



YARRA CITY COUNCIL
Internal Development Approvals Committee
Agenda

**to be held on Wednesday 28 February 2018 at
6.30pm in Meeting Rooms 1 & 2
at the Richmond Town Hall**

Rostered Councillor membership

Councillor Misha Coleman
Councillor Daniel Nguyen
Councillor Danae Bosler

- I. ATTENDANCE**
Vicky Grillakis (Co-Ordinator Statutory Planning)
Michelle King (Senior Planner)
Cindi Johnston (Governance Officer)
- II. DECLARATIONS OF PECUNIARY INTEREST AND CONFLICT OF INTEREST**
- III. CONFIRMATION OF MINUTES**
- IV. COMMITTEE BUSINESS REPORTS**

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***"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

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| 1.1 | PLN11/0648.02 - 221 Kerr Street, Fitzroy - Amendment to the endorsed plans, including a larger terrace at level 3, the modification of dwelling layouts, car park levels and window locations | 5 | 19 |
| 1.2 | 13A Adam Street, Burnley - Planning Permit Application PLN16/0938 - Development of the land for the construction of a two-storey dwelling, including a roof terrace. | 25 | 49 |
| 1.3 | 406 Napier Street, Fitzroy VIC 3065 - Planning Permit Application No. PLN17/0611 | 51 | 63 |

1.1 PLN11/0648.02 - 221 Kerr Street, Fitzroy - Amendment to the endorsed plans, including a larger terrace at level 3, the modification of dwelling layouts, car park levels and window locations

Executive Summary

Purpose

1. This report provides an assessment of planning permit application PLN11/0648.02 and recommends support subject to a number of conditions.

Key Planning Considerations

2. Key planning considerations include:
 - (a) clause 15.01-1 – Urban Design;
 - (b) clause 15.01-2 – Urban design principles;
 - (c) clause 15.01-5 – Cultural identity and neighbourhood character;
 - (d) clause 15.02-1 – Energy and resource efficiency;
 - (e) clause 15.03-1 – Heritage conservation;
 - (f) clause 21.05-1 – Heritage;
 - (g) clause 21.05-2 – Urban design;
 - (h) clause 21.07-1 – Ecologically sustainable development;
 - (i) clause 21.08-7 – Fitzroy;
 - (j) clause 22.02 – Development guidelines for sites subject to the Heritage Overlay;
 - (k) clause 22.16 – Stormwater management (water sensitive urban design); and
 - (l) clause 22.17 – Environmentally sustainable development.

Key Issues

3. The key issues for Council in considering the proposal relate to:
 - (a) buildings and works (including heritage);
 - (b) off-site amenity;
 - (c) on-site amenity;
 - (d) ESD; and
 - (e) Objector concerns.

Objector Concerns

4. A total of 12 objections were received to the application, these can be summarised as:
 - (a) off-site amenity (including overlooking, noise, safety and insufficient setbacks); and
 - (b) insufficient time to object.
5. A consultation meeting was held on 23 January 2018, with Council officers, Objectors and the Permit Applicant present. No resolutions were reached, however the discussions lead to the Permit Applicant submitting sketch plans for discussion (detailed later in this report).

Conclusion

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

CONTACT OFFICER: Sarah Thomas
TITLE: Principal Planner and Advocate
TEL: 9205 5046

1.1 PLN11/0648.02 - 221 Kerr Street, Fitzroy - Amendment to the endorsed plans, including a larger terrace at level 3, the modification of dwelling layouts, car park levels and window locations

Trim Record Number: D18/27092

Responsible Officer: Manager Statutory Planning

| | |
|-----------------------------|--|
| Proposal: | Amendment to the endorsed plans, including a larger terrace at level 3, the modification of dwelling layouts, car park levels and window locations |
| Existing use: | Former warehouse building (currently vacant) |
| Applicant: | Philkerr Property Pty Ltd |
| Zoning / Overlays: | Mixed Use Zone, Heritage Overlay (Schedule 334) and Environmental Audit Overlay |
| Date of Application: | 25 September 2017 |
| Application Number: | PLN11/0648.02 |

Planning History

1. The relevant planning history found on Council's files is as follows:

Planning Permit 1932

- (a) On 2 June 1981, Planning Permit 1932 was issued to use the whole of the building as a factory, warehouse and ancillary offices.

Planning Permit application PL01/1051

- (b) Planning Permit application PL01/1051 sought permission for a three storey extension to the existing building (total 5 storeys or 16.3m). The extension was to contain 12 dwellings within a contemporary 'pod' on top of the existing red brick 'podium'. The addition was to be primarily constructed of metal cladding and glazing. The design propped the 'pod' on stilts to allow for a void between the old and new built forms. The pod was setback 3.5m to 5m from the west and south title boundaries.
- (c) The application was advertised and five objections were received, raising grounds of heritage, off-site amenity, plan inaccuracies, height, parking, traffic, daylight, noise, insufficient consultation, material selection and impact on views.
- (d) On 2 April 2002, the application was refused by Council on the following grounds:
 - (i) the proposal does not satisfy the objectives and policies of the Yarra Planning Scheme which requires new development within heritage areas to respect the architectural integrity of neighbourhoods;
 - (ii) the proposal does not satisfy the intent of Clause 19 of the Yarra Planning Scheme;
 - (iii) the proposal does not make a positive contribution to neighbourhood character;
 - (iv) the proposal does not satisfy Clause 22.02 of the Yarra Planning Scheme; and
 - (v) the proposal is an overdevelopment of the site.
- (e) The Applicant lodged a review of Council's decision, however the application was withdrawn before the hearing.

Planning Permit application PL07/0929

- (f) On 2 June 2008, Planning Permit application PL07/0929 for buildings and works to the façade was withdrawn at the request of the Applicant. Before the application was withdrawn, Council's Heritage Advisor provided comments stating that the new shopfronts 'are in sharp contrast with the austere industrial character of the building'.

Planning Permit application PLN11/0785

- (g) Planning permit application PLN11/0785 lapsed on 1 March 2012 due to further information not being provided within the prescribed time. The application was for the use of the site as a licensed indoor recreation facility (bowling ally), tavern and function centre with associated buildings and works, part demolition and reduction in the car parking requirements.

Planning Permit PLN11/0648

- (h) Planning permit PLN11/0648 was issued on 7 August 2013 for the part demolition and construction of alterations and additions, resulting in a multi-storey building, construction of a new crossover and a reduction in the car parking requirements associated with dwellings (no planning permit required for dwelling use) as the result of a consent order through VCAT.
- (i) On 2 August 2016, this permit was amended under Section 72 of the Act to amend condition 1(m) to allow a 500mm projection of shutters over the title boundary.

- 2. The proposed amendment relates to this planning permit.

Background

- 3. On 29 January 2018, the Applicant submitted sketch plans to Council with the following key changes compared to the advertised plans:
 - (a) Reduction in parapet height around the level 3 landscaped terrace (non-trafficable) as per the endorsed plans, with planter pots setback at least 200mm from the title boundary (replacing inbuilt planters which were proposed to increase the parapet by 500mm;
 - (b) The new windows on the north elevation of the easternmost wing would be restricted to opening a maximum 125mm at their western edge to restrict overlooking.
- 4. These sketch plans also show a 200mm rise in the ground level car park finished floor level. This has not arisen from the consultation meeting discussions and the Applicant has not elected to formally amend the application under Section 57A of the *Planning and Environment Act 1987 [the Act]*. This change will therefore not be further discussed in this report.
- 5. A further sketch was provided to Council on 2 February 2018, responding to an objector concern regarding safety with potential access to the non-trafficable landscaped roof on level 3. The sketch shows a gate at the end of the corridor at this level to only enable access for maintenance. The end of this corridor was always shown as a full height mesh screen, however the door confirms that access would only be for maintenance (previously access was unclear).
- 6. These changes will be considered throughout this assessment.

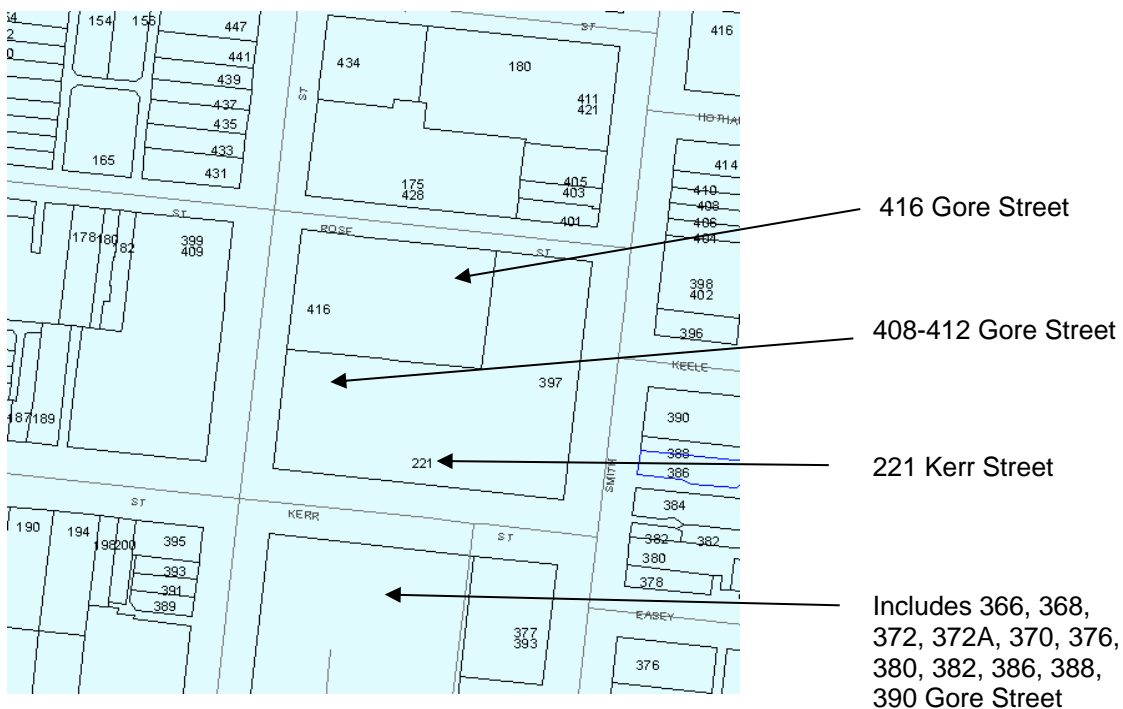
Existing Conditions

- 7. The original IDAC report description (report dated 23 January 2013) remains relevant:

Subject Site

20. The subject site is located on the north-east corner of Kerr and Gore Streets, Fitzroy and is legally known as lot S2 on Plan of Subdivision 419649H. The site is generally rectangular (with a narrow rectangular projection along Kerr Street) and has a frontage of 58.3m to Kerr Street and a frontage of 36.7m to Gore Street.
21. The site contains a two storey (9.2m high), red brick building used as offices, warehousing and roof-top car parking for 42 vehicles. The building was constructed between 1901 and 1915 and formed part of the MacRobertson chocolate complex.
22. The building is constructed to all title boundaries, has been modified (primarily ground floor window openings) and although the façade is a distinctive red brick, was once painted white as part of the 'great white city' of the MacRobertson chocolate factory complex. Many of the former factory buildings in the area have been stripped of their white paint to display this distinctive red brickwork. Another distinguishing feature is the tiled MacRobertson signage across many of the buildings. The subject site does not display the typical 'tiled' sign, however the 'Old Gold' building to the north presents this sign on the parapet fronting the subject site.
23. In the City of Yarra Heritage Review 2007 [**Heritage Review**], the statement of significance for the South Fitzroy Heritage Precinct comments on the former industrial buildings in the area, including those parts of the MacRobertson Confectionary complex:

Industry, which had barely existed in Fitzroy in the 1850s had grown considerably by the 1870s and a number of major factories were being built and extended in the 20th century up to the Great War and beyond, including the famous MacRobertson Confectionary factory which started in Argyle Street in the 1880s. The large factories and warehouses from this later period tower above the predominantly low rise nature of the early residential development.
24. On first review, the subject site is graded 'individually significant' in Appendix 8 to the Heritage Review. However, Appendix 8 lists 408-412 Gore Street as 'contributory'. When reviewing the property number sequence, it appears that the appendix may be identifying two elements on the site:



25. *In Council's system, the site has been consolidated into one address; 221 Kerr Street. A site inspection also revealed that a sign displaying '408' is on this northern Gore Street segment of the site.*



26. *The two different gradings could also be feasible with the northern element along Gore Street being modified with a roller door and two service enclaves (fire hose reel and substation). An understanding of these two gradings (northern Gore Street segment 'contributory' and southern or corner and Kerr Street frontage 'individually significant') will inform this assessment.*
27. *Vehicular access into the site is provided via two crossovers; one from Kerr Street and one from Gore Street, however access to the roof top car park is provided via a ramp from Kerr Street on the site to the east.*

Restrictive Covenants

28. *There are no Restrictive Covenants shown on the Certificate of Title provided with the application.*

Surrounding Land

8. The original IDAC report description (report dated 23 January 2013) remains relevant:

General

29. *The site is located between the Smith Street and Brunswick Street Major Activity Centres. A mixture of uses, including residential, retail, office and food and drinks premises surround the site and add to the diversity of the area. The inner-suburban locale ensures the site is well serviced by infrastructure, with:*
- (a) *Smith Street being serviced by a tram route (#86 – Bundoora/RMIT – Waterfront City/Docklands) and a night rider bus route;*
 - (b) *Brunswick Street (over 400m west) serviced by two tram routes (#11 – West Preston – Victoria Harbour Docklands and #112 – West Preston – St Kilda);*
 - (c) *Johnston Street (over 170m south) serviced by five bus routes and a night rider bus route; and*
 - (d) *the site being within 1.6km of the CBD grid.*

30. *The built form of the area is primarily hard edged, with fine grained residential parcels further north-west. Building heights are primarily low rise, with pockets of higher development (identified in Council's LPPF).*
31. *As has already been identified, the MacRobertson chocolate factory buildings are an important feature of the area. Appendix 8 to the City of Yarra Heritage Review 2007 is an incorporated document within the Yarra Planning Scheme [the Scheme] and identifies the corner or Kerr Street building element as 'individually significant' and the northern Gore Street element as 'contributory' to the South Fitzroy Heritage Precinct. Other MacRobertson buildings in the area are either contributory or individually significant.*
32. *Council's Heritage Advisor notes that the architectural style of the buildings varies according to their function. Appendix 8 to the Heritage Review notes the '408-412 Gore Street' element of the building as being former offices and store rooms, with the '221 Kerr Street' element being a former factory/warehouse complex (albeit incorrectly noting that part of the site is now converted into apartments).*
33. *Proximate to the subject site, the former factory/warehouse Old Gold building at 416 Gold Street is graded individually significant and the former MacRobertson building further north (now the 'Cherry apartments') at 175 – 185 Rose Street (detailed below) is contributory. On the west side of Gore Street is 399 – 407 Gore Street, which is also graded contributory to the precinct. On the south side of Kerr Street is a former factory/warehouse within the MacRobertson complex, graded individually significant to the precinct.*

East

34. *To the east of the subject site is a two storey warehouse building that fronts Smith Street and extends the length of the block between Kerr and Rose Streets. The building presents glazed shopfronts to Smith Street (primarily outlet shops) and a more solid, rendered panelling finish to both Kerr and Rose Streets. Roof top car parking is accessed via a ramp from Kerr Street with a loading / services area accessed via a roller door from Rose Street. Smith Street is a Major Activity Centre.*

South

35. *To the south of the subject site, across Kerr Street, is a two and a half storey building (semi-submerged lower level), again part of the MacRobertson factory complex. The building has been converted into dwellings and as per 416 Gore Street (Old Gold building), has seen the addition of projecting metal balconies. The window and door openings appear to have been modified and as with most of the other MacRobertson buildings in the area, the white paint has been removed to display distinctive red brickwork.*
36. *Further south of the site, approximately 180m, is Johnston Street. Notably, Johnston Street (section shy of Smith and Brunswick Streets) is covered by a Design and Development Overlay (DDO10). The DDO10 has recently been applied, a result of amendment C113 which was gazetted on 20 January 2011. Design principles contained in the DDO10 include 'In the area north of Johnston Street and east of Napier Street, new development must respect the height of the former MacRobertson complex and avoid dominating these buildings'.*

West

37. *To the west of the subject site, across Gore Street, is a single storey building, again one of the former MacRobertson buildings (graded contributory). The building presents a hard edge, red brick façade to Gore and Kerr Streets and appears to be vacant.*

North

38. *To the north of the subject site is the 'Old Gold' MacRobertson building, a 6 storey building with two additional levels above. The additional levels are more recent additions as part of a residential conversion and are setback approximately 4.6m from the shared boundary with the subject site, limiting views to these levels to long-range views only. The building has also been extended with a residential building at the eastern end. The extension has been developed with a three storey, rendered podium and five levels above. The upper levels are vertically and horizontally expressed to depict residential shells with metal posts and balustrades. The 'original' portion of the site presents a sheer wall with punctuated openings to dwellings and balconies beyond. The 'extended' portion of the building presents dwellings and open balconies to the subject site and are only setback 2m from the shared boundary.*
39. *Further north, across Rose Street, is a recently constructed mixed use development at 175 Rose Street. Planning Permit PL07/0813 allowed the construction of a five and six storey building (plus basement) for use as dwellings and comprising three shop tenancies and associated car parking.*
40. *The development retained the single storey, red brick building on the site (part of the MacRobertson factory complex) and introduced a further 4 to 5 levels above. The upper levels are fragmented into two elements and are setback a minimum 4.1m from Gore Street and 90mm to 2.4m from Rose Street. The upper levels are primarily constructed of grey metal cladding, with sliding mesh screens to balconies.*
41. *This site had previously been subject to an application for a nine storey building (maximum 27.1m), which was refused by Council. The refusal was upheld by VCAT. In the decision of Seban Holdings PL v Yarra CC [2004] VCAT 1499 (28 July 2004), the member stated:*
- 29 Whilst the proposed new building is of contemporary design and applies materials and finishes which would not be confused with the existing heritage building fabric, we consider that insufficient attention has been paid to the impact the development on the neighbourhood. We consider the visual bulk and massing of the proposed new building would adversely affect the significance of the heritage places, and will not be sufficiently in keeping with the character and appearance of adjacent buildings and the heritage place.*
42. *The decision also identified and made comment on the addition at the eastern end of the Old Gold building:*
- 33 This precinct has a high concentration of relatively low rise buildings, there are some higher buildings which serve as backdrop to both Smith Street and Gore Street. Whilst the height of the structure is lower than other buildings such as 416 Gore Street, its form and bulk, particularly when viewed from Smith street, will be a stark contrast to the lower built form around it. Even the older large industrial buildings, which serve as a backdrop have various forms of articulation and features which contribute to the context of the surrounding built form. This building fails to respond to the prevailing built form elements and seems to borrow some of the less favourable elements of nearby buildings, such as the rear of 416 Gore Street.*
43. *The order drew upon elements of Mr S Hutson's expert witness statement (called upon by an objector party), including:*

34 ... The proposed development seen in conjunction with the historic brick building at 416 Gore Street and the recent multi storey residential development adjacent to the east would be a consolidation of large scale structures that may dominate the existing context.

