



Agenda

Planning Decisions Committee

6.30pm, Tuesday 31 January 2023

Richmond Town Hall

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 chair 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 Anab Mohamud

Cr Claudia Nguyen

Cr Bridgid O’Brien

Council officers

Sarah Griffiths (Senior Co-ordinator Continuous Improvement - Statutory Planning)

Jessica Sutherland (Senior Statutory Planner)

Cindi Johnston (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

RECOMMENDATION

That the minutes of the Planning Decisions Committee held on Tuesday 20 December 2022 be confirmed.

6. Committee business reports

Item	Page	Rec. Page
6.1 PLN21/0569 - 69 Smith Street, Fitzroy	5	58

6.1 PLN21/0569 - 69 Smith Street, Fitzroy

This matter was presented to the Planning Decisions Committee on 20 December 2022. At that meeting, the Committee resolved “that this item be deferred to the Planning Decisions Committee Meeting on 31 January 2023 and that submissions be heard in accordance with the Yarra City Council Governance Rules”.

This report is presented in accordance with that resolution.

Report Summary

Purpose

1. This report provides Council with an assessment of Planning Application PLN21/0569 which is for partial demolition, alterations and construction of a multi storey building for an office and two dwellings (no permit required for the uses) and a reduction in the statutory car parking requirement of the Yarra Planning Scheme. The report recommends a position of approval subject to conditions.

Key Planning Considerations

2. Key planning considerations include:
 - (a) Clause 15.01 – Built Environment;
 - (b) Clause 22.02 – Development Guidelines for Sites Subject to the Heritage Overlay;
 - (c) Clause 22.05 – Interface Uses Policy;
 - (d) Clause 22.10 – Built Form and Design Policy;
 - (e) Clause 34.01 – Commercial 1 Zone;
 - (f) Clause 43.01 – Heritage Overlay;
 - (g) Clause 43.02 – Design & Development Overlay (Schedule 30);
 - (h) Clause 52.06 – Car Parking.

Key Issues

3. The key issues for Council in considering the proposal relate to:
 - (a) Policy and Strategic Support
 - (b) Dwelling Use and Clause 22.05 Interface Uses Policy
 - (c) Built Form and Heritage
 - (d) Off-site Amenity
 - (e) Internal Amenity, Equitable Development and Environmental Sustainability
 - (f) Car parking reduction and Engineering issues
 - (g) Potential Site Contamination
 - (h) Objector Concerns

Submissions Received

4. Twenty six (26) objections were received to the application, these can be summarised as:
 - (a) The proposed building height, scale, lack of transition to adjoining buildings and modern appearance not appropriate to the heritage and neighbourhood context,

- (b) Concern shop window replacement inappropriate to building,
- (c) Off-site amenity concerns including overlooking and overshadowing,
- (d) Increased demand for on-street car parking spaces competing with local businesses,
- (e) Proposal not consistent with Council policy including the requirements of Design and Development Overlay (Schedule 30),
- (f) Noise from occupants using elevated balconies,
- (g) Future occupants making complaints against the noise from existing businesses and businesses undertaking delivery from northern lane blocking access to proposed garage door,
- (h) Concern access to right of way blocked by bins placed in laneway for collection,
- (i) Lack of vegetation/open space, and
- (j) Poor ESD outcomes.

Conclusion

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

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

6.1 [PLN21/0569 - 69 Smith Street, Fitzroy](#)

Reference	D22/347199
Author	Laura Condon - Senior Statutory Planner
Authoriser	Coordinator Statutory Planning

Ward:	Langridge
Proposal:	Partial demolition, alterations, construction of a multi storey building and a reduction in the statutory car parking requirement of the Yarra Planning Scheme
Existing use:	Shop
Applicant:	Context Design Group
Zoning / Overlays:	Commercial 1 Zone (C1Z) Design and Development Overlay (Schedules 30) Development Contribution Plan Overlay (Schedule 1) Heritage Overlay – Schedule 464 (HO464)
Date of Application:	6 August 2021
Application Number:	PLN21/0569

Planning History

6. Planning Permit PL01/0439 was issued on 6 August 2001 for *buildings and works* at No. 69 Smith Street.
7. PLN17/0833 for *partial demolition of the existing buildings for the construction of a multi-level building, sale and consumption of liquor and a reduction in the car parking requirement and bicycle parking requirement associated with a restaurant (no permit required for use)* at 69 - 71 Smith Street was refused by Council on 13 December 2018. The application included a double storey addition to the rear of the subject site, with both the existing building and addition proposed to be used as a restaurant.

Background

Advertised plans

8. The application was originally submitted on 6 August 2021. On receipt of a satisfactory response to Council's Further Information request 31 January 2022, the application was advertised in February 2022 with 24 objections received.

[PLN21/0569 - 69 Smith Street Fitzroy - Advertised - Plans](#)

9. The application was referred to several Council departments, including Heritage, Engineering Services, Strategic Transport, Strategic Planning, Environmental Sustainability Officer and Urban Design.

Section 57A plans

10. In response to the issues raised within referral comments and by objectors, amended plans were submitted under Section 57A of the *Planning and Environment Act 1987 (the Act)* on 22 August 2022. A link to the amended plans is below.

[PLN21/0569 - 69 Smith Street, Fitzroy – Advertised Section 57B - Amended plans](#)

11. The following changes were incorporated into the amended plans;

Roof terraces

- (a) Deletion of the roof terrace to dwelling 1 and its replacement with a smaller roof plant area.
- (b) Deletion of the two roof terrace pop up access structures to dwelling 1 and 2 and their replacement with two roof access hatches.
- (c) Correcting the southern elevation to show the level 2 roof terrace balustrade to dwelling 1. The original advertised plans show a metal balustrade on the north and east elevation but omitted to show the balustrade on the south elevation.
- (d) The metal picket balustrades to north and south side of the level 2 terrace to dwelling 1 replaced with solid brick.
- (e) The southern skylight to the office extended in height to match the height of level 2 terrace balustrade to dwelling 1, with the skylight raked/angled inward resulting in a reduction in the height of the on-boundary wall.

Dwelling changes

- (f) Repositioned car space for dwelling 1 and associated internal rearrangement (including altered stair and alterations to window positions).
 - (g) Increased third floor setback of dwelling 2 from 1.5m to 3m to Little Smith Street and associated internal rearrangement (including proposed party wall repositioned and alterations to window positions).
 - (h) Raking of part of the southern level 3 wall to dwelling 1 adjacent the adjoining open space to the south and associated reduction of the on-boundary wall height.
 - (i) Some walls heights reduced through the deletion of the roof top access structures and other increased by a max of 400mm to accommodate internal layout changes.
12. The amended plans were advertised in November 2022 to adjoining properties and to objectors. No new objections were received. Three further objections were received by existing objectors, confirming the revised proposal only partially addressed their concerns.
13. The Section 57A plans are the 'decision plans' for this application. Reference is made to them in the assessment section of this report, where relevant.

Planning Scheme Amendments

Amendment C270

14. On 17 December 2019, Council requested the Minister for Planning consider the approval of proposed interim built form controls (interim Design and Development Overlays/DDOs) for activity centres in Fitzroy and parts of Collingwood under Section 20(4) of the Planning and Environment Act 1987 (Amendment without giving of notice).
15. On 20 August 2021, under delegation from the Minister for Planning, the Department for Environment, Land, Water and Planning (DELWP) decided to approve Amendment C270 with changes, however only four of the proposed DDOs were approved out of the proposed nine on an interim basis until 23 March 2023.
16. The subject site is in one of the four approved interim DDOs (DDO30 – Smith Street shops), which outlines built form controls along parts of Smith Street. An assessment of this control is included in this report.

Amendment C269

17. Amendment C269 proposes to update the local policies in the Yarra Planning Scheme (the Scheme) by replacing the Municipal Strategic Statement (MSS) at Clause 21 and Local Planning Policies at Clause 22 with a Municipal Strategic Strategy and Local Policies within the Planning Policy Framework (PPF), consistent with the structure recently introduced by the State Government.

18. Amendment C269 was on public exhibition between 20 August 2020 and 4 December 2020 and proceeded to a panel hearing in October 2021. The Panel report was released on 18 January 2022. Council resolved on 19 April 2022 that having considered the Panel report, to submit the adopted Amendment to the Minister for Planning for approval in accordance with section 31(1) of the Act. As such, Amendment C269 is a seriously entertained planning policy and relevant to the consideration of this application.
19. Of particular relevance to this application, Amendment C269 proposes:

Proposed C269 Local Policy reference	Brief Assessment
<i>Clause 02.04 – Strategic Framework Plan</i>	The Site is formally identified as being located within the Smith Street Major Activity Centre (MAC), consistent with DDO30.
<i>Clause 11.03-1L – Activity Centres</i>	The proposal will contribute positively to the Retail Centre Precinct of the Smith Street MAC.
<i>Clause 13.07-1L – Interfaces and Amenity</i>	The policy aspirations of this clause are addressed under the off-site amenity and on-site amenity assessments below.
<i>Clause 15.01-1L – Urban Design</i>	Built form and design is discussed in the officer assessment below and concludes that the proposal provides an acceptable outcome with regard to architectural and urban design.
<i>Clause 15.02-1L – Environmentally Sustainable Development</i>	The proposal achieves ESD commitments (subject to condition).
<i>Clause 16.01-2L – Housing affordability</i>	The proposal does not provide affordable housing.
<i>Clause 17.01-1L – Employment</i>	The proposal features a mix of land uses, consisting of shops and offices. These offerings will provide a positive contribution to employment opportunities within the Smith Street MAC.
<i>Clause 18.02-1L – Sustainable Transport</i>	The provision of bicycle facilities and reduction of car parking proposed will ensure this policy is met.
<i>Clause 18.02-4L – Car Parking</i>	The proposal seeks a reduction of the car parking requirements to reduce reliance on private vehicle usage associated with the commercial and residential uses.
<i>Clause 19.03-2L – Development Contributions</i>	This is addressed via permit conditions.
<i>Clause 19.03-3L – WSUD</i>	Subject to condition, the proposal is consistent with this policy, as outlined in the submitted Sustainable Management Plan.
<i>Clause 19.03-5L – Waste</i>	Waste management is discussed in the assessment section below and addressed via a Waste Management Plan that will be implemented by permit condition.

The Proposal

20. The proposal is for partial demolition, alterations, construction of a multi storey building for an office and two dwellings (no permit required for the uses) and a reduction in the statutory car parking requirement of the Yarra Planning Scheme. Key features of the proposal include:

Demolition

21. The ground floor shop front window is proposed to be demolished.
22. The ground floor addition to the rear of the shop is proposed to be demolished, along with a first floor window.
23. The single storey rear outbuilding is proposed to be demolished along with side boundary fences.

Ground Floor

24. The existing 1970's aluminium shop front window is to be replaced with a heritage style window to match the existing shop window at No.67 Smith Street,
25. A 25sqm addition is proposed to be constructed to the rear of the shop. A corridor with stair is proposed on the north side of the shop addition and extends to the northern lane. This will provide access to the new office proposed above the footprint of the shop addition and rear access for the shop. A bin store is also proposed for the commercial uses.
26. Dwelling 1 is centrally located on the site and will have an angled garage accommodating 1 car space that accesses the northern laneway. The garage will also accommodate a 6 cubic metre storage area, a bin storage area and two bicycle spaces. The dwelling entry lobby is located to the west of the garage. This area accommodates stair and lift access to the upper levels and a store.
27. Dwelling 2 is located on the intersection of the northern lane and Little Smith Street. A single width garage is accessed from Little Smith Street. The garage will also accommodate a 6 cubic metre storage area, a bin storage area and two bicycle spaces. The dwelling entry lobby is located to the east of the garage. This area accommodates stair and lift access to the upper levels and a study.
28. The combination of the existing shop and the proposed addition occupies the entire site, apart from some minor recesses to accommodate the pedestrian entries to the office and dwellings and a small splay on the north-west corner of the building. Accordingly, the proposal will be built to all site boundaries apart from the aforementioned recessed areas, as detailed in Figure 1.

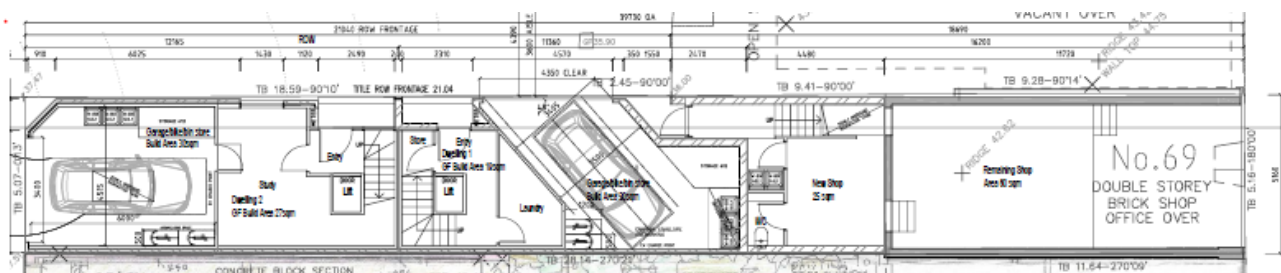


Figure 1: Proposed ground floor layout (Application material)

First floor

29. The first floor office to the immediate rear of the shop measures 23sqm and also accommodates a water closet and is set back 11.6metres from Smith Street.
30. Dwelling 1 proposes 2 bedrooms with both rooms serviced by a jack and jill ensuite.
31. Dwelling 2 proposes 2 bedrooms with each serviced by an ensuite. The westernmost bedroom has a 3sqm balcony on the north-west corner of the building.

32. The combination of the existing building and the proposed addition occupies the entire site at first floor. The new north, south and west walls are built the full extent of their boundaries, apart from a recess to accommodate a 3sqm balcony on the north-west corner of the building as detailed in Figure 2.

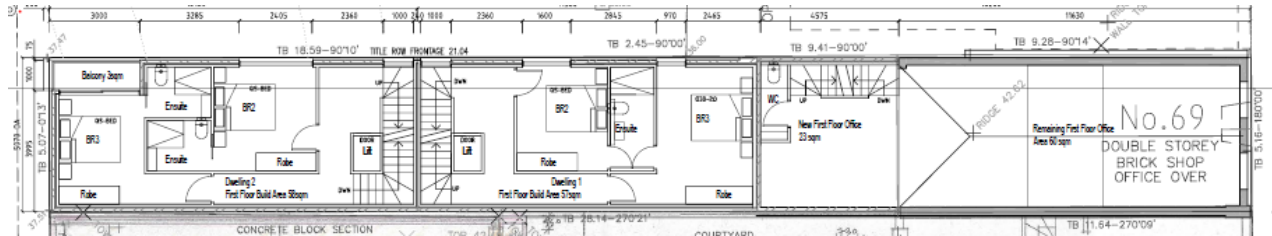


Figure 2: Proposed first floor layout (Application material)

Second floor

33. The second floor of the office measures 23sqm and proposes a window facing Smith Street.
34. Both Dwelling 1 and 2 have a mirrored floor layout at this level both comprising a master bedroom suite with bathroom. Dwelling 2 proposes a 4sqm balcony on the north-west corner of the building.
35. The proposed addition is set back 11.6m from Smith Street and with the new north, south and west walls built to the full extent of the remaining boundaries, apart from a recess to accommodate a 4sqm balcony on the north-west corner of the building as detailed in Figure 3.

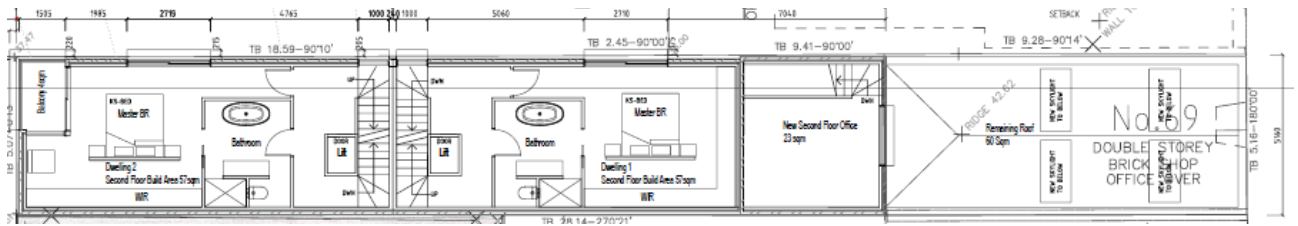


Figure 3: Proposed second floor layout (Application material)

Third floor

36. Both Dwelling 1 and 2 occupy the entire development footprint at this level (ie no office). Each dwelling has their kitchen/living areas on this level.
37. Dwelling 1 is provided with 16sqm terrace accessed from the living area, located immediately above the office footprint. This deck will have a 1m setback to the north boundary to accommodate an angled skylight servicing the office below.
38. Dwelling 2 is provided with a 16sqm balcony on the west side of its living area. The balcony extends the full width of the Little Smith Street and with the west wall set back 3m from this frontage.
39. The proposed addition is set back 11.6m from Smith Street to the east side of the terrace to dwelling 1, with a terrace balustrade to dwelling 2 proposed to the west boundary and with the north and south dwelling walls built the full extent of the remaining boundaries. The terrace to dwelling 1 has a proposed a depth of 4.57m to the rear of the retained heritage roof. The east-wall of dwelling 1 is set back 16.2m to Smith Street. The west wall to dwelling 2 is set back 3m from Little Smith Street to accommodate a terrace.

