

YARRA CITY COUNCIL

Internal Development Approvals Committee

Agenda

**to be held on Wednesday 30 January 2019 at 6.30pm
in Meeting Rooms 1 & 2 at the Richmond Town Hall**

Rostered Councillor membership

Councillor Amanda Stone
Councillor Mi-Lin Chen Yi Mei
Councillor Jackie Fristacky

I. ATTENDANCE

Laura Condon (Senior Statutory Planner)
Ally Huynh (Senior Co-ordinator Statutory Planning)
Cindi Johnston (Governance Officer)

II. DECLARATIONS OF PECUNIARY INTEREST AND CONFLICT OF INTEREST

III. CONFIRMATION OF MINUTES

IV. COMMITTEE BUSINESS REPORTS

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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

Item		Page	Rec. Page
1.1	PLN17/0474.01 - 122 Dover Street Cremorne - Section 72 Amendment to amend condition 3 of the planning permit to increase the operating hours of the industry from 7:00am to 6:00pm, Monday to Friday, to 5:00am to 10:00pm, seven days a week and amend condition 8 of the planning permit to increase the hours that delivery and collection of goods to and from the premises can occur from between 7:00am and 6:00pm, Monday to Friday, to between 5:00am and 7:00pm, Monday to Friday.	5	19
1.2	PLN18/0403 - 439-443 Swan Street Richmond - The construction of a seven storey building plus three levels of basement and a roof top terrace containing office space, a reduction in the car parking requirement and alterations to a road in a Road Zone, Category 1 by removing the crossover to Swan Street.	23	56

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- 1.1 PLN17/0474.01 - 122 Dover Street Cremorne - Section 72 Amendment to amend condition 3 of the planning permit to increase the operating hours of the industry from 7:00am to 6:00pm, Monday to Friday, to 5:00am to 10:00pm, seven days a week and amend condition 8 of the planning permit to increase the hours that delivery and collection of goods to and from the premises can occur from between 7:00am and 6:00pm, Monday to Friday, to between 5:00am and 7:00pm, Monday to Friday.**
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Executive Summary

Purpose

1. This report provides Council with an assessment of an application to amend planning permit PLN17/0474. The application seeks approval to amend condition 3 of the planning permit (to increase the operating hours of the industry from 7:00am to 6:00pm, Monday to Friday, to 5:00am to 10:00pm, seven days a week) and amend condition 8 of the planning permit (to increase the hours that delivery and collection of goods to and from the premises can occur from between 7:00am and 6:00pm, Monday to Friday to between 5:00am and 7:00pm, Monday to Friday).
2. As detailed in the assessment section, this report recommends approval of the proposed amendment application subject to conditions on any planning permit that issues to limit the potential off-site amenity impacts of the proposed increase in operating and loading hours of the approved industry on nearby residential uses.

Key Planning Considerations

3. Key planning considerations include:
 - (a) Land use (Clauses 17.01, 17.02, 17.03, 21.04 and 34.02 of the Yarra Planning Scheme).
 - (b) Off-site amenity impacts (Clauses 13.05, 13.06, 13.07, 22.05 and 34.02 of the Yarra Planning Scheme).

Key Issues

4. The key issues for Council in considering the proposal relate to:
 - (a) Land use.
 - (b) Off-site amenity impacts.
 - (c) Objector concerns.

Submissions Received

5. A total of nineteen objections were received for the application, these can be summarised as:
 - (a) Loss of amenity.
 - (b) Unpleasant odours.
 - (c) Attract vermin.
 - (d) Increased noise.
 - (e) Excessive operating hours.
 - (f) Lack of car parking.
 - (g) Increased traffic congestion.
6. One letter of support was received for the application.

Conclusion

7. Based on the following report, the proposed amendment is considered to comply with the relevant planning policy and should therefore be supported subject to the following key recommendations:
- (a) The loading and unloading of vehicles and the delivery of goods to and from the approved industry must be conducted entirely within the building on the subject site.
 - (b) The submission of an amended acoustic report providing an assessment on 'sleep disturbance targets'.
 - (c) The submission of a 'noise management plan'.
 - (d) The roller door to be shown on plans as remaining closed at all times, except for access and egress to/from the building.
 - (e) All deliveries and collections to and from the approved industry to be undertaken utilising vans or similar vehicles.
 - (f) Only out-going deliveries to occur between 5:00am and 7:00am, during the weekdays, with a maximum of three deliveries during any half-hour period.
 - (g) Incoming deliveries to the approved industry to occur on weekdays, between 7:00am and 6:00pm.
 - (h) No incoming or outgoing deliveries or collections to take place on a weekend.
 - (i) Flour truck deliveries to occur on weekdays, between 7:00am and 6:00pm only and within the building with the roller door closed.
 - (j) All loading and unloading of goods to be undertaken via manual handling (i.e. no use of forklifts, etc.).

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

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- 1.1 PLN17/0474.01 - 122 Dover Street Cremorne - Section 72 Amendment to amend condition 3 of the planning permit to increase the operating hours of the industry from 7:00am to 6:00pm, Monday to Friday, to 5:00am to 10:00pm, seven days a week and amend condition 8 of the planning permit to increase the hours that delivery and collection of goods to and from the premises can occur from between 7:00am and 6:00pm, Monday to Friday, to between 5:00am and 7:00pm, Monday to Friday.**
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Trim Record Number: D18/177515

Responsible Officer: Senior Co-ordinator Statutory Planning

Proposal:	Section 72 Amendment to amend condition 3 of the planning permit to amend condition 3 of the planning permit to increase the operating hours of the industry from 7:00am to 6:00pm, Monday to Friday, to 5:00am to 10:00pm, seven days a week and amend condition 8 of the planning permit to increase the hours that delivery and collection of goods to and from the premises can occur from between 7:00am and 6:00pm, Monday to Friday, to between 5:00am and 7:00pm, Monday to Friday.
Existing use:	Industry (food production)
Applicant:	Contour Consultants
Zoning / Overlays:	Commercial 2 Zone No overlays
Date of Application:	14 June 2018
Application Number:	PLN17/0474.01

Planning History

1. Planning Permit PLN17/0474 (Attachment 2) was issued on 10 October 2017 for *the use of the land for an industry (food production) and a reduction in the car parking requirement* and has the following restrictions:
 - (a) Condition 3 restricts the operating hours of the approved industry between 7:00am to 6:00pm, Monday to Friday.
 - (b) Condition 8 restricts the delivery and collection of goods to and from the land between 7:00am to 6:00pm, Monday to Friday.
2. A secondary consent application to amend the plans endorsed under Planning Permit PLN17/0474 was approved by Council on 30 October 2018, approving minor changes to the internal layout of the premises and re-labelling the use of the mezzanine floor rooms from 'office' and 'services' to 'storage'. A copy of the endorsed plans are included as Attachment 7 to this report.
3. At this stage, it does not appear that planning permit PLN17/0474 has been acted upon. However, as prescribed by condition 14 of the planning permit, the permit will expire if the use is not commenced within two years from the date of this permit. As the planning permit was issued on 10 October 2017, the use must commence by 10 October 2019.
4. That said, Council received a complaint on 28 September 2018 that construction works were being undertaken outside of the prescribed construction hours of the planning permit. Council's planning enforcement unit investigated the complaint and contacted the operator to advise of the breach. No further action was taken at that time.

Background

5. This application to amend planning permit PLN17/0474 was received by Council on 14 June 2018. Following the submission of further information the application was advertised in July and August 2018 and nineteen objections were received.
6. The application was referred to the Environment Protection Authority (EPA) who, on 14 September 2018, informed Council that they object to the grant of an amended planning permit PLN17/0474 on the basis that the proposal does not comply with *EPA Publication 1254 'Noise Control Guidelines' 2008* and the proposal had not demonstrated how it would comply with *State Environment Protection Policy SEPP N-1*.
7. A consultation meeting was held on 25 September 2018 and attended by objectors, the applicant and Council officers. No resolutions were reached at the meeting.
8. Subsequent to the consultation meeting, the applicant engaged an acoustic consultant and acoustic report (Attachment 3) prepared by Arup Australia and dated 31 October 2018 was subsequently submitted to Council address the concerns raised by the EPA, by Council officers and in the objections.
9. The EPA reviewed the submitted acoustic report and, in correspondence dated 12 December 2018, confirmed to Council that they were satisfied that their concerns had been addressed and therefore no longer objected to the grant of an amended planning permit PLN17/0474, subject to conditions (relating to odour, noise and ground water) on any amended permit issued.

Lodgment of a Section 57A amendment

10. The applicant subsequently submitted a Section 57A amendment on 7 January 2019 which formalises commitments made in the acoustic report (Attachment 3) and include the following:
 - (a) Loading and unloading to occur within the building.
 - (b) The roller door to remain closed, except for access and egress from the building.
 - (c) All deliveries to utilise a van-type vehicle.
 - (d) Out-going delivery to occur between 5:00am and 7:00am, during the weekdays, with a maximum of three deliveries during any half-hour period.
 - (e) Incoming deliveries to occur only on weekdays, between 7:00am and 6:00pm.
 - (f) No incoming or outgoing deliveries to occur on a weekend.
 - (g) Flour truck delivery to occur only on weekdays, between 7:00am and 6:00pm. Flour truck delivery will occur within the building with the roller door closed, and for up to 15 minutes duration.
 - (h) Two carrier refrigeration units will be running continuously inside the building.
 - (i) Two roof top extraction fans will be installed at a distance of not less than 6 metres from the boundary and will be running continuously.
 - (j) All loading and unloading of goods will be undertaken via manual handling.

The Proposal

11. This application seeks to amend planning permit PLN17/0474 by making the following changes to the approved industry use, in addition to the commitments recommended in the acoustic report prepared by Arup Australia listed above and formalised in the Section 57A amendment submitted.
 - (a) Amend condition 3 of the planning permit to increase the operating hours of the industry from 7:00am to 6:00pm, Monday to Friday, to 5:00am to 10:00pm, seven days a week. Essentially re-wording condition 3 from:

Except with the prior written consent of the Responsible Authority, the uses authorised by this planning permit may only operate between the hours of 7:00am and 6:00pm, Monday to Friday.

to:

Except with the prior written consent of the Responsible Authority, the uses authorised by this planning permit may only operate between the hours of 5:00am and 10:00pm, seven days a week.

- (b) Amend condition 8 of the planning permit to increase the hours that delivery and collection of goods to and from the premises can occur from between 7:00am and 6:00pm, Monday to Friday, to between 5:00am and 7:00pm, Monday to Friday. Essentially re-wording condition 8 from:

Except with the prior written consent of the Responsible Authority, delivery and collection of goods to and from the land may only occur between 7:00am and 6:00pm, Monday to Friday.

to:

Except with the prior written consent of the Responsible Authority, delivery and collection of goods to and from the land may only occur between 5:00am and 7:00pm, Monday to Friday.

It is noted that no changes to the already endorsed plans are sought as part of this application.

Existing Conditions

Subject Site

12. The subject site (Attachment 1) is rectangular in shape and located on the western side of Dover Street, approximately 58.6 metres north of Balmain Street, in Cremorne. The subject site has a frontage of 20.89 metres to Dover Street, a depth of 43.62 metres and an overall site area of approximately 860 square metres.
13. The subject site is developed with a warehouse building with a floor area of 724 square metres on the ground floor and 238 square metres at the mezzanine floor to the front of the building. The 'services' area on the mezzanine level to the rear of the building, with an area of 110 square metres, is not a habitable space. The building has a total net floor area of 962 square metres.
14. The warehouse building has a 6 metre front setback to Dover Street, adjoins the warehouse building to the south, is constructed to the rear boundary and to the western part of the northern boundary, and is setback approximately 1 metre from the eastern part of the northern boundary.
15. Within the front setback are five car parking spaces accessed directly from Dover Street. Vehicle access to the warehouse building is also provided to the south of the Dover Street frontage, with the entire front setback area hard paved.
16. The subject site forms the northern part of the land legally described as Lots 1 and 2 on Title Plan 434964A and is not affected by any restrictive covenants or easements.



Subject site, aerial imagery, October 2018.

Surrounding Land

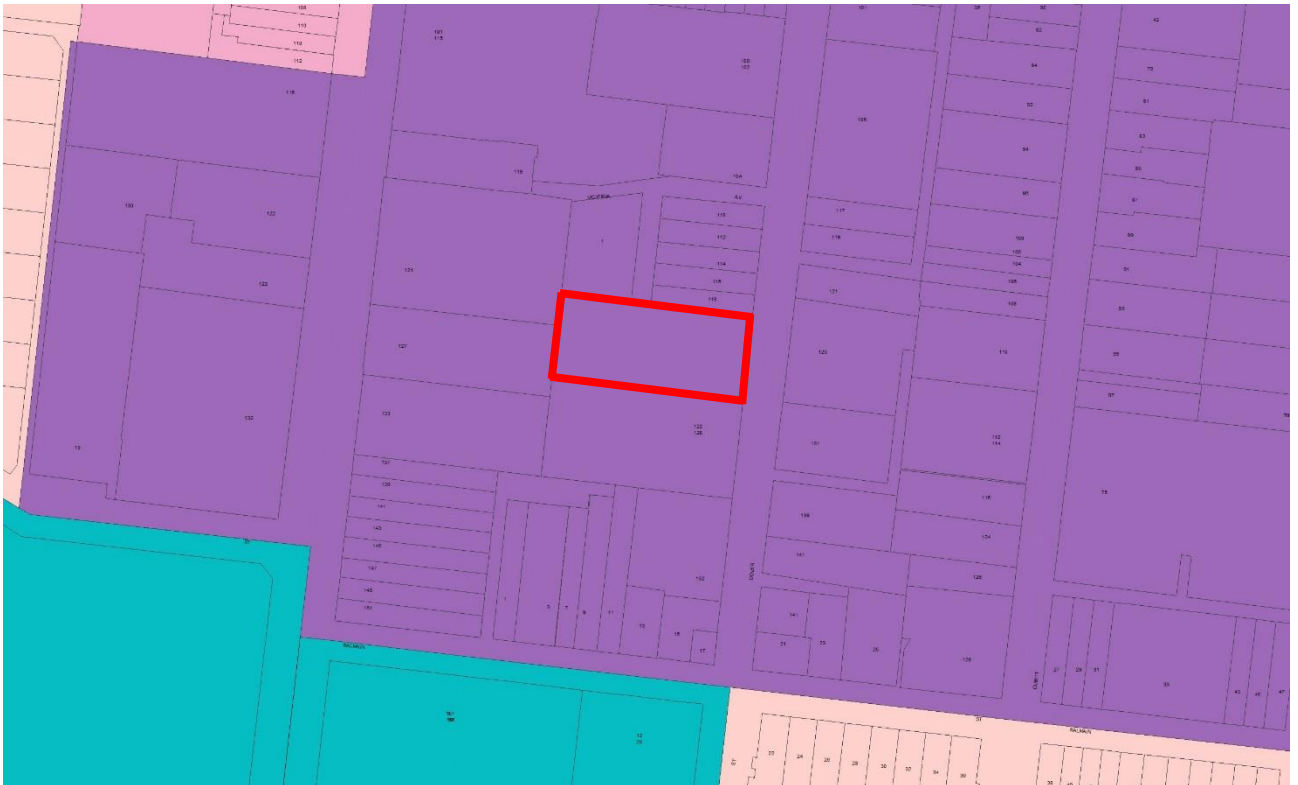
17. The surrounding land contains a mix of uses, including industry, warehouse and commercial uses, as well as residential. All surrounding land is located within the Commercial 2 Zone, extending to Balmain Street in the south, Cremorne Street in the west, Stephenson Street in the north and the railway line to the east.
18. To the immediate north is a row of single storey terrace dwellings facing Dover Street. These dwellings are non-conforming uses within the Commercial 2 Zone. Council records do not indicate whether these dwellings benefit from existing use rights or not, however, they all appear be used as dwellings. To the rear of these dwellings is a north-south laneway that commences at Victoria Avenue to the north and terminates at the northern boundary of the subject site. On the western side of the laneway is a warehouse building facing Victoria Avenue.
19. To the rear of the subject site are more warehouse and commercial buildings with frontages to Cremorne Street further west. These buildings are constructed to the rear common boundary with the subject site.
20. To the immediate south of the subject site is a similar large warehouse building currently used as an automotive parts retail premises. This site and the subject site combined form the land legally described as Lots 1 and 2 on Title Plan 434964A.
21. The subject site is well serviced by public transport with the Swan Street tram line located approximately 500 metres away to the north, Richmond train station located approximately 670 metres away to the north, East Richmond train station approximately 730 metres to the north-east and the Church Street tram line approximately 560 metres away to the east. The Swan Street major activity centre, which consists of a wide range of commercial uses, including restaurants, cafes and licensed premises, is located within close proximity of the subject site.

Planning Scheme Provisions

Zoning

Commercial 2 Zone

22. Pursuant to the table at Clause 34.02-1 of the Yarra Planning Scheme (the Scheme), 'industry' is a section 1 use provided it is not shown with a Note 1 or Note 2 in the table at Clause 52.10 of the Scheme. 'Food or beverage production' is shown with a Note 1 in the table and therefore a planning permit is required to use the land as an industry for food production in the Commercial 2 Zone. Planning Permit PLN17/0474 issued on 10 October 2017 approves the use of the land as an industry (food production).
23. Pursuant to Clause 34.02-4 of the Scheme, a planning permit is required to construct a building or construct or carry out works. This application includes the installation of two roof top extraction fans.
24. However, Clause 62.02-2 of the Scheme exempts *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* from triggering a planning permit for buildings and works, unless specifically required by the Scheme.
25. The Commercial 2 Zone does not specifically require a planning permit for any of these items, including a roof top extraction fan. A roof top extraction fan is considered 'or similar' to the services listed at Clause 62.02-2 of the Scheme.
26. Therefore, a planning permit is not required for building and works (the installation of two roof top extraction fans) in this instance.



