



YARRA CITY COUNCIL
Internal Development Approvals Committee
Agenda

**to be held on Wednesday 4 September 2019 at
6.30pm in Meeting Rooms 1 & 2 at the
Richmond Town Hall**

Rostered Councillor membership

Councillor Stephen Jolly
Councillor James Searle
Councillor Bridgid O'Brien

- I. ATTENDANCE**
Ally Huynh (Senior Co-ordinator Statutory Planning)
Lara Fiscalini (Principal Planner)
Cindi Johnston (Governance Officer)
- II. DECLARATIONS OF PECUNIARY INTEREST AND CONFLICT OF INTEREST**
- III. CONFIRMATION OF MINUTES**
- IV. COMMITTEE BUSINESS REPORTS**

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***"Welcome to the City of Yarra.
Yarra City Council acknowledges the
Wurundjeri as the Traditional Owners
of this country, pays tribute to all
Aboriginal and Torres Strait Islander
people in Yarra and gives respect to
the Elders past and present."***



Guidelines for public participation at Internal Development Approval Committee meetings

POLICY

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

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

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

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

**Governance Branch
2008**

1. Committee business reports

Item		Page	Rec. Page
1.1	000410.02 - Section 72 Amendment to Planning Permit 000410, including the following: - Change of Use to a Place of Assembly (Function Centre) - Increase the area for the sale and consumption of liquor - Buildings and works to construct a storage shed	5	42
1.2	36-38 Kerr Street, Fitzroy - Planning Application No. PLN18/0404 - Part demolition to allow for the construction of three dwellings.	47	78

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- 1.1 000410.02 - Section 72 Amendment to Planning Permit 000410, including the following:**
- **Change of Use to a Place of Assembly (Function Centre)**
 - **Increase the area for the sale and consumption of liquor**
 - **Buildings and works to construct a storage shed**
-

Executive Summary

Purpose

1. This report provides Council with an assessment of an application to amend planning permit 000410 and recommends approval, subject to conditions.

Key Planning Considerations

2. Key planning considerations include:
 - (a) Noise and off-site amenity impacts associated with the proposed use and liquor licence (clauses 13.05-1S, 21.04-2, 22.05, 22.09 and 52.27).

Key Issues

3. The key issues for Council in considering the proposal relate to:
 - (a) Strategic justification;
 - (b) Use of the land and sale and consumption of liquor;
 - (c) Buildings and works; and
 - (d) Objectors concerns.

Submissions Received

4. Thirteen (13) objections were received to the application, these can be summarised as:
 - (a) Noise (venue, leaving patrons, live music, collection of waste);
 - (b) Anti-social behaviours (including litter);
 - (c) Light spill;
 - (d) Location of red line increase inappropriate; and
 - (e) Shed materials/colours.

Conclusion

5. Based on the following report, the proposal is considered to comply with the relevant planning policy and should therefore be supported subject to the following key recommendations:
 - (a) Restricting the hours of operation for the proposed use Sunday to Wednesday, until 11pm.
 - (b) Deletion of the proposed extension of the red line area.
 - (c) Limiting the number of patrons within all outdoor areas.
 - (d) Further acoustic testing undertaken three months after the commencement of the sale and consumption of liquor in association with the Function Centre, demonstrating that the operation complies with the relevant policies and guidelines for music, patron and operational noise.

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- 1.1 000410.02 - Section 72 Amendment to Planning Permit 000410, including the following:**
- **Change of Use to a Place of Assembly (Function Centre)**
 - **Increase the area for the sale and consumption of liquor**
 - **Buildings and works to construct a storage shed**
-

Trim Record Number: D19/113006

Responsible Officer: Senior Coordinator Statutory Planning

- Proposal:** Section 72 Amendment to Planning Permit 000410, including the following:
- Change of Use to a Place of Assembly (Function Centre)
 - Operating hours: Sunday: 10am to 12 midnight, Mon to Sat: 9am to 12 midnight.
 - Patron numbers: 350 patrons.
 - Increase the area for the sale and consumption of liquor to include part of the forecourt area adjacent to the Victoria Street front entrance to the premises (concluding at 10pm on all days).
 - Buildings and works to construct a storage shed to the south of the building.
- Existing use:** Restaurant
- Applicant:** Victoria Gardens Developments Pty Ltd
Hollerich Town Planning Pty Ltd
- Zoning / Overlays:** Comprehensive Development Zone (Schedule 1)
Road Zone Category 1
Significant Landscape Overlay (Schedule 1)
Environmental Audit Overlay
Land Subject to Inundation Overlay
Design and Development Overlay (Schedule 2)
- Date of Application:** 12/01/2018
- Application Number:** 000410.02

Planning History

1. The planning history of the subject site can be broken into three aspects, the Victoria Gardens complex, Victoria Gardens – Stage 1 (Subject building) and the subject site, now known as Fenix Events.

Victoria Gardens Complex

2. The site is part of the broader 'Victoria Gardens' complex, comprising a range of retail, office and residential land uses. An excerpt from the IDAC report for PL10/0156 sets out the relevant history of the subject site:

Victoria Gardens – Comprehensive Development Zone

Background to planning controls

12. *Victoria Gardens ("the CDZ site") is the land bound by Victoria Street to the north, the Yarra River to the east, Burnley Street to the west and Doonside Street to the south (in part).*

13. *The site was rezoned on 4 February 1987 from 'General Industrial' to 'Comprehensive Development Zone No. 8' by Amendment 409 to the Melbourne Metropolitan Planning Scheme. The amendment permitted the site to be used for a mixture of office, retail, motel, residential and high technology industry uses.*
14. *On 8 October 1987, the Minister for Planning (in their capacity as the Responsible Authority for the site) endorsed a development plan, traffic control and management plan for the site.*
15. *On 16 February 1988, Council became the Responsible Authority such that any request to the previously approved plans must be made to Council.*
16. *In November 1989, Carlton United Brewery ("CUB") sought an amendment to develop the western part of the site as a large scale distribution centre. Council received a number of objections and the amendment was abandoned in September 1990.*
17. *Amendment L8 to the Yarra Planning Scheme was gazetted on 21 May 1997. The amendment rezoned the site to the 'Comprehensive Development Zone, Schedule 1: Victoria Gardens Comprehensive Development' which allows for retail, warehouse, cinema, and office development subject to the approval of development plans. The amendment also addressed car parking requirements and building height controls (among other things).*

History of approvals within the CDZ1

18. *On 11 November 1997, Council approved an office development in the north-east corner of the site which also included a restaurant. An amendment to the landscape plan was approved on 15 December 1999, modifying the planting schedule, and an amendment to the development plan was also approved on 6 February 2006, reflecting internal layout changes and modifications to advertising signage.*
19. *On 12 December 1997, Council approved a development plan, traffic plan, management plan, and landscape plan for stage 2 (residential development). The approval was subject to a number of conditions, including a requirement to meet EPA standards and regulations, and to conduct an Environmental Audit in accordance with the Environment Protection Authority Act 1970. On 29 March 1999, an amendment was approved to the development plan, modifying the roof terraces of apartments 7, 8 and 15 and increasing the height of the river front residential apartment building by 708mm. On 23 September 1998, Council approved an amendment to the landscape concept plan. On 8 September 1999, Council approved a further amendment to the development plan to delete awnings and address overlooking issues.*

Victoria Gardens – Stage 1 (Subject Building)

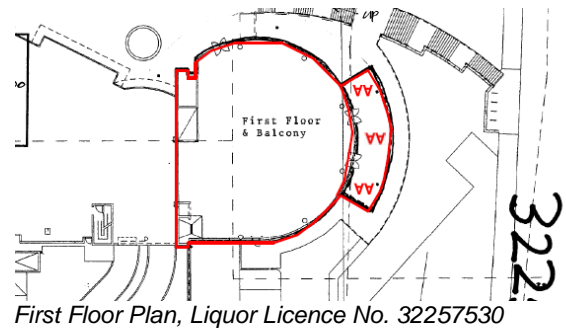
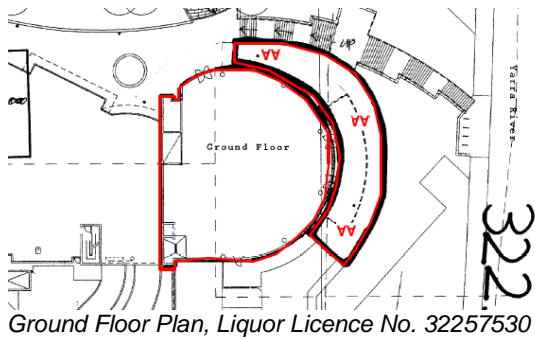
3. Planning Permit PLN14/1034 was granted by Council on 6 January 2015 for the installation of a fire escape door within an existing opening.
4. Planning Permit PLN16/0382 was granted by Council on 03 January 2017 for a reduction in car parking associated with food and drinks premises, and display of business identification signage.
5. Planning Permit PLN17/0684 and Development Plan Amendment AML8 was granted by Council on 16 January 2018. This amendment approved a reduction in the car parking requirements associated with buildings and works to the external pedestrian pathways.

6. As a result of this application, the Car Parking Management Plan associated with Stage 1 of the Victoria Gardens development was updated to make reference to the subject site as a 'Function Centre' rather than a 'Restaurant.' This document has been endorsed and removes the requirement for this application to amend this document to modify the use of the subject site.
7. Planning Permit Application PLN19/0129 is currently being advertised in respect of the café tenancy located at No. 678 Victoria Street, known as 'Concrete Blonde'. The application seeks approval for the sale and consumption of liquor associated with an existing food and drinks premises. This application is currently on advertising, with a decision yet to be made.

Subject Site (Fenix Events)

8. Planning Permit No. 000410 was issued on 11 August 2000 for an on-premises liquor licence. The liquor licence was granted in association with the use of the site for a restaurant, the use of which does not require planning approval pursuant to the requirements of the Comprehensive Development Zone, Schedule 1.
9. The permit included five conditions, as follows:
 - *All development and use must accord with the endorsed plans. Any alterations must be approved by the Responsible Authority.*
 - *The layout of the uses on the endorsed plans must not be altered without the written consent of the Responsible Authority.*
 - *The permit will expire if the use and development is not commenced within one year from the date of this permit. The Responsible Authority may approve extensions to these limits if request are made within 3 months of expiry.*
 - *The use hereby permitted must only operate between the hours of 10.00am to 12 midnight (Sunday), 9 am to 12 midnight Monday to Saturday and 12 noon to 12 midnight (Public Holidays) unless further consent is granted by the Responsible Authority.*
 - *No more than 350 patrons are to be permitted on the premises at any one time.*
10. Planning Permit Application PLN17/0390 was lodged on 22 May 2017 seeking an amendment to increase the licensed area to include part of the forecourt area adjacent to the premises. This application was withdrawn on 21 June 2017 and re-lodged as an amendment to Planning Permit 000410, as discussed in this next paragraph.
11. Planning Permit Amendment No. 000410.01 was lodged on 15 June 2017 seeking an amendment to increase the licensed area to include part of the forecourt area adjacent to the premises.
12. Through the processing of this application it became clear that the use of the subject site had changed over time, from a restaurant with an ancillary function centre component to a complete function centre use, with no restaurant component.
13. As the use of the land for a Function Centre requires a planning permit, planning permit application 000410.01 was withdrawn on 19 January 2018.
14. The subject application, planning permit amendment 000410.02, was lodged on 12 January 2018 seeking a change of use to a place of assembly (function centre), an increase to the area for the sale and consumption of liquor and buildings and works to construct a storage shed.