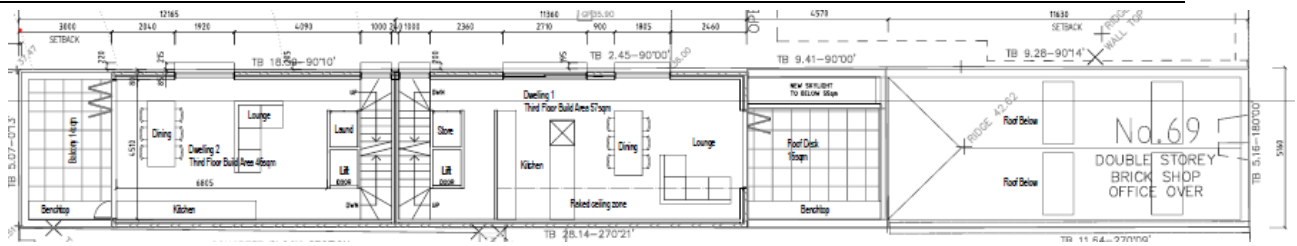


Figure 4: Proposed third floor layout (Application material)

Roof terrace

- 40. A 34sqm roof terrace is proposed to dwelling 2. The terrace is proposed to be built to the north and south boundary and set back 3m to the west boundary.
- 41. A 16sqm roof plant zone is proposed atop dwelling 1 and to be construed to the north boundary. A bank of solar panels is proposed to the east and south, outside the roof plant zone.
- 42. Both the roof terrace to dwelling 2 and the roof plant zone to dwelling 1 are accessed by roof access hatches.
- 43. The roof of dwelling 1 is set back 16.2m to Smith Street, is partially built to the south boundary and is set back 1.25m to the remaining south boundary to accommodate a raked level 3 wall opposite the ground floor open space of No.67 Smith Street and No.44. Little Smith Street. The 16sqm plant zone is built to the north boundary, set back 2.5m to the eastern roof edge and set back 2.6m to the south boundary with PV panels installed on the roof in these setback areas. The roof access hatch and stair access are located on the west side.
- 44. The roof of dwelling 2 is set back 3m to Little Smith Street and is built to the remaining north and south boundary. A 34sqm roof garden occupies all the roof area of dwelling 1 with the roof access hatch and stair access located on the east side.

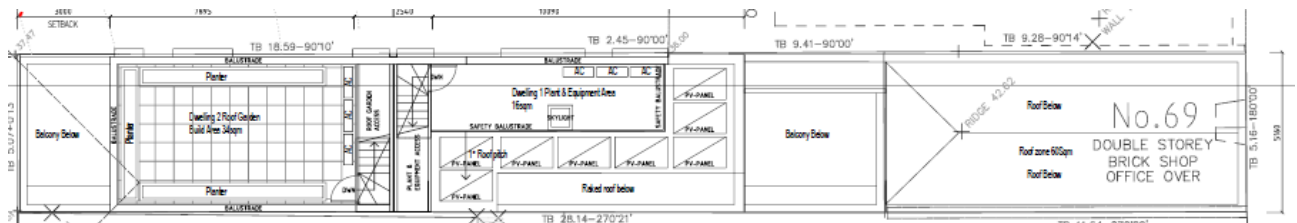


Figure 5: Proposed roof/terrace layout (Application material)

General

- 45. The shop and office addition will have maximum wall height of 11.2m to the south and east boundary and will be a brick construction (apart from a partial metal terrace balustrade on the east side). The north wall will have a maximum boundary wall height of 10.1m with the wall raking back 1m to a maximum height of 11.2m to accommodate the sloped/angled skylight servicing the office below.
- 46. Dwelling 1 will have a staggered northern boundary wall (to the lane) ranging in height from 13.1m to a maximum of 14.2m to the top of the roof services zone balustrade. To the south boundary this dwelling will also have a staggered wall height of 10.6m to 12.6m. The lower part of the boundary wall is generally positioned opposite the open space of a dwelling adjoining to the south. Above this lower boundary wall, the wall above rakes back from the southern boundary for a distance of 1.25m to a maximum height of 12m.
- 47. Dwelling 2 will have a maximum overall height and maximum northern and southern boundary wall heights of 14.2m. The wall to the top of the level 3 balcony balustrades will measure a maximum of 10.4m on the north and south side and 10m to Little Smith Street.

48. The buildings will be constructed of recycled red brick. The east, north and west walls will be a mixture of flush bricks with sections running the height of the buildings comprising of expressed brick providing variation to the façade.
49. Black steel shrouds will surround windows and balconies at a minimum height of 5m above road pavement/footpath levels.
50. The garage doors will be panel lift garage doors.
51. The east wall will have a brick construction with a window at each level 2 and 3.
52. The west wall will have a garage door at ground floor and brick finish on the remain levels each with a window facing Little Smith Street.
53. The southern wall has no proposed windows and will be a brick construction.
54. The north wall will have a brick finish with a high degree of glazing. The ground floor will also contain the pedestrian entries for both the dwellings and office and the garage door for dwelling 1.

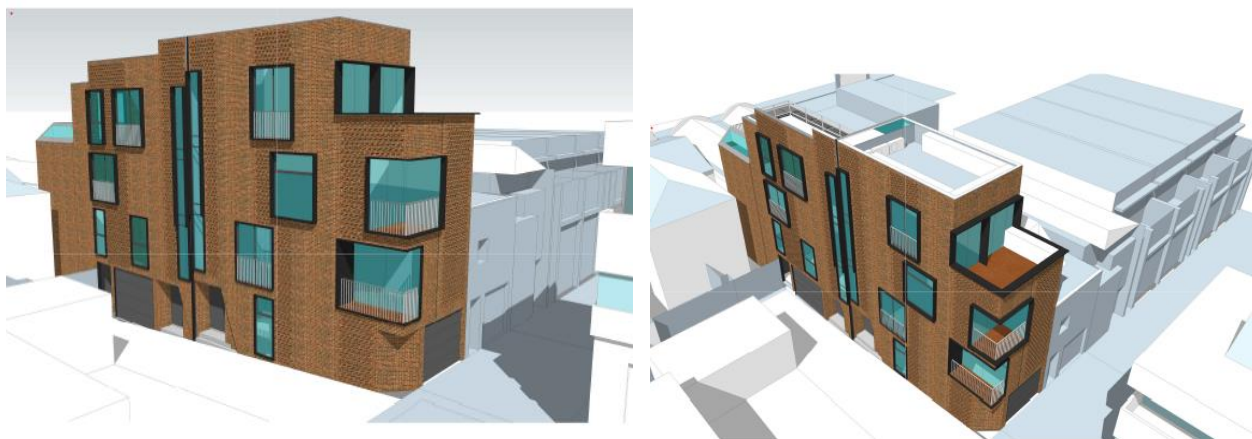


Figure 6: Render image of the proposal (Applicant material)

Existing Conditions

Subject Site

55. The subject site is located on the western side of Smith Street, 30m south of the intersection with Gertrude Street.
56. This lot is rectangular in shape, with a frontage of 5.07m to Smith and Little Smith Streets, a maximum depth of 39.8m, with an overall area of approximately 408sqm (site outlined in yellow in figure 8). It is not encumbered by any covenants/restrictions but has a party wall easement with No.67 Smith Street.
57. The site is developed with a double storey Victorian era building that is constructed to the north, south and east boundary and occupies approximately half the site area. The building is used as a shop. The building forms one of a pair with No.67 Smith Street. To the rear of the site is a single storey outbuilding. An open space area is centrally located on the site. The building has a mostly glazed shopfront directly abutting Smith Street, with a front canopy projecting over the footpath extending the width of the frontage (see figure 7 below).



Figure 7: Subject site frontage highlighted in yellow

Surrounding Land

- 58. The site is located within a Commercial 1 Zone and is part of the Smith Street Activity Centre. The area has a varied commercial and residential character. To the immediate north of the site is a 3.5m wide public laneway. The laneway appears to have a battle-axe configuration on its western end. However, the northern extension does not form part of the lane but is private land (highlighted with yellow infill and red x in Figure 8). The laneway terminates to the rear of No.71 Smith Street.
- 59. The western boundary of the subject site fronts onto Little Smith Street. While a named road and being wider than a typical laneway (at 6m), Little Smith Street essentially functions as a laneway providing rear access to properties fronting onto Smith Street and Gore Street. A number of properties have developed two and three storey dwellings to the rear their sites (see figure 12), meaning Little Smith Street has a predominant back of house character to both sides.



Figure 8: Aerial view subject site outlined in yellow

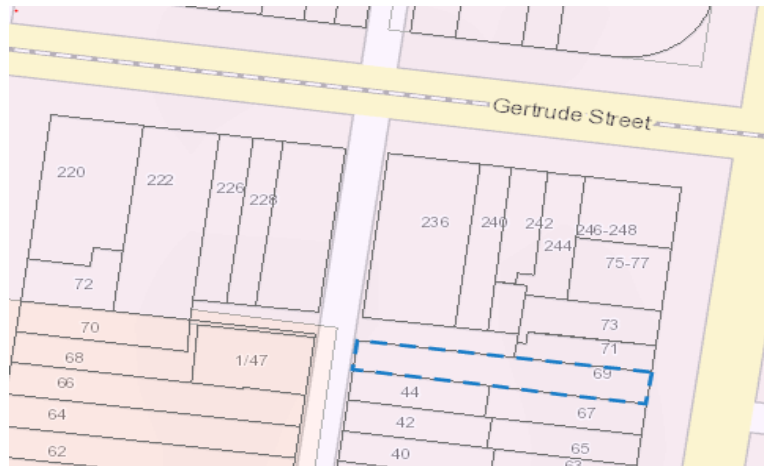
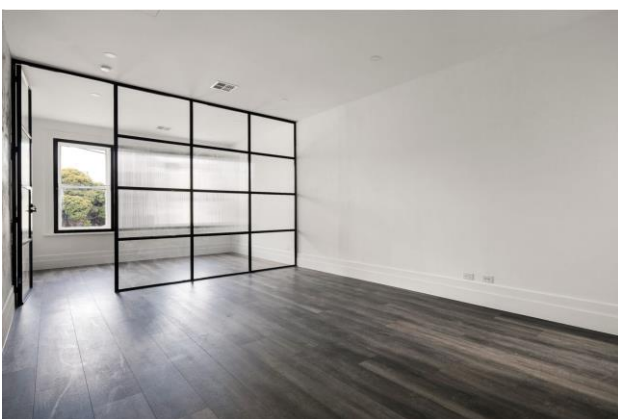


Figure 9: View of Commercial 1 Zone (in lilac) and Neighbourhood Residential Zone (in pink)

- 60. To the immediate north of the site is No.71 Smith Street and with No.73 Smith Street adjoining this site to the north. Both of these sites run approximately half the length of the subject site and have open space/yard to the rear. Online Real Estate information shows (see figure 10) No.71 Smith Street was leased in June 2022 as commercial use at ground floor, with the first floor being advertised as having potential for retail, office or residential uses. The advertising material showed the first floor to include rooms with a dual purpose capacity including one smaller room for either bedroom use or as the personal office for the manager of a commercial use; a large dwelling living area or an open plan office area and a kitchen and bathroom. The first floor is provided with external stair access from the rear and with a separate pedestrian gate also accessing the rear/northern lane. A yard is located to the rear of the property.
- 61. There are no windows facing the subject site at ground floor. At first floor there is a bathroom and kitchen window facing the subject site and a west-facing living room/open plan office window and two east-facing windows servicing the bedroom/managers office, with a fluted and clear glazed wall to the bedroom allowing for a secondary light source to the living room. The kitchen is also provided with a secondary light source via north-facing glazed door accessing a rearing landing area to the external stair.

Figure 10: No.71 Smith Street



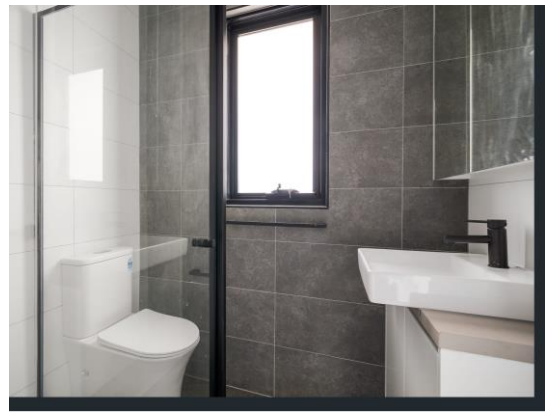
No. 71 Smith Street- Bedroom/managers office



Living room/open plan office window with kitchen door behind



Kitchen window and rear access door.



Bathroom window.



Setback area for first floor windows



View rear of No's 71 and 73 Smith Street

62. To the immediate north of this property is No.73 Smith Street. An objector to the application confirms that it is used for commercial purposes at ground floor and a dwelling at first floor, with the open space area to the rear shared between the commercial and residential use. On the opposite side of the northern lane (see figure 8) are three commercial properties with frontages to Gertrude Street (No's. 234-238, 240 and 242 Gertrude Street). Only No.240 Gertrude Street is built to the interface with the rear lane, with the remaining two properties having open/unfenced commercial yards fronting the lane (see figure 8 and 11).



Figure 11: Northern lane and surrounds

63. Across Little Smith Street is a three storey dwelling (No.1/47 Little Smith Street) with a three storey wall on boundary, 6 metres from the subject site. This wall contains a stairwell window at ground floor, an ensuite window at first floor and a stairwell and living room window at second floor and with the short side of the second floor balcony also facing the subject site. There are also solar panels to the roof of this site. To the north of this is a commercial use (restaurant) that fronts onto Gertrude Street. To the south of No 1/47 Little Smith Street are residential that front onto Gore Street.
64. To the east of the site, over Smith Street, is Derby Street which is predominantly a Mixed Use Zone, with the commercial shop frontages facing the subject site on the west side of Smith Street.



Figure 12: Views of Little Smith Street with subject site highlighted yellow

65. To the immediate south of the site is No.67 Smith Street (commercial at ground and first floor) and No.44 Little Smith Street (three storey residential). The commercial property is double storey with a single storey lean to and open space to the rear. The three storey dwelling at No.44 Little Smith Street has centrally located ground floor open space. The dwelling is built to the north, south and west site boundaries at ground and first floor with the third floor being recessed and having a smaller footprint than the levels below. This dwelling has no windows facing the subject site. The property further south is No.65 Smith Street (commercial) and No.42 Little Smith Street (residential).
66. The following ariel shows highlighted in yellow planning permits of note that have issued in the immediate vicinity in recent years and with endorsed plans provided showing the layout of residential approvals.



Figure 13: Planning permits in the vicinity of the subject site

67. To the north (across the lane) is No. 234- 238 Gertrude Street which received approval for a three storey residential development to the rear of the existing commercial buildings under planning permit PLN14/0715. This permit lapsed 10 March 2020.
68. A ground floor addition with rear car port was approved at No.66 Gore Street under planning permit PLN14/0007. Works have recently completed at the site but with the approved the carport roof not yet to be constructed. This area where the carport is approved is currently being used as a sealed car space.

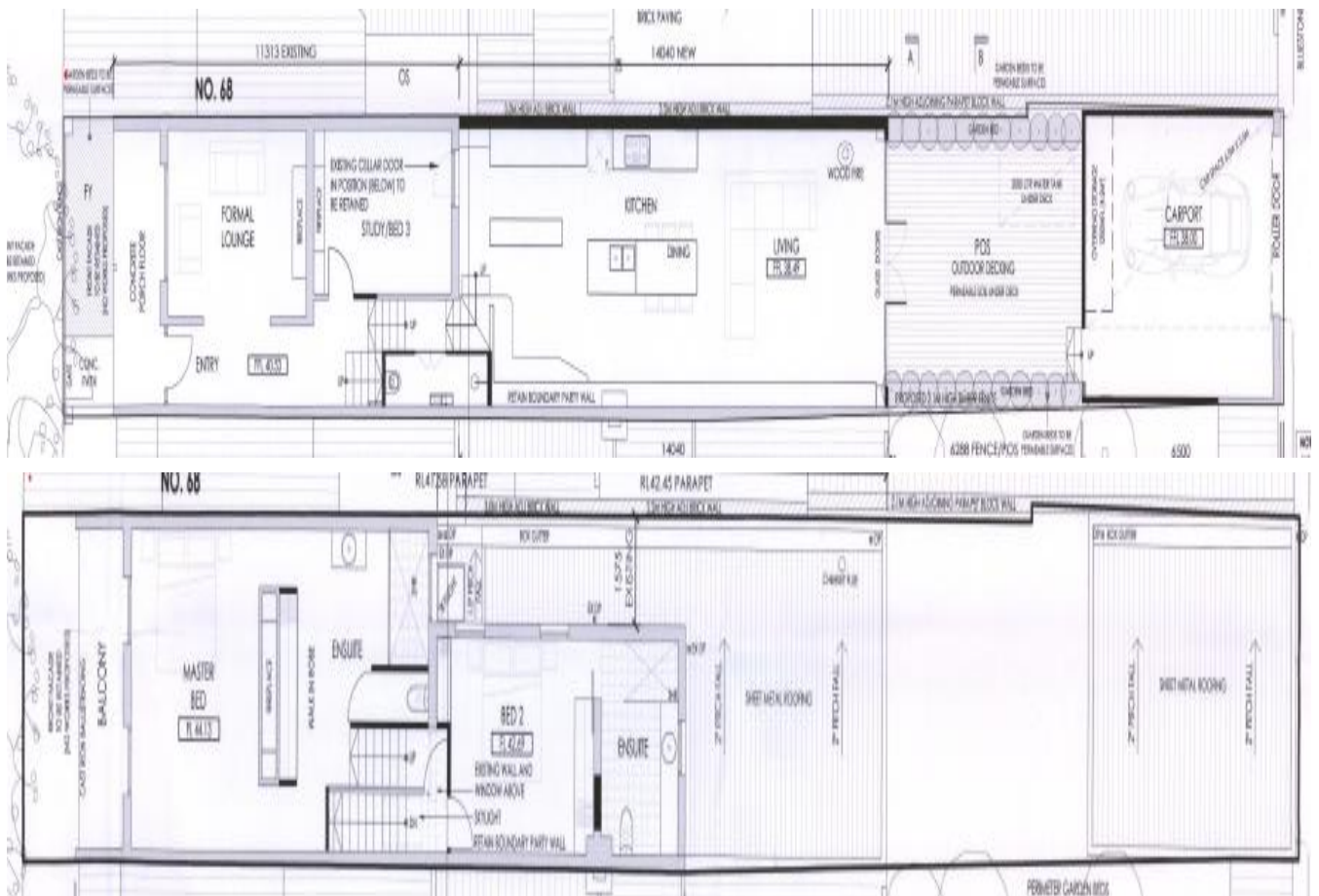


Figure 14: PLN14/0007 No.66 Gore Street

69. Two x three story dwellings approved under planning permit PLN11/1006 are constructed immediately opposite the site at No.47 Little Smith Street. The approved layout of these dwellings are provided below.