35 ... The proposed development will partially obscure views of historic building of 416 Gore Street. The setback of the development of 3 metres from the Gore Street frontage will result in a visual impact on the historic building from the north notwithstanding the stepping back of the proposal from eight storeys to four at the Gore Street frontage. The encroachment of solid fin walls to the sides of the balconies will reduce the effective visual setback to 2.1 metres along the Gore Street vista.

44. *Having regard to the fact that the order was in relation to a 27.1m high building across Rose Street and this application seeks approval for a maximum 27.1m high building adjoining the Old Gold building:*

37 Whilst Mr Axford supported the proposal on the basis of its contemporary design, even he conceded that it would not win any architectural awards. We consider both Ms Brady and Mr Axford underscored the impact of the proposed building, and we disagree with Ms Brady's suggestion made in cross examination by Mr Dreyfus that it would be a modest building. We firmly differ with this summation as we consider this is quite a substantial building albeit in close proximity a larger heritage building which has dominated the South Fitzroy skyline for the past 80 odd years.

45. *The decision continued to have regard to policy, including Melbourne 2030 and urban consolidation objectives. The order concluded that:*

55 We are of the view that the scale and massing of the development failed to respond and respond to the heritage and existing urban fabric of the locality. Whilst acknowledging the imperative of relying on areas such as the review site to provide housing diversity and density, neither Melbourne 2030 nor any of the policy in the Scheme suggests that they should prevail over other considerations such as heritage and design.

56 Our consideration of the matter is restricted to assessment of the current proposal. Given the limited nature of this assessment, we do not profess to be in a position to make recommendations on the redesign of the proposal. However, we are mindful of the mixed scale of development of this part of Fitzroy, primarily between the larger, bulkier and taller industrial buildings against a background of finer single and double storey Victorian and Edwardian domestic architecture.

57 Judging by the application, the Stamford development proposal and other likely development pressures on industrial and commercial buildings in the precinct, we suggest the responsible authority would be greatly assisted if it prepared some detailed urban design guidelines for the area.

58 Such an analysis would assist parties in understanding the intricate fabric of this juxtaposition and interplay between industrial buildings and the finer grained domestic architecture, to establish how new development or adaptation of the larger industrial buildings can respect this texture, or under what circumstances 'breakout' from such a texture can be contemplated.

46. *Since this decision, the Smith Street Structure Plan [SSSP] has been adopted by Council (summary below). A DDO was prepared on this basis (Amendment C140) and the document was exhibited and considered by a panel in late 2011/early 2012.*

The panel found there was no strategic justification for the amendment and recommended that it be abandoned. Nevertheless, the SSSP is still adopted by Council and will be considered accordingly.

The Proposal

9. The application is for an amendment to the endorsed plans to:
- (a) raise the crossover edge and internal ramp grade by a maximum of 200mm;
 - (b) level 2, south-west corner deck reduced in height (FFL reduced from 32.59 to 32.09) with the addition of a seat at the eastern end;
 - (c) apartment 206 reconfigured, with the outdoor area revised from 28m² at the northern edge to 27m² in an L configuration to the north and east of the apartment. At level 3 above, the terrace in south-east corner would then be revised from an east-west to a north-south axis and increased in size from 36m² to 42m². This would increase the east boundary wall height by 1.2m to 12.96m;
 - (d) addition of a bedroom at the southern end of apartment 205, reducing the outdoor terrace from 27m² to 19m²; and
 - (e) increase in the height of the level 3 north-east corner parapet by 500mm to allow for more planting;
 - (f) addition of a north facing window to the dining areas of apartments 311, 411, 507 and 604.

In addition to the above, further amendments are required as a result of the proposed changes including the updating Section CC, landscape plan (endorsed plan 31) and crossover detail (endorsed plan 34). The notation 'car parking spaces 1, 11 and 12 are for visitors' must also be added to the ground floor plan as per the endorsed set.

Legislative provisions

10. The amendment has been requested pursuant to Section 72 of the *Planning and Environment Act 1987* **[the Act]**.
11. Section 72 of the Act states:
- (1) *A person who is entitled to use or develop land in accordance with a permit may apply to the responsible authority for an amendment to the permit.*
 - (2) *This section does not apply to—*
 - (a) *a permit or a part of a permit issued at the direction of the Tribunal, if the Tribunal has directed under section 85 that the responsible authority must not amend that permit or that part of the permit (as the case requires); or*
 - (b) *a permit issued under Division 6.*
12. The original permit PLN11/0648 issued on 7 August 2013, was not issued at the direction of the Tribunal (rather, by way of a consent order between the parties). The permit was not issued under Division 6 of the Act.
13. Section 73 of the Act states that Sections 47 to 62 of the Act apply to the amendment application. This allows the Responsible Authority to apply the abovementioned sections of the Act to the amendment application as if it was an application for a permit.
14. Accordingly, the relevant sections will be addressed in this report.

Planning Scheme Provisions

Zoning

Mixed Use Zone

15. Under clause 32.04-6 of the Yarra Planning Scheme [**the Scheme**], a permit is required to construct 2 or more dwellings on a lot.
16. Transitional provisions apply and as the original application was lodged before VC136 (gazetted on 13 April 2017) and the requirements of Clause 58 do not apply.

Overlays

Heritage Overlay (HO334 – South Fitzroy Precinct)

17. Under clause 43.01-1 of the Scheme, a permit is required to demolish or remove a building and to construct a building or construct or carry out works.

Environmental Audit Overlay

18. Clause 45.03-1 states that 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.*
19. This requirement has already been conveyed to the Applicant in the form of a notation on the permit.

Particular Provisions

N/A

General Provisions

Clause 65 – Decision Guidelines

20. 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 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 15.01-1 – Urban design

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

Clause 15.01-2 – Urban design principles

22. The objective of this clause is: *To achieve architectural and urban design outcomes that contribute positively to local urban character and enhance the public realm while minimising detrimental impact on neighbouring properties.*
23. Planning must consider (as relevant) the *Apartment Design Guidelines for Victoria (Department of Environment, Land, Water and Planning, 2017).*

Clause 15.01-5 – Cultural identity and neighbourhood character

24. The objective of this clause is: *To recognise and protect cultural identity, neighbourhood character and sense of place.*

Clause 15.02-1 – Energy and resource efficiency

25. The objective of this clause is: *To encourage land use and development that is consistent with the efficient use of energy and the minimisation of greenhouse gas emissions.*

Clause 15.03-1 – Heritage conservation

26. The objective of this clause is: *To ensure the conservation of places of heritage significance.*

Local Planning Policy Framework (LPPF)

Clause 21.05-1 – Heritage

27. The relevant objective of this clause is:
(a) *Objective 14 To protect and enhance Yarra's heritage places.*

Clause 21.05-2 – Urban design

28. The relevant objectives and strategies of this clause are:
(a) *Objective 16 To reinforce the existing urban framework of Yarra.*
(b) *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.*
(c) *Objective 18 To retain, enhance and extend Yarra's fine grain street pattern.*
(d) *Objective 20 To ensure that new development contributes positively to Yarra's urban fabric.*
(e) *Objective 22 To encourage the provision of universal access in new development.*

Clause 21.07-1 – Ecologically sustainable development

29. The relevant objective of this clause is:
(a) *Objective 34 To promote ecologically sustainable development.*

Clause 21.08-7 – Fitzroy

30. The following relevant element is offered at this Clause:
(a) *Fitzroy is a mixed commercial and residential neighbourhood notable for the consistency of its Victorian streetscapes. It comprises a dense combination of residential areas, shopping precincts and commercial/ industrial activities.*

Relevant Local Policies

Clause 22.02 – Development guidelines for sites subject to the heritage overlay

31. Noting the buildings on the site are graded contributory and individually significant, the relevant elements of this clause are:

Clause 22.02-5.1 - Removal of Part of a Heritage Place or Contributory Elements

Generally discourage the demolition of part of an individually significant or contributory building or removal of contributory elements unless:

- (a) *That part of the heritage place has been changed beyond recognition of its original or subsequent contributory character(s).*
- (b) *For a contributory building:*
 - (i) *that part is not visible from the street frontage (other than a laneway), abutting park or public open space, and the main building form including roof form is maintained; or*
 - (ii) *the removal of the part would not adversely affect the contribution of the building to the heritage place.*
- (c) *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.*

32. In relation to new development, alterations and additions (as relevant):

Clause 22.02-5.7.1 – General

- (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.*

33. Guidance is also offered in this policy in relation to building heights and setbacks, however these do not significantly change as a result of this amendment.

Clause 22.05 – Interfaces Uses Policy

34. This policy applies to applications within Mixed Zones and aims to reduce conflict between commercial, industrial and residential activities. However, this amendment does not introduce a new residential use within close proximity of commercial premises to warrant a re-assessment against this clause (this was already considered when the permit was originally issued).

Clause 22.16 – Stormwater Management (water sensitive urban design)

Clause 22.17 – Environmentally Sustainable Development

35. Clause 22.16 applies to applications for new buildings, amongst others. The policy aims to achieve best practice water quality performance. Clause 22.17 applies to developments for non-residential buildings with a gross floor area greater than 100m².

36. Condition 6 of the existing permit requires the submission of a Sustainable Management Plan, generally as per the report prepared by Arc resources (dated 10 August 2011). This report has been endorsed and confirms 101% STORM compliance and that the development would achieve an average 6.1 star energy rating. This amendment would not alter those commitments.

Other Policies

N/A

Advertising

37. Notice of the application was given by way of letters as per Section 52 of the *Planning and Environment Act 1987* [the Act].
38. A total of 12 objections were received to the application, these can be summarised as:
(a) off-site amenity (including overlooking, noise, safety and insufficient setbacks); and
(b) insufficient time to object.
47. A consultation meeting was held on 23 January 2018, with Council officers, Objectors and the Permit Applicant present. No resolutions were reached; however the discussions lead to the Permit Applicant submitting sketch plans for discussion.

Referrals

39. The application was referred to Council's Engineering Services Unit, with advice included as appendices to this report.

Planning Considerations

40. Each amendment will be considered in turn, with reference to applicable policy, where appropriate.

Raise the crossover edge and internal ramp grade by a maximum of 200mm.

41. Council's Engineering Services Unit requires a ground clearance check using a B99 design vehicle to demonstrate that these changes would not result in the vehicle bottoming out. This should be required by way of a condition on any amended permit.
42. The ramp would finish at the approved RL of the existing ground floor car parking area, therefore a further 200mm height increase for this area is not supported.

Level 2, south-west corner deck reduced in height (FFL reduced from 32.59 to 32.09) with the addition of a seat at the eastern end.

43. The change does not affect the usability of this space. Being over 9m from the nearest dwelling to the north, the deck also does not raise overlooking opportunities (even when applying the ResCode overlooking guidelines, albeit ResCode or clause 55 or 58 does not apply in this instance).

Apartment 206 reconfigured, with the outdoor area revised from 28m² at the northern edge to 27m² in an L configuration to the north and east of the apartment. At level 3 above, the terrace in south-east corner would then be revised from an east-west to a north-south axis and increased in size from 36m² to 42m². This would increase the east boundary wall height by 1.2m to 12.96m.

44. These changes are in the south-east corner of the site, at levels 2 and 3, abutting a shared boundary with the retail premises to the east. The closest dwellings to the south are over 20m across Kerr Street.
45. This physical separation from the dwellings across Kerr Street and the abuttal with a boundary wall of a commercial premises ensures that these changes would not unreasonably impact the amenity of nearby dwellings.
46. Reviewing the south elevation, the proposal continues to respect the general built form character of Kerr Street, with a marginal (1.2m) height increase, in keeping with the style of the approved building. The south boundary setback at levels 2 and 3 have also not changed, ensuring the extension does not unreasonably dominate the heritage place and remains inline with local heritage policy at clause 22.02 and the purpose of the Heritage Overlay.

Addition of a bedroom at the southern end of apartment 205, reducing the outdoor terrace from 27m² to 19m².

47. The appearance of the building would not change significantly as the terrace opening would simply be glazed to allow for window. There is therefore no unreasonable urban design or heritage consequence as a result of this change.
48. Considering off-site amenity, even if clause 55 was applied (noting the application is exempt from both clause 55 and 58 requirements):
 - (i) Overlooking – Standard B22 – the proposal complies with the 9m Overlooking Standard as the closest residential property is 20m to the south; and
 - (ii) Private open space – Standard B28 – the proposal complies with a 19m² terrace still being provided (noting the proposal would even partly comply with the newer, more stringent clause 58 guidelines where Standard D5 requires a minimum 12m² terrace for a 3 bedroom dwelling, albeit the depth is 2m and should be at least 2.4m). While the minimum dimension of clause 58 is not achieved, the current approval does not meet this element of clause 58 and the 19m² terrace is considered to be of a reasonable size and configuration to be suitable for the needs of residents of a 3 bedroom apartment.

Increase in the height of the level 3 north-east corner parapet by 500mm to allow for more planting

49. The 500mm height increase did not raise any issue from a planning perspective as it is to the south of terraces (continuing to allow adequate daylight opportunities) and not result in unreasonable visual bulk, however the offer to reduce the height of the parapet wall (rather retain as per existing conditions) with pot plants added at least 2m from the northern boundary is supported as a reasonable compromise between the Permit Applicant and Objectors and should be imposed by way of a permit condition, should an amended permit issue.

Addition of a north facing window to the dining areas of apartments 311, 411, 507 and 604.

50. The plans show that these window openings would be partially restricted, although insufficient details have been provided. Although clauses 55 and 58 do not apply, it is reasonable to consider potential adverse overlooking in this context, and even apply the 9m distance, 45 degree rule outlined in these Particular provisions.
51. Following the notice period, receipt of objections and planning consultation meeting, the Applicant provided sketch plans showing these windows would be constructed or obscure glazing and restricted to a maximum 125mm opening, directing views into the subject site, yet not within a 9m distance of any other dwelling's habitable room window or private open space area.

This is considered to reasonably provide northern daylight and ventilation to these dwellings, without unreasonably overlooking the dwellings to the north. This treatment should be imposed by way of a permit condition, should an amended permit issue.

Procedural matters

52. As a result of the proposed amendments further changes to the already endorsed plans are required including, amending section CC, landscape plans (endorsed plan 31) and crossover plan (endorsed plan 34). The notation 'car parking spaces 1, 11 and 12 are for visitors' must also be added to the ground floor plan as per the endorsed set. These matters could be addressed by way of permit conditions, should an amended permit issue.

