Principal Public Transport Network*

72. The relevant strategies of this clause are to:  
(a) *Facilitate high-quality public transport access to job-rich areas.*  
(b) *Maximise the use of existing infrastructure and increase the diversity and density of development along the Principal Public Transport Network, particularly at interchanges, activity centres and where principal public transport routes intersect.*

*Clause 18.02-2S Public Transport*

73. The objective of this clause is:  
(a) *To facilitate greater use of public transport and promote increased development close to high-quality public transport routes.*

Local Planning Policy Framework (LPPF)

*Clause 21.04 Land Use*

74. The relevant objective and strategies of this clause are:  
(a) *Objective 1 To accommodate forecast increases in population;*  
(i) *Strategy 1.3 Support residual population increases in established neighbourhoods;*  
(b) *Objective 3 To reduce potential amenity conflicts between residential and other uses;*  
(i) *Strategy 3.1 Ensure new residential development in the Mixed Use, Business 1, Business 2, and Business 5 Zones and near Industrial and Business Zones is designed to minimise the potential negative amenity impacts of existing non-residential uses in the vicinity.*  
(ii) *Strategy 3.2 Apply the Interface Uses policy at clause 22.05.*

*Clause 21.04-2 Activity Centres*

75. The relevant objective and strategies of this clause are:  
(a) *Objective 5 To maintain the long term viability of activity centres.*  
(i) *Strategy 5.3 Discourage uses at street level in activity centres which create dead frontages during the day.*  
(ii) *Strategy 5.4 Permit residential development that does not compromise the business function of activity centres.*

*Clause 21.04-3 Industry, Office and Commercial*

76. The objective of this clause is:  
(a) *Objective 8 To increase the number and diversity of local employment opportunities.*

*Clause 21.05 Built Form*

77. The relevant objectives and strategies of this clause are:

- (a) *Objective 14 To protect and enhance Yarra's heritage places.*
  - (i) *Strategy 14.6 Protect buildings, streetscapes and precincts of heritage significance from the visual intrusion of built form both within places and from adjoining areas.*
  - (ii) *Strategy 14.8 Apply the Development Guidelines for sites subject to a Heritage Overlay policy at clause 22.02*

*Clause 21.05-2 Urban design*

78. The relevant objectives and strategies of this clause are:

- (a) *Objective 17 To retain Yarra's identity as a low-rise urban form with pockets of higher development.*
  - (i) *Strategy 17.2 Development on strategic redevelopment sites or within activity centres should generally be no more than 5-6 storeys unless it can be demonstrated that the proposal can achieve specific benefits such as:*
    - *Significant upper level setbacks*
    - *Architectural design excellence*
    - *Best practice environmental sustainability objectives in design and construction*
    - *High quality restoration and adaptive re-use of heritage buildings*
    - *Positive contribution to the enhancement of the public domain*
    - *Provision of affordable housing.*
- (b) *Objective 18 To retain, enhance and extend Yarra's fine grain street pattern.*
  - (i) *Strategy 18.2 Enhance the amenity of laneways by applying the Development Abutting Laneway policy at Clause 22.07.*
- (c) *Objective 20 To ensure that new development contributes positively to Yarra's urban fabric.*
- (d) *Objective 21 To enhance the built form character of Yarra's activity centres.*
  - (i) *Strategy 21.1 Require development within Yarra's activity centres to respect and not dominate existing built form.*
  - (ii) *Strategy 21.2 Require new development within an activity centre to consider the context of the whole centre recognising that activity centres may consist of subprecincts, each of which may have a different land use and built form character.*
  - (iii) *Strategy 21.3 Support new development that contributes to the consolidation and viability of existing activity centres.*
- (e) *Objective 22 To encourage the provision of universal access in new development.*

*Clause 21.06-1 Walking and cycling*

79. The relevant objectives and strategies of this clause are:

- (a) *Objective 30 To provide safe and convenient pedestrian and bicycle environments.*
  - (i) *Strategy 30.1 Improve pedestrian and cycling links in association with new development where possible.*
  - (ii) *Strategy 30.2 Minimise vehicle crossovers on street frontages.*
  - (iii) *Strategy 30.3 Use rear laneway access to reduce vehicle crossovers.*

*Clause 21.06-2 Public transport*

80. The relevant objective and strategy of this clause are:

- (a) *Objective 31 To facilitate public transport usage.*
  - (i) *Strategy 31.1 Require new development that generates high numbers of trips to be easily accessible by public transport.*

*Clause 21.06-3 The road system and parking*

81. The relevant objective of this clause is:

- (a) *To reduce the reliance on the private motor car.*

*Clause 21.07 Environmental Sustainability*

*Clause 21.07-1 Environmentally sustainable development*

82. The relevant objective and strategy of this clause are:

- (a) *Objective 34 To promote environmentally sustainable development.*

- (i) *Strategy 34.1 Encourage new development to incorporate environmentally sustainable design measures in the areas of energy and water efficiency, greenhouse gas emissions, passive solar design, natural ventilation, stormwater reduction and management, solar access, orientation and layout of development, building materials and waste minimisation.*

*Clause 21.08 Neighbourhoods*

83. Clause 21.08-8 of the Scheme describes the North Fitzroy neighbourhood as follows;

- (a) *The North Fitzroy Village neighbourhood activity centre is a mixed use centre with strong convenience retailing located on St Georges Road. Further north along St Georges Road is the North Fitzroy neighbourhood activity centre. This centre provides a number of specialist business services. Linkages between the two parts of the centre should be improved.*

84. The Figure 20 - Built Form Character Map: Fitzroy North shows the subject site located within the heritage overlay. The guiding urban design principle is to *'ensure that development does not adversely affect the significance of the heritage place'*.

Relevant Local Policies

*Clause 22.02 Development Guidelines for Sites Subject to the Heritage Overlay*

85. This policy applies to all new development included in a heritage overlay. The relevant objectives of this clause includes to conserve Yarra's natural and cultural heritage, to conserve the historic fabric and maintain the integrity of places of cultural heritage significance, to retain significant view lines to, and vistas of, heritage places and to preserve the scale and pattern of streetscapes in heritage places.

*Clause 22.05 Interface Uses Policy*

86. This policy applies to applications for use or development within Commercial 1 Zones (amongst others). The relevant objectives of this clause are:

- (a) *To enable the development of new residential uses within and close to activity centres, near industrial areas and in mixed use areas while not impeding the growth and operation of these areas as service, economic and employment nodes.*  
(b) *To ensure that residential uses located within or near commercial centres or near industrial uses enjoy a reasonable level of amenity.*

*Clause 22.07 Development Abutting Laneways*

87. This policy applies to applications for development that are accessed from a laneway or has laneway abuttal. The objectives of this policy include to provide an environment which has a feeling of safety for users of the laneway, to ensure that development along a laneway acknowledges the unique character of the laneway, to ensure that where development is accessed off a laneway, all services can be provided to the development and to ensure that development along a laneway is provided with safe pedestrian and vehicular access.

*Clause 22.16 Stormwater Management (Water Sensitive Urban Design)*

88. This policy applies to applications for new buildings and aims to (as relevant) achieve the best practice water quality performance objectives set out in the *Urban Stormwater Best Practice Environmental Management Guidelines*, CSIRO 1999 and to promote the use of water sensitive urban design, including stormwater re-use.

*Clause 22.17 Environmentally Sustainable Development*

89. This policy applies throughout the City of Yarra to residential and non-residential development that requires a planning permit. The overarching objective is that development should achieve best practice in environmentally sustainable development from the design stage through to construction and operation. The considerations are energy performance, water resources, indoor environment quality, storm water management, transport, waste management and urban ecology.

Other Documents

*Urban Design Guidelines for Victoria (DELWP, 2017)*

90. These guidelines are policy guidelines within the State Planning Policy Framework of the Victoria Planning Provisions. The guidelines must be considered when assessing the design and built form of new development where relevant. The guidelines use best practice knowledge and advice underpinned by sound evidence.

*Apartment Design Guidelines for Victoria (DELWP, 2017)*

91. These guidelines are policy guidelines within the State Planning Policy Framework of the Victoria Planning Provisions. The guidelines must be considered when assessing the design and built form of new apartment developments, where relevant. The guidelines use best practice knowledge and advice underpinned by sound evidence.

**Advertising**

92. The application was originally advertised (plans dated 24 November 2017) under the provisions of Section 52 of the Act by 259 letters sent to surrounding owners and occupiers and two signs displayed on site.
93. Pursuant to Clause 34.01-7 of the Scheme, an application to construct a building is exempt from the notice requirements of section 52(1)(a), (b) and (d), the decision requirements of section 64(1), (2) and (3) and the review rights of section 82(1) of the Act, however this exemption does not apply to land within 30m of land (not a road) which is in a residential zone. The site is located directly adjacent to land within the Neighbourhood Residential Zone. Further the use of the land for accommodation is not exempt from these requirements.
94. Council received 7 objections, the grounds of which are summarised as follows:
- (a) Excessive building height;
  - (b) Overshadowing;
  - (c) Overlooking;
  - (d) Inappropriate response to heritage area;
  - (e) Traffic issues along laneway and possible conflict with pedestrian movements;
  - (f) Stress on existing car parking;
  - (g) Additional demand on local infrastructure; and
  - (h) Increase in vacant shops.
95. A Planning Consultation Meeting was held on 3 April 2018, attended by the Applicant, Objectors and Planning Officers. Following this meeting, the Applicant submitted a set of amended plans under Section 57A of the Act on 12 June 2018. The changes within these plans were outlined in detail in paragraph 5 of this report.

96. The amended plans were advertised on 26 July 2018, with letters sent to the abutting sites and all 7 objector parties. One sign was displayed on the St Georges Road frontage. No further objections were received, ensuring that the overall number of objector parties remain at 7.
97. A set of amended sketch plans were submitted by the Applicant on 24 October 2018, with the changes in these plans outlined in paragraph 7 of this report. The sketch plans are attached to this agenda and were sent to all objector parties with the invitation to this meeting.

## Referrals

98. The application was not required to be formally referred to any external authority. Informally, the application was referred to VicRoads, due to the proposed awning to be constructed above the St Georges Road footpath (with this area of land located within a Road Zone Category 1).
99. In response, VicRoads recommend the inclusion of the following permit condition:
  - (a) *Prior to the commencement of the development, the owner of the land must enter into an agreement with the Department of Environment, Land, Water and Planning (DELWP) pursuant to Section 138(A) of the Land Act 1958 for the elements of the approved development that project more than 300mm beyond the land's St Georges Road street boundary (i.e. the canopies, fixed shading devices, awnings etc), to indemnify the Crown in relation to any claim or liability arising from the projections within the St Georges Road, road reserve. This condition does not apply where written confirmation is obtained from DELWP that the above agreement is not required.*
100. The original application was referred to the following internal departments:
  - (a) Urban Design;
  - (b) Heritage;
  - (c) Engineering Services Unit
  - (d) Open Space; and,
  - (e) City Works.
101. The amended plans (submitted under Section 57A of the Act on 12 June 2018) were informally referred to Urban Design and Heritage for additional comments. All comments have been included as attachments to this report.

## OFFICER ASSESSMENT

102. The considerations for this application are as follows:
  - (a) Strategic context/Land Use;
  - (b) Built form, design and heritage;
  - (c) Clause 58;
  - (d) Off-site amenity impacts;
  - (e) Car parking, bicycle parking & traffic;
  - (f) Other Matters
  - (g) Objector concerns.

### Strategic justification/Land Use

103. The proposal is consistent with the various objectives outlined in State and Local Planning Policy Frameworks (SPPF & LPPF) within the Scheme and provides a positive strategic opportunity for development and residential use within a well-resourced inner-urban environment.

104. The provision of a mixed-use development containing a shop at ground level and residential use above is consistent with the general strategies contained within the Scheme. These strategies encourage urban consolidation and employment generating uses in such locations, where full advantage can be taken of existing settlement patterns and transport, communication, water, sewerage and social facilities.
105. The subject land is located within the North Fitzroy NAC. The proposal meets the objectives and strategies of the Scheme by incorporating a range of uses into the development, including active spaces on the ground floor to reinforce an integrated street environment. The development is consistent with Clause 11.03-1S (Activity Centres), which aims to *encourage the concentration of major retail, residential, commercial, administrative, entertainment and cultural developments into activity centres that are highly accessible to the community*. The proximity of the site to a variety of public transport options highlights the land's strategic position.
106. The residential use of the land also achieves objectives outlined in Clause 16.01-2S, which encourages new residential development to be located in areas that offer good access to jobs, services and transport, and to increase the proportion of new housing in designated locations within established urban areas in order to reduce pressure for fringe development. The C1Z which applies to the site is readily acknowledged as a zone capable of accommodating greater density and higher built form, subject to individual site constraints.
107. It is noted that policy support for more intensive development needs to be balanced with built form and heritage guidance at Clauses 15.03, 21.05 and 22.02 of the Scheme. These policies call for development that responds to the surrounding context with regard to urban character and cultural heritage. More specifically, Council's local policy at Clause 22.02 seeks to maintain and conserve the significant historic character of the area.
108. As will be discussed in detail within this report, it is considered that the proposal sufficiently achieves State and local policy guidance in relation to high quality developments and protection of heritage values. It is on this basis that the submitted proposal should be supported, subject to conditions to be discussed throughout this report.

#### Built form, design and heritage

109. In considering the design and built form of the proposed development, the most relevant aspects of the Scheme are provided at Clause 15 (Built Environment and Heritage), Clause 21.05 (Built Form), Clause 22.07 (Development Abutting Laneways) and Clause 22.02 (Development Guidelines for Sites Subject to the Heritage Overlay).
110. These provisions and guidelines seek a development that responds to the existing or preferred neighbourhood character and provides a contextual urban design response reflective of the aspirations of the area. Particular regard must be given to the context, height and massing, relationship to adjoining buildings and architectural quality. These matters, and others, will be assessed in turn below.

#### *Context*

111. The existing character of the surrounding area is somewhat varied, with the majority of built form along St Georges Road being single and double-storey in scale, with high site coverage and commercial typologies. Higher elements of built form have emerged within proximity to the land, with a six-storey building constructed at No. 392 St Georges Road, approximately 50m to the north-east of the site. An image of this building is shown in Figure 4 below.

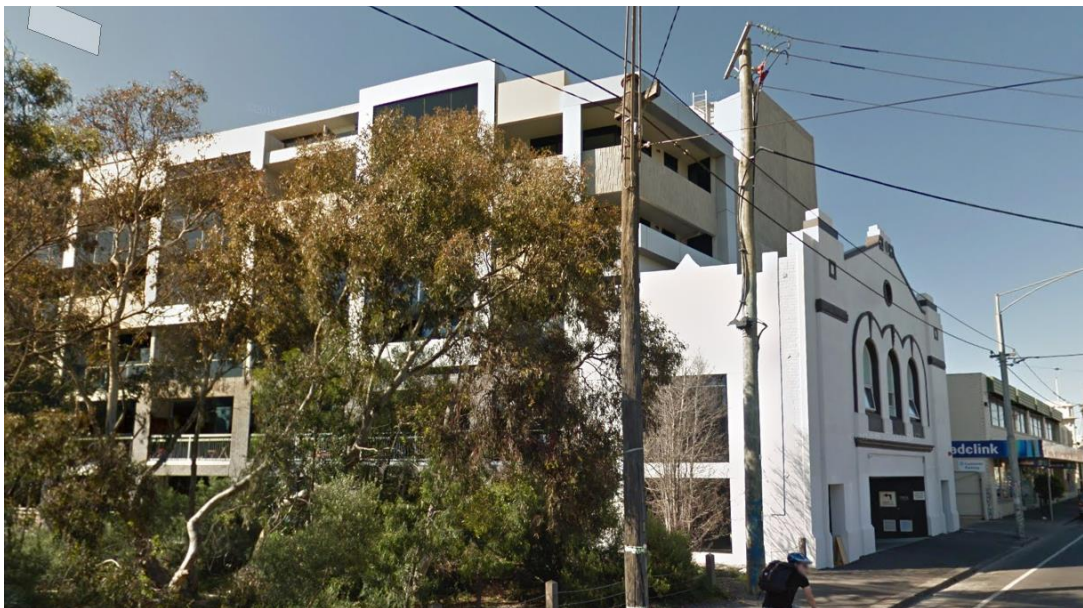


Figure 4: No. 392 St Georges Road – from the north along St Georges Road.

112. In addition, Planning Permit PLN16/0741 was issued on 8 February 2018 to allow the construction of a six-storey building at No. 378-390 St Georges Road. Whilst construction has yet to commence, the approval of this development clearly demonstrates that higher built form is anticipated within proximity to the site.
113. Considering the strategic direction of the C1Z to encourage higher density developments, there is expectation for more intensive development of the subject site and surrounding land within the North Fitzroy NAC. This outcome is recognised in Council's Urban Design comments. Whilst concerns were raised with elements of the original design, the comments noted that the intensified redevelopment of this site is supported in principle. It is clear from the two six-storey developments outlined above that the wider St Georges Road precinct is undergoing change, with strong state policy support for increased density in this neighbourhood.
114. The expectation of more intensive development in commercial zones was discussed in the decision *Daniel Stevens (Zero Nine Pty Ltd) v Yarra CC* [2011] VCAT 467 (this decision relates to No. 105-107 Johnston Street Collingwood – also within a NAC), where the following comments were made in relation to developments in commercial areas (previously called business zones):

*[16] However it needs to be said that (for the reasons set out above) there is very strong strategic policy support for this Business 1 zoned land to be developed more intensively over the longer term.*

*[17] In this situation where not just the subject land but the other nearby properties are going through a transition period where considerably more intensive built form can be expected in the future, I accept that it would be an inappropriate and overly timid planning outcome to temper the new built form on the subject land by reference to the more low key current situation at the rear of the other nearby properties.*

115. Based on this context, the addition of this higher built form is considered to be an acceptable outcome.

#### *Height, Scale and Massing*

116. With no specific built form guidance or height limits associated with the land, it is important for the assessment of building height to balance the range of influencing factors affecting this area, including policy provisions, existing height characteristics of nearby built form and preferred future character development.
117. The site is located within the C1Z and an activity centre. As previously noted, the zoning and location of the site clearly identifies that the land will be more intensively developed, with a purpose of the C1Z to provide for residential uses at densities complementary to the role and scale of the commercial centre. Clause 11.03-1S (Activity Centres) encourages a diversity of housing types at higher densities in and around these areas.
118. Strategy 17.2 at clause 21.05-2 of the Scheme states that development within activity centres should generally be no more than 5-6 levels unless it can be demonstrated that the proposal can achieve specific benefits such as significant upper level setbacks, architectural design excellence, best practice environmental sustainability objectives, adaptive re-use of heritage buildings, positive contribution to the public domain and provision of affordable housing. The proposal fits within this height range.
119. Further, a number of the additional features that would allow the consideration of a higher building have also been achieved, with the proposal providing upper level setbacks, an active street frontage and best practice environmental sustainability objectives.
120. The original Urban Design comments (based on the drawings dated 24 November 2017) recommended that the overall height of the development be reduced by one level; however this reduction in height was dependant on whether other alterations were made to the design. The amended plans (received by Council on 12 June 2018) incorporated a number of these changes into the development, with the original Urban Design recommendations and subsequent responses discussed in turn below.