Zoning Map

General Provisions

Clause 65 – Decision Guidelines

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

Planning Policy Framework (PPF)

Clause 13.05 – Noise Abatement

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

Clause 13.06 – Air Quality

29. The objective of this Clause is:
- (a) To assist the protection and improvement of air quality.

Clause 13.07 – Amenity and Safety

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

Clause 17.01 – Employment

31. The relevant objective of this Clause is:
- (a) To strengthen and diversify the economy.

Clause 17.02 – Commercial

32. The relevant objective of this Clause is:
- (a) To encourage development that meets the community's needs for retail, entertainment, office and other commercial services.

Clause 17.03 – Industry

33. The relevant objective of this Clause is:
- (a) To facilitate the sustainable development and operation of industry.

Local Planning Policy Framework (LPPF)

Clause 21.03 – Vision

34. The relevant sections of this clause are:
- (a) Yarra will have increased opportunities for employment.
 - (b) The complex land use mix characteristic of the inner City will provide for a range of activities to meet the needs of the community.

Clause 21.04 – Land Use

35. The relevant objectives of this clause are:
- (a) To increase the number and diversity of local employment opportunities.

Clause 21.08-2 - Cremorne

36. Clause 21.08-2 describes the Cremorne area in the following way:
- (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.

Relevant Local Policies

Clause 22.05 – Interface Uses Policy

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

Advertising

38. The application was advertised under the provisions of Section 52 of the *Planning and Environment Act (1987)* by 47 letters sent to surrounding owners and occupiers and by a sign displayed on site.
39. Council received one letter of support and nineteen objections, the grounds of which are summarised as follows:
 - (a) Loss of amenity.
 - (b) Unpleasant odours.
 - (c) Attract vermin.
 - (d) Increased noise.
 - (e) Excessive operating hours.
 - (f) Lack of car parking.
 - (g) Increased traffic congestion.
40. A consultation meeting was held on 25 September 2018 and attended by objectors, the applicant and Council officers. No resolutions were reached at the meeting.
41. Subsequent to the consultation meeting and in response to concerns raised by the EPA, Council Officers and in the objections, relating to noise from the proposed increased hours, the applicant engaged an acoustic consultant to review the proposed amendment and an acoustic report (Attachment 3) was subsequently submitted to Council on 1 November 2018.
42. The applicant submitted a Section 57A amendment to formalise the commitments made in the acoustic report on 7 January 2019. The commitments identified in the acoustic report include:
 - (a) Loading and unloading to occur within the building.
 - (b) The roller door to remain closed, except for access and egress from the building.
 - (c) All deliveries to utilise a van-type vehicle.
 - (d) Out-going delivery to occur between 5:00am and 7:00am, during the weekdays, with a maximum of three deliveries during any half-hour period.
 - (e) Incoming deliveries to occur only on weekdays, between 7:00am and 6:00pm.
 - (f) No incoming or outgoing deliveries to occur on a weekend.
 - (g) Flour truck delivery to occur only on weekdays, between 7:00am and 6:00pm. Flour truck delivery will occur within the building with the roller door closed, and for up to 15 minutes duration.
 - (h) Two carrier refrigeration units will be running continuously inside the building.
 - (i) Two roof top extraction fans will be installed at a distance of not less than 6 metres from the boundary and will be running continuously.
 - (j) All loading and unloading of goods will be undertaken via manual handling.

Referrals

43. The referral comments are based on the originally submitted application to amend the permit (the advertised plans and application documents) and the acoustic report prepared by ARUP Australia, dated 31 October 2018 which was lodged by way of the Section 57A amendment.

External Referral

44. The application to amend planning permit PLN17/0474 was referred to the Environment Protection Authority (EPA) pursuant to Clause 66.02-7 of the Scheme.

45. On 14 September 2018, the EPA informed Council that they object to the granted of an amended planning permit given that the proposal did not comply with EPA Publication 1254 'Noise Control Guidelines' 2008 and had not demonstrated how it would comply with State Environment Protection Policy SEPP N-1.
46. Further to this, the EPA reviewed the acoustic report (prepared by ARUP Australia, dated 31 October 2018, which was lodged by way of the Section 57A amendment) and, in correspondence to Council dated 12 December 2018, confirmed that they were satisfied that their concerns had been addressed and therefore no longer objected to the grant of an amended planning permit, subject to conditions relating to odour, noise and ground water. The EPA conditions are reflected in the recommendation section of this report. It is noted that the EPA conditions on the original permit (conditions 9 -13) will remain unchanged and on the permit, with the EPA's new conditions added to any amended planning permit that issues.
47. Referral responses/comments have been included as attachments (Attachments 4 and 5) to this report.

Internal Referrals

48. The application was not referred to Council's engineering services unit as the proposal does not increase the floor area of the building or seek to increase the number of employees restricted by condition 4 of the planning permit, therefore there is no change to the car parking requirement. Additionally, the access arrangements are not changing as a result of this application and the additional hours proposed are outside of peak hour times and will therefore have limited impact on traffic congestion in nearby streets.
49. The application was referred to Council's Acoustic Consultant (SLR Consulting Australia).
 - (a) SLR Consulting Australia made the following comments (Attachment 6) on the submitted acoustic report prepared by ARUP Australia:
 - (i) *Our review of the acoustic report prepared to address noise impacts from the proposed extension of hours of the bakery at 122 Dover Street, Cremorne is provided above. The report provides assessments of noise emissions to SEPP N-1, and advice for noise control. The advice includes:*
 - *Roller door to be kept closed except when used for access.*
 - *The proposed two new roof mounted exhaust fans are to have a sound power level of no more than 78 dBA and are to be located at least 6 metres from the north side of the roof.*
 - *The only deliveries to take place between 5:00am and 7:00am are to be van deliveries of bakery produce from the bakery (i.e. no incoming deliveries).*
 - *No incoming or outgoing deliveries on the weekend.*
 - *All loading and unloading of goods is to take place inside the loading dock with the roller door closed. All loading is to be manual (no forklifts and reversing beepers).*
 - (ii) *Based on the information provided and the proposed noise controls we agree that the use is likely to comply with SEPP N-1 during the extended hours of operation.*
 - (iii) *However, in our opinion an assessment to sleep disturbance targets should also be provided. Any predicted exceedance of sleep disturbance targets should be addressed through managerial or other noise controls.*
 - (iv) *Given the potential for staff activity to cause nuisance to neighbouring residents, it would be desirable for the business to develop and implement a noise management plan. This may address issues such as:*
 - *Arrival and departure from work during the early morning and late evening periods.*

- *Voice noise from staff breaks taken outside (this should not be permitted to occur before 7:00am Monday to Saturday or before 9:00am Sundays).*
- (v) *We note that both the bakery and the nearest noise sensitive receiver are located in a Commercial 2 zone, which is classified as 'Type 3' in SEPP N-1. Higher noise limits, and audible noise from commercial uses can be expected in land classified as Type 3.*

OFFICER ASSESSMENT

50. The primary considerations for this application are as follows:

- (a) Land use.
- (b) Off-site amenity impacts.
- (c) Objector concerns.

Land Use

- 51. As mentioned earlier in the report, pursuant to the table at Clause 34.02-1 of the Yarra Planning Scheme, an industry with a Note 1 in the table of Clause 52.10 defaults to a section 2 use within the zone. Therefore, the use of the land as an industry for food production requires a planning permit to operate.
- 52. The subject site is located within the Commercial 2 Zone. The purpose of the Commercial 2 Zone seeks to encourage commercial areas for offices, appropriate manufacturing and industries, bulky goods retailing, other retail uses, and associated business and commercial services, and to ensure that uses do not affect the safety and amenity of adjacent, more sensitive uses.
- 53. The use of the land for an industry (food production) was approved under the original planning permit and it continues to be consistent with the zone provisions in that it provides an appropriate manufacturing and industry to operate that will provide employment opportunities and complement the role and function of the surrounding commercial precinct.
- 54. More broadly, State and local planning policies, at Clause 17.03, Clause 21.03 and Clause 21.04-3 of the Scheme, seek to protect and carefully plan existing industrial areas to, where possible, facilitate further industrial development, as well as to increase opportunities for employment. These policies seek to foster a diverse and viable economic base within the City of Yarra, providing that a balance is achieved in relation to off-site amenity impacts.
- 55. Clauses 13.05, 13.06 and 13.07, Clause 21.04-2 and Clause 22.05 of the Scheme identify that noise and the interface between uses must be managed appropriately, particularly in a municipality such as Yarra where almost all residents are within 400 metres of an activity centre or industrial area.
- 56. From a policy context, it is considered that the use is generally consistent with relevant provisions of the State and local planning policy frameworks in relation to economic development and the provision of services, supporting the function of the Commercial 2 Zone by providing increased employment opportunities for the Cremorne area.
- 57. The decision guidelines for the use of land at Clause 34.02-7 require the Responsible Authority to consider, as appropriate, the effect that existing uses may have on the proposed use, the drainage of the land, the availability of and connection to services and the effect of traffic to be generated on roads.
- 58. The proposed use of the land for an industry is considered to complement the surrounding uses and will not be unduly impacted upon by the existing uses, as indicated by the existing planning permit for the site. The approved industry use is contained within the boundaries of the site and does not propose any new built form to what is already constructed on the site. Therefore, the land is already appropriately drained and connected to services. As will be discussed in more detail later in this report, the proposed use is also not expected to unreasonably impact on the amenity of the surrounding area.

59. Overall, the increased operating hours and delivery times for the approved industry use continue to be appropriate for the site and complementary to the surrounding commercial uses, while ensuring the amenity of the adjoining residential properties is not unreasonably impacted upon, subject to conditions as will be discussed in more detail below.

Off-site Amenity Impacts

60. The decision guidelines of the Commercial 2 Zone require the Responsible Authority to consider the interface with adjoining zones, especially the relationship with residential areas. Additionally, Clause 22.05 of the Scheme aims to ensure that residential uses located within or near commercial centres or near industrial uses enjoy a reasonable level of amenity. Clause 22.05-3 of the Scheme also requires new non-residential use and development to be designed to minimise noise and visual amenity impacts upon nearby, existing residential properties.
61. To the immediate north of the subject site are single storey terrace dwellings facing Dover Street, which appear to be used as dwellings (which are non-conforming uses within the Commercial 2 Zone and Council records do not indicate whether these dwellings benefit from existing use rights or not). With regard to 'non-conforming' residential uses in commercial areas, it is an established principle that dwellings located within a commercially zoned area do not have the same level of amenity protection compared to dwellings located within a residential zone. This issue has been discussed in many Tribunal decisions, particularly with regard to the Business 3 Zone (now encompassed within the Commercial 2 Zone) that applied to much of Cremorne prior to the introduction of the new zones.
62. For example, in the decision for Zak Group Pty Ltd v Yarra CC [2017] VCAT 1124 (27 July 2017) the Tribunal states at paragraph 83 that there *'must therefore be a reasonable expectation, informed by the provisions of the Yarra Planning Scheme, that the amenity enjoyed by these four residential properties, and others with an interface to this activity centre, will be impacted by the reasonable use and development within this activity centre'*.
63. Additionally, in the decision for Huczek v Yarra CC [1999] VCAT 45 (31 August 1999) the Tribunal states at paragraph 97 that *'neither the zone purpose, nor the decision guidelines, indicate an intention that residential amenity should be an issue in this zone, or residential standards of amenity applied within it'*. Adding further that *'It is not for the Tribunal to refuse a commercial development which complies with the zone requirements in a "Business" zone on the basis that if residential standards of amenity are applied, it would have an adverse impact on a non-conforming residential use. Such assertions would render the planning controls unwieldily, cumbersome and unpredictable, and would lead to a reduction in confidence in those particular planning controls'*.
64. The above Tribunal decisions must be kept in mind when assessing the proposed increase in operating hours and proposed increase in the delivery and collection hours (currently restricted by way of permit conditions) being sought under this application to amend planning permit PLN17/0474.
65. The following paragraphs will focus on the impacts of noise resulting from the proposed increase in hours and deliveries.

Hours of Operation

66. As identified by the EPA in their original referral response to this application, the main concern is noise from increased hours of operation and increased hours for the delivery and collection of goods. It is worth noting that if the use was not listed in the table at Clause 53.10, the use would be a section 1 use and as of right within the Commercial 2 Zone. Therefore, a planning permit would not be required to use the land and no restriction could be placed on the hours of operation. Nevertheless, the use is listed in the table at Clause 53.10 and therefore Council can place restrictions can be placed on the hours of operation.

67. A detailed assessment of the noise impacts will be undertaken in the following paragraphs to determine if the increased hours of operation and increased hours for the delivery and collection of goods are considered acceptable given the policy and physical context of the site.

Noise

68. The submitted acoustic report presents findings for a noise assessment conducted for the proposed extended evening and night-time period operation (increase the operating hours of the industry from 7:00am to 6:00pm, Monday to Friday, to 5:00am to 10:00pm, seven days a week and increase the hours that delivery and collection of goods to and from the premises can occur from between 7:00am and 6:00pm, Monday to Friday, to between 5:00am and 7:00pm, Monday to Friday) and its compliance with the noise limits of SEPP N-1. The acoustic report also considers the issues and concerns raised by the EPA in their first referral response to this application to amend a planning permit.
69. In summary, the submitted acoustic report identifies that the nearest affected noise sensitive receivers are residential properties located between 110 to 118 Dover Street, which are directly to the north of the subject site. The acoustic report confirms that site inspection and background noise measurements were undertaken on 25 October 2018, during the evening and night-time periods. SEPP N-1 noise criteria for these extended operational periods have been provided in the report.
70. The submitted acoustic report also identifies potential major noise sources associated with the subject site (including rooftop mechanical plant and equipment, indoor carrier refrigeration units, the roller door and delivery activities) and the impact of these on surrounding sensitive receivers. The acoustic report assesses this and confirms that compliance with the SEPP N-1 noise criteria is achieved subject to the recommended restrictions referenced at paragraph 41 of this report. The acoustic report concludes that the proposed changes to the operational hours and deliveries/collections sought under the amendment application will not adversely impact nearby noise sensitive residential uses.
71. Council's acoustic consultant reviewed the applicant's acoustic report and noted that the report provides an assessment of noise emissions to SEPP N-1 and advice for noise control. The recommendations from Council's acoustic consultant includes the following:
- (a) Roller door to be kept closed except when used for access.
 - (b) The proposed two new roof mounted exhaust fans are to have a sound power level of no more than 78 dBA and are to be located at least 6 metres from the north side of the roof.
 - (c) The only deliveries to take place between 5:00am and 7:00am are to be van deliveries of bakery produce from the bakery (i.e. no incoming deliveries).
 - (d) No incoming or outgoing deliveries on the weekend.
 - (e) All loading and unloading of goods is to take place inside the loading dock with the roller door closed.
 - (f) All loading is to be manual (no forklifts and reversing beepers).
72. The recommendations listed above are accord with the recommendations made in the submitted acoustic report. Based on the information provided by Arup Australia in the acoustic report and the proposed noise controls that are reflected as conditions in the recommendation section of this report, Council's acoustic consultant agrees that the use will comply with SEPP N-1 during the extended hours of operation.
73. That said, Council's acoustic consultant recommends that the submitted acoustic report should be updated to include an assessment to sleep disturbance targets, and recommends that any predicted exceedance of sleep disturbance targets should be addressed through managerial or other noise controls. Additionally, given the potential for staff activity to cause nuisance to neighbouring residents, they recommend that the business should develop and implement a 'noise management plan' which could address issues such as:

- (a) arrival and departure from work during the early morning and late evening periods; and
 - (b) voice noise from staff breaks taken outside (which should not be permitted to occur before 7 am Monday to Saturday or before 9:00am Sundays).
74. To address these outstanding issues raised by Council's acoustic consultant a condition will require the submitted acoustic report to be updated and include an assessment to sleep disturbance targets (with any predicted exceedance of sleep disturbance targets addressed through managerial or other noise controls) and a condition to require a 'noise management plan' to be submitted to Council.
75. Subject to these conditions, the amenity of nearby residential properties will not be unreasonably affected by the proposal, even though it is an established principle that dwellings located within a commercially zoned area do not have the same level of amenity protection compared to dwellings located within a residential zone, as mentioned earlier in this report.

Odours

76. The EPA considers the risk of odour low for this proposal but nevertheless request that a condition be included on any amended planning permit issued to require that offensive odours (odours which are offensive to the senses of human beings) must not be discharged, emitted or released beyond the boundaries of the premises. The condition recommended by the EPA is therefore included within the recommendation section of this report. This is considered reasonable, despite the fact that the dwellings are non-conforming uses.

Objector Concerns

77. The majority of the issues and concerns raised by objectors (as set out at paragraph 5 in the Executive Summary) have been addressed within the body of this report. Specifically:
- (a) Loss of amenity (paragraphs 60-76).
 - (b) Unpleasant odours (76).
 - (c) Increased noise (paragraphs 68-75).
 - (d) Excessive operating hours (paragraphs 66-67).
78. Outstanding concerns raised in the objections are discussed below:
- (a) Attract vermin.