Objector concerns

off-site amenity (including overlooking, noise, safety and insufficient setbacks)

53. Off-site amenity has been considered throughout this report. However, noise and setbacks have not.
54. The sketch plans reduce the additional wall height on the northern boundary as per the current endorsed plans (the 'insufficient setback' area targeted by the Objector).
55. As the proposal continues to be for dwellings within the MUZ and given the amendments sought (not including any new plant or equipment, etc) the proposal does not bring rise to unreasonable noise issues.

insufficient time to object

56. The application was advertised for 2 weeks as per Section 52 of the *Planning and Environment Act 1987*.

Conclusion

57. The amendments comply with the relevant elements of the Yarra Planning Scheme and are supported. The amendment necessitates amendments to the permit conditions as per below.

RECOMMENDATION

That having considered all objections and relevant planning policies, the Committee resolves to issue a Notice of Decision to Amend a Planning Permit PLN11/0648 for the Part demolition and construction of alterations and additions, resulting in a multi-storey building, construction of a new crossover and a reduction in the car parking requirements associated with dwellings (no planning permit required for dwelling use) at 221 Kerr Street, Fitzroy VIC 3065, generally in accordance with the advertised plans and subject to the following conditions :

1. Before the development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the endorsed plans (received by Council on 10 October and 8 November 2012 and prepared by Kerstin Thompson Architects Pty Ltd) which show:
 - (a) deletion of level 7 from the eastern most building segment;
 - (b) increased setback from the northern boundary to no less than 6.6 metres from the title boundary at levels 3 to 6 to the eastern most building segment;
 - (c) louvered windows to internal facing bedrooms and studies revised from clear to obscure glazing to a minimum height of 1.7m.

Where these windows are within a 45 degree arc and 9m radius of another habitable room window or private open space area, the louvers must be fixed to a minimum height of 1.7m or suitable alternative to the satisfaction of the responsible authority;

- (d) apartment entries recessed a minimum 100mm;
- (e) a sliding door/wall to the south of the dwelling 102 study or suitable alternative to the satisfaction of the responsible authority;
- (f) that the skylights to the level 1 bedrooms (dwelling 004 – 006) as openable or vented;
- (g) materials and finished to the northern elevation of the eastern most building Levels 3 to 6 be of a colour of light to mid tone and be non-reflective material to minimise glare to the satisfaction of the Responsible Authority;
- (h) a minimum 1 store per dwelling with a minimum area of 3m³ to be provided in over-bonnet arrangement or otherwise to the satisfaction of the responsible authority.
- (i) at least 1 bicycle parking space per dwelling;
- (j) bicycle dimensions as per 52.34-4 of the Yarra Planning Scheme, or otherwise to the satisfaction of the Responsible Authority;
- (k) bicycle signage as per clause 52.34-5 of the Yarra Planning Scheme;
- (l) deletion of references to 'proposed title boundaries' with existing title boundaries shown;
- (m) shutters may extend a maximum of 500mm outside title boundaries;
- (n) the fire booster cupboard to be finished in a colour that respects the face brickwork of the existing building;
- (o) confirm the crossover along Gore Street will be demolished and reconstructed;
- (p) a 1 in 20 scale cross sectional drawing of the vehicle crossing, extending from the road to inside the property. The drawing must show specific levels and dimensions and demonstrate that an 85th percentile vehicle profile as per AS/NZS 2890.1:2004 can traverse the proposed vehicle crossing without 'scraping out';
- (q) a schedule of colours and materials (including samples), with a maintenance schedule for the timber shutters;
- (r) provision of a minimum 3 on-site visitor car parking spaces;
- (s) a ground clearance check of the crossover using a B99 vehicle, demonstrating vehicles will not scrape or bottom out;**
- (t) further modified as per the amendments shown in the advertised plans received by Council on 25 September and 6 November 2017, but modified to:**
 - (i) **retain the north boundary wall height for the eastern built form segment as per the endorsed plans, with planters setback at least 2m from the northern boundary (as shown in the sketch plans received by Council on 29 January 2018);**
 - (ii) **restrict the opening of the new north facing, obscure glass windows to a maximum 125mm, (as shown in the sketch plans received by Council on 29 January 2018);**
 - (iii) **include an amended section CC, landscape plans (endorsed plan 31), crossover plan (endorsed plans 34) as per the advertised plans;**
 - (iv) **include the notation 'car parking spaces 1, 11 and 12 are for visitors' on the ground floor plan as per the endorsed set of plans; and**
 - (v) **remove any change to the approved car park levels (excluding crossover and ramp).**

Endorsed Plans

2. The development must accord with the endorsed plans. Any alterations must be approved in writing by the Responsible Authority.
3. Floor levels shown on the endorsed plans must not be altered or modified. Any alterations must be approved in writing by the Responsible Authority.

Acoustic Treatments

4. Before the plans are endorsed, an acoustic report prepared by a suitably qualified person must be submitted to and approved by the Responsible Authority. Once approved, the acoustic report will be endorsed and will then form part of the permit. The report must include:
 - (a) an assessment of how the requirements of State Environment Protection Policy N-1 and relevant Australian Standards will be met and must prescribe the form of acoustic treatment to:
 - (i) protect all dwelling occupants from external noise sources from Smith Street including details of glazing types; and
 - (ii) protect all dwelling occupants and nearby residential occupants from noise generated from the mechanical plant equipment and ventilation mechanisms installed or constructed as part of the development (including air conditioner units).
5. The recommendations and any works contained in the approved acoustic report pursuant to condition 4 must be implemented and completed and where they are recommendations of an ongoing nature must be maintained all to the satisfaction of the Responsible Authority.

Environmentally Sustainable Design Principles

6. Before the plans are endorsed, a Sustainable Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the SMP will then be endorsed and form part of this permit. The SMP must be generally in accordance with the report prepared by Arc resources (dated 10 August 2011) but modified to reflect the final development.

Wind Assessment

7. Before the plans are endorsed, a desktop wind assessment report to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. When approved, the report will be endorsed and will form part of the permit. The report must be prepared by a suitably qualified person and must:
 - (a) include a wind study of all communal areas and publicly accessible areas; and
 - (b) confirm that the surrounding public spaces and internal communal spaces will be within the criterion for walking comfort.
8. In the event the wind assessment report required under condition 7 recommends measures are required to moderate wind impacts, those recommendation must be incorporated into the design and once constructed thereafter maintained to the satisfaction of the Responsible Authority.

Car Parking, Crossovers and Footpaths

9. The area set aside for the parking of vehicles, together with the associated access lanes as delineated on the endorsed plan must:
 - (a) be provided and completed to the satisfaction of the Responsible Authority prior to the commencement of the development hereby permitted;
 - (b) thereafter be maintained to the satisfaction of the Responsible Authority;
 - (c) be made available for such use at all times and not used for any other purpose;
 - (d) be properly formed to such levels that it can be used in accordance with the endorsed plan; and
 - (e) be drained and sealed with an all weather seal coat all to the satisfaction on the Responsible Authority.
10. Any redundant vehicle crossings must be broken out and reinstated with paving, kerb and channel of the surrounding area. The cost of these reinstatement works must be borne by the Permit Holder.

11. Any damaged road(s) and footpath(s) adjacent to the development site as a result of the development must be reinstated to the satisfaction of the Responsible Authority and at the expense of the Permit Holder.
12. The construction of the new crossing must comply with the following:
 - (a) the vehicle crossings must be constructed in accordance with City of Yarra Standard Drawings and Specifications;
 - (b) the development's finished floor levels relative to the existing footpath and road levels must be such that pedestrian and vehicular access accord with the Australian/New Zealand Standard AS/NZS 2890.1:2004;
 - (c) existing kerb and channel, and road pavement surface levels must not be altered. Council may permit the adjustment of Building Line levels to provide access in accordance with AS/NZS 2890.1:2004; and
 - (d) the design and construction of the vehicle crossing must also satisfy the requirements of Council's Community Amenity unit's Vehicular Access into Properties (Info Sheet and Application Form) before a vehicle crossing permit can be issued.
13. The car lift must be installed and maintained in accordance with manufacture requirements by a suitably qualified person.
14. Tandem car parking spaces (each pair) must be allocated to the same dwelling.

Landscaping

15. Before the plans are endorsed, a landscape management plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the report will be endorsed and will form part of the permit. The report must be prepared by a suitably qualified person and must:
 - (a) include management details, including watering, mulching, etc.; and
 - (b) include plant life expectancies and replacement schedules.
16. Before the occupation of the development, the landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of the Responsible Authority.
17. The landscaping shown on the endorsed plans must be maintained to the satisfaction of the Responsible Authority including that any dead or diseased or damaged plants are to be replaced.

Lighting

18. The development must be provided with external lighting capable of illuminating access to each car parking spaces, storage, rubbish bin, recycling bin, pedestrian walkways, stairwells, lift, dwelling entrances and entry foyer. Lighting must be located, directed, shielded and of limited intensity so that no nuisance or loss of amenity is caused to any person within and beyond the site, to the satisfaction of the Responsible Authority.

General

19. Privacy screens as required in accordance with the endorsed plans must be installed prior to occupation of the building to the satisfaction of the Responsible Authority and maintained to the satisfaction of the Responsible Authority thereafter.
20. All new on boundary walls must be cleaned and finished to the satisfaction of the Responsible Authority.
21. All piping and ducting, other than for drainage above the ground floor storey of the building must be concealed.

Waste Management

22. Before the plans are endorsed, an updated Waste Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. Once approved, the Waste Management Plan will then form part of this permit. The Waste Management Plan must be generally in accordance with the Waste Management Plan prepared by Leigh Design, dated 9 January 2013.

Construction Management Plan

23. Before any 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 as evidence of its approval. The plan must provide for or include the following:
- (a) a pre-conditions survey (dilapidation report) of the subject site and all adjacent Council roads frontages and nearby road infrastructure;
 - (b) protection works necessary to road and other infrastructure (limited to an area reasonably proximate to the site);
 - (c) remediation of any damage to road and other infrastructure (limited to an area reasonably proximate to the site);
 - (d) containment of dust, dirt and mud within the site and method and frequency of clean up procedures in the event of build up of matter outside the site;
 - (e) on site facilities for vehicle washing;
 - (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 that the activities on-site pose including but not limited to: contaminated soil, materials and waste, dust, stormwater contamination from run-off and wash-waters, sediment from the site on roads, washing of concrete trucks and other vehicles and machinery, spillage from refuelling cranes and other vehicles and machinery;
 - (i) construction program;
 - (j) preferred arrangements for trucks delivering to the site including delivery and unloading points and expected frequency;
 - (k) parking facilities for construction workers;
 - (l) measures to ensure that sub-contractors/tradespersons operate 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; and
 - (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, to the satisfaction of the Responsible Authority. In this regard, consideration (amongst other matters) may be given to:
 - (i) using lower noise work practice and equipment;
 - (ii) the suitability of the site for the use of an electric crane;
 - (iii) silencing all mechanical plant by the best practical means using current technology; and
 - (iv) fitting all pneumatic tools operated near a residential area with an effective silencer on their air exhaust port.
24. During the construction, the following must occur:

- (a) any stormwater discharged into the stormwater drainage system to comply with EPA 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 premises enters the stormwater drainage system;
- (c) vehicle borne material must not accumulate on the roads abutting the site;
- (d) the cleaning of machinery and equipment must take place on site and not on adjacent footpaths or roads;
- (e) all litter (including items such as cement bags, food packaging and plastic strapping) must be disposed of responsibly; and
- (f) all site operations must comply with the EPA Publication TG302/92.

25. The development once commenced, must be completed to the satisfaction of the Responsible Authority.

Expiry

26. This permit will expire if one of the following circumstances applies:
- (a) the development is not started within two years of the date of this permit; and
 - (b) the development is not completed within four years of the date of this permit.

The Responsible Authority may approve extensions to these time limits if requests are made before the permit expires or within three months afterwards.

NOTE: The site is located within an Environmental Audit Overlay. Pursuant to clause 45.03 of the Yarra Planning Scheme, the requirements of the Environmental Audit Overlay must be met prior to the commencement of works permitted under the permit.

NOTE: A building permit maybe required before development is commenced. Please contact Council's Building Department on PH 9205 5351 to confirm.

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

NOTE: 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.

NOTE: The site must be drained to the legal point of discharge to the satisfaction of the Responsible Authority.

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

CONTACT OFFICER: Sarah Thomas
TITLE: Principal Planner and Advocate
TEL: 9205 5046

Attachments

- 1 PLN11/0648.02 - 221 Kerr Street Fitzroy - Advertising S52 - Plans
- 2 PLN11/0648.02 - 221 Kerr Street Fitzroy - Further Information Provided
- 3 PLN11/0648.02 - 221 Kerr Street Fitzroy - Sketch plans
- 4 PLN11/0648.02 - 221 Kerr Street Fitzroy - Engineering comments
- 5 PLN11/0648.02 - 221 Kerr Street Fitzroy - Email response to security question
- 6 PLN11/0648.02 - 221 Kerr Street Fitzroy - Further engineering referral

1.2 13A Adam Street Burnley - Planning Permit Application PLN16/0938 - Development of the land for the construction of a two-storey dwelling, including a roof terrace.

Executive Summary

Purpose

1. This report provides Council with an assessment of a planning permit application submitted for 13A Adam Street Burnley, which seeks approval for the development of the site for the construction of a two-storey dwelling, including a roof terrace. The report recommends approval, subject to conditions.

Key Planning Considerations

2. Key planning considerations include:
 - (a) Clause 15.01-1 Urban design;
 - (b) Clause 21.05 – Built form;
 - (c) Clause 22.07 – Development Abutting Laneways;
 - (d) Clause 22.10 - Built form and design policy;
 - (e) Clause 22.13 – Residential Built Form Policy;
 - (f) Clause 32.08 – General Residential Zone (Schedule 2);
 - (g) Clause 54 – Rescode; and
 - (h) Clause 52.06 – Car Parking.

Key Issues

3. The key issues for Council in considering the proposal relate to:
 - (a) Clause 54 (Rescode);
 - (b) Built form; and
 - (c) Objector concerns.

Objector Concerns

4. Six (6) objections were received to the application, these can be summarised as:
 - (a) Proposed design, including the materials are not appropriate with regards to the existing neighbourhood character.
 - (b) Over development of the site (height, site coverage, lack of setbacks).
 - (c) Amenity impacts (visual bulk, solar access to habitable room windows, overshadowing and overlooking).
 - (d) Lack of car parking provided on site.

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: Nish Goonetilleke
TITLE: Senior Statutory Planner
TEL: 9205 5005

1.2 13A Adam Street Burnley - Planning Permit Application PLN16/0938 - Development of the land for the construction of a two-storey dwelling, including a roof terrace.

Trim Record Number: D18/23215

Responsible Officer: Senior Coordinator Statutory Planning

Proposal: Development of the land for the construction of a two-storey dwelling, including a roof terrace.

Existing use: Dwelling

Applicant: Archiblox Pty Ltd

Zoning / Overlays: General Residential Zone (Schedule 2)
Design and Development Overlay (Schedule 5)

Date of Application: 12 October 2016

Application Number: PLN16/0938

Planning History

1. A Planning Permit was issued in 1996 for the construction of two, double-storey, rendered brick dwellings. However, as the planning records containing this approval are missing, no further details can be provided.

Background

2. The application was received by Council on 12 October 2016, with additional information received on 16 December 2016 and 20 December 2016. The application was advertised 21 December 2016, with six (6) objections received.
3. A planning consultation meeting was held on 14 March 2017, attended by the applicant, owners, objectors and Council officers.

Section 57A Plans

4. In response to the concerns raised by Council and objectors, a number of revised plans were submitted under the Section 57(A) of the *Planning and Environment Act 1987* (the Act), as follows:
5. On 30 May 2017; with the plans incorporating the following changes:
 - (a) Various modifications to the extent of boundary walls and setbacks at all floors.
6. The proposed changes were not substantial enough to respond to the concerns raised by Council or the objectors. Therefore, the amended plans were not advertised.
7. On 11 September 2017, with the key changes made to the proposal being:
 - (a) Replacement of the third-storey (retreat) and deck with a roof terrace;
 - (b) Front setback of ground and first floors increased;
 - (c) The southern light-court at ground floor reduced in size, with the wall associated with the ground floor open plan kitchen/living/dining area increased in length;
 - (d) Length of the northern boundary wall at first floor increased;
 - (e) Southern boundary wall associated with the bedroom at first floor reduced in length, followed by an increased setback and an additional boundary wall; and
 - (f) Reduction in the overall height of the dwelling from 8.99m to 8.21m.