*The form and design should be rationalised and simplified to create a more coherent composition;*

121. The design of the façade was substantially altered in the amended plans, with the extent of brickwork increased. This alteration is demonstrated in figures 5 & 6 below.



Figure 5: Original façade design



Figure 6: Section 57A Amended design

122. The extended use of brick provides a more coherent finish, by removing the metal cladding proposed for the first and second levels and consolidating the streetwall into one element to provide a more rational and robust design.

*Reduce the street wall (podium) height to 2 storeys at the front and rear of the building;*

123. The consolidation and design of the brick façade provides the appearance of a double-storey podium addressing St Georges Road, with the horizontal gap between the first and second-floors providing a degree of definition to the solid double-storey section of the façade below.
124. This amended design allows for an improved height transition within the streetscape, by providing a good degree of delineation between the streetwall and the two upper-most levels. The amended design results in two clear and distinct forms and increases the prominence of the façade within the streetscape.
125. Double-storey built form abuts the rear boundary of the site, thereby already achieving this recommendation.

*Above this podium, the front setback should be at least 5m at all levels and the rear setback of 5.515m should apply to all levels above the podium;*

126. Setbacks of the two upper levels range from 7.8m to 8.2m (based on the average setback from the angled front boundary), with the attached balconies set back 3.28m to 5.7m from this interface. When combined with the more visually dominant design of the façade, these setbacks are acceptable and provide a good degree of separation between the upper and lower levels.
127. The two upper-most levels are set back 7.88m from the rear laneway. The attached balconies are set back 5.66m from this interface. The setbacks from the rear boundary exceed those recommended by Council's Urban Designer, and allow for a sympathetic transition to the low-scale residential land to the west.

*Provide a more attractive finish to the black side walls.*

128. There were no changes in the amended plans to the presentation of the north or south-facing walls. This aspect will be discussed further in this report.
129. Urban Design comments were sought on the amended plans. These comments were largely supportive and confirmed that the majority of the issues were resolved via the changes outlined above. These comments confirmed that the modified façade strengthens the design of the streetwall and enhances this aspect of the development, with the contrasting material of the upper levels creating clear differentiation between the two facets of the building.
130. It was noted however that the black colour proposed for the finish of the upper-most levels somewhat overwhelmed the simplified and more coherent design of the façade. Although the upper level balconies are set back from the street frontage, the large expanse of black roof covering and the black vertical battens attached to the side of the balconies would be clearly visible from all angles. These features exacerbated the height of the building and failed to integrate the upper levels with the built form below.
131. It was recommended by Council's Urban Designer that the black material be substituted for an off-white finish to match the colour of the proposed side walls, and the depth of the roofing above the fourth-floor balcony be reduced to a maximum depth of 1.5m. The removal of the black battens was also encouraged. These changes were undertaken by the Applicant via sketch plans, with the amended design demonstrated in Figure 7 on the following page. It is considered that these changes improve the presentation of the upper levels and reduce the visual prominence of the development within St Georges Road. They allow the brick façade to read as the most prominent element and the amended colour scheme increases the integration of the front balconies with the higher side walls beyond. If a planning permit is to issue, these changes can be required via conditions.



*Figure 7: Sketch plans with further amendments*

132. As outlined earlier, there was no alteration to the treatment of the blank side walls addressing the northern and southern boundaries. Whilst it is acknowledged that the site to the south may be developed to a similar extent in the future, the northern building is graded 'individually significant' within the North Fitzroy Heritage Precinct.

This limits the extent of development that may occur on this site, and ensures that ongoing views to the large expanse of blank northern wall will continue.

To alleviate the visual impact of these walls and address the concerns raised, a degree of articulation or treatment is required. This could be provided in the form of vertical or horizontal lines, or a different texture to the render. If a planning permit is issued, this change can be facilitated via conditions.

133. Based on the alterations demonstrated in the amended plans, and the further conditions based on the sketch plans, Council's Urban Designer was largely supportive of the development. They confirmed that it is no longer considered necessary for the height of the building to be reduced, with the changes addressing the original recommendations, and the proposed permit conditions further improving the appearance and integration of the development within the streetscape.

### *Heritage*

134. The primary heritage considerations for this application relate to whether compliance is achieved with Clause 43.01-4 (Heritage Overlay: Decision guidelines) and Clause 22.02 (Development Guidelines for Sites Subject to the Heritage Overlay) of the Scheme. The site is located within the North Fitzroy Heritage Precinct, with the existing building classified as 'non-contributory' to this precinct. The proposal seeks to demolish the existing building on the site.
135. The key consideration for assessing this aspect of the works is whether the proposed demolition will adversely affect the broader heritage precinct. Clause 22.02-5.1 of the Scheme relates to full demolition of a heritage building and states that it is policy to *generally encourage the retention of a building in a heritage place, unless the building is identified as being not contributory*.
136. As the subject building has been identified as non-contributory, full demolition is considered acceptable.
137. Comments received from Council's Heritage Advisor on the original design were largely unsupportive. Whilst the contemporary response was considered acceptable, given the lack of contribution the existing building makes to the heritage streetscape, the proposed design was not considered to provide adequate respect to the adjacent heritage area. In particular, the appearance of the streetwall was critiqued, with the black screening to the second-floor façade considered to be out of character with the street, and resulting in a dominant 'floating' affect above the two lower levels.
138. The original heritage advice recommended that the streetwall be redesigned, so that a consistent and more visually prominent double-storey façade be provided. This would allow all levels above to read as separate and recessive elements within the site. As discussed previously, it is considered that this outcome has been adequately achieved via the various amendments made to the design. The amended plans provide a visually cohesive façade, by removing the black metal cantilevered second-floor balcony and consolidating the streetwall into a predominantly brick finish. The extended use of brick within the façade has provided a simplified and more coherent response. Whilst the streetwall remains triple-storey in scale, the use of brick at all levels provides a degree of consolidation that allows the façade to integrate more positively within the streetscape, and reduces the dominant nature of the original design.
139. This outcome is in keeping with comments provided in the original heritage advice, which acknowledged that the use of red facebrick materials for the ground and first-floor façade was appropriate, and integrated well with the heritage character of the surrounding area.

140. Heritage comments were sought on this aspect of the amended design, with a positive response received. The updated comments confirmed that the modified streetwall provides an acceptable response to the initial concerns and was more in keeping with the heritage context of the area.

However, as with the additional Urban Design advice, Council's Heritage Advisor noted that the consolidation of the façade somehow increased the prominence of the two upper levels, particularly due to the black finishes proposed. Heritage advice concurred that the use of off-white for the upper level balconies, and a reduction in the extent of roof form for the fourth-floor balcony, would reduce the visual impact of the higher elements of built form. The provision of a partially covered balcony would also reduce the likelihood that an umbrella could be accommodated in the top-floor balcony. The proposed changes to the design as outlined in the sketch plans and facilitated via permit conditions were supported from a heritage perspective.

141. With regards to other elements of the design, the original heritage advice raised concerns with the curved shape of the upper level balconies. The design of these balconies was considered to be out of keeping with more traditional rectangular forms found in heritage precincts. The heritage advice recommended that if these designs were retained, they should be set back further from the streetwall, so that they clearly do not form part of the heritage context of the street.
142. Whilst the subsequent plans retain the curved form of these balconies, the altered colour scheme to off-white and the reduced depth of the upper-most balcony roof are an improvement, with these changes creating a clear separation between the redbrick façade and the upper-levels. These alterations reduce the visual dominance of the upper level balconies within the streetscape; consistent with the provisions outlined in Clause 22.02 of the Scheme.
143. As with the original urban design advice, the original heritage comments recommended that the top-most level of the development be removed. However, based on the changes incorporated into the amended design, the updated heritage response no longer considers a reduction in height to be necessary. The most recent comments confirm that the amended response results in a less visually overwhelming building within the streetscape, and reduces the prominence of the upper-most levels to an acceptable degree. The height and massing of the development is supported from a heritage perspective.
144. The original heritage comments also recommended changes to the presentation of the ground floor façade, with a number of these alterations incorporated into the current design. In particular, it was recommended that a solid stallboard of 700mm be provided underneath the glazing, to match the dimensions of the stallboard within the heritage building to the north. The façade has been altered accordingly. However, it was also recommended that a recessed entry to the shop be provided. In the current design it appears that there is no entrance provided to the shop. If a planning permit is to issue, a condition can be added to ensure that a clearly defined and separate entrance be provided to the shop and for this entrance to be recessed from the St Georges Road boundary.
145. Based on the changes discussed, it is considered that the proposed development integrates well with the heritage character of the streetscape and respects the significance of the heritage place. Compliance with the provisions of Clause 22.02 is achieved.

#### *The Public Realm & Pedestrian spaces*

146. The introduction of a shop at ground level addressing St Georges Road provides an active frontage within the C1Z and the activity centre, with the proposed extent of glazing within the new shopfront providing good interaction between the footpath and internal space. This outcome is consistent with the public realm, pedestrian spaces and street and public space quality policies at clauses 15.01-2S and 21.04-2 of the Scheme.

147. Further improvements to this interface were recommended within the original Urban Design advice, which suggested that the shop use be extended to encompass more of the site, in place of the proposed storage or car parking. This alteration is not considered necessary, as these elements are not visible within the street frontage and have no influence on how the commercial use is perceived from St Georges Road. The majority of the street frontage is devoted to the shop; this outcome adheres with relevant policy and is supported.

#### *Laneway interface*

148. Council's local policy at Clause 22.07 relates to development abutting laneways. Relevantly, the policy seeks to provide an environment which has a feeling of safety for users of the laneway and to ensure that development along a laneway acknowledges its unique character. The policy specifically calls for development that respects the scale of the surrounding built form, with design guidelines at Clause 22.10-3.3 noting that new development which abuts a laneway should be no higher than 2 storeys.
149. The development will directly abut the laneway to a height of 5m, with the first and second-floor balconies above also constructed to this interface. However, these higher elements will be limited to the balcony balustrades, with open spaces providing depth and articulation to this elevation. Further, the first-floor balustrade will only be marginally visible above the rear boundary wall. The two upper-most levels will be set back over 5m from the rear boundary.
150. The original Urban Design advice raised concerns with the scale of built form addressing the laneway, stating that the overall height of the rear wall would have an imposing presence in the laneway and on the dwelling to the west, at No. 227 Barkly Street. This advice also recommended that dwelling entries should be incorporated into this interface, to provide a sense of activation of the laneway.
151. As noted, the first and second-floor balconies provide a good degree of articulation to the rear wall and ensure that it does not present as dominant built form. The second-floor balcony will be screened with vertical battens, thereby providing visual permeability. The solid to void ratio of the western elevation is acceptable. Given the generous setbacks of the levels above, the presentation of the development to the laneway is supported and no changes are required.
152. The addition of entrances to dwellings being provided from the laneway is not consistent with policy, which encourages pedestrian entries to be separate from vehicle entries and dissuades entries to dwellings to be obscured or isolated. The laneway is currently used for vehicle traffic only, with no visible residential entries for any surrounding sites. The retention of a primary residential entrance from St Georges Road is supported.
153. The balconies addressing the laneway at the first and second-floors will allow for passive surveillance, but do not unreasonably overlook private open space or habitable rooms on the opposite side of the laneway. This detail will be discussed in further detail later within this assessment.
154. The development will not obstruct the laneway and access for emergency vehicles will be maintained. The provisions of this policy will be met.

#### *Light and Shade*

155. The height of the streetwall and the proposed setbacks of the levels above from the eastern boundary ensure that there will be limited overshadowing affecting the eastern footpath along St Georges Road throughout the day. The shadow diagrams indicate that a small section of this footpath will experience shadow at 3pm; the scale and duration of these shadows are limited and considered to be an acceptable outcome.

156. Whilst shadows will affect the western footpath of St Georges Road from 1pm onwards; this would be an existing condition given the double-storey façade of the current building on the site.

*Site Coverage*

157. The proposal will occupy 100% of the site. Whilst this increases the existing coverage found on the land, this outcome is acceptable given the context of the site within a C1Z and an activity centre.
158. The degree of built form coverage proposed is similar to that found on many sites within the North Fitzroy NAC, with intensive development a characteristic of the surrounding neighbourhood. In particular, built form covers 100% of the site immediately to the north, with significant degrees of coverage evident within the more intensively developed land to the east. The proposed site coverage is an acceptable outcome.

*Architectural Quality*

159. The development, based on changes previously discussed, integrates well with the existing streetscape, with the contemporary design an appropriate outcome that sufficiently responds to the limited heritage characteristics found within this section of St Georges Road.
160. The design ensures that a good balance between the ratio of solid to void is achieved within the principal façade, with the use of brickwork within these lower levels providing a coherent response that relates to the form and massing of the double-storey building to the south. As noted previously, the amended design reduces the prominence of the upper levels and subsequently reduces the visual impacts of the curved balconies; this outcome is supported.
161. The northern and southern walls of the tower element are proposed to be finished in plain off-white render, with no articulation provided. As discussed, until such time that the adjacent sites are developed, these walls will be highly visible within the St Georges Road streetscape, with relatively limited development likely on the heritage site to the north. A condition has required a level of articulation, via a different design or finish, be provided to reduce the sheer finish of these walls. Based on these changes, the overall design is supported.

Clause 58

*Standard D1 – Urban context*

162. The purpose of this Standard is to ensure that the design responds to the existing urban context or contributes to a preferred future development of the area. These aspects have been discussed in detail earlier within this report, with the proposal considered to be an acceptable response within the existing and emerging character of the St Georges Road streetscape and surrounding neighbourhood. The Standard is met.

*Standard D2 – Residential Policies*

163. As outlined within the Strategic Context section of this report, the proposed development has strong policy support under the purpose of the C1Z and relevant policies of the Scheme. The site can clearly support higher density residential development, based on its proximity to public transport, community infrastructure and services, and with limited off-site amenity impacts. The Standard is met.

*Standard D3 – Dwelling diversity*

164. The proposal will provide 8 x 2 bedroom and 4 x 3 bedroom dwellings, thereby allowing for a range of dwelling types. The Standard is met.

*Standard D4 - Infrastructure*

165. The proposal is located within an established area containing existing utility services and infrastructure; there is no evidence to suggest that the proposed development would unreasonably overload the capacity of these existing services. The Standard is met.

*Standard D5 – Integration with the street*

166. The building will address St Georges Road at all levels, with the proposed commercial use at ground level providing an active frontage within the activity centre. This is consistent with the purpose of the C1Z. Vehicle access will be restricted to the rear laneway, with all pedestrian access from St Georges Road. The Standard is met.

*Standard D6 – Energy efficiency*

167. The development provides a good level of energy efficiency, with the layout of each dwelling considered to provide reasonable opportunities for access to daylight and natural ventilation, based on window operability being clearly shown on the plans. This element will be discussed in detail later within this report. Energy efficient heating/cooling and lighting is proposed, with water efficient fixtures to be used throughout. The Sustainable Management Plan (SMP) provided with the application states that a minimum 7 Star average NatHERS Star rating will be achieved for all dwellings, with a STORM score of 112% possible via the provision of a 10,000L rainwater tank connected to all apartment toilets. This results in a development that largely meets Council's Environmental Sustainable Design standards.
168. Standard D6 notes that dwellings located in a climate zone identified in Table D1 of this clause should not exceed the maximum NatHERS annual cooling load specified. In this instance, the development is in Climate Zone 21 (Melbourne) and should not exceed 30MJ/m<sup>2</sup> per annum.
169. The BESS report includes a sample of dwellings with cooling loads beneath the 30MJ/m<sup>2</sup> threshold, however it is required that all dwellings have cooling loads beneath this threshold to meet the Standard. Council's ESD Advisor noted that most dwellings have modest glazed areas exposed to summer sun angles, and shading through balcony overhangs, but there are significant areas of north-facing glazing exposed to summer sun angles. To ensure that all dwellings meet this Standard, further protection of all north, east and west-facing glazing from summer sun angles through the use of exterior adjustable shading blinds, fins or louvers is required. A condition can ensure this occurs, if a permit is to issue.
170. The only outstanding matter highlighted within the ESD comments (with the exception of ventilation, which will be discussed in Standard D27), was that the submitted SMP states that the thermal energy efficiency standard will be only 6 Stars, but the BESS report states 7.1 Stars. These documents should be consistent, and the SMP can be updated via permit condition.
171. Whilst some additional ESD improvement opportunities were recommended, not all are considered feasible or necessary for this development, such as the addition of a productive garden, landscaping or roof terrace. It is noted that a green wall is already proposed within the northern lightcourt. With only limited common areas, it is not clear which area of the development would benefit from a solar PV array, and with the use of two car stacking systems, the provision for electric vehicle charging could be problematic. A reasonable alternative could be the provision of electric bicycle charging facilities. This can be facilitated via a permit condition.