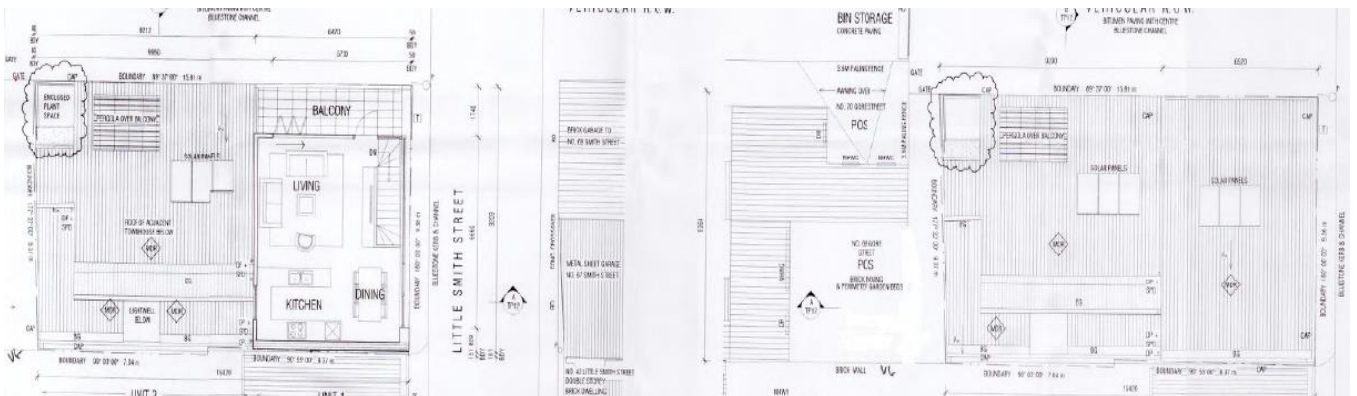
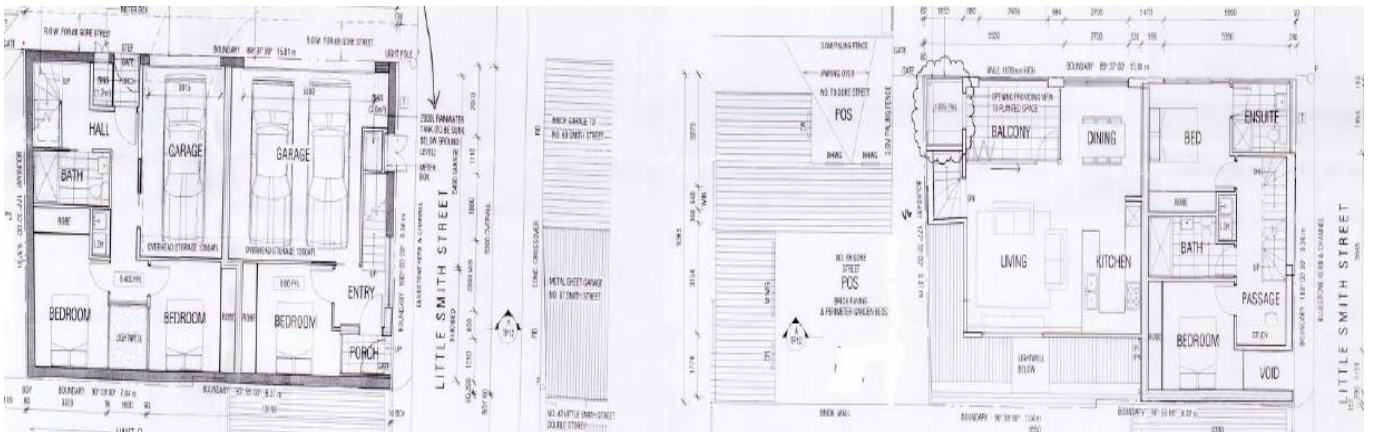


Figure 15: PLN11/1006 No.47 Little Smith Street

70. A fully constructed three storey dwelling to the immediate south of the subject at No.44 Little Smith Street was approved under planning permit PL08/0070. The approved layout of the dwelling and the retained shop/office (No.67 Smith Street) are provided below.

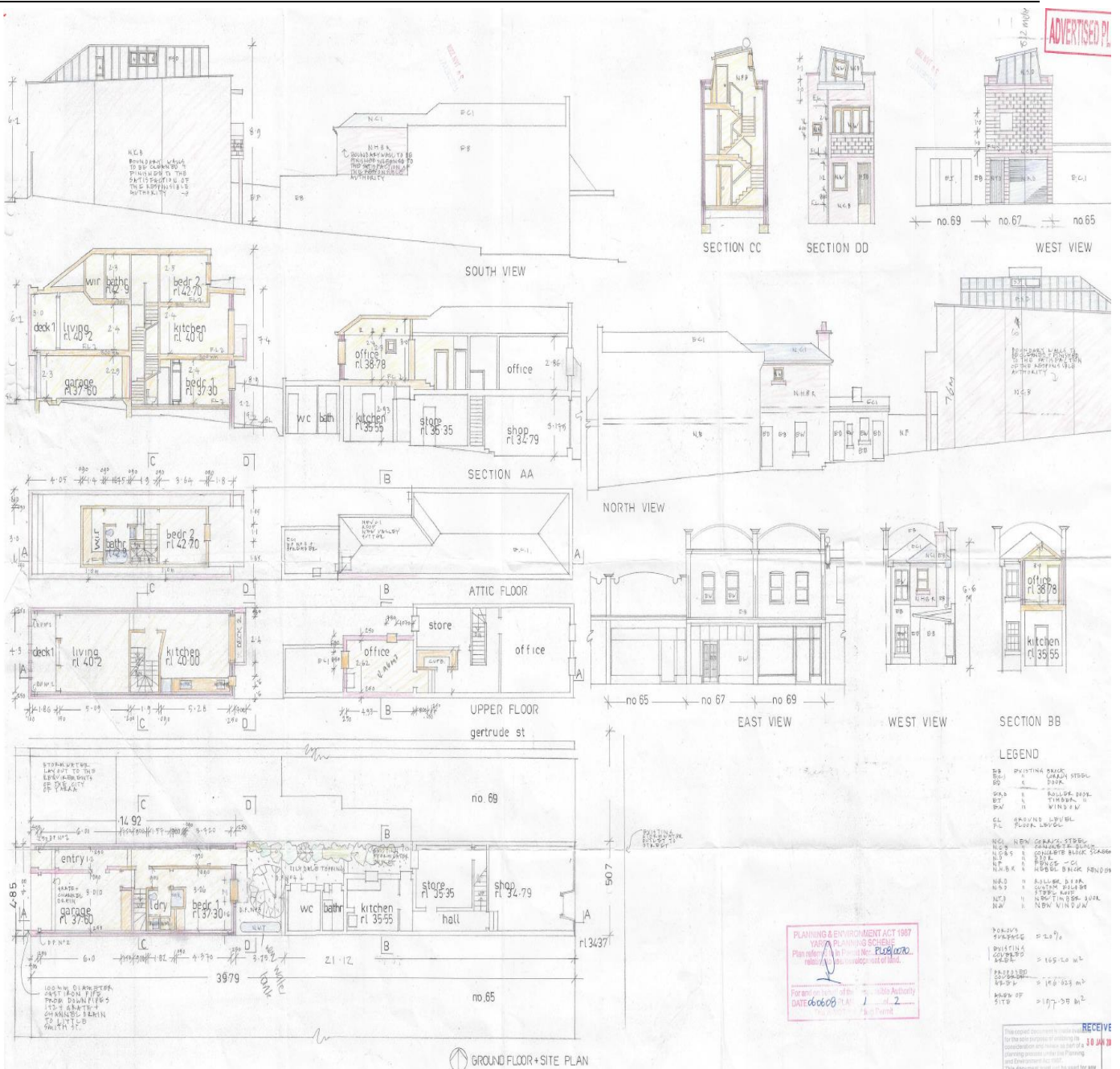


Figure 16: PL08/0070 No.44 Little Smith Street and No.69 Smith Street

71. A fully constructed two storey dwelling was approved further south at No.42 Little Smith Street under planning permit PL08/0244. The approved layout of the dwelling and the retained shop (No.65 Smith Street) are provided below.

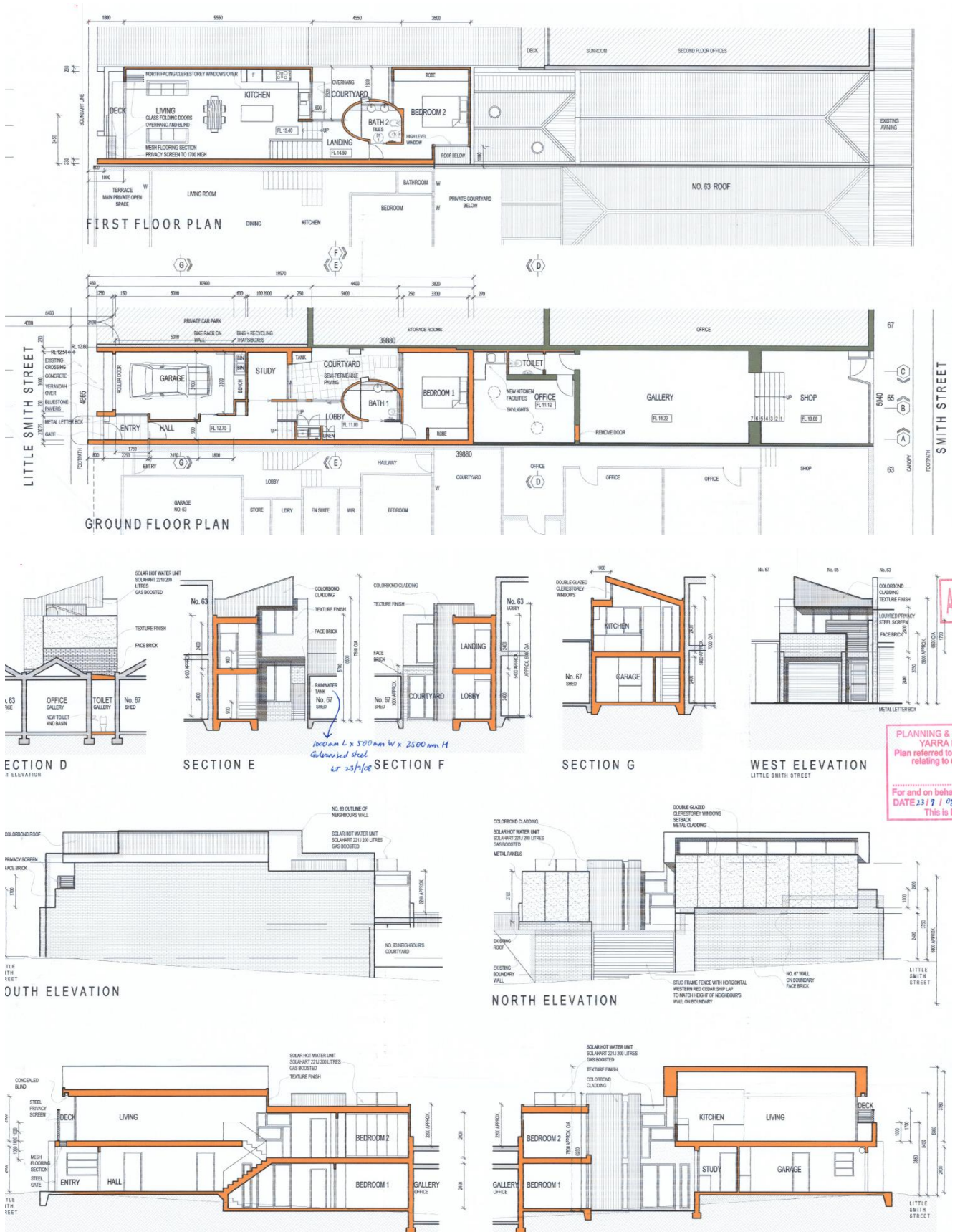


Figure 17: PL08/0244 No.42 Little Smith Street and No.65 Smith Street

72. The character of Little Smith Street is dominated by two and three storey built form typologies on the east side (C1Z) and generally single storey outbuildings with one three storey dwelling on the west side (NRZ1). See figure 13



Figure 18: Little Smith Street

Planning Scheme Provisions

Zoning

Commercial 1 Zone

73. The site is located within the Commercial 1 Zone (C1Z). The relevant purpose of the C1Z is:
- (a) *To create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses.*
 - (b) *To provide for residential uses at densities complementary to the role and scale of the activity centres.*
74. Pursuant to Clause 34.01-1, a dwelling (nested under accommodation) does not require a planning permit provided any frontage (Smith Street) at ground level does not exceed 2m. The dwellings rely on Little Smith Street and the northern laneway for access and so a planning permit is not required for the use.
75. Pursuant to Clause 34.01-1, a planning permit is not required to use the land for shops or offices.

76. Pursuant to Clause 34.01-4, a planning permit is required to construct a building or construct or carry out works.

Overlays

Heritage Overlay

77. The subject site is affected by the Heritage Overlay. The following provisions apply:
78. Pursuant to Clause 43.01-1 a planning permit is required to demolish and construct a building.
79. The site is located within HO464 – Smith Street South Precinct Fitzroy/Collingwood in which external paint controls apply.
80. 'City of Yarra Database of Heritage Areas, April 2022' (as saved in incorporated documents on the DELWP website Incorporated Documents (planning.vic.gov.au) identifies the site as being 'individually significant' heritage grading.

Design and Development Overlay (Schedule 30)

81. Pursuant to Clause 43.02-2 a planning permit is required to construct a building or construct or carry out works. This does not apply if a schedule to this overlay specifically states that a permit is not required. Schedule 30 does not specify that a permit is not required.
82. The design objections of Schedule 30 relevant to the development are as follows;
83. To ensure development responds to the heritage character and varied *streetscape of Smith Street by supporting:*
- (a) *a new lower to mid-rise character (ranging from 4 to 6 storeys) behind a consistent street wall north of Stanley and St David Streets and south of Gertrude Street*
 - (b) *To ensure development maintains the prominence of the existing heritage street wall and fine-grain heritage character through recessive upper levels and a façade composition and articulation that complements the Smith Street character.*
 - (c) *To ensure development responds to sensitive interfaces by ensuring the overall scale and form of new development 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.*
84. The following specific requirements apply to the site;
- (a) *Upper levels above the Smith Street streetwall should be set back by a minimum of 8 metres.*
 - (b) *Development should not exceed 11.2m in height.*
 - (c) *Development on a rear boundary with a NRZ interface should not exceed 8m with development above setback within a 45 degree envelope.*
 - (d) *Development to Little Smith Street should have a maximum street wall height of 11.2m.*
 - (e) *Upper levels should:*
 - (i) *be visually recessive from Smith Street frontages and side streets to ensure development does not overwhelm the heritage buildings and minimise upper level bulk;*
 - (ii) *be set back from the street wall below to ensure that upper level additions as seen from the public realm do not detract from the character of the streetscape when viewed directly or obliquely along the street; and*

- (iii) *contain upper level setbacks above the street wall within a maximum of two steps (including the setback above the street wall below as one step) to avoid repetitive steps in the built form.*
- (f) *Projections such as building services and architectural features (other than shading devices, moldings etc.), balconies and balustrades should not intrude into a setback.*
- (g) *Service equipment/structures including balustrades, unenclosed pergolas for communal areas, shading devices, plant rooms, lift overruns, stair wells, structures associated with pedestrian access, green roof areas and other such equipment may exceed the height provided that:*
 - (i) *the equipment and/or structures do not cause additional overshadowing of private open space to residential land, opposite footpaths, kerb outstands etc.;*
 - (ii) *the equipment/structures are no higher than 2.6 metres above the preferred maximum height; and*
 - (iii) *the equipment/structures occupy less than 50 per cent of the roof area (solar panels excepted).*
- (h) *New development should not overshadow properties fronting Bedford, Little Oxford Street and Little Smith Street, from the first floor upwards between 10am and 2pm at 22 September.*

Development Contributions Plan Overlay (Schedule 1)

- 85. The subject site is affected by the Development Plan Contributions Overlay (DPCO) – Schedule 1.
- 86. Pursuant to Clause 45.06-1 a permit granted in the DCPO must;
 - (a) *Be consistent with the provisions of the relevant development contributions plan.*
 - (b) *Include any conditions required to give effect to any contributions or levies imposed, conditions or requirements set out in the relevant schedule to this overlay.*
- 87. A planning permit is not required for works under the overlay. This overlay requires developers to pay a contribution towards essential city infrastructure like roads and footpaths, as well as community facilities. The overlay is applicable to the proposed development as it results in the provision of new dwellings and an office. Conditions have been included in the recommendation to require the development contributions to be met prior to commencement of the development.