15. An On-Premises Liquor Licence (Licence No. 32257530) was obtained following the granting of Planning Permit 000410 on 11 August 2000 and is still valid. The liquor licence allows for trading hours in accordance with Planning Permit 000410, but allows for a maximum capacity of 725 patrons.
16. The following are excerpts from the existing red line plan associated with liquor licence No. 32257530, showing where liquor can presently be sold and consumed on premises (according to the VCGLR):



Background

Retrospective Application

17. At the time of lodgement, the use and buildings and works components of this application were sought retrospectively.
18. On 28 June 2019, Council Officers were notified that whilst this planning application was being considered, the venue was taking the following steps to minimise noise and comply with the requirements of the Scheme, as follows:
 - Patron numbers in the northern forecourt area restricted to a maximum 45.
 - Combined maximum of 50 patrons occupying the Panorama and River Terrace outdoor areas to the east.
 - Patrons not permitted to occupy each of the 3 designated outdoor areas after 10pm.
 - The operators are currently undertaking a review of the door closing options to ensure they can automatically close.
 - Displaying of signs at venue exits encouraging patrons to be considerate of neighbours and keep noise to a minimum when leaving.
 - Opening of the venue through the day so that it is used as a restaurant.

Aboriginal Cultural Heritage Significance

19. Pursuant to Section 46 of the *Aboriginal Heritage Regulations 2018*:
 - (1) *The construction of a building or the construction or carrying out of works on land is a high impact activity if the construction of the building or the construction or carrying out of the works—*
 - (a) *would result in significant ground disturbance; **and***
 - (b) *is for, or associated with, the use of the land for any one or more of the following purposes—*

...

(xviii) a place of assembly;

...

[emphasis added]

20. The buildings and works component is for the placement of a storage shed upon the existing asphalt apron associated with an external car parking area.
21. The buildings and works would not result in significant ground disturbance and therefore would not be considered a high impact activity and are exempt from the requirements of the regulations.

Processing the Permit Application

22. The application was received by Council on 12 January 2018. Following the submission of further information, the application was advertised and thirteen (13) objections were received.
23. A planning consultation meeting was held on 26 February 2019 and attended by eight objectors, the applicant, client representatives and Council Planning Officers to discuss all issues and concerns raised in the letters of objection.
24. Whilst the applicant did not make any commitments to make changes, following the consultation meeting the applicant commissioned an acoustic report to be prepared to assess the mechanical plant, music noise and patron noise associated with the use.
25. This acoustic report was prepared by WatsonMossGrowcott Acoustics (WMGA), dated 9 May 2019 and was submitted to Council on 9 May 2019. The assessment and findings will be discussed further, later in this report.

Commitments from the Applicant

26. On 24 August 2019 the applicant advised Planning Officers in writing that in the interests of addressing objector concerns, they would be happy to accept conditions on any planning permit issued for the application, that would result in the following:
 - (a) No extension to the area for the sale and consumption of liquor. This would result in no liquor within the part of the forecourt area adjacent to the Victoria Street front entrance to the premises.
 - (b) Reduction in the hours on Monday, Tuesday and Wednesday so that the venue would cease operating at 11pm, in lieu of 12 midnight.

Existing Conditions

Subject Site

27. The subject site is located on the southern side of Victoria Street, with River Boulevard to the west and the Yarra River to the east, in Richmond. The site is irregular in shape, with a frontage of approximately 122 metres to Victoria Street and a maximum depth of 52 metres, constituting an overall area of 6529 sqm.
28. The site has been developed in accordance with Stage 1 of the approved Comprehensive Development Plan (CDP) with a four storey building incorporating offices, a café and the restaurant overlooking the Yarra River at the eastern end of the building. The main entrance to the offices is centrally located along Victoria Street, with access to the function centre provided to the north and east.

29. There is a multi-level basement, providing car parking to the building tenants and accessed via Elaine Court from the rear. This car park provides a total of 237 spaces over 5 levels. In addition, there are four at-grade car spaces adjacent to the loading bay area to the south of Fenix Events. An additional 161 car spaces are available to the west at No. 10 River Boulevard, with 117 spaces allocated to the offices and 44 spaces available on a commercial basis.
30. The rear of the building (abutting Elaine Court) has a number of functions including car parking access, delivery of goods and waste storage. The southern (rear) side of the building adds to this service context with large blank walls and basement vents dominating the façade. The setback between the rear of the building and Elaine Court has been planted with shrub-like landscaping and a row of semi-mature trees.
31. The subject tenancy “Fenix Events” (Fenix) is located over two levels in the eastern end of the Stage 1 building. The site is primarily accessed from the forecourt adjacent to Victoria Street. The forecourt features areas of landscaping and paved areas providing access to the various tenancies within the development. An image of the forecourt area to Fenix is shown below:



Planning Officer Photo, taken 18 July 2018

32. The building (where facing the Yarra River) includes large expanses of glazing to maximise views of the river and river environs. Each level includes additional outdoor areas facing the Yarra River, as shown in the below image:



Planning Officer Photo, taken 18 July 2018

33. Within Basement Levels 1 and 2 are 73 car parking spaces that are shared between the commercial “display & pay” customers; the subject tenancy Fenix Events and the customers of the café located at No. 678 Victoria Street.

All of the shared 73 car parking spaces must be made available solely to the subject tenancy Fenix Events when an event is being held within the tenancy, in accordance with the endorsed Car Parking Management Plan.

34. At the rear of the site, and accessed from Elaine Court, is an asphalt apron that comprises a loading area, at-grade car park for four spaces. This area also includes the storage container permission is retrospectively being sought for as part of this application. An informal bin storage area that was not previously approved but referenced within the documentation submitted within this application is also provided in this area. The below images show the existing arrangement of this area:



Planning Officer Photo, taken 15 July 2019

Restrictive Covenants

35. There are no restrictive covenants or easements listed on the property title submitted with the application for the subject site, located within Lot 1 of PS 415801 B.

Site Surrounds

36. The surrounding area is a mixture of residential and commercial properties. Figure 2 of the acoustic report prepared by WMGA, dated 9th May 2019 provides an aerial photo showing the subject site and surrounding noise sensitive receivers (e.g. closest residences):



Figure 2: Aerial Photo of Subject Site and Surrounds

37. To the north, on the opposite side of Victoria Street is a mixed-use high density development incorporating ground floor commercial uses, with apartments above. The built forms of these complexes are generally 9 storeys. This land is zoned Commercial 1 Zone.
38. To the east is the Yarra River. On the eastern side of the Yarra River is Harrison Court. This is a residential area located within the General Residential Zone, Schedule 1 of the Boroondara Planning Scheme. Several residences are located along Harrison Court, with large single dwellings oriented to face the river.
39. To the south, on the opposite side of Elaine Court, are residential complexes ranging in height from three to five storeys also located within the Comprehensive Development Zone, Schedule 1.
40. To the west of the subject site is No. 10 and No. 20 River Boulevard. These allotments are presently utilised for car parking associated with the Victoria Gardens Shopping Complex and the subject site.
41. However, a recent planning permit (PLN17/1143) and development plan (PLN16/1156) were approved for No. 10 and No. 20 River Boulevard for the construction of a 13 storey building (plus basement levels) containing dwellings shops, food and drinks premises (cafes), medical centre, childcare centre and restricted retail premises.

The Proposal

42. The key elements of the proposal can be summarised as follows:

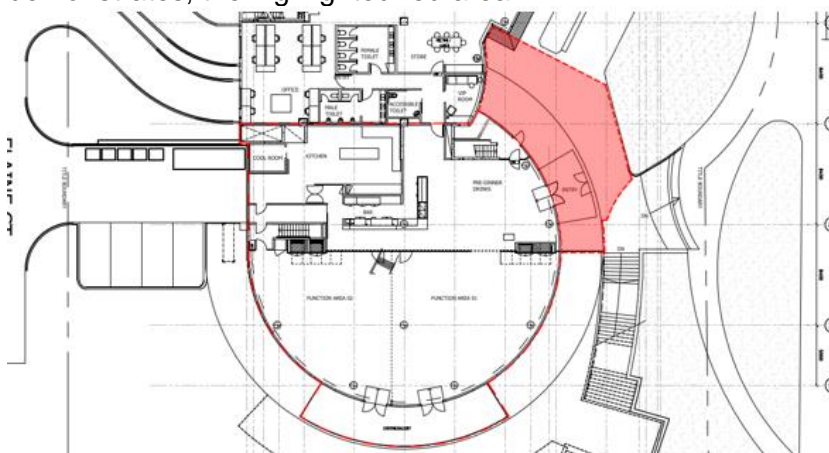
Use

43. Use of the land for a Place of Assembly (Function Centre), as follows:
 - (a) The proposed hours for operation match the existing hours as referenced on the Planning Permit for the sale and consumption of liquor:

- (i) Monday to Saturday: 9AM to 12 midnight; and
 - (ii) Sunday: 10AM to 12 midnight.
- (b) A total of 350 patrons will be unchanged from the maximum number of patrons as referenced on the Planning Permit for the sale and consumption of liquor.
 - (c) The venue operates over two levels, the lower level is known as the 'River Terrace' and due to the topography of the land is level with Elaine Court. The upper level is described as the 'Panorama Room' and due to the topography is level with Victoria Street. Both levels include outdoor areas, a terrace on the lower and balcony on the upper that face east. These outdoor areas shown in the red line plans (VCGLR Liquor Licence) are licensed. There is no maximum patron numbers or hours of operation for these outdoor areas.
 - (d) Music including amplified music in the form of DJs or live bands internal to the premises. No amplified music is played outdoors.
 - (e) Car parking will be made available within the subject building, as previously identified. Four at-grade car parking spaces are located to the south of the building along with the storage unit and informal bin storage area (this bin storage area has not been previously approved, nor has it been applied for in the current application).

Sale and consumption of liquor

- 44. It is proposed to increase the area for the sale and consumption of liquor to include part of the upgraded forecourt area adjacent to Victoria Street, as the below extract from the plans demonstrates, the highlighted red area:



- 45. The sale and consumption of liquor is proposed to commence from the times listed above, but conclude at 10pm on all days. This area is intended to be utilised for pre-dinner and arrival drinks.

Buildings and works

- 46. Installation of a storage shed within the southern setback of the building, upon an existing asphalt apron. The storage shed will be positioned 0.5 metres south of the existing building and 0.21 metres east of the adjacent garden bed.
- 47. The storage shed will adopt an overall height of 2.5 metres above natural ground level, a width of 1.7 metres and length of 6 metres. The storage shed will be painted black and is intended to be utilised for the storage of chairs.

Legislation Provisions

48. The amendment has been requested pursuant to Section 72 of the *Planning and Environment Act 1987* (the Act). Section 72 of the Act states:
- (1) A person who is entitled to use or develop land in accordance with a permit may apply to the responsible authority for an amendment to the permit.
 - (2) This section does not apply to—
 - (a) a permit or a part of a permit issued at the direction of the Tribunal, if the Tribunal has directed under section 85 that the responsible authority must not amend that permit or that part of the permit (as the case requires); or
 - (b) a permit issued under Division 6.
49. Planning Permit 000410 was issued on 11 August 2000 and was not issued at the direction of the Tribunal or under Division 6 of the Act.
50. Section 73 of the Act states that Sections 47 to 62 of the Act apply to the amendment application. This allows the Responsible Authority to apply the abovementioned sections of the Act to the amendment application as if it was an application for a permit.

