



Agenda

Planning Decisions Committee

6.30pm, Wednesday 2 December 2020

MS Teams

The Planning Decisions Committee

The Planning Decisions Committee is a delegated committee of Council with full authority to make decisions in relation to planning applications and certain heritage referrals. The committee is made up of three Councillors who are rostered on a quarterly basis.

Participating in the Meeting

Planning Decisions Committee meetings are decision-making forums and only Councillors have a formal role. However, Council is committed to ensuring that any person whose rights will be directly affected by a decision of Council is entitled to communicate their views and have their interests considered before the decision is made.

There is an opportunity for both applicants and objectors to make a submission to Council in relation to each matter presented for consideration at the meeting.

Before each item is considered, the meeting chair will ask people in attendance if they wish to make submission. Simply raise your hand and the Mayor will invite you to come forward, take a seat at the microphone, state your name clearly for the record and:

- Speak for a maximum of five minutes;
- direct your submission to the chair;
- confine your submission to the planning permit under consideration;
- If possible, explain your preferred decision in relation to a permit application (refusing, granting or granting with conditions) and set out any requested permit conditions
- avoid repetition and restating previous submitters;
- refrain from asking questions or seeking comments from the Councillors, applicants or other submitters;
- if speaking on behalf of a group, explain the nature of the group and how you are able to speak on their behalf.

Once you have made your submission, please remain silent unless called upon by the chair to make further comment or to clarify any aspects.

Following public submissions, the applicant or their representatives will be given a further opportunity of two minutes to exercise a right of reply in relation to matters raised by previous submitters. Applicants may not raise new matters during this right of reply.

Councillors will then have an opportunity to ask questions of submitters. Submitters may determine whether or not they wish to take these questions.

Once all submissions have been received, the formal debate may commence. Once the debate has commenced, no further submissions, questions or comments from submitters can be received.

Arrangements to ensure our meetings are accessible to the public

Planning Decisions Committee meetings are held at the Richmond Town Hall. The following arrangements are in place to ensure they are accessible to the public:

- Entrance ramps and lifts (via the entry foyer).
- Interpreting assistance is available by arrangement (tel. 9205 5110).
- Auslan interpreting is available by arrangement (tel. 9205 5110).
- A hearing loop and receiver accessory is available by arrangement (tel. 9205 5110).
- An electronic sound system amplifies Councillors' debate.
- Disability accessible toilet facilities are available.

1. Appointment of Chair

Councillors are required to appoint a meeting chair in accordance with the City of Yarra Governance Rules 2020.

2. Statement of recognition of Wurundjeri Woi-wurrung Land

“Yarra City Council acknowledges the Wurundjeri Woi Wurrung people as the Traditional Owners and true sovereigns of the land now known as Yarra.

We acknowledge their creator spirit Bunjil, their ancestors and their Elders.

We acknowledge the strength and resilience of the Wurundjeri Woi Wurrung, who have never ceded sovereignty and retain their strong connections to family, clan and country despite the impacts of European invasion.

We also acknowledge the significant contributions made by other Aboriginal and Torres Strait Islander people to life in Yarra.

We pay our respects to Elders from all nations here today—and to their Elders past, present and future.”

3. Attendance, apologies and requests for leave of absence

Anticipated attendees:

Councillors

- Cr Edward Crossland
- Cr Stephen Jolly
- Cr Sophie Wade

Council officers

- Amy Hodgen (Senior Co-Ordinator Statutory Planning)
- Ally Huynh (Senior Co-Ordinator Statutory Planning)
- Rhys Thomas (Senior Governance Officer)
- Cindi Johnson (Governance Officer)

4. Declarations of conflict of interest

Any Councillor who has a conflict of interest in a matter being considered at this meeting is required to disclose that interest either by explaining the nature of the conflict of interest to those present or advising that they have disclosed the nature of the interest in writing to the Chief Executive Officer before the meeting commenced.

5. Confirmation of Minutes

Any Councillor who has a conflict of interest in a matter being considered at this meeting is required to disclose that interest either by explaining the nature of the conflict of interest to those present or advising that they have disclosed the nature of the interest in writing to the Chief Executive Officer before the meeting commenced.

6. Committee business reports

Item		Page	Rec. Page
6.1	99/0390.02 - 298-300 Brunswick Street, Fitzroy - Section 72 amendment including part demolition, buildings and works to extend the first floor, construct a roof top terrace with a maximum of 113 patrons, increase total patron capacity from 300 to 395 patrons, an increase to the 'red line' area to the first floor and include the proposed roof top terrace, a further reduction in the car parking requirements of the Yarra Planning Scheme.	5	41
6.2	PLN19/0706 - 28 Canterbury Street Richmond - Construction of a double-storey dwelling and associated reduction in the car parking requirements	47	69
6.3	PLN20/0165 - 33- 37 Rupert Street, Collingwood - Development of a ten (10) storey building (plus roof terrace) and use of the land for a food and drink premises and an office and a reduction in the associated car parking requirement of the Yarra Planning Scheme.	72	116
6.4	PLN17/0705 - 388-390 Queens Parade, Fitzroy North - Extension of Time Request	126	143

- 6.1 99/0390.02 - 298-300 Brunswick Street, Fitzroy - Section 72 amendment including part demolition, buildings and works to extend the first floor, construct a roof top terrace with a maximum of 113 patrons, increase total patron capacity from 300 to 395 patrons, an increase to the 'red line' area to the first floor and include the proposed roof top terrace, a further reduction in the car parking requirements of the Yarra Planning Scheme.
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Executive Summary

Purpose

1. This report provides an assessment of a Section 72 amendment for part demolition, buildings and works to extend the first floor, construct a roof top terrace with a maximum of 113 patrons, increase total patron capacity from 300 to 395 patrons, an increase to the 'red line' area to the first floor and include the proposed roof top terrace, a further reduction in the car parking requirements of the Yarra Planning Scheme.

Key Planning Considerations

2. Key planning considerations include:
 - (a) Clause 15.01 – Built Environment;
 - (b) Clause 22.02 – Development Guidelines for sites subject to Heritage Overlay;
 - (c) Clause 34.01 – Commercial 1 Zone;
 - (d) Clause 43.01 – Heritage Overlay;
 - (e) Clause 22.09 & 52.27 – Licenced premises; and
 - (f) Clause 52.06 – Car parking

Key Issues

3. The key issues for Council in considering the proposal relate to:
 - (a) Sale and consumption of Liquor;
 - (b) Building and works;
 - (c) Car parking;
 - (d) Environmental Sustainable Design; and
 - (e) Objector concerns.

Submissions Received

4. Twelve objections were received to the application, these can be summarised as:
 - (a) Noise from live music and patrons;
 - (b) No checks/ lack of enforcement on existing venues with respect to noise;
 - (c) Addition will be visible from the street and as such not in accordance with the relevant Heritage guidelines;
 - (d) Anti-social behaviour (intoxicated patrons);
 - (e) Car parking issues within the surrounding area; and

- (f) Excessive hours of operation past 11pm;

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) Implementation of the acoustic referral recommendations and noise attention measures;
 - (b) Lowering and setting back of the northern boundary wall of the roof terrace;
 - (c) Retention of the existing chimney towards Brunswick Street.
 - (d) Installation of fixed seating;
 - (e) Incorporation of additional ESD measures.

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

6. Planning permit No. PL03/0029 was issued on the 20 February 2003 by Council for the construction of a flue to the rear of the site. The works had already been completed at the time of application, and it was a retrospective application.
7. Planning permit No. PL07/0400 was issued on 26 June 2007 to allow for the construction of a roof over a storage yard at the rear of the existing building.
8. Planning permit PLN14/0978 dated 28 October 2014 was issued for the development of the land for buildings and works consisting of placement of external lighting and external painting.
9. Planning permit PLN14/1116 was issued on 15 April 2015 for the development of the land for partial demolition, and buildings and works including a new open terrace at the first floor.
10. A Section 72 Amendment was granted by Council on the 6 June 2016 for planning permit No. 990390 to increase patron numbers from 150 to 300 patrons, decreasing to 200 patrons after 1am and an associated reduction in car parking requirements.
 - (a) The permit authorised the following liquor licence aspects:
 - (i) Sale and consumption of liquor in association with a bar;
 - (ii) No more than 300 patrons are permitted on the premises at any one time, decreasing to 200 patrons after 1.00am, with tables and chairs provided for at least 75 percent of patrons attending the premises at any one time;
 - (iii) Hours of operation:
 - Monday to Wednesday between 10:00am and 1:00am the following morning.
 - Thursday to Saturday between 10:00am and 3:00am the following morning
 - Sunday between 10:00am and 1:00am the following morning
 - Good Friday and Anzac Day between 12:00 noon and 1:00am the following morning.

Planning Scheme Amendments

11. Planning Scheme Amendment VC159 was gazetted on the 8 August 2019. The amendment introduced changes to the Victoria Planning Provisions (VPP) arising from the Victorian Government's Smart Planning program. Relevantly, the amendment also made changes to land use terms, including renaming 'tavern' to 'bar'. The definition of the land use however has not changed.

Background

12. The amendment application was lodged on 16 December 2019, with further information submitted in April and June 2020. The application was advertised, with 12 objections received.
13. Due to COVID-19 (Coronavirus) restrictions, no planning consultation meeting occurred.
14. During the course of the application, advice was obtained from Council's Heritage Advisor, Waste Management Unit, Community Amenity, Social Planning, ESD Advisor, Engineering Services and Council's Acoustic Consultant. The referral advice is attached to this report.
15. There is a discrepancy between the 'red line area' shown on the existing ground floor 'red line' plan and the endorsed plans, with the former showing this has increased to include the kitchen store area and courtyard siting area. The applicant has advised that this discrepancy is an error. As such, a condition will be included for the red line area to the ground floor to not be altered from the current endorsed layout.

16. As part of the original submission, it was proposed to operating on the roof terrace until 1am. Following concerns raised in the request for further information, the application reduced the sale of liquor from 1am to 12.30am. This update was included in the revised NAAP report and covering letter in the further information response. However, the town planning report or acoustic report was not updated and still identified the closing time as 1.00am. As such, there is a discrepancy between the reports. For the purposes of assessment a closing time of 12.30am is being considered.

Revised Waste Management Plan & Acoustic Memo (7 August 2020)

17. In response to concerns raised by internal referrals and objections, a revised acoustic memo and Waste Management Plan (WMP) were submitted on the 7 August 2020. These documents were submitted as 'sketch plans' rather than a formal amendment to the advertised documents. Nevertheless, these documents will be referenced within the assessment as relevant.
18. The revised acoustic memo and WMP were re-referred to Council's Acoustic Consultant and City Works Unit respectively and their comments will be discussed within the report as relevant.

Sketch plans (29 September 2020)

19. In response to concerns raised by Council's Development Assessment Panel, Heritage Advisor and objections, sketch plans were submitted on the 29 September 2020. These documents were submitted as 'sketch plans' rather than a formal amendment to the advertised documents. Nevertheless, these documents will be referenced within the assessment as relevant
20. The sketch plans did not alter the proposed development but sought to demonstrate with sight line diagrams, that a person standing at a height of 1.7m above the finished floor level of the roof terrace would not be visible from either Brunswick Street or Johnston Street.

Correspondents (14 October 2020)

21. Following multiple discussions and a meeting held with the applicant, the applicant has agreed to the following conditions on the permit, should one be granted.
- (a) *The proposed wall along the northern boundary of the rooftop deck to be reduced in height to RL59.21 to align with the balustrade along the western edge of the rooftop deck;*
 - (b) *All existing chimneys to be retained;*
 - (c) *Fixed seating to be provided along the southern perimeter of the rooftop deck adjacent to Johnston Street; and*
 - (d) *Fixed seating to be provided along the western perimeter the rooftop deck adjacent to Brunswick Street.*
22. In addition, the applicant has also consented to paint the visible elements of the staircase as 'like for like' with the colour of the existing heritage building.

Correspondents (6 November 2020)

23. In responding to concerns raised Council's Acoustic Consultant, the applicant has submitted an email which confirms that a 1.6m high glass balustrade is required to be constructed along the southern portion of the roof terrace. This is to address noise impacts to No. 120 Johnston Street.
24. As part of the response, a cross-section has been included within the email to demonstrate that the balustrade will not be visible from Johnston Street. The balustrade is further discussed within the acoustic memo received on the 11 November 2020.

Acoustic Memo (11 November 2020)

- 25. In response to concerns raised by Council’s Acoustic Consultant, a revised acoustic memo was submitted on the 11 November 2020. These documents were submitted as ‘sketch plans’ rather than a formal amendment to the advertised documents. Nevertheless, these documents will be referenced within the assessment as relevant.
- 26. The revised acoustic memo was re-referred to Council’s Acoustic Consultant and their comments will be discussed within the report as relevant.

The Proposal

- 27. The application seeks an amendment to planning permit 990390 for partial demolition of the existing building (first floor and roof), buildings and works to extend the first floor, construct a roof top terrace with a maximum of 113 patrons, increase total patron capacity from 300 to 395 patrons, an increase to the 'red line' area to the first floor and include the proposed roof top terrace, a further reduction in the car parking requirements of the Yarra Planning Scheme.
- 28. More specifically the proposal (as advertised) is for the following:

Buildings and works

- 29. Demolition
 - (a) Demolition of glazed doors at first floor leading out onto the outdoor dining area within the north-east corner (not clearly depicted on plans);
 - (b) Partial demolition of the existing roof, approximately 110sqm and including chimney (set back approximately 2.7m from the western Brunswick Street boundary);
- 30. First floor
 - (a) Extend the existing courtyard within the north-east corner (14sqm approx.);
 - (b) Increase the internal floor area and alterations to the external courtyard within the north-east corner (including the extension discussed above);
 - (c) The modifications to the first floor areas are summarised as follows:

	Existing	Proposed
Internal floor area	118sqm	127sqm
External floor area	32sqm	24sqm

- 31. Roof terrace
 - (a) Construction of a rooftop terrace (figure 1) of approximately 145sqm and consisting of:
 - (i) Seating for approximately 45 patrons (no specific number provided);
 - (ii) Construction of a bar area, stairwell, smoking area and toilet facilities;
 - (iii) Construction of a 3.35m high roof top canopy above the bar and openable louvered canopy above the standing area adjacent to the bar;
 - (iv) Construction of a 1.2m high white perforated steel balustrade along the southern and western sections of the terrace;
 - (v) Construction of a 3.35m high solid wall along the northern section of the roof terrace;
 - (vi) Construction of a stairwell along part of the southern interface and extending a maximum of 0.885m above the existing parapet wall;

- (vii) Construction of a 1.5m high by 3.9m long by 2.5m deep white perforated steel balustrade within the north-east section of the terrace (associated with the smoking area – 9sqm);
- (viii) Construction of a 2.2m to 3.7m high rendered and dark cladded wall associated with the bar, store and stairwell along the eastern elevation.



Figure 1 - Proposed roof terrace

- (b) Proposed setbacks of the terrace:
 - (i) A 1.5m setback to the western (Brunswick Street) front boundary;
 - (ii) A 1.5m setback to the southern (Johnston Street) side boundary;
 - (iii) A zero setback to the northern (side) boundary;
 - (iv) A varied 4m to 6.5m setback to the eastern (rear) boundary.
- (c) The proposal is to have a maximum height of 11.6 metres above natural ground level.
- (d) Proposed external finishes:
 - (i) Perforated white steel balustrade;
 - (ii) Rendered party wall to northern boundary and bar (no colour specified);
 - (iii) Dark timber cladding to stairwell;
 - (iv) Matt white steel cladded finish to parapet and louvers;

Liquor licence

- 32. Increase the red line area to include the following areas:
 - (a) The additional courtyard area within the first floor, north-east corner (14sqm approx.);
 - (b) The proposed roof terrace (141sqm).
- 33. The trading hours to the ground and first floor are to remain unchanged;
- 34. The proposed trading hours for the sale of liquor on the roof terrace are as follows:
 - (a) Monday to Saturday 10.00am to 12.30am the following morning;
 - (b) Sunday 10.00am to 11.00pm;
 - (c) Good Friday & ANZAC Day 12 noon to 12.30am the following morning;
 - (d) Sunday on the eve of a public holiday and Sunday of Johnston Street Fitzroy Spanish Festival 10.00am to 12.30am the following morning.
- 35. No change to the trading hours to the ground floor and first floor
- 36. Maximum number of patrons to be increased from 300 to 395
 - (a) With a maximum of 113 patrons permitted on the roof terrace at any one time.

- (b) A reduction in the overall maximum number of patrons to 200 patrons after 1.00am (condition 7 of the existing permit, no change proposed);

37. The applicant seeks to have live and amplified background music played within the roof terrace.

Existing Conditions

Subject Site

38. The existing conditions have not substantially changed since planning permit PLN14/1116 (albeit for the works approved within that permit and increase in patron numbers) was issued and the following is taken from the relevant Delegate report, with changes noted as such.



Figure 2 – Subject site No. 298-300 Brunswick Street, Fitzroy (Brunswick St Interface) Source: Applicant

39. *The subject site is located at the north-eastern corner of Johnston Street and Brunswick Street, in Fitzroy. The land is generally rectangular in shape and is bounded by a laneway on the east boundary. The site abuts Johnston Street for a length of 20.54m, Brunswick Street for a length of 12.19m, the northern boundary for a length of 20.54m and the laneway for a length of 12.19m. The site has an area of approximately 250.3sqm. No restrictive covenants apply.*
40. *The site is developed with a two-storey, late-Victorian building (formerly an ANZ bank). The building is developed to the north, west and south boundaries, with a courtyard and service yard opening onto the laneway to the east. An enclosed covered storage area is located in the north-east part of the site.*



Figure 3 – Subject site No. 298-300 Brunswick Street, Fitzroy (Johnston Street interface) Source: Google

41. *Access to the building is currently gained from either Brunswick or Johnston Streets. The building also has rear access from the laneway.*

42. *The site does not contain any on-site car parking provision or vehicle access and is currently used as a tavern with associated liquor licence.*
43. *The Stone Hotel' is an established live music venue which has a combination of dining, drinking and entertainment areas. There is a strong emphasis on the food offering at the venue and 75% of patrons are provided with seating / tables. Tables are provided at ground floor and first floor, with seating also provided in the ground floor courtyard and first floor deck. Food is considered to be a significant feature of the establishment, with the kitchen open until 9:30pm seven days a week (a snack menu is available after this time). Live music and DJs are able to set up either at ground floor, or at first floor.*
44. *Up until June 2014, the venue was occupied by Cape Live lounge, which was a licensed live music venue.*

Restrictive covenant/easements

45. There are no restrictive covenants or easements shown on the Certificate of Title provided with the application.

Surrounding Land

46. The site is located within the Brunswick Street Activity Centre which is characterised by a variety of retail and commercial uses in many different building styles. All adjoining properties are located within the same Commercial 1 Zone (figure 4). Buildings within the surrounding area predominantly have glazed shopfront/retail windows, awnings with commercial activities at the ground floor and offices located at the first floor of buildings including residential uses. The immediate surrounding context contains building heights that vary between 1 and 5 storeys.



Figure 4 – Zoning map of subject site and surrounds (Source: VicPlan)

47. To the north of the subject site is No. 302 Brunswick Street (Figure 1). This property is located within the Brunswick Street Activity Centre and is occupied by a two-storey, late-Victorian commercial building with a glazed front façade constructed to the street and abutting a laneway to the east (rear) interface. Occupying the ground floor is a bar (Baxter's Lot). This premises operates under an on-premises Liquor Licence with the following operational details:
- (a) Hours of operation
 - (i) Sunday: Between 10am and 1am the following morning
 - (ii) Good Friday and ANZAC Day: Between 12 noon and 11pm;
 - (iii) On any other day: Between 7am and 1am the following morning
 - (b) Maximum number of patrons - 116.
48. Further to the north at No. 304 Brunswick Street, is a two-storey, late-Victorian commercial building that is used as a bar (The Black Pearl). This bar operates under a Late Night (on-premises) licence with the following operational details:

- (a) Hours of operation (internal):
 - (i) Sunday: Between 10am and 3am;
 - (ii) Good Friday and ANZAC Day: Between 12 noon and 3am;
 - (iii) On any other day: Between 7am and 3am;
- (b) Hours of operation (external):
 - (i) Sunday: Between 10am and 1am;
 - (ii) Sunday (where the following day is a public holiday): Between 10am and 3am;
 - (iii) Good Friday: Between 12 noon and 3am;
 - (iv) ANZAC Day (Sun to Wed): Between 12 noon and 1am
 - (v) ANZAC Day (Thurs. to Sat): Between 12 noon and 3am
 - (vi) Monday to Wednesday: Between 7am and 1am;
 - (vii) Thursday to Saturday: Between 7am and 3am.

(c) Maximum number of patrons - 170

49. To the east is a laneway beyond which is two, two-storey, late-Victorian buildings at No. 121 Johnston Street. This property is located within the Brunswick Street Activity Centre with a glazed front façade constructed to the street. Occupying the ground floor is a restaurant (Sir Charles). This premises operates under an on-premises Liquor Licence with the following operational details:

- (a) Hours of operation
 - (i) Sunday: Between 10am and 11pm
 - (ii) Good Friday and ANZAC Day: Between 12 noon and 11pm;
 - (iii) On any other day: Between 8am and 11pm.

(b) Maximum number of patrons – 50 (internal)

50. To the south is Johnston Street. On the opposite side of Johnston Street is No. 296 Brunswick Street. The site is occupied by a two-storey, late-Victorian building with frontages on to both Johnston Street to the north and Brunswick Street to the west (formerly the Fitzroy Post Office). The site is used as a retail (clothing shop).

51. To the west is Brunswick Street. On the opposite side of Brunswick Street is No. 299 Brunswick Street. The site is occupied by a two-storey, late-Victorian building with a roof terrace and with frontages on to both Johnston Street to the south and Brunswick Street to the east. Occupying the site is a bar (Provincial Hotel). This premises operates under a Late Night (General) Liquor Licence with the following operational details:

- (a) Hours of operation (for consumption off the premises)
 - (i) Sunday: Between 10am and 1am
 - (ii) Good Friday and ANZAC Day: Between 12 noon and 11pm;
 - (iii) On any other day: Between 7am and 1am.

(b) Hours of operation (ground and first floor)

- (i) Sunday: Between 10am and 1am
- (ii) Good Friday: Between 12 noon and 11pm;
- (iii) ANZAC Day (Sun to Wed): Between 12 noon and 1am
- (iv) ANZAC Day (Thurs. to Sat): Between 12 noon and 3am
- (v) Monday to Wednesday: Between 7am and 1am;

- (vi) Thursday to Saturday: Between 7am and 3am:
- (vii) On the eve of a public holiday (Mon to Sat): Between 7am and 3am
- (viii) On the eve of a public holiday (Sunday): Between 10am and 3am
- (c) Hours of operation (Roof top terrace)
 - (i) Good Friday: Between 12 noon and 12.30am;
 - (ii) ANZAC Day (Sun to Wed): Between 12 noon and 12 midnight;
 - (iii) ANZAC Day (Thurs. to Sat): Between 12 noon and 12.30am
 - (iv) Sunday to Wednesday: Between 10am and 12 midnight;
 - (v) Thursday to Saturday: Between 10am and 12.30am;
 - (vi) On the eve of a public holiday: Between 10am and 12.30am.
- (d) Maximum number of patrons:
 - (i) Ground floor (348 patrons), First floor (153 patrons), Roof top (184 patrons);
 - (ii) Overall maximum: 685 patrons
 - (iii) Overall maximum between 1am and 2am: 400 patrons
 - (iv) Overall maximum between 2am and 3am: 348 patrons
- 52. There is no on-street car parking directly adjacent to the subject site given the corner site location. There is however, short term on-street ticketed parking along both Brunswick Street and Johnston Street.
- 53. The site is serviced well by public transport with:
 - (a) Tram services operating along Brunswick Street;
 - (b) Bus services that operate along Johnston Street;
 - (c) Tram services operating along Nicholson and Smith Streets, 326m and 485m, west and east of the site, respectively; and
 - (d) Brunswick Street is frequented regularly by taxis and the site is located with 3km of the CBD.

Legislative Provisions

- 54. The amendment has been requested pursuant to Section 72 of the *Planning and Environment Act 1987* (the Act).
- 55. Section 72 of the Act states:
 - (a) *A person who is entitled to use or develop land in accordance with a permit may apply to the responsible authority for an amendment to the permit*
 - (b) *This section does not apply to-*
 - (i) *A permit or a part of a permit issued at the direction of the Tribunal, if the Tribunal has directed under section 85 that the responsible authority must not amend that permit or that part of the permit (as the case requires); or*
 - (ii) *A permit issued under Division 6*
- 56. The planning permit was issued on 21 December 1999. The Tribunal has not directed that the responsible authority must not amend the permit, nor was the permit issued under Division 6 of the Act.
- 57. Section 73 of the Act states that Sections 47 to 62 of the Act apply to the amendment application. This allows the Responsible Authority to apply the abovementioned sections of the Act to the amendment application as if it was an application for a permit.

Planning Scheme Provisions

Zoning

Commercial 1 Zone

58. Pursuant to Clause 34.01-1 of the Yarra Planning Scheme (the ‘Scheme’), the use as a food and drink premises (bar) does not require a planning permit.
59. Pursuant to Clause 34.01-4 of the Scheme, a planning permit is required to construct a building or to construct or carry out works.

Overlays

Heritage Overlay – Schedule 311 – Brunswick Street Precinct

60. Pursuant to Clause 43.01-1 of the Scheme, a planning permit is required to:
- (a) demolish or remove a building,
 - (b) construct a building or construct or carry out works.

Particular Provisions

Clause 52.06 – Car parking

61. Pursuant 52.06-2 of the Scheme states that before a new use commences, the number of car spaces required under Clause 52.06-5 must be provided on the land to the satisfaction of the Responsible Authority.
62. Pursuant to Clause 52.06-2, the car parking spaces required under Clause 52.06-5 must be provided on the land. Clause 52.06-3 requires a planning permit to reduce the number of car parking spaces required under this clause. Pursuant to Clause 52.06-5, the car parking requirements for the proposed amendment are as follows:

Use	Statutory Requirement	On-site Provision	Reduction requested
Bar (159sqm)	5 (3.5 per 100sqm of leasable floor area)	0	5
Total	5	0	5

63. Pursuant to Clause 52.06-3, a permit is required to reduce (including reduce to zero) the number of car spaces required under Clause 52.06-5.

Clause 52.27 – Licenced Premises

64. Pursuant to Clause 52.27, a planning permit is required to use land to sell or consume liquor if any of the following apply:
- (a) *A licence is required under the Liquor Control Reform Act 1998;*
 - (b) *A different licence or category of licence is required from that which is in force;*
 - (c) *The number of patrons allowed under a licence is to be increased;*
 - (d) *The area that liquor is allowed to be consumed or supplied under a licence is to be increased.*

65. This application is seeking to increase the number of patrons allowed on site and the area in which liquor can be consumed. A permit is therefore required pursuant to clause 52.27.

Clause 52.34 – Bicycle Facilities

66. Pursuant to Clause 52.34-1, a new use must not commence or the floor area of an existing use must not be increased until the required bicycle facilities and associated signage are provided on the land. The following table identifies the car parking requirement under Clause 52.34-3, the provision on site, and the subsequent reduction below the statutory requirement.
67. A total of 159sqm of additional bar area on the first floor and roof terrace.

Use	Statutory Requirement	Spaces required	On-site Provision	Reduction requested
Retail (bar) • 159sqm	<u>Employee</u> 1 to each 300sqm of leasable floor area	0	N/A	N/A
	<u>Visitor/patron</u> 1 to each 500sqm of leasable floor area	0	N/A	N/A
Total		0	N/A	N/A

68. Clause 52.34-2 states that a permit may be granted to reduce or waive this requirement. As outlined in the table above, no reduction is sought. Clause 52.34-5 contains bicycle signage requirements.

General Provisions

Clause 65 – Decision guidelines

69. 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)

Clause 11.01-1S – Settlement

70. The objective of this clause is *“to promote the sustainable growth and development of Victoria and deliver choice and opportunity for all Victorians through a network of settlements”*.

Clause 13.05-1S – Noise abatement

71. The relevant objective of this clause is *“To assist the control of noise effects on sensitive land uses”*.

Clause 15.01-1S – Urban Design

72. The objective of this clause is *“to create urban environments that are safe, healthy, functional and enjoyable and that contribute to a sense of place and cultural identity.”*

Clause 15.01-2S – Building design

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

Clause 15.03-1S – Heritage conservation

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

Clause 17.01-1S – Diversified employment

75. The objective of this clause is *“to strengthen and diversify the economy”*.

Clause 17.02-1S – Business

76. The objective of this clause is *“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

77. The objective of this clause is *“to create a safe and sustainable transport system by integrating land use and transport”*.

Clause 18.02-1S – Sustainable personal transport

78. The objective of this clause is *“to promote the use of sustainable personal transport”*.

Clause 18.02-1R – Principal public transport network

79. The strategies for this clause are:

- (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 – Land use

Clause 21.04-2 – Activity centres

80. Relevant objectives and strategies for this clause are:

- (a) *Increase the range of retail, personal and business services, community facilities, and recreation activities, within individual centres.*
- (b) *Support land use change and development that contributes to the adaptation, redevelopment and economic growth of existing activity centres.*

Clause 21.05 – Built form

Clause 21.05-2 – Urban design

81. The relevant objective and strategy 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.*

Clause 21.08-7 – Neighbourhoods (Fitzroy)

82. This clause sets out the locally specific implementation of the objectives and strategies for Yarra's neighbourhoods. The subject site is included in the Fitzroy area which 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.

83. The subject site is located within the Brunswick Street Major Activity Centre. Accordingly, *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.*

Relevant Local Policies

Clause 22.02 – Development guidelines for sites subject to the Heritage Overlay

84. This policy provides guidance for the protection and enhancement of the City's identified places of cultural and natural heritage significance. The relevant objectives of this clause are:

- (a) *To conserve Yarra's natural and cultural heritage;*
- (b) *To conserve the historic fabric and maintain the integrity of places of cultural heritage significance;*
- (c) *To retain significant viewlines to, and vistas of, heritage places;*
- (d) *To preserve the scale and pattern of streetscapes in heritage places;*
- (e) *To encourage the preservation, maintenance, restoration and where appropriate, reconstruction of heritage places;*
- (f) *To ensure the adaptation of heritage places is consistent with the principles of good conservation practice;*

- (g) *To ensure that additions and new works to a heritage place respect the significance of the place.*
- (h) *To encourage the retention of 'individually significant' and 'contributory' heritage places.*

Clause 22.05 – Interface Uses Policy

- 85. This policy applies to applications for use or development within Business Zones (amongst others). The relevant objectives of this clause are:
 - (a) *To ensure that residential uses located within or near commercial centres or near industrial uses enjoy a reasonable level of amenity”.*
- 86. It is the policy under this clause 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*

Clause 22.09 – Licenced premises

- 87. This policy applies to all applications for new licensed premises and for the extension (including the extension of hours and the extension of patron numbers) of existing licensed premises. The policy addresses matters relating to location and access, hours of operation, patron numbers, noise, car parking and general amenity considerations.
- 88. A detailed assessment of the proposal against Council’s Licensed Premises Policy will be provided later in the report.

Clause 22.16 – Stormwater Management (Water Sensitive Urban Design)

- 89. 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

- 90. 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

- 91. The application was advertised under the provisions of Section 52 of the *Planning and Environment Act (1987)* by 263 letters sent to surrounding owners and occupiers and by two signs displayed on site. Council received 12 objections, the grounds of which are summarised as follows:
 - (a) Noise from live music and patrons;
 - (b) No checks/ lack of enforcement on existing venues with respect to noise;
 - (c) Addition will be visible from the street and as such not in accordance with the relevant Heritage guidelines;
 - (d) Anti-social behaviour (intoxicated patrons);
 - (e) Car parking issues within the surrounding area; and
 - (f) Excessive hours of operation past 11pm.
- 92. As a result of COVID-19 (Coronavirus) restrictions, no consultation meeting was held.

Referrals

93. The referral comments are based on the advertised plans. Additional comments have also been obtained from Council's Acoustic Consultant on the amended acoustic report and Council's City Works Unit on the amended Waste Management Plan, both received on the 7 August 2020, post advertising.

External Referrals

94. The application was not required to be externally referred.

Internal Referrals

95. The application was referred to the following units within Council and external consultant:

- (a) SLR Consulting (Acoustic Consultants)
- (b) Heritage Advisor;
- (c) Community Amenity;
- (d) Social Planning;
- (e) ESD Advisor;
- (f) City Works Unit; and
- (g) Engineering Services.

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

OFFICER ASSESSMENT

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

- (a) Sale and consumption of liquor;
- (b) Building and works;
- (c) Heritage
- (d) Car parking;
- (e) Environmental sustainable design; and
- (a) Objector concerns.

Sale and consumption of liquor

98. This assessment will be based on the decision guidelines of Clause 52.27 and the licensed premises policy of Clause 22.09.
99. The potential cumulative impacts of the proposed licensed premises will be assessed against the risk assessment matrix provided by the Corner Hotel decision (*Swancom Pty Ltd T/as Corner Hotel v Yarra City Council & Ors*). Applying the matrix of risk below, a reasonable consideration would suggest that a score of 1-3 would be *no risk* and would not require a cumulative impact assessment. Any score higher than 3 would suggest a potential risk that would require a cumulative impact assessment.

Type of Premise	Risk Factor
Café / Restaurant	0
Bar / Restaurant / Café	1
Bar	3
Hotel / Tavern	3
Night Club	3
Place of Assembly	2
Size of Premise	Risk Factor

0 – 49 patrons	0
50 – 99 patrons	1
100 – 199 patrons	2
200+	3
Closing hours	Risk factor
11pm	0
12am	1
1am	2
2am	3
3am	3
After 3am	4

100. The existing licensed premises under the current planning permit achieves a score of 9 and therefore consideration of the current amendment does require a cumulative impact assessment. The applicant has provided a cumulative impact assessment, which will be referred to throughout the assessment.
101. Pursuant to Clause 22.09-3, it is policy that *licensed premises are managed in accordance with a Noise and Amenity Action Plan (NAAP)*. The applicant has provided a NAAP, which outlines how the premises will operate including detail on staffing, patrons, incident complaints and noise control among other things. This will be endorsed as part of any amended permit.

Location, Access and Venue Design

102. The proposed licensed premises is located in a Commercial 1 Zone and within the Brunswick Street Major Activity Centre, which is also identified as a Core Entertainment Precinct within Clause 22.09-3. The location of the venue is supported by the Licensed Premises Policy, which encourages venues to be located outside of residential zones. All sites abutting to the north, east, south and west, are also located within the Commercial 1 Zone (Figure 5). From the zoning map below, the nearest residential zoned property is approximately 58m to the north-west along Argyle Street.

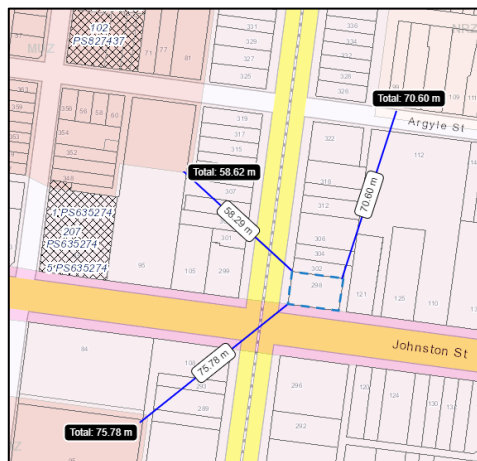


Figure 5 – Zoning map of subject site and surrounds (Source: VicPlan)

103. The patron entry and exit from the proposed premises is located along both the Brunswick Street and Johnston Street frontages (figure 6). The proposed venue has two pedestrian entries along Brunswick Street and two along Johnston Street. Both entries face commercial properties, with the closest entry approximately 28m to the north-west of the nearest residential property at No. 120 Johnston Street. This property is located within the same C1Z and is situated above a bar along the ground floor (Georges Bar).

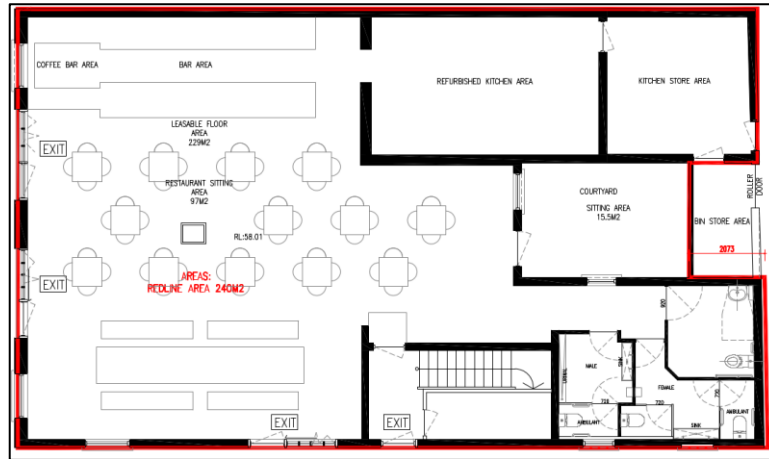


Figure 6 – Ground floor plan

104. It is considered that the 28m separation to the nearest apartment, combined with the Commercial 1 Zoning of all adjoining properties and acoustic attention measures, is a sufficient buffer between both uses. Queuing will primarily be located along Brunswick Street, with the queue leading north. This is the current arrangement and ensures that queues are generally located along Brunswick Street and not along the Johnston Street interface. However, in the event of a large queue forming, queues can switch to the south and extend along the Johnston Street interface. The provision for queuing within the NAAP is considered appropriate given the type of licence being applied. The location along Brunswick Street will ensure that the queuing is located towards the activity centre along Brunswick Street.
105. At first floor, it is proposed to increase the internal floor area and also construct a new external courtyard within the north-east corner (figure 7 – hatched red). Above, it is proposed to construct a 145sqm roof terrace with bar area with seating and a smoking area (figure 8). The new toilet facilities for the roof terrace are incorporated within the main outdoor terrace (rather than being in a separate area), and should therefore not create any additional noise impacts associated with patrons spilling beyond the redline area.