Condition 5 of the existing planning permit states that the amenity of the area must not be detrimentally affected by the use, including through the presence of vermin, amongst other things. This condition will remain unchanged and included on any amended planning permit that issues. It places the responsibility on the permit holder to ensure the premises is kept free of vermin, and addresses this objector concern.

Additionally, the premises will be required to comply with the *Food Act 1984*. The use must not commence until registration, or other approval, has been granted by Council's health protection unit. A note on any amended planning permit that issues will reiterate this requirement to the permit applicant.
 - (b) Lack of car parking.

This application does not propose to increase the floor area of the premises approved under the original planning permit or increase the number of employees restricted by way of condition 4 of the planning permit. Therefore, there is no requirement in the Scheme for any additional car parking to be provided. This application does not increase the quantum of car parking spaces required under the table at Clause 52.06-5 of the Scheme and no re-assessment of the approved car parking provision is required as part of the assessment of this application.
 - (c) Increased traffic congestion.

This application seeks to increase the operating hours and increase the hours for which deliveries and collections occur. While it is acknowledged that this will result in additional vehicle movements, any additional vehicle movements will largely occur outside of peak times, as the increased hours of operation and increased hours for the delivery and collection of goods sought are generally outside the peak hours.

The volume of additional traffic generated by the proposed amendment is not unduly high and should not have an adverse impact on the surrounding road network.

Conclusion

79. The changes to the permit proposed under this amendment application demonstrate a high level of compliance with the relevant policy objectives contained within the Municipal Planning Strategy and the Planning Policy Framework. Notably, the changes detailed in the Section 57A amendment (which will be required to be achieved through the conditions contained within the recommendation section of this report) will ensure that any impact on off-site amenity is reasonable for the zone and site context. Both the EPA and Council's acoustic consultant concur that the findings of the submitted acoustic report are accurate and that the increased hours sought in this amendment application will generally comply with SEPNN-1 and that the proposed amendment is satisfactory subject to the conditions discussed through the assessment section of this report and referenced in the recommendation section.
80. The amendment application is considered to comply with the relevant Planning Scheme provisions and planning policy and is therefore supported, subject to conditions outlined in the recommendation below.

RECOMMENDATION

That having considered all objections and relevant planning policies, the Committee resolves to issue a Notice of Decision to Grant an Amended Planning Permit PLN17/0474.01 to amend condition 3 of the planning permit (to increase the operating hours of the industry from 7:00am to 6:00pm, Monday to Friday, to 5:00am to 10:00pm, seven days a week) and amend condition 8 of the planning permit (to increase the hours that delivery and collection of goods to and from the premises can occur from between 7:00am and 6:00pm Monday to Friday, to between 5:00am and 7:00pm Monday to Friday) at 122 Dover Street, Cremorne, subject to the following conditions (new conditions and re-worded (amended) conditions of the original planning permit, are in **bold**):

Amended Plans

1. Before the use 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 advertised plans (received by Council on 19 June 2017) but modified to show:
 - (a) A minimum of one bicycle parking space.
2. The use 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.

Use

3. **Except with the prior written consent of the Responsible Authority, the uses authorised by this planning permit may only operate between the hours of 5:00am and 10:00pm, seven days a week.**
4. Except with the prior written consent of the Responsible Authority, no more than six (6) staff are permitted on the land at any one time.

5. The amenity of the area must not be detrimentally affected by the use, including through:
 - (a) the transport of materials, goods or commodities to or from land;
 - (b) the appearance of any buildings, works or materials;
 - (c) the emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or
 - (d) the presence of vermin.to the satisfaction of the Responsible Authority.
6. Prior to the commencement of the use, external lighting on the land must be designed, baffled and located to the satisfaction of the Responsible Authority to prevent any adverse impact on any adjoining property. External lighting must be:
 - (a) located;
 - (b) directed;
 - (c) shielded; and
 - (d) of limited intensity,to the satisfaction of the Responsible Authority.
7. The loading and unloading of vehicles and the delivery of goods to and from the land must be conducted entirely within the building on the subject site, to the satisfaction of the Responsible Authority.
8. **Except with the prior written consent of the Responsible Authority, delivery and collection of goods to and from the land may only occur between 5:00am and 7:00pm, Monday to Friday.**

Environment Protection Authority (conditions 9-16)

9. All development and use of the premises involving the emission of dust and other air quality indicators must comply with the State Environment Protection Policy (Air Quality Management).
10. Effective noise levels from the use of the premises must comply with the requirements of the State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N1.
11. Offensive odour must not be discharged beyond the boundaries of the premises.
12. Stormwater contaminated with liquid or solid waste, including food or oil waste, must not be discharged beyond the boundaries of the premises.
13. No litter is to be deposited beyond the boundary of the premises.
14. **Odours offensive to the senses of human beings must not be discharged, emitted or released beyond the boundaries of the premises.**
15. **There must be no emissions of noise and/or vibrations from the premises which are detrimental to either of the following:**
 - (a) The environment in the area around the premises; and
 - (b) The wellbeing of persons and/or their property in the area around the premises.
16. **The permit holder must not contaminate land or groundwater.**

Acoustic Report

17. **Before the hours of operation and hours for delivery and collection approved under this amended planning permit commences, an amended acoustic report to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority.**

When approved, the amended acoustic report will be endorsed and will form part of this permit. The amended acoustic report must be generally in accordance with the acoustic report prepared by ARUP Australia and dated 31 October 2018, but modified to include:

- (a) an assessment to sleep disturbance targets (with any predicted exceedance of sleep disturbance targets addressed through managerial or other noise controls).**
- 18. The provisions, recommendations and requirements of the endorsed acoustic report must be implemented and complied with to the satisfaction of the Responsible Authority.**

Noise Management Plan

- 19. Before the hours of operation and hours for delivery and collection approved under this amended planning permit commences, a noise management plan must be submitted to and approved by the Responsible Authority. When approved, the noise management plan will be endorsed and will form part of this permit. The noise management plan must include, but not be limited to, the following:**
- (a) Arrival and departure from the work during the early morning and late evening periods.**
 - (b) Voice noise from staff breaks taken outside (this should not be permitted to occur before 7:00am Monday to Saturday or before 9:00am Sundays).**
 - (c) Any managerial or other noise controls required by condition 17(a).**
- 20. The provisions recommendation and requirements of the endorsed noise management plan must be implemented and complied with to the satisfaction of the Responsible Authority.**
- 21. Except with the prior written consent of the Responsible Authority, the roller door is to remain in the closed position at all times, except for access and egress to/from the building.**
- 22. Except with the prior written consent of the Responsible Authority, all deliveries and collections to and from the land must be undertaken utilising vans or similar vehicles.**
- 23. Except with the prior written consent of the Responsible Authority, only out-going deliveries shall occur between 5:00am and 7:00am, during the weekdays, with a maximum of three deliveries during any half-hour period.**
- 24. Except with the prior written consent of the Responsible Authority, incoming deliveries will only occur on weekdays, during the day time period between 7:00am and 6:00pm.**
- 25. Except with the prior written consent of the Responsible Authority, no incoming or outgoing deliveries or collections are to take place during the weekend period.**
- 26. Except with the prior written consent of the Responsible Authority, flour truck deliveries shall only occur on weekdays, during the daytime period between 7:00am and 6:00pm. Flour truck deliveries must occur within the building with roller door closed.**
- 27. Except with the prior written consent of the Responsible Authority, all loading and unloading of goods will be undertaken via manual handling.**

Permit Expiry

28. This permit will expire if the use is not commenced within two years from the date of this permit. The Responsible Authority may extend the period referred to if a request is made in writing before the permit expires or within six months afterwards for commencement.

NOTES

A building permit may be required before the use is commenced. Please contact Council's Building Services on 9205 5095 to confirm.

These premises will be required to comply with the Food Act 1984. The use must not commence until registration, or other approval, has been granted by Council's Health Protection Unit.

All future property owners, business owners and employees within the uses approved under this permit will not be permitted to obtain resident, employee or visitor parking permits.

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

Attachments

- 1 PLN17/0474.01 - 122 Dover Street Cremorne - Subject Land Map
- 2 PLN17/0474 - 122 Dover Street Cremorne - Planning Permit
- 3 PLN17/0474.01 - 122 Dover Street Cremorne - Acoustic Report Prepared by Arup Australia
- 4 PLN17/0474.01 - 122 Dover Street Cremorne - Objection from the EPA
- 5 PLN17/0474.01 - 122 Dover Street Cremorne - Support from the EPA
- 6 PLN17/0474.01 - 122 Dover Street Cremorne - Review of Acoustic Report from SLR Consulting
- 7 PLN17/0474.01 - 122 Dover Street Cremorne - Endorsed Plans

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| 1.2 | PLN18/0403 - 439-443 Swan Street Richmond - The construction of a seven storey building plus three levels of basement and a roof top terrace containing office space, a reduction in the car parking requirement and alterations to a road in a Road Zone, Category 1 by removing the crossover to Swan Street. |
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Executive Summary

Purpose

1. This report provides Council with an assessment of planning permit PLN18/0403 which seeks approval for the construction of a seven-storey office building with roof terrace and three basement levels (for car parking), a reduction in the car parking requirement of the Scheme and alterations to a road in a Road Zone, Category 1 by removing a crossover to Swan Street.
2. As detailed in the assessment section, this report recommends approval of the proposed development subject to conditions to be attached to any planning permit issued, including the height of the building parapet at the sixth floor reduced by 1.6 metres from 25.6 metres to achieve a maximum building height of 24 metres and the roof terrace modified through the removal of the bathroom facility so that it no longer forms a 'storey' in its own right.

Key Planning Considerations

3. Key planning considerations include:
 - (a) Land use (Clauses 11.01, 11.02, 11.03, 17.01, 17.02, 21.04 and 34.01 of the Yarra Planning Scheme).
 - (b) Built form (Clauses 15.01, 21.05, 22.05, 22.07 and 22.10 of the Yarra Planning Scheme).
 - (c) Off-site amenity impacts (Clauses 13.05, 13.07, 15.01, 22.05 and 22.10 of the Yarra Planning Scheme).
 - (d) Internal amenity (Clauses 22.05 and 22.17 of the Yarra Planning Scheme).
 - (e) Car and bicycle parking (Clauses 18.01, 18.02, 21.06, 52.06 and 52.34 of the Yarra Planning Scheme).

Key Issues

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

Submissions Received

5. A total of fourteen objections were received for the application. The concerns raised can be summarised as follows:

- (a) Design and built form, including out of character, excessive height, bulk and scale and the materials and finishes are inappropriate.
- (b) Off-site amenity impacts including overlooking, overshadowing, visual bulk, loss of daylight, glare from the proposed glazing and light spill from the proposed offices.
- (c) Car parking, traffic and access including lack of car parking, increased traffic and waste management issues.
- (d) Impacts during construction.
- (e) Impacts on existing businesses and oversupply of office space.
- (f) Inaccuracies on plans/documents.
- (g) Will set a precedent.
- (h) Inconsistent with the Swan Street Structure Plan.

6. Two letters of support were received to the application.

Conclusion

7. Based on the following report, the proposal is considered to comply with the relevant planning policy in the Yarra Planning Scheme and should be supported subject to the following key recommendations:
- (a) The building parapet at the sixth floor reduced by 1.6 metres from 25.6 metres to achieve a maximum building height of 24 metres.
 - (b) The roof terrace modified through the removal of the bathroom facility so that it no longer forms a 'storey' in its own right.

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

1.2 PLN18/0403 - 439-443 Swan Street Richmond - The construction of a seven storey building plus three levels of basement and a roof top terrace containing office space, a reduction in the car parking requirement and alterations to a road in a Road Zone, Category 1 by removing the crossover to Swan Street.

Trim Record Number: D18/177513

Responsible Officer: Senior Co-ordinator Statutory Planning

Proposal:	The construction of a seven-storey office building with roof terrace and three basement levels (for car parking), a reduction in the car parking requirement of the Scheme and alterations to a road in a Road Zone, Category 1 by removing a crossover to Swan Street.
Site and Existing uses:	439-441 Swan Street (a double-storey commercial building with the ground floor used for storage and the first floor used as a karate studio). 443 Swan Street (a single storey commercial building used as an office).
Applicant:	Tract Consultants
Zoning / Overlays:	Commercial 1 Zone Design and Development Overlay (Schedule 2) Design and Development Overlay (Schedule 5) Design and Development Overlay (Schedule 17)
Date of Application:	8 June 2018
Application Number:	PLN18/0403

Planning History

1. Planning permit No. 120 for 439-441 Swan Street, was issued on 23 September 1969 and allowed *the erection of a factory to be used for printing*. The approved structure is assumed to have been constructed and still exists on the site; however it is no longer used for printing and does not appear to have been for some time.
2. Planning permit PLN17/0525 for 439-441 Swan Street, was issued on 11 January 2018 and allowed *a change of use to an indoor recreation facility, a reduction in bicycle facility requirements and the display of internally-illuminated and business identification signage*. The approved use continues to operate on the first floor of 439-441 Swan Street. The permit does not apply to the ground floor of 439-441 Swan Street.
3. Planning permit application PLN18/0481 sought approval for the construction of a roller door and vehicle crossover to Cutter Street. This application was refused on 14 December 2018 on the basis that the movement of vehicles to and from the site would reduce the safety and amenity of pedestrians using the Cutter Street footpath, inconsistent with the decision guidelines under Clause 34.01-8 (Decision Guidelines of the Commercial 1 Zone) of the Yarra Planning Scheme.

Background

4. This planning permit application was received by Council on 8 June 2018. Following the submission of further information, the application was advertised in August and September 2018 and a total of fourteen objections were received, as well as two letters of support.
5. A consultation meeting was held on 20 November 2018 and attended by objectors, the applicant's development team and Council officers. No resolutions were reached at the meeting however constructive discussions occurred between objectors and the applicant's team around objector concerns and how these could be resolved through design changes.

Planning Scheme Amendments

6. On 22 November 2018, Planning Scheme Amendment C236 was gazetted, introducing the Design and Development Overlay Schedule 17 (DDO17) into the Yarra Planning Scheme. The DDO17 introduced built form controls for the Swan Street activity centre on an interim basis while Council pursues the permanent controls. Specifically, DDO17 includes a mandatory maximum building height of 24 metres for the subject site and adjoining properties fronting Swan Street.

Lodgment of S57A Amended Plans

7. In response to objector concerns and discussions at the consultation meeting, issues raised by Council officers, referral comments and in response to the introduction of DDO17 in November 2018 and after the application was advertised, the applicant submitted amended plans pursuant to Section 57A of the Act to Council on 29 November 2018.
8. The Section 57A amended plans made the following changes to the proposed development as depicted in the advertised plans:
 - (a) Removal of the proposed vehicle crossover and access point to the ground floor driveway from Cutter Street, with vehicle access now exclusively proposed from the rear laneway.
 - (b) The provision of landscaping, a green wall and two ground level hoops accommodating four visitor bicycle spaces within the Cutter Street setback where the vehicle egress to Cutter Street was deleted.
 - (c) A reduction in the height of the building from nine storeys with roof terrace to seven storeys with roof terrace, resulting in the maximum building height reducing from 35.42 metres to 28.19 metres, a reduction of 7.23 metres.
 - (d) Introduction of a canopy over the Swan Street footpath and part of the Cutter Street footpath.
 - (e) Further screening measures to the north-facing windows on the first and second floors at the interface with the rear laneway, to limit overlooking to dwellings on the northern side of the laneway.
9. As the Section 57A amended plans have been formally substituted within the application material, they supersede the originally submitted plans and form the application plans and for the purpose of assessment and recommendation throughout the body of this report, they are the 'decision plans'.

The Proposal

10. The application proposes the construction of a seven-storey office building with roof terrace and three basement levels (for car parking), a reduction in the car parking requirement of the Scheme and alterations to a road in a Road Zone, Category 1 by removing a crossover to Swan Street.
11. The key elements of the proposed development as depicted in the Section 57A amendment 'decision plans' (Attachment 2) are as follows:

Use:

- (a) Total of 2,988 square metres of office floor area within the building.
- (b) Ground floor consisting of an office of 72 square metres, lift lobby, lift core and stair well, bicycle storage room with 19 spaces, two ground level hoops accommodating four visitor bicycle parking spaces within the Cutter Street setback, a substation, bin storage room, driveway, two car lifts and four vehicle waiting bays.
- (c) The first to sixth floors consisting of office space with a total floor area of 2,916 square metres.
- (d) The main pedestrian entrance to the lift lobby from the east of the Swan Street frontage, with separate bicycle entrance from Cutter Street.

- (e) A balcony facing the rear laneway on the fourth, fifth and sixth floors, with an area of 7.7, 7.1 and 7.9 square metres, respectively, and landscaping planter boxes along the perimeter of each.
- (f) The roof top terrace accessed via the lifts and stairwell with a communal open space of 314 square metres, landscaping around the perimeter of the open space, a bathroom facility, foyer adjoining the lift and stairwell and mechanical plant equipment.