Planning Scheme Provisions

Zoning

51. The subject site is located both within a Road Zone, Category 1 (RDZ1) and within the Comprehensive Development Zone, Schedule 1 (CDZ1) as the following image from Planning Maps Online demonstrates:



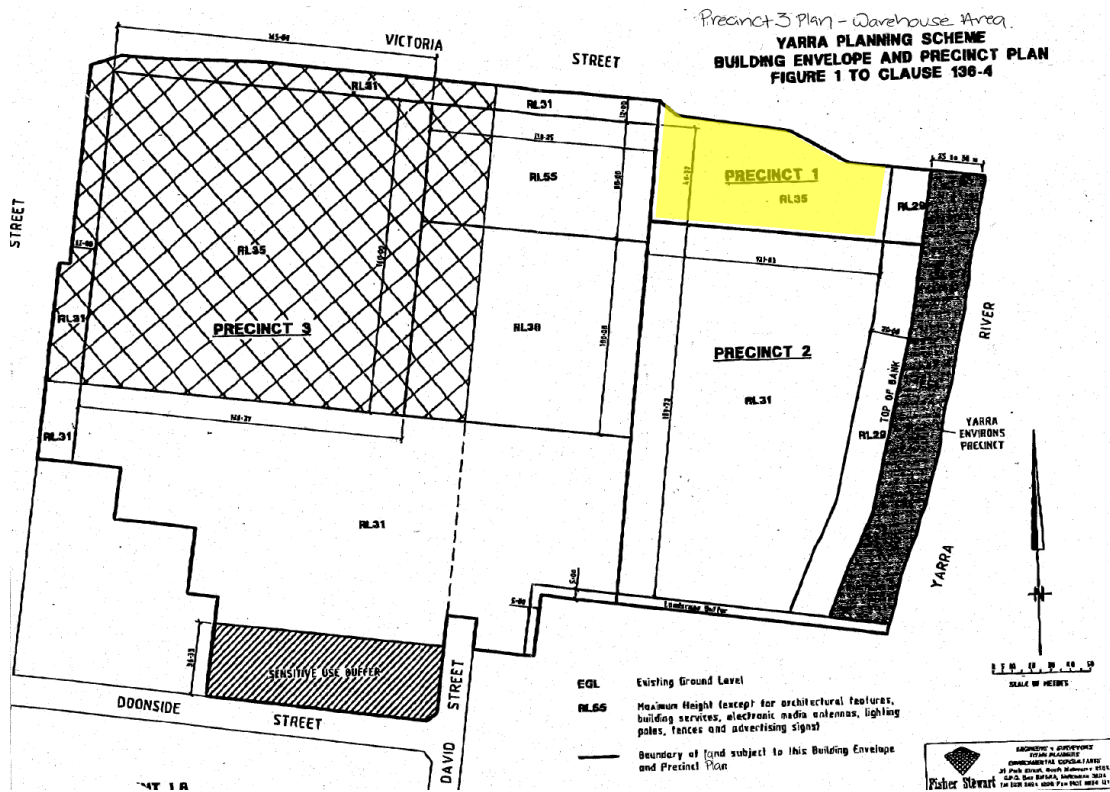
Pink = RDZ1, Blue = CDZ1, Location of buildings and works shown by asterisk

Road Zone, Category 1 (RDZ1)

52. Pursuant to Clause 36.04-1 of the Yarra Planning Scheme (the Scheme), a Place of Assembly and/or Function Centre is not listed under Section 1 (Permit not required) or Section 3 (Prohibited) and therefore a planning permit is required pursuant to the zone requirements for a Function Centre use.
53. The location of the buildings and works sought as part of this application are indicated by the yellow asterisk above. As the location of the buildings and works is not within the RDZ1 the requirements of the RDZ1 as it relates to buildings and works do not apply.

Comprehensive Development Zone, Schedule 1 (CDZ1)

54. Under Section 1 of Schedule 1 to the CDZ, a permit is required for a Place of Assembly if it is located in Precinct 1 or 2. As the following precinct map indicates, the subject site is located in Precinct 1:



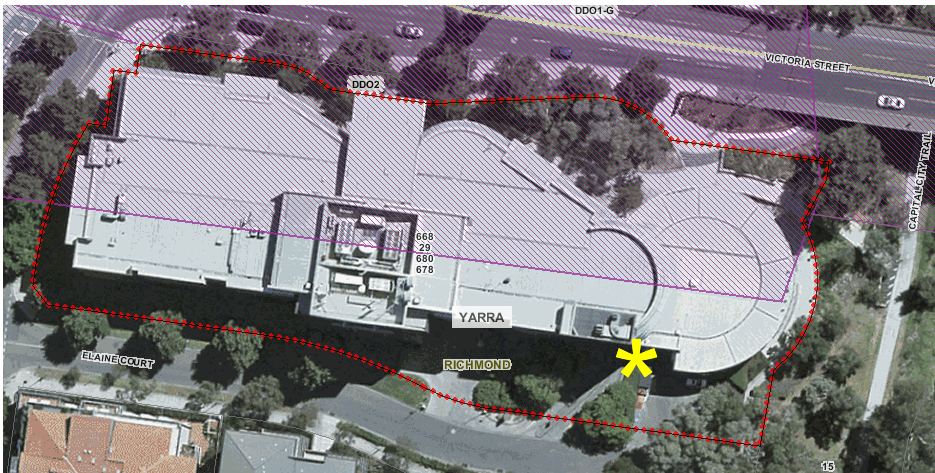
55. Under section 4 of Schedule 1 to the CDZ, a permit is not required to construct a building or to construct or carry out works if in accordance with a development plan prepared to the satisfaction of the responsible authority. The proposed buildings and works are not consistent with the existing development plan and therefore a permit is triggered pursuant to this clause.
56. Under section 5 of Schedule 1 to the CDZ, the provisions of clause 44.04 Land Subject to Inundation Overlay, Clause 42.03 Significant Landscape Overlay, Clause 43.02 Design and Development Overlay and Clause 43.01 Heritage Overlay do not apply to any development constructed in accordance with an approved development plan. As the proposed buildings and works are not consistent with the existing development plan, regard must be given to all overlays that are applicable to the site.
57. Sections 6, 7, 8, 9 and 10 outline requirements for a development plan, pedestrian amenity and access plan, management plan, transport plan and landscape plan. These documents are not required to be modified as a result of the application.
58. Section 18 outlines car parking controls. As previously identified, the car parking controls for the site have already been addressed through existing Planning Permit PLN17/0684 and Development Plan Amendment AML8.
59. Section 20 states that facilities for vehicles to load and unload must be provided on the land to the satisfaction of the responsible authority.
60. Section 21 states that goods must be stored and transported to, from and on the land to the satisfaction of the responsible authority.

Significant Landscape Overlay – Schedule 1 (SLO1)

- 61. Pursuant to the requirements of Clause 42.03-2 a planning permit is required to construct a building or construct or carry out works. This does not apply if a schedule to the overlay specifically states that a permit is not required.
- 62. Clause 3.0 of Schedule 1 to the SLO1 identifies that a permit is not required to construct a building less than 6 metres in height above natural ground level at any point.
- 63. The proposed storage shed will be 2.5 metres in height above natural ground level and therefore there is no requirement for a planning permit pursuant to this clause.

Design and Development Overlay, Schedule 2 (DDO2)

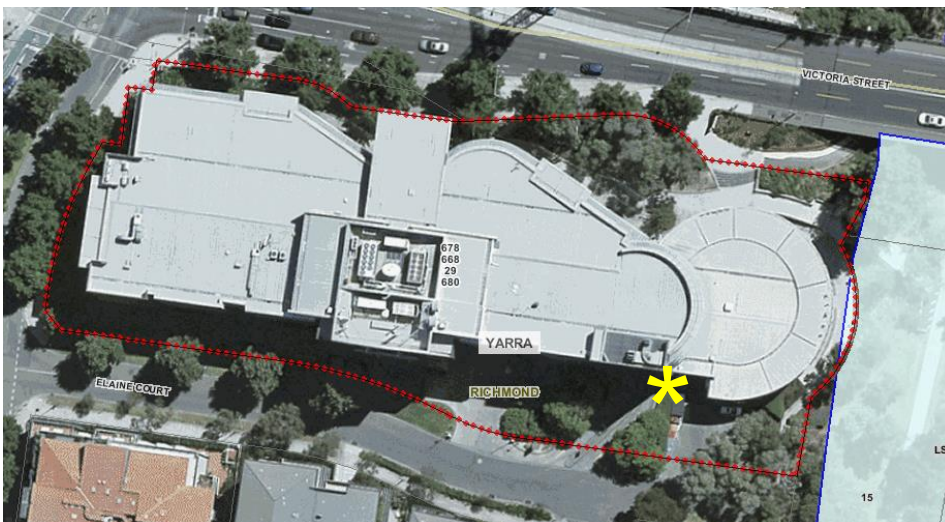
- 64. As the following image from Planning Maps Online demonstrates, the DDO2 covers land associated with the subject site along the northern half of the allotment and does not apply to the area where buildings and works are proposed, shown asterisked:



- 65. The requirements of the DDO2 therefore do not apply.

Land Subject to Inundation Overlay (LSIO)

- 66. As the following image from Planning Maps Online demonstrates, the LSIO covers land associated with the subject site along the eastern boundary and does not apply to the area where buildings and works are proposed, shown asterisked:



- 67. The requirements of the LSIO therefore do not apply.

Environmental Audit Overlay (EAO)

68. The Environmental Audit Overlay applies to the subject site. As the use of the land for a Function Centre is not a sensitive use, the requirements of the overlay do not apply.

Particular Provisions

Clause 52.06 – Car Parking

69. The CDZ1 provides a specific parking rate for a Place of Assembly use and therefore the parking rate provided within Clause 52.06 does not apply.
70. The CDZ1 requires 0.3 car parking spaces to be provided per seat or square metre available to the public. The use utilises 73 shared car parking spaces that are made available exclusively for the Place of Assembly during functions and 4 at-grade staff spaces.
71. The following are extracts from the endorsed Car Parking Management Plan associated with Stage 1 in regards to the car parking requirement and endorsed car parking allocation:

Table 3 Stage 1 – Car Parking Requirement

Use	Floor Area	CDP Rate	No. of Car Spaces
Office	11,308m ²	2.5 spaces / 100m ²	283 spaces
Fenix Events	350 patrons	0.3 spaces / seat	105 spaces
Café	80 seats	0.3 spaces / seat	24 spaces
Total			412 spaces

Table 5 Stage 1 – Car Parking Allocation

Level	No. of Spaces	Allocation
Basement Level 1 & 2	84 spaces	Office (7) Café (4) *Shared (73): Commercial Pay and Display, Fenix Events & Café Customers
Basement Level 3 - 5	148 spaces	Office
At Grade	4 spaces	Common Spaces
10 River Blvd	117 spaces	Office
	44 spaces	Commercial Pay and Display
Total	397 spaces	

*The shared provision of 73 car spaces on basement level 1 and 2 must be made available solely to Fenix Events when an event is being held at Fenix.