8. The amended plans were advertised to the abutting dwellings and the objectors on 22 September 2017. No changes to the number of objections.
9. On 23 January 2018, in response to the continued concerns raised by Council and objectors, as well as Council's Urban Design unit and Engineering Department; with the plans incorporating the following changes:
 - (a) Rear setback of ground and first floors, amended to 4.55m (previously 4.6m) and 4.44m (previously 3.78m), respectively;
 - (b) Southern setback of the light court at first floor increased from 1.69m to 1.89m, with the wall along the southern boundary at first floor reduced from 6.88m to 6.78m in length;
 - (c) Variation to the setbacks of the roof terrace from the southern boundary between 1.52m to 2.92m (previously between 2.1m to 4.2m);
 - (d) Additional privacy screening to the roof terrace;
 - (e) The proposed front fence limited to either side of the front title boundary (previously along the full length of the front boundary);
 - (f) Increase in the transparency of the timber screening at first floor to 60% (previously almost solid); and
 - (g) The dimensions of the car space annotated as 5.4m in length and 2.4m in width, and the width of the proposed gate identified as 3m. In addition, the vegetation within the front setback shifted further north and south, outside of the car parking envelope.
10. The amended plans were not advertised under the provision of Section 52 of the *Planning and Environment Act 1987*, as the majority of the proposed changes seek a reduction in the originally proposed built form. Whilst the roof terrace sees a reduction in its setback from the southern boundary, the proposed alterations will not impact any sensitive interfaces such as secluded private open spaces or habitable room windows. Discretionary exemption from notification was granted at Council's internal Development Assessment Panel (DAP) on 23 January 2018 on the basis that the changes will not cause material detriment to the surrounding owner/occupiers. Nonetheless, the amended plans were circulated to all objectors prior to the meeting, with their IDAC invitation letter.
11. On this basis, the assessment of the application will be based on the new plans lodged on 23 January 2018.

Amendment VC110

12. Amendment VC110 was gazetted on 27 March 2017, and varies the provisions of the Neighbourhood Residential Zone (NRZ), General Residential Zone (GRZ), Residential Growth Zone (RGZ) and Mixed Use Zone (MUZ). More relevantly to this site which is in a GRZ, the amendment includes the following:
 - (a) Removal of the restriction on the number of dwellings that can be built on land;
 - (b) The maximum height and the maximum number of storeys of a building used for the purpose of a dwelling must not exceed 11 metres or three-storeys, with potential to exceed this height in particular circumstances. However the Schedule to the zone states a maximum height of 9m; and
 - (c) A mandatory minimum garden area requirement for lots greater than 400sqm and above, ranging from between 25 to 35 percent of lot area.
13. The proposal is three-storeys and with a maximum height of 8.21m.
14. The subject site is only 180sqm in area; therefore the minimum garden area requirement does not apply.

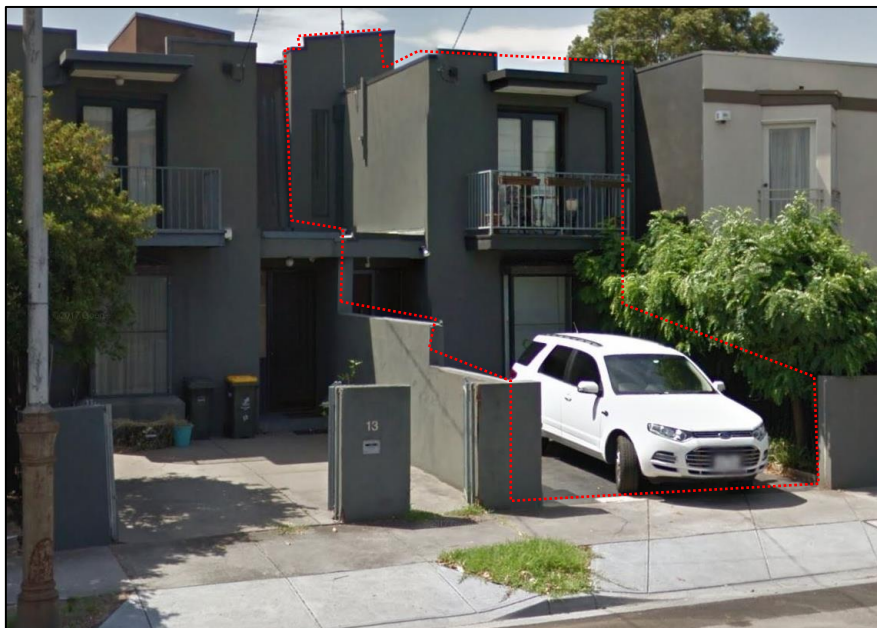
Amendment VC142

15. Amendment VC142 was gazetted on 16 January 2018 and changes the Victorian Planning Provisions (VPP) and all Planning Schemes in Victoria by removing excessive provisions and permit requirements, clarification of unclear provisions, updated planning provisions and use of contemporary land use terms. This amendment does not impact this application.

Existing Conditions

Subject Site

16. The subject site is located on the eastern side of Adam Street, with Cherrill Street to the south, Burnley Street approximately 90m to the west, and Swan Street approximately 200m to the north, in Burnley.
17. The site has a frontage of 5.6m to Adam Street and a depth of 30.30m, constituting an overall area of approximately 171sqm. The eastern boundary abuts a 3m wide Right-of-Way (ROW). However, this ROW appears to be fenced off further north, with part of this ROW used as secluded private open space (SPOS) of No. 3 Cherrill Street.



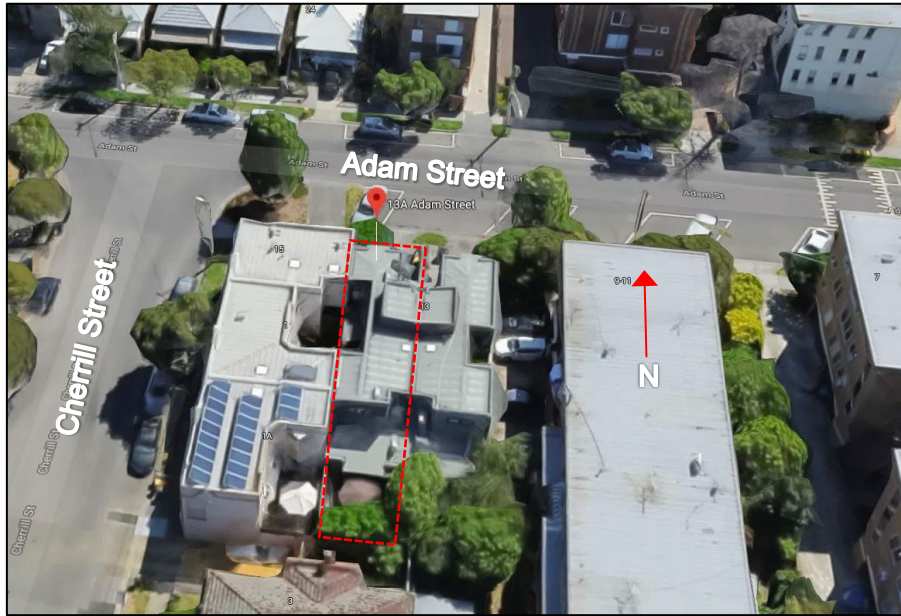
18. The site is occupied by a double-storey, rendered building constructed along a section of the northern and southern boundaries at both ground and first floors, with the exception of a 1.8m setback from the southern boundary at both floors. Both floors are setback a minimum of 4.9m from the western (front) boundary, with this setback occupying one on-site car space at ground floor and a small balcony at first floor. The dwelling is setback 5.4m and a minimum of 8.1m from the eastern boundary at ground and first floor, respectively, to accommodate SPOS. The existing dwelling has a height between 6.2m to 7.4m above natural ground level.
19. At ground floor, the dwelling consists of one bedroom, a living room, laundry, bathroom, and an open plan living/kitchen/dining area providing access to the SPOS. At first floor, the dwelling consists of two bedrooms, a bath room and a walk-in-robe.
20. There are no restrictive covenants or easements listed on the title provided.

Surrounding Land

21. The surrounding neighbourhood is largely residential, with a mixture of single and double-storey dwellings, as well as three to four-storey apartment blocks, and an increasing number of contemporary developments.

While building types vary substantially within Adam Street, high site coverage and the construction of walls on boundary are common elements, with the majority of buildings being constructed on or in close proximity to at least one side boundary. A number of these dwellings are setback between 3m to over 5m from the western (front) title boundaries to accommodate either small front gardens or open car parking, accessed from Adam Street. Areas of secluded private open space (SPOS) are predominantly located to the rear of these dwellings at ground floor.

22. Front fences consist of a variety of fence designs; ranging from timber pickets to wrought-iron to brick; all at varying heights.



North

23. Abutting the subject site to the north is No. 13 Adam Street, a double-storey, rendered brick dwelling, which was built as a pair with the subject site. Similar to the subject site, this dwelling contains open space areas in the rear and western (side) setback of the site. Vehicle access into the site is available from Adam Street.
24. Further to the north of No. 13 Adam Street is a block of three-storey, walk-up flats.

South

25. Abutting the subject site to the south is one large development comprising of three separate dwellings; No. 15 Adam Street and Nos. 1 and 1A Cherrill Street, Burnley.

No. 15 Adam Street

26. This is a double-storey, rendered, brick dwelling. Whilst the site is addressed to Adam Street, the front entrance is off Cherrill Street, to the south. The dwelling is built along the northern, southern and eastern boundaries, setback 2m from the eastern and northern boundaries at first floor, and setback between 3.2m to 4m from the western boundary at both floors to accommodate the principal SPOS. An open-sided pergola structure/carport is built abutting the northern and western boundaries within the western setback (not shown on plans). The front and rear boundary consists of a 1.5m high, rendered brick and mesh fence. A secondary courtyard is located within the north-eastern setback. Vehicle access into the site is available from Adam Street.

No. 1 Cherrill Street and No. 1A Cherrill Street

27. No. 1 Cherrill Street is a double-storey, rendered, brick dwelling which is constructed flush to Cherrill Street, built along the eastern and western boundaries and setback between 3.5m to 4m from the northern boundary at both floors, to accommodate SPOS.

Vehicle access into the site is available from Cherrill Street. No. 1A Cherrill Street is a mirror image of No. 1 Cherrill Street, built along its eastern and western boundaries and setback between 3.5m to 4m from the northern boundary at both floors, to accommodate SPOS. Vehicle access is available from Cherrill Street.

East

28. Abutting the subject site to the east is No. 3 Cherrill Street, a single-storey dwelling. As stated previously, it appears that the west-facing SPOS of this dwelling includes a section of the existing, fenced off ROW. Taking into account this parcel of land, the dwelling is setback between 3m to 4m from the common (western) boundary.

West

29. To the west of the subject site and across Adam Street, are single and double-storey dwellings, with a number of three to four-storey walk-up flats. The streetscape of this section of Adam Street is varied with front setbacks accommodating car parking or high boundary fencing. To the immediate west is a triple-storey, brick, walk-up flats.
30. The subject site is approximately 90m to the east of Burnley Street and over 200m south of Swan Street, in Burnley. Both Burnley Street and Swan Street provide access to public transport routes. Swan Street is also an Activity Centre and consists of a mix of shops, businesses, restaurants and cafes.

The Proposal

31. The proposed dwelling will be double-storey, with a flat roof form and a roof terrace above. The materials proposed are a mix of rendered brick, timber cladding and metal cladding. The dwelling will have a maximum height of 8.21m above natural ground level. Vehicle access to the dwelling will continue to be provided via the existing single crossover from Adam Street, with the dwelling having one car space within the front setback. Details of the proposed dwelling are as follows:

Demolition (no permit required)

- (a) Full demolition of the existing dwelling, including the front fence and part of the boundary fences.

Construction

- (b) Ground floor contains a living room, laundry, WC, and an open plan dining/kitchen/living area. A 3sqm light-court along the southern boundary is provided central to the site. To the rear of the site is approximately 26sqm of SPOS, including a 2,000L water-tank. A single car space is located within the front setback, including 2.3m high external storage along the southern boundary. Access for both pedestrians and vehicles is from Adam Street, including a 1.5m high timber-batten front fence;
- (c) First floor will consist of three bedrooms, a bathroom, a master-bedroom with an ensuite and a study nook. The first floor cantilevers 0.95m over the front portion of the ground floor and 0.11m over the SPOS at ground floor; and
- (d) A 28sqm roof terrace with access via a hatch door.
32. The dwelling is constructed to the northern boundary at all levels, with varied wall lengths and is setback between 4.44m to 13.1m from the rear boundary between ground floor and roof terrace. The dwelling is generally built along the southern boundary at both ground and first floors, with the exception of a central light-court at both ground floor (1m setback) and first floor (1.89m setback), followed by a setback of 2m towards the rear of the first floor from the southern boundary.

The roof terrace is setback between 1.52m to 2.92m from the southern boundary. The front setback is 6.23m at ground floor, reducing to between 5m to 5.28m at first floor and 5.28m at roof terrace.

33. The dwelling has a height of 6.61m, with a maximum height of 8.21m to the top of the balustrade of the roof terrace.

Planning Scheme Provisions

Zoning

Clause 32.08 General Residential Zone (Schedule 2)

34. Pursuant to *Clause 32.08-4* of the Yarra Planning Scheme (the Scheme), a planning permit is required to construct one dwelling on a lot less than 300sqm. As the subject site is approximately 171sqm, a planning permit is required. A development must meet the requirements of Clause 54.
35. Pursuant to *Clause 32.08-4* of the Scheme, *a permit is required to construct or extend a front fence within 3 metres of a street if:*
- (a) *The fence is associated with one dwelling on:*
 - (i) *A lot of less than 300 square metres, and*
 - (ii) *The fence exceeds the maximum height specified in Clause 55.06-2.*
36. The front fence along the western boundary will have a maximum height of 1.5m. As such, a permit is not required for this fence.
37. As highlighted earlier in the report, the proposal complies with the mandatory requirements of the zone as the development is for a two-storey dwelling with a maximum height of 8.21m, on a site less than 400sqm.

Overlays

Design and Development Overlay (Schedule 5 – CityLink Exhaust Stack Enviro)

38. Pursuant to *Clause 43.02-2* of the Scheme, *a permit is required to construct a building or to construct or carry out works. This does not apply:*
- (a) *If a schedule to this overlay specifically states that a permit is not required.*
39. Schedule 5 specifically states that a permit is not required for buildings and works. Notice however must be given to the Environment Protection Authority (EPA), Transurban City Link, and Vic Roads in the event that a planning permit is triggered under another provision within the Scheme.

Particular Provisions

Clause 52.06 Car parking

40. Pursuant to *Clause 52.06-2* of the Scheme, *before the floor area or site area of an existing use is increased*, the number of car parking spaces required under *Clause 52.06-5* must be provided to the satisfaction of the responsible authority on the land; or in accordance with a permit issued under *Clause 52.06-3*.
41. Pursuant to *Clause 52.06-3* of the Scheme, *a permit is not required if: the number of car parking spaces currently provided in connection with the existing use is not reduced after the new use commences.*

42. The existing three-bedroom dwelling is provided with one car space. The proposed dwelling consists of four bedrooms. The Car Parking Table at *Clause 52.06-5* of the Scheme specifies a rate of 2 car spaces to each 3 or more bedroom dwelling. As the existing car park rate is not amended under the proposed conditions, and the existing car space is to remain, a reduction of car parking is not required.

Clause 54 One Dwelling on a lot

43. Pursuant to *Clause 54* of the Scheme the provisions apply for the construction of a dwelling on a lot in a General Residential Zone.

General Provisions

Clause 65 Decision guidelines

44. 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 relevant State and Local Planning Policy Frameworks, as well as the purpose of the zone, overlay or any other provision.

State Planning Policy Framework (SPPF)

Clause 15.01-1 Urban design

45. The 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 15.01-2 Urban design principles

46. The objective of this clause is:
- (a) *To achieve architectural and urban design outcomes that contribute positively to local urban character and enhance the public realm while minimising detrimental impact on neighbouring properties.*

Clause 15.01-4 – Design for safety

47. The objective of this clause is:
- (a) *To improve community safety and encourage neighbourhood design that makes people feel safe.*

Clause 15.01-5 Cultural identity and neighbourhood character

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

Clause 15.02-1 Energy and resource efficiency

49. The objective of this clause is:

- (a) *To encourage land use and development that is consistent with the efficient use of energy and the minimisation of greenhouse gas emissions.*

Clause 16.01-4 – Housing diversity

50. The objective of this clause is:

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

Clause 18.02-1 – Sustainable personal transport

51. The objective of this clause is:

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

Clause 18.02-5 – Car parking

52. The objective of this clause is:

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

Local Planning Policy Framework (LPPF)

Clause 21 – Municipal Strategic Statement (MSS)

53. The MSS provides a broad demographic summary of the municipality and is structured into 4 main themes; land use, built form, transport and sustainability.

54. In relation to housing, Yarra has a higher percentage of flats and units and the MSS acknowledges that demand for inner-city living is high. An increased proportion of new housing development is to be encouraged on strategic redevelopment sites and in areas that are well located, close to public transport and activity centres.