172. Overall, it is considered that subject to the conditions discussed and the provision of an amended SMP, the proposed development would achieve best practice in environmentally sustainable development in accordance with the overarching objectives under Clause 22.16 (Stormwater Management (Water Sensitive Urban Design)) and Clause 22.17 (Environmentally Sustainable Development) of the Scheme.

*Standard D7 – Communal open space*

173. This Standard only applies to developments which propose forty (40) or more dwellings.

*Standard D8 – Solar access to communal open space*

174. No communal open space is proposed as part of this development.

*Standard D9 – Safety*

175. The residential entrance will be recessed 2m to 2.8m from the St Georges Road boundary. A wall extends across a section of the entrance, with mail boxes located behind. As noted in the Urban Design advice, the depth of the entry recess should be reduced to less than its width, in order to minimise the risk of this space becoming unsafe.
176. This outcome could be achieved via the relocation of the door 1m closer to the front boundary, thereby reducing this recess to between 1m and 1.8m. In addition, the section of wall extending in front of the entrance (along the front boundary) could be removed, to increase the visibility of the residential entrance. This alteration would reduce the depth of the recess to less than the width, and ensure views are readily available to this space from all vantages of St Georges Road.
177. With the addition of this condition, if a planning permit is to issue, the Standard would be met.

*Standard D10 – Landscaping*

178. Landscaping does not play a significant role in the character of this section of St Georges Road. The lack of landscaping proposed is therefore acceptable.
179. A vertical green wall is proposed within the northern lightcourt; this degree of landscaping will soften the appearance of this wall from the north and is supported. Information on how this green wall will be implemented and maintained will be required via a Landscape Plan. A condition of any permit issued will facilitate this.
180. The site is less than 750sqm; therefore no deep soil area is required. On this basis, the Standard is achieved.

*Standard D11 – Access*

181. This Standard seeks to ensure that the number and design of vehicle crossovers respects the urban context, whilst maximising the retention of on-street car parking spaces. In this instance, the development will be entirely reliant on an existing right-of-way (ROW) at the rear of the site, with all vehicle access limited to this interface.
182. This ensures that no on-street car parking spaces will be affected. Access for service, emergency and delivery vehicles is available. The Standard is met.

*Standard D12 – Parking location*

183. The location provided for car parking achieves a good design response, with all vehicle access restricted to the rear laneway. A total of 13 car parking spaces will be provided within the garage, in the form of two car stacking systems, with detailed specifications of the systems provided with the application. Council Engineers confirmed that the stacker models satisfy *Design Standard 4 – Mechanical parking* of Clause 52.06-9 of the Scheme. The swept path diagrams demonstrating access for a B85 vehicle to the car stackers from the laneway are also acceptable.
184. To ensure that vehicle access is appropriately provided, Council's Engineers recommended the following;
  - (a) The finished floor levels along the edge of any concrete slab must be set 40mm higher above the edge of the right-of-way (ROW);
  - (b) The width and headroom clearance of the garage door and floor to ceiling height of the garage should be dimensioned on the drawings;
  - (c) A convex mirror should be provided at the entrance of the garage to improve visibility for motorists exiting the site.
185. These requirements can be facilitated via conditions, if a planning permit is issued.
186. A number of additional recommendations were made; these relate more to civil works and will be addressed in the 'other matters' section of this report.
187. It is noted that a number of bedrooms will be located directly above the garage at first-floor. Potential noise impacts from the car stacking equipment will be discussed in Standard D16.

*Standard D13 – Integrated water and stormwater management*

188. A STORM report with a 112% STORM score was submitted with the application; this report demonstrates best practice and relies on 311sqm of roof connected to a 10,000L rainwater tank. The tank will be connected to all residential toilets. A condition can require this to be clearly noted on the ground floor plan. This is in line with the policy direction under clause 22.16 (Stormwater Management (Water Sensitive Urban Design)) and the Standard is met.

*Standard D14 – Building setbacks*

189. As outlined earlier in this report, the setbacks of the building are considered to achieve an acceptable design response within the character of the surrounding area. The setbacks of the upper-most levels from the front and rear boundaries will reduce the visual prominence within the streetscape and reduce visual impacts to the lower scale residential land to the west. The upper-level setbacks from the side boundaries will also provide adequate building separation, if the adjacent land is to be developed in the future.
190. The proposed setbacks will allow for adequate daylight to access all new dwellings, whilst providing for a reasonable outlook from all habitable rooms. Potential overlooking impacts will be discussed in detail later within this assessment. The Standard is met.

*Standard D15 – Internal views*

191. The drawings do not clearly demonstrate how internal overlooking opportunities between balconies at Levels 1 & 2 will be restricted. Whilst privacy screening is referenced on a number of elevations, the specific height and transparency of this screening is not provided. To ensure that no unreasonable internal overlooking can occur, sectional diagrams can be required via a condition of any permit issued, clearly demonstrating the material, height and level of obscurity provided for all balcony screens.

192. There are a number of bedrooms at each level which are separated by a 6m wide lightcourt. To ensure that the objective is met, one or both of these bedroom windows must be designed to prevent overlooking of more than 50% of the adjacent habitable bedroom window. A condition, should a planning permit be issued, will facilitate this.
193. Based on these conditions, the Standard will be met.

*Standard D16 – Noise impacts*

194. The subject site is located on a main road within an activity centre and therefore within proximity to a number of noise sources which may result in unreasonable internal noise levels to the new dwellings. The most prominent noise sources in this instance would be traffic and tram noise along St Georges Road. In addition, noise from mechanical equipment and the car stacker systems may result in unreasonable noise impacts to future occupants.
195. The Standard notes that new dwellings should be designed and constructed to include attenuation measures to reduce noise levels from off-site noise sources, with new buildings that are located within a noise influence area specified in Table D3 of this Standard to be designed to achieve the following noise levels:
  - (a) *Not greater than 35dB(A) for bedrooms, assessed as an LAeq,8h from 10pm to 6am.*
  - (b) *Not greater than 40dB(A) for living areas, assessed LAeq,16h from 6am to 10pm.*
196. According to the Traffic Volume Data provided by VicRoads, St Georges Road is not considered to be a major arterial road that carries more than 40,000 annual average daily traffic volumes. On this basis, the noise levels outlined in Standard D16 do not apply.
197. Irrespective of this, it is acknowledged that St Georges Road is a busy thoroughfare catering for cars and trams, and is likely to generate noise impacts particularly to dwellings addressing the road. Further, the provision of a car stacking system, directly beneath two first-floor dwellings, may result in unreasonable noise impacts within these apartments. Air-conditioning units are proposed either on each individual balcony, or directly adjacent to dwellings. Potential noise impacts from this mechanical equipment have not been assessed.
198. To ensure that all noise impacts have been considered, the provision of an Acoustic Report is recommended. This Acoustic Report can be required via a permit condition, if one is to issue, and would need to assess potential noise impacts and any necessary attenuation measures resulting from noise associated with St Georges Road, the car stacking system and any mechanical equipment on site. On this basis, Standard D16 will be met.

*Standard D17 – Accessibility objective*

199. To ensure the design of dwellings caters for people with limited mobility, the Standard notes that at least 50% of new dwellings should provide;
  - (a) *A clear opening width of at least 850mm at the entrance to the dwelling and main bedroom;*
  - (b) *A clear path with a minimum width of 1.2m that connects the dwelling entrance to the main bedroom, an adaptable bathroom and the living area;*
  - (c) *A main bedroom with access to an adaptable bathroom;*
  - (d) *At least one adaptable bathroom that meets all of the requirements of either Design A or Design B specified in Table D4.*
200. The floor templates indicate that 6 of the 12 dwellings will provide a clear opening width of at least 850mm at the entrance to the dwelling and main bedroom, as well as a clear path with a minimum width of 1.2m connecting the dwelling entrance to the main bedroom, an adaptable bathroom and the living area.

201. It is noted however that the adaptable bathrooms provided for these dwellings have not been directly connected to the main bedrooms, with each main bedroom provided with an ensuite that has not been designed accordingly. To provide a fully accessible layout for 50% of the dwellings, a better outcome would be for the ensuite bathrooms to be the adaptable bathrooms. This can be facilitated via relatively minor design changes to the following apartments - 102, 202, 301, 302, 401 & 402. With these alterations, the Standard will be met.

*Standard D18 – Building entry and circulation*

202. As discussed previously, the entrance to the shop has not been clearly demonstrated on the plans, with this to be rectified via a permit condition. The residential entrance is easily identifiable within the St Georges Road façade. A condition has required the section of wall directly in front of the entrance be removed, to further increase views to this space. The entrance is provided with shelter, a sense of personal address and a transitional space. The Standard is met.

*Standard D19 – Private open space*

203. Of relevance to this development, the dwellings should have access to balconies that meet the dimensions outlined in Table 5 of this Standard. This table specifies that a 2 bedroom dwelling should have access to a balcony with a minimum area of 8sqm and minimum dimension of 2m, with convenient access from a living room, with the balcony dimensions for a 3 bedroom dwelling increasing to 12sqm and 2.4m respectively. All of the dwellings will meet these requirements as outlined in the table below.

Dwelling	Balcony Size	Balcony Depth
Unit 101 – 2 bed	10sqm	2m
Unit 102 – 2 bed	10sqm	2m
Unit 103 – 2 bed	12sqm	2.2m
Unit 104 – 2 bed	12sqm	2.2m
Unit 201 – 2 bed	9.5sqm	2.2m
Unit 202 – 2 bed	9.5sqm	2.2m
Unit 203 – 2 bed	9.5sqm	2m
Unit 204 – 2 bed	9.5sqm	2m
Unit 301 – 3 bed	18sqm	Min. 2m
Unit 302 – 3 bed	28sqm	Min. 2.8m
Unit 401 – 3 bed	18sqm	Min. 2m
Unit 402 – 3 bed	28sqm	Min. 2.8m

204. Further, all of the balconies will be directly accessed from the living rooms of each dwelling. Secondary balconies, with access from bedrooms, have also been provided for the four, first-floor dwellings.
205. All of the balconies are roofed, with a number of vertical fins extending for the full height of the north and south elevations of the two upper-level balconies. Urban Design comments noted that this design may result in the balconies becoming fully enclosed, assuming that the adjacent sites are developed in the future. The only balcony to directly abut both sides boundaries is located at Level 1. If boundary development at this level was to occur, this balcony would retain the principal westerly outlook, with a good degree of daylight still able to access this space.
- The balconies above are set back from the north and south boundaries, ensuring that any future development on adjacent sites would not fully enclose these spaces. The design of these balconies is acceptable.

206. The Standard notes that if a cooling unit is located on a balcony, the balcony should provide an additional area of 1.5sqm. Air conditioning units have been shown in 8 of the 12 balconies, with the remaining 4 units located on sections of the roof adjacent to each apartment (at Level 1). The balconies on which air conditioning units are provided have been scaled accordingly, to ensure that the Standard is met.

*Standard D20 – Storage*

207. This Standard notes that the following usable and secure storage space should be provided for each dwelling;
- (a) 2 bedroom – a minimum of 14 cubic metres, with 9 cubic metres located within the dwelling;
  - (b) 3 bedrooms – a minimum of 18 cubic metres, with 12 cubic metres located within the dwelling.
208. Each apartment has been provided with individual storage units at ground level, measuring 9 cubic metres. Notations have been included within the floor templates of 5 of the 12 apartments, indicating that the following storage spaces are provided (outlined in the table below);

Dwelling	Internal storage	Total storage
Unit 104 – 2 bed	9.83 cubic metres	18.83 cubic metres
Unit 201 – 2 bed	9.54 cubic metres	18.54 cubic metres
Unit 203 – 2 bed	10.42 cubic metres	19.42 cubic metres
Unit 204 – 2 bed	9.83 cubic metres	18.83 cubic metres
Unit 402 – 3 bed	14.14 cubic metres	23.14 cubic metres

209. All of these storage dimensions meet the Standard.
210. Given the consistent internal layout of the 2 & 3 bedroom dwellings, it is assumed that the storage provisions will be similar in the dwellings not included in the table above. To ensure this is achieved, a condition can be added to any planning permit issued noting that storage requirements consistent with the Standard must be demonstrated for the remaining apartments – 101, 102, 103, 202, 301, 302 & 401.

*Standard D21 – Common property*

211. The common property areas within the development are clearly delineated and would not create areas which were difficult to maintain into the future. The lobby, storage spaces, bin room and vehicle access areas are well conceived and cohesive with the overall building design and are therefore considered to be in line with the objectives of this Standard.

*Standard D22 – Site services*

212. Mailboxes for the residential use are located directly adjacent to the entrance; however it is not clear where other site services will be located (such as a fire booster cabinet if required). If a planning permit is to issue, a condition will require the location of all necessary services to be clearly depicted on the plans.

*Standard D23 – Waste and recycling*

213. A residential bin storage area is proposed at ground level, with separate bin storage provided at the rear of the commercial space.

214. A Waste Management Plan (WMP) was prepared by Ratio Consultants, outlining the proposed waste generation rates, storage facilities and collection procedures associated with the development. It is noted that the WMP incorrectly refers to the ground floor space as an 'office' as opposed to 'shop'. This reference, along with any changes required to the associated waste generation levels, will require amending via a condition, should a planning permit be issued.
215. The WMP was referred to Council's City Works Unit. A number of deficiencies were highlighted within this document and the associated management procedures to be undertaken. These are outlined as follows;
- (a) A kerbside collection will not be suitable due to the potential traffic obstruction during collection. A private, internal service must be utilised from the rear access point with swept path diagrams to prove feasibility.
  - (b) There was no comparison provided between available bin room space and bin sizes, in meters squared.
  - (c) There were no details regarding the party responsible for bin cleaning.
216. Whilst the final two points above can be easily rectified, the provision of on-site collection for all waste as opposed to kerbside collection from St Georges Road is more problematic, given the provision of a car stacking system at the rear of the site. It is noted that on similarly sized sites, with limited dwelling numbers and no basement, Council has approved private waste collection with a condition that all bins are returned immediately to the storage room by the private contractors. This ensures no bins will obstruct either the kerb, or the laneway at any time.
217. The potential for this style of bin collection was discussed with and approved by Council's City Works Branch, upon the condition that the bins be collected from the rear laneway, and that swept path diagrams demonstrating this process are provided.
218. If a planning permit is to issue, an amended WMP reflecting all of these comments will be required via condition of the permit. The WMP will be endorsed to form part of the planning permit.

*Standard D24 – Functional layout*

*Bedrooms*

219. This Standard notes that main bedrooms should have a minimum width of 3m and minimum depth of 3.4m, with other bedrooms to be 3m x 3m in dimension. Of the 28 bedrooms within the development, only 4 bedrooms do not comply with this Standard. These are the second and third bedrooms of Apt. 301, the third bedroom of Apt. 401 and the main bedroom of Apt. 402. However in all of these instances, the level of non-compliance is extremely marginal (with widths of 2.99m instead of 3m). This outcome is acceptable and will not unreasonably impact the internal amenity of the non-compliant bedrooms.

*Living areas*

220. This Standard notes that living rooms associated with 2 or more bedroom dwellings should have minimum widths of 3.6m and minimum areas of 12sqm. All of the dwellings meet this Standard.

*Standard D25 – Room depth*

221. All of the 2-bedroom dwellings on Levels 1 & 2 have single-aspect habitable rooms. These dwellings have been designed to meet the following requirements;
- (a) The room combines the living area, dining area and kitchen;
  - (b) The kitchen is located furthest from the window; and,

(c) The ceiling heights are 2.7m.

222. The 3-bedroom dwellings are dual aspect. On this basis, the Standard is met.

*Standard D26 – Windows*

223. All habitable rooms within the proposed development contain a window within an external wall to the building, with no reliance on 'borrowed light'. None of the principal windows to any habitable room will directly address the sites to the north and south; this ensures that if these sites are to be developed in the future, daylight to the windows will not be unreasonably impacted.

224. One bedroom within each dwelling is oriented to address a lightcourt. These lightcourts are generously sized, with overall dimensions of 18sqm. If future on-boundary development is to occur adjacent to these lightcourts, their scale will ensure that the remaining access to daylight from these bedrooms is acceptable. The Standard is met.

*Standard D27 – Natural ventilation*

225. All of the dwellings will allow for natural cross-ventilation opportunities, with the floor templates indicating that the maximum breeze path dimensions will be met. However, a number of windows are not clearly shown as operable on the floor plans and elevations. To ensure that the Standard is achieved and the internal amenity of each dwelling is acceptable, the relevant drawings must be amended to show the operability of all living room and bedroom windows. A condition will facilitate this, should a planning permit be issued.

Off-site amenity

226. The context of the site, being located within a C1Z, with commercially zoned land and uses to the north, south and east, limits potential off-site amenity impacts on surrounding, more sensitive, sites. The only sensitive interface with the subject site is the dwelling directly to the west, at No. 227 Barkly Street. Floor plans of this dwelling confirm that there are no habitable room windows adjacent to the site, resulting in a relatively limited assessment with regards to potential amenity impacts to this residential land.

*Overlooking*

227. The only potential overlooking impacts to secluded private open space (SPOS) is associated with the site to the west, with four proposed balconies (at Levels 1 & 2) located within 9m of SPOS at the rear of this land. The proposed west elevation indicates that privacy screening (in the form of vertical battens) will be located along the western perimeter of these balconies; however the elevation fails to provide sufficient details on the height, transparency and materials of these screens. If a planning permit is to issue, a condition can specify that these screens must be a minimum height of 1.7m, with a maximum transparency of 25%. Based on the provision of these details, unreasonable views to adjacent residential land will be appropriately limited.