Based on the above allocation, the following effective provision is provided to the respective uses.

72. The above has been reviewed and endorsed by Council's Engineering Unit. A car parking waiver has already been granted for the proposed use of the land for a Function Centre and no further approvals are sought as part of this application.
73. The car parking allocation does reference the four at-grade spaces as being common spaces. The proposal relies on these as being solely designated to the Place of Assembly Use, and therefore in the event the application is supported, a condition should require the existing Car Parking Management Plan to be updated to reference these as being for the use of Fenix Events.
74. Furthermore, in the event the application is supported, a condition should require the proposed basement plans be provided outlining the location of all 73 spaces that are available to the use.

Clause 52.34 – Bicycle facilities

75. Pursuant to Clause 52.34-3, the bicycle requirements for a function centre use are triggered by a floor area of 1500sqm or greater. As the floor area of the proposed function centre is approximately 976sqm, the requirements of this clause do not apply.

Clause 52.27 (Licenced Premises)

76. Pursuant to Clause 52.27, a planning permit is required to use land to sell or consume liquor if the area that liquor is allowed to be consumed or supplied under a licence is to be increased.
77. Decision guidelines at clause 52.27 include:
- (a) *The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
 - (b) *The impact of the sale or consumption of liquor permitted by the liquor licence on the amenity of the surrounding area.*
 - (c) *The impact of the hours of operation on the amenity of the surrounding area.*
 - (d) *The cumulative impact of any existing licensed premises and the proposed licensed premises on the amenity of the surrounding area.*

Clause 53.06 (Live Music and Entertainment Noise)

78. The purpose of this clause is:
- (a) *To recognise that live music is an important part of the State's culture and economy.*
 - (b) *To protect live music entertainment venues from the encroachment of noise sensitive residential uses.*
 - (c) *To ensure that noise sensitive residential uses are satisfactorily protected from unreasonable levels of live music and entertainment noise.*
 - (d) *To ensure that the primary responsibility for noise attenuation rests with the agent of change.*
79. Pursuant to Clause 53.06-1, this clause *applies to an application required under any zone of this scheme to use land for, or to construct a building or carry out works associated with:*
- (a) *A live music entertainment venue.*
 - (b) *A noise sensitive residential use that is within 50 metres of a live music entertainment venue.*
80. *Relevant to this proposal, pursuant to clause 53.06-3:*
- (a) *A live music entertainment venue must be designed, constructed and managed to minimise noise emissions from the premises and provide acoustic attenuation measures that would protect a noise sensitive residential use within 50 metres of the venue.*

General Provisions

Clause 65 (Decision Guidelines)

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

Planning Policy Framework (PPF)

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

Clause 11 (Settlement)

Clause 11.03-1S (Activity centres network)

83. The objective is:

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

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

84. Strategies include:

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

Clause 13.05-1S (Noise abatement)

85. The objective is:

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

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

87. Strategies of this policy include:

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

Clause 13.07-1S (Land use compatibility)

88. The objective is:

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

Clause 15.01-1R (Urban Design – Metropolitan Melbourne)

89. The objective is:

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

Clause 15.01-2S (Building Design)

90. The objective is:

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

Clause 15.01-5S (Neighbourhood Character)

91. The objective is:

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

92. A strategy to achieve the objective is:

- (a) *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 17.02 (Commercial)

Clause 17.02-1S (Business)

93. The objective of this clause is '*To encourage development that meets the community's needs for retail, entertainment, office and other commercial services*'.

94. A strategy of this clause includes:

- (a) *Locate commercial facilities in existing or planned activity centres.*

Local Planning Policy Framework (LPPF)

Clause 21.03 (Vision)

95. The following is offered in this clause:

In the City of Yarra in 2020:

Land Use

- (a) *The complex land use mix characteristic of the inner City will provide for a range of activities to meet the needs of the community*
- (b) *Yarra's exciting retail strip shopping centres will provide for the needs of local residents, and attract people from across Melbourne*

Clause 21.04-2 (Activity Centres)

96. The site is located within the Victoria Street Activity Centre. The relevant objectives and strategies of this clause are:

- (a) *Objective 4 - To maintain a balance between local convenience and regional retail roles in Yarra's activity centres.*
 - (i) *Strategy 4.1 Increase the range of retail, personal and business services, community facilities, and recreation activities, within individual centres.*
 - (ii) *Strategy 4.2 Support the regional role of the Major Activity Centres as an important component of Yarra's economy and as a metropolitan destination.*
- (b) *Objective 5 To maintain the long term viability of activity centres.*
 - (i) *Strategy 5.2. Support land use change and development that contributes to the adaptation, redevelopment and economic growth of existing activity centres.*

Clause 21.04-3 (Industry, office and commercial)

97. Within Yarra the volume of commercial and associated uses is so significant that they form clusters of interrelated activity. The commercial and industrial sectors underpin a sustainable economy and provide employment. Yarra plans to retain and foster a diverse and viable economic base. The objective of this clause is 'to increase the number and diversity of local employment opportunities'.

Clause 21.05-2 (Urban design)

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

- (a) *Objective 16 To reinforce the existing urban framework of Yarra.*
- (b) *Objective 17 To retain Yarra's identity as a low-rise urban form with pockets of higher development.*

Clause 21.08-9 (North Richmond (area north of Bridge Road))

99. Figure 21 of this clause, the Neighbourhood Map of North Richmond, demonstrates that the subject site is located within the Victoria Street Major Activity Centre, as the following extract demonstrates with the subject site identified by the red asterisk:



100. The following relevant elements are offered at this clause:

- (a) *This part of Richmond is largely residential and Victorian and Edwardian in its origins. The consistent character of the residential areas must be protected. The Victoria Street Major Activity centre runs along the northern boundary of this neighbourhood. This activity centre spans approximately 2 kilometres and incorporates a variety of land uses along its length – some vibrant and others more dormant in terms of activity and street frontage.*
- (b) *Within the centre are three precincts:*
 - (i) *Victoria Street East This precinct incorporates the area between Grosvenor Street in the west and the Yarra River to the east. It includes a combination of retail, bulky goods, entertainment, residential and office land uses. The centre has a key interface with the Yarra River, which defines its northern and eastern boundaries. Significant parts of this precinct have recently undergone extensive redevelopment. With a number of key sites in the area still up for redevelopment, it will continue to evolve. New development must enhance the landscape qualities of the Yarra River and include active frontages on Victoria Street and the River. The Victoria Gardens development has the capacity to incorporate further residential development.*
To the east of Burnley Street is an area of mixed industrial character with a pocket of low rise residential development. Given the proximity of this area to Victoria Gardens and the limited demand envisaged for the reuse of large industrial sites, there is potential for a wider range of employment uses including offices to locate in this precinct. It is important to:

- *Protect the pocket of Residential 1 zoned land.*
- *Provide land use close to the Victoria Gardens Activity Centre that supports the role of the centre i.e. residential plus mixed uses.*
- *Continue to retain industry but allow office development further south and east of the Residential 1 and Mixed Use areas.*

Clause 21.05-3 (Built Form character)

101. Being within the CDZ, the site does not have a nominated built form character type in the Scheme.

Relevant Local Policies

Clause 22.05 (Interface Uses Policy)

102. This policy applies to applications for use or development within Business Zones (albeit now Commercial Zones), amongst others. The policy supports the objectives of the MSS by protecting Yarra's diverse land use mix and built form, reducing conflict between commercial, industrial and residential activities, and supporting appropriate industrial and commercial activity.

103. The policy has the following objectives:

- (a) *To ensure that residential uses located within or near commercial centres or near industrial uses enjoy a reasonable level of amenity.*

Clause 22.09 (Licenced premises)

104. This policy applies to all applications for new licensed premises and for the extension (including the extension of floor area, hours and patron numbers) of existing licensed premises.

105. The objectives of this clause are:

- (a) *To protect the amenity of nearby properties and areas by effectively managing the location, size, operation and hours of licensed premises.*
- (b) *To encourage best practice venue design and venue operation for licensed premises.*
- (c) *To protect residential and other commercial uses from excess noise, traffic and car parking issues.*
- (d) *To provide for daytime trade and active street frontages in retail strips, while providing reasonable commercial opportunities for the trading of licensed premises.*

106. This policy outlines a range of guidance at clause 22.09-3 including hours of operation and noise.

Clause 22.10 (Built form and design policy)

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

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

- (e) *Create a positive interface between the private domain and public spaces.*
- (f) *Encourage environmentally sustainable development.*

108. The clause includes various design objectives and guidelines that can be implemented to achieve the above objectives.

Clause 22.11 (Victoria Street East Precinct Policy)

109. The relevant objectives of this clause are:

Land use, activity and development opportunities

To facilitate a mix of land uses appropriate for land forming part of the Victoria Street Major Activity Centre.

Urban Design and Built Form

To relate the siting scale bulk and massing of new development to the distinctive landscape and ex-industrial character of this section of the Yarra River Corridor

To encourage high quality urban design and architecture throughout the precinct which contributes to the public realm, including the Yarra River corridor and street scapes.

110. The relevant policies of this clause are:

Land Use

A mix of land uses, in accordance with the Framework Plan forming part of this policy is encouraged in the redevelopment of all sites within the Precinct, having regard to site constraints.

Hospitality, entertainment and recreational uses, combined with office use, are encouraged east of Walmer Street

Urban Design and Built Form

Built form does not unreasonably impact on the landscape within viewed from the River corridor and public access routes along the River corridor

Other Policies

Victoria Gardens Urban Design Guidelines [VGUDG]

111. These guidelines are incorporated into the Scheme and outline 11 Design Objectives, as follows:

- (a) 4.1 Design Element 1 - Setbacks, building envelopes and height limits;
- (b) 4.2 Design Element 2 – Building form, materials and colour;
- (c) 4.3 Design Element 3 – Orientation, overshadowing and overlooking;
- (d) 4.4 Design Element 4 – Streetscape and landscape;
- (e) 4.5 Design Element 5 – Views and vistas;
- (f) 4.6 Design Element 6 – Car park access and treatment;
- (g) 4.7 Design Element 7 – Open space;
- (h) 4.8 Design Element 8 – Pedestrian movement and security;
- (i) 4.9 Design Element 9 – Advertising signs;
- (j) 4.10 Design Element 10 – Interface areas; and
- (k) 4.11 Design Element 11 – Boat landings.