Car Parking and Access:

- (g) Vehicle access to the ground floor driveway, car lifts and waiting bays from the rear laneway.
- (h) A total of 53 car parking spaces proposed within a car stacker system across three levels of basement, accessed via the two car lifts on the ground floor. The car stacker system allows employees to drive into the 'transfer cabin', leave their vehicle and the system then mechanically parks the vehicle within the basement. The reverse applies when employees want to retrieve their vehicle and results in them 'calling' their car and then being able to walk into the transfer cabin and drive out of the site.
- (i) A total of 49 on-site bicycle parking spaces, with nineteen spaces provided in the ground floor bicycle storage room, four spaces located within the ground floor setback to Cutter Street, five each on the first, second, third and fourth floors, two on the fifth floor and four on the sixth floor. All bicycle parking spaces are Ned Kelly style wall hanging hoops, with the exception of the four spaces within the ground floor setback to Cutter Street, which are proposed as ground level hoops.
- (j) Removal of the 11.1 metre wide crossover to Swan Street and the reinstatement of the kerb, channel and footpath.

Built Form:

- (k) Seven storey building plus three basement levels and a roof top terrace.
- (l) Maximum building height of 28.19 metres to the top of the roof top terrace.
- (m) Maximum height of 25.69 metres to the top of the sixth floor parapet.
- (n) A five storey street wall to Swan Street with a height of 15.85 metres, with the street wall to Cutter Street commencing at five storeys at the intersection with Swan Street and raking down to a four storey height of 12.11 metres at the north-west corner.
- (o) The setback above the Swan Street street wall raked from the fifth floor to the top of the sixth floor parapet, increasing to a setback from the street of 4.18 metres.
- (p) The setback above the Cutter Street street wall raked away to the top of the sixth floor parapet, increasing to a setback from the street of 1.82 metres.
- (q) A three and a half storey street wall to the rear laneway of 12.11 metres, with the upper floors raked away to the top of the parapet, increasing to a setback of 3.11 metres.
- (r) Materials and finishes including:
 - (i) Curtain wall glazing system.
 - (ii) Aluminium cladding in a charcoal colour.
 - (iii) Concrete finish in medium grey.
 - (iv) Colorbond perforated metal in monument.
 - (v) Frameless glass balustrades.
 - (vi) Glazing system to incorporate openable sliding doors.
 - (vii) Vertical louvres with planter boxes.
 - (viii) Green vertical garden.

Environmental Sustainable Design:

- (s) A 20 per cent improvement above the NCC energy efficiency requirements for energy efficiency based on various initiatives.
- (t) Operable windows to most office spaces (providing natural ventilation).
- (u) A STORM report with a 100 per cent score that demonstrates best practice and relies on 320 square metres of roof connected to 8,000 litres of rainwater storage proposed to flush toilets for equivalent of 360 people (i.e. all toilets within the proposed development).
- (v) Energy efficient HVAC, hot water and lighting, and water efficient fixtures and taps.
- (w) Rainwater for irrigation.
- (x) 45 bicycle parking spaces for the total 2,988 square metres of office floor area, plus four visitor bicycle parking spaces (equating to a total of 49 bicycle parking spaces for the development).
- (y) Electric vehicle charging facilities (one car parking space is provided with electric vehicle charging infrastructure).
- (z) Landscaping on the roof top terrace, balconies, green walls incorporated into building façade and ground floor.

Existing Conditions

Subject Site

12. The subject site (Attachment 1) is rectangular in shape and located on the north-east corner of Swan Street and Cutter Street, in Richmond. The site has a frontage to Swan Street of 19.77 metres, a frontage to Cutter Street of 30.48 metres and an overall site area of 603 square metres. The site has a laneway abuttal of 19.77 metres. The site is relatively flat with no appreciable fall.
13. The subject site consists of two allotments. The western allotment (439-441 Swan Street) on the corner of Swan Street and Cutter Street is legally described as Lots 14 and 15 on Plan of Subdivision 000127 and is not affected by any restrictive covenants or easements. The eastern allotment (443 Swan Street) is legally described as Lot 1 on Title Plan 534855X and is not affected by any restrictive covenants. A party wall easement is located along part of the eastern boundary of this lot.
14. The subject site is currently developed with a double-storey commercial building at 439-441 Swan Street and a single-storey building at 443 Swan Street.
15. The double-storey building is constructed to all site boundaries, with undercroft car parking provided at the front and directly accessed from Swan Street from an 11.1 metre wide vehicle crossover. Four car parking spaces are provided within the undercroft. Vehicle access is also provided via the rear laneway through a roller door at the north-west corner of the site. The double-storey building is currently used for storage on the ground floor and as a karate studio on the first floor.
16. The single-storey building is constructed to the front and side boundaries with a 7 metre concreted setback to the rear laneway. Vehicle access is gained via the 3.8 metre wide rear laneway through a wire mesh gate. The single storey building is currently used as an office.



(Site photo, 28 June 2018)

Surrounding Land

17. The subject site is located between Burnley Street and Stawell Street. This section of Swan Street has been developed with a diverse mix of architectural styles. Swan Street itself provides an east-west connection linking the suburbs east of the City of Yarra with the CBD, intersecting with major arterials Burnley Street, Church Street and Punt Road.
18. The subject site is located within the Swan Street activity centre, an important business and retailing strip within the City of Yarra. The activity centre runs east-west from Punt Road in the west to the rail overpass in the east and provides a range of business types, including offices, local convenience shops, restaurants and bars, interspersed with a number of dwellings.
19. The area is well serviced by a number of transport options, with the Swan Street tram line travelling in front of the subject site and Burnley train station located approximately 190 metres away to the south-west.
20. To the immediate east of the subject site, at 445 Swan Street, is a single-storey commercial building constructed to all site boundaries and currently used as a vet clinic. Further east, along Swan Street, is a mix of single and double-storey commercial buildings used for office and retail uses.
21. To the immediate north of the subject site is an east-west laneway running between Cutter Street and Stawell Street to the east. The laneway has a width of approximately 3.8 metres and provides vehicle access to the rear of properties fronting Swan Street.

22. On the northern side of the laneway, on the south-east corner of Cutter Street and Farmer Street, is a townhouse style development (four triple storey dwellings), three of which have roof top terraces. To the east of that development, north-east of the subject site and facing Farmer Street to the north, are single-storey terrace dwellings with their rear secluded private open spaces abutting the east-west laneway.
23. To the immediate west of the subject site, is Cutter Street, a local north-south street with a road reserve width of 10 metres, parallel car parking provided on the eastern side of the street and footpaths provided on both sides. Cutter Street provides a lane of traffic in each direction. A street tree is located in front of the site within the Cutter Street road reserve.
24. Opposite the site, on the north-west corner of Swan Street and Cutter Street, is a development currently under construction approved under planning permit PLN14/1205 on 11 March 2016. The development is a six storey mixed use development with a street wall to both Swan Street and Cutter Street of 17.95 metres, a setback above the street wall of between 1.6 metres and 3.2 metres and an overall building height of 20.06 metres.
25. To the north-west, on the south-west corner of Cutter Street and Farmer Street, is a recently completed multi-unit development consisting of a three-storey residential building containing nine dwellings.
26. To the immediate south is Swan Street, an east-west arterial road with a road reserve width of approximately 20 metres that carries four lanes of traffic, with tram lines sharing the middle two lanes and the two outside lanes accommodating parallel car parking outside of clearway times. On each side of the road is a footpath (approximately 3 metres wide).
27. On the southern side of Swan Street are predominantly double-storey commercial buildings located within the Commercial 2 Zone, containing offices, retail premises and showrooms, with various setbacks to Swan Street. However, there are two recent planning permit approvals on the southern side of Swan Street opposite the subject site that will contribute to the emerging character of the surrounding area. These are described in the following paragraph.
28. At 484-486 Swan Street, immediately opposite the subject site to the south, planning permit PLN17/0448 was issued on 2 May 2018 (and subsequently amended at the direction of the Victorian Civil and Administrative Tribunal on 3 September 2018) for *a twelve storey mixed-use building*. At 462-482 Swan Street, to the south-west of the subject site, planning permit PLN15/0057 was issued on 31 January 2018 for *the construction of a twelve storey mixed-use building*. Neither of the two developments have been constructed yet.



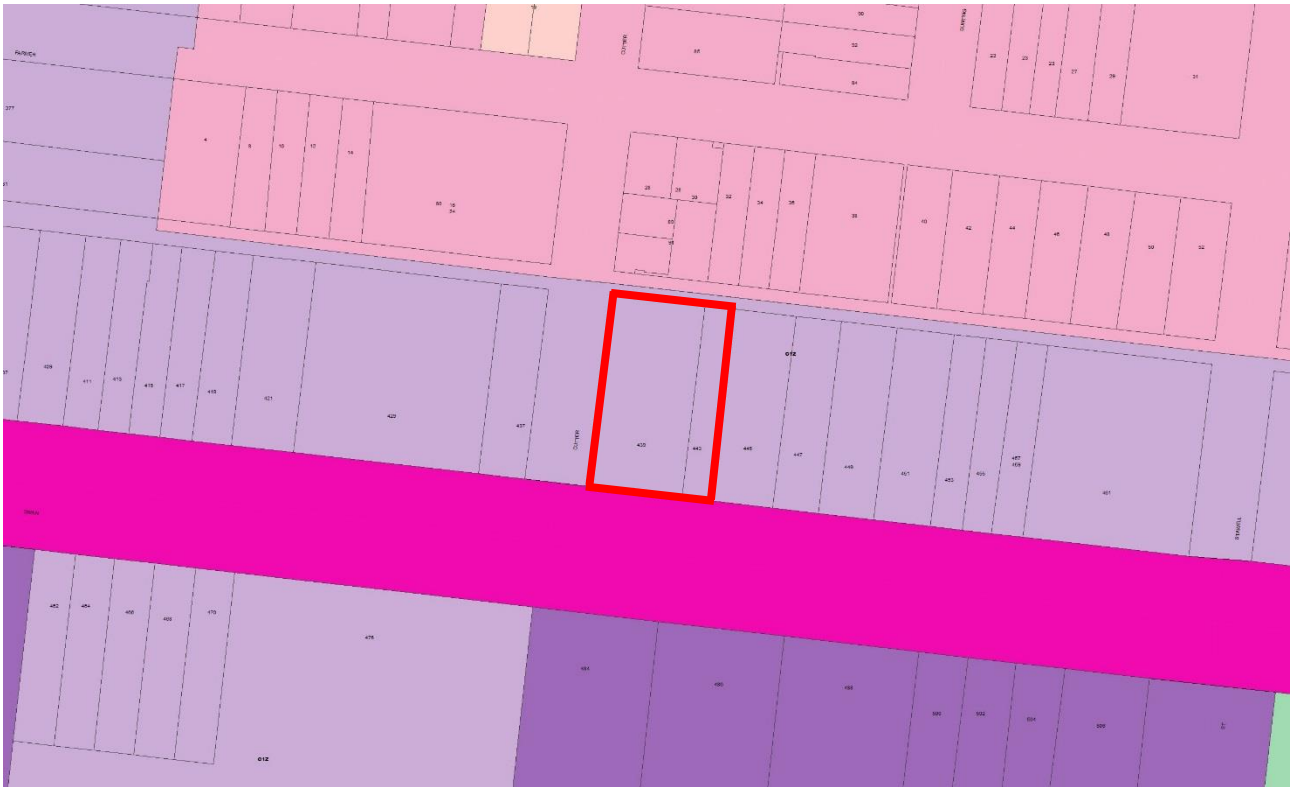
(Aerial imagery, October 2018)

Planning Scheme Provisions

Zoning

Commercial 1 Zone

29. Pursuant to Clause 34.01-1 of the Yarra Planning Scheme (the Scheme), an office is a section 1 use within the zone and therefore a planning permit is not required for the use of the land as an office.
30. Pursuant to Clause 34.01-4 of the Scheme, a planning permit is required for buildings and works.



(Zoning map)

Overlays

Design and Development Overlay (Schedule 2) – Main Roads and Boulevards

31. Pursuant to Clause 43.02-2 of the Scheme, a planning permit is required to construct a building or construct or carry out works.

Design and Development Overlay (Schedule 5) – City Link Exhaust Stack Environs

32. Pursuant to Clause 43.02-2 of the Scheme, a planning permit is required to construct a building or construct or carry out works. This does not apply if a schedule to this overlay specifically states that a permit is not required. Clause 2 of Schedule 5 to the overlay specifically states that a permit is not required to construct a building or construct or carry out works.
33. Pursuant to Clause 4 of the Schedule, where a permit is required to use land or for the construction of a building or the construction or carrying out of works under another provision in this scheme, notice must be given under section 52(1)(c) of the Planning and Environment Act 1987 to the person or body specified as a person or body to be notified in Clause 66.06 or a schedule to that clause. Notice of the application must therefore be given to the Environment Protection Authority, Transurban CityLink Limited and the Roads Corporation (VicRoads).
34. The original application and advertised plans were referred in accordance with this provision and comments (where submitted to Council) are provided in the referrals section of this report.

Design and Development Overlay (Schedule 17) – Swan Street Activity Centre

35. Pursuant to Clause 43.02-2 of the Scheme, a planning permit is required to construct a building or construct or carry out works. A mandatory maximum building height of 24 metres applies to the subject site.

Particular Provisions

Clause 52.06 – Car Parking

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

Use:	Rate:	Spaces required:	Spaces proposed:	Reduction sought:
Office (2,988 sqm)	3 to each 100 sqm of net floor area	89	53	36

38. 53 car parking spaces are provided on site in the form of car stackers within the three levels of basement. With a shortfall of 36 car parking spaces, this application therefore seeks a reduction in the car parking requirement of the Scheme associated with the 2,988 square metres of office use.
39. The type of car stacker system proposed allows employees to drive into the 'transfer cabin', leave their car and the system mechanically parks the car within the basement. The reverse applies when employees want to retrieve their car by 'calling' their car and then being able to walk into the transfer cabin and drive out of the site. This type of transfer cabin is also suitable for 'accessible' car parking, with a cabin area in excess of 6 metres wide.

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

40. Pursuant to Clause 52.29 of the Scheme, a planning permit is required create or alter access to a road in a Road Zone, Category 1. Swan Street is in a Road Zone, Category 1 and the proposal seeks to remove the vehicle access point from Swan Street. A planning permit is therefore required to remove access from Swan Street.
41. An application to create or alter access to a road declared as a freeway or arterial road under the Road Management Act 2004 or land owned by the Roads Corporation for the purpose of a road must be referred to the Roads Corporation under section 55 of the *Planning and Environment Act 1987*. In this instance Vic Roads are the relevant referral authority.
42. The original application and advertised plans were referred in accordance with this provision and referral comments are provided in the referrals section of this report.

Clause 52.34 – Bicycle Facilities

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

Use:	Employee Rate:	Spaces required:	Visitor/Shopper Rate:	Spaces required:
Office (2,988 sqm)	1 to each 300 sqm of net floor area if the net floor area exceeds 1,000 sqm	10	1 to each 1,000 sqm of net floor area if the net floor area exceeds 1,000 sqm	3

44. As 49 on-site bicycle parking spaces are proposed within the development and 13 spaces are required by the Scheme, the application exceeds the bicycle parking spaces requirement by 32 spaces.

45. End of trip facilities (i.e. showers or change rooms) are required by the Scheme. Further, the Scheme prescribes that when five or more employee bicycle spaces are required, one shower is required for the first five employee bicycle spaces, plus another shower to each ten employee bicycle spaces thereafter. Additionally, one change room or direct access to a communal change room is required to each shower. The change room may be a combined shower and change room.
46. As the Scheme requires ten employee bicycle parking spaces, two showers with change rooms are also required. As the proposed development incorporates nine combined shower and change rooms, the application exceeds the requirements of Clause 52.34 of the Scheme by seven showers.

General Provisions

Clause 65 – Decision Guidelines

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

Planning Policy Framework (PPF)

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

Clause 11.01-1R – Settlement – Metropolitan Melbourne

49. The relevant strategies of this Clause are:
 - (a) Develop a network of activity centres linked by transport; consisting of metropolitan activity centres supported by a network of vibrant major and neighbourhood activity centres of varying size, role and function.
 - (b) Create mixed-use neighbourhoods at varying densities, including through the development of urban-renewal precincts that offer more choice in housing, create jobs and opportunities for local businesses and deliver better access to services and facilities.

Clause 11.02-1S – Supply of Urban land

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

Clause 11.03-1S – Activity Centres

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

Clause 11.03-1R – Activity Centres – Metropolitan Melbourne

52. The relevant strategy of this Clause is:
 - (a) Locate significant new education, justice, community, administrative and health facilities that attract users from large geographic areas in or on the edge of metropolitan activity centres or major activity centres with good public transport.

Clause 13.05-1S – Noise Abatement

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

Clause 13.07-1S – Land Use Compatibility

54. The objective of this Clause is:

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

Clause 15.01-1S – Urban Design

55. The objective of this Clause is:

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

Clause 15.01-1R – Urban Design – Metropolitan Melbourne

56. The objective of this Clause is:

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

Clause 15.01-2S – Building Design

57. The objective of this Clause is:

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

Clause 15.01-4R – Healthy Neighbourhoods – Metropolitan Melbourne

58. The strategy of this Clause is:

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

Clause 15.01-5S – Neighbourhood Character

59. The objective of this Clause is:

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

Clause 15.02-1S – Energy and Resource Efficiency

60. The objective of this Clause is:

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

Clause 17.01-1S – Diversified Economy

61. The objective of this Clause is:

- (a) To strengthen and diversify the economy.