*Overshadowing*

228. Given the context of the surrounding land as discussed, the only potential overshadowing to SPOS will occur in the morning. As can be seen in Figure 8, the area of SPOS associated with the site to the west is located on the western side of the site, with an out-building and car parking space located along the eastern boundary. This provides a further degree of separation between any new built form on the subject site and the most sensitive area within the adjacent land to the west.

229. The shadow diagrams indicate that the only additional area of shadow affecting this site will be at 9am (see circled area of land in Figure 9). Following this time, there will be no additional shadows cast within the SPOS to the west. The limited duration and scale of shadows will ensure that the proposed development will not result in unreasonable overshadowing impacts to any adjacent residential land.



*Figure 8: Aerial view of adjacent SPOS to the west*

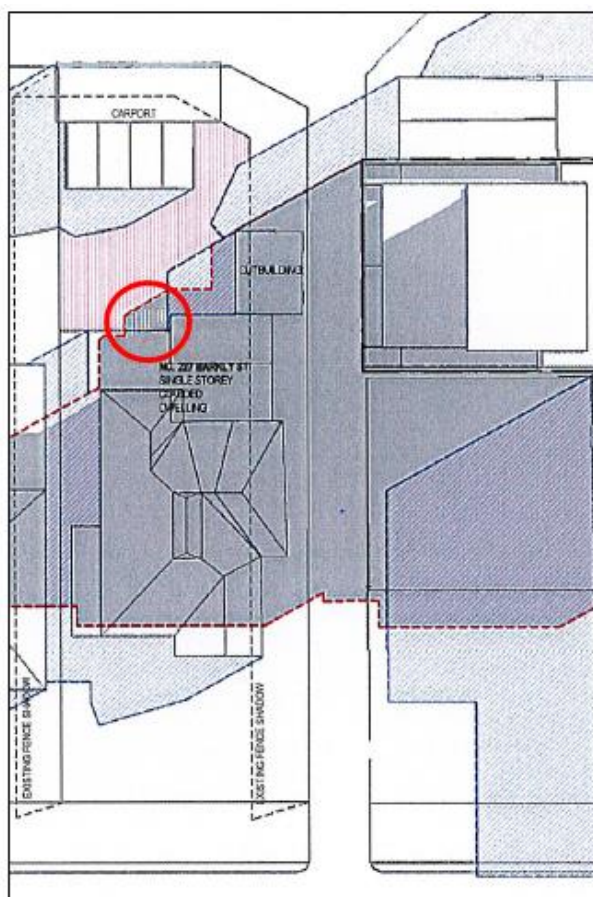


Figure 9: Additional overshadowing with SPOS at 9am

#### *Visual bulk*

230. The height and appearance of the proposed development has been discussed previously within this assessment, with the highest levels appropriately set back from all sensitive interfaces to reduce potential visual impacts to surrounding sites. The development will be provided with a degree of separation from the most sensitive sites to the west, via the laneway, with no HRW directly addressing the site within any of the adjacent dwellings. Whilst views to the building will be available from the SPOS of some of these sites, the views will be from oblique angles and from a distance.
231. It is highlighted that the residential land to the west of the laneway has a direct abuttal with land in the C1Z, with a number of Tribunal decisions acknowledging that amenity expectations of residents with direct commercial interfaces should be lower than those located solely within residential land. Irrespective of this, it is considered that the design of the development has appropriately responded to the different contexts at each interface and no unreasonable visual impacts will occur.

#### *Noise*

232. It is not considered that either the residential or shop components of the proposal are likely to result in unacceptable noise emissions to any nearby commercial or residential properties. Based on the context of the land within a C1Z and the nature of existing uses located along St Georges Road, these uses are considered to be in keeping with similar noise impacts within this environment.
233. Noise impacts of all services/plant equipment within the development itself have already been discussed; it is not considered that the proposed extent of these services will unreasonably impact uses on adjacent sites.

To further alleviate any impacts, a condition of the permit would require that the noise and emissions from plant equipment must comply at all times with the State Environment Protection Policy – *Control of Noise from Commerce, Industry and Trade* (SEPP N1). The provisions of Clause 22.05 (Interface Uses Policy) will be met.

*Loading and unloading*

234. There is no provision for on-site loading and unloading for the shop component; this is similar to conditions for the majority of shops within the City of Yarra, with on-street loading zones available. In this instance, a loading zone is located on St Georges Road, approximately 20m to the north of the site. The use of this loading zone is considered appropriate, given the limited scale of the shop proposed.

*Equitable Development*

235. Given the planning controls on the surrounding land and the context of the location, it is anticipated that future development may occur on both adjacent sites, although the heritage classification of the northern site will limit the scale of future development on this land.
236. The extent of on-boundary walls along the southern boundary will allow future development to replicate this detail, with the lightcourts in the centre of the site generous enough to allow adjacent on-boundary construction if proposed, without impacting daylight to the adjacent rooms to an unreasonable extent. It is anticipated however that any future development on this site would be encouraged to incorporate matching lightcourts in response.
237. The on-boundary walls to the rear of the northern boundary would also allow future development on the northern site (at the rear), without impacting any north-facing windows within the subject building. This outcome is considered acceptable.

Car parking, bicycle parking & traffic

238. Under the provisions of Clause 52.06-5 of the Scheme, the development's parking requirements are as follows:

Proposed Use	Quantity/ Size	Statutory Parking Rate	No. of Spaces Required	No. of Spaces Allocated	Reduction required
Two-bedroom dwellings	8	1 space to each dwelling	8	12 (1 for each dwelling)	0
Three-bedroom dwelling	4	2 spaces to each dwelling	8		4
Shop (Retail)	130m <sup>2</sup>	3.5 spaces to each 100 m <sup>2</sup> of leasable floor area	4	1	3
Total			20	13	7

239. Based on the above, the development has a parking shortfall of 7 spaces, with one space allocated to each of the dwellings and 1 space to the shop. All of the 2-bedroom dwellings meet the statutory requirement, with a reduction of 1 space required for each 3-bedroom residence.

240. Before a requirement for car parking is reduced, the applicant must satisfy the Responsible Authority that the provision of car parking is justified having regard to the assessment requirements of Clause 52.06-6.

*Availability of Car Parking.*

241. The subject site is located within an area containing predominantly time-restricted car parking, with periods ranging from 1 to 4 hours. Within the residential neighbourhood to the west, a large proportion of parking is restricted by permits, with 2-hour parking extending along both sides of St Georges Road. It is noted that the development will not result in any loss of on-street car parking, with all vehicle access restricted to the laneway at the rear.
242. To ascertain parking availability within the surrounding area, Ratio Consultants undertook a parking occupancy survey on Thursday 31 August 2017 between 9am and 8pm and on Saturday 2 September 2017, between 11am and 4pm. The survey area encompassed sections of St Georges Road to the north and south of the site, as well as sections of Clausen Street and Barkly Street. Whilst the surveys were conducted a year ago, there has not been any recent apartment developments occupied since this time and therefore no substantial changes to car parking availability within the area would have occurred. The time and extent of the survey was considered appropriate by Council Engineers.
243. A parking inventory of 108 to 150 publicly available parking spaces (based on different restrictions) was identified on the Thursday, with parking occupancy ranging from 55% to 78%. The peak occupancy of 78% occurred at midday, with 30 available car parking spaces found within the survey area at this time. On the Saturday, the parking inventory was between 149 to 150 spaces, with peak occupancy occurring at 11am. At this time, 72% of the car parking spaces were occupied, with a total of 41 spaces available.
244. This data suggests that short-stay parking, associated either with the shop or visitors to the residential component, could be accommodated on-street.

*Appropriateness of Providing Fewer Spaces than the Likely Parking Demand*

245. Each of the 3-bedroom dwellings will be provided with one on-site car parking space. The traffic report noted that data from the Australian Bureau of Statistics (ABS) Census in 2011 indicated that the average car ownership for 3-bedroom dwellings in Fitzroy North was 1.5 cars. This data suggests that 26% of 3-bedroom dwellings in Fitzroy North did not own a vehicle and that there is a market for a reduced car parking provision for this size of dwelling. It is considered that the provision of one car parking space for each dwelling is acceptable, particularly with regard to the site's access to public transport services, shops and facilities.
246. The additional reduction in car parking being sought by the proposal is supported by the following:
- (a) The site is located within an area which consists of a number of retail, entertainment and commercial premises, with the majority of these uses offering no on-site car parking provision;
  - (b) Visitors to the site might combine their visit by engaging in other activities or business whilst in the area;
  - (c) The site has direct access to tram services along St Georges Road. Bus services are within walking distance from Holden Street and Miller Street.
  - (d) The site has very good connectivity to the Principal Bicycle Network. The Merri Creek & Capital City Bicycle Trails are located approximately 250m to the south of the site, with on-road bicycle lanes located along St Georges Road, Holden Street and other local streets within proximity to the site.
  - (e) The Traffic Report indicates that 8 car-share vehicles are located within 800m of the land.

- (f) It is considered that the shop would heavily rely on walk-up trade. Pedestrians in the area and employees of local businesses would account for the majority of customers throughout the day;
- (g) The lack of opportunities to park on-street in the surrounding area would be a disincentive for employees of the shop to commute to work by car, with the short-term parking restrictions allowing customers to park for limited periods if necessary;
- (h) The proposed development is considered to be in line with the objectives contained in Council's *Strategic Transport Statement*. The site is ideally located with regard to sustainable transport alternatives and the reduced provision of on-site car parking would potentially discourage private motor vehicle ownership and use.
- (i) Practice Note 22 – *Using the Car Parking Provisions* indicates that car parking should be considered on a centre-basis rather than on a site/individual basis. This is applicable to activity centres, such as St Georges Road, where spare on-street car parking capacity would be shared amongst sites within the activity centre.
- (j) The occupants of the new dwellings will not be eligible to apply for on-street residential or visitor car parking permits.

247. The reduction in the car parking requirement is considered appropriate in the context of the development and the surrounding area.

#### *Bicycle parking*

248. The proposal generates a demand of 3 statutory spaces and provides a total of 14 spaces, thereby exceeding the requirement outlined at clause 52.34 of the Scheme. Bicycle parking spaces are proposed in two separate storage areas, with a mixture of wall mounted and horizontal spaces provided. The provision of hanging and horizontal spaces accords with the requirements of AS2890.3-2015, with Clause 2.1(e) of this Standard noting that a minimum of 20% of the bicycle spaces must be provided in the form of horizontal rails.

249. The bicycle spaces have not been specifically allocated, therefore residential visitors would be able to use these spaces if required. However as noted previously, a condition can be added to any permit issued to ensure that this occurs. This condition will ensure that the statutory rate with regards to visitor bicycle parking is met.

250. Whilst shower and locker facilities are not provided for the shop, this outcome is acceptable given the limited scale of this use. Customers of the shop would use the shared bicycle parking resources provided along St Georges Road.

#### *Traffic*

251. To determine the traffic generated by the development, the following rates were anticipated within the Traffic Report.

Proposed Use	Adopted Traffic Generation Rate	Daily Traffic	Peak Hour	
			AM	PM
Residential Dwellings (Allocated with 1 space)	4.0 trips per dwelling per day (12 dwellings) Peak hour volume is 10% of daily volume	48	4.8	4.8
Shop (Retail)	20 trips per 100 square metres of leasable floor area (130 m <sup>2</sup> )	27	2.7	2.7
Total		75	7.5	7.5

252. This level of traffic is considered to be low, and it is unlikely that the traffic associated with the development would have a discernible impact upon traffic levels in the laneway, Barkly Street or Clauscen Street. The primary use of the ROW used to access the garage is for vehicles, with no principal access for pedestrians to any adjacent dwelling provided from this interface. Increased use of the laneway by vehicle traffic is therefore considered reasonable, with this outcome supported Council's Traffic Engineers.

Other Matters

253. A number of additional recommendations were highlighted in Council's Engineering comments and have not as yet been addressed. These include the following;
- (a) *Upon the completion of all building works and connections for underground utility services,*
    - (i) *The footpath along the property's St Georges Road road frontage must be stripped and re-sheeted to Council's satisfaction and at the Permit Holder's cost. The footpath must have a cross-fall of 1 in 40 or unless otherwise specified by Council.*
    - (ii) *The vehicle crossing servicing the Right of Way is to be reconstructed to the full width of the Right of Way in accordance with Council's Infrastructure Road Materials Policy, Councils Standard Drawings and Engineering requirements.*
    - (iii) *Prior to the reconstruction of the vehicle crossing, the applicant must liaise with Council's Open Space unit to manage the pruning of the tree root from the nearby tree in Barkly Street.*
254. Given the extent of works proposed, the addition of the first recommendation as a permit condition is considered reasonable. It is noted that the re-sheeting of the footpath would impact an existing street tree in front of the site. With this in mind, the application was internally referred to Council's Open Space Unit, with the following comments received.
- (a) A bond of \$5,000 should be applied to the street tree during construction works;
  - (b) Appropriate tree protection measures, such as solid hoarding, will be required during the construction works; and,
  - (c) These measures must be installed and approved prior to any development of the site.
255. These requirements will be incorporated into conditions of the permit, should one be issued.
256. The remaining two recommendations are considered to be onerous. The ROW at the rear of the land is used by a large number of commercial properties addressing St Georges Road, with access also provided to a number of dwellings. It is not considered reasonable for this shared resource to be fully reconstructed by the Permit Applicant.
257. The remaining comments regarding further infrastructure works, with regards to the relocation of service poles/pits and the provision of drainage, will be captured in standard conditions placed on the planning permit.
258. The Engineering comments also specified that the proposed canopy along the St Georges Road frontage must be setback a minimum of 750mm from the face of kerb, with VicRoads requesting the inclusion of the following permit condition:
- (a) *Prior to the commencement of the development, the owner of the land must enter into an agreement with the Department of Environment, Land, Water and Planning (DELWP) pursuant to Section 138(A) of the Land Act 1958 for the elements of the approved development that project more than 300mm beyond the land's St Georges Road street boundary (i.e. the canopies, fixed shading devices, awnings etc), to*

*indemnify the Crown in relation to any claim or liability arising from the projections within the St Georges Road, road reserve. This condition does not apply where written confirmation is obtained from DELWP that the above agreement is not required.*

259. These requirements will be added to the permit, should one be issued.

260. It is noted that the Engineering comments raised issue with an architectural feature at the main pedestrian door which appears to encroach into the St Georges Road footpath. This feature was included in the original plans, and has been removed in all subsequent iterations.

Objector Concerns

261. *Height of the proposed development;*

- (a) The height and scale of the proposed development have been discussed within paragraphs 116 to 133 of this assessment.

262. *Heritage concerns;*

- (a) Heritage matters have been discussed at paragraphs 134 to 145 of this report.

263. *Potential off-site amenity impacts (Overshadowing/Overlooking);*

- (a) All potential off-site amenity impacts have been discussed at paragraphs 155-156 and 226 to 229 of this assessment.

264. *Reduction in car parking;*

- (a) Car parking issues have been discussed within paragraphs 238 to 247 of this report.

265. *Traffic issues along laneway and possible conflict with pedestrian movements;*

- (a) These issues have been discussed within paragraphs 148 to 154 and 251 to 252 of this report.

266. *Additional demand on local infrastructure;*

- (a) These issues have been discussed in paragraph 165 of this report.

267. *Increase in vacant shops.*

- (a) The use of the site as a shop does not require planning approval, with this use a 'Section 1 – no permit required' use within the C1Z.

**Conclusion**

268. The proposed development is considered to demonstrate a high level of compliance with policy objectives contained within the State and Local Planning Policy Framework. The proposal, subject to conditions recommended, is an acceptable planning outcome that demonstrates clear compliance with the relevant Council policies.

**RECOMMENDATION**

That having considered all objections and relevant planning documents, the Committee resolves to issue a Notice of Decision to Grant a Permit (PLN17/0789) for demolition of the existing building for the construction of a mixed-use multi-storey building, and use of the land for dwellings, with a

reduction in the car parking requirement at 377 St Georges Road, Fitzroy North subject to the following conditions:

1. Before the use and development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of this permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the decision plans, prepared by Point Architects, dated 30/05/2018 (TP006, TP102-TP107, TP200-202, TP400) but amended to include:
  - (a) The details as shown in the sketch plans (received by Council 24 October 2018) as follows;
    - (i) The colour of the third and fourth-floor east-facing balcony details and roofing amended to off-white, to match the colour of the proposed side boundary walls;
    - (ii) The fourth-floor balcony roof of Unit 402 reduced in depth, to a maximum depth of 1.5m from the building façade;
    - (iii) The black vertical architectural battens on the northern and southern side of the third and fourth-floor east-facing balconies removed.
  - (b) The 'commercial' use for the ground floor space amended to 'shop';
  - (c) One bicycle space to be designated as 'residential visitor parking';
  - (d) An amended demolition plan and proposed ground floor plan to show the correct use (i.e. commercial) of the subject site and the adjacent sites along St Georges Road;
  - (e) The addition of vertical/horizontal lines or a different texture/treatment to the northern and southern boundary walls at third and fourth-floors to provide greater visual interest;
  - (f) A separate recessed entrance to the shop;
  - (g) The removal of the section of brick wall along the front boundary in front of the residential entrance;
  - (h) The residential entry door relocated 1m closer to the front boundary;
  - (i) The finished floor levels along the edge of the concrete slab to be set 40mm higher above the edge of the right-of-way (ROW);
  - (j) The dimensions of the width and headroom clearance of the garage door and floor to ceiling height of the garage;
  - (k) A convex mirror at the entrance to the garage for motorists exiting the site;
  - (l) Notations confirming that all privacy screening within 9m of SPOS to the west, and screening between balconies within the development, be a minimum height of 1.7m and a maximum transparency of 25%;
  - (m) Measures to prevent overlooking of more than 50% of adjacent habitable bedroom windows (with regards to all bedrooms addressing the lightcourts);
  - (n) The internal designs of the ensuite bathrooms to Units 102, 202, 301, 302, 401 & 402 altered to be the adaptable bathroom for these dwellings, as per Standard D17 of Clause 58;

- (o) Storage requirements outlined in Standard D20 of Clause 58 to be demonstrated for Units 101, 102, 103, 202, 301, 302 & 401;
  - (p) A notation on the ground floor plan confirming that the rainwater tank will be connected to all residential toilets;
  - (q) The location of any site services if required (i.e. fire booster cabinet) within the St Georges Road frontage;
  - (r) Amended floor plans and elevations to clearly demonstrate the operability of all habitable room windows;
  - (s) The proposed canopy along the St Georges Road frontage setback a minimum of 750mm from the face of the kerb;
  - (t) Any alterations to the development required by the updated Sustainable Management Plan at Condition 3;
  - (u) Any alterations to the development required by the Acoustic Report at Condition 5;
  - (v) Any alterations to the development required by the updated Waste Management Plan at Condition 9;
  - (w) Any alterations to the development required by the Landscape Plan at Condition 7.
2. The use and development as shown on the endorsed plans must not be altered (unless the Yarra Planning Scheme specifies that a permit is not required) without the prior written consent of the Responsible Authority.
3. Before the use and development commences, 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 permit.

