



**YARRA CITY COUNCIL**  
**Internal Development Approvals Committee**  
**Agenda**

**to be held on Wednesday 7 August 2019 at 6.30pm  
in Meeting Rooms 1 & 2 at the Richmond Town Hall**

**Rostered Councillor membership**

Councillor Danae Bosler  
Councillor Misha Coleman  
Councillor Daniel Nguyen

- I. ATTENDANCE**  
Michelle King (Senior Planner)  
Vicky Grillakis (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**

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

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

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

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

**Governance Branch  
2008**

## 1. Committee business reports

Item		Page	Rec. Page
1.1	PLN18/0990 - 419 Fitzroy Street, Fitzroy - Full demolition and the use and development of the land for a residential hotel.	5	44
1.2	PLN18/0644 - 4A/1 Bik Lane, Fitzroy North - Development of the land for the construction of three additional storeys to an existing two storey building (5 storeys in total), containing 4 dwellings and a reduction in the car parking requirement	52	80
1.3	PLN17/0517 - Farm Road, Alphington - Buildings and works to an existing outdoor recreational facility (golf course) and vegetation removal including removal of putting green and first tee box, construction of an underground buggy storage area (with elevated tee box and associated pathways, alterations to clubhouse facade and construction of a first floor terrace and construction of fencing) and vegetation removal	85	100
1.4	PLN11/0429.04 - 35-41 Argyle Street, Fitzroy - Section 72 Amendment (plans) to increase the approved size of the fourth floor balcony by extending it further south into common property and to extend the size of the roof garden and construct a pergola and services, all for Unit 6 dwelling	103	120
1.5	PLN18/0584 - Langridge Ward - 79-89 Wellington Street, Collingwood - Use and development of the land for a multi-storey building containing a residential hotel and office and a reduction in car parking and visitor bicycle facilities	123	173
1.6	PLN17/1014 - 171-173 Swan Street, Richmond - Demolition of the existing building and development of a five storey mixed use building including a reduction in the car parking requirements of the Yarra Planning Scheme in association with a shop, office and dwellings	182	220

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**1.1 PLN18/0990 - 419 Fitzroy Street, Fitzroy - Full demolition and the use and development of the land for a residential hotel.**

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## **Executive Summary**

### **Purpose**

1. This report provides an assessment of the full demolition and use and development of the land for a residential hotel at No. 419 Fitzroy Street, Fitzroy.

### **Key Planning Considerations**

2. Key planning considerations include:
  - (a) Built form, urban design and heritage (Clauses 15.01, 15.03, 21.05-1, 21.05-4, 22.02);
  - (b) Land Use (Clauses 13.07, 17, 21.04, 22.05, 32.04-14);
  - (c) Internal amenity (Clause 22.17);
  - (d) Off-site amenity impacts (Clauses 13.05-1S, 13.07, 22.05); and
  - (e) Car and bicycle parking (Clauses 18.02, 21.06, 52.06, 52.34).

### **Key Issues**

3. The key issues for Council in considering the proposal relate to:
  - (a) Policy and strategic support;
  - (b) Land use;
  - (c) Built form and heritage;
  - (d) On-site amenity (ESD);
  - (e) Off-site amenity;
  - (f) Car parking, vehicle access, traffic, loading & waste;
  - (g) Bicycle provision; and
  - (h) Objector concerns.

### **Submissions Received**

4. A total of 68 objections were received to the application, these can be summarised as
  - (a) Lack of on-site car parking (including drop-off/pick-up provisions);
  - (b) Insufficient on-site loading provisions;
  - (c) Increased traffic and pedestrian congestion, including impacts on the proposed pedestrian-friendly Rose Street precinct;
  - (d) Excessive height/overdevelopment of the site/lack of setbacks;
  - (e) Lack of integration with the neighbourhood character and heritage precinct;
  - (f) Hotel use within a residential area is inappropriate;
  - (g) Objection to the removal of one street tree;
  - (h) Objection to the removal of an existing mural;
  - (i) Potential off-site amenity impacts (loss of daylight, overlooking, noise, waste collection, drainage, equitable development etc.);
  - (j) Impact upon property values in the neighbourhood;
  - (k) Loss of views; and
  - (l) Impacts during construction.

### **Conclusion**

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

- (a) The removal of all external seating within the Rose Street and Fitzroy Street frontages at ground level;
- (b) The alterations to internal access and doorways as outlined in the Sketch Plans submitted to Council on 18 July 2019;
- (c) The bicycle entrance door on the Rose Street façade to be visually permeable; and
- (d) Both street trees adjacent to the Rose Street frontage to be retained.

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**TITLE:** Senior Statutory Planner  
**TEL:** 9205 5372

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**1.1 PLN18/0990 - 419 Fitzroy Street, Fitzroy - Full demolition and the use and development of the land for a residential hotel.**

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Trim Record Number: D19/113083

Responsible Officer: Senior Coordinator Statutory Planning

<b>Proposal:</b>	Full demolition and the use and development of the land for a residential hotel
<b>Existing use:</b>	Warehouse / Food and Drinks Premises/Dance studio
<b>Applicant:</b>	Deal Corporation (Rose Street) Pty Ltd.
<b>Zoning / Overlays:</b>	Mixed Use Zone (MUZ) Heritage Overlay (Schedule 344) Environmental Audit Overlay (EAO)
<b>Date of Application:</b>	21 December 2018
<b>Application Number:</b>	PLN18/0990

### Planning History

1. The subject site has the following planning history:
  - (a) Planning Permit PL08/0315 was issued by Council on 7 July 2008 for *change of use from Warehouse to Restricted Recreation Facility and display of business identification signage*.
  - (b) Planning Permit PLN12/0147 was issued by Council on 6 September 2012 for *the use of the site as a food and drinks premises (café), reduction in associated car parking requirements, buildings and works and the construction and display of advertising signage (including partial demolition)*.
    - (i) An application to amend Planning Permit PLN12/0147 was refused by Council on 2 May 2013. The amendment sought to allow for the sale and consumption of liquor (restaurant and café licence), an increase in patron numbers from 70 to 99 and an increase in the operating hours of the café.
    - (ii) Council's decision was reviewed by the Victorian Civil and Administrative Tribunal (VCAT), with VCAT upholding Council's refusal to grant an amended permit on 8 January 2014.

### Background

2. The application was lodged on 21 December 2018, with further information received on 15 and 27 February 2019. The application was subsequently advertised, with 68 objections received.
3. Whilst this process was occurring, Council sought and received advice from external urban design and acoustic consultants, as well as internal Council departments including Engineering Services, Traffic, Urban Design (public realm), Heritage, Strategic Transport, City Works, Open Spaces and Environmental Sustainable Development.
4. On 22 February 2019, Council was informed that the Applicant had lodged a Section 79 'failure to determine within the prescribed time' appeal with VCAT. Six objectors have joined as parties to the review. A compulsory conference is scheduled for 20 August 2019, while the hearing is set down for 28 October 2019 over two days.

5. On 18 July 2019, the Applicant submitted a set of 'sketch plans' to Council. These plans were in response to concerns raised by Council's Strategic Transport Unit with regards to the number of internal doors (6) located between the employee entrance and the employee bicycle parking area within the basement. The sketch plans outlined how these doors could be reduced, and will be referenced later within this report.

## **The Proposal**

6. The proposal is for the use and construction of a seven-storey residential hotel. In summary;

### Use

- (a) 127 hotel rooms – 24 hour/7 day use. Five different types of hotel rooms will be provided, each with varying floor areas and one with external balconies;
- (b) Ancillary dining room/kitchen at ground level and roof terrace;
- (c) 10 basement car parking spaces;
- (d) 26 bicycle spaces (13 employee/13 visitor). These spaces will be located within the basement and at ground level.

### Development

#### *Demolition*

- (e) Demolition of all built form on the subject land, with one crossover removed and one modified, a tree on-site and a street tree on the Rose Street footpath to be removed and all concrete car-parking surfaces removed.

#### *Basement*

- (f) A basement level will be accessed via Fitzroy Street, with the following features;
  - (i) 10 car parking spaces;
  - (ii) 16 bicycle spaces (13 employee/3 visitor);
  - (iii) End-of-trip (EoT) facilities for employees, including showers/change room;
  - (iv) 2 x 10,000L rainwater tanks;
  - (v) Offices, storage, services, comms room, switch room and lift lobby.

#### *Ground floor*

- (g) The ground level will be largely constructed to all four boundaries, with minor setbacks for seating and entrances from Fitzroy Street and Rose Street, and an open courtyard (4.5m x 15.8m) along the western boundary;
- (h) The north-east floor area will contain an open-plan lobby, dining room and hotel kitchen, with indoor and outdoor seating;
- (i) Pedestrian entrances will be provided from both street frontages, with a bicycle entrance from Rose Street and the basement entrance from Fitzroy Street. An employee entry will be available to the rear laneway;
- (j) 10 visitor bicycle parking spaces will be available in the north-west corner, with 5 hotel rooms at this level extending along the courtyard interface;
- (k) A loading bay will be provided from Fitzroy Street, directly adjacent to the basement entrance. An existing vehicle crossover will be extended to a total width of 10.37m;
- (l) The remaining ground floor will contain lift core, facilities, storage rooms, waste room and services.

#### *Levels 1 & 2*

- (m) These levels will extend along the northern (Rose Street) boundary and the majority of the eastern (Fitzroy Street) boundary, with a 3m setback from the south-east corner;
- (n) Balconies will abut part of the eastern interface;
- (o) The southern wall will be set back 3m and 7.15m from the southern boundary, with two sections of wall abutting the western boundary;
- (p) The remaining western elevation will be set back 4.5m above the ground floor courtyard;



- (q) A total of 28 hotel rooms will be located at each level, surrounding a central lift and services core.

*Levels 3 & 4*

- (r) These levels will be set back 3m from the northern and eastern boundaries, 6.74m and 10.8m from the southern boundary and 4.5m from the western boundary;
- (s) A total of 18 hotel rooms will be located at each level, surrounding a central lift and services core.

*Levels 5 & 6*

- (t) These levels will be set back 3m from the northern and eastern boundaries, 11.16m and 15.3m from the southern boundary and 4.5m from the western boundary;
- (u) A total of 15 hotel rooms will be located at this level, surrounding a central lift and services core to the north, east and west.

*Roof Terrace*

- (v) A roof top terrace, as well as services and storage, are located to the northern part of the site, with setbacks of 4m and 4.5m respectively from the north and east, 8.07m from the west and varied setbacks of 14.11m, 16.5m and 18.25m from the south;
- (w) A lightweight pergola (uncovered) will sit above the roof terrace, which will also be surrounded by lightweight balustrades (1.1m in height);
- (x) A 12kW array of solar panels will be located along the western side of the roof.

*General*

- (y) The main built form (to level 6) will be 23.5m in height, with the roof terrace extending 3m higher (26.5m) and the lift overrun an additional 1.9m (total height of 28.45m).

*Materials and finishes*

- (z) The predominant wall material will be a mixture of solid and perforated weathered steel, in vertical alignments. The colours and degrees of perforation of the steel will vary between panels;
- (aa) Weathered and galvanised steel will be used for balcony and roof terrace balustrades, and plant screening;
- (bb) A slatted steel gate will provide entry to the bicycle parking from Rose Street.

- 7. An image of the proposed development from the south-east corner is provided in Figure 1.



**Figure 1: View from corner of Rose and Fitzroy Streets**

## Existing Conditions

### Subject Site

8. The subject site is located on the south-west corner of Rose and Fitzroy Streets in Fitzroy. The site has a frontage of 35.51m to Fitzroy Street and a frontage of 29.66m to Rose Street, with an overall site area of 1,093sqm. The western boundary is 39.6m in length, with an irregular southern boundary wrapping around a small site in the south-east corner. The south-west corner of the subject land abuts a narrow laneway along its southern boundary for a length of 8.1m. The layout of the site is demonstrated in Figure 2.

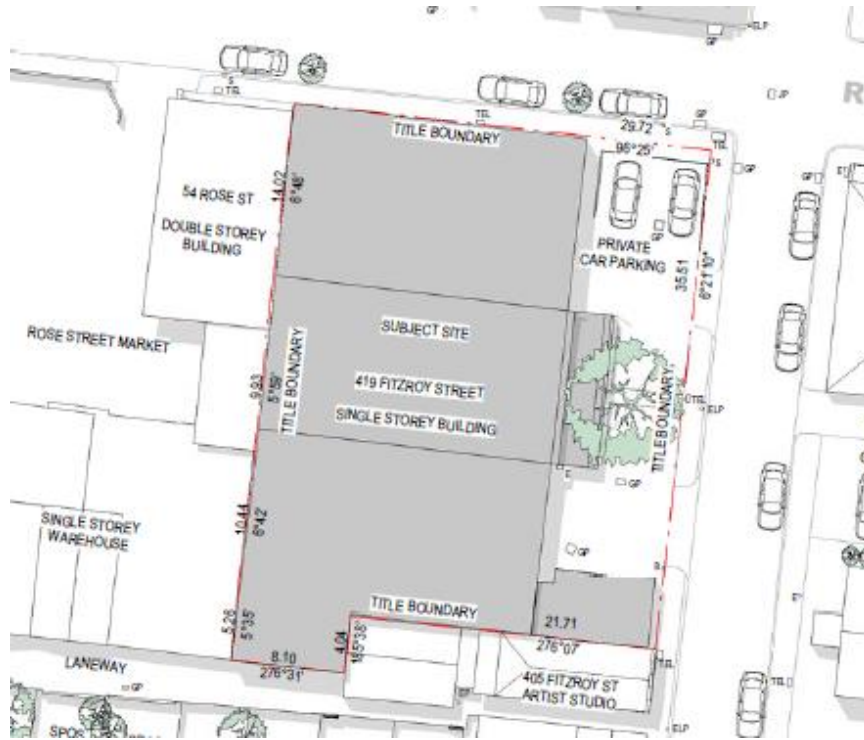


Figure 2: title boundaries of subject site

9. The site is developed with a single-storey warehouse building which is split into three tenancies:
- (a) A dance studio, located in the northernmost tenancy abutting Rose Street;
  - (b) A restricted recreation facility (gym) located in the central tenancy; and
  - (c) A food and drinks premises (café) located at the southernmost tenancy.
10. A view of the site from Fitzroy Street is provided in Figure 3.

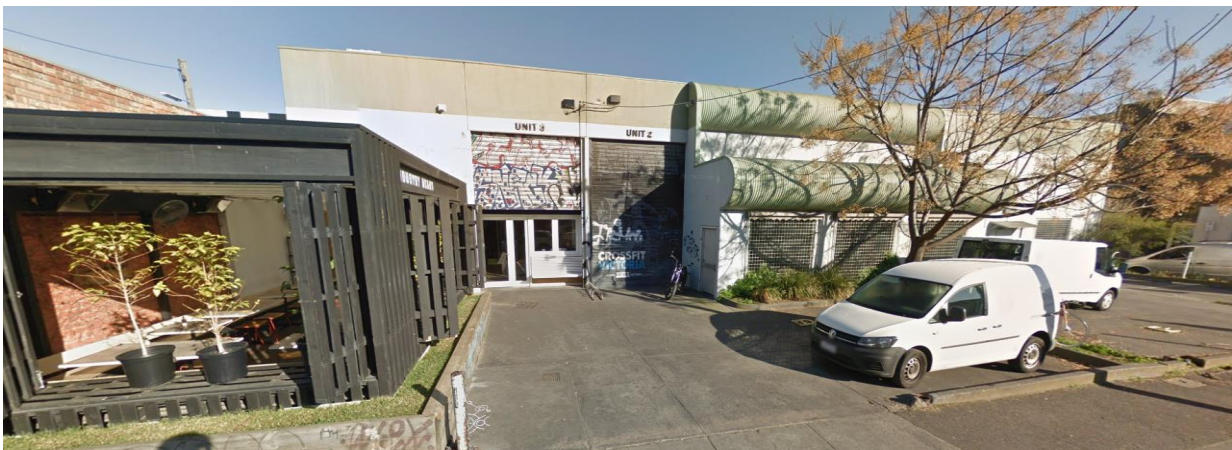


Figure 3: view from Fitzroy Street

11. The warehouse building is constructed flush to the Rose Street boundary, and the western and southern boundaries. The building is generally set back 8.5m from Fitzroy Street, with seven at-grade car parking spaces located within this setback. A single-storey timber addition that forms part of the café extends to Fitzroy Street at the southern end of the site. Two vehicle crossovers service the car parking area along Fitzroy Street.
12. The presentation of the warehouse building to Rose Street is a painted concrete wall. The presentation to Fitzroy Street includes the aforementioned car parking area, roller doors and pedestrian doors. A view of the site from Rose Street is provided in Figure 4.



Figure 4: subject site from Rose Street

### Surrounding Land

13. The land surrounding the subject site is predominantly within the Mixed Use Zone (MUZ), as depicted in Figure 5. This zone contains a mixture of former industrial land with some remnant warehouses and factories, as well as contemporary residential developments (with heights generally ranging from 3 to 7 storeys) and older housing stock, typically of the Victorian-era and single-storey in scale. The emerging character of the surrounding area is increasingly diverse.
14. The site is located approximately 90m to the west of the Brunswick Street Major Activity Centre (MAC), which is zoned Commercial 1 (C1Z) and comprises a diverse range of retail, hospitality and arts-based offerings and has a strong night time economy with many licensed premises including bars, nightclubs and restaurants.
15. The nearest residentially zoned land (other than the MUZ) is approximately 50m to the north-west, within the Neighbourhood Residential Zone (NRZ). This land contains predominantly single to double-storey Victorian-era dwellings.
16. Approximately 150m to the west of the subject site is a north-south linear strip of land along Nicholson Street zoned Commercial 2 (C2Z). This streetscape is largely defined by older, single and double-storey factory buildings which typically house restricted retail and office uses.

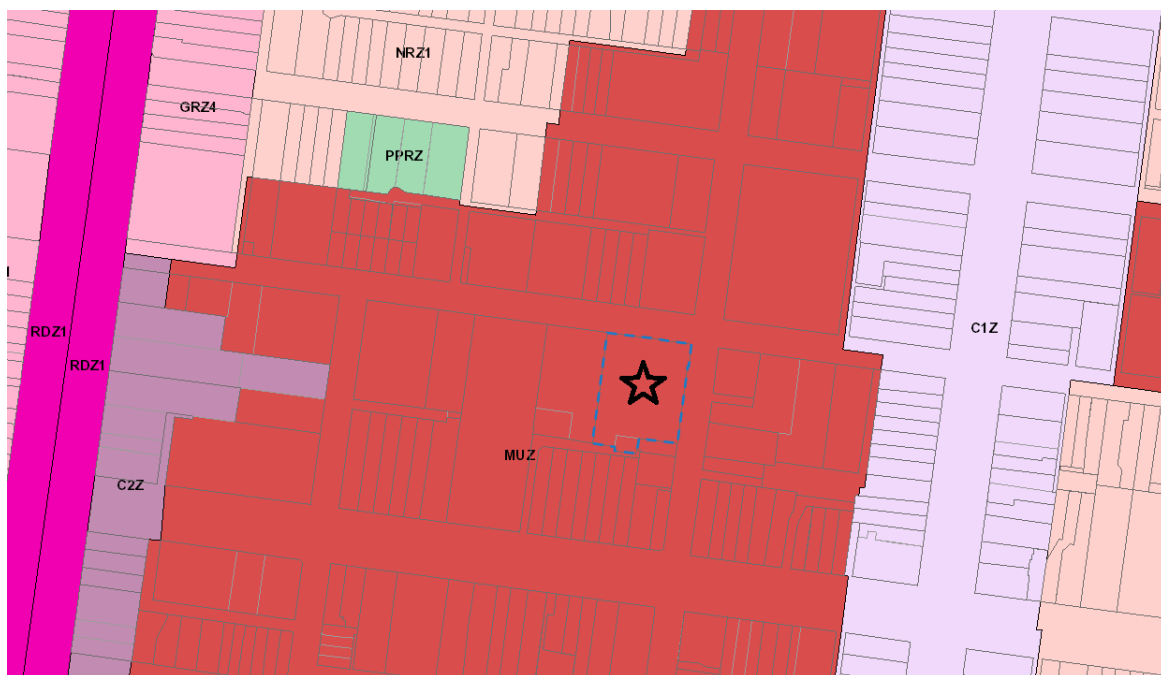


Figure 5: Surrounding zones

17. The site has excellent access to public transport opportunities, with tram services operating along Brunswick Street and Nicholson Street, and bus services along Alexandra Parade to the north and Johnston Street to the south. Bicycle infrastructure is prevalent within the surrounding streets and the site is within 2km from the Melbourne CBD.

18. The site's more immediate interfaces are outlined below.

*South*

19. The subject site extends along the northern and western boundaries of No. 405 Fitzroy Street; a single-storey, Edwardian-era, red-brick building which currently houses an artist studio. This building occupies the entire site, with no windows addressing the subject site. A narrow laneway extends along the southern boundary of this land.

20. On the southern side of the laneway is No. 403 Fitzroy Street; a single-storey dwelling with an area of secluded private open space (SPOS) in the southwest corner of the lot. Further to the south is a row of single-storey dwellings (with some first-floor additions) addressing Kerr Street. Nos. 57 to 63 Kerr Street have direct interfaces with the subject land (albeit separated by a 3.4m wide laneway). All of these sites have areas of SPOS to the north.

*West*

21. The Rose Street Artist's Market is located at No. 54 Rose Street, with this site extending along the entire shared boundary with the subject land. This market operates under Planning Permit PL03/0224 as follows;

- (a) Maximum capacity of 40 market stalls;
- (b) Maximum of 250 patrons on site at any one time;
- (c) Operating hours limited to 9am to 5pm on Saturdays and Sundays.
- (d) A food and drinks premises (café) which is operated under the business name 'Young Bloods'. Planning Permit PL03/0224 allows for the sale and consumption of liquor, a maximum of 100 patrons and the following operating hours for the cafe:
  - (i) Monday – Thursday 7am-5pm;
  - (ii) Friday – Saturday 9am-10pm at ground-floor and 9am to 9pm at first-floor;
  - (iii) Sunday 9am to 9pm.

22. Development on this site includes single-storey warehouse buildings towards the south of the site, a large open courtyard in the north-west corner and a double-storey building in the north-east corner (constructed flush to the common boundary with the subject site). The café is located in the double-storey building, with a roof area covered by translucent sheeting. A single-storey brick wall extends along the majority of the Rose Street frontage, with pedestrian entry available in the north-east corner.
23. Further to the west is No. 46 - 52 Rose Street; a substantial site that extends through to Kerr Street in the south. This site contains a six-storey mixed-use development above a retained heritage warehouse façade which presents to Rose Street. The façade and parapet provide the equivalent of a double-storey streetwall, with upper level setbacks in the order of 4m to 8m. The development is largely dedicated to apartments, with an office and cafe at ground level. The development is lower in scale as it presents to Kerr Street, with a maximum of four-storeys. An image of this development as it presents to Rose Street is provided in Figure 6.



**Figure 6: No. 46-52 Rose Street**

*North*

24. On the north-west corner of Fitzroy Street and Rose Street is No. 71-73 Rose Street; a triple-storey townhouse development with balconies fronting Fitzroy Street. Also to the north of the site is No. 63-69 Rose Street, a development containing a row of attached triple-storey townhouses with individual vehicle access at ground level and balconies above (addressing Rose Street). All of the dwellings along the northern side of Rose Street have minimal setbacks from the adjacent footpath.
25. The land at No. 61 Rose Street is currently under construction in accordance with Planning Permit PLN11/0576 for a six-storey apartment building, with an articulated, three-storey street wall and upper level street setbacks ranging from 3m to 7m.
26. Further to the north-west is a six-storey apartment building at No. 45 Rose Street. This building has an articulated, three-storey street wall and upper level street setbacks ranging from 4m to 5m. An image of this development is provided in Figure 7.

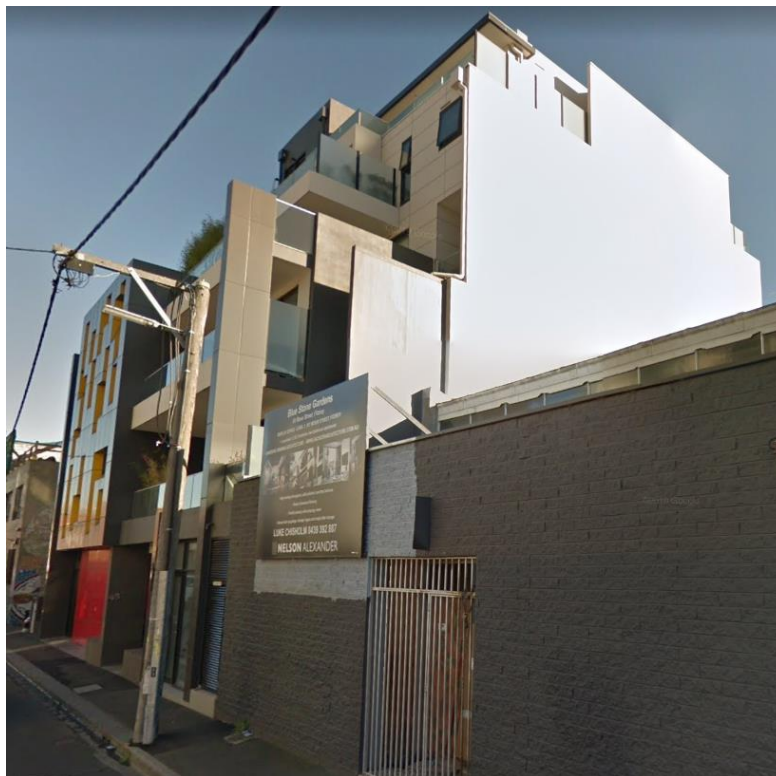


Figure 7: No. 45 Rose Street

*East*

27. Fitzroy Street, a 10m wide one-way street (running north to south), extends along the eastern boundary of the land. Further to the east, at No. 74 Rose Street, is a single-storey, Victorian-era building located on the south-east corner of Rose and Fitzroy Streets. This building operates as a café.
28. An at-grade car park is located to the south and east of this café, with access from Fitzroy Street and Rose Street.
29. Further to the south, and also opposite the subject land, is No. 406 Fitzroy Street, a former single-storey Church which has been converted to office use.
30. To the north-east of the site is a part single, part double-storey warehouse style building, at No. 75-87 Rose Street. The front section of this site is open-air, and operates as a market on weekends and a car park during the week. The market, approved under Planning Permit PLN14/0934 operates between 9am to 4pm (weekends only), with a maximum of 104 stalls.

**Planning Scheme Provisions**

Zoning

31. The subject site is located within the Mixed Use Zone (MUZ). The relevant purposes of the MUZ include;
  - (a) *To provide for a range of residential, commercial, industrial and other uses which complement the mixed-use function of the locality.*
  - (b) *To encourage development that responds to the existing or preferred neighbourhood character of the area.*
32. A Residential Hotel is nested under 'Residential Building' and 'Accommodation' in clause 73.04-1 of the Yarra Planning Scheme (the Scheme).

33. Pursuant to clause 32.04-2 of the Scheme, Accommodation (other than Community care accommodation, Dependent person's unit, Dwelling, Residential aged care facility and Rooming house) is a 'Section 2 – permit required use' in the MUZ.
34. Pursuant to Clause 32.04-6 of the Scheme, a planning permit is required to construct a residential building and pursuant to clause 32.04-9 of the Scheme, a permit is required to construct a building or construct or carry out works for a use in section 2 of clause 32.04-2.
35. There is no maximum building height requirement in the schedule to the zone.
36. The areas of the development designated as the 'hotel lobby' and 'roof terrace' are considered to be 'ancillary' to the proposed hotel use, and are not standalone uses in their own right. Whilst the Scheme does not provide a formal definition of 'ancillary', it is defined in the Macquarie Dictionary as: *an accessory, subsidiary or helping thing or person*. In this instance, the dining room within the hotel lobby and the terrace at roof level are provided for the use of hotel guests, and are therefore an accessory to the overall hotel use. Further, the dining room is not separated from the lobby area and therefore seating within this space is likely to be used for both purposes (waiting area and food and drinks).

#### Overlays

37. The subject site is affected by Schedule 334 to the Heritage Overlay. The following provisions are applicable:
  - (a) Pursuant to clause 43.01-1 of the Scheme, a planning permit is required to demolish or remove a building and to construct or carry out works.
  - (b) The site is not listed in *Appendix 8, City of Yarra Review of Heritage Overlay Areas 2007. (rev. May 2018)* and is therefore considered to be 'non-contributory' to the heritage overlay.
38. The subject is affected by the Environmental Audit Overlay. The following provisions apply:
  - (a) Pursuant to clause 45.03-1 of the Scheme, *before a sensitive use (residential use, child care centre, pre-school centre or primary school) commences or before the construction or carrying out of buildings and works in association with a sensitive use commences, either:*
    - (i) *A certificate of environmental audit must be issued for the land in accordance with Part IXD of the Environment Protection Act 1970, or*
    - (ii) *An environmental auditor appointed under the Environment Protection Act 1970 must make a statement in accordance with Part IXD of that Act that the environmental conditions of the land are suitable for the sensitive use.*
39. As a Residential Hotel is considered to be a sensitive use, a note would be required to be added to any planning permit issued informing the applicant of these obligations.

#### Particular Provisions

##### *Clause 52.06- Car parking*

40. Pursuant to clause 52.06-2 of the Scheme, before a new use commences the number of car parking spaces required under Table 1 at Clause 52.06-5 must be provided to the satisfaction of the responsible authority.

41. Clause 52.06-6 notes that where a use of land is not specified in Table 1, car parking spaces must be provided to the satisfaction of the responsible authority. The use of the land as a Residential Hotel is not specified in this table, therefore the provision of car parking is to the satisfaction of the responsible authority.

*Clause 52.34 - Bicycle facilities*

42. Pursuant to Clause 52.34-1, a new use must not commence until the required bicycle facilities and associated signage are provided on the land. The following table identifies the bicycle parking requirement under Clause 52.34-3 and the provision on site.

Proposed Use	Quantity/ Size	Statutory Parking Rate	No. of Spaces Required	No. of Spaces Allocated
<b>Residential hotel</b>	<b>127 rooms</b>	In developments of four or more storeys, 1 employee space to each 10 lodging rooms	13 employee spaces	13 employee spaces
		In developments of four or more storeys, 1 visitor space to each 10 lodging rooms	13 visitor spaces.	13 visitor spaces
		<b>Bicycle Parking Spaces Total</b>	26 employee/visitor spaces	26 employee/visitor spaces
<b>Showers / Change rooms</b>	<b>1 to the first 5 employee spaces and 1 to each additional 10 employee spaces</b>		2 showers / change rooms	2 showers / change rooms

43. The development complies with the number of on-site employee/visitor bicycle parking spaces required, along with the shower/change rooms required by the clause.

#### General Provisions

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

#### Planning Policy Framework (PPF)

45. Relevant clauses are as follows:

*Clause 11.01-1R (Settlement - Metropolitan Melbourne)*

46. Relevant strategies include;
- 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.*
  - 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 (Managing Growth)*



*Clause 11.02-1S (Supply of Urban Land)*

47. The objective 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 (Planning for Places)*

*Clause 11.03-1R (Activity centres – Metropolitan Melbourne)*

48. Relevant strategies are:

- (a) *Support the development and growth of Metropolitan Activity Centres by ensuring they:*
- (i) *Are able to accommodate significant growth for a broad range of land uses.*
  - (ii) *Are supported with appropriate infrastructure.*
  - (iii) *Are hubs for public transport services.*
  - (iv) *Offer good connectivity for a regional catchment.*
  - (v) *Provide high levels of amenity.*

*Clause 13.04-1S (Contaminated and potentially contaminated land)*

49. The objective is to ensure that potentially contaminated land is suitable for its intended future use and that contaminated land is used safely.

*Clause 13.05-1S (Noise abatement)*

50. The objective is:

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

51. The strategy is:

- (a) *Ensure that development is not prejudiced and community amenity is not reduced by noise emissions, using a range of building design, urban design and land use separation techniques as appropriate to the land use functions and character of the area.*

*Clause 13.07 (Amenity and Safety)*

*Clause 13.07-1S (Land use compatibility)*

52. The objective is:

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

*Clause 15.01 (Built Environment and Heritage)*

53. This clause outlines the following guidelines;

- (a) *Planning should ensure all land use and development appropriately responds to its surrounding landscape and character, valued built form and cultural context.*
- (b) *Planning must support the establishment and maintenance of communities by delivering functional, accessible, safe and diverse physical and social environments, through the appropriate location of use and development and through high quality buildings and urban design.*
- (c) *Planning should promote development that is environmentally sustainable and should minimise detrimental impacts on the built and natural environment.*
- (d) *Planning should promote excellence in the built environment and create places that:*
- (i) *Are enjoyable, engaging and comfortable to be in.*
  - (ii) *Accommodate people of all abilities, ages and cultures.*
  - (iii) *Contribute positively to local character and sense of place.*
  - (iv) *Reflect the particular characteristics and cultural identity of the community.*
  - (v) *Enhance the function, amenity and safety of the public realm.*

*Clause 15.01-1S (Urban design)*

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

*Clause 15.01-1R (Urban design - Metropolitan Melbourne)*

55. The objective is:
- (a) *To create distinctive and liveable city with quality design and amenity.*

*Clause 15.01-2S (Building Design)*

56. The objective is:
- (a) *To achieve building design outcomes that contribute positively to the local context and enhance the public realm.*
57. The strategies of this clause are:
- (a) *Ensure the site analysis provides the basis for the consideration of height, scale and massing of new development.*
  - (b) *Ensure development responds and contributes to the strategic and cultural context of its location.*
  - (c) *Minimise the detrimental impact of development on neighbouring properties, the public realm and the natural environment.*
  - (d) *Ensure the form, scale, and appearance of development enhances the function and amenity of the public realm.*
  - (e) *Ensure buildings and their interface with the public realm support personal safety, perceptions of safety and property security.*
  - (f) *Ensure development provides safe access and egress for pedestrians, cyclists and vehicles.*
  - (g) *Ensure development provides landscaping that responds to its site context, enhances the built form and creates safe and attractive spaces.*

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

58. The strategy 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 is:
- (a) *To recognise, support and protect neighbourhood character, cultural identity, and sense of place.*
60. Strategies are:
- (a) *Ensure development responds to cultural identity and contributes to existing or preferred neighbourhood character.*
  - (b) *Ensure development responds to its context and reinforces a sense of place and the valued features and characteristics of the local environment and place by emphasising the:*
    - (i) *Pattern of local urban structure and subdivision.*
    - (ii) *Underlying natural landscape character and significant vegetation.*
    - (iii) *Heritage values and built form that reflect community identity.*

*Clause 15.02 (Sustainable Development)*

*Clause 15.02-1S (Energy and resource efficiency)*

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

*Clause 15.03 (Heritage)*

*Clause 15.03-1S (Heritage conservation)*

62. The objective is:
- (a) *To ensure the conservation of places of heritage significance.*
63. Strategies include:
- (a) *Encourage appropriate development that respects places with identified heritage values.*
  - (b) *Retain those elements that contribute to the importance of the heritage place.*
  - (c) *Encourage the conservation and restoration of contributory elements of a heritage place.*
  - (d) *Ensure an appropriate setting and context for heritage places is maintained or enhanced.*
  - (e) *Support adaptive reuse of heritage buildings where their use has become redundant.*

*Clause 17 (Economic development)*

*Clause 17.02-1S (Business)*

64. The objective is:
- (a) *To encourage development which meet the communities' needs for retail, entertainment, office and other commercial services.*

*Clause 17.04 (Tourism)*

*Clause 17.04-1S (Facilitating tourism)*

65. The objective is:
- (a) *To encourage tourism development to maximise the economic, social and cultural benefits of developing the state as a competitive domestic and international tourist destination.*
66. Relevant strategies are:
- (a) *Encourage the development of a range of well-designed and sited tourist facilities, including integrated resorts, accommodation, host farm, bed and breakfast and retail opportunities.*
  - (b) *Encourage investment that meets demand and supports growth in tourism.*

*Clause 18.02-1S – (Sustainable personal transport)*

67. The objective is:
- (a) *To promote the use of sustainable personal transport.*
68. Relevant strategies are:
- (a) *Encourage the use of walking and cycling by creating environments that are safe and attractive.*
  - (b) *Develop high quality pedestrian environments that are accessible to footpath-bound vehicles such as wheelchairs, prams and scooters.*
  - (c) *Require the provision of adequate bicycle parking and related facilities to meet demand at education, recreation, transport, shopping and community facilities and other major attractions when issuing planning approvals.*
  - (d) *Ensure provision of bicycle end-of-trip facilities in commercial buildings*

*Clause 18.02-1R (Sustainable personal transport- Metropolitan Melbourne)*

69. Strategies of this policy are:

- (a) *Improve local travel options for walking and cycling to support 20 minute neighbourhoods.*
- (b) *Develop local cycling networks and new cycling facilities that support the development of 20-minute neighbourhoods and that link to and complement the metropolitan-wide network of bicycle routes - the Principal Bicycle Network*

*Clause 18.02-2S (Public Transport)*

70. The objective 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)*

71. A relevant strategy of this clause is to:

- (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)*

72. The objective is:

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

73. A relevant strategy is:

- (a) *Protect the amenity of residential precincts from the effects of road congestion created by on-street parking.*

Local Planning Policy Framework (LPPF)

74. The following LPPF provisions of the Scheme are relevant:

*Clause 21.04 (Land Use)*

75. Relevant objectives and strategies include;

- (a) *Objective 3 To reduce potential amenity conflicts between residential and other uses.*
  - (i) *Strategy 3.2 Apply the Interface Uses policy at clause 22.05.*
  - (ii) *Strategy 3.4 Discourage late night and 24 hour trading activities located near residential zones to minimize impacts on residential amenity.*

*Clause 21.04-2 (Activity Centres)*

76. Relevant strategies include;

- (a) *Strategy 4.1 Increase the range of retail, personal and business services, community facilities, and recreation activities, within individual centres.*
- (b) *Strategy 5.2 Support land use change and development that contributes to the adaptation, redevelopment and economic growth of existing activity centres.*
- (c) *Strategy 5.3 Discourage uses at street level in activity centres which create dead frontages during the day.*

*Clause 21.04-3 (Industry, office and commercial)*

77. The objective of this clause is *'to increase the number and diversity of local employment opportunities.'*

*Clause 21.05-1 (Heritage)*

78. Relevant objectives and strategies include;
- (a) *Objective 14 To protect and enhance Yarra's heritage places:*
    - (i) *Strategy 14.3 Protect the heritage skyline of heritage precincts.*
    - (ii) *Strategy 14.4 Protect the subdivision pattern within heritage places.*
    - (iii) *Strategy 14.6 Protect buildings, streetscapes and precincts of heritage significance from the visual intrusion of built form both within places and from adjoining areas.*
    - (iv) *Strategy 14.8 Apply the Development Guidelines for Heritage Places policy at clause 22.02*

*Clause 21.05-2 (Urban design)*

79. The relevant objectives and strategies are:
- (a) *Objective 16 To reinforce the existing urban framework of Yarra;*
  - (b) *Objective 17 To retain Yarra's identity as a low-rise urban form with pockets of higher development;*
  - (c) *Objective 18 To retain, enhance and extend Yarra's fine grain street pattern;*
  - (d) *Objective 20 To ensure that new development contributes positively to Yarra's urban fabric;*
  - (e) *Objective 21 To enhance the built form character of Yarra's activity centres;*
    - (i) *Strategy 21.1 Require development within Yarra's activity centres to respect and not dominate existing built form; and*
  - (f) *Objective 22 To encourage the provision of universal access in new development.*

*Clause 21.05-4 (Public environment)*

80. The relevant objective and strategies are:
- (a) *Objective 28 To provide a public environment that encourages community interaction and activity:*
    - (i) *Strategy 28.1 Encourage universal access to all new public spaces and buildings*
    - (ii) *Strategy 28.2 Ensure that buildings have a human scale at street level.*
    - (iii) *Strategy 28.3 Require buildings and public spaces to provide a safe and attractive public environment.*

*Clause 21.06 (Transport)*

81. This clause builds upon the objectives outlined at clause 18, promoting cycling, walking and public transport as alternatives to private motor vehicle usage.

*Clause 21.06-1 (Walking and cycling)*

82. This clause builds upon the Objectives outlined at Clause 18, promoting cycling, walking and public transport as alternatives to private motor vehicle usage.

- (a) *Objective 30 To provide safe and convenient bicycle environments:*
  - (i) *Strategy 30.2 Minimise vehicle crossovers on street frontages.*

*Clause 21.06-2 (Public transport)*

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

*Clause 21.06-3 (The road system and parking)*

- (c) *Objective 32 To reduce the reliance on the private motor car.*

*Clause 21.07-1 (Environmentally sustainable development)*

83. The relevant objective of this clause is:

- (a) *Objective 34 To promote ecologically sustainable development:*  
(i) *Strategy 34.1 Encourage new development to incorporate environmentally sustainable design measures in the areas of energy and water efficiency, greenhouse gas emissions, passive solar design, natural ventilation, stormwater reduction and management, solar access, orientation and layout of development, building materials and waste minimisation;*

*Clause 21.08-7 Neighbourhoods (Fitzroy)*

84. The following relevant commentary is offered at this clause:

- (a) *Fitzroy is a mixed commercial and residential neighbourhood notable for the consistency of its Victorian streetscapes. It comprises a dense combination of residential areas, shopping precincts and commercial/ industrial activities.*  
(b) *The role of the Brunswick Street centre can be characterised as hospitality, entertainment, clothing and footwear, art galleries and studios, and non-government community services, all with a metropolitan focus.*

Local Policies

*Clause 22.02 (Development Guidelines for sites subject to Heritage Overlay)*

85. The relevant objectives of this clause are as follows

- (a) *To retain significant view lines to, and vistas of, heritage places.*  
(b) *To preserve the scale and pattern of streetscapes in heritage places.*  
(c) *To ensure that additions and new works to a heritage place respect the significance of the place.*

86. The relevant parts of this clause are as follows:

*Clause 22.02-5.1 (Demolition)*

- (a) *Generally encourage the retention of a building in a heritage place, unless*  
(i) *The building is identified as being not contributory.*

*Clause 22.02-5.7 (New Development, Alterations or Additions)*

*Clause 22.02-5.7.1 (General)*

87. The relevant objectives of this clause are as follows

- (a) *Encourage the design of new development and alterations and additions to a heritage place or a contributory element to a heritage place to:*  
(b) *Respect the pattern, rhythm, orientation to the street, spatial characteristics, fenestration, roof form, materials and heritage character of the surrounding historic streetscape.*  
(c) *Be articulated and massed to correspond with the prevailing building form of the heritage place or contributory elements to the heritage place.*  
(d) *Be visually recessive and not dominate the heritage place.*  
(e) *Be distinguishable from the original historic fabric.*  
(f) *Not remove, cover, damage or change original historic fabric.*  
(g) *Not obscure views of principle façades.*

- (h) *Consider the architectural integrity and context of the heritage place or contributory element.*

*Clause 22.05 (Interface Uses Policy)*

- 88. The relevant policy is:
  - (a) *New non-residential use and development within Business 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)*

- 89. This policy applies to applications for development that is accessed from a laneway or has laneway abuttal, with the relevant objectives as follows:
  - (a) *To provide an environment which has a feeling of safety for users of the laneway.*
  - (b) *To ensure that development along a laneway acknowledges the unique character of the laneway.*
  - (c) *To ensure that where development is accessed off a laneway, all services can be provided to the development. To ensure that development along a laneway is provided with safe pedestrian and vehicular access.*

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

- 90. This policy applies to (as relevant) new buildings and contains the following objectives:
  - (a) *To achieve the best practice water quality performance objectives set out in the Urban Stormwater Best Practice Environmental Management Guidelines, CSIRO 1999 (or as amended).*
  - (b) *Currently, these water quality performance objectives require:*
    - (i) *Suspended Solids - 80% retention of typical urban annual load*
    - (ii) *Total Nitrogen - 45% retention of typical urban annual load*
    - (iii) *Total Phosphorus - 45% retention of typical urban annual load*
    - (iv) *Litter - 70% reduction of typical urban annual load*
  - (c) *To promote the use of water sensitive urban design, including stormwater re-use.*
  - (d) *To mitigate the detrimental effect of development on downstream waterways, by the application of best practice stormwater management through water sensitive urban design for new development.*
  - (e) *To minimise peak stormwater flows and stormwater pollutants to improve the health of water bodies, including creeks, rivers and bays.*
  - (f) *To reintegrate urban water into the landscape to facilitate a range of benefits including microclimate cooling, local habitat and provision of attractive spaces for community use and well being.*

*Clause 22.17 (Environmentally Sustainable Design)*

- 91. The overarching objective is that development should achieve best practice in environmentally sustainable development from the design stage through to construction and operation. The considerations are energy performance, water resources, indoor environment quality, storm water management, transport, waste management and urban ecology.

**Advertising**

- 92. The application was advertised under the provisions of Section 52 of the *Planning and Environment Act 1987* (the Act) with 436 letters sent to surrounding owners and occupiers and two signs displayed on site. Council received 68 objections, the grounds of which are summarised as follows:
  - (a) Lack of on-site car parking (including drop-off/pick-up provisions);

- (b) Insufficient on-site loading provisions;
- (c) Increased traffic and pedestrian congestion, including impacts on the proposed pedestrian-friendly Rose Street precinct;
- (d) Excessive height/overdevelopment of the site/lack of setbacks;
- (e) Lack of integration with the neighbourhood character and heritage precinct;
- (f) Hotel use within a residential area is inappropriate;
- (g) Objection to the removal of one street tree;
- (h) Objection to the removal of an existing mural;
- (i) Potential off-site amenity impacts (loss of daylight, overlooking, noise, waste collection, drainage, equitable development etc.);
- (j) Impact upon property values in the neighbourhood;
- (k) Loss of views; and
- (l) Impacts during construction.

93. A consultation meeting was not held for this application, given that the Planning Officer received a number of aggressive and abusive phone calls. As such, it was determined at a Development Assessment Panel on 10 April 2019 that a consultation meeting would not be pursued.

### **Referrals**

94. The referral comments are based on the decision plans (i.e. the advertised plans) as there have been no amendments to the application since the notice period was undertaken.

#### External Referrals

95. The application was referred to the following authority:

- (a) Transport for Victoria

96. No objection to the application was received. The referral response has been included as an attachment to this report.

#### Internal Referrals

97. The application was referred to the following units within Council:

- (a) Heritage;
- (b) Urban Design (public realm works);
- (c) Engineering Services;
- (d) City Works;
- (e) Strategic Transport;
- (f) Open Spaces;
- (g) Traffic;
- (h) ESD.

98. The application was referred to the following external consultants:

- (a) Urban Design (Hansen Partnership); and
- (b) Acoustic (SLR Consultants).

99. Referral comments have been included as attachments to this report.

### **OFFICER ASSESSMENT**

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

- (a) Policy and strategic support;
- (b) Land use;
- (c) Built form and heritage;
- (d) On-site amenity;



- (e) Off-site amenity;
- (f) Car parking, vehicle access, traffic, loading & waste;
- (g) Bicycle provision; and
- (h) Objector concerns.

#### Policy and Strategic Support

101. It is considered that the proposed development achieves the various land use and development objectives outlined in the Scheme and is in accordance with relevant State and local planning policies applicable to the redevelopment of sites within areas such as this.

The subject site is within proximity (approximately 90m) to the Brunswick Street MAC, which provides a wide range of retailing, services and food and drinks premises with good public transport links. This ensures that the site is well serviced by local infrastructure and commercial offerings.

102. The subject site is located within a MUZ which aims to create a dynamic range of residential and commercial uses which complement the mixed-use nature of the neighbourhood. The layout of the proposed use provides hotel rooms predominantly above ground level, with the operational spaces associated with the hotel (i.e. lobby, reception and dining areas) at ground floor. This will provide an active street frontage and allow good interaction between the public and private realms.
103. With regards to the proposed development of the site, State and local policies encourage the concentration of development in and around activity centres, with more intense development on sites well connected to public transport, thereby ensuring the efficient use of existing infrastructure. The site is well connected to public transport opportunities, with trams along Brunswick Street and Nicholson Street and bus services along Johnston Street and Alexandra Parade, encouraging the use of alternative modes of transport to and from the site and reducing reliance on motor vehicles, as encouraged by clauses 18.02 (Transport), 21.03 (Vision), 21.06-3 (The road system and parking) and 21.07 (Environmental sustainability).
104. However, policy support for more intensive development needs to be balanced with built form and heritage guidance at clauses 15.03, 21.05-1 and 21.05-2 of the Scheme. These policies call for development that responds to the surrounding context with regard to urban character and cultural heritage. More specifically, Council's local policy at Clause 22.02 seeks to maintain and conserve the significant historic character of the area.
105. As will be discussed in detail within this report, it is considered that the proposal achieves a good balance of State and local policy in relation to high quality developments and protection of heritage values.

#### Land Use

106. The proposed use of the land as a residential hotel is considered to be consistent with the purpose of the MUZ, which is to provide for a range of residential, commercial, industrial and other uses which complement the mixed-use function of the locality. A wide range of uses currently operate within vicinity of the site; this includes markets, cafes, offices and artist/dance studios, as well as dwellings. The proposed addition of a hotel to this mix is supported, and will further diversify the eclectic assortment of functions operating within the zone.
107. Clause 22.05 (Interface uses policy) of the Scheme applies to applications for use and development within the MUZ, and aims to manage conflict that may occur at the interface of these land uses, with particular regards to impacts upon dwellings and residential sites.

Clause 22.05-1 states '*While the mix of land use creates a diverse and interesting inner city character, it also may create conflict at the interface between the land uses*' with the relevant policy at this clause noting that new non-residential use and development within the MUZ should be designed to minimise noise and visual amenity impacts upon nearby, existing residential properties.

108. Given the proposed use of the land as a hotel, the premises would be open and available to guests 24 hours a day, 7 days a week. As the ground floor dining room and roof-top terrace are considered to be 'ancillary' uses to the hotel and are designed to cater predominantly to hotel guests, no specific operating hours have been nominated for these areas. Technically this would allow these spaces to operate throughout the day and night, with no restrictions to the hours proposed within the application.
109. One of the main concerns raised in the objections to this application was noise, and in particular, the noise that may be generated from the roof terrace. Whilst not specifically stated in the application material, it does note that this terrace is to provide amenity to guests of the hotel, and on this basis it is assumed that only hotel guests will have access to this space. Whilst this restriction would reduce impacts generated within this space, a restriction to the hours in which this space can be accessed by the hotel guests would further manage any unreasonable noise impacts which may occur.
110. If Council was in a position to support the application, the implementation of a Hotel Management Plan could be required via a permit condition. This Management Plan would include hours of operation for the various shared areas of the hotel, and specify that the use of the roof terrace is restricted to guest use only. In this instance, it is considered reasonable for the terrace to be accessible to guests between 7am to 10pm each day. This ensures that residential amenity during the sensitive night-time period (10pm-7am) is protected and limits the number of people using the terrace at any one time.
111. Whilst it would be relatively easy to limit the use of the roof terrace to hotel guests only (through the provision of lift passes and security restrictions), it is more difficult to restrict the general public from accessing the ground floor dining room, particularly given its prominent corner location and activated frontage. The permit applicant has confirmed that the primary use of this space is to provide breakfast through to late night snacks for hotel guests, with the hotel operator (as opposed to an external café operator) to maintain management of this space. Nonetheless, it is acknowledged that restricting this space to hotel guests only would be difficult to enforce, especially with guests circulating through the adjacent lobby area.
112. The external appearance of this space and activation of the streetscape will be discussed in detail later within this report, however it is noted that a row of external seating is proposed along each street frontage. The location of this seating externalizes the use to a degree and would attract additional patronage from pedestrians in the area. It is considered that removing this seating would assist in internalizing the use and increase the emphasis on the dining area being directly associated with the hotel. The removal of this seating would also assist in managing noise impacts within the streetscape and to the adjacent residential uses. A condition could require the removal of all external seating, if a planning permit was issued.
113. A restriction to the operating hours to match those proposed for the roof terrace is considered reasonable; the 7am to 10pm hours would allow breakfast and late-night snacks to be served in this area, and would appropriately reduce noise impacts to the adjacent dwellings during the sensitive, night-time period.
114. All of these restrictions could be outlined within the Hotel Management Plan, which could have been required via a permit condition, had Council been in a position to support the proposal. To further reduce noise impacts to adjacent dwellings, the main entrance to the hotel has been located in the north-east corner which is close to the existing café, market, car park and other commercial uses.

In addition, all of the proposed balconies at levels 1 & 2 are east-facing, ensuring there is no direct interface with sensitive, residential uses. Given the requirement of a Management Plan via conditions, in conjunction with the layout outlined above, Council considers that potential noise impacts from hotel guests can be appropriately controlled.

115. It is highlighted that the applicant has not applied for the sale and consumption of liquor within the premises. If this was to alter in the future, an amendment to any planning permit issued would have to be sought and considered separately at that time. It is also noted that the use of the site as a 'food and drink premises' would require a planning permit under the MUZ (given the floor area exceeds 150sqm). If this ancillary use sought to operate as a standalone café in the future, additional planning approval would be required.
116. Clause 22.05-6 also notes that *before deciding on an application for non-residential development, Council will consider as appropriate:*
  - *Whether the buildings or uses are designed or incorporate appropriate measures to minimise the impact of unreasonable overlooking, overshadowing, noise, fumes and air emissions, light spillage, waste management and other operational disturbances on nearby residential properties.*
117. Issues such as overlooking and overshadowing will be discussed later within this assessment. A separate loading bay is proposed within the Fitzroy Street frontage, with no direct residential interfaces, and a separate, internal waste storage room is provided. This ensures that rubbish would be adequately concealed within the building and any emissions would have an adequate dispersal distance from any dwellings.
118. If Council had been in a position to support the proposal, general conditions would have been included on any planning permit to ensure the amenity of the area is not unreasonably compromised due to the proposed use. These would include restrictions on noise, waste disposal, deliveries and emissions, including light spill. Subject to the above conditions, the use of the land as a hotel can be supported.

#### Built form and Heritage

119. The primary built form considerations for the proposed development are the decision guidelines at clause 32.04-6 (Mixed Use Zone) and policy at clause 15 (Built Environment and Heritage), clause 21.05 (Built Form), clause 22.07 (Development abutting laneways) and clause 22.02 (Development Guidelines for Sites Subject to the Heritage Overlay). All of these provisions and guidelines support 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 and relationship to adjoining buildings.

#### *Context*

120. As outlined earlier within this report, built form in the immediate area is mixed, with a strong emergence of contemporary, higher-scale development. Rose Street in particular has altered substantially over recent years due to the approval and construction of a number of six-storey developments. These developments are interspersed throughout a predominantly triple to four-storey streetscape. This is most clearly demonstrated in the built form context map provided at Figure 8.
121. Pockets of low-density, single-storey dwellings remain; however these are located largely to the south of the subject site, addressing Kerr Street or further to the west towards Nicholson Street.

Whilst the ‘individually significant’ heritage classification attributed to the former Church building at No. 406 Fitzroy Street may limit the degree of change within this site, it is likely that a degree of development will occur within the site on the south-east corner of Rose and Fitzroy Streets, with the single-storey building at No. 74 Rose Street and the surrounding at-grade car park classified as ‘non-contributory’ to the heritage precinct. It is therefore clear that higher built form is the emerging characteristic within the immediate surrounds.

122. As outlined previously, there is no dispute that strategically the subject site is appropriately located for a higher-density development, being within proximity to a MAC and the C1Z, and with excellent access to cycling networks, public transport, services and facilities. Based on these attributes, it is a reasonable expectation that this site will experience intensification in use and development.



Figure 8: Built form heights within Rose Street

123. With regards to the surrounding heritage context, the site is located within the South Fitzroy Heritage Precinct, which covers the vast majority of Fitzroy. The immediate vicinity however does not have a highly intact heritage streetscape. The majority of nearby properties are either contemporary, multi-storey residential developments (on ex-industrial sites) or single-storey warehouses or car parks, the majority of which are listed as non-contributory to the heritage precinct.
124. In light of this context, the proposed development would not unduly affect the significance of the broader heritage place in accordance with clause 22.02 of the Scheme. Council’s Heritage Advisor concurred with this, stating that *‘the area has taken on a different somewhat bohemian/ edgy character as a result of more recent development...Therefore there is considerable scope for new built form provided that it is respectful and fits in with the immediate surrounds’*.

*Demolition*

125. Prior to ascertaining if the proposed development of the land is acceptable, consideration of the extent of demolition is required. These considerations are outlined at clause 22.02 and clause 43.01 of the Scheme.

As outlined in Council's heritage advice, the factory building on the land appears to have been constructed c. 1960-70s, and is not listed in *Appendix 8, City of Yarra Review of Heritage Overlay Areas 2007. (rev. May 2018)*. On this basis, the built form within the site is assumed to be 'non-contributory' and as such, the full demolition of the existing buildings is supported by local heritage policy at clause 22.02-5.1.

*Built form (height and massing)*

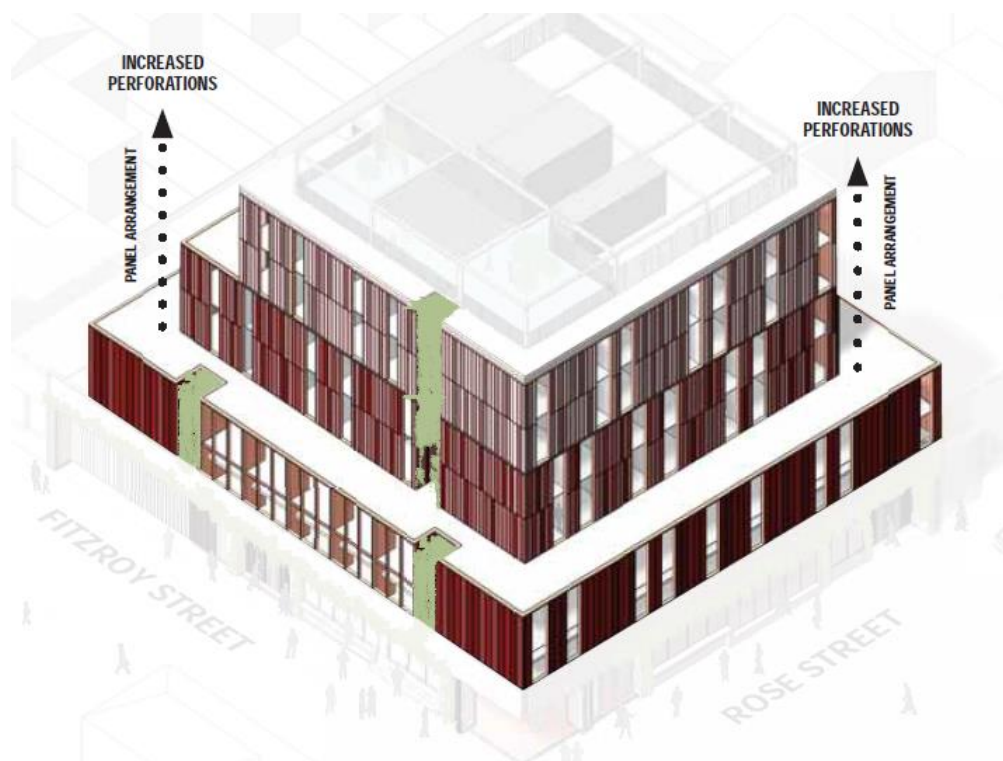
*Height*

126. The development proposes a solid built-form height of six-storeys, with an open roof terrace forming a permeable upper-most level. The main built form (to level 6) will be 23.5m in height, with the roof pergola extending 3m higher (26.5m) and the lift overrun an additional 1.9m (total 28.45m). Views to the lift overrun will be appropriately limited due to its location within the centre of the building.
127. As demonstrated in Figure 8, the proposed height is similar to the emerging heights found in surrounding sites, with the increasing scale of these buildings subsequently resulting in the transformation of a historically low-rise context into a pocket of higher development.
128. External urban design advice was sought by Council from Hansen Partnership, who were largely supportive of the proposed height of the hotel. As outlined in this advice *'where recent mid-rise development along Rose Street are in the order of 6 storeys, the proposed scale does not represent a drastic departure from the common order'*, and *'a mid-rise response of 7 storey on this site is generally consistent and supportable from an urban design perspective'*.
129. The context of the site being on a corner and within an ex-industrial precinct where a number of larger sites are found influences this outcome. The Urban Design advice notes *'where amenity impacts to existing low rise residential can be contained within larger sites which are unconstrained by heritage (on site, or abutting sites) more can potentially be achieved than a typical response for sites in RGZ/GRZ'*. The limited degree of amenity impacts to residential sites will be discussed later within this report, however the lack of heritage fabric on or adjoining the site, along with the mixed character of the existing streetscape and the way in which the development responds to surrounding built form allows a higher scale to be supported.
130. The proposed height of the development is also supported by Council's Heritage Advisor, who states that *'the overall height of 26.54m is acceptable in this context, given the heights of surrounding buildings'* and that *'the proposed building will not be out-of-keeping in respect of height'*.
131. Based on this feedback and given the existing and emerging heights within the area as outlined, the building height is supportable subject to further consideration of off-site amenity impacts.

*Massing*

132. The development will provide a three-storey streetwall along the Rose Street and Fitzroy Street interfaces, with the permeable design and inclusion of small setbacks within the ground level frontages providing a good degree of articulation to the massing of these facades. The height of the streetwall is commensurate with the emerging built form character in the surrounding area (e.g. 3 storeys) and is considered to provide a human scale to the development, by focussing pedestrian sightlines to the lower levels. This outcome is supported.