Particular Provisions

Clause 52.06 – Car parking

- 88. 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. Pursuant to Clause 52.06-3 a permit is required to reduce the number of car parking spaces required under this clause.
- 89. Pursuant to Clause 52.06-5, Column B of Table 1 applies if any part of the land is identified as being within the Principal Public Transport Network Area as shown on the *Principal Public Transport Network Area Maps* (State Government of Victoria, August 2018). The subject site is shown as being within the Principal Public Transport Network Area and therefore Column B applies.
- 90. 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 decision guidelines at Clause 52.06-6 of the Scheme. The provision of car parking is as follows:

Land Use	Units/Area proposed	Rate	No. required	No. proposed	Reduction sought
Office	60sqm	3 car parking spaces per 100sqm of net floor area	1	0	1
Shop addition	30sqm	3.5 car spaces per 100sqm of leasable floor area	1	0	2
2 x Three bedroom Dwellings	2	2 spaces per dwelling	4	2	2
Total			6	2	4

91. As shown in the table above, the development requires a planning permit for a car parking reduction pursuant to Clause 52.06-3. A reduction of 4 spaces is sought.

Clause 52.34 – Bicycle Facilities

92. Pursuant to Clause 52.34-1 of the Scheme, 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.
93. The following table identifies the bicycle requirement under Clause 52.34-1 for the proposal:

Proposed Use	Quantity/ Size	Statutory Parking Rate	No. of Spaces Required	No. of Spaces Allocated
Dwellings	2 dwellings	In developments of four or more storeys, 1 resident space to each 5 dwellings	0 resident spaces	
		In developments of four or more storeys, 1 visitor space to each 10 dwellings	0 visitor spaces.	
Shop	30 sqm	1 employee space to each 600 sqm of leasable floor area if the leasable floor area exceeds 1000 sqm	0 employee spaces	
		1 visitor space to each 500 sqm of leasable floor area if the leasable floor area exceeds 1000 sqm	0 visitor spaces	
Bicycle Parking Spaces Total			0 resident / employee spaces	4 resident spaces
			0 visitor spaces	0 visitor spaces

94. As illustrated in the tables above, the proposal exceeds the bicycle facility requirements. Therefore a planning permit is not required to reduce or waive the requirements pursuant to Clause 52.34-2. Clause 52.34-5 of the Scheme contains bicycle signage requirements.

Clause 53.06 – Live Music Entertainment Venues

95. This clause applies to an application required under any zone of this scheme to use land for, or to construct a building or construct or carry out works associated with:

- (a) *A noise sensitive residential use that is within 50 metres of a live music entertainment venue.*

96. In this clause live music entertainment venue means:

- (a) *a food and drink premises, nightclub, function centre or residential hotel that includes live music entertainment*
- (b) *a rehearsal studio*
- (c) *any other venue used for the performance of music and specified in clause 3.0 of the schedule to this clause, subject to any specified condition or limitation.*

97. Relevant requirements include:

- (a) *A noise sensitive residential use must be designed and constructed to include acoustic attenuation measures that will reduce noise levels from any:*
- (i) *Indoor live music entertainment venue to below the noise limits specified in the Environment Protection Regulations under the Environment Protection Act 2017 and the incorporated Noise Protocol (Publication 1826, Environment Protection Authority, November 2020)*
- (ii) *Outdoor live music entertainment venue to below 45dB(A), assessed as an Leq over 15 minutes.*
- (iii) *For the purpose of assessing whether the above noise standards are met, the noise measurement point may be located inside a habitable room of a noise sensitive residential use with windows and doors closed (consistent with EPA Publication 1826).*
- (iv) *A permit may be granted to reduce or waive these requirements if the responsible authority is satisfied that an alternative measure meets the purpose of this clause.*

98. Based on an officer assessment of existing permits within the immediate vicinity, there are no live music venues within 50m of the subject site.

Clause 53.18 – Stormwater Management in Urban Development

99. This clause applies to an application under a provision of a zone to construct a building or construct or carry out works. An application to construct a building or to construct or carry out works:

- (a) *Must meet all of the objectives of Clauses 53.18-5 and 53.18-6.*
- (b) *Should meet all of the standards of Clauses 53.18-5 and 53.18-6.*

[General Provisions](#)

100. The decision guidelines outlined at Clause 65 of the Scheme are relevant to all applications. Before deciding on an application, the Responsible Authority must consider a number of matters. Amongst other things, the Responsible Authority must consider the relevant State Planning Policy Frameworks, Local Planning Policy Frameworks and any local policy, as well as the purpose of the zone, overlay or any other provision.

[Planning Policy Framework \(PPF\)](#)

101. Relevant clauses are as follows:

Clause 11.01-1R (Settlement - Metropolitan Melbourne)

102. Relevant strategies include;

- (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)

103. The objective is:

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

104. Relevant strategies are:

- (a) *Planning for urban growth should consider:*
 - (ii) *Opportunities for the consolidation, redevelopment and intensification of existing urban areas.*
 - (iii) *Neighbourhood character and landscape considerations.*

Clause 11.03 (Planning for Places)

Clause 11.01-1S (Activity Centres)

105. The objective of this clause is:

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

106. Relevant strategies are:

- (a) *Reduce the number of private motorised trips by concentrating activities that generate high numbers of (non-freight) trips in highly accessible activity centres.*
- (b) *Support the continued growth and diversification of activity centres to give communities access to a wide range of goods and services, provide local employment and support local economies.*
- (c) *Encourage economic activity and business synergies.*
- (d) *Improve the social, economic and environmental performance and amenity of activity centres.*

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

107. Relevant strategies are:

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

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

108. Relevant strategies are:

- (a) *Ensure contaminated or potentially contaminated land is or will be suitable for the proposed use, prior to the commencement of any use or development.*
- (b) *Protect a sensitive use (residential use, childcare centre, kindergarten, pre-school centre, primary school, even if ancillary to another use), children's playground or secondary school from the effects of contamination.*
- (c) *Facilitate the remediation of contaminated land to make the land suitable for future intended use or development.*

109. The policy guideline is:

- (a) *Consider as relevant the potential for contamination to impact the proposed use or development through an assessment that is proportionate to the risk, including: An assessment in accordance with the National Environment Protection (Assessment of Site Contamination) Measure (National Environment Protection Council, 1999)*
- (b) *A preliminary risk screen assessment or environmental audit under Part 8.3 of the Environment Protection Act 2017.*

Clause 13.07 (Amenity, Human Health and Safety)

Clause 13.07-1S (Land use compatibility)

110. The objective of this clause is:

- (a) *To protect community amenity, human health and safety while facilitating appropriate commercial, industrial, infrastructure or other uses with potential adverse off-site impacts.*

111. Relevant strategies are:

- (a) *Ensure that use or development of land is compatible with adjoining and nearby land uses.*
- (b) *Avoid or otherwise minimise adverse off-site impacts from commercial, industrial and other uses through land use separation, siting, building design and operational measures.*

Clause 15 (Built Environment and Heritage)

112. This clause includes the following guidelines;

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

- (e) Planning should facilitate development that:
- (i) *Is adapted and resilient to climate related hazards.*
 - (ii) *Supports the transition to net zero greenhouse gas emissions.*
 - (iii) *Minimises waste generation and supports resource recovery.*
 - (iv) *Conserves potable water.*
 - (v) *Supports the use of, and access to, low emission forms of transport.*
 - (vi) *Protects and enhances natural values.*
 - (vii) *Minimises off-site detrimental impacts on people and the environment.*

Clause 15.01 (Built Environment)

Clause 15.01-1S (Urban design)

113. The objective is:

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

114. Relevant strategies are:

- (a) *Require development to respond to its context in terms of character, cultural identity, natural features, surrounding landscape and climate.*
- (b) *Ensure development contributes to community and cultural life by improving the quality of living and working environments, facilitating accessibility and providing for inclusiveness.*
- (c) *Ensure the interface between the private and public realm protects and enhances personal safety.*
- (d) *Ensure development supports public realm amenity and safe access to walking and cycling environments and public transport.*
- (e) *Ensure that the design and location of publicly accessible private spaces, including car parking areas, forecourts and walkways, is of a high standard, creates a safe environment for users and enables easy and efficient use.*
- (f) *Ensure that development provides landscaping that supports the amenity, attractiveness and safety of the public realm.*
- (g) *Ensure that development, including signs, minimises detrimental impacts on amenity, on the natural and built environment and on the safety and efficiency of roads.*
- (h) *Promote good urban design along and abutting transport corridors.*

115. The objective is:

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

116. The relevant strategy is:

- (a) *Support the creation of well-designed places that are memorable, distinctive and liveable.*

Clause 15.01-2S (Building Design)

117. The objective is:

- (a) *To achieve building design and siting outcomes that contribute positively to the local context, enhance the public realm and support environmentally sustainable development.*

Clause 15.01-4S (Healthy neighbourhoods)

118. The objective is:

- (a) *To achieve neighbourhoods that foster healthy and active living and community wellbeing.*

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

119. The strategy is:

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

Clause 15.01-5S (Neighbourhood character)

120. The relevant objective is:

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

121. Strategies are:

- (a) *Support development that respects the existing neighbourhood character or contributes to a preferred neighbourhood character.*
- (b) *Ensure development responds to its context and reinforces a sense of place and the valued features and characteristics of the local environment and place by emphasising the:*
 - (i) *Pattern of local urban structure and subdivision.*
 - (ii) *Underlying natural landscape character and significant vegetation.*
 - (iii) *Heritage values and built form that reflect community identity.*

Clause 15.02 (Sustainable Development)

Clause 15.02-1S (Energy and resource efficiency)

122. The objective is *to encourage land use and development that is energy and resource efficient, supports a cooler environment and minimises greenhouse gas emissions.*

Clause 15.03 (Heritage)

Clause 15.03-1S (Heritage conservation)

123. The objective is *to ensure the conservation of places of heritage significance.*

124. Strategies include:

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

Clause 16.01 Residential Development

Clause 16.01-1S – Housing Supply

125. The objective of this clause is *'To facilitate well-located, integrated and diverse housing that meets community needs.'*

Clause 16.01-1R (Housing Supply Metropolitan Melbourne)

126. Strategies for this clause are:

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

Clause 17 (Economic development)

127. The clause states:

- (a) *Planning is to provide for a strong and innovative economy, where all sectors are critical to economic prosperity.*
- (b) *Planning is to contribute to the economic wellbeing of the state and foster economic growth by providing land, facilitating decisions and resolving land use conflicts, so that each region may build on its strengths and achieve its economic potential.*

Clause 17.01 (Employment)

Clause 17.01-1S (Diversified economy)

128. The objective is:

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

129. Relevant strategies are:

- (a) *Protect and strengthen existing and planned employment areas and plan for new employment areas.*
- (b) *Improve access to jobs closer to where people live*

Clause 17.01 -1R (Diversified economy – Metropolitan Melbourne)

130. Strategies include:

- (a) *Facilitate the development of National Employment and Innovation Clusters by ensuring they:*
 - (i) *Have a high level of amenity to attract businesses and workers;*
 - (ii) *Are supported by good public transport services and integrated walking and cycling paths;*
 - (iii) *Maximise investment opportunities for the location of knowledge intensive firms and jobs.*

Clause 17.02 (Commercial)

Clause 17.02-1S (Business)

131. The objective is:

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

132. Relevant strategies include:

- (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 18.01 (Land Use and Transport)

Clause 18.01-1S (Land Use and Transport Integration)

133. The objective is:

- (a) *To facilitate access to social, cultural and economic opportunities by effectively integrating land use and transport.*

134. Relevant strategies are:

- (a) *Support urban development that makes jobs and services more accessible:*
(i) *In accordance with forecast demand.*
(ii) *By taking advantage of all available modes of transport.*

Clause 18.02 – (Movement Networks)

Clause 18.02-1S – (Walking)

135. The objective is:

- (a) *To facilitate an efficient and safe walking network and increase the proportion of trips made by walking.*

Clause 18.02-2S – (Cycling)

136. The objective is:

- (a) *To facilitate an efficient and safe bicycle network and increase the proportion of trips made by cycling.*

Clause 18.02-3S (Public Transport)

137. The objective is:

- (a) *To facilitate an efficient and safe public transport network and increase the proportion of trips made by public transport.*

Clause 18.02-3R (Principal Public Transport Network)

138. A relevant strategy of this clause is to:

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

Clause 18.02-4S (Car Parking)

139. The objective is:

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

140. A relevant strategy is:

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

[Local Planning Policy Framework \(LPPF\)](#)

Clause 21.04 (Land Use)

141. Relevant objectives and strategies include;

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

Clause 21.04-2 (Activity Centres)

142. The relevant objective of this clause is to maintain the long-term viability of activity centres.

143. Relevant strategies include;

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

Clause 21.05 – Built Form

Clause 21.05-1 (Heritage)

144. Relevant objectives and strategies include;

- (a) *Objective 14 To protect and enhance Yarra's heritage places:*
 - (i) *Strategy 14.1 Conserve, protect and enhance identified sites and areas of heritage significance including pre-settlement ecological heritage.*
 - (ii) *Strategy 14.2 Support the restoration of heritage places.*
 - (iii) *Strategy 14.3 Protect the heritage skyline of heritage precincts.*
 - (iv) *Strategy 14.4 Protect the subdivision pattern within heritage places.*
 - (v) *Strategy 14.6 Protect buildings, streetscapes and precincts of heritage significance from the visual intrusion of built form both within places and from adjoining areas.*
 - (vi) *Strategy 14.8 Apply the Development Guidelines for Heritage Places policy at clause 22.02.*
 - (vii) *Strategy 14.9 Apply the Landmarks and Tall Structures policy at clause 22.03.*

Clause 21.05-2 (Urban design)

145. The relevant objectives and strategies 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 19 – To create an inner city environment with landscaped beauty;*
- (d) *Objective 20 To ensure that new development contributes positively to Yarra's urban fabric;*
 - (i) *Strategy 20.1 – Ensure development is designed having particular regard to its urban context and specifically designed following a thorough analysis of the site, the neighbouring properties and its environs.*
 - (ii) *Strategy 20.2 – Require development of Strategic Redevelopment Sites to take into account the opportunities for development on adjoining land.*
 - (iii) *Strategy 20.3 – Reflect the fine grain of the subdivision pattern in building design where this is part of the original character of the area.*
- (e) *Objective 21 To enhance the built form character of Yarra's activity centres;*

- (i) *Strategy 21.1 Require development within Yarra’s activity centres to respect and not dominate existing built form; and*
- (ii) *Strategy 21.3 – Support new development that contributes to the consolidation and viability of existing activity centres.*
- (f) *Objective 22: To encourage the provision of universal access in new development.*

Clause 21.05-3 (Built form character)

146. The general objective of this clause is *to maintain and strengthen the identified character of each type of identified built form within Yarra.*
147. The subject site is located within a non-residential area, where the built form objective is to *“improve the interface of development with the street”.*
148. The strategies to achieve the objective are to:
- (a) *Strategy 27.1 – Allow flexibility in built form in areas with a coarse urban grain (larger lots, fewer streets and lanes).*
 - (b) *Strategy 27.2 – Require new development to integrate with the public street system.*

Clause 21.05-4 (Public environment)

149. The relevant objective and strategies are:
- (a) *Objective 28 To provide a public environment that encourages community interaction and activity:*
 - (i) *Strategy 28.1 Encourage universal access to all new public spaces and buildings.*
 - (ii) *Strategy 28.2 Ensure that buildings have a human scale at street level.*
 - (iii) *Strategy 28.3 Require buildings and public spaces to provide a safe and attractive public environment.*
 - (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.*
 - (vi) *Strategy 28.9 Apply the Public Open Space Contribution policy at clause 22.12.*

Clause 21.06 (Transport)

150. This policy recognises that Yarra needs to reduce car dependence by promoting walking, cycling and public transport use as viable and preferable alternatives. Relevant objectives and strategies of this Clause are as follows:
151. The relevant objective and strategy include:
- (a) *Objective 30 To provide safe and convenient 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 21.06-1 (Walking and cycling)

152. This clause builds upon the objectives outlined at Clause 18, promoting cycling, walking and public transport as alternatives to private motor vehicle usage. The relevant objectives and strategies of this clause are:

- (a) *Objective 30 - To provide safe and convenient bicycle environments:*
 - (i) *Strategy 30.2 Minimise vehicle crossovers on street frontages.*
- (b) *Objective 32 - To reduce the reliance on the private motor car.*
- (c) *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 21.06-2 (Public transport)

153. Relevant objectives and strategies include;

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

Clause 21.06-3 (The road system and parking)

154. Relevant objectives is objective 32 to reduce the reliance on the private motor car.

Clause 21.07-1 (Environmentally sustainable development)

155. The relevant objective and strategy of this clause is:

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

Clause 21.08-7 Neighbourhoods (Fitzroy)

156. This clause describes the area in the following way (as relevant):

- (a) *Fitzroy is a mixed commercial and residential neighbourhood notable for the consistency of its Victorian streetscapes. It comprises a dense combination of residential areas, shopping precincts and commercial/ industrial activities.*

157. Relevant built form strategies include:

- (a) *Ensure that development does not adversely affect the significance of the heritage place.*
- (b) *The implementation of built form strategies in clause 21.05 includes:*
 - (i) *Supporting development that maintains and strengthens the preferred character of the relevant Built Form Character type.*
 - (ii) *Encouraging the redevelopment of the following strategic re-development sites in a way that contributes positively to the urban fabric and public domain of Yarra, and, where subject to the Heritage Overlay protects the heritage of the site and of the area.*

[Relevant Local Policies](#)

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

158. The relevant objectives of this clause are as follows:

- (a) *To retain significant view lines to, and vistas of, heritage places.*
- (b) *To preserve the scale and pattern of streetscapes in heritage places.*

- (c) *To ensure that additions and new works to a heritage place respect the significance of the place.*

159. The relevant sections of this clause are as follows:

Clause 22.02-5.1 (Demolition)

160. *Generally encourage the retention of a building in a heritage place, unless:*