The amended Sustainable Management Plan must be generally in accordance with the Sustainable Management Plan prepared by Sustainable Built Environments and dated 11 September 2017, but modified to include or show:

- (a) Electric bicycle charging facilities;
  - (b) A thermal energy efficiency standard of 7.1 Stars (to match the BESS report);
  - (c) That all dwellings will not exceed the maximum NatHERS annual cooling load specified (30MJ/m2 per annum) for Climate Zone 21 (Melbourne), through the provision of exterior adjustable shading blinds, fins or louvers if required.
4. The provisions, recommendations and requirements of the endorsed Sustainable Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.
5. Before the use and development commences, an Acoustic Report to the satisfaction of the Responsible Authority must be prepared by a suitably qualified acoustic engineer and must be submitted to and approved by the Responsible Authority. When approved, the Acoustic Report will be endorsed and will form part of this permit. The Acoustic Report must assess the following:
- (a) Tram and traffic noise impacts on the internal amenity of dwellings within the development;
  - (b) Potential noise impacts from the car stacking systems to the proposed first-floor dwellings above;
  - (c) Potential noise impacts from mechanical equipment/air conditioning units to all dwellings within the development.

6. The provisions, recommendations and requirements of the endorsed Acoustic Report must be implemented and complied with to the satisfaction of the Responsible Authority.
7. Before the use and development commences, a Landscape Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Landscape Plan will be endorsed and will form part of this permit. The Landscape Plan must:
  - (a) show the type, location, quantity and botanical names of all proposed plants within the green wall; and
  - (b) provide details on how the green wall will be maintained, to the satisfaction of the Responsible Authority.
8. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, 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.
9. Before the use and development commences, an amended Waste Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Waste Management Plan will be endorsed and will form part of this permit. The amended Waste Management Plan must be generally in accordance with the Waste Management Plan prepared by Ratio Consultants and dated 12 September 2017, but modified to include:
  - (a) The proposed 'office' use altered to 'shop' use, with any associated changes to the waste levels generated by these different uses;
  - (b) Dimensions of the bins and total area of bin storage room in order to confirm that all bins will fit and able to be manoeuvred;
  - (c) Details of responsibility for bin cleaning;
  - (d) Details confirming that all bin collections will be undertaken via private collection from the rear ROW. Bins must be collected and returned immediately to the bin storage room by the private contractor;
  - (e) Swept path diagrams demonstrating movements of the bin collection vehicle within the rear ROW.
10. The provisions, recommendations and requirements of the endorsed Waste Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.
11. 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 the reconstruction of the footpath immediately outside the property's St Georges Road frontage if required by the Responsible Authority):
  - (a) at the permit holder's cost,
  - (b) to the satisfaction of the Responsible Authority.
12. Except with the prior written consent of the Responsible Authority, Council assets must not be altered in any way.
13. 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.

14. Before the development commences, the permit holder must provide a security bond to the Responsible Authority to secure the street tree adjacent to the site along St Georges Road ("bonded works"). The security bond would cover the amenity value of the tree and:
  - (a) is to be \$5,000;
  - (b) must be provided in a manner, and on terms, to the satisfaction of the Responsible Authority; and
  - (c) may be held by the Responsible Authority until the construction works are completed to the satisfaction of the Responsible Authority.

Once the construction works are completed to the satisfaction of the Responsible Authority, the Responsible Authority will inspect the tree and provided it is found to be in good condition, the security bond will be refunded to the permit holder.

15. Before the development commences, a Tree Management Plan to the satisfaction of the Responsible Authority must be prepared by a suitably qualified Arborist and must be submitted to and approved by the Responsible Authority. When approved the Tree Management Plan will be endorsed and will form part of this permit. The Tree Management Plan must make recommendations for:
  - (a) the protection of the street tree adjacent to the site along St Georges Road
    - (i) pre-construction; and
    - (ii) during construction.
  - (b) the provision of any barriers to the satisfaction of the Responsible Authority.
16. The provisions, recommendations and requirements of the endorsed Tree Management Plan must be complied with and implemented to the satisfaction of the Responsible Authority.
17. 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 car park, shop and pedestrian 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.
18. Before the development 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.
19. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, all new on-boundary walls must be cleaned and finished to the satisfaction of the Responsible Authority.
20. Before the building is occupied, any wall located on a boundary facing public property must be treated with a graffiti proof finish to the satisfaction of the Responsible Authority.
21. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, the car stackers must be installed in accordance with the manufacturer's specifications by a suitably qualified person. The car stackers must be maintained thereafter to the satisfaction of the Responsible Authority.
22. Finished floor levels shown on the endorsed plans must not be altered or modified without the prior written consent of the Responsible Authority.

23. The amenity of the area must not be detrimentally affected by the use or development, including through:
  - (a) the transport of materials, goods or commodities to or from land;
  - (b) the appearance of any buildings, works or materials;
  - (c) the emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or
  - (d) the presence of vermin.to the satisfaction of the Responsible Authority.
24. The use and development must comply at all times with the State Environment Protection Policy – Control of Noise from Commerce, Industry and Trade (SEPP N-1).

VicRoads condition 25

25. Prior to the commencement of the development, the owner of the land must enter into an agreement with the Department of Environment, Land, Water and Planning (DELWP) pursuant to Section 138(A) of the *Land Act* 1958 for the elements of the approved development that project more than 300mm beyond the land's St Georges Road street boundary (i.e. the canopies, fixed shading devices, awnings etc), to indemnify the Crown in relation to any claim or liability arising from the projections within the St Georges Road, road reserve. This condition does not apply where written confirmation is obtained from DELWP that the above agreement is not required.
26. Before the 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 permit. The plan must provide for:
  - (a) a pre-conditions survey (dilapidation report) of the land and all adjacent 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) stormwater 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 refuelling 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;
- 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.
- 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;
  - (c) Sundays, ANZAC Day, Christmas Day and Good Friday at any time.
- 29. This permit will expire if:
  - (a) the development is not commenced within two years of the date of this permit;
  - (b) the development is not completed within four years of the date of this permit;
  - (c) the use is not commenced within five years of the date of this permit.

The Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires or within six months afterwards for commencement or within twelve months afterwards for completion.

Notes:

A building permit may be required before development is commenced. Please contact Council's Building Services on 9205 5585 to confirm.

This site is subject to a Heritage Overlay. A planning permit may be required for any external works

Provision must be made for drainage of the site to a legal point of discharge. Please contact Council's Building Services on 9205 5585 for further information.

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 Council property will be accepted.

**All future property owners, residents, employees and occupiers residing within the development approved under this permit will not be permitted to obtain resident, employee or visitor parking permits.**

In accordance with the Yarra Planning Scheme, a 4.5 per cent public open space contribution will apply in the event of the subdivision of the land.

A local law permit (e.g. Asset Protection Permit, Road Occupation Permit) may be required before development is commenced. Please contact Council's Construction Management Branch on Ph. 9205 5585 to confirm.

**CONTACT OFFICER:** Lara Fiscalini  
**TITLE:** Senior Statutory Planner  
**TEL:** 9205 5372

**Attachments**

**1** PLN17/0789 - 377 St Georges Road, Fitzroy North - Decision Plans

- 2** PLN17/0789 - 377 St Georges Road, Fitzroy North - Amended Sketch Plans
- 3** PLN17/0789 377 St Georges Road, Fitzroy North - Urban Design Advice
- 4** PLN17/0789 - 377 St Georges Road, Fitzroy North - Urban Design comments on Amended Plans
- 5** PLN17/0789 - 377 St Georges Road Fitzroy North - Heritage advice
- 6** PLN17/0789 - 377 St Georges Road, Fitzroy North - Heritage Advice on amended plans
- 7** PLN17/0789 - 377 St Georges Road, Fitzroy North - Street Tree advice
- 8** PLN17/0789 - 377 St Georges Road Fitzroy North - Engineering comments
- 9** PLN17/0789 377 St Georges Road, Fitzroy North - ESD comments
- 10** PLN17/0789 - 377 St Georges Road, Fitzroy North - WMP referral comments

---

**1.4 5 Park Drive, Clifton Hill - PLN17/0648 - Amendment to a Section 173 Agreement**

---

## **Executive Summary**

### **Purpose**

1. This report provides Council with an assessment of a planning application which proposes to amend the Section 173 Agreement (Dealing No. W900947G) that applies to land at No. 5 Park Drive, Clifton Hill. The Section 173 Agreement relates to Planning Permit 981449 which approved "*Residential subdivision incorporating a Building Envelope Plan and Design Guidelines and removal of trees*" on 4 August 1999 and controls, as relevant, the building height and number of storeys of dwellings within the Park Drive Estate.
2. This report recommends approval of a variation to the Section 173 Agreement by entering into a supplemental agreement with the landowners of No. 5 Park Drive, Clifton Hill.

### **Key Planning Considerations**

3. Section 178B(1) of the *Planning and Environment Act 1987* (the Act) is relevant to this application as it sets out the matters to be considered in assessing a proposal to amend or end an agreement. Specifically, Section 178B(1) requires the responsible authority to consider the following:
  - (a) the purpose of the Section 173 Agreement;
  - (b) the purpose of the amendment;
  - (c) whether any change in circumstances necessitates the amendment;
  - (d) whether the amendment would disadvantage any person, whether or not a party to the Section 173 Agreement;
  - (e) the reasons why the responsible authority entered into the Section 173 Agreement;
  - (f) if the amendment is to remove land from the application of the agreement, whether the land is subject to any further liability under the agreement;
  - (g) any relevant permit or other requirements the land is subject to under the *Subdivision Act 1988*; and
  - (h) any other prescribed matter.
4. There are no relevant planning considerations in the Yarra Planning Scheme specifically related to the approval sought in this instance.

### **Key Issues**

5. The key issues for Council in considering the proposal relate to:
  - (a) Section 178B(1) of the Act; and
  - (b) objector concerns.

### **Objector Concerns**

6. Six (6) objections were received to the application, raising issues (summarised) as follows:
  - (a) Loss of local amenity.
  - (b) Loss of certainty over the nature of built form and possibility of inappropriate development in the Park Drive Estate.
  - (c) The "overturn" of a legal agreement which was made between Council, local residents and developer to maintain a low-rise, controlled development in the Park Drive Estate.

## **Conclusion**

7. Based on the following report, the application is considered to be appropriate and should therefore be supported, subject to a supplemental agreement between Council and the landowners of No. 5 Park Drive, Clifton Hill.

---

**1.4            5 Park Drive, Clifton Hill - PLN17/0648 - Amendment to a Section 173 Agreement**

---

Trim Record Number: D18/156874

Responsible Officer: Senior Co-ordinator Statutory Planning

**Proposal:** Amendment to Section 173 Agreement W900947G  
**Existing use:** Dwelling  
**Applicant:** TP Legal Solicitors  
**Zoning / Overlays:** Neighbourhood Residential Zone (Schedule 1)  
                                     Environmental Audit Overlay  
                                     Environmental Significance Overlay (Schedule 2)  
**Date of Application:** 10/08/2017  
**Application Number:** PLN17/0648

**Planning History**

*Planning Permit 981449*

8. Planning Permit 981449 was issued on 4 August 1999 for *“Residential subdivision incorporating a building envelope plan and decision guidelines and removal of trees”* at Crown Allotment 44 Walker Street, Clifton Hill.
9. The planning permit granted approval for a 27-lot subdivision of Crown land previously used by Council as a nursery site, which subsequently created land now known as Nos. 1-11 (odd and even numbers) and Nos. 13-33 (odd numbers) Park Drive and Nos. 101-109 (odd numbers) Walker Street, including No. 5 Park Drive (the subject site). Collectively, these subdivided lots are known as the Park Drive Estate.
10. The endorsed plans of the planning permit include a Building Envelope Plan, which contains a building footprint on each of the 27 lots and a maximum height of two storeys (7.5m above ground level) for each dwelling, and Design Guidelines, which provide guidelines on the building envelope plan, maximum heights, fences, building facades, windows, balconies, roof terraces and garage doors.
11. Condition 20 of the planning permit required the owners of the land to enter into a Section 173 Agreement. This resulted in Agreement W900947G (as amended) being registered on title of the land at Crown Allotment 44 Walker Street (or also known as No. 101 Walker Street in the agreement) on 10 July 2000. Following the subdivision, the agreement carried over to the created lots, which includes the subject site (No. 5 Park Drive).
12. An amendment application to this permit, lodged to Council on 18 February 2015, sought to amend the endorsed 'Design Guidelines' and 'Subdivision and Building Envelope Plan' approved under the permit to enable a third-storey addition to the approved dwelling. This application was refused by Council on 19 November 2015 on the following grounds:
  - (a) *“Planning Permit 981449 is spent as the permitted subdivision has been completed and therefore, Council does not have power to amend the endorsed Design Guidelines or endorsed Subdivision and Building Envelope Plan.”*

*Planning Permit PLN14/1055*

13. Planning Application PLN14/1055 (which was lodged to Council on 14 November 2014 and assessed concurrently with Amendment Application 981449.01) proposed the *construction of a third-storey extension to an existing double-storey dwelling on land in the Neighbourhood Residential Zone – Schedule 1; and construction of a third-storey extension to an existing double-storey dwelling on a land in the Environmental Significance Overlay – Schedule 2*. The application was refused by Council on 19 November 2015 on the following grounds:
  - (a) *“The height of the development will not fit in with the existing and preferred neighbourhood character in the area and fails to comply with clauses 54.02-1 (Neighbourhood Character), 54.03-2 (Building Height), 22.10-3.2 (Urban form and character) and 22.10-3.3 (Setbacks & building heights).”*
14. An application for review of Council’s decision to refuse to grant a planning permit for Application PLN14/1055 was lodged at VCAT by the applicant on 8 January 2016. Council’s decision to refuse the application was overturned and Planning Permit PLN14/1055 was subsequently issued at the direction of VCAT (the Tribunal) on 18 May 2017. Condition 1 of Planning Permit PLN14/1055 requires:
  - (a) *“Prior to commencement of development under this permit, the section 173 Agreement recorded in W900947G on Lot 4 of Plan of Subdivision 432125U must be removed or amended to allow the development of Lot 4 of Plan of Subdivision 432125U in accordance with this planning permit PLN14/1055.”*
15. Planning Permit PLN14/1055 is of direct relevance to this amendment application

*Other planning permits on the site*

16. Planning Application PL01/0807 for *the construction of a dwelling* was refused by Council on 9 November 2001.
17. Planning Permit PL02/0125 issued on 21 June 2002 approved *the construction of a dwelling*. The permit was acted on and the approved double-storey dwelling completed.
18. Planning Permit PL08/0596 issued on 17 October 2008 approved the *installation of bluestone paving and steel pedestrian cross-over (partial demolition)*.

**Background**

19. The application was received by Council on 10 August 2017.
20. Following a review by Council’s planning officers, the submitted application was discussed at Council’s internal Development Assessment Panel (DAP) meeting on 8 September 2017, where DAP resolved to agree in-principle to the proposal to amend the Section 173 Agreement. A letter was sent on 8 September 2017 to the owners of the subject site as notification of Council’s in-principle support pursuant to Section 178A(3) of the Act.
21. The application was advertised and six (6) objections were received.
22. A consultation meeting was held on 30 January 2018 and was attended by three (out of the six) objectors and Council planning officers. No ward councillors were in attendance. The applicant also did not attend; hence, the meeting only facilitated a discussion of objectors’ concerns. No resolutions were reached at the meeting.
23. In light of Council’s in-principle support of the application, Council’s legal advisor prepared a draft supplemental agreement to give effect to the substance of the application (i.e. to vary the obligations in Agreement W900947G to the extent of allowing the construction of the third-storey dwelling addition at the subject site).

The supplemental agreement is intended to give effect to condition 1 Planning Permit PLN14/1055 imposed by the Tribunal in a clearer manner than would be achieved by inserting a new clause into the existing agreement, as proposed by the applicant.

24. The draft supplemental agreement sets out the following obligations:

#### **6.1 “Agreement is supplemental to the First Agreement**

*The Parties agree that:*

- 6.1.1 *this Agreement\* is supplemental to the First Agreement\* [Agreement W900947G];*
- 6.1.2 *this Agreement\* must be read in conjunction with the First Agreement\*;*
- 6.1.3 *other than as set out in clause 6.2 of this Agreement\*, the First Agreement\* is unchanged and all obligations of the First Agreement\* continue to apply.*

#### **6.2 Development of the Subject Land**

*The Owner\* covenants and agrees the development of the Subject Land\* may only contravene clauses 3.2.3 and 3.2.7 of the First Agreement\* to the extent authorised by the Planning Permit\* [PLN14/1055] as shown in the Endorsed Plan\*.”*

25. Note: The definitions of words marked with an asterisk (\*) above are contained in the draft supplemental agreement in the attachment to this report.
26. The draft supplemental agreement was not advertised. Council’s decision to enter into a supplemental agreement (as opposed to inserting a new clause into the existing agreement) falls within the ambit of Council’s ability to “decide to amend an agreement in a matter that is not substantively different from the proposal” under section 178E(3)(b) of the Act.
27. As confirmed by Council’s legal advisors, entering into a supplemental agreement relates to the form of the agreement. It does not in any way alter the substance of the agreement proposed by the applicant and is not considered to be ‘substantively different’ from the applicant’s proposal; hence, it does not require re-advertising under section 178E(4) of the Act.
28. A copy of the draft supplemental agreement was sent along with the IDAC invitations to all parties of the Agreement and objectors to the application.