Clause 21.04 – Land use

Clause 21.04-1 – Accommodation and Housing

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

- (a) *Objective 1 To accommodate forecast increases in population.*
 - (i) *Strategy 1.1 Ensure that new residential development has proper regard for the strategies applicable to the neighbourhood in question identified in clause 21.08;*
 - (ii) *Strategy 1.3 Support residual population increases in established neighbourhoods;*

Clause 21.05 – Built form

Clause 21.05-2 Urban Design

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

- (a) *Objective 16 - To reinforce the existing urban framework of Yarra.*
 - (i) *Strategy 16.2 Maintain and strengthen the preferred character of each Built Form Character Type within Yarra.*
- (b) *Objective 17 - To retain Yarra's identity as a low-rise urban form with pockets of higher development.*

- (i) *Strategy 17.1 Ensure that development outside activity centres and not on Strategic Redevelopment Sites reflects the prevailing low-rise urban form.*
- (c) *Objective 18 - To retain, enhance and extend Yarra's fine grain street pattern.*
 - (i) *Strategy 18.1 Encourage the re-establishment of streets and laneways through new development sites where such links were part of the historic street pattern, except where this will cause detrimental traffic impacts.*
 - (ii) *Strategy 18.2 Enhance the amenity of laneways by applying the Development Abutting Laneway policy at Clause 22.07.*
- (d) *Objective 20 - To ensure that new development contributes positively to Yarra's urban fabric.*
 - (i) *Strategy 20.1 Ensure development is designed having particular regard to its urban context and specifically designed following a thorough analysis of the site, the neighbouring properties and its environs.*
 - (ii) *Strategy 20.3 Reflect the fine grain of the subdivision pattern in building design where this is part of the original character of the area.*
 - (iii) *Strategy 20.4 Apply the Built Form and Design policy at clause 22.10.*
- (e) *Objective 22 - To encourage the provision of universal access in new development.*
 - (i) *Strategy 22.1 Encourage applicants to take into account the access needs of all people in the design of new buildings.*

Clause 21.05-3 Built Form Character

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

- (a) *Objective 23 To maintain and strengthen the identified character of each type of identified built form within Yarra.*
 - (i) *Strategy 23.1 Require applicants for planning permits to identify the Built Form Character Types in which the subject site is located by reference to Maps in clause 21.08 Neighbourhoods and to identify how the proposed development responds to the Built Form Character Type.*
- (b) *Objective 24 To maintain and reinforce preferred character.*
 - (i) *Strategy 24.1 Apply the Residential Built Form policy at clause 22.13.*

Clause 21.06 Transport

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

- (a) *Objective 30 To provide safe and convenient pedestrian and bicycle environments.*
 - (i) *Strategy 30.2 Minimise vehicle crossovers on street frontages.*
 - (ii) *Strategy 30.3 Use rear laneway access to reduce vehicle crossovers.*

Clause 21.07 Environmental Sustainability

59. The relevant objective and strategies of this clause is:

- (a) *Objective 34 To promote ecologically 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.*
- (ii) *Strategy 34.2 Apply the environmental sustainability provisions in the Built Form and Design policy at clause 22.10-3.5.*

Clause 21.08-2 Burnley, Cremorne, South Richmond

60. The neighbourhood character statement for this area states:
- (a) *The Cremorne area has a truly mixed use character with Victorian cottages, apartments and warehouse conversions intermingled with commercial and industrial uses. This mix of uses is valued by the local community and must be fostered.*
 - (b) *The established residential area surrounding Barkly Gardens provides a range of housing opportunities in small cottages and larger period dwellings.*
 - (c) *The area east of Burnley Street includes the Golden Square residential area which comprises predominantly cottages of heritage significance.*
61. *This neighbourhood is largely an eclectic mix of commercial, industrial and residential land use. With two railway lines and both north south, and east west tram routes, the neighbourhood has excellent access to public transport. The Cremorne commercial area functions as an important metropolitan business cluster which must be fostered.*
62. The map at Figure 8: Built-form character Map: Burnley, Cremorne, South Richmond shows that the subject site is located in an 'Inner Suburban Residential' area. The strategy for this area is:
- (a) *Maintain the existing pattern of front setbacks.*
 - (b) *Limit variations in height to a maximum of one-storey compared to the adjacent properties, on single house sites/small development sites in areas with general consistent building heights.*

Relevant Local Policies

Clause 22.07 Development Abutting Laneways

63. The objectives of this clause are:
- (a) *To provide an environment which has a feeling of safety for users of the laneway.*
 - (b) *To ensure that development along a laneway acknowledges the unique character of the laneway.*
 - (c) *To ensure that where development is accessed off a laneway, all services can be provided to the development.*
 - (d) *To ensure that development along a laneway is provided with safe pedestrian and vehicular access.*

64. Whilst there is a ROW to the east of the subject site, the portion of this ROW abutting the eastern boundary of the subject site appears to be used as a part of the SPOS of No. 3 Cherrill Street. As such, this policy will not be considered under the assessment and any amenity impacts to the SPOS will be considered. However, the proposal does not alter the existing pedestrian and vehicle access, which is from Adam Street, and will not change the existing northern, eastern and southern boundary fencing. Furthermore, the proposed extension is setback over 4.4m from the ROW/SPOS.

Clause 22.10 - Built form and design policy

65. This policy applies to all new development not included in a heritage overlay. The relevant objectives of this policy are:
- (a) *Ensure that new development positively responds to the context of the development and respects the scale and form of surrounding development where this is a valued feature of the neighbourhood character.*
 - (b) *Ensure that new development makes a positive contribution to the streetscape through high standards in architecture and urban design.*
 - (c) *Limit the impact of new development on the amenity of surrounding land, particularly residential land.*
 - (d) *Design buildings to increase the safety, convenience, attractiveness, inclusiveness, accessibility and 'walkability' of the City's streets and public spaces.*
 - (e) *Create a positive interface between the private domain and public spaces.*
 - (f) *Encourage environmentally sustainable development.*
66. The clause includes various design objectives and guidelines that can be implemented to achieve the above objectives. The relevant design objectives and guidelines relate to:
- (a) Urban form and character;
 - (b) Setbacks and building heights;
 - (c) Street and public space quality; and
 - (d) Environmental sustainability.

Clause 22.13 - Residential Built Form Policy

67. This policy includes design responses which relate to the built form character types at *Clause 21.08* of the Scheme. The subject site is within an "Inner Suburban Residential", area described as "*Built form dominated residential areas with small gardens (if any) and minimal front and side setbacks*". This policy encourages the following design responses for developments within "Inner Suburban Residential" areas:
- (a) *Maintain the existing pattern of front setbacks.*
 - (b) *Landscape the front setback in a style that reinforces the garden character (if any) of the streetscape.*
 - (c) *Where the general pattern of development includes gaps between buildings, include a setback on at least one side of the building.*

- (d) *Orient buildings at right angles to the street frontage.*
- (e) *Provide front fencing that is open (unless the building is zero front setback).*
- (f) *On single house sites in areas with generally consistent building heights, limit variations in height to a maximum of one storey compared to the adjacent properties.*

Clause 22.16 – Stormwater Management (Water Sensitive Urban Design)

68. This policy applies to applications for new buildings and recognises that increased development can result in greater hard surface area and changes to the volume, velocity and quality of stormwater drainage into natural waterways. The relevant objectives of this Clause are as follows:
- (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).*
 - (b) *To promote the use of water sensitive urban design, including stormwater re-use.*
 - (c) *To mitigate the detrimental effect of development on downstream waterways, by the application of best practice stormwater management through water sensitive urban design for new development.*
 - (d) *To minimise peak stormwater flows and stormwater pollutants to improve the health of water bodies, including creeks, rivers and bays.*
 - (e) *To reintegrate urban water into the landscape to facilitate a range of benefits including microclimate cooling, local habitat and provision of attractive spaces for community use and well-being.*

Advertising

69. The original application was advertised in accordance with Section 52 of the Act by way of 40 letters sent to surrounding property owners and occupiers and the display of one sign on the Adam Street frontage.
70. Council received a total of six (6) objections. The grounds of objection are summarised as follows:
- (a) Proposed design, including the materials are not appropriate with regards to the existing neighbourhood character.
 - (b) Over development of the site (height, site coverage, lack of setbacks).
 - (c) Amenity impacts (visual bulk, solar access to habitable room windows, overshadowing and overlooking).
 - (d) Lack of car parking provided on site.
71. These issues will be discussed later within this report.
72. As highlighted earlier in the report, a number of amended plans were submitted under S57A of the Act. The final set of amended plans dated 23 January 2018 were not advertised under the provision of Section 52 of the *Planning and Environment Act 1987*, as the majority of the changes seek a reduction in the originally proposed built form and the increased roof terrace will not impact any sensitive interfaces. Discretionary exemption from notification was granted at Council's internal Development Assessment Panel (DAP) on 23 January 2018, on the basis that the changes will not cause material detriment to the surrounding owner/occupiers.
73. This assessment is based on the final set of amended plans, dated 23 January 2018.

Referrals

External Referrals

74. The application was referred to City Link Authority, VicRoads and EPA under Section 52 of the Act based on the requirements of the DDO5. There was no objection to the application from the EPA or VicRoads. CityLink Authority did not provide any response.

Internal Referrals

75. The application was referred to Council's Engineering Department and Urban Design Unit. The comments are located in the Appendix to this report.

OFFICER ASSESSMENT

76. The key planning considerations for Council in considering the proposal are:

- (a) Clause 54 (Rescode);
- (b) Vehicle access; and
- (c) Objector concerns.

Clause 54 – Rescode

77. The following is a detailed assessment of the proposal against the relevant provisions of ResCode (*Clause 54*), incorporating an assessment against the policy guidelines for sites within an Inner Suburban Residential area at *Clause 22.13 (Residential built form policy)* and the provisions of *Clause 22.10 (Built form and design policy)*.

78. Clause 54 comprises of 19 design objectives and standards to guide the assessment of new residential development. Given the site's location within a built up inner city residential area, strict application of the standard is not always appropriate, whether the proposal meets the objective is the relevant test.

A1 – Neighbourhood character objective

79. The immediate streetscape character is diverse, with a variety of dwelling designs, including walk-up flats, and commercial building designs further south of Adam Street, all with varying heights and setbacks. There are a number of examples of contemporary buildings along Adam Street, namely, the subject site, No. 13 and 15 Adam Street, with the majority of these dwellings providing car parking spaces within the front setback.

80. The proposed site coverage is generally consistent with the character of the street which is typically high given the minimal setbacks, extent of boundary walls and small lot sizes.

81. The design objective of *Clause 22.10-3.3* of the Scheme seeks to *ensure new roof forms respect any prevailing roof forms in the area and contribute to the skyline silhouette*. The proposed flat roof is consistent with other dwellings along the eastern side of Adam Street, where the majority of the roof forms are flat. The existing dwelling on the subject site is itself a contemporary looking dwelling with a flat roof.

82. Overall, the proposal is a site and neighbourhood responsive design response, meeting the objective of the Standard.

A2 – Integration with the street objective

83. The proposed dwelling will continue to be orientated to Adam Street, with a 1.5m high front fence proposed along the front boundary, and as such will positively integrate with the street and promote passive surveillance. This is further enhanced through the provisions of large habitable room windows at the ground and first floors.
84. Similar to other contemporary buildings along Adam Street, including the subject site, minimal landscaping exists within the front setback. Consistent with *Clause 22.10-3.3* of the Scheme which recommends *new development constructed with a front setback to the street should include soft landscaping within the setback area*, the proposed ground floor plan shows vegetation along the northern and southern boundaries of the front setback, which is an improvement to the existing conditions.
85. As a guide, *Clause 22.13-3.2* of the Scheme states, *on single house sites in areas with generally consistent building heights, limit variations in height to a maximum of one storey compared to the adjacent properties*. The proposal does not increase the existing number of storeys; i.e. double-storey, but will include a roof terrace. The roof terrace is shown as an open structure and would not present as a third-storey. As such, the design of the development as a two-storey building, with a roof terrace is considered to be generally consistent with the existing pattern of surrounding development.
86. *Clause 22.10-3.4* recommends the provision of *a reasonable level of transparent treatment (e.g. windows, voids etc.) within the front street elevations*. The proposal is consistent with this as it provides large windows at both ground and first floors. The use of screening on the west-facing, first floor window will be discussed under A3 – Street setback objective.
87. In addition it is important to note that, as an existing crossover is to be used to access the site from Adam Street, there will be no impact on existing on-street car parking.

A3 – Street setback objective

88. The proposed front setback of 6.23m at ground floor is consistent with the front setback of the existing dwelling on the subject site and other developments along Adam Street. Most notably the abutting dwelling to the north; setback 6m from the western boundary and the abutting dwelling to the south; whilst not its front boundary, it is setback 4m from the western boundary. As such, the proposal complies with *Clause 22.13-3.2* of the Scheme which states *maintain the existing pattern of front setbacks*.
89. *Clause 22.10-3.3* of the Scheme recommends that the front setback not be used for ancillary services. Whilst storage is proposed within the front setback, it will be appropriately designed with timber cladding and is limited in height and size.
90. The use of the front setback to accommodate car parking is an existing condition and while local policy at *Clause 22.10-3.3* does not encourage car parking at the front of the site, the overall observation and surveillance of the street would not be impacted as it is an open car space, with no pergola structure over or carport. Car parking within the front setback of the site can be found along a number of the properties along the eastern side of Adam Street; notably, the subject site, as well as Nos. 13 and 15 Adam Street.
91. In addition, the car space will be enclosed by the proposed 1.5m high timber fence and vehicle gate, as well as soft landscaping on either side of the front setback; with the focus on the car space reduced and will allow for a degree of interaction between the dwelling's facade and the streetscape. In addition, as per *Clause 22-13-3.2* of the Scheme, in order to provide appropriate separation between vehicle access and pedestrian entry areas and to better identify the pedestrian entry, the proposed pedestrian entrance is located directly in front of the door, with a paved pathway further enhancing this. However, the proposed pedestrian entrance will be constructed of the same 1.5m high timber material used for the vehicle entrance and the remaining front fence. Further to this, Council's Urban Design Unit has recommended the front fence to be at least 33% open, to ensure a reasonable level to passive surveillance.

In order to provide an emphasis on the pedestrian entrance as opposed to the vehicle access and differentiate between the two, a condition will require the pedestrian entrance replaced with a highly permeable material (different from the proposed vehicle gate).

92. Based on the S57A plans lodged on 11 September 2017, Council's Urban Design Unit stated:

The design incorporates extensive screening. To ensure a reasonable level of passive surveillance, it is important that this is not too solid. I recommend that screening to the front window be at least 75% open....

93. As a response, the Applicant increased the transparency of the west-facing timber screening at first floor to from almost being solid to 60%. Given the increased transparency of the black, metal screening at first floor, combined with the proposed white brick work at ground floor and timber fence, the first floor will not appear to be as dominant and will be generally consistent with the policy direction under *Clause 21.08, Clause 22.10 and Clause 22.13* of the Scheme.

94. As stated before, the proposed setback of the first floor and roof terrace at 5.28m from the front boundary complies with Standard A3 - Street Setback of the Scheme.

A4 – Building height objective

95. The proposed maximum building height is 8.21m above natural ground level, thereby achieving compliance with the maximum 9m specified under the Standard.

A5 – Site coverage objective

96. This Standard states that the site area covered by buildings should not exceed 60%. The proposed increase in site coverage from approximately 61% to 67% continues to exceed the requirement of the Standard (including the area allocated for the external storage). However, the design response is considered reasonable in the context of the site in an inner-urban environment, and the established neighbourhood character which is characterised by high site coverage and small open space areas. In particular, similar degrees of site coverage are found within the adjacent sites to the north and south, at Nos. 13 and 15 Adam Street and Nos. 1 and 1A Cherrill Street.

A6 – Permeability objectives

97. Currently, permeable surfaces are located within the southern portion of the front setback, as well as, the rear setback and consist of approximately 30sqm or 18% of the overall site. A minimum of 20% site permeability is recommended by this Standard. The proposed ground floor plan shows that there will be a total of a 26sqm of permeable surfaces within the rear SPOS, and as such 15% of permeable surfaces will be retained on the subject site, which does not meet the standard. Whilst vegetation is proposed along the southern portion of the front setback, it is unclear whether there will be permeable surfaces. A condition will require the front setback to consist of permeable surfaces, to demonstrate compliance with the objective of Standard A6 (Permeability objective) of Clause 54 of the Yarra Planning Scheme.

98. Furthermore, the proposed floor plan indicates that there will be a 2,000Ltr rainwater tank within the rear setback. The STORM report provided shows a STORM rating of 160%; which far exceeds best practice and would reduce water-runoff.

A7 – Energy efficiency protection objectives

99. The proposed development will have a good level of energy efficiency given:

- (a) The proposal incorporates an area of private open space at the rear of the dwelling which will gain access to direct sunlight throughout the day, and is located directly off the main living room, thereby achieving good solar access and reducing the reliance on artificial lighting;
- (b) Cross-ventilation opportunities will be provided via the operable windows on the ground and first floors;

- (c) The first floor at the rear cantilevers over the ground floor, and would protect living room windows from the eastern sun;
- (d) A slim-line 2,000 litre rainwater tank is proposed for the new dwelling;
- (e) The addition of a south-facing light-court at ground floor will reduce the reliance on artificial lighting; and
- (f) The majority of the built form of the proposed dwelling at first floor and roof terrace will be setback from sensitive interfaces such as SPOS and habitable room windows. Therefore, not unreasonably impacting daylight or solar access to adjoining properties. This will be discussed in detail in other sections of the Rescode assessment.