112. The design objectives that are applicable to the buildings and works to construct the storage shed are provided below:

4.1 Design Element 1 - Setbacks, building envelopes and height limits

- *Acknowledge the value of the historic landmark "Skipping Girl" in the urban landscape;*
- *To ensure development of the site complements and enhances the surrounding streetscape and built form;*
- *To integrate, where appropriate, the layout and design of the proposal with the surrounding neighbourhood and abutting uses;*
- *To reflect a transition of building height, scale and massing in respect to surrounding development; and*
- *To respect the significance of the Yarra River and the valley.*

4.2 Design Element 2 – Building form, materials and colour

- *Building design to capitalise on river corridor and city sky line views;*
- *To articulate strategic aspects of the site, such as the Burnley and Victoria Streets corner, the Victoria Bridge edge and the Victoria Street frontage;*
- *To create high levels of community safety within the site; and*
- *To encourage a variety of architectural forms, roofscapes and façade treatments across the site which is reflective of the cultural and architectural diversity of the surrounding area.*

4.3 Design Element 6 – Car park access and treatment

- *Shared provision of car parking spaces is encouraged, where possible to minimise areas of parking;*
- *To ensure adequate landscaping of ground level car parking areas;*
- *To ensure that the appearance, location and entrances to on site car parking do not detrimentally affect streetscape amenity; and*
- *To minimise pedestrian/vehicle conflict.*

Advertising

113. The application was advertised under the provisions of Section 52 of *the Planning and Environment Act* (1987) with 371 letters sent to surrounding owners and occupiers and three signs displayed on site. Council received thirteen (13) objections, the grounds of which are summarised as follows:

- (a) Noise (venue, leaving patrons, live music, collection of waste);
- (b) Anti-social behaviours (including litter);
- (c) Light spill;
- (d) Location of red line increase inappropriate; and
- (e) Shed materials/colours.

114. A planning consultation meeting was held on 23 October 2018 and attended by eight objectors, the Applicant and Council Planning Officers to discuss all issues and concerns raised in the letters of objection.

115. Following the consultation meeting the applicant submitted an acoustic report prepared by WMGA detailing the existing conditions and proposed acoustic attenuation measures to upgrade the building to ensure compliance with the State Environmental Protection Policies.

116. As previously identified on 24 August 2019 the applicant advised in writing that in the interests of addressing objector concerns, they would be happy to accept conditions on any planning permit issued for the application, that would result in the following:
- (a) No extension to the area for the sale and consumption of liquor. This would result in no liquor within the part of the forecourt area adjacent to the Victoria Street front entrance to the premises.
 - (b) Reduction in the hours on Monday, Tuesday and Wednesday so that the venue would cease operating at 11pm, in lieu of 12 midnight.

Referrals

External Referrals

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

- (a) Head, Transport for Victoria (Determining Authority)

This application was referred to the Head, Transport for Victoria pursuant to Clause 66.02-11 of the Yarra Planning Scheme as buildings and works are proposed in conjunction with a change of use to a Place of Assembly that has a gross floor area greater than 600 sqm. No response was received.

- (b) SLR Consulting (engaged by Council for acoustic peer review)

Internal Referrals

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

- (a) Community Amenity Unit

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

120. Informal comments were sought from Council's Engineering Unit who advised that for car parking spaces with a width of 2.6 metres, a minimum aisle width of 5.8 metres would be required in accordance with the Australian Standard for employee parking (long stay).

121. As the proposal results in an aisle width of 4.4 metres due to the position of the storage shed, Council's Engineering Unit were not supportive of this aspect of the proposal.

OFFICER ASSESSMENT

122. The primary considerations for this application are:

- (a) Strategic justification;
- (b) Use of the land and sale and consumption of liquor;
- (c) Buildings and works;
- (d) Objector concerns; and
- (e) Other Matters.

Strategic Justification

123. The Planning Policy Framework, including local policies, encourage the sustainability of commercial uses. These policies seek to encourage development and use of land which meets the communities' needs for retail, entertainment, office and other commercial services and provide net community benefit in relation to accessibility, efficient infrastructure use and the aggregation and sustainability of commercial facilities, provided that a balance is achieved in relation to off-site amenity impacts.
124. Specifically, Clauses 13.04-1, 21.04-2 and 22.05 identify that noise and the interface between uses must be managed appropriately, particularly in a municipality such as Yarra where *'almost all residents are within 400m of an activity centre... Abutting uses along the length of the strips are generally residential, creating interface conflicts where some uses are not well managed or inappropriate uses are permitted'* (Clause 21.04-2).
125. The proposed function centre in this location is considered to have strategic support given:
- (a) State and local planning policies encourage the concentration of commercial and entertainment uses in activity centres, such as Victoria Street which are well connected to public transport (clauses 11.03-1, 11.03-2 and 21.04-2);
 - (b) Clause 17.01-1 also encourages the aggregation of commercial facilities which can be achieved by locating them in an Activity Centre such as Victoria Street;
 - (c) The purpose of Schedule 1 to the Comprehensive Development Zone includes *to assist redevelopment as a mix of office, retail, entertainment, residential, commercial and ancillary uses*. The proposal would contribute to the provision of commercial and entertainment facilities within this mixed use precinct.
126. Whilst there is overarching strategic policy support for new businesses to locate in Activity Centres such as Victoria Street, the impacts of these venues should be appropriately limited as outlined by relevant clauses such as 22.05, 22.09 and 52.27. These clauses require careful consideration of on and off-site amenity impacts that will be considered later in this report.

Use of the land and sale and consumption of liquor

127. A key purpose of Schedule 1 to the Comprehensive Development Zone is *to ensure that the combination of uses, their overall density and the scale, character and level of redevelopment are compatible with, as relevant, the amenity of the surrounding area and the nature of the surrounding uses*.
128. The proposal is for a change of use, from a restaurant to a function centre. With regard to this it is noted that whilst no liquor licence is sought for the internal areas or the eastern terrace/balcony areas (already in existence), the use of the land for a function centre is intrinsically associated with the sale and consumption of liquor. Any use permit granted will essentially result in changes to the operation of the sale and consumption of liquor from the venue (e.g. from in association with restaurant to in association with a function centre).
129. For this reason, the use of the land will be assessed against the headings contained within Clause 22.09, Council's local policy for licensed premises. The policy contains several headings for assessment, including location and access, venue design, hours of operation, patron numbers and noise that are all relevant to the use application that, as identified, would also have implications for the extent of the existing liquor licence.
130. It is reiterated that the sale and consumption of liquor from inside the existing tenancy and also within the directly adjoining terrace/balcony areas to the east is already permissible due to the existing liquor licence (controlled by the VCGLR). No increase in patron numbers or modification of hours for the sale and consumption of liquor is proposed.

A permit is triggered pursuant to Clause 52.27 for the extension of the red line within the forecourt area. This will also be required to be assessed against Clause 22.09.

131. To evaluate the appropriateness of the amendment in terms of a licensed function centre use, clause 22.05 (Interface Uses Policy) and clause 22.09 (Licensed Premises Policy) contain the relevant policy guidelines.

Location and access

132. The site is located within the Victoria Street Major Activity Centre; a consolidated urban neighbourhood with good access to services, infrastructure and public transport. The site has a direct frontage to Victoria Street and has a car park on site which provides 73 car parking spaces to the subject use at any time a function is held.

133. Whilst policy at Clause 22.09 directs licensed premises with a capacity of more than 200 patrons to within Core Entertainment Precincts, the closest being Victoria Street west of Burnley Street, the sale and consumption of liquor from this site for 350 people has already been approved. Regardless, it is considered the use and associated sale and consumption of liquor is appropriate in this location due to the following:

- (a) The building already exists and has operated as a 350 patron licenced venue for many years. The use of the land for a function centre does not require a new or additional building; rather, it will be within an existing large commercial building that has existed on the land for many years and one that has been identified as being suitable for commercial use zone and in policy.
- (b) The area is well served by public transport, having excellent access to the Principal Public Transport Network (PPTN) through the tram network along Victoria Street.
- (c) Given the site's location within a Major Activity Centre it is also considered that taxis and ride share/Uber services are readily available in the area.
- (d) The land is not zoned specifically for residential and the Comprehensive Development zone encourages entertainment venues to be located within this precinct.
- (e) The venue would not result in an unreasonable cumulative impact on the amenity of the surrounding area, as discussed later.
- (f) There is opportunity for a high level of public safety and surveillance of patrons as they enter and leave the premises due to the access directly from Victoria Street and patron car parking located on-site. People leaving the venue are unlikely to disperse to the south as there is no through road, and only residential uses to the south.

Venue Design and Patron Numbers

134. The policy seeks to ensure that the layout and design of a new licensed premises incorporates safe design principles, that entry and exit points and areas for queuing of patrons are located away from sensitive land uses and that waste management and storage is provided on-site and noise enclosures are provided where bottle crushers are to be used.
135. As this application does not seek to alter the layout or design of the tenancy, but allow for the use to change from a restaurant to a function centre these policies are largely extraneous to this application. It is considered that the large floor area associated with the tenancy provides an adequate layout and facilities to service the use. The endorsed Car Parking Management Plan associated with the Comprehensive Development Plan already anticipates the car parking in association with the Function Centre use, requiring that all shared 73 car spaces be made available to the use when an event is held.

136. It is unlikely that queuing of patrons would occur, as events would typically be invitation only, and waste management will be discussed further, later in this report.
137. Policy requires an assessment of patron capacity against the *VCGLR Liquor Licencing Fact Sheet – Maximum Patron Capacity* (2016). The fact sheet requires an assessment demonstrating:
- (a) *the number of patrons that may be accommodated on the internal premises and (if applicable) on any external areas of the premises based on a ratio of one person per 0.75 square metres.*

138. With regard to the current maximum of 350 patrons to be allowed on site at any time liquor is being sold and consumed, it is considered that this is well below the referenced ratio with regard to the square meterage of 976sqm available to the public (i.e. 1,301 patrons). The floor area can accommodate the 350 patrons, and this number is considered acceptable for the Function Centre use.

Hours of Operation and Noise

139. The proposal does not seek to modify the overall hours for the sale and consumption of liquor associated with the existing venue. The sale and consumption of liquor on the premises, internally and including the eastern terrace/balcony areas, will continue between the following hours:
- (a) Sunday: 10am to 12 midnight
(b) Monday to Saturday: 9am to 12 midnight
(c) Public Holidays: 12noon to 12 midnight
140. The use of the land for a function centre proposes to adopt the hours as referenced above.
141. The sale and consumption of liquor is proposed to include part of the forecourt area adjacent to the Victoria Street front entrance. The sale and consumption of liquor is proposed to commence at the times referenced above, and conclude at 10pm on all days. As proposed, this area would still be available for use after 10pm by patrons, without liquor.
142. The subject site is located within a Comprehensive Development Zone. This zone is not recognised as either a residential zone or a commercial zone, but rather a special use zone. The purpose of the Comprehensive Development Zone is to provide for a range of uses and the development of land in accordance with a comprehensive development plan incorporated into the Scheme.
143. Whilst located within a commercial building, the function centre is located within proximity of several apartment buildings and single residences, located within the Commercial 1 Zone to the north, the Comprehensive Development Zone to the south and the General Residential Zone to the east, across the river.
144. Policy at Clause 22.09-3 provides guidelines for the hours of operation dependent on zone type, however, the policy does not go so far as addressing the Comprehensive Development Zone specifically. Rather, the policy looks at commercial zoning, residential zoning (excluding the mixed use zone) and the mixed use zone separately.
145. A purpose of Schedule 1 to the Comprehensive Development Zone is *to assist redevelopment as a mix of office, retail, entertainment, residential, commercial and ancillary uses*. This is considered to be closely aligned to the purpose of a commercial zone, however, the reference to the residential uses also indicate some overlap with the purposes of the Mixed Use Zone where a mix of residential and non-residential uses are encouraged.