- (a) *The building is identified as being not contributory*

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

- (a) *For individually significant building or works, it can be demonstrated that the removal of part of the building or works does not negatively affect the significance of the place.*

Clause 22.02-5.3 Reconstruction and Restoration

162. *Encourage restoration of a heritage place or contributory element if evidence exists to support its accuracy.*

163. *Encourage the reconstruction of a building or works which previously existed in a heritage place if:*

- (a) *The reconstruction will enhance the heritage significance of the heritage place*
- (b) *Evidence exists to support the accuracy of the reconstruction.*

164. *Encourage the reconstruction of original or contributory elements where they have been removed. These elements include, but are not limited to, chimneys, fences, verandahs, roofs and roof elements, wall openings and fitting (including windows and doors), shopfronts and other architectural details and features.*

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

Clause 22.02-5.7.1 (General)

165. The relevant objectives of this clause are as follows:

- (a) *Encourage the design of new development and alterations and additions to a heritage place or a contributory element to a heritage place to:*
 - (i) *Respect the pattern, rhythm, orientation to the street, spatial characteristics, fenestration, roof form, materials and heritage character of the surrounding historic streetscape.*
 - (ii) *Be articulated and massed to correspond with the prevailing building form of the heritage place or contributory elements to the heritage place.*
 - (iii) *Be visually recessive and not dominate the heritage place.*
 - (iv) *Be distinguishable from the original historic fabric.*
 - (v) *Not remove, cover, damage or change original historic fabric.*
 - (vi) *Not obscure views of principle façades.*
 - (vii) *Consider the architectural integrity and context of the heritage place or contributory element.*

Clause 22.05 (Interface Uses Policy)

166. This policy applies to all development and 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.

167. It is policy that:

- (a) *New residential use and development in or near commercial centres and activity centres and near industrial uses includes design features and measures to minimise the impact of the normal operation of business and industrial activities on the reasonable expectation of amenity within the dwellings.*

168. Decision guidelines at Clause 22.05-6 include:

- (a) *Before deciding on an application for residential development, Council will consider as appropriate:*
 - (i) *The extent to which the proposed dwellings may be subject to unreasonable noise, fumes and air emissions, light spillage, waste management and other operational matters from the nearby business or industrial uses.*
 - (ii) *Whether the dwellings are designed or incorporate appropriate measures to minimise the impact of noise, fumes and air emissions, light spillage, waste management and other operational matters from the nearby business or industrial uses.*

Clause 22.07 (Development abutting laneways)

169. This policy applies to applications for development that is accessed from a laneway or has laneway abuttal, with the relevant objectives as follows;

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

Clause 22.12 – Public Open Space Contribution

170. The objectives of this clause are:

- (a) *To implement the Yarra Open Space Strategy;*
- (b) *To identify when and where land contributions for public open space are preferred over cash contributions; and*
- (c) *To ensure that where appropriate, land suitable for public open space is set aside as part of the design of a development so that it can be transferred to or vested in Council, in satisfaction of the public open space contribution requirement.*

171. The subject site is in an area where land in lieu of cash is the preferred method of public open space contribution (area 3121B). Given the size of the site, a land contribution will not be practical and therefore a cash contribution will be requested instead.

Clause 22.16 Stormwater Management (Water Sensitive Urban Design)

172. This policy applies to (as relevant) new buildings and contains the following objectives;

- (a) *To achieve the best practice water quality performance objectives set out in the Urban Stormwater Best Practice Environmental Management Guidelines, CSIRO 1999 (or as amended).*
- (b) *Currently, these water quality performance objectives require:*
 - (i) *Suspended Solids - 80% retention of typical urban annual load*
 - (ii) *Total Nitrogen - 45% retention of typical urban annual load*
 - (iii) *Total Phosphorus - 45% retention of typical urban annual load*
 - (iv) *Litter - 70% reduction of typical urban annual load*
- (c) *To promote the use of water sensitive urban design, including stormwater re-use.*

- (d) *To mitigate the detrimental effect of development on downstream waterways, by the application of best practice stormwater management through water sensitive urban design for new development.*
- (e) *To minimise peak stormwater flows and stormwater pollutants to improve the health of water bodies, including creeks, rivers and bays.*
- (f) *To reintegrate urban water into the landscape to facilitate a range of benefits including microclimate cooling, local habitat and provision of attractive spaces for community use and wellbeing.*

Clause 22.17 (Environmentally Sustainable Design)

173. 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

174. The application was advertised under the provisions of Section 52 of the *Planning and Environment Act (1987)* by 90 letters sent to surrounding owners and occupiers and by a sign displayed on site. Council received 26 objections, the grounds of which are summarised as follows):

- (a) The proposed building height, scale, lack of transition to adjoining buildings and modern appearance not appropriate to the heritage and neighbourhood context,
- (b) Concern shop window replacement inappropriate to building,
- (c) Off-site amenity concerns including overlooking and overshadowing to private property;
- (d) Increased demand for on-street car parking spaces competing with local businesses.
- (e) Proposal not consistent with Council policy including the requirements of Design and Development Overlay (Schedule 30);
- (f) Noise from occupants using elevated balconies;
- (g) Future occupants making complaints against to noise from existing businesses and businesses undertaking delivery from northern lane blocking access to proposed garage door;
- (h) Concern access to right of way blocked by bins placed in laneway for collection,
- (i) Lack of vegetation/open space; and
- (j) Poor ESD outcomes.

175. The Section 57A amended plans were advertised in November 2022 under the provisions of Section 52 of the *Planning and Environment Act (1987)* by letters sent to adjoining surrounding owners and occupiers and objectors. No new objections were received. Three further objections were received by existing objectors, confirming the revised proposal only partially addressed their concerns with the proposal.

Referrals

176. The referral comments are based on the originally advertised plans. As the section 57A amended plans responded to most referral recommendations, re-referral of the application was not warranted in this instance, apart from the Traffic engineers and the ESD officer who provided additional advice on the section 57A amended plans. No external referral were required.

Internal Referrals

177. The application was referred to the following units within Council including Heritage, Engineering Services, Strategic Transport, Strategic Planning, Environmental Sustainability Officer and Urban Design.
178. Referral comments have been included as attachments to this report.

OFFICER ASSESSMENT

179. The primary considerations for this application are as follows:
- (a) Policy and Strategic Support
 - (b) Dwelling Use and Clause 22.05 Interface Uses Policy
 - (c) Built Form and Heritage
 - (d) Off-site Amenity
 - (e) Internal Amenity, Equitable Development and Environmental Sustainability
 - (f) Car parking reduction and Engineering issues
 - (g) Potential Site Contamination
 - (h) Objector Concerns

Policy and Strategic Support

180. The proposal satisfies the various land use and development objectives within the PPF, providing an acceptable level of compliance with the relevant policies within the Scheme, and is considered to provide a positive strategic opportunity for development within a well-resourced inner-urban environment. The proposal has strong strategic planning policy support at both State and local levels. The subject site is within the Commercial 1 Zone (C1Z) and forms part of the Smith Street Major Activity Centre (AC). The key purpose of the C1Z is:
- (a) *To create vibrant mixed-use commercial centres for retail, office, business, entertainment and community uses.*
 - (b) *To provide for residential uses at densities complementary to the role and scale of the commercial centre.*
181. The suitability of the proposed dwelling uses in a C1Z will be discussed in the following assessment. The PPF and LPPF at Clause 11.03-1S and at Clause 21.04-2 encourage the concentration of retail, commercial, administrative, entertainment and cultural developments into activity centres that are highly accessible to the community and support the long-term viability of activity centres.
182. The 85sqm shop tenancy will provide an active interface along the Smith Street commercial strip and will help to support the retail focus of the activity centre. The development provides for improved office supply within the well serviced Smith Street AC, and the overall development will help to support the long term viability of the AC, particularly with the provision of an office above generating custom for the retail, dining, community, health and business services along Smith Street.
183. Clause 17.02-1S of the PPF encourages development that meets the community's needs for retail, entertainment, office and other commercial services. The proposed office and shop will provide for this.
184. Clause 17.01-1S of the PPF encourages growth in a range of employment sectors, while clause 21.04-3 of the LPPF aims to increase the number and diversity of local employment opportunities. The shop and office tenancies will provide an employment source for the community and is in accordance with the PPF and LPPF.

185. In addition to this, Clause 11 states that planning is to facilitate sustainable development that takes full advantage of existing settlement patterns and investment in transport, utility, social, community and commercial infrastructure and services. The site has immediate access to the AC, the Smith Street, Gertrude Street and Nicholson Street tram services, and is within reasonable walking distance to CBD.
186. The proposed mixed dwelling and commercial development benefits from the established settlement pattern and the existing transport, utility, social and commercial infrastructure and services available in the area, in accordance with the PPF.
187. Overall, the mixed-use development has strong strategic planning policy support. However, policy support for more intensive development on this site must be balanced with other planning considerations, including the local built form context (including streetscape, heritage values, landmarks), the proposed architectural response, equitable development opportunities, public realm, pedestrian spaces, light and shade requirements, including on-site amenity and ESD considerations, off-site amenity considerations, car and bicycle space provision and car park design.
188. Overall, and in a strategic sense, the proposed construction of a multi-storey mixed use building is consistent with the relevant State and local policies (Clauses 11.03-1S, 17.02-1S, 21.04-2, 21.04-3 and 21.04-4 of the Scheme) and the purpose of the Commercial 1 Zone which supports a vibrant mixed-use commercial centre. Notwithstanding, any policy support for more intensive development needs to be balanced with built form guidance at Clauses 15.01, 21.05-2, 22.02 and 43.02 of the Scheme which call for development that appropriately responds to the surrounding context and heritage character.

[Dwelling Use and Clause 22.05 Interface uses policy](#)

189. As outlined earlier, a purpose of the C1Z is:
- (a) *To provide for residential uses at densities complementary to the role and scale of the commercial centre.*
190. While the zoning of the land prioritises commercial uses over residential purposes, it does encourage residential uses in appropriate locations that do not undermine the prioritising of commercial uses along the main street frontages. This is achieved by the fact a large number of commercial uses are as-of-right uses in the zone, while dwellings require a permit if they have a ground floor frontage of more than 2sqm (pursuant to clause 34.01-1). With the entire frontage to Smith Street at the subject site being occupied by a shop use and with the dwellings appropriately accessed from the northern laneway and Little Smith Street, a planning permit is not required for the dwelling use in this instance. As such the proposed dwellings are appropriately located to the rear of the site and satisfy the policy intention to protect commercial uses along the Smith Street frontage.
191. While the C1Z located on Smith Street is commercial in nature, it is evident that a large proportion of these commercial sites have residential properties to the rear fronting Little Smith Street (including a row 6 dwellings adjoining the subject site to the south and with more residential properties located further south). With the east side of Little Smith Street being located in a Neighbourhood Residential Zone Schedule 1, this strong residential character is reinforced on the opposite side of Little Smith Street. Given this residential context and that the use is as-of-right in the C1Z, a residential use at the subject site will not be an anomaly in this context nor be an unreasonable constraint on the commercial operation and intent of the zone.
192. The *Use Decision Guidelines* of the C1Z and clause 22.02 *Interface Uses Policies* require dwellings in commercial zones be adequately protected from commercial noise sources within the immediate vicinity. These policies also require consideration of whether the approval of a residential use would unreasonably constrain existing commercial uses within the immediate vicinity.

To confirm this, Council would typically require the provision of an acoustic report to demonstrate appropriate acoustic measures are incorporated into the dwelling construction to adequately protect itself from commercial noise sources within the immediate vicinity.

193. However in this instance, it was determined this was not necessary. Given the immediately abutting residential uses to the south and on the opposite side of Little Smith Street, the site is currently reasonably buffered from commercial noise impacts. Currently all of the commercial uses to the north between No's 230 to 248 Gertrude Street and No's 71 to 77 Smith Street are all low noise generating commercial uses including shops and restaurants, and none having rear courtyards that accommodate patron outdoors. Based on an officer assessment of all permits within 50m of the subject, there are no live music venues with 50m of the subject site and so an assessment against clause 53.06 (Live Music Entertainment venues) is not required.
194. As such these uses currently do not generate any noise interface issues of concern that might warrant the provision on an acoustic assessment. Further the submitted Sustainable Design Assessment (SDA) states that double glazing is proposed. This will offer adequate acoustic protection to the proposed dwellings from background commercial noise such as plant. However, the plans do not note that double glazing is provided. A condition will require this detail.
195. It is further noted that there are no current planning permit applications on these sites to the north with potential to generate detrimental noise impacts to the proposed dwellings. The only planning permit of note being planning permit PLN14/0715 at No. 234-238 Gertrude Street which received approval for a three storey residential development to the rear of the existing commercial buildings. However, this permit lapsed 10 March 2020 and so not further consideration of this permit is required.
196. Objectors have raised concerns with the future occupants making complaints against existing and future commercial activities in the C1Z to the immediate north of the site. Existing operations have been discussed previously. Uses with the potential for high noise impacts such as the service of liquor in outdoor areas to the rear of the site will require a planning permit. This will allow for noise impacts to be appropriately considered and operation management procedures to be implemented to adequately protect the amenity of existing nearby dwellings and the proposed dwellings.
197. Objectors also raised conflicts with future occupants accessing the northern garage and business conducting loading from the laneway. Technically vehicles should not conduct loading from the laneway, with Council's Parking Services Unit having the ability to further investigate and issue fines when appropriate. However, should ad hoc deliveries occur from the laneway from time to time, delivery vans are unlikely to park opposite the proposed garage door given other parking options are available that are away from vehicle entrance. As such, it is considered this matter can be adequately managed.

Built form and Heritage

Design and Development Overlay (Schedule 30)

198. Design and Development Overlay Schedule 30 applies to the site. The design guidelines outlined in DDO30 are also of significant relevance from a heritage perspective, as they provide site specific heritage guidelines on heights and front setbacks. The following specific requirements apply to the site (in italics) with commentary on compliance with relevant requirements provided.

Height and setback requirements

- (a) *Development should not exceed 11.2m in height.*

- (b) *Upper levels above the Smith Street streetwall should be set back by a minimum of 8 metres.*
- (c) *Upper levels above a side street wall be set back by a minimum of 6 metres.*
- (d) *Service equipment/structures including balustrades, unenclosed pergolas for communal areas, shading devices, plant rooms, lift overruns, stair wells, structures associated with pedestrian access, green roof areas and other such equipment may exceed the height provided that:*
 - (i) *the equipment and/or structures do not cause additional overshadowing of private open space to residential land, opposite footpaths, kerb outstands etc.;*
 - (ii) *the equipment/structures are no higher than 2.6 metres above the preferred maximum height; and*
 - (iii) *the equipment/structures occupy less than 50 per cent of the roof area (solar panels excepted).*
- (e) *For heritage buildings, upper level setbacks behind the street wall in excess of the minimum upper level setback should be provided where:*
 - (i) *it would facilitate the retention of a roof form and/or chimneys that are visible from the public realm, or a roof or any feature that the relevant statement of significance identifies as contributing to the significance of the heritage building or streetscape;*
 - (ii) *it would maintain the perception of the three-dimensional form and depth of the building.*

Shop and office additions proposed heights

199. The shop and office addition including the roof top terrace balustrades comply with this preferred height requirements at a proposed maximum of 11.2m.

General Dwelling 1 and 2 proposed heights

200. Dwelling 1 and 2 walls will have a maximum wall height of 13.1m in non-compliance with this standard. The top of the roof plant balustrade/roof terrace balustrade and associated access hatches at a maximum of 14.2m also do not comply with the preferred height requirement at 3m above the preferred 11.2m requirements (with the DDO stipulating a maximum of 2.6m above the preferred maximum wall height for service structures).

Non-compliances of Dwelling 1 and 2 roof plant/roof terrace balustrades

201. In terms of the non-compliances of the roof plant/terrace balustrades and the access hatches, being only 0.4m above the height requirement, this modest non-compliance is not considered significant and so is acceptable, particularly as it is not a mandatory height requirement and the roof plant and balustrades are recessed 3m from Little Smith Street and 18.7m from Smith Street. This means they will not be highly visible from key vantage points. Moreover, the eastern and southern balustrades to the plant area to dwelling 1 are metal balustrades making them appear lightweight and further reducing their visibility. Also, the plant area and roof terrace to dwelling 1 and 2 at 65sqm satisfies the occupation of 50% of the roof area requirement (with the solar panel area and level 2 terraces to dwelling 1 and 2 comprising the remaining 63sqm of the roof area), further reinforcing the appropriateness of the marginal non-compliance in the height requirement.
202. Further reinforcing support of the service equipment, the non-compliant height of these service structures/terrace balustrades do not cause any additional shadowing to private open space or footpaths on the opposite side of Little Smith Street nor private open space to the south (with shadow generated by these structures contained within the shadows generated by the walls of the proposed levels below).

Non-compliances of Dwelling 1 and 2 wall heights

203. The dwelling wall heights exceed the preferred height by a maximum of 1.9m at 13.1m. In regard to both Heritage and the DDO30 this is considered to be acceptable outcome for a number of key reasons. Firstly, the 11.2m height requirement is a preferred maximum and so the DDO contemplates some flexibility in height in some circumstances. Secondly, given the slope of the land, with a fall of 1.94m between the west wall of dwelling 2 and the east wall of the proposed office/shop addition, some exceedances to the height requirement are deemed reasonable for the building to negotiate the significant slope across the land. Also, the height exceedances have been supported by Council's Urban Design Unit, Strategic Planning Unit and Heritage officer (subject to the changes incorporated in the section 57A amended plans, which are discussed in more detail later in this assessment).