100. Whilst not required under *Clause 22.17* of the Scheme, the Applicant has included a Sustainable Development Assessment (SDA). The SDA provided outlines a BESS Score of 58%, which exceeds the minimum requirement of 50%.

101. Overall, the proposed development is considered to achieve an appropriate design response with regard to energy efficiency objectives.

A8 – Significant trees objective

102. No tree removal has been proposed under this application.

A10 – Side and rear setbacks objective

103. The proposal incorporates built form which will be setback from the southern (side) and eastern (rear) title boundaries. The following table compares the proposed building setbacks with those required by the standard.

| Wall location | Wall height | Setback required | Setback provided | Complies? |
|--|----------------|------------------|------------------|-----------|
| <u>Southern wall</u> Ground floor | 3.3m | 1m | 1m | Yes |
| First floor, including roof terrace (top of the balustrade) | 6.67m to 8.21m | 1.92m to 3.06m | 1.89m to 2.92m | No |
| <u>Eastern wall</u> Ground floor | 3m | 1m | 4.55m | Yes |
| First floor, including roof terrace (top of the balustrade) | 6.61m to 8.21m | 1.9m to 3.06 | 4.4m to 13.1m | Yes |

104. As demonstrated above, whilst the proposed eastern (rear) wall at all floors, and the southern (side) wall at ground floor meet the setback requirements set by the Standard, the setbacks of the proposed first floor addition and the roof terrace, from the southern boundary does not meet the standard.

Southern setback

105. The proposed southern wall at first floor associated with the bathrooms will be constructed at a height of 6.67m above natural ground level and will be setback 1.89m from the southern boundary. The standard requires a setback of 1.92m for a 6.67m high wall, and as such, falls short of the requirement by 0.03m. The proposed roof terrace will be built at a height of 7.5m to 8.21m above natural ground level and will be setback between 1.52m to 2.92m. The standard requires a setback between 2.59m to 2.92m for a 7.5m to 8.21m high wall, and as such, falls short of the requirement between 1.07m (lower point) to 0.14m (highest point). The proposed southern wall will be adjacent to a ground floor, habitable room window of No. 15 Adam Street and the SPOS of No. 1 Cherrill Street.

106. Currently, the existing double-storey dwelling has a height of between 6.2m to 7.4m, and is setback 1.89m from the southern boundary. Under the existing conditions, the standard requires a setback between 1.78m to 2.49m, and as such, falls short of the requirements by 0.6m.
107. *Clause 54.01-4 of the Scheme seeks to ensure that the height and setback of a building from a boundary respects the existing or preferred neighbourhood character and limits the impact on the amenity of existing dwellings.* As stated above, the existing conditions fall short of the requirements set under the standard. The setback of the wall at first floor and the roof terrace, combined with the use of a number of different materials (metal cladding at first floor and timber battens for the roof terrace), including the addition of windows would provide an appropriate level of articulation to reduce visual bulk impacts when viewed from the SPOS of the dwellings to the south. In addition, a variation of 3cm at first floor and 14cm at roof terrace would not be discernible when viewed from the adjoining properties. The portion of the roof terrace which is setback 1.52m from the southern boundary will be adjacent to existing double-storey built form of No. 15 Adam Street, and not opposite SPOS or habitable room windows. In addition, the proposed southern setback of 1.89m at first floor is similar to the existing setback.
108. Whilst the southern setbacks at first floor and roof terrace does not meet the setback requirements set by the standard, the ground floor, habitable room window of No. 15 Adam Street is already impacted by a double-storey wall running along the southern boundary, of the existing dwelling on the subject site. As such, this setback at first floor (aside from the double-storey wall proposed along the boundary which will be discussed later), is an improvement to the existing conditions.
109. The 6.67m high wall associated with the bedroom towards the rear of the first floor meets the setback requirement of 1.92m as the proposal incorporates a setback of 2m from the southern boundary.
110. Therefore this proposal will not cause any unreasonable off-site, visual bulk impacts when viewed from the SPOS of the dwellings to the south.

A11 – Walls on boundaries objective

111. To comply with this standard, any new wall constructed along the northern and southern boundaries should not exceed 15.07m in length and 8.9m for the eastern boundary. The standard also notes that the average wall height should not exceed 3.2m with no part higher than 3.6m unless abutting a higher existing or simultaneously constructed wall.

Northern boundary

112. The existing wall along the northern boundary at ground floor runs along for a length of 24m of this boundary and is shared with No. 13 Adam Street. As such, the existing conditions do not meet the maximum allowable length of 15.07m set by the standard.
113. The existing wall along the northern boundary at first floor runs along for a length of 14m of this boundary. As such, the existing conditions meet the maximum allowable length of 15.07m set by the standard, but as it is a double-storey wall, does not meet the average height of 3.2m set by the Standard. However, this wall abuts an existing double-storey wall.
114. The proposal maintains the existing northern boundary wall at ground and first floors, with the ground floor extended from 18m to 19.5m and the first floor extended from 14m to 20.58m in length. A new 11m long wall is proposed for the roof terrace. The majority of the ground and first floor walls will abut the existing double-storey wall of No. 13 Adam Street, except for 1m and 1.2m, respectively, where it will be opposite the adjoining verandah and SPOS. Whilst the lengths and height of the proposed double-storey wall does not meet the length and height set by the standard, it will not result in unreasonable adverse amenity impacts as this SPOS will continue to have an outlook to the north given that it abuts existing SPOS and southern setback of the walk-up flats further north of the site, as well as the SPOS of the dwelling to the east.

Therefore, this SPOS will not appear closed-in. In addition, the visual impact of this wall at first floor will be broken down by the proposed 3m high northern boundary wall at ground floor.

115. The front portion of the proposed double-storey wall along the northern boundary will be adjacent to a 1.5m southern setback of No. 13 Adam Street. However, the neighbouring dwelling to the north does not have any habitable room windows or POS within this setback and only a blank wall. Therefore, this section of the proposed double-storey wall is acceptable. Furthermore, Council's Urban Design Unit has stated *at level 1, the proposed cladding changes from natural timber at the front to black metal on the side. Given that low-maintenance finishes are needed on the boundary, this could be a reasonable outcome, provided the junction between the two materials is well detailed.* As such, whilst the front portion of the first floor will be visible from the north-western corner, given the proposed materials and the context of No. 13 Adam Street, it is acceptable.
116. The proposal incorporates a wall length of 11m associated with the roof terrace. This is acceptable as it will abut the existing double-storey wall of the site to the north, and will not be adjacent to SPOS or habitable room windows.

Southern boundary

117. Currently there is an 18m long wall running along the southern boundary at a height of between 3.1m to 6m. As such, the length and the height of the existing wall along the southern boundary do not meet the length and height set by the Standard.
118. The proposal incorporates demolishing all walls at both ground and first floors and constructing a 4.2m long wall at both floors, at a height of 6.67m above natural ground level. Whilst the length meets the maximum allowable length of 15.07m under the standard, the double-storey height does not. Under the existing conditions, the north-facing window at ground floor of No. 15 Adam Street is already impacted by the existing double-storey wall of the subject site. The existing double-storey wall runs for a length of 4.8m along the southern boundary, whilst the proposed double-storey wall associated with the master bedroom at first floor runs for a length of 4.2m along the southern boundary, followed by a light-court. Therefore, this is an improvement compared to the existing conditions. In addition, this double-storey height is acceptable as the proposed wall will be adjacent to a north-facing bathroom window at first floor (not a habitable room window) of No. 15 Cherrill Street.
119. Following the above walls and the setbacks from the southern boundary (stated previously), a 12m long x 3.2m to 3.5m high wall and a 6.78m long wall x 6.77m high wall are proposed along the southern boundary. Whilst the length of this wall at ground floor meets the standard, sections of the height do not meet the average of 3.2m set by the standard. The majority of the southern boundary wall at ground floor will abut the existing northern boundary wall of Nos. 1 and 1A Cherrill Street., aside from a length of 3.2m which would abut the SPOS of No. 1 Cherrill Street and a length of 1.5m which would abut the SPOS of No. 1A Cherrill Street. The section of wall which abuts the SPOS of No. 1 Cherrill Street is acceptable as the majority of the height is 3.2m. Furthermore, under the existing conditions, this SPOS abuts a 3.1m to 6m high wall. Whilst the wall abutting the SPOS of No. 1A Cherrill Street is 3.5 in height, it will be limited to a length of 1.5m. Furthermore, the use of white bricks will help to reduce the perception of being closed-in when viewed from this SPOS.
120. Based on the above; the location, lengths, heights of these walls, the proposal will meet the objectives of the standard.

A12 – Daylight to existing windows objective

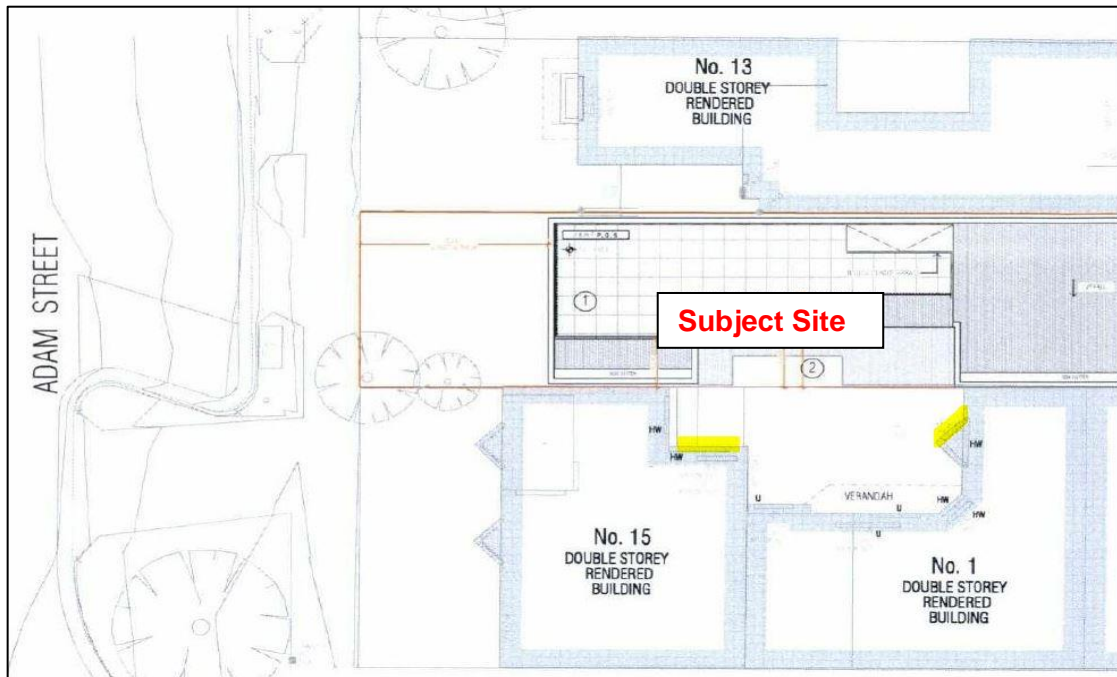
121. Standard A12 requires a light-court to be provided with a minimum area of 3sqm and a minimum dimension of 1m clear to the sky. No. 15 Adam Street has one north-facing habitable room window at ground floor (living room) and No. 1 Cherrill Street has two north-facing habitable room windows; one at ground floor (kitchen) and one at first floor (bedroom).

These windows will be discussed under *A13 North-facing windows*, as this is the more onerous standard. Aside from the abovementioned window, No. 1 Cherrill Street has a number of habitable room windows at ground and first floors.

122. It is important to note that at a wall height of 3m, 6.77m and 8.21m, setbacks of 1m, 3.38m and 4.1m, respectively, are required from all these habitable room windows. The proposed development will be setback over 2m at ground floor to 3.89m at first floor and 4.92m at roof terrace, all of which exceeds the recommended setbacks. Therefore, it is considered that the proposed development has been sited and designed to ensure that the abovementioned existing habitable room windows of the dwellings to the south will continue to receive an adequate level of daylight access.

A13 – North-facing windows objective

123. Standard A13 requires a wall within 3m of a north-facing habitable room window to be setback 1m from the boundary, plus 600mm for every metre of height over 3.6m.
124. The standard defines a north-facing window as a *window with an axis perpendicular to its surface oriented north 20 degrees west to north 30 degrees east*. The north-facing habitable room window at ground floor of No. 15 Adam Street is currently setback 2m from the northern boundary, with the two at No. 1 Cherrill Street setback between 1m to 1.5m at both ground and first floors. The relevant north-facing, habitable room windows of these dwellings to the south have been highlighted in yellow, on the floor plan below.



Above: North-facing habitable room windows of No. 15 Adam Street and No. 1 Cherrill Street, Burnley

125. The north-facing windows of No. 15 Adam Street and No. 1 Cherrill Street currently have an interface with a wall along the shared boundary at ground floor, with the existing first floor wall setback 1.89m. The following table compares the proposed building setbacks from the southern boundary, adjacent to these north facing windows, with those required by the standard.

| Wall Description | Proposed height | Required setback | Proposed setback | Compliance? |
|------------------------------|-----------------|------------------|------------------|--------------------|
| Ground floor | 3m | 1m | Zero | Variation required |
| First floor and roof terrace | 6.67m to 8.21m | 2.84m to 4.29m | 1.89m to 2.92m | Variation required |

126. As demonstrated above, the existing ground floor wall along the southern boundary falls short of the required setback by 1m, with the proposed setback at first floor and roof terrace falling short between 0.95m to 1.37m.

No. 15 Adam Street

127. Under the existing conditions, the north-facing window at ground floor of No. 15 Adam Street is already impacted by the existing double-storey wall of the subject site. It is important to note that the existing double-storey wall runs for a length of 4.8m along the southern boundary, whilst the proposed double-storey wall associated with the master bedroom at first floor runs for a length of 4.2m along the southern boundary, followed by a light-court. Therefore, this is an improvement in the solar access to this north-facing ground floor window, compared to the existing conditions.

No. 1 Cherrill Street

128. Under the existing conditions, the north-facing habitable room window at ground floor of No. 1 Cherrill Street is already impacted by the existing 3.1m high wall of the subject site. As such, this habitable room window at ground floor is already impacted. However, the kitchen window at ground floor is part of an open plan living/dining/ kitchen area, with alternate, west-facing windows and north-facing windows (setback over 3.5m from the northern boundary) providing solar access.
129. The proposal incorporates a setback of 1.89m from the southern boundary, adjacent to the north-facing bedroom window at first floor of No. 1 Cherrill Street. Whilst the required setback falls short by 0.95m, this is an acceptable variation as the bedroom at first floor has alternate south-facing windows. Furthermore, a length of only 0.3m of the proposed roof terrace will be adjacent to the north-facing windows of No. 1 Cherrill Street.
130. Overall, it is considered that the proposed development has been sited and designed to ensure that these habitable room windows of the dwellings to the south will continue to receive an adequate level of solar access.

A14 – Overshadowing open space objective

131. The proposed development will not result in additional overshadowing to the SPOS of No. 15 Adam Street, as it is located further west of the site.
132. Furthermore, given the increased setbacks at first floor and roof terrace, there will be no additional shadows cast on the SPOS of No. 1 Cherrill Street.
133. However, the proposed development would result in additional overshadowing to the SPOS areas of No. 1A Cherrill Street, at the September Equinox. This dwelling consists of 23.8sqm of SPOS located within their northern (rear) setback.
134. Given the orientation of the subject site and the location of the SPOS of No. 1A Cherrill Street, there will be no additional overshadowing to this SPOS between 9am to 10am. As illustrated on the shadow diagrams provided by the Applicant, this SPOS will be impacted between 11am to 3pm. The additional shadows are depicted in red whilst the blue shaded area denotes the additional shadows cast from the originally advertised proposal (which included the third-storey).
135. At 11m, 12pm and 1pm, only marginal increases of 0.2sqm, 1.08sqm and 2.09sqm, respectively, in additional overshadowing will be experienced. The minimal, additional shadowing between these hours is not considered unreasonable in this particular instance with the mid-afternoon shadows not significantly altering the use of the neighbouring POS areas which is already affected by shadows cast under the existing conditions.

136. As illustrated on the shadow diagrams, this neighbouring SPOS is impacted mostly at 2pm, with an additional increase of 3.47sqm of shadowed SPOS. Whilst this site would be the most impacted at 2pm as a result of the proposed development, this site is already heavily overshadowed by existing built form; most notably the existing double-storey building on the subject site and the 2.6m high southern boundary fencing. By 3pm, this SPOS is completely overshadowed. However, given the limited timeframe of 1 hour during the late afternoon, the extent of shadows is acceptable.
137. Given the narrow lot sizes, high built form in the area and the site's orientation; it is common to see some level of increased overshadowing. The impact of the additional overshadowing on the SPOS of the adjacent dwellings to the south is not unreasonable, and will continue to allow solar access, generally in accordance with the objective. The design which has set the southern walls away from the boundary at first floor minimises the impacts to neighbouring lots, meeting the objective of the Standard.