133. The external urban design advice was similarly supportive of the streetwall dimensions, noting that the wall provides a *'street based response'* and that the street wall height (10.9m) is proportionate to the width of both Rose and Fitzroy Streets (approximately 10m wide). The height of the streetwall was further supported by heritage advice, which noted that *'most, if not all, buildings in the immediate surrounds are built to all boundaries, so a zero setback at the Ground to Level 2 is appropriate'*.
134. The upper levels (levels 3-6) will be set back 3m from both Rose and Fitzroy Streets above the streetwall. These setbacks are considered appropriate for the site, particularly given its corner location, which allows for a more robust presentation to the street. The consistent 3m upper level setback approach allows for the development to avoid a 'wedding cake' typology as it presents to Rose and Fitzroy Streets. The urban design advice supported the upper levels setback of 3m to Fitzroy Street, based on the robust built form along this streetscape and the minimal public realm overshadowing generated by the setback. However, the advice recommended that the upper levels be setback an additional metre from the Rose Street boundary (4m), so as to match the upper level setbacks established by recent developments at No. 48-50 Rose Street and No. 45 Rose Street to the west. An increased setback for these levels is not supported by Council officers, based on the following;
- (a) The subject site is different to most other sites in Rose Street, with a corner location allowing for a more robust presentation to the street. Similarly, the proposed upper level setback to Rose Street will help to anchor this corner setting. The subject site thus has a different context to other recent developments (which are located mid-block) and as such, should not be required to match their respective upper level setbacks.
  - (b) The street level activation and the three-storey streetwall will maintain interest at the lower levels of the development, drawing the eye of pedestrians to these levels and thereby minimising the visual impact of the upper levels.
  - (c) The proposed materials predominantly consist of weathered steel cladding. Above the street wall, the upper levels will feature perforations in the steel cladding that increase in permeability as the development rises. As a result, the upper levels would appear recessive to the street wall and allow for a more visually 'lightweight' finish. This design response is demonstrated in Figure 9.
135. Further to this, Council's heritage advice was supportive of the 3m setbacks at the upper levels from both streets, noting that the front and side setbacks at levels 3-6 will assist in reducing visual bulk on a corner site and will reduce visual encroachment in views towards the west along Rose Street. The 3m setbacks as proposed are therefore considered appropriate.
136. The proposed roof terrace will be setback further from both street interfaces (4m & 4.5m) thereby reducing visibility of this built form to an acceptable degree.
137. The development has responded well to the context of lower built form to the south, with generous setbacks provided to this interface. In particular, the rear setbacks are appropriately respectful of the abutting Victorian-era building at No. 405 Fitzroy Street. At levels 1-2, the southern wall will be set back 3m and 7.15m from the southern boundary, with these setbacks increasing to 6.74m and 10.8m at levels 3 & 4, and 11.16m and 15.3m at levels 5 & 6. The roof terrace and plant will have varied setbacks of 14.11m, 16.5m and 18.25m from the south.



**Figure 9: Proposed finishes with increased permeability at the upper levels**

138. The urban design advice supports these setbacks, noting that the 'development has been suitably arranged in terms of its relationship with the rear laneway and common boundary to the south, as well as with rear yards of residential lots fronting Kerr Street' and that 'care has been taken to ensure well-modulated elevations are achieved through variation in building setbacks'.
139. The development partly abuts the western boundary, with a central section set back 4.5m from this interface above the ground floor courtyard. This design response, when combined with the various setbacks from the northern and southern boundaries, provides a good degree of articulation to the western wall. Whilst views to the upper-levels of the building will be available from the west, this will be behind the existing 6-storey building. The degree of visual interest provided to this elevation, along with the prevalence of high walls within the streetscape, result in an appropriate outcome. On this basis, the setbacks proposed for the development at all levels are supported.

*Public Realm and pedestrian spaces*

140. This principle requires the design of interfaces between buildings and public spaces to enhance the visual and social experience of the user. This outcome has been achieved at ground level, with a high degree of openings allowing good interaction between internal areas of the hotel and the adjacent street. Active uses are proposed at this level, with bi-fold doors and windows allowing direct interaction and casual surveillance between the hotel dining room/kitchen and the public realm. The bi-fold glazed doors at the corner of Rose and Fitzroy Streets have been set back 1.4m from both streets; this will allow adequate pedestrian movement within this prominent corner position.
141. As noted previously, rows of in-built, outdoor seating are proposed along both street frontages. This seating is set back 0.5m within the site. Whilst the activation of the street frontage is supported within the urban design comments, it was noted that the limited setback of the seats could result in interrupted pedestrian movement along both streets. An earlier recommendation has already addressed the issue of the seating, requiring this to be removed so as to internalise the use of the hotel.

The removal of the seating will subsequently address urban design concerns and ensure that the adjacent footpaths will be free from obstruction.

142. The permeability of the ground level facades is demonstrated in Figure 10.



**Figure 10: Rose Street elevation (above) and Fitzroy Street (below)**

143. As can be seen in Figure 10, an entrance gate to the bicycle parking area is provided at the western end of the Rose Street façade. Council’s Internal Urban Design Unit recommended that this door be visually permeable, so as to allow clear views to the bicycle storage area within the streetscape. This is a minor change that could be addressed by way of condition, if Council was in a position to issue a planning permit.
144. The drawings indicate that a degree of landscaping will be incorporated into the street frontages and within the roof terrace, however no details of what is proposed or how this will be maintained is provided. Whilst landscaping is not a characteristic of the immediate streetscape, a degree of vegetation as proposed is supported. This would soften the built form response within the streetscape and provide a good degree of visual interest to the building façade. If Council was in a position to support the development, a Landscape Plan could be required via condition.
145. Vehicle and loading access has been provided to the southern periphery of the development within Fitzroy Street (away from the corner of Rose and Fitzroy Streets). This ensures that these services do not unduly impose on the pedestrian experience. In addition, all back-of-house services have been consolidated within the south-west corner of the building. This layout is supported by the external urban design advice, which noted that the ‘*consolidation of car parking, services and loading facility at the south-eastern corner off Fitzroy Street is logical and supportable. This ‘back of house’ facility currently occupies less than 50% of the Fitzroy Street frontage which is positive.*’
146. Comments provided from Council’s Traffic Department indicate that a future ‘shared zone’ is proposed to be developed between the Rose Street Market and Brunswick Street, allowing a maximum vehicle speed of 10km/h, with this zone to incorporate a variety of road treatments and associated infrastructure to increase the amenity of the pedestrian experience within this area. Council’s Traffic Department is generally supportive of the proposed ground floor interface along Rose Street, as all proposed activities are within the site’s title boundaries and are unlikely to impact the proposed ‘shared zone’.



147. However the application seeks to remove two, 2P car parking spaces along the Rose Street frontage, along with an existing street tree directly adjacent to these spaces. This is outlined in Section 6.2.3 of the Traffic Assessment, which states that a short-stay parking zone in this space will be made available for the drop-off and pick-up of hotel guests. Whilst the provision of such a zone is supported, the proposed location is not. Council's Traffic Department have confirmed that the two car parking spaces adjacent to the Rose Street frontage are likely to be fully removed as part of the 'shared zone' works, with Council's Open Space Team not supportive of the removal of any street trees along the Rose Street frontage.
148. An alternative solution recommended by the Traffic Department is the relocation of the 'short-stay' zone to Fitzroy Street, where car parking is currently restricted to '1P' and 'Permit Only' along its eastern side. Traffic Engineers noted that 2 spaces within this area could be converted to a short-stay zone during the day, with permit restrictions applying after 7pm. Further details regarding these arrangements would have to be undertaken via a separate process involving Council's Traffic Engineers. As the proposed short-term spaces are not included on any of the floor plans, there is no requirement to amend the application, although the retention of the street tree on the ground floor plan should be shown. If Council had been in a position to support the application, a condition requiring the retention of the street tree would be required, and in addition to this, to ensure that the two existing street trees on Rose Street are protected, a Tree Management Plan would be required as a condition of the permit.
149. Additional comments provided by Council's Urban Design Unit also recommended the following improvements to the public realm;
- (a) All pavements in the public realm surrounding the site are to be reinstated as asphalt footpath with the following details:
    - (i) Rose Street footpath to be reinstated with dressed bluestone kerb and single pitcher bluestone channel;
    - (ii) Fitzroy Street footpath to be reinstated with dressed bluestone and two-pitcher bluestone channel; and
  - (b) All pavements within the boundaries of the subject site must use a different material to asphalt so as to distinguish public and private land.
150. These requirements are considered reasonable given the scale of the proposed development and the location of the subject site within a Heritage Overlay. However, the requirements cannot apply to the sections of the site required for the construction of vehicle crossovers. If Council had been in a position to support the development, these recommendations could be included by way of conditions.
151. Based on these changes, the proposed presentation of the hotel to the public realm is considered to be well designed, and will integrate positively with the future development of a shared pedestrian zone with Rose Street.

*Architectural quality*

152. Policy at clause 15.01-2S encourages high standards in architecture and urban design, whilst clause 22.02 encourages the design of new development to respect (amongst others) the pattern, spatial characteristics, fenestration, roof form, materials and heritage character of the surrounding historic streetscape, and to consider the architectural integrity and context of the heritage place.
153. As noted earlier, an increasing degree of modern, higher built form is visible within Rose Street, with these contemporary developments providing robust, symmetrical designs, straight lines and flat roof forms. The proposal responds well to these characteristics, with heritage advice noting that *'the generally blocky design will also be in-keeping with the immediate surrounds where there are generically similar buildings and with balconies, and blocky industrial buildings, or remnants thereof'*.

154. The development has incorporated weathered metal cladding as the dominant material. This is considered to be a contemporary material that respectfully references materials and finishes in the broader heritage precinct. The design has incorporated vertical-rectangular window formats that are reflective (but not in imitation of) the dominant pattern of fenestration in the heritage precinct. The proposed development also proposes a high solid-to-void ratio above ground floor which ensures that glazed elements do not unduly detract from the heritage precinct.
155. As outlined in paragraph 134(c) and demonstrated in Figure 9 of this report, the perforation of the cladding will increase in permeability as the development rises. As a result, the upper levels would appear recessive to the streetwall and allow for a more visually 'lightweight' finish. This also allows for a change in texture as the building height increases, and adds variety to the appearance of each elevation.
156. Whilst Council is largely supportive of the design and materials proposed, Council's Heritage Advisor raised concerns with the lack of detail provided for the colour and design of the metal cladding. Further details of the cladding, finishes and colours (including the degree of perforations proposed) were requested. Heritage advice recommended that other materials (in addition to or to replace the metal cladding) be considered; however Council officers do not agree with this. The proposed material and the varied textured responses provided result in a visually interesting design that responds to and respects the surrounding context. The introduction of additional materials would result in a 'busy' presentation, with the simple material proposed (when combined with the increasing transparency) allowing for the building to blend into the streetscape (Rose Street) which provides a variety of materials and finishes. However if Council had been in a position to support the application, a condition requesting further details of this cladding will be added.

*Site Coverage*

157. The majority of the land will be covered in built form, with the exception of the courtyard along the western boundary. The degree of built form coverage proposed is similar to that found on many sites within proximity to the land, with intensive development a characteristic of the surrounding neighbourhood. Further, the EAO affecting the site would likely require extensive capping to occur over the land due to potentially contaminated soil. These works would cover 100% of the site and reduce permeability accordingly. The degree of built form is considered acceptable based on the context of the land, which has been one of commercial/warehouse style buildings, and is not considered to result in a visually bulky or imposing building.

*Laneway abuttal*

158. The development will have a limited abuttal with a laneway along part of the site's southern boundary, for a length of 7.9m and height of 5m. Clause 22.07 of the Scheme aims to maintain the unique character of laneways and ensure that development abutting laneways respects the scale of surrounding built form. This laneway is restricted in length and characterised by single-storey industrial walls and rear fences. It is considered that the new wall, which replaces an existing concrete wall with similar dimensions, would not impact the laneway's character or deviate from the scale of existing built form along the lane.
159. The wall will be located at the end of the laneway, with only pedestrian access available within this interface. The pedestrian access will be further limited to hotel employees only, with all guest access provided from the main street frontages.

160. This laneway does not appear to be used for vehicle access to dwellings addressing Kerr Street, however even if vehicles do use this thoroughfare, the limited degree of pedestrian usage considered to be generated along the laneway is unlikely to result in unsafe conditions. The pedestrian doorway is setback from the laneway, providing a safe, transitional space. This outcome is considered acceptable.

*Light and Shade*

161. Overshadowing to the public realm will be limited, with shadows only affecting Fitzroy Street in the afternoon hours (after 1pm). Whilst these shadows will extend to the eastern footpath of Fitzroy Street after this time, the narrow width of this street would make it difficult for the subject site to be developed to any reasonable degree without causing shadows to this footpath. Shadows beyond the footpath will fall upon the roof of the adjacent café and within the car park on the eastern side of Fitzroy Street. On balance, the limited duration of overshadowing affecting the eastern side of the streetscape is an acceptable outcome and will not result in unreasonable impacts to the public realm.

On-Site Amenity

162. Whilst residential hotels are not expected to provide the same level of internal amenity as permanent accommodation (i.e. a dwelling), a level of amenity commensurate with the expectations of temporary accommodation still needs to be considered. This was explored through the recent VCAT decision of nearby site at Nos. 42-44 Oxford Street, 61-63 Cambridge Street and 16 Langridge Street, Langridge and Cambridge Funding Development Pty Ltd v Yarra CC [2018] VCAT 703, which at paragraph 126 stated that:
- (a) *We accept there is limited guidance in the scheme as to the benchmarks that would demonstrate that a hotel room provides acceptable amenity. Clearly daylight, ventilation, safety and communal spaces are necessary starting points.*
163. The development is considered to achieve a good level of internal amenity through the provision of a suite of ESD features, which include ventilation to all rooms and corridors, a good degree of daylight to all rooms and the provision of outdoor space in the form of the roof terrace (and balconies for a number of rooms). Employee and guest bicycle parking is provided, along with generous EoT facilities within the basement for employees.
164. With particular regard to the internal comfort of the hotel rooms, Council's ESD advice recommended external shading devices be provided for all east, west and north elevations. However, given the short-term use of the hotel rooms, external design changes are not considered necessary, with the use of internal blinds or shading a more reasonable response. The Sustainable Management Plan (SMP) submitted with the application (prepared by JBA Consulting Engineers) states that double-glazing and thermal insulation would be required for the hotel rooms to achieve an acceptable level of NatHERS compliance; the use of double-glazing for all rooms is therefore considered to assist in controlling the thermal comfort of each room to an appropriate degree. To ensure that double-glazing is provided for all habitable rooms, a notation to all relevant plans could have been added as a permit condition if Council was in a position to support the application.
165. With regards to the wider ESD features proposed for the development, rainwater will be captured for irrigation use, a 12kW array of solar panels will be located on the roof and sustainable products will be used throughout the design. The proposed ESD features achieve a BESS score of 51%, with a score of 50% signifying 'best practice'. To further increase the development's energy efficiency, Council's ESD advice recommended a number of additions and alterations to the design. These include the following;
- (a) Infrastructure for electric vehicle charging provided within the basement;
- (b) Rainwater to be used for toilet flushing as well as irrigation;
- (c) Separate hard waste and recycling streams throughout;

- (d) A recycling target of 70% for building materials through construction; and
- (e) Obtaining a commitment to a JV3 modelling report which demonstrates a 10% improvement over NCC 2016 standards.

166. If Council was in a position to support the application, these requirements could have been facilitated via permit conditions.
167. To further improve the internal amenity of the development, the external urban design advice recommended an increase in the size of the proposed courtyard at ground level, thereby resulting in the removal of hotel rooms at each level. The justification for this recommendation was that it would provide amenable views to the light well from internal corridors and increase natural daylight within these areas. This change is not considered necessary, given that internal corridors are transient spaces that do not warrant the same level of amenity as hotel rooms. Further, the ground floor hotel rooms will be provided with an appropriate level of daylight through the extensive proportion of glazing proposed, with each hotel room provided with an external window to allow direct daylight into these spaces. For these reasons, the recommendation for the light well extension is not considered necessary for internal amenity.

*Room Layout*

168. The proposed development seeks a mix of hotel room typologies, including five room ‘types’ which are described in the following table:

<b>Room Type (no. proposed)</b>	<b>Dimensions</b>	<b>Balcony</b>	<b>Windows</b>	<b>Accessible</b>
Type A (60)	6.1m x 2.94m (18sqm)	No	1 operable	No
Type B (47)	6.02m x 3.05m (18.3sqm)	No	1 operable	No
Type C (10)	9.4m x 3.05m (28.6sqm)	Yes	1 operable	No
Type D (4)	7.95m x 4.2m (33sqm)	No	2 operable	Yes
Type E (6)	6.02m x 4.2m (25sqm)	No	3 operable	Yes

169. As can be seen from the table, the majority of hotel rooms are provided with approximately 18sqm of floor area (i.e. room types A and B which make up 84% of rooms). Whilst small in size, room types A and B are considered to provide an appropriate internal amenity for guests given the following:
- (a) The typical floor plans show that circulation through the rooms will be possible with the placement of a king size bed (approximate dimensions 1.8m x 2m) in the room;
  - (b) The development will provide additional areas for recreation including a roof terrace as well as dining and lobby areas at ground floor;
  - (c) High floor-to-ceiling heights of 2.9m will be provided to all rooms (for the section of the room associated with the bed) which will create a sense of spaciousness for guests;
  - (d) Areas have been designated for providing storage to all rooms;
  - (e) Full height, operable windows will be provided to all rooms, thereby allowing access to natural daylight and ventilation;
  - (f) The location of the subject site within proximity to the Brunswick Street MAC will allow visitors easy access to a wide variety of retail, hospitality and art-based offerings, which provide additional amenity; and
  - (g) A total of 10 rooms (approximately 10%) will be universally accessible.
170. Based on these factors, the internal layout provided to each room is considered acceptable for a residential hotel.

*Noise*

171. The application included an acoustic report which outlines potential external noise impacts that may unreasonably affect the amenity of the hotel rooms. This report (prepared by Marshall Day Acoustics) identifies external noise sources such as traffic, hotel deliveries and waste collection, mechanical equipment and patron noise from surrounding venues (including the Young Bloods Diner at the Rose Street Market). This report recommends the adoption of specific glazing and façade systems to ensure that external noise intrusion to the hotel rooms is adequately controlled.
172. The acoustic report was externally reviewed for Council by SLR Consultants (SLR). This review concluded that the development is likely to be minimally impacted by traffic noise and this aspect is generally appropriately addressed via the proposed measures. This also includes deliveries to and waste collection from the hotel.
173. Whilst SLR generally agreed with the noise sources identified in the report, it noted that noise testing was undertaken when the Young Bloods Diner was not operational, with potential noise impacts from this space based on '*theoretical prediction*' and not on actual operational noise levels. SLR also highlighted the site's proximity to Brunswick Street, and in particular, the location of a live-music venue approximately 80m to the east (Glamarama Bar). Whilst the distance of the venue does not trigger the requirement for an assessment against clause 53.06 (Live music and entertainment noise), SLR noted that an amendment to the Planning Permit for this venue (PL04/0185) was issued on 4 February 2019, with this amendment authorising the construction of a rooftop terrace. This terrace is authorised to operate until 1am, Friday and Saturday, and 10pm all other days, with a maximum of 150 patrons allowed in this space.
174. Although a distance of 80m is provided between the rooftop terrace and the subject site, SLR noted that the proposed development is taller than most buildings in the area and could be directly exposed to noise emissions from this venue. Based on this, further testing and consideration of this bar was recommended.
175. In summary, the following recommendations were provided by SLR to further ensure that the internal amenity of the hotel rooms were appropriately managed;
- (a) Further testing during actual operations of the Young Bloods Diner;
  - (b) A formal assessment of music levels from the Young Bloods Diner should be undertaken and considered, and the building façade design should ensure that day/evening internal SEPP N-2 music noise limits are met within the development;
  - (c) A formal assessment of patron and music levels from the Glamarama Bar should be undertaken and considered, and the building façade design should ensure that day/evening internal SEPP N-2 music noise limits are met within the development;
  - (d) The acoustic report should be amended to assess the operation of the rooftop exhaust fan (or any other mechanical plant) associated with the Young Bloods Diner to formal SEPP N-1 targets at the proposed development. If an excess is determined, this needs to be addressed and should be the responsibility of the developer to do so given the encroachment would represent the nearest most affected residential use; and
  - (e) The report should provide a clear recommendation for mechanical plant and equipment associated with the development, including the carpark entry door, to be reviewed by an acoustical consultant during the detailed design stage to ensure both SEPP N-1 and sleep disturbance targets are met. The carpark entry door should also include a specification to ensure it achieves both SEPP N-1 and sleep disturbance impacts to existing residents.
176. If Council was in a position to, these amendments to the Acoustic Report and any subsequent amendments to the building design could be required via conditions.

#### Off-Site Amenity

177. Clause 15.01-2S of the Scheme aims to provide building design that minimises the detrimental impact of development on neighbouring properties, the public realm and the natural environment, with potential impacts relating to overshadowing of SPOS, loss of daylight to windows, visual bulk and overlooking of sensitive areas. The relevant policy framework for amenity considerations is contained within clause 22.05 (Interface uses policy) of the Scheme, with potential noise and emission impacts already addressed within this report.
178. The adjacent sites to the east and west contain commercial uses, with the southern and northern sites being the most sensitive interfaces with regards to potential off-site amenity impacts. It is considered that the development has been appropriately designed to minimise amenity impacts to these nearby sensitive uses, as discussed below.

#### *Overlooking*

179. The closest habitable room windows and SPOS within proximity to the site are associated with the triple-storey dwellings on the northern side of Rose Street, and the row of dwellings addressing Kerr Street to the south. The development has been appropriately designed to limit impacts to these properties. All of the windows and areas of SPOS associated with these dwellings are more than 9m from any windows associated with the proposed hotel. Although not strictly applicable in this instance, the proposal would thus comply with the overlooking objective of Clause 55 (Standard B22), which specifies that new development should be designed to avoid direct views into habitable room windows and SPOS of dwellings within a radius of 9m.
180. The 3m setback of the upper levels of the hotel from Rose Street will further increase this distance from the triple-storey dwellings to the north, with all south-facing windows and balconies associated with these dwellings addressing Rose Street and thereby already interfacing with the public realm. Given the short-term nature of the proposed hotel rooms and the distance provided between these interfaces, this outcome is acceptable.
181. In addition, the only balconies provided within the development are east-facing; thereby addressing commercial uses along Fitzroy Street. This ensures no unreasonable overlooking to adjacent dwellings will occur from these external spaces, whilst affording a good degree of passive surveillance to the public realm.

#### *Daylight to windows*

182. As noted previously, the closest habitable room windows addressing the subject site are located within the dwellings on the northern side of Rose Street. A distance of at least 10m will separate the new built form from these windows (given the width of Rose Street). As these windows are south-facing, no direct solar access will be impacted by the proposed development, with the width of Rose Street ensuring that ample daylight will continue to access these dwellings. This outcome is acceptable.

#### *Overshadowing*

183. Although not strictly applicable in this instance, Standard B21 of Clause 55 notes;
- (a) *Where sunlight to the secluded private open space of an existing dwelling is reduced, at least 75 per cent, or 40 square metres with minimum dimension of 3 metres, whichever is the lesser area, of the secluded private open space should receive a minimum of five hours of sunlight between 9 am and 3 pm on 22 September; and*
  - (b) *If existing sunlight to the secluded private open space of an existing dwelling is less than the requirements of this standard, the amount of sunlight should not be further reduced.*

184. In this instance, given the generous setbacks provided from the southern interface of the site, along with the width of the laneway separating the site from residential lots to the south, there will be no additional overshadowing of any areas of SPOS of Nos. 51 – 67 Kerr Street and No. 403 Fitzroy Street at the equinox.
185. The additional areas of overshadowing generated by the development between 9am to 12pm will fall either upon the roofs of adjacent commercial buildings or the laneway to the south-west, with a minor section of additional shadows cast within an external walkway associated with the residential development at No. 46-52 Rose Street. As none of these areas are associated with SPOS, this outcome is acceptable.
186. From approximately 11am onwards, shadows will fall upon the roof and a skylight associated with the artist studio directly to the south of the site. Whilst these shadows will restrict a degree of daylight to the studio (via the skylight), again this is not associated with a sensitive residential use, and alternative daylight sources are available to this building.
187. From 1pm onwards, shadows will fall upon the western footpath of Fitzroy Street, and will extend across the road reserve to cover the eastern footpath by 2pm. As outlined earlier within this report, the narrow width of this street would make it difficult for the subject site to be developed to any reasonable degree without causing shadows to this footpath. Shadows beyond the footpath will fall upon the roof of the adjacent café and within the car park on the eastern side of Fitzroy Street. On balance, the limited duration of overshadowing affecting the eastern side of the streetscape is an acceptable outcome and will not result in unreasonable impacts to the public realm.

#### *Visual Bulk*

188. A variety of measures, including setbacks and articulation, have been incorporated into the building to assist in limiting visual impacts from adjacent sites. Whilst direct views to the proposal will be available from the dwellings to the north; the separation provided by Rose Street and the upper levels setbacks from Rose Street will reduce the visual prominence of the new built form. Further, the 4.5m setback of levels 3-6 from the western boundary will provide a generous break between the sites, and ensure that this space will remain open in the future, even if the site to the west is developed to a similar height.
189. Generous setbacks have been provided from the site's southern boundary. These setbacks, in conjunction with the up to 3.4m wide laneway along the southern interface, will reduce visual impacts from the SPOS to an appropriate degree.

#### *Wind Impacts*

190. A Wind Assessment was not undertaken as part of the proposal. This is acceptable, as the proposed height of the development is only marginally higher than existing six-storey buildings along Rose Street. Wind impacts are of more concern when a proposed development is significantly higher than surrounding built form.
191. Further, the canopy above the hotel entrance will protect pedestrians and hotel guests from potential 'downwashing' of wind that could otherwise occur off the building façade, with the setbacks above the triple-storey streetwall also providing a degree of articulation that will combat wind impacts by removing sheer walls to both facades. Landscaping and balustrades surrounding the roof terrace will also alleviate unreasonable wind impacts within this space.

#### *Equitable development*

192. To ensure the 'fair, orderly, economic and sustainable development of land' in accordance with the objective of the Act, matters of equitable development must be considered. In this instance, the site is separated from land to the east and north by roads, with a limited abuttal to the single-storey building to the south. The most likely land to be developed in any significant manner in the future that has direct abuttal with the subject site is associated with the Rose Street Market to the west.
193. The design has responded to this outcome by providing a 4.5m setback (internal courtyard) from the western boundary. This setback ensures that future development scenarios to the west will not be unduly impacted, with this setback maintaining daylight to the west-facing hotel rooms even if the site to the west is developed. As noted above, this setback will also ensure that a significant break in built form will be maintained between upper levels of development within the streetscape if the western site is developed in the future to a similar scale.

Car parking, vehicle access, traffic, loading & waste

*Provision of Car parking*

194. The proposed development would provide 10 on-site car parking spaces within the basement level. As previously outlined, there is no prescribed car parking rate provided at Table 1 to Clause 52.06 associated with the use of the site as a residential hotel, and as such, car parking must be provided to the satisfaction of the Responsible Authority.
195. Council's Engineering Services Unit outlined that the proposed residential hotel can be compared to the NSW Roads and Maritime Services' *Guide to Traffic Generating Developments*, which provides a car parking rate of 1 space per four bedrooms for residential hotels (0.25 spaces per one-bedroom lodging room). Applying this rate would result in a car parking demand of 32 car parking spaces for this application.
196. In addition, the Transport Impact Assessment provided with the application (prepared by GTA Consultants) included reference to a number of similarly sized approved hotel developments within inner-city Melbourne. These include hotels in South Yarra, South Melbourne, West Melbourne and the CBD. These hotels have car parking rates in the order of 0 to 0.3 spaces per room.
197. The proposed provision of 10 on-site spaces is considered appropriate given the following considerations:
- (a) On-street car parking in the surrounding area consists largely of 1 hour, 2 hour and permit restricted spaces. The lack of long-stay car parking in the surrounding area will significantly reduce car parking demand. Further, the permit-restricted spaces in the area will continue to protect car parking availability for existing, permit-holding residents.
  - (b) The nature of the use generates transient visitors who would likely be attracted to the inner-city location and the retail, hospitality and art-based offerings within Fitzroy, Collingwood and Carlton which are all readily accessible on foot. Given the site's context, it is anticipated that visitors would be less inclined to arrive via private vehicle. Further, it is anticipated that the majority of visitors would stay for short periods of time and be from outside the area, which would make the use of taxis or private driver services more likely (for visitors who choose not to arrive via public transport).
  - (c) The excellent access to public transport, including tram services on both Nicholson Street and Brunswick Street and bus services on Johnston Street and Alexandra Parade;
  - (d) The provision of bicycle infrastructure in the surrounding area, including bicycle lanes incorporated into many streets. Further, the proposed bicycle parking facilities proposed will encourage staff associated with the use to arrive via bicycle.



- (e) The variation of car parking demand over time – the peak parking demand would be during the check in period for hotel guests. As hotel guests would arrive at different times for check-in, it is considered that the peak parking demand would be spread out across the afternoon and evening period (i.e. typical check in hours for hotels).

*Vehicle Access*

- 198. The application seeks to provide access to the basement car parking area via a single width access door and ramp. Whilst the Traffic Department recommended the installation of a warning system for the single-access ramp, Council's Engineering Services Unit did not raise issue with vehicle safety. It is noted that convex mirrors are proposed at the top and bottom of the ramp; these features, along with the limited number of on-site car parks, is considered to provide an acceptable outcome with regards to vehicle access and safety outcomes.
- 199. In general, Council Engineers were largely supportive of the proposed access arrangements, with minor changes and additional details required as follows;
  - (a) The minimum headroom clearance measured perpendicular from the ramp to the underside of the ground floor slab to be dimensioned,
  - (b) Clarification of how the tandem parking sets are to be managed with the operation of the proposed use;
  - (c) A bollard to be inserted in the shared area associated with the accessible parking space, and
  - (d) Ground clearance to be resubmitted to satisfy Council engineering requirements.
- 200. With regard to items (a), (b) and (c) above, these can be addressed by way of conditions, if Council was supportive of the application. With regard to item (d), this will be addressed through the subsequent requirement for a separate vehicle crossing permit from Council.
- 201. A number of additional recommendations were provided by Council Engineers; these relate to various infrastructure requirements immediately surrounding the site that should be undertaken to Council's satisfaction and at the Permit Holders cost, as follows;
  - (a) The kerb and channel along the property's Rose Street and Fitzroy Street frontages must be reconstructed;
  - (b) The footpath along the property's Rose Street and Fitzroy Street frontages must be reconstructed. The footpath must have a cross-fall of 1 in 33 or unless otherwise specified by Council;
  - (c) All redundant vehicle crossings are to be demolished and reinstated with paving, kerb and channel;
  - (d) The road profile of Fitzroy Street along the property's frontage must be profiled (grinded to a depth of 50 mm) and re-sheeted;
  - (e) New pram crossings are to be constructed at the south-west and southeast radials of the Rose Street/Fitzroy Street intersection;
  - (f) The existing grated side entry pits at the south west corner of the Rose Street/Fitzroy Street intersection must be reconstructed;
  - (g) The existing One Way sign in Fitzroy Street, just south of Rose Street, must be reinstated to the satisfaction of Council's Traffic unit;
  - (h) 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;
  - (i) A Construction Management Plan must be prepared and submitted to Council. The Plan must be approved by Council prior to the commencement of works. A detailed dilapidation report should detail and document the existing and post construction conditions of surrounding road infrastructure and adjoining private properties;
  - (j) Any services poles, structures or pits that interfere with the proposal must be adjusted, removed or relocated at the owner's expense after seeking approval from the relevant authority;

- (k) 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;
- (l) Only roof runoff, surface water and clean groundwater seepage from above the water table can be discharged into Council drains; Basements that extend into the groundwater table must be waterproofed/tanked;
- (m) 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;
- (n) Any on-street parking reinstated as a result of development works must be approved by Council's Parking Management unit; and
- (o) The removal of any kerbside parking sensors and any reinstatement of parking sensors will require the Permit Holder to pay Council the cost of each parking sensor taken out from the kerb/footpath/roadway.

202. If Council was in a position to support the application, a number of these would have been captured under general infrastructure, drainage and construction management conditions and/or notes that are usually placed on a permit of this type.

#### *Traffic*

203. The Traffic report provided a break-down of potential traffic generated by the site, with an anticipated 'modal hierarchy' based on the context of the use, the location of the site and similar case studies within inner-city Melbourne. This indicated that public transport and walking would be the most significant transport modes (40% and 35% respectively), with pick-up/drop off constituting 15% and cycling and private vehicles (as the driver) both 5%.
204. Given the number of hotel rooms proposed, this results in an expectation that approximately 70 sustainable trips and 20 vehicle trips could occur during the busiest hour. Given the limited number of vehicle trips, this outcome is considered acceptable and would not unduly impact traffic conditions in the surrounding street network.

#### *Loading and unloading/Waste*

205. A loading bay is proposed within the eastern façade, with dimensions of 3.5m x 6.5m and a height clearance of 3.5m. Council Engineers confirmed that the dimensions of the loading facility could comfortably accommodate a 6.4m long Small Rigid Vehicle, with swept path diagrams also confirming that a vehicle of this size could adequately access the space via Fitzroy Street. The layout of the loading facility will allow delivery vehicles to reverse into the loading bay from Fitzroy Street and exit in a forward direction. This outcome is acceptable.
206. Waste will be collected internally on-site, within the loading bay. The Waste Management Plan (WMP) specifies that a private contractor will collect waste from within the development. Hard waste and recyclables will be separated. The WMP also specifies that food organics will be sorted as a separate stream. A direct route is provided between the waste refuse room and loading bay. The storage and maintenance of the waste facilities, along with the collection of waste from the site, were all considered satisfactory by Council's Civil Works Unit. To ensure that waste is adequately managed, if a planning permit was issued, the WMP would be endorsed accordingly.

#### Bicycle provision

207. As outlined in the table at paragraph 42 of this report, the development meets the statutory requirements outlined in clause 52.34 with regards to the number of on-site employee and visitor bicycle parking spaces, along with the requirement for adequate EoT facilities for employees.

Council's Strategic Transport Officer confirmed that the spaces all meet the Australian Standard (AS2890.3) for clearance and accessways, with the employee spaces contained within a secure room, directly adjacent to shower and change room facilities.

208. Whilst it was recommended that the visitor bicycle spaces be provided as 'horizontal, at-grade' spaces instead of 'hanging spaces'; it was noted that this could be difficult to achieve due to the site constraints. The advice also highlighted that the presence of nearby on-street visitor bicycle spaces provided this option within proximity to the site.
209. One concern raised in the advice was the number of doors located along the internal path to the employee bicycle spaces, with the closest access point to the basement parking from Fitzroy Street, and a total of 6 doors located between this ground floor doorway and the basement bicycle parking area. In response, the applicant provided sketch plans which demonstrate how the number of doors could be managed. These plans result in the potential removal of one door, with 3 of the doors to be altered to an automatic design. This would allow these doors to remain open, and only close automatically in the event of a fire. This outcome would facilitate access to the bicycle spaces and is supported by Council. If a planning permit was issued, the changes as outlined in these sketch plans could be required via permit conditions.

#### Objector concerns

210. *Lack of on-site car parking (including drop-off/pick-up provisions);*  
(a) The lack of on-site car parking has been discussed within the car parking assessment section at paragraphs 194 to 197 of this report, with the potential provision of a drop-off/pick-up zone discussed in paragraphs 146 to 148.
211. *Insufficient on-site loading provisions;*  
(a) *The on-site loading arrangements have been discussed in paragraphs 205 and 206 of this report.*
212. *Increased traffic and pedestrian congestion, including impacts on the proposed pedestrian-friendly Rose Street precinct;*  
(a) Traffic impacts have been discussed in paragraphs 203 & 204 of this report. Given the current high pedestrian levels along Rose Street, the addition of a hotel in this location is not expected to unduly impact upon existing conditions. Further, as discussed, the hotel will not impact upon the future development of a 'shared zone' along the Rose Street frontage subject to conditions.
213. *Excessive height/overdevelopment of the site/lack of setbacks;*  
(a) These elements have been discussed in paragraphs 126 to 139 of this report.
214. *Lack of integration with the neighbourhood character and heritage precinct;*  
(a) These elements have been discussed in paragraphs 120 to 124 of this report.
215. *Hotel use within a residential area is inappropriate;*  
(a) The use of the land as a hotel within this location has been discussed in paragraphs 106 to 118 of this report.
216. *Removal of one street tree is inappropriate;*  
(a) As outlined in paragraph 148 of this report, both of the street trees on the Rose Street footpath are required to be retained as per permit conditions. Further, a Tree Management Plan to protect these trees has been required via an additional condition.
217. *Removal of existing mural is inappropriate;*  
(a) There are no paint controls in the precinct to protect this mural. Therefore this is not a planning consideration.

218. *Potential off-site amenity impacts (loss of daylight, overlooking, noise, waste collection, drainage, equitable development etc.);*
- (a) Off-site amenity impacts have been discussed within paragraphs 177 to 193 of this report.
219. *Impact upon property values in the neighbourhood;*
- (a) This is not a planning consideration and cannot be addressed as part of this assessment.
220. *Loss of views;*
- (a) This is not a planning consideration and cannot be addressed as part of this assessment.
221. *Impacts during construction.*
- (a) Whilst this is not primarily a planning issue, it is noted that a Construction Management Plan will be required via any planning permit issued.

### **Conclusion**

222. As outlined throughout this assessment, there is good policy support at both state and local levels for urban consolidation, coupled with the site strategic location including proximity to the Smith Street Major Activity Centre and excellent public transport accessibility; the site lends itself as an ideal development site for higher density.

### **RECOMMENDATION**

That having considered all objections and relevant planning policies, the Committee resolves to advise the Victorian Civil and Administrative Tribunal that had it been in the position to, it would have issued a Notice of Decision to Grant a Planning Permit PLN18/0990 for full demolition and use and development of the land for a residential hotel at 419 Fitzroy Street, Fitzroy, subject to the following conditions:

1. Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of this permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the decision plans prepared by Woods Bagot (SK2201 (Revision C), SK2202 – SK2210 (Revision B), SK3200 – SK3203 (Revision B), SK3210 – 3211 (Revision B) SK4200 – 4201 (Revision B) but modified to show:
  - (a) The removal of all external seating within the Rose Street and Fitzroy Street frontages at ground level;
  - (b) The alterations to internal access and doorways as outlined in the Sketch Plans submitted to Council on 18 July 2019;
  - (c) The bicycle entrance door on the Rose Street façade to be visually permeable;
  - (d) Both street trees adjacent to the Rose Street frontage to be retained;
  - (e) A notation confirming that double-glazing will be provided for all hotel room windows;
  - (f) Additional details of the proposed wall cladding material, outlining the various degree of perforation for each type of finish;
  - (g) The type of paving within the site's title boundaries to be of a different material to the footpath asphalt;
  - (h) Engineering requirements as follows;
    - (i) Dimension of the minimum headroom clearance measured perpendicular from the ramp to the underside of the ground floor slab;
    - (ii) Clarification of how the tandem parking sets are to be managed;

- (iii) A bollard inserted in the shared area associated with the accessible parking space;
- (i) Any changes as a result of the amended Sustainable Management Plan required at Condition 4;
- (j) Any changes as a result of the amended Acoustic Report required at Condition 6; and
- (k) Any changes required by the Landscape Management Plan at Condition 9.

### **Hotel Management Plan**

2. Before the use commences, a Hotel Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Hotel Management Plan will be endorsed and will form part of this permit. The Hotel Management Plan must include the following conditions;
  - (a) The roof terrace to be accessible only to hotel guests during the hours of 7am to 10pm each day;
  - (b) The ground floor dining room to be open only during the hours of 7am to 10pm each day.
3. The provisions, recommendations and requirements of the endorsed Hotel Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

### **Sustainability Management Plan**

4. 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 JBA Consulting Engineers (Revision 4, dated 18 December 2018) but modified to include;
  - (a) Infrastructure for electric vehicle charging provided within the basement;
  - (b) Rainwater to be used for toilet flushing as well as irrigation;
  - (c) Separate hard waste and recycling streams throughout;
  - (d) A recycling target of 70% for building materials through construction; and
  - (e) Obtaining a commitment to a JV3 modelling report which demonstrates a 10% improvement over NCC 2016 standards.
5. The provisions, recommendations and requirements of the endorsed Sustainable Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

### **Acoustic Report**

6. Before the development 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 Marshall Day Acoustics (dated 14 December 2018), but modified to include;
  - (a) Testing of the Young Bloods Diner during operational hours, including a formal assessment of music levels from this venue, with the building façade design amended if necessary to ensure that day/evening internal SEPP N-2 music noise limits are met within the development;

- (b) A formal assessment of patron and music levels from the Glamarama Bar, with the building façade design amended if necessary to ensure that day/evening internal SEPP N-2 music noise limits are met within the development;
  - (c) As assessment of the operation of the rooftop exhaust fan (or any other mechanical plant) associated with the Young Bloods Diner to formal SEPP N-1 targets at the proposed development; and
  - (d) A clear recommendation for mechanical plant and equipment associated with the development, including the carpark entry door, to be reviewed by an acoustical consultant during the detailed design stage to ensure both SEPP N-1 and sleep disturbance targets are met. The carpark entry door should also include a specification to ensure it achieves both SEPP N-1 and sleep disturbance impacts to existing residents.
7. The provisions, recommendations and requirements of the endorsed Acoustic Report must be implemented and complied with to the satisfaction of the Responsible Authority.
8. Within 3 months of the commencement of the use, an Acoustic Report to the satisfaction of the Responsible Authority must be prepared by a suitably qualified acoustic engineer and must be submitted to and approved by the Responsible Authority. When approved, the Acoustic Report will be endorsed and will form part of this permit. The acoustic report must assess the compliance of the use and, where necessary, make recommendations to limit the noise impacts in accordance with the State Environment Protection Policy (Control of noise from industry, commerce and trade) No. N-1 (SEPP N-1), State Environment Protection Policy (Control of music noise from public premises) No. N-2 (SEPP N-2) or any other requirement to the satisfaction of the Responsible Authority.

### **Landscape Management Plan**

9. 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; and
  - (c) provide a specification of works to be undertaken prior to planting, to the satisfaction of the Responsible Authority.
10. Before the building occupied, or by such later date as approved in writing by the Responsible Authority, the landscaping works shown on the endorsed Landscape Plan must be carried out and completed to the satisfaction of the Responsible Authority. The landscaping shown on the endorsed Landscape Plan must be maintained by:
- (a) implementing and complying with the provisions, recommendations and requirements of the endorsed Landscape Plan;
  - (b) not using the areas set aside on the endorsed Landscape Plan for landscaping for any other purpose; and
  - (c) replacing any dead, diseased, dying or damaged plants, to the satisfaction of the Responsible Authority.

### **Tree Management Plan**

11. Before the development commences, a Tree Management Plan to the satisfaction of the Responsible Authority must be prepared by a suitably qualified Arborist and must be submitted to and approved by the Responsible Authority.

When approved the Tree Management Plan will be endorsed and will form part of this permit. The Tree Management Plan must make recommendations for:

- (a) the protection of the two street trees adjacent to the Rose Street frontage;
    - (i) pre-construction;
    - (ii) during construction; and
    - (iii) post construction
  - (b) the provision of any barriers;
  - (c) any pruning necessary; and
  - (d) watering and maintenance regimes, to the satisfaction of the Responsible Authority.
12. The provisions, recommendations and requirements of the endorsed Tree Management Plan must be complied with and implemented to the satisfaction of the Responsible Authority.

### **Waste Management Plan**

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.
14. The collection of waste from the site must be by private collection, unless with the prior written consent of the Responsible Authority.

### **Infrastructure**

15. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, any new vehicle crossing must be constructed:
- (a) in accordance with any requirements or conditions imposed by Council;
  - (b) at the permit holder's cost; and
  - (c) to the satisfaction of the Responsible Authority.
16. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, the redundant vehicular crossing within the Fitzroy Street frontage must be demolished and reinstated with dressed bluestone and two-pitcher bluestone channel;
- (a) at the permit holder's cost; and
  - (b) to the satisfaction of the Responsible Authority.
17. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, any damage to Council infrastructure resulting from the development must be reinstated, including the footpath along the property's Rose Street and Fitzroy Street frontages, with these footpaths to be reinstated with dressed bluestone kerb and single pitcher bluestone channel;
- (a) at the permit holder's cost; and
  - (b) to the satisfaction of the Responsible Authority.
18. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, new pram crossings are to be constructed at the south-west and south-east radials of the Rose Street/Fitzroy Street intersection;
- (a) at the permit holder's cost; and
  - (b) to the satisfaction of the Responsible Authority.

19. Except with the prior written consent of the Responsible Authority, Council assets must not be altered in any way, with the existing 'One Way' sign in Fitzroy Street, just south of Rose Street, to be reinstated;
  - (a) at the permit holder's cost; and
  - (b) to the satisfaction of the Responsible Authority.

### **General**

20. The development must comply at all times with the State Environment Protection Policy — Control of Noise from Commerce, Industry and Trade (SEPP N-1).
21. The development must comply at all times with the State Environment Protection Policy — Control of Music Noise from Public Premises (SEPP N-2)
22. The amenity of the area must not be detrimentally affected by the use or development, including through:
  - (a) the transport of materials, goods or commodities to or from land;
  - (b) the appearance of any buildings, works or materials;
  - (c) the emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or
  - (d) the presence of vermin.  
to the satisfaction of the Responsible Authority.
23. Delivery and collection of goods to and from the land may only occur between 7am and 10pm Monday to Saturday, or after 9am on a Sunday or public holiday except for those allowed under any relevant local law.
24. The loading and unloading of vehicles and the delivery of goods to and from the land must be conducted entirely within the land 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, external lighting capable of illuminating access to the pedestrian and vehicular entrances must be provided on the subject site. Lighting must be:
  - (a) located;
  - (b) directed;
  - (c) shielded; and
  - (d) of limited intensity,  
to the satisfaction of the Responsible Authority.
26. All buildings and works must be maintained in good order and appearance to the satisfaction of the Responsible Authority.
27. 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.
28. 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.

### **Construction Management Plan**

29. 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.
30. The provisions, recommendations and requirements of the endorsed construction management plan must be implemented and complied with to the satisfaction of the Responsible Authority.
31. 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.

### **Permit Expiry**

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

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

**Notes:**

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

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

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.

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

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

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

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.

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.

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

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

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

All future employees working within the development approved under this permit will not be permitted to obtain employee 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.

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.

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

**Attachments**

- 1** PLN18/0990 - 419 Fitzroy Street, Fitzroy - Site Plan
- 2** PLN18/0990 - 419 Fitzroy Street Fitzroy - S52 Advertising Plans
- 3** PLN18/0990 - 419 Fitzroy Street Sketch Plans Bicycle access
- 4** PLN18/0990 - 419 Fitzroy Street Fitzroy - Engineering comments
- 5** PLN18/0990 - 419 Fitzroy Street Fitzroy - Acoustic Review SLR
- 6** PLN18/0990 - 419 Fitzroy Street, Fitzroy - UD comments
- 7** PLN18/0990 - 419 Fitzroy Street Fitzroy - ESD Referral Comments
- 8** PLN18/0990 - 419 Fitzroy Street, Fitzroy - ESD additional advice
- 9** PLN18/0990 - 419 Fitzroy Street Fitzroy WMP comments
- 10** PLN18/0990 - 419 Fitzroy Street Fitzroy - TFV Referral Response
- 11** PLN18/0990 - 419 Fitzroy Street, Fitzroy - Heritage referral comments
- 12** PLN18/0990 - 419 Fitzroy Street, Fitzroy - Strategic Transport referral comments
- 13** PLN18/0990 - 419 Fitzroy Street, Fitzroy - Traffic referral comments on shared zone

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- 1.2 PLN18/0644 - 4A/1 Bik Lane, Fitzroy North - Development of the land for the construction of three additional storeys to an existing two storey building (5 storeys in total), containing 4 dwellings and a reduction in the car parking requirement**
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## **Executive Summary**

### **Purpose**

1. This report provides an assessment of the development of the site at No. 4A/1 Bik Lane, Fitzroy North for the construction of three additional storeys to an existing two-storey dwelling (equating to a 5 storey building in total), and increasing the number of dwellings on the site from 1 to 4 and a reduction in the associated car parking requirement of the Scheme.

### **Key Planning Considerations**

2. Key planning considerations include:
  - (a) Built form (Clauses 15.01, 21.05 and 22.10);
  - (b) Off-site amenity (Clauses 15.01, 22.05 and 58);
  - (c) Internal amenity (Clause 58); and
  - (d) Car Parking (Clause 18.02, 21.06, 52.06) of the Scheme.

### **Key Issues**

3. The key issues for Council in considering the proposal relate to:
  - (a) Strategic context;
  - (b) Built form and design;
  - (c) Clause 58;
  - (d) Off-site amenity impacts;
  - (e) Car parking; and
  - (f) Objector concerns.

### **Submissions Received**

4. The application was advertised and 16 objections were received to the application. The issues/concerns raised are summarised as the following:
  - (a) Neighbourhood character (height, scale, bulk, design details).
  - (b) Overdevelopment of the site.
  - (c) Amenity impacts (overlooking, overshadowing, loss of light).
  - (d) Traffic congestion and car parking.
  - (e) Extent of demolition.
  - (f) Impact on proposed solar panels on adjoining properties.
  - (g) Insufficient waste capacity.
  - (h) Loss of views.
  - (i) Noise (during construction and from residents).
  - (j) Loss of value to adjoining lots.

5. A consultation meeting was held on 9 April 2018. It was attended by seven of the 16 objectors, the applicant and Council Officers. All issues and concerns raised in the letters of objection were discussed constructively between all parties in attendance however there were no resolutions. Action points from the consultation meeting were that the applicant would submit an amended Waste Management Plan (WMP) and revised shadow diagrams to Council to assist Officers with the assessment of the proposal.

**Conclusion**

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

**CONTACT OFFICER:** Gary O'Reilly  
**TITLE:** Senior Statutory Planner  
**TEL:** 9205 5040

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**1.2 PLN18/0644 - 4A/1 Bik Lane, Fitzroy North - Development of the land for the construction of three additional storeys to an existing two storey building (5 storeys in total), containing 4 dwellings and a reduction in the car parking requirement**

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Trim Record Number: D19/75883

Responsible Officer: Senior Co-ordinator Statutory Planning

**Proposal:** Development the site for the construction of three additional storeys to an existing two storey-dwelling (equating to a 5 storey building in total), and increasing the number of dwellings on the site from 1 to 4 and a reduction in the associated car parking requirement of the Scheme.

**Existing use:** Dwelling

**Applicant:** John Brigg

**Zoning / Overlay:** Mixed Use Zone, Environmental Audit Overlay

**Date of Application:** 27 August 2018

**Application Number:** PLN18/0644

### Planning History

1. Planning Permit SP05/0010 was approved on the 30 June 2005 for the *subdivision of the land into seven lots and common property (to the rear of 650 Nicholson Street)*. The subject site is known as Unit 4A/1 Bik Lane and is one of the seven lots created within the subdivision.
2. Planning Permit SP05/0099 was approved on the 12 January 2006 for the *creation of party wall easements* at 650 & 672 Nicholson Street, Fitzroy North.
3. Planning Permit PL06/1201 was issued on 5 July 2006 for *roadworks to widen the existing crossover to the south of subject site and upgrade the carriageway to allow two-way traffic and service heavy vehicles for the warehouses to the rear of No. 650 Nicholson Street*.
4. Planning Permit SP10/0021 was issued on 15 September 2010 for a three lot subdivision. This subdivided Lot 3/1 Bik Lane into Lots 3A, 3B and 3C/1 Bik Lane.
5. Planning Permit SP13/0041 was issued on 7 August 2013 for a two lot subdivision. This subdivided Lot 5B/1 Bik Lane into Lots 5C and 5D/1 Bik Lane.
6. Planning Permit SP14/0003 was issued on 23 July 2014 for a two lot subdivision. This subdivided Lot 6 Bik Lane into Lots 6A and 6B/1 Bik Lane.



**Figure 1 – Aerial photo of subject site and surrounds**

## Background

### Environmental Audit

7. The subject site is covered by the Environment Audit Overlay (EAO). Pursuant to clause 45.03 of the Yarra Planning Scheme (the Scheme), before a sensitive use (residential use, child care centre, pre-school centre or primary school) commences or before the construction or carrying out of buildings and works in association with a sensitive use commences, either:
  - (a) *a certificate of environmental audit must be issued for the land in accordance with Part IXD of the Environment Protection Act 1970; or*
  - (b) *an environmental auditor appointed under the Environment Protection Act 1970 must make a statement in accordance with Part IXD of that Act that the environmental conditions of the land are suitable for the sensitive use.*
8. A conditional Statement of Environmental Audit dated 22 December 2006, has been issued by an Environmental Auditor appointed under the *Environmental Protection 1970* for 650 Nicholson Street (Plan of Consolidation PC353171, Vol. 10093 Fol. 721) and for 650A Nicholson Street (Plan of Consolidation CP151410, Vol. 10882 Fol. 197), Fitzroy North. It is noted that the subject site, 4A/1 Bik Lane, was previously known as 650A Bik Lane.
9. The conditional Statement of Environmental Audit confirms the following:

*The site is suitable for the following beneficial uses subject to the conditions attached thereto:*

  - (a) *High density residential use, and commercial and industrial use, subject to compliance with the environmental management plan Report on Site Management Plan, 650 Nicholson Street North Fitzroy, Project: 42116, prepared by Douglas Partners Pty Ltd and dated 16 November 2006 that is included in the attached environmental audit report.*
  - (b) *The condition of the site is detrimental or potentially detrimental to any (one or more) beneficial uses of the site. Accordingly, I have not issued a Certificate of Environmental Audit for the site in its current condition, the reasons for which are presented in the environmental audit report. The terms and conditions that need to be complied with before a Certificate of Environmental Audit may be issued are set out as follows:*
    - (i) *Prior to issue of a Certificate of Environmental Audit, all PAH-contaminated soils remaining on the site (including soils beneath concrete slabs) must be remediated, and the remediation must be validated. It is likely that such remediation would require demolition of the existing buildings on the site.*
10. Officer's review of the EPA website has identified that no Environmental Audit has been issued for the subject site to date. As such, appropriate conditions regarding the EPA requirements will be included on any planning permit issued.

### Lodgment of sketch plans

11. A consultation meeting was held on 9 April 2018, following which the applicant submitted sketch plans on the 17 May 2019 and the 5 July 2019 to specifically address some of the objector's overshadowing concerns. The sketch plans were lodged to Council to be informative. They will be referenced throughout the Assessment section of this report.
12. The concerns identified were that the advertised plans (decision plans) did not show the adjoining open spaces along the northern boundaries of No. 3B/1 Bik Lane, No. 3C/1 Bik Lane (west) and No. 4B/1 Bik Lane (east). Both sets of plans now clearly identify all adjoining open spaces and show the extent of shadowing into all affected properties. Shadows are shown in two dimension and through sections on the September 22 equinox.
13. The plans did identify where the adjoining open spaces are and the extent of overshadowing as a result of the proposed development.

### Sketch plans – 17 May 2019

14. The sketch plans show the 3 adjacent secluded private open spaces (terraces) at No. 3B/1 Bik Lane, No. 3C/1 Bik Lane (west) and No. 4B/1 Bik Lane (east) which were not shown on the advertised plans. The sketch plans show that these open spaces (terraces) are not affected by additional overshadowing.
15. The sketch plans show a more accurate site context to assist Officers with their assessment. Objectors raised concern that the advertised shadow diagrams did not accurately take into account the site context and elevated adjoining terraces (i.e. they are not located at ground floor).
16. An updated waste management plan (WMP) to address objector concerns and Council Waste Management Unit referral comments was lodged on 17 May 2019.

#### Sketch plans – 5 July 2019

17. The sketch plans include further shadow diagrams, taking into account the elevation (height) of the adjoining terraces. With the increased height, these spaces at present received more solar access. Therefore the possibility of the proposed development impacting on these spaces is greater.
18. The sketch plans did confirm that there was some additional overshadowing into the adjoining property at No. 3C/1 Bik Lane. A full assessment will be discussed later in this report.
19. The sketch plans were not provided to objectors as they did not materially alter the proposed (advertised) development, moreover the sketch plans were used in conjunction with the advertised plans to assist Officers with their assessment. The 'decision plans' are the advertised plans.

#### **The Proposal**

20. The application proposes:
  - the construction of three additional storeys to an existing two storey-dwelling (equating to a 5 storey building in total);
  - an increase of the number of dwellings on the site from 1 to 4; and
  - a reduction in the associated car parking requirement of the Scheme (the permit trigger for this will be assessed later in this report).
21. In terms of 'use' a planning permit is not required in the Scheme for 'dwellings' (apartments) in a Mixed Use Zone (MUZ).
22. Pursuant to Clause 72 of the Scheme, an apartment is defined as:
  - (a) *A dwelling located above the ceiling level or below the floor level of another dwelling and is part of a building containing two or more dwellings.*

23. More specifically the proposal is for the following:

#### Demolition (no permit required)

24. Internal demolition of the existing dwelling, including all internal walls.
25. Removal of the garage door and pedestrian entry along the ground floor, southern-façade of the existing dwelling.
26. Partial demolition of the first floor southern and western façade walls of the existing dwelling.

#### Buildings and works

27. Construction of three additional storeys to the existing two storey building resulting in a five (5) storey building with 4 apartments (2 x 1 bedrooms and 2 x 2 bedrooms).



28. Apartment A located along first floor and is accessed via a central core with a stairwell and lift along the eastern boundary. Apartment A has a bedroom (with west-facing highlight window), bathroom and an open plan kitchen, dining and living room leading out onto an 8sqm balcony within the south-west corner.
29. Apartment B located along second floor and accessed via a central core with a stairwell and lift along the eastern boundary. The layout provides a bedroom with west-facing highlight window, bathroom and an open plan kitchen, dining and living room leading out onto an 8sqm balcony within the south-west corner.
30. Apartment C located along the third and fourth floors and is accessed via a central core with a stairwell and lift along the eastern boundary. The layout provides a master bedroom with west-facing highlight window and en-suite, bathroom and an open plan kitchen, dining and living room along the third floor. Along the fourth floor is a second bedroom with en-suite and WIR. The bedroom is accessed via an internal staircase and also provides access to the apartment's balcony within the southern setback.
31. Apartment D located along the ground, first, second and third floors. The apartment is accessed via the ground floor lobby/building entry along the western boundary. The layout provides a master bedroom with en-suite, toilet and courtyard along the ground floor. A bedroom bathroom, and living area along the first floor. An open plan kitchen dining and living room area along the second floor. A roof terrace is at the third floor. All floors are accessed via an internal staircase.
32. Access to the apartments will be along the western boundary of the subject site, with a pedestrian doorway leading into a centrally located lobby via the common property. The lobby area is adjacent to a lift, stairwell and bicycle store area of Apartment A.
33. Maximum building height of 15.9m.

#### Sign

34. Installation of a 0.35m wide by 1.2m directions sign. The sign is located along the ground floor southern façade (south-west corner). The sign is situated at ground level and purpose is to direct visitors to the new pedestrian entry along the western boundary.

#### Setbacks

35. The ground floor footprint of the original dwelling generally remains unaltered and retains most of the original external walls/façade which is constructed to all boundaries. This is with the exception of the garage doors and pedestrian entry to the west. A 2m by 4.6m courtyard for Apartment D is located within the north-west corner.
36. The first floor footprint of the original dwelling generally remains unaltered with walls constructed to all boundaries. Two openings are provided along the southern and western boundaries (fronting the common property) adjacent to the balcony associated with Apartment A. A 2m by 4.6m lightcourt is located within the north-west corner for Apartment D.
37. The second floor will be constructed to all boundaries with the exception of a 2m by 4.6m lightcourt located within the north-west corner, associated with Apartment D. A balcony in the south-west corner associated with Apartment B retains the original sawtooth roof form, providing articulation in the form of a 2.4m by 3.2m balcony. The balustrade (roof form) however is located on the boundary.
38. The third floor incorporates the following:
  - (a) A 0.3m setback from the southern (front) boundary.
  - (b) A zero metre setback from the eastern (side) boundary.
  - (c) A varied zero metre to 2m western (side) setback.
  - (d) A varied 4.9m to 6.9m northern (rear) setback.
39. The fourth floor incorporates the following:

- (a) A varied 0.3m (balustrade) to 5.6m (bedroom) setback from the southern (front) boundary.
- (b) A varied zero metre to 2.31m setback from the eastern (side) boundary.
- (c) A varied zero metre to 4.5m setback from the western (side) boundary.
- (d) A varied 6.89m to 12m northern (rear) setback.

#### Landscaping

- 40. It is proposed to retain the planter box located adjacent to the pedestrian entry of the existing dwelling along the western boundary. Some further planting is proposed within the courtyard (south-west corner) of Apartment D.

#### Colours and materials

- 41. A combination of zincalume lysaght custom orb (to match existing external finish of the subject site), dark grey slimline metal, dark grey metal cladding, gold coloured perforated metal screen, red powder coated metal, silver grey double glazing, grey render, white rectangular stretcher bond tiling and colourbond steel roofing is shale grey finish.