Clause 17.02-1S – Business

62. The objective of this Clause is:

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

Clause 18.01-1S – Land Use and Transport Planning

63. The objective of this Clause is:

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

Clause 18.01-2S – Transport System

64. The objective of this Clause is:

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

Clause 18.02-1S – Sustainable Personal Transport

65. The objective of this Clause is:

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

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

66. The relevant strategy of this Clause is:

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

Clause 18.02-2S – Public Transport

67. The objective of this Clause is:

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

Clause 18.02-2R – Principal Public Transport Network

68. The relevant strategy of this Clause is:

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

Clause 18.02-4S – Car Parking

69. The objective of this Clause is:

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

Clause 19.03-4S - Stormwater

70. The objective of this Clause is:

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

Local Planning Policy Framework (LPPF)

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

Clause 21.03 – Vision

72. The relevant sections of this Clause are:

- (a) Yarra will have increased opportunities for employment.
- (b) The complex land use mix characteristic of the inner city will provide for a range of activities to meet the needs of the community.
- (c) Yarra's exciting retail strip shopping centres will provide for the needs of local residents, and attract people from across Melbourne.
- (d) Most people will walk, cycle and use public transport for the journey to work.

Clause 21.04-2 – Activity Centres

73. The relevant objectives of this Clause are:

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

Clause 21.04-3 – Industry, Office and Commercial

74. The relevant objective of this Clause is:

- (a) To increase the number and diversity of local employment opportunities.

Clause 21.05-2 – Urban Design

75. The relevant objectives of this Clause are:

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

Clause 21.05-3 – Built Form Character

76. The relevant objectives of this Clause are:

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

Clause 21.05-4 – Public Environment

77. The relevant objectives of this Clause are:

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

Clause 21.06 – Transport

78. The relevant objectives of this Clause are:

- (a) To provide safe and convenient pedestrian and bicycle environments.
- (b) To facilitate public transport usage.
- (c) To reduce the reliance on the private motor car.
- (d) To reduce the impact of traffic.

Clause 21.07 – Environmentally Sustainable Development

79. The relevant objectives of this Clause are:

- (a) To promote environmentally sustainable development.
- (b) To improve the water quality and flow characteristics of storm water run-off.

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

80. Clause 21.08-10 describes the Central Richmond area in the following way:

- (a) The land use character of this neighbourhood is predominantly residential, with the area closest to Punt Road comprising early to mid-Victorian cottages and terraces, and an increasing amount of Edwardian dwellings towards the east of the neighbourhood.

81. Within Figure 23 of Clause 21.08-10, the subject site is located within the Swan Street major activity centre. Figure 24 of Clause 21.08-8 shows the subject site as being within category 1 area relating to main roads where the objective is to '*maintain the hard edge of the strip*'.

Relevant Local Policies

Clause 22.05 – Interface Uses Policy

82. This policy applies to applications for use or development within the Commercial 1 Zone (amongst others). The relevant objective of this clause is to ensure that residential uses located within or near commercial centres or near industrial uses enjoy a reasonable level of amenity. It is policy that:

- (a) New non-residential use and development within Business (now Commercial) and Mixed Use and Industrial Zones are designed to minimise noise and visual amenity impacts upon nearby, existing residential properties.

Clause 22.07 – Development Abutting Laneways

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

Clause 22.10 – Built Form and Design Policy

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

Clause 22.16 – Stormwater Management (Water Sensitive Urban Design)

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

Clause 22.17 – Environmentally Sustainable Development

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

Other Documents

Urban Design Guidelines for Victoria (DELWP)

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

Swan Street Structure Plan

- 88. The Swan Street Structure Plan is relevant to the subject site and provides guidance for the built form of the precinct.

Advertising

- 89. The originally submitted application was advertised under the provisions of Section 52 of the *Planning and Environment Act (1987)* by 231 letters sent to surrounding owners and occupiers and by two signs on site (one sign displayed on the Swan Street frontage and one sign displayed on the Cutter Street frontage).
- 90. Council received two letters of support and fourteen objections, the grounds of which are summarised as follows:
 - (a) Design and built form, including out of character, excessive height, bulk and scale and the materials and finishes are inappropriate.
 - (b) Off-site amenity impacts including overlooking, overshadowing, visual bulk, loss of daylight, glare from the proposed glazing and light spill from the proposed offices.

- (c) Car parking, traffic and access including lack of car parking, increased traffic and waste management issues.
 - (d) Impacts during construction.
 - (e) Impacts on existing businesses and oversupply of office space.
 - (f) Inaccuracies on plans/documents.
 - (g) Will set a precedent.
 - (h) Inconsistent with the Swan Street Structure Plan.
91. A consultation meeting was held on 20 November 2018 and attended by objectors, the applicant's development team and Council officers. Constructive discussions occurred between objectors and the applicant's team around objector concerns and how these could be resolved through design changes.
 92. On 22 November 2018, Planning Scheme Amendment C236 was gazetted, introducing the Design and Development Overlay Schedule 17 (DDO17) into the Scheme. The DDO17 introduced built form controls for the Swan Street activity centre on an interim basis while Council pursues the permanent controls. Specifically, DDO17 includes a mandatory maximum building height of 24 metres for the subject site and adjoining properties fronting Swan Street.
 93. In response to objector concerns and discussions at the consultation meeting, issues raised by Council officers, referral comments and in response to the introduction of DDO17 in November 2018 and after the application was advertised, the applicant submitted amended plans pursuant to Section 57A of the Act to Council on 29 November 2018.
 94. The Section 57A amended plans make the following changes to the proposed development as depicted in the advertised plans:
 - (a) Removal of the proposed vehicle crossover and access point to the ground floor driveway from Cutter Street, with vehicle access now exclusively proposed from the rear laneway.
 - (b) The provision of landscaping, a green wall and two ground level hoops accommodating four visitor bicycle spaces within the Cutter Street setback where the vehicle egress to Cutter Street was removed from.
 - (c) A reduction in height from nine storeys plus a roof top terrace to seven storeys plus a roof top terrace, resulting in the maximum building height reducing from 35.42 metres to 28.19 metres, a reduction of 7.23 metres.
 - (d) Introduction of a canopy over the Swan Street footpath and part of the Cutter Street footpath.
 - (e) Further screening measures to the north-facing windows on the first and second floors at the interface with the rear laneway, to limit overlooking to dwellings on the northern side of the laneway.
 95. As the Section 57A amended plans have been formally substituted within the application material, they supersede the originally submitted plans and form the application plans. For the purpose of assessment and recommendation throughout the body of this report, they are referred to as the 'decision plans'.
 96. This Section 57A amendment has been specifically exempted from the advertising provisions under Section 57B of the *Planning and Environment Act* (1987) (*The Act*) at Council's internal Development Assessment Panel meeting (DAP) on 16 January 2019 as the amendment would not cause any additional material detriment to any person or adjoining property.

Referrals

97. The referral comments are based on the originally submitted (advertised) plans and, where required, additional referral comments were sought on the Section 57A amended plans.

External Referrals

98. Pursuant to Clause 52.29, an application to create or alter access to a road declared as a freeway or arterial road under the Road Management Act 2004 or land owned by the Roads Corporation for the purpose of a road must be referred to the Roads Corporation under section 55 of the *Planning and Environment Act 1987*. In this instance Vic Roads are the relevant referral authority.
99. The application was formally referred to VicRoads, however, no response has been received. Referral requirement to VicRoads under the Scheme is triggered by the proposed removal of the Swan Street crossover only and is not triggered by the proposed car parking arrangement, the type of car parking proposed (car stackers) or the proposed vehicle access from the laneway.
100. Notice of the application was given to the following authorities under the provision of the Design and Development Overlay (Schedule 5):
 - (a) Environment Protection Authority (Attachment 3).
 - (b) VicRoads (no response received).
 - (c) Transurban CityLink (no response received).
101. Referral responses/comments have been included as attachments to this report. While VicRoads and Transurban CityLink have not provided a response, this does not prevent Council from making a decision on the application.

Internal Referrals

102. The application was referred to the following units within Council:
 - (a) Engineering services unit (Attachment 4).
 - (b) ESD advisor (Attachment 5).
 - (c) Urban design unit (Attachment 6).
 - (d) Open space planning and design unit (Attachment 7).
 - (e) Strategic transport unit (Attachment 8).
 - (f) Acoustic consultant (SLR Consulting Australia) (Attachment 9).
 - (g) Urban design consultant (David Lock Associates) (Attachment 10).
103. Referral comments have been included as attachments to this report.

OFFICER ASSESSMENT

104. The primary considerations for this application are as follows:
 - (a) Strategic justification.
 - (b) Built form and design.
 - (c) Equitable development.
 - (d) Off-site amenity impacts.
 - (e) Internal amenity.
 - (f) Sustainable design.
 - (g) Car and bicycle parking.
 - (h) Traffic and access.
 - (i) Objector concerns.

Strategic Justification

105. The subject site is located within the Commercial 1 Zone, a zone that seeks to create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses. The proposed office use for the building is a 'section 1 use' and does not require a planning permit to operate within the zone. However, a planning permit is required to construct a building or construct or carry out works.
106. In regard to the proposed building and works, State and Local policies encourage the concentration of development in and around activity centres and intensifying development on sites well connected to public transport, ensuring the efficient use of existing infrastructure.
107. Council's local policy at Clause 22.10 of the Scheme outlines high level urban design guidance for future built form, which supplements State and Local policy that seeks to increase the number and diversity of employment opportunities within and around activity centres.
108. The application proposes the construction of a seven storey building containing office uses on a site which is underutilised with reference to its physical and policy context. The zoning of the land supports development which provides a range of residential, commercial and other uses.
109. Council's Municipal Strategic Statement (MSS) identifies the site as being within the Swan Street activity centre (Clauses 21.03 and 21.08-10) and the site has many of the attributes of a strategic redevelopment site. These include the overall size of the site, frontage to a major arterial road, proximity to a regionally significant transport corridor and proximity to services and transportation within the surrounding area.
110. The proposal is considered to be generally consistent with the purpose of the zone and strategic incentives set out in the Scheme for this area that encourage intensification of uses and the provision of employment opportunities.
111. The subject site is well connected to public transport infrastructure, with the Swan Street tram line located immediately in front of the site and Burnley train station located approximately 150 metres away to the south-west, encouraging the use of alternative modes of transport to and from the site, rather than full reliance on motor vehicles. This is encouraged and supported by both State and local policies, at Clause 18.02 (Movement Networks), Clause 21.06-3 (Transport) and Clause 21.07 (Environmental Sustainability) of the Scheme.
112. Overall, and in a strategic sense, the proposed construction of a multi-storey office building is consistent with the relevant State and local policies (Clauses 11.03, 17.02, 21.04-2 and 21.04-3 of the Scheme) and the purpose of the Commercial 1 Zone which supports the entire building consisting of office space within a vibrant mixed-use commercial centre.
113. That said, any policy support for more intensive development needs to be balanced with built form guidance at Clauses 15.01, 21.05-2 and 22.10 of the Scheme which call for development that appropriately responds to the surrounding context and urban character which in this case is commercial but with a residential interface to the north of the site.
114. While the surrounding area is expected to undergo a substantial level of change as a result of the zoning of the land, the introduction of the Design and Development Overlay Schedule 17 (DDO17), the strategic location and access to services and transport, consideration of the off-site amenity impacts and the scale of the development (taking into account the expected future character of the area) are all relevant considerations in the assessment of this proposal.
115. As will be discussed in more detail within this report, the scale of the proposed development at seven storeys plus a roof top terrace, in principle, appropriately responds to the site context and surrounding built form with no unreasonable overshadowing, visual bulk or overlooking impacts on nearby residential land. That said, with the introduction of DDO17, the maximum height is now subject to other considerations. This will be assessed/discussed in the next section of this report.

116. The proposed development enjoys strong strategic support at both State and local level. The site is within an area where a change in the environment is encouraged and is achieved through the development proposed. Subject to conditions including the building parapet reduced to a maximum building height of 24 metres and the roof top terrace modified by the removal of the bathroom facility so that it no longer forms a storey in its own right, the proposed development will achieve the various land use and development objectives outlined earlier in this report and, importantly, the requirements of the DDO17.

Built Form and Design

117. In considering the design and built form of the proposed development, the most relevant aspects of the Scheme are found in the Design and Development Overlay (Schedule 17) that was introduced into the Yarra Planning Scheme on 22 November 2018. Additionally, Clause 15 (Built Environment and Heritage), Clause 21.05 (Built Form), Clause 22.07 (Development Abutting Laneways) and Clause 22.10 (Design and Built Form) provide further guidance. As supplementary guidance, the *Urban Design Guidelines for Victoria* (prepared by Department of Environment, Land, Water and Planning) 2017 are also relevant.
118. These provisions and guidelines all seek a development outcome that responds to the existing or preferred neighbourhood character and provides a contextual urban design response reflective of the aspirations for the area. Particular regard must be given to the acceptability of the design in terms of height and massing, street setbacks, relationship to adjoining buildings, views and roof forms.
119. The proposal is generally considered to be consistent with all relevant built form and decision guidelines. However, the height of the proposed development at seven storeys plus a roof terrace does not comply with the mandatory maximum building height prescribed by the DDO17. This can however be easily addressed and subject to the building parapet reduced to a maximum building height of 24 metres and the roof terrace modified by deleting the bathroom facility so that it no longer reads as a 'storey' in its own right, the proposal will respond appropriately to the surrounding context in addition to achieving a built form outcome that complies with DDO17.
120. It is noted that the maximum height prescribed in DDO17 for this site is a mandatory control, as opposed to a preferred (or discretionary) outcome. A mandatory height control cannot be exceeded, whereas a preferred or discretionary height control could be exceeded following due assessment.

Street Wall

121. The relationship between street width and building height is important for defining the character of a place. In this instance, DDO17 calls for a preferred maximum street wall height to both Swan Street and Cutter Street of 14.5 metres and for development along Swan Street to achieve a 'prominent street wall'. Additionally, Clause 21.05-4 of the Scheme aims to ensure that buildings have a human scale at street level (noting that human scale is the practice of measuring and designing things to match the physical and cognitive characteristics of humans). Further, the *Urban Design Guidelines for Victoria* (prepared by Department of Environment, Land, Water and Planning, 2017) seek to ensure that building scale and form supports the context and preferred future character of an activity centre, achieved by using the building height and setbacks to frame the street space as a public space and utilising a podium and tower form to create a pedestrian scale at street level.
122. The proposal incorporates a five storey street wall height of 15.85 metres to Swan Street. The surrounding built form context includes a mix of street wall heights. To the immediate east is a mix of single and double storey commercial buildings built hard edged to Swan Street. On the north-west corner of Swan Street and Cutter Street, opposite the subject site is a currently under construction development of a six storey mixed use development with a street wall to Swan Street of five storeys and 17.95 metres.
123. While exceeding the preferred street wall height of DDO17 by 1.35 metres, the proposed five storey street wall to Swan Street, at a height of 15.85 metres, is considered acceptable due to the varied nature of street walls along this section of Swan Street.

It is also generally consistent with the five storey street wall height of the six storey apartment building on the north-west corner of Swan Street and Cutter Street, albeit it the proposed street wall height is marginally lower.

124. Additionally, Swan Street has a width of 20 metres which, using the proposed street wall height of 15.85 metres, equates to street wall height to street width ratio of almost 1:1 and it is considered that this would not unreasonably impact on the streetscape character along this section of Swan Street. Overall, the proposed five storey street wall height of 15.85 metres, albeit exceeding the preferred street wall height of DDO17 by 1.35 metres, is considered appropriate for the subject site and site context.
125. The proposed street wall height to Cutter Street gradually transitions from five storeys and 15.85 metres at the corner with Swan Street down to four storeys and 12.1 metres at the corner with the rear laneway. This is considered an appropriate transition down to the three storey townhouse style development to the north of the subject site and is generally compliant with the street wall requirement of DDO17 which is 14.5 metres.

Upper Level Setbacks

126. DDO17 calls for a preferred minimum upper level setback of 5 metres above the street wall to Swan Street and a setback of 3 metres above the street wall to Cutter Street. Additionally, the *Urban Design Guidelines for Victoria* (prepared by Department of Environment, Land, Water and Planning, 2017) call for the upper levels of tall buildings to be setback to create a pedestrian scale at street level (noting that pedestrian scale means the use of human proportioned architectural features and site design elements clearly oriented to pedestrian activity).
127. The proposal includes a raked form from the fifth floor to the top of the sixth floor parapet, increasing to a setback from the street of 4.18 metres to Swan Street. While not achieving the DDO17 preferred minimum setback of 5 metres, the setback in the submitted proposed raked form is generally compliant and is supported by Council's urban design consultant who confirms that it is *'an acceptable design response for this corner site and can deliver the desired visual recession of the upper form above the street wall'*.
128. To Cutter Street, the proposed raked form above the street wall continues to this interface with the setback increasing to 1.82 metres to the top of the sixth floor parapet. Again, while this does not achieve the preferred 5 metre minimum upper level setback to Cutter Street prescribed by the DDO17, the raked form achieves a design that is expressed in the round and avoids a repetitive stepped form.