Height and Amenity

204. Another noteworthy site specific reason that the proposed height can be contemplated, is the lack of sensitive interfaces to the north (laneway) and to the south (where directly adjoining the existing three storey dwelling at No.44 Little Smith Street). Where there is a sensitive interface (ground floor private open space at No.44 Little Smith Street), the boundary wall height reduces to a maximum of 10.6m, with the wall above raking away from the boundary.
205. This raking wall is considered to appropriately address visual bulk impacts associated with the exceedance of the preferred height adjacent to this sensitive interface, particularly given the proposed 3 three storey/10.6m boundary wall height is directly comparable with the building height of the 3 storey dwelling at No.44 Little Smith Street.

Height, setbacks and Heritage

206. Finally the non-compliances in height are partially justified by the proposal vastly exceeding the 8m setback requirement to Smith Street. The shop and office addition is set back a minimum of 11.63m behind the Smith Street façade and also complies with the height requirements 11.2m. While dwelling 1 and 2 do not comply with height requirement, their minimum setback of 16.9m to Smith Street will minimise the visual impact of the height from key vantage points and allows for the heritage frontage to remain the dominant feature.
207. With the site being almost 40m in length, it has sufficient length to be able to include substantial setbacks that obscure the visibility of the central/taller parts of the addition that are non-compliant. This is in compliance with heritage objectives to ensure heritage fabric is not overwhelmed by inappropriately tall additions. For all of these reasons the non-compliant height is considered on-balance to be acceptable.
208. The proposal also satisfies the policy objective to exceed this minimum 8m setback requirement to allow for the retention the full extent of the existing pitched roof form. This is a positive heritage outcome as it allows for the three-dimension presentation of the heritage building to be retained.
209. In terms of the preferred upper level side street setback requirement of 6m above a preferred 11.2m street wall to Little Smith Street, both Council's Heritage advisors and Strategic Planning Unit were satisfied with a 3m upper level setback in this case given the presence of three storey built form to the immediate south allowing for an appropriate height transition to be achieved. Council's Urban Design Unit was satisfied that a lesser setback for 2m would be appropriate in this instance, for similar reasons.
210. Council's Strategic Planning Unit also requested the increased setback be complemented by a reduced street wall height to Little Smith Street to 11.2m from the 12.9m originally proposed. With the section 57A amended plans providing for the requested 3m setback and reducing the Little Smith Street wall even more than requested to 10m, the non-compliance with the preferred 6m setback is in line with the recommendations of Council's Strategic Planning Unit, Urban Design Unit and Heritage Advisor and therefore considered appropriate.
211. Further DDO30 heritage guidelines relating to height and setbacks are as follows (in italics):

(a) *Upper levels should:*

(i) *be visually recessive from Smith Street frontages and side streets to ensure development does not overwhelm the heritage buildings and minimise upper level bulk'*

212. The following sightline provided by the applicant shows the 11.63m front setback of the addition is sufficient to obscure views of it from the opposite side of Smith Street:

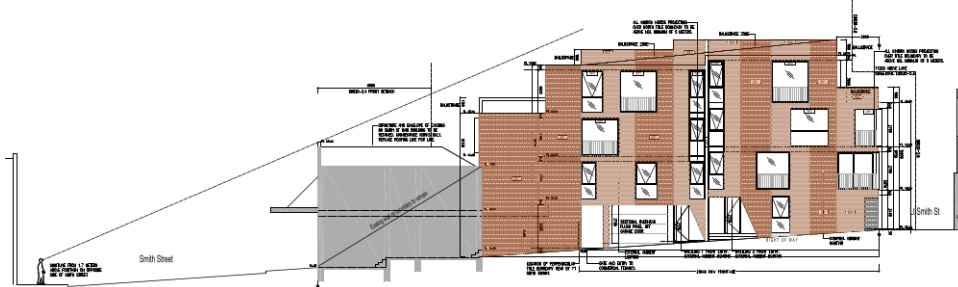


Figure 19: Heritage sightline

(i) *be set back from the street wall below to ensure that upper level additions as seen from the public realm do not detract from the character of the streetscape when viewed directly or obliquely along the street; and*

213. The combination of the minimum 11.63m setback of the addition and the presence of a row of 3 double storey buildings between the subject site and the intersection with Gertrude Street (see figure 20) is adequate to ensure the addition is obscured on northern oblique views, in compliance with this requirement.

214. There are two single storey buildings to the south at No's 63 and 65 Smith Street that open up oblique views from the south. However, with the building adjoining the subject site being double storey at No.67 Smith Street and the buildings to the south of No.63 Smith Street also being double storey (see figure 20), the view cone over the single storey buildings is narrow/restricted. This combined with the minimum 11.63m setback ensure the proposal will be appropriately recessive and have reasonable visual impacts when viewed on the oblique from the south, in compliance with objective of this requirement.



Figure 20: Subject site frontage highlighted in yellow

(i) *contain upper level setbacks above the street wall within a maximum of two steps (including the setback above the street wall below as one step) to avoid repetitive steps in the built form.*

215. Partial compliance. The east wall of the office and the east wall of dwelling 1 include the maximum stepping sought by this policy. It is noted that figure 19 shows two further steps when viewed on the north elevation of dwelling 1 and 2, in non-compliance with the requirement. However, the step above dwelling 1 is parapet only on the north side to obscure views of plant equipment from the northern lane and so will not be visible as a step in the building when viewed from Smith Street. On the east side/Smith Street side, this plant area is enclosed by an open metal balustrade and so does not present as a step in the building when viewed from Smith Street, in compliance with the policy.
216. The slight stepping further along to accommodate the roof terrace to dwelling 2 is so deeply recessed along the site that it will not be highly visible from the frontage. Further this is only a small step to accommodate the roof terrace balustrade, rather than the stepping of full floor levels as anticipated by policy. As such this small step created by the roof balustrade of dwelling 2 is considered acceptable and generally meets the intention of this policy.
217. In summary the proposed Height and Setbacks for the building are acceptable from a heritage and DDO30 perspective, with Council's Urban design, Strategic Planning Unit and Heritage advisor all being supportive of these aspects.

DDO30 Shadowing requirements

218. Design and Development Overlay Schedule 30 provides the following guidance on shadowing impacts as follows (in italics):
- (a) *New development should not overshadow properties fronting Bedford, Little Oxford Street and Little Smith Street, from the first floor upwards between 10am and 2pm at 22 September.*
 - (b) *Development should respond to existing secluded private open spaces by setting back at upper levels to create a sense of separation, minimise overshadowing and reduce building bulk.*
 - (c) *Development should meet the objective of Clause 55.04-5 Overshadowing for adjoining land within a Neighbourhood Residential Zone and/or General Residential Zone, including where separated by a laneway.*
219. Given their orientation, no properties to the north are overshadowed as a result of the proposal. The DDO30 and the Yarra planning scheme does require an assessment of shadowing to affected commercial open space/yards (ie No.67 Smith Street).
- Shadowing of Little Smith Street first floor windows and open space between 10am and 2pm.
220. The proposal achieves partial compliance when considering overshadowing impacts to the first floor upwards for Little Smith Street properties to the south of the subject site.
221. Between 10am and noon, the west-facing first floor balconies of No's 40, 42 and 44 Little Smith Street have the potential to be overshadowed by the proposal. With shadows after this time limited generally to their roofs and not affecting their west-facing first floor open space. Their west-facing windows will be shadowed by their own walls between 10am and noon and with additional shadow as a result of the proposal having moved away from these windows by noon. Further detail is provided below.

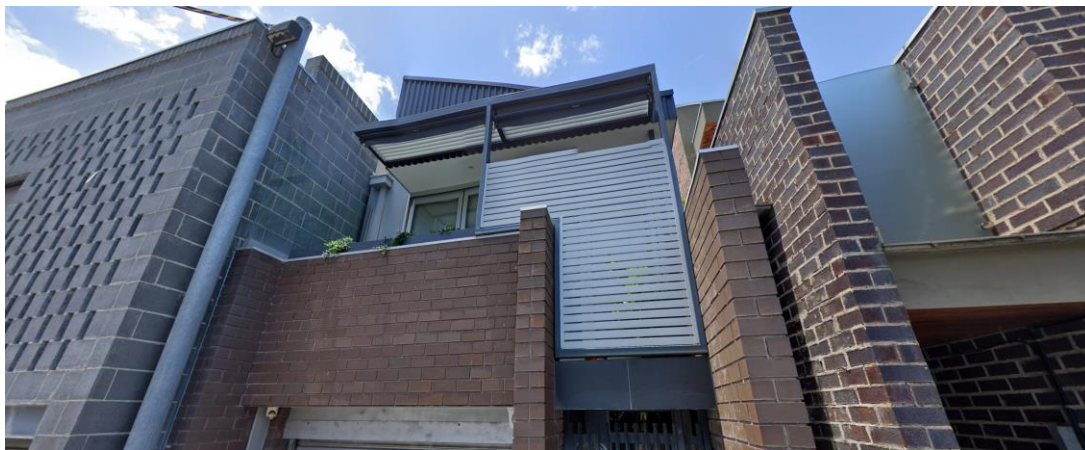


Figure 21: Western balconies of No's 40, 42 and 44 Little Smith Street

No.44 Little Smith Street

222. Immediately to the south is No.44 Little Smith Street, whose first floor western balcony to Little Smith Street is entirely roofed over, has full height solid brick sides walls and a full height hit and miss brick western wall. Given its enclosed nature, this balcony and the windows behind will not be overshadowed as a result of the proposal.
223. This property also has a narrow (0.7m) first floor balcony on its east-side with a first floor window behind and a second floor east-facing window. The proposed boundary wall will be opposite the north-side of this balcony and windows and so will overshadow them until noon, with this dwelling's own walls overshadowing the balcony and windows from approximately noon onwards.
224. In relation to the balcony, given its particularly narrow width, that it has an approved 1.7m high wall on its north side, a 1m balustrade on its east side and that it is roofed over, it would be largely shadowed throughout the morning by its own northern wall, balustrades and roof. As such the additional shadow impact to it will not be significant and so is on balance considered acceptable.
225. While the two east-facing windows will be shadowed between 10am and noon, this is considered acceptable as the windows face out onto large open space areas and so will have good access to daylight regardless of whether they are shaded by the proposal. It is further noted that ResCode does not require that existing windows are not overshadowed by development but instead requires they have good access to reasonably sized light courts to allow for reasonable daylight access (rather than sunlight). The size of the open space areas these windows face out onto would greatly exceed the minimum requirements (1m x 3m light court) required of clause 55.04-3 (*Daylight to Existing windows objective*). As such, the shadow impact to these windows is acceptable, particularly given the commercial zoning of the land.
226. Finally, it is noted that this site has a small solar unit in plan on its roof that will be shaded throughout the day as a result of the proposal. However, as the west end of the three storey roof is free from additional shadow from 2pm, there is potential to reposition the unit so it can be exposed to western sun throughout the afternoon from 2pm. For the subject development to not overshadow this unit, it would require at least a level of dwelling 1 and 2 to be removed, which is considered too onerous, particularly given the unit could be moved west. Furthermore, the C1Z only specifies that solar units that are in residential zones are worthy of protection.

Shadow impact to ground floor open space of No.44 Little Smith Street

227. No.44 Little Smith Street also has an east-facing ground floor open space area. This area measures 18 sqm and enjoys good access to sunlight during day before 2pm. At 9am and noon 7sqm of the open space is currently in direct sun with this lost as a result of the proposal. At 3pm this open space is fully shadowed by its own structures at this time.

It is noted Council's Strategic Planning Unit (based on the originally advertised plans) requested the fourth floor southern wall be set back to this adjoining ground floor private open space in response to the shadowing and visual bulk objectives of the DDO30. In response, the section 57A amended plans provide a raked wall above level 2. While this will not reduce shadow impacts to this open space, it will reduce visual bulk impacts which is a positive outcome.

228. The increased shadowing to this open space is considered acceptable, given the DDO references that compliance with Clause 55.04-5 (*Overshadowing*) is only expected to be achieved for residentially zoned land and that the DDO only requires an assessment of shadowing from first floor and above for properties fronting Little Smith Street. This implies the DDO30 anticipates acceptance of some additional overshadowing to ground floor open space areas. Further this land is zoned C1Z and so does not enjoy the same right to amenity as land zoned specifically for Residential purposes.
229. In addition, based on an officer assessment, a two storey wall opposite this open space would have the same additional shadow impact as that currently proposed. To retain sunlight access similar to current levels at this site would require the additions to be reduced to 1 storey. This single storey outcome is not a reasonable expectation in a C1Z, with this view reflected by the DDO30 requirements which anticipates buildings heights well beyond single storey forms. Further with two storey built form outcome generating the same shadow impacts to this open space as the current proposal, there is insufficient justification to require the building height be reduced to address shadowing impacts. For this reason and on-balance the additional shadowing to the ground floor open space of No.44 Little Smith Street is considered acceptable.

Shadow impact to No.42 Little Smith Street

230. In relation to western balcony and windows fronting it at No.42 Little Smith Street, they are shadowed by their balcony roof form, by its own dwelling and balcony walls and the walls at No.44 Little Smith Street between the hours of 10am to noon. As such the proposal will have no additional shadow impact to this open space or windows.
231. The ground floor open space and the windows facing into the central courtyard of this property are significantly shaded between 10am and 2pm by either by their own walls or by the three storey dwelling at No.44 Little Smith Street. Should any additional shadow potentially reach these windows, it would be limited to the first floor bathroom and habitable windows in the early morning, and so would not have impacts on any habitable room windows. Further the existing light court servicing these windows exceeds the requirements of clause 55.04-3 (*Daylight to Existing windows*) and so these windows will continue to receive adequate access to daylight.
232. This property also has a north-facing clerestory window. With the proposed southern wall opposite this clerestory window being a maximum of 5m higher than the dwelling at No.44 Little Smith Street, shadows at the equinox are limited to the roof of No.44 Little Smith Street and do not extend to the clerestory windows at No.42 Little Smith Street. Similarly, the solar panel on the east end of this dwelling is not shadowed as a result of the proposal.

Shadow impact to No.40 Little Smith Street

233. Given separation of this site from the subject site and the approx. 1.8m height walls surrounding this west-facing balcony and first floor will be shaded by its own dwelling walls, its balcony balustrades and the dwelling at No 42 Little Smith Street between the hours of 10am and noon. The ground floor open space and first floor window to the rear of this property are not affected by additional shadows as a result of the proposal between the hours of 10am and 2pm at the equinox. Similarly, the solar panel on the roof of this dwelling is not shadowed as a result of the proposal.

Shadow impact to No.1/47 Little Smith Street

234. In compliance, at the equinox the proposal does not shadow above the first floor of No.1/47 Little Smith Street (opposite the site) at 10am, with shadow having moved entirely off this site by 11am. For this same reason, the solar panels on the roof of this dwelling is also not shadowed as a result of the proposal.

Shadow impact to No.66 Gore Street and No.64 Gore Street

235. At No.66 Gore Street an approved car parking area is overshadowed at 9am with its open space unaffected by additional overshadowing at this time. This property is not affected by additional overshadowing at the equinox as a result of the proposal for the remainder of the day. As such the requirements of clause 55.04-5 (*Overshadowing objective*) are satisfied along with the DDO30 requirement that overshadowing to residentially zoned land satisfies this requirement. The private open space of No.64 Gore Street is not affected by additional overshadowing as a result of the proposal at the equinox.

DDO30 Building separation requirements

- (a) *Where development shares a common boundary within the overlay and/or adjoins a Commercial 1 Zone and/or Mixed Use Zone outside of the overlay, upper level development should:*
- (i) *be set back a minimum of 4.5m from the common side boundary, where a habitable window or balcony is proposed and/or exists.*
 - (ii) *be set back a minimum of 3.0m from the common side boundary where a commercial or non-habitable window is proposed and/or exists.*
236. Of relevance is the interface between the proposed shop/office studio built to the shared boundary with the No.71 Smith Street. As detailed in the *Surrounding Land* section, there are two habitable room windows located within 1m of the shared boundary, namely a south-facing kitchen window and a west facing living room window. In this instance it is considered acceptable the proposal is not set back 4.5m off the boundary to these windows as the kitchen is serviced by a second full height glazed west facing door and the living area are serviced by a further 2 east-facing windows to the bedroom (see figure 9). Given these secondary light sources, it is considered the amenity of these rooms will not be unreasonably impacted by this non-compliance.
237. In relation to No.67 Smith Street it has commercial north-facing windows at ground floor (kitchen) and first floor (office) that are set back approx. 1.5m from the shared boundary. The first floor office also has a west-facing window (see figure 11). The proposed addition (office/shop) is constructed to the shared boundary at a height of approx. 11.2m opposite these windows. As the office room at first floor has a second, west-facing window, it is considered the variance to this requirement is acceptable. As the affected ground floor window is to a kitchen in a commercial property it is unlikely this room would be used on a regular basis and so would not have a high need for a high level of internal amenity. As such it is not considered justified to require further setbacks to this window. Further the proposed addition will also have a solid brick wall, to allow equitable development of the south neighbouring property.
238. Councils Strategic Planning Unit also supports a variation to this requirement for similar reasons to those outlined above.

Public realm and passive surveillance

239. Finally, DDO30 and Development Abutting Laneways policy contains guidelines relating to visibility of entries from the public realm and passive surveillance. The proposal is considered acceptable in this regard and this aspect of the proposal has also been generally supported by Councils' Strategic Planning and Urban Design Units.

Council's Urban Design Unit did request the pedestrian entry be moved further west to allow it be more clearly visible from Little Smith Street. This was explored further with the applicant but was found to have significant impact on the internal layout through the need to reposition the stair and lift to accommodate this. As such the position of the pedestrian door is considered acceptable. Particularly as the streetlight on Little Smith Street will illuminate the northern lane to assist to identify the pedestrian entries. Further, the site has good ground and upper level passive surveillance to the entries and a condition will require the dwelling entries are provided with external lighting to assist in them being easily identified from the public realm.