146. Policy at Clause 22.09-3 provides the following relevant guidelines:
- (a) *Licensed premises (including packaged liquor outlets) should not commence the sale and consumption of liquor before 9am.*
 - (b) *Licensed premises in a Mixed Use Zone should not provide for the sale and consumption of liquor beyond 10pm, unless the responsible authority is satisfied that it will not adversely affect the amenity of the area.*
 - (a) *Licensed premises in a Commercial or Industrial zone should not provide for the sale and consumption of liquor beyond 1am, unless the responsible authority is satisfied that it will not adversely affect the amenity of the area.*
 - (b) *For outdoor areas, including smoking areas, rooftops and open courtyards, the sale and consumption of liquor should not occur after 10pm, unless the responsible authority is satisfied that it will not adversely affect the amenity of the area.*
 - (c) *Deliveries to and waste collection from a licensed premises should not occur after 10pm on any day, before 7am Monday to Saturday, or before 9am on a Sunday or public holiday except for those allowed under any relevant local law.*
 - (d) *Emptying bottles into bins in outdoor areas should not occur after 10pm on any day, before 7am Monday to Saturday, or before 9am on a Sunday or public holiday.*
147. The proposed commencement times for the sale and consumption of liquor meet the requirements of the policy and would not commence prior to 9am at the earliest.
148. A condition can be included to ensure the emptying of bottles into bins accords with the above referenced time, consistent with Council's Local Law.
149. Furthermore, whilst the submitted NAAP details the waste management practices and number of bins required, it is considered that the description does not go far enough in addressing the waste management practices and procedures on site. It is considered that the proposed use would generate a large volume of waste that has not been outlined.
150. In addition, while a bin store area has been shown on the plans this has not been submitted as part of the application and has therefore not been considered. Even if it formed part of the application, there is a concern with the location of the bin store area, upon the existing concrete apron associated with the four at-grade car parking spaces. A site inspection carried out by Planning Officers on 18 July 2019 indicated that the placement of bins outside resulted in conflict with vehicles utilising the apron and also detrimentally affected the amenity of the area due to the unregulated appearance of the bin storage area.
151. The Stage 1 approval for the larger overall building and subsequent liquor licence application for Fenix Events always included the storage and provision of waste receptacles within the subject building. The tenancy, a venue for 350 patrons, is not to change. Only the use from a restaurant to a function centre will change as a result of this application. It is considered that this change would not warrant a change to the pre-existing waste arrangements and therefore a condition will require the external bin storage areas to be deleted from the external area.
152. A condition of permit will require a Waste Management Plan to be submitted, prior to the commencement of the use (on the basis that it is currently operating as a restaurant), to include waste storage within the subject building.

153. Whilst the building is already operating as a function centre (without a planning permit) this has evolved from a restaurant over time and it is considered that these conditions are warranted for the formal change of use, and also the proposed extension of the service area, as it is clear from the objections that there have been issues with noise from waste collection.
154. In regards to deliveries to the venue the submitted NAAP outlines that deliveries only occur Monday to Friday, between 9am and 5pm. This is in accordance with the policy guidance above consistent with Council's Local Law. A condition will require deliveries and waste collection to be with the specific times as outlined in Council's Law.
155. With regard to the policy guidance for sites within a Mixed Use Zone, a Commercial Zone and outdoor areas this assessment must determine if the following would not adversely affect the amenity of the area:
- (a) The operation of the use, and therefore the sale and consumption of liquor, from the internal areas and adjacent terraces/balconies between 10pm and 12 midnight (i.e. outside of specified hours supported by policy); and
 - (b) The operation of the use and extension of the red line area for the sale and consumption of liquor within the adjacent forecourt area until 10pm.
156. Referral comments were sought from Council's Community Amenity Unit on the proposal who recommended:
- (a) *The forecourt area to be licenced Thursday to Saturday (10pm) only.*
 - (b) *No music is in the forecourt (outdoor) area at any time.*
 - (c) *A noise limiter be installed.*
157. The recent amenity complaints cannot be ignored, nor can the content of the objections, that primarily raise issues with the existing operation of the premises in regards to noise.
158. It is long held by VCAT that residentially zoned land near, or abutting Activity Centres cannot expect the same level of amenity as would be afforded within a purely residential zone.
159. Senior Member Rickards concluded at paragraph 24 in *Robertson v Yarra CC (2014)* that:
- Living in close proximity to a Major Activity Centre and within a mixed use zone it should be expected that there will be some level of noise over and above what might be expected in a purely residential area. The nearby residents therefore cannot expect their amenity will not be impacted to a certain extent by some level of noise from other uses within the mixed use zone.*
160. It must be reiterated that the subject site is within the Victoria Street Major Activity Centre, with apartment buildings to the north and south that are not included within residential zoning. Whilst consideration of residential amenity must be afforded it is clear that residential amenity expectations within this zone area must be tempered.
161. Clause 22.09 contains specific policy requirements for the assessment of noise, as follows:
- (a) *Noise from the operation of the licensed premises should not have an unreasonable impact on the amenity of the area.*
 - (b) *Noise emissions from licensed premises should comply with the standards specified in the State Environmental Protection Policy or any other relevant requirement such as accepted sleep disturbance criteria or relevant Australian Standards.*

- (c) *On-site noise attenuation measures should be applied for licensed premises where unreasonable amenity impacts on the surrounding area may result from the proposed activities.*
- (d) *Where required, a licensed premise must be designed and managed in accordance with an acoustic report approved by the responsible authority.*

162. In respect of the acoustic performance of the building and the proposal concerning the use, the applicant submitted an acoustic report prepared by WMGA detailing the existing conditions and proposed acoustic attenuation measures to upgrade the building to ensure compliance with the State Environmental Protection Policies.
163. The report concluded that the outlined acoustic attenuation treatments proposed, that will be discussed further in the following paragraphs, are likely to enable compliance with the relevant criteria, legislation and guidelines for mechanical equipment, music and patron noise.
164. The submitted acoustic report was reviewed by Council's external acoustic consultants, SLR Consulting (SLR). SLR have recommended that the details of the attended measurements (times and results for each location) be included for transparency and this can be required by way of condition.

Mechanical Equipment Noise

165. WMGA concluded that in order for the existing rooftop plant to achieve compliance with the State Environment Protection Policy – Control of Noise from Commerce, Industry and Trade (SEPP N-1) rectification works would be required, and potential treatments include:
- (a) *Each of the existing fans must be replaced so that the cumulative sound power level of the new fans has a maximum sound power level of 95 dB(A). Should the fans operate during the EPA-defined night period, the cumulative value will be reduced to 90 dB(A).*
 - (b) *Replace KEF-1 fan with same fan which is used for KEF-2. If this option is selected, then only one fan can operate at any time. Both fans cannot operate simultaneously.*
 - (c) *Should the existing fans be retained, then additional acoustically lined duct and/or acoustic attenuators will need to be installed to the discharge side of the fans.*
166. Whilst the applicant has stated they believe the rectification of the noise generated by the kitchen exhaust fans would be onerous to require of the applicant as this is a broader building issue, rather than linked to the use application, Planning Officers disagree. It is clear that the kitchen exhaust system is linked to the kitchens of the Function Centre use and therefore rectification works are required.
167. In regards to mechanical equipment noise, SLR have raised concern with the upper level apartments at Nos. 3 to 6 Christine Crescent not being considered by WMGA and recommend WMGA review the noise control measures with regard to these residences.
168. SLR identifies that WMGA includes options for rectifying the exceedances, as referenced above. To ensure it is clear what option will be undertaken to rectify the non-compliant roof top plant and also ensure that the residential receivers at the upper levels of Nos. 3 to 6 Christine Crescent are considered, a condition will require this report to be updated to identify what rectification method will be undertaken and provide an assessment of these additional residential properties.
169. Furthermore, a post occupational acoustic report undertaken within 3 months of permit issue and commencement of use will be required to demonstrate compliance or identify what matters require further attention and what rectification works would be undertaken.

A post occupational acoustic report would provide a safeguard to ensure that these issues have been resolved, and that the venue is in compliance.

Music and Patron Noise (Outdoors)

170. The proposed extension of the red line area to include the forecourt is proposed by the applicant. It is proposed for this area only to be used for the sale and consumption of liquor until 10pm everyday, with no parameters provided for the general use of this area.
171. To successfully limit noise, WMGA recommends no more than 45 patrons be accommodated in this area, no music within this area and for the use of this area to conclude at 10pm. SLR agrees with this recommendation. In addition, Council's Community Amenity Unit requested this area to be licenced Thursday to Saturday only.
172. The extension of the red line area and use is supported within the forecourt area, subject to the use and sale and consumption of liquor be restricted until 10pm on all days with a maximum of 45 patrons. Whilst the recommendation of the Community Amenity Unit has not been adopted, to restrict the use to Thursday – Saturday, it is considered the report by WMGA has adequately demonstrated that subject to conditions the outdoor area could successfully operate until 10pm, in accordance with policy.
173. The applicant has advised by email on 24 August 2019 that to address the objector concerns they would be happy to accept conditions on any permit issued that delete the extension of the red line within this area. This can therefore form a condition.
174. It is clear from the WMGA report that the use of the forecourt area, even without liquor, would result in unreasonable amenity impacts from patron noise. Given the proximity of the forecourt area to the apartment buildings on the northern side of Victoria Street the use in this location is still recommended to be restricted to 45 patrons and until 10pm in accordance with policy.
175. It is clear from the objections received that music and patron noise from the outdoor terrace/balcony areas that face east result in a high level of disturbance. The application seeks that these areas be used until 12 midnight, on all days.
176. The recommendations from WMGA confirm that the use is not currently operating in a fashion that would limit amenity on the surrounding areas, with the following recommendations:
 - (a) A combined total of 50 patrons can occupy the Panorama and River Terrace outdoor terrace areas.
 - (b) This number can be increased for ceremonies, so long as a speech reinforcement system be calibrated to ensure that the maximum noise level (of the celebrant) does not exceed 75 dBA Leq @ 3 m from the loudspeaker. The speech reinforcement system must also be angled west toward the venue base building.
 - (c) No music is to be played outdoors.
 - (d) The areas must cease use at 10pm.
 - (e) Doors to be closed (except for ingress and egress).
177. SLR agrees with the above restrictions and it is recommended that restrictions on the hours, number of patrons and music form conditions to ensure that the use is appropriately managed. It is understood that this would also result in the sale and consumption of liquor from these areas being restricted. In regards to the requirement for doors to be closed, except for the ingress and egress of patrons, automatic doors cannot be enforced however this is a clear requirement of the acoustic reporting and would be required to be complied with.

178. In regards to the recommendation for increased patron numbers subject to a calibrated speech reinforcement system it is considered that further details on how this would be managed would be required for support. Parameters such as number of outdoor ceremonies a year, time of ceremonies (e.g. is it the day / evening / night period) and maximum length of ceremonies would be required for support. As this has not been provided, this will be required to be removed from the Acoustic Report.

Music and Patron Noise (Indoors)

179. As previously outlined, it must be determined whether the use of the internal areas between 10pm and 12 midnight is appropriate, with regard to the surrounding sensitive residential uses and policy direction contained at Clause 22.09. The WMGA report recommends:

- (f) Music is not to exceed octave band levels provided in Table 25 if both venues are operating. If only one venue is operating, levels can be 3 dB higher. The nominated levels are to be met 3 m from any loudspeaker within the venue.
- (g) Music is only to be played through a dedicated in-house system. The system is to include spectrum shaping capabilities and is to be set up by a suitably qualified acoustical consultant to ensure that the nominated noise levels are not exceeded.
- (h) Access doors between the inside and outside patron areas are to be kept closed unless being used for access. Installation of automatic door closers is recommended.
- (i) A follow up assessment of music noise is recommended to ensure that compliance has been achieved.