### **Existing Conditions**

#### Subject Site

29. The subject site is located on the western side of Park Drive, to the south of Walker Street, in Clifton Hill.
30. The subject site is irregular in shape with a northern boundary length of 7m, a western boundary length of 21.4m and an eastern boundary length of 24m. The southern boundary (diagonal) is a length of 7.5m. The total site area is 160sqm.
31. The subject site is occupied by a double-storey rendered brick dwelling with a flat roof (constructed as part of Planning Permit PL02/0125). This dwelling is primarily constructed on the western boundary (with the exception of a 2m wide by 1m deep light court) and on the eastern and northern boundaries (with the exception of a 1m deep driveway and an 2.7m by 3m alcove entry). Secluded private open space is located to the south of the dwelling.

Planning Permit PLN14/1055 issued on 18 May 2017 approved the construction of a third-storey to this dwelling, which comprise of an additional bedroom, bathroom and terrace. This approved development has not commenced.

32. Entry to the dwelling (both vehicular and pedestrian) is from the northernmost eastern side of the subject site from Park Drive, as shown in the image below (the subject site is marked with a red star).



#### *Title*

33. The title plan submitted with the application shows the subject site is affected by a restrictive covenant (Covenant PS432125U) and a Section 173 Agreement (Agreement W900947G).

#### *Restrictive Covenant*

34. Covenant PS432125U applies to all 27 residential lots within the Park Drive Estate. The covenant contains restrictions which prevent the following (as summarised):
- (a) the construction of any dwellings of maximum 7.5m outside the relevant hatched areas shown on the title plan;
  - (b) the construction of any single storey buildings of maximum height 4.4m outside the relevant hatched area; and
  - (c) the construction of any buildings or works other than in accordance with the endorsed plans of Planning Permit 981449 or any further planning permit issued by Council for the dwellings within the relevant hatched areas.

#### *Section 173 Agreement*

35. Agreement W900947G applies to all 27 residential lots within the Park Drive Estate. The agreement contains a number of specific obligations which the owners of the land must abide by. Some of the obligations are one-off and have already been met through the subdivision of the parent land (Crown Allotment 44 Walker Street); while others are on-going which continue to have effect on all lots created by the subdivision, including the subject site (No. 5 Park Drive).
36. A summary of the owners specific obligation is provided below:
- (a) acknowledgement of the extent of use and activities associated with the scouts hall to the west and the soccer field forming part of Hall Reserve to the east;
  - (b) limiting development of each lot to a single dwelling;
  - (c) preventing further subdivision of the lots (except for boundary realignments or public acquisitions);
  - (d) requiring buildings to be constructed within the building envelopes and in accordance with an endorsed design guidelines;
  - (e) maintaining pedestrian access to Hall Reserve at the eastern end of Park Drive;
  - (f) maintaining planting in the private open space of each lot;
  - (g) requiring the transfer of a parcel of land to form part of Hall Reserve; and
  - (h) payment of landscaping costs and installation of utility services.
37. More specifically, and of relevance to this application, clause 3 of the Agreement contains the following 'owners obligations':

*3.2 The Owner agrees that:*

...

- 3.2.3 it must not build, construct or erect or cause or permit to be built, constructed or erected any Building on the Subject Land or any part of the Subject Land outside the Building Envelopes;*

...

- 3.2.7 all Buildings must be constructed generally in accordance with the endorsed Design Guidelines to the satisfaction of Council.*

38. "Building Envelopes" is defined in clause 1 of the Agreement to mean:

*the area delineated and identified on the Endorsed Plan as a building envelope or the like.*

39. "Building" is defined in clause 1 of the Agreement as:

*has the same meaning as in the Planning Scheme and includes dwellings, swimming pools, tennis courts and out-buildings.*

40. The endorsed Design Guidelines are those entitled "Park Drive Estate – Walker St Clifton Hill, Design Guidelines Amended 18.5.99". This document contains the following guidelines:

*1. Building Envelopes – Plan*

*The building envelopes indicated on the Subdivision and Envelopes Plan are shown as a maximum plan footprint that cannot be exceeded. Floor plans of a lesser size are permitted as long as minimum setbacks shown on the subdivision and envelopes plan are not reduced. Where shown on plans, balconies may be constructed as non-trafficable roofs to lower storeys. Where shown on plans roofs must be constructed as non-trafficable roofs.*

*2. Building Envelopes – Height*

*The building envelope heights shown on the Building Envelopes and Possible Elevations drawings are the maximum heights permitted for single and two storey structures and no part of any roof parapet or balustrade must not exceed the designated envelope height at any point above natural ground level. The envelope sections shown on the plans are shown as maximum dimensions and ceiling heights and overall heights may be reduced.*

41. This agreement is the subject of this current amendment application.

### **Surrounding Land**

42. The subject site is located within the Park Drive Estate, which consists of Nos. 1-11 (odd and even numbers) and Nos. 13-33 (odd numbers) Park Drive and Nos. 101-109 (odd numbers) Walker Street. The lots within the Park Drive Estate have all been developed with double-storey dwellings. The land surrounding Park Drive Estate include a Scout Hall and child care centre to the west, Quarries Park Reserve to the south, Hall Reserve to the east and single- and double-storey dwellings to the north across Walker Street.

43. The lots immediately adjoining the subject site (No. 5 Park Drive) can be described as follows:

#### *North*

44. Immediately to the north of the subject site is No. 3 Park Drive, which contains a double-storey dwelling orientated east towards Park Drive. The dwelling has a first floor balcony located approximately 2.0m from the boundary shared with the subject site. A ground floor courtyard is located to the west of the dwelling.

#### *East*

45. Immediately to the east of the subject site is No. 7 Park Drive, which also contains a double-storey dwelling orientated north towards Park Drive and constructed to both side boundaries. A ground floor courtyard is located to the south of the dwelling.

#### *West*

46. Immediately to the west of the subject site is No. 89-95 Walker Street, which is used as a Scout Hall. The Scout Hall building is currently under renovation, with the former single-storey building demolished to be replaced by a new single-storey hall (with mezzanine level) as approved under was developed Planning Permit PLN14/0529 issued on 21 October 2015. The permit has a development completion date of 21 October 2019.

#### *South*

47. Immediately to the south of the subject site is the Quarries Reserve (parkland).

### **The Proposal**

48. The application seeks to amend Section 173 Agreement W900947G by inserting a new clause (Clause 3.3) to serve as an additional owners obligation in the agreement that applies to the subject site.

49. The new clause is proposed to read as follows:

*“Lot 4 may be developed in the manner allowed by planning permit PLN14/1055. To the extent that the development of lot 4 pursuant to planning permit PLN14/1055 might otherwise have contravened any provision of this Agreement, this clause 3.3 shall take precedence over any other such provision.”*

50. The application seeks to give effect to Condition 1 of Planning Permit PLN14/1055, which is to vary the obligations of the agreement to the extent of allowing the construction of a third-storey dwelling extension as approved by Planning Permit PLN14/1055.

### **Provisions of the Planning and Environment Act 1987 (the Act)**

51. Section 178A of the Planning and Environment Act 1987 (the Act) is relevant to the assessment of this application. Section 178A allows for an owner of land, or a person who has entered into an agreement under Section 173 in anticipation of becoming the owner of the land, to apply to the responsible authority for agreement to a proposal:

- (a) *to amend an agreement in respect of that land; or*
- (b) *to end an agreement in respect of that land, wholly or in part or as to any part of that land.*

52. The application seeks to amend a Section 173 agreement under Section 178A(1)(a) of the Act.

53. Section 178B of the Act set out the matters to be considered in considering a proposal to amend or end an agreement. Specifically, Section 178B(1) states:

*In considering a proposal under section 178A to amend an agreement, the responsible authority must consider:*

- (a) *the purpose of the agreement; and*
- (b) *the purpose of the amendment; and*
- (c) *whether any change in circumstances necessitates the amendment; and*
- (d) *whether the amendment would disadvantage any person, whether or not a party to the agreement; and*
- (e) *the reasons why the responsible authority entered into the agreement; and*
- (f) *if the amendment is to remove land from the application of the agreement, whether the land is subject to any further liability under the agreement; and*
- (g) *any relevant permit or other requirements the land is subject to under the Subdivision Act 1988; and*
- (h) *any other prescribed matter*

54. There are no relevant planning considerations in the Yarra Planning Scheme (the Scheme). The Scheme does not contain any permit requirements for amending a Section 173 Agreement.

### **Advertising**

55. The application was advertised in accordance with Section 178C of the Act by way of sending 43 letters to all parties to the agreement and other property owners and occupiers surrounding Park Drive Estate and the display of a sign to the rear of the subject site, facing Quarries Park.

56. A total of six (6) objections were received, raising concerns on the following matters (as summarised):

- (a) Loss of local amenity.

- (b) Loss of certainty over the nature of built form and possibility of inappropriate development in the Park Drive Estate.
  - (c) The “overturn” of a legal agreement which was made between Council, local residents and developer to maintain a low-rise, controlled development in the Park Drive Estate.
57. As previously discussed in the Background section of this report, the draft supplemental agreement was not advertised as entering into a supplemental agreement (as opposed to inserting a new clause into the existing agreement) falls within the ambit of Council’s ability to “decide to amend an agreement in a matter that is not substantively different from the proposal” as provided in section 178E(3)(b) of the Act. Entering into a supplemental agreement in the terms prepared by Council’s legal advisors is not ‘substantively different’ from the applicant’s proposal; hence, it does not require re-advertising under section 178E(4) of the Act.

## Referrals

58. The application was not required to be referred to any external Referral Authorities.
59. Council’s planning officers sought advice from Council’s legal advisors regarding the proposal to insert a new clause into the agreement. They advised that entering into a supplemental agreement would be a more appropriate legal mechanism to give effect to the substance of the application (i.e. to vary the obligations in Agreement W900947G to the extent of allowing the construction of the third-storey dwelling addition at the subject site in accordance with Planning Permit PLN14/1055).

## OFFICER ASSESSMENT

60. The considerations for this application are:
- (a) the requirements at Section 178B(1) of the Act; and
  - (b) objector concerns.

### The requirements at Section 178B(1) of the Act

61. An assessment against each of the considerations set out at Section 178B(1) of the Act is provided below:
- (a) The purpose of the agreement*
62. The Agreement was entered into in accordance with condition 20 of Planning Permit 981449, which approved the subdivision of the land at Crown Allotment 44 Walker Street, Clifton Hill (parent title).
63. The purpose of the Agreement is to ensure the development outcomes authorised under Planning Permit 981449 continue to survive after the land (Crown Allotment 44 Walker Street) has been subdivided and the permit is ‘spent’. The Agreement contains a number of one-off and on-going owner obligations, which include, as relevant to this application, requiring buildings to be constructed within building envelopes and in accordance with an endorsed design guidelines.
64. The building envelopes and design guidelines set out in the Agreement were put in place to preserve a low-scale built form character for the Park Drive Estate in the context of the surrounding parkland. The building envelopes and design guidelines prohibit the construction of buildings more than two-storeys or 7.5m in height.
65. The proposal, which seeks to amend the Agreement to give effect to Planning Permit PLN14/1055, is not considered to undermine the purpose of the Agreement.

66. The planning merits associated with varying the building envelopes and design guidelines formed the subject of the Tribunal's decision in *Markey v Yarra CC [2017] VCAT 716* (18 May 2017) (**Markey**), in which the Tribunal directed Planning Permit PLN14/1055 be granted.
67. For the reasons set out in *Markey*, the Tribunal determined a third-storey extension at No. 5 Park responds acceptably to the preferred neighbourhood character of the Park Drive Estate. The Tribunal's reasons included (amongst other things) the modest size of the third storey and its limited visibility from Walker Street, Park Drive and adjoining parkland.
68. By imposing condition 1 on Planning Permit PLN14/1055, the Tribunal clearly turned its mind to the purpose of the Section 173 Agreement and determined departing from the two-storey height restriction was acceptable.
69. The planning merits of the departure from the height restriction have been fully and finally resolved by the Tribunal. It is not open to Council to form an alternate view as to the merits of amending the Agreement. Rather, Council is required to vary the Agreement to give effect to the Tribunal's determination.

*(b) The purpose of the amendment*

70. The application seeks to amend the Agreement to give effect to condition 1 of Planning Permit PLN14/1055. Condition 1 was imposed by the Tribunal to ensure the approved development does not breach the Agreement.
71. The purpose of the amendment is, ultimately, to enable the construction of the third-storey dwelling extension at No. 5 Park Drive in accordance with the endorsed plans of Planning Permit PLN14/1055.
72. Importantly, the agreement will only be varied insofar as the specific development approved by the Tribunal contravenes the terms of the Agreement for this particular site.
73. The amendment is intended to vary only two obligations in the Agreement - clause 3.2.3, restricting building height to a maximum of 7.5m as shown in the building envelope plan, and clause 3.2.7, limiting buildings to 2-storeys as part of the endorsed design guidelines - and only to the extent which the approved development is in breach of these obligations.

*(c) Whether any change in circumstance necessitates the amendment*

74. The grant of Planning Permit PLN14/1055 at the direction of the Tribunal necessitates the amendment (to take the form of the supplemental agreement). Condition 1 of the permit expressly requires the Agreement applying to No. 5 Park Drive to be either removed or amended to enable the construction of the development approved by the permit.

*(d) Whether the amendment would disadvantage any person, whether or not a party to the agreement*

75. It is considered the amendment in the form of the supplemental agreement will not disadvantage any person given it simply gives effect to the Tribunal's decision to direct Council grant Planning Permit PLN14/1055. It is important the 'disadvantage' associated with amending the Agreement is not conflated with any 'disadvantage' associated with the merits of allowing the proposed development which formed the subject of Tribunal's decision.
76. Given the amendment is intended only to apply to the specific site at No. 5 Park Drive to enable the particular development approved under Planning Permit PLN14/1055, it is considered reasonable and appropriate any proposed supplemental agreement is drafted in a way that only alleviates the relevant restrictions in relation to No. 5 Park Drive.

77. Council's legal advisor recommends that to give effect to condition 1 of Planning Permit PLN14/1055, it is more appropriate for Council and the landowners of No. 5 Park Drive to enter into a supplemental agreement rather than inserting a new clause into the existing Agreement (as is being proposed).

This allows greater clarity that the varied Agreement relates only to the particular development approved under Planning Permit PLN14/1055 and only affects the subject site. This approach would allow for the existing Agreement which applies to the entire Park Drive Estate to remain otherwise unchanged and for the remainder of the subject site to continue to be bound by the requirements of the existing agreement. Accordingly, this recommendation should be adopted.

78. Given the supplemental agreement would only be between Council and the landowners of No. 5 Park Drive, other parties to the agreement would not be affected by the variation to the agreement. A separate application will be required each time any party to the agreement wish to amend or remove the agreement under Section 178A of the Act and will be assessed on its own merits.
79. Granting this variation to the agreement in the form of the supplemental agreement does not create a precedent for any further amendment to the agreement. It is not predetermined that any further changes to the Agreement would be (or would have to be) supported. Each case would need to be considered on its merits. As the controls within the Scheme presently stand, any other lots within the estate seeking to construct a similar third-storey dwelling extension, for instance, would not be able to do so given the current requirements of the Neighbourhood Residential Zone, which now has mandatory height controls limiting new development to a maximum of two storeys.
80. In essence, the current Scheme provides greater control over the future development of the Park Drive Estate than the former version of the Scheme at the time of the Agreement. Under the current Scheme, the development approved under Planning Permit PLN14/1055 would not be approved. The subject site is located in the Neighbourhood Residential Zone which (by way of Amendment C176 introduced in 30 April 2015) has a mandatory two-storey limit, which cannot be varied under an application for review at VCAT.

*(e) The reasons why the Responsible Authority entered into the agreement*

81. Council entered into the Agreement in 2000 to ensure the use and development of lots within the Park Drive Estate maintain on-going compliance with the conditions of the subdivision permit (Planning Permit 981449) in terms of keeping a low-scale built form character in respect of the adjoining parkland after the land has been subdivided and the subdivision permit is 'spent'.
82. The variation to the Agreement is not considered to undermine the reasons for entering into the agreement given the existing agreement will remain unchanged and, consistent with the recommendation of Council's legal advisor, a supplemental agreement be entered into (rather than submitted amendment request of inserting a new clause into the existing agreement). As previously stated, the supplemental agreement will serve only to enable the particular development approved by Planning Permit PLN14/1055 on the subject site. The approval of Planning Permit PLN14/1055 was not considered to have adverse impacts on the adjoining parkland.

*(f) If the amendment is to remove land from the application of the agreement, whether the land is subject to any further liability under the agreement*

83. The amendment does not propose to remove the land (the subject site) from the Agreement.

*(g) Any relevant permit or other requirement the land is subject to under the Subdivision Act 1988*

84. As discussed above, there are only two permits relevant to this amendment - Planning Permit 981449, which resulted in the creation of the Agreement under condition 20 of the permit; and, Planning Permit PLN14/1055, which requires the amendment or removal of the agreement applying to the subject site under condition 1 of the permit.