Materials and Architectural Quality.

240. Council's Urban Design Unit commended the use of recycled brick, textured brick, steel window and balcony shading cowls and the 2.8m high ground floor splay on the north-west corner to articulate the building, subject to clearances being supported by Council's engineers. Council's engineers have supported the 2.8m clearance to the splay and the 5m cowl clearances as detailed on the Section 57A plans.
241. The Urban Design Unit requested the colour and finish of the balustrades, gate, entry doors and garage doors along with clear glazing notations to be shown on the elevations. Subject to a condition requiring this detail, proposed materials are considered acceptable. A condition will require this detail.
242. Council's Strategic Planning Unit also commended the fenestration to the east, west and north facades which provides visual interest through use of repeated shapes with varied patterns and utilises window hoods over all north and west facing windows to frame these elements. Council's Heritage Advisor was also supportive of the architectural quality of the addition to the rear of the site. Based on the support of these Units, the proposed architectural quality of the rear addition is considered acceptable.

Remaining Heritage considerations

243. The previous DDO30 assessment provided an assessment of height, setbacks and architectural quality on the proposed addition from a heritage perspective. This assessment supported these aspects of the proposal. Significantly, Council's Heritage Advisors is also supportive of these aspects of the proposal.
244. The remaining heritage considerations relate to the replacement of the shop front windows and proposed demolition. In terms of a heritage assessment of these items, relevant heritage objectives are at clause 22.02 and 43.01. The proposed development demonstrates a high level of compliance with relevant heritage objectives at clause 22.02 and 43.01 through the retention of the existing façade and main roof form to the front of the site unaltered. Demolition is limited to the rear service wing (apart from changes to the front window discussed later) and so does not result in the loss of ornate heritage fabric and so is acceptable from a heritage perspective.
245. In terms of the proposed demolition of the front window and its replacement, the relevant policy guideline is at clause 22.02-5.1 and 22.02-5.1 which encourage the removal of inappropriate replacement fabric and encourages the replacement of these non-original features to be appropriate to the period of the building and to use evidence to support the accuracy of this construction. The shop (No.67 Smith Street) that forms a pair with the building at the subject site, has retained its original windows. The plans provide a photo of these windows and have to state the new window will match the window at No, 67 Smith Street. Council's Heritage advisors is satisfied and supportive of this approach, subject to their following comments being addressed by way of conditions:
 - (a) *The proposed extent of demolition is acceptable, provided the replacement shop window replicates the appearance of the original shop window (as per No.67 Smith Street).*

- (b) *Note that while the shop window to No.69 is not original, the splayed entrance tiling is original and must be retained.*
- (c) *The proposed reconstruction of the original shop window to match the shop window of the adjoining property is supported. Prior to the commencement of the demolition and dismantling of the existing aluminium shop front full details of the proposed reconstruction works must be submitted to and approved by Council.*

246. In line with the advice of Council's heritage advisor, conditions will address this matter. Subject to these conditions, the proposal is considered acceptable from a heritage perspective (and as further discussed throughout the DDO30 assessment).

Off-site amenity

247. In terms of off-site amenity, relevant considerations include overlooking, equitable development, daylight to existing windows and overshadowing and visual bulk to private open space. Clause 55 Overlooking objectives are listed in the decision guidelines in the zone and can be considered as a guide when assessing off site amenity issues to residential land. The decision guidelines of the Commercial 1 Zone also separately references the impact of overshadowing and overlooking to Residentially Zoned land as relevant considerations. As such, overlooking and shadowing to commercial uses is not a consideration and No.67 Smith Steet and the commercial properties on the north side of the lane will not be considered. Further daylight to existing windows and overshadowing and visual bulk to private open space have been discussed in detail in the previous DDO30 assessment and so will not be discussed further. This leaves only overlooking and equitable development considerations outstanding.

Overlooking to No's 71 and 73 Smith Street

248. The second floor terrace to dwelling 1 and the north-facing windows of this dwelling has the potential to overlook windows and open space to the first floor dwellings at No's.71 and 73 Smith Street. The first floor dwelling at No.73 Smith Street has no west-facing windows and so there are no window habitable windows overlooked. An objector has confirmed the ground floor rear yard is shared between the dwelling and commercial use. As it is not exclusively used as private open space for a dwelling, it is considered acceptable that it is partially overlooked.
249. As detailed in the *Surrounding Land* section there are no windows facing the subject site at ground floor at No.71 Smith Street with a bathroom and kitchen window facing the subject site at first floor and first floor west-facing living room. With the bathroom being non-habitable, overlooking to this window is not of concern. With the terrace to dwelling 2 located atop the office/shop it has the potential for some downwards views to the living and kitchen window and rear open space. However, with proposed terrace being 5m above the first floor habitable windows and set back 1m from the shared boundary and with the windows being located in a 1m setback area, there will be very limited views down to these windows.
250. Similarly, the proposed north-facing windows for dwelling 1, given their position, have limited of new views into the 1m setback area containing these windows. Downwards views from the proposed dwelling 1 terrace and its associated east-facing windows to the rear ground floor open space will be largely obscured by the double storey built form at No.71 Smith Street. Finally only a small part of the ground floor open space is within the 45 degree 9m overlooking arc stipulated by Standard 55.04-6 (*Overlooking objective*) to No's 71 and 73 Smith Street and for this reason this overlooking is considered acceptable (particularly given the Commercial zoning of these parcels of land and their shared use with the ground floor commercial tenancies).

Overlooking to No.44 and 42 Little Smith Street

251. As detailed in the DDO30 assessment the balcony to Little Smith Street for No.44 Little Smith is entirely enclosed, while the balcony No.42 is also roofed over, with these items preventing overlooking from the proposal to these balconies. With no roof terrace or south-facing windows proposed to dwelling 1, this dwelling will not overlook the centrally located ground floor open space or windows of these two properties to the south, nor the first floor east-facing balcony to No.44.
252. In terms of overlooking from the second floor terrace of dwelling 1 to the windows and ground floor open space of No.44 and 42 Little Smith Street, given this terrace is highly separated from this POS and the intervening single and double storey commercial built form at No's 65 and 67 Smith Street, clear views from the proposed second floor terrace will not be available down into the open space areas or their windows. Further views within the within the 45 degree 9m overlooking arc stipulated by Standard 55.04-6 (*Overlooking objective*) are limited to the commercial roof forms to the south.
253. Finally No.44 has a north-facing clerestory window with the capacity to be overlooked by the roof terrace and third floor terrace to dwelling one. But given the steep incline of the roof behind/servicing the clerestory window and the angle of the available views from the subject site into this window, views will not be able to penetrate down into the room serviced by the clerestory window.

Overlooking to No 66 Gore Street and 1/47 Little Smith Street

254. No.66 Gore Street is located outside the 9m 45 degrees radius overlooking arc stipulated by Clause 55 and so not is of no concern from an overlooking perspective. Figure 15 shows there is second floor living room windows and balcony fronting Little Smith Street at No.1/47 Little Street that has the potential to be overlooked by the second and third from west-facing balconies at the subject site. However, as these balconies face a named road (ie Little Smith Street) and the passive surveillance the proposed balconies will offer to the street, it is not considered justified to require these balconies are treated for overlooking.
255. It is a typical planning concept that it is not appropriate to treat for overlooking when balconies are facing a street, even if they result in overlooking. As blank facades to the street with no passive surveillance opportunities invite anti-social behaviour into the street and given the proximity of this site to Smith Street, it would be particularly important to preserve passive surveillance to discourage anti-social activity spilling into street when bars close along Smith and Gertrude Streets. Further with the balcony at No.1/47 Little Street principally facing north, only a small part of it will be overlooked. Similarly, views within the 45 degree 9m radius overlooking arc stipulated by the standard will be largely restricted to the stairwell serving the living area, with a maximum of 1sqm of the living area within the overlooking arc. As such the extent of overlooking is not significant and is considered acceptable.
256. Finally it is noted the proposed west-facing windows and roof terrace for dwelling 1 are sufficiently recessed from No.1/47 Little Smith Street to be outside the 9m 45 degrees radius overlooking arc of Standard 55.04-6 (*Overlooking objective*) and so are not required to be treated for overlooking.

Off-site visual bulk to residential properties.

257. With the proposed Little Smith Street wall satisfying the height requirements of DDO30, the 3m setback to the top level, combined with the 7m separation offered by Little Smith Street, the visual bulk impact to the properties opposite is considered acceptable. The proposal will not be visible from the outdoor areas of No.42 Little Smith Street due to the existing three storey building located to the north of it at No.44 Little Smith Street.

258. In relation to the visual bulk impact to No.44 Little Smith Street, with its first floor east and west facing balconies being roofed over, the areas most impacted will be the ground floor open space and east facing windows. However, in response to officer and objector concerns with the original proposal for a four storey wall with roof terrace opposite the open space area, the section 57A amended plans deleted the proposed roof terrace and raked the upper level wall away from this property.
259. This has resulted in a reduction in the height of the on-boundary wall to three storeys which is comparable (albeit approx. 1.5m higher) to the existing building at No.44 Little Smith Street. Given the wall height is similar to wall heights at No.44 Little Smith Street, the boundary wall height complies with the DDO30 height requirements and the raked wall atop the 3 storey wall will not be visible from the private open space given the position of the proposed boundary and the narrow width of No.44 Little Smith Streets, the visual bulk impact to this open space is considered acceptable. Particularly given this site is located in a C1Z and affected by DDO30, where more robust built form outcomes are anticipated.
260. Similarly the visual bulk impact to the first floor dwellings at No's 71 and 73 Bridge Road is considered acceptable given they are located on commercially zoned land and given the dwellings are located at first floor, their elevated position will assist to ameliorate visual bulk to an acceptable level. Given the ground floor open space areas are shared with the commercial uses operating at these sites and so are not dedicated private open space areas, the visual bulk impact to these areas is considered acceptable. Particularly as the tallest parts of the proposed building are not opposite these areas.

Daylight to existing windows

261. The proposal is not opposite any existing habitable room windows apart from a south-facing kitchen window at first floor at No.71 Smith Street. The kitchen is also provided with a secondary light source via north-facing glazed door as such the loss of daylight of the southern window is acceptable as the amenity of the room will not be detrimentally impacted given this alternative light source.
262. While not opposite the subject site, the boundary walls will be located adjacent to a west-facing living room window at No.71 Smith Street and so will reduce daylight access to this window. As detailed in the *Surrounding Land* section, there are two east-facing windows servicing the first floor bedroom and along with a fluted and clear glazed wall to the bedroom allowing for these windows to act a secondary daylight source for the living room. Further a wide corridor from the kitchen to the living area allows the glazed kitchen door to act as a further supplementary daylight source. As such the amenity of the living room is considered to be appropriately protected given the presence of these additional daylight sources.

Internal Amenity, Equitable Development and Environmental Sustainability

263. Clause 55 Rescode and 22.05 *Interfaces Use Policy* provide guidance on amenity and ESD issues. In terms of *Interfaces Use Policy*, the offices and shops are uses that are traditionally considered not to have significant amenity impacts such as noise disturbance on dwellings. Given this, the proposed position of dwelling 1 located in close proximity to these commercial uses at the subject site is considered reasonable.
264. With the windows for the office being a clerestory/skylight window or facing towards Smith Street, there are no overlooking concerns from the office to dwelling 1. Similarly, given the orientation of windows and balconies and with only one roof terrace proposed, there are no overlooking opportunities between dwelling 1 and 2.

265. All proposed windows for the dwellings are clear to the sky and will have good access to daylight. Particularly as all windows can either rely on the northern lane, Little Smith Street or overlook the heritage roof form at the subject site, daylight access to these windows will be secured into the future. As such daylight access to the proposed windows comply with the requirements of standard 55.05-3 (*Daylight to new windows objective*). This is also a positive equitable development scenario for both the subject site and the adjoining sites to the north and south as no windows at the subject site will be affected should these sites develop further in the future. As such the proposal does not place an unreasonable development constraint on these sites in relation to equitable development.
266. Similarly, the areas of open space provided for each dwelling comply with the requirements of clause 55.05-4 (*Private open space objective*). All open space areas also have northern orientation and so will receive good access to sunlight in compliance with clause 55.05-5 (*Solar access to open space objective*). All of the terraces can either rely on the northern lane, Little Smith Street or overlook the heritage roof form at the subject site, and so reasonable sunlight access to these proposed open space areas will be secured into the future in an equitable development scenario. For all of these reasons the proposal will provide a reasonable level of amenity for both dwellings.
267. However, of concern from an amenity perspective is that a window is not proposed to the first floor of the office, with only a skylight and east-facing window proposed at second floor. This issue was reviewed by Council's ESD Officer who indicated that given the small footprint of the office this it was not a significant concern. Particularly given the skylight being immediately above the stairwell allows for daylight access to the first floor via the stairwell. However, the ESD office requested the plans confirm that the stair be unenclosed (ie low southern balustrades to the stair well and to the southside of the stairwell at first and second floor) and that the stair risers be open to allow for maximum light transmission. A condition will require this detail is provided.
268. The lack of a new window to the shop addition is accepted as it is fairly typical for the back-of house areas of shops to not have windows as they generally are not high use areas, such as staff lunch areas or a store room, where natural light access is generally not required.

ESD

269. Returning to ESD considerations, apart from the request to improve daylight penetration to the office, Council's ESD officer noted the following matters in relation to ESD considerations (in italics). It is noted these comments are based on the original development plans (ie pre Section 57A amendment). A condition will require the SDA is updated (including STORM report) are amended to reflect the changes made to the development via the section 57A amended plans.
270. *ESD commitments:*
- (a) *6-star NatHERS ratings have been entered into BESS for both dwellings, in addition to cooling loads >30MJ/m2. This is concerning for a new development in 2022. Given the NCCs 7-star minimum is to be introduced in the next update, and with climate change impacts increasing it is strongly suggested that a 7-star (min) target be set to future proof the development.*
 - (b) *Besides double glazing, no other IEQ items claimed for the residential apartments (which form most of the development). Confirm operable windows for all habitable rooms and provide breeze paths for the townhouses.*

- (c) *No provision for FOGO management. Re-consider, and include FOGO management/composting*
- (d) *Low VOC and formaldehyde specifications, while welcome are not considered innovative and should be removed from the innovation section of the BESS report.*
- (e) *The provision of vegetation (2% of site area) should be addressed. More vegetation should be incorporated into the rooftop terraces and northern façade (e.g. climbing vegetation for urban cooling benefits).*

271. *Outstanding Information*

- (a) *Clarify extent of 'no gas connection' as per the BESS report (SDA, p. 19). It is assumed the building is already connected to gas – confirm this is being removed for an all-electric approach for all building services (cooking, heating, HWS etc.).*
- (b) *Confirm extent of external shading, and depth of window shade 'hoods' referred to on TP301.*
- (c) *Amend rooftop plan with annotation to confirm rooftop solar PV system size (per dwelling), and number of panels.*
- (d) *Amend ground floor plans to include the EV charging infrastructure as confirmed in the BESS report (by drawing or annotation).*
- (e) *Provide a statement as to how the development has responded to and mitigates the urban heat island effect.*

272. *ESD Improvement Opportunities*

- (a) *Consider including a shower within the retail WC for staff to use as an EoT facility.*
- (b) *Consider the use of recycled materials (i.e. bricks) or products with post-consumer content (i.e. insulation).*
- (c) *Consider designing for disassembly to reduce end-of-life or renovation waste.*
- (d) *Consider an operable shading device (/trellis) for rooftop terraces to provide shade (and potential structures for climbing vegetation).*
- (e) *Consider greater provision of vegetation, for ecology, amenity and urban cooling benefits/ climbing plants to terraces and exterior walls.*

273. All of these items will be addressed by way of permit conditions apart from the request for an operable roof top pergola to the roof terraces, as this structure would exceed the height requirements of DDO30. Further the section 57A amended plans now noted EV charging and use of recycled bricks in the garage and so this item addresses. Subject to the conditions to this effect being imposed on the permit, the proposal is considered acceptable from an ESD perspective.

274. The applicant has consented to conditions to this effect but indicated a preference to retain the currently proposed 6 Star NatHERS rating, stating it is difficult to commit to a higher rating in advance of a building permit having issued. Council's ESD officer reconsidered this item and indicated the 7-Star rating would not be overly difficult to achieve, particularly given the good northern exposure of the buildings. As such this condition is considered reasonable and will be retained.

Ventilation and Storm Water Management

275. Ventilation of the dwelling will be achieved with north and east and west-facing operable windows. However, the plans do not clearly demonstrate this. A condition will require the plans clearly show all habitable room windows will be operable.
276. A compliant STORM report in response to clause 22.16 (Storm Water management) was originally submitted with three 2000ltr water tanks proposed. However these tanks are reliant on the two roof top terrace originally proposed. A revised STORM report was not submitted with the section 57A amended plans, so it is not clear if compliance will be achieved, particularly as one of the roof terraces is now deleted. A condition will require the section 57a amended Scheme demonstrates a minimum 100% STORM score and require relevant stormwater treatment systems be noted on plans.

Site Coverage

277. The level of site coverage will increase to 100%. Whilst the proposal does not comply with the maximum 80% recommended within Clause 22.10-3.6, given the site context, where commercial sites within the area have close to approximately 100% site coverage and lack of on-site ground floor open space and landscaping is acceptable.

Waste management and Services

278. It is not clear if the shared bin storage area for the shop and offices will be suitable to the needs of the businesses. Further it is not clear if waste collection procedures will be appropriately managed for both the dwellings and the shop/office, given the only available footpath frontage to the rear of the site is proposed to be largely occupied by the crossover for dwelling 1. With both dwellings and the rear shop/entry areas provided with recesses around their entry, there is the possibility to accommodate bins clear of roads/laneways. However, the lack of available footpath space may reveal that a private collection rather than Council collection may be needed depending on proposed waste generation rates. As such a condition will require that a Waste Management Plan is provided.
279. A further condition will require a letter box, pedestrian light, intercom to facilitate visitor entry to the office and dwellings entries to ensure appropriate services are provided and to facilitate ease of access to the site from the rear lane. With a streetlight located immediately opposite the northern lane the opposite side of Little Smith Street, and combined with the pedestrian lights to the doorways, visitors to the site at night should not have trouble negotiating the northern lane.