180. SLR endorses the above approach and a condition will require post occupational testing, within three months of the Function Centre use according with the requirements outlined above. To be included within the post occupational testing, as identified by SLR, is an assessment from a location exposed to noise from the venue roof, as well as the glazed walls, and undertaken for sufficiently long to provide an indication of noise leakage via external doors onto the deck.

181. Council's Community Amenity Unit recommended the installation of a noise limiter due to the recent complaints they have received regarding the operation of the use within night time period. This is considered an appropriate measure. Whilst the WMGA report advised that a suitably qualified consultant would set the music levels in accordance with the report, there is a possibility that a third party could tamper with these settings. A condition will be implemented to require a noise limited to ensure a greater level of control around the acoustics is required.

182. It is considered that the music and patron noise from inside the venue can be managed, subject to the recommended conditions being implemented. The post occupational acoustic report would also provide a safeguard to ensure that these issues have been resolved, and that the venue is in compliance.

Hours of Operation and Noise Summary

183. With regard to the above it is considered that plant, music and patron noise would be successfully addressed through the proposed acoustic attenuation measures. Post occupational testing would also ensure that if compliance is not achieved additional measures would be required to be implemented to guarantee compliance.

184. Furthermore, standard conditions should be included on the permit to ensure the use at all times complies with the requirements of the State Environment Protection Policy – Control of Music Noise from Public Premises (SEPP N-2) and SEPP N-1.

185. Further consideration must be given to the appropriateness of the use operating until 12 midnight every night as proposed.
186. The applicant has advised by email on 24 August 2019 that to address the objector concerns they would be happy to accept conditions on any permit issued to restrict the operating hours until 11pm Monday to Wednesday. With the location of the use in a quasi-commercial, quasi-residential zone this is a necessary restriction.
187. Member Davies concluded at Paragraph 47 of *Bailey Kennett Pty Ltd v Yarra CC* [\[2018\] VCAT 698](#):

Given the particular location in the MUZ, close to the activity centre, it is reasonable to have a closing time on Sunday nights later than 10pm, as now specified in the policy. However, I think trading until midnight is not reasonable. Sunday is no longer seen as 'a day of rest' in a religious sense and Sunday shopping hours in Victoria have been deregulated for many years. However, there is still an expectation that Sunday will be treated differently to other days, especially Thursday to Saturday. This is an area where there are nearby residents in a MUZ. My concern relates more to noise and other disturbance associated with dispersal of patrons after the closing time, rather than noise from within the premises...

188. The above decision discusses the appropriateness of later hours on a Sunday, ultimately determining that Sunday to Wednesday is to be afforded a greater level of sensitivity due to community expectations. It is therefore recommended that the use be limited until 11pm, Sunday to Wednesday.
The operation until 12 midnight Thursday to Saturday is considered appropriate with the recommendations of the acoustic reporting, and would be in line with community expectations for weekend days.
189. The recommended conditions discussed above are quite explicit in terms of controlling noise. Recommended conditions to restrict the use, together with the mandatory requirements under both SEPP N-1 and SEPP N-2, would ensure that the proposed activity on the land would not cause unreasonable detriment to surrounding residential properties in an area which is zoned for a mix of uses.

Noise and Amenity Action Plan

190. To ensure a venue is managed appropriately, Council's local policy at clause 22.09 requires submission of a NAAP which outlines management procedures aimed at ensuring good patron management. This document outlines the specific management procedures to be followed at all times, and includes details relating to staffing, responsible service of alcohol and complaint management procedures.
191. In regards to patron noise management, the report prepared by WMGA recommends the facility managers actively manage the patron noise. These measures include:
- (a) *Implementing management plans for non-typical events (eg. Patrons shouting) within outdoor areas to ensure that the events are resolved promptly.*
 - (b) *Communication with patrons relating to expectations during arrival and departure from the subject site. This will include minimising loud communication, and operating vehicles in 'reasonable' manner.*
 - (c) *Clear signage within the venue which notifies patrons to be aware of their surroundings and to conduct themselves in a 'reasonable' manner.*
192. In regards to point (a) and (b) it is considered that these items should be addressed within an updated NAAP. These can form conditions of permit.

193. In regards to (c), the following condition can also be included on any permit issued:

Before the commencement of the sale and consumption of liquor, the applicant must, to the satisfaction of the Responsible Authority, display a sign at the exit of the licensed premises advising patrons to respect the amenity of adjacent uses and to leave in a quiet and orderly manner.

194. It is acknowledged that the use of the site for a function centre gives rise to the potential for various groups to hire and use the space for a variety of events. There is an associated risk that the event operator may not be fully aware of the obligations of the planning permit and NAAP.

195. Accordingly, in addition to the above the NAAP should require and specify the role and function of a venue manager who is responsible for bookings, providing those booking a function with the obligations of the permit and NAAP and for management of events when they are taking place. This measure will ensure a reasonable degree of accountability for the venue for management of patrons.

196. Litter has been an issue that has been consistently raised within the objections. This is partly due to the lack of physical barriers between the river terrace, the outdoor area adjoining the lower level, and the public realm. To manage this aspect of the operation a condition can be included for the NAAP to be updated to require hourly patrols of all outdoor areas, as well as at closing time, to ensure all litter associated with the venue is remedied.

197. One area of noise that has been raised within the objections and not addressed, is the noise generated from patrons leaving via cars within the car park allocated to the Function Centre. A further condition will require the NAAP to include details of how patrons who exit via private vehicles will be managed in regards of exiting in an orderly and quiet fashion.

198. SLR recommended details of the means by which occupation of the outdoor patron areas is to be limited to the numbers specified should be provided. This should also be required.

199. In regards to light spill, the NAAP identifies that the subject site is well lit along the frontage to Victoria Street and at the main entrance. A condition will require the NAAP to indicate that all external lighting along the eastern façade be baffled.

200. Objections received indicate that there is light spill to the east, across the river, from internal lights (e.g. disco lights). It is considered that the restricted hours of operation recommended by this assessment would adequately limit light spill from the use to be within appropriate hours.

201. An item the NAAP does not touch on, is the management of smokers. This is to be included within the NAAP, and also details of how the closing of all outdoor areas at 10PM will be managed.

202. In addition to these measures, Council's Local Law No.8 prohibits the consumption of liquor in public places and Council's Community Amenity Unit and Victoria Police are charged with ensuring these venues operate in an appropriate manner. Victoria Police generally focus on patron behaviour on the street and Council's Community Amenity Unit generally deals with issues of noise from within premises. Regardless, the NAAP will also be updated to reference how the quasi-public and outdoor areas are to be managed to limit litter outside of the premises.

203. The NAAP with updated requirements is considered to be satisfactory in mitigating negative cumulative impacts associated with the venue. To ensure the venue is managed in accordance with these specifications, the NAAP should be endorsed by way of condition, on any permit issued.

Cumulative Impact Assessment

204. It is acknowledged that the mix of licensed premises in an area can influence potential cumulative impacts. These cumulative impacts can be both positive and negative. For instance, areas with a range of licensed venues (small bars, large hotels, and restaurants) can create vibrant commercial areas with fewer impacts, whereas areas with many large scale bars and nightclubs within proximity of each other could potentially result in more negative impacts to the immediate neighbourhood accumulatively.
205. The “Corner Hotel” decision (*Swancom Pty Ltd T/as Corner Hotel v Yarra City Council & Ors*) provides an assessment methodology for considering applications that may result in cumulative impact. The decision also acknowledges that depending on the nature of the use (i.e. premise type, patron numbers and operating hours) the required level of assessment will vary.
206. Based on this decision, Council has developed an assessment tool to determine the likelihood of cumulative impact occurring as a result of a proposal based on risk factors associated with the type, size and closing hours of the premises, to help determine what level of assessment is appropriate.

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

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

207. Applying the matrix of risk, a reasonable consideration would suggest a score of 1-3 would be no risk, higher than 3 would be a potential risk. In this instance the venue achieves a maximum score of 6, thus would be a venue of potential risk.

208. Practice Note 61 – Licensed premises: Assessing cumulative impact was released by the former Department of Planning and Community Development (DPCD) in March 2011, and provides a framework for assessing cumulative impact.
209. A number of these factors such as the policy context and land mix of the surrounding area have been discussed previously within this report, with anticipated amenity impacts also considered in detail. An assessment including the mix of licensed premises and the dispersal of patrons will need to be undertaken.

The mix of licensed premises

210. When assessing the mix of licensed premises Practice Note 61 provides some guidance as to what is to be achieved. The practice note states that *the mix of licenced premises in an area can influence potential cumulative impacts. For example, an area with a mix of restaurants, cinemas and small bars may have fewer impacts than an area with primarily large bars and nightclubs.*
211. According to the VCGLR the following liquor licences (excluding limited licenses) exist within 500m of the site:

319570072 (General Licence)	61 North Street, Richmond	Brogan's Way Distillery
31913117 (General Licence)	12 River Street, Richmond	Royston Hotel
320554013 (Packaged Liquor)	Victoria Gardens Shopping Centre	Liquorland
32272035 (On- Premises Licence)	Victoria Gardens Shopping Centre	Café Krifi
32270180 (On- Premises Licence)	Victoria Gardens Shopping Centre	Hoyts Cinema Complex
32068339 (Packaged Liquor Licence)	Victoria Gardens Shopping Centre	Toscano's Victoria Gardens
32204406 (Restaurant and café licence)	663 Victoria Street, Abbotsford	Four Larks
32319285 (restaurant and café licence)	677-679 Victoria Street, Abbotsford	Kitty Burns
32321761 (Restaurant and café licence)	677-679 Victoria Street, Abbotsford	Frankie Says

212. Most of the existing licenses are associated with cafes and the Victoria Gardens Shopping Centre that would have a significant food offering and early closing time, thus a reasonable balance is being provided within the area and it is not considered that it is offering a risky cluster of 'vertical drinking' venues.
213. It is considered that the Function Centre in proximity of the above referenced liquor licenses would not result in negative cumulative impacts, nor positive ones, given the differences between the venue offerings.

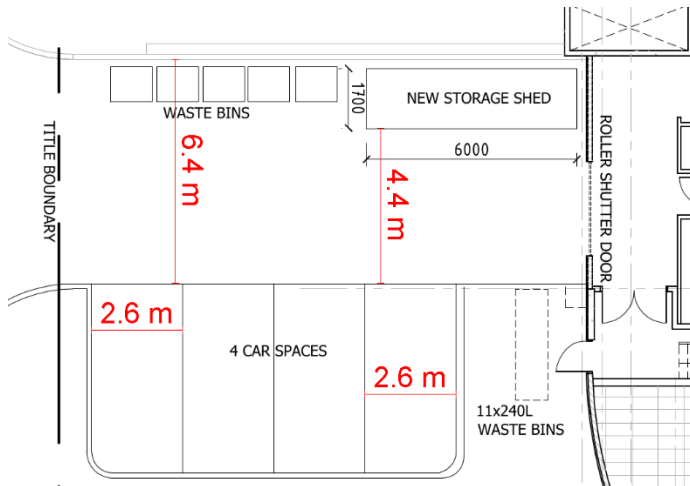
Transport and dispersal

214. The practice note requests consideration of the dispersal routes of patrons from the premises in order to assess potential impacts on the amenity of the surrounding area, noting that how patrons leave the licensed premises at closing time can have a significant impact on the amenity of an area.
215. As recommended throughout this report, conditions would require the function centre use to conclude at 11pm Sunday to Wednesday and 12 midnight Thursday to Saturday. Furthermore, the outdoor uses would cease at 10pm on any night. With this type of use it is anticipated that large groups of patrons would disperse at similar time periods.
216. There are considered to be two main entry/exit points to the venue. To Victoria Street (to those dispersing to public transport, taxis and rideshares) and to the internal car parking area. There is no need for patrons to pass through the residential apartment buildings to the north and to the south, with the river providing a barrier to those residences located on the east side of the river.
217. Based on the above identified dispersal routes it is not considered that the proposed use in an Activity Centre would result in unreasonable impacts, considering the limitation of the use to 11pm Sunday to Wednesday.