Height

129. In terms of the built form context, the area is generally defined by the one to three storey hard edged development along Swan Street, as well as some low-rise residential development dispersed within the surrounding area. In terms of recent developments, a six storey apartment building is under construction to the west of the site at 429-437 Swan Street, while planning permits for twelve storey buildings have been approved at both 484-486 and 462-482 Swan Street, to the south and south-west of the subject site, respectively.
130. Physically, the subject site provides development opportunities in the form of the commercial zoning of the land and its overall size, supporting its consideration as a redevelopment site. Site constraints include however the proximity of nearby dwellings and lower scale built form.
131. The proposed seven storey building will have a maximum overall height of 28.19 metres to the top of the lift overrun and a maximum building height (when measured to the parapet of the sixth floor) of 25.69 metres. The building incorporates raked setbacks above the street wall, increasing to 4.18 metres from Swan Street, 1.82 metres from Cutter Street and 3.11 metres from the rear laneway.
132. DDO17, introduced to the Scheme on 22 November 2018, sets the mandatory maximum building height at 24 metres. It is noted that building height is defined in Clause 73.01 of the Scheme as *'the vertical distance from natural ground level to the roof or parapet at any point'*.

133. The proposed development therefore fails to comply with the mandatory maximum building height for the site. Specifically, the sixth floor parapet reaching a height of 25.69 metres, exceeds the maximum height requirement by 1.69 metres. Additionally, the roof top terrace in its submitted form is technically considered a 'storey' in its own right as a result of the bathroom facility provided on that level.
134. In order to ensure the proposed development complies with the mandatory maximum building height of the DDO17, a condition contained within the recommendation section of this report will require the building height to be reduced to a maximum height of 24 metres.

It is likely that this will be achieved by setting back the parapet from the edge of the roof form so that it no longer forms part of the building parapet and is solely included and presents instead as part of the roof top terrace balustrade, which is not included when assessing building height.
135. Additionally, the condition contained within the recommendation section of this report requiring a maximum building height of 24 metres will also require the roof top terrace to be modified so that it no longer forms a 'storey' in its own right. This will require the bathroom facility to be deleted from the plans.
136. Generally speaking, roof top terrace access via lifts and stairwells and a transitional space adjacent to both are not considered a storey and therefore not included in the building height. The definition of building height in Clause 2.1 of DDO17 confirms this as '*non structural elements and service equipment including plant rooms, lift overruns, structures associated with green roof areas and other such equipment*' are excluded from the building height definition.
137. For the above reasons, the overall design of the proposed development is considered to adequately respond to the existing and emerging character of this section of Swan Street, subject to conditions requiring the building parapet reduced to a maximum height of 24 metres and the roof top terrace modified so that it no longer forms a storey in its own right. Subject to these design changes the mandatory requirements of DDO17 will be met.

Architectural quality

138. The proposed development is considered to be of a high architectural quality and, in that regard, responds to the design objectives of Clause 15.01 of the Scheme. The contemporary design is appropriate and responds to the existing and emerging character of this part of Swan Street, as confirmed by Council's urban design consultant who noted that '*the proposed architectural concept provides an interesting and unique design response for the site within Swan Street*'. Whilst the proposed building is designed with a unique form, the proposal is considered to achieve the traditional setback requirements required by policy albeit it in a contemporary design approach.
139. The eastern side elevation uses various concrete finishes, including a smooth concrete finish and textured concrete finish, both in medium grey, as well as recessed area in the upper floors. The use of these various finishes on the side boundary walls, combined with the recessed areas, will assist in articulating this elevation until such time as neighbouring properties develop, which is both logical and supported.
140. The textured concrete finish, denoted as AF02 on the submitted material schedule that formed part of the advertised plans, has been inadvertently deleted from the material schedule submitted with the Section 57A amended plans. A condition contained within the recommendation section of this report will therefore require the textured concrete finish, denoted as AF02, to be reinstated on the materials schedule.

Street Level Interface

141. At the ground floor, the proposal will activate Swan Street by way of the office space to the majority of the ground floor front facade. The location of service cabinets predominantly away from the ground floor front facade of the proposal and will ensure an active ground level frontage and a design which facilitates street level activity to Swan Street, and is a positive element of the design.

142. The Cutter Street frontage consists of a 3.5 metre section of office frontage with glazing, a substation, separate bicycle entrance, a shallow landscaped section in front of the car lift and a 5 metre section of green wall to the north of the Cutter Street frontage. While this offers limited activation by the way of glazing to Cutter Street, it is somewhat unavoidable given the design and layout of the car park entrance and proposed car parking in the form of an extensive car stacker system. The extensive glazed facades at the upper levels facing Cutter Street however somewhat compensate for the lack of activation at the ground floor.
143. In relation to the proposed canopy over the Swan Street footpath, Council's urban design consultant recommends that the *'weather canopy should be extended to the full length of the Swan Street frontage and return along the Cutter Street frontage to provide weather protection to the pedestrian entries and the public realm'*. Further, the *'height of the canopy should be no more than 3.6 metres above the footpath natural ground level, and should extend to 750mm from the kerb'*. To address this, plans now show a canopy with a height of 3.5 metre above the footpath to the full extent of Swan Street, extending 1.5 metres from the kerb to allow for street trees to be planted in front of the site. This is considered an appropriate design outcome which will provide both weather protection and allow street trees to be planted, and is therefore supported.
144. The proposed canopy turns the corner into Cutter Street for a length of approximately 7.4 metres and extends 750mm from the kerb and while it does not extend the full length of the Cutter Street frontage, it must be acknowledged that the footpath on Cutter Street is narrow. The design response is therefore acceptable and furthermore, building regulations stipulate that a canopy must be setback a minimum of 750mm from the kerb, resulting in a shallow canopy to Cutter Street that does not offer much weather protection in any event.
145. Objective 3.1.5 of the Urban Design Guidelines for Victoria (UDGV) aims to ensure comfortable and enjoyable public spaces. Taller buildings invariably create challenging wind conditions at street level and, specifically, the guidelines seek to protect public spaces from strong winds. These include down drafts and wind tunnel effects. Measures to reduce the impact of these effects should be considered.
146. The submitted wind impact assessment prepared by Vipac Engineers is based on the nine storey building plus roof top terrace as depicted in the advertised plans. The report concludes that the development *would be expected to generate wind conditions on the ground level footpath areas and surrounding walkways and in the outdoor amenity areas of the roof top terrace within the recommended walking comfort criteria, and wind conditions at the building entrance areas within the standing comfort criteria*. The reduced building height is considered to have an acceptable wind environment in the adjacent areas with wind speeds reduced to within the relevant designated criteria.
147. The proposed development includes the removal of the crossover to Swan Street, and reinstatement of the kerb, channel and footpath to the street frontage. This is considered a positive outcome and will improve the pedestrian environment along Swan Street as a result of eliminating potential conflict between pedestrians and vehicles.
148. With regard to public realm improvements, given the scale and type of development, further opportunities for public amenity should be explored. Plans now show bicycle hoops within the Swan Street footpath, as well as additional street trees in both the Swan Street and Cutter Street road reserves. Conditions contained within the recommendation section of this report therefore require the bicycle hoops to be designed and located in accordance with Council requirements and constructed at the permit holder's cost and to Council's satisfaction and for the permit applicant to make a one-off contribution for the cost of planting and maintaining the proposed street trees.

Laneway Interface

149. Council's local policy at Clause 22.07 of the Scheme relates to development abutting laneways. Relevantly, the policy seeks to provide an environment which has a feeling of safety for users of the laneway and to ensure that development along a laneway acknowledges the unique character of the laneway. The policy specifically calls for development that respects the scale of the surrounding built form.
150. Additionally, Council's local policy at Clause 22.10 in relation to built form and design states that new development which abuts a laneway should not affect the amenity of neighbouring residential properties. Specifically, Clause 22.10-3.3 seeks new development which abuts a laneway to be no higher than two storeys.
151. The proposal development incorporates a three and a half storey street wall to the rear laneway of 12.11 metres, with the upper floors raked away to the top of the parapet, increasing to a setback of 3.11 metres. While the policy mentioned above does not specify a maximum height in metres, the proposed 12.11 metre high wall on the rear laneway would exceed the recommended two storeys for development that abuts a laneway.
152. The policy provides guidance and is not a mandatory control and is used to assess development in laneways across the municipality, from outbuildings to multi-level developments. In this instance, zoning and site context plays an important factor in determining the appropriateness of the design response. The proposed design incorporates various materials on the northern elevation including solid metal panels, textured, fritted or obscured glazing and balconies that provide articulation and visual interest and the upper floors are raked away to the top of the parapet, which combined will assist in softening the appearance of the development from the sensitive interface to the north. As such, while the two-storey height has not been achieved, the height is considered appropriate in the submitted form and will have no unreasonable impacts on the sensitive interface to the north.

Site Services

153. Site services and related enclosures for waste disposal and recycling, mail and deliveries and water and energy metering are necessary elements in any development. It is important, however, that these elements are designed into a development while still meeting the size and location requirements of service authorities.
154. The ground floor façade of the proposed development presents to a 19.77 metre wide Swan Street frontage and incorporates minimal service cabinets facing the street. To the Swan Street frontage, the fire booster cupboard is located next to the entrance lobby and is the only service cabinet facing Swan Street. The extent of service cabinets facing Swan Street is considered an appropriate design outcome consistent with Clause 22.10-3.11 of the Scheme, minimising the visual impact of these items on the activation of the street.
155. The operability of the fire booster cupboard doors are not shown on the plans. To ensure the doors do not encroach on the public footpath area, they need to swing 180 degrees and latch on to the building. Similarly, the door providing access to the substation on the Cutter Street frontage should also swing 180 degrees and latch on to the building. The recommendation section of this report therefore includes a condition to ensure these requirements are met and are shown on plans.
156. The ground floor Cutter Street facade consists of a 3.5 metre section of office frontage with glazing, the substation, a separate bicycle entrance, a shallow landscaped section in front of the car lift and a 5 metre section of green wall to the north of the Cutter Street frontage. While this offers little activation by the way of glazing to Cutter Street, it is somewhat unavoidable given the layout of the car park entrance and car stacker system. Additionally, as mentioned earlier in this report, the glazed facades at the upper floors facing Cutter Street compensate for the lack of activation at the ground floor.
157. The remainder of the building services are appropriately located within the basement, on the ground floor or on the roof top, largely concealed from view and obscured from the public domain. This is also considered an appropriate design outcome that is consistent with Clause 22.10-3.11 of the Scheme relating to service infrastructure.

Landscaping

158. Landscaping is not a typical feature of commercial buildings along Swan Street however, the proposal includes landscaping around the perimeter of the roof top terrace and each of the balconies, as well as green walls to both the splayed south-east corner of the building and to the north of the ground floor Cutter Street frontage. Additional landscaping is also proposed within the ground floor setback to Cutter Street. To ensure that landscaping is implemented and maintained, a condition contained within the recommendation section of this report requires a landscape plan to show all plantings details, satisfying objectives at Clauses 22.10-3.2 and 22.10-3.9.
159. In relation to the street tree in front of the site, a condition contained within the recommendation section of this report requires a tree management plan to be submitted that ensure the tree is protected. The amended plans also show two proposed street trees within Cutter Street and three proposed street trees within Swan Street. A condition contained within the recommendation section of this report requires the permit applicant to make a one-off contribution for the cost of planting and maintaining these proposed street trees.

Equitable Development

160. To ensure the fair, orderly, economic and sustainable development of land, matters of equitable development must be considered in accordance with the objectives of planning in Victoria as set out in Section 4(1) of the *Planning and Environment Act 1987*. Objective 5.1.3 of the *Urban Design Guidelines for Victoria* also seeks to ensure buildings provide equitable access to daylight and sunlight.
161. The subject site has street frontages to the west and south and a laneway frontage to the north, eliminating any concerns of equitable development to these interfaces. To the eastern boundary, the site adjoins a property similarly within the Commercial 1 Zone and the proposed development is therefore considered to provide an equitable development outcome to the eastern interface. This is supported by Council's urban design consultant who notes that the *'location of a blank wall and raked folds on the eastern boundary ensures the future development potential of 445 Swan Street'*.

Off-site Amenity Impacts

162. The policy framework for amenity considerations is at Clause 22.05 (Interface Uses Policy) and Clause 22.10 of the Scheme. Policy at Clause 22.10-3.8 of the Scheme seeks to ensure that new development does not prejudice the rights of adjoining and/or nearby land users (especially residents) to enjoy solar access, privacy, and acceptable noise levels, although this should be tempered with amenity expectations for residential properties at mixed-use interface locations.
163. Additionally, where private open space and/or windows to adjoining residential properties are unreasonably affected, Clause 22.05-4.2 calls for non-residential development to have appropriate setbacks from boundaries to address loss of daylight, overshadowing and visual bulk impacts. Furthermore, design objectives of DDO17 seek to minimise the amenity impacts on residential properties adjoining the Swan Street activity centre, including through overlooking, overshadowing and visual bulk impacts.
164. The subject site is located within the Commercial 1 Zone and land/properties to the east, west and south are also within the Commercial 1 Zone (refer to the zoning map earlier in this report). The purpose of the zone includes to create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses. Land to the north is located within the General Residential Zone. The appropriateness of amenity impacts on residentially zoned land, including visual bulk, shadowing and overlooking, need to be considered within their strategic context, with the site being located within a Commercial 1 Zone.

165. The local character shows a high level of site coverage and boundary-to-boundary development, within the subject site and those surrounding it that are also within the Commercial 1 Zone. There would be an expectation within this area that buildings would include on boundary walls and limited setbacks, particularly as this area is earmarked for mixed-use development.

Visual Bulk

166. In relation to visual bulk impacts, the sensitive interface of the site is to the north, which is separated from the proposal by the 3.8 metre wide laneway, thus reducing any direct visual bulk impact potential.
167. While expectations of visual bulk should be tempered for those who live at the rear of properties with outlooks to laneways and those living next to a commercial zone in which commercial looking buildings are expected, it is acknowledged that the original nine storey development plus top terrace as shown on the advertised plans to which objections were received, failed to adequately reduce visual bulk to the northern interface by virtue of its height and design.
168. The amended plans address this concern through a reduced building height (from nine storeys to seven storeys), reducing the maximum building height from 35.42 metres to 25.59 metres. This height, coupled with the recommended permit conditions relating to reducing the building parapet height to a maximum of 24 metres and modifying the roof top terrace so that it is no longer a storey in its own right, visual bulk impacts to the northern sensitive interface will be considered reasonable.

Overshadowing

169. In relation to shadowing, policy at Clause 22.10-3.8 of the Scheme seeks to ensure that '*new development does not substantially overshadow adjoining residential private open space*'. The amenity impacts associated with the proposal must be measured in the context of the future development of the land and that the zoning of the land seeks to provide for a range of residential, commercial and other uses which complement the mixed-use function of the locality.
170. The subject site has a sensitive interface with land in the General Residential Zone to the north. The proposed development will however obviously not overshadow the properties on the northern side of the laneway.
171. Design requirements of the DDO17 (Clause 2.2) state that a planning permit cannot be granted to construct a building or construct or carry out works that would overshadow the southern footpath of Swan Street between 10:00am and 2:00pm at 22 September. The submitted shadow diagrams show that the proposed development will not overshadow the southern footpath of Swan Street during those times, thereby satisfying this requirement.

Daylight Access

172. The *Urban Design Guidelines for Victoria* call for buildings in activity centres to provide equitable access to daylight (Objective 5.1.3), while Clause 22.10-3.8 seeks to ensure that new development does not adversely impact on the amenity of adjoining residential properties in terms of daylighting to habitable rooms.
173. The subject site is effectively bordered on three sides by either a road or laneway, the sensitive residential interface is located to the north, and the eastern side boundary adjoins land within the Commercial 1 Zone. With this in mind, reasonable daylight access is retained for all adjoining or opposite properties.

Overlooking

174. Clause 22.10-3.8 of the Scheme seeks to ensure that new development does not prejudice the rights of adjoining and/or nearby land users (especially residents) to enjoy privacy. Planning policy does not therefore seek to eliminate overlooking, simply minimise unreasonable overlooking.

175. More specifically, Clause 55.04-6 (ResCode) of the Scheme, while not applicable to the assessment of this application but useful to acknowledge as a rule of thumb, seeks to limit views into existing secluded private open space and habitable room windows within a 9 metre radius. Specifically, the policy requires views to existing secluded private open space or habitable room windows within a 9 metre radius to be screened to a height of 1.7 metres above the finished floor level, so that the policy objective is achieved.
176. In order to minimise overlooking to the residential properties on the northern side of the laneway, the design includes a combination of solid metal panels and textured, fritted or obscured glazing panels with no more than 25 per cent transparency. The solid metal panels are installed immediately opposite the habitable room windows of the under construction dwelling to the immediate north of the subject site.

Overall these aim to minimise any unreasonable overlooking from the first and second floor north-facing elevations of the building to the north.
177. However, the submitted design does not include any measures to address overlooking from the third floor north facing windows of the building, which are also within 9 metres of the roof top terraces and secluded private open space of residential properties on the northern side of the laneway. Therefore, a condition contained within the recommendation section of this report will require screening to the north-facing third floor windows so that overlooking is limited and to ensure no unreasonable overlooking from the proposed development.
178. In relation to the balconies on the fourth floor and above, the landscaping planter boxes along the perimeter of each balcony effectively minimises views to the adjoining residential properties, preventing any unreasonable overlooking.