Car parking reduction and Engineering issues

280. In relation to engineering matters, of most significance was that the site did not have sufficient width to accommodate a car space perpendicular to the northern lane, as was proposed in the originally advertised plans. The applicant worked closely with Council's Engineers to design an angled car space for dwelling 1 to ensure the garage has sufficient length to accommodate a car space. Council's engineers are satisfied with the length and width of the angled garage shown on the section 57A amended plans, along with the width of the garage door and the height clearance to the car space inside the garage.
281. The engineers are also satisfied with vehicles needing to reverse from this space along the northern lane in order to exit the site via Little Smith Street. While this reversing is not an optimal arrangement, Council's Engineers have outlined that it is likely a common occurrence that vehicles would reverse from the lane the given the lack of turning area in the laneway.

Given this support from Council's engineers, the unusual configuration of parking layout for dwelling 1 is acceptable. The applicant has also provided swept paths that demonstrate the northern lane can accommodate turning circles into and out of the garage which have also been supported by Council's Engineers.

282. Council's Engineers were also satisfied with all aspect of the access to the garage for dwelling 2, subject to a request the garage door be widened by 200mm. This change has been implemented on the section 57A with the door now measuring 3.4m in width.
283. The Engineers were also not satisfied with the northern shading cowls extending over the northern roadway. In consultation with Council's engineers, the height of the cowls above the roadway were increased to a minimum of 5m. This has been implemented on the section 57A amended plans. They were satisfied the 2.8m splay on the north-west corner of the building is acceptable as it is located adjacent to the footpath and so its low clearance will not obstruct vehicles using the northern land or Little Smith Street.
284. The Engineers also requested a ground clearance check from each proposed crossover to ensure vehicles will not bottom out. A condition will require this. Council's Engineers also requested the provision of a Construction Management Plan given the difficulties of constructing a four storey building on a confined site with access via a lanes. They further requested standard conditions and notes relating to drainage, rehabilitation of any damage to any Council assets, changing of parking restrictions and any new services to be installed inside the property line.

Car parking reduction and traffic

285. As noted earlier, the proposal generates a statutory car parking requirement for 4 car spaces, with 2 car spaces provided. In assessing a car parking reduction, the Responsible Authority must have regard to a number of factors outlined at clause 52.06-6 of the Scheme. These relate to the associated car parking demand that the use may generate, the availability and proximity of alternative transport options, provisions for bicycle parking upon the site and the likelihood of multi-purpose trips within the locality which may incorporate the proposed use. These are discussed throughout the assessment below.

Car parking demand and public transport availability

286. Given the proximity of public tram options servicing the site along Smith, Gertrude and Brunswick Street and Victoria Parade all within walking distance and multiple commercial uses along Smith Street Road, it is likely that a large proportion of visitors will be in the area for more than one and will be short term stays. As advised by Council's Engineering Unit, customers and visitors to the site who choose to drive might combine their visit by engaging in other business or activities whilst in the area. On this basis, the overall demand for visitor parking is expected to be less than the sum of individual demands for each premises in the activity centre. As such the car parking reduction is considered acceptable, when considered in relation to visitor demand.
287. In relation to reductions for the shop/office staff and residents, given on-street car parking restrictions are limited to predominately 2 hours, it is considered unlikely that staff would drive to work or residents would use on-street parking as they would be aware of these restrictions. Recent planning applications have sourced Car Ownership data for households in the City of Yarra from the 2016 Census conducted by the Australian Bureau of Statistics. The Census indicates that 75% of 3 bedroom households in Fitzroy own 1 vehicle or less. The census data provided suggests there is a high proportion of demand for dwellings with no or reduced car spaces. On this basis, and that 1 car parking is provided for each of the dwellings, this is not inconsistent with the average car ownership in the municipality.

288. These applications also provided an analysis in relation to demand generated by the office use from ABS census data which shows 36.2% of people in the City of Yarra travel to work by car in comparison to State-wide levels of 61.8%. Further 43.5% of residents of the City of Yarra use public transport, cycling or bicycles to travel to work. They also outline that staff from outside the City of Yarra area are unlikely to drive given short term restrictions for on-street parking does not make this viable option.
289. Based on these figures and for the reasons outlined above, it is considered that the increased parking demand associated with the proposal will not have an adverse impact on parking conditions within the surrounding area. Further Council's Engineers have supported the proposed car parking reduction. Finally, a note on the permit will outline all future property owners, residents, employees and occupiers residing within the development approved under this permit will not be illegible to obtain resident, employee or visitor parking permits. This ensures the proposal does not increase demand for on-street car parking.

Provisions for bicycle use and parking

290. Pursuant to clause 52.34 there is no requirement for on-site car spaces. Regardless of this a total of 4 on-site bicycles spaces are provided, with 2 allocated to each dwelling. Council's Strategic Transport unit have requested the plans detail the type of hook proposed so that they can assess if sufficient clearances have been provided to the bicycle spaces. A condition will require this. They also requested the plans note a power source to the garage so they can be electric vehicle ready in the future. The section 57A amended plans have provided this detail and so a condition is not necessary to address this item.

Traffic

291. The traffic generated by the proposed use is expected to be in the form of private vehicles associated with customers and delivery vans. A large proportion of traffic within the area during normal business hours will be existing traffic generated by the surrounding commercial uses. It is therefore not considered that the proposal will generate a high rate of traffic in addition to the existing traffic conditions and will not adversely affect current conditions, particularly as the site currently operates with a shop and offices uses and so are unlikely to generate significant level of additional traffic. With only two on-site spaces provided for the dwellings, it will not significantly alter existing traffic levels. On balance, the extent of traffic to be generated by the proposal is considered reasonable.

Potential Site Contamination

292. The State Government website relating to potentially contaminated sites (*Victoria Unearthed*) lists a previous use at the subject site to be a Fuel Depot in association with the sale of wood and coal and with a Laundry listed at No.71 Smith Street. As both these uses are listed as having high potential for contamination pursuant to Table 2 of Practice Note 30 (*Potentially Contaminated Land*), in accordance with the requirements clause 13.04-1S (*Contaminated and potentially contaminated land*) a condition will require Preliminary Site Investigation/ a desktop assessment of the likely site contamination. This needs to be prepared by a suitably qualified environmental consultant (not necessarily an EPA appointed auditor) and should include:
- (a) Desktop investigation- Preliminary Site Investigation (PSI)
 - (b) Site inspection
 - (c) May included limited field investigations and sampling conducted to the standard established in Schedule B2 of *National Environment Protection (Assessment of Site Contamination) Measure* (ASC NEPM 1999), and

- (d) To make recommendations on likelihood of contamination and whether further assessment is necessary i.e. PRSA or an Audit.

293. Conditions will also address the event that contamination is found, an Environmental Audit is required to ensure the site is suitable for the proposed dwelling uses.

Objector concerns

294. Objectors raised the following concerns:

- (a) The proposed building height, scale, lack of transition to adjoining buildings and modern appearance not appropriate to the heritage and neighbourhood context,
- (b) Concern shop window replacement inappropriate to building,
- (c) Off-site amenity concerns including overlooking and overshadowing,
- (d) Increased demand for on-street car parking spaces competing with local businesses,
- (e) Proposal not consistent with Council policy including the requirements of Design and Development Overlay (Schedule 30),
- (f) Noise from occupants using elevated balconies,
- (g) Future occupants making complaints against to noise from existing businesses and businesses undertaking delivery from northern lane blocking access to proposed garage door,
- (h) Concern access to right of way blocked by bins placed in laneway for collection,
- (i) Lack of vegetation/open space, and
- (j) Poor ESD outcomes.

295. All of these items have been discussed in detail throughout this assessment, apart from noise concerns from occupants using the proposed outdoor areas. With the residential uses being as-of-right uses in the C1Z, Council does not have the ability to control the use of these outdoor areas by way of permit conditions.

Conclusion

296. 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 a Notice of Decision to Grant a Planning Permit PLN21/0569 be issued for partial demolition, alterations, construction of a multi storey building and a reduction in the statutory car parking requirement of the Yarra Planning Scheme at 69 Smith Street, Fitzroy, generally in accordance with the “decision plans” and subject to the following conditions:

Development Plans

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 Context Design Group, dated 14.10.2021 (TP101 (Rev B), 201 (Rev F), 202 (Rev F), 203 (Rev F), 204 (Rev F), 205 (Rev F), 206 (Rev F), 301 (Rev F) and 302 (Rev but modified to show the following:

- (a) Notations stating the following:
 - (i) All external glazed doors and windows will be double glazed,
 - (ii) External lights will be provided to the dwelling pedestrian entries,
 - (iii) All windows to be clear glazed,
 - (iv) Clarify the materials and finish of the balustrades, office entry gate, entry doors and garage doors,
 - (v) The splayed entrance tiling to the shop to be retained,
 - (vi) Low southern balustrades to be provided to the office stair including the southern walls abutting the stair at first and second floor and along with the office stair risers to be open,
 - (vii) All habitable rooms will be provided with operable windows, and
 - (viii) The dwellings and offices to be provided with a letter box and intercom.
 - (b) Details at a scale of 1:20 of the proposed reconstruction works to the front window demonstrating materials and details will be appropriate to the period of the building,
 - (c) Provision of a compliant STORM report with detail of stormwater treatment systems noted on plans,
 - (d) Vehicle crossing profiles to demonstrate that a B85 design vehicle as identified in Australian Standard AS/NZS2890.1-2004 can enter and leave the property without bottoming-out, with vehicle traverse lines shown on the vehicle crossing cross-sections, in accordance with condition 10b);
 - (e) Any changes required by the amended Sustainable Design Assessment at Condition 3,
 - (f) Details of the type of hook proposed for the bicycle spaces, and
 - (g) Any changes as required by the Waste Management Plan at Condition 8.
2. The development as shown on the endorsed plans must not be altered (unless the Yarra Planning Scheme specifies that a permit is not required) without the prior written consent of the Responsible Authority.

Sustainable Design Assessment

3. Before the development commences, an amended Sustainable Design Assessment to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Sustainable Design Assessment will be endorsed and will form part of this permit. The amended Sustainable Design Assessment must be generally in accordance with the Sustainable Design Assessment prepared by prepared by Green Rate, dated 26 October 2021, but modified to include or show:
- (a) a 7-star NatHERS rating for both dwellings,
 - (b) Include a Food and Garden Organics management/composting strategy,
 - (c) Low VOC and formaldehyde specifications to be removed from the innovation section of the BESS report,
 - (d) The provision of vegetation (2% of site area),
 - (e) Clarify extent of 'no gas connection' in the BESS report to confirm all electric for all building services (cooking, heating, HWS etc.),
 - (f) Confirm the depth of window shade 'hoods',
 - (g) Amend rooftop plan with annotations to confirm rooftop solar PV system size (per dwelling) and number of panels,

- (h) Provide a statement as to how the development will respond to and mitigate the urban heat island effects, and
 - (i) Consideration of designing for disassembly to reduce end-of-life or renovation waste.
4. The provisions, recommendations and requirements of the endorsed Sustainable Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

Contamination

5. Before the construction of the development authorised by this permit commences, an assessment of the land to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The assessment must be prepared by an environmental professional with suitable qualifications to the satisfaction of the Responsible Authority and must include:
- (a) a description of previous land uses and activities on the land;
 - (b) an assessment of the level, nature and distribution of any contamination within, or in close proximity to, the land;
 - (c) details of any provisions, recommendations and requirements (including but not limited to, clean up, construction, ongoing maintenance or monitoring) required to effectively address and manage any contamination within the land; and
 - (d) recommendations as to whether the land is suitable for the use for which the land is proposed to be developed and whether an Environmental Auditor should be appointed under section 53S of the Environment Protection Act 1970 (EP Act) to undertake an Environmental Audit in accordance with the provisions of the EP Act.
6. If the assessment required by condition 5 does not result in a recommendation that an Environmental Auditor be appointed under section 53S of the EP Act to undertake an Environmental Audit in accordance with the provisions of the EP Act, all provisions, recommendations and requirements of the assessment must be implemented and complied with to the satisfaction of the Responsible Authority.
7. If the assessment required by condition 5 results in a recommendation that an Environmental Auditor be appointed under section 53S of the EP Act to undertake an Environmental Audit in accordance with the provisions of the EP Act, before the construction of the development authorised by this permit commences, the Environmental Auditor appointed under section 53S of the EP Act must undertake an Environmental Audit in accordance with the provisions of the EP Act and issue:
- (a) a Certificate of Environmental Audit for the land in accordance with section 53Y of the EP Act (**Certificate**); or
 - (b) a Statement of Environmental Audit for the land in accordance with section 53Z of the EP Act (Statement),
- and the Certificate or Statement must be provided to the Responsible Authority.

If, pursuant to condition 3, a Statement is issued:

- (c) the development authorised by this permit must not be undertaken unless the Statement clearly states that the land is suitable for the sensitive use for which the land is being developed;
- (d) the development authorised by this permit must not be undertaken until compliance is achieved with the terms and conditions that the Statement states must be complied with before the development commences (**pre-commencement conditions**);
- (e) before the construction of the development authorised by this permit commences, a letter prepared by the Environmental Auditor appointed under section 53S of the EP Act which states that the pre-commencement conditions have been complied with must be submitted to the responsible authority.

- (f) if any term or condition of the Statement requires any ongoing maintenance or monitoring, the owner of the land (or another person in anticipation of becoming the owner of the land) must enter into an agreement with the Responsible Authority pursuant to section 173 of the Planning and Environment Act 1987 (Agreement). The Agreement must:
 - (i) provide for the undertaking of the ongoing maintenance and monitoring as required by the Statement; and
 - (ii) be executed before the sensitive use for which the land is being developed commences; and
- (g) the owner of the land, or other person in anticipation of becoming the owner, must pay all costs and expenses (including legal expenses) of, and incidental to, the Agreement (including those incurred by the Responsible Authority).

Waste Management

- 8. Before the development commences, a Waste Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Waste Management Plan will be endorsed and will form part of this permit.
- 9. The provisions, recommendations and requirements of the endorsed Waste Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

Road Infrastructure

- 10. Before the development completed, or by such later date as approved in writing by the Responsible Authority, the new vehicle crossing 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 B85 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.
- 11. 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 street frontages must be reconstructed (including kerb and channel):
 - (a) at the permit holder's cost; and
 - (b) to the satisfaction of the Responsible Authority.
- 12. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, any damage to Council infrastructure resulting from the development must be reinstated:
 - (a) 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.
- 13. 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 (including trenching and excavation for utility service connections) must be reinstated:
 - (a) at the permit holder's cost;
 - (b) to the satisfaction of the Responsible Authority.

14. Except with the prior written consent of the Responsible Authority, Council assets must not be altered in any way.
15. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, any new vehicle crossing must be constructed:
 - (a) in accordance with any requirements or conditions imposed by Council;
 - (b) at the permit holder's cost; and
 - (c) to the satisfaction of the Responsible Authority.
16. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority the relocation of any service poles, structures or pits necessary to facilitate the development must be undertaken:
 - (a) at the permit holder's cost;
 - (b) to the satisfaction of the Responsible Authority.

General

17. 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.
18. 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.
19. The floor levels shown on the endorsed plans must not be altered or modified without the prior written consent of the Responsible Authority.
20. All buildings and works must be maintained in good order and appearance to the satisfaction of the Responsible Authority.
21. The amenity of the area must not be detrimentally affected by the development, including through:
 - (a) the transport of materials, goods or commodities to or from land;
 - (b) the appearance of any buildings, works or materials;
 - (c) the emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or
 - (d) the presence of vermin.
22. 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.
23. Before the building is occupied, any wall located on a boundary facing public property must be treated with a graffiti proof finish to the satisfaction of the Responsible Authority.
24. The development must at all times comply with the noise limits specified in the Environment Protection Regulations under the Environment Protection Act 2017 and the incorporated Noise Protocol (Publication 1826.4, Environment Protection Authority, May 2021), as may be amended from time to time.

Development Infrastructure Levy

25. Prior to the commencement of the development, the Development Infrastructure Levy must be paid to Yarra City Council in accordance with the approved Development Contributions Plan, or the Owner must enter into an agreement with Yarra City Council to pay the Development Infrastructure Levy within a time specified in the agreement.

Community Infrastructure Levy

26. Prior to the issue of a building permit, the Community Infrastructure Levy must be paid to Yarra City Council in accordance with the approved Development Contributions Plan, or the Owner must enter into an agreement with Yarra City Council to pay the Community Infrastructure Levy within a time specified in the agreement.

Construction Management Plan

27. 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.

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.

- (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.

28. The provisions, recommendations and requirements of the endorsed Construction Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.
29. 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.
30. This permit will expire if:
- (a) the development is not commenced within two years of the date of this permit; or
 - (b) the development is not completed within four years of the date of this permit.

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

Notes:

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

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

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

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

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

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

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

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

Attachments

- 1 PLN21/0569 - 69 Smith Street, Fitzroy – Advertised Section 57B - Amended plans
- 2 PLN21/0569- 69 Smith Street- ESD comments
- 3 PLN21/0569- 69 Smith Street- Supplementary ESD comments
- 4 PLN21/0568- 69 Smith Street-Urban Design comments
- 5 PLN21/0569- 69 Smith Street- Heritage comments
- 6 PLN21/0569-69 Smith Street-Development Engineering comments
- 7 PLN21/0569-69 Smith Street-Strategic Planning comments