A15 – Overlooking objective

138. The standard states that a habitable room window should be located and designed to avoid direct views into the SPOS of an existing dwelling (or a habitable room window) within a horizontal distance of 9 metres (measured at ground level) of the window. Views should be measured within a 45 degree angle from the plane of the window and from a height of 1.7m above floor level. If there is overlooking, windows need to be screened.

Ground floor

139. Overlooking opportunities at ground level would be suitably limited by existing and proposed boundary walls and fences that are over 2.6m in height (and given that floor levels are less than 800mm above natural ground). There is however potential overlooking opportunities from the deck at the rear and into the SPOS of No. 13 Adam Street, given that the fence is only 1.8m in height. A condition will require the floor level of the rear deck to be annotated on the plans and provide compliance with this standard.

First floor

140. The east-facing, master bedroom window at first floor will have a sill height of 1.7m above floor level. As such, meeting the requirements of the standard.
141. The proposed west-facing, master bedroom window at first floor provides a 60% transparent screening. Given that the western setback of No. 15 Adam Street consists of SPOS, there is potential for overlooking from this window at first floor into this SPOS, within the 9m overlooking arc. However, as a result of the existing carport/pergola structure located within this western setback of No. 15 Adam Street, views into this SPOS may be obstructed, within the 9m overlooking arc. However, a condition will require for this window to demonstrate compliance with the objective of the Standard.
142. The west-facing window and east-facing windows of the remaining three bedrooms will consist of metal screening up to 1.7m in height, with 25% transparency, which meets the requirements set by the standard.
143. The proposed south-facing windows of the bathrooms at first floor do not require screening as these are not a habitable room window.

Roof terrace

144. The proposed roof terrace consists of a 1.2m high timber balustrade along the western boundary and part of the southern boundary, further towards the front of the terrace. As a result of the existing carport/pergola structure located within the western setback of No. 15 Adam Street, views into this SPOS from the western portion of the roof terrace will be obstructed, within the 9m overlooking arc.

However, there are possible overlooking opportunities into the SPOS of No. 1 Cherrill Street from the southern part of the roof terrace and as such, a condition will require for this section of the roof terrace to demonstrate compliance with the objective of this Standard. The remaining southern boundary of the roof terrace is proposed to consist of a 1.7m high timber balustrade, with 25% transparency, which meets the requirements of the standard. The east-most portion or rear of the roof terrace will consist of 1.2m high balustrade and does not require compliance with the standard as there are no sensitive interfaces within the 9m overlooking arc.

A16 – Daylight to new windows objective

145. All of the proposed windows will face an area with a minimum 3sqm and minimum dimension of 1m clear to the sky, thereby complying with the standard.

A17 – Private open space objective

146. The standard states that a dwelling should have POS of an area consisting of 80sqm or 20% of the area of the lot, whichever is the lesser, but not less than 40sqm. Furthermore, at least one part of the POS should consist of SPOS with a minimum area of 25sqm and a minimum dimension of 3m at the side or rear of the dwelling with convenient access from a living room.
147. The dwelling would provide approximately 29sqm of POS at ground floor. The SPOS of 26sqm at the rear of the ground floor complies with the minimum area of 25sqm required by the standard for SPOS and is easily accessible from the main living area and provides satisfactory recreational space for the dwelling occupants. Furthermore, the proposal incorporates 28sqm of roof terrace.

A18 – Solar access to open space objective

148. The open space at ground floor is orientated to the north and east. Given that the existing dwelling at No. 13 Adam Street is setback over 5.5m from its eastern (rear) boundary and the proposed dwelling on this site will be setback of 4.44m from its rear boundary, the open space of the subject site will continue to receive full northerly solar access.
149. In addition, the roof terrace will also receive ample northerly solar access as No. 13 Adam Street is only a double-storey dwelling.

A19 – Design detail objective

150. The proposal is an appropriate response to the mixed neighbourhood character with Adam Street, and can be supported on the following grounds:
- (a) The presentation of the proposed development is considered to achieve a design response which respects the existing neighbourhood character of the area. As described earlier in this report, the car space within the front setback, as well as the highly visually permeable screening at first floor, are considered to be acceptable in light of the established, mixed character of dwellings, with car spaces within the front setback; which face onto Adam Street.
 - (b) The proposed development is modern and will be complementary to a streetscape which consists of a mix of single and triple-storey dwellings, and supports an emerging contemporary housing stock and as such will not appear out of context. The use of brick and metal cladding will clearly differentiate the contemporary build from existing brick and weatherboard dwellings on either side.
 - (c) Utilising a flat roof for the development would ensure the building presents in a similar fashion to the surrounding developments.
 - (d) As recommended previously in the report, the pedestrian gate needs to be highlighted to provide an appropriate separation between the vehicle access and pedestrian entry.

A20 – Front fences objective

151. Does not apply as the proposed front fence does not exceed 1.5m.

Vehicle access

152. The comments from Council's Traffic Engineering Unit based on the originally advertised plans state that while the vehicle access from Adam Street and car parking arrangements at the front of the site are generally satisfactory, some changes or additional details are required. These include:
- (a) The dimension of the parking envelope to be shown on the drawings.
 - (b) The width of the proposed gate must be dimensioned on the drawings.
 - (c) The car parking areas to be clear of any vegetation/landscaping to satisfy *Diagram 1 Clearance to car parking spaces of Design standard 2 – Car parking spaces*.
153. The plans amended under a S57A of the Act on 23 January 2018 have identified the dimensions of the car space as 5.4m x 2.4m and the width of the proposed gate as 3m. In addition, the plans show the vegetation shifted further north and south, outside of the car parking envelope, enabling adequate clearance for a car to be parked.
154. Overall the proposed car parking arrangement is considered satisfactory subject to the conditions described above.

Objector Concerns

155. The majority of concerns raised by the objectors have been addressed in the above assessment. A summary of the response to objector concerns is provided as follows:
156. *Proposed design, including the materials are not appropriate with regards to the existing neighbourhood character.*
The dwelling's integration with the neighbourhood character and the surrounding area has been discussed at paragraphs 79 to 94 and paragraph 150.
157. *Over development of the site (height, site coverage, lack of setbacks).*
The site coverage is discussed at paragraph 96, side and rear setbacks, including walls on boundaries at paragraphs 103 to 120, and the height of the proposal is discussed at paragraph 95.
158. *Amenity impacts (visual bulk, solar access to habitable room windows, overshadowing, and overlooking).*
Off-site amenity impacts have been discussed at paragraphs 103 to 144.
159. *Lack of car parking provided on site.*
The proposed development is for a four bedroom dwelling, and one car space within the front setback. The existing dwelling consists of three bedrooms, with one car space located within the front setback. Under *Clause 52.06* of the Scheme, a three or more bedroom dwelling requires the provision of two car spaces. As stated at paragraphs 40 to 42, the proposed dwelling is not required to be provided with two car spaces as the existing rate of car parking is consistent with the proposed rate of car parking. The proposal only increases the number of bedrooms by one, as opposed to the construction of two new dwellings. Therefore, the existing conditions and any impacts on the availability of on-street car parking will not be substantially impacted.

Other matters

160. As stated previously, the existing carport/ pergola structure located within the western setback of No. 15 Adam Street has not been shown on the plans. As such, a condition will require all existing structures of the abutting lots to be shown correctly.

RECOMMENDATION

That having considered all relevant planning policies, the Committee resolves to issue a Notice of Decision to Grant Planning Permit PLN16/0938 for development of the land for the construction of a two-storey dwelling, including a roof terrace at 13A Adam Street Burnley VIC 3121 subject to the following conditions:

1. Before the development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the plans prepared by Archiblox, dated 23.01.2018 (A.102, A.103, A.104, A.203, A.202, and material schedule), but modified to show:
 - (a) All structures on abutting lots, including the carport/ pergola structure of No. 15 Adam Street.
 - (b) The pedestrian gate replaced with a highly permeable material (different from the proposed vehicle entrance and front fence).
 - (c) The front setback of the dwelling to consist of permeable surfaces to demonstrate compliance with the objective of Standard A6 (Permeability objective) of Clause 54 of the Yarra Planning Scheme.
 - (d) Dimension all heights of proposed built form above natural ground level, including the floor level of the deck.
 - (e) The following to demonstrate compliance with the objective of Standard A15 (Overlooking objective) of Clause 54 of the Yarra Planning Scheme:
 - (i) Deck at ground floor; and
 - (ii) First floor, west-facing master-bedroom window; and
 - (iii) South-facing sections of the roof terrace.
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.
3. 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.
4. 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.
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. 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.

7. 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.

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

NOTE: 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.

NOTE: 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: Nish Goonetilleke
TITLE: Senior Statutory Planner
TEL: 9205 5005

Attachments

- 1 PLN16/0938 - 13A Adam Street Burnley - Engineering Comments
- 2 PLN16/0938 - 13A Adam Street Burnley - Urban Design Unit

1.3 406 Napier Street, Fitzroy VIC 3065 - Planning Permit Application No. PLN17/0611 (Development of the land for partial demolition, buildings and works including the construction of a plant equipment platform and associated screening)

Executive Summary

Purpose

1. This report provides an assessment of the above planning application, which seeks approval for development of the land for partial demolition, buildings and works including the construction of a plant equipment platform and associated screening.

Key Planning Considerations

2. Key planning considerations include:
 - (a) Clause 22.01 - Discretionary Uses in the Residential 1 Zone;
 - (b) Clause 22.02 - Development Guidelines for Sites Subject to the Heritage Overlay;
 - (c) Clause 22.05 – Interface Uses Policy;
 - (d) Clause 32.09 - Neighbourhood Residential Zone – Schedule 1; and
 - (e) Clause 43.01 - Heritage Overlay.

Key Issues

3. The key issues for Council in considering the proposal relate to:
 - (a) Heritage;
 - (b) Off-site amenity impacts;
 - (c) Objector concerns; and
 - (d) Other matters - internal layout of building.

Objector Concerns

4. Six (6) objections were received to the application, these can be summarised as:
 - (a) Visual bulk
 - (b) Heritage impacts;
 - (c) Noise emissions; and
 - (d) Extent of notification.

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: Madeleine Moloney
TITLE: Statutory Planner
TEL: 92055009

1.3 406 Napier Street, Fitzroy VIC 3065 - Planning Permit Application No. PLN17/0611

Trim Record Number: D18/29820
 Responsible Officer: Principal Statutory Planner

Proposal: Development of the land for partial demolition, buildings and works including the construction of a plant equipment platform and associated screening.

Existing use: Hotel/Tavern

Applicant: Minsmere Pty Ltd c/- Ratio Consultants

Zoning / Overlays: Neighbourhood Residential Zone (Schedule 1); Heritage Overlay (HO334); Special Building Overlay (part)

Date of Application: 31 July 2017

Application Number: PLN17/0611

Planning History

1. Planning Permit No. 266 was issued by Council on 18 October 1988 to repaint the exterior of the Rose Hotel.
2. Planning Permit No. 96/1205 was issued by Council on 15 November 1996 for alterations to the hotel.
3. Planning Permit No. 991613 was issued by Council on 14 July 2000 to sell and consume liquor (general license) in the public bar on Thursday to Saturday until 1am.
4. Planning permit No. 001345 was issued by Council on 17 August 2001 for an extension of trading hours (11.00pm – 1.00am the following day, Sunday to Wednesday, and 11.00pm – 1.00am the following day, Good Friday and ANZAC Day).
5. Planning Permit No. 2301 was issued by Council on 30 March 2003 for the construction of a pergola.
6. Planning Permit PL03/0319 was issued by Council on 18 August 2003 for buildings and works (including partial demolition) for internal alterations comprising an increase in floor area and a waiver of associated car parking. An amendment was approved by Council on 2 July 2004, amending the plans to alter the internal layout.
7. Planning Permit PL05/0880 was issued by Council on 23 November 2005 for 406-410 Napier St, Fitzroy for the development of the land through buildings and works to the side of the existing building, including part demolition (retrospective). Subsequent amendments to the permit lapsed (PL05/0880.01) and were withdrawn at the Applicant's request (PL05/0880.02).
8. Planning Permit PL06/0084 was issued by Council on 13 April 2006 for the development of the land for the purpose of constructing a window, including partial demolition.
9. Planning Permit PL07/0918 was issued by Council on 05 January 2009 for the development of the land for the construction of a first floor terrace (includes part demolition), extension of area for the sale and consumption of liquor (to include the terrace) and a waiver of car parking associated with the increase in floor area of the existing hotel. A refusal to amend this permit to remove the roof over the first floor terrace was issued by Council on the 29 August 2013.

An amendment was approved for relocation of the first floor external services door and installation of decorative timber cladding to the inside of the northern acoustic screen on the 2 December 2013. A further amendment to allow for a second door to the first floor terrace and modify condition 2 of the permit to refer to doors was approved on 24 August 2016. The first floor terrace has been constructed.

10. Planning Permit PL07/1010 was issued by Council on 23 April 2008 (for 406 – 410 Napier Street) for the development of the land for the installation of four air conditioning units.
11. Planning Permit PLN12/0416 was issued by Council on 13 August 2012 for the development of the land for buildings and works (construction of a roller door facing the laneway) including part demolition.
12. Planning Permit PLN16/0888 was issued by Council on 21 December 2016 for development of the land for part demolition and external alterations to the existing building (replacement of ground floor façade windows).

Background

13. The application was lodged on the 31 July 2017. Following the submission of further information, the application was advertised in November 2017, and six (6) objections were received.
14. After advertising, the applicant submitted informal “sketch plans” to Council on 22 December 2017 in response to concerns raised regarding visual bulk impacts. The sketch plans show the following key changes:
 - (a) Provision of a 1.53m setback from the northern title boundary to the screened plant area (with a concomitant reduction in the screened plant area).
 - (b) Retention of the existing southern AC unit in its current position (instead of relocation to the new plant platform).
15. A consultation meeting was held on 30 January 2018 and was attended by the applicant and their representatives, five (5) objectors, and Council officers. After the meeting, a copy of the sketch plans (submitted on 22 December 2017) was distributed to objectors via email. The applicant advised Council subsequent to the meeting that they did not wish to make any further changes to the proposal beyond what has been suggested in the sketch plans.
16. The assessment undertaken in this report is based on the advertised plans which form the decision plans. However, reference will be made to the sketch plans (submitted on 22 December 2017) where relevant.
17. Amendment VC142 to the Yarra Planning Scheme was gazetted on 16 January 2018 (after advertising of this application). This amendment affected all planning schemes across Victoria and included a wide range of changes that generally removed permit triggers; expanded permit exemptions for land uses and buildings and works; removed superfluous and outdated provisions; updated references and definitions; and sought to clarify common points of confusion and generally improve usability of the Victorian Planning Provisions.
18. Of consequence to this application, as part of amendment VC142:
 - (a) A new permit exemption was introduced at Clause 62.02-2 of the Scheme (Buildings and works not requiring a permit unless specifically required by the planning scheme) for *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;*
 - (b) There is no specific requirement for a planning permit for these types of services included within the amended Clause 32.09 (Neighbourhood Residential Zone) and hence these services are now exempt from requiring a permit under this zone.

19. As a result, the proposed rooftop equipment, as of 16 January 2018, no longer required a planning permit pursuant to the Neighbourhood Residential Zone (Schedule 1).

Existing Conditions

Subject Site

20. The subject site is located on the north-east corner of Napier and Leicester Streets, in Fitzroy. The site has a 10.05m frontage to Napier Street, a depth of 28.9m and overall site area of approximately 289sqm.
21. The site contains a two storey Victorian-era commercial building (the Rose Hotel) which is constructed to all title boundaries at ground floor and the first floor has setbacks from eastern (rear) boundary and the rear part of the northern boundary.
22. The building is constructed of masonry and has arched windows at ground and first floor to both the Napier Street and Leicester Street frontages and a decorative first floor parapet above the corner splay.
23. Aerial photos and a site visit show a number of existing services are currently located on the roof of the building, including a number of air conditioning units and a roofed plant shelter on the ground floor roof that are visible obliquely from Leicester Street.

Surrounding Land

24. The immediate area surrounding the subject site is residential and generally one to two storey in scale, with a predominance of buildings originating from the Victorian and Edwardian period
25. To the north is a dwelling, part of a terrace row of single-storey, late Victorian-era brick dwellings, with secluded private open space located at the rear (east).
26. To the south is Leicester Street and beyond is a row of mostly single-storey, red-brick, Edwardian-era dwellings fronting Napier Street, with secluded private open space at the rear (east). One of these dwellings has a contemporary first floor addition at the rear.
27. To the west is Napier Street, beyond which are single-storey, brick, Edwardian-era dwellings.
28. To the east is a laneway (approximately 3m wide) and beyond is a Victorian-era weatherboard dwelling which has a double-storey rear addition and secluded private open space also at the rear (ground and first floor). The dwelling has solid (part weatherboard, part brick) western walls at ground floor abutting the laneway and the first floor incorporates a setback from the laneway.