*(h) Any other prescribed matter*

85. None.

Objector concerns

86. The majority of the objector concerns have been addressed throughout the report. A summary is however provided below:

*Loss of local amenity*

87. The planning merits in constructing the third-storey extension approved under Planning Permit PLN14/1055 at No. 5 Park Drive was already considered at the time the permit was issued. Council's planning officers, following its full assessment, resolved to refuse the application on the basis that the height of the development was not in keeping with the existing and preferred character of the estate. Council's decision to this application was overturned by the Tribunal as it determined that the particular development at the subject site specifically would not cause a loss of local amenity due to its size and limited visibility from the public realm. It would be futile to revisit the impact of the particular development at No. 5 Park Drive on local amenity when the Tribunal has already done so and resolved to overturn Council's decision on this matter and direct to issue the permit.

*Loss of certainty over the nature of built form and possibility of inappropriate development in the Park Drive Estate;*

88. By entering into a supplemental agreement as recommended by Council's legal advisors, the existing Agreement will continue to be in place for all lots within the Park Drive Estate. Should a three-storey dwelling extension be proposed under current circumstances, it would be prohibited and incapable of support by Council given the mandatory two-storey limit of the Neighbourhood Residential Zone that was introduced into the Scheme on 30 April 2015.
89. Any future application lodged to Council for a dwelling extension on a lot within the Park Drive Estate would be subject to an assessment against the current Scheme, and would need to meet the requirements of the Agreement. Currently there are greater controls in the Scheme, in terms of height and number of storeys that were not in the Scheme and as such were not applicable when Planning Application PLN14/1055 was lodged on 14 November 2014, which benefitted from transitional provisions.

*The "overturn" of a legal agreement which was made between Council, local residents and developer to maintain a low-rise, controlled development in the Park Drive Estate.*

90. Varying the Agreement by way of entering into a supplemental Agreement as recommended by Council's legal advisors is not considered to overturn the existing agreement. Moreover, while the subject site would be bound by the requirements of the existing Agreement and the supplemental agreement, the existing agreement would remain in place for all remaining lots within the Park Drive Estate. In short, the supplemental agreement will only allow the permit holder of No. 5 Park Drive to construct the development approved under the permit.

## Conclusion

Based on the assessment provided in this report, the amendment to the Agreement is considered to be appropriate and should therefore be supported subject to modification, with the existing agreement to remain unchanged and a supplemental agreement entered into between Council and the landowners of No. 5 Park Drive.

## RECOMMENDATION

1. That having considered all the matters set out in Section 178B(1) of the *Planning and Environment Act 1987* and all objections received, the Committee resolves to issue a Notice of Decision to Amend Section 173 Agreement under Section 178E(3)(b) of the Act associated with 5 Park Drive, Clifton Hill, in a manner that is not substantively different from the proposal, as detailed below:
  - (a) Section 173 Agreement W900947G is to remain unchanged.
  - (b) The amendment to the agreement will take effect through a supplemental agreement. In substance, the covenants of the existing s173 agreement will be varied for No. 5 Park Drive, Clifton Hill to give effect to condition 1 of Planning Permit PLN14/1055 (the Permit), issued by Council at the direction of the Victorian Civil and Administrative Tribunal, by allowing the development of the land at No. 5 Park Drive, Clifton Hill to contravene clauses 3.2.3 and 3.2.7 of the existing s173 agreement only to the extent authorised by Planning Permit PLN14/1055.
  - (c) Within three (3) months of the registration of the supplemental agreement on title, the landowners of No. 5 Park Drive, Clifton Hill must provide a copy of title to Council.

**CONTACT OFFICER:** Catherine Balagtas  
**TITLE:** Statutory Planner  
**TEL:** 03 9426 1425

## Attachments

- 1 PLN17/0648 - 5 Park Drive Clifton Hill - Locality Map
- 2 PLN17/0648 - 5 Park Drive Clifton Hill - Section 173 Agreement
- 3 PLN17/0648 - 5 Park Drive Clifton Hill - Supplemental Agreement
- 4 PLN14/1055 - 5 Park Drive Clifton Hill - Planning Permit
- 5 PLN14/1055 - 5 Park Drive Clifton Hill - Endorsed Plan
- 6 981449 - Crown Allotment 44 Walker Street Clifton Hill - Planning Permit
- 7 981449 - Crown Allotment 44 Walker Street Clifton Hill - Endorsed Building Envelope
- 8 981449 - Crown Allotment 44 Walker Street Clifton Hill - Endorsed Design Guidelines
- 9 Markey v Yarra CC [2017] VCAT 716 (18 May 2017) - VCAT Order

- 
- |            |   |
|------------|---|
| <b>1.5</b> | <b>37 - 39 Stewart Street - PLN16/0365.02 - Section 72 Amendment to extend the existing platform (with associated air conditioning units) on the western side of the existing building to a height of 8.3 metres.</b> |
|------------|---|
- 

## **Executive Summary**

### **Purpose**

1. This report provides Council with an assessment of an application at 37 – 39 Stewart Street, Richmond, to amend the endorsed plans and extend an existing steel platform (with an additional 2 associated air conditioning units on it) located on the western side of the office building from a height of 3.7 metres to a height of 8.3 metres above natural ground level.

### **Key Planning Considerations**

2. Key planning considerations include:
  - (a) clause 15.01 – Urban Environment;
  - (b) clause 21.08-10 – Neighbourhoods – Central Richmond;
  - (c) clause 22.02 – Development Guidelines for Sites Subject to the Heritage Overlay;
  - (d) clause 22.05 – Interface Uses;
  - (e) clause 32.04 – Mixed Use Zone; and
  - (f) clause 43.01 – Heritage Overlay

### **Key Issues**

3. The key issues for Council in considering the proposal relate to:
  - (a) Heritage;
  - (b) Interface Uses Policy; and
  - (c) Objector concerns

### **Submissions Received**

4. Six (6) objections were received to the application, raising issues that can be summarised as:
  - (a) visual bulk of the platform and associated air conditioning units;
  - (b) heritage impacts; and
  - (c) noise emissions and pollution from the air conditioning units.

### **Conclusion**

5. Based on the following report, the proposal is considered to comply with the relevant planning policy and should therefore be supported.

**CONTACT OFFICER:**     **Jessica Sutherland**  
**TITLE:**                     **Statutory Planner**  
**TEL:**                        **9205 5365**

---

**1.5      37 - 39 Stewart Street - PLN16/0365.02 - Section 72 Amendment to extend the existing platform (with associated air conditioning units) on the western side of the existing building to a height of 8.3 metres.**

---

Trim Record Number: D18/183880

Responsible Officer: Senior Co-ordinator Statutory Planning

<b>Proposal:</b>	Section 72 Amendment to extend the existing platform (with associated air conditioning units) on the western side of the existing building to a height of 8.3 metres
<b>Existing use:</b>	Offices/ Mixed Use
<b>Applicant:</b>	Glossop Town Planning
<b>Zoning / Overlays:</b>	Mixed Use Zone Heritage Overlay (Schedule 332) Environmental Audit Overlay
<b>Date of Application:</b>	13 July 2018
<b>Application Number:</b>	PLN16/0365.02

### Planning History

1. Planning Permit PLN16/0365 was issued on 12 September 2016 for *change of use to an office, buildings and works including part demolition and a reduction in the car parking requirements*.
2. Planning Permit PLN16/0365 was amended on 17 October 2016 under Section 72 of the Act with plans amended to show the construction of an air-conditioning platform and air condenser unit on the western elevation and louvres on five windows (east and west elevations). The amended permit has been acted on and construction has since completed.
3. Planning Permit Application (PLN18/0697) was submitted to Council on 17 September 2018 for *the use of the ground floor as an office and a waiver to the car parking and bicycle requirements of the Scheme*. The application is currently being processed by Council and a decision had not been made at the time of writing this report.
4. Planning Permit Application (PLN18/0728) was submitted to Council on 27 September 2018 for *the installation of two air-conditioning condensers* located at ground level of the western elevation. The application was exempt from the notice requirements of Section 52 of the *Planning and Environment Act (1987)* pursuant to clause 43.01-4 which exempts air conditioning units from advertising under the Heritage Overlay. And as such the application was not advertised. Planning Permit PLN18/0728 was issued on 8 November 2018. The permit has not been acted on since the time of writing this report.

### Background

5. This application to amend Planning Permit PLN16/0365 was lodged to Council on 13 July 2018. The application was advertised in September 2018 and six (6) objections were received.
6. A consultation meeting was held on 23 October 2018 and was attended by the applicant, two (2) objectors and Council officers. Discussions at the meeting were largely in relation to noise emissions of the existing air-conditioning condensers on the building, and potential noise emissions associated with the proposed air-conditioning condensers that would be placed on the extended platform. No resolution was made at the consultation meeting and no changes were made to the submitted proposal by the applicant, following the consultation meeting.

## **The Proposal**

7. The amendment seeks to make the following changes to plans associated with Planning Permit PLN16/0365 and specifically to the existing platform which is attached (externally) to the western (side) wall of the building as approved by the original permit.
  - (a) An additional level to be added to the existing platform, essentially raising the approved platform by 4.6 metres from 3.7 metres above natural ground level to 8.3 metres above natural ground level.
  - (b) The extended platform will provide space for two additional air conditioning condensers on it (3 air conditioning units are approved on the original platform).
  - (c) Located on the western elevation and visible from Stewart Street, the platform (existing and proposed) protrudes 3 metres from the western wall of the office building.
  - (d) The platform is open and will be constructed of steel.

## **Existing Conditions**

### Subject Site

8. The subject site has two street frontages, Tanner Street to the north and Stewart Street to the south. The site is occupied by two buildings; a single-storey building extending along the western side of the site (addressing Tanner Street) and a four-storey building also fronting Tanner Street.
9. This application specifically relates to the four-storey building fronting Tanner Street. The building is a former factory building, industrial in style, with a saw-tooth roof and composed of red brick. It has a floor area of 1,355sqm and is currently used as offices at the ground and first floor and is currently vacant at the upper levels.
10. Two walkways abut the eastern and western boundaries of the subject site, providing access from Tanner Street through to Stewart Street in the south. Vehicle access to the site is provided via Stewart Street, with at-grade car parking to the south of the four-storey building.
11. The principal heritage façade is to Tanner Street where the four-storey building and abutting single-storey building are built to the street. The building is setback from Stewart Street by 23 metres and is set behind the built form of No. 33 Tanner Street. The buildings western elevation is visible from Stewart Street from the driveway (shown in Image 1).



*Image 1: view of No. 37 – 39 Stewart Street from the vehicle access off Stewart Street. The existing platform and air-conditioning units are visible to the right of the “Siem Form” signage*

12. The platform approved (essentially under the first amendment to PLN16/0365 and not the original permit issued in September 2016) has been constructed in accordance with the endorsed plans. See image 2 below.



*Image 2: Existing - platform and air-conditioning units approved under permit PLN16/0365.01*

13. There are no other services or air conditioning units external to the building (with the exception of the three air conditioning units approved under Planning Permit PLN16/0365.01)
14. Caveat AM001916Q affects the subject land and relates to the transfer of land. It is not affected by the proposed application.

#### Surrounding Land

15. The subject site and immediate surrounds are located within the Swan Street Major Activity Centre (MAC) approximately 900m to the south of the Bridge Road MAC. The area contains a mixture of large, former industrial buildings converted to commercial and residential uses, with low-scale dwellings to the north of the subject site.
16. The land to the east, at No. 24 Tanner Street, contains a matching four-storey industrial style building with commercial uses at ground level. It has been converted to residential uses in the levels above.
17. The land to the west, at No. 18 Tanner Street, contains a six-storey mixed use building, with this car parking and commercial uses at ground level and residential apartments above. The building is setback 11.5 metres from the shared boundary with the subject site and 14.5 metres from the existing platform (approved under Planning Permit PLN16/0365).
18. To the south of the site is No. 33 Tanner Street, which is developed with a double storey warehouse/industrial building fronting Tanner Street. Beyond Stewart Street are elevated train tracks, with Swan Street further to the south.
19. The subject site is located 30 metres from Richmond Station and associated train tracks.
20. The northern side of Tanner Street contains a row of predominantly single-storey dwellings.

#### **Planning Scheme Provisions**

##### Zoning

##### *Mixed Use Zone*

21. The subject site is located in the Mixed Use Zone. The following provisions apply:
- (a) Pursuant to clause 32.04-8 of the Scheme, a planning permit is required to construct or carry out works for a use in Section 2 of the clause 32.04-2.  
The use of the land as an office is a 'section 2' use, and the original permit approved this use. The buildings and works associated with changes to the platform requires a permit under the zone.
  - (b) Pursuant to clause 62.02-2 (*Buildings and works not requiring a permit unless specifically required by the planning scheme*), services normal to a building other than a dwelling, including heating and cooling systems are exempt from permit requirements.  
Air-conditioning condensers do not require a planning permit under the zone.

### Overlays

#### *Environmental Audit Overlay*

22. The subject site is located within the Environmental Audit Overlay. The following provision applies:
- (a) Pursuant to clause 45.03-1 of the Scheme, *before a sensitive use (residential use, child care centre, pre-school centre or primary school) commences or before the construction or carrying out works in association with a sensitive use commences, either"*
    - (i) *A certificate of environmental audit must be issued for the land in accordance with Part IXD of the Environmental Protection Act 1970, or*
    - (ii) *An environmental auditor appointed under the Environment Protection Act 1970 must make a statement in accordance with Part IXD of the Act that he environmental conditions of the land are suitable for the sensitive use.*
  - (b) As the use of the site is an office does not constitute a 'sensitive' use, the clause does not apply to this application.

#### *Heritage Overlay (Schedule 332)*

23. The subject site is located within the Heritage Overlay (Schedule 332). The following provisions apply:
- (a) Pursuant to clause 43.01-1 of the Scheme, a planning permit is required *to construct and carry out works, including services normal to a building other than a dwelling, including heating and cooling systems if the works are visible from a street (other than a lane) or public park.*  
Under the heritage overlay, a permit is required for the construction of an extension to the approved platform and a permit is required for the installation of the air-conditioning condensers (which are visible from Stewart Street).

### Particular Provisions

24. None relevant.

### General Provisions

#### *Clause 62*

25. Pursuant to clause 62.02-2 of the Scheme, unless specifically required by the planning scheme, a planning permit is not required for:
- (a) *Services normal to a building other than a dwelling, including chimneys, flues, skylights, heating and cooling systems, hot water systems, security systems and cameras, downpipes, window shading devices, or similar.*
26. The above provision exempts air-conditioning condensers from requiring a planning permit under the Mixed Use Zone.

27. Note: A planning permit is still required under the Heritage Overlay as there is a specific requirement under the Heritage Overlay for services that are visible from the street.

*Clause 65*

28. The Decision Guidelines outlined in Clause 65 of the Scheme are relevant to all applications. Because a permit can be granted does not imply that a permit should or will be granted. Before deciding on an application, the Responsible Authority must consider the relevant State Planning Policy Frameworks, Local Planning Policy Frameworks and any Local Policy, as well as the purpose of the Zone, Overlay or any other Provision. An assessment of the application against the relevant sections of the Scheme is offered further in this report.

Before deciding on an application or approval of a plan, the responsible authority must consider, as appropriate:

- (a) *The matters set out in section 60 of the Act. The Municipal Planning Strategy and the Planning Policy Framework.*
- (b) *The purpose of the zone, overlay or other provision.*
- (c) *Any matter required to be considered in the zone, overlay or other provision.*
- (d) *The orderly planning of the area.*
- (e) *The effect on the amenity of the area.*
- (f) *The proximity of the land to any public land.*
- (g) *Factors likely to cause or contribute to land degradation, salinity or reduce water quality.*
- (h) *Whether the proposed development is designed to maintain or improve the quality of stormwater within and exiting the site.*
- (i) *The extent and character of native vegetation and the likelihood of its destruction.*
- (j) *Whether native vegetation is to be or can be protected, planted or allowed to regenerate.*
- (k) *The degree of flood, erosion or fire hazard associated with the location of the land and the use, development or management of the land so as to minimise any such hazard.*
- (l) *The adequacy of loading and unloading facilities and any associated amenity, traffic flow and road safety impacts.*

Planning Policy Framework (PPF)

29. The following clauses are of relevance to the amendment application:

*Clause 15 – Built Environment and Heritage*

*Clause 15.01-2S – Building Design*

30. The objective of this clause is “*to achieve building design outcomes that contribute positively to the local context and enhance the public realm*”.

*Clause 15.03– Heritage*

*Clause 15.03-1S – Heritage Conservation*

31. The objective of this clause is “*to ensure the conservation of places of heritage significance*”.

Local Planning Policy Framework (LPPF)

*Clause 21.05 - Built Form*

*Clause 21.05-1 – Heritage*

32. The clause incorporates the following relevant objectives and strategies:

- (a) *Objective 14 – To protect and enhance Yarra’s heritage places*

- (b) *Strategy 14.6 – protect buildings, streetscapes and precincts of heritage significance from the visual intrusion of built form both within places and from adjoining areas.*

*Clause 21.08 – Neighbourhoods*

*Clause 21.08-10 – Central Richmond (area between Bridge Road and Swan Street)*

- 33. The policy encourages the “*improvement of the built form of land adjacent to Punt Road*”.