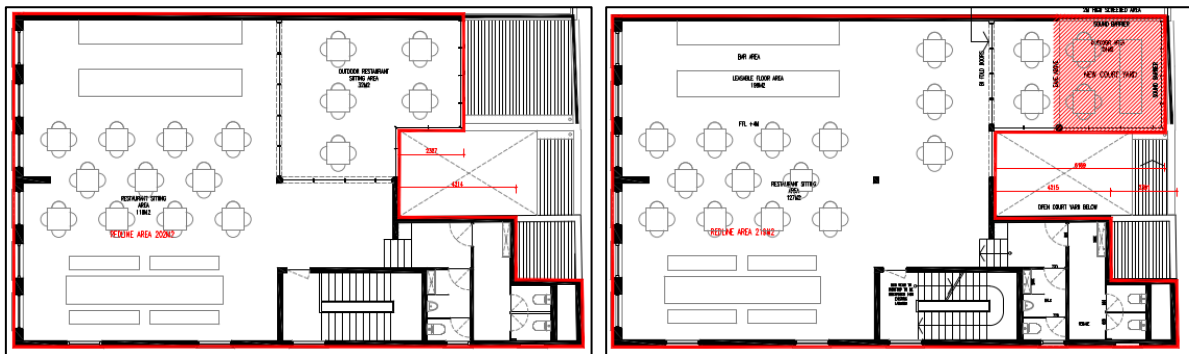


Figure 7 – Existing and proposed first floor plan

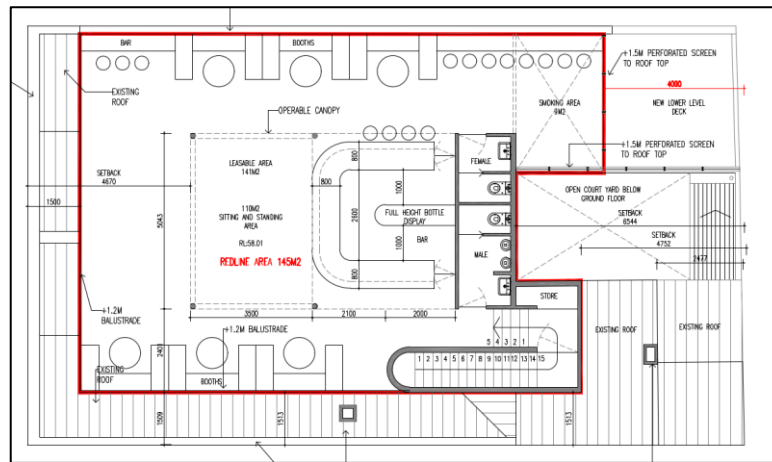


Figure 8 - Roof top terrace

106. The primary entry is to be maintained along Brunswick Street. This location provides a high level of public safety and an opportunity for surveillance (both passive and active), in particular to the intersection with Johnston Street, as well as providing good access to infrastructure as encouraged by Clause 22.09-3. This should discourage anti-social behaviour by virtue of eyes on the street.
107. A designated smoking area is provided on site within the roof terrace, which will minimise the need for patrons to spill out on the street and also the potential for cigarette butt litter. The floor plans provide toilets to the new roof top terrace, including maintaining the existing toilets at ground and first floor level, which provides a good level of onsite amenity.
108. A bin storage room is provided to the rear of the premises, accessible from the kitchen store area and externally via a roller door to the eastern abutting laneway. The advertised Waste Management Report (dated 2 April 2020) states that the premise will utilise one 660L General Waste Bin and one 240L Recycling Bin (including glass). Collections times for the bins will vary between 2 to 3 times per week. The report states these bins will be collected from Johnston Street by a private waste contractor. Provision has also been made for hard waste and e-waste with the plan.
109. The WMP was referred to Council's City Works Unit for review. This review found the WMP to be unsatisfactory for the following reasons:
 - (a) *The total size of the bin storage area by square metres to be provided;*
 - (b) *Food waste diversion should be included as a requirement;*
 - (c) *Investigate minimising proposed collections per stream*
110. In response to the concerns raised by the City Works referral, an amended WMP dated 29 July 2020 was received 7 August 2020. This plan was reviewed by Council's City Works Unit who have confirmed that the updated WMP was satisfactory. This includes the provision of food organic waste bins, of which the venue is anticipated to generate 939 litres per week.

Hours of Operation

111. As discussed earlier in this report, the current hours of operation with respect to the ground and first floors is to remain unchanged. The proposed roof terrace is to have the following operational hours (as outlined in the NAAP):
 - (a) Monday to Saturday 10.00am to 12.30am the following morning;
 - (b) Sunday 10.00am to 11.00pm;
 - (c) Good Friday & ANZAC Day 12 noon to 12.30am the following morning;
 - (d) Sunday on the eve of a public holiday and Sunday of Johnston Street Fitzroy Spanish Festival 10.00am to 12.30am the following morning.

112. The subject site is located approximately 58m from the nearest residential zone (Mixed Use Zone to the north-west). Clause 22.09-3 discourages outdoor areas within licenced venues operating beyond 10pm, unless the responsible authority is satisfied that it will not adversely affect the amenity of the area. The subject site is located within a core entertainment precinct, where these type of venues are typical. It is also 58m from the nearest residential zone. Subject to conditions relating to noise attention it is considered that the proposed roof terrace (outdoor area) is acceptable. Specifically in relation to noise impacts where the combination of noise limiters, provision for seating (i.e. limited vertical consumption) and acoustic walls will provide sufficient protection to the nearest sensitive interfaces. This is discussed in more detail later in this report however, has concluded that the operating past 10pm is acceptable.
113. To reduce the potential negative cumulative impacts with other venues, Practice Note 61 identifies reducing the patron numbers after 11pm. This is already evident under the existing permit which requires to have reduced its total patron numbers to 200 by 1am. In seeking to reduce the potential negative cumulative impacts Council's Community Health and Safety Unit has recommended:
- (a) The rooftop close are 12 midnight, to ensure the for safe patron dispersal and avoid detrimental cumulative impacts.
 - (i) This will also allow a one hour period in lieu of a 30 minute to reduce the overall number of patrons down to 200;
 - (b) Last drinks be called at 11.30pm;
 - (c) No new patrons be permitted entry or passouts provided after 11.30pm;
 - (d) Incorporate multiple safe exit points (no passouts allowed) to reduce bottleneck crowding while exiting the premises.
114. It is not considered necessary to incorporate a condition for the staggering of patrons off the roof terrace. The existing conditions of the permit only allow a maximum of 200 patrons on the premises after 1.00am. If the venue is at maximum capacity, this will effectively require the venue to ensure 195 patrons have left the venue between 12.30am and 1am. If at full capacity, the venue's design and layout will allow patrons on the roof (113) to exit via the stairwell without requiring to enter the existing venue as the stairwell is closed off from the rest of the venue. The remaining patrons within the venue can exit via separate exits to both Brunswick Street and Johnston Street and through staff closing off sections of the venue to reduce the overall number of patrons. This is an existing requirement of the venue's operation with staff already practiced in this procedure.
115. Alternative to the staggering of patrons, Council's Community Health and Safety recommended nuanced security measures with the development of a detailed and sophisticated NAAP, which could be incorporated and include:
- (a) *Details on numbers;*
 - (b) *Timeframes and locations of stationed security guards in different 'sections' of the venues;*
 - (c) *Have a procedure in place when sections of the venue are at capacity;*
 - (d) *Development of a staged/timed patron dispersal plan through the venue (when at capacity) including entry/exit points;*
 - (e) *Pass out procedures for the rooftop;*
 - (f) *Strategies in place to avoid glass transport through the venue (i.e. via imposing a 'last drinks' call at 11.30pm on the rooftop);*
 - (g) *All background music reduced/turned off on the rooftop at 11.50pm.*
116. As there will be no staggering from the roof bar the above requirements are considered appropriate. A condition will be included for an updated NAAP to incorporate the above requirements.
-

117. With regards to the possible spilling out of patrons at 12.30am, should the venue be unable to accommodate patrons internally, it is not considered unreasonable for patrons to be exiting the site at this time given the site's location within a core activity centre. It is noted that there are other venues in the area (specifically The Provincial) which also require patron numbers to be reduced at 12.30am. The surrounding entertainment precinct has numerous other late night venues, a number of which are late night venues. Given this saturation of venues within the surrounding area it is considered that this combined overflow from both the subject site and The Provincial can be accommodated in these surrounding venues should patrons not be returning home. Furthermore, it is unlikely that the maximum number of patrons will be dispersing at exactly the same time. A staggered exit is more likely.
118. Overall the proposed hours of operation are considered acceptable for the following reasons:
- (a) The site's location within a Commercial 1 Zone/Activity Centre,
 - (b) Noise attenuation measures (to be discussed later in this report) and distance to the nearest residential zone (58m) the hours are considered reasonable.
 - (c) The proposed hours are also identical to the permitted hours of the adjoining roof terrace at the Provincial (paragraph 49) which cease operations on the roof at 12.30am.
 - (d) The hours of operation are also reasonable given the site's location within a Core Entertainment Precinct (as defined within clause 22.09).
 - (e) The site's location with convenient access to public transport and taxis along Brunswick Street and Johnston Street, it is unlikely patrons will need to travel through the residential area to the north-east.
119. On this basis, and subject to existing and proposed permit conditions to further mitigate potential noise impacts (as discussed further in the report), Council officers are satisfied that the liquor licence hours would not result in adverse amenity impacts.
120. Furthermore, Council's Compliance Branch have advised that no recent complaints have been received to these existing operations. Typically complaints relate to operating outside of the permitted hours or excessive noise from a venue.
121. Subject to the conditions discussed, the proposed hours of operation are considered acceptable and generally in line with the hours permitted for licenced venues in commercial zones under the Scheme.
122. As the original permit was approved in December 1999, there are no conditions with respect to deliveries or the emptying of bottles in bins. Conditions will therefore be included requiring that the emptying of bottles into bins will not occur after 10pm on any day, before 7am Monday to Saturday, or before 9am on a Sunday or Public Holiday.
123. An additional condition will also be included stating that deliveries 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. These conditions are consistent with clause 22.09-3.

Patron Numbers

124. The licensed premises seeks to increase the maximum number of patrons from 300 patrons to 395 patrons, corresponding with the expansion of the premises into the first floor courtyard and roof terrace. The applicant has provided a Building Surveyor's Report which states that the maximum occupant capacity of the premises as a whole would be 395, and therefore the proposed patron numbers will not exceed the safe or amenable capacity of the building as encouraged by the policy.
125. The total number of patrons is considered to be appropriate for the context of the site, being located within a Core Entertainment Precinct (Brunswick Street between Gertrude Street and Alexander Parade) where larger licenced premises (with a capacity exceeding 200 patrons) are encouraged to be located.

126. While the patron numbers are not identified on the plans, the town planning report submitted with the application suggests that the ground floor is to have a maximum of 122 patrons, the first floor is to have a maximum of 160 patrons and the roof terrace is to have a maximum of 113 patrons. Based upon the Building Surveyor's report and assessment against the National Construction Code (NCC), a ratio 1 person per 0.5sqm to 1sqm i.e. 113 patrons is recommended to ensure a safe capacity of the roof terrace. Furthermore, Council's Compliance Branch and Social Planning Unit have raised no concerns with the increase in patron numbers. Potential noise impacts are discussed further below.
127. Condition 7 of the existing permit requires tables and chairs provided for at least 75 percent of patrons attending the premises at any one time. This condition is not proposed to be altered and will be retained within any amended permit. The proposed amendment has provision for seating however has not applied to have regulated (fixed) seating for the roof terrace. For reasons relating to heritage, which will be discussed later in this report, and to ensure compliance with condition 7 a condition will be included for all seating along the northern and southern perimeter of the roof top level to be fixed.

Noise

128. The primary noise sources from the premises are generated by music and patron noise. Conditions 3, 4, 5, 6, 12, 13, 14 and 15 of the existing permit provide protection to adjoining properties through:
- (a) Compliance with the State Environmental Protection Policy – Control of Noise from Commercial, Industry and Trade (SEPP N-1) and State Environmental Protection Policy – Control of Music Noise from Public Premises (SEPP N-2);
 - (b) Installation of signs at exits for patrons to respect neighbours and leave quietly;
 - (c) Closing of first floor doors when amplified music above background levels is being played;
 - (d) Installation of a noise limiter;
 - (e) Installation of a noise barrier along the northern and eastern sides of the roof area to the east of the courtyard;
 - (f) No live music after 1.00am; and
 - (g) Not permitting security alarms to produce noise beyond the premises.

Music Noise

129. The existing venue is permitted to play amplified music associated with a DJ and background music via a speaker located within the outdoor area on the first floor.
130. It is proposed to maintain amplified music associated with a DJ and background music via a speaker located within the outdoor area on the first floor. Existing conditions including the requirements of SEPP N-2, closing of the first floor bi-fold doors when amplified music is above background levels, installation of a noise limiter and noise barrier will still remain applicable. This will ensure noise from the ground and first levels are addressed.
131. With regards to the roof terrace, it is proposed to play live and amplified background music played from the terrace. An acoustic report along with two acoustic memos have been provided and reviewed by Council's Acoustic consultants. The review found that noise associated music can be sufficiently managed subject to the installation of an additional noise limiter, construction of an acoustic wall along the northern boundary, installation of a glass balustrade along the southern section of the terrace and limiting live performances in the outdoor patron area to acoustic music (noting that all such performances are to comply with SEPP N-2). In addition to the above requirements, the site will still be subject to the requirements of SEPP N-2.

132. The applicant has also committed to, *“during the installation and calibration of the noise limiter, updated background noise measurements will be taken at all sensitive receivers identified (inclusive of residents on Argyle Street) whereby appropriate SEPP N-2 noise limits can be derived. This process removes all practical doubt regarding compliance and resolves any potential inaccuracies in the modelling and background noise measurements conducted to date”*. Council’s Acoustic Consultants have confirmed that is an appropriate measure.

Patron noise

133. As discussed in the above section, the roof terrace is to incorporate an acoustic wall along the northern boundary and installation of a glass balustrade along the southern section of the terrace.
134. The memo dated 10 November 2020 confirmed the locations of all nearest sensitive interfaces affected (No. 120 Johnston Street and Nos. 99 and 127 Argyle Street), appropriate background levels and resulting patron noise targets. In addition, the review also took into account existing patron noise from the existing roof top bar to the west at The Provincial. Noting that due to Covid-19 restrictions, background noise testing could not be carried out at present.
135. The combination of confirming the nearest sensitive interfaces, calculating appropriate background levels and resulting patron noise targets and noise emanating from the Provincial has produced modelled of patron noise levels to the above receivers. Council’s Acoustic Consultant has confirmed that the levels are acceptable and should not result in unreasonable impacts to the receivers.
136. Council’s Acoustic Consultant has advised that the venue would most likely achieve compliance with the relevant requirements. This is due to the combination of existing conditions, noise attenuations measures discussed above, the nature of the venue, which has provision for the serving of food at all times, significant seating available and fixed music limits set by the noise limiter. In addition, conditions 3, 4, 5, 6, 12, 13, 14 and 15 of the existing permit will remain in place and provide protection.
137. Subject to conditions discussed above, noise generated from the operation of the venue is not expected adversely impact the amenity of the area.

Buildings and works

138. Pursuant to Clause 34.01-8 of the C1Z, before deciding on an application, the responsible authority must consider the buildings and works decision guidelines.
139. Movement of vehicles to the site for supplies, waste removal, and emergency services will remain unchanged under the proposed development scheme.
140. There will be no car parking provided on site under the proposed scheme. A waiver of car parking is considered under Clause 52.06 provisions later in the report.
141. With regard to the streetscape presentation, a full heritage assessment is discussed later in this report. It is emphasised that the proposed additions are primarily located on the roof and setback from the main facades so as not to present a dominant feature. Therefore, it is considered that the proposed works will have no significant impacts on the Brunswick Street or Johnston Street interface. No alterations are proposed to the ground floor interface to either street.
142. An existing waste storage area is provided to the rear of the building and accessed via the rear laneway. As has been discussed earlier in this report, subject to conditions, the submitted WMP and storage of waste and recycle bins is considered satisfactory
143. The title shows that the building is under one ownership. Responsibility of maintenance would need to be outlined as required under the relevant lease agreement/s. There is no concern in this regard.

144. The C1Z decision guidelines require consideration of overlooking and overshadowing to adjoining land in a GRZ, NRZ, RGZ or TZ. All adjoining land is located within the C1Z, therefore this decision guidelines does not apply.
145. The C1Z decision guidelines also require consideration of the impact on existing rooftop solar energy facilities on dwellings on adjoining lots in a GRZ, MUZ, NRZ, RGZ or TZ. It is reiterated that all adjacent land is located within the C1Z. Therefore, impact on existing rooftop solar energy facilities is not a valid consideration under the C1Z decision guidelines.
146. The use on site will remain unchanged. It is expected that the bar will continue to be connected to required utility services and infrastructure. There are no foreseeable conflicts in this regard.
147. This application does not proposes any residential component and therefore ResCode is not applicable.

Heritage

148. The decision guidelines from *Clause 43.01-4 Heritage Overlay* and policy from *Clause 22.02 (Development Guidelines for Sites Subject to the Heritage Overlay)* of the Scheme are used to assess the proposed works, in-order to ensure that there is consistency achieved with the heritage values of the surrounding area.

Demolition

149. Clause 22.02-5.1 generally discourages the demolition of part of a contributory building or removal of contributory elements unless that part is not visible from the street frontages (other than a laneway), abutting park or public open space, and the main building form including roof form is maintained.

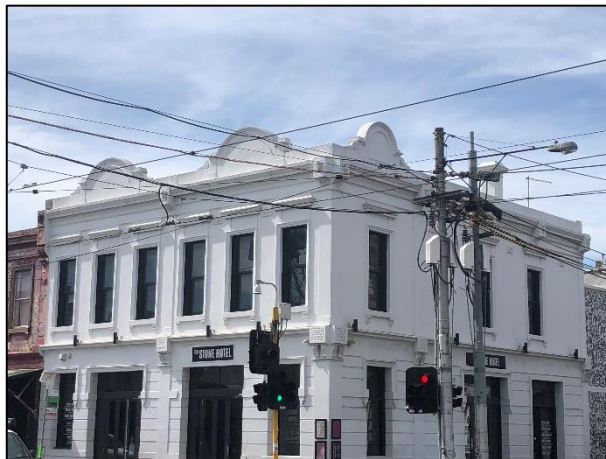


Figure 9 - Subject site with views to the parapet walls

150. The proposed development will remove a large portion of the existing roof to make way for the roof terrace. A portion of the roof to Brunswick Street and Johnston Street (1.5m to the southern and western boundaries) will be retained (figure 9). The parapets effectively screen the existing roof from view and as such demolition of the roof will also be screened from view. Only partial views are possible from the rear boundary when travelling west along Johnston Street.

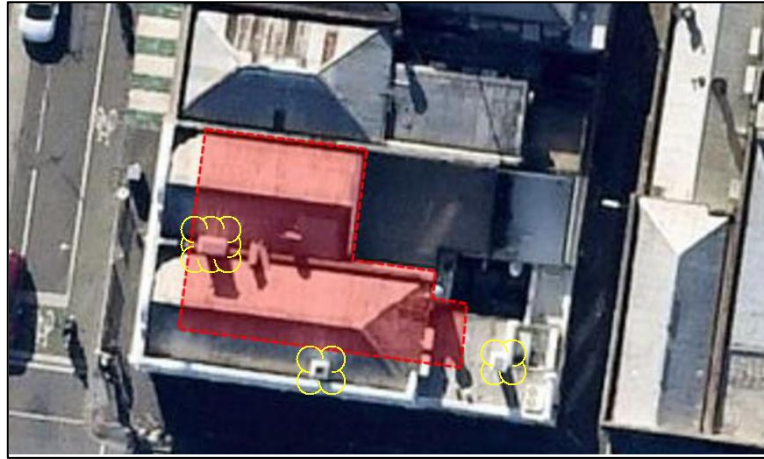


Figure 10 – Extent of roof demolition (highlighted red) with chimneys clouded yellow

151. In addition to the roof from, there are three chimneys (figure 10 – clouded yellow) which are considered contributory elements. Two of these chimneys are proposed to be retained, with one towards Brunswick Street to be demolished to make way for the terrace. The chimney towards Brunswick Street being the largest of the three. All three chimneys are visible or partially visible from the street and given that they are contributory features a condition will be included the chimney towards Brunswick Street to be retained. This will effectively result in the proposed terrace being constructed around the chimney.



Figure 11 – Chimney partially visible from Brunswick Street



Figure 12 - Brunswick Street Chimney



Figure 13 - Chimneys visible from Johnston Street

152. There are concerns that the chimney could be damaged during construction and post occupation given its location within the roof terrace. To protect this contributory feature, a condition will be included for a heritage conservation report to be submitted. This report must include measures/recommendations that will ensure that the chimney is not damaged either during construction during the post occupation stage when the terrace is in operation. .
153. In addition, given the nature of the proposed demolition works, a separate condition will be included for a structural report to be submitted to demonstrate how the chimney would be retained.
154. In response to the concerns raised by Council's Heritage Advisor with regards to the extent of roof which is being demolished. Clause 22.02-5.1 generally discourages the demolition of part of a contributory building or removal of contributory elements unless that part is not visible from the street frontages (other than a laneway), abutting park or public open space. It is submitted that the parapet wall generally screens the roof form and therefore this part of the roof the generally not visible to either the main frontages along Brunswick or Johnston Streets. The extent of demolition is therefore supported.
155. Given the above and retention of the main built form, the extent of demolition it is considered acceptable. The existing ground and first floor façade is to be retained and demolition generally concealed from view, which in supports conservation of the heritage precinct.

Additions and Alterations

156. *Clause 22.02-5.7* provides direction as to the appropriate location for new works. It states (relevantly) that additions to a contributory building should be located towards the rear of the site and should be encouraged to be sited within the 'envelope' created by projected sight lines.
157. The extension to the first floor in the north-east corner will not be visible Brunswick Street. The works will only be visible from an oblique angle along Johnston Street and within the rear laneway. As the works are generally screened from view, it is considered that they will not impact on the heritage significance of the building.
158. The proposed roof terrace is to be set back 1.5m from both Brunswick and Johnston Street. While the proposed 1.2m high balustrade to the roof terrace would sit comfortably below the existing parapet, concern was raised in relation to the visibility of patrons on the deck. To demonstrate that persons on the roof terrace will not be visible from either Brunswick or Johnston Streets, sketch plans were submitted on the 29 September 2020 (figures 14 - 16).
159. The viewline diagrams show that with seating incorporated along the southern section of the terrace, patrons are blocked from view. However, on the western interface to Brunswick Street, this does not appear to be the case. Figure 15 appears to demonstrate compliance with a person standing slightly behind the parapet but not directly adjacent to the parapet. If a person was standing directly adjacent to the parapet the diagram shows that they would be visible.

As such, a condition will be included for fixed seating to be also placed along the western section of the terrace. This should ensure persons are screened from view along Brunswick Street and is an identical design response which is proposed along Johnston Street.

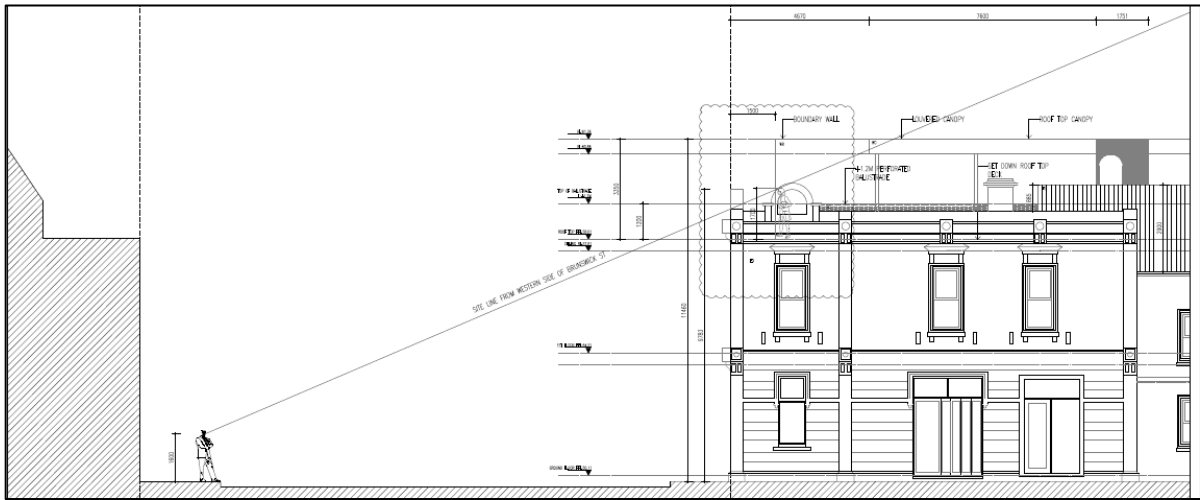


Figure 14 - Sightline diagram from Brunswick Street - Sketch plans (29 Sept 2020)

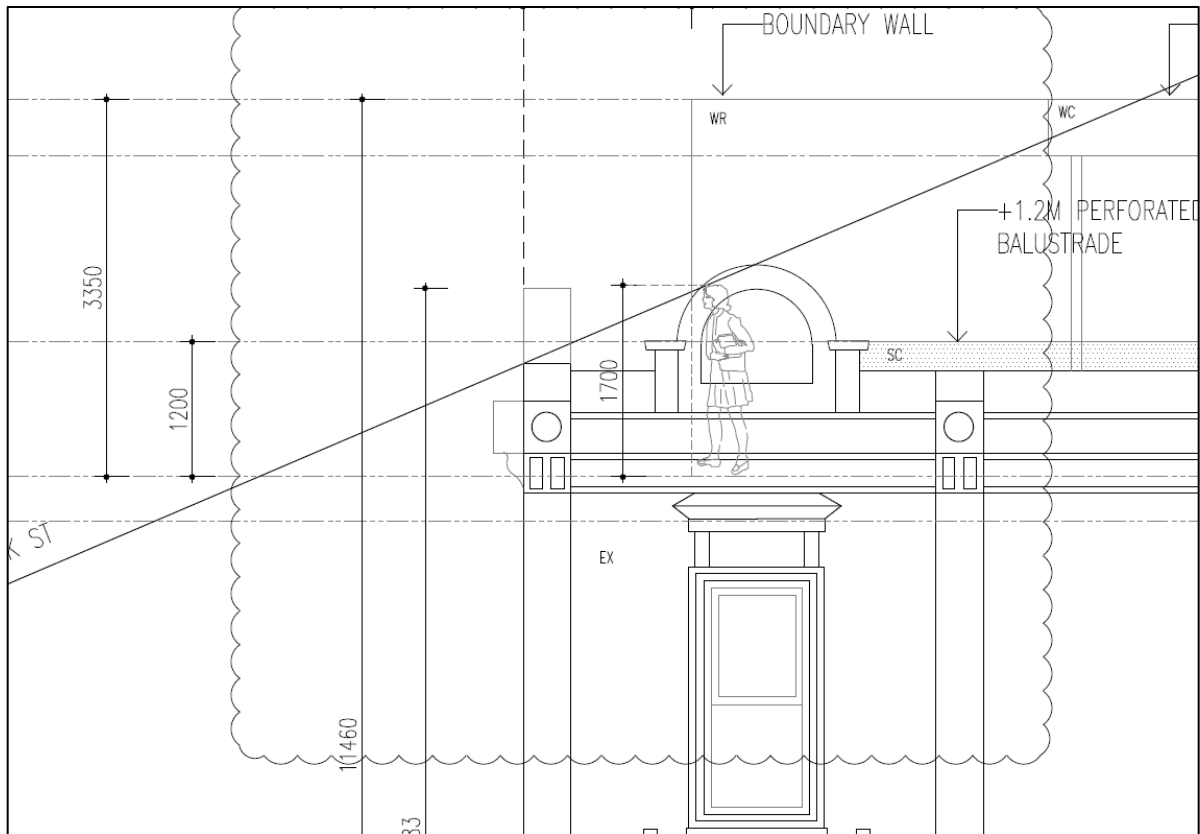


Figure 15 - Enlarged cut out of Sightline diagram from Brunswick Street - Sketch plans (29 Sept 2020)

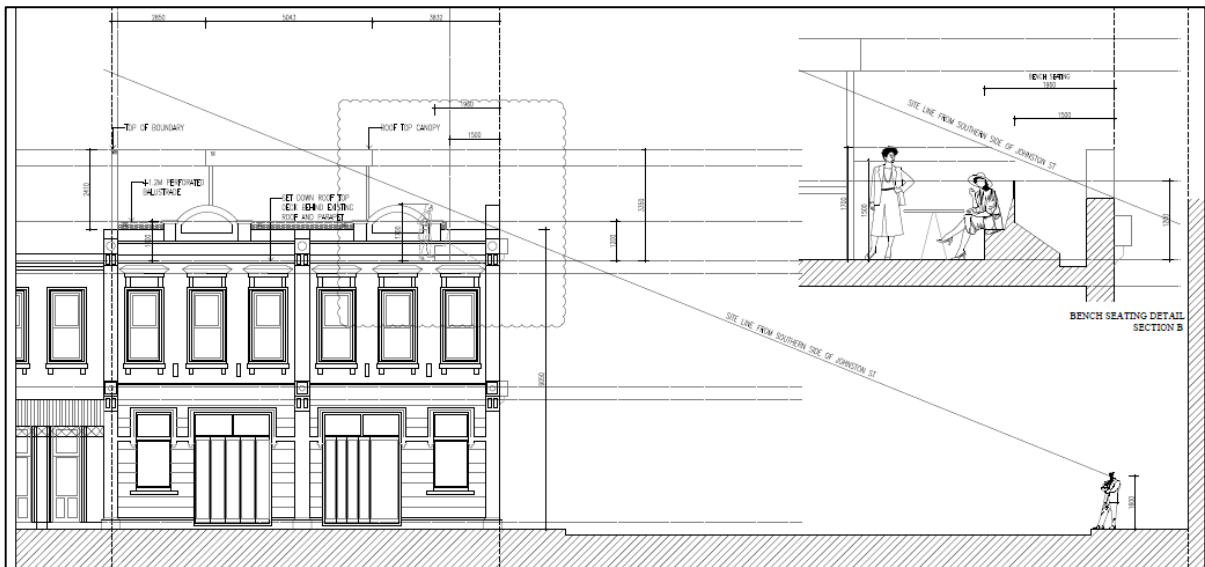


Figure 16 - Sightline diagram from Johnston Street - Sketch plans (29 Sept 2020)

- 160. The 1.5m setback is therefore considered sufficient to adequately screen both the balustrade and activity within the terrace to both Brunswick Street and Johnston Street.
- 161. In order to address acoustic concerns, it was deemed necessary to install an additional glass balustrade above the fixed seating along the southern interface of the terrace. To demonstrate that the balustrade would result in a maximum height of 1.6m above the FFL. To demonstrate that the balustrade will not be visible from Johnston Street, the applicant submitted a revised sightline diagram (figure 17) on the 6 November 2020. This diagram demonstrates that the balustrade will not be visible from the southern side of Johnston Street as it will be blocked from view by the parapet wall.

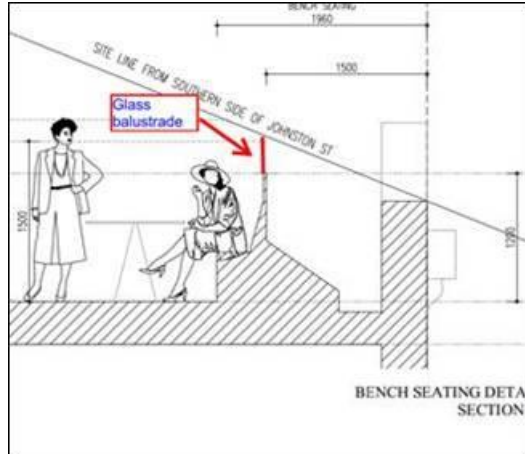


Figure 17 - Sightline diagram submitted 6 November 2020

- 162. While activity on the terrace can be suitably concealed with the proposed setback of 1.5m, concerns is raised with the northern boundary wall, which is also set back 1.5m from Brunswick Street and is to have a maximum height of 3.35m, therefore it will be clearly visible from Brunswick Street above the sightline. The screen/boundary wall is required to the roof deck for acoustic attenuation purposes as discussed earlier, however to address heritage concerns associated with its visibility, it has been determined that the setback of the screen can be increased to 3.5m from Brunswick Street and reduced to a maximum height of 2.5m, whilst still maintaining an adequate noise barrier. This is considered to sufficiently screening the wall from view (figure 18).

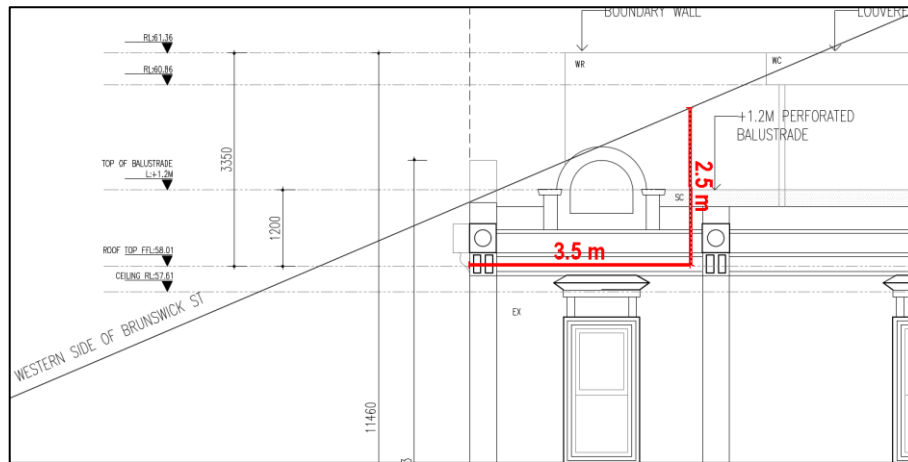


Figure 18 - Section showing visibility of northern boundary wall

163. The sightline diagram provided also demonstrates that the 3.3m high canopy associated with the bar and standing area will be partially visible, notwithstanding the 4.67m setback from Brunswick Street and 3.9m from Johnston Street. Council’s Heritage Advisor does not support the canopy being visible from the street (figures 15 and 17).
164. Clause 22.05-5.7.2 (industrial, commercial and retail heritage place or contributory elements) of the Scheme encourages upper level additions and works to:
- (a) *Respect the scale and form of the existing heritage place or contributory elements to the heritage place by being setback from the lower built form elements. Each higher element should be set further back from lower heritage built forms.*
 - (b) *Incorporate treatments which make them less apparent.*
165. Although partially visible from the street, the canopy is considered to be sufficiently setback into the terrace to present as a recessive element to the lower built form elements. This is further assisted through the use of a white matt finish and the partial operability of the canopy to reduce the solid nature of the structure and incorporating a treatment which makes them less apparent. The canopy will also be providing shading to patrons. The setbacks ensure that a two storey street wall is maintained with a recessed roof terrace/third storey (bar). It also allows for the existing two storey section of the building to be the dominant feature presenting to both street frontages. It also maintains a relatively consistent street wall height.
166. The stair access within the south-east corner will be visible from Johnston Street. The structure will vary in height of between 0.88m above the parapet wall to 2.9m within the rear setback. This element also incorporates a dark timber cladded finish which is visible from Johnston Street. Council’s Heritage Advisor has raised concerns with respect to the use of the dark timber cladding not being, “*discrete in appearance to avoid it being a distracting new element clearly visible from the public realm*”. As such, it has been recommended that the proposed stair access structure must be utilitarian in design and finished to match the colour of the surround roof cladding. It is agreed that the dark finish could present a distracting new element and as such a condition will be included for a more appropriate finish which is less dominant to the street.
167. It is considered that given the location of this staircase to the rear and setback, it is sufficiently screened from the main heritage façade. When viewed from the junction of Brunswick Street and Johnston Street it will not be visible, with the two storey street wall being the dominant element. Subject to condition with respect to the external finish, the staircase location is considered satisfactory.
168. As per the recommendation of Council’s Heritage Advisor, a condition will be included for the stair access structure to be finished to match the colour of the surround roof cladding.

Car parking

169. As discussed earlier in this report, the existing use has no on-site car parking. The existing venue creates a demand of 14 spaces. When the additional floor area is added within the first floor and roof terrace, this creates an additional demand of 5 spaces, bringing the total demand up to 19 spaces.
170. The additional car parking shortfall is considered acceptable in this case based upon the following:
- (a) The site is well serviced by public transport including:
 - (i) Tram services operating along Brunswick Street;
 - (ii) Bus services that operate along Johnston Street;
 - (iii) Tram services operating along Nicholson and Smith Streets, 326m and 485m, west and east of the site, respectively; and
 - (iv) Brunswick Street is frequented regularly by taxis and the site is located with 3km of the CBD.
 - (b) The high demand and limited availability for on-street parking would dissuade staff and customers from driving, particularly in a location where other modes of transport are readily available.
 - (c) The short-term parking restrictions in the surrounding area would ensure that there is a regular parking turnover in the area for those that do drive to the site.
 - (d) Council's Engineering Department has no objection to the proposal, satisfied that it is in-line 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 usage.

Environmental Sustainable Development (including Stormwater Management)

171. Pursuant to Clauses 22.16 (Stormwater Management – Water Sensitive Urban Design) 22.17 (Environmental Sustainable Development), the development of a non-residential building with a gross floor area of between 100sqm and 1,000sqm must be accompanied by a Sustainable Development Assessment (SDA). The applicant has been accompanied by an SDA prepared by Low Impact Development Consulting (LID).
172. A summary of the major ESD initiatives committed to include:
- (a) Improved energy efficient double glazed windows to the first floor extension;
 - (b) Lighting density throughout the development will be within the Building Code of Australia 2019 maximums;
 - (c) Potable (drinking) water saving measures including low flow toilets, taps and dishwashers;
 - (d) Full height glazing to improve internal daylight amenity;
 - (e) Reduced indoor pollutants from the use of low off-gassing materials such as low VOC paints and adhesives, and low formaldehyde products;
 - (f) Avoidance of the use of endangered rainforest timbers in this development;
 - (g) Use of more environmentally friendly materials alternatives for concrete, insulation and other building components;
 - (h) Provision of a 1sqm raingarden (not shown on plans).
173. The SDA/application has been reviewed by Council's ESD Officer who has found that the proposal in its current form does not meet Council's Environmental Sustainable Design Standards. The following deficiencies have been identified:
-

- (a) **Stormwater Treatment:** *The development performs poorly in terms of stormwater (32% STORM score). A Strategy to improve this outcome to reflect best practice is required.*
- (b) **Waste Management:** *No mention of organic waste management in the ESD report. Clarify strategy (and provide facilities) for organic waste storage and collection*
- (c) **Biodiversity:** *Consider incorporating a green roof or other greenery to increase biodiversity value of the project.*

174. With regards to point (a) and stormwater treatment, it is considered that the collection of additional stormwater from the roof terrace is possible. Although a STORM rating of 100% may not be feasible an increased rate for 32% is considered possible. A condition will be included for stormwater to be collected from the roof terrace. This will increase the overall STORM rating.