The Proposal

29. The application proposes development of the land for partial demolition, buildings and works including the construction of a plant equipment platform and associated screening.. Details include:

Demolition

30. Removal of a section of the existing ground floor roof decking at the north-east corner of building (measuring approximately 3.5m by 4.4m).
31. Removal of the existing equipment weather shelter, and equipment within, that is located on the ground floor roof, immediately to the east of the first floor rear wall (one third of equipment will be retained and re-located).

32. Removal of seven existing airconditioning (AC) units, variously located on the ground floor roof of the building (five of the AC units will be retained and re-located).

Buildings and works

33. Replacement of the existing ground floor roof decking at the north-east corner of the building (measuring approximately 3.5m by 4.4m), with new to match the existing.
34. Construction of a roof plant platform (measuring 3m by 3.3m) at the north-east corner of the ground floor of the building, with perforated metal screening around the perimeter of the platform (unroofed). The metal screening is 1.4m high, resulting in an overall height of 4.55m above ground level. The screens are set back approximately 0.3m from the northern boundary, and approximately 0.7m from the eastern (laneway) boundary.
35. Re-location of the retained equipment to within the screened plant platform (one third of equipment from the existing equipment shelter and five of the existing seven AC units on the ground floor roof).

Planning Scheme Provisions

Zoning

Neighbourhood Residential Zone (Schedule 1)

36. Pursuant to clause 32.09-7 a permit is required to construct a building or construct or carry out works for a use in Section 2 of Clause 32.09-1. As a tavern and hotel (both food and drink premises) are Section 2 uses.
37. The decision guidelines for works for non-residential development are located at clause 32.09-12 of the Yarra Planning Scheme (the Scheme) and will be referred to within the assessment.
38. The decision guideline of relevance, which is to be considered is:
(a) *The design, height, setback and appearance of the proposed buildings and works.*

Overlays

Heritage Overlay

39. Pursuant to clause 43.01-1 of the Scheme, a permit is required to demolish or remove a building; and to construct a building or construct or 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.*
40. While the services will be concealed by the semi-permeable screening device, a more conservative approach is applied that the rooftop plant does require a permit under the Heritage Overlay.

Special Building Overlay

41. This overlay covers most of the subject site, including the rear portion where works are proposed.
42. Pursuant to Clause 44.05-1, a planning permit is required to construct a building or to construct or carry out works. However, this does not apply to *an alteration to an existing building where the original building footprint remains the same and floor levels are constructed to at least 300mm above flood level.*

As there is no change to the building footprint and no new floor area is constructed, the application is exempt from requiring a permit under the overlay.

General Provisions

Clause 62

43. 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.*
44. The above provision exempts the proposed re-located rooftop plant equipment from requiring a permit under the Neighbourhood Residential Zone and Special Building Overlay, however, a planning permit is still required under the Heritage Overlay as there is a specific requirement under the Heritage Overlay for a permit when these services are visible from a street.

Clause 65

45. 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.

State Planning Policy Framework (SPPF)

46. The following clauses are of relevance to this application:

Clause 10.04 - Integrated Decision Making

47. This clause outlines an approach to decision making that balances competing objectives and states that: *Planning authorities and responsible authorities should endeavour to integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations.*

Clause 15.01-1 – Urban design

48. The 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 15.01-2 – Urban design principles

49. The objective of this clause is:
- (a) *To achieve architectural and urban design outcomes that contribute positively to local urban character and enhance the public realm while minimising detrimental impact on neighbouring properties.*

Clause 15.03-1 Heritage Conservation

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

51. Supporting strategies are:

- (a) *Encourage appropriate development that respects places with identified heritage values and creates a worthy legacy for future generations.*
- (b) *Ensure an appropriate setting and context for heritage places is maintained or enhanced.*

Clause 17: Economic development

52. The provisions of clause 17 of the Scheme seek to foster economic prosperity for and within communities.

Clause 17.01-1 Business

53. The objective of this clause is:
- (a) *To encourage development which meets the communities' needs for retail, entertainment, office and other commercial services and provides net community benefit in relation to accessibility, efficient infrastructure use and the aggregation and sustainability of commercial facilities.*

Local Planning Policy Framework (LPPF)

Clause 21.04-3 - Industry, office and commercial

54. This clause notes that the commercial and industrial sectors within Yarra underpin a sustainable economy and provide employment and that Yarra plans to retain and foster a diverse and viable economic base.
55. The relevant objective is:
- (a) *To increase the number and diversity of local employment opportunities.*

Clause 21.05-1 Heritage

56. The relevant objectives include:
- (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 21.08-7 - Fitzroy

57. This clause describes the Fitzroy Neighbourhood and includes the following passage:
- (a) *Fitzroy is a mixed commercial and residential neighbourhood notable for the consistency of its Victorian streetscapes. It comprises a dense combination of residential areas, shopping precincts and commercial/ industrial activities.*
58. Pursuant to Figure 18 – Built Form Character Map: Fitzroy, the site is located in a Heritage Overlay Area where it is encouraged to:
- (a) *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

59. The applicable objectives of this policy are:
- (a) *To conserve Yarra's natural and cultural heritage.*

- (b) *To conserve the historic fabric and maintain the integrity of places of cultural heritage significance.*
- (c) *To retain significant view lines to, and vistas of, heritage places.*
- (d) *To preserve the scale and pattern of streetscapes in heritage places.*
- (e) *To ensure the adaptation of heritage places is consistent with the principles of good conservation practice.*
- (f) *To ensure that additions and new works to a heritage place respect the significance of the place.*

60. Pursuant to the incorporated document 'City of Yarra Review of Heritage Overlay Areas 2007, Graeme Butler and Associates 2007: Appendix 8 (revised May 2017) City of Yarra Heritage Database' the site is nominated as "*individually significant*" within the South Fitzroy Heritage Precinct.

Clause 22.01 - Discretionary Uses in Residential 1 Zone

61. This policy applies to land in the Residential 1 Zone (now diversified into several different residential zones) and is designed to guide assessment of impacts from non-residential use.
62. The relevant guideline is:
- (a) *New buildings and works should be consistent with the scale, bulk and character of the area.*

Clause 22.05 – Interface Uses Policy

63. This policy applies to applications for use or development within a Residential 1 Zone where the subject site is within 30 metres of an existing business or industrial use.
64. The policy comprises various considerations and decision guidelines for non-residential use and development located near residential properties relating to overlooking, overshadowing, noise, fumes and air emissions, light spillage, waste management and other operational disturbances that may cause unreasonable detriment to the amenity of nearby residential properties.

Clause 22.07 - Development Abutting Laneways

65. The relevant objectives of this clause are:
- (a) *To ensure that development along a laneway acknowledges the unique character of the laneway.*

Advertising

66. The application was advertised under the provisions of Section 52 of the *Planning and Environment Act 1987* (the Act) by two letters sent to the adjoining properties to the north and east. Six (6) objections were received to the application.
67. Pursuant to Clause 43.01-4 of the Heritage Overlay, the 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. Hence the installation of the rooftop equipment is not subject to notice and review (however, the screening associated with the plant is not exempt).
68. The objector concerns can be summarised as follows:
- (a) Visual bulk
 - (b) Heritage impacts;
 - (c) Noise emissions; and
 - (d) Extent of notification.

Consultation Meeting

69. A consultation meeting was held on 30 January 2018 and was attended by the applicant and their representatives, five (5) objectors and Council officers. After the meeting, a copy of the sketch plans submitted on 22 December 2017 was distributed to objectors via email. The applicant advised Council subsequent to the meeting that they did not wish to make any further changes to the proposal beyond what has been offered in the sketch plans.

Referrals

External Referrals

70. No external referrals are required under the provisions of the Scheme.

Internal Referrals

71. Due to the minor scope of the demolition and works, a formal referral was not required to any internal Council units. However, the application was discussed with Council's Heritage Adviser who provided informal comments. Their response is attached in the appendices to this report and will be referred to, as relevant, within the assessment.

OFFICER ASSESSMENT

- (a) Heritage;
- (b) Off-site amenity impacts;
- (c) Objector concerns; and
- (d) Other matters - internal layout of building.

Heritage

72. Of greatest relevance to the heritage assessment are the decision guidelines of the Heritage Overlay (at clause 43.01-5 of the Scheme) and local policy development guidelines for sites subject to the Heritage Overlay (at clause 22.02 of the Scheme).
73. While Clause 22.07 (Development Abutting Laneways) is also applicable, due to the location of works abutting the rear laneway, as the proposed buildings and works are of a modest scope and do not affect laneway access, it is considered that the heritage assessment adequately addresses any laneway character considerations.
74. Relevant to the proposal, policy at clause 22.02-5.1 relating to part demolition of a building, specifies that it is policy to:
- (a) *Encourage the removal of inappropriate alterations, additions and works that detract from the cultural significance of the place.*
 - (b) *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.*
75. In relation to the proposed demolition (removal of part of the rear ground floor roof to the building and removal of existing rooftop equipment and associated shelter), the extent of demolition is considered to be consistent with heritage policies and decision guidelines of the Heritage Overlay, given that:
- (a) The removal of part of the existing roofing is associated with a non-original part of the building, and will not be visible from the public realm;

- (b) The existing equipment and associated weather shelter are later ancillary structures that do not contribute to the heritage significance of the building;
 - (c) The removal of the above elements will not adversely affect the significance of the building; and
 - (d) Council's Heritage Adviser has supported the extent of demolition proposed.
76. 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.*
77. Relevant to the proposal, policy at clause 22.02-5.7.2 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 green house 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.*
78. In relation to the proposed buildings and works (replacement roofing; construction of the plant platform; re-location of some of the existing rooftop equipment to the new platform; and perforated metal screening to conceal equipment), the proposal is considered to generally meet the above heritage policies and guidelines. In particular, it is noted that:
- (a) The equipment and associated structures are associated with a non-original part of the building and would not conceal important contributory features of the building or the principle facades.
 - (b) Future removal of the equipment and associated structures would not damage heritage fabric.
 - (c) The equipment and screening will be clearly distinguishable as later additions to the building.
 - (d) Although not fully concealed from view, the location of the structures, positioned at the rear of the building behind the double-storey component, means their visibility from the street will be limited to certain vantage points from Leicester Street. Furthermore, the visual impact of the equipment will be softened by the proposed screening. Overall, the equipment and associated structures will be a recessive addition to the building.
 - (e) The location and design of the equipment and associated screening / support structures has been found to be acceptable by Council's Heritage Adviser who indicated that the works would not adversely affect the significance, character or appearance of the building.
79. As the colour of the metal screening has not been specified, to ensure that the finish will not contrast too strongly with surrounding built form, as per Council's Heritage Adviser's suggestion, the finish to the screen will be required to be galvanised or otherwise to generally match the existing roof. This will ensure the structure is as recessive as possible.
80. Furthermore, the plans are not clear as to the extent of the metal screen. Although there is a dotted line around the perimeter of the platform, it is unclear if this represents the extent of the screen (as the screen is only notated on the northern and eastern edges).

To ensure that the screen effectively screens the equipment from Leicester Street, plans will be required to show the 1.4m high screen extending along the southern edge of the platform. A proposed southern elevation will also be required. No screening is necessary along the western edge as this side faces internally to the site.

Off-site amenity impacts

81. The proposed screening must also be assessed in relation to off-site amenity impacts, as the screening component of the works requires a planning permit under the Neighbourhood Residential Zone.
82. Of relevance to consideration of off-site amenity impacts:
 - (a) The decision guidelines of the Neighbourhood Residential Zone include consideration of the *design, height, setback and appearance of the proposed buildings and works*;
 - (b) Clause 22.01 (Discretionary Uses in the Residential 1 Zone) which requires that new *buildings and works should be consistent with the scale, bulk and character of the area*; and
 - (c) Clause 22.05 (Interface Uses Policy) requires consideration of the off-site amenity impacts related to residential properties from commercial development (including overshadowing and visual bulk).
83. As the screens are positioned to the south of the adjoining secluded private open space and to the east is a laneway, there would be no overshadowing impacts to secluded private open space from the screens.
84. In relation to visual bulk impacts, the main consideration is the northern screen as this extends for a length of 3m north-adjointing secluded private open space. The dwelling to the east, over the laneway, would not be impacted as there are no ground floor windows facing the laneway. Although the provisions of "Rescode" (Clause 54 of the Yarra Planning Scheme) are not applicable to the assessment of the proposal, the "Side and Rear Setback" Standard A10 can be considered to provide a guide as to what may constitute an acceptable setback to mitigate any visual bulk. Standard A10 suggests that a wall with a height of 4.55m (the overall height of the screen above natural ground level) should be set back a minimum of 1.29m from the boundary.
85. Given that the northern screen is only set back approximately 0.3m from the boundary and adjoining secluded private open space, it is considered that there would be an adverse visual bulk impact to the north-adjointing dwelling.
86. The applicant has responded to this concern by submitting sketch plans on 22 December 2017, which showed a reduction in the screened plant area by providing a setback of 1.53m from the northern boundary (no change to eastern setback). Given the 1.53m northern setback would comply with the Side and Rear Setbacks Standard (A10), it is considered that subject to a condition requiring that the 1.53m setback from the northern boundary (as depicted on the sketch plans) is incorporated to the northern screen, the visual bulk impacts will be resolved.
87. Subject to the above condition, it is considered that the proposed screening achieves an acceptable outcome in relation to off-site amenity impacts and the scale and design of the structures are appropriate within the built form context.

Objector Concerns

88. The above assessment has addressed the objector concerns, as follows:
 - (a) Visual bulk (paragraphs 81-87)
 - (b) Heritage impacts (paragraphs 71- 79).
89. Outstanding concerns (or those not fully addressed) relate to:

- (a) Noise emissions; and
- (b) Extent of notification.

Noise emissions

90. In relation to concerns regarding noise emissions from the rooftop equipment, 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 equipment (“services”) and the reason that a permit is required is due to the visibility of the equipment from the street (Leicester Street). Hence, little weight can be given to considerations that go beyond the heritage impacts arising from the visibility of the equipment from the street.
91. Notwithstanding the above, 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.
92. Given the proposal does not include any new rooftop equipment and is simply re-locating existing equipment, it would not be anticipated that any additional noise emissions would result. However, the applicant has confirmed they are agreeable to include a standard condition on any permit granted that requires that the premises is compliant with SEPP-N1 limits. The inclusion of this condition will ensure that Council has clear enforcement capabilities in respect of any noise from equipment.

Extent of notification

93. Unless satisfied that no material detriment will be caused, under the provisions of Section 52 of the *Planning and Environment Act 1987* (the Act), Council is required to give notice to the owners/occupiers of any lots adjoining the subject land, and to any other person that the grant of a permit may cause material detriment.
94. As detailed earlier in the report, notification was undertaken by way of two letters:
- (a) one notifying the owners/occupiers of the north-adjointing lot; and
 - (b) one notifying the owners/occupiers of the lot on the eastern side of the laneway fronting Leicester Street (directly opposite the subject site).
95. The extent and type of notification is commensurate to the scale of the works and the potential for material detriment.

Other matters - internal layout of building

96. The existing and proposed ground and first floor plans for the site show a quite detailed internal layout of the building. Although there are no changes depicted between existing and proposed internal layouts, to ensure that the floor plans are not taken to indicate permission being granted for any internal works, layout or other operational details, a notation will be required on the plans indicating that the internal layout is indicative only and does not form part of the proposal.

Conclusion

97. The proposal demonstrates a reasonable level of compliance with the policy requirements outlined in the Yarra Planning Scheme. 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 relevant planning policies, the Committee resolves to issue a Notice of Decision to Grant a Planning Permit PLN17/0611 for development of the land for partial demolition, buildings and works including the construction of a plant equipment platform and associated screening at 406 Napier Street, Fitzroy, in accordance with the plans received by Council (on 11 October 2017) 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 (received by Council on 11 October 2017) but modified to show:
 - (a) A reduction in the screened plant area, incorporating a 1.53m setback from the northern boundary to the northern screen, as depicted on sketch plans submitted on 22 December 2017.
 - (b) The 1.4m high metal screen to extend along the southern edge of the plant platform.
 - (c) A proposed southern elevation.
 - (d) The colour of the perforated metal screen to be galvanised or otherwise to generally match the existing roof colour.
 - (e) Notation(s) indicating that the internal layout of the building is indicative only and does not form part of the proposal.
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.
3. The development must comply at all times with the State Environment Protection Policy – Control of Noise from Commerce, Industry and Trade (SEPP N-1).
4. Within two months of completion of the development, 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.
5. 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.
6. 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.

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: Madeleine Moloney
TITLE: Statutory Planner
TEL: 92055009

Attachments

- 1 PLN17/0611 - 406 Napier Street Fitzroy - Site Context Map
- 2 PLN17/0611 - 406 Napier Street Fitzroy - Informal Heritage Advice
- 3 PLN17/0611 – 406 Napier Street Fitzroy - Decision Plans
- 4 PLN17/0611 - 406 Napier Street Fitzroy - Sketch Plans submitted 22 December 2017