#### ESD commitments

- 42. One 1,500 litre rainwater tank for garden use. The tank is located within the ground floor courtyard of Apartment D and is to be used for landscaping within the courtyard.
- 43. Good access to daylight and natural ventilation, energy efficient lighting / heating / cooling / hot water and water efficient taps and fixtures.

#### Access and car parking

- 44. Two single width car garages are provided within the building and are allocated to Apartments B and C. The garages are accessed via the common property, with two doors located along the southern boundary.
- 45. Two additional tandem car spaces are provided within the original subdivision, to the south west of the subject site. This brings the total number of car spaces allocated to the subject site to 4.
- 46. The vehicle entry is located along the ground floor's southern boundary and accessed via common property. This common property forms part of the subdivision of 1 Bik Lane into seven lots. The common property is centrally located and provides pedestrian and vehicular access to all lots within the subdivision (i.e. 1-7/1 Bik Lane).

#### Private open space

- 47. Apartments A and B are provided with 8sqm balconies located within the south-west corner of the first and second floors respectfully. Both spaces are accessed via the living areas.
- 48. Apartment C is provided with a 26sqm balcony located along the fourth floor. This space is located within the southern setback and has outlook to the common property.
- 49. Apartment D is provided with a 20sqm balcony located along the third floor. This space is located within the northern setback.

### **Existing Conditions**

#### Subject Site

- 50. The subject site (4A/1 Bik Lane) is located within a larger subdivision of 13 lots of attached, industrial buildings at 1 Bik Lane. The properties were constructed circa 1960s and have each been converted into residences or maintained as commercial properties. The site history has been discussed earlier in this report which details all permits issued for the subject site and lot formally known as No. 650 and No. 650A Nicholson Street. Access to the larger subdivision is from Bik Lane which leads into a common property area for lots numbered 1 to 7/1 Bik Lane.

51. 'Common property' is land commonly owned by all members of the associated owners corporation of a subdivision. In this case it is land commonly owned by residents within 1 Bik Lane.
52. The plan of subdivision identifies that lots, 3B, 4A, 4B, 5A and 6A have tandem car spaces adjacent to the common property, near the entry of the site along Bik Lane. Additional car spaces appear to be provided within individual lots. No details have been provided with the application on the exact number of car spaces provided within each lot. No details have been provided with the application on any visitor car spaces.
53. Lots 1 and 2 are orientated with their eastern boundaries fronting the common property. Lot 3 is orientated part of its southern boundary orientated to the common property. Lots 4, 5, and 6 are orientated with their southern boundaries fronting the common property. Lot 7 has its northern boundary fronting the common property.



Figure 2 – Aerial photo of subject site and surrounds

54. The subject site is rectangular in shape with a 6.85m wide frontage to the common property, a maximum depth of 19.99m and yielding an area of 135sqm.
55. The subject site is developed with a two-storey dwelling. There are no records of when the building was converted from a commercial use to a dwelling. However within a MUZ, there is no planning permit required to change the use to a dwelling. The dwelling is located on the northern side of the larger subdivision and the property is centrally located within the larger subdivision.
56. The common property is located adjacent to the southern and part of the western boundaries of the subject site and provides vehicle and pedestrian access to all lots within the original subdivision.

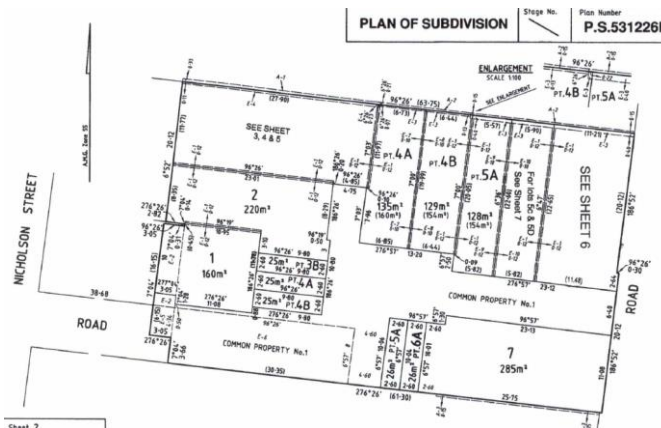


Figure 3 – Plan of Subdivision showing the location of lots and common property

57. Pedestrian access to the dwelling is via a pedestrian door and vehicle access is via a roller door on the southern façade of the dwelling.

58. The dwelling has a single width garage and entry along its southern façade. It has a secondary pedestrian entry on its western façade, and living area, kitchen laundry and bathroom at ground level. The first floor has four bedrooms, a bathroom and a living area with an outlook to the south, which faces the common property.

#### Surrounding Land

59. The land surrounding the larger subdivision is a mix of residential and commercial. The commercial uses are generally located on the west side of Nicholson Street, between Scotchmer Street to the north and Reid Street to the south. In terms of built form, there is a mix of Victorian to Edwardian-era buildings and more contemporary in-fill developments with heights varying between single-storey commercial buildings to six storey apartment blocks.
60. Immediately to the north of the subject site is No. 672 Nicholson Street developed with 14 recently constructed dwellings (apartments) within a three-storey building with roof terraces for each dwelling. The three-storey building is constructed to its Nicholson Street frontage and extends the full length of the site (102m) to a Right of Way (ROW) at the rear. Two apartments within the building (number 8/672 and number 9/672 Nicholson Street) have their rear interface to the subject site. The interface includes a ground and first floor boundary wall, a second floor kitchen and dining room windows and the terraces along the third floor.
61. Immediately to the east of the subject site is Lot 4B/1 Bik Lane. This property forms part of the larger subdivision and is developed with a two-storey warehouse. Council's records confirm that planning permit PL08/0356 approved the *conversion of a warehouse into a dwelling* on 23 June 2008. It does not appear that the planning permit has been acted on or an extension of time to the commencement date of the permit applied for or approved. This means that the planning permit has lapsed. A dwelling use within the warehouse would not be unlawful however because the use as a dwelling is an as of right use within a Mixed Use Zone and therefore does not require a planning permit.
62. Immediately to the west of the subject site is the common property beyond which is Lot 3C/1 Bik Lane. This property forms part of the larger subdivision and is occupied by a three-storey dwelling with a roof terrace/deck in the north-east corner which directly abuts the common boundary and faces the subject site (located directly opposite the subject site).
63. Immediately to the south of the subject site is common property (with a width of 10.1m at the site frontage) and is owned by all members of the associated owners corporation of the subdivision.
64. The subject site and larger subdivision is well serviced by public transport and public open space facilities, including the following:
- (a) The 96 tram route servicing Nicholson Street, 70m to the east (stop at the junctions of Nicholson and Reid/Scotchmer Streets).
  - (b) The 11 tram route servicing Brunswick Street, 340m to the south-east (stop at the junctions of Brunswick Street and Reid Street).
  - (c) The 250 and 251 bus routes servicing Rathdowne Street, 471m to the west.
  - (d) Edinburgh Gardens, located approximately 360m to the south-east.
65. A full site history has been discussed earlier in this report and details the additional applications which increased the number of lots on the larger subdivision from 7 to 13.

### **Planning Scheme Provisions**

#### Zoning

##### *Clause 32.04 – Mixed Use Zone*

66. Pursuant to Clause 32.04-2 of the Scheme no planning permit is required for the use of the subject site as a dwelling because the use of the land for a dwelling is listed as a section 1 use (no permit required) in the table of use contained with Clause 32.04-2. Therefore no planning permit is required for the use.

67. Pursuant to Clause 32.04-6 of the Scheme, a planning permit is required to construct a building and construct or carry out works.
68. The decision guidelines at Clause 32.04-14 of the Scheme specify that for a residential development, the objectives, standards and decision guidelines of Clause 58 of the Scheme apply.
69. Clause 58 is applicable where apartment developments of five or more storeys, excluding a basement, is proposed and is located within a General Residential Zone, Residential Growth Zone, Mixed Use Zone or Township Zone. A 'residential development' is a development where there are residential uses within that development. An apartment is defined as a *dwelling located above the ceiling level or below the floor level of another dwelling and is part of a building containing two or more dwellings*.
70. As discussed earlier in this report the following subdivision permits have been issued for the site:
  - (a) Planning Permit SP05/0010 was approved on the 30 June 2005 for the *subdivision of the land into seven lots and common property (to the rear of 650 Nicholson Street)*. The subject site is known as Unit 4A/1 Bik Lane and is one of the seven lots created within the subdivision.
  - (b) Planning Permit SP10/0021 was issued on 15 September 2010 for a three lot subdivision. This subdivided Lot 3/1 Bik Lane into Lots 3A, 3B and 3C/1 Bik Lane.
  - (c) Planning Permit SP13/0041 was issued on 7 August 2013 for a two lot subdivision. This subdivided Lot 5B/1 Bik Lane into Lots 5C and 5D/1 Bik Lane.
  - (d) Planning Permit SP14/0003 was issued on 23 July 2014 for a two lot subdivision. This subdivided Lot 6 Bik Lane into Lots 6A and 6B/1 Bik Lane.

### Overlay

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

71. Pursuant to Clause 45.03-1 (Environment Significant Overlay) of the Scheme, "*before a sensitive use (residential use, child care centre, pre-school centre or primary school) commences or before the construction or carrying out of buildings and works in association with a sensitive use commences, either:*
  - (a) *a certificate of environmental audit must be issued for the land in accordance with Part IXD of the Environment Protection Act 1970; or*
  - (b) *an environmental auditor appointed under the Environment Protection Act 1970 must make a statement in accordance with Part IXD of that Act that the environmental conditions of the land are suitable for the sensitive use.*
72. As discussed earlier in this report, a conditional Statement of Environmental Audit dated 22 December 2006 has been issued by an Environmental Auditor appointed under the *Environmental Protection 1970* for 650 Nicholson Street (Plan of Consolidation PC353171, Vol. 10093 Fol. 721) and for 650A Nicholson Street (Plan of Consolidation CP151410, Vol. 10882 Fol. 197), Fitzroy North. It is noted that the subject site, 4A/1 Bik Lane, was previously known as 650A Bik Lane.
73. A review of the EPA website indicates that no Environmental Audit has been issued for the above sites (which includes the now subject site).
74. The conditional Statement of Environmental Audit allowed for a high density residential use, subject to the following conditions:
  - (a) *Compliance with the environmental management plan Report on Site Management Plan, 650 Nicholson Street North Fitzroy, Project: 42116, prepared by Douglas Partners Pty Ltd and dated 16 November 2006 that is included in the attached environmental audit report.*

(b) *Prior to issue of a Certificate of Environmental Audit, all PAH-contaminated soils remaining on the site (including soils beneath concrete slabs) must be remediated, and the remediation must be validated. It is likely that such remediation would require demolition of the existing buildings on the site.*

75. To ensure compliance with the above EPA requirements, the above conditions will be included on any planning permit issued.

Particular Provisions

*Clause 52.06 – Car Parking*

76. Clause 52.06-2 of the Scheme states that before an increase to an existing use by the measure specified in Column C of Table 1 in Clause 52.06-5 for that use, the number of car spaces required under Clause 52.06-5 should be provided.
77. Clause 52.06-3 of the Scheme states that a planning permit is required to reduce the number of car spaces required under Clause 52.06-5 of the Scheme.
78. The Clause 52.06-5 requirements for the on-site car parking provision for this proposal, is shown in the table below:

<b>Use</b>	<b>Rate required under the Scheme</b>	<b>Car parking spaces required under the Scheme</b>	<b>Car parking spaces proposed</b>	<b>Variation (reduction) required</b>
Dwellings (4 total)	1 space for a 1 and 2 bedroom dwelling	4	4	4
	2 spaces for a 3 bedroom dwelling	N/A	N/A	N/A
	Visitor spaces	N/A	N/A	N/A
<b>Total</b>		4	4	4

79. Whilst the submitted proposal seeks a reduction in the associated car parking requirement, the table above demonstrates that pursuant to Clause 52.06-5 of the Scheme, the proposed development does not require a reduction in car parking, based on the fact that four car parking spaces are provided on site (see Proposal section of this report). There is no requirement for a visitor car spaces in the Scheme as the subject site is located within the Principle Public Transport Network area, which does not require dwellings to provide visitor spaces due to the close proximity of public transport.
80. As part of the application, the proposal was submitted and advertised as requiring a reduction in the car parking requirement. However, upon a full assessment of the proposed development Officers have determined that no reduction in car parking is required based on the fact that four car parking spaces are provided to the subject site, as described above. Based on this, no assessment on a reduction in car parking is required in this report and if approved the permit preamble will not need to reference a car parking reduction as it is not a permit trigger.

*Clause 58 – Apartment Developments*

81. Clause 58 of the Scheme applies to an apartment development of five or more storeys, excluding a basement. It is therefore relevant to this proposal because of the proposed development contains apartments and proposes a height of five storeys. Clause 58 generally considered the urban context & design response, site layout, amenity impacts, on-site amenity and facilities, detailed design and internal amenity.

## General Provisions

### *Clause 65 – Decision Guidelines*

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

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

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

- (a) The matters set out in section 60 of the Act;*
- (b) The Municipal Planning Strategy and the Planning Policy Framework;*
- (c) The purpose of the zone, overlay or other provision;*
- (d) The orderly planning of the area;*
- (e) The effect on the amenity of the area;*
- (f) The adequacy of loading and unloading facilities and any associated amenity, traffic flow and road safety impacts.*

## Planning Policy Framework (PPF)

### Clause 11.02 - Managing Growth

83. Clause 11.02-1 Supply of Urban Land

84. The objective is:

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

### Clause 13.04-1S Contaminated and potentially contaminated land

85. The relevant objective of this clause is:

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

### Clause 13.05-1S – Noise abatement

86. The relevant objective of this clause is:

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

### Clause 13.07 - Amenity

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

87. 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

88. The relevant objective of this clause is:

- (a) To create urban environments that are safe, functional and provide good quality environments with a sense of place and cultural identity.*

### Clause 15.01-2S – Building design

89. The relevant objective of this clause is:

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

Clause 15.01-5S Neighbourhood character

90. The relevant objective of this clause is:

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

Clause 15.02 – Sustainable Design

91. The objective of this clause is:

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

Clause 15.03 - Heritage

92. The objective of this clause is:

- (a) *To ensure the conservation of places of heritage significance.*

Clause 16.01 – Residential development

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

- (a) *To promote a housing market that meets community needs;*  
(b) *Ensure housing developments are integrated with infrastructure and services, whether they are located in existing suburbs, growth areas or regional towns.*

Clause 16.01-2S Location of residential development

94. The objective of this clause is:

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

Clause 18.01 integrated transport

95. The objective of this clause is:

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

Clause 18.02 Movement Networks

96. The objective of this clause is:

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

Clause 18.02-2S Public Transport

97. 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

98. The objective 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.*

Local Planning Policy Framework (LPPF)

Clause 21.04-1 Accommodation and Housing

99. The objectives of this clause are:

- (a) *To accommodate forecast increases in population;*



- (b) *Support residual population increases in established neighbourhoods;*
- (c) *To reduce potential amenity conflicts between residential and other uses;*
- (d) *To reduce potential amenity conflicts between residential and other uses;*
- (e) *Ensure new residential development in the Mixed Use, Business 1, Business 2, and Business 5 Zones and near Industrial and Business Zones is designed to minimise the potential negative amenity impacts of existing non-residential uses in the vicinity;*
- (f) *Apply the Interface Uses policy at clause 22.05.*

100. Clause 21.05 Built environment

- (a) *To protect and enhance Yarra's heritage places;*
- (b) *To reinforce the existing urban framework of Yarra;*
- (c) *To retain Yarra's identity as a low-rise urban form with pockets of higher development;*
- (d) *Development on strategic redevelopment sites or within activity centres should generally be no more than 5-6 storeys unless it can be demonstrated that the proposal can achieve specific benefits such as:*
  - (i) *Significant upper level setbacks;*
  - (ii) *Architectural design excellence;*
  - (iii) *Best practice environmental sustainability objectives in design and construction;*
  - (iv) *High quality restoration and adaptive re-use of heritage buildings;*
  - (v) *Positive contribution to the enhancement of the public domain;*
  - (vi) *Provision of affordable housing.*
- (e) *To ensure that new development contributes positively to Yarra's urban fabric;*
- (f) *Ensure development is designed having particular regard to its urban context and specifically designed following a thorough analysis of the site, the neighbouring properties and its environs;*
- (g) *Support new development that contributes to the consolidation and viability of existing activity centres.*

Clause 21.06 Transport

101. The objectives of this clause are:

- (a) *Use rear laneway access to reduce vehicle crossovers;*
- (b) *To facilitate public transport usage;*
- (c) *Require new development that generates high numbers of trips to be easily accessible by public transport;*
- (d) *To reduce the reliance on the private motor car.*

Clause 21.07 Environmental Sustainability

102. The relevant objectives of this clause are:

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

Clause 21.08 Neighbourhoods

103. Clause 21.08-7 of the Scheme describes the Fitzroy neighbourhood as, *"a mixed commercial and residential neighbourhood notable for the consistency of its Victorian streetscapes. It comprises a dense combination of residential areas, shopping precincts and commercial industrial activities. The role of the Brunswick Street centre can be characterised as hospitality, entertainment, clothing and footwear, art galleries and studios, and nongovernment community services, all with a metropolitan focus"*.

### Relevant Local Policies

#### Clause 22.05 Interface uses policy

104. This policy applies to applications for use or development within Mixed Use Zones (amongst others). The objectives of this clause is 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 and to ensure that residential uses located within or near commercial centres or near industrial uses enjoy a reasonable level of amenity.

#### Clause 22.12 Public Open Space Contribution

105. This policy applies to all residential proposals, mixed use proposals incorporating residential uses and proposals incorporating residential subdivision. The subject site is in an area where land in lieu of cash is the preferred method of public open space contribution (area 3065A). However considering the size of the site, it is not practical to provide the preferred area of land and therefore cash will be provided.

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

106. This policy applies to applications for new buildings and aims to achieve the best practice water quality performance objectives and to promote the use of water sensitive urban design, including stormwater re-use.

#### Clause 22.17 Environmentally Sustainable Development

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

### **Advertising**

108. The application was advertised under the provisions of Section 52 of the *Planning and Environment Act (1987)* by 548 letters sent to surrounding owners and occupiers and by a sign displayed on site, at the Bik Lane frontage for 14 days.
109. Council received 16 objections to the application, the grounds of which are summarised as follows:
- (a) Neighbourhood character (height, scale, bulk, design details).
  - (b) Overdevelopment of the site.
  - (c) Amenity impacts (overlooking, overshadowing, loss of light).
  - (d) Traffic congestion and car parking.
  - (e) Extent of demolition.
  - (f) Impact on proposed solar panels on adjoining properties.
  - (g) Insufficient waste capacity.
  - (h) Loss of views.
  - (i) Noise (during construction and from residents).
  - (j) Loss of value to adjoining lots
110. A consultation meeting was held on 9 April 2018. It was attended by seven of the 16 objectors, the applicant and Council Officers. All issues and concerns raised in the letters of objection were discussed constructively between all parties in attendance however there were no resolutions. Action points from the consultation meeting were that the applicant would submit an amended Waste Management Plan (WMP) and revised shadow diagrams to Council to assist with the assessment of the proposal.

111. The applicant submitted sketch plans on the 17 May 2019 and the 5 July 2019 to specifically address some of the objector's overshadowing concerns. The sketch plans were lodged to Council to be informative and will be referenced throughout the Assessment section of this report. None of the sketch plans were sent to the objectors given there is no material change to the proposal and the sketch plans were to assist Officers with their assessment.

112. The concerns identified at the consultation meeting were that the advertised plans (decision plans) did not show the adjoining open spaces along the northern boundaries of No. 3B/1 Bik Lane, No. 3C/1 Bik Lane (west) and No. 4B/1 Bik Lane (east).

The sketch plans clearly identify all adjoining open spaces and show the extent of shadowing into all affected properties. Shadows are shown in two dimension and through sections on the September 22 equinox.

113. Both sets of sketch plans (17 May 2019 and 5 July 2019) identify where the adjoining open spaces are and the extent of overshadowing as a result of the proposed development.

#### Sketch plans – 17 May 2019

114. The sketch plans show the 3 adjacent secluded private open spaces (terraces) at No. 3B/1 Bik Lane, No. 3C/1 Bik Lane (west) and No. 4B/1 Bik Lane (east) which were not shown on the advertised plans. The sketch plans show that these open spaces (terraces) are not affected by additional overshadowing.

115. The sketch plans show a more accurate site context (objectors raised concern that the advertised shadow diagrams did not accurately take into account the site context and elevated adjoining terraces (i.e. they are not located at ground floor).

116. An updated waste management plan (WMP) to address objector concerns and Council Waste Management Unit referral comments was lodged at this time too.

#### Sketch plans – 5 July 2019

117. These sketch plans include further shadow diagrams, taking into account the elevation (height) of the adjoining terraces. With the increased height, these spaces at present received more solar access. Therefore the possibility of the proposed development impacting on these spaces is greater.

118. These plans confirm that there was some additional overshadowing into the adjoining property at No. 3C/1 Bik Lane.

### **Referrals**

119. The referral comments are based on the advertised (decision) plans.

#### External Referrals

120. The application does not trigger referral to any external authorities under the requirements of the Scheme.

#### Internal Referrals

121. The application was referred to the following units within Council:

- (a) Engineering Services Unit
- (b) Urban Design Unit
- (c) ESD Advisor
- (d) Waste Management Unit

- (i) As a result of the consultation meeting, an amended WMP was submitted and referred to Council's Waste Management Unit who found the WMP unsatisfactory.

- (ii) As this WMP was not formally substituted pursuant to Section 57A of the *Planning and Environment Act 1987*, it cannot be conditioned to be amended as per the referral comments received by Council's Waste Management Unit. As such, the original WMP will be assessed as part of this application and referral advice received initially included as a condition of any planning permit issued.

122. Referral comments are included as attachments to this report.

## **OFFICER ASSESSMENT**

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

- (a) Strategic context
- (b) Urban design
- (c) Clause 58 – Apartment Developments
- (d) Environmental sustainability
- (e) Car parking / traffic
- (f) Off-site amenity impacts
- (g) Objector concerns

### Strategic Context

- 124. The proposal is consistent with the various development objectives outlined in State Planning Policy Frameworks (PPF) and Local PPF in the Scheme, by providing an acceptable level of compliance with the relevant policies within the Scheme.
- 125. The subject site is located within a Mixed Use Zone (MUZ) and is in close proximity to a commercial strip along Nicholson Street (the east side of Nicholson Street is located in the MUZ and the west side is located within the Commercial 1 Zone (C1Z)).
- 126. The subject site is within easy walking distance to public transport and services (Nicholson Street and St Georges Road). Policy encourages the urban consolidation/higher densities developments within and in close proximity to activity centre locations and the concentration of such developments in established areas. Policy supports proposals which achieve the urban growth objectives at clauses 11.01, 11.02 and 16.01-2S of the Scheme through the development on land close to existing transport corridors and services.
- 127. The proposed development is consistent with the purpose of the MUZ which seeks “to provide for housing at higher densities” and “to encourage development that responds to the existing or preferred neighbourhood character of the area”. The housing growth encouraged under the MUZ combined with the subject site’s close proximity to existing infrastructure will be a key driver of change within the surrounding area.
- 128. Clause 21.04-4 of the Scheme encourages new developments to provide for a diversity of housing types. The proposal is for 4 new dwellings (2 x 1 bedrooms and 2 x 2 bedrooms) in an inner city location, which will contribute to the diversity of housing in the area.
- 129. The proposal will result in the efficient use of existing infrastructure, consistent with Clause 21.04-1 of Council’s MSS. Related strategies encourage the adaptation and reuse of land in established urban areas to reduce development pressures on the metropolitan fringe and encourage sustainable transport.
- 130. Clause 16.01-3S seeks to provide a mix of housing types in well-designed, medium density housing developments that respect the neighbourhood character; improve housing choice; make better use of existing infrastructure and improve the energy efficiency of housing. Clause 16.01-4S aims to deliver more affordable housing closer to jobs, transport and services. It is considered that the subject site’s locational benefits and strategic policy context support a medium-density residential development. The proposal would achieve multiple objectives and is ideally located for higher density development. The proposal however must also address and take into account the off-site amenity of adjoining properties.

131. As discussed earlier in this report, an application of this scale must be accompanied by an ESD assessment. These typically take the form of a STORM report and BESS report. The STORM reports assess stormwater management and will usually require treatments such as a rainwater tank or rain garden. The Built Environment Sustainability Scorecard (BESS) report assesses energy and water efficiency, thermal comfort, and overall environmental sustainability performance of your new building or alteration.
132. The proposal, subject to the submission of an amended STORM and BESS report, will comply with Clause 22.16 Stormwater Management (WSUD) and Clause 22.17 Environmental Sustainable Developments. A full assessment of both clauses is discussed later in this report.

#### Urban Design

133. The area surrounding the subject site is single to three storey built form. And within the larger subdivision at No. 1 Bik Lane there is three storey built form used for a mix of residential and warehouse purposes.
134. Recent development along Nicholson Street and Bik Lane is 4 storey (medium density) to 6 storey (high density) apartment developments being to the south of the subject site at 4 Bik Lane. These recent developments show an emerging character of increased height and built form and contemporary style residential apartment designs. Given the inner city location and the site context, increased residential density is encouraged under the PPF of the Scheme.
135. The proposal is for the construction of additional levels to an existing dwelling which will result in a five storey residential building with 4 dwellings. This is supported by policy and in the site context.
136. The proposal will retain the existing two-storey built form / footprint of the original warehouse including its sawtooth roof form and construct an additional three storeys above, resulting in a five storey built form. The ground, first and second floors will retain the hard edge built form of the subject site's front boundary (which fronts the common property to 1 Bik Lane) and incorporate balconies within the south-west corner of the building at level 1 and level 2. These will create setbacks of 2.4m from 3m and will essentially provide a break in the massing of the building at these levels when viewed from the common property. This is considered appropriate as it provides articulation and a break in the overall mass which also provides an open space which has good outlook for future residents.
137. A 0.3m setback from southern boundary will be incorporated at the third floor and a varied (between 3.29m and 5.6m) setback will be incorporated at the fourth floor and provide a balcony for Apartment C. To provide further articulation and assist in breaking up the building's bulk when viewed from the common property and adjoining lots within Bik Lane, the proposal uses a variety of metal finishes to the front façade (including zincalume and gold coloured perforated metal).
138. In terms of height, Council's Urban Design Unit's referral comments consider a five storey built form to be uncharacteristic within the existing 2 to 3 storey built form within the larger subdivision at No. 1 Bik Lane. The referral comments consider a four storey built form to be more appropriate and four storeys would sit more comfortably on the subject site when considering the heights within the larger subdivision and the prevailing pattern of 3 to 4 storey heights directly around the subject site. Council Urban Design Unit's referral comments therefore recommend the deletion of the upper most level.
139. In terms of setbacks, Council's Urban Design Unit's referral comments recommend that the third and fourth storey (based on the fact that the fifth storey is deleted) be setback a minimum of 1 metre from the southern boundary. They consider that this will provide a clearer distinction between the retained original building and the extension.
140. In terms of materials, Council's Urban Design Unit's referral comments raise concern in relation to the use of the metals gold metal finish at the upper fourth and fifth levels and that this will not complement the industrial character of the immediate area. Council's Urban Design Unit's instead recommend a more rustic/industrial metal finish.

141. Clause 22.10-3.3 of the Scheme encourages the use of massing or articulation or changes of surface treatment, or a combination of these, to relate taller buildings to the scale of their surrounds, and to diminish visual bulk. They also seek the use of appropriate materials, finishes and colours, which add visual interest and, assist in breaking up the mass and bulk of new development. The proposed gold metal finish is considered to provide an appropriate design repose which provides articulation and visual interest to the building's façade and a break in the massing. The metal finish also relates back to the previous and current industrial/commercial uses on site.
142. In response to the height concern, at the rear the building will be setback from the northern boundary at the fourth and fifth storey and will have a render/gold metal finish at these levels. While the proposal will be higher than the three storey prevailing heights of the abutting sites at 3/1 and 4/1 Bik Lane it is considered acceptable in the site context and in the submitted form which includes setbacks provided at the fourth and fifth levels from the southern (front) and northern (rear) boundaries.
143. One of the main purposes of the MUZ is to provide housing at higher densities. Examples of this are the three-storey built form immediately surrounding the subject site and the higher built forms located at 650 Nicholson Street (4 storeys) and 4 Bik Lane (6 storey). Given this surrounding context and the close proximity of the subject site to Nicholson Street, it is considered that there is strong strategic justification for the proposed 5 storey height in its submitted form.
144. In response to the setback concern, the proposal will limit visual bulk impacts through setbacks (varying between 300mm and 3.2m), by incorporating balconies and using a variety of materials. The building will generally interface common property and adjoining roof form of Nos. 3C/1 and 4B/1 Bik Lane. The setbacks are appropriately provided to the sensitive interfaces at the rear of the subject site (i.e. to the dwellings within No. 672 Nicholson Street and roof terrace to the west at No. 3C/1 Bik Lane) at the upper floors. It is considered that given the surrounding context, the purpose of the MUZ and the setback/articulation provided in the design response, that the proposal will provide an acceptable design response in its submitted 5-storey height.
145. Overall, and on balance, while it is acknowledged that Council Urban Design Unit's referral comments support a 4-storey built form with the resulting third and fourth storey setback a minimum of 1 metre from the southern boundary, there is policy support and site contextual support for the proposal in its submitted design of 5 storeys. Therefore neither a reduced height from 5 to 4 storeys or an increase in setback at the fourth or fifth levels are considered necessary in this instance.
146. In response to the materials concern, the surrounding area does have a mix of external finishes from industrial finishes to more contemporary finishes (as is evident at recent developments at 650 Nicholson Street and 3/1 and 4/1 Bik Lane). The area has an evolving character in terms of the use of materials and based on this it is considered that the retained lower levels in zincalume and the use of a perforated metal finish at the upper levels, strikes an appropriate balance. These materials are not only considered to complement each other, but be consistent with and complement the other buildings within the wider subdivision and the existing and emerging built form context of the immediate area. Further, the materials will respect the past industrial use and 'historical' component of the building (albeit not covered by the Heritage Overlay) while incorporating a more contemporary material to clearly distinguish between old and new and embrace the emerging character of the area. The perforated nature of the metal finish in particular will provide a more transparent (softer) finish to the upper floors.
147. Overall therefore, the proposed five storey built form in its submitted form is considered an appropriate design response for the site which is located within a MUZ which seeks "*to provide for housing at higher densities*". The immediate area includes four to six storey built form and these heights are part of the emerging character within the immediate area.

148. The proposal includes some minor façade alterations to the vehicle and pedestrian access along the southern and western facades of the existing dwelling. The proposed roller door is considered acceptable given the prevailing character along Bik Lane where garage doors are prevalent along common property. And the proposed relocation of the pedestrian entry to the western façade of the dwelling will be consistent with the existing pedestrian entries of other buildings within the larger subdivision at Units 2/1 and 3/1 Bik Lane.
149. Lastly, the proposal includes two directional 'signs' to identify the relocated pedestrian entry. The first sign is a 0.35m wide by 1.2m directions sign located along the ground floor southern façade (south-west corner). The second sign is attached to the pedestrian access/door along the western boundary. No details have been provided by the applicant on the signs save for the fact that the purpose of them is to simply direct visitors to the new pedestrian entry along the western boundary. For the site context, signs for this purpose are supported in principal on the basis that they will appropriately identify the pedestrian entry. It is submitted that they will be identical to the pedestrian entry signs at No. 2/1 and No. 3/1 Bik Lane located within the larger subdivision.

Clause 58 – Apartment Development

150. Clause 58 of the Scheme comprises 27 design objectives and standards to guide the assessment of new apartment development. This is relevant to the assessment of this proposal given that the proposed height is five storeys.
151. The following objectives are however not relevant to the assessment of this proposal:
- (a) Dwelling diversity – The development consists of less than 10 dwellings.
  - (b) Communal open space – The development consists of less than 40 dwellings.
  - (c) Solar access to communal outdoor open space – There is no communal open space provided as part of the proposal.
  - (d) Access – no vehicle crossovers are proposed as part of the proposal.

Standard D1 Urban context

152. A full assessment against neighbourhood character and urban context is provided at paragraphs 133-149 of this report. In summary the scale and built form is considered acceptable in the context of the immediate area and where increased developments of this type and scale are encouraged under the MUZ.

Standard D2 Residential policy

153. There is strong strategic policy support for high density residential development within well serviced areas close to public transport and employment. This would include the Nicholson Street Neighbourhood Activity Centre in which the subject site is located 70m from. In this regard the development meets State and Local policy for housing location.

Standard D4 Infrastructure

154. The proposal is located within an established area with existing utility services and infrastructure. There is no evidence to suggest that the proposed development would unreasonably overload the capacity of the existing services.

Standard D5 Integration with street

155. The subject site does not have a direct interface or access to Bik Lane, moreover it is located behind the front façade (southern boundary) and accessed via common property. The proposal retains its vehicle access from the south and will relocate the pedestrian access to the building from the southern boundary to the western boundary. The relocated entry will have signage to identify the entry which is identical to the pedestrian entries at No. 2/1 and No. 3/1 Bik Lane which are located within the larger subdivision. These are examples of other buildings within the 1 Bik Lane subdivision which do not have their entry directly fronting or orientated towards the southern boundary.

Standard D6 Energy efficiency

156. Of the four dwellings (apartments), three will have southerly orientations as their principal living areas of POS. This is due to the site constraints and is considered an acceptable design response in this instance, and will provide for some passive surveillance of the common property which is supported.
157. Apartment D will have a northerly orientated balcony which will maximise solar access to the dwelling and its SPOS.
158. Council's ESD Advisor supports the proposal as it provides an appropriate design response in terms of provision of solar panels, daylight, hot water systems, lighting/water fixtures and NatHERS rating.

#### Standard D9 Safety

159. The pedestrian entry for all 4 dwellings (apartments) will be located along the western boundary and accessed via the common property. To identify the pedestrian entry, two signs are proposed along the frontage (one next to the garage of Apartment B and one directly adjacent to the pedestrian entry itself). This is consistent with other pedestrian entries within the larger subdivision including Nos. 2/1 and 3/1 Bik Lane which are both accessed from the same area.

For the context, the location for the pedestrian entry and having associated signs is appropriate, with the entrance being clearly visible and identifiable from the common property (and not obscured or isolated).

#### Standard D10 Landscaping

160. There is no requirement for deep soil areas or canopy trees as the size of the subject site is below 750sqm.
161. Submitted floor plans show indicative landscaping within the ground floor courtyard and balconies of Apartment D. Plans also show the retention of the landscaping strip adjacent to the existing pedestrian entry. Limited soft landscaping is not uncommon for an apartment development or on a small site and it is not integral to the overall design response. Soft landscaping is not characteristic of the wider subdivision given the inner city context.
162. As such, the submitted design response is considered to be appropriate and there is no need to require the submission of a formal landscape plan.

#### Standard D12 Parking location

163. The proposal includes four car parking spaces. Two of the spaces are in the form of single-width spaces at the front of the subject site which will be accessed via the common property. The location and design of these spaces is consistent with the existing site conditions, where there are car spaces located in exactly the same area.
164. The remaining two spaces are located to the south-west of the subject site, in the form of an uncovered tandem car space. These spaces are identified on the title and allocated to the subject site (i.e. Lot 4A). These spaces are not in common property and therefore there was no need to identify the proposal as 1 Bik Lane for the purpose of advertising.
165. There is no direct access from the car spaces to the lobby, however given that there are only two car parking spaces, access via the roller doors and the remaining two accessed via the common property they are considered acceptable in this instance.
166. There is no mechanical equipment associated with the proposed car parking.

#### Standard D13 Integrated water and stormwater management

167. Plans identify a 1,500 litre rainwater tank located within the north-west corner of the subject site, to be used for 'garden use only' for Apartment D. This is not consistent with the STORM report submitted, which confirms that two, 1,500 litre rainwater tanks are proposed. Further errors have been identified in the STORM report submitted including references to the Municipality in which the subject site is located and the size of the subject site (lot).



168. To address the inconsistencies, a condition will require an amended STORM report to be submitted. This amended STORM report can be easily achieved through appropriate treatments. If the amended report is still inaccurate, plans will not be endorsed.

#### Standard D14 Building setback

169. This standard includes multiple requirements relating to building setbacks, daylight to windows, overlooking, outlook and the internal amenity of residents, none of which have 'quantifiable' measures. In other words, it is to the satisfaction of the Responsible Authority where there are no unreasonable amenity impacts.
170. With regard to setbacks, this is discussed earlier in this report at paragraph 133-149. The proposal in its submitted form is deemed acceptable for the site context.
171. All habitable room windows to the 4 dwellings proposed will receive direct daylight from the common property (southern and western interfaces) and courtyard within the north-west corner. The daylight is adequate for each dwelling and is supported by Council's ESD Advisor's referral comments.
172. Apartments A, B and C will have outlook to the common property to the south from their main living areas. The common property provides a minimum 10m setback, allows for sufficient daylight and passive surveillance.
173. Apartment D (located at the rear) will have a limited outlook onto the courtyard from its third floor living area. To improve the internal amenity of this dwelling a roof terrace, with generous setbacks, is provided to it and the terrace will get excellent solar access given the site orientation. Although not ideal, this level of amenity is not unreasonably compromised and is considered acceptable in this inner city context with site constraints and it is not an uncommon design response (in terms of outlook and location of open spaces) with similar layouts approved at Nos. 3/1 and 4/1 Bik Lane.
174. Overall, the proposal will have 3 dwellings (equating to 75% of the development) which will achieve a good outlook and good daylight access.
175. Standard D14 also aims to "limit views" into habitable room windows and private open space of new and existing dwellings, thereby reducing reliance on screening to inhibit these views.
176. Given that Apartments A, B and C will have outlook to the common property to the south, there is no concern with respect to internal or external overlooking/views. The common property has a minimum width of 10m to the south and 4.7m to the west. There are no concerns with regards to overlooking to the west or south given the distance and as the properties directly to the west are used as warehouses.
177. The only potential overlooking into existing properties is at the rear of the subject site (at Nos. 3C/1 and 4B/1 Bik Lane) and will be from the roof terrace of Apartment D. Screening to a height of 1.8m is provided in the form of perforated gold metal balustrade surrounding the terrace. Although the standard seeks to avoid screening, it is not possible in this instance, with adjoining terraces to the north (No. 650 Nicholson Street), east (No. 5A/1 Bik Lane) and west (No. 3C/1 Bik Lane). An additional condition will be included for the screening details, with a requirement for a maximum of 25% transparency. Although this is not specifically required, it is the industry standard for screening to limit overlooking and is therefore considered reasonable in this instance.

#### Standard D15 Internal views

178. This standard states that windows and balconies should prevent overlooking into 50% of private open space of a lower-level dwelling directly below and within the same development.
179. As a result of the internal layout, there will be no internal views between apartments within the wider subdivision or within the building.

#### Standard D16 Noise impacts

180. The proposed development will be residential and it is therefore considered that there will be no unreasonable off-site amenity (noise) impacts to the surrounding area. Balconies and roof terraces for POS are a common design feature within an inner city context and are found at developments at Nos. 3/1 and 4/1 Bik Lane.
181. The proposed development is not located in proximity to a *noise influence area* as specified in Table D3 to this Standard. A noise influence area can come from industry, roads and railways.
182. In this instance potential noise relates to Nicholson Street, where if a site is located within 300m of a road carrying 40,000 annual average daily traffic volumes. VicRoads has confirmed that Nicholson Street is not a road that generates in excess of 40,000 Annual Average Daily Traffic Volume, thus does not meet the threshold for a noise influence area in Table D3 of this Standard. The annual average daily traffic volumes is taken for the VicRoads website (the application is not required to be referred to VicRoads).
183. In light of this, incorporating noise attenuation into the design response does not need to be considered by this proposal and the submission of an acoustic report is not required.

Standard D17 Accessibility

184. To ensure the design of dwellings cater for people with limited mobility, the standard requires at least 50% of new dwellings provide:
- (a) *a clear opening width of at least 850mm at the entrance to the dwelling and main bedroom;*
  - (b) *a clear path with a minimum width of 1.2m that connects the dwelling entrance to the main bedroom, an adaptable bathroom and the living area;*
  - (c) *a main bedroom with access to an adaptable bathroom;*
  - (d) *at least one adaptable bathroom that meets all of the requirements of either Design A or Design B specified in Table D4.*
185. The proposal does not specify which dwellings within the development will meet the standard or which design option (Design A or B) is being applied for. For the purpose of this assessment Apartment A and Apartment B will be assessed (they are identical in layout).
186. Apartment A and Apartment B have minimum 850mm door openings along with a 1.2m wide clear path between the dwelling entry to the main bedroom, living area and bathroom. The bathroom to both apartments is in line with Design option B, which specifies a 870mm opening, 1m by 2.7m circulation area (including the shower) and a toilet located closest to the door opening. As such the internal design of Apartment A and Apartment B meet the dimensional requirements of design option B.
187. Plans are missing notations in relation to the 'hopless shower' and whether the shower door has readily removable hinges. This design detail can easily be addressed by way of permit condition and as such a condition will require notations to be included on plans, requiring both items above. Subject to this condition, Apartment A and Apartment B will meet (a) to (d) requirements of the standard and the requirement of the standard will be met.

Standard D18 Building entry and circulation

188. The proposed pedestrian entry is via the common property on the western boundary of the subject site. It will not be clearly visible from the front (southern side) of the subject site. The proposal therefore includes two signs on the frontage (adjacent to the garage for Apartment B and directly adjacent to the pedestrian entry itself) to identify the building. Other properties within 1 Bik Lane (1/2 and 3/1 Bik Lane) have identical entries and signage along the same section of the common property.

189. The proposal includes the refurbishment of the pedestrian entry door with white rectangular stretcher bond tiles and red powdercoated metal finish. This is not supported because it is considered that to provide a better transition from the common property area a condition require an element of glazing to be incorporated into the door design, more consistent with the existing dwelling's design.
190. There is no shelter provided to the pedestrian entry. This design is supported on the basis that the entry will be located adjacent to common property and providing shelter to it would be outside the title boundaries. Given the surrounding context in which shelters above pedestrian entries are not common and there is a lobby space immediately inside the entry, the lack of a shelter is considered acceptable in this instance.
191. Given the site constraints and relatively small scale of the proposed development, it is not possible include a natural light source on each level. That said there are two skylights provided at level 3 which will provide natural light down the stairwell.

Standard D19 Private open space

192. Of relevance to this development, a dwelling should provide balconies meeting the dimensions outlined in Table 5 of this Standard which specifies that:
- (a) *A two bedroom dwelling should have access to a balcony with a minimum area of 8sqm and minimum dimension of 2m, with convenient access from a living room.*
  - (b) *A three (or more) bedroom dwelling should have access to a balcony with a minimum area of 12sqm and minimum dimension of 2.4m, with convenient access from a living room.*
193. Each of the 4 dwelling will be one and two-bedrooms which requires a minimum balcony area of 8 square metres. Each dwelling will have a balcony area of at least 8 square metres with a minimum width of 2 metres, which is in accordance with this standard.

Standard D20 Storage

194. Of relevance to this development, the total minimum storage space (including kitchen, bathroom and bedroom storage) should meet the requirements specified in Table 6 of this Standard. The table specifies that:
- (a) *A one bedroom dwelling should have a total minimum storage volume of 10 cubic meters with a minimum storage volume within the dwelling of six cubic meters.*
  - (b) *A two bedroom dwelling should have a total minimum storage volume of 14 cubic meters with a minimum storage volume within the dwelling of nine cubic meters.*
195. Plans show a minimum of 10m<sup>3</sup> of storage to Apartment A and B and a minimum of 14m<sup>3</sup> to Apartment C and Apartment D. This is in accordance with the standard.

Standard D21 Common property

196. All common property areas are generally clearly delineated and would not create areas which are difficult to maintain into the future. The lobby is cohesive with the overall design and considered to be in line with the objectives of this Standard. The garages are allocated to individual apartments (Apartment B and Apartment C).

Standard D22 Site services

197. The location of site services on the plans. A condition will therefore require the location of all site services, including mailboxes and bins to be clearly shown on the plans, in accordance with the above standard.

Standard D23 Waste and recycling

198. The Waste Management Plan (WMP) submitted with the original proposal was found to unsatisfactory by Council's Waste Management Unit with deficiencies in the formatting of the WMP and lack of information regarding both hard waste and e-waste diversion.

199. An amended WMP was submitted to Council on 20 May 2019 as part of the 'sketch plans' package following the consultation meeting. It was unfortunately still found to be unsatisfactory by Council's Waste Management Unit however no formal referral comments were received. As such, a condition will require the submission of a revised WMP based on the WMP submitted with the original proposal.

#### Standard D24 Functional Layout

200. This standard requires main bedrooms to have a minimum width of 3m and minimum depth of 3.4m, with other bedrooms to be 3m x 3m in dimensions (any wardrobes should be additional to this). Living area dimensions (excluding dining and kitchen areas) should have a minimum width of 3.3m and minimum area of 10sqm (1- bedroom apartment) and a minimum width of 3.6m and minimum area of 12sqm (2-bedroom apartments).
201. The main bedrooms of Apartments A, B and C have a minimum width of 3 metres and depth of 3.4 metres and all secondary bedrooms have a minimum width and depth of 3 metres.
202. The main bedroom of Apartment D has a depth of 3.259m, which requires a variation of 0.141m to the dimensions prescribed by the standard. This variation is considered acceptable on the basis that a 3.259m room depth for a main bedroom will still allow for a useable and functional bedroom.
203. All apartments meet the minimum living area dimensions of 10 square metres for one bedroom apartment and 12 square metres for two or more bedroom apartments.

#### Standard D25 Room depth

204. This standard requires that single aspect habitable rooms should not exceed a room depth of 2.5 times the ceiling height. All apartments will have a minimum ceiling height of 2.7 metres. The maximum room habitable room depth is therefore calculated at 6.75 metres for single aspect rooms. This length can be increased to 9m if the room combines the living, dining and kitchen area, has the kitchen furthest away from the window and has a maximum floor to ceiling height of 2.7m.
205. With all dwellings having a maximum depth of 5.585m, the standard is met.

#### Standard D26 Window

206. All habitable rooms have a window within an external wall with direct access clear to the sky and no reliance on 'borrowed light' for any habitable room.

#### Standard D27 Natural Ventilation

207. This standard requires that at least 40 percent of dwellings are provided with effective cross-ventilation that has a maximum breeze path through the dwelling of 18m and a minimum breeze path of 5m.
208. Apartment A and Apartment B (equating to 50% of the apartments) will have effective cross ventilation with a maximum breeze path of 9.5m and of no less than 5m, in compliance with the standard.

#### Environmental sustainability

209. A Sustainable Development Assessment (STORM and BESS) was provided as part of the application. Council's ESD Advisor supports the assessment and considers it to be generally acceptable with the exception of the STORM report which states that two, 1,500 litre rainwater tanks are proposed, when only one is shown on plans. Further errors have been identified in the STORM report which include the Municipality and size of the subject site (lot).
210. To address the inconsistencies, a condition will require an amended STORM report to be submitted. This amended STORM report can be easily achieved through appropriate treatments. If the amended report is still inaccurate, plans will not be endorsed.

#### Car parking / traffic

211. Pursuant to Clause 52.06-2 of the Scheme, car parking spaces required under Clause 52.06-5 must be provided on the land. Clause 52.06-3 requires a planning permit to reduce the number of car parking spaces required under this clause.
212. Amendment VC148 (gazetted 31 July 2018) amended Clause 52.06 so that the car parking rates of Column B apply if any part of the land is identified as being within the Principal Public Transport Network Area. The subject site is located within the Principal Public Transport Network Area and the Column B car parking rates therefore apply to this proposal.
213. For the proposal, the Scheme requires 4 car parking spaces. The subject site will have 4 car spaces in the form of two single width garages and a tandem car space for two additional cars. The tandem car space is allocated to the subject site (Lot 4A) on title. Details for the allocation of the four car spaces has not been submitted and is not necessarily required for assessment purposes. Based on the Scheme requirement of four car spaces and the on-site provision of four car spaces, the Scheme requirement is met and there is no reduction in the car parking requirement of the Scheme.
214. In processing the application, the proposal was advertised as seeking a reduction in car parking because the tandem car space was not clearly identified on the proposed plans and the applicant submitted that they were seeking a reduction. While the application proceeded on that basis, given that a car parking reduction is not technically required, it does not need to be assessed in this report or referenced in the permit preamble. This will be reflected in the Recommendation at the end of this report.

#### *Access and layout*

215. Access to the two garages for Apartment B and Apartment C is via common property. It has been identified that both of the garage dimensions fall under the required minimum dimensions (3.5m width & 6m length) specified in Clause 52.06. The garages are to have a maximum width of 3.125m and length of 5.6m, requiring a variation of 0.375m and 0.4m respectfully.
216. Council's traffic engineers have reviewed the dimension and access arrangement and have no objection to a variation in the garage dimensions or revised access arrangement. They have confirmed that access for a B85 design vehicle is satisfactory with the reduced dimensions of the garages.
217. Access to the tandem car space is to remain unchanged from the existing conditions.

#### Off-site amenity impacts

218. The headings below are based on off-site amenity impacts typically assessed under Clause 55 of the Scheme, which are not covered under Clause 58. There is an overlap in some of the off-site amenity impacts discussed under the Clause 58 assessment. The below assessment will focus on the off-site amenity impacts which are not covered under Clause 58.
219. The subject site is located within the MUZ, as are the immediately surrounding properties abutting the subject site boundaries. The zoning of the land and its location within a Neighbourhood Activity Centre means that dwellings within the same zone may be afforded the same amenity considerations that are considered within typical residential zone (i.e. neighbourhood and general).
220. The eastern and western (side) boundary walls are constructed alongside existing properties at Nos. 3C/1 Bik Lane and 4B/1 Bik Lane. Towards the eastern boundary the subject site abuts the double storey dwelling at No. 4B/1 Bik Lane. To the west, the subject site partially interfaces common property and No. 3C/1 Bik Lane which is developed with a 3-storey dwelling with two roof terraces.

#### *Overshadowing*

221. One of the purposes of the MUZ is, “*to provide for housing at higher densities*” which is considered to contemplate increased built forms which introduce some level of off-site amenity impacts. It is obviously not development at any cost however and development must be appropriate for the site context and off site amenity impacts need to be carefully considered and be reasonable.
222. Shadow diagrams submitted to Council on the 5 July 2019 show overshadowing at 9am on 22 September to the terrace at 3C/1 Bik Lane which is open space located at the third floor level and to the west of the subject site. The overshadowing is as result of the third storey wall of the proposed development. The shadows affect a small section (0.28sqm) of the terrace at 9am, however at 12pm and 3pm the terrace will be unaffected.
223. Given the limited hours and limited extent of overshadowing, and the elevated location of the terrace at 3C/1 Bik Lane it will receive sufficient solar access during the midday and afternoon periods. It is considered that the extent of overshadowing is not unreasonable.
224. There is no overshadowing to the terrace to the east at 4B/1 Bik, given its first floor location and existing boundary wall which already overshadows this space.

*Overlooking*

225. Plans submitted only identify habitable room windows/open spaces to the rear of the subject site, associated with No. 672 Nicholson Street and the two adjacent terraces at Nos. 3C/1 & 4B/1 Bik Lane. Therefore this assessment will be confined to the rear interface.
226. There is no overlooking between the ground floor to the second levels, with the existing and proposed boundary walls blocking any views from Apartment D into the adjoining properties. Along Level 3 it is proposed to construct a terrace for Apartment D within the rear (northern) setback with screening along the terrace’s northern, eastern and western boundaries in the form of a metal screen (M4). The exterior materials schedule identified this material (M4) as a gold coloured perforated metal screen, however provides no details as to the extent of perforation. As such, the extent of overlooking cannot be determined.
227. A condition will require the perforation of the screen located along the northern, eastern and western sections of the terrace to Apartment D not to exceed a maximum of 25% and for details to be submitted for approval, so that the screen complies with Clause 55.04-6 (which while not technically applicable to this proposal it is a standard used under clause 54 and 55 ResCode assessments and therefore a general rule of thumb for limiting overlooking within a 9m radius.

*Daylight*

228. Clause 58 does not prescribe any quantifiable measurements on assessing daylight to windows.
229. The proposal seeks to retain the existing boundary wall at ground, level 1 and part of level 2 (which follows the sawtooth roof form) and above the sawtooth roof the level 3 boundary wall will be infilled with a 1.8m high metal screen. The proposal includes a setback of 0.9m to the existing brick wall along Levels 1 (bedroom interface), Level 2 (dining room interface) and part of Level 3 (terrace) for 8/672 Nicholson Street and 9/672 Nicholson Street. Based on this design, the daylight to bedrooms at Level 1 (8/672 Nicholson Street and 9/672 Nicholson Street) and the dining areas at Level (8/672 Nicholson Street and 9/672 Nicholson Street) will be decreased given the increased wall height associated with Level 3 and the terrace screen (Apartment D).
230. This daylight reduction is considered acceptable as the bedrooms interface an existing built form and bedrooms are generally not occupied a large amount of time during the daytime. With regard to the dining room for 9/672 Nicholson Street, this is an open plan room with a north-facing living room receiving solar access. Along level 3, a 2.5m setback is provided which will provide sufficient daylight.

231. So overall, although level 1 bedrooms will be affected the design response is considered acceptable because of the bedrooms interface to an existing built form and bedrooms are generally not occupied a large amount of time during the daytime. With regard to the dining room for 9/672 Nicholson Street, this is an open plan room with a north-facing living room receiving solar access.

Objector concerns

232. The majority of the issues raised by the objectors have been addressed within the body of this report, as follows:

(a) Neighbourhood character (height, scale, bulk, design details);

Paragraphs 133 –149

(b) Amenity impacts (overlooking, overshadowing, loss of light);

Paragraphs 218 – 231

(c) Traffic congestion and car parking;

Paragraphs 211 – 217

233. Outstanding concerns raised by the objectors are discussed below:

(a) Overdevelopment of the site

The subject site is located within a MUZ and is in close proximity to services. State Planning Policy encouraged urban consolidation in areas that are well serviced and is in proximity to a range of facilities and infrastructure, which the subject site is.

Furthermore the MUZ seeks “*to provide for housing at higher densities*”. The immediate area has four to six storey built form. Given the purpose of the zone and examples of existing built forms within the area, the proposal is not considered to be an overdevelopment of the site. The proposed height and design and the building envelope is considered to be appropriate for an area experiencing this type of development.

(b) Extent of demolition

While the former use of the subject site and the large subdivision is unique, it is not located within a Heritage Overlay and as such the demolition aspects do not require a planning permit and cannot therefore be considered in the assessment of this application. The proposal does however seek to retain a lot of the original features of the building including boundary walls and sawtooth roof from which goes some way to address this concern despite the lack of planning control encouraging retention of existing built form.

(c) Loss of views

While the Victorian Civil and Administrative Tribunal (VCAT) recognise that views can be a relevant amenity consideration, it has also held that there is no *right to a view* and that the weight to be given to the amenity impact of loss of views is diminished where no planning control applies encouraging retention or sharing of views. There is no specific policy, provision or local policy control in the Scheme in relation to views and view loss. In this site context, it is not considered that the extent of loss of view in this case is unreasonable, particularly considering the built form expectations envisaged under the MUZ.

(d) Noise (during construction and from residents)

It is not anticipated that the proposed development will result in any levels of noise above what can be reasonably expected from a residential development. The proposed development incorporates balconies, which is a common design response for development of this type and within a MUZ.

With regard to the construction phase, a condition will be included on any permit issues requiring a Construction Management Plan to be submitted and will require details on the hours of construction, loading zones and traffic management all of which seek to reduce the impacts of construction on the community. This Construction Management Plan will be endorsed and will form part of the planning permit.

(e) Solar panels on adjoining properties

In determining a planning application, Council can only assess the current conditions on-site. At present there is no solar panels on the directly abutting sites (i.e. 3C/1 Bik Lane and 4B/1 Bik Lane. The possible installation of solar panels at some future date is not a decision guideline in the Scheme or Act and as such cannot be considered.

A site visit and aerial photos (December 2018) show solar panels at No. 5B/1 Bik Lane. The shadow diagrams submitted as part of the 'sketch plans' on 5 July 2019 shows that no additional shadow will be cast on these solar panels.

(f) Insufficient waste capacity

The submitted WMP has been referred to Council's Waste Management Unit who have not identified any concerns with regard to the waste capacity on the site. That said they have not found the WMP to be satisfactory in relation to the formatting of the WMP and lack of information regarding both hard waste and e-waste diversion. An amended WMP is required to address these concerns.

## Conclusion

234. The proposed development is considered to demonstrate an appropriate level of compliance with policy objectives contained within the State and Local Planning Policy Framework. Notably, the proposal achieves the State Government's urban consolidation objectives, the preference to direct higher density development in the Mixed Use Zone and aligns with the State Policy as well as the direction given by the Tribunal in relation to applications of similar developments.

## RECOMMENDATION

That having considered all objections and relevant supporting documents, the Committee resolves to issue a Notice of Decision to Grant a Permit (PLN18/0644) for the development of the land for the construction of three additional storeys to an existing two storey building (equating to 5 storeys in total), for 4 dwellings at 4A/1 Bik Lane, Fitzroy North subject to the following conditions:

### Amended Plans

1. Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of this permit. The plans must be drawn to scale with dimensions, and three copies must be provided. The plans must be generally in accordance with the decision plans but modified to show the following:
  - (a) The terraces at No. 3C/1 Bik Lane and No. 4B/1 Bik Lane.
  - (b) For Apartment D, Level 3, the screening details for the terrace (including a maximum transparency of 25%).
  - (c) For Apartment A and Apartment B, plan notations confirming:
    - (i) that the showers are 'hopless; and
    - (ii) that the bathroom doors associated have readily removable hinges.
  - (d) The incorporation of glazing to the pedestrian door entry (facing the western site boundary).
  - (e) The location of site services (including mailboxes and the 'signs' for the pedestrian entries) in accordance with Clause 58.06-2 of the Yarra Planning Scheme.



(f) Any plan changes required as a result of another condition of permit (including any changes from the STORM report required under the Sustainable Management Plan at condition 3 of this permit).

2. Before 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.

#### Sustainable Management Plan

3. 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 dated November 2018, but modified to include (but not limited to) the following:

(a) A complete, accurate and correct STORM or equivalent assessment report of the development in accordance with Clause 22.16 (Stormwater Management) of the Yarra Planning Scheme. The STORM rating should achieve a minimum of 100%.

4. The provisions, recommendations and requirements of the endorsed Sustainable Management Plan must be implemented and complied with at all times to the satisfaction of the Responsible Authority.

#### Waste Management Plan

5. 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 JBL Architects and dated November 2018, but modified to include the following:

(a) The waste management plan submitted as a separate report.  
(b) Further information needs to be added regarding both hard waste and e-waste diversion.

6. The provisions, recommendations and requirements of the endorsed Waste Management Plan must be implemented and complied with at all times to the satisfaction of the Responsible Authority.

#### Car Parking

7. 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.

#### Environmental Audit

8. The development permitted by this permit must comply with the conditions in the Statement of Environmental Audit issued by Christopher Jewell of C.M Jewell & Associates Pty Ltd dated 22 December 2006 and environmental management plan report on Site Management Plan, 650 Nicholson Street North Fitzroy, Project: 42116, prepared by Douglas Partners Pty Ltd, dated 16 November 2006.

#### General

9. 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.
10. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, external lighting capable of illuminating pedestrian walkway, laneway and dwelling entrances must be provided within the property boundary. Lighting must be:
  - (a) Located;
  - (b) Directed;
  - (c) Shielded; and
  - (d) Of limited intensity.
11. Finished floor levels shown on the endorsed plans must not be altered or modified without the prior written consent of the Responsible Authority.
12. Before the development is occupied, or by such later date as approved in writing by the Responsible Authority, all screening and other measures to prevent overlooking as shown on the endorsed plans must be installed to the satisfaction of the Responsible Authority. Once installed the screening and other measures must be maintained to the satisfaction of the Responsible Authority.
13. 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.
14. All buildings and works must be maintained in good order and appearance to the satisfaction of the Responsible Authority.

#### Construction Management

15. 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; Agenda Page 162 Yarra City Council – Internal Development Approvals Committee Agenda – Wednesday 24 October 2018
    - (ii) materials and waste;
    - (iii) dust;
    - (iv) stormwater contamination from run-off and wash-waters; (v) sediment from the land on roads;
    - (v) washing of concrete trucks and other vehicles and machinery; and
    - (vi) 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.
16. The provisions, recommendations and requirements of the endorsed Construction Management Plan must be implemented and complied with at all times to the satisfaction of the Responsible Authority.
17. Except with the prior written consent of the Responsible Authority, demolition or construction works must not be carried out:
- (a) Monday-Friday (excluding public holidays) before 7 am or after 6 pm;
  - (b) Saturday and public holidays (other than ANZAC Day, Christmas Day and Good Friday) before 9 am or after 3 pm; or
  - (c) Sundays, ANZAC Day, Christmas Day and Good Friday at any time.
18. This permit will expire if:
- (a) The development is not commenced within two years of the date of this permit; and
  - (b) The development is not completed within four years of the date of this permit.