175. In regard to point (b), organic waste has already been addressed under the revised waste management plan prepared by Ratio and dated 29 July 2020. In regard to point (c) It is considered that there is sufficient area for vertical greening to be accommodated on the walls or potentially within the roof terrace itself. The deficiency identified in points (c) will be included as condition of the permit accordingly. .

Objections

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

- (a) Noise from live music and patrons;
Paragraphs 128 to 137
- (b) Addition will be visible from the street and as such not in accordance with the relevant Heritage guidelines;
Paragraphs 138 to 168
- (c) Anti-social behaviour (intoxicated patrons);
Paragraphs 98 to 127
- (d) Car parking issues within the surrounding area;
Paragraphs 169 to 170
- (e) Excessive hours of operation past 11pm
Paragraphs 111 to 123

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

- (a) No checks/ lack of enforcement on existing venues with respect to noise;
Any application to amend an existing liquor licence permit must consider any relevant information about the previous and current operation of the premises including, but not limited to complaints received by relevant authorities such as the Yarra City Council, Victoria Police, and the Victorian Commission for Gambling and Liquor Regulation. As part of the review of this application, the amendment was referred to Council's Amenity enforcement Unit who have confirmed that there have been no recent complaints received.

All complaint received are investigated by Council Enforcement Unit and if found in breach could result in fines. Any breaches under this permit are enforceable under the permit conditions.

Proposed alteration to permit preamble

178. The following changes are proposed to the existing planning permit, with changes highlighted in **bold**.

Existing permit preamble

179. A waiver of car parking, buildings and works and for the sale and consumption of liquor for an existing tavern.

Amended permit preamble

180. A waiver of car parking, buildings and works and for the sale and consumption of liquor for an existing **bar**.

181. Subject to planning scheme amendment VC159, the land use term “tavern” has been replaced with “bar” under Clause 73.03 of the Yarra Planning Scheme.

Proposed alterations to permit conditions

Existing Condition 1

182. Before the patron numbers are increased, 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 by Bagnoli Architects received by Council on 20 November 2015 but modified to show:

- (a) All requirements of the endorsed acoustic report (condition 12) (where relevant to be shown on the plans).

Amended Condition 1

183. Before the **sale and consumption of liquor or buildings and works associated with the amended permit 990390.02** 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 Bagnoli Architects **and dated 5 August 2018 (Issue 3)** but modified to show:

- (a) All requirements of the endorsed acoustic report (condition 12) (where relevant to be shown on the plans).
- (b) **The screen to the northern boundary of the roof terrace reduced to a maximum height of 2.5m above the finished floor level of the terrace and set back a minimum of 3.5m from the western title boundary.**
- (c) **Any balustrading along the northern boundary of the roof terrace between 1.5m and 3.5m from the western boundary to be no higher than 1.2m above the finished floor level, unless otherwise concealed when viewed from the opposite site of Brunswick Street.**
- (d) **Construction of a clear glass (or suitable similar alternative material) balustrade to the southern section of the roof terrace, located above the seating and to a maximum height of 1.6 metres above the finished floor level of the roof top level.**
- (e) **The retention of all chimneys.**
- (f) **All seating along the northern and southern perimeter of the roof top level to be fixed.**
- (g) **Fixed seating to be incorporated along the entire length of the western perimeter of the roof top level.**
- (h) **The location, size and capacity of the raingarden.**
- (i) **Incorporating a green roof or other greenery to increase biodiversity value of the project.**
- (j) **The stair access structure to be finished to match the colour of the roof cladding of the existing building.**

- (k) **The ‘existing’ red line area within the ground floor consistent with the previously approved ground floor plan (i.e. under 990390.01).**
- (l) **The STORM report updated to include collection of stormwater from the roof top bar area.**
- (m) **Any changes as required by the endorsed conservation management plan pursuant to Condition 26.**
- (n) **Any changes as required by the endorsed structural report pursuant to Condition 28.**
- (o) **Any changes as required by the endorsed acoustic report pursuant to Condition 15.**

Existing condition 7

184. Not more than 300 patrons are permitted on the premises at any one time, decreasing to 200 patrons after 1.00am, with tables and chairs provided for at least 75 percent of patrons attending the premises at any one time.

Amended condition 7

185. Not more than **395** patrons are permitted on the premises at any one time, decreasing to 200 patrons after 1.00am, with tables and chairs provided for at least 75 percent of patrons attending the premises at any one time.

Existing condition 12

186. Prior to the endorsement of plans under Condition 1, 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 ViPAC and dated 7 March 2016, but modified to include (or show, or address):
- (a) The first floor, bi-fold doors closed at all times that amplified music above background noise is played on the first floor;
 - (b) The noise limiter installed in the venue and set up by a suitably qualified acoustical consultant to ensure that music noise levels on both the ground and first floor of the venue do not exceed the SEPP N-2 noise identified within the ViPAC report;
 - (c) A noise barrier installed along the northern and eastern sides of the roof area to the east of the courtyard. The barrier will have a minimum height of 2m, made of solid construction and have no gaps.

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.

Amended condition 12 (renumbered condition 15)

187. **Before the sale and consumption of liquor or buildings and works associated with the amended permit 990390.02 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 Enfield Acoustics Pty Ltd and dated 17 November 2019, but modified to include:**

- (a) **The recommendations as outlined in Acoustic Technical Memorandums received by Enfield Acoustics Pty Ltd and dated 23 July 2020 and 10 November 2020**

but further modified to include:

- (b) **All amplified music within the outdoor patron areas is to be played through a suitable music noise limiter / limiter compressor the compressor and meet the following requirements:**
- (i) **Noise limiter to incorporate a frequency discriminating sound analyser and be able to be set to control octave band music levels.**
 - (ii) **The noise limiter to be installed in a tamperproof box or have a software lock, not accessible to personnel other than the venue's management and acoustical consultant.**
 - (iii) **The system is to be calibrated by the acoustical consultant to ensure that music levels played in the outdoor area/s comply with SEPP N-2.**
 - (iv) **The noise limiter device to be recalibrated as necessary to maintain SEPP N-2 compliance when any changes are made to the audio equipment or to the venue generally, which have the potential to affect the SEPPN-2 compliance status of the venue.**
- (c) **Live performances within the outdoor patron area are to be restricted to acoustic music only and to comply with the requirements pursuant to SEPP N-2.**
- (d) **The operating hours of the rooftop bar, as per condition 11.**

The acoustic report must 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.

Existing condition 17

188. This permit will expire if the use is not commenced within two years from the date of this permit. The Responsible Authority may approve an extension to this time limit if a request is made in writing within 3 months of expiry.

Amended condition 17 (renumbered condition 29)

189. **The amended permit 990390.02 will expire if:**
- (a) **The development is not commenced within two years of the date of the amended permit 990390.02;**
 - (b) **The development is not completed within four years of the date of the amended permit 990390.02; or**
 - (c) **The sale and consumption of liquor associated with the amended permit 990390.02 is not commenced within two years of the date of this amended 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.

New conditions

New condition 8

190. Of the 395 patrons permitted on the premises at any one time, not more than 113 patrons are permitted on the roof top bar at any one time.

New condition 11

191. The sale and consumption of liquor on the roof top bar must only operate between the following times:

- (a) Monday to Saturday between 10:00am and 12:30am the following morning;
- (b) Sunday between 10:00am and 11:00pm;
- (c) Good Friday and Anzac Day between 12:00 noon and 12:30am the following;
- (d) Sunday on the eve of a public holiday and Sunday of Johnston Street Fitzroy Spanish Festival between 10:00am and 12:30am the following morning.

New condition 13

192. Before the sale and consumption of liquor or buildings and works associated with the amended permit 990390.02 commences, an amended Noise and Amenity Action Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Noise and Amenity Action Plan will be endorsed and will form part of this permit. The amended Noise and Amenity and Action Plan must be generally in accordance with the Noise and Amenity Action Plan dated April 2020, but modified to include (or show, or address):
- (a) Details on numbers of security guards;
 - (b) Timeframes and locations of stationed security guards in different 'sections' of the venues;
 - (c) Have a procedure in place when sections of the venue are at capacity
 - (d) Development of a staged/timed patron dispersal plan through the venue (when at capacity) including entry/exit points;
 - (e) Pass out procedures for the rooftop;
 - (f) Strategies in place to avoid glass transport through the venue (i.e. via imposing a 'last drinks' call at 11.30pm on the rooftop);
 - (g) All background music reduced/turned off on the rooftop at 11.50pm.

New condition 14

193. Before the sale and consumption of liquor or buildings and works associated with the amended permit 990390.02 commences, a Noise and Amenity Action Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. Once approved, the Noise and Amenity Action Plan will be endorsed and will form part of this permit.

New condition 16

194. Live performances within the outdoor patron area are to be restricted to acoustic music only and to comply with the requirements pursuant to SEPP N-2.

New condition 21

195. Before the sale and consumption of liquor or buildings and works associated with the amended permit 990390.02 commences, a Waste Management Plan generally in accordance with the Waste Management Plan prepared by Ratio Consultants and dated 29 July 2020 must be submitted to and approved by the Responsible Authority. Once approved, the Waste Management Plan will be endorsed and will form part of this permit.

New condition 22

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

New condition 23

197. Emptying of bottles and cans into bins may only occur between 7am and 10pm on Monday to Saturday or after 9am on a Sunday or public holiday.

New condition 24

198. Deliveries 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.

New condition 25

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

New condition 26

200. Before the demolition commences, a Conservation Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Conservation Management Plan will be endorsed and will form part of this permit. The Conservation Management Plan must be prepared by a suitably qualified heritage architect or similar and include, but not be limited to, the following:
- (a) Fully dimensioned and accurately measured plans at a scale of no less than 1:50 prepared by a suitably qualified heritage practitioner/ architect, detailing the retention of the chimney adjacent to the Brunswick Street interface.
 - (b) Recommendations for protection of the chimney:
 - (i) during construction;
 - (ii) on-going protection post occupation of the roof terrace;
 - (iii) having regard to the *Burra Charter: the Australian ICOMOS Charter for Places and Cultural Significance 1999 (Australia ICOMOS)*.
 - (c) Any modifications to the roof terrace to facilitate protection of the chimney as recommended under Condition 26(b).

New condition 27

201. Before the demolition commences, a Conservation Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Conservation Management Plan will be endorsed and will form part of this permit. The Conservation Management Plan must include, but not be limited to, the following.

New condition 28

202. Before the demolition commences, a structural report to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the structural report will be endorsed and will form part of this permit. The structural report must be prepared by a suitably qualified structural engineer, or equivalent, and demonstrate the means by which the chimney adjacent to the Brunswick Street interface will be supported during demolition and construction works to ensure its retention, including any recommendations from the endorsed Conservation Management Plan pursuant to Condition 26.

Conclusion

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

RECOMMENDATION

That the Planning Decisions Committee resolves to issue a Notice of Decision to Grant an amended planning permit 990390.02 for part demolition, buildings and works to extend the first floor, construct a roof top terrace with a maximum of 113 patrons, increase total patron capacity from 300 to 395 patrons, an increase to the 'red line' area to the first floor and include the proposed roof top terrace, a further reduction in the car parking requirements of the Yarra Planning Scheme at 298-300 Brunswick Street, Fitzroy VIC, generally in accordance with the plans and reports noted previously as the "decision plans" subject to the following changes to the permit preamble/conditions:

1. **Before the sale and consumption of liquor or buildings and works associated with the amended permit 990390.02 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 Bagnoli Architects and dated 5 August 2018 (Issue 3) but modified to show:**
 - (a) All requirements of the endorsed acoustic report (condition 12) (where relevant to be shown on the plans.
 - (b) The screen to the northern boundary of the roof terrace reduced to a maximum height of 2.5m above the finished floor level of the terrace and set back a minimum of 3.5m from the western title boundary.
 - (c) Any balustrading along the northern boundary of the roof terrace between 1.5m and 3.5m from the western boundary to be no higher than 1.2m above the finished floor level, unless otherwise concealed when viewed from the opposite site of Brunswick Street.
 - (d) Construction of a clear glass (or suitable similar alternative material) balustrade to the southern section of the roof terrace, located above the seating and to a maximum height of 1.6 metres above the finished floor level of the roof top level.
 - (e) The retention of all chimneys.
 - (f) All seating along the northern and southern perimeter of the roof top level to be fixed.
 - (g) Fixed seating to be incorporated along the entire length of the western perimeter of the roof top level.
 - (h) The location of the raingarden.
 - (i) Incorporating a green roof or other greenery to increase biodiversity value of the project.
 - (j) The stair access structure to be finished to match the colour of the surround roof cladding.
 - (k) The red line area along the ground floor is not to be altered.
 - (l) The collection of stormwater from the roof top bar area and STORM report updated accordingly.
 - (m) Any changes as required by the endorsed acoustic report pursuant to Condition 15.
 - (n) Any changes as required by the endorsed conservation management plan pursuant to Condition 26.
 - (o) Any changes as required by the endorsed structural report pursuant to Condition 28
2. The use and development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.

3. Before the use starts, the permit holder must install and maintain noise limitation equipment or sound attenuation equipment that ensures that the escape of noise from the premises is limited or restricted to comply with State Environment Protection Policy (Control of noise form Commerce, Industry and Trade) No. N-1 and State Environment Protection Policy (Control of Music Noise in Public Premises) No, N-2 or successive documents.
4. The permit holder must conduct the premises to the satisfaction of the Responsible Authority, so as to ensure that any escape of noise from the premises does not disturb the peace and quiet of the neighbourhood or be audible in any residential premises.
5. The permit holder must, to the satisfaction of the Responsible Authority, not cause or permit any undue detriment to the amenity of the area arising out of or in conjunction with the use of the premises during or immediately after trading hours.
6. The permit holder must install signage at all exits, to the satisfaction of the Responsible Authority, with words to the effect of: "PLEASE RESPECT OUR NEIGHBOURS AND LEAVE THE AREA QUIETLY".
7. Not more than **395** patrons are permitted on the premises at any one time, decreasing to 200 patrons after 1.00am, with tables and chairs provided for at least 75 percent of patrons attending the premises at any one time.
8. **Of the 395 patrons permit on the premises at any one time, not more than 113 patrons are permitted on the roof top bar at any one time.**
9. Substantial meals shall be available to patrons at all times that the venue is operating.
10. The sale and consumption of liquor must only operate between the following times:
 - (a) Monday to Wednesday between 10:00am and 1:00am the following morning
 - (b) Thursday to Saturday between 10:00am and 3:00am the following morning
 - (c) Sunday between 10:00am and 1:00am the following morning
 - (d) Good Friday and Anzac Day between 12:00 noon and 1:00am the following morning
11. **The sale and consumption of liquor on the roof top bar must only operate between the following times:**
 - (a) **Monday to Saturday between 10:00am and 12:30am the following morning;**
 - (b) **Sunday between 10:00am and 11:00pm;**
 - (c) **Good Friday and Anzac Day between 12:00 noon and 12:30am the following;**
 - (d) **Sunday on the eve of a public holiday and Sunday of Johnston Street Fitzroy Spanish Festival between 10:00am and 12:30am the following morning**
12. These hours can only be altered with the written consent of the Responsible Authority.
13. **Before the sale and consumption of liquor or buildings and works associated with the amended permit 990390.02 commences, an amended Noise and Amenity Action Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Noise and Amenity Action Plan will be endorsed and will form part of this permit. The amended Noise and Amenity and Action Plan must be generally in accordance with the Noise and Amenity Action Plan dated April 2020, but modified to include (or show, or address):**
 - (a) **Details on numbers of security guards;**
 - (b) **Timeframes and locations of stationed security guards in different 'sections' of the venues;**
 - (c) **Have a procedure in place when sections of the venue are at capacity;**

- (d) **Development of a staged/timed patron dispersal plan through the venue (when at capacity) including entry/exit points;**
 - (e) **Pass out procedures for the rooftop;**
 - (f) **Strategies in place to avoid glass transport through the venue (i.e. via imposing a 'last drinks' call at 11.30pm on the rooftop);**
 - (g) **All background music reduced/turned off on the rooftop at 11.50pm.**
14. **Before the sale and consumption of liquor or buildings and works associated with the amended permit 990390.02 commences, a Noise and Amenity Action Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. Once approved, the Noise and Amenity Action Plan will be endorsed and will form part of this permit.**
15. **Before the sale and consumption of liquor or buildings and works associated with the amended permit 990390.02 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 Enfield Acoustics Pty Ltd and dated 17 November 2019, but modified to include:**
- (a) **The recommendations as outlined in Acoustic Technical Memorandums received by Enfield Acoustics Pty Ltd and dated 23 July 2020 and 10 November 2020 .**

But further modified to include:
 - (b) **All amplified music within the outdoor patron areas is to be played through a suitable music noise limiter / limiter compressor the compressor and meet the following requirements:**
 - (i) **Noise limiter to incorporate a frequency discriminating sound analyser and be able to be set to control octave band music levels.**
 - (ii) **The noise limiter to installed in a tamperproof box or have a software lock, not accessible to personnel other than the venue's management and acoustical consultant.**
 - (iii) **The system is to be calibrated by the acoustical consultant to ensure that music levels played in the outdoor area/s comply with SEPP N-2.**
 - (iv) **The noise limiter device to be recalibrated as necessary to maintain SEPP N-2 compliance when any changes are made to the audio equipment or to the venue generally, which have the potential to affect the SEPPN-2 compliance status of the venue.**
 - (c) **Live performances within the outdoor patron area are to be restricted to acoustic music only and to comply with the requirements pursuant to SEPP N-2.**
 - (d) **The operating hours of the rooftop bar, as per condition 11.**

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.

16. **Live performances within the outdoor patron area are to be restricted to acoustic music only and to comply with the requirements pursuant to SEPP N-2.**
17. **The provisions, recommendations and requirements of the endorsed Acoustic Report must be implemented and complied with to the satisfaction of the Responsible Authority.**

18. No live music shall be played after 1.00am without the written consent of the Responsible Authority.
19. Alarms must be connected to a security service, to the satisfaction of the Responsible Authority, and must not produce noise beyond the premises.
20. A public notice board of minimum dimensions 100 centimetres by 40 centimetres, to the satisfaction of the Responsible Authority, must be provided on the premises. The notice board must include a notice setting out the rules governing behaviour on the premises, including prohibition of gambling and fighting.
21. **Before the sale and consumption of liquor or buildings and works associated with the amended permit 990390.02 commences, a Waste Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. Once approved, the Waste Management Plan will be endorsed and will form part of this permit.**
22. **The provisions, recommendations and requirements of the endorsed Waste Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.**
23. **Emptying of bottles and cans into bins may only occur between 7am and 10pm on Monday to Saturday or after 9am on a Sunday or public holiday.**
24. **Deliveries 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.**
25. **The provisions, recommendations and requirements of the endorsed Sustainable Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.**
26. **Before the demolition commences, a Conservation Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Conservation Management Plan will be endorsed and will form part of this permit. The Conservation Management Plan must be prepared by a suitably qualified heritage architect or similar and include, but not be limited to, the following:**
 - (a) **Fully dimensioned and accurately measured plans at a scale of no less than 1:50 prepared by a suitably qualified heritage practitioner/ architect, detailing the retention of the chimney adjacent to the Brunswick Street interface:**
 - (b) **Recommendations for protection of the chimney:**
 - (i) **during construction**
 - (ii) **on-going protection post occupation of the roof terrace**
 - (iii) **having regard to the *Burra Charter: the Australian ICOMOS Charter for Places and Cultural Significance 1999 (Australia ICOMOS)*.**
 - (c) **Any modifications to the roof terrace to facilitate protection of the chimney as recommended under Condition 26(b).**
27. **Before the demolition commences, a Conservation Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Conservation Management Plan will be endorsed and will form part of this permit. The Conservation Management Plan must include, but not be limited to, the following.**

- 28. Before the demolition commences, a structural report to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the structural report will be endorsed and will form part of this permit. The structural report must be prepared by a suitably qualified structural engineer, or equivalent, and demonstrate the means by which the chimney adjacent to the Brunswick Street interface will be supported during demolition and construction works to ensure its retention, including any recommendations from the endorsed Conservation Management Plan pursuant to Condition 26.**
- 29. The amended permit 990390.02 will expire if:**
- (a) The development is not commenced within two years of the date of the amended permit 990390.02;**
 - (b) The development is not completed within four years of the date of the amended permit 990390.02; or**
 - (c) The sale and consumption of liquor associated with the amended permit 990390.02 is not commenced within two years of the date of this amended permit.**

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

NOTE: This property is covered by a Heritage Overlay. A Planning Permit is required for any demolition, re-painting, sand blasting, exterior works, subdivision or consolidation of land.

NOTE: A monetary contribution could be required in the event of a parking precinct plan for the area being adopted by Council.

NOTE: A building permit must be obtained before development is commenced.

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

Attachments

- 1** 990390.02 - 298-300 Brunswick Street, Fitzroy - Site Plan
- 2** 990390.02 - 298-300 Brunswick Street, Fitzroy - Advertised plans
- 3** 990390.02 - 298-300 Brunswick Street, Fitzroy - Acoustic referral advice - 9 July 2020
- 4** 990390.02 - 298-300 Brunswick Street, Fitzroy - Heritage Advice
- 5** 990390.02 - 298-300 Brunswick Street, Fitzroy - ESD referral advice
- 6** 990390.02 - 298-300 Brunswick Street, Fitzroy - Community Health and Safety referral advice
- 7** 990390.02 - 298-300 Brunswick Street, Fitzroy - Amenity Enforcement referral advice
- 8** 990390.02 - 298-300 Brunswick Street, Fitzroy - Waste referral response - 9 July 2020
- 9** 990390.02 - 298-300 Brunswick Street, Fitzroy - Engineering referral advice
- 10** 990390.02 - 298-300 Brunswick Street, Fitzroy - Acoustic memo - 23 July 2020
- 11** 990390.02 - 298-300 Brunswick Street, Fitzroy - Amended Waste Management Plan - 29 July 2020
- 12** 990390.02 - 298-300 Brunswick Street, Fitzroy - Waste referral response - 24 August 2020
- 13** 990390.02 - 298-300 Brunswick Street, Fitzroy - Acoustic referral advice - 1 September 2020
- 14** 990390.02 - 298-300 Brunswick Street, Fitzroy - Sketch plans - 29 September 2020
- 15** 990390.02 - 298-300 Brunswick Street, Fitzroy - Correspondents from Applicant - 14 October 2020

- 16** 990390.02 - 298-300 Brunswick Street, Fitzroy - Correspondents from Applicant - 6 November 2020
- 17** 990390.02 - 298-300 Brunswick Street, Fitzroy - Acoustic memo - 10 November 2020
- 18** 990390.02 - 298-300 Brunswick Street, Fitzroy - Acoustic referral response - 11 November 2020

6.2 PLN19/0706 - 28 Canterbury Street Richmond - Construction of a double-storey dwelling and associated reduction in the car parking requirements

Executive Summary

Purpose

1. This report provides Council with an assessment of planning permit application PLN19/0706 submitted for 28 Canterbury Street Richmond. The application seeks approval for the construction of a double-storey dwelling and associated reduction in the car parking requirements. The report recommends approval of the application, subject to conditions.

Key Planning Considerations

2. Key planning considerations include:
 - (a) Clause 22.10 – Built Form and Design Policy;
 - (b) Clause 22.13 – Residential Built Form Policy;
 - (c) Clause 52.06 – Car Parking; and
 - (d) Clause 54 – One dwelling on a lot.

Key Issues

3. The key issues for Council in considering the proposal relate to:
 - (a) Clause 54 – One dwelling on a lot; and
 - (b) Objector concerns.

Submissions Received

4. Seven (7) objections were received to the application and can be summarised as:
 - (a) Out of keeping with neighbourhood character;
 - (b) Inappropriate design and overdevelopment (height, scale, bulk);
 - (c) Off-site amenity (overshadowing, overlooking);
 - (d) Loss of on-street car parking; and
 - (e) Discrepancies on plans.

Conclusion

5. Based on the following report, the proposal is considered to comply with the relevant planning policy and key considerations, and should therefore be supported, subject to conditions generally requiring limited design changes.

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

6.2 [PLN19/0706 - 28 Canterbury Street Richmond - Construction of a double-storey dwelling and associated reduction in the car parking requirements](#)

Reference	D20/158479
Author	Nish Goonetilleke - Senior Statutory Planner
Authoriser	Senior Coordinator Statutory Planning

Ward:	Melba Ward
Proposal:	Construction of a double-storey dwelling and associated reduction in the car parking requirements
Existing use:	Dwelling
Applicant:	DX Architects
Zoning / Overlays:	General Residential Zone (Schedule 1) Design and Development Overlay (Schedule 5)
Date of Application:	14 October 2019
Application Number:	PLN19/0706

Planning History

1. Council records indicate that there is no planning permit history for the subject site.

Background

2. The application was received by Council on 14 October 2019 and additional information was received on 5 March 2020. The application was advertised on 5 March 2020 with six (6) objections received.

Section 57A Plans

3. The permit applicant submitted a set of amended plans to Council under Section 57(a) of the *Planning and Environment Act* (1987) (the "Act") on 22 June 2020 in response to concerns raised by Council's Planning Officer, Engineering Unit and objectors. The Section 57(a) plans included the following changes:
 - (a) Increased ground floor southern boundary wall length from 19.71m to 20.91m;
 - (b) Downward sloping roof profile (RL20.93 to RL19.8) amended to maintain a continuous roof pitch (RL20.82);
 - (c) Increased first floor front setback by 0.02m and 0.04m;
 - (d) Increased first floor minimum setback from the rear boundary from 4.82m to 7.45m;
 - (e) Internal reconfiguration of the first floor, including the introduction of a central raked setback from the northern boundary from 0.99m to 2.24m; and
 - (f) Horizontal window proportions on the front façade at both levels revised to vertical, and the privacy screening/size of the first floor rear window revised/reduced.
4. The amended plans were re-advertised and one (1) additional objection was received with some original objectors re-emphasising their concerns.
5. The permit applicant submitted a second set of amended plans to Council under S57(a) of the Act on 22 October 2020 in response to concerns raised by objectors. The Section 57(a) plans included the following changes;

- (a) Decreased ground floor southern boundary wall length from 20.91m to 19.71m;
 - (b) Ground floor eastern setback increased from 4.92m to 6.12m;
 - (c) Overall roof profile decreased from RL 20.82 to RL 20.54;
 - (d) Deletion of the first floor circular window on the southern façade;
 - (e) Addition of a 0.6m high lattice above the proposed 1.8m high timber fence along the southern boundary;
 - (f) Existing pergola structure at No. 30 Canterbury Street accurately represented; and
 - (g) Ground clearance check for the proposed car parking space.
6. The amended plans were not advertised, with the application given a discretionary exemption at Council's internal Development Assessment Panel (DAP) meeting held on 13 November 2020, on the basis that the proposed amendments were a reduction in built form and would not result in material detriment. However, a copy of the S57A plans were circulated with the Planning Decision Committee invitations to all objectors.
7. The assessment in this report is based on the amended S57A plans submitted to Council on 22 October 2020.

The Proposal

8. The application seeks approval for the construction of a double-storey dwelling and associated reduction in the car parking requirements. The proposal is summarised as follows:

Demolition (no permit required)

- (a) Full demolition of all structures on-site, with the exception of the existing northern boundary fence;
 - (b) Removal of two trees from the rear of the site;
 - (c) Removal of existing footpath along Canterbury Street to construct a new vehicle crossover;
9. The proposed dwelling would be two-storeys, with a part skillion and part flat roof profile, with a maximum height of 8.81m above natural ground level (NGL). Details of the proposed dwelling are as follows:
- (a) The ground floor consists of a study, laundry, WC and an open plan kitchen/dining/living area providing access to secluded private open space (SPOS). The front setback also accommodates access to a single car parking space via a 3m wide crossover;
 - (b) The ground floor is setback a minimum 2.39m from the eastern (front) boundary, built along the northern and southern boundaries for lengths of 15.54m and 19.71m, respectively, and setback a minimum of 6.12m from the western (rear) boundary to accommodate SPOS, an uncovered patio, and a 1.6sqm , 2.51m high garden shed and worm farm;
 - (c) The first floor would consist of a bathroom, ensuite and three bedrooms;
 - (d) The first floor would be setback a minimum 1.49m from the front boundary and cantilevered over the ground floor, setback between 0.93m - 2.24m to the central rake, built along the southern boundary for a length of 17.71m and setback a minimum 7.45m from the rear boundary;
 - (e) Proposed northern and southern boundary wall heights range between 3.08m to 3.14m and 3.6m to 8.81m above NGL, respectively;
 - (f) A 3,000Ltr in-ground rainwater tank is proposed within the front setback, as well as a bin/battery storage behind the carport, including a front fence/sliding gate with a maximum height of 1.5m constructed of timber battens;
 - (g) 22 panels of PV solar panels to be constructed flush to the northern skillion roof; and
 - (h) The materials proposed would be a combination of vertical timber boards, masonry brick, concrete render (light tones), metal roof, timber fence (dark grey) and glazing.

Existing Conditions

Subject Site

10. The subject site is located on the western side of Canterbury Street, between Boyd Street to the north and Newry Street to the south; with Burnley Street approximately 68m to the east and Church Street approximately 700m to the west, in Richmond. The site has a frontage of 6.01m to Canterbury Street and a maximum depth of 27.94m, constituting an overall area of approximately 166sqm. The land slopes from south to north and west to east.
11. The site is occupied by a single-storey, semi-detached, weatherboard dwelling, with a hipped metal roof form and chimney shared with No. 30 Canterbury Street to the south. The dwelling is setback a minimum 2.36m from the front boundary which accommodates a maximum 1.6m high, timber picket front fence and garden. At ground floor, the dwelling is setback 0.9m from the northern boundary, built along the southern boundary for a length of 18.8m, and setback a minimum 6.3m from the rear boundary to accommodate SPOS. The dwelling consists of a living room, two bedrooms, a bathroom, and an open plan dining/kitchen area providing access to the rear SPOS.
12. There is no car parking on-site.



The subject site when viewed from Canterbury Street (DX Architects, August 2019)

Title






13. There are no restrictive covenants listed against the certificate of title provided for the subject site, aside from the following easements:
 - (a) A 0.9m and 1.2m wide drainage and sewerage easement runs along the northern boundary and towards the rear of the dwelling; and
 - (b) A 16.95m long party-wall easement shared with the abutting site to the south (No. 30 Canterbury Street).
14. The applicant provided written consent from City West Water who have provided in-principle support for the proposed building over the drainage and sewerage easements, subject to the lodgement and subsequent approval of plumbing work for sewerage and water.

Surrounding Land

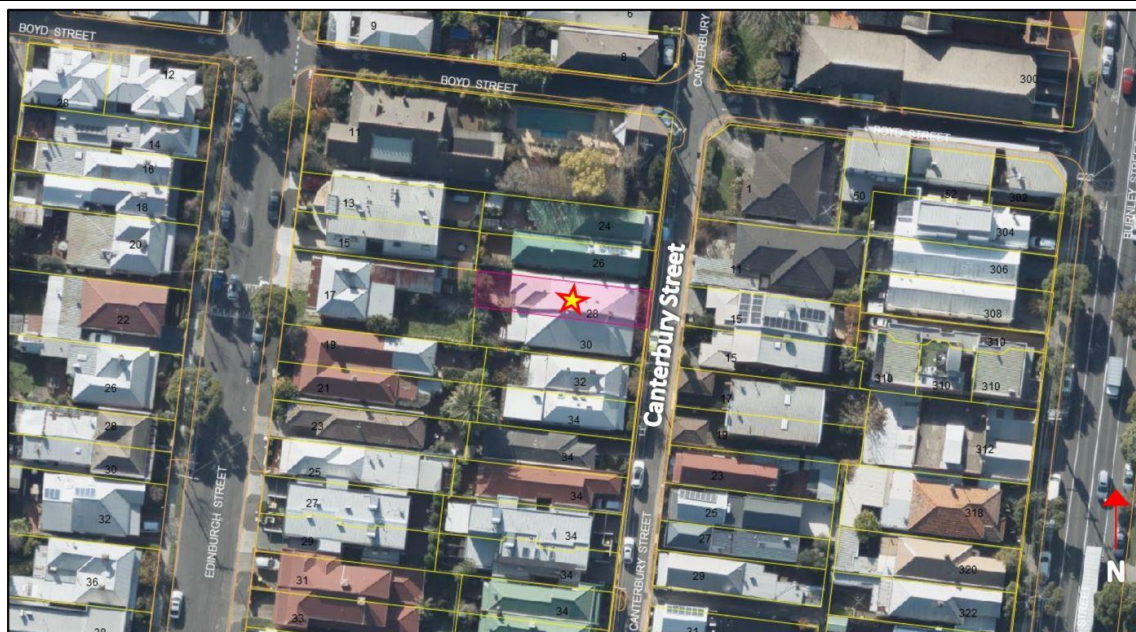
15. The surrounding neighbourhood is largely residential, with a mixture of single and double-storey dwellings with pitched, gabled or flat roof forms and an increasing number of contemporary developments. While building types vary within Canterbury Street, high site coverage and the construction of walls on boundary are common elements, with the majority of buildings being constructed on at least one (if not both) side boundaries.

A number of dwellings on the western side of Canterbury Street are setback between 2.34m-3m from the front title boundaries to accommodate front gardens. The more recent developments along both sides of Canterbury Street mostly incorporate vehicle crossovers and garages to the Canterbury Street frontage. Areas of SPOS are predominantly located at ground level within the rear setbacks.

16. The emerging housing stock consists of contemporary architectural responses, with generally rectilinear fenestration and pitched roof forms, and typically consist of materials ranging from timber battens, concrete and metal cladding with high proportions of glazing. As shown below, the following developments within this section of Richmond have been approved, some of which are under construction or already completed:

Address and Distance to Subject Site	Development	Image
34A - D Canterbury Street, 30m south	4 x 2 storey dwellings and associated reduction in car parking (PLN13/0051)	
35 Canterbury Street, 54m south-east	2 x 2 storey dwellings (PL07/1001)	
32 Newry Street, Richmond, 120m south-east	12 x part 3 and part 4 storey residential building and associated reduction in car parking (PLN14/1007)	
21 Newry Street, Richmond, 94m south-east	2 storey dwelling (PL06/1030)	
336 Burnley Street, Richmond	2 x 3 storey dwellings (PLN19/0099 approved and waiting for construction)	

17. Immediately surrounding the subject site are the following properties:



The subject site and surrounding land (Council GIS, November 2020)

18. Abutting the subject site to the north is No. 26 Canterbury Street; a single-storey, semi-detached, weatherboard house with a metal roof. The dwelling is setback a minimum 2.27m from the front boundary, setback a minimum 1.09m from the southern boundary, and setback a minimum 5.6m from the rear boundary to accommodate SPOS. The existing timber picket front fence has a maximum height of 1.6m above NGL.
19. Abutting the subject site to the south is No. 30 Canterbury Street; which has a similar duplex configuration as the subject site. This neighbouring dwelling to the south is a single-storey, semi-detached, weatherboard dwelling, setback 2.34m from the front boundary, built along the northern boundary for a length of 21.6m and setback a minimum 6m from the rear boundary to accommodate SPOS, a pergola and shed. The existing timber picket front fence has a maximum height of 1.6m above NGL.
20. Immediately to the east of the subject site, across Canterbury Street are a mix of single and double-storey dwellings, some with open car parking spaces/carports/garages located within the front setback.
21. Abutting the subject site to the west are the rear SPOS and sheds of single and double-storey dwellings fronting Edinburgh Street. Immediately abutting the subject site to the west are the rear SPOS of Nos. 15 to 19 Edinburgh Street, with the dwellings setback over 5.4m from the shared boundary with the subject site.
22. Canterbury Street consists of a variety of front fence designs, ranging from cast-iron to timber-pickets to brick fences, in different heights.
23. Canterbury Street is located between two designated Activity Centres (AC); Bridge Road approximately 470m to the north and Swan Street approximately 300m to the south. Therefore, the subject site is within proximity to a range of retail premises, food and drink premises, and also community buildings, medical facilities and tram routes serving the CBD and eastern suburbs. The subject site has good access to public transport and open space, including:
 - (a) Burnley Street bus and train routes approximately 68m east and 390m south-east, respectively;
 - (b) Swan Street tram lines approximately 300m south;
 - (c) Bridge Road tram lines approximately 470m north;
 - (d) Church Street tram lines approximately 700m west; and

- (e) Approximately 800m north of parkland associated with the Yarra River corridor, which includes the Capital City Cycle Trail.

Planning Scheme Provisions

Zoning

24. The subject site is zoned General Residential Zone (Schedule 2). The following provisions apply:
- (a) Pursuant to *Clause 32.08-4* of the Yarra Planning Scheme (the Scheme), the mandatory minimum garden area requirement applies to lots over 400sqm. The overall subject site is only 166sqm in area and therefore the minimum garden area requirement does not apply.
- (b) Pursuant to *Clause 32.08-5* of the Scheme a planning permit is required to:
- (i) construct one dwelling on lot less than 500sq.m. *Clause 54* (one dwelling on a lot) applies.
- (ii) construct or extend a front fence within 3 metres of a street if, *the fence is associated with one dwellings on a lot and the fence exceeds the maximum height specified in Clause 54.06-2.*
- No permit is required to:*
- (iii) *Construct or extend an out-building (other than a garage or carport) on a lot provided the gross floor area of the out-building does not exceed 10sqm and the maximum building height is not more than 3m above ground level.*
25. The proposed shed and worm farm would have a maximum area of 1.6sqm with an overall height limited to 2.51m above NGL and therefore do not trigger a planning permit under the zone.
26. Under the zone, a planning permit is required for the proposed dwelling. The proposed front fence along the eastern boundary would have a maximum height of 1.5m, which meets the 1.5m height recommended by the standard. As such, a permit is not required for this fence under the zone.
27. Pursuant to *Clause 32.08-10* of the Scheme, a maximum building height of 9m and three-storeys apply. The proposed dwelling is two-storeys and has an overall height of 8.81m, and therefore satisfies this requirement.