Relevant Local Policies

*Clause 22.02 – Development guidelines for sites under the heritage overlay*

- 34. This policy applies to all land within a Heritage Overlay. The clause incorporates the following relevant objectives;

- (a) *To conserve the historic fabric and maintain the integrity of places of cultural heritage significance.*
- (b) *To retain significant view lines to, and vistas of, heritage places.*
- (c) *To ensure that additions and new works to a heritage place respect the significance of the place.*

*Clause 22.05 – Interface policy*

- 35. This policy applies to applications for use or development within Mixed Use Zones. The clause incorporates the following relevant objectives:

- (a) *To enable the development of new residential uses within and close to activity centres, near industrial areas and in mixed use areas while not impeding the growth and operation of these area as service, economic and employment nodes.*
- (b) *To ensure that residential uses located within or near commercial centres or near industrial uses enjoy a reasonable level amenity.*

**Advertising**

- 36. The application was advertised under the provisions of Section 52 of the *Planning and Environment Act (1987)* by 150 letters sent to surrounding owners and occupiers.
- 37. The proposed extension to the platform is not exempt from notice and review.
- 38. The two air-conditioning condensers shown on the submitted plans were not subject to notice and review. Pursuant to clause 43.10-4 of the Heritage Overlay, services normal to a building, including heating and cooling systems, are exempt from the notice requirements of Section 52(1) (a), (b) and (d), the decision requirements of Section 64(1), (2) and (3) and the review rights of Section 82(1) of the Act.
- 39. For advertising purposes, the application was referred to as Section 72 Amendment to extend the existing platform (with associated air conditioning units) on the western side of the existing building to a height of 8.3 metres. The words “air conditioning units” were placed in brackets as a way of indicating the platform extension as the permit trigger in this instance.
- 40. Council received six (6) objections to the application, the grounds of which are summarised as follows:
  - (a) visual bulk of the platform and associated air conditioning units;
  - (b) heritage impacts; and
  - (c) noise emissions and pollution from the air conditioning units.
- 41. A consultation meeting was held on 23 October 2018 and was attended by the applicant, two (2) objectors and Council officers. Discussions at the meeting were largely in relation to noise emissions of the existing air-conditioning condensers on the building, and potential noise emissions associated with the proposed air-conditioning condensers that would be placed on the extended platform. No resolution was made at the consultation meeting and no changes were made to the submitted proposal by the applicant, following the consultation meeting.

42. The originally submitted proposal therefore forms the basis of assessment and decision.

## Referrals

### Internal Referrals

43. The application was informally referred to Council's Heritage Advisor, who provided the following comments:
- (a) The location of the proposed platform is supported as it will not be visible from the Tanner Street frontage and is largely recessive when viewed to from Stewart Street.
  - (b) The platform is supported as it is simple, open and can be easily removed without damaging heritage fabric.
  - (c) It is noted that the existing platform appears to be constructed higher than what was approved under the first amendment to PLN16/0365.01. Council's Heritage Advisor expressed concern to the overall height of the structure (i.e. that it will be required to be higher than what is shown in plans to allow for an additional level to the existing structure) and stated that a platform higher than the proposed 8.3 meters would not be supported.

## OFFICER ASSESSMENT

44. An extension to a platform approved under the original planning permit requires a planning permit under the zone given that use of the building, as an office, is a 'section 2' use in the zone. While the platform itself requires a planning permit, any services located on it, including air conditioning units, do not require a planning permit under the zone. It is important to note that in the Scheme, the only consideration for the two proposed air conditioning units located on the extended platform, is heritage.
45. The primary considerations for this application are therefore as follows:
- (a) Heritage
  - (b) Interface Uses Policy
  - (c) Objector concerns
  - (d) Other matters
  - (e) Clause 65

### Heritage

46. The heritage assessment for this proposal is guided by clause 22.02 – Development Guidelines for Sites Subject to the Heritage Overlay and clause 43.01 – Heritage Overlay of the Scheme.
47. Relevant to the proposal, policy at clause 22.02-5.7.1 of the Scheme, relating to general policies for new development, alterations and additions, specifies that it is policy to:
- (a) *Encourage the design of new development and alterations and additions to a heritage place or a contributory element to a heritage place to:*
    - (i) *Be visually recessive and not dominate the heritage place.*
    - (ii) *Be distinguishable from the original historic fabric.*
    - (iii) *Not remove, cover, damage or change original historic fabric.*
    - (iv) *Not obscure views of principle façades.*
48. Relevant to the proposal, policy at clause 22.02-5.7.2 of the Scheme relating to *ancillaries and services*, specifies that it is policy to:

- (a) *Encourage ancillaries or services such as satellite dishes, shade canopies and sails, access ladders, air conditioning plants, wall and roof top mounted lighting, roof top gardens and their associated planting, water meters, and as far as practical aerials, to contributory or significant buildings, to be concealed when viewed from street frontage.*
  - (b) *Where there is no reasonable alternative location, ancillaries and services which will reduce greenhouse gas emissions or reduce water consumption, such as solar panels or water storage tanks, or provide universal access (such as wheel chair ramps), may be visible but should be sensitively designed.*
  - (c) *Encourage ancillaries or services to be installed in a manner whereby they can be removed without damaging heritage fabric.*
49. The purpose of the HO is as follows:
- (a) *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
  - (b) *To conserve and enhance heritage places of natural or cultural significance.*
  - (c) *To conserve and enhance those elements which contribute to the significance of heritage places.*
  - (d) *To ensure that development does not adversely affect the significance of heritage places.*
  - (e) *To conserve specified heritage places by allowing a use that would otherwise be prohibited if this will demonstrably assist with the conservation of the significance of the heritage place.*
50. The platform itself was approved under the first amendment to PLN16/0365. The proposed extension to it will increase the height above NGL by 4.6 metres, essentially increasing the visibility of the platform and associated air conditioning units from vantage points. The overall design of the extended part of the platform is however consistent with the platform design originally approved.
51. The platform extension and air-conditioning units located on it, are on the western elevation of the four-storey building. The works are located approximately 30 metres distance from the Tanner Street frontage and views of the platform and air-conditioning units from Tanner Street are restricted by the single storey building to the west. The works are located approximately 40 metres distance from the Stewart Street frontage and while being visible from this vantage point they are not considered to *visually dominate the heritage place* and the distance will make them appear as *visually recessive*. For these reasons, the works are supported by local heritage policy at clause 22.02-5.7.1 of the Scheme.
52. The platform extension will continue to be clearly distinguishable from the heritage built form which is supported by policy and due to its design avoids any damage to the heritage fabric of the building if/when removed.
53. The platform extension will be constructed of metal (steel) materials which are consistent with the platform approved (and constructed) under the original permit. The platform is 'simple' in structure and of a design that does not cover or dominate the heritage fabric as is encouraged and supported under policy at clause 22.02-5.7.1 of the Scheme.
54. It is acknowledged that the design of the platform, and its extension, results in any services located on it being visible from neighbouring properties to the west and from Stewart Street. There is also a likelihood that the open form of the platform could potentially allow for noise transfer. However, the test under the heritage overlay is to whether the proposal detracts the heritage significance of a heritage place. As such, due to the design of the platform extension being consistent and compatible with the platform already approved and open form that will not require the removal or damage or heritage fabric for its installation, it meets the relevant decision guidelines of clause 22.02 of the heritage policy and is supported.

55. Off-site amenity as a result of the air conditioning units is not a consideration under heritage policy. Neither the heritage policy decision guidelines nor the purpose of the Heritage Overlay call for an assessment against off-site residential amenity impacts of the use of the site or associated services.
56. Overall, in regard to the proposed works (platform and associated air-conditioning units), the meets the heritage policies and guidelines. In consideration of all of the above, and with regard to the decision guidelines at clause 22.02 and the purpose of the heritage overlay at clause 43.01 of the Scheme, the proposed works are acceptable from a heritage perspective.

#### Interface Uses Policy

57. The air-conditioning units do not require a permit under the Mixed Use Zone. Thus, the following built form assessment relates only to the proposed platform extension and this will be guided by policy at Clause 22.05 (Interface Uses Policy) which is applicable because of the sites location in a Mixed Use Zone and proximity to residential properties.
58. The clause incorporates the following relevant objectives:
  - (a) *To enable the development of new residential uses within and close to activity centres, near industrial areas and in mixed use areas while not impeding the growth and operation of these area as service, economic and employment nodes.*
  - (b) *To ensure that residential uses located within or near commercial centres or near industrial uses enjoy a reasonable level amenity.*
59. It is acknowledged that the design of the platform, and its extension, means that any services on it will be visible from No. 18 Tanner Street to the west and there is the potential for noise transfer. The air-conditioning units (although not requiring a permit under the zone) could result in a level of noise transfer to nearby residential properties given that they are not internal to the building or have any form of screening. It is acknowledged that services like air conditioning units are generally screened so that their visibility from surrounds are limited and so that they are better integrated into the design of a building. This is certainly the case for new developments which tend to have services located on the roof with appropriately designed screening. However the host building in this instance is a four-storey brick heritage building with a saw-tooth roof form and the air conditioning units and the platform required to house them are more of a retro-fit, allowing the heritage building to be adapted and used as offices.
60. That said, the platform is located 14.5 metres from the nearest residential building (No. 18 Tanner Street) and will be 8.3 metres maximum (9.3 metres inclusive of the air-conditioning units) above natural ground level. The approval of this application will result in 7 air conditioning units being approved on the western elevation; three from the first amendment to PLN16/0728 and two approved under PLN18/0728 (though not yet installed). While the platform (and air-conditioning units) will be visible from 18 Tanner Street, in terms of the relevant policy, there is no identifiable 'harm' because the platform design is simple and open and its backdrop is the four-storey building to which it is in front of. The extended platform (which is essentially a portion vertically measuring 4.6 metres) will increase the approved platform size from 19.8sqm to 39.6sqm and increase its height above ground from 3.7 metres to 8.3 metres is unlikely to have any unreasonable or identifiable visual bulk implications to nearby residences particularly given the distance of 14.5 metres from the nearest residential property.
61. Clause 22.5-4.2 of the Interface Uses Policy provides guidelines for non-residential development near residential properties, and states that "*new non-residential development is to be designed to minimise noise transmission within the building, including from machinery and ventilation systems, between floors or separate units and to adjoining residential properties*". As previously discussed, the host building is not new and the location of the proposed platform and associated air conditioning units is somewhat constrained by heritage policy. Nonetheless, the air conditioning units are a distance of 14.5 metres from a residential interface.

62. Moreover, within the context of central Richmond, being 20 metres from Richmond Station and train lines and 140 metres from Punt Road and the background noise associated, noise emissions from the air-conditioning units will unlikely be dominant or unreasonable. Further to this, as the air conditioning units are associated to the use of the site for offices, it is likely that any resulting noise would be during the day time, during normal office hours.
63. Nonetheless, condition 6 of the original permit (issued 12 September 2016) requires the following:  
*The use must comply at all times with the State Environment Protection Policy — Control of Noise from Commerce, Industry and Trade (SEPP N-1).*
64. The proposed air conditioning units will also need to comply with the SEPP N-1 and can be enforced by Council's Compliance Team.
65. In consideration of the above, despite the proposed platform extension being somewhat visible from the dwellings of No. 18 Tanner Street, and there being a perceived concern that the air conditioning units will be audible from the dwellings opposite, the proposed works in their own right are not considered unreasonable for the site context within the Mixed Use Zone and Swan Street Activity Centre.
66. Overall the proposed works are considered to meet the objectives of clause 22.05 Interface Uses Policy which are outlined at paragraph 58.

#### Objector Concerns

##### *Visual bulk.*

67. This has been discussed at paragraphs 57 - 60.
68. While it is acknowledged that the platform extension and air-conditioning units will continue to be visible from No 18. Tanner Street, as per the platform approved and constructed under the original planning permit, visibility does not necessarily result in 'harm' or 'unreasonable visual bulk'. On balance, it is considered that the scale of the proposed works are normal to a heritage building being used as offices and it not unreasonable within the site context.

##### *Heritage impacts.*

69. Heritage has been discussed at paragraphs 46 - 56.
70. Overall the proposed works are considered to comply with all relevant heritage policy and guidelines and the purpose of the Heritage Overlay.

##### *Noise emissions and pollution.*

71. In relation to concerns regarding noise emissions and pollution from air-conditioning units, regard must be given to the "National Trust Principle" established by the Supreme Court in National Trust of Australia (Victoria) v Australian Temperance and Mutual Life Assurance Society Ltd [1976] VR 592, which effectively limits consideration to those issues relevant to the purpose of the control which triggers the requirement for the permit. In this instance, the Heritage Overlay is the only trigger for a planning permit for the air conditioning units and the reason that a permit is required is due to the visibility of the units from the street (Stewart Street). Hence, little weight can be given to considerations that go beyond the heritage impacts arising from the visibility of the air conditioning units from the street.
72. Notwithstanding the above, noise impacts have been discussed at paragraphs 61 - 65 of this report and are addressed at condition 6 of the original permit which will be carried over to any amended permit issued.
73. Noise emissions from commercial equipment are regulated by Environmental Protection Authority (EPA) regulations - specifically the State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) (SEPP N-1). Compliance with noise emission limits from plant and equipment is required independently of any planning permissions.

#### Other matters

74. A site inspection carried out by Council Officers on 25 October 2018 confirmed that the existing platform constructed (which has 3 air-conditioning units on it) is greater in height than what is approved under the original permit. In other words the platform constructed is higher above the natural ground level. Concerns were raised by Council's Heritage Advisor that this breach of the original permit will require the additional platform (proposed to be 4.6 metres higher than the existing) to be higher than the 8.3 metres shown in plans.
75. The platform is required however to be constructed to the specifications of the original permit otherwise the permit holder is in breach of the planning permit. To avoid any confusion however, any amended permit issued would stipulate that the overall built form of the platform should not be built any higher than 8.3 metres above natural ground level, as is shown on the decision plans. In other words, the extended platform will be required to be constructed in accordance with the previously approved plans, before being extended, to regularise this current breach of the planning permit.

#### Clause 65

76. Clause 65 of the Scheme provides a set of broad guidelines that all applications must consider. The application is considered to meet these decision guidelines for the following reasons:
  - (a) The proposal has considered the purpose of the Mix Use Zone and Heritage Overlay and has appropriately balanced the requirements of both.
  - (b) The proposal is not considered to unreasonably impact the amenity of the area.
  - (c) The proposal will not detrimentally impact the orderly planning of the area.

#### **Conclusion**

77. The proposal achieves an appropriate balance between all relevant policies in the Scheme, including heritage policy and Interface Uses Policy and clause 65. The proposed works has appropriately considered the heritage impacts.
78. Based on the report, the proposal is considered to generally comply with the relevant policies of the Yarra Planning Scheme and is recommended for approval with the original permit conditions carried over and no new conditions included.

#### **RECOMMENDATION**

That having considered all objections and relevant planning policies, the Committee resolves to issue a Notice of Decision to Amend Planning Permit PLN16/0365 which approved *the change of use to an office, buildings and works including partial demolition and a reduction in car parking and bicycle parking requirements* at 37 – 39 Stewart Street, Richmond VIC 3121, generally in accordance with the advertised plans which show an extended platform by virtue of it being an overall height of 8.3 metres and two additional air conditioning units and subject to the following conditions:

1. Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of this permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the decision plans but modified to show:
  - (a) The proposed boundary fencing annotated on the ground floor plan to match the proposed eastern and western elevations.
  - (b) Notation on the northern elevation specifying the balcony screening will be permanently fixed; at least 1.7 metres above floor level and be no more than 25 per cent transparent.
  - (c) The roof structure reduced by 600mm in accordance with the Sketch Plan submitted on 9 May 2017.

- (d) The north facing first floor bedroom window retained in accordance with the Sketch Plan submitted on 9 May 2017.
- 2. Before the demolition commences, a photographic survey of the existing building to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the photographic survey will be endorsed and will form part of this permit. The survey must include, but not be limited to, the following:
  - (a) The rear structure's relationship to the main part of the building, its relationship to the rear structures at 9 and 13 King William Street, and its relationship to the rear lane way;
- 3. The development as shown on the endorsed plans must not be altered (unless the Yarra Planning Scheme specifies that a permit is not required) without the prior written consent of the Responsible Authority.
- 4. Before the development commences, a Tree Management Plan to the satisfaction of the Responsible Authority must be prepared by a suitably qualified Arborist and must be submitted to and approved by the Responsible Authority. When approved the Tree Management Plan will be endorsed and will form part of this permit. The Tree Management Plan show:
  - (a) Details of how all trees on the adjoining property will be protected pre, during and post construction works.
  - (b) The use of tree sensitive construction materials and methods for the construction of the dwelling within the TPZ of Trees 1, 2, 3, 4 and 5 should be detailed in this report..
  - (c) How tree roots will be protected.
  - (d) TPZ fencing, mulching and irrigation requirements (where possible throughout the development process).

All of the above must be to the satisfaction of the Responsible Authority. Once approved the Tree Management Plan becomes part of the endorsed documents of this permit.

- 5. 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:
  - (a) at the permit holder's cost; and
  - (b) to the satisfaction of the Responsible Authority.
- 6. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, all new on-boundary walls must be cleaned and finished to the satisfaction of the Responsible Authority.
- 7. Before the development 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.
- 8. Except with the prior written consent of the Responsible Authority, demolition or construction works must not be carried out:
  - (a) before 7 am or after 6 pm, Monday-Friday (excluding public holidays);
  - (b) before 9 am or after 3 pm, Saturdays and public holidays (other than ANZAC Day, Christmas Day and Good Friday); or
  - (c) at any time on Sundays, ANZAC Day, Christmas Day and Good Friday.

- 9. This permit will expire if:

- (a) the development is not commenced within two years of the date of this permit; or
- (b) the development is not completed within four years of the date of this permit.

The Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires or within six months afterwards for commencement or within twelve months afterwards for completion.

**Notes:**

A building permit maybe required before development is commenced. Please contact Council's Building Services on 9205 5095 to confirm.

This site is subject to a Heritage Overlay. A planning permit may be required for any external works.

Provision must be made for drainage of the site to a legal point of discharge. Please contact Council's Building Services on 9205 5095 for further information.

The permit holder must obtain approval from the relevant authorities to remove and/or build over the easement(s).

The following table will be included on any amended permit issued:

Date of amendment	Brief description of amendment
	Amendment to Planning Permit PLN16/0365 by amending plans to show an extension to the air-conditioner platform to a height of 8.3 metres with 2 additional air conditioning units on it.

**CONTACT OFFICER:** Jessica Sutherland  
**TITLE:** Statutory Planner  
**TEL:** 9205 5365

**Attachments**

- 1 PLN16/0365.02 - 37 - 39 Stewart Street Richmond, Site Location Map
- 2 PLN16/0365.02 - 37 -39 Stewart Street Rihcmond, Decision Plans