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

Notes:

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

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

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

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

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

**CONTACT OFFICER:** Gary O'Reilly  
**TITLE:** Senior Statutory Planner  
**TEL:** 9205 5040

**Attachments**

- 1 PLN180611 - 4A 1 Bik Lane, Fitzroy North - Site Plan
- 2 PLN180644 - 4A 1 Bik Lane Fitzroy North - Advertising S52 - Plans
- 3 PLN180611 - 4A 1 Bik Lane, Fitzroy North - Sketch Plans - 17 May 2019
- 4 PLN180611 - 4A 1 Bik Lane, Fitzroy North - Sketch Plans - 5 July 2019
- 5 PLN180644 - 4A 1 Bik Lane, Fitzroy North - Engineering referral advice
- 6 PLN18.0644 - 4A 1 Bik Lane, Fitzroy North - Urban Design referral advice
- 7 PLN18.0644 - 4A 1 Bik Lane, Fitzroy North - ESD referral advice
- 8 PLN18.0644 - 4A 1 Bik Lane, Fitzroy North - Waste management advice

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- 1.3 PLN17/0517 - Farm Road, Alphington - Buildings and works to an existing outdoor recreational facility (golf course) and vegetation removal including removal of putting green and first tee box, construction of an underground buggy storage area (with elevated tee box and associated pathways, alterations to clubhouse facade and construction of a first floor terrace and construction of fencing) and vegetation removal**
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## **Executive Summary**

### **Purpose**

1. This report provides Council with an assessment of planning permit PLN17/0517 and recommends approval subject to conditions.

### **Key Planning Considerations**

2. Key planning considerations include the following:
  - (a) Clause 15.01 – Urban environment
  - (b) Clause 15.02 – Sustainable development
  - (c) Clause 21.05 – Built form character
  - (d) Clause 21.07-1 – Environmental sustainable development
  - (e) Clause 21.07-2 – Yarra River, Merri Creek and Darebin Creek
  - (f) Clause 43.02 – Design and Development Overlay (Schedule 1)
  - (g) Clause 42.03 – Significant Landscape Overlay (Schedule 1)

### **Key Issues**

3. The key issues for Council in considering the proposal relate to:
  - (a) strategic policy;
  - (b) built form and design;
  - (c) removal of vegetation;
  - (d) environmental sustainable development; and
  - (e) objector concerns.

### **Submissions Received**

4. 21 objections were received to the application, raising the following issues (summarised):
  - (a) The installation of a fence along Farm Road will prevent access by the community to Darebin Creek.
  - (b) Design of fence (including ecological impacts, it will block views to Darebin Creek, and the materials are not characteristic of the area).
  - (c) Design of clubhouse addition inconsistent with existing built form.
5. 2 letters of support were received to the application.

### **Conclusion**

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

**CONTACT OFFICER:** Gary O'Reilly  
**TITLE:** Senior Statutory Planner  
**TEL:** 9205 5040

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**1.3 PLN17/0517 - Farm Road, Alphington - Buildings and works to an existing outdoor recreational facility (golf course) and vegetation removal including removal of putting green and first tee box, construction of an underground buggy storage area (with elevated tee box and associated pathways, alterations to clubhouse facade and construction of a first floor terrace and construction of fencing) and vegetation removal**

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Trim Record Number: D19/112221

Responsible Officer: Senior Co-ordinator Statutory Planning

<b>Proposal:</b>	Buildings and works to an existing outdoor recreational facility (golf course) including removal of putting green and first tee box, construction of an underground buggy storage area (with elevated tee box and associated pathways, alterations to clubhouse facade and construction of a first floor terrace and construction of fencing) and vegetation removal.
<b>Existing use:</b>	Outdoor recreational facility (golf course)
<b>Applicant:</b>	La Trobe Golf Course C/Song Bowden Planning Pty Ltd
<b>Zoning / Overlays:</b>	Special Use Zone (Schedule 1)
<b>Date of Application:</b>	3 July 2017
<b>Application Number:</b>	PLN17/0517

### Planning History

1. The subject site has the following planning history:
  - (a) Planning Permit no. 991053 was issued by Council on 19 November 1999 for *buildings and works including road widening, relocation of nets, landscaping and resurfacing the existing car park.*
  - (b) Planning Permit PL02/0225 was refused by Council on 28 November 2003 for *buildings and works to the existing club house.*
  - (c) Planning Permit application PL05/0130 for the development of storage lakes and tree removal was withdrawn on 28 October 2005.
  - (d) Planning Permit PL05/1001 was issued on 15 March 2006 by Council, for the *development of chimney flue on the club house (retrospective).*
  - (e) Planning Permit application PL06/0185 for the removal of trees was withdrawn on 4 May 2006.
  - (f) Planning Permit PL06/0807 was issued by Council, for *buildings and works to allow for the construction of a vehicle wash bay and storage room to the existing maintenance shed.*
  - (g) Planning Permit PLN13/0418 was issued by Council, on 4 September 2013 for *development of the land for earthworks and vegetation removal (a result of the construction of temporary tees and greens).* This application was associated with sewer replacement works.
  - (h) Planning Permit PLN13/0624 was issued by Council on 8 November 2013, for *development of the land to remove and lop vegetation.* This application was associated with sewer replacement works.

- (i) Planning Permit PLN14/1199 was issued by Council on 09 June 2015, for *Development of the land to carry out works and earthworks associated with a golf course*. This application was to restore the golf course to original conditions following the completion of the abovementioned sewer works.
- (j) Planning Permit PLN15/0281 was issued by Council on 09 October 2015 for *Removal and lopping of vegetation*. This application is associated with works to the Darebin-Yarra Trail Link project.
- (k) Planning Permit PLN16/0549 was issued by Council on 17 October 2016 for *Development of the land for an extension to the car park, relocation of out-buildings and landscaping*.
- (l) Planning Permit PLN17/0940 was issued by Council on 18 February 2019 for the *relocation of fill*.

## **Background**

### Aboriginal Cultural Heritage Significance

- 2. The subject site is located within an area of Aboriginal Cultural Heritage Sensitivity. A subsequent section of this report determines that a Cultural Heritage Management Plan is not required for the subject application.

### Lodgment of S57A plans

- 3. Following the submission of objections and in an attempt to address the concerns raised, amended plans pursuant to Section 57A of the *Planning and Environment Act 1987* (the Act) were submitted on the 21 March 2019 showing the following changes to the originally submitted (advertised) plans:
  - (a) Deletion of the proposed fence along Farm Road.
  - (b) Reduce the length of the proposed fence adjacent to the first teebox and lower level car park.
  - (c) Relocation of the covered buggy storage area and accessways from directly underneath the first tee box to the north-east of the tee box.
  - (d) Relocation of the retaining wall and landscaping works along the north and north-eastern section of the first tee box as a result of the relocation of the covered buggy store.
  - (e) Installation of two rainwater tanks, adjacent to the north-east corner of the covered buggy store.
  - (f) Redesign of the first teebox and beam structure reducing the tee off area to allow for a buggy circulation route and extend the beam structure towards the north-east of the tee box to provide golf buggy parking area.
- 4. The plans show no change to the proposed addition to the clubhouse.
- 5. The amended plans were re-advertised to adjoining properties and all objectors in March 2019. Three additional objections were received, however two of these objections were later withdrawn. Council has, at the time of writing this report, received a total of 21 objections.

## **The Proposal**

- 6. The application includes the following works:

### Demolition (no permit required)

- (a) First teebox and practice green.
- (b) The existing brick retain wall to the north of first teebox.
- (c) The timber sleeper retaining wall to the east of first teebox.
- (d) Three (3) trees to the east of first teebox.



7. Construction

- (a) Covered buggy storage area to the north of the first teebox. The originally advertised plans (Section 52 plans) had the majority of the buggy storey located directly underneath the teebox.
- (b) New raised first teebox and associated accessway, construction of a new graded accessway to provide access from the buggy store to the new first teebox and construction of a new prefabricated concrete column and associated beam/lintel structure to new first teebox.
- (c) Remove the existing brick and timber sleeper retaining wall to east of first teebox and replace with a stone retaining wall in the same location.
- (d) New first floor outdoor terrace to clubhouse (168sqm in size) along the western side of the building, adjacent to the first teebox. The terrace is to have a varied width of between 6.6m to 9.9m and a length of 27m. The terrace is to have a minimum height of 3.2m above the NGL and incorporate a 1.1m high balustrade.
- (e) External alteration to clubhouse to provide access to new first floor outdoor terrace, including new window openings and screening to the north-facing, first floor windows.
- (f) A defcon tubular spear-top security fence (67m long, 1.8m high) along the southern portion of the upper car park.
- (g) A defcon tubular spear-top security fence (101m long, 1.8m high) along the southern portion of the lower car park.

**Existing Conditions**

Subject Site

- 8. The subject site is located at the eastern end of Farm Road and is known as LaTrobe Golf Course (a private club open to members and guests). The subject site is irregular in shape, with access via Farm Road.
- 9. The clubhouse consists of a double-storey brick building with significant portions of glazing. The clubhouse has a pro shop, locker room and first floor lounge and kitchen. It is accessed off Farm Road and there are two car parks; one 'upper car park' located directly adjacent to the Farm Road entrance and one 'lower car park' located directly to the east of the clubhouse and adjacent to Darebin Creek.
- 10. The golf course itself is located to the south and south-west of the clubhouse and has 18 holes.
- 11. The subject site is made up of a number of consolidated titles with several easements, none of which are affected by the works proposed under this proposal. No covenants affect the subject site.

Surrounding Land

- 12. To the north of the subject site and clubhouse is an open green area, currently used for the storage of fill material associated with works that were occurring along Darebin Creek. A site inspection indicated these works were associated with the new pathway constructed for the new Darebin-Yarra Trail Link project. Planning permit PLN17/0940 has been issued for the relocation of fill in this location. Further to the north is Darebin Creek and Alphington Grammar School. The golf course abuts Farm Road for a length of 113m.
- 13. To the east of the subject site is Darebin Creek, the Yarra River and beyond which (on the opposite side of the Yarra River) is Kew Golf Course. There are currently works along the eastern boundary associated with the Darebin-Yarra Trail Link project.
- 14. To the south of the subject site is the Yarra River, with the Eastern Freeway located on the opposite side.

15. To the west of the subject site is the Alphington Park Wetlands (south-west) and the rear boundaries of properties fronting Lucerne Crescent. The wetlands is zoned as an Urban Floodway Zone and abuts the subject site for approximately 315m. Properties along Lucerne Crescent are zoned Neighbourhood Residential Zone (Schedule 2) and abut the subject site for approximately 643m.

## **Planning Scheme Provisions**

### Zoning

#### *Clause 37.01 – Special Use Zone*

16. Pursuant to Clause 37.01-4 of the Yarra Planning Scheme (the Scheme), a permit is required to construct a building or construct or carry out works.

#### *Clause 37.03 – Urban Floodway Zone*

17. This zone covers a portion of the subject site located north-east of the first teebox and adjacent to part of Darebin Creek. No works are located within this zone and as such there is no permit trigger for works under the zone.

### Overlays

#### *Clause 43.02 – Design and Development Overlay (Schedule 1)*

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

#### *Clause 42.01 – Environmental Significance Overlay (Schedule 3)*

19. This zone covers the northern portion of the subject site. No works are located within this overlay and as such there is no permit trigger for works under this overlay.

#### *Clause 44.04 – Land Subject to Inundation Overlay*

20. Pursuant to Clause 44.04-1 of the Scheme, a planning permit is required to construct or carry out works. Pursuant to Clause 44.04-5 an application must be referred in accordance with Section 55 of the Act to the local floodplain management authority, Melbourne Water.

#### *Clause 45.01 – Public Acquisition Overlay*

21. This zone covers the north-eastern portion of the subject site and runs adjacent to Darebin Creek. No works are located within this overlay and as such there is no permit trigger for works under this overlay.

#### *Clause 42.03 – Significant Landscape Overlay*

22. Pursuant to Clause 42.03-2 of the Scheme, a planning permit is required to:

- (a) *construct a building or construct or carry out works*
- (b) *construct a fence*
- (c) *remove, destroy or lop any vegetation specified in a schedule to this overlay*

### Particular Provisions

23. There are no particular provision applicable to this application.

### General Provisions

#### *Clause 65 – Decision Guidelines*

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

### Planning Policy Framework (PPF)

25. The following SPPF provisions of the Scheme are relevant:  
*Clause 12.01-1S – Protection of biodiversity*
26. The relevant objectives of this clause include:  
(a) To assist the protection and conservation of Victoria’s biodiversity.  
*Clause 12.01-2S – Native vegetation management*
27. The relevant objectives of this clause include:  
(a) To ensure that there is no net loss to biodiversity as a result of the removal, destruction or lopping of native vegetation.  
*Clause 12.03-1S – River corridors, waterways, lakes and wetlands*
28. The relevant objective of this clause is:  
(a) To protect and enhance river corridors, waterways, lakes and wetlands.  
*Clause 13.03-1S – Floodplain management*
29. The relevant objectives of this clause are:  
(a) To assist in the protection of:  
(i) Life property and community infrastructure from flood hazard;  
(ii) The natural flood carrying capacity of rivers, streams and floodways;  
(iii) The flood storage function of floodplains and waterways;  
(iv) Floodplain areas of environmental significance or of importance to river health.  
*Clause 15.01-1S – Urban Environment*
30. The relevant objective of this clause is:  
(a) To create urban environments that are safe, functional and provide good quality environments with a sense of place and cultural identity.  
*Clause 15.02-1S – Energy and resource efficiency*
31. The objective of this clause is:  
(a) To encourage land use and development that is consistent with the efficient use of energy and the minimisation of greenhouse gas emissions.  
*Clause 17.02-1S – Business*
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.
- Local Planning Policy Framework (LPPF)  
*Clause 21 – Municipal Strategic Statements (MSS)*  
*Clause 21.04-1 – Land Use*
33. The relevant objectives of this clause are:  
(a) To increase the number and diversity of local employment opportunities.  
(b) To establish a linked open space network.  
(c) To provide an open space network that meets existing and future community needs.  
*Clause 21.05 – Built Form*
34. The relevant objectives of this clause are:  
(a) To reinforce the existing urban framework of Yarra.

- (b) To ensure that new development contributes positively to Yarra's urban fabric.
- (c) To ensure that development maintains and enhances the environmental, aesthetic and scenic qualities of the Corridor.

*Clause 21.06 – Transport*

35. The relevant objective of this clause is:

- (a) To provide safe and convenient pedestrian and bicycle environments.

*Clause 21.07 – Environmental Sustainability*

36. The relevant objectives of this Clause are:

- (a) To promote environmentally sustainable development;
- (b) To protect wildlife habitat, provide habitat linkages and arrest the loss of biodiversity;
- (c) To balance the ecological and recreational potential of the waterway Corridors;
- (d) To protect and enhance the environmental values of land within the waterway Corridors;
- (e) To improve the water quality and flow characteristics of storm water run-off.

*Clause 21.08 – Neighbourhoods*

37. Clause 21.08-6 describes the Fairfield-Alphington area in the following way:

- (a) *To the east of Yarra Bend Park is a green, leafy, residential area, comprising late Victorian, Edwardian and interwar dwellings. Dwellings have generous front and side setbacks and allotments are double fronted and deep allowing for large spacious gardens and substantial backyards. The neighbourhood also has a significant amount of open space. The Northern Metropolitan Institute of TAFE and the Victorian Institute of Forensic Mental Health lie within the parkland.*
- (b) *The Heidelberg Road neighbourhood activity centre is on the boundary between the Cities of Yarra and Darebin. It is a small convenience centre, with limited furniture and home wares outlets and a small amount of office space.*

Relevant Local Policies

*Clause 22.08 – Protection of biodiversity*

- 38. This policy applies to land affected by Schedule 1 and Schedule 3 to the Environmental Significance Overlay (among others).
- 39. This policy identifies that few areas of remnant vegetation remain in Yarra except those along the Yarra River and the northern waterways. Furthermore, a number of remnant indigenous plants within Yarra are considered to be of regional conservation significance, and these areas are under threat from development including by the invasion of pest plants.
- 40. The relevant objectives of this Clause are:
  - (a) To protect and enhance Yarra's natural biodiversity;
  - (b) To protect the long-term survival and viability of remnant vegetation;
  - (c) To ensure the survival of indigenous species;
  - (d) To minimise the impacts of introduced flora and fauna on indigenous vegetation;
  - (e) To manage sites to allow for the natural regeneration of indigenous vegetation.

*Clause 22.10 – Built form and design policy*

41. 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)*

42. This policy applies to an application for new buildings. A sustainable management plan (SMP) was submitted with the application which includes a STORM rating report relating to water re-use. The SMP confirms that a raingarden and infiltration sand will be used for the new terrace and clubhouse.

*Clause 22.17 – Environmental Sustainable Development*

43. This policy applies to developments of a non-residential building with a gross floor area of between 100sqm and 1000sqm. 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 relevant legislation

*Aboriginal Heritage Act 2006 - Cultural Heritage Management Plan (CHMP)*

44. The subject site is located within an area of cultural heritage sensitivity. A review by Council has determined that a CHMP is not required for a minor sports and recreational facility which has been in operation prior to 28 May 2007.

**Advertising**

45. The application was advertised under the provisions of Section 52 of the *Planning and Environment Act (1987)* by 70 letters sent to surrounding owners and occupiers and by a sign displayed on site.
46. Council received 20 objections and 2 letters of support, the grounds of which are summarised as follows:
- (a) The installation of a fence along Farm Road will prevent access by the community to Darebin Creek.
  - (b) Design of fence (including ecological impacts, it will block views to Darebin Creek, and the materials are not characteristic of the area).
  - (c) Design of clubhouse addition inconsistent with existing built form;
47. Pursuant to Section 57A of the *Planning and Environment Act 1987* (the Act) amended plans were submitted on the 21 March 2019 showing the following changes to the originally submitted (advertised) plans:
- (a) Deletion of the proposed fence along Farm Road.
  - (b) Reduce the length of the proposed fence adjacent to the first teebox and lower level car park.
  - (c) Relocation of the covered buggy storage area and accessways from directly underneath the first tee box to the north-east of the tee box.
  - (d) Relocation of the retaining wall and landscaping works along the north and north-eastern section of the first tee box as a result of the relocation of the covered buggy storage area.
  - (e) Installation of two rainwater tanks, adjacent to the north-east corner of the covered buggy storage area.

- (f) Redesign of the teebox and beam structure reducing the tee off area to allow for a buggy circulation route and extend the beam structure towards the north-east of the tee box to provide golf buggy parking area.
48. The plans show no change to the proposed addition to the clubhouse.
49. The S57A plans were re-advertised under the provisions of Section 57B of the *Planning and Environment Act (1987)* by 88 letters sent to surrounding owners and occupiers (which included letters to objectors/supporters) and by a sign displayed on site.
50. Council received an additional 3 letters of objections, raising issues on:
- (a) the design of the clubhouse additions (being inconsistent with the architectural character and built form of the existing clubhouse).
51. A consultation meeting was held on 3 June 2019 and attended by two objectors, the Applicant (including the Golf Club President and Manager), a Councillor and Council Officers. The issues and concerns raised in the letters of objection were discussed. No resolution were achieved at the meeting.
52. The Applicant however later advised Council that they would be willing to accept the deletion of the 101m long fence in the lower car park (adjacent to the first teebox) as a condition of any planning permit issued, to assist in the reducing the ecological impacts to local wildlife (i.e. movement of wildlife) and ensure views to Darebin Creek remain unaltered.

### **Referrals**

53. All referral comments are based on the original plans and the Section 57A plans.

#### External Referral

54. The application was referred to Melbourne Water. Their referral response is included as an attachment to this report.

#### Internal Referrals

55. The application was referred to the following units within Council:

- (a) Council Arborist
- (b) Biodiversity Strategy Project Officer

56. Referral comments are included as attachments to this report.

### **OFFICER ASSESSMENT**

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

- (a) Policy and Strategic Policy;
- (b) Special Use Zone (SUZ);
- (c) Design and Development Overlay (DDO);
- (d) Significance Landscape Overlay (SLO);
- (e) Land Subject to Inundation Overlay (LSIO); and
- (f) Objections.

#### Policy and Strategic Support

58. It is the objective of clause 11.02-1S of the Scheme *“to ensure a sufficient supply of land is available for residential, commercial, retail, industrial, recreational, institutional and other community uses.”* This is further complemented with clause 19.02-3R which seeks to *“Maintain and strengthen Melbourne’s distinctiveness as a leading cultural and sporting city with world-class facilities”*
59. The subject site is an existing outdoor recreational facility (gold course) with good access to public transport (bus services along Heidelberg Road and Alphington Train Station located 450m and 780m to the north-west, respectively).

The proposal does not increase the capacity of the golf course but proposes works to the clubhouse, buggy store, and first teebox with the intention of improving the facilities for members. It is also proposed to construct 2 new security fences adjacent to both of the car parks to secure the golf club from the Darebin Creek Yarra Trail link.

#### Special Use Zone (SUZ)

60. The SUZ decision guidelines directs the Responsible Authority to focus on the provision of landscaping and the possible effect the proposed buildings and works have on the amenity of the neighbourhood.
61. In relation to landscaping, the subject site is heavily landscaped. The proposed works (associated with the replacement teebox and buggy store) will result in the loss of three trees adjacent to the first teebox. This has been reviewed and has been supported by Council's Arborist. The works have as far as possible been designed around trying to maintain existing landscaping on the site.
62. In relation to the impact on the amenity of the neighbourhood, the proposed works will have limited affect on the amenity of the neighbourhood. This will be discussed later in this report.

#### Design and Development Overlay (DDO)

63. The proposed works are generally confined to the first teebox and clubhouse. The works include infilling the existing first teebox with soil, the construction of a buggy storage area and construction of accessways associated with this, construction of a retaining wall and a concrete column/beam and lintel structure, a first floor terrace and screening to the north-facing windows of the clubhouse and the removal of vegetation (three trees). The remaining works are associated with fencing adjacent to the two car parks and will be discussed separately.

#### Clubhouse

64. The remaining works are associated with the clubhouse and include the construction of a first floor terrace along the building's eastern façade and alterations to the building's northern façade in the form of screens above the existing north-facing windows. The first floor terrace will extend/cantilever above the circulation area adjacent to the first teebox and will have a width varying between 6.6m to 14.1m. It will be accessed via the lounge room. The terrace will be open with no roof structure proposed above it.
65. With the exception of the terrace and screening, there are no additions proposed to the clubhouse. Given its open nature and retention of the glazed facade along the eastern portion of the building is considered that the terrace will not add any significant bulk to the presentation of the clubhouse itself. The screening will be confined to the first floor windows and provide shade from the northern sun. Overall, the architectural character of the clubhouse will generally remain intact and its footprint will remain generally unchanged (with the exception of the terrace). The façades (eastern and southern walls) of the clubhouse will remain untouched.

#### Buggy storage area and first teebox

66. The proposed buggy storage area is to be directly adjacent to the first teebox, along its north-eastern boundary. A retaining wall is to be constructed to separate the first teebox from the store and associated accessways. The storage area is to be partially underground, provide 39 buggy spaces and include a service and wash down area. The structure will be an open metal frame, with zinc cladding and a pitched zinc standing stem roof and will be a maximum height of 5.4m.
67. Adjacent to the buggy storage area is an accessway leading up to the new first teebox. The existing teebox will be infilled with between 0.6m to 1.4m of topsoil. Additional works to the new first teebox include the construction of a buggy parking area (to the north-west and extending above the accessway and partially covered by the zinc roof structure) and the construction of a prefabricated concrete column/beam and lintel structure.

This column/beam and lintel structure is located along the north and north-western portion of the first teebox and parking area and will incorporate 9 columns spaces apart, with a beam constructed above. The structure will have a maximum height of 7.9m, measured from the lower level (buggy storage area).

68. The proposed works will be partially visible from Darebin Creek, which is located approximately 22m to the north (at the shortest point). The works will be partially screened by existing landscaping and an embankment to the Darebin Creek. Given the topography of approximately 2m and screening, it is unlikely that the buggy store will be visible Darebin Creek. The teebox, column/beam structure and works to the clubhouse will be visible from Darebin Creek but considered acceptable given the separation distance and the open nature of the terrace and column/beam structure.

This setback will also allow for sufficient space between the creek and building to allow for sufficient plant growth (including canopy trees adjacent to the creek). Furthermore the column/beam structure will be below the maximum height of the existing clubhouse.

69. The proposed works will not create any additional overshadowing of public space. The open wall metal frame to the buggy storage area will result in no, or very limited, impacts on the Darebin Creek's/river's natural flood or watercourse.
70. The proposed works will not interfere with the aesthetics of the environment along the edge of the Darebin Creek as the site is a considerable distance from both areas (22m and 135m, respectively).
71. The viewlines along both Darebin Creek and the Yarra River will not be unreasonably interrupted by the proposed works due to their 32m distance from the creek and 134m distance from the river and the maximum height of the works being lower than the clubhouse. The proposed works will retain the majority of landscaping within the site which includes a number of significant canopy trees between the area of the proposed works and Darebin Creek and the Yarra River.
72. Given the setbacks from Darebin Creek and the Yarra River, it is not anticipated that the proposed works will impact on the river's/creek's natural flood or waterway characteristic. The buggy storage area however has been designed with a metal open framed wall to allow water to flow through in a flood event.
73. The heights of the proposed works are considered to be an appropriate design response, where the works will not exceed the height of the existing clubhouse. The scale of the works are therefore considered to complement the clubhouse's built form and the surrounding area. The heights of the works (column & beam, buggy storage area and terrace) are a maximum of 7.9 metres, which is below the existing maximum height of the clubhouse. In addition, the clubhouse will maintain all of its glazed first floor façade (eastern and southern elevations) which will further reduce the visual bulk, given their transparent nature.
74. Materials and finishes include an open metal framed wall, zinc roofing and screening to part of the first floor, northern façade of the clubhouse. These finishes are consistent with the mix of finishes found within the immediate context.

#### Fencing

75. The final aspect to the proposed development is the construction of fencing. It is proposed to construct a 67m long fence along the southern portion of the upper car park and a 101m long fence along the southern portion of the lower car park. The fence type will be a 1.8m high defcon tubular spear top security fence in a black finish with 40mm by 40mm rails, 25mm by 25mm pickets spaced 140mm apart.
76. The rationale for the proposed fencing is to provide security to LaTrobe Golf Club given the introduction of the Darebin Creek Yarra Trail (which as part of the trail has a fence constructed along the common boundary between the trail and the club).



77. The need for the proposed fencing is questionable given that existing fence constructed along the common boundary between the trail and the club already provides a level of security. Further, a decision guideline under the SLO requires the Responsible Authority to consider:
- (a) *Whether the proposed fencing allows for the free movement of wildlife minimises visual intrusion and limits impact on the natural flood and watercourse characteristics.*
78. A full assessment of the decision guideline will be discussed later in this report. However in relation to the fencing, it is considered that given that there is an existing fence provided along the Creek and the potential impacts to wildlife (i.e. restricting their movements), the proposed fencing is not considered essential and is not supported by policy. This is despite the rationale for the proposed fence put forward by the applicant, which is for security.
79. Based on the lack of policy support for the fencing a condition will therefore be included on any planning permit issued, to delete all of the fencing to both car parks.

#### Significant Landscape Overlay

80. A full assessment of the proposed works (in other words the buggy storage area, alterations to the teebox, works to the clubhouse) has been discussed in paragraphs 64-74 of this report and deemed acceptable. This section of the report will therefore focus on the vegetation removal (the removal of three shrubs) and the construction of the proposed fences.
81. With regard to vegetation removal, it is proposed to remove three trees. This includes the removal of two Chinese Hawthorns (*Photinia Serratifolia*) and one Sweet Pittosporum (*Pittosporum Undulatum*) which are located to the east of the first teebox. The reason for their removal is to make way for the buggy storage area.
82. The arborist report submitted with the application identifies that the Sweet Pittosporum is a recognised 'weed' species. The two Chinese Hawthorns (*Photinia Serratifolia*) are 'common' species, with one in declining health.
83. A weed is defined as any plant that requires some form of action to reduce its effect on the economy, the environment, human health and amenity. Weeds are also known as invasive plants. Weeds typically produce large numbers of seeds, assisting their spread. They are often excellent at surviving and reproducing in disturbed environments and are commonly the first species to colonise and dominate in these conditions. A weed can be an exotic species or a native species that colonises and persists in an ecosystem in which it did not previously exist. Weeds can inhabit all environments; from our towns and cities through to our oceans, deserts and alpine areas.
84. A 'common' species is a plant that is 'common the surrounding area' and not classified as a 'weed'.
85. Given the nature of the golf club use, it is logical to have the buggy storage area close to the clubhouse / first teebox. Given the site constraints (which include the flood overlay affecting the site, proximity to Darebin Creek and possible impacts to efficiency and practicality for the golf course operations in locating the buggy storage area elsewhere) the proposed location of the buggy storage area and the resulting vegetation removal is deemed acceptable.
86. Council's Arborist has reviewed the arborist report submitted with the application and has no objection to the vegetation removal. While any vegetation loss is unfortunate, there is significant landscaping throughout the golf course to absorb the vegetation removal proposed and still provide sufficient habitat to wildlife and maintain the landscaped interface to the Darebin Creek and Yarra River. No trees immediately adjacent to the creek are proposed to be removed or disturbed, ensuring little if any effect on the habitat value, wildlife corridor and long term viability of remnant and revegetated areas along the Creek corridor. The proposed works will not affect the future enjoyment of the area by the community as all works will be contained with golf club lands and not along the creek (public land).

87. The proposed works associated with the first teebox and buggy storage area will be in close proximity to three maturing Victorian Blue Gums (*Eucalyptus Bicostata*). While these trees will be retained, the submitted Arborist report recommends that a Tree Protection Zone (TPZ) is provided during construction. The encroachment zone to these trees is shown to be less than 10% which complies with AS4970, and this suggests the continued health of these three trees during and post construction.
88. The submitted Arborist report was not updated with the submission of the s57A amendment. Given that the s57A plans show the relocation of the buggy storage area from directly underneath the first teebox to just north-east of the teebox, it is anticipated that these three trees may be further impacted. In light of the possible risk to these trees and to ensure that their health is retained and maintained, a condition will be included on any permit issued, requiring an updated Arborist report to be submitted which must take into account the s57A (decision) plans and measures to protect said trees.
89. While the proposed location of the lower security fence is adjacent to the three maturing Victorian Blue Gums (*Eucalyptus Bicostata*), a condition is to be placed on the permit requiring all fencing to be deleted from the proposal. This will ensure there will be no risk to these trees from the fence.
90. With regard to the proposed fencing design, concerns have been raised by Council's Biodiversity Strategy Project Officer in relation to the impact it will have on wildlife to move freely and its impacts on the natural flood and watercourse characteristics of this area as it is located within a LSIO and can be subject to flooding in a storm event.
91. Firstly, with regard to the impact it will have on wildlife to move freely, Council's Biodiversity Strategy Officer in their referral response, requires the following design considerations to be taken into account:
  - (a) *Do not use barb wire.*
  - (b) *Keep a 50 cm gap between ground level and the first rail or strand.*
  - (c) *Keep 30 cm gaps between the rails or remaining strands.*
  - (d) *Use box wire mesh (Pig Mesh) (with squares of no less than 15 cm).*
  - (e) *Leave a 50 cm gap between the ground level and fence bottom, and ensure the fence is not more than 1.2 - 1.4 metres high.*
  - (f) *A capping rail along the top also allows for easy movement.*
  - (g) *Consider planting vegetation into, or adjacent, to the fence*
92. The fencing will be constructed of 1.8m high defcon tubular spear top security fence in a black finish with 40mm by 40mm rails, 25mm by 25mm pickets and a spacing of 140mm. No gap is provided between the ground and first rail and the spacing between the rail is 140mm which is less than half of what is being recommended by Council's Biodiversity Strategy Project Officer.
93. The fence design in its submitted form is considered to have an unreasonable impact on the movement of wildlife, particularly between the golf course and creek and open space further to the north. This is contrary to the decision guideline of the SLO and policy at clause 65 of the Scheme in terms of orderly planning of the area. Combined with the rationale behind the need for the fencing at all, it is considered that the fence is not an acceptable design response for the site context. As such, a condition will be included on any planning permit issued requiring the deletion of both fences.
94. With regard to the flood impacts (being the second decision guideline of the SLO – Schedule 2) this will be discussed later in this report.

#### Land Subject to Inundation Overlay

95. The subject site is affected by the Land Subject to Inundation Overlay (LSIO). A planning permit is required under this overlay for the construction of the buggy storage area and retaining wall, infill of the first teebox, accessways associated with the revised buggy storage area layout and the construction of the fences.

There are no triggers under the LSIO for the removal or planting of trees and there is no requirement under the LSIO to provide any replacement tree planting.

96. From a LSIO perspective the proposed fences are supported, and it is acknowledged that the application was referred to Melbourne Water who raise no objection subject to conditions. However as discussed earlier in this report, the fences will be required to be deleted from the proposal (by way of a condition of any planning permit issued) due to their lack of compliance with the SLO.
97. The decision guidelines under the LSIO Council must consider include:
- (a) *The Municipal Planning Strategy and the Planning Policy Framework;*
  - (b) *Any local floodplain development plan.*
  - (c) *Any comments from the relevant floodplain management authority.*
  - (d) *The existing use and development of the land.*
  - (e) *Whether the proposed use or development could be located on flood-free land or land with a lesser flood hazard outside this overlay.*
  - (f) *The susceptibility of the development to flooding and flood damage.*
  - (g) *The potential flood risk to life, health and safety associated with the development. Flood risk factors to consider include.*
    - (i) *The frequency, duration, extent, depth and velocity of flooding of the site and accessway*
    - (ii) *The flood warning time available.*
    - (iii) *The danger to the occupants of the development, other floodplain residents and emergency personnel if the site or accessway is flooded.*
  - (h) *The effect of the development on redirecting or obstructing floodwater, stormwater or drainage water and the effect of the development on reducing flood storage and increasing flood levels and flow velocities.*
  - (i) *The effect of the development on river health values including wetlands, natural habitat, stream stability, erosion, environmental flows, water quality and sites of scientific significance.*
  - (j) *Any other matters specified in a schedule to this overlay.*
98. With regard to the buggy storage area, it has been designed to incorporate a metal framed open wall which will allow for the free passage of flood water in the event of stormwater. Given the relatively small level of works (taking into the site as a whole) it is considered that the buggy storage area will not significantly alter the drainage potential on site or flood storage capacity of the site or the ability of water to flow across the site. Further, Melbourne Water raise no objection, subject to conditions on any planning permit issued.
99. Overall, the proposal is considered to comply with the relevant State and Local Planning Policy Framework and has been supported by Melbourne Water as the relevant referral authority.

#### Objections

100. The majority of the issues which have been raised by the objectors have been addressed within this report, as outlined below:
- (a) Design of clubhouse additions are inconsistent with the existing architectural character and built form of the clubhouse (paragraphs 64 to 65)
101. The concerns raised in the objections are discussed below, and relate to:
- (a) Installation of a fence along Farm Road will prevent access by the community to Darebin Creek.

Access is currently available to the Darebin Creek across the subject site. However the subject site is private property and there are currently no carriageways identified on the title or zoning of the land which would allow or permit access to the Creek via the subject site to the public (i.e. the land is not zoned for public usage, such as a park would be zone Public Park and Recreation Zone). As such, there is no access permitted across the subject site and no requirement in the Scheme either. As such, this objector concern is not a planning matter.

- (b) Design of fence (including ecological impacts, it will block views to Darebin Creek, and the materials are not characteristic of the area).

Due to the ecological impacts relating to the possible impact on the movement of wildlife and with concerns relating to the rationale behind the need for the fence construction, a condition will be included on any planning permit issued requiring the deletion of the fences. As such the above concerns are no longer relevant.

The referral advice received from Council's Biodiversity Strategy Project Officer states that given the impacts to wildlife the proposed fences are not characteristic of the area and that any fencing proposed within the SLO must have a clear rationale for their construction and constructed in such a manner to not impact on the movement of local wildlife.

The decision guideline under the SLO requires consider to be given to "*whether he proposed fencing allows for the free movement of wildlife minimises visual intrusion and limits impact on the natural flood and watercourse characteristics*". As discussed earlier in this report, the fence design fails to meet this requirement of the SLO.

## Conclusion

102. The proposal, subject to the conditions recommended, is an acceptable planning outcome that demonstrates clear compliance with the relevant Council policies in the Scheme.

## RECOMMENDATION

That having considered all relevant planning controls and policies, it is recommended that a Notice of Decision to Grant a Planning Permit PLN18/0517 be issued for buildings and works to an existing outdoor recreational facility (golf course) and vegetation removal at Farm Road, Alphington, generally in accordance with the decision plans (being the 57A plans received by Council on 27 February 2019) and subject to the following conditions:

1. Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of this permit. The plans must be drawn to scale with dimensions, and three copies must be provided. The plans must be generally in accordance with the decision plans but modified to show the following:
  - (a) The deletion of all proposed fencing within the upper car park and the lower car park.
  - (b) Any requirements from conditions of this planning permit including:
    - (i) Melbourne Water requirements pursuant to conditions 7 to 13; and
    - (ii) any tree protection measures required as a result of condition 3.
2. The development as shown on the endorsed plans must not be altered (unless the Yarra Planning Scheme specifies that a permit is not required) without the prior written consent of the Responsible Authority.
3. Before the development commences, an amended Tree Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Tree Management Plan will be endorsed and will form part of this permit.

The amended Tree Management Plan must be generally in accordance with the Tree Management Plan prepared by Treelogic dated 23 May 2018, but modified to include (or show):

- (a) protection measures for the three Victorian Blue Gums (*Eucalyptus Bicostata*) as a result of the proposed development.
4. The provisions, recommendations and requirements of the endorsed Tree Management Plan must be complied with and implemented to the satisfaction of the Responsible Authority.
  5. The finished site levels shown on the endorsed plans must not be altered or modified without the prior written consent of the Responsible Authority.
  6. Except with the prior written consent of the Responsible Authority, demolition or construction works must not be carried out:
    - (a) Monday-Friday (excluding public holidays) before 7 am or after 6 pm;
    - (b) Saturdays and public holidays (other than ANZAC Day, Christmas Day and Good Friday) before 9 am or after 3 pm; or
    - (c) Sundays, ANZAC Day, Christmas Day and Good Friday at any time.

**Melbourne water conditions (condition 7 to condition 13)**

7. The layout of the site and size, design and location of buildings and works including the width of the openings to the 'open style' fence as shown on the submitted plans must not be altered without prior written consent from Melbourne Water.
8. The cut and fill plan 'TP09 Revision J dated 14 March 2019' must not be altered without the prior consent of Melbourne Water. The cut and fill plan shows the location and amount of cut and fill within the development
9. The development must be setback a minimum of thirty (30) metres measured from the top of bank of Darebin Creek.
10. The development must include a minimum five (5) metre landscape buffer zone to screen the development from the Darebin Creek.
11. Prior to the endorsement of plans, a detailed landscape plan must be submitted to Melbourne Water for approval. The plan must show:
  - (a) a survey (including botanical names) of all existing vegetation to be retained and/or removed;
  - (b) details of surface finishes of pathways and driveways;
  - (c) a planting schedule of all proposed trees, shrubs and ground covers, including botanical names, common names, pot sizes, sizes at maturity, and quantities of each plant;
  - (d) the location of the five (5) metre landscape buffer zone;
  - (e) only local native plants should be used and shown on the landscape plans.
12. Flood depth indicators and flood warning signs must be erected around the development including at the main entrance points to ensure that the public are aware that the area will be inundated during a 100 year event.
13. Prior to the endorsement of plans, the existing Flood Response Plan must be amended by an accredited risk management professional to include the new development and be submitted to Melbourne Water for review and approval.

14. This permit will expire if:

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

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

Notes:

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

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.

A local law permit may be required for tree removal. Please contact Council's Compliance Branch on 9205 5166.

**Melbourne Water Notes**

The applicable flood level is 18.22 metres to Australian Height Datum (AHD).

To access more information regarding other services or online applications that Melbourne Water offers please visit our <https://www.melbournewater.com.au/planning-and-building>

For general development enquiries contact Melbourne Water Customer Service Centre on 131722.

**CONTACT OFFICER: Gary O'Reilly**  
**TITLE: Senior Statutory Planner**  
**TEL: 9205 5040**

**Attachments**

- 1 PLN17/0517 - Farm Road Alphington (Latrobe Golf Course) - Advertising S57B - Plans Part 1
- 2 PLN17/0517 - Farm Road Alphington (Latrobe Golf Course) - Advertising S57B - Plans Part 2
- 3 PLN17/0517 - Farm Road Alphington (Latrobe Golf Course) - Advertising S57B - Plans Part 3
- 4 PLN170517 - Farm Road, Alphington - Melbourne Water Response - 2 May 2019
- 5 PLN17/0517 - Farm Road, Alphington - Bio-diversity Advisor Response
- 6 PLN17-0157 - Farm Road, Alphington (Latrobe Golf Course) - Arborist referral response

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- 1.4 PLN11/0429.04 - 35-41 Argyle Street, Fitzroy - Section 72 Amendment (plans) to increase the approved size of the fourth floor balcony by extending it further south into common property and to extend the size of the roof garden and construct a pergola and services, all for Unit 6 dwelling**
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## **Executive Summary**

### **Purpose**

1. This report provides Council with an assessment of an amendment to planning permit PLN11/0429 and recommends approval, subject to conditions.

### **Key Planning Considerations**

2. Key planning considerations include:
  - (a) clause 15.01 – Urban Environment;
  - (b) clause 22.02 – Development Guidelines for Sites Subject to a Heritage Overlay; and
  - (c) clause 43.01 – Heritage Overlay of the Yarra Planning Scheme.

### **Key Issues**

3. The key issues for Council in considering the proposal relate to:
  - (a) built form, height and heritage;
  - (b) amenity impacts; and
  - (c) objector concerns.

### **Submissions Received**

4. Ten objections were received to the application, raising issues which can be summarised as:
  - (a) design (visual dominance, height and setbacks of balcony along the fourth floor and roof garden to Argyle Street and rear laneway);
  - (b) heritage (balcony setbacks along the fourth floor and roof garden level a dominant features the heritage façade of the building);
  - (c) off-site amenity (overlooking and loss of views, location and noise from air conditioning units (located in the north-east corner of the roof garden));
  - (d) lack of compliance with approved plans (building height and form, and planting); and
  - (e) risk of setting a precedence for the failure to enforce legal requirements for other developments within the neighbourhood.

### **Conclusion**

5. Based on the following report, the proposal is considered to comply with the relevant planning policy and should therefore be supported, subject to conditions.
6. In summary, and in relation to the 3 components that this proposal is seeking retrospective permission for, the following is provided:
  - (a) The additional balcony at the fourth floor is supported subject to a condition requiring the removal of the obscure glazing to the balustrade along the southern and western elevations.
  - (b) The rear addition and construction of the storage box, air conditioner railings and pergola is supported.

- (c) The addition roof terrace area within the southern setback is not supported. A condition on any amended planning permit issued will require the deletion of this section of roof garden. Given that this has already been constructed a condition will require it to be removed within 1 month of the issue date of any amended planning permit.

**CONTACT OFFICER:** Gary O'Reilly  
**TITLE:** Senior Statutory Planner  
**TEL:** 9205 5040



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**1.4 PLN11/0429.04 - 35-41 Argyle Street, Fitzroy - Section 72 Amendment (plans) to increase the approved size of the fourth floor balcony by extending it further south into common property and to extend the size of the roof garden and construct a pergola and services, all for Unit 6 dwelling**

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Reference: D19/120673  
 Authoriser: Senior Co-ordinator Statutory Planning

**Proposal:** Section 72 Amendment (plans) to increase the approved size of the fourth floor balcony by extending it further south into common property and to extend the size of the roof garden and construct a pergola and services, all for Unit 6 dwelling.

**Existing use:** 5 storey residential building (6 dwellings)

**Applicant:** Jon Darnell

**Zoning / Overlays:** Mixed Use Zone / Heritage Overlay (HO334) / Environmental Audit Overlay (EAO)

**Date of Application:** 26 September 2018

**Application Number:** PLN11/0429.04

**Planning History**

1. Planning Permit No. PL03/0495 was issued at the direction of VCAT on 11 October 2004 for *the construction of six dwellings within a four storey building*. This permit was not acted on and has since expired.
2. Planning Permit No. PL06/0896 was issued at the direction of VCAT on 30 July 2007 for *the construction of three dwellings within a three storey building (plus roof deck)*. This permit was not acted on and has since expired.
3. Planning Permit No. PLN11/0429 was issued by Council on 07 September 2011 for *the development of the land for alterations and additions to the existing building, including a two storey addition (to a total of four storeys), plus roof decks and part demolition*.
4. Planning Permit No. PLN11/0429 was amended on 31 July 2012 (application PLN11/0429.01) to allow *a fire hydrant booster cupboard and a window lintel in the south-west corner of the façade*.
5. Planning Permit No. PLN11/0429 was further amended on 22 May 2013 (application PLN11/0429.02) to allow *for alterations and additions to the existing building, including a three storey addition (to a total of five storeys) and a reduction in the car parking requirement and part demolition*. No roof decks were proposed as part of this amendment.
6. Planning Permit No. PLN11/0429 was further amended on 04 April 2015 (secondary consent amendment) to allow *minor changes including alterations to the rear garage entry, windows and material finishes*. The permit was acted upon and the building has been completed.
7. Planning Permit No. PLN11/0429 was approved an extension of time for completion on 22 October 2013, so that were required to be completed by 7 September 2016.
8. Planning Permit No. PLN11/0429 was further amended on 29 May 2015 (application PLN11/0429.03) to allow *for the construction of a rooftop garden, amend the permit preamble to permit the rooftop garden and inclusion of conditions for relevant notation on the plans and for the rooftop terrace to be solely used by Unit 6*. The permit has been acted upon and works have been completed. These works also included additional unauthorised works which have resulted in a non-compliance with the endorsed plans and is the reason for this application.

9. Planning permit SP14/0092 was issued by Council on 14 December 2015 for a *six lot subdivision*. The plan of subdivision was later certified under SC14/0111 on the 15 December and a Statement of Compliance issued on 13 January 2016. The subdivision was registered (i.e. new titles issued by the Titles Office) on title on 18 February 2016.

## **Background**

### Enforcement action

10. Enforcement proceedings (relating to the works on the rooftop terrace and car parking not being in accordance with the endorsed plans) is pending the outcome of this amendment application.

## **The Proposal**

11. This application proposes to amend the plans endorsed for Planning Permit PLN11/0429.04 pursuant to section 72 of the Act. The planning permit has been amended three times already and this is the fourth request to amend the planning permit pursuant to section 72 of the Act.
12. This application relates to Unit 6 which is one of six units (dwellings) within the building. Unit 6 is located at the third and fourth floors of the building and has sole access to the roof terrace. This application seeks retrospective permission to regularise the currently unlawful (as-constructed) built form.
13. This application seeks to make the following changes to the approved plans:

### Southern interface

- (a) The balcony on the southern side of the building increased in size by approximately 14sqm by extending it 1.399m closer to the southern (front) boundary of Argyle Street (the approved setback is 7.1m and the proposed setback is 5.6m to 5.7m).
- (b) The spa and associated structures (raised platform) located on the southern balcony is to be increased in area and spa altered from a rectangular shape to a circular shape.
- (c) The size and location of the piers which support the roof garden within the southern (front) setback changed from 0.3m wide and 1.1m long as shown on the approved plans to 0.3m wide to 0.55m long.
- (d) Use of colourbond finish (monument) to the balustrade of Level 4 instead of the approved aluminium sandwich panel with a sealed copper veneer.
- (e) The balcony on the southern side of the building increased in size by 27sqm by extending it 5.199m closer to the southern (front) boundary of the roof garden level. Resulting in the southern (front) setback being altered from 16.04m as shown on the approved plans to 10.77m.
- (f) The installation of glass balustrade associated with the extended balcony within the southern setback of the building along the roof garden.

### Roof garden northern (rear) interface

- (g) The roof garden on the northern side of the building increased in size by 6.3sqm by extending it 0.72m closer to the northern (rear) boundary of the roof garden, resulting in a setback of 2.88m instead of the approved 3.6m setback.
- (h) Construction of a storage box (1.35m wide by 4.328m long by 1.7m high) in the north-west corner of the roof garden.
- (i) Installation of air conditioning units in the north-east corner of the roof garden, with 1.3m high by 1.595m wide by 3.7m long black railings surrounding it.

### Roof garden alterations (internal & western boundary)

- (j) Alterations to stairwell including:

- (i) provision of an access door on the eastern side of the roof garden (the approved plans show the door along the northern side);
  - (ii) increase in size of the stairwell floor area by extending 1.5m by 2.6m in the south-east corner of the stairwell (the approved plans show this area as part of the terrace); and
  - (iii) a glass and aluminium sandwich panel with a sealed copper veneer finish to the external finish instead of the approved all glass finish.
- (k) Construction of a BBQ area adjacent to the stairwell (width of 0.9m by 2.6m long).
- (l) Construction of an open sided pergola (measuring 4.2m in width by 7.5m in length by 2.2m in height) with a roofed structure.
- (m) Construction of a timber stud wall in a speedup with applied colourbond finish (monument) on the western side of the roof garden.

	<b>Approved under the planning permit</b>	<b>Proposed under this amendment application</b>	<b>Variation (reduced setback) sought under this amendment application</b>
Balcony setback to Argyle Street, Fourth Floor	7.1m	5.6m to 5.7m	1.399m
Balcony setback to Argyle Street, Roof Garden	16.04m	10.77m	5.2m
Roof garden setback to rear laneway, Roof Garden	3.6m	2.8m	0.72m

### **Existing Conditions**

#### Subject Site

14. The subject site is located on the northern side of Argyle Street, approximately 42m east from the junction of Argyle Street and Spring Street in Fitzroy. The subject site is rectangular in shape with a southern frontage of 9.52m to Argyle Street and a northern frontage to unnamed laneway. It has a maximum depth of 33.49m and an overall site area of 318sqm.
15. The subject site is Unit 6 (Lot 6), which is one of 6 apartments (dwellings) within a five storey apartment building with a roof garden for the sole use of Lot 6. The subject site is a 5 bedroom dwelling located on the third and fourth floors of the building with sole access to the roof top level.
16. The five storey apartment building is constructed to the front, rear and side boundaries and retains the double storey heritage façade to Argyle Street. Vehicle access is gained via a bluestone crossover from Argyle Street as well as through a garage door from the rear laneway. Pedestrian entry to the building is via Argyle Street (south-west corner of the building).
17. The subject site is not affected by any restrictive covenants or easements.

#### Surrounding Land

18. Since the granting of the most recent amendment to the Planning Permit (PLN11/0429.03) in May 2015 there has been no significant change in the surrounding area or site context. The following description is therefore taken from the officer's report for that amendment application:
19. *"The land surrounding the subject site is within a Mixed Use Zone. The subject site is located within a precinct containing a variety of building forms and uses. To the south, east and west are commercial precincts along Johnston Street, Brunswick Street and Nicholson Street (respectively).*
20. *Rear laneway access is provided to the north of the site off Spring Street. Beyond this laneway is a single storey warehouse with an at-grade car parking area accessed from this laneway. To the immediate east of this warehouse is a dwelling fronting Kerr Street, whilst to the west is a contemporary three-five storey building containing dwellings.*
21. *To the immediate east of the subject site is a three storey residential development. The private open space is in the form of terraces facing north, south and east. The boundary wall of this development that adjoins the subject site is a blank wall except at the top level, where there are three light wells. To the immediate west of the subject site is a two storey commercial building constructed in full to the common boundary with the subject site.*
22. *To the south, beyond Argyle Street, are two double storey terraces. To the east of these dwellings is a single storey building used as a mechanics garage, to the west is a three storey residential development containing three units."*

## **Planning Scheme Provisions**

### Zoning

23. Pursuant clause 32.04-6 of the Yarra Planning Scheme (the Scheme), a permit is required to construct or extend two or more dwellings on a lot. While a planning permit is triggered for the development of dwellings within the subject site, the requirements of Clause 55 of the Scheme (ResCode) are not applicable to this application given that ResCode does not apply to construct or extend a development of five or more storeys. As discussed earlier in this report, the land has been subdivided, with the plan of subdivision registered on the 18 February 2016.
24. Since the approval of the most recent amendment to the planning permit (PLN11/0429.03) on 29 May 2015, amendment VC136 has been introduced into the Scheme. The amendment introduced Clause 58 in the Scheme and new apartment standards to all new residential buildings of five or more storeys.
25. Clause 58 does not apply to a Section 72 amendment application when the original permit application was lodged before the introduction of the amendment (13 April 2017).
26. Given that the original Planning Permit PLN11/0429 was lodged to Council on 3 June 2011, and this is before the introduction of the amendment into the Scheme, the provisions of Clause 58 do not apply to this application.
27. So this application will be assessed against the provisions identified in paragraphs 35 to 58 of this report.

### Overlays

#### *Heritage Overlay*

28. The subject site is located within a Heritage Overlay (Schedule 334). Pursuant to Clause 43.01-1 of the Scheme, a planning permit is required to:
  - (a) *demolish a building; and*
  - (b) *construct a building or construct or carry out works.*

Given that buildings and works are proposed (as identified above), a planning permit is therefore triggered under this clause.

#### Environment Audit Overlay

29. Pursuant to Clause 45.03 of the Scheme:

*Before a sensitive use (residential use, child care centre, pre-school centre or primary school) commences or before the construction or carrying out of buildings and works in association with a sensitive use commences, either:*

- (a) *a certificate of environmental audit must be issued for the land in accordance with Part IXD of the Environment Protection Act 1970, or*
- (b) *an environmental auditor appointed under the Environment Protection Act 1970 must make a statement in accordance with Part IXD of that Act that the environmental conditions of the land are suitable for the sensitive use.*

30. The subject site is Unit 6 (Lot 6), which is one of 6 apartments (dwellings) within a five storey apartment. As it is residential, the above requirements are applicable.

31. The standard way to deal with this is to include a note on the permit informing the owner of their obligations under Clause 45.03 of the Scheme. Planning Permit PLN11/0429 (and subsequent amendment) already includes a note stating:

- (a) *As the site is affected by an Environmental Audit Overlay, before a sensitive use (residential use, child care centre, pre-school centre or primary school) commences or before the construction or carrying out of buildings and works in association with a sensitive use commences, the requirements of Clause 45.03-1 must be met.*

Particular Provisions

*Clause 52.06 – Car Parking*

32. Pursuant to Clause 52.06-2 of the Scheme, the car parking spaces required under Clause 52.06-5 must be provided on the land. Pursuant to the Car parking requirement table at clause 52.06-5 of the Scheme, dwellings are required to provide on-site car parking spaces as follows:

- (a) *1 space to each one or two bedroom dwelling, plus*
- (b) *2 to each three or more bedroom dwelling (with studies or studios that are separate rooms counted as a bedrooms).*

33. This application does not propose any no new bedrooms or studies to Unit 6 and therefore does not generate a further reduction in the car parking requirement which has already been approved under the Planning Permit PLN11/0429.

General Provisions

*Clause 65 – Decision Guidelines*

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

Planning Policy Framework (PPF)

35. The following SPPF provisions of the Scheme are relevant:

*Clause 11.03-1S – Activity Centres*

36. The relevant objectives of this clause include:

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

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

37. The relevant strategies of this clause include:

- (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.
- (b) Locate new small scale education, health and community facilities that meet local needs in or around Neighbourhood Activity Centres.

Clause 15.01-1S – Urban Environment

38. The objectives of this clause is:

- (a) *To create urban environments that are safe, functional and provide good quality environments with a sense of place and cultural identity.*

Clause 15.01-1R – Urban Design – Metropolitan Melbourne

39. The objectives of this clause is:

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

Clause 15.01-2S – Building Design

40. The objectives of this clause is:

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

Clause 15.01-5S – Neighbourhood Character

41. The objectives 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

42. The objective of this clause is:

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

Clause 15.03-1S – Heritage Conservation

43. The objective of this clause is:

- (a) To ensure the conservation of places of heritage significance.

Clause 16.01-1S – Integrated Housing

44. The objective of this clause is:

- (a) To promote a housing market that meets community needs:

Clause 16.01-1R – Integrated Housing – Metropolitan Melbourne

45. The strategies of this clause are:

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

Clause 16.01-2S – Location of Residential Development

46. The objective of this clause is:

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

Clause 16.01-3S – Housing Diversity

47. The objective of this clause is:
- (a) To provide for a range of housing types to meet diverse needs.
- Clause 16.01-4S – Housing Affordability
48. The objective of this clause is:
- (a) To deliver more affordable housing closer to jobs, transport and services.
- Local Planning Policy Framework (LPPF)  
*Clause 21 – Municipal Strategic Statements (MSS)*  
*Clause 21.04 – Land Use*
49. The relevant objectives of this clause are:
- (a) To accommodate forecast increases in population.
  - (b) To retain a diverse population and household structure.
  - (c) To reduce potential amenity conflicts between residential and other uses.
  - (d) To maintain the long term viability of activity centres.
- Clause 21.05 – Built Form*
50. The relevant objectives of this clause are:
- (a) To protect and enhance Yarra's heritage places.
  - (b) To reinforce the existing urban framework of Yarra.
  - (c) To retain Yarra's identity as a low-rise urban form with pockets of higher development. Strategy 17.2 – Development on strategic redevelopment sites or within activity centres should generally be no more than 5-6 storeys unless it can be demonstrated that the proposal can achieve specific benefits such as:
    - (i) Significant upper level setbacks.
    - (ii) Architectural design excellence.
    - (iii) Best practice environmental sustainability objectives in design and construction.
    - (iv) High quality restoration and adaptive re-use of heritage buildings.
    - (v) Positive contribution to the enhancement of the public domain.
    - (vi) Provision of affordable housing.
  - (d) To retain, enhance and extend Yarra's fine grain street pattern.
  - (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 21.06 – Transport*
51. The 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 – Environmental Sustainability*
52. The relevant objectives of this Clause are:
- (a) To promote environmentally sustainable development.
  - (b) To improve the water quality and flow characteristics of storm water run-off.

*Clause 21.08 – Neighbourhoods*

53. Clause 21.08-7 describes the Fitzroy area in the following way:

- (a) *Fitzroy is a mixed commercial and residential neighbourhood notable for the consistency of its Victorian streetscapes. It comprises a dense combination of residential areas, shopping precincts and commercial/ industrial activities.*
- (b) *The Brunswick Street and Smith Street major activity centres run north south through the middle, while the Johnston and Gertrude Streets neighbourhood activity centres run east west through the neighbourhood. The Smith Street centre borders on Collingwood and is discussed in clause 21.08-5.*

Relevant Local Policies

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

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

*Clause 22.05 – Interface Uses Policy*

55. This policy applies to applications for use or development within Mixed Use zones (amongst others). The objectives of this clause is 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 and to ensure that residential uses located within or near commercial centres or near industrial uses enjoy a reasonable level of amenity.

*Clause 22.08 – Development Abutting Laneways*

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

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

57. This policy applies to applications for new buildings and extension to existing buildings which are 50sqm in floor area or greater. The policy aims to achieve the best practice water quality performance objectives and to promote the use of water sensitive urban design, including stormwater re-use.

58. The proposed amendment will increase the floor area by approximately 50.7sqm. However the below assessment has concluded that the roof top garden extension towards the southern boundary (27sqm) is not an appropriate design response and is to be deleted. This brings the additional floor area to 23sqm. As such, the above provision is not applicable in this instance.

**Advertising**

59. The application was advertised under the provisions of Section 52 of the *Planning and Environment Act (1987)* by 57 letters sent to surrounding owners and occupiers and by a sign displayed on the site.

60. Council received 10 objections to the application, the grounds of which are summarised as follows:

- (a) design (visual dominance, height and setbacks of balcony along the fourth floor and roof garden to Argyle Street and rear laneway);



- (b) heritage (balcony setbacks along the fourth floor and roof garden level a dominant features the heritage façade of the building);
  - (c) off-site amenity (overlooking and loss of views, location and noise from air conditioning units (located in the north-east corner of the roof garden);
  - (d) lack of compliance with approved plans (building height and form, and planting); and
  - (e) risk of setting a precedence for the failure to enforce legal requirements for other developments within the neighbourhood;
61. For an application with 5 or more objections a consultation meeting is held prior to any IDAC meeting with the purpose of discussing the proposed application and to facilitate any possible amendments to the plans to address objector concerns. It was agreed at Council's internal Development Advisory Panel (DAP) meeting on 21 June 2019 that a consultation meeting would not add any value to the application process in this instance because of the following reasons:
- (a) The subject site appears to be central to current court proceedings occurring between the two owners.
  - (b) The application has been lodged following an enforcement investigation about the construction of the fourth floor balcony and roof terrace not being in accordance with the endorsed plans. Objectors have made it clear (in their objection letters and through telephone calls with the Planning Officer) that they believe the amendment application should not even be considered by Council. Moreover they request that enforcement proceedings be immediately brought against the two owners.

## Referrals

### External

62. The application does not trigger referral to any external authorities under the requirements of the Scheme.

### Internal

63. The application was referred to Council's Heritage Advisor. Their referral advice is attached as an Appendix to this report.