Overlays

28. The subject site is affected by the Design and Development Overlay (Schedule 5). The following provisions apply:
- (a) Pursuant to *Clause 43.02-2* of the Scheme, *a permit is required to:*
- (i) *construct a building or to construct or carry out works. This does not apply if a schedule to this overlay specifically states that a permit is not required.*
29. Schedule 5 specifically states that a permit is not required for buildings and works. Notice however must be given to the Environment Protection Authority (EPA), Transurban City Link, and Vic Roads in the event that a planning permit is triggered under another provision within the Scheme. However, the City of Yarra has entered into an agreement with the EPA on 10 July 2019 regarding the requirement for notice to be given to the EPA under *Clause 43.02*, Schedule 5. The agreement is to exempt certain applications from being required to be referred to the EPA. These applications are as follows:

- (a) *An application to use land or for the construction of a building or the construction or carrying out of works does not require notice to be given to the EPA if the following requirements are met:*
- (i) *The title boundary of the subject site is more than 50 metres from the centre of the Burnley Tunnel exhaust stack (located at Barkley Ave. Richmond. Latitude - 37.8295434, Longitude 145.0018514); and*
 - (ii) *The proposed building height is less than 10 stories or 30 metres, whichever is lesser.*
- (b) *Regardless of clause 3(a) of this Agreement, an application for carrying out of works specified in clause 62.02-2 of the Yarra Planning Scheme (even if a permit is specifically required for any of these matters) does not require notice to be given to the EPA.*

30. As the subject site is over 1km from the centre of the Burnley Tunnel exhaust stack and the proposed overall height of the building being limited to 8.81m above NGL, notice to the EPA was not required to be given.

Particular Provisions

Clause 52.06 Car Parking

31. This clause is relevant given that a new dwelling is proposed. The number of car parking spaces required under *Clause 52.06-5* of the Scheme or in a schedule to the Parking Overlay must be provided to the satisfaction of the responsible authority before:
- (a) *a new use commences; or*
 - (b) *the floor area or site area of an existing use is increased; or*
 - (c) *an existing use is increased by the measure specified in Column C of Table 1 in Clause 52.06-5 for that use.*
32. The following table identifies the car parking requirement under *Clause 52.06-5*, the provision on site, and the subsequent reduction:

Proposed Use	Quantity/ Size	Statutory Parking Rate	No. of Spaces Required	No. of Spaces On-site	Reduction Required
3 x bedroom dwelling	1	2 spaces per dwelling	2	1	1
Total			2	1	1

33. With 1 car parking space provided on-site, the proposal seeks a total reduction of 1 car space for the dwelling.

Clause 54 – One dwelling on a lot

34. Pursuant to Clause 54 of the Scheme, the provisions apply for a new dwelling on a lot under 500sqm.

General Provisions

Clause 65 - Decision Guidelines

35. 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)

36. Relevant clauses are as follows:

Clause 15.01-1S – Urban design

37. The relevant objective of this clause is *to create urban environments that are safe, healthy, functional and enjoyable and that contribute to a sense of place and cultural identity.*

Clause 15.01-5S – Neighbourhood character

38. The relevant objective of this clause is *to recognise, support and protect neighbourhood character, cultural identity, and sense of place.*

Clause 15.02-1S Energy and resource efficiency

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

Clause 18.01-1S – Land use and transport planning

40. The objective of this clause is *“to create a safe and sustainable transport system by integrating land use and transport”.*

Clause 18.02-2R – Principal Public Transport Network

41. Relevant strategies for this clause are:

- (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 21.05 – Built Form

Clause 21.05-2 – Urban design

42. The relevant objectives of this clause are:

- (a) *Objective 16 – To reinforce the existing urban framework of Yarra.*
- (b) *Objective 18 – To retain, enhance and extend Yarra’s fine grain street pattern.*
- (c) *Objective 20 – To ensure that new development contributes positively to Yarra’s urban fabric.*

Clause 21.05-3 - Built form character

43. The objectives and associated strategies of this clause are as follows:

- (a) *To maintain and reinforce preferred character.*
 - (i) *Apply the Residential Built Form Policy at clause 22.13.*

Clause 21.06 – Transport

Clause 21.06-1 Walking and cycling

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

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

(iii) *Strategy 30.3 Use rear laneway access to reduce vehicle crossovers.*

Clause 21.07 Environmental Sustainability

45. The relative objective of this clause is:

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

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

46. This clause describes the neighbourhood as being predominantly residential in character.

47. The built form character map at Figure 24 identifies the subject site as being within an 'Inner Suburban Residential' area and the specific development guideline is to:

- (a) *Maintain the existing pattern of front setbacks.*
(b) *Limit variations in height to a maximum of one storey compared to the adjacent properties, on single house sites/small development sites in areas with generally consistent building heights.*

Relevant Local Policies

Clause 22.10 – Built form and design policy

48. 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 22.13 – Residential built form policy

49. This policy applies to residentially zoned land in areas not covered by a heritage overlay and refers to the Built Form Character Types as set out in the Built Form Character Maps in *Clause 21.08*. The subject site is located within an 'Inner Suburban Residential' area. The relevant design objectives for this area are as follows:

- (a) *Maintain the existing pattern of front setbacks.*
(b) *Landscape the front setback in a style that reinforces the garden character (if any) of the streetscape.*
(c) *Where the general pattern of development includes gaps between buildings, include a setback on at least one side of the building.*
(d) *Orient buildings at right angles to the street.*
(e) *Provide front fencing that is open (unless the building is zero front setback).*

Clause 22.16 – Stormwater management (Water Sensitive Urban Design)

50. This policy applies to applications for new buildings (amongst others). Under this clause it is policy to:

- (a) *To achieve the best practice water quality performance objectives set out in the Urban Stormwater Best Practice Environmental Management Guidelines, CSIRO 1999 (or as amended).*
(b) *To promote the use of water sensitive urban design, including stormwater re-use.*
(c) *To mitigate the detrimental effect of development on downstream waterways, by the application of best practice stormwater management through water sensitive urban design for new development.*
(d) *To minimise peak stormwater flows and stormwater pollutants to improve the health of water bodies, including creeks, rivers and bays.*
(e) *To reintegrate urban water into the landscape to facilitate a range of benefits including microclimate cooling, local habitat and provision of attractive spaces for community use and well-being.*

Advertising

51. The originally submitted application was advertised under the provisions of Section 52 of the *Planning and Environment Act (1987)* by 28 letters sent to surrounding owners and occupiers and by one sign displayed on site; at the Canterbury Street frontage.
52. Council received 6 objections, the grounds of which are summarised as follows:
 - (a) Out of keeping with neighbourhood character;
 - (b) Inappropriate design and overdevelopment (height, scale, bulk);
 - (c) Off-site amenity (overshadowing, overlooking);
 - (d) Loss of on-street car parking; and
 - (e) Discrepancies on plans.
53. On 22 June 2020, the applicant submitted revised plans under Section 57(A) of the Act. The amended plans were re-advertised and one (1) additional objection was received with some original objectors re-emphasising their concerns.
54. The permit applicant submitted a second set of amended plans to Council under S57(a) of the Act on 22 October 2020. Following the submission of these amended plans, the application was not advertised and was given a discretionary exemption at Council's internal Development Assessment Panel meeting held on 13 November 2020, as the proposed amendments were a reduction in built form. However, a copy of the plans were circulated to objectors with the PDC invitations.
55. The current number of objectors are 7 in total.

Referrals

External Referrals

56. As stated earlier in the report, whilst the application is not required to be referred to the EPA, the application was referred to City Link Authority and VicRoads under Section 52 of the Act based on the requirements of the DDO5. There was no objection to the application from any authority.

Internal Referrals

57. The originally advertised application was formally referred to Council's Urban Design Unit, Traffic Engineering Unit and Civil Engineering Unit. The referral comments have been included as an attachments to this report.
58. The amended (S57A) plans were informally referred to Council's Traffic Engineering Unit and these comments have also been included as an attachment to this report.

OFFICER ASSEMENT

59. The following key issues and policies will be used to frame the assessment of this planning permit application:
 - (a) Clause 54 (One dwelling on lot);
 - (b) Parking layout and traffic;
 - (c) Objector concerns; and
 - (d) Other matters.

Clause 54 – One dwelling on lot

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

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

A1 – Neighbourhood character objective

62. The surrounding area is predominantly residential with a fine-grained subdivision pattern, with fewer, larger allotments interspersed. Built form typically varies between 1-2 storeys, with the more contemporary designs ranging between 2-3 storeys. The streetscape is relatively varied in relation to built form, and includes weatherboard dwellings with no car parking and 2-3 storey, contemporary townhouse-style developments with car parking spaces either directly abutting or setback from the street frontage.

63. In this context, the scale of the development at two-storeys is acceptable having regard to the scale of surrounding built form (one to two-storeys) and immediately adjoining built form (single-storey). *Clause 22.13-3.2* of the Scheme states, *on single house sites in areas with generally consistent building heights, limit variations in height to a maximum of one storey compared to the adjacent properties*. As such, the proposed two-storey building provides a single-storey transition in height with the adjoining single-storey development to the south and to the north.

64. The fine-grained subdivision pattern of the area would still be expressed in the building design, massing, modulation and facade articulation, consistent with policy at *Clause 22.10-3.2 (Urban form and character)* as glazing and the utilisation of a range of different materials helps to break up the building's mass. Additionally, the proposed skillion roof, whilst contemporary, provides a modern and sympathetic response to the pitched roof form at No. 30 Canterbury Street to the south while also being consistent with other modern dwellings in the street which have varied roof forms. Council's Urban Design Unit are supportive of the skillion roof, commenting that *the sloping roof responds well to the existing street character*.

65. Given the lack of a consistent neighbourhood character in regards to front crossovers, garages and car parking, the provision of vehicular access is considered an acceptable response that is not at odds with the street.

66. Overall, the proposal is a site and neighbourhood responsive design, meeting the objective.

A2 – Integration with the street objective

67. Standard A2 recommends that *developments should be oriented to front existing and proposed streets*.

68. The proposed dwelling would continue to be orientated to Canterbury Street, with a 1.5m high, timber front fence and would positively integrate with the street and promote passive surveillance. This also complies with policy at *Clause 22.13-3.1* which encourages development proposals to *orient buildings at right angles to the street frontage*.

69. As stated earlier, *Clause 22.13-3.2* of the Scheme recommends limiting variations in height to a maximum of one-storey compared to the adjacent properties. As such, the two-storey building is considered to be generally consistent with the existing pattern of surrounding development, providing a single-storey transition in height compared to the adjoining single-storey development to the south and to the north.
70. The cantilevering of the first floor above the ground floor is not supported by Council's Urban Design Unit as they state this is inconsistent with the surrounding built form. However, the existing streetscape along Canterbury Street is varied and therefore considered acceptable, particularly as it serves to partly obscure the car parking space rather than leaving this as a 'gap' in the streetscape where the typical setback is between 2-3m (as seen by other dwellings in the street which have an open car space in front of the building). In addition, the cantilever provides entry protection which is supported by policy at *Clause 22.10-3.4* of the Scheme which recommends access to new developments enhance public safety and pedestrian experience. This will be discussed further under Standard A3 – Street Setback.
71. Based on the advertised plans where the ground floor presented limited openings to Canterbury Street, Council's Urban Design Unit recommended *providing an opening next to the entrance door which will contribute in providing some level of active frontage. The bike storage area is enclosed by vertical timber boards which contributes in creating a large portion of blank wall for the ground floor frontage.*
72. As shown below, the applicant lodged amended plans under a S57A of the Act, revising the ground floor façade to consist of a larger window. In addition, the first floor window fronting Canterbury Street was changed from a horizontal window to a vertical window in order to respect the existing vertical window fenestrations found along Canterbury Street. This is consistent with *Clause 22.10-3.4* of the Scheme which states new development should continue vertical themes within the façade (where these exist and where appropriate). The proposed habitable room windows at both levels would provide for passive surveillance opportunities between the public and private realm.



Advertised plans front façade (DX Architects November 2019)



S57A plans front façade (DX Architects October 2020)

73. Similar to other contemporary dwellings along Canterbury Street, minimal landscaping with permeable surfaces is proposed within the front setback. In addition, a single car parking space is provided within the front setback. This does not comply with *Clause 22.10-3.10* of the Scheme which states *new development should provide car parking areas that are concealed from street frontages.* This clause further states; *new development constructed with a front setback to the street should include soft landscaping within the setback area.* Amongst other things, *this setback should not be used for car parking.*

While local policy does not encourage car parking at the front of the site, a number of dwellings containing car parking within the front setback and vehicle crossovers already exist in the street. Council's Urban Design Unit found that the provision of *an open car parking area rather than dominating the front faced with a garage is highly supported and respects the existing streetscape character.*

74. With the location of the pedestrian entrance protruding forward of the car parking space, combined with the first floor cantilevering over the ground floor, the focus on the car parking space would reduce and allow for a degree of interaction between the dwelling's facade and the street. In addition, as per *Clause 22-13-3.2* of the Scheme, the proposal incorporates a separate pedestrian gate from the sliding vehicle access gate in order to provide appropriate separation between vehicle access and pedestrian entry areas and to identify the pedestrian entry more.
75. The development would integrate appropriately with Canterbury Street, as encouraged by the objective and standard.

A3 – Street setback objective

76. The proposed minimum ground floor front setback of 2.39m is similar to the front setbacks of other developments along Canterbury Street, and most notably the abutting dwellings to the north (2.27m) and the southern dwelling (2.34m). Therefore, the proposed ground floor setback complies with Standard A3 – Street Setback of the Scheme.
77. The proposed first floor would cantilever above the ground floor, setback between 1.49m to 1.89m from the front boundary. Council's Urban Design Unit found that the first floor cantilever does not maintain the existing pattern of front setbacks in the area and makes the upper form dominant which would result in a deep undercroft space. It has been recommended to *increase the first floor setback while maintaining the interesting composition.*
78. However, Canterbury Street is varied in its built form and character with some dwellings being setback well over 8m from the front boundary to accommodate garages (Nos. 11, 17 and 19 Canterbury Street) along the front boundary or covered carports at ground floor protruding further forward of the pedestrian entrances. As stated earlier in the report, the first floor cantilever combined with the vertical fenestrations and vertical timber batten composition provides a level of articulation, passive surveillance and reduces the visibility of the ground floor car park. In addition, setting back the first floor would reduce the "interesting composition" of the building by making it more akin to a straight two-storey townhouse building similar to others in the street. As such, it is considered that the proposed first floor front setback is acceptable, particularly as it provides a contemporary "verandah" to the entry which is reflective of verandah setbacks to the north and south.
79. *Clause 22.10-3.3* of the Scheme states *new development that is higher than adjacent buildings should adopt a secondary setback for the higher building component which aligns to the street pattern.* Whilst the first floor would sit forward of the front setback of No. 30 Canterbury Street, it sits behind the front setback of No. 26 Canterbury Street as a result of the front verandah of this neighbouring dwelling to the north. Furthermore the proposed cantilever is angled; i.e. increasing in setback from 1.49m to 1.89m, which would provide a level of interesting architectural form and enable the first floor to appear recessive when viewed from Canterbury Street.

A4 – Building height objective

80. The maximum building height of the proposed dwelling extension would be 8.81m above NGL. This is below the maximum 9m prescribed by this standard and is respectful of the neighbourhood character and essentially lower than the height of the abutting site to the north.

A5 – Site coverage objective

81. This Standard states that the site area covered by buildings should not exceed 60%. The proposed increase in site coverage from approximately 68% to 69% continues to exceed the requirement of the Standard.

82. However, this is similar to the properties to the immediate north and south. The additional site coverage of 1% is reasonable in the context of the site in an inner urban environment on a lot that is 166sqm, and where the established neighbourhood character is of high site coverage. In addition, *Clause 22.10-3.6* of the Scheme recommends that *new development should not exceed a maximum site coverage of 80%*. Therefore, the proposed increase in site coverage continues to be below 80%.

A6 – Permeability objectives

83. The existing permeable surfaces are located within sections of the front and rear SPOS of the subject site, equating to 9sqm or 5% of the overall site. A minimum of 20% site permeability is recommended by this Standard.

84. The proposal incorporates 40sqm or 24% of permeable surfaces consisting of permeable paving within the front setback and garden area within the rear SPOS, which meets the standard. This is an improvement from the existing conditions and would continue to assist in reducing storm water run-off on-site.

85. In order to improve the STORM rating of a site, *Clause 22.16* of the Scheme requires appropriate treatments to be provided for a new build. The STORM report prepared by DX Architects shows a 3,000Ltr rainwater tank and a STORM rating of 110%; which would assist to reduce water-runoff. The plans confirm that this underground rainwater tank will be located below the car parking space and would be connected for sanitary purposes.

A7 – Energy efficiency protection objectives

86. It is considered that the proposed development would have a good level of energy efficiency given:

- (a) The proposal incorporates an area of private open space at the rear of the dwelling which would gain access to direct northern sunlight, and is located directly off the main living room, thereby achieving good solar access and reducing the reliance on artificial lighting;
- (b) West-facing windows would provide adequate natural lighting to the ground floor living room. However, the ground floor west-facing living room windows do not include any solar protection measures to provide passive cooling, and reduce the need for air-conditioning use during the harsh summer months, which would compromise energy efficiency. Therefore, a condition will require the addition of a solar protection device to minimise the impacts of solar radiation in the summer months. In order to minimise any off-site amenity impacts such as overshadowing to the southern neighbouring dwelling, the applicant can apply solar protection to the window itself (eg specific glazing materials and/or awnings that attach outside of the window, etc);
- (c) East, west and north-facing operable windows would provide natural lighting and ventilation to the first floor bedrooms, with only one small west-facing window provided which has a window shroud to give it some solar protection;
- (d) The addition of solar panels would improve the energy efficiency of the dwelling; and
- (e) The majority of the built form of the proposed dwelling would be adjacent existing on-boundary built form, thereby not unreasonably impacting daylight or solar access to neighbouring dwellings. This will be discussed later in the report.

A8 – Significant trees objective

87. The proposal involves the removal of two trees within the rear SPOS, neither of which are included on Council's significant trees. Therefore, the removal of the trees are of no particular concern.

A10 – Side and rear setbacks objective

88. This standard stipulates the following:

- (a) *“A new building not on or within 200mm of a boundary should be set back from side or rear boundaries:*
- (i) *At least the distance specified in a schedule to the zone, or*
- (ii) *If no distance is specified in a schedule to the zone, 1 metre, plus 0.3 metres for every metre of height over 3.6 metres up to 6.9 metres, plus 1 metre for every metre of height over 6.9 metres”.*

89. The following table compares the proposed building setbacks at ground floor (GF) and first floor (FF) with those prescribed by the standard.

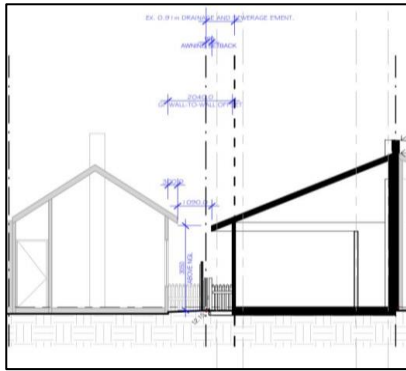
Wall Description	Proposed height	Required setback	Proposed setback	Compliance/Variation
<u>Eastern Wall</u>				
GF	3.46m	1m	6.12m	Complies
FF	6.31m – 8.3m	1.81m – 3.39m	7.45m – 8.88m	Complies
<u>Northern Wall</u>				
GF Entry	3.08m	1m	3m	Complies
FF Bedrooms	6.46m	1.85m	0.93m – 1.03m	Variation Required
FF Ensuite/Bath	4.5m – 7m	1.27m – 2.09m	0.97m – 2.24m	Variation Required
Overall dwelling	8.45m	3.54m	4.5m	Complies
<u>Southern</u>				
FF	8.77m	3.86m	1.11m	Variation required

90. As demonstrated above, whilst the eastern and ground floor northern walls associated with the dwelling complies with the setbacks prescribed by the standard, the first floor northern and southern dwelling walls do not.

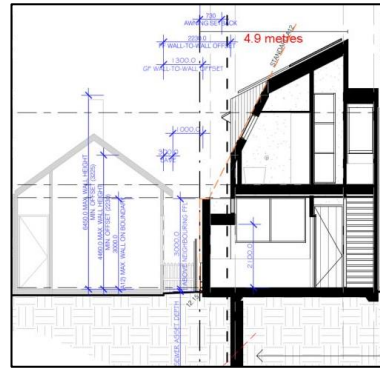
Northern Wall

91. As shown on the table above, the proposal incorporates various heights associated with the northern façade at first floor. The first floor northern wall will be adjacent to the 1.09m to 1.3m wide southern walkway of No. 26 Canterbury Street. There are five (5), south-facing habitable room windows (HRW) of this neighbouring site to the north. The first two windows are associated with a bedroom and living room, with the last three windows being associated with an open plan kitchen/dining area. Therefore, given the open plan nature of the kitchen/dining area, the last three HRWs of No. 26 Canterbury Street have an alternate view via their west-facing windows. As shown below, under the existing conditions, these windows are already visually impacted by the eaves of the existing dwelling on the subject site.

92. In order to minimise any visual bulk impacts to the south-facing bedroom and living room window of No. 28 Canterbury Street, the proposal has incorporated a raked roof form adjacent to these two windows. Therefore, as shown below, the immediate visibility would be the proposed 3m high boundary wall at ground floor, with the raked portion of the dwelling allowing no visual intrusions. Therefore, the proposed variation to this standard is acceptable.



Existing conditions (DX Architects October 2020)



Proposed conditions (DX Architects October 2020)

93. Whilst there are window shrouds encroaching into the northern setback (associated with the bedroom walls), these would provide a level of articulation to the northern façade and therefore, variation from the northern boundary is considered acceptable.

Southern Wall

94. The proposed southern wall will be adjacent to existing built form of No. 30 Canterbury Street and therefore, the variation of 2.75m to the setback required by the standard is acceptable.

A11 – Walls on boundaries objective

95. This standard stipulates the following:
- (a) The total length of walls along the northern and southern boundaries should not exceed 14.48m, *unless abutting an existing or simultaneously constructed wall*; and
 - (b) *The maximum height of all boundary walls should not exceed an average 3.2m height, with no part higher than 3.6m unless abutting a higher existing or simultaneously constructed wall on an adjoining lot.*

Northern boundary

96. Currently there are no walls built along the northern boundary. At ground floor, the proposal incorporates a 15.54m long wall at varied heights between 3.08m to 3.13m above NGL. Therefore, whilst the proposed height is below the average height of 3.2m required by the standard, the required length varies by 1.06m. This wall will be adjacent to a 1.09m to 1.3m wide walkway of No. 26 Canterbury Street. As shown earlier in the report, these windows are already visually impacted by an existing 0.3m wide eave above these windows, as well as the existing 1.8m to 2.3m high boundary fence. The proposed wall will have a maximum height of 3.13m above NGL and therefore, given that this height is below the 3.2m permitted on the boundary, the variation is considered to be an appropriate response to these south-facing neighbouring windows. Furthermore, this continuous wall length will not be directly adjacent to the SPOS of No. 26 Canterbury Street, which is a more sensitive interface. Therefore, the length variation to this standard is acceptable as it does not cause visual bulk when viewed from the HRWs of No. 26 Canterbury Street.

Southern boundary

97. Currently, the subject dwelling is built abutting No. 30 Canterbury Street to the south for a length of 18.8m, at a maximum height of approximately 6m above NGL. Therefore, the existing wall along the southern boundary exceeds the allowable wall length and height set by the Standard.
98. The proposal incorporates a 19.71m and 17.71m long wall along the southern boundary at ground and first floors, respectively. The proposed southern boundary wall varies in height between 3.6m to 8.81m above NGL. Whilst this would not meet the length and height required by the standard, the proposed southern boundary walls are considered acceptable as these walls would be constructed abutting existing built form at No. 30 Canterbury Street. Therefore, the variation to the standard is acceptable.

A12 – Daylight to existing windows objective

99. As stated earlier in the report, the dwelling at 30 Canterbury Street has 5, south-facing, HRWs at ground floor adjacent to the subject site. The following table shows the required setbacks from these windows for the varied wall heights:

Wall Description	Proposed height	Required setback	Proposed setback	Compliance/Variation
<u>Northern Wall</u> GF	3.08m – 3.13m	1.54m – 1.56m	1.09m – 1.3m	Variation Required
FF Bedrooms	6.46m	3.23m	2.23m	Variation Required
FF Ensuite/Bath	4.5m – 7m	2.25m – 3.5m	3.48m	Variation Required
Overall dwelling	8.45m	4.22m	5.99m	Complies

100. The proposed ground floor wall would be constructed to the boundary, with the neighbouring HRWs only setback between 1.09m to 1.3m from this wall. Whilst this does not meet the required setbacks of 1.54m to 1.56m, this variation is considered acceptable given the limited width of both the subject site and the neighbouring site to the north. Furthermore, as stated earlier in the report, three of these windows (open plan kitchen/dining room) have alternate daylight sources via their west-facing windows. Furthermore, given that these windows are south-facing windows, daylight is limited to ambient light. Therefore, these windows are already impacted. In addition, the applicant proposes to use a light coloured material on all facades of the building and this, combined with the raked composition of the proposed building would further assist in providing reflective light to these windows.

A13 – North-facing windows objective

101. There are no north-facing habitable room windows within 3m of the subject site.

A14 – Overshadowing open space objective

102. The standard states, *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. 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.*

103. Given the east-west orientation of the site and based on the September Equinox, the proposed development will result in additional overshadowing to the SPOS of Nos. 17 Edinburgh and No. 30 Canterbury Street between 9.00am to 3.00pm. These abutting sites to the west and south consists of 103sqm and 32sqm of SPOS within the rear setbacks, respectively. The following tables prepared by the Planning Officer is a comparison between existing unshadowed SPOS, proposed unshadowed SPOS and the increase in overall shadows for each site:

No. 17 Edinburgh Street

Time	Unshadowed Area (Existing) SPOS	Unshadowed Area (Proposed) SPOS	Increase in Overall Shadows
9.00am	61sqm	58sqm	3sqm
10.00am	69sqm	67sqm	2sqm
11.00am	74sqm	73sqm	1sqm
12.00pm	No Impacts		
1.00pm			
2.00pm			
3.00pm			

No. 30 Canterbury Street

Time	Unshadowed Area (Existing) SPOS	Unshadowed Area (Proposed) SPOS	Increase in Overall Shadows
9.00am	5sqm	1sqm	4sqm
10.00am	10sqm	9sqm	1sqm
11.00am	13sqm	13sqm	No change
12.00pm	No Impacts		
1.00pm			
2.00pm			
3.00pm			

104. As shown above, the SPOS of No. 17 Edinburgh Street and No. 30 Canterbury Street are already heavily impacted as a result of existing built form, fencing and pergola structures. As outlined above, the marginal increases in shadows for both sites (maximum of 3sqm for No. 17 Edinburgh Street and 4sqm for No. 30 Canterbury Street at 9am) are considered acceptable as they will not significantly alter the use of the neighbouring SPOS area which is already affected by shadows cast under the existing conditions. Whilst these dwellings would be most impacted at 9am, this is limited to a one hour time frame, with the extent of additional shadows reducing from 11am, with no impacts after 12noon The SPOS of No. 17 Edinburgh Street and No. 30 Canterbury Street will continue to be suitable for recreational needs of residents.

105. Given the narrow lot sizes, high built form in the area and the site’s east-west orientation it is common to see some level of overshadowing. The impact of the additional overshadowing on the SPOS of the adjacent dwellings to the west and south are reasonable and will continue to allow solar access, generally in accordance with the objective.

A15 – Overlooking objective

106. This standard stipulates that a habitable room window, balcony, terrace, deck should be located and designed to avoid direct views into the SPOS of an existing dwelling (or a habitable room window) within a horizontal distance of 9 metres (measured at ground level) of the window. Views should be measured within a 45 degree angle from the plane of the window and from a height of 1.7m above floor level.

107. The above standard does not apply to a new habitable room window, deck or patio which faces a property boundary where there is a visual barrier at least 1.8m high and the floor level of the habitable room window, deck or patio is less than 800mm above ground level at the boundary. All overlooking opportunities at ground level would be suitably limited by proposed and existing boundary fences that are up to 2.3m in height (and given that floor levels are less than 800mm above natural ground).

108. Views from the east-facing, ground floor study room window will fall within the public realm (Canterbury Street) and therefore does not require screening. Similarly, views from the first floor Bedroom 1 window will fall within the public realm (Canterbury Street) and therefore does not require screening. No screening is required for the first floor, east-facing, stairs window as this is a non-habitable area.

109. While the plan shows most of the first floor, north-facing bedroom windows with a dimension of 1.7m high sill heights above floor level (therefore meeting the requirements of the standard), there is one window that does not show this dimension. A condition will require all north-facing, first floor habitable room windows to show a minimum 1.7m clearance above floor level for clarity. The first floor, north-facing ensuite and bathroom windows do not require screening as these are non-habitable areas.

110. The first floor, west-facing bedroom window would consist of 1.7m high sill height above floor level and therefore meets the requirements of the standard.

A16 – Daylight to new windows objective

111. All of the proposed windows will face an area with a minimum 3sqm and minimum dimension of 1m clear to the sky, thereby complying with the standard.
112. Amongst other things, the standard requires a habitable room window to face an outdoor space clear to the sky with minimum of 3sqm and minimum dimension of 1m clear to the sky, not including land on an abutting lot.
113. As a result of the proposed 3.08m to 3.13m high northern boundary wall, the proposed 6 north-facing, ground floor, high-level windows (consisting of varied lengths) will face an overall light-court area of 12.6sqm (14m x 0.9m). Whilst the light-well meets the area required to be clear to the sky prescribed by the standard, the proposal does not meet the minimum dimension of 1m clear to the sky. Consequently, these north-facing, study and open plan kitchen/dining/living room windows would not receive daylight access as per the standard. Nonetheless, both these rooms would have alternate daylight access via east and west-facing windows and therefore, the variation to this standard is considered acceptable.
114. All other habitable room windows will receive daylight access in accordance with the standard requirements.

A17 – Private open space objective

115. The standard states that a dwelling should have POS of an area consisting of 80sqm or 20% of the area of the lot, whichever is the lesser, but not less than 40sqm. Furthermore, at least one part of the POS should consist of SPOS with a minimum area of 25sqm and a minimum dimension of 3m at the side or rear of the dwelling with convenient access from a living room.
116. Whilst the proposed ground floor plan (TP04) states that the dwelling would provide approximately 31sqm of POS, this appears to be a clerical error. The site provides 37sqm or 22% of POS within the front and rear setbacks at ground floor. Of this area, 35sqm of SPOS is provided at ground floor within the rear setback. This complies with the minimum area of 25sqm required by the standard, with this area continuing to provide for the reasonable enjoyment of the occupiers and is easily accessible from the main living area.

A18 – Solar access to open space objective

117. The open space at ground floor is orientated to the north and will receive full northerly solar access meeting this objective.

A19 – Design detail objective

118. The design of the addition is supported given:
- (a) The presentation, siting and proportions of the dwelling achieves a design response which respects the existing varied character of the area;
 - (b) The materials are generally respectful of the existing neighbourhood character; timber battens, masonry wall, concrete render, glazing, as well as timber boundary fences that can be found within the subject and neighbouring sites, ensuring that the proposed materials are generally sympathetic to the surrounding area;
 - (c) The proportions of the new dwelling complement the neighbourhood setting and will not be visually intrusive when viewed from Canterbury Street;
 - (d) Additionally, Council's Urban Design Unit have confirmed that *the proposed material palette provides relatively neutral materials and use lighter shades which are sympathetic to the context*; and
 - (e) The use of diamond grass pavers for car park is also supported by Council's Urban Design Unit.

A20 – Front fences objective

119. Does not apply as the proposed fence is 1.5m above NGL.
120. Overall, the proposal is considered to generally respond to the features of the site and the surrounding area, contributing to the emerging and preferred neighbourhood character.

Parking layout and traffic

Car parking

121. Under the *Clause 52.06-5* of the Yarra Planning Scheme, the development's parking requirements are as follows:

Proposed Use	Quantity/ Size	Statutory Parking Rate	No. of Spaces Required	No. of Spaces On-site	Reduction Required
3 x bedroom dwelling	1	2 spaces per dwelling	2	1	1
Total			2	1	1

122. Based on the table above, the proposed three bedroom dwelling has a parking shortfall of 1 car parking space. Before a requirement for car parking is reduced, the applicant must satisfy the Responsible Authority that the provision of car parking is justified having regard to the assessment requirements of *Clause 52.06-6*.

Availability of Car Parking

123. The subject site is located within an area containing predominantly permit zone parking only (western side of Canterbury Street) and time-restricted car parking, with periods ranging from ¼ hour to 2 hours. A large proportion of parking is restricted to 2 hours, extending along the northern side of Newry Street and eastern side of Edinburgh Street.

124. There is currently one car parking space provided along the Canterbury Street frontage of the site. This on-street car parking space will be impacted by the development as one on-site car parking space accessed via Canterbury Street is proposed. Council's Engineering Unit have no objection to the loss of one on-street car parking space stating that *the Permit Zone restriction along the west side of Canterbury Street improves on-street parking for residents*.

Parking Demand for Dwelling Use

125. Future residents would know up-front that the 3 x bedroom dwelling will only have one car parking space provided on-site. Council's Traffic Engineer Unit raised no concerns with the reduction in car parking. Car ownership is influenced by a number of factors including public transport access, proximity to employment and education centres, affordability issues, environmental concerns, and access to services. Given the location of the subject site; i.e. between two ACs with access to public transport, combined with the area's coverage of 2P restrictions this would provide regular turnover of parking throughout the day.

Appropriateness of Providing Fewer Spaces than the Likely Parking Demand

126. The additional reduction in car parking being sought by the proposal is supported by the following:
- (a) Tram services operating along Bridge Road (470m north), Swan Street (300m south) and Church Street (700m west). The site also has access to train services operating from the Burnley Train Station (390m south-east), as well as bus services (68m east);
 - (b) The site has good connectivity to the on-road bicycle network; and

- (c) The proposed development is considered to be in line with the objectives contained in Council's *Strategic Transport Statement*. The site is appropriately 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.

127. The reduction in the car parking requirement associated with the dwelling is considered appropriate in the context of the development and the surrounding area.

Car park access and layout

128. The proposed at-grade car parking layout and access shown on the S57A plans were assessed by Council's Traffic Engineering Unit, who confirmed that the width of the vehicle entrance and crossover are satisfactory meets all relevant standards and guidelines. The dimensions of the car parking space (6m long x 3.45m wide) was also found to be suitable.

129. As part of the S57A plans, the applicant provided a 1:20 scaled cross-sectional drawing of the ground clearance check. Whilst Council's Traffic Engineering Unit found the ground clearance check to be generally viable, a number of annotations on the cross section were required to be clarified. Therefore, a condition will require the applicant to demonstrate access into and out of the development by providing a vehicle crossing ground clearance check for a B85 design vehicle with appropriate levels provided in accordance with Council's 'Vehicle Crossing – Cross Section' information sheet and to.

Traffic

130. Given the allocation of the one on-site car parking space to the dwelling, any traffic generated by the site is considered to be low, and it is unlikely that the traffic associated with the development would have a discernible impact upon traffic levels along Canterbury Street and any other surrounding street.

131. The use of Canterbury Street is currently shared with both pedestrian and vehicle access. Increased use of Canterbury Street by vehicle traffic is therefore considered reasonable, with this outcome supported Council's Traffic Engineers.

Objector concerns

132. Objector concerns are outlined and discussed below:

- (a) *Out of keeping with neighbourhood character*

Neighbourhood character is discussed in paragraphs 62 to 66.

- (b) *Inappropriate design and overdevelopment (height, scale, bulk)*

Design and overdevelopment are discussed in paragraphs 80 to 116.

- (c) *Off-site amenity (overshadowing, overlooking)*

Overshadowing and overlooking are discussed in paragraphs 102 to 105 and 106 to 110, respectively.

- (d) *Loss of on-street car parking*

Loss of on-street car parking is discussed in paragraph 124.

- (e) *Discrepancies on plans (location of pergola structure)*

The applicant lodged a second set of S57A plans correctly identifying the location of the pergola of No. 30 Canterbury Street, including revised shadow impacts which has been discussed in paragraphs 102 to 105 (overshadowing).

Other matters

Building over easements

133. The application was referred to Council's Civil Engineering Unit during the further information stage. It was advised that *the Regulation 130 requires the Owner to obtain Council's consent to a proposal to build over the Easement only if the Easement is vested in Council*. However, this does not apply as the easements are not vest in Council.
134. Council's Civil Engineering Unit and City West Water have offered no objections to the construction of the dwelling over the existing drainage and sewerage easements in principle. The standard permit note relating to building over easement will be included.

Conclusion

Based on the report, the proposal is considered to comply with the relevant policies of the Yarra Planning Scheme and is recommended for approval, subject to conditions.

RECOMMENDATION

That having considered all relevant planning policies, the Committee resolves to issue a Notice of Decision to Grant a Planning Permit PLN19/0706 for the construction of a double-storey dwelling and associated reduction in the car parking requirements at 28 Canterbury Street Richmond VIC 3121, subject to the following conditions:

1. Before the development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the plans prepared by DX Architects, dated 15.10.2020 (Rev D: TP04, TP05, TP06, TP12, TP13, TP17, TP15, TP14), but modified to show the following:
 - (a) The ground floor, west-facing living room windows provided with solar protection;
 - (b) Dimension all north-facing, first floor habitable room windows showing a minimum 1.7m above floor level; and
 - (c) Demonstrate access into and out of the development by providing a vehicle crossing ground clearance check for a B85 design vehicle with appropriate levels provided in accordance with Council's 'Vehicle Crossing – Cross Section' information sheet.
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 is occupied, or by such later date as approved in writing by the Responsible Authority, all new on-boundary walls must be cleaned and finished to the satisfaction of the Responsible Authority.
4. Before the development is occupied, or by such later date as approved in writing by the Responsible Authority, all screening and other measures to prevent overlooking as shown on the endorsed plans must be installed to the satisfaction of the Responsible Authority. Once installed the screening and other measures must be maintained to the satisfaction of the Responsible Authority.

5. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, any 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.

6. 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.

7. 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.

8. 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.

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 5555 to confirm.

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

Provision must be made for drainage of the site to a legal point of discharge. Please contact Council's Building Services on 9205 5555 for further information.