Noise

179. Clause 13.05 of the Scheme aims to ensure that development is not prejudiced and community amenity is not reduced by noise emissions. Clause 22.05 of the Scheme seeks to ensure new commercial development is adequately managed having regard to its proximity to residential uses.
180. The submitted acoustic assessment prepared by Acoustic Logic confirms that mechanical plant will be designed to comply with State Environment Protection Policy (Control of noise from industry, commerce and trade) No. N-1 (SEPP N-1). On review of the assessment, Council's acoustic consultant confirms that this *'is a standard approach for mechanical plant as detailed information is not usually available during the planning stage'*.
181. Council's acoustic consultant confirms that the only additional information that is generally provided at planning is identification of the SEPP N-1 noise limits, and identification of any general concerns with meeting them at the site. Therefore, a condition contained within the recommendation section of this report will require additional information to be submitted to confirm that the chosen mechanical plant will comply with SEPP N-1.
182. In relation to the proposed car stackers, they will be installed in a fully enclosed basement, with ventilation pathways acoustically treated. The type of car stacker system proposed allows motorists to drive into the 'transfer cabin', leave their car and the system mechanically parks the car within the basement. The reverse applies when motorists want to retrieve their car by 'calling' their car and then being able to walk into the transfer cabin and drive out of the site.
183. This car stacker design is supported by Council's acoustic consultant who confirms that *'this is a good approach to addressing noise from the car stackers and is adequate for the planning stage'*. While the standard SEPP N-1 condition will control noise levels, a further condition will require the submission of an acoustic report and specifically require additional information to confirm that the car stacker design will comply with SEPP N-1.

184. The selection of the proposed car park entry gate is to achieve sleep disturbance targets of 65 dBA L_{max} at the nearest dwelling. Whilst it would be useful to have this information for assessment purposes, noting that Council's acoustic consultant *'would prefer the report also included a noise level at a known reference distance (e.g. 75 dBA L_{max} at 1 metre instead of 65 dBA L_{max} at an undefined distance), as this would assist the developer in selecting an appropriate gate'*, Council's acoustic consultant confirms that *'this information can be provided later if the consultant is involved'*.
185. As such, a condition contained within the recommendation section of this report requires additional information to be provided in the form of an acoustic report to demonstrate that the car parking and car park entry gate complies with the relevant noise levels.

Internal Amenity

186. Council's local policies at Clause 22.10-3.7 relating to on-site amenity and Clause 22.17 relating to sustainable design provide useful guidance with regard to assessing on-site amenity for non-residential uses.

Generally, these policies aim to ensure that new development optimises amenity for future occupants and improves the amenity and liveability of new development.

Daylight and Ventilation

187. The proposed development is considered to provide an acceptable level of amenity and indoor environmental quality consistent with objectives of these policies. Specifically, this is achieved through good access to daylight for the office space, compliant with the Built Environment Sustainability Scorecard's minimum standard for non-residential development. Council's ESD advisor commented that the proposed development achieves *'good daylight to most office areas'*.
188. In relation to ventilation, Council's ESD advisor supports the design and confirms that the proposed development provides *'operable windows to most office spaces giving reasonable access to natural ventilation'*, thus achieving an appropriate level of ventilation.

Circulation Spaces

189. The main pedestrian entrance to the proposed building is from the east of the Swan Street frontage, with a separate entrance provided to the ground floor office space from the splayed corner of Swan Street and Cutter Street. A separate bicycle entrance is provided from Cutter Street providing convenient access to the bicycle storage room. This provides an appropriate level of transition in to and out of the proposed building.
190. The main pedestrian entrance from Swan Street provides access to the lift core and stair well. The entrance and lift lobby area is provided with adequate sightlines from the street so people can see both in and out when entering or leaving. The entries to the lift lobby and ground floor retail premises are considered to be well located.
191. At 2.55 metres wide, the main ground floor pedestrian entrance corridor is of an appropriate width between the main pedestrian entrance, lift core and stair well and is provided with adequate natural light through the glazed entrance doors.

Sustainable Design

192. Council's local policies at Clause 22.16 and Clause 22.17 of the Scheme call for best practice water quality performance objectives and best practice in environmentally sustainable development from the design stage through to construction and operation. The submitted sustainability management plan prepared by Sustainability House provides an overview of the sustainability initiatives in the proposed development.
193. Council's ESD advisor has reviewed the application and sustainability management plan, and found that the standard of environmental sustainable design meets Council's requirements. However, Council's ESD advisor identified the following outstanding information which will therefore be required to be addressed by way of conditions and the submission of an amended sustainable management plan:

- (a) Commitment to provide a completed JV3 energy modelling report, or equivalent, prior to occupation demonstrating at least 20 per cent improvement on NCC requirements.
 - (b) Confirm HVAC system type in completed JV3 energy modelling report prior to occupation.
 - (c) Confirm hot water system type and efficiency standard in completed JV3 energy modelling report prior to occupation.
 - (d) Confirm the number and location of lockers provided as end of trip facilities.
 - (e) Update plans to show electric vehicle charge points on the plans.
194. Overall, from an environmentally sustainable design perspective, the proposed development is able to achieve Council's best practice standards, subject to conditions reflecting (a) to (e) listed above, which are contained within the recommendation section of this report.

Car and Bicycle Parking

Car Parking

195. The development is seeking a car parking reduction of 36 car parking spaces, as detailed in the table in the Particular Provisions section earlier in the report. The proposal includes 53 on-site car parking spaces within the development, with all spaces allocated to the office space.
196. For an application that seeks to reduce the number of car parking spaces required for the proposed development, the car parking demand assessment required by Clause 52.06-7 of the Scheme considers the following matters, as relevant.
197. In relation to the office use, car parking *'associated with office type developments is generally long-stay parking for employees and short term parking (say up to two hours' duration) for customers and clients'*, as noted by Council's engineering services unit. The actual car parking demand generated by the office is expected to be lower than the statutory car parking rate of three spaces per 100 square metres of floor space, since the area has good access to public transport services.
198. The proposed development provides 53 on-site car parking spaces in the form of car stackers, which equates to a rate of 1.77 spaces per 100 square metres of floor area. Throughout the municipality, *'a number of developments have been approved with reduced office rates'*, as noted by Council's engineering services unit. Furthermore, the *'proposed on-site office parking rate... is considered appropriate, having regard to the site's good accessibility to public transport services and proximity to Melbourne'*.
199. The availability of public transport in the locality of the land is also of relevance to the car parking demand assessment. As noted by Council's engineering services unit, *'the site is within walking distance of tram services operating along Swan Street' and 'the Burnley railway station is also within walking distance of the development'*. Moreover, *'visitors and clients visiting the office might combine their visits by engaging in other activities or business whilst in the area'*.
200. Clause 52.06-7 of the Scheme lists a number of considerations for deciding whether the required number of car parking spaces should be reduced. For the subject site, the considerations for providing fewer car parking spaces than the likely car parking demand are discussed below:
- (a) The applicant's traffic consultant has conducted an on-street car parking occupancy survey of the surrounding area. The survey area encompassed sections of Swan Street, Farmer Street and Burnley Street. An inventory of 188 publicly available on-street car parking spaces were identified. Council's engineering services unit commented that *'the times and extent of the survey are considered appropriate'*. The results of the survey recorded that the peak on-street car parking occupancy had occurred at 1:00pm, with 157 spaces occupied and 31 spaces vacant.

The short-stay car parking that would be generated by the development could be accommodated on-street.

- (b) The proposed development is considered to be in line with the objectives contained in Council's *Strategic Transport Statement*. The site is ideally located with regard to sustainable transport alternatives and the reduced provision of on-site car parking would potentially discourage private motor vehicle ownership and use.
- (c) *Practice Note 22 – Using the Car Parking Provisions* indicates that car parking should be considered on a centre-basis rather than on a site/individual basis. This is applicable to activity centres, such as Swan Street, where spare on-street car parking capacity would be shared amongst sites within the activity centre.

201. From a traffic engineering perspective, a reduction of the car parking requirement associated with the office use *'is considered appropriate in the context of the development and the surrounding area'*, as stated by Council's engineering services unit. Additionally, the *'short-stay parking demand associated with the office could be accommodated on-street'* and *'employees who have not been allocated an on-site car parking space would make other travel arrangements, such as taking public transport or riding a bicycle'*.

Council's engineering services unit *'has no objection to the reduction in the car parking requirement for this site'*.

202. To further offset the car parking reduction, encourage alternative forms of transport and reduce the reliance on the private motor vehicle, a condition contained within the recommendation section of this report requires the submission of a green travel plan, as recommended by Council's strategic transport unit and required by policy at Clause 22.17 of the Scheme.

Bicycle Parking

203. The proposed development is required to provide ten employee bicycle parking spaces and three visitor bicycle spaces. The proposal includes 49 on-site bicycle parking spaces on-site, which exceeds the minimum number prescribed by the Scheme by 32 spaces.
204. Through the provision of these surplus spaces, the proposal has responded to the importance that State and local policies place on encouraging low energy forms of transport such as Clauses 15.02-1S, 18.02-1S, 18.02-1R and 21.06. This is a development where the use of bicycles can take precedence over the use of private motor vehicles due to the proximity of services and employment opportunities and higher density residential development, which will encourage the use of bicycles in this development.
205. The main bicycle parking within the proposed development is located on the ground floor within a dedicated bicycle storage room, where 19 bicycle spaces are provided. Additional employee bicycle parking is provided on each of the upper floors. As there is a shower facility on each floor, the additional bicycle parking spaces on the upper floors is considered appropriate in this instance.
206. Pursuant to the Australian Standard AS2890.3 - 2015, at least 20 per cent of bicycle parking spaces should be ground level bicycle hoops, with a maximum of 80 per cent Ned Kelly style hanging hoops. As the bicycle parking spaces shown on the Section 57A amended plans incorporate 45 Ned Kelly style hanging hoops and four horizontal spaces, this requirement has not been met. A condition contained within the recommendation section of this report therefore requires a minimum of 20 per cent of bicycle parking spaces to be provided as ground level bicycle hoops to achieve an acceptable split between ground and hanging bicycle parking spaces.
207. In relation to visitor bicycle parking two ground level bicycle hoops accommodating four bicycle spaces is provided within the ground floor setback to Cutter Street. The Scheme requires three visitor bicycle parking spaces, therefore the proposal meets the minimum visitor bicycle parking requirement.

208. Council's strategic transport unit recommends a minimum of one visitor bicycle parking space to each 500 square metres of office floor area to achieve best practice. This would require a minimum of six visitor bicycle parking spaces which exceeds the Scheme's requirement. The plans do however show an additional four bicycle parking spaces proposed on the Swan Street footpath in front of the site. Subject to an appropriate design of these bicycle parking spaces as will be sought by a condition in the recommendation section of this report, the provision of visitor bicycle parking will exceed the requirements of the Scheme and will be consistent with Council's strategic transport unit's referral and is considered adequate for this proposal.
209. As noted in the Particular Provisions section earlier in this report, end of trip facilities (i.e. showers or change rooms) are required by the Scheme, specifically two showers with change rooms are required. The ground floor contains the required shower and change room facilities, therefore meeting the requirement. Additionally, each upper floor is also provided with a shower and change room, supplementing the ground floor facilities.

Traffic and Access

Traffic Generation

210. The traffic generated by the proposed development will utilise the rear laneway for ingress and egress of the on-site car parking and flow directly onto Cutter Street and the surrounding road network. The submitted traffic impact assessment estimates that *'the traffic generation of the proposed development is 347 daily vehicle movements, with 27 vehicle movements occurring in the commuter peak periods'*. Council's engineering services unit support these findings and advise that the surrounding road network has the ability to accommodate the expected increase in traffic volumes. In their referral comments they state *'the traffic volumes generated by the development are not unduly high and it is agreed that these volumes should not adversely impact on the surrounding road network'*.

Vehicle Access

211. The proposed on-site car parking will be accessed exclusively from the rear laneway, as depicted in the Section 57A amended plans, with vehicles entering and exiting directly from the rear laneway. This is supported and an appropriate outcome from a vehicle access perspective. It is a noted improvement on the access arrangements shown in the advertised plans, which incorporated an egress point directly onto Cutter Street which Council's engineering services did not support given the impact on pedestrian amenity along Cutter Street. Furthermore, DDO17 (Plan 8 of Clause 2.3) confirms that vehicle access is not preferred from Cutter Street.
212. In relation to manoeuvrability from the laneway to the site, Council's engineering services unit support the submitted swept path diagrams. They confirm that the diagrams *'satisfactorily demonstrate vehicle turning movements into the site via the right of way'*.
213. At the consultation meeting, the applicant verbally agreed to a number of measures to address objector's safety concerns with the laneway. To reduce the risk of conflict in the laneway between vehicles and pedestrians, the applicant verbally committed to providing signs at the laneway boundary to alert motorists to be aware of pedestrians, appropriately located mirrors to improve visibility, and sensor lights. Conditions contained within the recommendation section of this report therefore reflect these verbal commitments and require these additional measures to be shown on the plans.

Car Parking Layout

214. The proposal includes an extensive car stacker system across three levels of basement. The type of car stacker system proposed allows motorists to drive into the 'transfer cabin', leave their car and the system mechanically parks the car within the basement. The reverse applies when motorists want to retrieve their car by 'calling' their car and then being able to walk into the transfer cabin and drive out of the site.

215. Each car stacker space measures 5.4 metres by 2.3 metres and can accommodate vehicles up to the size of the B99 design vehicle and that all car stacker spaces can accommodate vehicles with heights of 2 metres. The type of car stacker system proposed allows motorists to drive into the 'transfer cabin', leave their car and the system mechanically parks the car within the basement. The reverse applies when motorists want to retrieve their car by 'calling' their car and then being able to walk into the transfer cabin and drive out of the site. This type of transfer cabin is also suitable for 'accessible' car parking, with a cabin area in excess of 6 metres wide.
216. Council's engineering services unit has reviewed the overall car parking layout and car stacker system, and considers it to be satisfactory.
217. A queuing analysis of the car park entrance at the rear laneway has been submitted which assesses the performance of the car stacker system in the morning peak hour. As noted by Council's engineering services unit, *'since there would be two car lifts in the system, queue lengths of the car park would involve multi-channel queuing analysis, which involves the use of complex mathematical calculations'*.
218. To determine the vehicle storage queue for the proposed development, guidance is sought from the relevant standards. The car lifts *'should allow for sufficient vehicle storage to accommodate the 98th percentile queue (the queue that will be exceeded on 2 per cent of occasions)'*, as mentioned by Council's engineering services unit.

The applicant's traffic consultant had calculated the 98th percentile queue length to be 5.8 (rounded up to six) vehicles. Two vehicles would be in the system and four vehicles would be external to the car lifts (accommodated in the waiting bays). Council's engineering services unit is *'satisfied with the analysis provided'*.

Civil Works

219. Council's engineering services unit recommends a number of conditions to be placed on any permit issued relating to civil works and road protection, impacts on assets, vehicle crossings and drainage. These will all be included as notes on the permit or required by way of conditions, as contained within the recommendation section of this report.

Waste Management

220. The submitted waste management plan outlines the waste management practices for the proposed development, which includes a private waste contractor to collect all commercial waste from a waste collection point in the rear laneway, which is in close proximity to the ground floor bin storage room.
221. Council's city works branch supports the submitted waste management plan but notes that no area has been dedicated to hard waste in the bin storage room and that e-waste will be banned from landfill from 1 July 2019. As such, conditions contained within the recommendation section of this report will require a dedicated area for hard waste within the bin storage room and details of how e-waste will be diverted from the waste stream, in an amended waste management plan and on plans.
222. The submitted waste management plan references the width of the laneway as 7.5 metres wide at the collection point however submitted plans show the laneway combined with the ground floor setback to the vehicle waiting bays to be 4.782 metres wide. A condition contained within the recommendation section of this report will require the waste management plan to correctly show the width of the laneway as 7.5 metres.

Objector's Concerns

223. The majority of the issues which have been raised by the objectors have been addressed within the body of this report, as outlined below:
- (a) Design and built form, including out of character, excessive height, bulk and scale and the materials and finishes are inappropriate (paragraphs 116-158).

- (b) Off-site amenity impacts including overlooking, overshadowing, visual bulk and loss of daylight (paragraphs 161-183).
- (c) Car parking, traffic and access including lack of car parking, increased traffic and waste management issues (paragraphs 193-220).

224. Outstanding concerns raised in the objections are discussed below:

- (a) Glare from the proposed glazing and light spill from the proposed offices

It is unclear from the plans as to the level of reflectivity of the proposed glazing. As such, and to address this concerns, a condition contained in the recommendation section of this report requires all materials and finishes be of a low reflectivity level.

A condition contained within the recommendation section of the report will also ensure that external lighting on the land is designed, baffled and located to prevent any adverse impact on any adjoining property.

Internal lighting of a building is difficult to control and furthermore, the office use of the building is an as of right use within the Commercial 1 Zone which means that Council cannot restrict or control the hours of operation through planning permit conditions. However, sensor lights should be installed within the internal office space to ensure lights are turned off when there is no one inside the building. In this regard, at the consultation meeting, the applicant verbally agreed to the installation of internal sensor lights to minimise light spill from the proposed office building.

Conditions contained within the recommendation section of this report reflect this commitment made by the applicant.

- (b) Impacts during construction

Concern has been raised in relation to damage of the adjoining buildings and public property during the construction phase. Protection of adjoining properties during construction is not a matter that can be addressed through the planning permit process however, the developer has obligations under the Building Act 1993 to protect adjoining property from potential damage. It is therefore the responsibility of the relevant building surveyor to require protection work as appropriate.

Council's local laws require an asset protection permit to be obtained to ensure infrastructure assets within the road reserve are protected or repaired if damaged. A condition contained in the recommendation section of this report requires a construction management plan to be submitted outlining the measures to be put in place during the construction phase to minimise impacts on the surrounding area.