## OFFICER ASSESSMENT

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

- (a) Built form and heritage
- (b) Amenity impacts
- (c) Objector concerns

### Built form and heritage

#### ***Southern interface***

65. The relevant objectives to built form and heritage are contained within Clause 15.01 (*Urban Design, Building Design & Neighbourhood Character*), 15.03-1S (*Heritage Conservation*) Clause 21.05-1 (*Built Form: Heritage*), Clause 21.05-2 (*Built Form: Urban Design Clause*), Clause 22.02 (*Development Guidelines for Sites Subject to the Heritage Overlay*) and Clause 43.01 (Heritage Overlay) of the Scheme.
66. The subject site and surrounding area was previously an industrial pocket. The area is now located within the Mixed Use Zone (MUZ) and is experiencing built form and land use changes as a result of its close proximity to two activity centres, services and employment opportunities. A number of these industrial uses still remain but there has been a clear emerging character with new higher density residential developments reusing existing buildings or constructing new residential buildings.
67. Along Argyle Street are a mix of built forms constructed of brick with buildings mainly constructed to the footpath with double storey heritage front facades being a dominant feature. Upper floor additions and higher built forms can be found at:

- (a) Nos. 7, 9, 11, 13, 15, 30, 32, 33, 34 and 35 Argyle Street (two storey presentation to the street with a recessed third storey);
  - (b) Nos. 95-103 Johnston Street (Coles) which fronts Argyle Street and is a four storey building presenting as two storeys to the street with recessed upper levels.
  - (c) No. 21 Argyle Street (three storey hard edge to the street);
  - (d) Nos. 43-47 Argyle Street to the east of the side (three storey development);
  - (e) No. 32 Kerr Street to the rear of the subject site (five storey development);
  - (f) Nos. 81-83 Argyle Street (a six storey development at which has been recently completed and presents a sheer four storey street wall, with a recessed fifth and sixth storeys.
68. The subject site is an example of an old industrial building which has been converted into a residential use with new levels added increasing its height from two storeys to five storeys and providing 6 dwellings (apartments). To preserve the heritage fabric, the additional built form has been setback from the heritage façade along Argyle Street. This was all approved under Planning Permit PLN11/0429.
69. The current endorsed plans approve a 2.4m setback from Argyle Street of the built form at the first and second floor of the building (with the balconies to the respective apartments at these levels constructed to the front heritage façade). At the third floor, the balcony for Unit 6 is setback 2.4m from the front boundary (in line with the built form below), and the living room is setback 5.72m from the front boundary. At the fourth floor, the balcony for Unit 6 is setback approximately 7.1m, with the living room setback 10.6m.
70. The rationale for the design response of the approved setbacks (as is described in the assessment section of the 62 and 63 report for the most recent amendment under permit application PLN11/0429.03) was to ultimately screen the fourth floor when viewed from standing on the opposite side of Argyle Street. Section TP06 shows that the third floor will be screened when viewed from the opposite side of Argyle Street. However, this sightline is taken from the roof ridge of the gable end roof, meaning that views are only partially blocking. As a result of the gable end, views of the third floor will only be partially blocked, with the building's built form constructed along both side boundaries visible, given the pitched nature of the gable.
71. This proposal seeks to decrease the approved fourth floor setback of the balcony from 7.1m to a minimum of 5.6m. This will result in the 1.2m balustrade being visible from the street.
72. This proposal seeks to alter the finish of the balcony's balustrade to incorporate a speedup with applied colourbond finish (monument) and obscure glazing within the south-west former adjacent to the spa. The endorsed plans show aluminium sandwich panel cladding with sealed copper veneer finish.
73. This proposal also seeks to extend the roof terrace for Unit 6 so that it is closer to the southern (front) of the building. It will incorporate a 5.19m by 5.2m area within the southern setback for the purpose of additional terrace space and be enclosed by a 1.3m high glass balustrade.
74. The relevant policy guidelines under clause 22.02-5.7.1 of the Scheme encourage alterations and additions to a heritage place to do the following:
- (a) *Respect the pattern, rhythm, orientation to the street, spatial characteristics, fenestration, roof form, materials and heritage character of the surrounding historic streetscape.*
  - (b) *Be articulated and massed to correspond with the prevailing building form of the heritage place or contributory elements to the heritage place.*
  - (c) *Be visually recessive and not dominate the heritage place.*
  - (d) *Be distinguishable from the original historic fabric.*



81. Works to the rear interface are confined to the roof garden level and include an increased floor area towards the rear setback (i.e. reduced northern setback), construction of a pergola, a storage box and the installation of air conditioners and associated metal railings.
82. For additions within a heritage overlay, *Clause 22.02-5.7* provides direction as to the appropriate location for new works. It states (relevantly) that additions to a contributory dwelling should be located towards the rear of the site and should be encouraged to be sited within the 'envelope' created by projected sight lines. This is to ensure that the original heritage fabric is the dominant feature visible and that the new additions are hidden from view or setback so that they are a recessive feature of the building.
83. The proposal seeks to reduce the rear setback of the roof garden by 0.72m which will result in a setback of 2.88m in lieu of the approved 3.6m setback. Viewline diagrams submitted with the application demonstrate that the addition will not be visible when standing directly on the opposite side of the rear laneway (TP06). The pergola and storage box will however will be visible from oblique angles along the laneway and Argyle Street.
84. The built form at this roof level (from the pergola, storage box and railing to the air conditioners within the side setbacks) is acceptable and supported by heritage policy given that they are located to the rear of the front facade and setback a minimum of 26m into the boundaries and therefore away from the building's heritage frontage. With a height of 2.2m the pergola will also not exceed the height of the approved stairwell (2.2m) and both the pergola and railings are open which reduces the visual bulk and how it presents to the adjoining properties at Nos. 25 & 43 Argyle Street. The off-site amenity impacts associated with the built form at this roof level will be discussed later in this report.

***Roof garden alterations (internal & western boundary)***

85. With regard to the proposed works to the staircase and western wall (a speed panel with pre-applied colourbond finish in a monument finish) the material choice will match that at the lower levels of 2, 3 and 4 and allow the appearance of the upper floor to be more consistent and more comfortably absorbed into the overall design and appearance of the development approved under the original planning permit.
86. In summary therefore, and in relation to the 3 components that this proposal is seeking retrospective permission for, the following is provided:
  - (a) The additional balcony along the fourth floor is supported subject to a condition requiring the removal of the obscure glazing to the balustrade along the southern and western elevations.
  - (b) The rear addition and construction of the storage box, air conditioner railings and pergola is supported.
  - (c) The addition roof terrace area within the southern setback is not supported and a condition will require the deletion of this section of the roof garden. Given that this has already been constructed a condition will require it to be removed within 1 month from the issue date of the amended permit.

Amenity impacts

***Setbacks***

87. As discussed earlier in this report, the front and rear setbacks of the fourth floor balcony and roof garden are considered appropriate and are sufficiently setback to not dominant the heritage façade.
88. The proposal includes the construction of a storage box (1.35m wide by 4.328m long by 1.7m high) within the north-west corner of the roof garden. It also proposes a screen (1.595m wide by 3.6m long by 1.7m high black railing) to screen air conditioning units within the north-eastern corner of the roof garden. The storage box will be setback 0.239m from the western site boundary and the screen setback 0.234m from the eastern site boundary.

89. While the storage box and the screen will add built form on the eastern and western sides of the roof garden they are considered acceptable given their setbacks (which will ensure that there are no sheer walls), the fact that the interface to the roofs of the two adjoining buildings are non-sensitive, and the fact that their heights will not exceed 1.7m (which is the height of the boundary walls along the eastern and western portions of the roof garden).

In addition, the screening is black railings and transparent so reduce the visual bulk when viewed from the surrounding streets and adjoining properties.

### ***Overshadowing***

90. Shadow diagrams submitted with the proposal show increased overshadowing to the east and west adjoining properties at 9am and 3pm as a result of the reduced rear setback of the roof garden, the storage box, screening to the air conditioning unit, pergola and glazed balustrade within the front setback of the roof garden along the fourth floor and roof garden levels.
91. As a result of the works associated with the proposed amendment, part of the roof associated with No. 25 Argyle Street will received increased shadowing at 9am by a total of approximately 5.8sqm.
92. At 12pm part of the roof associated with No. 43-47 Argyle Street will received increased shadowing by a total of approximately 0.7sqm.
93. At 3pm, part of the car parking area within the front setback of No. 49 Argyle Street will received increased shadowing by a total of approximately 0.37sqm.
94. The extent of overshadowing is considered reasonable given that the shadowing will only affect adjoining roof forms, car parking spaces and Argyle Street. For reasons outlined earlier in this report, a condition will be included on any amended planning permit issued requiring the deletion of the additional roof terrace within the southern setback of the roof garden level. As such, shadowing created by this element onto Argyle Street and No. 49 Argyle Street will be removed.
95. The overshadowing created by the storage box, screens and pergola is contained to the adjoining roof forms, with no secluded private open spaces or habitable room windows affected. As such, while there is an increased level of overshadowing from these elements, it is considered reasonable as it will not cause any unreasonable off-site amenity impacts.
96. Shadow diagrams submitted show that the three, north-facing first floor balconies associated at No. 43-47 Argyle Street (located to the rear of this property) will not receive any additional overshadowing as a result of the proposed amendment.

### ***Overlooking***

97. The fourth floor balcony will be extended in size and get 1.3m closer to Argyle Street (southern boundary). At present this balcony is not screened and is not required to under the Scheme given its outlook to Argyle Street. The nearest identifiable open spaces are located at the second floor of Nos. 43-47 Argyle Street to the east (which also front Argyle Street and as such are not screened) and are partially blocked from view from the subject site because of their gable roofs. The proposed pushing forward of the fourth floor balcony will increase the possibility of overlooking from the subject site to the balconies within the southern setback of No. 43-47 Argyle Street. However given that these balconies are not screened and can already be viewed from Argyle Street they are already compromised to an extent by views from Argyle Street. Overlooking would also be more prevalent from the existing third floor balcony (not part of this amendment) given they are not screened, their reduced setback to Argyle Street and their height above the adjoining balconies.
98. The proposed pushing forward of the balcony will also result in overlooking from the balcony to the lower balcony on the third floor. However, as both balconies are for the same apartment (the subject site, Unit 6), there is no concern.

99. With regard to the roof garden, a condition will require the deletion of the front portion of the terrace with the glazed balustrade. The remaining area of the terrace to the rear will be screened with a 1.7m high wall along the northern, western and part of the eastern sections of the terrace, to limit overlooking into adjoining properties.

100. The proposal includes a 6.9m section of the eastern portion of the roof garden to have 1.3m high balustrading. This height is below the 1.7m high industry standard which is considered to limit overlooking.

This section of the roof does not however interface any adjoining secluded private open spaces or habitable room windows and so would not require screening to a height of 1.7m.

### ***Daylight***

101. None of the proposed works will be directly adjacent to any existing habitable room windows or lightcourts due to their location at the upper levels. Therefore daylight to adjoining properties will not be affected including to the two adjoining lightcourts at No. 43-47 Argyle Street to the east, where no works associated with the amendment are proposed and therefore no additional overshadowing will occur.

### **Objector concerns**

102. The majority of the issues raised by objectors have been addressed throughout the assessment section within this report, as follows:

- (a) Design (visually dominant, height, setbacks) at paragraphs 65-86.
- (b) Heritage (balconies dominant over the heritage façade) at paragraphs 65-86.
- (c) Amenity (off-site, overlooking) at paragraphs 87-101.

103. The outstanding concerns raised by objectors are discussed below:

- (a) Loss of views

Objectors raise concern with regard to the built form impinging upon the sky views of the neighbouring properties to the north and south.

While the Victorian Civil and Administrative Tribunal (VCAT) recognise that views can be a relevant amenity consideration, it has also held that there is no *right to a view* and that the weight to be given to the amenity impact of loss of views is diminished where no planning control applies encouraging retention or sharing of views.

There is no specific policy, provision or local policy control in the Scheme in relation to views or view loss. The only applicable policy within the Scheme relates to views to landmarks. However this policy is not applicable to the assessment of this proposal as the subject is not with proximity to any landmark buildings identified in the Scheme.

This proposal will alter the appearance of the approved building (through the balcony extensions, a pergola, storage box and screening). The appropriateness of the proposed built form at the roof level has been fully assessed at paragraphs 79 to 86 of this report. For the site context, it is not considered that the extent of loss of view as a result of the increased balcony and terrace area (in this case along Argyle Street) is unreasonable, particularly considering the existing built form in the immediate area.

- (b) Building exceeds originally approved height and form, in contrast to what residents had been led to believe will occur

It is acknowledged that this application has been lodged as a result of an enforcement investigation by Council's Planning Enforcement Unit and Building Department given that the works proposed under this application have already been built, and retrospective approval is therefore being sought for the as-constructed works. In other words, Council acknowledges that the existing works at Unit 6 have not been built in accordance with the plans endorsed for the permit and that the permit holder is therefore currently in breach of the planning permit.

Under the *Planning and Environment Act 1987* (the Act) an owner has the right to amend a planning permit pursuant to Section 72 of the Act. As a result of the enforcement investigation a Section 72 amendment to the permit has been lodged to obtain retrospective approval for the works described in the proposal section of this report. All adjoining properties have been notified in accordance the requirements of the Act and objections have been received.

- (c) Precedent set for failure to enforce legal requirements for other developments within the neighbourhood

Any alleged breaches of a planning permit which are brought to the attention of Council are investigated by Council's Planning Enforcement Unit and Building Department who take appropriate action, depending on the breach. As part of the alleged breach of Planning Permit PLN11/0429, the applicant was directed by Council's Planning Enforcement Unit and Building Department to either bring the development in line with the endorsed plans or lodge a Section 72 Amendment to seek retrospective approval for the currently unauthorised works. The owner of the site elected to lodge a Section 72 Amendment (being this application before Council).

- (d) Location and noise from air conditioning units (north-east corner)

A full assessment of the proposed air conditioning units is at paragraphs 81 to 84 of this report. The proposed location and screening has found that they are sufficiently setback into the site so that they are recessive within the development and not dominant to the streetscape or heritage place. Their location within the side setback of the building is a common design response for developments of this type. Furthermore, they are located along the fifth floor, within the side setback (i.e. recessed from the neighbouring properties) and enclosed by railings, which provide some screening. Given all of the above, they are considered to be appropriately located.

Noise associated with an air conditioning unit are administered by Council's Health Department. Using the Public Health and Wellbeing Act and EPA guidelines, Council will seek to ensure no unreasonable noise impacts to adjoining residents and ensure that the hours stipulated by the EPA are adhered to (7am to 10pm Monday to Friday & 9am to 10pm, Weekends and Public Holidays).

- (e) Approved planting not in accordance with the endorsed plans

There are no landscape plans endorsed under Planning Permit PLN11/0429. While the endorsed plans show some indicative planting in the roof garden there are no details on the endorsed plans showing the species type, number of plants or mature heights. As such, there is no approved landscape plan / planting schedule for the permit holder to work to or for Council to enforce.

For a development of this type, and in an inner city context, limited landscaping (and no endorsed landscape plan) is not uncommon.

## Conclusion

104. The proposal, subject to the conditions recommended throughout the report, is considered to be an acceptable planning outcome for the site context that demonstrates compliance with the relevant policies in the Scheme.
105. In summary, and in relation to the 3 components that this proposal is seeking retrospective permission for, the following is provided:
- (a) On level 4, the additional balcony is supported subject to a condition requiring the removal of the obscure glazing to the balustrade along the southern and western elevations.
- (b) On the roof garden, the rear addition and construction of the storage box, air conditioner railings and pergola is supported.

- (c) On the roof garden, the additional roof terrace area within the southern setback is not supported.
- (d) Conditions on any amended planning permit issued will require the deletion of the obscure glazing referenced at (a) and the section of roof garden referenced at (c) above. Given that the works have been unlawfully constructed a separate condition will require these all to be removed within 1 month of the date of amendment of any amended planning permit issued.

106. Within the Recommendation below, the following is provided:

- (a) Existing (and unchanged) conditions of the original permit are shown in normal font.
- (b) New wording / conditions added to the original permit are shown in **bold**.
- (c) Amended conditions of the original permit are shown in **bold and underline**.
- (d) Redundant conditions of the original permit are shown as ~~deleted~~.

## RECOMMENDATION

1. Before the development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the decision plans received by Council on ~~7 April 2015~~ **10 September 2018** but modified to show the following:
  - (a) A demolition plan.
  - (b) Residential door on Argyle Street to open within title boundaries.
  - (c) Revised material schedule.
  - (d) The location of bin storage in the garage to be clearly annotated.
  - (e) The full extent of demolition, including the removal of brickwork to allow for the conversion of the ground floor western window to a door.
  - (f) An increase in roller door width and/or an increased roller door setback from the laneway to provide access for an 85th percentile vehicle to the garages of units 2 and 3.
  - (g) The provision of a water tank(s). A note must detail:
    - (i) the expected amount of water to be collected;
    - (ii) the capacity of the tank(s); and
    - (iii) how the water will be reused.
  - (h) The location of pits and meters.
    - (i) Replacement of all relevant plan notations from the previously endorsed plans.
    - (j) Notation that the roof terrace be used solely by Unit 6.
  - (k) On Level 4, the deletion of the glass balustrade on the southern and western sides of the balcony.**
  - (l) On the roof garden, the deletion of the additional roof terrace area (measuring 5.19m by 5.2m approximately) located within the southern (front) setback.**
  - (m) On the roof garden, the balustrade on the southern side of the roof garden to be constructed of glass.**
2. All development must accord with the endorsed plans. Any alterations must be approved by the Responsible Authority.
3. Any damaged road(s) and footpath(s) and other infrastructure adjacent to the development site as a result of the construction works must be reinstated by the Permit holder, at their cost, to the satisfaction of the Responsible Authority.



4. Before the development starts, a Waste Management Plan must be submitted to and approved by the Responsible Authority. Once approved, the Waste Management Plan will be endorsed and will then form part of the permit. The Waste Management Plan must be to the satisfaction of the Responsible Authority and must detail who will undertake waste collection, the location and size of the storage area, hours when collection will occur, and the method of presentation of bins for collection (with particular emphasis on Units 2 and 3). Waste collection from the development must be undertaken in accordance with the endorsed Waste Management Plan, to the satisfaction of the Responsible Authority.
  
5. Before the development starts, an acoustic report, prepared by a suitably qualified expert must be submitted and endorsed to the satisfaction of the Responsible Authority. The endorsed report will then form part of the permit. The report must:
  - (a) detail any industrial and commercial uses within close proximity of the site;
  - (b) if necessary due to the nature of the uses surrounding the site, include sound monitoring to establish noise levels; and
  - (c) recommend any acoustic treatments to ensure the internal amenity of future residents.
  
6. Before any development starts, a Construction Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed as evidence of its approval. The plan must provide for or include the following:
  - (a) a pre-conditions survey of all adjacent Council roads and footpaths;
  - (b) protection works necessary to road and other infrastructure (limited to an area reasonably proximate to the site);
  - (c) remediation of any damage to road and other infrastructure (limited to an area reasonably proximate to the site);
  - (d) containment of dust, dirt and mud within the site and method and frequency of clean up procedures in the event of build up of matter outside the site;
  - (e) on site facilities for vehicle washing;
  - (f) methods for management of noise and general nuisance;
  - (g) site security;
  - (h) waste and stormwater treatment;
  - (i) construction program;
  - (j) preferred routes for trucks delivering to the site;
  - (k) parking facilities for construction workers;
  - (l) delivery and unloading points and expected frequency;
  - (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; and
  - (o) traffic management measures to comply with provisions of AS 1742.3-2002 Manual of uniform traffic control devices - Part 3: Traffic control devices for works on roads.
  
7. Except with the written consent of the Responsible Authority, demolition or construction works must only be carried out between: 7.00 am – 6.00 pm, Monday-Friday (excluding public holidays) and 9.00 am – 3.00 pm, Saturday and public holidays. No work is to be carried out on Sundays, ANZAC Day, Christmas Day or Good Friday without a specific permit. All site operations must comply with the relevant Environmental Protection Authority's Guidelines on Construction and Demolition Noise.
  
8. This permit will expire if:
  - (a) the development is not commenced within two (2) years from the date of this permit;
  - (b) the development is not completed within four (4) years from the date of this permit.

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

- 9. Unless a further planning permit is issued by the Responsible Authority, the owner of the land must remove the unlawful structures identified at condition 1(k) and condition 1(l) and carry out the works required at condition 1(m), within one (1) month from the date of amendment of the planning permit.**

**NOTES:**

A building permit may be required before development is commenced. Please contact Council's Building Services Unit on Ph. (03) 9205 5351 to confirm.

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

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

This site is subject to a Heritage Overlay pursuant to the Yarra Planning Scheme. Unless hereby approved, a planning permit may be required for any demolition, re-painting or other external alterations, sandblasting, exterior works (including the installation of external air-conditioning units, solar panels, and any other heating/cooling units) to an existing building or buildings, construction of a building or fence, changes to the natural topography of the land or the subdivision or consolidation of land.

As the site is affected by an Environmental Audit Overlay, before a sensitive use (residential use, child care centre, pre-school centre or primary school) commences or before the construction or carrying out of buildings and works in association with a sensitive use commences, the requirements of Clause 45.03-1 must be met.

**CONTACT OFFICER: Gary O'Reilly**  
**TITLE: Senior Statutory Planner**  
**TEL: 9205 5040**

**Attachments**

- 1 PLN110429.04 - 35 - 41 Argyle Street, Fitzroy - Site plan
- 2 PLN110429.04 - 35 - 41 Argyle Street, Fitzroy - Advertising Plans.pdf
- 3 PLN110429.04 - 35 - 41 Argyle Street, Fitzroy - Heritage advice
- 4 PLN110429.04 - 35 - 41 Argyle Street, Fitzroy - Planning Permit (Amended)
- 5 PLN110429.03 - 35 - 41 Argyle Street, Fitzroy - Endorsed Plans

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**1.5 PLN18/0584 - Langridge Ward - 79-89 Wellington Street, Collingwood - Use and development of the land for a multi-storey building containing a residential hotel and office and a reduction in car parking and visitor bicycle facilities**

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## **Executive Summary**

### **Purpose**

1. This report provides Council with an assessment of Planning Application PLN18/0584, which affects the land at No. 79-89 Wellington Street, Collingwood. The application seeks approval for use and development of the land for a multi-storey building containing a residential hotel and office and a reduction in car parking and visitor bicycle facilities.

### **Key Planning Considerations**

2. Key planning considerations include:
  - (a) Use (Clauses 11, 02-1S, 17.02, 21.04, 32.04)
  - (b) Built Form (Clauses 15.01, 21.05, 22.10 and 43.02)
  - (c) Car Parking and Bicycle facilities (Clauses 18.02, 21.06, 52.06 and 52.34)

### **Key Issues**

3. The key issues for Council in considering the proposal relate to:
  - (a) Policy and strategic support;
  - (b) Use
  - (c) Built Form and Design
  - (d) Internal Amenity
  - (e) Environmental sustainability;
  - (f) Public realm
  - (g) External amenity impacts
  - (h) Equitable development
  - (i) Car parking, bicycle facilities and movement;
  - (j) Objector concerns

### **Submissions Received**

4. Ten (10) objections were received to the application, these can be summarised as:
  - (a) Excessive height and massing
  - (b) Poor architectural quality and internal amenity
  - (c) Amenity Impacts (overshadowing, daylight to windows, visual bulk)
  - (d) Noise from hotel guests
  - (e) Increased traffic and insufficient car parking
  - (f) Loss of 'heritage' fabric

### **Conclusion**

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

- (a) Changes to the materiality to improve the quality and have greater connection with the surrounding area
- (b) Provision for screening to the west facing balconies

**CONTACT OFFICER:** Amy Hodgen  
**TITLE:** Coordinator Statutory Planning  
**TEL:** 9205 5330

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**1.5 PLN18/0584 - Langridge Ward - 79-89 Wellington Street, Collingwood - Use and development of the land for a multi-storey building containing a residential hotel and office and a reduction in car parking and visitor bicycle facilities**

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Trim Record Number: D19/105261

Responsible Officer:

<b>Proposal:</b>	Construction of a multi-storey building containing a residential hotel and office and a reduction in car parking and visitor bicycle facilities
<b>Existing use:</b>	Vacant (previously office)
<b>Applicant:</b>	Wellington Property Holdings Pty Ltd
<b>Zoning / Overlays:</b>	Mixed Use Zone/Design and Development Overlay (Schedule 2 & 23), Environmental Audit Overlay
<b>Date of Application:</b>	14 August 2018
<b>Application Number:</b>	PLN18/0584

### Planning History

1. Planning Permit PL02/0306 was issued on 19 September 2003 for *construction of a six (6) storey building for dwellings, offices and 62 car parks generally in accordance with the application plans, with a waiver of the balance of car spaces pursuant to clause 52.06 and demolition of the existing building.*
2. The commencement date of PL02/0306 was extended 5 times, with the last extension of time expiring on 19 September 2010. This permit was never acted upon and has subsequently expired.
3. Given the changes in planning policy and the surrounding context that have occurred since the expiry of this permit, it has limited relevance in the assessment of the current application.

### Background

#### Planning Scheme Amendments

4. On 22 November 2018, 3 months after the application was lodged, Planning Scheme Amendment C250 was gazetted into the Yarra Planning Scheme (the Scheme) introducing Schedule 23 to the Design and Development Overlay. Schedule 23, which relates to the Collingwood South (Mixed Use) Precinct introduced preferred built form outcomes for the site including height and setbacks. Further detail of the relevant built form outcomes is provided throughout this report.
5. The original application did not comply with these requirements, specifically the proposal exceeded the preferred height limit of 30m, with 37.9m proposed. Amended plans were subsequently lodged via Section 57A of the *Planning and Environment Act 1987* (the Act). These are discussed below.

#### Lodgment of S57A plans or sketch plans

6. On 15 May 2019, the applicant submitted amended plans via Section 57A of the Act that primarily sought to address the new DDO23 built form guidelines and officer concerns. The key changes to the plans are summarised as follows:
  - (a) Reduction in the height of the building from 12 to 9 storeys
  - (b) Reduction in the street wall height from 24.6m (8 storeys) to 22.6m (7 storeys)
  - (c) Increased setbacks from the southern boundary (western section)
  - (d) Reduced upper level setbacks from the northern boundary

- (e) Deletion of the third basement level
- (f) Modification to façade and roof design treatment (original design in figure below)
- (g) Residential hotel rooms reduced from 100 rooms to 83 rooms
- (h) Reduced office floor area from 1,936sqm to 1,096sqm
- (i) Reduced retail tenancy from 87sqm to 82.5sqm
- (j) Reduced car spaces from 77 spaces to 47 spaces



**Figure 1: Original scheme submitted 14 August 2018**

7. These plans have been readvertised and form the decision plans to this current application and are the basis for the following assessment.

Characterisation of use

8. It is necessary to explore the characterisation of the use for the ‘temporary accommodation’ proposed. The application documentation refers to the proposed use as both serviced apartments and residential hotel. However, most importantly, the description used on the application form references ‘residential hotel’.
9. ‘Serviced apartments’ are not a defined use within the Scheme, and therefore it takes on its ordinary meaning, which can infer both short-term and long-term stay.
10. The characterisation of ‘serviced apartments’ has been raised in various VCAT decisions as to whether they should be defined as ‘dwellings’, a ‘residential hotel’ or its own use within the broader definition of ‘accommodation’. This discussion was described as a ‘red herring’ in the case of *Australian Conservation Foundation Inc. and Surrowee Pty Ltd v Melbourne CC and Anor [2002] VCAT 1*, with the Tribunal concluding that internal amenity concerns relating to long-term stay could be readily resolved through conditions that require the use to be confined to short stay accommodation.
11. The classification of use was also explored in *Tribe v Whitehorse CC [2014] VCAT 212*, with the Tribunal determining ‘Serviced Apartments’ to be a use in their own right, albeit not defined in the Planning Scheme.
- (a) *‘Serviced Apartments’ have their own specific qualities and characteristics, distinguishing them from other defined land uses. These include the provision of self-contained accommodation, serviced and controlled under central management regime, suitable for travellers or other persons seeking short term stays away from their usual place of residence. The alternative is that this use falls within the broader definition of ‘Accommodation’*

12. Having regard to these decisions, it would not be unreasonable to define the proposed use as 'serviced apartments', provided that internal amenity concerns were addressed by controlling the length of stay. However, based on the information supplied, it is also considered reasonable to define the proposed use as a 'residential hotel'. While the rooms are relatively self-contained, with cooking facilities (stove tops) provided, the proposed development also includes facilities akin to a residential hotel including:
  - (a) Generous reception area
  - (b) Ancillary staff offices
  - (c) Luggage room
  - (d) Conference room
  - (e) Business lounge
  - (f) Gymnasium
13. As discovered through the previous VCAT decisions, whether the use is described as 'serviced apartments' or 'residential hotel' appears to have very little impact on the activities permitted provided that adequate planning permit conditions are included to control the use. Notwithstanding this, it is considered that 'residential hotel' more clearly articulates the temporary nature of the permitted use. In the current application, it is the temporary nature that is sought to be highlighted.
14. Given description of the proposal in the application form and Council's documents have referenced a 'residential hotel', this will be carried over onto the permit preamble description. However to clearly articulate the intended use of the site, 'serviced apartments' will be added in parenthesis after 'residential hotel'.

### The Proposal

15. The application seeks approval for use and development of the land for a multi-storey building containing a residential hotel (serviced apartments) and office and a reduction in car parking and visitor bicycle facilities. The following description is based on the 'decision plans' received 15 May 2019, prepared by Fenton Design Group dated 26 April 2019:

#### Use

- (a) A food and drink (café) tenancy of 82.5sqm is proposed at ground floor in the north-eastern corner adjacent to Wellington Street. This use is as of right.
- (b) Residential hotel accommodating a maximum of 83 rooms from Levels 1 to 6. **(N.B.** The plans indicate there will be 46 rooms. This is based upon the capacity of rooms to be joined via internal doors. The following assessment is based upon the maximum capacity of the residential hotel (i.e. 83 rooms)).
- (c) Based on the maximum capacity of 83 rooms, the room size break down is:
  - (i) 38 studios
  - (ii) 37 one bedroom rooms
  - (iii) 8 two bedroom rooms
- (d) Through internal room connections, it is possible to provide a maximum of 35 two bedroom rooms and 5 three bedroom rooms (with 1 studio and 5 single bedrooms remaining)
- (e) The residential hotel also provides various amenities including:
  - (i) Ground level lobby area
  - (ii) Conference room
  - (iii) Business lounge
  - (iv) Gym and

- (v) back-of-house staff areas
- (f) Office tenancies are proposed to Levels 7 & 8 comprising a total net floor area of 1,248sqm (and leasable floor area of 1,096sqm – i.e. excluding common areas).

General form and materials

- (g) The building comprises 9 storeys with a maximum height of 29.15m excluding roof top services.
- (h) The proposal will present a 7 storey street wall expressed by two projecting framed balcony elements.
- (i) The materials proposed include:
  - (i) Paint finish “*white watsonia*” to precast concrete to the framed balcony elements to Wellington Street and the western elevation and the north and south boundary walls, with small sections in a “*monument*” paint finish.
  - (ii) “*Low E Green*” coloured glass with “*monument*” glass spandrels to vertical sections of the curtain walls.
  - (iii) Exposed concrete aggregate proposed to the ground level pedestrian area with a powder coat entrance canopy in a “*Previous Silver Pearl Kinetic*” metallic finish.



**Figure 2: Wellington Street render image**

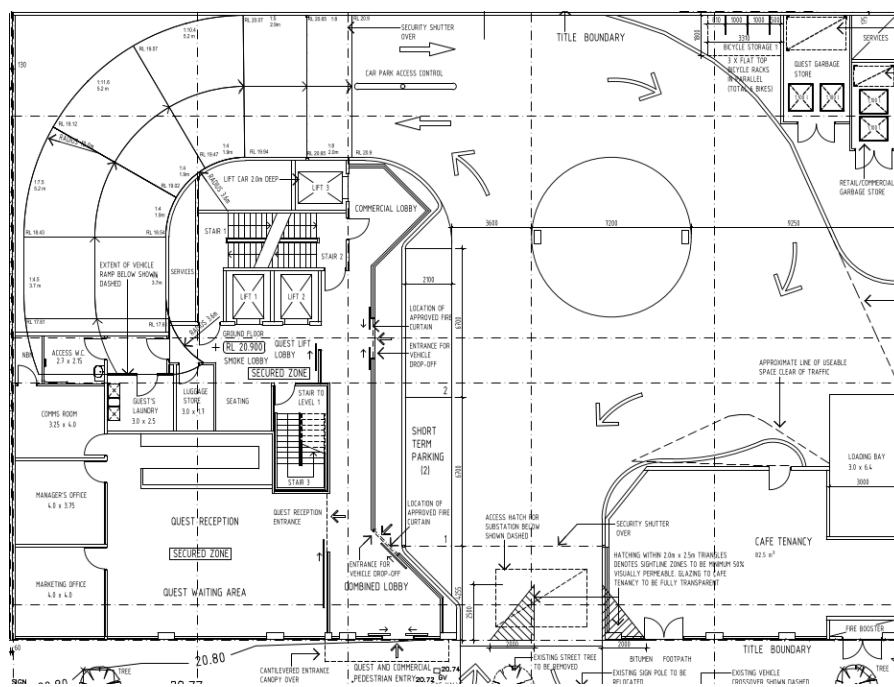
Basement levels

- (j) Two levels of basement are proposed accommodating 45 car spaces. Also contained within the basement is a 20kL rainwater tank and other various building services including a substation on the upper basement level.
- (k) Vehicle access to the basement levels is provided via a two-way ramp.
- (l) The upper level basement contains bicycle storage for up to 12 bikes and two unisex showers/bathroom change areas.
- (m) A loading bay is also proposed within the upper level basement.
- (n) The basement levels extend to all boundaries.



**Ground level**

- (o) The reception area for the residential hotel is proposed toward the south-eastern corner of the ground floor facing Wellington Street, with two ancillary offices adjacent to the southern boundary.
- (p) The pedestrian entrance to the residential hotel and the lift lobby to the levels above is located to the north of the reception area.
- (q) A café tenancy is proposed in the north-eastern corner facing Wellington Street with direct pedestrian access from the street.
- (r) Between the café and lobby entrance is the vehicle access to the site, which is to be 6.4m wide. This will require a new crossover to be created and removal of the existing 7m crossover further to the north. The vehicle crossover works do not trigger a planning permit.
- (s) The ground floor also contains 2 short term parking spaces for guests of the residential hotel (e.g. for check in), a turning area for vehicles and a loading bay.
- (t) The bin storage area is provided adjacent to the loading bay area.
- (u) Visitor bicycle facilities accommodating 6 bicycles.
- (v) Separate lift access is provided for the office and residential hotel, with one lift servicing office, and two lifts for the residential hotel.
- (w) A fire booster is proposed in front of the café tenancy in the northern corner adjacent to Wellington Street.
- (x) The ground level extends to all boundaries.



**Figure 3: Ground level treatment (TP06)**

**Level 1**

- (y) The amenities for the residential hotel are provided at the southern portion of the first floor including a conference room, business lounge and gym.

- (z) The business lounge contains bi-folding doors opening onto a terrace along the eastern half of the southern boundary and returning along the eastern boundary facing Wellington Street.
- (aa) A linen store and a conference room store is provided to the west of the lift core.
- (bb) Fire tanks and a fire pump room are proposed along the southern portion of the western setback.
- (cc) The northern portion of the first floor contains 10 hotel rooms, including 5 studio rooms, 4 x 1 bed rooms and a two bed DDA compliant room.
- (dd) The first floor provides a setback of 1.53m to 2.17m from Wellington Street, however contains balconies extending to the boundary line in two sections (which frame the "podium").
- (ee) The business lounge is set back 2.25m, from the southern boundary, with the terrace occupying the setback area.
- (ff) The fire tanks are set back 3.35m from the southern boundary.
- (gg) The residential hotel rooms are set back 4.68m from the western boundary, with the balconies encroaching into this setback, 3.16m from the boundary.
- (hh) The first floor extends along the northern boundary with the exception for a centrally located light court 2m wide and 3.76m in depth.

#### Level 2 & 3

- (ii) This level contains 6 studio rooms, 6 one bed rooms and 2 x 2 bed rooms.
- (jj) A linen store is provided to the west of the lift core.
- (kk) At these levels the building is set back:
  - (i) 1.53m to 2.17m from Wellington Street, except for balconies in two sections which extend to the title boundary (matching Level 1)
  - (ii) 3.33m to 3.57m from the southern boundary
  - (iii) 4.79m to 5.47m from the western boundary, with the exception for balconies, which are set back 3.25m from the western boundary.
  - (iv) 0.0m from the northern boundary with the exception of the central light court 2m wide and 3.76m in depth (matching Level 1)

#### Levels 4 to 6

- (ll) These levels match Levels 2 and 3 below except for the replacement of a two bed room with a studio and a single bed room.
- (mm) The boundary setbacks are the same as Levels 2 and 3

#### Levels 7 & 8

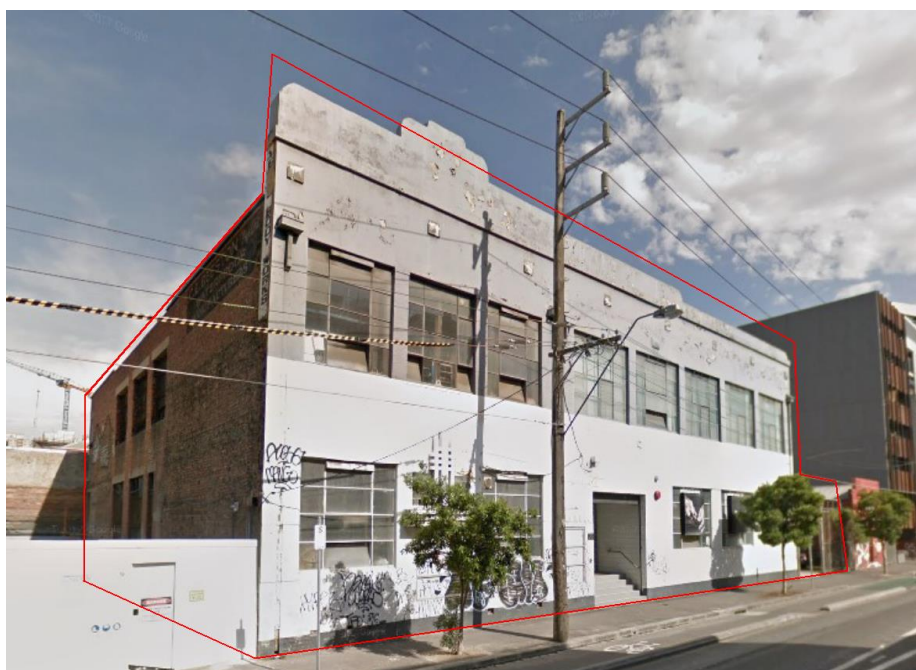
- (nn) These levels contain the office tenancies; with Level 7 having a leasable floor area (LFA) of 542sqm (83.3sqm of common areas) and Level 8 having an LFA of 551sqm (72sqm of common areas)
- (oo) Level 7 will have two communal terraces within the northern boundary setback and wrapping around the east and western side of the building with a total area of 71.4sqm.
- (pp) These levels are set back:
  - (i) 3m from Wellington Street
  - (ii) 3.33m to 3.57m from the southern boundary
  - (iii) 6.27m from the western boundary, excluding the Level 7 terrace, which is set back 4.68m from the boundary

- (iv) 3.13m from the northern boundary, excluding the Level 7 terrace, which extends to the boundary.

## Existing Conditions

### Subject Site

- 16. The subject site is located on the western side of Wellington Street, within the block between Langridge Street (south) and Peel Street (north). The site is a rectangular shaped lot with a frontage of 40.24m to Wellington Street and a depth of 28.47m, yielding an overall site area of 1,143sqm.
- 17. The site previously contained a two storey office building with a setback from its northern boundary and otherwise built to all boundaries. The northern setback was used for car parking within an uncovered concreted area. A 7.08m wide crossover to Wellington Street provided access to the car parking area.



**Figure 4: Google Street view image dated Nov 2017**

- 18. At the time of last inspection (15 June 2019), the site was under demolition (see image below).



**Figure 5: subject site taken 15 June 2019**

19. The Certificate of Title does not contain any easements or agreements, nor are there any easements burdening the subject site. However the site benefits from a 1.83m wide light easement within the property to the south, which extends along part of the southern boundary. This appears to align with the windows within the southern boundary wall visible on the 2017 Google Street view image in the figure above.

Surrounding Land

20. The surrounding area has undergone rapid change in the past 5 years, with a significant number of buildings approved, under construction or recently developed. These are typically in the range of 7 to 11 storeys.

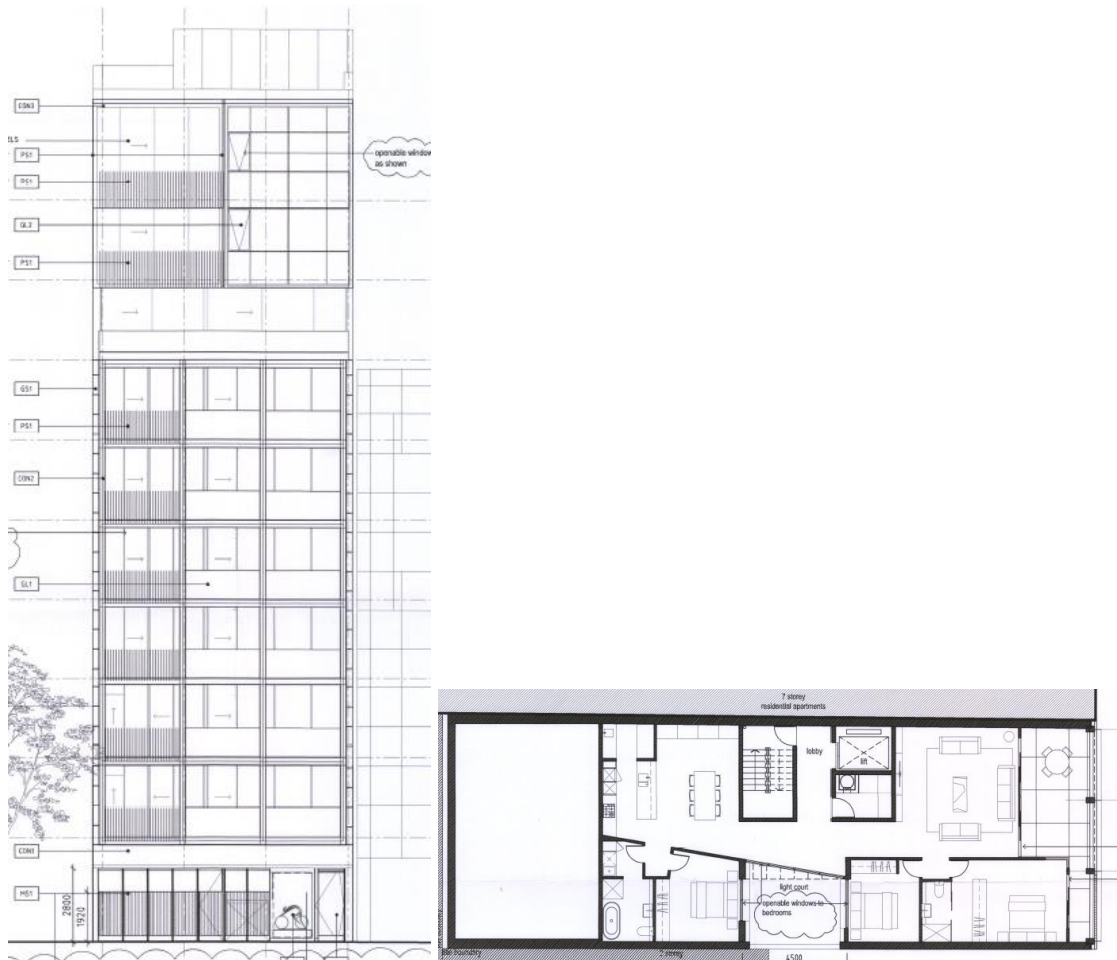


**Figure 6: Aerial of the subject site (source: Nearmaps 7 April 2019)**

21. Land immediately surrounding the subject site is described as follows:

*North*

22. Immediately to the north of the site is No. 93 Wellington Street, Collingwood. Planning Permit PLN17/0512 was issued on 19 July 2018 for a 10 storey building containing 9 dwellings (one on each level).
23. Plans were endorsed on 24 May 2019, with the approved development proposed to be built along the shared boundary for the full length of the building except for a 4.5m wide and 2.75m deep light court midway along the boundary. This is to provide light to bedrooms on Levels 1 and 2 and to corridors, butler's pantries/laundries and bathrooms on the levels above.
24. The development has not yet commenced, however a sales office has been set up on the land operating from the existing single storey building.



**Figure 7: Wellington St (east) elevation and Level 1 Plan**

25. Further to the north at No. 95-105 Wellington Street is a 7 storey building occupied by community housing. Further north again on the south-west corner of Peel and Wellington Streets is No. 47-49 Peel Street (formally 109 Wellington Street), which has been developed with a 10 storey apartment building with a ground floor food and drink premises under Planning Permit PLN14/0739.



**Figure 8: 95-105 Wellington Street**



**Figure 9: 47-49 Peel Street, Collingwood**

*East*

26. Wellington Street is immediately to the east of the site. This street has been upgraded with 'Copenhagen' style bicycle lanes on either side. There are also two street trees along the frontage of the site. On the eastern side of Wellington Street is No. 82-86 Wellington Street – a two storey office building to the north of Waterloo Road. Immediately behind this is the former Yorkshire Brewery site, which contains a predominately residential development up to 17 storeys. The permit for this development was issued at the direction of the Tribunal on 27 March 2013.



**Figure 10: view of the Yorkshire Brewery as viewed from Cambridge Street (across recently cleared site at No. 72-92 Cambridge Street and the subject site)**

27. To the south of Waterloo Road is No. 70-80 Wellington Street, developed with a 6 storey office building on the north-east corner of Wellington Street and Langridge Street.



**Figure 11: 70-80 Wellington Street**

28. On the southern side of Langridge Street to the south-east of the subject site is No. 51 Langridge Street. This site is currently under construction associated with PLN17/0332 for an 11 storey office building with a ground floor food and drink premises.



**Figure 12: 51 Langridge Street, Collingwood**

*South*

- 29. Immediately to the south of the site at No. 73-77 Wellington Street is a recently completed 10 storey development containing dwellings with ground floor retail. This building has been developed under Planning Permit PLN15/1138, which was issued 4 October 2016. The front portion of the site abuts the shared boundary. The rear portion of the site is set back 1.82m from the shared boundary and 4.56m from the western boundary. There are two windows per level that abut the subject site; one which relates to a bedroom and the other is a secondary window to the main living area, with primary outlook to the west. A typical floor plan is provided in the figure below.



**Figure 13: Typical floor layout (Level 2) of No. 73-77 Wellington Street, Collingwood**

- 30. Further to the south of Langridge Street at No. 61-71 Wellington Street and 37-39 Langridge Street is a 14 storey development currently under construction. Development of the site was approved on 1 September 2016 under Planning Permit PLN15/0641.

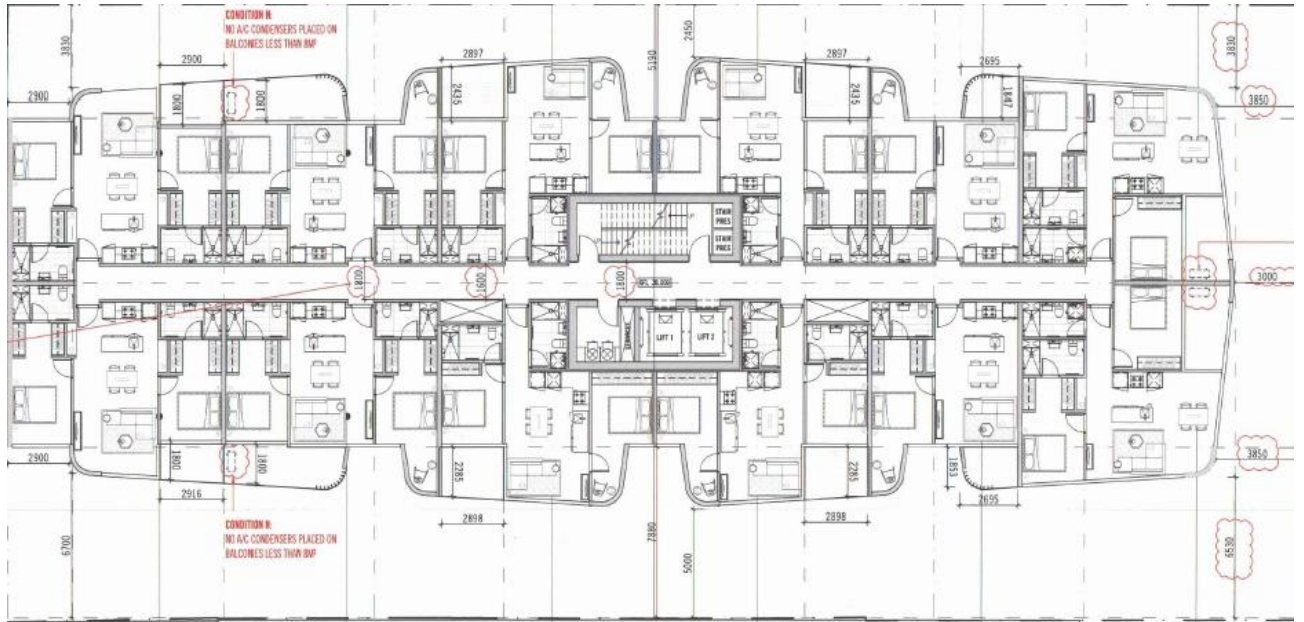


**Figure 14: 73-77 Wellington Street, with 61-71 Wellington Street behind**

*West*



31. Immediately to the west of the site is No. 72-94 Cambridge Street. Planning Permit PLN15/1083 was issued on 25 October 2016 for a 10 storey apartment building with ground floor retail and a gallery. The plans were endorsed on 18 April 2019. The development is set back a minimum of 5m from the shared boundary from Level 1. There is a secondary consent application currently under consideration which seeks minor changes to the endorsed plans. Given that these have not yet been endorsed, the following assessment will be based upon the current endorsed plans. Notwithstanding this, the amendments are minor and would not be noticeably impacted by the proposal.



**Figure 15: 72-94 Cambridge Street PLN15/1083 endorsed L4-5 plan (subject site to the bottom)**

32. This site has since been cleared of buildings with temporary fencing erected along the Cambridge Street frontage.



**Figure 16: 72-94 Cambridge St (image taken from the north-west corner)**

33. Further to the west, on the western side of Cambridge Street is No. 42-44 Oxford Street, 61-63 Cambridge Street and 16-20 Langridge Street. Planning Permit PLN18/0497 was recently issued on 15 May 2019 for a 9-10 storey building containing dwellings, a residential hotel, ground floor retail. Plans have not yet been submitted for endorsement.
34. A previous application PLN16/1050 was sought for a 14 storey scheme containing a similar mix of uses. VCAT determined to refuse the application. Further discussion regarding this decision will be contained in the report as relevant.

## Planning Scheme Provisions

### Zoning

35. The subject site is within a Mixed Use Zone, the following triggers apply:

#### *Use*

36. Pursuant to clause 32.04-2, a planning permit is not required for a food and drink premises (includes café), provided that the leasable floor area (LFA) does not exceed 150sqm. The LFA of the café is 82.5sqm, as such, a planning permit is not required for the use.
37. Pursuant to clause 32.04-2, a planning permit is not required to use land as an office provided that the LFA does not exceed 250sqm. The LFA is 1,096sqm and therefore the use of the land for an office triggers a planning permit
38. Pursuant to clause 32.04-2, a planning permit is required to use land for Accommodation not otherwise listed in Section 1. Residential Hotel, which is nested under Accommodation, is not listed in Section 1 and as such, a planning permit is required for this use.

#### *Buildings and works*

39. Pursuant to clause 32.04-6, a permit is required to construct a residential building. A residential hotel is nested under residential building.
40. Pursuant to clause 32.04-9, a permit is required to construct a building or construct or carry out works for a use in Section 2.

### Overlays

41. The site is affected by the following overlays:

#### *Design and Development Overlay – Schedule 2 & Schedule 23*

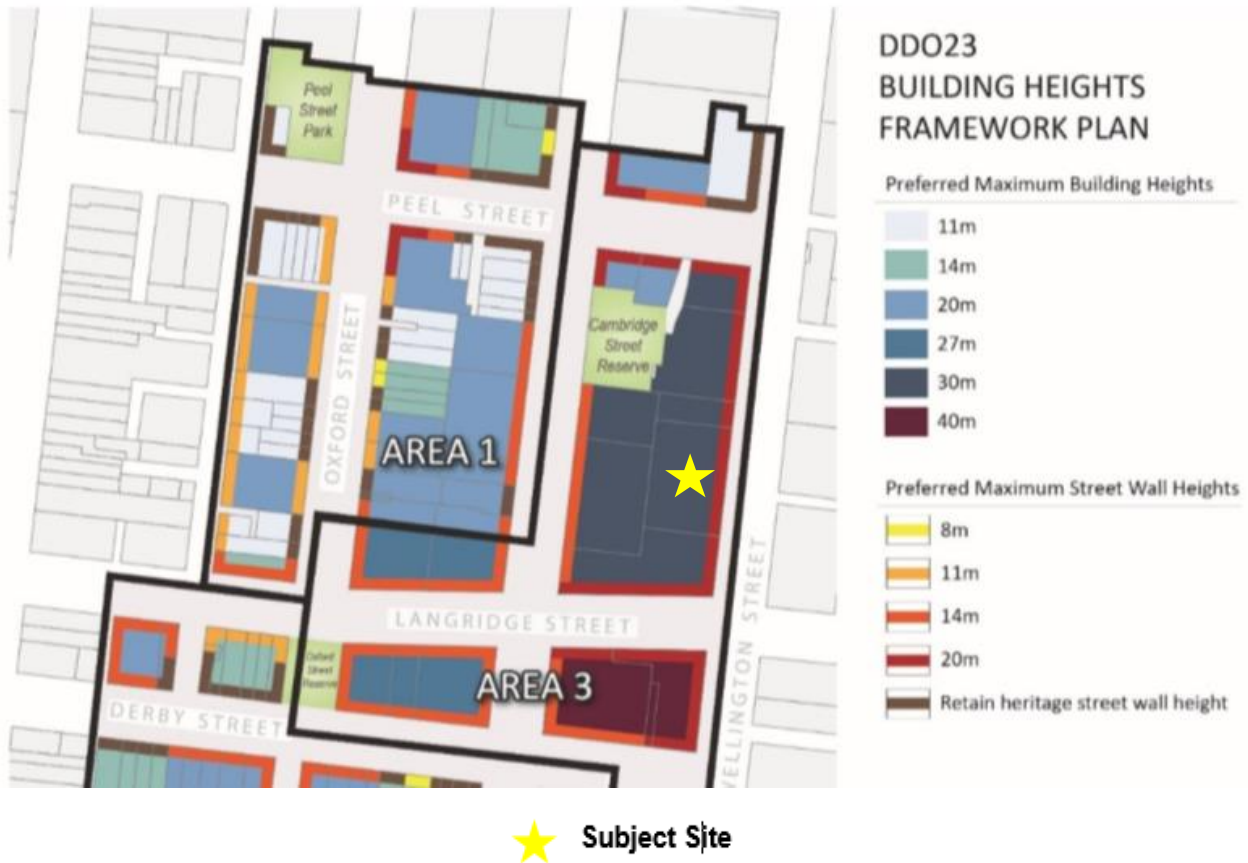
42. Pursuant to Clause 43.02-2, a permit is required to construct a building or construct or carry out works. Buildings and works must be constructed in accordance with any requirements in a schedule to this overlay. A permit may be granted to construct a building or construct or carry out works which are not in accordance with any requirement in a schedule to this overlay, unless the schedule specifies otherwise.

#### *Schedule 2 - Main Roads & Boulevards*

43. This schedule contains design objectives and decision guidelines for ensuring high quality streetscapes. There are no mandatory controls contained within Schedule 2.

#### *Schedule 23 - Collingwood South (Mixed Use) Precinct*

44. In addition to design objectives and decision guidelines, this schedule contains the following built form requirements relevant to the subject site:
45. Pursuant to section 2.2, a permit cannot be granted to vary the building height or street wall height specified in Plan 1: Building Heights Framework Plan (below), unless various requirements are met. The required building height for the subject site is 30m. This has been met, with a maximum height of 29.13m proposed. The street wall height however slightly exceeds the requirement of 20m, measuring at 22m above the footpath.
46. Upper levels for non-heritage sites within Area 3 are to be setback 3m. This is met, with the top two levels set back 3m from Wellington Street.
47. Schedule 23 also contains requirements relating to:
- (a) Overshadowing and solar access (public realm)
  - (b) Building separation, amenity and equitable development
  - (c) Vehicle access and car parking
48. These requirements are not mandatory and will be discussed within the assessment section of this report.



★ Subject Site  
**Figure 17: Plan 1 – Building Heights Framework Plan of DDO23**

*Environmental Audit Overlay*

49. Pursuant to clause 45.03-1, before a sensitive use (includes residential), commences or before the construction or carrying out of buildings and works in association with a sensitive use commences, either:
  - (a) A certificate of environmental audit must be issued for the land in accordance with Park 1XD of the *Environmental Protection Act 1970*, or
  - (b) An environmental Auditor appointed under the *Environmental Protection Act 1970* must make a statement in accordance with Park IXD of that Act that the environmental conditions of the land are suitable for the sensitive use.
50. A note will be added to any permit that issues to remind the permit applicant of their obligations under clause 45.03-1.

Particular Provisions

*Clause 52.06 – Car Parking*

51. Clause 52.06-1 requires that a new use must not commence until the required car spaces have been provided on the land. A permit is required to reduce (including reduce to zero) the requirement to provide the number of car parking spaces required under this clause.
52. Under clause 52.06-5, the following parking rates are required

Proposed Use	Size	Statutory Parking Rate	No. of Spaces Required	No. of Spaces Allocated
--------------	------	------------------------	------------------------	-------------------------

Residential hotel	83 rooms	Rate not specified in Clause 52.06-5	To the satisfaction of the responsible authority	28 and 2 x short stay spaces
Office	1,096.3sqm	3.0 spaces per 100m <sup>2</sup> of leasable floor area	32	16
Café (food and drink premises)	82.5sqm	3.5 spaces per 100m <sup>2</sup> of leasable floor area	2	1
<b>Total</b>			<b>34</b>	<b>47</b>

53. While the total number of spaces exceeds the statutory requirement, the allocation of spaces for office and the café tenancies is less than the specified rates for these uses. This will be discussed further within the assessment section of this report.

*Clause 52.34 – Bicycle Facilities*

54. Pursuant to clause 52.34, a new use must not commence until the required bicycle facilities and associated signage has been provided on the land. The purpose of the policy is to encourage cycling as a mode of transport and to provide secure, accessible and convenient bicycle parking spaces
55. Under the provisions of Clause 52.34-5 of the Scheme, the development’s bicycle parking requirements are as follows:

Proposed Use	Quantity/ Size	Statutory Parking Rate	No. of Spaces Required	No. of Spaces Allocated
Residential building	83 rooms	In developments of four or more storeys, 1 resident space to each 10 lodging rooms	8 resident spaces	12 employee spaces
		In developments of four or more storeys, 1 visitor space to each 10 lodging rooms	8 visitor spaces	6 visitor spaces
Office (other than specified in the table)	1,096.3sqm	1 employee space to each 300sqm of net floor area if the net floor area exceeds 1000sqm	4 employee spaces	
		1 visitor space to each 1000sqm of net floor area if the net floor area exceeds 1000sqm	1 visitor spaces.	
Retail premises (other than specified in this table)	82.5sqm	1 employee space to each 300sqm of leasable floor area	0 employee spaces	0 spaces
		1 visitor space to each 500sqm of leasable floor area	0 visitor spaces.	
<b>Bicycle Parking Spaces Total</b>			<b>12 resident/ employee spaces</b>	<b>12 resident/ employee spaces</b>
			<b>9 visitor spaces</b>	<b>6 visitor spaces</b>
<b>Showers / Change rooms</b>		1 to the first 5 employee spaces and 1 to each additional 10 employee spaces	<b>1 showers / change rooms</b>	<b>2 showers / change rooms</b>

56. The proposed development has a shortfall of 3 visitor bicycle spaces. A planning permit is required pursuant to 52.34-2 to vary the requirements of clause 52.34-5.

57. Clauses 52.34-6 and 52.34-7 provides design standard for bicycle spaces and signage.

*Clause 53.18 – Stormwater Management in Urban Development*

58. These provisions were introduced via Amendment VC154 on 26 October 2018. While there are transitional provisions for applications received prior to Amendment VC154, this is not applicable for the current application as the application was amended after Amendment VC154.
59. Pursuant to clause 53.18-3, applications to construct a building or construct or carry out works must meet the objectives of Clauses 53.18-5 and 53.18-6 and should meet the standards these clauses. These matters will be discussed within the assessment section of this report.