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

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

Attachments

- 1 PLN19/0706 - 28 Canterbury Street Richmond - Site Location Plan
- 2 PLN19/0706 - 28 Canterbury Street Richmond - Advertised Plans

- 3 PLN190706 28 Canterbury Street Richmond - Urban Design Comments (Advertised Plans)
- 4 PLN19/0706 - 28 Canterbury Street Richmond - Informal Civil Engineering Comments (Advertised Plans)
- 5 PLN19/0706 - 28 Canterbury Street Richmond - Traffic Engineering Comments (Advertised Plans)
- 6 PLN19/0706 - 28 Canterbury Street Richmond - 1st S57A (Advertised Plans)
- 7 PLN19/0706 - 28 Canterbury Street Richmond - 2nd S57A (Decision Plans)
- 8 PLN19/0706 - 28 Canterbury Street Richmond - Traffic Engineering Comments (S57A Plans)
- 9 PLN19/0706 - 28 Canterbury Street Richmond - VicRoads Response (S52 Notice)

6.3 **PLN20/0165 - 33- 37 Rupert Street, Collingwood - Development of a ten (10) storey building (plus roof terrace) and use of the land for a food and drink premises and an office and a reduction in the associated car parking requirement of the Yarra Planning Scheme.**

Executive Summary

Purpose

1. This report provides an assessment of the proposal at property No. 33 - 37 Rupert Street, in Collingwood for the development of a ten (10) storey building (plus roof terrace) and use of the land for food and drink premises and an office and a reduction in the associated car parking requirement of the Yarra Planning Scheme.

Key Planning Considerations

2. Key planning considerations include:
 - (a) Use (Clause 34.02-1);
 - (b) Built form (Clauses 15, 21.05, 22.10, 34.02-7 and 43.02);
 - (c) Interface uses policy (Clause 22.05); and
 - (d) Car Parking and Bicycle Provision (Clauses 52.06 and 52.34) of the Yarra Planning Scheme.

Key Issues

3. The key issues for Council in considering the proposal relate to:
 - (a) Policy and Strategic Support;
 - (b) Built form and Urban Design;
 - (c) On-site amenity including Environmentally Sustainable Design;
 - (d) Off-site amenity including Waste Management;
 - (e) Car parking and traffic;
 - (f) Bicycle facilities and strategic transport; and
 - (g) Objector concerns.

Submissions Received

4. Six (6) objections were received to the application, these can be summarised as:
 - (a) Built form and design:
 - (i) The development is inconsistent with the neighbourhood character.
 - (b) Off-site amenity impacts:
 - (i) Does not provide adequate equitable development opportunities for surrounding sites.
 - (c) Traffic, Car and Bicycle parking:
 - (i) Reduction in the car parking requirement is excessive.
 - (ii) The on-site car parking provision will cause traffic congestion.
 - (iii) Reliance on traffic through surrounding streets.

- (iv) Not enough car parks provided on-site, the on-street car parking is already at capacity and cannot cater to overflow from development.
- (v) Bicycle parking is inadequate to off-set the reduction in car parking.
- (d) Other:
 - (i) The development provides an area for smokers i.e. smoke lobbies.
 - (ii) There is no guarantee that the building will be used as proposed, due to COVID-19.

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 conditions as detailed within the “Recommendation” section of this report.

CONTACT OFFICER: John Theodosakis
TITLE: Principal Planner
TEL: 9205 5307

5. Whilst the advertised plans are the “decision plans” forming the basis of this assessment, the additional material outlined above has been submitted on a without prejudice basis and as a response to the referral advice and will also be referenced in the body of the ‘Assessment’ section of this report. The documents provide some improvements and solutions to the design of the building.

The Proposal

6. The application proposes to develop the land at No’s. 33-37 Rupert Street, Collingwood with the construction of a ten (10) storey building (plus roof terrace and service areas) and a reduction in the associated car parking requirement of the Yarra Planning Scheme associated with an office and food and drink premises (both non-permit required uses).
7. The key elements of the development can be summarised as follows:

Use(s)

- (a) The following uses and designated areas are proposed:

- (i) A food and drink premises - cafe (permit not required use) of 62.8sq.m. at the ground floor; and
- (ii) 3,157sq.m. of office (permit not required use) spread across the ground to Level 09 floors, and a roof terrace of 73.9sq.m.

Development

- (b) Construction of a ten (10) storey (plus roof terrace and plant service area) building with a one level basement.
- (c) The height of the building is proposed at 38m to the roof above Level 9 (also translates as the floor level associated with the roof terrace) above the natural ground level (NGL), 39m to the highest point of the balustrade of the roof terrace above the NGL and 42.2m to the highest point of the roof of the lift overrun and stairwell access to the roof terrace above the NGL.
- (d) The building will read with a three storey podium to Rupert Street and a tower above (see Figure 3) with a recessive cap.

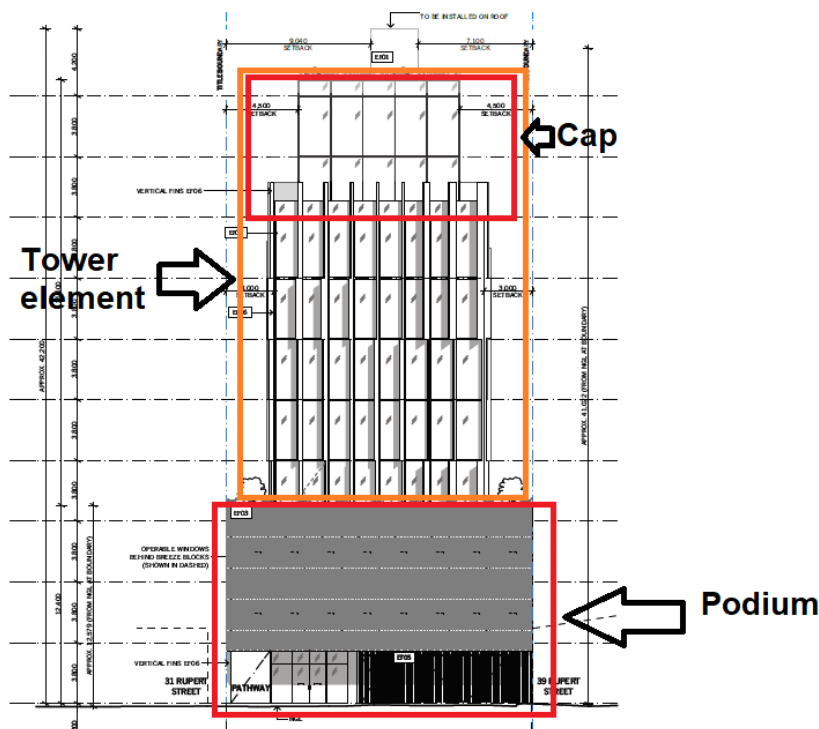


Figure 1: Elements of building as perceived from Rupert Street to the east.

Building massing and setbacks to Rupert Street (East)

- (e) One basement level is proposed across the site.
- (f) The walls associated with the ground floor would be setback a minimum 1.5m from the front boundary, forming an under-croft with the levels above (i.e. Levels 1 and 2) extending to the boundary and forming the three-storey podium to Rupert Street as identified at Figure 3.
- (g) The podium as measured above the natural ground level (NGL) will have a height of 12.57m to the balustrade at Level 3.
- (h) Levels 3 to 7 will be set back 3m from the Rupert Street boundary with the exception of a terrace of 104sq.m. at Level 3 that will extend into this setback.
- (i) Levels 8 and 9 including the roof top terrace, will be set back 5m from the Rupert Street boundary with the exception of a terrace at Level 8 that will extend into the setback by 2m.

Building massing and setbacks to the North and South

- (j) The building will extend at the ground floor for a length of 33.5m across the northern and southern boundaries.
- (k) To the north, Levels 1 and 2 will be constructed to the boundary save for a 3m deep light court at each level of varying lengths. To the south, Levels 1 and 2 will extend for a length of 12.1m from the south-west corner, before setting back 3m for a length of 10.75m (with the exception of planters that will extend into their setback) and extend across the remainder of the boundary for a length of 12.2m.
- (l) Levels 4 to 7 will be setback 3m from both, northern and southern boundaries.
- (m) Levels 8 and 9 will be setback 4.5m from both, northern and southern boundaries with the exception of a terrace at Level 8 that will extend into the setbacks by 1.5m.
- (n) The roof terrace and plant / service areas will be setback 5.2m from both northern and southern boundaries.

Building massing and setbacks to the west (rear)

- (o) To the west (rear), the building will extend across the title boundary at the ground through to Level 2 for its full length of 19.14m, and at Level 3 to Level 7 for a length of 13.14m, producing on-boundary wall heights of 12.14m and 32.34m (with the latter measured to the wall / balustrade associated with the terraces and planter boxes / landscaped areas at Level 8) above the NGL.
- (p) At Levels 8, 9 and the roof terrace and plant / service area, the building will be setback a minimum distance of 1.5m from the boundary.

Layout

- (q) A food and drink premises (café) facing Rupert Street, with separate access into a pedestrian pathway also accessed from Rupert Street, leading to a foyer associated with the offices.
- (r) The ground floor would be setback 1.5m and widen the Rupert Street footpath.
- (s) The pedestrian pathway created by the 2.8m setback at the ground floor to the south is intended to connect pedestrian movement with Rupert Street and the development recently approved to the west, at No. 40 and 50 Rokeby Street (planning application No. PLN20/0168).
- (t) The ground floor would include a waste service room, end-of-trip (EOT) facilities for 20 bicycle spaces in the rear 4.1m setback, service amenities and lifts.
- (u) The ground floor would also include a crossover that will provide access to a loading bay with a minimum dimension of 6.4m x 3m, that will also serve as a waiting bay for vehicle accessing a car lift servicing and providing access to the basement.

- (v) The basement car park will provide up to 18 car spaces, service and fire pump rooms.
- (w) The office area(s) would be spread across all levels.

Materials and Finishes

- (x) The podium will be constructed of glazing at the ground floor recess, and hit-and-miss bricks at the upper levels on the boundary, with the on-boundary side and rear walls constructed of precast-concrete with those recessed constructed primarily of glazing with vertical fins for articulation and shading of internal office areas.



Figure 2: Street view looking west towards the subject site and image showing variation in materials between podium and recessed walls on closer inspection.

ESD Features

- (y) The development would incorporate the following ESD commitments:
 - (i) The development is claiming a BESS score of 61%, representing best practice;
 - (ii) Building User Guide will be provided to building occupants with the intent to reduce energy and water consumption;
 - (iii) Heating and cooling systems to be within one Star of the best available, or Coefficient of Performance (COP) & Energy Efficiency Ratios (EER) 85% or better than the most efficient equivalent capacity unit;
 - (iv) All water heating systems must be within one Star, or 85% or better than the most efficient equivalent capacity unit available;
 - (v) A minimum 10% improvement on BCA minimum requirements for energy efficiency;
 - (vi) The development will feature vertical shading devices (blades) to all elevations except where there is a precast wall on the boundary;
 - (vii) Provision of 20 bicycle spaces at the ground level, with EOT facilities provided; and
 - (viii) Water efficient fixtures and taps.

Existing Conditions

Subject Site

- 8. The subject site is comprised of two lots, namely 33 and 35-37 Rupert Street, identified as Lots 1 on Certificate of title Volume No's. 01712 and 00440 and Folio No's. 275 and 885, respectively and associated with Plans of Subdivision TP54761V and TP603867H, respectively.

The subject site is located on the western side of Rupert Street in Collingwood between Langridge Street to the north and Victoria Parade to the south. The aerials / images below identify the subject site.

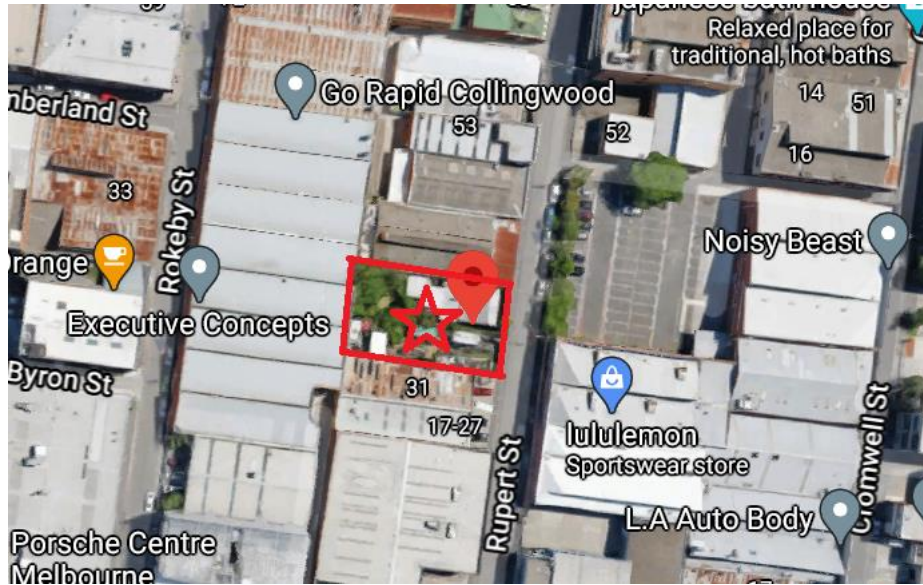


Figure 3: Aerial (sourced from Google – Map data 2020) with subject site identified with a star / red box.



Figure 4: Aerial (sourced from Google) with subject site outlined in yellow looking west from above and over the site.



Figure 5: Photos sourced from permit applicant's Town Planning report and modified to identify property numbers.

9. The subject site is rectangular in shape with a combined frontage of 18.29m, a depth of 35.05m and an overall site area of approximately 641sq.m.
10. The site is occupied by a single-storey, Victorian brick terrace with a front yard and tall front boundary fence. The front portion of the dwelling is setback from its southern side boundary shared with no. 33 Rupert Street (also forming part of the subject site) that is vacant save for some shipping containers and an awning frame. The majority of the dwelling is constructed along the northern boundary with private open space located at the rear (west) of the site and no vehicle access.
11. The land gradient is flat and the site is not encumbered by any restrictive covenants or party wall easements.

Surrounding Land

12. The surrounding area is characterised by a mixture of uses and architectural styles including industrial and commercial buildings of various types and eras as well as older style dwellings and newly constructed apartment developments (Yorkshire Brewery). The immediate surrounding area is zoned Commercial 2 (dark purple at Figure 11).



Figure 6: Subject site and zoning.

13. The area contains a range of businesses including light industry, manufacturing, warehousing, offices and studios and other commercial uses. Allotment sizes are varied as are building types ranging from industrial to warehouses, office and commercial, all reflecting the historic industrial nature of the area. Construction along Rupert Street is typically built boundary to boundary, with full site coverage and car parking provided within garages or car parking areas within front setbacks, including large open air car parking areas.

14. Some sites in the wider area are underutilised and / or vacant whilst others have been redeveloped for residential (i.e. up to 17 storeys (i.e. property No. 21 Robert Street, Collingwood – the former Yorkshire Brewery site – approximately 200m north-west of the subject site and zoned Mixed Use) and commercial uses i.e. up to 11 storeys with roof top terraces at property No. 51 Langridge Street approximately 170m north-west of the site. Some are currently under construction (i.e. property no. 2-16 Northumberland Street, Collingwood that is up to 13 storeys and zoned Commercial 2 located approximately 120m west of the subject site) whilst other sites, are being cleared (see Figure 13) in preparation for the commencement of works (i.e. property No. 71 – 93 Gipps Street, Collingwood that has a planning permit (planning permit no. PLN16/1150) for the construction of an 11 storey commercial building located approximately 300m north-east of the site).
15. The subject site, combined with the properties mentioned above, form part of the Gipps Precinct that has been identified as being strategically important for commercial activity and evidently, a transformation of built form within this precinct has commenced with further approved and proposed developments that include:
 - (a) PLN18/0183 – 19 Down Street, Collingwood – Development of an 8 storey commercial building – approved and at the time of writing, information in accordance with conditions of permit still pending. This application was considered by the Internal Development Approvals Committee on 13 May 2020 that adopted the Officer’s recommendation for the issue of a Notice of Decision to Grant a Permit with conditions.
 - (b) PLN20/0168 – 40-50 Rokeby Street, Collingwood – Development of a 13 storey commercial building – this application was supported by the Planning Decisions Committee (PDC) on 18th November, but with a further condition reducing the height to 11-storey (plus roofed services); and
 - (c) PLN19/0719 – 128 – 144 Wellington Street, Collingwood - Staged development and use of the land for two buildings up to 15 storeys – At the time of writing, this application was pending for a decision.
16. Within the Gipps Street precinct are also a number of purpose-built dwellings such as that on the subject site including on the southern side of Gipps Street (located further north) all zoned Commercial 2.



Figure 7: Properties to the south of Gipps Street, between Rokeby and Rupert Streets with the 17-storey, former Yorkshire Brewery in the background.

17. More recently, Council received notification that the Minister for Planning (the Minister) adopted amendment C283 to the Scheme, that includes a new Schedule to Clause 45.12 'Specific Controls Overlay' to facilitate a 13 storey development to land at 81-89 Rupert Street (located approximately 190m to the north of the subject site), also known as the 'Walk Up Village' (generally as previously proposed in Yarra planning permit application PLN19/0570).

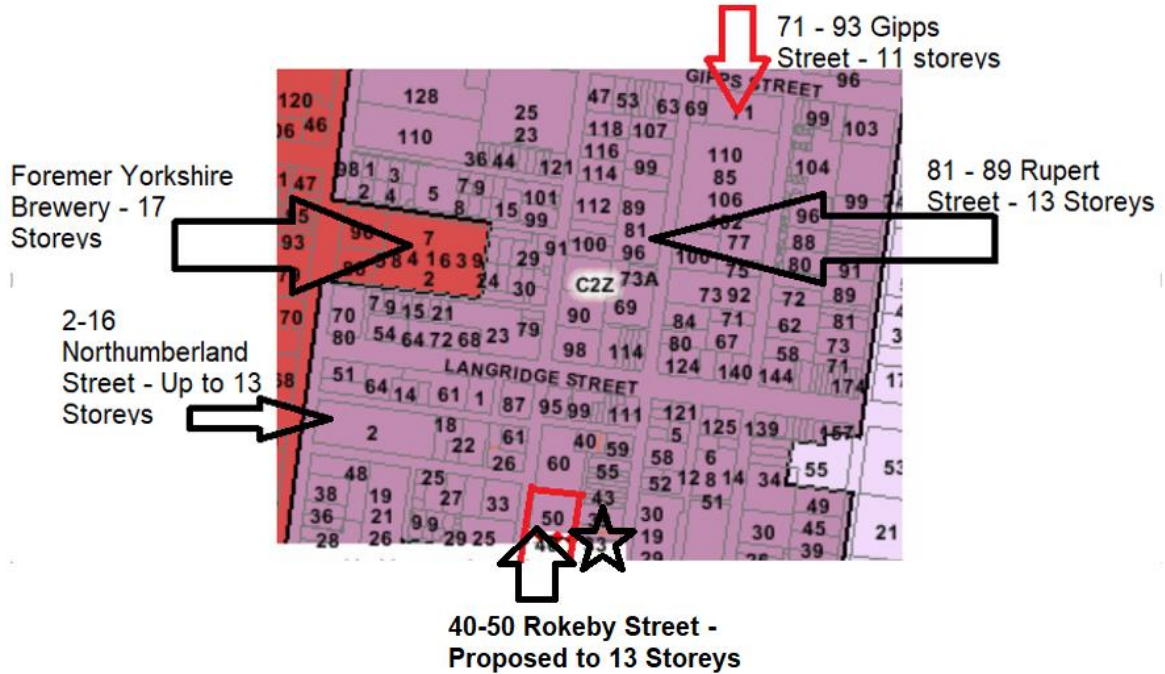


Figure 8: Subject site identified with a star with locations of some taller buildings identified (proposed, approved and under construction) for context.



Figure 9: South-east corner of Gipps and Rupert Street, with the land at 71-93 Gipps Street, in the background cleared and cited with a crane in preparation of construction.

18. The site's immediate interfaces are as follow:

North



Figure 10: Property to the immediate north (No.39 Rupert Street that can also be seen in Figure 11 below).



Figure 11: Properties to the immediate north as viewed from above facing west (sourced from google).

19. To the north (see Figure 10) is a single-storey former factory and warehouse building used as a food catering company. The building is constructed hard-edged to Rupert Street, of masonry construction and contains a roof that is in part, flat to Rupert Street, and followed by a pitched pop-up and angled roofing. The building extends across the entire, shared site boundary. Further north (see Figure 11), is another single-storey, hard-edged former factory and warehouse building, of masonry construction with that further north being two-storeys and hard-edged to Rupert Street. All three identified buildings contain crossovers to Rupert Street.

West



Figure 12: Image (sourced from Google) looking towards the western adjoining building from Rokeby Street.

20. The western adjoining properties (namely 40-50 Rokeby Street – see Figure 12) are occupied by former factory buildings that extend to their respective boundaries, covering 100% of the site, and used for automotive repairs and offices. The buildings present hard-edged masonry walls with a saw tooth roof form and a series of metal-framed windows, large openings for ease of vehicle and pedestrian access into a large open plan for automobile repairs.
21. The western properties have high on-boundary masonry walls where abutting the subject site and as previously indicated, have an approval for a multi-level building greater in height as compared to the one before Council. The height of the building as originally proposed to the PDC (see Figure 13 below) was at 54.33m to the roof above Level 12 and 59.03m level to the highest point of the roof plant screen above the NGL.

The PDC supported this on the basis of further conditions, with one requiring its reduction by two storeys, or in other words to a height of approximately 46.3m to the roof above Level 10 and 51.03m level to the highest point of the roof plant screen above the NGL (i.e. translating to a reduction by up to 8m with the condition).

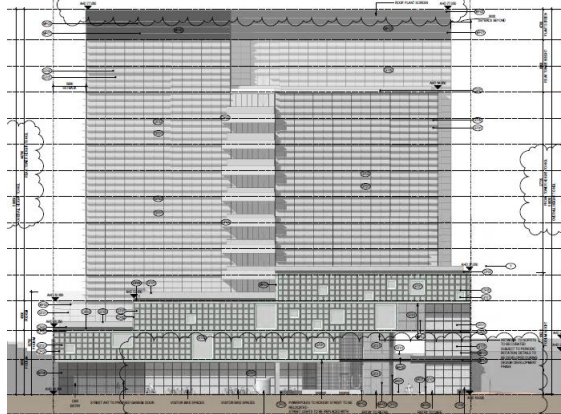


Figure 13: Rokeby Street elevation (West Elevation) of Scheme presented to the PDC on 18 November 2020.

22. At the time of writing, planning application No PLN20/0168 was pending for a decision.

South



Figure 14: Properties addressed to Rupert Street to the immediate south (sourced from Google).

23. The immediate southern properties are occupied by two single-storey commercial buildings of masonry construction and unlike the vast majority along Rupert Street, are recessed and provide car parking in their front setbacks. Further south is a two-storey, hard-edged commercial building. Beyond that are single and double-storey commercial buildings, some with deep recesses where they provide car parking areas with the site specifically heritage overlay controlled (i.e. graded 'individually significant') former "Ebenezer Particular Baptist Church" located at the north-east corner of the Victoria Parade and Rupert Street intersection. On the opposite corner is a contemporary building that houses a trophy engraving centre including the "Smeg" building.
24. Victoria Parade is a tree-lined arterial road located within the Road Zone Category 1 with tram stops located within the tree reserve. Beyond Victoria Parade are a series of buildings varying in height between two, three and four levels that progressively get higher closer to the CBD.

East

25. To the immediate east is Rupert Street which is a one-way street, with traffic flow heading south, from Langridge Street to the north. Parallel parking is provided on the eastern side of Rupert Street with 4 hour parking restrictions. The eastern side of Rupert Street contains two and three storey commercial buildings that are also constructed hard-edged to the street, including a large open air car park opposite.
26. The subject site is also well connected to surrounding services including being located:

- (a) Approximately 130m to the north of Victoria Parade, with various bus routes serving the western and eastern suburbs via the CBD, and tram route 109 Docklands to Box Hill via the CBD;
- (b) Approximately 260m to the west of Hoddle Street, a major arterial road with bus routes servicing Doncaster, the northern suburbs, various railway stations, the CBD, Elsternwick and St Kilda;
- (c) Approximately 540m to the east of Smith Street, a Major Activity Centre, with bars, cafes, restaurants, taverns, nightclubs, retail and community facilities, and tram route 86 serving Docklands and Boroondara via the CBD;
- (d) Approximately 650m from the North Richmond Railway Station located south-east; and
- (e) Approximately 950m to the south of Johnston Street, a Neighbourhood Activity Centre, with bus routes servicing this Centre.

Planning Scheme Provisions

Zoning

Commercial 2 Zone (C2Z)

27. The purposes of this zone are:

- (a) *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- (b) *To encourage commercial areas for offices, appropriate manufacturing and industries, bulky goods retailing, other retail uses, and associated business and commercial services.*
- (c) *To ensure that uses do not affect the safety and amenity of adjacent, more sensitive uses.*

28. The food and drink premises and office use **do not** require planning approval because the former is less than 100sq.m. and the latter is a no permit required use at the Table of uses of Clause 34.02-1 of the Scheme.

29. Pursuant to Clause 34.02-4 of the Scheme, a planning permit is required to construct a building or construct or carry out works.

Overlays

Design and Development Overlay (DDO) – Schedule 11 – Gipps Precinct

30. Pursuant to Clause 43.02-2 of the Scheme, a planning permit is required to construct a building.

31. Schedule 11 to the DDO contains requirements in assessing buildings and provides the following decision guidelines at point 7 that must be considered:

- (a) *The impact of traffic generated by the proposal and whether it is likely to require additional traffic management control works in the neighbourhood.*
- (b) *How the design, height and form of development responds to the preferred built form character of the Precinct.*
- (c) *How the design, height and visual bulk of building/s on the site address potential negative amenity impacts on surrounding development.*
- (d) *How the proposal improves the street environment for pedestrians along street frontages.*
- (e) *The location of, and access to, parking facilities and their effect on the local road network.*

Particular Provisions

Clause 52.06 – Car parking

32. Clause 52.06-1 requires that a new use must not commence or the floor area of an existing use must not be increased until the required car spaces have been provided on the land.
33. Pursuant to Clause 52.06-3 a permit is required to reduce the number of car parking spaces required under this clause.
34. Pursuant to Clause 52.06-5, Column B of Table 1 applies if any part of the land is identifies as being within the Principal Public Transport Network Area as shown on the *Principal Public Transport Network Area Maps* (State Government of Victoria, August 2018). The subject site is shown as being within the Principal Public Transport Network Area and therefore Column B applies.
35. Before a requirement for car parking is reduced, the applicant must satisfy the Responsible Authority that the provision of car parking is justified having regard the decision guidelines at clause 52.06-6 of the Scheme.
36. The following table identifies the car parking requirement under Clause 52.06-5 and the provision on site.

Proposed Use	Quantity/ Size	Statutory Parking Rate*	No. of Spaces Required	No. of Spaces Allocated
Office	3,157q.m.	3 spaces per 100sq.m. of net floor area	94	18
Food and drink premises (Café)	63sq.m. (nearest whole no.)	3.5 spaces per 100sq.m. of leasable floor area	2	0
Total			96	18

37. A total of 18 car spaces are proposed on site, therefore the application seeks a reduction of 78 car spaces.

Clause 52.34 – Bicycle Facilities

38. 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
39. Under the provisions of Clause 52.34-3 of the Scheme, the development’s bicycle parking requirements are as follows:

Proposed Use	Quantity/ Size	Statutory Parking Rate	No. of Spaces Required
Office (other than specified in the table)	3,157sq.m.	1 employee space to each 300 sqm of net floor area if the net floor area exceeds 1000 sqm	11 employee spaces
		1 visitor space to each 1000 sqm of net floor area if the net floor area exceeds 1000 sqm	3 visitor spaces.
Food and drink premise (café) – nested with retail	63sq.m.	1 to each 600 sq m of leasable floor area if the floor area exceeds 1000sq.m.	0 0

Bicycle Parking Spaces Total			11 employee spaces
			3 visitor spaces
Showers / Change rooms	1 to the first 5 employee spaces and 1 to each additional 10 employee spaces		2 showers / change rooms

40. The development proposes 20 bicycle spaces for staff / employees in the rear setback at the ground floor and 6 showers / change rooms also located at the ground floor and within the building. The bicycle requirements are above and beyond the statutory requirements of the Scheme.

41. Clause 52.34-4 provides the design standard for bicycle spaces and signage.

General Provisions

Clause 65 – Decision Guidelines

42. 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)

43. Relevant clauses are as follows:

Clause 11.01-1R – Settlement – Metropolitan Melbourne

44. 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 - Managing Growth

Clause 11.02-1S - Supply of Urban Land

45. The objective this clause is “to ensure a sufficient supply of land is available for residential, commercial, retail, industrial, recreational, institutional and other community uses”.

Clause 13.05 - Noise

Clause 13.05-1S - Noise abatement

46. The relevant objective of this clause is “to assist the control of noise effects on sensitive land uses”.

47. Noise abatement issues are measured against relevant State Environmental Protection Policy (SEPP) and other Environmental Protection Authority (EPA) regulations.

Clause 13.07 - Amenity and Safety

Clause 13.07-1S - Land use compatibility

48. The objective of this clause is *“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
49. The relevant objective of this clause is *“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
50. The objective of this clause is *“to create distinctive and liveable city with quality design and amenity”*.
Clause 15.01-2S - Building design
51. The relevant objective of this clause is *“to achieve building design outcomes that contribute positively to the local context and enhance the public realm”*.
52. Relevant strategies of this clause are:
- (a) *Ensure a comprehensive site analysis as the starting point of the design process and 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 is designed to protect and enhance valued landmarks, views and vistas.*
 - (g) *Ensure development provides safe access and egress for pedestrians, cyclists and vehicles.*
 - (h) *Ensure development provides landscaping that responds to its site context, enhances the built form and creates safe and attractive spaces.*
53. This clause also states that planning must consider (as relevant), the *Urban Design Guidelines for Victoria (Department of Environment, Land, Water and Planning, 2017)*.
Clause 15.01-4S - Healthy neighbourhoods
54. The objective of this clause is *“to create urban environments that are safe, functional and provide good quality environments with a sense of place and cultural identity”*.
Clause 15.01-4R - Healthy neighbourhoods - Metropolitan Melbourne
55. The strategy is to *“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
56. The relevant objective of this clause is *“to recognise, support and protect neighbourhood character, cultural identity, and sense of place”*.
Clause 15.02 - Sustainable Development
Clause 15.02-1S - Energy Efficiency
-

57. The objective of this clause is *“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
58. The objective of this clause is *“to strengthen and diversify the economy”*.
59. 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
60. The relevant objective of this clause is *“to encourage development that meets the communities’ needs for retail, entertainment, office and other commercial services”*.
61. 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 18.02 - Movement Networks*
Clause 18.02-1S – Sustainable personal transport
62. The relevant objectives of this clause is *“to promote the use of sustainable personal transport”*.
63. 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*
64. 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

65. The objective of this clause is “*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

66. A relevant strategy of this clause is to “*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

67. The objective of this clause is “*to ensure an adequate supply of car parking that is appropriately designed and located*”.
68. A relevant strategy is “*protect the amenity of residential precincts from the effects of road congestion created by on-street parking*”.

Local Planning Policy Framework (LPPF)

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

Municipal Strategic Statement (MSS)

70. Relevant clauses are as follows:

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

Clause 21.03 – Vision

72. The relevant sections of this Clause are:

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

Clause 21.04-3- Industry, office and commercial

73. The objective of this clause is “*to increase the number and diversity of local employment opportunities*”.

Clause 21.05-2 – Urban Design

74. 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 achieved through the following relevant strategy:*
 - (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:*
 - a. *Significant upper level setbacks;*
 - b. *Architectural design excellence;*

- c. *Best practice environmental sustainability objectives in design and construction;*
- d. *High quality restoration and adaptive re-use of heritage buildings;*
- e. *Positive contribution to the enhancement of the public domain; and*
- f. *Provision of affordable housing.*

(c) *To ensure that new development contributes positively to Yarra's urban fabric; and*

(d) *To enhance the built form character of Yarra's activity centres.*

Clause 21.05-3 – Built Form Character

75. A relevant objective of this Clause is “*to maintain and strengthen the identified character of each type of identified built form within Yarra*”.

Clause 21.05-4 – Public Environment

76. 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

77. This policy recognises that Yarra needs to reduce car dependence by promoting walking, cycling and public transport use as viable and preferable alternatives.

78. Parking availability is important for many people, however in Yarra unrestricted car use and parking is neither practical nor achievable. Car parking will be managed to optimise its use and to encourage sustainable transport options.

79. 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

80. The relevant objective is “*to promote ecologically sustainable development*”.

81. A relevant strategy of this clause is Strategy 34.1 which is to “*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

82. The neighbourhood character statement for this area at Clause 21.08-5 states:
- (a) *The Gipps Street industrial precinct is characterized by traditional manufacturing, service activities and a considerable portion of activity related to the textile, clothing and footwear sector.*
- The precinct provides the opportunity for a wide range of small to medium businesses to operate in a location that is relatively unconstrained by sensitive uses.*
- (b) *To allow flexibility for large sites which may have difficulty in finding new industrial tenants rezoning to Business 3 will be supported. This will enable the area to retain an industrial character but evolve to provide a wider range of employment opportunities including service business and offices uses. Any change of use should consider opportunities for improvement to the public domain.*
83. Figure 14 shows the subject site is a ‘*non-residential area*’ where the built form character objective is to improve the interface of development with the street.

Relevant Local Policies

Clause 22.03 – Landmarks and Tall Structures

84. This policy applies to all development. Whilst the site is not within proximity to an identified sign or landmark within the policy, it is important to “*ensure the profile and silhouette of new tall structures adds to the interest of Yarra’s urban form and skyline*”.

Clause 22.05 – Interfaces Uses Policy

85. This policy applies to all development and land use applications 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.
86. It is policy that “*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*”.
87. Decision guidelines at clause 22.05-6 include that “*before deciding on an application for non-residential development, Council will consider as appropriate:*
- (a) *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.*
- (b) *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 22.16 Stormwater Management - Water Sensitive Urban Design

88. 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 22.10 Built form and design policy

89. 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.*

Clause 22.16 Stormwater Management - Water Sensitive Urban Design

90. 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

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.

Other Documents

Urban Design Guidelines for Victoria (DELWP)

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

Gipps Street Local Area Plan

93. The Gipps Street Local Area Plan (GSLAP) was adopted by Council in February 2010. This plan includes objectives, strategies and actions which deal with future land use and form of development, physical improvements and infrastructure investments. It provides the strategic basis for future development and activity mix, preferred future character, a guide for new public works and infrastructure, design guidance and an overall approach to implementation and priorities.
94. This plan pre-dates the rezoning of the subject land from Industrial to Commercial and influenced the implementation of Schedule 11 to the Design and Development Overlay affecting the site.
95. The GSLAP aims to reduce car travel into the precinct, as follows:
- (a) *A broader policy objective to implement Council's Strategic Transport Statement is to reduce the proportion of trips into and out of the precinct by car.*
 - (b) *Reduced car travel will depend primarily on broader initiatives beyond the scope of this plan.*
 - (c) *Local initiatives should aim to improve walking and cycle access and connections to public transport and slowing car and other vehicle traffic in and around the precinct.*

Plan Melbourne

96. Released in May 2017, Plan Melbourne 2017-2050 (Plan Melbourne) outlines the key strategic directions with regard to the provision of housing and commercial activity within Melbourne's urban areas. The strategic outcomes outlined in the document are required to be considered as part of Council's decision-making process and include (inter-alia):
- (a) Outcome 1: *'Melbourne is a productive city that attracts investment, supports innovation and creates jobs.'*
 - (i) Direction 1.2 of Plan Melbourne is to *'Improve access to jobs across Melbourne and closer to where people live'*.
 - (b) The strategy promotes '20-minute neighborhoods' where there is access to local shops, schools, parks, jobs and a range of community services within a 20 minute trip from your front door.

Melbourne Industrial and Commercial Land Use Plan (MICLUP)

97. The Melbourne Industrial and Commercial Land Use Plan builds on the relevant policies and actions of Plan Melbourne 2017-2050 and its associated Plan Melbourne 2017-2050 Five-Year Implementation Plan.
98. The MICLUP identifies the Gipps Street precinct in Collingwood as a key commercial area, stating that *"it is home to creative sectors such as architecture and design, software and interface design and visual arts. Council strategies support commercial office conversions, small office complexes, light industry and office warehouse developments in the area"*.
99. The strategy identifies that planning within the Inner Metro Region (inclusive of Melbourne City Council, Port Phillip Council and Yarra City Council) should *retain and support areas in and around Collingwood, Cremorne and South Melbourne to continue to develop as key locations creative industry uses*.
100. The MICLUP anticipates an additional 4 million square metres of commercial floor space will be required across the Inner Metro Region by 2031. Of this, approximately 3.3 million square metres is anticipated to be required for office uses and the remaining floor space to be allocated for retail.

Whilst the City of Melbourne is anticipated to accommodate the majority of the additional floor spaces required, the City of Yarra is expected to provide, in addition to the existing 933,400sqm of commercial floor space identified in 2018, an additional 548,000sqm of commercial floor space by 2031.

Spatial Economic and Employment Strategy

101. The Spatial Economic and Employment Strategy (SEES) was adopted by Council in September 2018 and includes 6 directions which will inform future policy for the Scheme.
102. The strategic direction contained within the SEES supersedes that contained within the Yarra Business and Industrial Land Strategy (BILS), adopted by Council in June 2012.
103. The Gipps Street Major Employment Precinct (located between Smith, Johnston and Hoddle Streets and Victoria Parade) is nominated as one of five major employment precincts within Yarra, the other four being Abbotsford, Church Street south, Cremorne and Victoria Parade.
104. A Strategy of the SEES relevant to this application is Strategy 2: Retain and grow Yarra's Major Employment precincts:

To accommodate projected demand for commercial floor space, Yarra's two large consolidated employment precincts at Gipps Street, Collingwood and Cremorne/Church Street South, Richmond should be retained for employment activities. These areas have made a gradual transition from predominantly industrial uses to a wider mix of activities that include professional services, creative industries, medical-related activities and small-scale manufacture. Zoning should continue to exclude residential development to retain the core employment function of these precincts.