- (c) Impacts on existing businesses and oversupply of office space

The decision guidelines of the Scheme and the *Planning and Environment Act 1987* do not accommodate consideration of lost income arising as a result of new development and competing land uses.

- (d) Inaccuracies on plans/documents

Sufficient information to enable an informed view of the application has been submitted with the application.

- (e) Will set a precedent

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

- (f) Inconsistent with the Swan Street Structure Plan

There is justification for a taller building than envisaged by the structure plan.

The Victorian Civil and Administrative Tribunal has found that only limited weight can be given to the structure plan, particularly its site-specific provisions (429 Swan Street Pty Ltd v Yarra CC [2016] VCAT 370; Blueprint Development Pty Ltd v Yarra CC [2016] VCAT 2105).

Conclusion

225. The proposed development is considered to demonstrate a high level of compliance with policy objectives contained within the Municipal Planning Strategy and the Planning Policy Framework. Notably, the proposal achieves the State Government's urban consolidation objectives and Council's preference to direct higher density development in activity centres or on strategic redevelopment sites.
226. Any off-site amenity impacts on residential properties immediately to the north of the subject site, beyond the laneway, are not considered unreasonable given the physical and policy context for the site.
227. Overall and on balance, the proposal, subject to conditions outlined in the recommendation section below (including the building parapet reduced to a maximum building height of 24 metres and the roof top terrace modified by the removal of the bathroom facility so that it no longer forms a storey in its own right), is considered to be an acceptable planning outcome that demonstrates compliance with the relevant Council policies.

RECOMMENDATION

That having considered all objections and relevant planning policies, the Committee resolves to issue a Notice of Decision to Grant a Planning Permit PLN18/0403 for the construction of a seven storey office building with three levels of basement and a roof top terrace, a reduction in the car parking requirement and alterations to a road in a Road Zone, Category 1 by removing the crossover to Swan Street at 439-443 Swan Street, Richmond, subject to the following conditions:

Amended Plans

1. Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of this permit. The plans must be drawn to scale with dimensions, and three copies must be provided. The plans must be generally in accordance with the 'decision plans' prepared by Bruce Henderson Architects and received by Council on 29 November 2018 but modified to show all of the following:
 - (a) The building height reduced to a maximum height of 24 metres.
 - (b) Overlooking screening to the third floor north-facing windows with a maximum transparency of 25 per cent and a minimum height of 1.7 metres above the finished floor level.
 - (c) The textured concrete finish, denoted as AF02 on the finishes schedule of the advertised plans prepared by Bruce Henderson Architects and dated 29 May 2018, shown on the materials schedule, and all external materials and finishes to be of a low reflectivity level.
 - (d) Plan notations to show that all service cabinet or meter room doors will open within the title boundaries, with any doors that do open outwards over public land shown to be able to swing 180 degrees and be latched to the building when opened or serviced.
 - (e) Verbal commitments made by the applicant in the 20 November 2018 consultation meeting including:
 - (i) appropriately design signs alerting motorists accessing and egressing the building to be aware of pedestrians at the car park entrance/exit;
 - (ii) appropriately located mirrors to improve visibility around the car park entrance/exit;
 - (iii) sensor lights at the car park entrance/exit; and
 - (iv) internally located sensor lights in all internal office spaces.
 - (f) For the bicycle parking:

- (i) a minimum of 20 per cent of the bicycle parking spaces shown as ground level bicycle hoops, with a maximum of 80 per cent Ned Kelly style hanging hoops; and,
 - (ii) the two bicycle hoops located within the Swan Street footpath to have a minimum 600mm setback from the kerb, spaced a minimum 1 metre apart and provide a minimum 2 metre setback from the building line.
 - (g) The number and location of lockers provided as the 'end of trip facilities'.
 - (h) A minimum of one electric vehicle charge point.
 - (i) An area dedicated to hard waste and e-waste material shown within the bin storage room.
 - (j) Internal sensor lights installed within the office space.
 - (k) Any requirement of the acoustic report required by condition 7 of this planning permit (and where relevant to show on plans).
 - (l) Any requirement of the sustainable management plan required by condition 9 of this planning permit (and where relevant to show on plans).
 - (m) Any requirement of the waste management plan required by condition 12 of this planning permit (and where relevant to show on plans).
 - (n) Any requirement of the green travel plan required by condition 14 of this planning permit (and where relevant to show on the plans).
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.

Landscaping

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

to the satisfaction of the Responsible Authority.

4. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, the landscaping works shown on the endorsed landscape plan must be carried out and completed to the satisfaction of the Responsible Authority. The landscaping shown on the endorsed landscape plan must be maintained by:
- (a) Implementing and complying with the provisions, recommendations and requirements of the endorsed landscape plan.
 - (b) Not using the areas set aside on the endorsed landscape plan for landscaping for any other purpose.
 - (c) Replacing any dead, diseased, dying or damaged plants.

to the satisfaction of the Responsible Authority.

5. Before the development commences, a tree management plan to the satisfaction of the Responsible Authority must be prepared by a suitably qualified arborist and must be submitted to and approved by the Responsible Authority. When approved the tree management plan will be endorsed and will form part of this permit. The tree management plan must make recommendations for:
- (a) The protection of the street trees in front of the site on Cutter Street:

- (i) pre-construction;
- (ii) during construction; and,
- (iii) post construction.
- (b) The provision of any barriers.
- (c) Any pruning necessary.
- (d) Watering and maintenance regimes.

to the satisfaction of the Responsible Authority.

6. Before the development commences, or by such later date as approved in writing by the Responsible Authority, the permit holder must make a one off contribution to the Responsible Authority for the costs of planting and maintaining the proposed new street trees in front of the site in both Swan Street and Cutter Street.

Acoustic Report

7. Before the development commences, an acoustic report to the satisfaction of the Responsible Authority must be prepared by a suitably qualified acoustic engineer and must be submitted to and approved by the Responsible Authority. When approved, the acoustic report will be endorsed and will form part of this permit. The acoustic report must be generally in accordance with the acoustic assessment prepared by Acoustic Logic and dated 13 July 2018, but modified to ensure/include the following:
 - (a) Identification of the State Environment Protection Policy (Control of noise from industry, commerce and trade) No. N-1 (SEPP N-1) noise limits, and identification of any general concerns with meeting them at this site.
 - (b) Additional acoustic treatments for ventilation of the basement car stacker system.
 - (c) A noise level for the car park entrance gate at a known reference distance.
 - (d) A more detailed acoustic assessment, when the mechanical selection has been finalised, or a commitment to post construction testing to demonstrate compliance with SEPP N-1 and sleep disturbance targets.
8. The provisions, recommendations and requirements of the endorsed acoustic report must be implemented and complied with to the satisfaction of the Responsible Authority.

Sustainable Management Plan

9. Before the development commences, an amended sustainable management plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended sustainable management plan will be endorsed and will form part of this permit. The amended sustainable management plan must be generally in accordance with the sustainable management plan prepared by Sustainable House and dated 25 July 2018, but modified to include or show:
 - (a) Provide a completed JV3 energy modelling report, or equivalent, prior to occupation demonstrating at least 20 per cent improvement on NCC requirements.
 - (b) Confirm HVAC system type in completed JV3 energy modelling report prior to occupation.
 - (c) Confirm hot water system type and efficiency standard in completed JV3 energy modelling report prior to occupation.
 - (d) Confirm the number and location of lockers provided as end of trip facilities.
 - (e) Update plans to show electric vehicle charge points on the plans.
10. Prior to the occupation of the development approved under this planning permit, a report from the author of the sustainable management plan, approved pursuant to this permit, or similarly qualified person or company, must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm that all measures specified in the sustainable management plan have been implemented in accordance with the approved plan.

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

Waste Management Plan

12. Before the development commences, an amended waste management plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended waste management plan will be endorsed and will form part of this permit. The amended waste management plan must be generally in accordance with the waste management plan prepared by RB Waste Consulting Service and dated 6 June 2018, but modified to include:
 - (a) An area dedicated to hard waste in the bin storage room.
 - (b) Details of how e-waste will be diverted from the waste stream.
 - (c) The correct width of the north adjoining laneway (3.8 metres).
13. The provisions, recommendations and requirements of the endorsed waste management plan must be implemented and complied with to the satisfaction of the Responsible Authority.

Green Travel Plan

14. Before the development commences, a green travel plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the green travel plan will be endorsed and will form part of this permit. The green travel plan must include, but not be limited to, the following:
 - (a) A description of the location in the context of alternative modes of transport.
 - (b) Employee resident welcome packs (e.g. provision of Myki/transport ticketing).
 - (c) Sustainable transport goals linked to measurable targets, performance indicators and monitoring timeframes.
 - (d) A designated 'manager' or 'champion' responsible for coordination and implementation.
 - (e) Details of bicycle parking and bicycle routes.
 - (f) Details of green travel plan funding and management responsibilities.
 - (g) The types of bicycle storage devices proposed to be used for employee and visitor spaces (i.e. hanging or floor mounted spaces).
 - (h) The types of lockers proposed within the change room facilities, with at least 50 per cent of lockers providing hanging storage space.
 - (i) Security arrangements to access the employee bicycle storage spaces.
 - (j) Signage and wayfinding information for bicycle facilities and pedestrians pursuant to Australian Standard AS2890.3.
 - (k) Reference to electric vehicle charging facilities (if proposed).
 - (l) Provisions for the green travel plan to be updated not less than every five years.
15. The provisions, recommendations and requirements of the endorsed green travel plan must be implemented and complied with to the satisfaction of the Responsible Authority.

General

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

18. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, external lighting capable of illuminating access to the pedestrian and vehicular entrances must be provided on the subject site. All external lighting must be:
 - (a) located;
 - (b) directed;
 - (c) shielded; and
 - (d) of limited intensity,to the satisfaction of the Responsible Authority.
19. All buildings and works must be maintained in good order and appearance to the satisfaction of the Responsible Authority.
20. 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.
21. Before the building is occupied, any wall located on a boundary facing public property must be treated with a graffiti proof finish to the satisfaction of the Responsible Authority.
22. All pipes, fixtures, fittings and vents servicing any building on the land must be concealed in service ducts or otherwise hidden from view to the satisfaction of the Responsible Authority.
23. Except with the prior written consent of the Responsible Authority, demolition or construction works must not be carried out:
 - (a) Monday to Friday (excluding public holidays) before 7:00am or after 6:00pm.
 - (b) Saturdays and public holidays (other than ANZAC Day, Christmas Day and Good Friday) before 9:00am or after 3:00pm.
 - (c) Sundays, ANZAC Day, Christmas Day and Good Friday at any time.
24. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, the area set aside on the endorsed plans for the car parking spaces, access lanes, driveways and associated works must be:
 - (a) Constructed and available for use in accordance with the endorsed plans.
 - (b) Formed to such levels and drained so that they can be used in accordance with the endorsed plans.
 - (c) Treated with an all-weather seal or some other durable surface.
 - (d) Line-marked or provided with some adequate means of showing the car parking spaces.to the satisfaction of the Responsible Authority.
25. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, the car stackers must be installed in accordance with the manufacturer's specifications by a suitably qualified person. The car stackers must be maintained thereafter to the satisfaction of the Responsible Authority.

Civil Works

26. 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.
27. Before the buildings is occupied, or by such later date as approved in writing by the Responsible Authority, footpath along the property's Cutter Street road frontage must be stripped and re-sheeted:

- (a) in accordance with any requirements or conditions imposed by Council;
 - (b) with a cross-fall of 1 in 40 or unless otherwise specified by Council;
 - (c) at the permit holder's cost; and
 - (d) to the satisfaction of the Responsible Authority.
28. Before the buildings is occupied, or by such later date as approved in writing by the Responsible Authority, the redundant vehicular crossing on Swan Street must be demolished and re-instated as standard footpath and kerb and channel:
- (a) at the permit holder's cost; and
 - (b) to the satisfaction of the Responsible Authority and VicRoads.
29. Any services poles, structures or pits that interfere with the proposal must be adjusted, removed or relocated at the permit holder's expense after seeking approval from the relevant authority.
30. Any damaged roads, footpaths and other road related infrastructure adjacent to the development site as a result of the construction works, including trenching and excavation for utility service connections, must be reconstructed to Council's satisfaction and at the developer's expense.
31. Upon the completion of all building works and connections for underground utility services, or by such later date as approved in writing by the Responsible Authority, all redundant property drains must be removed and Council assets reinstated to Council's satisfaction and at the permit holder's cost.
32. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, the proposed bicycle parking spaces located on the Swan Street footpath in front of the site must be constructed:
- (a) in accordance with any requirements or conditions imposed by Council;
 - (b) at the permit holder's cost; and
 - (c) to the satisfaction of the Responsible Authority.

Construction Management Plan

33. Before the development commences, a construction management plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will form part of this permit. The plan must provide for:
- (a) A pre-conditions survey (dilapidation report) of the land and all adjacent Council roads frontages and nearby road infrastructure.
 - (b) Works necessary to protect road and other infrastructure.
 - (c) Remediation of any damage to road and other infrastructure.
 - (d) Containment of dust, dirt and mud within the land and method and frequency of clean up procedures to prevent the accumulation of dust, dirt and mud outside the land.
 - (e) Facilities for vehicle washing, which must be located on the land.
 - (f) The location of loading zones, site sheds, materials, cranes and crane/hoisting zones, gantries and any other construction related items or equipment to be located in any street.
 - (g) Site security.
 - (h) Management of any environmental hazards including, but not limited to,:
 - (i) contaminated soil.
 - (ii) materials and waste.
 - (iii) dust.
 - (iv) stormwater contamination from run-off and wash-waters.
 - (v) sediment from the land on roads.
 - (vi) washing of concrete trucks and other vehicles and machinery.
 - (vii) spillage from refuelling cranes and other vehicles and machinery.
 - (i) The construction program.

- (j) Preferred arrangements for trucks delivering to the land, including delivery and unloading points and expected duration and frequency.
- (k) Parking facilities for construction workers.
- (l) Measures to ensure that all work on the land will be carried out in accordance with the construction management plan.
- (m) An outline of requests to occupy public footpaths or roads, or anticipated disruptions to local services.
- (n) An emergency contact that is available for 24 hours per day for residents and the Responsible Authority in the event of relevant queries or problems experienced.
- (o) The provision of a traffic management plan to comply with provisions of AS 1742.3-2002 Manual of uniform traffic control devices - Part 3: Traffic control devices for works on roads.
- (p) A noise and vibration management plan showing methods to minimise noise and vibration impacts on nearby properties and to demonstrate compliance with Noise Control Guideline 12 for Construction (Publication 1254) as issued by the Environment Protection Authority in October 2008. The noise and vibration management plan must be prepared to the satisfaction of the Responsible Authority. In preparing the noise and vibration management plan, consideration must be given to:
 - (i) using lower noise work practice and equipment.
 - (ii) the suitability of the land for the use of an electric crane.
 - (iii) silencing all mechanical plant by the best practical means using current technology.
 - (iv) fitting pneumatic tools with an effective silencer.
 - (v) other relevant considerations.
- (q) If any existing public lighting assets require temporary disconnection, alternative lighting must be provided to maintain adequate lighting levels. A temporary lighting scheme can only be approved by Council and relevant power authority.
- (r) Existing public lighting could only be disconnected once temporary alternative lighting scheme becomes operational.
- (s) A temporary lighting scheme must remain operational until a permanent lighting scheme is reinstated.
- (t) Any site-specific requirements.

If required, the construction management plan may be approved in stages. Construction of each stage must not commence until a construction management plan has been endorsed for that stage, to the satisfaction of the Responsible Authority.

- 34. During the construction:
 - (a) Any stormwater discharged into the stormwater drainage system must be in compliance with Environment Protection Authority guidelines;
 - (b) Stormwater drainage system protection measures must be installed as required to ensure that no solid waste, sediment, sand, soil, clay or stones from the land enters the stormwater drainage system;
 - (c) Vehicle borne material must not accumulate on the roads abutting the land;
 - (d) The cleaning of machinery and equipment must take place on the land and not on adjacent footpaths or roads; and
 - (e) All litter (including items such as cement bags, food packaging and plastic strapping) must be disposed of responsibly.
- 35. The provisions, recommendations and requirements of the endorsed construction management plan must be implemented and complied with to the satisfaction of the Responsible Authority.

Permit Expiry

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

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

Notes:

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

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

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

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

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

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

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

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

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

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

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

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

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

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TEL: **9205 5456**

Attachments

- 1** PLN18 0403 - 439-443 Swan Street Richmond - Subject Land Map
- 2** PLN18/0403 - 439-443 Swan Street Richmond - Section 57A Amended Plans
- 3** PLN18/0403 - 439-443 Swan Street Richmond - EPA Referral Comments
- 4** PLN18/0403 - 439-443 Swan Street Richmond - Engineering Referral Comments
- 5** PLN18/0403 - 439-443 Swan Street Richmond - ESD Referral Comments
- 6** PLN18/0403 - 439-443 Swan Street Richmond - Urban Design Unit Referral Comments
- 7** PLN18/0403 - 439-443 Swan Street Richmond - Open Space Planning Referral Comments
- 8** PLN18/0403 - 439-443 Swan Street Richmond - Strategic Transport Referral Comments
- 9** PLN18/0403 - 439-443 Swan Street Richmond - Acoustic Consultant Referral Comments
- 10** PLN18/0403 - 439-443 Swan Street Richmond - Urban Design Consultant Comments