General Provisions

60. Pursuant to clause 66.02-11, an application to construct a building or construct or carry out works for a residential building comprising 60 or more lodging rooms must be referred to the Head, Transport for Victoria. Further detail is provided within the referral section of this report.
61. The decision guidelines outlined at Clause 65 of the Scheme are relevant to all applications. Because a permit can be granted does not imply that a permit should or will be granted. Before deciding on an application, the Responsible Authority must consider a number of matters. Amongst other things, the Responsible Authority must consider the relevant Municipal Planning Strategy and the Planning Policy Framework, as well as the purpose of the zone, overlay or any other provision. An assessment of the application against the relevant sections of the Scheme is contained in this report

Planning Policy Framework (PPF)

62. Relevant clauses are as follows:

*Clause 11.02 (Managing Growth)*

*Clause 11.02-1S (Supply of Urban Land)*

63. The objective is:

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

*Clause 13.04-1S (Contaminated and potentially contaminated land)*

64. The objective is:

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

*Clause 13.07 (Amenity)*

*Clause 13.07-1S (Land use compatibility)*

65. 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 (Built Environment and Heritage)*

*Clause 15.01-1S (Urban design)*

66. The relevant 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)*

67. The objective is:

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

*Clause 15.01-2S (Building design)*

68. The relevant objective of this clause is:

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

69. Relevant strategies of this clause are:

- (a) *Require a comprehensive site analysis as the starting point of the design process.*
- (b) *Ensure the site analysis provides the basis for the consideration of height, scale and massing of new development.*
- (c) *Ensure development responds and contributes to the strategic and cultural context of its location.*
- (d) *Minimise the detrimental impact of development on neighbouring properties, the public realm and the natural environment.*
- (e) *Ensure the form, scale, and appearance of development enhances the function and amenity of the public realm.*
- (f) *Ensure buildings and their interface with the public realm support personal safety, perceptions of safety and property security.*
- (g) *Ensure development is designed to protect and enhance valued landmarks, views and vistas.*
- (h) *Ensure development provides safe access and egress for pedestrians, cyclists and vehicles.*
- (i) *Ensure development provides landscaping that responds to its site context, enhances the built form and creates safe and attractive spaces.*
- (j) *Encourage development to retain existing vegetation.*

70. This clause also states that planning must consider as relevant:

- (a) *Urban Design Guidelines for Victoria (Department of Environment, Land, Water and Planning, 2017).*

*Clause 15.01-4S (Healthy neighbourhoods)*

71. The objective is:

- (a) *To create urban environments that are safe, functional and provide good quality environments with a sense of place and cultural identity.*

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

72. The strategy 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)*

73. The relevant objective of this clause is:

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

*Clause 15.02 (Sustainable Development)*

*Clause 15.02-1S (Energy Efficiency)*

74. 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 – (Employment)*

*Clause 17.01-1S – (Diversified economy)*

75. The objective of this clause is:

- (a) *To strengthen and diversify the economy.*

76. The relevant strategies of this clause are:

- (a) *Protect and strengthen existing and planned employment areas and plan for new employment areas.*
- (b) *Facilitate growth in a range of employment sectors, including health, education, retail, tourism, knowledge industries and professional and technical services based on the emerging and existing strengths of each region.*
- (c) *Improve access to jobs closer to where people live.*

*Clause 17.02 – (Commercial)*

*Clause 17.02-1S – (Business)*

77. The relevant objective of this clause is:

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

78. The relevant strategies of this clause is:

- (a) *Plan for an adequate supply of commercial land in appropriate locations.*
- (b) *Ensure commercial facilities are aggregated and provide net community benefit in relation to their viability, accessibility and efficient use of infrastructure.*
- (c) *Locate commercial facilities in existing or planned activity centres.*

*Clause 17.04-1S – (Facilitating Tourism)*

79. The relevant objective of this clause is:

- (a) *To encourage tourism development to maximise the economic, social and cultural benefits of developing the state as a competitive domestic and international tourist destination.*

80. The relevant strategy of this clause is:

- (a) *Maintain Metropolitan Melbourne's position as a global, national and local destination in its own right and as a gateway to regional Victoria by:*
  - (i) *Developing city precincts and promenades.*
  - (ii) *Revitalising the retail core of the Central City.*
  - (iii) *Supporting artistic and cultural life.*
  - (iv) *Improving public facilities, amenities and access.*
  - (v) *Maintaining city safety.*
  - (vi) *Providing information and leisure services.*
  - (vii) *Improving transport infrastructure.*

*Clause 18.01 (Integrated Transport)*

*Clause 18.01-1S – (Land use and transport planning)*

81. The objective of this clause is:

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

82. Relevant strategies to achieve this objective include:

- (a) *Develop transport networks to support employment corridors that allow circumferential and radial movements.*
- (b) *Plan urban development to make jobs and community services more accessible by (as relevant):*
  - (i) *Ensuring access is provided to developments in accordance with forecast demand, taking advantage of all available modes of transport and to minimise adverse impacts on existing transport networks and the amenity of surrounding areas.*
  - (ii) *Coordinating improvements to public transport, walking and cycling networks with the ongoing development and redevelopment of urban areas.*
  - (iii) *Requiring integrated transport plans to be prepared for all new major residential, commercial and industrial developments.*
- (c) *Integrate public transport services and infrastructure into new development.*

*Clause 18.02 (Movement Networks)*

*Clause 18.02-1S – (Sustainable personal transport)*

83. The relevant objectives of this clause is:

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

84. Relevant strategies of this policy are:



- (a) *Encourage the use of walking and cycling by creating environments that are safe and attractive.*
- (b) *Develop high quality pedestrian environments that are accessible to footpath-bound vehicles such as wheelchairs, prams and scooters.*
- (c) *Ensure cycling routes and infrastructure are constructed early in new developments.*
- (d) *Provide direct and connected pedestrian and bicycle infrastructure to and between key destinations including activity centres, public transport interchanges, employment areas, urban renewal precincts and major attractions.*
- (e) *Ensure cycling infrastructure (on-road bicycle lanes and off-road bicycle paths) is planned to provide the most direct route practical and to separate cyclists from other road users, particularly motor vehicles.*
- (f) *Require the provision of adequate bicycle parking and related facilities to meet demand at education, recreation, transport, shopping and community facilities and other major attractions when issuing planning approvals.*
- (g) *Provide improved facilities, particularly storage, for cyclists at public transport interchanges, rail stations and major attractions.*
- (h) *Ensure provision of bicycle end-of-trip facilities in commercial buildings*

*Clause 18.02-1R – (Sustainable personal transport- Metropolitan Melbourne)*

85. Strategies of this policy are:

- (a) *Improve local travel options for walking and cycling to support 20 minute neighbourhoods.*
- (b) *Develop local cycling networks and new cycling facilities that support the development of 20-minute neighbourhoods and that link to and complement the metropolitan-wide network of bicycle routes - the Principal Bicycle Network*

*Clause 18.02-2S (Public Transport)*

86. 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)*

87. A relevant strategy of this clause is to:

- (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)*

88. The objective of this clause is:

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

89. A relevant strategy is:

- (a) *Protect the amenity of residential precincts from the effects of road congestion created by on-street parking.*

Municipal Strategic Statement

90. The relevant policies in the Municipal Strategic Statement can be described as follows:

*Municipal Strategic Statement (MSS)*

91. Relevant clauses are as follows:

*Clause 21.04-3 (Industry, office and commercial)*

92. The objective of this clause is:

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

*Clause 21.05-2 – (Urban design)*

93. The relevant objectives of this Clause are:

(a) *Objective 16 - To reinforce the existing urban framework of Yarra;*

(b) *Objective 17 - To retain Yarra's identity as a low-rise urban form with pockets of higher development:*

(i) *Strategy 17.2 Development on strategic redevelopment sites or within activity centres should generally be no more than 5-6 storeys unless it can be demonstrated that the proposal can achieve specific benefits such as:*

1. *Significant upper level setbacks*
2. *Architectural design excellence*
3. *Best practice environmental sustainability objectives in design and construction*
4. *High quality restoration and adaptive re-use of heritage buildings*
5. *Positive contribution to the enhancement of the public domain*
6. *Provision of affordable housing.*

(c) *Objective 18 - To retain, enhance and extend Yarra's fine grain street pattern;*

(d) *Objective 20 - To ensure that new development contributes positively to Yarra's urban fabric;*

(i) *Strategy 20.1 Ensure development is designed having particular regard to its urban context and specifically designed following a thorough analysis of the site, the neighbouring properties and its environs.*

(ii) *Strategy 20.2 Require development of Strategic Redevelopment Sites to take into account the opportunities for development on adjoining land.*

(iii) *Strategy 20.3 Reflect the fine grain of the subdivision pattern in building design where this is part of the original character of the area.*

(iv) *Strategy 20.4 Apply the Built Form and Design policy at clause 22.10.*

*Clause 21.05-3 – (Built form character)*

94. The general objective of this clause is:

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

95. The subject site is located within a non-residential area, where the built form objective is to *"improve the interface of development with the street"*.

96. The strategies to achieve the objective are to:

- (a) *Strategy 27.1 - Allow flexibility in built form in areas with a coarse urban grain (larger lots, fewer streets and lanes).*
- (b) *Strategy 27.2 - Require new development to integrate with the public street system.*

*Clause 21.05-4 (Public environment)*

97. The relevant objective and strategies of this clause are:

- (a) *Objective 28 - To provide a public environment that encourages community interaction and activity:*
  - (i) *Strategy 28.1 - Encourage universal access to all new public spaces and buildings*
  - (ii) *Strategy 28.2 - Ensure that buildings have a human scale at street level.*
  - (iii) *Strategy 28.3 - Require buildings and public spaces to provide a safe and attractive public environment.*
  - (iv) *Strategy 28.5 - Require new development to make a clear distinction between public and private spaces.*
  - (v) *Strategy 28.8 - Encourage public art in new development.*

*Clause 21.06 – (Transport)*

98. This policy recognises that Yarra needs to reduce car dependence by promoting walking, cycling and public transport use as viable and preferable alternatives. Relevant objectives and strategies of this Clause are as follows:

- (a) *Objective 30 – To provide safe and convenient pedestrian and bicycle environments.*
  - (i) *Strategy 30.2 – Minimise vehicle crossovers on street frontages.*
  - (ii) *Strategy 30.3 – Use rear laneway access to reduce vehicle crossovers.*
- (b) *Objective 31 – To facilitate public transport usage.*
- (c) *Objective 32 – To reduce the reliance on the private motor car.*
- (d) *Objective 33 To reduce the impact of traffic.*
  - (i) *Strategy 33.1 Ensure access arrangements maintain the safety and efficiency of the arterial and local road network.*

*Clause 21.07-1 – Ecologically sustainable development*

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

- (a) *Objective 34 – To promote ecologically sustainable development.*
  - (i) *Strategy 34.1 – Encourage new development to incorporate environmentally sustainable design measures in the areas of energy and water efficiency, greenhouse gas emissions, passive solar design, natural ventilation, stormwater reduction and management, solar access, orientation and layout of development, building materials and waste minimisation.*

*Clause 21.08-5 Neighbourhoods (Collingwood)*

100. This clause outlines the Collingwood neighbourhood as follows;

- (a) *Much of Collingwood is industrial in character with the residential precincts surrounded by or interspersed with industrial buildings.*

- (b) *To the south of Johnston Street development is Victorian overlaid with subsequent periods of development. This part of Collingwood is varied in built form and character, ranging from large Victorian factory buildings to small pockets of low rise residential development. The most outstanding feature of this precinct is the Foy and Gibson complex of retail and warehouse of buildings which below to the suburb's commercial past. The buildings have large dominating built forms with rhythmic façade design. They are imposing and visually cohesive.*

101. Figure 14 of Clause 21.08-5, shows the subject site as being within a non-residential built form character area where the objective is to improve the interface of development with the street.

#### Relevant Local Policies

##### *Clause 22.05 – Interfaces Uses Policy*

102. This policy applies to applications within the Mixed Use Zone (among others), and aims to reduce conflict between commercial, industrial and residential activities. The policy acknowledges that the mix of land uses and development that typifies inner city areas can result in conflict at the interface between uses.

103. It is policy that:

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

104. Decision guidelines at clause 22.05-6 include:

- (a) *Before deciding on an application for non-residential development, Council will consider as appropriate:*
- (i) *The extent to which the proposed buildings or uses may cause overlooking, overshadowing, noise, fumes and air emissions, light spillage, waste management and other operational disturbances that may cause unreasonable detriment to the residential amenity of nearby residential properties.*
  - (ii) *Whether the buildings or uses are designed or incorporate appropriate measures to minimise the impact of unreasonable overlooking, overshadowing, noise, fumes and air emissions, light spillage, waste management and other operational disturbances on nearby residential properties.*

##### *Clause 22.10 – Built form and design policy*

105. This policy applies to all new development not included in a Heritage Overlay. The relevant objectives of this policy are to:

- (a) *Ensure that new development positively responds to the context of the development and respects the scale and form of surrounding development where this is a valued feature of the neighbourhood character.*
- (b) *Ensure that new development makes a positive contribution to the streetscape through high standards in architecture and urban design.*
- (c) *Limit the impact of new development on the amenity of surrounding land, particularly residential land.*
- (d) *Design buildings to increase the safety, convenience, attractiveness, inclusiveness, accessibility and 'walkability' of the City's streets and public spaces.*
- (e) *Create a positive interface between the private domain and public spaces.*

(f) *Encourage environmentally sustainable development.*

106. The Clause includes various design objectives and guidelines that can be implemented to achieve the above objectives. The design elements relevant to this application relate to:

- (a) *urban form and character;*
- (b) *setbacks and building height;*
- (c) *street and public space quality;*
- (d) *environmental sustainability;*
- (e) *site coverage;*
- (f) *on-site amenity;*
- (g) *off-site amenity;*
- (h) *landscaping and fencing;*
- (i) *parking, traffic and access; and*
- (j) *service infrastructure.*

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

107. Clause 22.16-3 requires the use of measures to “*improve the quality and reduce the flow of water discharge to waterways*”, manage the flow of litter from the site in stormwater and encourage green roofs, walls and facades in buildings where practicable.

*Clause 22.17 – Environmentally Sustainable Design*

108. This policy applies to residential development with more than one dwelling. 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 relevant documents

109. Clause 15.01-2S states that planning must consider as relevant:

- (a) *Urban Design Guidelines for Victoria (Department of Environment, Land, Water and Planning, 2017). (UDG)*

**Advertising**

110. The application was advertised under the provisions of Section 52 of the Act by 1,262 letters sent to surrounding owners and occupiers and by a sign displayed on site. Council initially received 7 objections, the grounds of which are summarised as follows:

- (a) Excessive height and massing
- (b) Poor architectural quality and internal amenity
- (c) Amenity Impacts (overshadowing, daylight to windows, visual bulk)
- (d) Noise from hotel guests
- (e) Increased traffic and insufficient car parking
- (f) Loss of ‘heritage’ fabric

111. The Section 57A amended plans were readvertised pursuant to Section 57B of the Act to the existing objectors and the adjoining properties to the north and west. While the amended plans result in a reduction in scale and largely an improvement to the original proposal, they also resulted in a reduced setback from the northern boundary at the upper levels. It was on this basis that the application was readvertised to those affected (i.e. north and west).

The amended application was not readvertised to the property to the south (other than those who had initial objected) on the basis that the changes did not result in any material detriment to this interface.

112. Council received a further 3 objections, bringing the total number of objections to 10. These objections did not raise any new matters.
113. A planning consultation meeting was held on 3 June 2019 and attended by the Applicant, Council Officers and four residents of 73-75 Wellington Street, one whom later objected to the proposal. The discussion centred around potential daylight impacts on the windows to the south.
114. In response to the concerns raised by the applicants, the permit applicant obtained a daylight analysis to study the impact on the apartments identified by the residents including both the proposed development and the approved development to the west at No. 72-94 Cambridge Street. This was subsequently circulated to the residents that had attended the meeting. The results on the daylight analysis will be further discussed within the assessment section of this report.

## **Referrals**

### External Referrals

115. The original application was referred to Head, Transport for Victoria (TfV) as a determining referral authority pursuant to Clause 66.02-11 of the Scheme. In correspondence dated 24 December 2018, TfV confirmed that it did not object to the proposal (unconditionally). The S57A Amended Plans were not re-referred to TfV on the basis that the changes resulted in a scaling down of the proposal and would not impact TfV's original advice.

### Internal Referrals

116. The original application was referred to the following Council units/officers and external consultants:
  - (a) Urban Design consultant (Rob McGauran of MGS)
  - (b) Engineering Services Unit
  - (c) Environmental Sustainable Development (ESD) consultant
  - (d) Strategic Transport Unit
  - (e) Streetscapes and Natural Values Team (Street trees)
  - (f) Strategic Planning
  - (g) City Works (Waste Management)
117. The amended application was re-referred back to the following:
  - (a) Urban Design Consultant (Rob McGauran)
  - (b) Environmental Sustainable Development (ESD) consultant
  - (c) Engineering Services Unit
  - (d) Strategic Transport Unit
118. The amended application was not re-referred to the remaining advisers and internal departments as the changes did not require further review. In regard to the Strategic Planning Department, their advice was initially sort given the variations to the DDO23 controls, in light of the amendments and the general consistency with DDO23, re-review of the amended proposal was not required.
119. In light of the significant changes, the original Urban Design Comments and the Strategic Planning comments are no longer relevant and have not been attached. All other referral comments have been included as attachments to this report.

## OFFICER ASSESSMENT

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

- (a) Policy and strategic support;
- (b) Use
- (c) Built Form and Design
- (d) Internal Amenity
- (e) Environmental sustainability;
- (f) Public realm
- (g) External amenity impacts
- (h) Equitable development
- (i) Car parking, bicycle facilities and movement;
- (j) Building services, loading and waste management
- (k) Objector concerns and
- (l) other matters

### Policy and Strategic Support

121. Pursuant to State policy at clause 17, economic development is to be fostered by *'...providing land, facilitating decisions and resolving land use conflicts, so that each region may built on its strengths and achieve its economic potential'*. At a local level, the Municipal Strategic Statement at Clause 21.04-3 seeks to *'increase the number and diversity of local employment opportunities'*. As will be discussed in further detail within this report, the proposal will support economic opportunities in a highly accessible, service-rich area. The uses proposed will increase employment opportunities in hospitality and through the future tenants of the office levels. The proposed uses are complementary to the surrounding area and are not expected to pose interface conflict issues. This will be explored in greater detail within the report.
122. Clause 17.04-1R seeks to maintain and develop Metropolitan Melbourne as a desirable tourist destination. The provision for a residential hotel will contribute to the availability of accommodation within the locality, while concurrently supporting the local economy through additional visitors to the area. Given the proximity to the Brunswick and Smith Street Activity Centres, this is considered an appropriate location for temporary accommodation. Furthermore, the proximity of the site to the Gipps Street employment precinct is likely to support proximate accommodation for business travellers.
123. Overarching State policy at clause 15.01-1S (urban design) seeks to *create urban environments that are safe, healthy, functional and enjoyable and that contribute to a sense of place and cultural identity*. This is reinforced at clause 15.01-2S (building design) which encourages *'...building design outcomes that contribute positively to the local context and enhance the public realm.'* Council's Municipal Strategic Statement seeks to *'ensure that new development contributes positively to Yarra's Urban fabric'* (Objective 20) and also *'maintain and strength the identified character of each type of identified built form within Yarra.'* (Objective 23). The key considerations in relation to these policies relates to the consistency of the proposed development with Schedule 23 of the Design and Development Overlay, Collingwood South (Mixed Use) Precinct, which applies to the western side of Wellington Street and further beyond to the west.
124. Both State and local polices (clause 15.02-1S, 21.07-1) support energy and resource efficiency through environmentally sustainable development, consolidation and integration of urban development and supporting low energy forms of transport.

125. Both State and local policy directives seek to promote the use of sustainable personal transport (Clauses 18.02-1R, 18.02-2R, and 21.06). In regard to car parking, Clause 18.02-4S encourages an adequate supply of car parking to be provided with consideration to existing and potential modes of access including public transport, the demand for off-street car parking, road capacity and the potential for demand management of car parking.
126. At a local level, clause 21.06 acknowledges that whilst parking availability is important for many people, *'unrestricted car use and parking is neither practical nor achievable.'* Matters relating to transport will be covered later within this report.

#### Use

127. Within the Mixed Use Zone, a permit is required to use the land for a residential hotel (accommodation) and office, as the floor area exceeds 250sqm (1,096sqm proposed). Both uses however are considered to align with the purpose of the Mixed Use Zone, which seeks to support *'... a range of residential, commercial, industrial and other uses which complement the mixed use function of the locality.'*
128. There are no specific decision guidelines within the MUZ for a new use other than industry and warehouse. However, guidance for assessing new uses in the MUZ is provided within Council's Interfaces uses policy at Clause 22.05 of the Scheme. Having regard to clause 22.05, the appropriateness of the discretionary uses are assessed in turn below.

#### *Office*

129. While the site exceeds the as-of-right LFA for an office within a mixed use zone, this exceedance is considered reasonable given the generous land size. The site is also on the edge of the Mixed Use Zone, with Commercially 2 zoned land directly to the south-west of the site, which encourages commercial areas for office. Therefore the office use will be complementary to the existing office activity within the immediate surrounds.
130. Office is a passive land use that generates minimal external impacts such as noise, odour or visual appearance. Amenity impacts from the proposed buildings and works will be discussed in greater detail through the report, however it is noted that the built form outcomes are not adversely impacted by the use of the land as office (as opposed to an alternative as-of-right use). The office is not anticipated to place an excessive demand on services, including loading/unloading or waste generation. The proposed development has accommodated sufficient loading areas and waste storage areas to support the future office use. These matters will be discussed in greater detail later within this report.
131. The hours of operation for the offices have not been nominated by the permit applicant. It is recommended that the hours of operation are restricted to 7am to 10pm, reflecting the day and evening hours pursuant to EPA's State Environmental Protection Policy (SEPP). This will be included as a condition accordingly.

#### *Residential Hotel*

132. As outlined within the Strategic justification section earlier, the subject site is considered an appropriate location for a residential hotel based on its proximity to key activity centres (Smith and Brunswick Streets) and the Gipps Street Employment Precinct.
133. A management plan has been prepared by Quest Apartment Hotels detailing matters relating to security and management of the facility. Key details include:
- (a) Reception hours between 7am to 11pm daily, with all guest checked into the computer reservations system.
  - (b) On-site live in manager available outside reception hours and is responsible for enforcing noise control
  - (c) Swipe-only access between 10pm and 7am
  - (d) Pre-organised after-hours check in available via a key safe
  - (e) CCTV surveillance across the premises



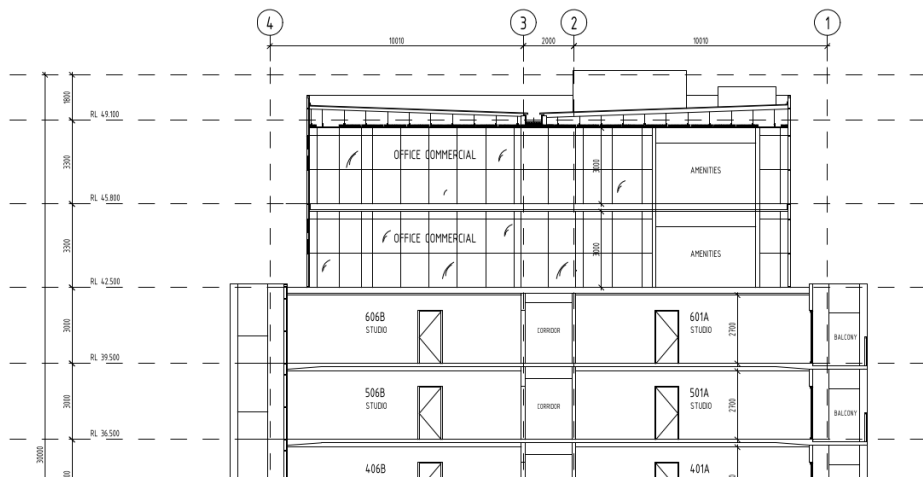
(f) Staff to be trained in emergency evacuation and First Aid

134. However, the management plan does not detail how the conference room, business lounge and adjacent terrace will be used, including their hours of operation. Given the proximity of these areas to the apartments to the south at No. 73-77 Wellington Street, it is possible that unregulated use of these areas could adversely impact the amenity of the adjacent residential properties. It is suggested that use of the outdoor terrace should be limited to 10pm. This aligns with EPA's SEPP night time period, which commences at 10pm. This would also be consistent with Council's Licenced Premises policy at clause 22.09 of the Scheme for use of outdoor areas for the sale and consumption of liquor. While the current application does not seek approval for a liquor license on the land, this policy provides guidance on suitability of outdoor area activity within a mixed use context.
135. To minimise noise spill from the adjacent conference room and business lounge, it is appropriate windows and external doors to these areas to be shut after 10pm. Given that the management plan indicates that visitors of the residents will be required to leave the premises by 11pm, it is considered appropriate that the use of the conference room and business lounge also cease by 11pm. These matters can be addressed through an amended management plan. The management plan already indicates that music played on site will be limited to background noise only, this would apply to these areas as well.
136. Subject to the additional inclusions identified above, the policies and procedures outlined within the management plan will ensure that external amenity impacts from the residential hotel, such as noise and guest behaviour, are appropriately managed. The amended management plan will be required by condition accordingly on any permit issued.
137. Interface matters relating to the proposed buildings and works will be discussed later within the assessment of amenity impacts. Other matters relating to the operation of the residential hotel, such as waste management, loading and unloading and car parking generation, will be discussed in greater detail within the relevant sections of this report.

**Built Form and Design**

*Building Height*

138. Specific building height guidance is contained within Schedule 23 of the Design and Development Overlay, which applies to the site. As described in the planning controls section, a 30m height control applies to this site. The proposal has met this, with a maximum height of 29.13m proposed (as shown on the eastern elevation). As such, the overall height of the development is considered acceptable and consistent with the strategic direction for the site.
139. A roof top service area (and screening) is depicted on the cross sections (TP40 & TP41) to marginally projects above 30m from the natural ground level (uppermost dashed horizontal line as shown on the image below).



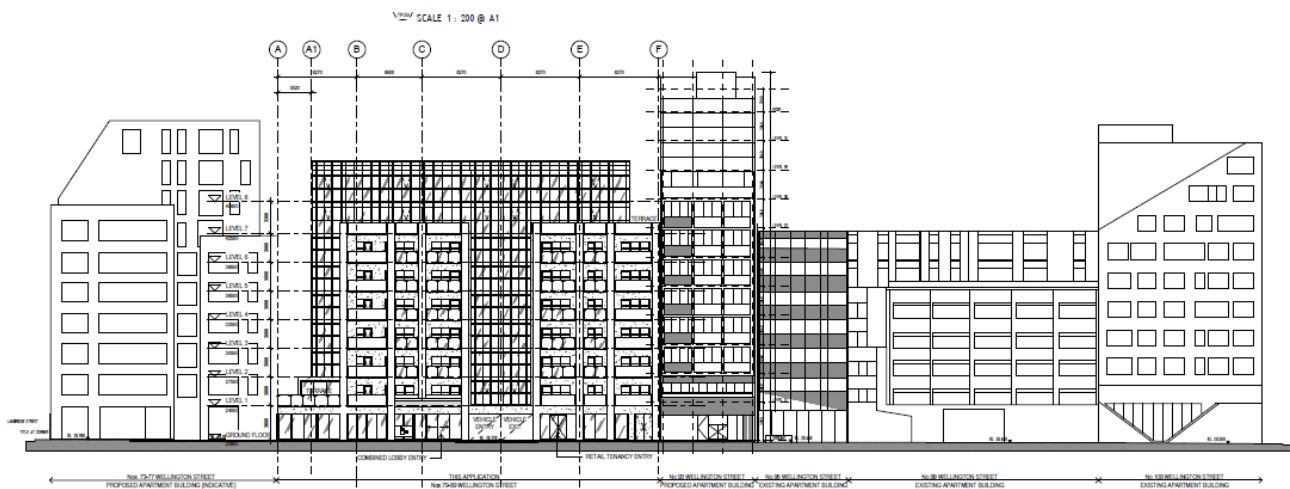
**Figure 18: Excerpt from Section A (TP40)**

140. The height to the top of the roof top services has not been clearly dimensioned, however the roof plan (TP20) indicates that a 1.8m high screen is proposed around the perimeter of the roof services platform. The definition of building height at clause 2.1 of DDO23 excludes screens to service areas or such equipment provided that the following criteria is met:
- (a) *Less than 50% of the roof area is occupied by the equipment (other than solar panels)*
  - (b) *Any equipment is located in a position on the roof so as to avoid additional overshadowing of either public or private open space, or windows to habitable rooms of an adjacent property*
  - (c) *Any equipment does not extend higher than 3.6m above the proposed height of the building and*
  - (d) *Any equipment and any screening is integrated into the design of the building to the satisfaction of the responsible authority.*
141. The above criteria for the services area is met in the following manner:
- (a) Equates to approximately 10% of the overall roof area.
  - (b) Is located in a relatively central area of the roof area, with services to be readily concealed by the louvered screen.
  - (c) Is sufficiently set back from the site boundaries to ensure that the services area will not create overshadowing impacts on adjoining sites.
  - (d) The services screen is 1.8m height, as such will be comfortably less than 3.6m above the building height.
  - (e) The services screen is sufficient subordinate to the roof profile and is unlikely to be readily visible from the public realm
142. For clarity, a condition will require the roof top services screen to be shown on the elevations, as well as dimensions of the maximum height to be clearly shown on elevations and sections. A further condition will also require the RL measurement to the roof parapet to be dimensioned as this detail has been omitted.
- Street wall & upper level setbacks*
143. Schedule 23 of the DDO stipulates a street wall height of 20m, with levels above to be set back 3m from the street wall. The proposed development slightly exceeds the preferred street wall height at 22.6m, however levels above are set back the requisite 3m. The street wall height is not dimensioned on the plans, with Council officers deriving the measurement from scaling the plans in Council's plan software (Trapeze).
144. Schedule 23 states that a street wall height cannot be exceeded unless all of the following are met:
- (a) *The built form outcome, as a result of the proposed variation satisfies the Design Objectives at Clause 1.0 and the Heritage Building Design Requirements in this schedule*
  - (b) *The proposed street wall height provides a transition, scaling down to the interface with heritage building, and is no more than two storeys higher than the street-wall height of the adjacent heritage building*
  - (c) *The proposed street wall height does not overwhelm the adjacent heritage building.*
145. Having regard to the above, neither (b) nor (c) are relevant given that the site does not have an interface with a Heritage Building, nor is it within a Heritage Overlay. Similarly, the Heritage Building design requirements as referenced in (a) are also not relevant.
146. The relevant consideration is whether the slightly higher street wall is consistent with the five design objectives at clause 1.0. These are discussed below in turn.

147. The first design objective seeks: *'To foster an emerging, contemporary, mixed use character with a prominent street wall edge, incorporating upper level setbacks and design features that create a distinction between lower and upper levels.'* The difference between a 20m and a 22m high street wall is considered inconsequential to this design objective. The street wall will be prominent and clearly distinguishable from the upper levels due to the material variations and the 3m upper level setback.
148. The second objective is seeking to achieve a mid-rise form that responds to the topography of the area whilst minimising amenity impacts on existing residential properties through visual bulk, overlooking and overshadowing. The proposed mid-rise form relates to the overall height and is not considered to be affected by the 2m difference in the street wall height. The additional height of the street wall is also considered inconsequential from an amenity perspective, with the tallest section of the street wall set back 3.1m from the southern boundary (being the only existing residential interface).
149. The third objective is to maintain the prominence of corner buildings on Wellington Street and to provide a responsive design where adjacent to heritage buildings. The second part of the objective is not relevant as there are no heritage buildings immediately surrounding the site. Noting that the corner site to the south (73-77 Wellington Street) has a podium height stepping down from 7 storeys at the corner to 6 storeys along Wellington Street, Council's Urban Design advisor stated that it would be desirable if the street wall height was lowered from 6 to 5 storeys. It is suggested that this could be achieved by removing the proposed framing and soffit areas to the projecting balconies at Level 5 (i.e. 504A to 507A).

This suggestion has not been included within the officer recommendation for the following reasons:

- (a) The podium as proposed is not considered to present a more dominate street wall compared to that to its south. As illustrated in the image below, the proposed podium height will sit at a height between the higher and lower elements of the development to the south.
- (b) The proposed podium height would also sit comfortably alongside the podium height associated with the approved development to the north, with a similar street wall height of 22.23m.
- (c) Reducing the height of the street wall would also emphasis the upper levels, consequently making them appear more prominent. This is not a preferred outcome given the breadth of the upper levels.



**Figure 19: Wellington Streetscape between Langridge St (South) and Peel St (North)**  
**N.B. Proposed development to the north (right) is shown one storey higher than approved**

150. The fourth design objective is: '*To promote and encourage pedestrian activity through street edge activation and the protection of footpaths and public open spaces from loss of amenity through overshadowing*'. The additional height of the street wall does not impact upon the street edge activation. Furthermore, the shadow diagrams submitted with the amended application also clearly show that the additional height will not affect solar access on the opposite side of Wellington Street before 2pm. As the sunlight period between 10am-2pm is nominated elsewhere in DDO23 as the basis for assessing overshadowing impact on the public realm, the absence of shadows at this time demonstrates the consistency with this design objective.

151. The final design objective relates to ensuring equitable development through building separation and a design response that considers the development opportunities. This objective is not influenced by the podium height.

152. Based on the above analysis, it is determined that the podium height is acceptable.

#### *Building separation*

153. Schedule 23 of the DDO provides the following guidance for upper levels building separation where development shares a common boundary:

- (a) Be setback a minimum 4.5m from the common boundary where a habitable window or balcony is proposed
- (b) Be setback a minimum of 3m from the common boundary where a commercial or non-habitable window is proposed

#### South

154. This is not met along the southern boundary for the residential hotel levels 2 to 6, with setbacks of 3.3m to 3.57m proposed where habitable room windows face a common boundary. The variation is considered acceptable in this case based upon the following:

- (a) The internal amenity of these hotel rooms will not be unreasonably impacted. None of the main living areas have their principal outlook toward the southern boundary. While there are bedroom windows that rely on this window for light, given the temporary nature of the accommodation, this is considered an acceptable outcome.
- (b) The setbacks do not result in inequitable development opportunities or unreasonable amenity impacts based on existing conditions, as will be discussed in greater detail later within this report
- (c) From a streetscape perspective (refer to Figure 19 above), a reduction in the side setback is inconsequential, noting that the surrounding developments are built boundary to boundary along Wellington Street.

155. The upper two levels of office are set back a minimum of 3.33m from the southern boundary in accordance with the preferred building setback.

#### West

156. From the western boundary, a setback of 4.5m or greater is provided for all habitable windows, however balconies to the residential hotel rooms at Levels 1 to 6 are within 3.16m from the boundary. While this would not meet the building separation requirements, it is considered acceptable on the following basis:

- (a) Screening can be applied to the balconies without unreasonably compromising the internal amenity of the hotel rooms, given that they are for temporary accommodation.
- (b) A minimum separation of 8.61m will be achieved from the adjacent residential apartments to the west based on the endorsed plans for 72-94 Cambridge Street, resulting in a difference of 0.4m from the anticipated 9m building separation between sites.
- (c) The variation of 0.4m is not expected to be perceivable from a daylight or visual bulk perspective.

157. The windows to the upper office levels are set back a minimum of 6.72m, well in excess of the minimum 3m setback requirement.

North

158. The only windows along the northern boundary to the residential hotels are associated with the internal shared corridor. This window is set back 3m from the boundary and therefore complies with the building separation requirement.
159. The upper office levels are set back 3.13m from the boundary, meeting the preferred building setback.

*Materials and design*

160. DDO Schedule 2 recognises Wellington Street as one of importance to the image of the City of Yarra. Specifically, the design objectives within Schedule 2 include:

- (a) *To recognise and reinforce the pattern of development and the character of the street, including the traditional lot width, in building design;*
- (b) *To encourage high quality contemporary architecture’.*

161. These objectives are considered particularly important for the subject site given its substantial frontage to Wellington Street.
162. The original façade composition has been significantly improved through the amended plans, which is now much more responsive to the street rhythm. This is achieved by expressing the street wall with two framed balcony modules comparable to the typical grain size of the street.

This is reflected in the streetscape elevation above at Figure 19. Council’s urban design consultant also no longer raises any concern with the composition of the eastern elevation.

163. While the response to the streetscape pattern has been improved, the material quality remains unsatisfactory given the prominence of the site. The street wall balcony modules are composed of precast concrete with a paint finish. Council’s urban design consultant raised concern with the use of this material and recommended the use of a masonry finish, reflecting materials characteristic in the area. Council officers consider a masonry finish such as a textured brick snap cladding to the front façade in a brown/red colour would improve its relationship with the Collingwood area and the materials typical of the remnant heritage brick warehouse buildings.
164. The rest of the façade comprises dark grey “*Monument*” glass spandrels and “*Low E Green*” glazing. Concern is raised with the green tint of the “*Low E Green*” glass, which presents poorly to the streetscape and the emerging contemporary developments. It is subsequently recommended that this be replaced with either clear glazing, light grey or a more ‘neutral’ bronze colour. For continuity, this should apply to all sides of the building, including glazed balcony balustrades. At ground level however, the glass will be required to be clear to maximise activation and passive surveillance.
165. Detailed perspectives will be requested by way of condition to ensure that the revised composition is appropriate. To ensure that the alternative materials are of a sufficient quality, a condition will require a material board with physical samples of materials to confirm the development is of sufficient quality.

Internal Amenity

166. It has been well established by VCAT that residential hotels and serviced apartments do not require the same standard of internal amenity as a dwelling given the short term, temporary nature of the accommodation type.
167. In the matter of *Tribe v Whitehorse CC* [2014] VCAT 212, the Tribunal made the following observations at paragraphs 59 and 62 regarding the serviced apartments, which could equally apply to a residential hotel:

- (a) *The proposed apartments do not have layouts or facilities consistent with what would typically be provided for dwellings. As noted by the objectors, some apartments do not have balconies or ground level courtyards for open space, living spaces rather than some bedrooms are 'internalised' within the unit layout and facilities like storage and areas to dry clothes are not provided. The 'apartments' are, in many cases small, and more akin to a motel unit with cooking facilities.*
- (b) *By and large, I do not see any difficulty with apartments of the size and type proposed being used for temporary accommodation. However, I would not approve them for dwellings providing permanent accommodation given the standard of amenity they provide. The absence of open space for some apartments, the internal layouts and absence of facilities do not make the proposed units suitable for permanent accommodation*

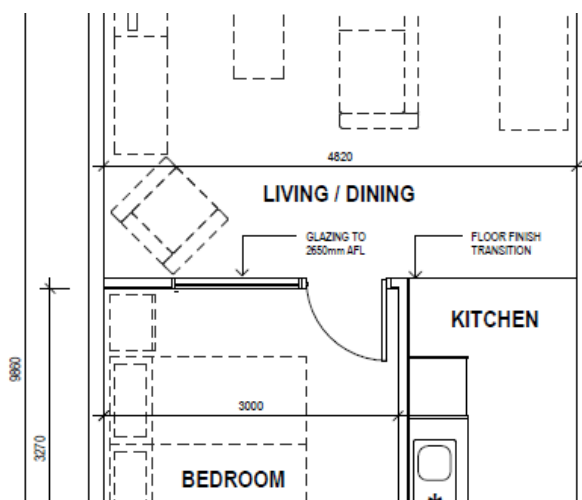
168. However, whilst serviced apartments and residential hotels are not expected to provide the same level of internal amenity as permanent accommodation, a level of amenity commensurate with the expectations of temporary accommodation still needs to be considered. This was explored through the recent VCAT decision of nearby site at Nos. 42-44 Oxford Street, 61-63 Cambridge Street and 16 Langridge Street, Langridge and Cambridge Funding Development Pty Ltd v Yarra CC [2018] VCAT 703, which at paragraph 126 stated that:

- (a) *We accept there is limited guidance in the scheme as to the benchmarks that would demonstrate that a hotel room provides acceptable amenity. Clearly daylight, ventilation, safety and communal spaces are necessary starting points.*

169. In this case, the Tribunal was not persuaded that the daylight or size of the hotel rooms were adequate. The smaller rooms dimensioned at 2.2m by 4.9m and failed to provide enough chairs for the occupants of the room. In contrast, the hotel rooms in the current proposal are of a reasonable size. There are three layouts; a studio, a one bedroom and a two bedroom, with opportunities to connect adjacent rooms in some instances. The studio, being the smallest of the hotel rooms measures at 3.1m by 9.2m. The furniture layout illustrates there is sufficient room for a bed, bedside tables, a kitchenette, a desk with two chairs and a shelving unit in addition to and separate bathroom and balcony.

170. The one and two bedroom room types are also of a reasonable size, with bedrooms measuring at a minimum of 3m x 3.25m in addition to built-in-robos, hallway galley kitchens and living/dining areas with a minimum dimension of 4m and area of 16sqm. While not applicable, it is acknowledged that bedrooms and living areas would largely meet the Functional Layout Standard D24 at Clause 58.07-1, with a 20cm shortfall of the minimum 3.4m depth for main bedrooms.

171. While the layout of the hotel rooms is acceptable, the level of daylight for bedrooms is significantly below what would be acceptable for long term accommodation. Most of the one bedroom and all two bedroom room types rely on borrowed light and ventilation from the living areas. To facilitate borrow light, walls between the bedrooms and living areas contain glazing to 2.65m above the finished floor level (see image below).



**Figure 20: Except of typical single bedroom layout**

172. While this would not be an acceptable arrangement for long-term accommodation, it is considered suitable for short stay accommodation. A notable difference between a hotel room and an apartment is that significantly less time is spent inside the rooms, particularly in bedrooms, during the day. While the reliance on borrowed light was criticised by the Tribunal in *Langridge and Cambridge Funding Development Pty Ltd*, in contrast to that proposal, all living rooms will have excellent access to natural light and ventilation with half of the rooms facing Wellington Street and the remainder facing the western boundary with a minimum setback of 4.5m (excluding the balcony).
173. The basis for supporting the extent of borrowed light is the temporary nature of the accommodations. The Quest Management Plan submitted with the application indicates that the average length of stay would be 2.7 nights (based on data from other Quest accommodations). To ensure that guests are only occupying rooms for a short period of time, a condition of any permit issued will require the owner of the land to enter into a Section 173 Agreement stipulating a maximum duration for guests will be 30 days. This is considered a reasonable timeframe to accommodate short business trips and holidaying guests. A duration beyond 30 days is considered to denote a more established living arrangement (albeit still temporary), where the internal amenity is likely to cause a greater imposition on the resident of the rooms.

Environmental Sustainability:

174. An amended Sustainability Management Plan (SMP) was submitted with the amended plans prepared by JBA Consulting Engineers Pty Ltd and dated 24 March 2019 to reflect the amended plans and address some of the initial comments from Council’s ESD advisor. An assessment of the environmental sustainability of the development is provided in the following sections.

*Indoor Environmental Quality*

175. The SMP indicates that outdoor air quantities will achieve a minimum 50% improvement on the minimum AS1668.2.
176. Council’s ESD advisor had recommended in their initial advice that the hotel rooms should be reconfigured to provide breezeways to at least 30 percent of apartments. As a consequence of the amended plans, 10 hotel rooms (12%) now have windows to two sides of the main living area, providing a breezeway. A further three apartments would also be able to receive cross ventilation via the bathroom windows, increasing the opportunities for breezeways to 15% of rooms. While falling short of the Council’s ESD advisors initial targets, the plans have sought to improve the breezeways to a number of rooms and given the temporary nature of the dwellings, this is considered an acceptable outcome.

*Energy*

177. The SMP commits to a 15% improvement above NCC energy efficiency requirements for heating and cooling through enhanced envelope insulation. In the initial advice, Council's ESD advisor requested a JV3 energy modelling report be provided before occupancy to demonstrate that the 15% improvement in the NCC requirements has been achieved. The applicant has sought to provide a greater assurance of its commitment of 15% improvement by providing a DTS Preliminary Section J assessment as part of the Section 57A amendment.
178. Council's ESD advisor has reviewed this document and has raised concerns with the assessment. In particular, the report is reliant on very low Solar Heat Gain Coefficient (SHGC) glazing on the major facades, however no evidence has been provided regarding the glazing selection. Additionally, the U-level glazing qualities are very low. There also appears to be inconsistency between this modelling and the daylight assessment, which relies on high visual Transmittance glazing. On this basis, the ESD advisor has recommended that the heat loads be improved through changes to the facades, such as raising window sill levels or introducing additional vertical fins.
179. Furthermore, as discussed within the assessment of the materials, it is sought to replace the 'Low E Green' glass to improve the appearance of the development. It is acknowledged that these changes may also impact the internal heat loads. However, additional screening devices or higher solid to void ratios (i.e. higher window sills) could be explored to achieve acceptable levels for both daylight and reduced heat loads. This will be included as a condition on permit accordingly.
180. In the original advice, Council's ESD advisor recommended that a PV array be introduced to contribute to onsite electricity demands. This was included as part of the amended proposal and now shown on the roof plan.
181. The proposed development is not expected to impact on solar energy facilities on adjoining sites. There are no solar panels shown on the endorsed plans for No. 73-77 Wellington Street to the south, however given that the proposed development would not cast shadow across the roof of this development, any solar energy facilities would be unaffected by the proposed development.
182. There are solar energy facilities proposed to the roof of No. 72-94 Cambridge Street to the west. This will not be overshadowed by the proposed development and as such, would not be impacted. Matters relating to daylight of adjoining properties will be discussed within the assessment of offsite amenity impacts.

*Water*

183. Best practice STORM rating of 103% is achieved with a 20kL rainwater tank collection from the roof of the building, redirecting to toilet flushing for 30% of toilets within the development. Water efficient fixtures and taps are also proposed. This is considered an acceptable response to both Clauses 22.16 and 53.18.

*Other initiatives*

184. In addition to the above, the following initiatives are highlighted:
  - (a) Metering and monitoring strategy applied
  - (b) Commissioning and tuning plan to nominated building systems
  - (c) At least 90% of construction and demolition waste to be diverted from landfill
  - (d) 2 x electric vehicle (EV) charging points within the basement
185. Council's ESD advisor has also recommended provision for organic waste. This is considered appropriate, with food scrap bins within office developments becoming common place. Furthermore, given that the hotel rooms come with kitchenettes, it is likely that these may also generate food waste that could be disposed of more sustainably. As such, this suggestion will be conditioned accordingly within a revised SMP and Waste Management Plan.



186. The provision for EV charging points are supported, however their location away from car spaces would affect their usability. This will be rectified via condition requiring the EV charging points to be provided adjacent to car spaces.

### Public Realm Environment

#### *Ground level treatment*

187. Schedule 23 of DDO encourages active street frontages and design elements/features that contribute to an engaging streetscape. Where services are required along the frontage, these are required to be sensitively designed.
188. Given that Wellington Street is the only street abuttal for the subject site (e.g. no rear or side access), service functions along the Wellington Street façade are unavoidable. This includes provision for vehicle access and a fire booster. The remainder of the frontage will provide an active interface, consisting of full height glazing to the café tenancy, lobby/entrance, residential hotel reception and marketing office. Having regard to the site constraints, the proposed development has achieved a high level of activation with Wellington Street. However, as discussed with the assessment of materiality, it is suggested that the green tint glazing is replaced with clear glazing to maximise the visibility and integration with the streetscape. This will be conditioned accordingly.
189. A small canopy is provided above the lobby entrance for the office and residential hotel. This will provide weather protection for pedestrians transitioning in and out of the building. The remainder of the façade does not provide a canopy. This is acceptable given that the other existing or proposed developments along Wellington Street also have not provided canopies to the street, therefore the absence of a canopy for the remainder of the frontage will be consistent with the existing and emerging streetscape character.

#### *Solar access*

190. Schedule 23 of DDO states that: '*for streets that extend in a north-south direction, development must not overshadow:*

- (a) *the eastern footpath to a distance of 2m from the kerb between 10am and 2pm on September 22;*
- (b) *The eastern footpath to a distance of 2.0m from the kerb from 10am to 2pm on September 22.'*

191. Whilst not explicit in the above requirement, it is not feasible for development of any scale to avoid overshadowing the same side of the street between the nominated times. It is understood that the intent of the requirement is to avoid development overshadowing the opposite side of the street. Shadow diagrams submitted with the application have adequately demonstrated that shadow cast by the development would not impact the eastern side of Wellington Street between 10am and 2pm on September 22.

#### *Wind impacts*

192. A decision guideline of DDO23 is to consider the wind effects created by the development. A wind impact assessment was submitted with the original proposal. A revised wind report has not been provided. The original report indicated that the ground level footpath areas would be expected to meet walking criteria, with entrance areas being within standard criteria, noting that the most significant northerly and westerly winds would be blocked by other developments.
193. However, in order to satisfy the design guidelines of DDO23, a condition of any permit that issues will require a wind impact assessment to be provided based on the amended scheme.

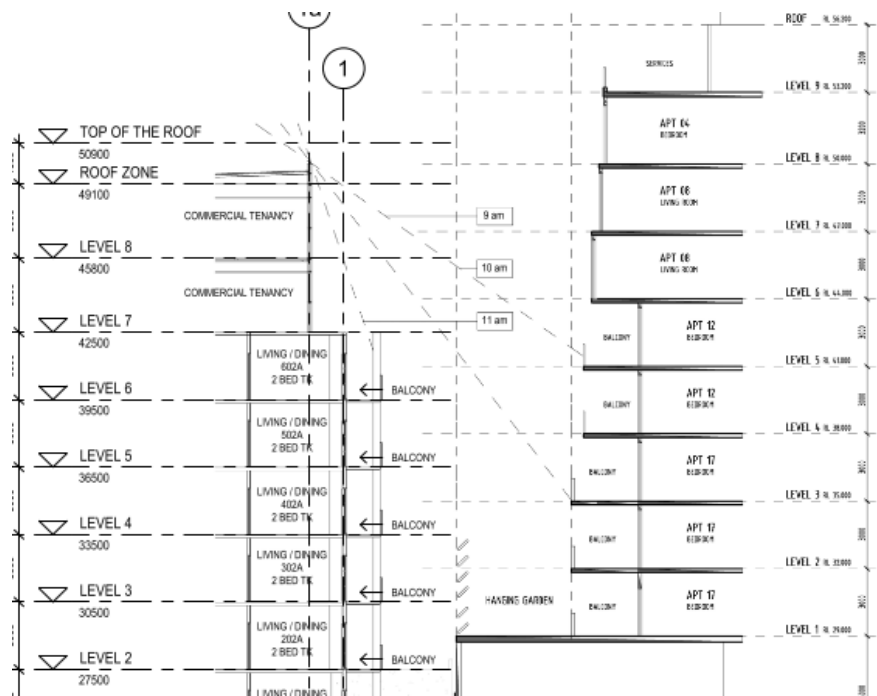
### External amenity impacts

#### **Overshadowing**

194. Shadowing on the public realm has been discussed previously. Shadows cast by the proposed development will impact the future development to the west and the recently constructed development to the south. These will be discussed in turn.

*West*

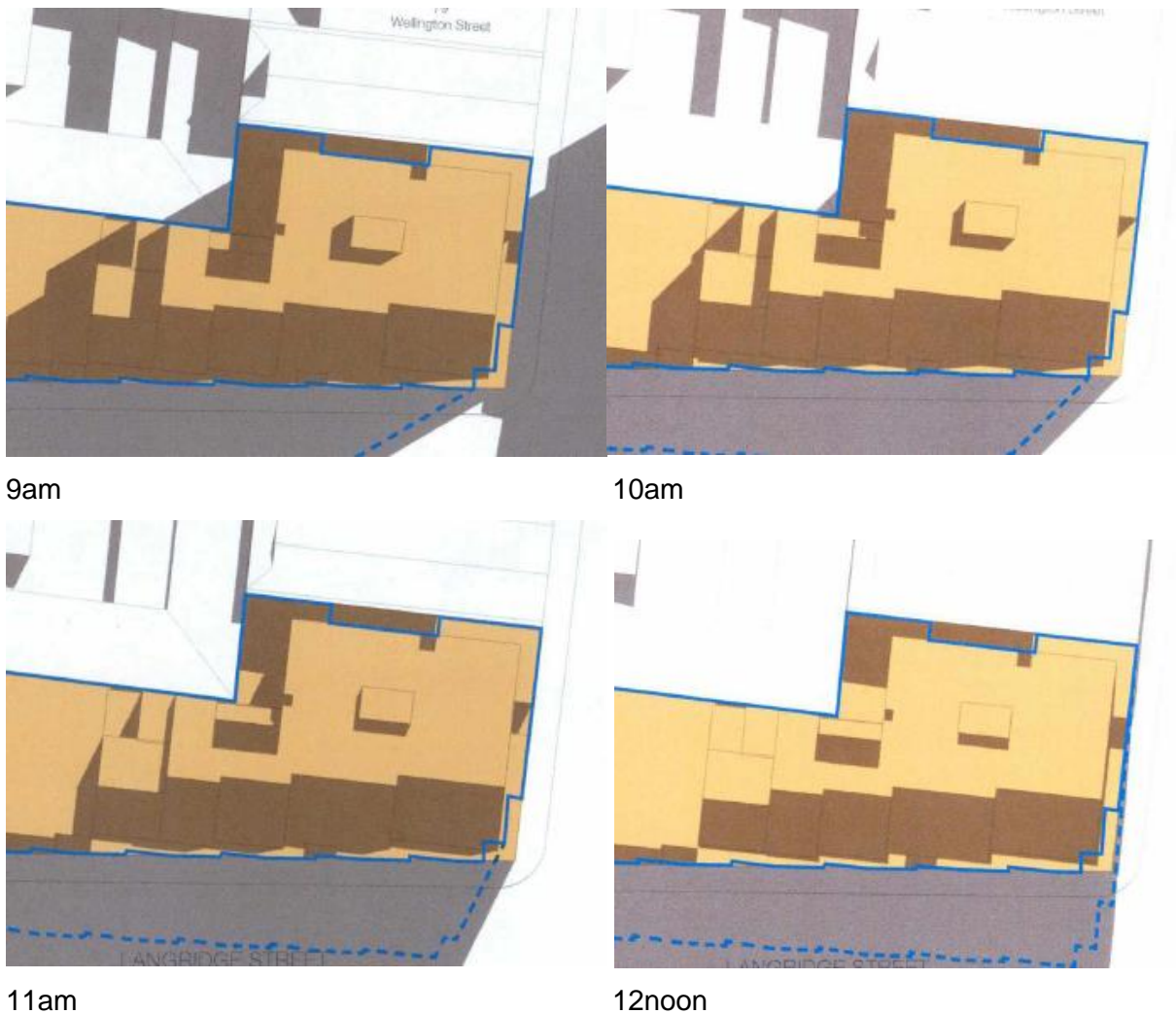
195. The shadow diagrams submitted with the application indicate that the development will cast a shadow on the proposed development to the west between 9am to 11am. However, sectional shadow diagrams have been provided that demonstrate that the shadows will not impact the entire building, with shadows at 9am impacting apartments up to Level 4 only and by 10am, only the apartments on Levels 1 and 2 will be affected. By 11am, the shadows will fall within the shadows already created by the proposed boundary wall of the site to the west. The extent of shadows cast by the proposed development are considered reasonable given the development expectations for the subject site. Additionally, the occupants of No. 72-94 Cambridge Street will also have access to a communal rooftop terrace with uninterrupted solar access throughout the day. On this basis, the reasonable amenity expectations from the proposed development are not unduly compromised.



**Figure 21: Section shadow diagrams cast from the subject site (left) to No. 72-94 Cambridge Street (right) at 22 September**

*South*

196. To the south, adjacent the south-western corner at Level 1 is a terrace associated with the apartment adjacent to the south. There are also balconies to the levels above. These balconies have a solid wall facing the subject site with a window cut-out. There are no other open space areas immediately abutting the subject site. The shadow diagrams submitted with the application indicate that the development will overshadow this area up until midday. However, on review of the shadow diagrams submitted with the application for No. 73-77 Wellington Street (below), this area will already be overshadowed by its own development. It is not anticipated that the shadows cast by the proposed development would be noticeably greater than existing conditions.
197. To offset the limited solar access provided to this terrace, the adjoining development also includes a communal podium terrace at Level 7 facing Cambridge Street. This would receive uninterrupted solar access. Given that the occupants of the development would continue to have access to an outdoor area with good sunlight access, the impact on this development is considered acceptable.



**Figure 22: Shadow diagrams provided with PLN15/1138 – 73-77 Wellington Street, Collingwood**

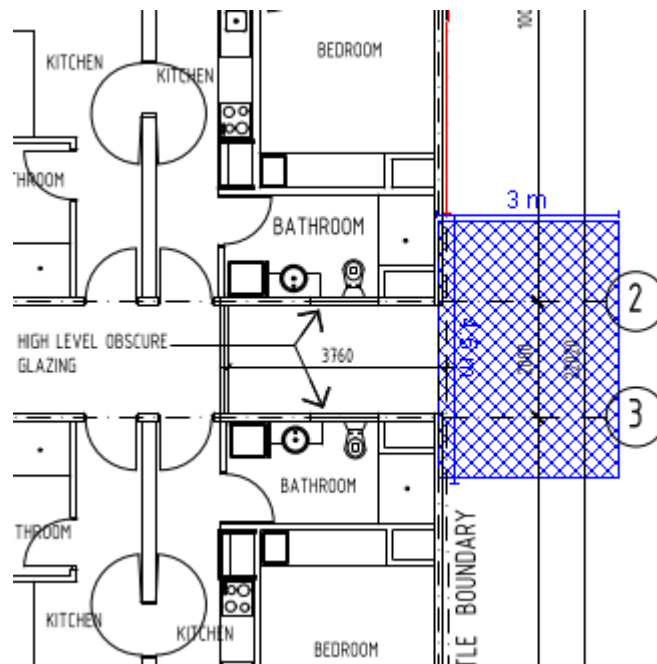
***Daylight impacts***

*North*

- 198. The land to the north at No. 93 Wellington Street presently contains a single storey commercial building, however as identified in the surrounds description, a planning permit has been issued for construction of a 10 storey apartment building on this site . The endorsed plans provide a mid-block light court along the southern boundary with a length of 4.5m and a depth of 3.05m. This provides daylight to bedrooms at Levels 1 and 2. Other windows to this lightcourt are associated with bathrooms, laundries/butlers pantries and corridors.
- 199. The approximate location of the proposed lightcourt is shown below (blue hatch). As illustrated below, the development has responded by providing its lightcourt directly opposite this area, however it will be approximately half the width. While the urban design advice has raised concern with the potential impact on the daylight access to the development to the north, it is considered that further modification is not necessary on the following basis:
  - (a) The lightcourt largely provides daylight access to non-habitable windows with the exception for Level 1 and 2 of the building. On level 1, the lightcourt provides daylight to 2 of 3 bedrooms, with the master bedroom located adjacent to Wellington Street, with uninterrupted daylight access. On level 2, this relates to 1 of 3 bedrooms, with the two remaining bedrooms having uninterrupted access to Wellington Street and to the west (respectively).

- (b) Given the significant change that has occurred within the immediate surrounds, and the generous size of the site, it was to be expected that the subject site would be developed in future.
- (c) There are no requirements under the Scheme which direct that a larger light court is provided. The subject site does not seek to rely on this light court for amenity, with it servicing bathrooms and common corridors only.
- (d) While the officer report for No. 93 Wellington Street (PLN17/0512) suggested that the daylight access would be acceptable if the subject site were to mirror the light court, this reliance upon the adjoining site to develop in a certain manner beyond what should be reasonably expected is considered inequitable.
- (e) It is also noted that the light court to the north is not an existing site condition. While plans have been endorsed, the development to the north has not commenced and therefore, less weight can be placed on the amenity impacts.

200. While it is not considered reasonable or necessary to require the lightcourt to be increased to match that to the north, it is suggested that the boundary walls to either side of the light court on the subject site have a white paint finish (rather than black) to improve the daylight levels within the adjacent light court. This will be conditioned accordingly.



**Figure 23: Interface with proposed light court to the north (blue hatched)**

*West*

201. Land to the west has recently been cleared of buildings, suggesting that construction for the approved 10 storey apartment development is likely to shortly commence. The plans for the subject site have included details of the future development on this site. This shows that a 5m to 7.96m setback will be provided from the common boundary from Level 3 and above.

The subject site provides a minimum 3.16m setback to balconies and a 4.68m to the building line. This results in a combined separation of 8.28m to 11.9m. This separation is considered sufficient to ensure that adequate daylight access can be maintained for all dwellings.

*South*

202. The property to the south at No. 73-77 Wellington Street contains bedroom and secondary living room windows facing the subject site within 1.82m from the shared boundary.

In the officer report for 73-77 Wellington Street, in relation to the daylight from the northern boundary, stated at paragraph 194 that *'...should the abutting sites develop with similar setbacks it would be an acceptable outcome'*

203. In responding to this interface, the proposed development is set back 3.3m from the southern boundary and 4.79m from the western boundary to align with the western balcony of the building to the south. The setback from the southern boundary will be almost double the setback provided by the property to the south. Furthermore, the southern walls are proposed to have a white paint finish which will assist in daylight levels through light transmittance.
204. It is acknowledged that the ground and first floor levels are constructed on the boundary. This is considered an acceptable outcome and an improvement on existing conditions given that the proposed wall will be 4.9m lower than the existing two storey brick building currently constructed to this boundary. The current interface is shown in the image below (as viewed from Cambridge Street).



**Figure 24: Existing interface between subject site (red brick) and 73-77 Wellington St**

205. As outlined earlier in the report, at the public consultation meeting residents of No. 73-77 Wellington Street to the south-west of the proposed development raised concern with the daylight impact on their apartments. The applicant has undertaken a daylight modelling analysis that models the future impact of both the subject site and the approved development to the west at No. 72-94 Cambridge Street. This confirms that the lightcourt to the south will continue to receive an acceptable level of daylight.



Figure 4 Dwelling 108 Bedrooms & Kitchen/living



Figure 5 Dwelling 207 Bedrooms & Kitchen/living

**Figure 25: Daylight modelling for 108 & 207, 73-77 Wellington St**

**Overlooking**

206. There are potential overlooking opportunities to the north, west and south. These will be addressed in turn within the paragraphs below.

**North**

207. While the approved development to the north is yet to be developed, in the interests of orderly planning, future overlooking opportunities have been considered. West-facing balconies are proposed to the hotel rooms adjacent to the northern boundary. The lower levels would have direct views into the terrace on Level 2 of the adjoining development to the north. This could be readily resolved by screening along the northern boundary of these terraces. This will be included as a condition accordingly.