105. The strategy includes the following precinct specific directions for the Gipps Street precinct:

Given projected demand for employment floor space, and office floor space in particular, the precinct should retain its employment focus. Recent zoning changes have already provided greater flexibility in the range of permissible employment land uses.

Although there are many retail and hospitality business beyond the immediate Gipps Street precinct, the lack of retail within the precinct could be a barrier to attracting new businesses. The collection of smaller business on Glasshouse Road at the western edge of the precinct might be interpreted as evidence of the attractiveness of the more vibrant quarters of the precinct.

More detailed built form guidance would provide greater clarity about opportunities for additional development and the scale and form envisaged.

This precinct could accommodate future demand for floor space generated by both the Victoria Parade health precinct and the Johnston Street Activity Centre, where capacity for growth is more constrained.

106. The SEES also acknowledges that *employment across the precinct is changing, with the evolution of a more diverse commercial employment base focused around the creative sector, service industries, and hybrid office/industrial businesses.*

Advertising

107. The application was advertised under the provisions of Section 52 of the *Planning and Environment Act (1987)* by 2,345 letters sent to surrounding owners and occupiers and by two signs displayed on the Rokeby Street frontage. Six (6) objections were received to the application, these can be summarised as:

- (a) Built form and design:
 - (i) The development is inconsistent with the neighbourhood character.
- (b) Off-site amenity impacts:
 - (i) Does not provide adequate equitable development opportunities for surrounding sites.
- (c) Traffic, Car and Bicycle parking:
 - (i) Reduction in the car parking requirement is excessive.
 - (ii) The on-site car parking provision will cause traffic congestion.
 - (iii) Reliance on traffic through surrounding streets.
 - (iv) Not enough car parks provided on-site, the on-street car parking is already at capacity and cannot cater to overflow from development.
 - (v) Bicycle parking is inadequate to off-set the reduction in car parking.
- (d) Other:
 - (i) The development provides an area for smokers i.e. smoke lobbies.

 - (ii) There is no guarantee that the building will be used as proposed, due to COVID-19.

108. Due to the volume of objections received and Government restrictions related to COVID-19, a planning consultation was not held. However, the planning officer overseeing the application has been available via phone and email to residents wishing to discuss the matter further.

Referrals

Internal Referrals

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

- (a) Urban Design Unit (public realm only);
- (b) Engineering Unit;
- (c) Strategic Transport Unit;
- (d) City Works Unit; and
- (e) ESD Advisor.

External Consultants

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

- (a) Urban Design (Hansen Partnership Pty. Ltd.); and
- (b) Wind (Vipac Engineers and Scientists Ltd.).

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

OFFICER ASSESSMENT

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

- (a) Policy and Strategic justification;
- (b) Built Form – Urban Design;
- (c) On-site Amenity (ESD);
- (d) Off-site Amenity;
- (e) Traffic, access and car parking;
- (f) Waste Management/Loading; and
- (g) Objector's concerns.

Policy and Strategic Justification

113. The proposal has strong strategic support at a State and local level. The C2Z which applies to the site is capable of accommodating greater density and higher built form, subject to individual site constraints.

114. State and local policies (such as clauses 11.02-1S and 21.04-3) encourage the concentration of development near activity centres (with the Smith Street Major Activity Centre located approximately 500m west), diversifying employment opportunities and more intense development on sites well connected to public transport.

115. 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'*. The proposal will support economic opportunities in a highly accessible, service-rich area. The office use combined with a food and drink premises (café) will increase employment opportunities. The proposal is complementary to the surrounding area due to the sites location and is not expected to pose interface conflict issues.

116. Council's recent SEES document, identifies the Gipps Street Major Employment precinct as evolving to including *'a more diverse commercial employment base focused around the creative sector, service industries and hybrid office/industrial businesses'*. The proposal has been informed by other surrounding land uses and will comfortably knit into this emerging culture of uses within the precinct that is experiencing growth in office use.

117. In regard to the proposed built form, local and state policies encourage the concentration of development in and around activity centres but also intensifying development on sites that are specifically zoned to be tailored to accommodate development that is well connected to public transport and therefore ensuring the efficient use of existing infrastructure, which is also an important facet of Clause 65.
118. Schedule 11 to the DDO also provides further guidance for the preferred direction for development on the subject site and the surrounding land, which reinforces current State and Local policy to increase the number and diversity of employment opportunities within and around activity centres as is proposed and discussed favourably.
119. The application proposes the construction of a ten storey building (plus roof plant area and terrace) in an area that has potential for an increase in development (as is also evidenced by the number of large developments in the surrounding area that can be seen from multiple streets). The area is undergoing significant development and the proposal is highly consistent with the purpose of the zone and strategic intent for this area (including the requirements within Schedule 11 of the DDO that seek to encourage intensification of commercial uses and provision of diverse employment opportunities.
120. The site's proximity to public transport would encourage the use of alternative modes of transport to and from the site rather than reliance on motor vehicles, complying with clauses 21.03 – Vision; 18.02-2S – Public Transport; and 21.06 –Transport of the Scheme.
121. While there may be strong strategic direction for intensified development and a car parking reduction on the subject site, the built form policy and direction under clauses 22.05 – *Interface uses* and Clause 15 - *Built Environment and Heritage*, Clause 21.05 - *Built Form* and Clause 22.10 - *Built form and design policy* of the Scheme also outline that consideration must be given to the design of the building and its interfaces with the surrounding area. These policies will therefore be considered in associated with the requirements within Schedule 11 of the DDO.
122. The size of the subject site allows for a more robust development to occur in its existing underutilised conditions. However, more intensive growth, whilst strongly supported by policy, must respond to existing conditions and be tempered to respect the existing neighbourhood and the site's relationship with adjoining built form in terms of producing a reasonable scale and ameliorate or reduce off-site amenity impacts. These factors will be discussed in turn.
123. Having regard to applicable policy, the proposed re-development of the site is considered to have strong strategic planning support.
124. The use of the site as a mixed-use building containing office and a food and drink premises (café) is supported by both State and Local policy, as outlined previously within the *Policy and Strategic Justification* section.
125. Additionally, the zoning of the land being C2Z includes the objective of encouraging development of commercial areas for offices, appropriate manufacturing and industries, bulky goods retailing, other retail uses, and associated business and commercial services.
126. The office use and food and drink premises (café) do not require a planning permit in the C2Z.
127. The food and drinks premise (café) within the scheme (non-permit required) is likely to be frequented by office workers in the building.
128. The mixed use function of the building supports the purpose of the zone, and the objectives and strategies outlined earlier. In considering land use applications within a C2Z also requires consideration of the following matters:
 - (a) The effect of existing uses on the proposed use
 - (b) The drainage of the land
 - (c) The availability and connection to services; and

(d) The effect of traffic to be generated

129. With respect to drainage and services, there is no evidence that the subject site cannot connect to the existing drainage networks and service. The effect of traffic generation will be discussed later in the report.
130. The impact on existing uses requires further discussion. It is anticipated that as the surrounding uses are primarily commercial in nature that the proposed development can adequately manage offsite impacts. It is acknowledged that there are some existing dwellings within the C2Z proximate to the site which also must be considered.
131. Clause 22.05 (Interface Uses Policy) requires new non-residential use and development within Commercial Zones to be designed to minimise noise and visual amenity impacts upon nearby, existing residential properties as well as requiring building design to ensure that the ongoing viability of surrounding industrial and commercial properties is not impacted through the introduction of more sensitive land uses.
132. Broadly speaking, the incorporated uses do not require a planning permit, however, will be complimentary to those already existing in the immediate area that is also comprised of offices and car repairs, food catering services and some manufacturing. It is considered that the proposal will enhance existing uses in the area (particularly commercial) by providing a ground level food and drink premises (café) and publically accessible pedestrian pathway that will connect to the laneway proposed by the development to the west, on the Rokeby Street sites identified in earlier sections, and further discussed in a later section of this assessment, at the rear of the site and will effectively activate this interface to Rupert Street.

Built form - Urban Design

133. 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 22.10 (Built form and design policy) and Clause 43.02 (Design and Development Overlay Schedule 11) of the Scheme.
134. 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).

Context

135. The direct interfaces to the subject site include single and double-storey buildings. Beyond and more broadly are hard-edged buildings that are generally robust in their architectural expression that have a former warehouse / industrial appearance or office influenced design with one extending to three-storeys further north-east.
136. As outlined within the 'site and surrounds' section of this report, the subject site is located within an area where higher built form and contemporary designs are clearly emerging characteristics of the precinct. A significant number of multi-storey buildings have been approved or constructed within the Gipps Street Precinct with heights broadly ranging from 6 (i.e. property No. 48 – 50 Gipps Street – Planning Permit No. PLN18/0902) to 17 storeys (i.e. property No. 1-21 Robert Street - Yorkshire Brewery – Planning Permit No. PLN11/0750).
137. Byron Street locate to the west of Rokeby Street, also provides access to buildings ranging between 2 and 6 storeys associated with the former silos (now redeveloped to 11 storeys) at No. 21 Northumberland Street and the former distillery at No. 26 Wellington Street. There is no dispute that strategically the subject site is appropriately located for a higher-density development given the scale of surrounding built form, being within proximity to the Smith Street Activity Centre, and within a commercial zone 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 the future. This change is supported by Council, with Clause 21.08-5 of the Scheme noting the following;

- (a) *The Gipps Street industrial precinct is characterized by traditional manufacturing, service activities and a considerable portion of activity related to the textile, clothing and footwear sector. The precinct provides the opportunity for a wide range of small to medium businesses to operate in a location that is relatively unconstrained by sensitive uses. To allow flexibility for large sites which may have difficulty in finding new industrial tenants, rezoning to Business 3 will be supported. This will enable the area to retain an industrial character but evolve to provide a wider range of employment opportunities including service business and offices uses. Any change of use should consider opportunities for improvement to the public domain [Emphasis added].*

138. To provide further context of the scale and mass around the subject site and more broadly, the map at Figure 23 indicates buildings in excess of between 5-17 storeys within the Collingwood neighbourhood. It is evident that the area is undergoing significant redevelopment as a pocket with taller developments with the vast majority of these approved (with the exception of the developments at properties at 128-144 Wellington and 40-50 Rokeby Street pending for a decision at the time of writing this report with further amendment applications pending at 79-88 Wellington and 23-45 Waterloo Streets).



Figure 15: Site plan identifying varied building heights in the immediate and broader context.

139. Whilst an increasing number of robust, multi-level developments are located within the area more broadly, it is noted that the direct interfaces to the subject site, include one storey buildings to the immediate north and south, facing Rupert Street and comparable two-storey buildings to the immediate west facing Rokeby Street. It is a reasonable expectation that these sites may be consolidated and developed to a similar intensity in the future. It is further highlighted, that the site to the west has Council support for an eleven-storey mixed use building with a maximum building height of approximately 51.03m above the NGL.
140. The area is strategically identified for growth and is currently in transition from low scale industrial uses to now including greater scale and new service and arts industries which are all co-locating.

Whilst the proposed 10 storey building (with plant services and a roof terrace) would be taller than the buildings immediately interfacing the site, this is consistent with the strategic direction provided by policy in this area and the direction of scale, proportions, built form and mass of approved surrounding developments such as those detailed in earlier sections.

141. The Minister's recent gazettal of amendment C283 to the Scheme to facilitate a 13 storey development at 81-89 Rupert Street (located approximately 190m to the north from the subject site, marked as E in Figure 15 above), also known as the 'Walk Up Village, including amendment C285 to the Scheme to facilitate a 15-storey development at 36 – 52 Wellington Street, Collingwood of 15 storeys (located approximately 140m west from the subject site, marked as T in Figure 15 above), further benchmark and justify a height that is comparable to these buildings. The building height approved at 81.89 Rupert Street is 56.9m above the NGL to the highest point of the sawtooth roof form and that approved at 36-52 Wellington Street is approximately 61m above the NGL to the highest point of the plant screen. The current application before Council proposes a maximum building height of 42.2m to the highest point of the roof of the lift overrun and stairwell access to the roof terrace above the NGL hence being less than the heights of buildings approved by the Minister for Planning.
142. In addition to the above, new buildings must achieve the preferred future character as outlined within the DDO control which seeks the following:
- (a) *A built form business and commercial environment which builds on the existing fine grain industrial nature of the area that allows for innovation and interest;*
 - (b) *A vibrant and safe street environment due to an increasing amount of street orientated development particularly on Gipps and Langridge Street;*
 - (c) *A consistent streetscape and well-articulated buildings with street facades built to a height of up to 3 – 4 storeys. Taller built form will set back from property boundaries and spaced to create new interest and variety in building forms.*

New development

143. It is important for any assessment of building height and neighbourhood character to balance the range of influencing factors affecting this area, including policy provisions, existing height characteristics of nearby built form and preferred future character for the area.
144. The Scheme provides guidance to assist in determining whether the proposed height is acceptable within the site context. In relation to the PPF, building heights are best derived from specific design objectives; being contextual design, the aspirations for urban consolidation and issues of minimising adverse off-site amenity impacts rather than outlining specific height limits.
145. With regard to policy direction under the Scheme, clause 21.05 – *Urban Design* contains Objective 17: *to retain Yarra's identity as a low-rise urban form with pockets of higher development*. Strategy 17.2 reads as follows:
- (a) *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; and*
 - (vi) *Provision of affordable housing.*

146. Based on the policy above, the proposed development must be able to demonstrate specific benefits to gain policy support for a height greater than 6 storeys. Further policy guidance is provided by Schedule 11 to the DDO where the preferred character for the Gipps Street Precinct is (as relevant to the development):
- (a) *A built form business and commercial environment which builds on the existing fine grain industrial nature of the area that allows for innovation and interest; and*
 - (b) *A consistent streetscape with active street-frontages and well-articulated buildings with street facades built to a height of up to 3-4 storeys. Taller built form will be set back from property boundaries and spaced to create new interest and variety in building forms.*
147. The following requirements are applicable to developments above four storeys:
- (a) *Demonstrate a high standard of architectural design;*
 - (b) *Minimise overshadowing of adjoining streets, public spaces or private properties;*
 - (c) *Be set back from along the northern side of the following streets:*
 - (i) *Gipps Street; and*
 - (ii) *Langridge Street*
148. Development should also be designed to:
- (a) *have active and attractive frontages.*
 - (b) *address street activity in its interface design, avoiding recessed car parking at street level.*
 - (c) *be well articulated and modulated.*
 - (d) *use materials and finishes which complement adjacent development and enhance the appearance of the narrow street network.*
149. In response to the policy framework applicable to the site and the objectives describing the preferred future character of this precinct, the proposal at 10 storeys plus plant service area and terrace, whilst greater in height than most existing surrounding buildings will be commensurate with other buildings approved by Council in more recent years and even more recently, the Minister, and is therefore responsive to this shift in built form. The area has seen and is continuing to undergo substantial change in terms of taller built forms (both constructed and under construction) and it is considered that the building has been considered in relation to its context and within the C2Z, on a site where more robust built form such as that proposed are becoming more readily visible.
150. Urban design advice was sought from Hansen Partnerships (Hansen). Hansen were generally supportive of greater development on the site and acknowledged that policy and contextual attributes support a taller development such as the current scheme before Council. In fact, the building height is considered to have provided a mediated response to other buildings supported at a greater height including lower built forms of 5 – 7 storeys as already established earlier.
151. The podium design provides a transitional response to Rupert Street as it is expressed across the site from the north to the south, with the ground floor recessed from the footpath by a minimum 1.5m, improving the usability of this space and referencing other buildings that are recessed from their front boundaries (albeit it is noted that most buildings are hard-edged). The three-storey podium (i.e. ground through to Level 2) has been supported by Hansen, who provided the following comment in relation to this element:
- (a) *We are generally satisfied that the presentation of the proposed architectural treatment in achieving unambiguous visual distinction between the 'base' and 'top'. Compositionally, we commend the utilisation of 'bricks' as in response to predominant material palette within the context of Rupert Street streetscape.*

The application of a ‘hit and miss’ brick works that enables visual permeability is successful in achieving a restrained façade design without discounting on the human-scaled articulation and sense of depth to the building. Currently, existing buildings to the north and south of the subject site are setback from their Rupert Street frontage, revealing the proposed 3-storey northern and southern elevation.

152. Hansen made some further observations and recommended that the development be further improved through the application of the masonry element along the northern and southern party walls to further refine and improve the three-dimensional quality of the podium. The sketch plans provided 24th September and prepared by Pitch Architects, provide this improvement by extending the masonry element to the on-boundary walls at the north-east and south-east corners for minimum lengths of 12.35m and 12.2m , respectively (modified from concrete panels). This will improve the three-dimensional aspect of the street podium by ensuring a continuous line of built form that will read in the round.

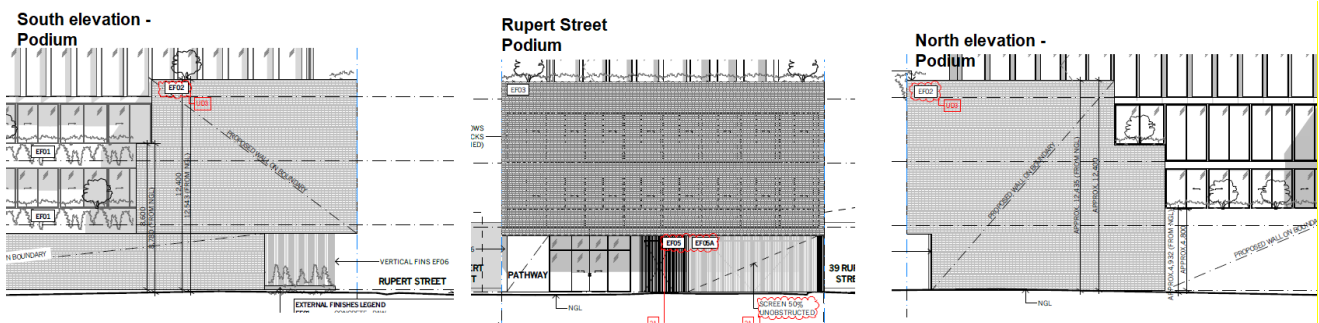


Figure 16: Rupert Street podium with north and south podium elevation as per the sketch plans provided 24th September.

153. Above the podium, Hansen has made a further suggestion to increase the Rupert Street setbacks from 3m to 4m at levels 3 through to 7 and from 5m to 6m at levels 8 and 9, with the aim of reducing the visual dominance of the tower component to Rupert Street. However, these additional setbacks do not provided the added benefit of distinguishing the tower from the podium given the already incorporated 3m and 5m setbacks to Rupert Street and the glazing applied to the walls of the tower elements combined with the fins, i.e. being lightweight as compared to the masonry and concrete panel walls at the first three levels that are heavier in appearance. The materials combined with the existing setbacks are considered to go far enough in terms of establishing this clear distinction as can be observed by the north, south and east elevations. The sketch plans have also been further improved to provide a recess from the western boundary that will further add to the 3D appearance of the tower element in terms of separating this from the podium / base.
154. It is also acknowledged that additional setbacks may further reduce the shadow cast (discussed further in a later section) on the opposite Rupert Street footpath, but as the podium stands out as a primary element to the street, with current shadows acceptable, the setbacks will not be adopted. The 1m difference will do very little to further distinguish and solidify the base of the building to the street as it presents or reduce the shadows. In fact, the sketch plans with the base / podium modified to wrap-around part of the north and south boundaries as a result of the adoption of masonry have improved on this element, ensuring that there is a strong visual separation when combined with the existing setbacks and varied materials at the upper levels.
155. The levels associated with the podium above will cantilever over the ground floor and will extend to the boundary. The interface at ground level incorporates the pedestrian pathway forming the main entry point into the development that will provide access to the ground floor office tenancy and foyer to the main building, including bicycle spaces in the rear setback and EOT that don't interface the street.

156. The on-boundary walls and setbacks of upper levels adopted to the north and south have been supported by Hansen, largely due to the as-built conditions of surrounding buildings, which occupy a significant level of their site areas, but also because these sites have the ability to be developed with reciprocal setback conditions (and hence associated equitable development opportunities discussed further later under its own heading). Hansen has also made several recommendations that relate to the western interface that will also be discussed later in this assessment.
157. Hansen, did not approve of the setback at Level 8 and 9 (i.e. the cap) and had a preference for the vertical blade screens to be extended at these levels. However, this is considered to be counter intuitive, when one part of their advice suggests an increase in the setback above the podium and another part introduces an element that would in fact, accentuate the height. The recess at Levels 8 and 9 is supported because this presents as a lightweight cap and at present is unobtrusive. As such, this recommendation will not be adopted.
158. The surrounding non-sensitive interface to the north, west and south, combined with commercial uses and surrounding built forms along Rupert Street, justify each elevation's relationship with its immediate neighbouring property. Officers also consider that the surrounding physical context can comfortably absorb the height of the building, as well as the setbacks adopted from each boundary.
159. The elevations of the tower with the use of glazing and vertical metal fins and a masonry base, has simple lines with a varied architectural expression that can be read with a three storey podium to Rupert Street, with two varied elements above as a result of the cap, and more recessive and simpler design adopted at Levels 8 and 9.

The Public Realm and Pedestrian Spaces

160. Clause 22.10-3.4 (Street and Public Space Quality) aims to ensure that ground level façade treatments interface positively with the street, by enhancing the pedestrian experience and creating attractive and active interfaces with the public domain.

This can be achieved by designing development to provide a high level of pedestrian amenity and visual interest, by incorporating well-defined entries at ground level and installing glazed areas which allow permeability into the interior space.
161. The building provides an attractive and open ground level frontage to Rupert Street, with a 1.5m setback that will allow for the broadening of the public realm at ground-floor and pedestrian pathway that will extend through the building to the rear and interconnect with the development supported by Council at No. 40-50 Rokeby Street (see Figure 17). This will provide an inviting space for pedestrians and building occupants, thereby achieving the objective at Clause 22.10-3.4 (Street and Public Space quality) of the Scheme, which is to 'create attractive and active interfaces with the public domain whilst maintaining a sense of public space'. This will also create a positive link between Rokeby and Rupert Streets.

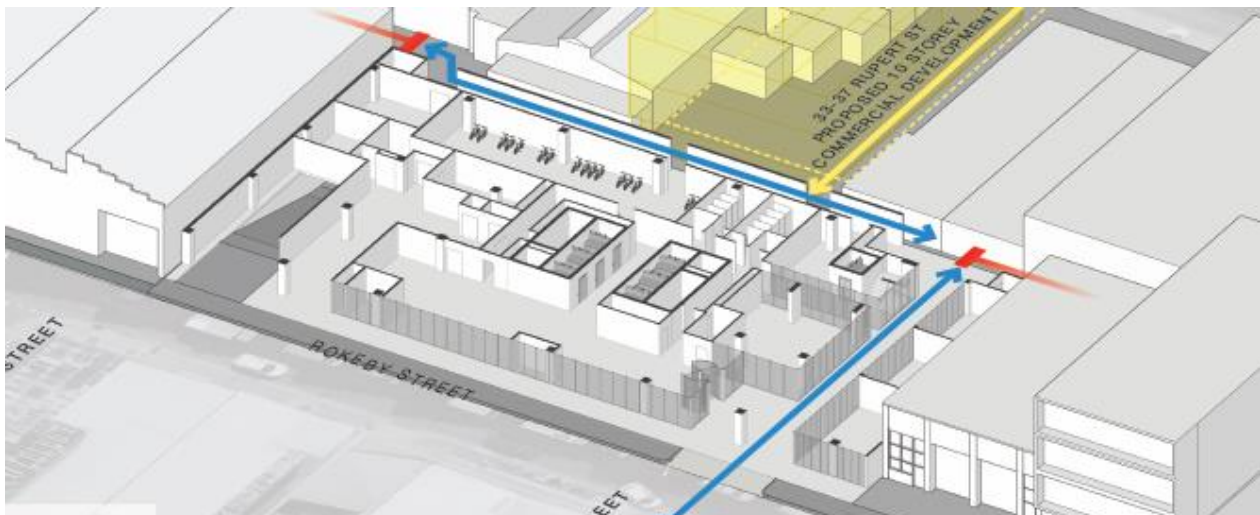


Figure 17: Ground floor plans with publically accessible path of travel delineated in blue at No 40-50 Rokeby Street and yellow at 33-37 Rupert Street (subject site).

162. Council’s internal Urban Design unit made some further recommendations for improvements across the Rupert Street interface, the walkway and rear setback. In relation to the Rupert Street interface, the pedestrian sight lines came into question, including queries around the surface material in providing a seamless transition with the footpath, whether outdoor dining furniture was to be provided and whether there was scope for the provision for additional landscaping in the front setback as highlighted in green at Figure 18.

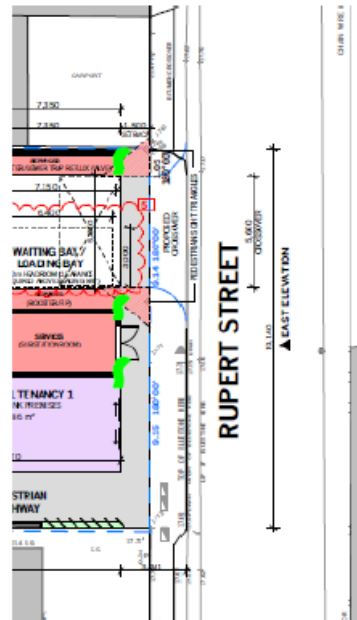


Figure 18: Part of ground floor plan identifying areas recommended by Council’s urban designer for planting in green.

163. In relation to the pedestrian pathway and the rear setback, Council’s Urban Design Unit raised queries relating to the management of the pedestrian gates (i.e. closing times), the applied lighting arrangements, the location for the dismounting of cyclists prior to accessing the bicycle spaces in the rear setback and provision for a way-finding strategy between this site and that to the west (i.e. 40-50 Rokeby Street) for occupants to familiarise themselves with the connectivity between Rokeby and Rupert Streets. Further queries related to the location of gates in between the subject site and that to the west (i.e. 40-50 Rokeby Street) and a recommendation for the repositioning of one of the two gates at the south-east corner and adjacent to the extended footpath.
164. These comments were provided in relation to the original scheme. In response, the sketch plans have provided spot levels on the ground floor plan along the streetscape interface and the pedestrian pathway. A plan notation has also been included stating that the “grade portion of paving to be flush with the existing footpath” with the paving materials within the title boundaries nominated as brick. A flush steel edge has also been included that will delineate between private and public land.
165. The sketch plans include notations confirming that the pedestrian pathway gates will be time programmed with sensor lights and will be locked at the same time after business hours. Ground floor service walls have also been modified to be pervious with 50% unobstructed walls within the sightline triangles at the north-east and south-east corners of the crossover to ensure clear visible sightlines between drivers and pedestrians and hence, increase safety. This will provide an outcome consistent with strategies at Clause 15.01-1S (Urban design) and clause 21.06 (Transport), which aim to respectively; *‘ensure the interface between the private and public realm protects and enhances personal safety* and *‘minimise vehicle crossovers on street frontages’*.

166. The minimum width clearances along the pedestrian pathway have been nominated on the sketch plans, with further plan notations confirming that existing bluestone kerb and channel and footpaths will be repaired as required, and as per Council standards and requirements.
167. The sketch plans have also identified the openings at the rear for access to the laneway associated the development at No. 40-50 Rokeby Street, with further plan notations confirming that 'way-finding' signs will be positioned at each end of the pedestrian pathway identifying the link to Rokeby Street with further signs requiring cyclists to dismount, again at each end of the pedestrian pathway. The plans have also included sensor lighting within the pedestrian pathway and within the rear setback for users of these areas.
168. Glazing has also been introduced to the west of the ground floor office (identified as Commercial Tenancy 2) where interfacing the bike store to enhance the level of passive surveillance of rear spaces from within the development, as is already an added feature to the south of both ground level tenancies, better presented in the artist's impressions at Figure 19 . The permit applicant in their response provided these artist' impressions that provide a picture of the glazing at the ground floor that extends from the tenancy to Rupert Street and into the pedestrian pathway and now into the rear on the ground floor plans forming part of the sketch plans.
169. The southern boundary wall also includes an area intended for art installations, but the length of this is unclear on the plans. A condition will require a plan notation confirming its application across the full length of the southern boundary wall at the ground floor so that this can be appreciated from within the site at its fullest. The vertically finned landscaping arrangement provided in the south-east corner is a welcomed addition adding to the mix of visually interesting detail.



Figure 19: Artist's perspectives of the pedestrian pathway and showing level and degree of passive surveillance from Rupert Street and within the development.

170. Council's Urban Design Unit, also made a design suggestion for the relocation of the substation in the basement. However, CitiPower's preference is that substations are provided at the ground level where these are not subjected to flooding. The development has already been designed to provide a significant number of services in the basement, with the ground floor designed to facilitate the substation for practical reasons. The door will be made pervious and has been designed to blend into the façade through its door being designed to be pervious with vertical metal fins, lending itself to a similar articulation applied to the roller door. These elements will sit into the undercroft at the ground floor, with the upper level facades of Levels 1 and 2, producing the more dominant element of the façade with the hit-and-miss masonry forming part of the base.

171. The permit applicant has also indicated that it would be difficult to provide for outdoor dining in the setback to Rupert Street due to the entrance to the café, and pedestrian pathway to the south.
172. Overall the proposal's integration with the public realm provides a positive outcome and is supported with regard to its intended use of space and public environment. This is further enhanced by the landscaping opportunities incorporated and discussed under the heading below.

Landscaping

173. A landscape response package prepared by Acre landscape architecture (dated 24 February 2020) was submitted with the original application plans. The package outlines all proposed landscaping / vegetation on the site.
174. The landscaping proposed within the development itself, within the ground floor setback to the south and at the upper levels, will enhance the internal amenity of the building for future occupants. This integrated landscaping will also improve the visual appearance of the building from the public realm and if a permit were to issue, a condition requiring the endorsement of this material can be included.
175. With regard to the added landscaping in the identified locations recommended by Council's Urban Design Unit, the permit applicant in their response advised that this would obstruct sightlines associated with the vehicle entrance and the glazed façade. It is agreed that this would be the case, and in tempering this, the passive surveillance and safety features of the development take precedence. As such a condition will not require any further landscaping treatments.
176. Rokeby Street has been identified to be planted as part of Council's street tree planting program and based on this, a monetary contribution for at least one tree can be captured via a condition.

Landmarks, Views and Vistas

177. It is policy at clause 15.01-2 (Urban design principles) of the Scheme that important landmarks, views and vistas be protected or enhanced, or where appropriate, created by new additions to the built form. The proposed development does not compete with any identified landmarks given its location and is considered to be an acceptable response to the policy direction under clause 22.03-4 (Landmarks and tall structures) of the Scheme. The proposed building would not result in the loss of any significant view lines to heritage buildings and/or landmarks.

Consolidation of Sites and Empty Sites

178. The subject site includes an anomalous dwelling to the zone and vacant portion of land with shipping containers and is somewhat under-utilised. The existing dwellings and structures will be replaced with built form that is encouraged by the policy within the Scheme as discussed in this report and where some hard edged development to the street is a desired outcome with *opportunity for a wide range of small to medium businesses to operate in a location that is relatively unconstrained by sensitive uses* as identified under Clause 21.08-5 (Collingwood) of the Scheme.

Light and Shade

179. The subject site is located in a predominantly commercial and industrial location, where some degree of overshadowing within the public realm is inevitable due to the hard-edged built form character which has been established. The narrow width of Rupert Street also contributes to overshadowing of this space; given the limited breadth of this street a double storey building would overshadow the adjacent footpath at 1pm at the September equinox.
180. This is demonstrated in the 1pm shadow diagram provided, which shows the two-storey, hard-edged office and warehouse building south of the two buildings recessed from the western Rupert Street footpath (i.e. No. 17-27 Rupert Street), currently shadows the adjacent Rupert Street footpath.

At 1pm, the proposed development would also cast shadows on this footpath, with the remaining shadows falling over the facades and rooftops of buildings on the opposite side of Rupert Street from 2pm onwards. These shadows will only form in the afternoon, with no additional overshadowing affecting the eastern footpath of Rupert Street before 1pm. The usability of Rupert Street will not be detrimentally affected by the additional shadowing impacts. The one metre additional setbacks requested at the levels above the podium by Hansen will make very little difference in reducing the shadow cast on the eastern side of Rupert Street. However, the footpath will partially receive morning sunlight being the most beneficial for the enjoyment of this space as a result of the land adjacent to the footpath being occupied by an open-air car park. The footpath to the south of this, and to the west of properties opposite is already in shadow and primarily benefits from the northern aspect at midday due to the north-south orientation of Rupert Street.

181. The footpath opposite has also benefited from existing low scale buildings, on the west side (same side as the subject site) of Rupert Street as part of an existing condition. That said, this must also be tempered against policy, context, and the zoning of land that prohibits sensitive land uses from co-locating. Rupert Street is also narrow and shadows cast from taller buildings is unavoidable. With all of these factors in mind, it is considered that the shadows cast can be supported and absorbed by the surrounding context without impacting the usability of the footpath.
182. Rokeby Street and a short section of Byron Street, will only be impacted by additional shadows in the early hours of the morning and based on this outcome, it is not considered that the additional shadowing from the development would affect the usability of the public realm. Hansen's request for 3D modelling of the shadow impact is not warranted in this instance where policy dictates the location of taller buildings and where some shadow impact is to be expected.

Site Coverage

183. Design objectives at Clause 22.10-3.6 aim to ensure that the site coverage of new development complements the desired neighbourhood character of the area and responds to the features of the site. The new building will extend to 100% site coverage. This level of site coverage is consistent with existing built forms within the area and is considered to be an appropriate outcome.

Architectural Quality

184. The proposed design provides a well-considered response that integrates with the surrounding older-style warehouse buildings and emerging contemporary designs. The elevations are expressed in a robust manner that is characteristic of surrounding taller buildings but doesn't attempt to replicate a "typical" tower with fenestration. Rather, the podium will be constructed of glazing at the ground floor recess, and hit-and-miss bricks at the upper levels on the boundary, with the on-boundary side and rear walls modified as a result of the sketch plans to include masonry at the north-east and south east corners. The tower element is to be constructed primarily of glazing with vertical fins for articulation and shading of internal office areas.
185. The fins have adopted a variation in their thickness for added visual interest and articulation and combined with the masonry (also a significant material present on buildings throughout Collingwood) can be adequately absorbed by the surrounding commercial and industrial context. The hard-edged construction of surrounding buildings, when seen in combination with the current building before council, will not appear as being prominent as compared to when these are perceived in their isolated manner on plan.
186. The distribution of finishes is supported and is considered to provide articulation worthy of support. It is also considered that overall, the building is adequately animated to each elevation by the adopted solid-to void ratio and with regard to Rupert Street, the three elements discussed earlier and further with a fine-grained rhythm along the street frontage that will facilitate for a well resolved public environment with good levels of interaction and passive surveillance.

187. The sketch plans have also addressed and improved the sense of the building address to the pedestrian pathway from Rupert Street by extending the stone-look paving across the walkway and within the front setback of the building, whilst levelling this with the footpath (see Figure 20).

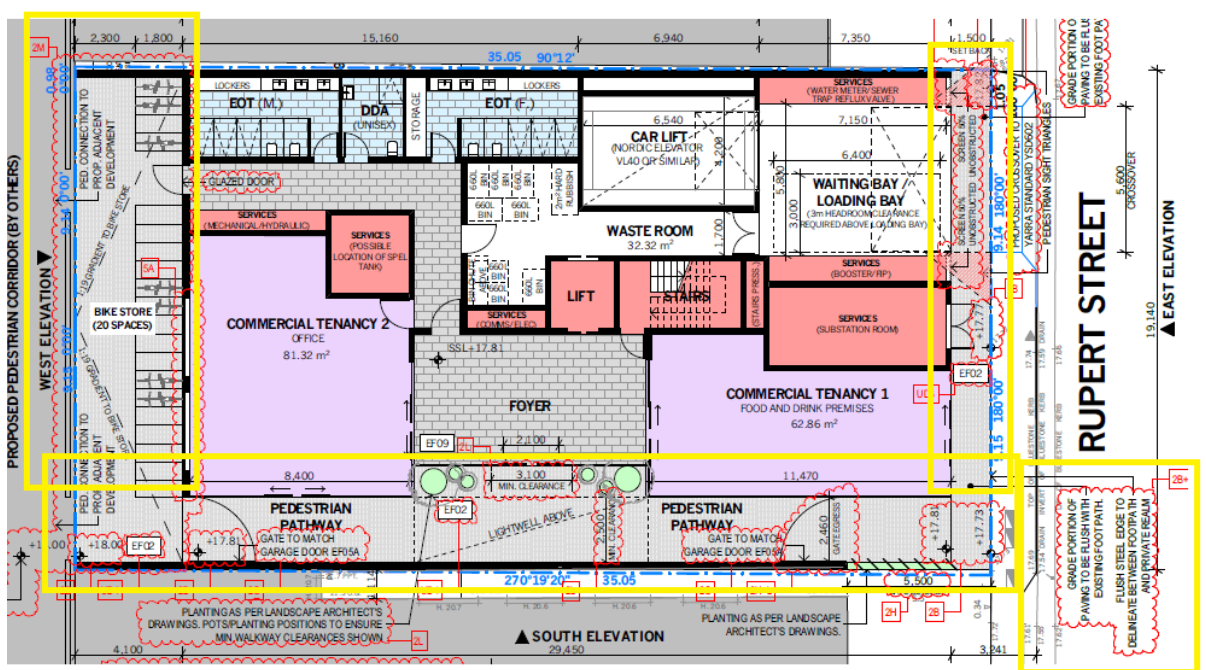


Figure 20: Areas of paving where these are continued from Rupert Street and into the site to improve sense of address

188. The setback at the ground floor would make way for the provision of a wider footpath across the Rupert Street interface whilst providing a prominent entrance to the foyer associated with the office building. The ground floor façade includes expanses to the food and drink premises, and the sketch plans have been amended to include 50% pervious screening elements to the service areas and vehicle entrance (the latter responding to Hansen’s advice relating to how services will be concealed), increasing the activation of the building at a human scale.

189. The entrance to the pedestrian walkway will provide a clear line of sight to the rear where it is intended to provide a connection to the adjoining development at property No. 40-50 Rokeby Street and this development’s connecting laneway. As such, the development is considered to have responded to the public realm successfully achieving the policy direction under Clause 21.05-4 (Public Environment) of the Scheme which requires developments to provide pedestrian/human scaled designs at street level that enhance street interaction.

190. Overall, it is considered that the proposed development achieves a good level of architectural quality and provides an appealing aesthetic and visually interesting design response. If a planning permit is to issue, a comprehensive façade strategy can be added as a permit condition, along with the requirement for on-going architect involvement with the project to ensure this high level of quality is maintained. Further reasons for policy support are as follows:

- (a) The proposed building is broken down across the Rupert Street elevation with varied elements as outlined in previous paragraphs, and ground floor setback that will provide a positive public environment;
- (b) The development responds to the design objectives at Clause 15.01-2S with a contemporary design that is appropriate and responds well to this emerging part of Collingwood;
- (c) Council’s ESD advisor supports the proposal and confirms it largely meets Council’s best practise standards for ESD outcomes (deficiencies will be discussed in detail later in this assessment);

- (d) The design detail and overall choice of materials are supported, given the solid to void ratio and hence degree of transparency, and is well articulated and modulated (achieving compliance with the requirements of Schedule 11 of the DDO);
- (e) Landscaping has been incorporated through the building (where practicable) and within the setbacks, with the ground level that will provide an open entrance and pedestrian pathway for easy access into the site for patrons, customers and staff and connection to the laneway provided by the development at No. 40-50 Rokeby Street; and
- (f) The development avoids car parking at street level through the provision of basement car parking (discussed further in a later heading).

On-site amenity (ESD)

Daylight and ventilation

- 191. The development is considered to provide a good level of amenity and indoor environmental quality. Specifically, this is achieved through good access to daylight for each level through a generous display of fenestration.
- 192. As is the case with most office buildings, this will also be largely mechanically ventilated as it is not suitable for an operable window design at the upper levels above the podium. The sketch plans have identified the operable windows and these are provided at the podium levels to the north and south where these face into their setback (see sketch plan elevations), and to the east where these sit behind the hit-and-miss masonry, including Level 8 where facing into the balcony. This is considered to adequately respond to this aspect by providing this as an added benefit to the mechanical ventilation, and it is an agreed position, that in office developments of this size, operable windows are not a key contributor to ventilation and to the extent of having these operable at the lower levels, it is accepted.
- 193. The design incorporates large communal balconies at Levels 3 and 8 and a roof terrace, with the building adequately taking advantage of the northern and eastern interfaces through the provision of fenestration. Each floor level would be provided with service amenities and accessible to staff with a lift and a stairwell. The western side of the building is now made to be recessive as per the sketch plans with an increased setback at level 8 to provide for an equitable development separation distance of 6m between the subject building and the development at No. 40-50 Rokeby Street, as recommended by Hansen. In doing this, the western interface has been articulated to include pockets of glazing with fins, and hence shaded from the harsh western sun.

Circulation Spaces

- 194. The entrances from Rupert Street, provide primary access to the building and more specifically to the foyer associated with the office component that has a lift, stairs servicing the upper levels, and service amenities associated with the building. The main entrances are provided with adequate sightlines from Rupert Street so people can see both in and out when entering or leaving, with the entire interface of commercial Tenancies 1 and 2 and the foyer, to Rupert Street, pedestrian pathway made up of glazing enhancing the viewing lines. The sketch plans have made further improvement through the provision of glazing to the west wall of Commercial Tenancy 2, where facing the bike store. The circulation spaces in their configuration, afford a good level of amenity to future building occupants.
- 195. Any risk associated with anti-social behaviour and loitering in the pedestrian pathway is mitigated through the plan notations confirming that the security gates are to be time programmed with sensor lights after hours as per the sketch plans.

Facilities

- 196. Adequate facilities in terms of service amenities are provided at each level for all occupants of the building. Bicycle parking and end-of-trip facilities are also incorporated into the scheme. Outdoor areas as indicated have also been provided and will further enhance the on-site amenity and staff enjoyment of the building.

Environmentally Sustainable Design (ESD)

197. 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. Council's ESD Advisor confirmed that the proposal does not meet Council's Best Practice ESD standards, noting that this was provided in response to the original application drawings, but provided recommendation and improvement opportunities that can be addressed with conditions.
198. Council's ESD Advisor identified deficiencies that related to the management of stormwater, building and construction recycling targets and organic waste. Further information was also requested relating to glazing and insulation specifications and calculations and daylight modelling, water heating, external shading treatments at Levels 9 and 10, more detail on the HVAC system, certification of timber products, location of car share, EV charging points energy use of solar PV, strategy around organic waste, and a recycling or reuse target of 80+% for demolition and construction waste materials, with further ESD improvement opportunities specified as follows:
- (a) *Consider methods to reduce embodied carbon such as: recycled materials, reducing steel and sourcing from an ethical steel producer and incorporating more natural materials (such as timber). Best practice requires an LCA to support claims in embodied carbon reduction.*
 - (b) *Consider a small pallet of materials and construction techniques that can assist in disassembly.*
 - (c) *Consider pipes, cabling, flooring to do not contain PVC or meeting best practice guidelines for PVC.*
 - (d) *Consider providing some charging stations for EV's or wiring for future.*
 - (e) *Consider increasing vegetation provision at the front of the site to mitigate UHI impacts from increased building mass.*
 - (f) *Consider head contractor to be ISO 14001 accredited.*
199. It is highlighted that the redevelopment of the site located in an existing built-up area already makes efficient use of existing infrastructure and services, and the proximity of the subject site to numerous public transport modes reduces reliance on private vehicles. To this extent, the site is well positioned.
200. The permit applicant in their response provided additional material, including an updated ESD response to the items above and NCC JV3 assessment authored by EcoResults that were prepared in discussion with Council's ESD advisor. The sketch plans also provide an in-ground rainwater tank below basement with a 10,000lt capacity connected to the toilets for flushing.
201. This material was not further reviewed by Council's ESD advisor, however the items identified can be addressed with a condition requiring an amended SMP to be submitted concurrent with any amended plans requested that will need to be consistent with the sketch plans considered as part of this assessment.
202. The standard condition which requires an implementation report to confirm all measures specified in the Sustainability Management Plan have been implemented in accordance with the approved plan will also be included.
- Wind impacts*
203. An Environmental Wind Assessment was prepared and authored by MEL Consultants Pty. Ltd. dated 6 May 2020 was undertaken as part of the proposal. The report analysed the wind impacts around the proposed development and confirmed that the wind conditions along Rupert Street, the balconies on Levels 3 and 8 and the roof terraces are expected to achieve the walking criterion. The wind conditions outside the main building entrance in the middle of the pedestrian pathway are expected to satisfy the standing criterion.

204. The report was peer reviewed by VIPAC Engineers and Scientists Pty. Ltd. consultants who responded with comments in full support of the findings. While a full and accurate assessment has been carried out in relation to the siting and scale of the subject building, and is supported in principle, a condition will require an amended Wind Assessment Report to further confirm that wind mitigation measures have been appropriately considered in the design of the proposed development. This is unlikely to result in significant changes to the proposal, and normally limited to increased screening or landscaping.
205. Their advice has been attached to this report and as both are highly reputable firms, Council can be comfortable that their findings will result in a positive outcome.

Off-site amenity

206. The policy framework for external amenity considerations is contained within Clauses 22.10-3.8 – (Off-site amenity) and 22.05 (Interface uses policy). Clause 22.10-3.8 (Off-Site Amenity) outlines objectives and decision guidelines for considering whether a development has adequate regard to the site's context and surrounding pattern of development. Following is an assessment of the development against the potential off-site amenity impacts.
207. The subject site is zoned Commercial 2, as are the immediate surrounding properties to the north, south and west, including those on the opposite side of Rupert Street. There are no sensitive interfaces to the subject site and with this in mind, the following assessment is provided:

Visual bulk and overlooking

208. With the north, south, west and the east interfaces with the subject site being to commercial buildings and to the street, which are largely built to boundaries, the development would not be subject to unreasonable visual bulk impacts and would not result in unreasonable overlooking. It is also an accepted principle that overlooking only occurs between habitable rooms (i.e. bedrooms and living rooms) and private open space.
209. Most recently, Council considered an application at property No. 40-50 Rokeby Street that proposed a thirteen-storey mixed use building. At the time of writing, planning application No PLN20/0168 had been issued with a Notice of Decision to Grant a Permit, that included a condition to reduce the height to 11 storeys (plus plant roof).

Overshadowing

210. As discussed earlier in the report, the proposed development would increase the shadow impact into the public domain to the west and east. The biggest impact is evident from 2pm onward when the shadow extends to the opposite side of Rupert Street. Given the context and orientation, this is considered to be acceptable.

Noise

211. In respect to amenity impacts, Clause 22.05 (Interface Uses Policy) of the Scheme seeks to ensure that new non-residential uses do not unreasonably impact dwellings including through noise, light spill, emissions and rubbish. The closest purpose built dwellings are located on Gipps Street with very few that have established existing use rights in the silos facing Northumberland Street, some 120m west of the subject site. These dwellings are well removed from the subject site and therefore not impacted by the development.
212. However, conditions will require compliance of all mechanical equipment prior to and post development of the land to ensure that all criteria of SEPP N-1 and SEPPN-2 are met.

Fumes and air emissions, light spillage

213. All uses will be conducted indoors (with the exception of the outdoor balconies / terraces). The proposal is not considered to result in unreasonable air emissions, and whilst there will be a degree of light spill, the surrounding land is zoned Commercial 2 and non-sensitive.

Equitable Development

214. To ensure the fair, orderly, economic and sustainable development of land, matters of equitable development should be considered in accordance with the objectives of planning in Victoria as set out in Section 4(1) of the *Planning and Environment Act 1987*. The objectives of Clause 21.05-2 of the Scheme include a requirement for development to take into account the opportunities for development on adjoining land (Strategy 20.2).
215. New development should ensure that areas can develop with an equitable access to outlook and sunlight, while the possible future development of adjoining sites should be considered and allow, as best as possible, for an equitable spread of development potential throughout an area.
216. In this respect, the proposed design utilises Rupert Street and the interfaces for primary outlooks and connection points through the development, and has included setbacks to the north and south at the upper levels that will also provide primary outlooks over adjoining sites and beyond.
217. The proposed development accommodates generous setbacks to the north and south from Level 3 onwards, of 3m that will ensure that the adjoining sites, are not constrained in their development potential. Further, the sketch plans have also adopted a 500mm setback to the west from Level 3 onwards, to ensure a minimum separation distance of 6m from the tower intended to be constructed as part of the development at No. 40-50 Rokeby Street that has been approved by Council with a 5.55m setback from the shared boundary. This is an improvement on the equitable development opportunities in terms of facilitating daylight access to this tower, and conditions will address the sketch plans.
218. The development also has on-boundary walls and light-wells, and the adjoining sites, will be able to replicate the condition and construct up against these walls at the lower levels without their development potential being compromised as a consequence.

Traffic, access and car parking

219. The applicant is seeking a statutory parking reduction of 78 car parking spaces, with 18 on-site car parking spaces proposed. To support the reduction in the statutory rate, a Traffic Impact assessment was undertaken by Traffix Group and dated May 2020, with parking availability in the neighbourhood also reviewed.

Parking Availability

220. On-street parking occupancy surveys of the surrounding area were undertaken and suggest a generous amount of on-street car parking in the vicinity that encompassed Rupert Street and Langridge Street to the north. It is evident that the availability of parking in the vicinity is high during business hours. However, this is blanketed by time based parking restrictions that would be a disincentive for employees or staff to drive. The car parking restrictions would also provide regular turnover throughout the day, thereby allowing visitors to park near the site.
221. The surrounding area has ample transport contextually supporting a development of this scale in the inner city. The availability of alternative transport methods will be discussed in turn.

Parking Demand

222. In support of the reduced car parking on-site, examples of existing uses within the City of Yarra with reduced on-site car parking rates (primarily offices) were provided by Councils Traffic Engineers. Details of these development sites (some of which have also been referenced in the report) are provided as follows:

Development Site	Approved Office Parking Rate
60-88 Cremorne Street PLN17/0626 issued 21 June 2018	0.72 spaces per 100 m ²
2-16 Northumberland Street, Collingwood PLN16/1150 issued 14 June 2017	0.89 spaces per 100 m ²

51 Langridge Street, Collingwood,
PLN16/1150 issued 10 April 2018

0.54 spaces per 100 m²

223. Council's Traffic Engineers provided the following comments in relation to each use with car parking provision and a permit requirement:

Parking Demand Consideration	Response
Parking Demand for Office Use	<i>The proposed on-site office parking rate of 0.57 spaces per 100 square metres of floor area is fairly consistent with the above rates and is considered appropriate, having regard to the site's good accessibility to public transport services and proximity to Melbourne.</i>
Parking Demand for Food and Drink Use	<i>For the food and drink use, a staff parking demand of 1 space per 100 square metres of floor area could be adopted. Using this rate would equate to one space. All parking associated with the food and drink use would be accommodated off-site.</i>

224. Specifically in relation to the particular benefits of the site location with regard to the reduced rate of on-site car parking, Council's Traffic Engineers have indicated that:

- (a) There is ample public transport, with trams located on Smith Street and Victoria Parade, buses on Hoddle Street and the Collingwood and North Richmond railway stations, all within walking distance;
- (b) Visitors would likely be aware of the car parking constraints in the area or otherwise be made aware by the occupants of the building, thus also encouraging a high turnover of parking on the street and use of alternative modes such as cycling; and
- (c) It is in line with the objectives of Council's *Strategic Transport Statement* noting that the site is ideally located with regard to sustainable transport alternatives and the reduced provision of on-site parking would discourage private motor vehicle use.

Traffic

225. Council's Traffic Engineers have confirmed that the traffic generation is reasonable, and that any increase in the volume of traffic generated by the development could be accommodated within the local road network without adversely impacting on the traffic operation of nearby streets.

Access and layout

226. Clause 52.06-9 (Design standards for car parking) of the Scheme relates to the design of car parking areas and contains 7 standards and requirements relating to access way, car parking spaces, gradients, mechanical parking, urban design, safety and landscaping.

227. These details, along with the proposed ramp designs as per the original application drawings were reviewed by Council's Traffic Engineers who were satisfied with the layout of the car parking area. It has also been indicated that the car lift is capable of servicing 73.46 vehicles per hour, based on a total service time of 49 seconds estimated by Traffix Group, which is considered reasonable by Council's Engineering Services Unit. Based on this, there will be very limited impact on the use of the loading bay (if any) when in use. Council's Traffic Engineers have requested that the plans be revised (also in reference to the original application drawings) to include the following details / dimensions that will be addressed by way of conditions:

- (a) The dimension of the headroom clearance of the development's vehicle entrance and the loading bay;

- (b) The length of the tandem spaces dimensioned;
- (c) All column depths, setbacks and locations clearly annotated and dimensioned and positioned to ensure that they allow for car doors to be opened to satisfy the relevant standards (i.e. AS/NZS 2890.1:2004);
- (d) Car spaces adjacent to a wall provided with a clearance of no less than 300 mm to satisfy AS/NZS 2890.1:2004. If this cannot be achieved, car space Nos. 13, 14, 17, and 18 should all be designated as a small car space.
- (e) Swept path diagrams for a B85 design vehicle demonstrating all movements into and out of the tandem car spaces.
- (f) Car lift information / data sheet that identifies all relevant specifications relating to this and the plans updated to reflect these details (as relevant).

228. Several engineering conditions in regards to the vehicle crossing, civil works, road asset protection, and construction management, impacts of assets on the proposed development, discharge of water from the development and modification to car parking signage have been recommended.

229. These conditions are considered standard and should also be included on any permit issued.

230. Overall, the proposed design and configuration of access and car parking areas are considered to achieve a satisfactory outcome and will be further improved with the above details requested by Council's Engineering Unit.

Electric vehicles

231. Council's ESD advisor and Strategic Transport Unit made a recommendation for some EV charging points (or wiring that may facilitate this in the future) that will be addressed with a condition.

Bicycle parking

232. The application was referred to Council's Strategic Transport Unit who made a recommendation for a further 12 bicycle spaces for staff and a minimum 6 spaces designated for visitors. Acknowledging that the total is already in excess of 6 bicycle spaces over the statutory rate, it is unreasonable to impose a further rate of 12 bicycle spaces for staff. This is because the layout has already been designed with bicycle parking in mind, positioning this in the rear setback. The basement car park is also at its fullest capacity in terms providing services and car parking bays. However, the request for 6 visitor bicycle spaces will be addressed as this is a smaller number, and can be accommodated more practically into the layout of the building without significant impacts. The condition will also ensure that the provision is spread across the ground floor in easily accessible and clearly identified location(s) for visitors of the office and cafe.

233. Hansen and Council's Strategic Transport Unit made reference to the safety of the location of the bike store, and the permit applicant has since addressed this aspect with plan notation on the sketch plans confirming that the gates will be time programmed with sensor lights, and with further sensor lights provided in the bike store and across all pathways. It is highlighted that all gates are lockable and have the ability to fully secure staff bicycle parking in the rear setback ensuring that this area does become a lockable compound. It is also highlighted, that the ground floor plans supported by Council for the development of the western site, include plan notations detailing and making reference to the current proposal and include openings at the shared boundary with security gates that will be locked after hours. The plans show a wall with openings in the shared area (see Figure 21). This is considered to further address Council's Strategic Transport Unit's comments relating to the design and safety of the bicycle store.

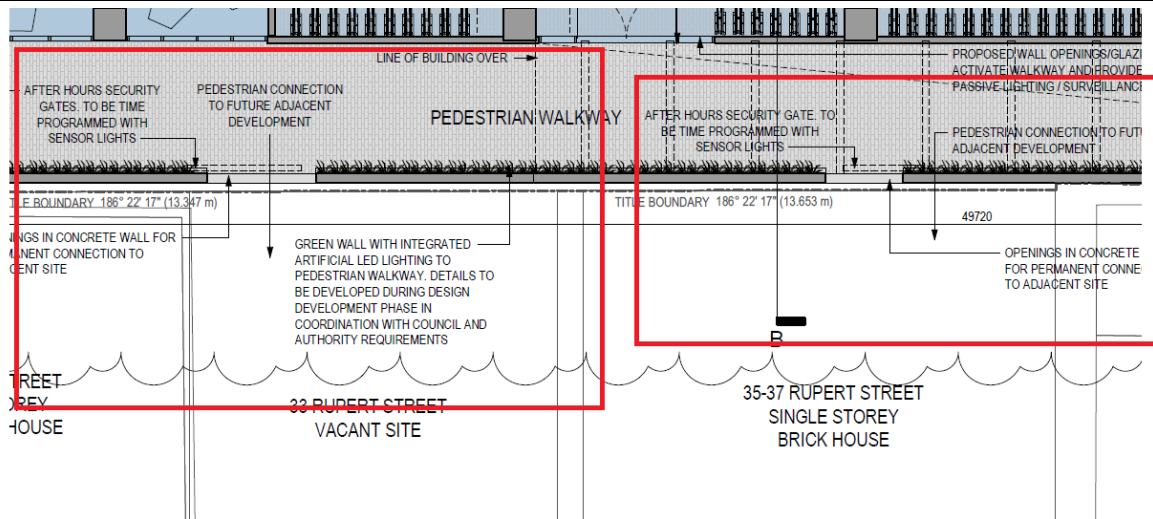


Figure 21: Openings and security gates of development at No 40-50 Rokeby Street (extracted from the ground floor plan forming part of the plans supported by PDC on 18 November 2020)

234. It is also worth highlighting, that the subject site does not rely on the development at No. 40-50 Rokeby Street to ensure the lockable condition of the bike store. The existing condition is also such that the bike store becomes lockable as a result of the on-boundary walls of adjoining buildings as per the existing conditions and in the absence of the development supported to the west.

Green Travel Plan (GTP)

235. Council's Strategic Transport Unit has also requested a Green Travel Plan to be provided containing the following items:

- (a) a description of the location in the context of alternative modes of transport;
- (b) employee welcome packs (e.g. provision of Myki/transport ticketing);
- (c) sustainable transport goals linked to measurable targets, performance indicators and monitoring timeframes;
- (d) a designated 'manager' or 'champion' responsible for coordination and implementation;
- (e) details of bicycle parking and bicycle routes;
- (f) details of GTP funding and management responsibilities;
- (g) the types of bicycle storage devices proposed to be used for employee, resident and visitor spaces (i.e. hanging or floor mounted spaces);
- (h) the types of lockers proposed within the change-room facilities, with at least 50% of lockers providing hanging storage space;
- (i) security arrangements to access the employee bicycle storage spaces; and
- (j) signage and wayfinding information for bicycle facilities and pedestrians pursuant to Australian Standard AS2890.3;
- (k) Reference to a minimum 40A single phase electrical sub circuit should be installed to the car park areas for 'EV readiness'.
- (l) provisions for the Green Travel Plan to be updated not less than every 5 years.

236. A condition can address this.

Waste Management and Loading

237. An initial Waste Management Plan (WMP) was submitted by the Applicant in association with the original application plans advertised. This was reviewed by Council's City Works Branch, who indicated that it was unsatisfactory and was required to be amended to include the following items:

- (a) Food waste diversion should be included as a requirement.
- (b) Details of net space taken up by the bins on site by M²
- (c) The swept path diagram has not been provided in the WMP.

238. A condition can require the submission of an amended WMP that includes the requested items. The permit applicant, in their response, have also indicated that they would support a condition to this effect.

239. It is highlighted that the development will rely on a private waste contractor with waste collection undertaken from within the building at the ground level via the loading bay. The loading bay is adequately sized with a minimum width of 3m at its narrowest point. Council's Engineer has also confirmed that the loading bay dimensions are adequate.

Objector concerns.

(a) *Built form and design:*

(i) *The development is inconsistent with the neighbourhood character.*

240. The development's relationship with the neighbourhood in terms of building height, mass and design has been discussed at paragraphs 113 to 190. The design subject to conditions detailed within the body of the assessment will achieve, on balance, an acceptable planning outcome on land zoned Commercial 2. The site is not subject to heritage controls and the building is considered to have adopted adequate setbacks, will provide an appropriate and reasonable built form outcome that is responsive to the neighbourhood context and more broadly, to the Gipps Street Precinct in Collingwood.

(b) *Off-site amenity impacts:*

(i) Does not provide adequate equitable development opportunities for surrounding sites.

241. Equitable development opportunities have been discussed at paragraphs 214 to 218 and cannot be applied in the same vein as if the site were residentially zoned. The sketch plans have provided a setback to the west, to ensure a minimum separation distance of 6m is achieved with the development recently supported by Council at property No. 40-50 Rokeby Street. The proposed development before Council has adequately provided light-wells and setbacks to the north and south of a minimum 3m, and hard-edged on-boundary walls that can comfortably be replicated into any design associated with the redevelopment of adjoining site.

(c) *Traffic, Car and Bicycle parking:*

(i) Reduction in the car parking requirement is excessive.

(ii) The on-site car parking provision will cause traffic congestion.

(iii) Reliance on traffic through surrounding streets.

(iv) Not enough car parks provided on-site, the on-street car parking is already at capacity and cannot cater to overflow from development.

(v) Bicycle parking is inadequate to off-set the reduction in car parking.

242. Traffic and car parking has been addressed at paragraphs 219 to 231 and the provision of bicycle parking has been discussed at paragraphs 232 to 236 and a condition will improve the visitor bicycle parking requirement.

(d) *Other:*

(i) The development provides an area for smokers i.e. smoke lobbies.

(ii) There is no guarantee that the building will be used as proposed, due to COVID-19.

243. One Objector raised concerns with the floor plans stating that there are indoor areas for smokers i.e. the smoke lobbies. These areas are indicated in the hallways and labelled as such to demonstrate that these areas facilitate a level of protection in the case of a fire emergency.

244. The level of uncertainty presented by the current pandemic is not a planning consideration.

Conclusion

245. The development is considered to demonstrate a high level of compliance with policy objectives contained within the Planning Policy Framework and Municipal Strategic Statement. Notably, the proposal achieves the State Government's urban consolidation objectives.
246. The development, subject to the conditions recommended, is an acceptable planning outcome that demonstrates clear compliance with the relevant Council policies and should therefore be supported.

RECOMMENDATION

That having considered all objections and relevant planning policies, the Committee resolves to issue a Notice of Decision to Grant a Planning Permit PLN20/0165 for the construction of a multi-level building (with roof terrace and services) and a reduction in the car parking requirement of the Yarra Planning Scheme at 33 – 37 Rupert Street, Collingwood generally in accordance with the plans advertised by Council and noted previously as the application drawings prepared by Pitch Architecture and Design and dated 18 May 2020 and 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 plans prepared by Pitch Architecture and Design and dated 18 May 2020 but modified to show / include:

Plans

- (a) All plan notations and details as per the architectural plans (i.e. TP0-101 to TP0-103, TP1- 101, TP2-101(Rev A), TP2-102 (Rev B), TP2-103 to TP2-104 (Rev A), TP2-105 to TP2-106 Rev B), TP2-107 to TP2-109, TP3-101 to TP3-103 (Rev B), TP3-104 (Rev A), TP3-105, TP3-106 (Rev A), TP4-101 (Rev A), TP5-101 to TP5- 107 (Rev A) and TP6-116 (Rev A) and as detailed in the Statement of changes prepared by Pitch Architects and Design provided to Council on a without prejudice basis on 24th September 2020 that include the following key changes:
 - (i) The building setback from the western boundary increased by 500mm from Level 3 and above, and the western interface articulated further with glazing and vertical fins;
 - (ii) The podium walls on the north and south facades modified to a red brick finish;
 - (iii) Provision of a 10,000L in-ground rainwater tank to the basement plan.
 - (iv) The screen to the garage/loading bay with up to 50% permeability and clear of visual obstructions within the sight triangles;
 - (v) Spot levels and notes indicating a seamless transition between public and private pathways with a flush steel edge across the Rupert Street boundary to differentiate between public and private space;
 - (vi) The eastern pedestrian gate relocated further to the east;
 - (vii) Glazing to the western wall of commercial tenancy 2;
 - (viii) Notes indicating when the security gates and sensor lights to the bike store, pedestrian path and footpath will be activated, and provision for signage identifying Rokeby Street as a point of connectivity through the subject site; and
 - (ix) A note indicating that signage is to be provided for cyclists to dismount in the pedestrian pathway.

But further modified to show:

- (b) A plan notation confirming that the art installation facing into the pedestrian pathway will be applied to the full length of the southern boundary wall (excluding the fins in the south-east corner).
- (c) The dimension of the headroom clearance of the development's vehicle entrance and the loading bay;
- (d) The length of the tandem spaces dimensioned;
- (e) All column depths, setbacks and locations clearly annotated and dimensioned and positioned to ensure that they allow for car doors to be opened to satisfy the relevant standards (i.e. AS/NZS 2890.1:2004);
- (f) Car spaces adjacent to a wall provided with a clearance of no less than 300 mm to satisfy AS/NZS 2890.1:2004 or car space Nos. 13, 14, 17, and 18 designated as a small car space.
- (g) Swept path diagrams for a B85 design vehicle demonstrating all movements into and out of the tandem car spaces.
- (h) Car lift information / data sheet that identifies all relevant specifications and the plans updated to reflect these details (as relevant).
- (i) A minimum of one EV charging point in the basement.
- (j) Provision of at least 6 additional visitor bicycle spaces in a secure location and easily accessible on the ground floor.

Reports

- (k) Any requirement of the endorsed Landscape Plan (condition 3) (where relevant to show on plans).
- (l) Any requirement of the endorsed Sustainable Management Plan (condition 6) (where relevant to show on plans).
- (m) Any requirement of the endorsed Wind Assessment Report (condition 9) (where relevant to show on plans).
- (n) Any requirement of the endorsed Green Travel Plan (condition 11) (where relevant to show on plans).
- (o) Any requirement of the endorsed Waste Management Plan (condition 13) (where relevant to show on plans).
- (p) Any requirement of the endorsed Public Lighting Plan (condition 16) (where relevant to show on plans).

Ongoing Architect Involvement

- 2. As part of the ongoing progress and development of the site, Pitch Architecture and Design or an architectural firm to the satisfaction of the Responsible Authority must be engaged to:
 - (a) oversee design and construction of the development; and
 - (b) ensure the design quality and appearance of the development is realised as shown in the endorsed plans or otherwise to the satisfaction of the Responsible Authority.

Landscape Plan

- 3. Before the development commences, an amended Landscape Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Landscape Plan will be endorsed and will form part of this permit. The amended Landscape Plan must be generally in accordance with the Landscape Package of material prepared by Acre landscape architecture (dated 24 February 2020) but modified to include (or show):
 - (a) Details of soil volumes for all garden beds provided including those at the ground floor.
 - (b) Consideration to passive irrigation or use of water captured by the subject site.

- (c) The planting schedule to include the pot sizes and mature heights of all tree and plant species selected.
 - (d) A specification of works to be undertaken prior to planting.
 - (e) Maintenance schedules and notes, including how any plant failure will be managed
 - (f) Details on the proposed methods for irrigation and drainage.
 - (g) All plants proposed confirmed to not be listed within DELWP *Advisory List of Environmental Weeds in Victoria*.
4. Before the buildings is occupied, or by such later date as approved in writing by the Responsible Authority, the landscaping works shown on the endorsed Landscape Plan must be carried out and completed to the satisfaction of the Responsible Authority. The landscaping shown on the endorsed Landscape Plan must be maintained by:
- (a) implementing and complying with the provisions, recommendations and requirements of the endorsed Landscape Plan;
 - (b) not using the areas set aside on the endorsed Landscape Plan for landscaping for any other purpose; and
 - (c) replacing any dead, diseased, dying or damaged plants,
- to the satisfaction of the Responsible Authority.
5. Before the development commences, or by such later date as approved in writing by the Responsible Authority, the permit holder must make a one off contribution of \$800 to the Responsible Authority to contribute to the cost of planting one (1) new street tree.

Sustainable Management Plan

6. 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 EcoResults dated 27 February 2020, but modified to include details relating to the:
- (a) Reference to the plans as required by Condition 1;
 - (b) Management of stormwater;
 - (c) Building and construction recycling targets and organic waste;
 - (d) All glazing and insulation specifications and calculations and daylight modelling;
 - (e) Water heating and detail on the HVAC system;
 - (f) Certification of timber products;
 - (g) Reference to the location of car share and EV charging point(s);
 - (h) Energy use of solar PV;
 - (i) Strategy around organic waste;
 - (j) A recycling or reuse target of 80+% for demolition and construction waste materials;
 - (k) A small pallet of materials and construction techniques that can assist in disassembly;
 - (l) Consideration to not use PVC for pipes, cabling PVC or meeting best practice guidelines for PVC;
 - (m) Head contractor to be ISO 14001 accredited.
7. The provisions, recommendations and requirements of the endorsed Sustainable Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

8. Before the development is occupied, a report from the author of the Sustainability Management Plan, approved under 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 all measures specified in the Sustainability Management Plan have been implemented in accordance with the approved plan.

Wind Assessment Report

9. Before the development commences, an amended Environmental Wind Assessment to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Environmental Wind Assessment will be endorsed and will form part of this permit. The amended Environmental Wind Assessment must be generally in accordance with the Environmental Wind Assessment prepared by MEL Consultants Pty. Ltd. dated 6 May 2020, but modified to include (or show):
- (a) Assess the proposal as amended pursuant to Condition 1 with:
 - (i) Wind tunnel testing to verify any predictions; and
 - (ii) Mitigation measures to ameliorate any identified non-compliances with the relevant criteria.
10. The provisions, recommendations and requirements of the endorsed Environmental Wind Assessment must be implemented and complied with to the satisfaction of the Responsible Authority.

Green Travel Plan

11. Before the development commences, a Green Travel Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Green Travel Plan will be endorsed and will form part of this permit. The Green Travel Plan must make reference to the plans as endorsed at Condition 1 and provided the following details:
- (a) a description of the location in the context of alternative modes of transport;
 - (b) employee welcome packs (e.g. provision of Myki/transport ticketing);
 - (c) sustainable transport goals linked to measurable targets, performance indicators and monitoring timeframes;
 - (d) a designated 'manager' or 'champion' responsible for coordination and implementation;
 - (e) details of bicycle parking and bicycle routes;
 - (f) details of GTP funding and management responsibilities;
 - (g) the types of bicycle storage devices proposed to be used for employee, resident and visitor spaces (i.e. hanging or floor mounted spaces);
 - (h) the types of lockers proposed within the change-room facilities, with at least 50% of lockers providing hanging storage space;
 - (i) security arrangements to access the employee bicycle storage spaces; and
 - (j) signage and wayfinding information for bicycle facilities and pedestrians pursuant to Australian Standard AS2890.3;
 - (k) Reference to a minimum 40A single phase electrical sub circuit should be installed to the car park areas for 'EV readiness'.
 - (l) provisions for the Green Travel Plan to be updated not less than every 5 years.
12. The provisions, recommendations and requirements of the endorsed Green Travel Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

Waste Management Plan

13. 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 EcoResults dated 3 March 2020 but modified to make reference to the plans as endorsed at Condition 1 and include the following details:

- (a) Food waste diversion;
- (b) Details of net space taken up by the bins on site by M²; and
- (c) A swept path diagram of the truck accessing the loading bay.

- 14. The provisions, recommendations and requirements of the endorsed Waste Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.
- 15. The collection of waste from the site must be by private collection, unless with the prior written consent of the Responsible Authority.

Public Lighting Plan

- 16. Before the development commences, a Public Lighting Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The Public Lighting Plan must address lighting along the Rupert Street and in the walkways and entrances to the approved building. When approved, the Public Lighting Plan will be endorsed and will form part of this permit. The Public Lighting Plan must provide for:
 - (a) A maintenance regime for the lighting scheme within the curtilage of the property; and
 - (b) The use of energy efficient luminaries and/or solar lighting technologies to reduce carbon emission if possible.
- 17. The provisions, recommendations and requirements of the endorsed Public Lighting Plan must be implemented and complied with at no cost to Council and to the satisfaction of the Responsible Authority.

Loading and Unloading

- 18. 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 loading 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 it can be used in accordance with the endorsed plans;
 - (c) treated with an all-weather seal or some other durable surface; and
 - (d) line-marked or provided with some adequate means of showing the loading bay area.to the satisfaction of the Responsible Authority.

- 19. 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.

Road Infrastructure

- 20. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, the vehicle crossing at the Rupert Street interface and abutting laneways must be constructed:
 - (a) in accordance with any requirements or conditions imposed by Council;
 - (b) Demonstrating satisfactory access into and out of the site with a vehicle ground clearance check using the B99 design vehicle, and be fully dimensioned with actual reduced levels (to three decimal places) as per Council's Vehicle Crossing Information Sheet;

- (c) at the permit holder's cost; and
 - (d) to the satisfaction of the Responsible Authority.
 - (e) The Permit Holder must obtain the consent of the relevant power authority for the relocation of any power poles. All costs associated with the relocation will be at the Permit Holder's cost.
 - (f) The vehicle crossing shall be constructed in accordance with Department of Infrastructure's and City of Yarra's requirements and specifications.
21. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, all building works and connections for underground utility services, the footpaths along the property's Rupert Street (service road) and laneway frontages must be reconstructed (including kerb and channel):
- (a) at the permit holder's cost; and
 - (b) to the satisfaction of the Responsible Authority.
22. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, the full width road pavement of the Rupert Street reserve must be profiled and re-sheeted:
- (a) at the permit holder's cost; and
 - (b) to the satisfaction of the Responsible Authority.
23. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, any isolated areas of road pavement failure as a consequence of construction traffic impacts must be reconstructed:
- (a) at the permit holder's cost;
 - (b) to the satisfaction of any other relevant authority; and
 - (c) to the satisfaction of the Responsible Authority.
24. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority the relocation of any service poles, structures or pits necessary to facilitate the development must be undertaken:
- (a) at the permit holder's cost; and
 - (b) to the satisfaction of the Responsible Authority.
25. 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.
26. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, 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.

Lighting

27. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, a public lighting design scheme along the development's road frontages demonstrating adequate lighting levels for pedestrians as per Australian Standard requirements must be submitted to and approved by the Responsible Authority. Notations must confirm that the lighting scheme has been approved by CitiPower and all lighting infrastructure and hardware will be funded by the Permit Holder.
28. 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.

General

29. 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.
30. 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.
31. Except with the prior written consent of the Responsible Authority, 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.
32. Finished floor levels shown on the endorsed plans must not be altered or modified without the prior written consent of the Responsible Authority.
33. 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.
34. The development must comply at all times with the State Environment Protection Policy – Control of Noise from Commerce, Industry and Trade (SEPP N-1).
35. The use(s) must comply at all times with the State Environment Protection Policy – Control of Music Noise from Public Premises (SEPP N-2).
36. 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.

37. All buildings and works must be maintained in good order and appearance to the satisfaction of the Responsible Authority.
38. All pipes, fixtures, fittings and vents servicing any building on the land must be concealed in service ducts or otherwise hidden from view to the satisfaction of the Responsible Authority.

Construction Management Plan

39. 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.

In preparing the Noise and Vibration Management Plan, consideration must be given to:

 - (i) using lower noise work practice and equipment;
 - (ii) the suitability of the land for the use of an electric crane;
 - (iii) silencing all mechanical plant by the best practical means using current technology;
 - (iv) fitting pneumatic tools with an effective silencer;
 - (v) other relevant considerations; and
 - (q) any site-specific requirements.

During the construction:

- (r) any stormwater discharged into the stormwater drainage system must be in compliance with Environment Protection Authority guidelines;
 - (s) 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;
 - (t) vehicle borne material must not accumulate on the roads abutting the land;
 - (u) 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.
40. 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.
41. The provisions, recommendations and requirements of the endorsed Construction Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.
42. 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.

Time expiry

43. 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 5555 to confirm.

A vehicle crossing permit is required for the construction of the vehicle crossing(s). Please contact Council's Construction Management Branch on 9205 5555 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 5555 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 business (whether as owners, lessees/tenants, occupiers / staff) within the development approved under this permit, will not be permitted to obtain, business parking permits.

A local law permit (e.g. Asset Protection Permit, Road Occupation Permit) may be required before development is commenced. Please contact Council's Construction Management Branch on Ph. 9205 5555 to confirm.

The applicant must apply for a Legal Point of Discharge under Regulation 133 – Stormwater Drainage of the *Building Regulations* 2018 from Yarra Building Services unit.

Any storm water drainage within the property must be provided and be connected to the nearest Council pit of adequate depth and capacity (legal point of discharge), or to Council's satisfaction under Section 200 of the *Local Government Act* 1989 and Regulation 133.

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.

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.

Except with the prior written consent of the Responsible Authority, Council assets must not be altered in any way.

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 (signs and line markings) as a result of development works must be approved by Council's Parking Management unit.

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

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

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: <http://www.esv.vic.gov.au/About-ESV/Reports-and-publications/Brochures-stickers-and-DVDs>.