208. Windows proposed to the northern lightcourt on the subject site are to non-habitable (bathrooms and corridors) and therefore are not considered to result in any unreasonable overlooking opportunities to the proposed bedroom windows on Levels 1 and 2 of No. 93 Wellington Street within its lightcourt.

*West*

209. While the development to the west has not yet commenced, in the interest of orderly planning, overlooking opportunities have been considered. Borrowing from the ResCode overlooking standard, views within 9m of the boundary are considered to compromise the reasonable privacy expectations of the future residents. As mentioned previously, the minimum separation between the balconies of the subject development and the development to the west is slightly less than 9m, with an 8.3m separation proposed, therefore overlooking opportunities would potentially compromise the reasonable amenity expectations of the future occupants. To address this concern, it is recommended that screening devices are provided to the balconies of the residential hotels. The screening devices could be applied at an angle so to maintain oblique views to the south and/or north whilst restricting a direct westerly outlook. This will be addressed via condition accordingly.

*South*

210. Windows to living rooms and bedrooms along the southern boundary are highlight windows will minimum sill heights 1.7m above the respective finished floor level. This will sufficiently minimise potential overlooking from these windows.
211. The west-facing balconies appear to have balustrades 1.7m high along the southern side of the balconies. The height and visual permeability of these screens has not been clearly shown, with this detail also omitted from the floor plans. To ensure that there will not be any overlooking opportunities into the Level 1 terrace or balconies above, a condition will require that the southern side of the southernmost west-facing balconies to provide 1.7m high obscure glazed screening or otherwise limited to a maximum 25% openings.

***Visual Bulk***

212. The proposed development is not considered to cause any unreasonable visual bulk impacts to the existing development to the south or the proposed development to the north given that neither development have their primary outlooks facing the subject site. The western wall has also been setback from the western boundary generally in line with the adjoining developments to the north and south, as such oblique views from the private open space areas within the western setbacks will also not be unreasonably impacted.
213. The primary outlook for a number of the apartments within the proposed development to the west is toward the subject site, therefore there should be greater care applied in its presentation. The current presentation with the exposed balconies has an overwhelming utilitarian presentation and would create an undesirable outlook for these apartments.



**Figure 26: Excerpt from Proposed Western elevation (TP34)**

214. Council’s Urban Design consultant has also raised concern with the presentation of this elevation describing it as *‘underworked and requiring greater levels of care and articulation in its interface with neighbours.’* As discussed within the overlooking assessment, screening is also required to prevent unreasonable overlooking. With careful application, the screening could also be used to improve the visual presentation of the western façade and reduce its utilitarian appearance. It is suggested that decorative screening such as fixed blade or semi operable screens could be used to provide a curtain-wall like appearance, whilst maintaining privacy. This has been used within the podium levels of No. 72-94 Wellington Street as shown in the image below:



**Figure 27: Marketing images associated with 72-94 Cambridge Street**

215. Another similar example of screening is provided below:





**Figure 28: No. 2 St Georges Road**

Equitable development

216. As has been discussed throughout this report, all adjoining sites have either been recently developed or have planning permits for their future development. These developments have been considered in the assessment of the current application. Subject to additional modifications as discussed above, the proposed development will not compromise the equitable development opportunities of any adjoining properties.

Car parking, bicycle facilities and traffic;

*Car Parking Demand*

217. A total of 47 spaces are proposed for the development, with 28 spaces allocated to the residential hotel, 16 spaces allocated to the office component and 1 space for the retail. As detailed within the planning controls, there is no statutory rate specified for a residential hotel. The office and retail car parking requirements are 32 spaces and 2 spaces respectively, therefore a reduction in the car parking requirements is triggered for these uses.
218. Having regard to the decision guidelines for assessing the provision of car parking, the following is noted of relevance to the current application:
- (a) The site has excellent access to public transport including trams along Smith Street and Victoria Parade within 350m and Collingwood Station within a 10 minute walk. It is also reasonably close to the CBD.
  - (b) Copenhagen bicycle lanes along Wellington Street provide safe and efficient access to the site by bike.
  - (c) As identified by Council's Traffic Engineers, the parking demand for the office component is typically long-stay parking for employees and up to 2 hours for visitors. As on-street parking is largely restricted to 2hr parking, employees are unlikely to drive to the site unless they have an allocated space on site. Given the alternative access to the site available, additional onsite car parking is not considered necessary.
  - (d) Similarly for visitors to the office, given the proximity to the CBD, it is likely that the majority of the visitors would travel to the site by public transport, bike, taxi or similar hire car service.
  - (e) The ground floor café would likely attract a local catchment who would already be in the area and therefore would be accessing the site by foot.
  - (f) Given that a residential hotel does not have a rate within the Yarra Planning Scheme, Council's Engineers have had regard to the NSW Roads and Maritime's *Guide to Traffic Generating Developments v.2.2*, which is 0.25 spaces per bedroom room.

Ratio Consultants has suggested a rate of 0.3 spaces per room based on their empirical data. The on-site parking rate is provided at a rate of 0.34 spaces per apartment. This is supported by Council's Engineers as an appropriate rate.

- (g) Council's Traffic Engineers have also identified that the proposed development also aligns with the objectives contained within Council's Strategic Transport Statement given that; *'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.'*

219. Furthermore, a Green Travel Plan has been submitted to demonstrate measures to encourage future occupants of the development to either walk or take other forms of transport. This has been reviewed by Council's Strategic Transport Unit who have requested that the following amendments be made:

- (a) Updated to reflect the final set of plans
- (b) sustainable transport goals linked to measurable targets, performance indicators and monitoring timeframes;
- (c) security arrangements to access the employee bicycle storage spaces;
- (d) signage and wayfinding information for bicycle facilities and pedestrians pursuant to Australian Standard AS2890.3; and
- (e) Provisions for the Green Travel Plan to be updated not less than every 5 years.

220. These matters will be addressed via conditions of permit.

*Traffic*

221. Ratio anticipate a maximum of 20 movements per hour during the morning and afternoon peaks. Council's Engineers agree with the anticipated traffic generation rates from the proposed development and are satisfied that this should no adversely impact upon the traffic operations of Wellington Street.

*Car Parking Design and Access*

222. Schedule 23 of the DDO provides the following guidance in relation to vehicle access and car parking requirements:

- (a) Avoid providing vehicle access from Wellington Street
- (b) Provide car parking within a basement
- (c) Avoid recessed parking spaces at ground floor level

223. Vehicle access via Wellington Street is unavoidable given that there is no alternative access point to the site. There is also an existing crossover approximately 7m wide that will no longer be required and can be reinstated as footpath. This will also require the Copenhagen lanes to be modified. These matters will be addressed via condition.

224. The parking is largely accommodated within the basement, with the exception of two short term car parking spaces on the ground level adjacent to the residential hotel reception area. Given the limited on street parking, on-site parking is considered necessary for guests 'checking-in' to the hotel. The spaces have been appropriately designed and located within the building to minimise their visibility from Wellington Street. This is considered an acceptable outcome and ensures car parking does not detract from the street frontage.

225. Council's traffic engineers have reviewed the car parking access and layout. The following items have been identified that will need to be addressed via conditions of permit, should one issue:

- (a) Sightlines triangles need to be kept clear at all times. It is not clear on the plans how this will be achieved given that it cuts across the south-eastern corner of the café tenancy.
- (b) The internal ramped access ways need to be dimensioned.

- (c) A ground clearance check for the ascending (inside) lane of the curved ramps is required using a B99 design vehicle to demonstrate that such vehicle can adequately traverse the inside lane of the curved ramp without scraping.
  - (d) Car spaces 20 to 24 on Basement B2 must be lengthened from 4.84m to 4.9m.
  - (e) Car spaces less than 2.6 metres wide are to be designated as “Small Car” spaces and clearly depicted on the drawings. Their widths are also required to be dimensioned.
226. Council’s engineers also recommended that the internal ramps demonstrate compliance with AS/NZS 2890.1:2004. However due to the geometry of the curved ramps (being a compound curve rather than circular), the design will not meet the standard. However, the applicant’s traffic engineers have prepared swept path diagrams that demonstrate adequate vehicle passing movements for a B85 and a B99 vehicle. Council’s engineers have confirmed that they no longer require the ramps to achieve compliance with AS/NZS 2890.1:2004.

#### Bicycle Parking

227. The proposed development provides storage for 12 bicycles within Basement L1 for staff and 3 hoops (accommodating 6 bikes) within the ground floor back of house area for visitors. As outlined within the Planning Scheme Provisions section, the statutory requirement is for 12 employee/resident spaces and 9 visitor spaces. The required employee/residential spaces is met, however there is a shortfall of 3 visitor bicycle spaces.
228. Council’s Sustainable Transport Officer has reviewed the location and design of the bicycle facilities and is comfortable with the visitor bicycle space provision. However, while the statutory bicycle parking requirement is met for staff and residents, Council’s Sustainable Transport Officer has recommended that the staff bicycle provision is increased to a minimum of 15 spaces (based on BESS best practice).
229. Exploring the visitor bicycle parking requirement further, the rate is a combination of 1 visitor space for the office and 8 spaces for the residential hotel. The rate for the residential hotel derives from the rate for any residential building, which would also include apartment buildings. Unlike a residential apartment building however, the proposed residential hotel would be expected to generate a much lower demand for visitor parking. On this basis, fewer on-site visitor bicycle spaces are considered acceptable.
230. It was explored with Council’s Sustainable Transport Officer whether it would be appropriate to install new hoops along Wellington Street adjacent to the site frontage, however given the narrowness of the footpath, this was not considered a viable alternative. It was suggested by Council’s Strategic Transport Officer that there are sufficient hoops available within the immediate surrounding area to accommodate any overflow visitor bicycle parking demand.
231. With respect to the staff bicycle parking, while the minimum statutory requirement is met, a larger number of staff bicycle spaces is warranted given the proposed car parking reduction will place a greater demand on staff to cycle to work, thereby increasing the demand for on-site bicycle spaces. As such, a condition will require a minimum of 15 staff bicycle spaces (i.e. increase of 3 spaces) to be provided in accordance with the advice from Council’s Strategic Transport Officer and BESS best practice.
232. The design of the employee spaces is also not compliant with AS2890.3, which requires a minimum of 20% horizontal spaces and for all spaces to be located within a lockable secure area of the basement e.g. cage or similar. Council’s Strategic Transport Officer has also requested that lockers are provided for each employee space. These matters, in addition to the provision for 3 additional staff spaces, will be included as conditions accordingly.

#### Building services, loading and waste management

##### **Building services**

233. Building services typical of a development of this scale have been shown on the plans. As discussed earlier within the report, services have been appropriately designed and located to minimise their visual impact on the public realm at street level. However, air condenser units are shown on balconies facing Wellington Street.

Given that more than half the balconies consist of glazed balustrades, these units would likely be visible from the street. The visibility of these services from Wellington Street would adversely impact the presentation of the building. It is therefore recommended that all air condenser units to balconies with glazed balustrades to be relocated either internally within the development or within the rooftop services area, where their visibility is concealed.

234. The plans do not clearly show whether the air condensers for the balconies with solid balustrades facing Wellington Street would also be concealed i.e. whether they are to be mounted on the ground below the balustrade height. This will need to be confirmed on the plans via condition.
235. While the urban design advice raised concern with the potential visibility of the air condenser units on the western balconies from the adjoining development to the west, given that a condition will require screens to be applied to these balconies to improve the presentation and prevent overlooking, these will also effectively conceal air conditioning units on the balconies.

### **Loading**

236. The proposed development provides two loading bay areas; one on the ground floor capable of supporting a small rigid vehicle e.g. for waste collection and small truck deliveries. A second loading bay is proposed within the Basement 1 level, which can support a B99 vehicle. This is likely to be used for smaller deliveries in vans or similar, such as linen deliveries. The provision for two loading areas is expected to adequately address the loading area demand for the future uses of the site.

### **Waste management**

237. A waste management plan (WMP) prepared by Leigh Design and dated 3 August 2018 has been submitted with the application outlining expected waste generation, waste storage and collection processes. The WMP outlines that waste will be stored and collected within the site via a private contractor. The WMP has been reviewed by Council's City Works Unit who were satisfied with the report. However, given the plans have changed, the WMP will need to be updated to reflect the amended plans. As discussed in the ESD section earlier, it is also recommended that organic/green waste is provided on site. These matters will be addressed through an amended WMP accordingly.

### Civil works/Street trees

238. Council's Engineering Services Unit has provided advice in relation to civil works required as a consequence of the proposed development. Other than the modifications to the Copenhagen Lane, these matters are largely addressed through standard permit conditions.
239. As a result of the new vehicle crossover, an existing street tree will need to be removed/relocated. This has been reviewed by Council's Streetscape and Natural Values Unit who has recommended that an additional 2 street trees are planted along the street frontage in lieu of the tree to be removed. The cost associated with the removal and replacement (including establishment) of the trees will be included as a condition on permit.

### Objections

240. The following matters raised within the objections have been addressed within the body of the report:
- (a) Excessive height and massing (para 138 to 159)
  - (b) Poor architectural quality and internal amenity (para 160 to 173)
  - (c) Amenity Impacts (overshadowing, daylight to windows, visual bulk) (para 194 to 215)
  - (d) Noise from hotel guests (para 132 to 137)
  - (e) Increased traffic and insufficient car parking (para 217 to 221)

241. The remaining matter not covered within the report relates to the loss of 'heritage' fabric. As the site is not within a Heritage Overlay, there is no protection of the existing buildings on the site. A planning permit is not required for demolition of the existing buildings, hence the demolition of the existing building has been able to commence prior to the determination of the current application.

### **Conclusion**

242. Based on the above report, the proposal is considered to substantially comply with the relevant planning policy and therefore should be approved and subject to the conditions contained within the recommendation below.

### **RECOMMENDATION**

That having considered all objections and relevant planning policies, the Internal Development Approvals Committee resolves to issue a Notice of Decision to Grant a Planning Permit PLN18/0584 for the use and development of the land for a multi-storey building containing a residential hotel (serviced apartments) and office and a reduction in car parking and visitor bicycle facilities at 79-89 Wellington Street, Collingwood, subject to the following conditions:

1. Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of 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 Fenton Design Group dated 26 April 2019 but modified to show:

#### General

- (a) Services screen to be clearly depicted on elevations.
- (b) 'RL' level to the top of the building parapet and the services screen to be shown on cross sections and elevations
- (c) Height of the 'street wall' measured from natural ground dimensioned on the north, east and south elevations and sections, including an 'RL' measurement to the uppermost point.
- (d) Full height screens either fixed or with restricted openings to the west facing balconies angled to prevent direct overlooking within 9m to the proposed balconies and habitable room windows of No. 72-94 Cambridge Street as shown on the endorsed plans for PLN15/1083.
- (e) Northern side of the northern-most west-facing balconies treated to prevent overlooking into the proposed west facing Level 2 terrace at No. 93 Wellington Street as shown on the endorsed plans for PLN17/0512.
- (f) Southern side of the southern-most west facing balconies to provide a 1.7m high obscure glazed privacy screen, or otherwise restricted to a maximum of 25% openings.
- (g) Relocation of the air condensers on the balconies with glazed balustrades to internally within the building or within the roof top services area
- (h) Demonstrate (e.g. through plan notations) that air condensers to balconies with solid balustrades will not be visible from Wellington Street.

#### ESD

- (i) Additional external shading systems applied on all east, west and north facing facades and/or reduction in glazing to achieve acceptable cooling loads as determined by the revised DTS Preliminary Section J assessment pursuant to condition 3(c) ;
- (j) Provision for organic/green waste system

### Materials

- (k) 'P1' paint finish to precast concrete to the columns and balconies facing Wellington Street replaced with a masonry finish such as brick-snap cladding with a brown/red colour finish
- (l) 'G1 – Low E Green' glass replaced with a clear, light grey, 'neutral' bronze colour or similar.
- (m) Clear glazing (or similar) in lieu of Low E Green (G1) to the glazed sections at ground level to Wellington Street.
- (n) Details of privacy screens to the west facing balconies pursuant to Condition 1(d), including a light colour finish;
- (o) 'P2' (*Monument*) paint finish to the northern boundary walls to either side of the lightcourt replaced with 'P1' (*White watsonia*)
- (p) an updated schedule of external colours and materials, including samples (where appropriate). The schedule must show:
  - (i) thumb nail sketches of key elements of the façade for all buildings;
  - (ii) coloured elevations including coloured perspectives reflective of the proposed colours and materials;

### Bike and Car Parking

- (q) Splay the retail tenancy so that it does not obstruct the vehicle sightline triangle or alternatively demonstrate the measures to ensure that the sightline will be kept clear at all times.
- (r) Dimensions of the internal ramped access ways.
- (s) Ground clearance check for the ascending (inside) lane of the curved ramps using a B99 design vehicle demonstrating that a vehicle can adequately traverse the inside lane of the curved ramp without scraping.
- (t) Swept path diagrams to confirm the extent of modification required to the raised concrete barriers associated with the Copenhagen bicycle lanes along Wellington Street in order to accommodate vehicle access in and out of the subject site.
- (u) Construction/extension of the raised concrete barrier for the Copenhagen Lane adjacent to the redundant vehicle crossover.
- (v) Length of car spaces 20 to 24 on Basement B2 increased to a minimum of 4.9m.
- (w) Car spaces less than 2.6 metres wide to be dimensioned and designated as "Small Car" spaces and clearly depicted on the drawings.
- (x) Relocation of electric vehicle (EV) charging points adjacent to car spaces.
- (y) Provision for a minimum of 15 employee bicycle spaces designed in accordance with AS2890.3 by:
  - (i) A minimum 20% horizontal spaces
  - (ii) All spaces within a secure lockable area (i.e. cage or similar)

### Reports

- (z) any requirements as a result of the endorsed Sustainable Management Plan report pursuant to condition 3 to be shown on plans;
- (aa) any requirements as a result of the endorsed wind assessment report pursuant to condition 5 to be shown on plans;

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

### **Sustainability Management Plan**

3. Before the development commences, an amended Sustainable Management Plan (SMP) to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended SMP will be endorsed and will form part of this permit. The amended SMP must be generally in accordance with the SMP prepared by JBA Consulting Engineers and dated 24 March 2019, but modified to include or show/include:
  - (a) Updated to reflect the amended plans pursuant to condition 1, including:
    - (a) Description of the site
    - (b) Rainwater catchment areas
  - (b) Revised daylight modelling based on the amended plans pursuant to condition 1, including accurate glazing types;
  - (c) Revised DTS Preliminary Section J assessment based on the amended plans pursuant to condition 1 including accurate glazing types;
  - (d) Provision for organic/green waste;
4. 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 including:
  - (a) Completed JV3 energy modelling report (or equivalent) demonstrating at least 15% improvement in the heating and cooling requirements of the NCC

### **Wind Report**

5. Before the development commences, a Wind Assessment Report to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Wind Assessment Report will be endorsed and will form part of this permit.
6. The provisions, recommendations and requirements of the endorsed Wind Assessment Report must be implemented and complied with to the satisfaction of the Responsible Authority.

### **Waste Management Plan**

7. Before the development commences, an amended waste management plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended waste management plan will be endorsed and will form part of this permit. The amended waste management plan must be generally in accordance with the waste management plan prepared by Leigh Design and dated 3 August 2018, but modified to include:
  - (a) Any changes as required by the amended plans pursuant to condition 1
  - (b) Provision for organic/green waste

8. 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**

9. Before the use commences, an amended Green Travel Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Green Travel Plan will be endorsed and will form part of this permit. The amended Green Travel Plan must be generally in accordance with the Green Travel Plan prepared by JBA Consulting Engineers and dated April 2019, but modified to include or show:
  - (a) Updated to reflect the amended plans pursuant to condition 1
  - (b) sustainable transport goals linked to measurable targets, performance indicators and monitoring timeframes;
  - (c) security arrangements to access the employee bicycle storage spaces;
  - (d) signage and wayfinding information for bicycle facilities and pedestrians pursuant to Australian Standard AS2890.3; and
  - (e) Provisions for the Green Travel Plan to be updated not less than every 5 years.
10. The provisions, recommendations and requirements of the endorsed Green Travel Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

### **Uses**

11. Except with the prior written consent of the Responsible Authority, the office uses authorised by this planning permit may only operate between the hours of 7:00am to 10:00pm, seven days a week.
12. The amenity of the area must not, to the satisfaction of the Responsible Authority, be detrimentally affected by the development and uses, including through:
  - (a) The transport of materials, goods or commodities to or from land.
  - (b) The appearance of any buildings, works or materials.
  - (c) The emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil.
  - (d) The presence of vermin.
13. The uses and development must comply at all times with the State Environment Protection Policy — Control of Noise from Commerce, Industry and Trade (SEPP N-1).
14. The uses and development must comply at all times with the State Environment Protection Policy — Control of Music Noise from Public Premises (SEPP N-2).
15. The provision of music and entertainment on the land must be at a background noise level
16. Delivery and collection of goods to and from the land may only occur between 7am and 10pm Monday to Saturday, or after 9am on a Sunday or public holiday except for those allowed under any relevant local law.
17. Before the use of the residential hotel commences, an amended Residential Hotel Operation Management Plan must be submitted and approved by the Responsible Authority. When approved, the operation management plan will be endorsed and will form part of this permit.



The Residential Hotel Operation Management Plan must be generally in accordance with the Management Plan prepared by Quest Hotels submitted with the original application on 23 November 2018 but updated to include/show:

- (a) Date and version of the management plan
- (b) Use of the outdoor terrace restricted to 10pm, with all external doors/windows from the business lounge and conference room closed thereafter;
- (c) The use of the business lounge and conference area restricted to 11pm.

### **Section 173 Agreement – Residential Hotel**

18. Unless otherwise agreed by the Responsible Authority, prior commencement of the development authorised by this permit, the owner (or another person in anticipation of becoming the owner) must enter into an agreement with the Responsible Authority under section 173 of the *Planning and Environment Act 1987*, which provides for the following:
  - (a) The guests of the residential hotel (serviced apartments) to be restricted to maximum stay of 30 days; and
  - (b) The residential hotel (serviced apartments) must be managed by a single operator and not disposed of as individual lots.

### **General**

19. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, external lighting capable of illuminating access to the pedestrian and vehicular entrances must be provided on the subject site. Lighting must be:
  - (a) located;
  - (b) directed;
  - (c) shielded; and
  - (d) of limited intensity,to the satisfaction of the Responsible Authority.
20. All buildings and works must be maintained in good order and appearance to the satisfaction of the Responsible Authority.
21. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, all new on-boundary walls must be cleaned and finished to the satisfaction of the Responsible Authority.
22. Before the development is occupied, or by such later date as approved in writing by the Responsible Authority, all screening and other measures to prevent overlooking as shown on the endorsed plans must be installed to the satisfaction of the Responsible Authority. Once installed the screening and other measures must be maintained to the satisfaction of the Responsible Authority.
23. 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.
24. All pipes, fixtures and fittings servicing any building on the land must be concealed in service ducts or otherwise hidden from view 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 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) Line-marked or provided with some adequate means of showing the car parking spaces.

to the satisfaction of the Responsible Authority.

### **Copenhagen Bicycle lanes**

26. Before the building is occupied, or by such later date as approved in writing by the responsible authority, the following works to the Copenhagen bicycle lanes along Wellington Street are required to be undertaken to the satisfaction of the Responsible Authority and at the full cost of the permit holder:
- (a) the raised concrete barrier for the Copenhagen lane extended across the reinstated vehicle crossing.
  - (b) Modification to the raised concrete barrier as determined by the swept path diagrams submitted pursuant to condition 1(t) of this permit
  - (c) Any subsequent lane marking/painting

### **Civil Works**

27. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, any new vehicle crossing must be constructed:
- (a) in accordance with any requirements or conditions imposed by Council;
  - (b) at the permit holder's cost; and
  - (c) to the satisfaction of the Responsible Authority.
28. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, any redundant vehicular crossing 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.
29. Except with the prior written consent of the Responsible Authority, Council assets must not be altered in any way.
30. 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.
31. 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.

### **Street trees**

32. Before the development commences, the permit holder must make a one off contribution to the Responsible Authority to cover the cost for the removal of the existing street tree as required as a result of the development and replacement of two new street tree plantings along the site frontage, including 2 years' maintenance.

### **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.
36. 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.

### **Permit Expiry**

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

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

### **Notes:**

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

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 5095 for further information.

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

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

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

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

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

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

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.

**CONTACT OFFICER:** Amy Hodgen  
**TITLE:** Coordinator Statutory Planning  
**TEL:** 9205 5330

### **Attachments**

- 
- 1.6 PLN17/1014 - 171-173 Swan Street, Richmond - Demolition of the existing building and development of a five storey mixed use building including a reduction in the car parking requirements of the Yarra Planning Scheme in association with a shop, office and dwellings.**
- 

## **Executive Summary**

### **Purpose**

1. This report provides an assessment of the proposed demolition of the existing building and development of a five storey mixed use building including a reduction in the car parking requirements of the Yarra Planning Scheme in association with a shop, offices and dwellings at No's 171-173 Swan Street, Richmond.

### **Key Planning Considerations**

2. Key planning considerations include:
  - (a) Built form and Heritage (Clauses 15.01, 15.03, 21.05, 22.02, 34.01-8, 43.01 and 43.02 of the Yarra Planning Scheme)
  - (b) Internal amenity (Clause 58);
  - (c) Off-site amenity impacts (Clauses 13.05-1S, 13.07 and 22.05); and
  - (d) Car parking (Clauses 18.01, 18.02, 21.06, 52.06 and 52.34).

### **Key Issues**

3. The key issues for Council in considering the proposal relate to:
  - (a) Strategic justification;
  - (b) Built form context, Heritage, Urban design, Architectural Quality, Height/Massing and DDO17;
  - (c) Land Use, Noise and off-site amenity;
  - (d) Parking layout, traffic and bicycle parking;
  - (e) Other matters (easements); and
  - (f) Objector concerns.

### **Submissions Received**

4. Seven objections were received to the application, these can be summarised as:
  - (a) Negative impacts on heritage character of area.
  - (b) Issues relating to construction over carriageway easement.
  - (c) Insufficient car parking.
  - (d) Excessive visual bulk, wind impacts, height and insufficient upper level setbacks.
  - (e) Construction period causing nuisance.

### **Conclusion**

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

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

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**1.6 PLN17/1014 - 171-173 Swan Street, Richmond - Demolition of the existing building and development of a five storey mixed use building including a reduction in the car parking requirements of the Yarra Planning Scheme in association with a shop, office and dwellings.**

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Trim Record Number: D19/100188

Responsible Officer: Director Planning and Place Making

[Help](#)

**Proposal:** Demolition of the existing building and development of a five storey mixed use building including a reduction in the car parking requirements of the Yarra Planning Scheme in association with a shop, offices and dwellings

**Existing use:** TAB

**Applicant:** Loop Architecture Pty Ltd.

**Zoning / Overlays:** Commercial 1 Zone  
Heritage Overlay, Schedule 335.  
Design and Development Overlay, Schedule 5.  
Design and Development Overlay, Schedule 17 (Precinct 2).

**Date of Application:** 24 November 2017

**Application Number:** PLN17/1014

**Planning History**

1. Planning permit 6215 issued 11 November 1991 for *the erection of business signage to an existing building.*
2. Planning permit 96/389 issued 24 June 1996 for the *purpose of signage and installation of a ATM.*
3. Planning permit 96/310 issued 1 April 1996 for the *purpose of installing an automatic teller machine.*
4. Planning permit 8169 issued 4 August 1995 for the *purpose of installing a roof top satellite antenna.*
5. Planning permit 991520 issued 27 March 2000 for *signage, waiver of car parking and alterations and additions.* This application converted the use of the site from the Commonwealth Bank to a restaurant.
6. Planning permit PL03/0489 issued 25 March 2004 for *partial demolition, building and works, painting and waiver of car parking in association with change in use to betting agency.*
7. Planning permit PL03/0490 issued 25 March 2004 for *advertising signs associated with a betting agency.*

**Background**

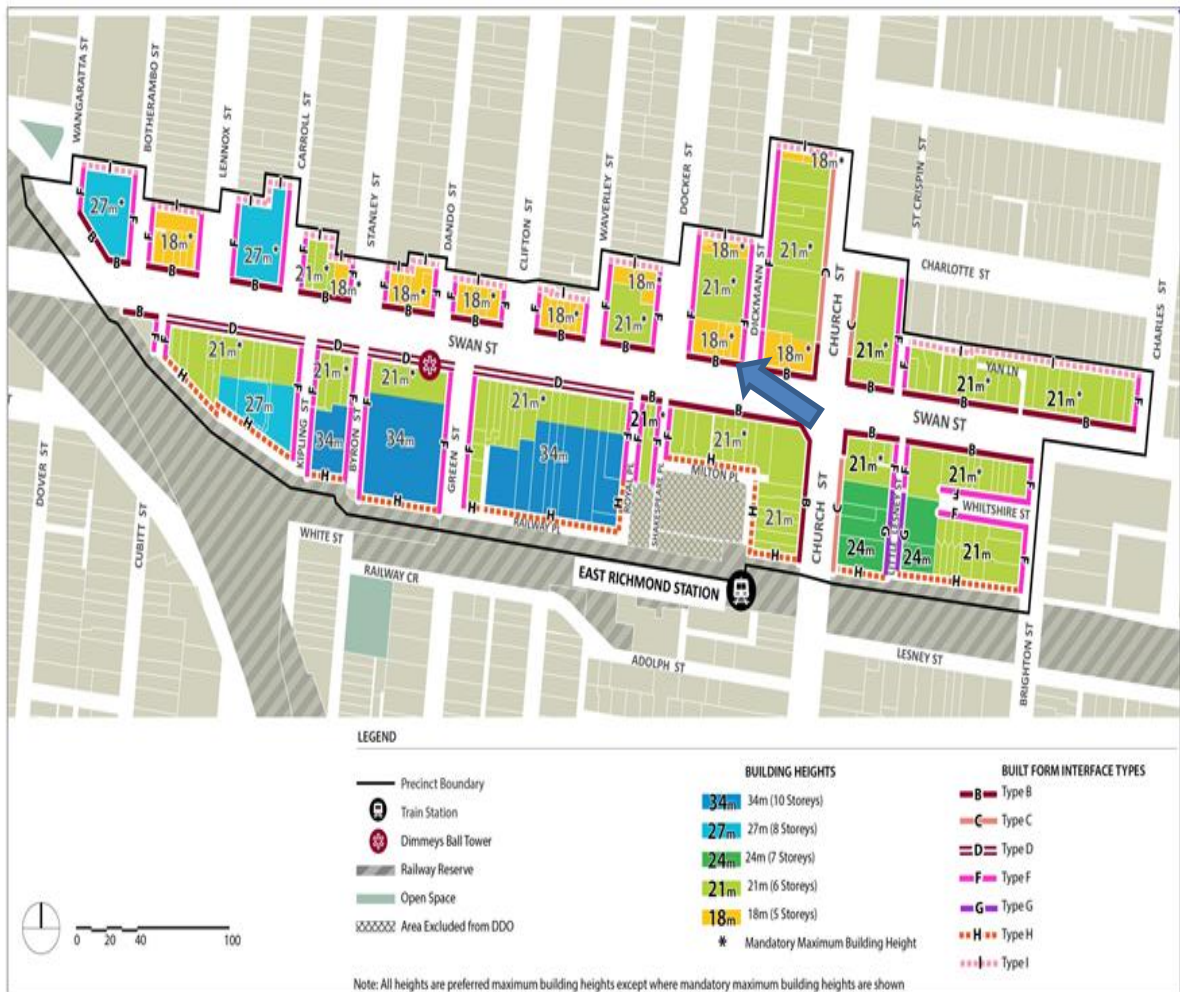
Planning Scheme Amendments

VC142

8. The current application was lodged 24 November 2017 and with amendment VC142 introduced into the Scheme on 16 January 2018. This amendment included a wide range of reforms across the VPP that generally removed permit triggers, expanded permit exemptions for land uses and buildings and works and outdated provisions. This amendment included the deletion of clause 52.07 (*Loading and Unloading of vehicles*). Thus when originally lodged the application included a planning permit trigger for a reduction in the loading bay requirements. As a result of amendment VC142 the loading bay requirement is no longer applicable.

*C236-Design and Development Overlay-Schedule 17 (Swan Street Activity Centre) (DDO17)*

9. Amendment C236 was gazetted and introduced into the Yarra Planning Scheme (the Scheme) on 22 November 2018. The amendment was prepared by Council with the view to managing the scale and form of new buildings on and around Swan Street. The DDO guides the height and setbacks of new development so that their height, scale and form respond to the heritage character of Swan Street and adjoining low scale residential areas.
10. The subject site is located within Precinct 2 (*Swan Street Retail Centre*) with the overlay supporting a mandatory 18m building height limit, 11m street wall height and 5m setback for the upper level facade. At the time the application was lodged (24 November 2017), DDO17 had not yet been introduced to the Scheme. However, DDO17 does not contain transitional provisions and so the mandatory requirements of this overlay are applicable to the development at the subject on the introduction of DDO17 to the Scheme. The requirements of this overlay expire after 30 December 2019. Amendment C191 proposes to insert DDO17 into the Scheme on a permanent basis. A Planning Panel hearing for the amendment commences 11 November 2019.



Blue arrow indicates subject site - DDO17 area map

Original application

11. The application was lodged on 24 November 2017 for a 6 storey building with a basement, a shop and car stacker at ground level, an office at level 1 and four dwellings on the remaining 4 levels above. Further information was received on 11 April 2018 and the application was then advertised by way of 224 letters and 2 signs displayed on site, one facing Swan Street and one facing Dickman Street. A total of 6 objections were received. Figure 1 provides a perspective image of the original design concept.



Objector and officer concerns related principally to the staggered street wall height, glazed façade design, materials selection and the building height being out of context in a heritage area.



Figure 1: Original application design

Lodgement of S57A plans

12. In response to the above concerns the applicant requested Council to put the application on-hold to allow time to reconsider the building design. Council agreed to this. As discussed above, in the interim, DDO17 was introduced into the Scheme. An amended application was lodged 8 April 2019 pursuant to section 57A of the *Planning and Environment Act (1987)* (the Act). These plans showed the following changes:

- (a) Deletion of one level reducing the building from six to five storeys;
- (b) Overall maximum wall height reduced from 19.25m to 17m (and 18.03m to top of lift overrun);
- (c) Deletion of an apartment reducing the total number from 4 to 3;
- (d) The three storey street wall to Swan Street and its Dickman Street return, to have a uniform façade wall height of approx. 11m and window proportions that are more reflective of the proportions of heritage windows found in the streetscape;
- (e) Reduction in the extent of glazing to the upper levels through the incorporation of greater expanses of off-white matt brick and light ash timber look aluminum panels;
- and
- (f) A timber textured double storey off-form concrete wall to define the residential and office pedestrian entrance from Dickman Street.



Figure 2 and 3: Section 57A amended elevations.

13. These plans were advertised in April 2019 via letters to nearby properties and objectors with one objector providing further submissions stating the revised plans did not address their concerns.
14. Due to the podium balcony for apartment 3 not satisfying the 5m Swan Street setback requirement of DDO17, a second section 57A amended application was received on 21 June 2019 to address this issue. The plans included the following additional changes (in response to Heritage, Urban Design and Strategic Planning advice on the first section 57A amended plans);
- (a) Deletion of the podium/level balcony to apartment 3 and its replacement with an 8sqm balcony in the north-east corner of level 3;
  - (b) The size of the bedroom 1 balcony at level 4 increased from 1.88m x 1.5m to 2.3m x 1.5m;
  - (c) Reduced Swan Street setback of the upper two levels from 6m to 5m (in compliance with DDO17 5m Swan Street setback requirement);
  - (d) Reduced street wall height to Swan Street and Dickman Street from 11.12m to 11m (in compliance with the 11m DDO17 street wall height restriction);
  - (e) Deletion of part of the roof over the balcony to apartment 2 (to improve access to daylight);
  - (f) Size of plant altered to reduced its visibility as follows:
    - (i) Setback to west boundary increased from a max. of 0.7m to 1.55m;
    - (ii) Setback to east boundary increased from 1.3m to 2.3m;
    - (iii) Setback to north boundary reduced from 3.6m to 3.08m; and
    - (iv) Setback to south boundary reduced from 9.7m to 9.3m.
  - (g) The large perforated screens to the garage replaced with smaller perforated screen panels on a steel frame (to facilitate the replacement of sections should the screens be damaged);
  - (h) Replacement of perforated metal balustrades to balconies with warm grey powder coated aluminium angled blades;
  - (i) Replacement of white polished concrete wall on Swan Street wall with kerlite matt finish white tile; and
  - (j) Deletion of signage panel to Swan Street awning.
15. These plans were advertised in July 2019 via letters to nearby properties and objectors with two objectors providing further submissions stating the revised plans did not address their concerns. An existing objector that previously formed part of a group objection submitted a separate objection and so is now registered as an objector in their own right, resulting in a total of seven objections to the application. This objector outlined that the revised plans did not address their original concerns. These plans now form the decision plans.

### **The Proposal**

16. The application proposes the full demolition of the existing building and development of a five storey mixed use building and associated reduction in the car parking requirements. The proposal can be summarised as follows:

#### *Demolition*

- (a) Existing part one and two storey building on site and all structures.

#### *General*

- (b) 64sqm of retail (shop) at ground level;
- (c) 140sqm of office floor area at level 1;
- (d) A one and two bedroom dwelling at level 2;
- (e) A two bedroom double storey dwelling over level 3 and 4; and

- (d) 4 car spaces and 8 Ned Kelly and 4 hoop bicycle racks.

#### *New facades*

- (f) The three storey eastern street wall to Swan Street and its Dickman Street return to have a uniform façade wall height of 11m. Window proportions will be sash style. The walls will be a polished concrete grey render and a matte kerlite tile finish. The two levels above will be setback 5m to Swan Street, will have balcony and window openings and be constructed of matte white kerlite tile, matte off-white brick and timber look aluminium cladding panels;
- (g) The remaining three storey eastern street wall (max 11m high) to Dickman Street (northern end) will include double height poured concrete feature wall (with pressed wooden board finish) around the office and residential entry, first floor glazed wall to the offices, window and balcony openings to the second level dwellings. The remaining walls will be the same kerlite tile, brick and aluminium cladding with a perforated metal cladding to the garage. The two recessed upper residential levels will be setback 1m will have the same kerlite tile, brick and aluminium wall cladding;
- (h) The north wall will be built to the full length of the northern boundary apart from ground floor and level 1 which are to be setback 1.2m to a height of 6.88m (to accommodate a rear carriageway). The ground level wall will be perforated metal to the garage with the first level being glazing to the office. The remaining upper level boundary wall is proposed to have the kerlite tile, brick and aluminium wall cladding; and
- (i) The western wall will be built to the boundary on all levels with the visible sections of walls repeating the tile, brick and aluminium cladding.

#### *Basement*

- (j) The basement will accommodate a 4 space car stacker pit. The basement will be accessible via the lift and stairs and will include a 5000ltr water tank for grey water use and two plant areas (one measuring 11sqm and another measuring 20sqm). The basement will also include end of trip facilities including an accessible toilet, two shower change rooms, 14 lockers, 4 x hoop bicycle spaces and 8 x Ned Kelly spaces. Three stores will be provided, one for each dwelling and each measuring 9 cubic metres.

#### *Ground floor*

- (k) Ground floor will be built to all site boundaries, apart from 1.2m setback to the rear to accommodate a carriageway easement;
- (l) At ground floor the retail space will measure 64sqm;
- (m) The office and dwelling entry foyer is centrally located on Dickman Street with direct access to the lift and stair core. A fire sprinkler booster system and fire hydrant booster are located either side of the entry. The car stacker entry is located to the rear and is to be accessed via a new crossover to Dickman Street. A bin storage area is located to the rear of the car stacker with access onto the rear carriage way easement. The bin store area accommodates 6 bins with the gas and water meters also contained in this area. A mezzanine platform is located over this area to accommodate some building services.

#### *Level 1*

- (n) Level 1 will be built to all site boundaries, apart from 1.2 setback to the rear to accommodate a carriage way easement.
- (o) This level will include a 140sqm office. The plan also notes a commercial use but the applicant along with a submitted traffic report which confirmed office is the intended use (with no other commercial use proposed).

### *Level 2*

- (p) Level 2 will have 2 apartments, one to the front of the site (two bedrooms) and another to the rear (one bedroom). Both have 8sqm balconies (north-east and south-west corner of site).

### *Level 3 and 4*

- (q) Level 3 and 4 will be built to the north and west boundary, setback 1m to the east boundary and 5m to the south/Swan Street boundary, and will accommodate a 2 bedroom apartment over the two levels. A kitchen/dining/living area with an 8sqm balcony will be provided on level 3 and two bedrooms on level 4 (each with a large ensuite and walk-in-robe).
- (r) A 2.8sqm balcony is proposed to the level 4 rear bedroom in the north-east corner of the site.

### *ESD commitments*

- (s) Good access to natural light and outlook;
- (t) Bicycle facilities with end-of-trip lockers and showers;
- (u) Irrigation is provided to terraces;
- (v) An average 6.6 star NatHERS rating;
- (w) Water efficient fixtures, fittings and appliances;
- (x) Efficient gas water heating; and
- (y) A 5000L rainwater tank will supply water for flushing four toilets.

## **Existing Conditions**

### Subject Site

- 17. The subject site is located on the north side of Swan Street in Richmond and 50m west of Church Street. The site has a southern boundary of 9.45m, western of 20m, eastern of 19.92m and northern of 13.89m (to accommodate the rear carriageway easement), yielding a lot area of approx. 177sqm (not including the area of the carriageway easement at 16.6sqm). The western boundary has a slight indentation along its central portion and a party wall easement on the southern end. The party wall easement benefits both the subject site No. 169 Swan Street. The carriageway easement is located to the north of the site with the subject site and No's 167 and 169 Swan Street having access rights.
- 18. The building is a modern construction and is of 'not-contributory' significance to the Swan Street heritage precinct. The Statement of Significance (City of Yarra Review of Heritage Areas, 2007; Appendix 8: Graeme Butler and Associates) for the site provides a construction date range of 1970-2000.
- 19. The building is constructed to the southern, eastern and western boundary and is setback from the northern boundary to accommodate the rear carriageway easement. The building is predominately single storey with a small double storey addition to the front and rear of the building. The building is occupied by a TAB Betting Agency.

### Surrounding Land

#### *General*

- 20. Swan Street provides an east-west connection linking the suburbs east of the City of Yarra with the CBD, intersecting with major arterials of Burnley Street, Church Street and Punt Road. The subject site is located within the Swan Street Major Activity Centre (MAC), an important business, entertainment and retailing strip within the City of Yarra.

The activity centre provides a range of business types, including offices, local convenience shops, restaurants and bars, interspersed with a number of dwellings.

21. The area is well serviced by a number of transport options, with the Swan Street tram route No. 70 travelling in front of the subject site and tram route 78 travelling along Church Street approx. 50m east of the site. East Richmond train station is located approximately 82m south-east and Richmond Station 600m west.

*West*

22. Adjoining the site to the west is a pair of double storey Victorian era shops known as No's 167 and 169 Swan Street. They are currently used as a beauty shop and restaurant. The first floors appear to be used for offices, with access via the rear carriageway. The western end of the rear carriageway is partially enclosed by the fence of No.169 Swan Street. The furthestmost building (No 77 Docker Street and 161-163 Swan Street) accommodates three, ground floor shops with first floor offices (accessed from Docker Street). All of these buildings are 'contributory' to the heritage precinct and are built at a double storey height to all site boundaries (apart from No's 167 and 169 Swan Street which accommodate a 3m first floor rear setbacks).

*North*

23. To the immediate rear of the site is a Council owned car park. A copy of title has been provided for this land which shows there is no carriageway easement aligning with the carriageway easement at the subject site (ie no potential for a widened carriageway for vehicle access). This site also does not have access rights to the carriageway easement to the rear of the subject site. The car park runs between Dickman Street and Docker Street and can be accessed from both frontages. The car park extends approx. 31m north of the subject site.
24. To the north of the car park and fronting Dickman Street are 4 dwellings of two to three storeys in height with the dwellings further north being generally single storey.

*East*

25. On the opposite side of Dickman Street is the side wall of No.175 Swan Street. This building is 'individually significant' to the heritage precinct and is occupied by a gift shop (Lily and Weasel) and by Noir Restaurant. The area behind Lily and Weasel is occupied by an open car parking area and a single storey addition to the rear of Noir. Two commercial flues are located on the roof of this single storey addition and a commercial air-con on the double storey roof.
26. Further east of Noir is a double storey building occupied by Bahari Restaurant and has two commercial flues (one on the rear wall and one on the roof). This building is double storey and is built to all site boundaries. The building is 'contributory' to the heritage overlay.
27. To the east of Bahari Restaurant to the intersection of Swan Street are three take-away food premises and a 7-11 with a gym at first floor. This building is double storey and is built to all site boundaries. The building is 'not-contributory' to the heritage precinct.
28. To the north of the 7-11 is a double storey building accommodating three, ground floor tenancies accessed from Church Street (printing, pizza and beauty shops) and offices at first floor. The rear of this building faces Dickman Street opposite the subject site. The building is setback approx. 19m from Dickman Street accommodating car parking and bin storage and with air-conditioning units and two commercial flues located on the rear wall. The building is 'not-contributory' to the heritage precinct.
29. Adjoining this building to the north is a large double storey building with four, ground floor tenancies accessed from Church Street (bar, café and catering/ice-cream shop) and a first-floor dance school. This building is double storey to the boundary with Dickman Street and has two large roller doors accessing this street (one roller door recessed approx. 2m).

Further north of this building are 2 to 4 storey residential developments generally constructed to the Dickman Street footpath edge. The building is 'not-contributory' to the heritage precinct.



Figure 4: Aerials of site (Source Council GIS)



\*Figure 5: Commercial flues opposite site Source Google maps Oct 2016. \*accuracy of Goggle images confirmed by officer site visits.

**South**

- 30. On the opposite side of Swan Street are a number of double storey commercial properties fronting Swan Street. Of the nine buildings located opposite the subject site between Shakespeare Place and Church Street, seven are 'individually significant' to the heritage precinct.



\*Figure 6: Individually significant building on the opposite side of Swan Street. Google Maps Nov 2017



Figure 7: Heritage grading in area: White-not graded, Green-non-contributory, Brown-contributory and Red- individually significant.

- 31. The permitted patron numbers, music volumes and hours of operation of taverns within the immediate vicinity of the site are as follows:

- (a) Ground floor No.438 Church Street - The Palm Royale - 30m east of subject site.
  - (i) Operates under planning permit PL01/0856 and allows for 85 patrons.
  - (ii) The planning permit requires that no amplified or live music is played within the site.
  - (iii) Operating hours are Sunday to Thursday 10am to 1am and Friday and Saturday 10am to 3am.
- (b) No.149 Docker Street - The Richmond Social - 49m west of subject site.
  - (i) Operates under planning permit PL06/0603 and allows for 510 patrons.

- (ii) The liquor licence (31915185) prohibits any live music at the site and limits other music to background levels.
  - (iii) Beer garden operating hours are midnight on Friday and Saturday nights, 11pm on Thursdays and Sundays and 10pm for the remainder of the week.
  - (iv) Indoor operating hours are 1am Wednesday to Saturday, midnight Monday and Tuesday and 11pm on Sunday.
  - (v) A current amendment application to this permit is being considered by Council officers. It is proposed to increase patron numbers from 510 to 750 and to construct a first-floor terrace and a new lounge within the existing first floor. The indoor and outdoor areas are proposed to operate under existing approved hours and with background music only.
- (c) No.214 Swan Street - Fargo & Co - 33m south-west of subject site.
- (i) Operates under permit PLN14/1208 and allows for 422 patrons.
  - (ii) The endorsed acoustic report limits music to background music apart from live music permitted on the terrace until 9pm on Thursday to Saturday.
  - (iii) Operating hours are everyday until 1am.
- (d) Ground floor No.238 Swan Street - The Ugly Duckling - 35m south-east of subject site.
- (i) Operates under permit PLN14/0783 and allows for 76 patrons.
  - (ii) The planning permit limits all music to background levels.
  - (iii) Operating hours are Sunday to Thursday to 1am and 3am on Friday and Saturdays.
- (e) No. 425 Swan Street - The Swan Hotel - 70m south-east of subject site.
- (i) The liquor licence allows for 300 patrons.
  - (ii) The liquor licence also allows for live music to be played at the site.
  - (iii) Operating hours are Sunday to 1am and 3am every other day.

## Planning Scheme Provisions

### Zoning

#### *Commercial 1 Zone*

32. Pursuant to Clause 34.01-1 of the Scheme, a dwelling is a section 1 use within the zone if the frontage at ground floor does not exceed 2 metres. Clause 73.01 defines a frontage as follows:
- (a) *The road alignment at the front of a lot. If a lot abuts two or more roads, the one to which the building, or proposed building faces.*
33. As the dwellings are accessed from Dickman Street and the building faces Swan Street, a permit is not required for the dwelling use. Further the dwelling entrance is a shared access with the office and so would not be technically described as a residential entry.
34. Pursuant to Clause 34.01-1 of the Scheme, a shop and an office are section 1 uses and therefore a planning permit is also not required for these uses.
35. Pursuant to Clause 34.01-4 of the Scheme, a planning permit is required for buildings and works

#### *Road Zone*

36. Pursuant to clause 36.04-2 a permit is required to construct or carry out works for a use in Section 2 of Clause 36,04-1. It is proposed to construct an awning over a Road Zone Category 1 (the Swan Street footpath) and so a permit is required. Council must consider the views of the road authority. VIC Roads required conditions which will be placed on the permit.

### Overlays

*Heritage Overlay (HO335 – Swan Street Precinct, Richmond)*

37. Under clause 43.01-1 of the Scheme, a planning permit is required to demolish or remove a building, construct a building or construct or carry out works. The buildings on the subject site are located within Schedule 335 and identified as ‘not contributory’ to the Swan Street precinct as outlined in the incorporated document *City of Yarra Review of Heritage Areas 2007 Appendix 8 (as updated from time to time)*.

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

38. 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.
39. 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).

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

40. Pursuant to Clause 43.02-2 of the Scheme, a planning permit is required to construct a building or construct or carry out works. The subject site is located in Precinct 2- Swan Street Retail Centre- Area B (Swan Street) and Area F (Dockers Street). A mandatory maximum building height of 18 metres applies to the whole of subject site. A mandatory maximum street wall height of 11 metres applies to Swan Street and preferred 11m maximum to Dickman Street. A mandatory 5m upper level setback applies to Swan Street and preferred 3m to Dickman Street. A permit cannot be granted to construct a building or construct or carry out works that would overshadow: any part of the southern footpath of Swan Street, measured as 4.0m from the southern road boundary of Swan Street between 10am and 2pm at 22nd September.

Particular Provisions

*Clause 52.06 – Car Parking*

41. 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. 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:

Proposed Use	Quantity/ Size	Statutory Parking Rate	No. of Spaces Required	No. of Spaces Allocated
One-bedroom dwelling	1	1 space per dwelling.	1	4
Two-bedroom dwellings	2	1 space per dwelling	2	



Office	140sqm	3 to each 100 sqm of net floor area	4	0
Commercial (Shop)	64sqm	3.5 spaces to each 100 m <sup>2</sup> of leasable area	2	0
<b>Total</b>			<b>9</b>	<b>4</b>

42. Four car parking spaces are provided on site a car stacker. With a shortfall of 5 car parking spaces, this application therefore seeks a reduction in the car parking requirement of the Scheme.

*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:

Proposed Use	Quantity/Size	Statutory Parking Rate	No. of Spaces Allocated
Dwelling (3)	Resident – In developments of four or more storeys, 1 to each 5 dwellings	0	0
	Visitor – In developments of four or more storeys, 1 to each 10 dwellings	0	0
Commercial (Shop) 64 m <sup>2</sup>	Employee – 1 to each 600sqm of leasable floor area if the leasable floor area exceeds 1000sqm.	0	0
	Shopper – 1 to each 500sqm of leasable floor area if the leasable floor area exceeds 1000sqm.	0	0
Office (140sqm)	1 to each 300 sqm of net floor area if the net floor area exceeds 1,000 sqm	0	0
<b>Total</b>		<b>0</b>	<b>0</b>

44. Despite a bicycle space reduction not being required, twelve on-site bicycle parking spaces are provided. End of trip facilities (EOFT) are not required however three showers/change rooms and fourteen lockers are proposed.

*Clause 58 Apartment Developments*

45. Clause 58 applies to applications to construct an apartment development within a Commercial 1 Zone. This clause seeks to encourage apartment development that provides reasonable standards of amenity for existing and new residents and to encourage apartment development that is responsive to the site and surrounding area.

General Provisions

*Clause 65 – Decision Guidelines*

46. 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)

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

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

48. 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*

49. 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*

50. 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*

51. The relevant strategy of this Clause is:

- (a) *Support the development and growth of Metropolitan Activity Centres by ensuring they are able to accommodate significant growth for a broad range of land uses.*

*Clause 13.05-1S – Noise Abatement*

52. 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*

53. 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*

54. 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*
55. 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*
56. 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*
57. 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*
58. 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*
59. 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 16.01-1S – Integrated housing*
60. The objective of this clause is “to promote a housing market that meets community needs”.
- Clause 16.01-1R – Integrated housing- Metropolitan Melbourne*
61. Strategies for this clause are:
- (a) *Provide certainty about the scale of growth by prescribing appropriate height and site coverage provisions for different areas.*
  - (b) *Allow for a range of minimal, incremental and high change residential areas that balance the need to protect valued areas with the need to ensure choice and growth in housing.*
- Clause 16.01-2S – Location of residential development*
62. The objective of this clause is “to locate new housing in designated locations that offer good access to jobs, services and transport”.
63. Relevant strategies for this clause are:
- (a) *Increase the proportion of new housing in designated locations within established urban areas and reduce the share of new dwellings in Greenfield and dispersed development areas.*
  - (b) *Encourage higher density housing development on sites that are well located in relation to jobs, services and public transport.*
  - (c) *Ensure an adequate supply of redevelopment opportunities within established urban areas to reduce the pressure for fringe development.*
  - (d) *Facilitate residential development that is cost effective in infrastructure provision and use, energy efficient, water efficient and encourages public transport use.*

- (e) *Identify opportunities for increased residential densities to help consolidate urban areas.*

*Clause 16.01-3S – Housing diversity*

64. The objective of this clause is “*to provide for a range of housing types to meet increasingly diverse needs*”.

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

65. The strategy of this policy is “*create mixed-use neighbourhoods at varying densities that offer more choice in housing*”.

*Clause 16.01-4S – Housing affordability*

66. The objective of this clause is “*to deliver more affordable housing closer to jobs, transport and services.*”

*Clause 17.01-1S – Diversified Economy*

67. The objective of this Clause is:  
(a) *To strengthen and diversify the economy.*

*Clause 17.02-1S – Business*

68. 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*

69. 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*

70. 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*

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

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

72. 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*

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

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

74. 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*

75. The objective of this Clause is:

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

Local Planning Policy Framework (LPPF)

76. The following LPPF provisions of the Scheme are relevant:

*Clause 21.03 – Vision*

77. 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 21.04-1 – Accommodation and housing*

78. Relevant objectives and strategies for this clause are:

- (a) *Objective 1 To accommodate forecast increases in population.*
  - (i) *Strategy 1.1 Ensure that new residential development has proper regard for the strategies applicable to the neighbourhood in question identified in clause 21.08.*
  - (ii) *Strategy 1.3 Support residual population increases in established neighbourhoods.*
- (b) *Objective 2 To retain a diverse population and household structure.*
- (c) *Objective 3 To reduce potential amenity conflicts between residential and other uses.*
  - (i) *Strategy 3.1 Ensure new residential development in the Mixed Use, Business 1, Business 2, and Business 5 Zones and near Industrial and Business Zones is designed to minimise the potential negative amenity impacts of existing non-residential uses in the vicinity.*
  - (ii) *Strategy 3.2 Apply the Interface Uses policy at clause 22.05.*

*Clause 21.04-2 – Activity Centres*

79. 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*

80. The relevant objective of this Clause is:

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

*Clause 21.05-1 Heritage*

81. This clause acknowledges that new development can still proceed whilst paralleling the objective to retain the nineteenth century character of the City. Conservation areas seek to conserve the City's heritage places whilst managing an appropriate level of change.

82. Relevant objectives include:

- (a) *Objective 14 To protect and enhance Yarra's heritage places:*

- (i) *Strategy 14.1 Conserve, protect and enhance identified sites and areas of heritage significance including pre-settlement ecological heritage.*
- (ii) *Strategy 14.2 Support the restoration of heritage places.*
- (iii) *Strategy 14.3 Protect the heritage skyline of heritage precincts.*
- (iv) *Strategy 14.4 Protect the subdivision pattern within heritage places.*
- (v) *Strategy 14.6 Protect buildings, streetscapes and precincts of heritage significance from the visual intrusion of built form both within places and from adjoining areas.*
- (vi) *Strategy 14.8 Apply the Development Guidelines for Heritage Places policy at clause 22.02*

*Clause 21.05-2 – Urban Design*

83. 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 ensure that new development contributes positively to Yarra's urban fabric.*
- (d) *To enhance the built form character of Yarra's activity centres.*

*Clause 21.05-3 – Built Form Character*

84. 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*

85. The relevant objectives of this Clause are:

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

*Clause 21.06 – Transport*

86. 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*

87. 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)*

88. 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.*

89. 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 22.02 Development Guidelines for Sites Subject to the Heritage Overlay*

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

*Clause 22.05 – Interface Uses Policy*

91. 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.*
  - (b) *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.*

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

92. Clause 22.16-3 requires the use of measures to “improve the quality and reduce the flow of water discharge to waterways”, manage the flow of litter from the site in stormwater and encourage green roofs, walls and facades in buildings where practicable.

*Clause 22.17 – Environmentally Sustainable Development*

93. This policy applies to developments for more than 2 dwellings. The overarching objective is that development should achieve best practice in environmentally sustainable development from the design stage through to construction and operation. The considerations are energy performance, water resources, indoor environment quality, storm water management, transport, waste management and urban ecology.

**Advertising**

94. The originally submitted application was advertised in May 2018 under the provisions of Section 52 of the *Planning and Environment Act (1987)* by 226 letters sent to surrounding owners and occupiers and by two signs (one sign displayed on the Swan Street frontage and one to the Dickman Street frontage). Six objections to the application were received.
95. The grounds of objection are summarised as follows:
- (a) Negative impacts on heritage character of area.
  - (b) Issues relating to construction over carriage way easement.
  - (c) Insufficient car parking.
  - (d) Excessive visual bulk, wind impacts, height and insufficient upper level setbacks.
  - (e) Construction period causing nuisance.
96. A consultation meeting was held on 8 November 2018 and attended by objectors, the applicant's development team and Council officers. In response to objector and Council officer concerns amended plans were submitted pursuant to section 57A of the Act and advertised in April 2018 under the provisions of Section 52 of the Act by 81 letters sent to surrounding owners, occupiers and objectors. An existing objector submitted further comments outlining the revised proposal did not address their concerns.
97. Further amended plans were submitted pursuant to section 57A of the Act and advertised in June 2019 under the provisions of Section 52 of the Act by 84 letters sent to surrounding owners, occupiers and objectors. An existing objector submitted further comments outlining the revised proposal did not address their concerns. An existing objector that formed part of a group objection submitted a separate objection and so is now registered as an objector in their own right, resulting in a total of seven objections to the application.

This objector outlined that the revised plans did not address their original concerns. No new grounds were list, therefore the list above remains the full list of concerns raised.

## **Referrals**

98. The referral comments are based on the originally submitted plans and, where required, additional referral comments were sought on the April 2019 Section 57A amended plans. The June Section 57A plans were not referred as they were submitted to address the concerns raised in the referral comments.

### External Referrals

99. Notice of the original application plans was given to the following authorities under the provision of the Design and Development Overlay (Schedule 5) and Road Zone:
- (a) Environment Protection Authority (no response received).
  - (b) VicRoads (no response received under Design and Development Overlay but a response received under Road Zone referral).
  - (c) Transurban CityLink (no response received).

### Internal Referrals

100. The application was referred to the following units within Council:
- (a) Engineering services.
  - (b) ESD Advisor.
  - (c) Heritage Advisor.
  - (d) Strategic Planning.
  - (e) Urban Design.
  - (f) Contracts Services.

### External Consultant

- (g) External Acoustic Consultant (SLR Consulting Australia).
101. Referral comments have been included as attachments to this report.

## **OFFICER ASSESSMENT**

102. The following key issues and policies will be used to frame the assessment of this planning permit application:
- (a) Strategic justification;
  - (b) Built form context, Heritage, Urban design, Architectural Quality, Height/Massing and DDO17;
  - (c) Land Use, Noise and off-site amenity;
  - (d) Parking layout, traffic and bicycle parking;
  - (e) Other matters (easements); and
  - (f) Objector concerns.

### Strategic justification

103. The proposal satisfies the various land use and development objectives within the PPF, providing an acceptable level of compliance with the relevant policies within the Scheme, and is considered to provide a positive strategic opportunity for development within a well-resourced inner-urban environment. There is strong strategic direction to support the redevelopment of the site to provide higher density residential use. Policy at clauses 11, 16, 18 and 21.04 of the Scheme encourage the accumulation of commercial activities and the intensification of development in and around activity centres. This ensures efficient use of infrastructure and supports Council's preference that established areas experience residual increases in population growth.



104. The dwellings would provide increased housing opportunities consistent with the policy outlined above. The site has excellent access to shops, restaurants, community facilities and supermarkets, ensuring that the proposal will result in efficient use of existing infrastructure, consistent with Clause 21.04 of Council's MSS. Further, the provision of a small retail tenancy at ground level, addressing both Swan Street and Dickman Street, will activate the streetscape, also consistent with the purpose of the C1Z.
105. The subject site is well connected to public transport infrastructure, with the Swan Street tram route 70 travelling in front of the subject site and tram route 78 travelling along Church Street approx. 50m east of the site. East Richmond train station is located approximately 82m south-east and Richmond Station 600m 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 18.02-2S (Movement Networks), Clause 21.06-3 (Transport) and Clause 21.07 (Environmental Sustainability) of the Scheme.
106. Overall, and in a strategic sense, the proposed construction of a multi-storey mixed use 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 a vibrant mixed-use commercial centre. Plus of most significance, the proposal demonstrates a high level of compliance with the built form requirements of Design and Development Overlay Schedule 17 (as will be discussed in detail later).
107. That said, any policy support for more intensive development needs to be balanced with built form guidance at Clauses 15.01, 21.05-2, 22.02 and 43.02 of the Scheme which call for development that appropriately responds to the surrounding context and heritage character.  
Built form context, Heritage, Urban design, Architectural Quality, Height/Massing and DDO17.
108. In considering the design and built form of the proposed development, the most relevant aspects of the Scheme are provided at Clause 15 (*Built Environment and Heritage*), Clause 21.05 (*Built Form*), Clause 22.02 (*Development Guidelines for Sites subject to the Heritage Overlay*) and Clause 43.02 (*Design and Development Overlay Schedule 17*) of the Yarra Planning Scheme. Particular regard must be given to the acceptability of the design in terms of height and massing, street setbacks and relationship to nearby buildings. This assessment will also consider the building design response to ESD considerations with applicable policy Clause 22.16 (*Stormwater Management*), Clause 22.17 (*Environmentally Sustainable Development*).

*Built form context*

109. The existing character of the surrounding area is somewhat varied, with the majority of built form along Swan Street being double storey in height with a two storey 'individually significant' heritage building on the opposite side of Dickman Street and seven 'individually significant' buildings on the opposite side of Swan Street. Two storey 'contributory' heritage buildings are located to the west of the site. Existing multi-storey new developments built along Swan Street between Church Street and Wangaratta Street include the Dimmeys development site (10 storeys) and a 5 storey building on the south-west corner of Swan and Docker Street.



\*Figure 8: Dimmeys Source Google maps Oct 2016.



\*Figure 9: Swan and Docker Street. Source Google maps Oct 2016.

110. In this context, the proposed development will not appear an incongruous element, particularly given the upper level Swan Street setbacks will exceed those of the 5 storey building on the corner of Docker Street and so will appear more visually recessive. The proposal complies with the mandatory height requirements of DDO17 and so is in line with height contemplated by Council policy.

*Demolition*

111. Councils Heritage Advisor is supportive of the demolition of the existing building given its 'not-contributory' status to the Swan Street heritage precinct. However, demolition plans have not been provided. A condition will require this.

*Heritage, Urban design, Architectural Quality, Height/Massing and DDO17.*

112. DDO17 along with Clause 22.02 (*Development Guidelines Subject to the Heritage overlay*) provide most guidance on the issues relating to heritage, urban design, architectural quality and height/massing. Of significance when considering the appropriateness of the proposal, is that Council's Heritage Advisor is generally supportive of most aspects on the design (with concerns limited only to materials selections) and the proposal generally satisfies all of the requirements of DDO17. It is noted that DDO17 provides significant heritage-based design guidance that aligns with policy objectives at clause 22.02 and provides site/precinct specific heritage objectives that are not found in clause 22.02. For this reason, this policy will be used also frame heritage considerations and analysis.

113. The subject site is located in DDO17 Precinct 2- Swan Street Retail Centre- Area B (Swan Street) and Area F (Dickman Street). A mandatory maximum building height of 18 metres applies to the whole of subject site. A mandatory maximum street wall height of 11 metres applies to Swan Street and preferred 11m maximum to Dickman Street. A mandatory 5m upper level setback applies to Swan Street and preferred 3m to Dickman Street. A permit also cannot be granted to construct a building or construct or carry out works that would overshadow any part of the southern footpath of Swan Street, measured as 4.0m from the southern road boundary of Swan Street between 10am and 2pm at 22nd September.

114. The proposal satisfies all of the 'mandatory' and 'preferred' requirements apart from the 'preferred' 3m setback above the 11m street wall to Dickman Street, with a 1m setback proposed. The overall height, street wall heights, Swan Street upper levels setbacks and shadowing requirements are met. This high level of compliance demonstrates the proposal is in-line with Council's strategic built form aspirations for Swan Street. The design also responds positively to the remaining relevant DDO17 design guidelines as follows (in italics):

*Plant*

*DDO17*

- *The total roof area occupied by the equipment (other than solar panels) is minimised; The service equipment is located in a position on the roof so as to minimise its visibility.*

115. Both Council's Urban Design and Strategic Planning units raised concerns with the previous proposal in relation to with the position of the plant and its visibility in the streetscape. In response, the second Section 57A plans recessed the plant screens further from the eastern (setback 2.3m) and western (setback 1.55m) and so has adequately responded to these concerns. The plant will be setback 3.08m from the north boundary and 9.3m from Swan Street. Based on this, it is anticipated the plant would only have minor visibility from the east and west side and meets the DDO requirement.

*Floor to ceiling height*

*DDO17*

- *Frontages at ground floor and within the street wall must be designed with floor to floor ceiling heights suitable to accommodate commercial activity.*

116. The ground and first floor have commercial scale floor to ceiling heights.

*Verandahs*

*DDO17*

- *Frontages at ground floor must incorporate verandahs, consistent with the form and scale of adjoining verandahs, into the façade design.*

117. The height and design of the proposed verandah to Swan Street is consistent with the building to the west.

*Boundary wall expression*

*DDO17*

- *Upper level development must be designed to ensure buildings are expressed in the round and provide detail on facades when viewed from all directions.*

118. The upper levels are articulated through various materials and fenestration which ensures it does not present as blank walls on any side.

*Articulation*

*DDO17*

- *Façade treatments and the articulation of infill buildings on land affected by a heritage overlay and of new buildings on land immediately adjoining a heritage building must:*
  - *ensure the façade treatments and the articulation of new development are simple and do not compete with the more elaborate detailing of the adjoining heritage building(s) respect the vertical proportions of the nineteenth and early twentieth century facades of the heritage streetscape and/or adjoining heritage building(s);*
  - *avoid large expanses of glazing with a horizontal emphasis except to ground floor shopfronts.*

119. In-line with policy, the façade treatments and the articulation are simple and do not compete with the more elaborate detailing of the nearby heritage buildings and the patterning respects the vertical proportions of existing heritage facades. The original design was not acceptable in this regard containing a stepped street wall and tall window forms to Swan Street. Council's Heritage Advisor originally stated *'while the street wall façade design to Swan and Dickman Streets, in terms of proportion, rhythm etc. is an acceptable response to the streetscape, this is undermined by unrelated detailing which is an inappropriate response to the historic attributes of the streetscape. The levels above the street wall are attention-grabbing and need to be redesigned to have a far more subtle, subdued and recessive appearance'*.

120. In the original design, the upper level residential components also had disproportionate expanses of glazing with horizontal emphasis, as expressly discouraged by policy. The design was reworked in consultation with Council’s Heritage Advisor and Council’s planning officers, with the Swan Street street wall and Dickman Street return now containing window proportions that are reflective of heritage windows, a uniform street wall height and simple façade design reflective of the heritage facades in the streetscape. Council’s Heritage Advisor is now being supportive of this aspect of the design stating *‘the fenestration is now acceptable’*.

121. In relation to the Swan Street street wall and its Dickman Street return, Council’s Urban Design Unit was supportive of the simplified design and the uniform street wall height shown in the Section 57A amended plans. They raised concerns the use of the white and grey wall finish to Swan Street and the number of punctuations on the façade resulted in an overly complex design.

It is considered the use of the two colours on the façade allows for the development to reflect the mixed grain lot sizes typically found in Swan Street. The street pattern is defined by wider buildings interspersed which much narrower buildings. Given the presence of two narrow buildings abutting the site to the west, it is considered appropriate two finishes are utilised to break up the mass of the façade to better respond to the abutting fine grain character. The number of window openings is also considered acceptable as it is reflective of the window ratio found on the *‘individually significant’* heritage buildings located immediately opposite across Swan Street. The second section 57A amended plans also deleted the podium balcony as requested by Council’s Urban Design Unit.

122. Council’s Urban Design Unit remain concerned with the treatment to Dickman Street stating a preference for more solidity to the street wall *to reinforce the three storey base and recessive 2 storey upper level form, as the proposal utilises the same palette and language across levels 2-5*. It is not considered critical the solidity of the three storey street wall be increased along the entire Dickman Street elevation, with the building purposely designed to break up the mass of this façade into three vertical components. The three components include the Swan Street return wall, the residential/office entry and the garage/office components. The two rear components are separated by a vertical spine of kerlite tiling, with the mix of materials on the rear two sections intended to diminish bulk.

123. While it is acknowledged that Urban Design Unit’s suggestion that a more solid street wall may allow the upper to levels appear more recessive, it is also conversely likely to make the street wall appear more imposing. The solidity offered by the Dickman Street corner return is considered sufficient to respect the solidity Swan Street heritage streetscape. The remainder of the modern style street wall is appropriately located away from the principal heritage street and is more recessive due to the less solid appearance of its materials and this prevents it dominating the streetscape. For these reasons the Dickman Street wall and its 1m upper setback is considered acceptable (and will be discussed further in the following *Upper levels setbacks* assessment). Further, Council’s Heritage Advisor did not raise this as a concern.



Figure 10: Original design

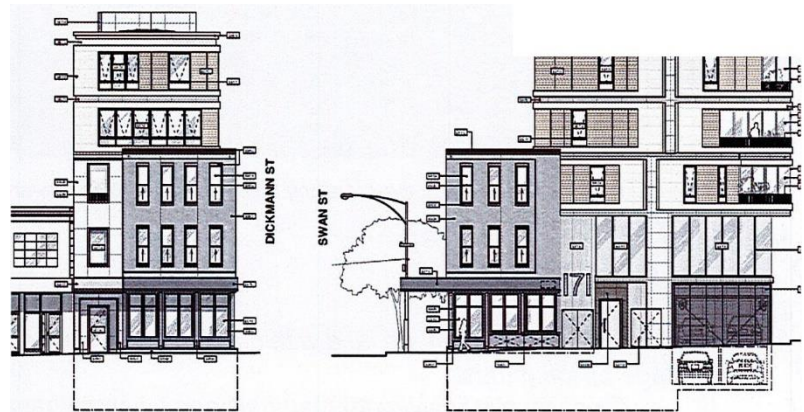


Figure 11: Decision plans with heritage appropriate façade articulation

*Non-compliant upper levels setbacks*

*DDO17*

- *Upper level development on land within a heritage overlay and on land immediately adjoining a heritage building must:*
  - *be visually recessive and not visually dominate the heritage building and the heritage streetscape.*

124. The proposal satisfies the 'mandatory' 5m setback requirement to Swan Street and so its position will be visually recessive in line with policy objectives. Council's Urban Design Unit raised concern with the non-compliance of the 1m setback of the two upper levels above the Dickman Street street wall, with DDO17 nominating a 'preferred' 3m setback. They state *'the palette of proposed material composition exacerbates the lack of the upper level setbacks and defined street wall along Dickman Street, presenting as a sheet wall... that overwhelms the narrow Dickman streetscape'*. However, Council's Heritage Advisor did not raise this concern. Council's Strategic Planning Unit were also accepting of this aspect of the proposal stating *'while the absence of a proposed setback along Dickman Street increases the bulk impacts of the development when viewed from Dickman Street, the proposal, overall, does somewhat reinforce and respond to the street wall edge and create a distinct difference between upper and lower levels'*.
125. Council planning officers agree with the comments of the Strategic Planning Unit, particularly given the 'preferred' 3m setback significantly restricts the internal amenity of the apartments reducing their width from 8.5m to 6.5m. A further intention of this policy objective of this 3m setback is to encourage the street frontage on side streets to provide an appropriate transition to low rise residential streets located behind Swan Street, with these streetscapes typically comprising single storey dwellings with front gardens. This intention is again reflected in the following *General Deign Objective* of the DDO:
- *To support a new mid rise scale built form character with lower built form at the interfaces with streets and the adjoining low rise residential areas that maintains an active, high quality and pedestrian friendly environment.*
126. Importantly, the following image demonstrates the robust street edge character along Dickman Street to the immediate north of the site. In this context, it is considered the 1m setback to the upper two levels will not overwhelm the streetscape and it is not justified to require the upper levels be further recessed. The previous *Articulation* assessment also discusses how the Dickman Street street wall has been designed to minimise bulk.
127. The upper two levels include the 5m setback to Swan Street and the north-west corner to Dickman Street is articulated by three balconies. This allows them appear a recessive element due to the open areas behind and combined with the 1m setback to Dickman Street ensures the upper two levels do not overwhelm Dickman Street. Finally, the proposal satisfies all the mandatory requirements of the DDO and on-balance the proposed 1m setback of the upper two levels is considered acceptable.



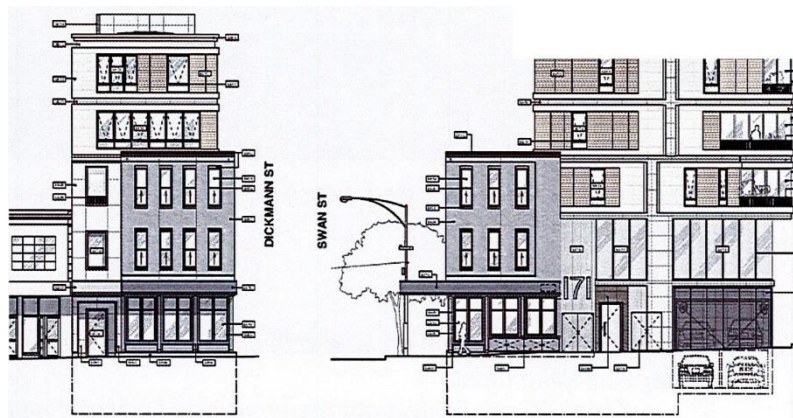
\*Figure 12: Views from north of the site along Dickman Street toward swan Street, Source google maps July 2014.

**Materials**

**DDO17**

- Upper level development on land within a heritage overlay and on land immediately adjoining a heritage building must:
  - utilise visually lightweight materials and finishes that are recessive in texture and colour and provide a juxtaposition with the heavier masonry of the heritage facades incorporate simple architectural detailing that does not detract from significant elements of the heritage building and the heritage streetscape.

128. In line with policy objectives, the upper levels utilise visually lightweight and recessive materials including glazing, metal cladding and kerlite tile and provide juxtaposition with the heavier masonry of the heritage facades. The design also incorporates simple architectural detailing that does not detract from significant elements of the heritage streetscape, as recommended by policy.
129. This detailing includes a matte off-white brick surrounding light coloured timber look metal cladding, with floor levels defined by a band of kerlite tiling. The titling banding is continued along the Dickman Street frontage where there is also a vertical element to reflect the more fine grain pattern of this street. These treatments provide for a high architectural quality with this aspect of the design supported by Council’s Heritage Advisor, Urban Design and Strategic Planning Units



PROPOSED SWAN STREET ELEVATION | SOUTH  
Figure 13: Materials

PROPOSED DICKMAN STREET ELEVATION | EAST

130. Council's Heritage Advisor raised concerns with the white and gray polished concrete finishes to the street walls and the pressed poured concrete wall to Dickman Street stating these material finishes are likely to become stained and not maintain a pristine finish. It was recommended that a brick or rendered masonry finish be instead used. In response, the second Section 57A amended plans replaced the white polished concrete finish to Swan Street with a white kerlite tile cladding. This product is more resistant to staining and so is considered acceptable in this regard.
131. It is not appropriate to require the street wall facades be a brick finish as requested by the Heritage Advisor, as most of the Swan Street facades are rendered finishes and brickwork would appear out of context (particularly as the primary concern is about staining). Council's Heritage Advisor's suggestion that a painted render be adopted is not appropriate as painted renders are also susceptible to staining. Build-up of normal detritus on the proposed surfaces can be removed through washing and so on-balance the proposed materials are acceptable.
132. The materials board submitted with the application show the polished concrete applied to a wooden sheet. This is of concern as render applied over lightweight wooden cladding will have a tendency to split and crack and become unsightly over time. This concern was raised with the applicant who agreed to a condition that the render be applied to a masonry walls to prevent this issue. Given the heritage significance of the Swan street, it is important the proposed street walls are durable to ensure a high quality street presentation in the future.
133. Finally, in relation to materials, the Heritage Advisor raised concerns with the proposed steel mesh to the balcony balustrades and the garage door to Dickman Street stating the material is likely to gather detritus and with the garage doors likely to become unsightly if dented by vehicle movements. To address this the second Section 57A amended plans provide vertical metal picket balustrades the terraces which satisfactorily address this item.

The perforated garage door has been replaced with numerous panels which allows for any damaged panels to be easily replaced. As opposed to the original design which would require the entire door be replaced in the event of damage sustained. These changes are considered to satisfactorily address these concerns.

*Egress*

*DDO17*

- *Vehicle ingress and egress into development, including loading facilities and building servicing, must be designed to ensure a high quality pedestrian amenity and limit potential conflict between vehicle movements and pedestrian activity.*

134. The final relevant DDO17 policy considerations relates to vehicle ingress and egress and seeks to ensure a high quality pedestrian amenity and limit potential conflict between vehicle movements and pedestrian activity. As discussed above the design of the garage door is considered acceptable. The development also incorporates convex mirrors at the edge of the garage to prevent pedestrian conflict when car exit the site. Council's Engineers are also satisfied safe egress can be achieved.

*Public realm, light and shade, landscaping and pedestrian spaces*

135. This principle requires the design of interfaces between buildings and public spaces to enhance the visual and social experience of the user. In this respect, the proposal represents an improvement in streetscape, public space quality and perceived safety.
136. The construction of a residential building with an office, dwellings and pedestrian entry areas located along the street frontages is an improvement on the streetscape compared to existing conditions which are largely blank walls to Dickman Street. The applicant has also agreed to reconstruct the footpaths and maintain the existing bicycle hoop and street bin. All of these improvements satisfy public realm, pedestrian spaces and street and public space quality policies at clauses 15.01-2S, 18.02-1S and 21.05-2.
137. The proposal fully complies with the shadow requirements of DDO17. As such the proposal is acceptable from a light and shade perspective.

*Environmentally Sustainable Design*

138. Redevelopment of the site located in an existing built up area would make efficient use of existing infrastructure and services, and the proximity of the subject site to numerous public transport modes which reduce residents and visitors from relying on private vehicles. Policy at clauses 15.01-2S, 21.07, 22.16 and 22.17 of the Scheme, encourage ecologically sustainable development, with regard to water and energy efficiency, building construction and ongoing management.
139. Council's ESD officer has reviewed the applicant submitted ESD advice and outlined the following application ESD commitments and application ESD deficiencies;
140. *ESD Commitments:*
- (a) *Natural light and outlook – Good natural light appears well-balanced with window size;*
  - (b) *Bicycle facilities – A good number of bicycle parks with end-of-trip lockers and showers;*
  - (c) *Irrigation – Is provided to terraces to allow residents potted plants;*
  - (d) *Thermal performance (apartments) – Preliminary modelling indicates an average 6.6 star NatHERS rating;*
  - (e) *Water efficiency – Water efficient fixtures, fittings and appliances;*
  - (f) *Hot water – Efficient gas water heating; and*
  - (g) *Rainwater – A 5000L rainwater tank will supply water for flushing for 5 toilets.*
141. *ESD Deficiencies:*
- (a) *Best practice - ESD reports are sought in order to establish if proposed designs will exceed business-as-usual construction to achieve 'best practice'. Reference to legal minima such as 'compliance' with the NCC are not relevant and should be removed.*
  - (b) *Bicycle parking – Some bike riders are unable to lift bicycles into vertical racks. A minimum of 20% horizontal bicycle parks are sought per 'AS 2890.3:2015 Parking facilities Bicycle parking'*
  - (c) *Building materials – The section provided on page 3 of the SDA contains no clear commitment to materials. Rewording is sought to clarify how material impacts will be reduced. Suggestions include:*
    - (i) *Concrete – incorporation of cement replacement materials, and recycled aggregate*
    - (ii) *Timber – use of third-party certified 'sustainable' timber such as AFS, or FSC*
    - (iii) *Recycle content – use of materials with recycled content such as thermal insulation*
  - (d) *Solar energy – No photovoltaic or solar hot water collectors are proposed despite appropriate sun-exposed roof*
  - (e) *Thermal performance (non-res.) – No details are provided for improvements to the thermal performance of the commercial levels.*
  - (f) *Shade – No effective external shade is provided to the first floor full-height glazed wall to the northeast of Level 1.*
142. *Outstanding information:*
- (a) *Non-committal language – This report uses non-committal language to describe some initiatives, and therefore these are unable to be assessed. Statements using language such as: "recommended", "suggested", "encouraged", etc. are sought to be reworded to that which provides clear commitments to design outcomes and performance measures. Clarity is sought around commitments in sections 5, 6 and 7 of the SMP.*
  - (b) *BESS report – Some credits appear to require adjustment. Republish the report and resubmit after any revision including clarification of the following:*
    - (i) *Energy efficiency – rating improvements on heating and cooling;*
    - (ii) *Water credit 4.1 – clarify provision of building systems (fire test water, and water based heat rejection);*
    - (iii) *Waste credit 1.1 – clarifying retention of 30 % of building fabric.*



- (iv) *Space heating and cooling – The rating of the systems proposed does not meet Council’s standards for best practice. BESS Water credit 4.1 has been claimed with no details of water-based heat rejection systems or wet fire-suppression systems. Please clarify details with consideration of best practice systems, and note strategy for HVAC use minimisation.*
- (c) *Indoor Air Quality – Clarify if low/zero VOC and formaldehyde products are to be used*
- (d) *Natural ventilation – Clarification is sought as to if effective natural ventilation is provided. Multiple operable window sashes are sought on both the north and northeast Level 1 glazed walls.*
- (e) *Thermal performance (non-res) – Details are sought of how the thermal performance of the building fabric will be improved above the legal minimum. A minimum 10% improvement is considered best practice.*
- (f) *Urban ecology – Clarify commitments to urban ecology, including how Urban Heat Island effect has been addressed. Lighter coloured roofs/decking/paving are sought where sun exposed.*
- (g) *Lighting – Further details are sought as to if daylight and movement sensors will be utilised in commercial and common areas of the building. All LED lighting commitment is sought to meet the current (NCC 2019) minimum lighting power densities.*
- (h) *Active transport – Details are sought on the nature of stair access between levels of Apartment 3. Separation is sought to the common stair below, with the inclusion of natural light in both stairs – to encourage use of stairs over lifts.*

143. Council’s ESD officer is generally supportive of the application given a 6.6 NatHERS rating and BESS and STORM compliance is to be generally achieved. Along with the above items, the ESD officer recommended a number of items be shown on the plans. Either the second Section 57A amended plans or the SMP show these items, apart from ceiling fans, clotheslines, electric vehicle and bicycle charging and roof colour treated for urban heat island effects. Given the smaller size of the proposal, it is not considered reasonable to require urban heat island treatments or electric charging facilities (particularly as vehicle car parking is in a stacker). A condition requiring more operable windows will address ventilation concerns and ceiling fans can be installed on a needs basis by occupants. It is not necessary to require external clothes lines, with occupants likely to purchase clothes horses to allow for clothes drying both indoors and outdoors. All of the remaining *Deficiencies/Outstanding Information* are either shown on plans or in the SMP or have been translated into conditions, apart from the following items discussed below.
144. The ESD office has requested external shading to the north and east-facing glazing to the office. The applicant however does not wish to provide shading to the office level stipulating maintenance and cleaning issues associated with upper level shading screens. This is considered acceptable particularly as the northern office glazing will be overhung by the levels above to a depth of 1.2m which will provide adequate shading. Given the eastern office façade will be partially shaded before 9am by the buildings on the opposite side of Dickman Street and shaded by the proposed building at the subject site from noon, it is considered these windows should not be exposed to excessive heat loading. Further the submitted ESD report stipulates all glazing is to be double glazed which will further mitigate heat loading issues.
145. The ESD officer requested floor to ceiling heights be noted. With a minimum separation of 3.05m between the floor of each level, there is no concern that habitable rooms would have unreasonable ceiling clearances. The applicant has confirmed 3.3m ceiling heights to the shop, 2.9m to the office and 2.7m to the apartments. These heights are acceptable. A condition will require the floor to ceiling heights are specified on plan.
146. To maximise natural ventilation opportunities, the ESD advisor has requested sash operation to all windows and doors, with the lack of operable windows to the office space being a particular concern. A condition will require sash operation windows to the office.

The residential windows to three storey heritage style façade of the building are already shown as sash and so are acceptable. The remaining residential windows are shown to be awning windows which generally have restricted openings. In line with the ESD advice a condition will require a sash operation to maximise ventilation opportunities and glazing to the terraces be operable.

147. The plans do not show any operable component to the shop windows. As this style of windows has been agreed to by Council's Heritage Advisor, it is not considered appropriate their appearance be changed to a sash operation. However, a condition will require these windows are provided with operable elements to facilitate natural ventilation of this space.
148. The ESD officer also requested glazing to the stairwell to encourage people to use the stair. The applicant has indicated that given the stair is a fire escape, it is difficult to accommodate window openings for fire-rating reasons. This is considered reasonable and so a condition will not require windows to the communal stair. The ESD officer also requested clarification on separated stair access to apartment 3, with the implication being occupants are more likely to use their private lift over a communal stair. The applicant has indicated the lower levels of the building are not required to be provided with access to the roof and the stair can be private for this level. This is considered acceptable.
149. Based on the above analysis and subject to the suite of conditions addressing Council's ESD officers' concerns, the proposal is considered acceptable from an ESD perspective.

#### Land Use, Noise and off-site amenity

##### *Uses and off-site amenity impacts to nearby dwellings*

150. The fact that all of the uses do not require a permit pursuant to the zone demonstrates compatibility with the zoning of the land which actively encourages these uses. This intention is demonstrated by relevant purposes of the C1Z *to provide for residential uses at densities complementary to the role and scale of the commercial centre and to create vibrant mixed use commercial centre for retail, office, business, entertainment and community use*. Whilst the uses are as-of-right clause 22.05 seeks to ensure both new residential uses are reasonably protected from negative amenity impacts from existing commercial uses and proposed commercial use will not unreasonably impact on existing residential uses.
151. In relation to the proposed commercial uses in the building, the ground floor shop and first floor office is typical of uses found along Swan Street. The nearest dwellings are located approx. 31m north of the site at on Dickman Street with this separation ensuring commercial uses would have minimal impact on these dwellings. This separation will also reduce noise and visual bulk impacts and minimises overlooking opportunities. Their position to the north of the subject site also prevents overshadowing or open space and does not affect existing daylight levels to habitable windows.
152. The location of services/plant equipment on the roof is acceptable. A condition would require that the noise and emissions from plant equipment and music noise from the shop must comply at all times with the State Environment Protection Policy – Control of Noise from Commerce, Industry and Trade (SEPP N1) – Control of Music Noise from Public Premises (SEPP N-2).

##### *Noise and Live Music and Entertainment Noise and patron noise*

153. Clause 22.05 requires new residential developments in activity centres to include design features to minimise the impact of the normal operation of business. In this regard, noise impacts from existing commercial plant and existing taverns in the area are of most relevance.

As part of this application, acoustic reports were submitted (Broner Consulting: dated April 2017, 57A amended report dated April 2019) which predominately dealt with traffic, music, patron and mechanical plant noise measured to standard Sleep Disturbance criterion. The April 2019 report details acoustic treatments including the following:

- (a) Internal wall options and glazing/sliding doors to achieve the indoor noise criteria.
- (b) Criteria for internal air conditioning noise levels and a Sound Power Level limit was set for the outside condensers.
- (c) General recommendations for hydraulic noise control.
- (d) To minimize stacker noise emission, the rear car park area ceiling area should be acoustically lined and the car park entry door should be a minimum of Rw 28.

154. Council's acoustic engineers were satisfied with proposed treatments in relation to music, patron, traffic and plant noise subject to the following conditions being imposed:
- (a) A revised acoustic report to provide an assessment of late night music noise between midnight and 1am and 2am and 3am on a Friday or Saturday night. Should the music assessment demonstrate exceedances in SEPP N-2 requirements, the revised acoustic report must provide recommendations for the building façade design to demonstrate the proposal will achieve internal SEPP N-2 noise limits with windows and doors closed.
  - (b) A revised acoustic report to assess noise from nearby commercial mechanical plant and patron noise and to demonstrate internal noise targets of 30dBA Leq will be achieved in bedrooms, 35dBA Leq in living rooms, and 55dBA Leq on private balconies.

155. These will be further discussed below.

156. Clause 53.06 (*Live Music and Entertainment Noise*) provides the most relevant guidance for treating live music noise impacts to proposed dwellings within 50m of a venue. The previous *Surrounds* section provides detail of all taverns with the immediate area, including their patron numbers, hours of operation and music control measures.

Of all of the taverns only The Swan Hotel (No. 245 Swan Street) and Fargo and Co. (No.214 Swan Street) play live music.

157. The Swan Hotel was of most concern to Council's acoustic engineers with their liquor licence allowing for live music to be played until 3am (with late night live music and djs advertised on their website). They noted the assessment carried out in the applicants report measured noise until 9pm with music noise impacts likely to be greatest between 1am and 3am on a Friday or Saturday night, particularly given background noise would be lower at these times. However, with the Swan Hotel being located 70m from the site, it is outside the 50m radius stipulated by clause 53.06. Given clause 53.06 allows for assessment of venues only within 50m of the proposed development site and the Swan Hotel is located a further 20m away that the maximum stipulated by this policy, it is not considered appropriate to require the applicant carry out any further acoustic assessment in relation to live music from the Swan Hotel.
158. While Fargo and Co. is within 50m of the proposed development, a condition of this permit restricts live music to the rear terrace between 6pm and 9pm Thursday to Saturday only. Given the live music will not be played late into the evening and the terrace is located 40m away, it is considered music noise from will not unreasonably impact the dwellings at the subject site. For this reason conditions will not require further acoustic testing in relation to music noise.
159. Finally, Council's acoustic engineers have requested the applicants report be revised to show the dwellings will achieve internal noise targets of 30dBA Leq in bedrooms, 35dBA Leq in living rooms, and 55dBA Leq on private balconies to adequately protect the dwellings from commercial plant noise.

As outlined in the *Surrounds* assessment, there are numerous commercial grade flues located immediately opposite the subject site across Dickman Street. The applicant acoustic report specifies targets of 35dBA Leq will be achieved in bedrooms and 40BA Leq in living rooms with no target for balconies being specified.

160. The applicant has indicated they can realistically achieve the bedroom and living room targets but have questioned the need to limit noise on the balconies, particularly given tall screens would need to be constructed on the balcony edge. It is agreed that enclosing the balconies behind tall screens is inappropriate due to resultant poor internal amenity impacts. While it would facilitate noise reduction on the balconies, it would make the balconies feel enclosed and would significantly limit optimal ventilation opportunities for the dwellings.
161. Further, people moving to this area would be very aware of the outdoor noise impacts from mechanical plant, trams, traffic, music and patrons and would not expect outdoor balconies to be a quiet environment in a MAC that is known as a sports and entertainment precinct. The mechanical plant is also required to be compliant with relevant Environmental Protection Agency noise requirements (SEPP N-1).
162. For all of these reasons, it is not considered justified to require the outdoor balconies to be acoustical treated. A condition will require the internal noise targets are improved to better treat against plant noise in line with the advice of Councils Acoustic engineer. These improvements will also have the benefit for further limiting other external noise impacts such as traffic, late-night music and patron noise. Subject to a condition to this effect, it is considered the proposed dwelling will be adequately treated against external noise sources.

#### *Equitable development*

163. The Scheme aims to facilitate equitable development opportunities for neighbouring properties within the context of the site's location. In this instance, the site has direct abuttal with two properties, the first being the double storey shop to the west and the Council owned car park to the north.  
In this regard the proposed sheer wall with no openings or light courts on the west boundary of the subject site is likely to be an equitable development outcome with this site. It will allow the adjoining site develop with north and south facing apartments.
164. The northern boundary wall at the subject site would not unreasonably constrain any future development on the car park to the north, with this future building having the option to build sheer to this wall. Reasonable light access will be provided to the proposed northern office windows by the 6.8m height clearance to the carriageway in the event a boundary wall is constructed opposite. The extensive east facing glazing to the office will provide for adequate additional light access. However, the height of the undercoft clearance to the carriageway is not noted. A condition will require this detail. The large size of the site to the north also ensures it is not unreasonably restricted by the proposed develop at the subject site. The proposed balconies at the subject site with a northern interface also have an eastern outlook, which protects their future amenity in the event the site to the north is developed.

#### Clause 58

##### *Standard D1 – Urban context*

165. As discussed in the previous Built Form assessment of this report.

##### *Standard D2 – Residential Policies*

166. As discussed in the previous Built Form assessment of this report.

*Standard D3 – Dwelling diversity*

167. Only applicable to 10 or more dwellings.

*Standard D4 - Infrastructure*

168. The proposal is located within an existing commercial and residential area with established utility services and infrastructure. There is no evidence to suggest that the proposed development would impact on the operation of these existing services and therefore the purpose of the Standard is considered to be met.

*Standard D5 – Integration with the street*

169. The proposed development would provide a significant improvement in terms of the subject site's interface with Swan Street and Dickman Street, as discussed previously in the *Public Realm* assessment.

*Standard D6 – Energy efficiency*

170. All of the balconies are located either within the south-west or north-east corners towards the street, thereby increasing direct sunlight opportunities. All dwellings have good access to natural ventilation (subject to condition), with all balconies provided with partial over hangs to assist in managing solar heat gain. No west-facing glazing is proposed apart from to apartment 1. As these west-facing windows face onto a balcony enclosed by walls on its north, south and east side, these windows will be adequately shaded and not exposed to excessive heat loads. An ESD report has been submitted with the application that demonstrates compliance with the NatHERS requirements of this standard.

*Standard D7 – Communal open space*

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

*Standard D8 – Solar access to communal open space*

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

*Standard D9 – Safety*

173. This standard encourages that pedestrian entrances are not isolated or obscured from the street. In compliance the residential entry will be clearly visible from Dickman.

*Standard D10 – Landscaping*

174. Given the C1Z of the land and its location with the Swan Street MAC, landscaping and vegetation does not form a characteristic of the surrounding neighbourhood. In this context, the lack of proposed onsite landscaped areas is considered acceptable. The existing building does not include landscaped areas.

*Standard D11 – Access*

175. This standard encourages the number and design of vehicle crossovers to respect the character of the area through minimising the width of crossover to a maximum of 33% of the frontage. The proposed crossover at 5.7m in width along the 20m wide Dickman Street frontage complies with the standard.

*Standard D12 – Parking location*

176. The location of the residential parking will provide convenient and secure access to the ground level residential lobby. A car stacking system will be provided. An objective of the Standard is to protect residents from vehicular noise within developments. With an office level located above the garage this will provide sufficient separation and reasonably protect these dwellings from mechanical noise. Further the acoustic report details acoustic treatments to the stacker that have been supported by Council's Acoustic engineer.

*Standard D13 – Integrated water and stormwater management*

177. In compliance, the application proposes the installation of a 5,000L rainwater tank which would be connected to grey water, thereby achieving a STORM rating of 109% (confirmed by the ESD Advisor).

*Standard D14 – Building setbacks*

178. This Standard seeks to ensure that building setbacks respond to the surrounding context of the site, and allow adequate internal and off-site amenity to be achieved. In compliance, all the windows are located opposite street frontages or face onto proposed balconies allowing for adequate access to daylight. Given the windows face street frontages, adequate outlook will also be provided. With no existing dwellings located nearby, overlooking to habitable windows or open space is not a concern.

*Standard D15 – Internal views*

179. The arrangement of outward facing windows and balconies above each other ensure there is generally no more than 50% of the open space exposed to internal views between most dwellings. Of potential concern, is overlooking from south-facing windows on the upper two levels into the balcony of apartment 1. However, direct views will be limited by the podium roof.

*Standard D16 – Noise impacts*

180. This Standard aims to contain noise sources in developments that may affect existing dwellings, whilst protecting residents from any external and internal noise sources. In this instance, the proposed development would not be located in proximity to any noise generating areas as listed under Table D3 of this Standard. The site is located on Swan Street, resulting in the potential for south and east-facing dwellings to be unreasonably affected by traffic and tram noise along this busy thoroughfare. Subject to the condition outlined earlier requiring an updated acoustic report to confirm noise targets to be met within the habitable areas, this satisfactorily addressed this item.

*Standard D17 – Accessibility objective*

181. This standard stipulates minimum dimensions in relation to doorway widths and circulations for at least 50% of dwellings. The front door widths into the apartment 2 and 3 comply with the standard. Apartment 3 allows for a clear path with a minimum width of 1.2m that connects the dwelling main entrance to the bedroom, adaptable bathroom and living area. The accessway widths of apartment 2 to the ensuite, living room and bedroom to not comply with the standard at 1m and 1.1m wide. As will be discussed below, the ensuite of this dwelling will be required to be redesigned to accommodate compliant internal circulation areas, and it is considered this redesign can allow for the access way widths to be widened.
182. The proposed bathroom dimensions do not comply with the standard however apartment 2 and 3 appear to have the most capacity to accommodate these requirements. Compliance can be easily accommodated, with only doorway widths required to be widened to apartment 3.

183. Along with the doorway needing to be widened, the ensuite for dwelling 2 would need to be enlarged to allow for the toilet to be repositioned to accommodate the minimum circulation areas. Given there is a large walk-in-robe to the immediate east of the ensuite, the robe can be reduced in size to accommodate the changes required to the bathroom. These changes can be easily implemented and will be required by way of condition.

*Standard D18 – Building entry and circulation*

184. The proposed residential lobby would be readily identifiable within Dickman Street, with the cantilevered design of Level 1 providing a degree of shelter above this entry. The main lobby and those at each upper level would be sufficiently dimensioned to service residents coming and going to a development of this scale, and are generally in line with the objectives under this Standard. No communal corridors are proposed to the dwellings,

*Standard D19 – Private open space*

185. The Standard notes that 2-bedroom dwellings should be provided with secluded private open space (SPOS) of 8sqm, with a minimum width of 2m, with this increasing to 12sqm and 2.4m respectively for 3 or more bedroom dwelling. In all dwellings these requirements are met. The degree of SPOS afforded to each dwelling, along with the design of each balcony, is considered to be a reasonable outcome and will allow a direct connection between the main habitable rooms of each dwelling and these outdoor areas. This design response is supported.

*Standard D20 – Storage*

186. Each of the proposed dwellings would exceed the storage requirement of this Standard, as outlined below. All of the storage will be provided within each individual dwelling and in stores in the basement. The Standard is met.

Apartment	Required storage	Storage provided
Unit 1 – 1 bed	10m3	21.8m3
Unit 2 – 2 bed	14m3	23.4m3
Unit 3 – 2 bed	14m3	42.8m3

*Standard D21 – Common property*

187. The common property areas within the development are clearly delineated and would not create areas which were difficult to maintain into the future. The residential lobby and lift access areas are well conceived, with the refuse and bicycle storage rooms easy to access and generally cohesive with the overall building design. The Standard is met.

*Standard D22 – Site services*

188. Site services and meters would be located to the rear wall of the garage, addressing the carriageway, with additional services internal to the building and readily accessible from the main lobby. Fire services are provided on the Dickman Street façade but the plans show they will be clad in the same material as their surround walls and so will not be a prominent element and will blend with the remainder of the building. Notations to this effect are provided on the plans to ensure this outcome. Council’s engineers requested service cupboards open in a 180° position (already noted on plans) and to be attached/latched to the building when in an open position. A condition will require these latches are noted.

*Standard D23 – Waste and recycling*

189. A shared refuse room is provided at ground level, with this space easily accessible from the commercial premises and with bin chutes provided at each level of the development for residential use. The Waste Management Plan (WMP) prepared by Loop Architecture dated 12 April 2019. The WMP was referred to Council's City Works Branch, who were satisfied with the plan subject to it being amended to include waste collection by private contractors and with residential bins to be 1 X 240ltr waste and 1X 240ltr recycling. A condition will address this.

*Standard D24 – Functional layout*

190. This Standard notes living areas for dwellings with 1 or more bedrooms should have a minimum width of 3.3m, and a minimum area of 10sqm and dwellings with 2 or more bedrooms should have a minimum living area width of 3.6m, and a minimum area of 12sqm. Apartment 3 complies but apartment 1 (2 bed) has non-compliant living area dimensions of 3.1m x 4.5m and apartment 2 (1 bed) living area dimensions of 3.2m x 3.45m. There is capacity to easily rectify this for apartment 2 given the extent of non-compliance is marginal. A condition will require this. There is also capacity to rectify this for apartment 1 by relocating the living area to the kitchen, with the kitchen having minimum dimensions of 3.6m x 4.2m. A condition will require compliance with this standard.
191. The proposed development is fully compliant with the bedroom dimensions required under this Standard apart from one 2.9mx 3.4m wide bedroom in apartment 1. Given this non-compliance is marginal, it should be easily rectified, A condition will require this.

*Standard D25 – Room depth*

192. This proposed floor to ceiling heights to habitable rooms is 2.7m. This height has been confirmed by the applicant but is not shown on plan. A condition will require this detail. All of the bedrooms have access to a window and the internal room dimensions comply with the standard. In compliance, all of the living areas are double aspect allowing for adequate light access apart from apartment 2. However, with the living area only having a maximum depth of 6.1m and a floor to ceiling of 2.7m, it complies with the standard (6.75m maximum depth permitted).

*Standard D26 – Windows*

193. All habitable rooms within the proposed development contain a window within an external wall to the building, thereby meeting the Standard.

*Standard D27 – Natural ventilation*

194. A good degree of natural ventilation is provided for all dwellings, with cross-ventilation opportunities provided within the living rooms of the larger apartments, and compliant breeze paths also providing good cross-ventilation between habitable rooms of the smaller dwellings. The operability of the windows are not provided. A condition will require this detail to ensure compliance.

Parking layout, traffic and bicycle parking

*Traffic and car parking reduction*

195. In relation to traffic considerations, this area has strong strategic justification to support buildings of this scale, along with associated car parking reductions. Given Richmond Station and east Richmond Station are located in close proximity to the site, along with tram services along Swan and Church Street, the site is ideally located to take advantage of multiple modes of existing public transport infrastructure within the immediate vicinity.



196. Encouraging the use of public transport as well as walking and cycling as modes of transport is central to Council's policy objectives relating to sustainable transport. Car parking reductions achieve the objectives of sustainable transport that are outlined in clauses 18.02 and 21.06 of the Scheme.
197. The reduced rate of on-site car parking will mean a reduced impact on traffic within the surrounding street network, which is considered a positive outcome. Further Council's traffic engineers are supportive of the proposed reduction of 5 car spaces.
198. Objectors have raised concerns that staff and visitors may increase pressure on existing on-street car parking. However, the development will not be eligible for on-street staff or visitor parking permits which minimise the impact the development will have on existing on-street car spaces. Given the proximity of the site to public transport and two hour on-street car parking restrictions, it is unlikely that staff would drive to work as they would be aware of these restrictions.
199. An office use would not typically generate a significant number of visitor trips and so would not place undue strain on available on-street parking. Visitors also have the option to use the public car park located to the immediate rear of the site. Given the proximity of public transport options servicing the site and multiple commercial uses along Swan Street, it is likely that a large proportion of visitors (particularly to the shop) will be in the area for more than one purpose and will be short term stays.

#### *Parking layout/access*

200. The 4 car parking spaces of the dwellings will be provided within two stacking systems, accessed via Dickman Street. The layout of the car stackers and garage was assessed by Council Engineers, who whilst generally supportive of the design, required further information to ensure that the layout of this space is efficient and functional. A number of these items have been satisfactorily addressed on the second section 57A amended plans, including provision of convex mirrors and service cabinet doors swinging 180-degrees. Remaining outstanding include detail of headroom clearance to the garage and service cupboards to be latched to the building when open. These will be addressed by way of conditions.
201. In addition, a number of standard further conditions and notes were outlined by Council Engineers. These include matters relating to protection of Council's assets, construction of the crossover, re-sheeting the footpath post development, drainage, operation of the car stacker, footpath waste bin and bicycle hoop retained, the verandah canopy to be setback 750mm from the kerb edge, adjustment of car parking restriction signs and liaising with the relevant service authorities regarding adjustments to their assets. The Dickman Street frontage contains bluestone kerbing and a condition will require its retention. All of these issues can be required by way of conditions or notes, should a permit be granted.

#### *Bicycle parking*

202. The development proposes a total of 14 bicycle spaces, with all of these located in a secure storage room for residents. This room can be accessed either internally or via the ROW to the west. The number of spaces exceeds Council's best-practice standard of one space per dwelling, and 4 of these spaces are at-grade and horizontal, thereby allowing convenient and easy access. The number, location and design of the bicycle spaces are supported and comply with Clauses 18.02-1S and 21.06 of the Scheme.

#### Other matters (easements)

203. There are two easements affecting the site, a carriageway easement to the north and a party wall easement along part of the west boundary. The plans show it is proposed to construct over the party wall easement and to construct over the carriageway easement at a height of 6.8m. The applicant has provided a transcripts of Memorial No. 483 Book 512 and Memorial No. 483 Book 498 which describe the easements and form part of the title. These documents do not specify a height limit to the easement and so Council can consider the construction over the easement once it is satisfied it is not unduly restricted. The purpose of the easement is to provide pedestrian access to the subject site and No's 165 and 167 Swan Street. This is clear by its limited width of 1.2m. Given the building is to be constructed at a height of 6.88m above the easement, it is considered that the easement will not be unduly restricted by the proposal.
204. Objectors have raised concerns that an application (and associated public notification) has not been made to vary the carriageway easement to facilitate construction over it (under Clause 52.02 (*Applications to alter, remove or vary an easement*)). The objectors also submit construction over the easement is a breach of the easement and as such should not be supported by officers. However, in this regard to, it is not a relevant consideration whether the proposal would constitute a breach of the Easement as part of the current planning permit application. The current proposal does not of itself trigger a permit requirement under clause 52.02. A permit is triggered under clause 52.02 before a person proceeds under various provisions of the Subdivision Act 1988 to create, vary or remove an easement or restriction.
205. While an application to vary an easement pursuant to Clause 52.02 can be made at the same time as the permissions sought for construction of a development, it is not a requirement. Where an application is made to vary the easement under Clause 52.02 of the planning scheme, the decision guidelines (in addition to the decision guidelines in clause 65) are 'the responsible authority must consider the interests of affected people'. As such the application would then be advertised to all beneficiaries of the easement (if an application was made).
206. Further in this regard, it is not a consideration for Council whether the proposal is in breach of the easement, but this is instead a Civil Matter. This view is supported in the decision by Victorian Civil and Administrative Tribunal (VCAT), *Craig v Yarra [2016] VCAT 1816* with the following comments made in relation to this issue:
- [10] *I acknowledge that there is a consistent line of previous Tribunal decisions that it is for the courts rather than the Tribunal to resolve whether or not proposed works would breach an easement. This reflects such a dispute about an easement being seen as a 'property' dispute rather than a 'planning' dispute.*
207. However, had an application been made to vary the easement under 52.02 this does allow Council a limited consideration on whether the proposal unreasonably restrict the easement and its beneficiaries. The aforementioned VCAT case provides guidance on what the scope of this consideration should constitute as follows:
- [29] *The Tribunal is of the view that the following questions should be asked:*
- (i) *Does the current use of or the current state or condition of the dominant and servient lands (tenements) indicate a need or requirement for the continued existence of the easement; and*
  - (ii) *Would the owners of the dominant land suffer any material detriment in the use and enjoyment of that land if the easement was removed or varied?*
208. It is Council's view the same line of questioning should be applied to buildings and works applications (in the absence of a clause 52.02 application being made). This ensures that development proposals are not futile in the event they unreasonably restrict an easement and would be unlikely be supported in an easement breach Civil Case.

Turning one's mind to this line of questioning, it is considered the pedestrian easement is not unreasonably restricted by the proposal given the building provides for a 6.88m clearance to it and so retains unfettered pedestrian access to it.

209. The plans do not show the position of the party wall easement on the west boundary with new western wall appearing to be proposed in the position of the party wall. The applicant has been unable to confirm the existence of the party wall but acknowledges it is likely to be present. Applying the same line of questioning outlined above, the removal of this party wall would result in detriment to the adjoining property owners/beneficiary. For this reason, the removal or variation of this easement is unlikely to gain support in either a Clause 52.02 application or a Civil Case. For this reason, Council is unwilling to support the current application in the absence of confirmation that the party wall easement will remain unfettered by the proposed development.

The applicant has indicated that it is not intended to remove the party wall and supported a condition requiring the plans show all works located clear of the easement. Subject to a condition to this effect it is considered the proposal does not unreasonably restrict either easement.

#### Objector concerns

210. The majority of the issues which have been raised by the objectors have been addressed within this report, the following section provides a recap of the issues raised by objectors.
- (a) *Negative impacts on heritage character of area.*
    - (i) This issue has been discussed extensively within paragraphs 108-133 of this report.
  - (b) *Issues relating to construction over carriageway easement.*
    - (i) These matters have been discussed in details within paragraphs 203-209 of this report.
  - (c) *Insufficient car parking.*
    - (i) These matters have been discussed in detail within paragraphs 195-199 of this report.
  - (d) *Excessive visual bulk, wind impacts height, and insufficient upper level setbacks.*
    - (i) Apart from wind issues, these matters have been discussed in detail within paragraphs 108-133 of this report. Council would not require a Wind Report be provided for a development of only 5 storeys. With street walls of only 11m in height and recessed upper levels, the building will not contribute to significant wind impacts to the streetscape.
  - (e) *Disruption during construction phase.*
    - (i) While impacts during the construction phase are not able to be directly addressed through the requirements of the Planning Scheme, a condition of permit for a Construction Management Plan would be included to assist with minimising disruption to the area.

#### **Conclusion**

211. The proposal, subject to conditions outlined in the recommendation below, is an acceptable planning outcome that demonstrates compliance with the relevant Council policies. Based on the above report, the proposal complies with the relevant Planning Scheme provisions and planning policy and is therefore supported, subject to conditions.

## RECOMMENDATION

That having considered all objections and relevant planning documents, the Committee resolves to issue a Notice of Decision to Grant a Permit PLN17/1014 for demolition and development of the land for the construction of a mixed-use building, and a reduction in the statutory car parking requirement at No. 171 -173 Swan street, Richmond subject to the following conditions:

1. Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of this permit. The plans must be drawn to scale with dimensions, and three copies must be provided. The plans must be generally in accordance with the decision plans, prepared by Loop Architecture, dated June 2018 and 2019 (SK100 Rev U, SK101 Rev R, SK102 Rev Q, SK103 Rev Q, SK104 Rev S, SK105 Rev S, SK107 Rev T, SK201 Rev N, SK301 Rev T, SK302 Rev S, SK301 Rev X, SK302 Rev W, SK901 Rev R but amended to include:
  - (a) The following:
    - (i) Floor to ceiling heights in habitable rooms;
    - (ii) Operable glazing to residential terraces;
    - (iii) Service cupboards to be attached to the building when in an open position;
    - (iv) Headroom clearance to the garage;
    - (v) Minimum height clearance of the building to the rear carriageway easement;
    - (vi) Removal of reference to commercial use in office area; and
    - (vii) The heritage style Swan Street wall and its Dickman Street return to be a masonry construction.
  - (b) Sash operation windows to the office and dwellings to improve natural ventilation opportunities,
  - (c) Provision of operable windows to both elevations of the shop (with style of windows not to altered);
  - (d) All buildings and works to be located clear of the boundary wall easement shown as E-2 on Title Plan TP101204J;
  - (e) A demolition plan including confirmation the existing boundary wall affected by the party wall easement is to be retained;
  - (f) Demonstration of compliance with Standard D17 (*Accessibility objective*), Standard D24 (*Functional layout*) and Standard D27 (*Natural ventilation*) of Clause 58 (*Apartment Developments*) of the Yarra Planning Scheme; and
  - (g) Any alterations to the development required by the updated Sustainable Management Plan at Condition 3, Acoustic report at Condition 5 and Waste Management Plan at Condition 9.
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.

### Sustainable Management Plan

3. 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 Building Thermal Performance Assessors and dated 22 April 2019, but modified to include:
  - (a) Removal of non-committal language and references to minimum compliance with NCC standards and to instead demonstrate Best Practice;
  - (b) Building Materials Section to clarify commitments to recycled and sustainable materials;

- (c) Detail thermal performance including details of building materials performance for the ground and first floor commercial uses and to achieve a minimum of 10% improvement on Best Practice;
  - (d) BESS report credits to clarify the following:
    - (i) Rating improvements on heating and cooling,
    - (ii) Provision of building systems (fire test water and water based heat rejection);
    - (iii) Retention and reuse of 30% of existing building fabric;
  - (e) Space heating and cooling to clarify details with consideration of best practice systems, and note strategy for HVAC use minimisation;
  - (f) Clarify if low/zero VOC and formaldehyde products are to be used;
  - (g) Thermal performance of commercial uses building fabric;
  - (h) Clarification on the Utilisation of daylight and sensor lighting in the office and communal areas with LED lighting to meet current (NCC) minimum light power densities.
4. The provisions, recommendations and requirements of the endorsed Sustainable Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

#### Acoustic

5. Before the development 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 report prepared by Broner Consulting: dated April 2019, but modified to include or show:
- (a) all dwellings to achieve internal noise targets of 30dBA Leq in bedrooms and 35dBA Leq in living rooms.
6. Within 3 months of the commencement of the occupation of the building, a post-occupation Acoustic Report to the satisfaction of the Responsible Authority must be prepared by a suitably qualified acoustic engineer and must be generally in accordance with the acoustic report approved under condition 5. The report must be submitted to and approved by the Responsible Authority. When approved, the Acoustic Report will be endorsed and will form part of this permit. The Acoustic Report must assess the following:
- (a) confirm the recommendations of the endorsed acoustic reports required as part of conditions 5 have been implemented;
  - (b) assess mechanical plant noise (including the garage door) to SEPP N-1; and
  - (c) if non-compliance with condition 5a) is measured, additional acoustic measures as recommended by the amended post-occupation acoustic report are to be implemented within one month of the date of the amended acoustic report.
7. The provisions, recommendations and requirements of the endorsed Acoustic Reports must be implemented and complied with to the satisfaction of the Responsible Authority.
8. The uses must comply at all times with the State Environment Protection Policy – Control of Noise from Commerce, Industry and Trade (SEPP N-1).
9. The use must comply at all times with the State Environment Protection Policy – Control of Music Noise from Public Premises (SEPP N-2).

#### Waste Management Plan

10. 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 Waste Loop Architecture and dated April 2019, but modified to include:

- (a) residential bins to be 1 X 240ltr waste and 1X 240ltr, and
  - (b) Waste collection by private contractors.
11. The provisions, recommendations and requirements of the endorsed Waste Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

Engineering

12. 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.
13. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, the footpath frontage to the site must be demolished and re-instated as standard footpath with a maximum 1-40 cross-fall and with bluestone kerb and channel to Dickman Street frontage retained/reinstated:
- (a) at the permit holder's cost; and
  - (b) to the satisfaction of the Responsible Authority.
14. Except with the prior written consent of the Responsible Authority, Council assets must not be altered in any way and with all redundant property drains to be removed.
15. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, the new vehicle crossing must demonstrate by way of a ground clearance check that B99 vehicle vehicles can traverse the new vehicle crossing without scraping or bottoming out and the crossover to be constructed:
- (a) in accordance with any requirements or conditions imposed by Council;
  - (b) at the permit holder's cost; and
  - (c) the satisfaction of the Responsible Authority
16. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, 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.

VicRoads (Conditions 17 and 18)

17. Prior to the commencement of the development, the owner of the land must enter into an agreement with the Department of Environment Land Water and Planning (DELWP) pursuant to Section 138A (11) of the Land Act 1958 for the elements of the approved development that project more than 300mm beyond the land's Swan Street boundary (i.e., the canopies, fixed shading devices, architectural features, balcony framing, screening etc), to indemnify the Crown in relation to any claim or liability arising from the projections within the Swan Street road reserve. This condition does not apply where written confirmation is obtained from DELWP that the above agreement is not required.
18. Separate consent will be required from VicRoads (the Roads Corporation) under the Road Management Act 2004 for buildings and works undertaken outside the title boundary within a Road Zone CatCategory 1 (i.e. Swan Street). Please contact VicRoads prior to commencing any works.

General

19. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, external lighting capable of illuminating access to the car park and pedestrian entrances must be provided within the property boundary. Lighting must be:
  - (a) located;
  - (b) directed;
  - (c) shielded;
  - (d) of limited intensity, and
  - (e) to the satisfaction of the Responsible Authority.
  
20. Before the development is occupied, or by such later date as approved in writing by the Responsible Authority, all screening and other measures to prevent overlooking as shown on the endorsed plans must be installed to the satisfaction of the Responsible Authority. Once installed the screening and other measures must be maintained to the satisfaction of the Responsible Authority.
  
21. 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.
  
22. Finished floor levels shown on the endorsed plans must not be altered or modified without the prior written consent of the Responsible Authority.
  
23. Before the development commences, a Construction Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will form part of this permit. The plan must provide for:
  - (a) a pre-conditions survey (dilapidation report) of the land and all adjacent Council roads frontages and nearby road infrastructure;
  - (b) works necessary to protect road and other infrastructure;
  - (c) remediation of any damage to road and other infrastructure;
  - (d) containment of dust, dirt and mud within the land and method and frequency of clean up procedures to prevent the accumulation of dust, dirt and mud outside the land;
  - (e) facilities for vehicle washing, which must be located on the land;
  - (f) the location of loading zones, site sheds, materials, cranes and crane/hoisting zones, gantries and any other construction related items or equipment to be located in any street;
  - (g) site security;
  - (h) management of any environmental hazards including, but not limited to,:
    - (i) contaminated soil;
    - (ii) materials and waste;
    - (iii) dust;
    - (iv) stormwater contamination from run-off and wash-waters;
    - (v) sediment from the land on roads;
    - (vi) washing of concrete trucks and other vehicles and machinery; and
    - (vii) spillage from refuelling cranes and other vehicles and machinery;
  - (i) the construction program;
  - (j) preferred arrangements for trucks delivering to the land, including delivery and unloading points and expected duration and frequency;
  - (k) parking facilities for construction workers;
  - (l) measures to ensure that all work on the land will be carried out in accordance with the Construction Management Plan;
  - (m) an outline of requests to occupy public footpaths or roads, or anticipated disruptions to local services;

- (n) an emergency contact that is available for 24 hours per day for residents and the Responsible Authority in the event of relevant queries or problems experienced;
- (o) the provision of a traffic management plan to comply with provisions of AS 1742.3-2002 Manual of uniform traffic control devices - Part 3: Traffic control devices for works on roads;
- (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.
- (q) 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.
- (r) During the construction:
  - (i) any stormwater discharged into the stormwater drainage system must be in compliance with Environment Protection Authority guidelines;
  - (ii) 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;
  - (iii) vehicle borne material must not accumulate on the roads abutting the land;
  - (iv) the cleaning of machinery and equipment must take place on the land and not on adjacent footpaths or roads; and
  - (v) all litter (including items such as cement bags, food packaging and plastic strapping) must be disposed of responsibly.

24. The provisions, recommendations and requirements of the endorsed Construction Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

25. Except with the prior written consent of the Responsible Authority, demolition or construction works must not be carried out:

- (a) Monday-Friday (excluding public holidays) before 7 am or after 6 pm;
- (b) Saturdays and public holidays (other than ANZAC Day, Christmas Day and Good Friday) before 9 am or after 3 pm;
- (c) Sundays, ANZAC Day, Christmas Day and Good Friday at any time.

26. This permit will expire if:

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

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

Notes:

A building permit may be required before development is commenced. Please contact Council's Building Services on 9205 5428 to confirm.



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

Provision must be made for drainage of the site to a legal point of discharge. Please contact Council's Building Services on 9205 5428 for further information.

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

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

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

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

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

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

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

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.

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

#### **Attachments**

- 1 PLN17/1014-171-173 Swan Street-Decision Plans
- 2 PLN17/1014-171-173 Swan Street-Subject Site
- 3 PLN17/1014-171-173 Swan Street-Copy of Title and Title Plan
- 4 PLN17/1014-171-173 Swan Street-Title Transcript
- 5 PLN17/1014-171-173 Swan Street-Applicant section 57A ESD Report
- 6 PLN17/1014-171-173 Swan Street-Applicant section 57A Traffic Assessment Report
- 7 PLN17/1014-171-171 Swan Street-Applicant section 57A Acoustic Report
- 8 PLN17/1014-171-173 Swan Street-Applicant Waste Management Report
- 9 PLN17/1014-171-173 Swan Street-ESD comments
- 10 PLN17/1014-171-173 Swan Street-Engineering comments
- 11 PLN17/1014-171-173 Swan Street-Acoustic comments
- 12 PLN17/1014-171-173 Swan Street- Waste Management comments
- 13 PLN17/1014-171-173 Swan Street-Heritage comments
- 14 PLN17/1014-171-173 Swan Street-Urban Design comments
- 15 PLN17/1014-171-173 Swan Street-Strategic Planning comments
- 16 PLN17/1014-171-173 Swan Street-VIC Roads comments