Attachments

- 1 Original Application drawings - Advertised Plans / Decision Plans
- 2 Collated referral advice in order listed in report.
- 3 'Sketch Plans' provided in response to referral advice and referenced.

6.4 PLN17/0705 - 388-390 Queens Parade, Fitzroy North - Extension of Time Request

Executive Summary

Purpose

1. This report provides the Planning Decisions Committee with an assessment of a request for an extension of time to commence Planning Permit PLN17/0705 associated with the land at No. 388-390 Queens Parade, Fitzroy North.
2. This report recommends that Council grant an extension of time to the commencement date to enable the Planning Permit for the:
 - (a) *Development of the land with a five storey building comprising of a ground floor restaurant and first floor offices and three dwellings above, including car parking for four vehicles located in a stack at the rear of the existing building, including demolition works within a heritage overlay and a reduction in car parking requirements and construction of a sign in a heritage overlay in accordance with the endorsed plans*

Key Planning Considerations

3. Key planning considerations in considering whether to grant an extension of time for commencement include:
 - (a) Whether there has been a material change in planning policy or the Planning Scheme;
 - (b) Any information which suggests that the owner of the land is seeking to “warehouse” the permit;
 - (c) Intervening circumstances as bearing upon grant or refusal;
 - (d) The total elapse of time since the granting of the permit;
 - (e) Whether the limit originally imposed was adequate;
 - (f) The economic costs on the landowner; and
 - (g) The probability of a permit issuing should a fresh application be made.

Key Issues

4. The key issue for Council to consider is whether an extension of time to commence Planning Permit PLN17/0705 should be granted given that the existing approval would now exceed the mandatory height control under Schedule 16 to the Design and Development Overlay.

Submissions Received

5. There is no notification/third party involvement for an Extension of Time request, however 14 submissions have been received. Submitters raise concern that the expired planning permit is contrary to Schedule 16 to the Design and Development Overlay, specifically the mandatory 11m building height limit for the site, which was introduced into the Yarra Planning Scheme on 1 October 2020 via Planning Scheme Amendment C231.

Conclusion

6. Based on the following report, the proposal is considered on balance to meet with the relevant tests for granting an extension of time and should therefore be supported

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

6.4 PLN17/0705 - 388-390 Queens Parade, Fitzroy North - Extension of Time Request

Reference	D20/161451
Author	Amy Hodgen - Coordinator Statutory Planning
Authoriser	Manager Statutory Planning

Ward:	Nicholls
Purpose	To consider an application to extent the timeframe for commencement of a planning permit
Permit Allows	Development of the land with a five storey building comprising of a ground floor restaurant and first floor offices and three dwellings above, including car parking for four vehicles located in a stack at the rear of the existing building, including demolition works within a heritage overlay and a reduction in car parking requirements and construction of a sign in a heritage overlay in accordance with the endorsed plans
Existing use:	Restaurant (ground level)
Applicant:	Tim Hutchens – DCA Design
Zoning / Overlays:	Commercial 1 Zone Heritage Overlay (HO330) Design and Development Overlay (DDO16)
Date of Application:	13 June 2020
Application Number:	PLN17/0705

Planning History

1. The original application was lodged with Council on 30 August 2017.
2. Planning Permit PLN17/0705 was issued 19 September 2018 at No.388-390 Queens Parade, Fitzroy North for:
 - (a) *Development of the land with a five storey building comprising of a ground floor restaurant and first floor offices and three dwellings above, including car parking for four vehicles located in a stack at the rear of the existing building, including demolition works within a heritage overlay and a reduction in car parking requirements and construction of a sign in a heritage overlay in accordance with the endorsed plans.*
3. The original permit was granted by 'consent' between parties at a Compulsory Conference at the Victorian Civil and Administrative Tribunal (VCAT). The application was subject to a review against Council's failure to determine the application (Section 79 of the *Planning and Environment Act 1987*).
4. Planning Permit PLN17/0705 was issued subject to the following salient condition:
 - (a) *The permit will expire if:*
 - (i) *The development is not commenced within two years of the date of this permit*
 - (ii) *The development is not completed within four years of the date of this permit; or (sic.)*

(b) *In accordance with Section 69 of the Planning and Environment Act 1986, an application may be submitted to the responsible authority for an extension of the period referred to in this section.*

5. Plans and reports were submitted on 19 January 2019 for endorsement under the Planning Permit. These were endorsed on 26 July 2019.
6. In April 2019, the applicant applied to VCAT to amend the Planning Permit to add an additional level i.e. increasing the building to 6 storeys. This was later withdrawn on 18 July 2020.
7. On 23 September 2019, the application lodged a request to make minor amendments to plans under 'secondary consent' provisions. These plans were approved 17 April 2020.
8. A request to extend the commencement date was lodged with Council on 13 July 2020 and is the subject of this report.

The Proposal

9. A summary of the approved development under Planning Permit PLN17/0705 is provided below.

Demolition

10. Demolition of the ground floor glazing to Queens Parade
11. Demolition to the rear including:
 - (a) Rear (north-west) wall at ground and first floor levels
 - (b) Rear external stairs
 - (c) Rear western corner and door along the south-west ground floor wall
 - (d) North-east first floor wall
 - (e) Internal walls (no permit required)
 - (f) Boundary fencing (no permit required)
 - (g) Roof beyond the front room

Development

General

12. The proposed development is focused to the rear and above the existing double storey building facing Queens Parade.
13. The development will be a maximum of 5 storeys, and 17.51m in height to the building parapet, with a centrally located roof services deck area concealed by a 1.2m high screen.
14. The upper levels are to be set back 10.2m from Queens Parade, with balconies set back a minimum of 8.2m above the existing parapet.
15. The existing restaurant and offices are to be retained within the ground and first floors with the development to the rear incorporating car parking, a lobby area, office space and three dwellings to the levels above.

Material and Design

16. The new development is to have a simple rectilinear design, composed of red/brown face brick work to the upper two levels, articulated with multi-paned glazing.
17. Other finishes to include white brick within the lightcourt to the north-eastern laneway and light coloured rendered finishes to the lower three levels of the addition.
18. The roof top service deck is centrally located within the roof space, set back 18m from Queens Parade, 3,2m from the north-east laneway, and 3.05m from the south-western boundary, with the exception for the lift core, which is to abut the south-western boundary.



Figure 1 – Queens Parade elevation

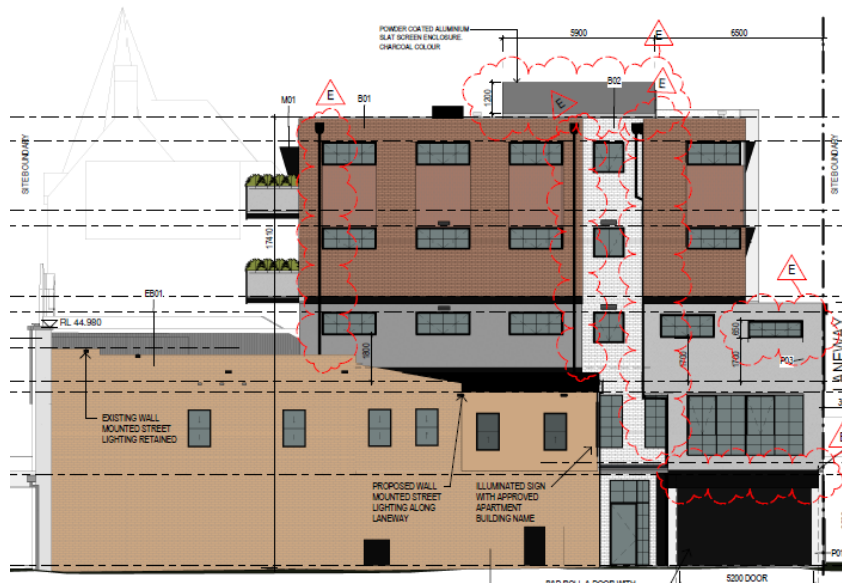


Figure 2 – North-eastern laneway elevation (Former ANZ bank ghosted)

Signage

19. A vertical illuminated sign will be attached perpendicular to the north-eastern wall, identifying the apartment building.

Ground floor

20. At ground level, the existing restaurant is to be retained with updated bathroom facilities. A 1.6m wide, 1.5m high fire booster cabinet is proposed facing Queens Parade.
21. Toward the rear of the existing restaurant, an enclosed lobby is to be constructed, accommodating lift and stair access to upper levels and bicycle storage. The lobby entrance is to be set back 2.08m from the laneway to the north-east.
22. A car stacker system is proposed to the rear northern corner, accommodating four vehicles, extending within a basement pit below. The car stacker system is enclosed, with a roll a door set back 0.99m from the north-eastern laneway.

23. An enclosed bin area is proposed within the rear western corner. This is to be accessible via a door to the lane to the north-west of the site. A 5kL rainwater tank is depicted below ground under the bin storage area.

First Floor

24. The two existing offices are to be retained, with a third office proposed to the rear of the site.
 25. The new first floor addition is to abut the north-eastern, north-western and south-western boundary, with the exception for a 2m x 2.7m light well adjacent to the north-western laneway.

Second Floor

26. A three bedroom dwelling is proposed at Level 2. This is to be set back 10.2m from Queens Parade, with a 34sqm terrace set back 5.9m, obscured by the existing roof.
 27. The second floor is to extend to the rear (north-western boundary) for the full length, providing a 0.41m (not dimensioned) setback along the north-eastern laneway, in addition to the 2m x 2.7m light well. The dwelling will partially abut the south-west boundary for a length of 9.8m, with the remaining section set back between 0.92m and 1m from the boundary.

Third & Fourth Floor

28. The Third and Fourth floors have identical floor plates, each comprising a two bedroom dwelling, with a small study nook.
 29. The dwellings are to be set back a minimum 10.2m from Queens Parade, with 16sqm balconies set back a minimum of 8.2m from the street.
 30. A 2.6m-3m setback (not dimensioned) from the rear (north-western) boundary is proposed, with the setbacks from the north-eastern laneway to match Level 2 below.



Figure 3 - Fourth Floor level

Existing Conditions

Subject Site

31. There have not been any notable changes to the subject site since the original report for the application. The description is reproduced below:
 32. The subject site forms part of the Queens Parade Neighbourhood Activity Centre (NAC), located on the north-western side of Queens Parade, opposite the Y-junction between Queens Parade and Heidelberg Road, in Fitzroy North.
 33. The site is made up of two lots (Lot 1 on PS614586S, Vol. 11093, Fol. 794 & Lot 2 on PS614586S, Vol. 11093, Fol. 795) and comprises of a combined 9.26m frontage to Queens Parade, a 30.48m depth and a site area of 282.24m².

34. *The site comprises a pair of double storey shopfronts circa 1900-1915, being the first two double storey Victorian era shopfronts in a matching row of three. The building is constructed to the Queens Parade frontage and side boundaries at ground and first level and comprises of a south-easterly orientation toward Queens Parade. At the Queens Parade frontage the building comprises two shopfront windows and central pedestrian entry at ground level, a canopy over the Queens Parade footpath, two pairs of vertical double hung windows at first level and two curved parapets with piers. Beyond the front parapet to the north-west are dual zincalume hipped roof forms and lean-to roof forms. An open courtyard is provided to the rear providing for two (2) open car spaces to the restaurant, and on-site bin storage.*
35. *At ground level it appears that the common wall between the two shopfronts has been removed to create a larger tenancy used as a restaurant. At first level the building consists of two side-by-side office tenancies with a frontage to Queens Parade but accessed via a common external stairwell and separate entries to the rear.*



Figure 4 – Subject site viewed from Queens Parade (Google Streetview Oct 2016)

36. *The title submitted with the application does not show any covenants. A narrow party wall easement affects the south-western boundary, in part, and common property is provided in the location of the external stairwell. This has no effect on the proposed development.*

Surrounding Land

37. There have not been any discernible physical changes to the surrounding area since the original report. However a planning application was received and has since been refused for the land to the rear of the site at No. 390A Queens Parade. This proposed 13, four-storey townhouses. This application will be discussed within the assessment as relevant. The description of the surrounding area from the original report is reproduced below:
38. *The subject site forms part of the Queens Parade NAC which is an intact heritage streetscape with attached Victorian and Edwardian era double storey shopfronts with sheer double storey facades, shopfront windows at ground level, vertical double-hung windows at first level, projecting canopies over the footpath, and facade parapets with pitched roofs behind. Single storey Victorian and Edwardian era shopfronts are also interspersed. The former London Bank of Australasia building (or currently known as the ANZ Bank Building) is found further south-west of the site at No. 370 Queens Parade. This building is iconic in the commercial strip and is the tallest building in the strip with a 3-4 storey scale, is located at the corner bend of Queens Parade; and is recognised for its architectural significance as one of the best examples of English Queen Anne Revival style commercial architecture in Melbourne.*

39. *Immediately south-west of the site at No. 386 Queens Parade is a single fronted, double storey shopfront building with frontage to Queens Parade, being the third double storey Victorian era shopfront in the matching row of three associated with the subject site. This building is used as a shop at ground level. The applicant indicates that the first level is used as an office. However the objector has advised Council that the rear of this building is used as a residence. From on-site investigations, this appears to be the case, with the rear yard being used as the SPOS to the dwelling.*
40. *To the north-east of the site is a 5m wide bluestone ROW. Beyond the ROW to the north-east is a single fronted, single storey shopfront with frontage to Queens Parade. This building is used as a takeaway restaurant.*
41. *To the rear (north-west) of the site is a 3m wide bluestone ROW. Beyond this ROW to the north-west is a large single storey warehouse building. The rear (north-western abutting) ROW comprises a cluster of former single storey industrial buildings, rear yards and a recently constructed triple storey apartment building located further north-east of the site at the rear of No. 404 Queens Parade.*
42. *Along the north-western side of the Queens Parade is angle time restricted car parking, predominantly 1P, 7am – 7pm. Based on the survey advice provided in the submitted Traffic Impact Assessment by O'Brien Traffic Consultants, dated 30/11/2017, the broader area within 250m of the site includes restricted parking of 1P or longer.*
43. *The site has convenient access to public transport including:*
 - (a) *Immediate access to tram and bus services along Queens Parade;*
 - (b) *The Hoddle Street bus services, 300m from the site; and*
 - (c) *The Clifton Hill Railway Station, 300m from the site.*
44. *The site is in close proximity to on-road bike lanes along Queens Parade, Heidelberg Road, Michael Street, McKean Street and Gold Street. Off-road shared paths are provided nearby in the area.*

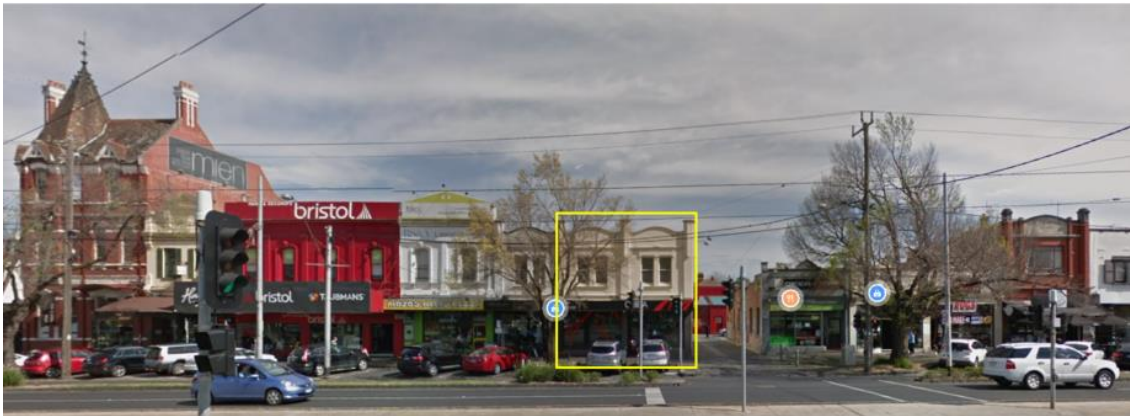


Figure 5 – Queens Parade Streetscape, subject site outlined in yellow (source: Google Streetview Oct 2016)



Figure 6: Aerial view of subject site – subject site highlighted (source: NearMap 8 November 2020)

Planning Scheme Provisions

Zoning

Clause 34.01 – Commercial 1 Zone

45. Pursuant to Clause 34.01-1, a planning permit is not required for an office or accommodation (including dwelling) as the dwellings do not have a frontage at ground floor level exceeding 2m.
46. Pursuant to Clause 34.01-4 a permit is required to construct a building or carry out works.
47. Pursuant to Clause 34.01-4 an apartment development must meet the requirements of Clause 58.
48. The applicable zone and application triggers have not changed since the original permit was issued.

Overlays

Clause 43.01 - Heritage Overlay (HO330)

49. Pursuant to Clause 43.01-1 a permit is required to demolish or remove a building and to construct a building or construct or carry out works.
50. Pursuant to the Schedule to the Heritage Overlay, External paint controls apply to HO330.
51. This Heritage Overlay and the relevant application triggers have not changed since the original permit was issued.

Clause 43.02 – Design and Development Overlay – Schedule 16

52. Pursuant to Clause 43.02-1, a permit is required to construct or carry out works.
53. Schedule 16 relates to Queens Parade. This Overlay was introduced on 1 October 2020, replacing interim DDO Schedule 20. At the time that the permit was issued, the interim DDO16 was applicable. This will be discussed in greater detail within the assessment.

Particular Provisions

54. The following particular provisions are relevant to the planning permit:
 - (a) Clause 52.06 – Car Parking
 - (b) Clause 52.34 – Bicycle Parking
 - (c) Clause 53.18 – Stormwater in Urban development
 - (d) Clause 59 – Apartment Developments

55. Clause 53.18 has been introduced since the original permit was issued. This will be discussed within the assessed

General Provisions

56. Clause 65 – Decision guidelines

Planning Policy Framework (PPF)

57. The following State policies continue to apply, there have not been any significant changes to these policies that affect the subject site:

- (a) Clause 11.01-1R – Settlement – Metropolitan Melbourne
- (b) Clause 11.03-1R – Activity Centres – Metropolitan Melbourne
- (c) Clause 15.01 – Built Environment
- (d) Clause 15.02 – Sustainable development
- (e) Clause 15.03 – Heritage
- (f) Clause 16.01 – Residential development
- (g) Clause 17.01 – Employment
- (h) Clause 18.01 – Integrated Transport
- (i) Clause 18.02-2R – Principal Public Transport Network

Local Planning Policy Framework (LPPF)

Municipal Strategic Statement (MSS)

58. The following relevant policies of the municipal strategic statement continue to apply. There have not been any changes to these policies since the permit was issued:

- (a) Clause 21.04-1 – Accommodation and housing
- (b) Clause 21.04-2 – Activity centres
- (c) Clause 21.05-1 – Heritage
- (d) Clause 21.05-2 – Urban design
- (e) Clause 21.05-3 - Built form character
- (f) Clause 21.07-1 – Environmentally sustainable development
- (g) Clause 21.08-8 – Fitzroy North

59. Under Figure 19 Neighbourhood Map: North Fitzroy the site is located within the Queens Parade NAC. Under the Figure 20 Built Form Character Map: North Fitzroy the site is located within the Heritage Overlay Area. The strategy is to ensure that development does adversely affect the significance of the heritage place.

Relevant Local Policies

60. The following relevant Local policies continue to apply. There have not been any changes to these policies since the permit was issued:

- (a) Clause 22.02 – Development Guidelines for Sites Subject to the Heritage Overlay
- (b) Clause 22.03 – Landmarks and tall structures
- (c) Clause 22.05 – Interface Uses Policy
- (d) Clause 22.07 – Development Abutting Laneways
- (e) Clause 22.16 – Stormwater Management (Water Sensitive Urban Design)
- (f) Clause 22.17 – Environmentally Sustainable Development

Legislation

61. Section 69 of the *Planning and Environment Act (1987)* provides that:
- (1) *Before the permit expires or within 6 months afterwards, the owner or the occupier of the land to which it applies may ask the responsible authority for an extension of time.*
 - (1A) *The owner or occupier of land to which a permit for a development applies may ask the responsible authority for an extension of time to complete the development or a stage of the development if—*
 - (a) *the request for an extension of time is made within 12 months after the permit expires; and*
 - (b) *the development or stage started lawfully before the permit expired.*
62. The permit expired on 19 September 2020 for commencement. The request for an extension of time was received on 13 July 2020, therefore the request was made in time.

Advertising

63. There is no notification/third party involvement for an Extension of Time request, however 14 submissions have been received. Submitters raised concern that the expired planning permit is contrary to Schedule 16 to the Design and Development Overlay, specifically the mandatory 11m building height limit for the site, which was introduced into the Yarra Planning Scheme on 1 October 2020 via Planning Scheme Amendment C231. This matter is discussed in detail within the officer assessment below.

Referrals

64. The application did not require referral to any external authorities or internal departments.

OFFICER ASSESSMENT

65. The ‘tests’ for assessing request for an extension of time to act upon a planning permit were established in the Supreme Court decision of *Kantor v Murrindindi Shire Council*, 18 AATR 285,. It was held that the Responsible Authority should treat the applicant as being obliged to advance some reason or material in support of the grant of an extension of time to a permit.
66. It was further held that where a request to extend time is made, a Responsible Authority may rightly consider the following:
- (a) Whether there has been a material change in planning policy;
 - (b) Whether the Applicant is seeking to “warehouse” the permit;
 - (c) Intervening circumstances as bearing upon grant or refusal;
 - (d) The total elapse of time since the granting of the permit;
 - (e) Whether the limit originally imposed was adequate;
 - (f) The economic burden imposed on the Applicant by the Permit
 - (g) The probability of a permit issuing should a fresh application be made
67. These tests have been assessed in turn below.
68. As will be discussed, these tests are to support a balanced assessment to determine whether an extension of time should be supported.
- Whether there has been a material change in planning policy***
69. Since the permit was issued on 19 September 2018, there have been a number of changes to planning policy with the Yarra Planning Scheme. Those that are relevant to subject site are listed in chronologically below:

- (a) Amendment VC149 (Gazetted 4 October 2018)
- (b) Amendment VC154 (Gazetted 26 October 2018)
- (c) Amendment C231 (Gazetted 1 October 2020)

Amendment VC149

- 70. This amendment, introduced into the Scheme on 04 October 2018, established new requirements under *Clause 34.01-8 (Decision Guidelines – Buildings and Works)* to consider overshadowing to existing rooftop solar energy systems on adjoining lots in a General Residential Zone, Mixed Use Zone, Neighbourhood Residential Zone, Residential Growth Zone or Township Zone.
- 71. Amendment VC149 would not impact the subject site as there are no adjoining lots within the aforementioned zones, nor are there any solar panels proximate to the subject site that would be affected by the proposed development. The nearest solar panels are located approximately 30m to the south-east (No. 370 Queens Pde) within the Commercial 1 Zone and approximately 35m to the east (No. 224 McKean St) in the Neighbourhood Residential Zone. As illustrated below in the 9am shadow diagram for the September Equinox, neither of these properties would be overshadowed by the development, with shadows limited to a maximum length of 21m, across the service yards of No. 384-386 Queens Pde and small portions of the roofs at No. 380 Queens Parade and 390A Queens Pde.



Figure 7 – nearby solar panels (circled in yellow)

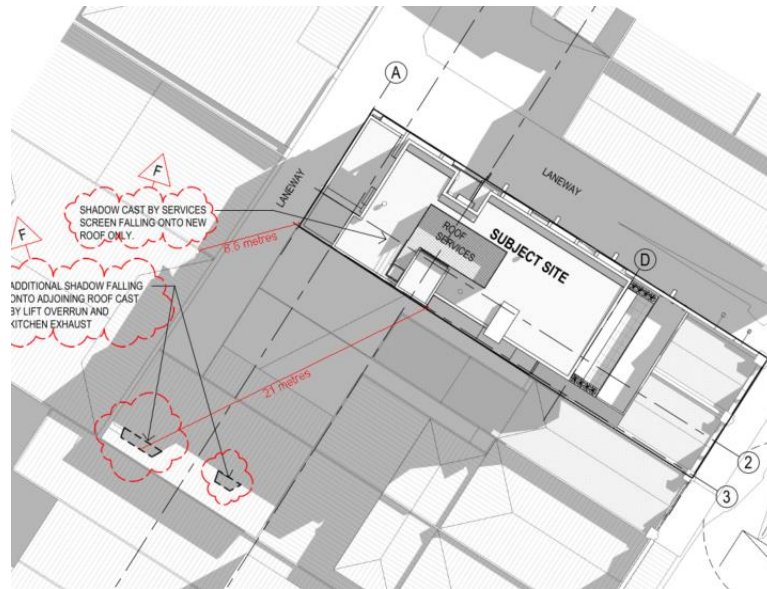


Figure 8 - Shadow diagram based on Secondary Consent application approved - April 2020

Amendment VC154

- 72. This amendment, gazetted on 26 October 2018, introduced the *Stormwater Management for Urban Development* provision at clause 53.18 within all Victorian Planning Schemes. However, the Yarra Planning Scheme already has a local policy dedicated to Stormwater Management at clause 22.16 of the Scheme, which was introduced via Amendment C117 on 13 March 2014 and was in place when the original application was assessed.
- 73. The approved development incorporates a 5kL rainwater tank to collect stormwater from the roof and for reuse in toilet flushing. This achieved a STORM rating of 100%. This complies with Clause 22.16 and would also satisfied clause 53.18.

Amendment C231

- 74. This amendment, gazetted 1 October 2020, introduced permanent built form controls through Schedule 16 to the Design and Development Overlay (DDO16) for Queens Parade. This replaced the interim DDO20 that existed at the time that the original permit was issued.
- 75. It is important to note, that at the time the application was determined, the application was compliant with the building height requirements within the interim DDO20.
- 76. The overlay specifies several relevant design requirements for developments within specific precincts; the proposal is situated within Precinct 4. The following table is an assessment of those design requirements.

Built Form	Mandatory requirement	Complies
Maximum building height	11m (mandatory)	No Building height 17.51m, plus a 1.2m high roof top services areas
Maximum and minimum street wall height on Queens Parade	Retain height of the existing heritage façade. (mandatory)	Yes Existing heritage street wall height on

		Queens Parade retained
Maximum and minimum street wall height in side street	No higher than the existing heritage façade. (discretionary)	Not applicable Site does not abut a side street
Minimum upper level setback on Queens Parade	8 metres (mandatory)	Yes 8.2m setback to balcony at levels 03 and 04. Set back of terrace at level 02 (5.954m) is not included in this setback as the terrace is located behind the street wall. The upper level is defined as, " <i>development above the height of the street wall</i> ".
Minimum upper level setback in side street	6 metres (discretionary)	Not applicable Site does not abut a side street
Maximum and minimum street wall setback	Retain existing setback (discretionary)	Yes No change to existing street wall at ground floor
Side and rear setbacks (NRZ interface)	Where there is a laneway, height and setbacks as shown in Figure 1 Where there is no laneway, height and setbacks as shown in Figure 2 (discretionary)	Not applicable (no NRZ interface)
Minimum rear setback to a C1Z interface	3 metres above 11 metres (discretionary)	No (2.49m to 3m setback above 11m)

77. As illustrated in the above table, there are two built form requirements that the approved development would not meet; the overall height and the minimum rear setback. These will be addressed in turn.

Building Height

78. When the original permit was granted, it was subject to the interim DDO20 for Queens Parade. This control supported building height up to 21.5m, or rather 6 storeys, with a minimum setback of 6m from the frontage. The approved development at 17.51m with an 8.2m-10.2m setback, was a conservative response to these controls, acknowledging the sensitivities of the Queens Parade heritage streetscape and the proximity to the former ANZ bank building.

79. While the approved development exceeds the mandatory high limit introduced by DDO16 by the equivalent of two storeys, this does not prevent an extension of time to the permit being granted. This was clearly outlined in the decision of *AMV Homes Pty Ltd v Moreland CC (Includes Summary) (Red Dot) [2015] VCAT 1699*, whereby the Tribunal stated the following at paragraph 7 (Emphasis added):
- (a) *It is important to appreciate some additional relevant principles:*
 - (i) *An applicant should advance good reasons as to why an extension should be granted; a request should not be approved simply because it has been asked for.*
 - (ii) *The Kantor “tests” are not mandatory nor exhaustive.*
 - (iii) *There may be other relevant considerations to those articulated in Kantor, including matters of natural justice and equity.*
 - (iv) **That the approved development is now prohibited does not mandate a decision refusing to extend the time to commence a development. However, it is something that would usually be expected to be one factor weighing against an extension of time.**
 - (v) **Each case needs to be decided on its own facts and circumstances including whether and how the development in question would undermine or offend the changed policy or planning control regime.**
80. Having regard to the decision of *AMV Homes Pty Ltd*, it is important to consider whether the scale of the approved development would now undermine Schedule 16 of the Design and Development Overlay for Queens Parade. This requires an assessment to be undertaken of the objectives of Schedule 16. These are discussed in the table below.

Objective	How the development responds
<p><i>To ensure development responds to the heritage character and streetscapes and varying development opportunities and supports:</i></p> <ul style="list-style-type: none"> • <i>The existing low rise character to Precincts 1, 3B, 4 and 5A;</i> • <i>A new mid-rise character behind a consistent street wall in Precincts 2, 3A and 5B;</i> • <i>Higher rise development in Precinct 5C.</i> 	<p>The heritage streetscape was also a relevant consideration at the time that the original permit was issued given the Heritage Overlay that affects the site.</p> <p>The approved development has responded to the heritage and low-rise streetscape character of Precinct 4 by setting back the upper levels from the original heritage façade by a minimum of 8.2m to the balconies and 10.2m to the façade. This is over and above the minimum 8m setback required under DDO16 and assists in lessening the visual impact of the addition from Queens Parade.</p> <p>These setbacks, combined with a subtle and unobtrusive design, ensures that the building will not unreasonably impact the otherwise low rise character of the Precinct.</p>
<p><i>To protect the integrity of historical streetscapes and clusters of heritage buildings of a similar scale and materiality.</i></p>	<p>As outlined above, the upper floor setbacks from Queens Parade sufficiently protect the historical streetscape and maintain the predominant double storey street wall to the street.</p> <p>The upper levels of the approved development also incorporate a mix of red brick and render and incorporates fenestration which when combined respects and responds to the materiality of the heritage streetscape.</p>

<p><i>To ensure development respects the architectural form and qualities of heritage buildings and streetscapes and maintains the visual prominence of the St John the Baptist church belfry and spire, the former ANZ Bank building, the former United Kingdom Hotel and the former Clifton Motor Garage.</i></p>	<p>This objective is unchanged from the interim DDO20 and therefore was a relevant consideration when the original permit was granted.</p> <p>In the original application, it was determined that the generous upper level setbacks from Queens Parade would ensure that views to the former ANZ building are maintained along Queens Parade.</p> <p>In addition to being well-recessed from Queens Parade, the maximum height of the proposal would sit below the chimneys and spire associated with the former ANZ bank building, thereby ensuring that the visual prominence of the former ANZ bank building is retained.</p>
<p><i>To promote design excellence that ensures new development respects the wide, open boulevard character of Queens Parade including where existing historic trees are key elements in the streetscape, they remain the dominant visual feature.</i></p>	<p>The proposed addition is a well-considered and complementary design to the heritage streetscape, with the materiality and setbacks responding appropriately to the heritage character of Queens Parade.</p> <p>No street trees would be impacted as a result of the approved development.</p>
<p><i>To ensure development responds to sensitive interfaces by ensuring the overall scale and form of new buildings provides a suitable transition to low scale residential areas and protects these properties from an unreasonable loss of amenity through visual bulk, overlooking and overshadowing.</i></p>	<p>This objective is unchanged from the interim DDO20 and was deemed to be met when the original permit was granted.</p> <p>The subject site does not have any direct abutments with residential zones, thereby reducing the potential amenity impacts associated with the additional building height.</p>

81. As discussed in the table above, the objectives of Schedule 16 were already largely considered in the assessment of the original application, either through the interim DDO20 or under the Heritage Overlay. Based upon the assessment provided in the table above, the proposed development would continue to meet these objectives and would therefore not undermine DDO16.

Rear setback

82. Under DDO16, the only other non-compliance relates to the rear setback requirement, which states that built form above 11m should be 3m where interfacing with a Commercial 1 Zone. This is not a mandatory control.
83. This same discretionary control applied at the time the permit was granted under the interim DDO20. This was considered acceptable at the time of the original application, therefore, it follows that the variation would continue to be acceptable if assessed today.
84. Furthermore, it is noted that the area of non-compliance relates only to a small projection associated with the stair (highlighted below). Noting also that the adjacent land is separated by a 3m wide laneway, which would provide an additional buffer, the variation is considered to be acceptable.



Figure 9 – Projecting sections

Whether the Applicant is seeking to “warehouse” the permit

- 85. There is no evidence to suggest that the applicant is seeking to “warehouse” the permit as this is the first extension of time requested to the planning permit.
- 86. Furthermore, as outlined in the background section, the applicant has been activity working towards commencing the development.

Intervening circumstances as bearing upon grant or refusal;

- 87. The applicant has identified a number of intervening circumstances that have result in the delay to commencing construction. Most recently being the construction restrictions imposed as a result of the Covid-19 pandemic.
- 88. The Planning History outlined earlier in the report demonstrates lengthy delays associated with obtaining and amending endorsed plans, with final plans endorsed 17 April 2020. The only outstanding matter is the Construction Management Plan pursuant to Condition 18 of the Planning Permit. This would generally be prepared by the builder and submitted immediately prior to commencement of the development.
- 89. In preparing to act upon the permit, the applicant lodged a building permit on 10 December 2019 and also made arrangements to relocate the first floor office tenant in January 2020.
- 90. The applicant has demonstrated a clear intention to commence works, with reasonable intervening circumstances preventing this from occurring within the timeframes of the permit. The applicant has also advised that a Certificate of Compliance for proposed Building Work was issued on 22 October 2020.
- 91. It is to be acknowledged that the gazettal of Amendment C231 on 10 October 2020, which introduced a mandatory 11m high limit on the site, is a factor weighing against the grant of the extension. However, as outlined in the *AMV Homes Pty Ltd* design, this must be considered alongside matters of natural justice and equity. As have been outlined above, there have been understandable and unavoidable intervening circumstances preventing the applicant from acting upon their permit in time. The impact of refusing the request would be significant, given that a planning permit for the approved development could no longer be obtained pursuant to DDO16.

The total elapse of time since the granting of the permit

- 92. As this is the first request for an extension of time, the lapse of time is not an unreasonable factor that would lead to the refusal of the request.

93. Since Planning Permit PLN17/0705 was granted, an application was received for the land to the rear of the site at 390A Queens Parade. This application proposed the construction of 13, 4-storey townhouses. The application was appealed to VCAT for Council's failure to determine the application in time. On 8 October 2020, the Tribunal determined not to grant a planning permit. At the time the decision was made, interim DDO20 was still applicable to 390A Queens Parade (i.e. 6 storey height control), with this site having been separated from the balance of Amendment C231. Nevertheless, Amendment C231, as it applied to the subject site, had been adopted by Council and was considered a 'seriously entertained' amendment.
94. In its decision (*Plenty & Dundas Pty Ltd v Yarra CC* [2020] VCAT 1131), the Tribunal outlined two fundamental reasons for not supporting the application:
- (a) Poor internal amenity i.e. excessive screening and insufficient open space for two of the 13 townhouses; and
 - (b) Unreasonable amenity impacts upon the Neighbourhood Residential Interface of McKean Street to the rear.
95. The current permit had no apparent influence on the decision.
96. There have been no other notable changes that have occurred within the surrounding area that would be prejudiced by an extension of time to commence the permit, or would otherwise influence the assessment if considered today.

Whether the time limit originally imposed was adequate

97. The time limit imposed for commencement of the development under the Planning Permit was two years, consistent with the default timeframe under section 68(1)(b) of the Act.
98. While it is considered that the development could have been undertaken within the timeframe allowed, there have been a number of unexpected disruptions preventing the permit from being acted upon.
99. While plans were initially endorsed on 25 July 2019, a further amendment to refine plan details was lodged on 23 September 2019, which was only finalised on 17 April 2020. This coincided with the tightening of restrictions associated with the Covid-19 pandemic.
100. The delays experienced by the permit applicant are reasonable and considered largely unavoidable.
101. While the applicant has sought an extension of two years to commence work due to the uncertainty imposed by the Covid-19 pandemic, however given that the applicant has demonstrated clear readiness to commence, a 12 month extension would be considered adequate.

The economic burden imposed on the applicant by the permit

102. There would be costs associated with the preparation of plans for endorsement in addition with the documentation package for tender and construction.
103. If the request were to be refused, the economic burden would be significant. There would be costs associated with the preparation of a new planning application. Furthermore, the mandatory controls that now apply under DDO16 would prohibit the approved development and reduce the site's yield from three dwellings to one.

The probability of a permit issuing should a fresh application be made

104. As discussed earlier in the report, whilst the approved development meets most of the requirements of the proposed DDO16, the approved development exceeds the mandatory maximum height requirement of DDO16. Therefore, if an application was lodged today, it would be prohibited. Nevertheless, it is found that this variation is acceptable as the development will continue to achieve the design objectives of the DDO16.

105. With the exception for the mandatory heights pertaining to DDO16, the application remains generally consistent with the policy introduced into the Yarra Planning Scheme since its approval. Furthermore, there have been no changes to the surrounds that would warrant refusal of this extension of time request.

Conclusion

106. Taking into account the above, an extension of time is considered appropriate having regard to:
- (a) The request for the extension was made within the prescribed time.
 - (b) It is the first request for an extension of time and the supporting reasons for the delay in commencing the approved development are reasonable and unavoidable.
 - (c) The applicant has demonstrated a clear intention to act upon the planning permit.
 - (d) There have been no changes in the site context that would influence the outcome if the application was assessed today.
 - (e) There have been changes to the planning policy which would prohibit the proposed development if assessed under the current controls, however, for the reasons already outline in this report, it is considered that the overall development will continue to satisfactorily respond to the design objectives of the DDO16.

RECOMMENDATION

That the Planning Development Committee resolve to grant an extension of time to Planning Permit PLN17/0705 associated with 388-390 Queens Parade, Fitzroy North so that the works must now commence no later than 19 September 2021 and be completed no later than 19 September 2023.

Attachments

- 1 Planning Permit
- 2 Endorsed Plans
- 3 Request for an Extension of Time
- 4 Additional information on EOT
- 5 Applicant's Legal advice on EOT