Buildings and works

218. As outlined earlier in the report a permit is required to construct a building or construct or carry out works under the CDP1 of the Scheme. The buildings and works are not triggered by any other zone or overlay.
219. The proposed buildings and works are relatively minor in scale and effectively formalise an area for the storage of extra chairs within the rear service area. The works are consistent with the relevant State and local policy given that it supports the purpose of the zone and commercial activity along Victoria Street and the associated Major Activity Centre.
220. The proposal is also suitable in terms of built form given that it would be low scale and not impact on views from the Yarra River. The works do not change the overall height of the larger built form behind, nor increase the predominant scale and massing of the building.
221. It is considered that the development achieves a high level of compliance with Clause 22.10 and the broader policies within this clause, as follows:
 - (a) Given the location of the storage shed it will not have a detrimental impact on the Yarra River and its environs. It's location upon an existing asphalt apron will also ensure stormwater runoff is not increased nor impact as a result of the proposal.
 - (b) The storage shed will not have a detrimental impact on the amenity of adjoining land users, residential or commercial, due to the low scale nature and purpose for the storage of items.
 - (c) An objection was received requesting that the finishes of the shed be constructed in conjunction with the finishes of the existing building. The finish of the storage shed in black adequately blends in with the materiality of the overall development.
222. Clause 22.05 (Interface Uses Policy) requires consideration of the off-site amenity impacts to residential properties from commercial development (including overshadowing and visual bulk).
223. Due to the height of the storage shed not exceeding 2.5 metres, and minimum separation distance of approximately 20 metres to residences it is not considered that the storage shed would result in any off-site amenity impacts.

224. With regard to the *Victoria Gardens Urban Design Guidelines [VGUDG]* it is considered that the proposal achieves a high degree of compliance with *Design Element 1 - Setbacks, building envelopes and height limits* and *Design Element 2 – Building form, materials and colour*.
225. The proposed storage shed is neat in appearance, low in height and provides adequate setbacks to the River and Elaine Court. The basic construction of the storage shed would ensure that the form is not overbearing and would blend in with the larger development behind.
226. In regards to *Design Element 6 – Car park access and treatment* there is concern with the reduced aisle width the placement of the storage shed would result in, as follows:



Excerpt of development plans, with aisle widths imposed using Trapeze Desktop (Imaging software that provides the ability to scale and measure plans).

227. As previously identified, the VGUDG has the objective to minimise pedestrian/vehicle conflict. Furthermore, Clause 22.10 requires new development to ensure car parking areas allow for safe and efficient movements within the development.
228. Council’s Engineering Unit reviewed the proposal and commented that the position of the new storage shed would result in aisle widths that are not compliant with the Australian Standard and would result in inefficient access/egress into the car spaces opposite.
229. This is contrary to the above referenced policies and therefore, to ensure that new development ensures car parking areas allow for safe and efficient movements within the development, the storage shed will be required to be deleted.

Objector concerns

Noise (venue, leaving patrons, live music, collection of waste)

230. This concern has been discussed at paragraphs 139 - 203.

Anti-social behaviours (including litter)

231. This concern has been discussed at paragraphs 190 - 203.

Light spill

232. This concern has been discussed at paragraph 199 - 200.

Location of red line increase inappropriate

233. This concern has been discussed at paragraphs 170 - 178.

Shed materials/colours

234. This concern has been discussed at paragraphs 218 - 229.

Other Matters

235. If an amended permit were to issue the permit preamble would be required to be updated to acknowledge the inclusion of the use, from:

On premises liquor licence

To:

Use of the land as a place of assembly (function centre) including sale and consumption of liquor (on-premises liquor licence)

236. The amended permit preamble will not include reference to the extension of the red line area, or the buildings and works to construct the storage shed, as these aspects have been recommended to be deleted by condition.

237. The existing permit where references have been made to use, would be required to be updated to reference use and the sale and consumption of liquor.

238. Condition 1, from:

All development and use must accord with the endorsed plans. Any alterations must be approved by the Responsible Authority.

To:

*All development and use **(including the sale and consumption of liquor)** must accord with the endorsed plans. Any alterations must be approved by the Responsible Authority.*

239. Condition 2, from:

The layout of the uses on the endorsed plans must not be altered without the written consent of the Responsible Authority.

To:

*The layout of the uses **(including the sale and consumption of liquor)** on the endorsed plans must not be altered without the written consent of the Responsible Authority.*

240. Condition 4, from:

The use hereby permitted must only operate between the hours of 10.00am to 12 midnight (Sunday), 9 am to 12 midnight Monday to Saturday and 12 noon to 12 midnight (Public Holidays) unless further consent is granted by the Responsible Authority.

To:

*The **sale and consumption of liquor** hereby permitted must only operate between the hours of 10.00am to 12 midnight (Sunday), 9 am to 12 midnight Monday to Saturday and 12 noon to 12 midnight (Public Holidays) unless further consent is granted by the Responsible Authority.*

241. The existing expiry condition will be required to be updated to reference the date of the amended permit, rather than the original permit date, from:

This permit will expire if the use or development is not commenced within one year from the date of this permit. All development must be completed within 2 years from the date of this permit. The Responsible Authority may approve extensions to these time limits if requests are made within 3 months of expiry.

To:

This permit will expire if the use is not commenced within one year from the date of this amended permit.

242. As approval for the storage shed was sought retrospectively, a new condition will require the removal of this element within one month from the date of the issuing of a permit.

Conclusion

243. The proposal is considered to demonstrate a high level of compliance with policy objectives contained within the Planning Policy Framework. The proposal, subject to conditions recommended, is an acceptable planning outcome that demonstrates clear compliance with the relevant Council policies.

RECOMMENDATION

That having considered all objections and relevant planning policies, the Committee resolves to issue a Notice of Decision to Grant an Amended Planning Permit for the change of use to a Place of Assembly (Function Centre) and buildings and works to construct a storage shed at 680 – 682 Victoria Street, Richmond, generally in accordance with the plans noted previously as the “decision plans” and subject to the following conditions (amended/new conditions shown in **bold**):

Preamble (amended)

Use of the land as a place of assembly (function centre) including sale and consumption of liquor (on-premises liquor licence)

Conditions (amended or new conditions in bold)

1. **Before the use or the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of 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 ‘A1 1.01’ (Rev 2, 14.09.2018), ‘A2 G.01’ (Rev 2, 04.11.2018), ‘A2 G.02’ (Rev 2, 04.11.2018), ‘A2 1.01’ (Rev 2, 04.11.2018), ‘A2 1.02’ (Rev 1, 15.08.2018) and ‘A4 0.01’ (Rev 0, 30.04.2018) but modified to show:**
 - (a) **Basement plans clearly identifying all 73 car parking spaces to be used in association with the Function Centre.**
 - (b) **Deletion of the external storage shed.**
 - (c) **Deletion of external bin storage areas.**
 - (d) **Any requirement of the endorsed acoustic report required prior to commencement (condition 12) where relevant to show on plans and specific requirements annotated.**

- (e) **Any requirement of the endorsed waste management plan required prior to commencement (condition 22) where relevant to show on plans and specific requirements annotated.**
- 2. All development and use **(including the sale and consumption of liquor)** must accord with the endorsed plans. Any alterations must be approved by the Responsible Authority.
- 3. The layout of the uses **(including the sale and consumption of liquor)** on the endorsed plans must not be altered without the written consent of the Responsible Authority.
- 4. **Prior to the commencement of the use, the Car Parking Management Plan (dated 7 December 2016) endorsed under PLN16/0382 and Amendment L8 must be amended to allocate the four at-grade spaces to the Function Centre Use.**

Liquor Licence

- 5. The **sale and consumption of liquor** hereby permitted must only operate between the hours of 10.00am to 12 midnight (Sunday), 9 am to 12 midnight Monday to Saturday and 12 noon to 12 midnight (Public Holidays) unless further consent is granted by the Responsible Authority.
- 6. No more than 350 patrons are permitted on the land at any one time.

Use

- 7. **Except with the prior written consent of the Responsible Authority, the use may only occur between the following hours:**
 - (a) **Sunday** 10am to 11pm
 - (b) **Monday to Wednesday** 9am to 11pm
 - (c) **Thursday and Saturday** 9am to 12 midnight
- 8. **No more than 350 patrons are permitted on the land at any one time.**
- 9. **Except with the prior written consent of the Responsible Authority, the use within all outdoor areas may only occur until 10pm and no more than 45 patrons are permitted within the outdoor forecourt outdoor area and 50 patrons are permitted within the eastern outdoor terrace/balcony areas.**

Amenity

- 10. **Before the use commences, an amended Noise and Amenity Action Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Noise and Amenity Action Plan will be endorsed and will form part of this permit. The amended Noise and Amenity and Action Plan must be generally in accordance with the Noise and Amenity Action Plan prepared by Hollerich Town Planning, but modified to include:**
 - (a) **The following in accordance with the recommendations of the Acoustic Report prepared by WatsonMossGrowcott, dated 9th May 2019:**
 - (i) **Management plans for non-typical events (eg. Patrons shouting) within outdoor areas to ensure that the events are resolved promptly in accordance with the recommendations of the Acoustic Report prepared by WatsonMossGrowcott, dated 9th May 2019.**

- (ii) **Details of how communication with patrons relating to expectations during arrival and departure from the subject site will be undertaken. This will include minimising loud communication, and operating vehicles in 'reasonable' manner.**
 - (b) **The specific role and function of a venue/function manager(s) who is responsible for taking bookings, providing details of permit and NAAP restrictions and obligations to those making bookings and management of events when they occur. This must also specify that a venue/function manager must be on-site during all functions/events**
 - (c) **Details of how patrons who exit via private vehicles will be managed in regards of exiting in an orderly and quiet fashion.**
 - (d) **Details of the means by which occupation of the outdoor patron areas is to be limited to the numbers specified within Condition 9.**
 - (e) **Indication of all external lighting along the eastern façade, ensuring that the lighting is baffled.**
 - (f) **Management of smokers, with regard to the requirements of Condition 9.**
 - (g) **Management of outdoor areas to limit litter, including hourly patrons of external areas and at the conclusion of operating hours.**
11. **The provisions recommendations and requirements of the endorsed Noise and Amenity Action Plan must be implemented and complied with to the satisfaction of the Responsible Authority.**
12. **Before the use commences, an amended Acoustic Report to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Acoustic Report will be endorsed and will form part of this permit. The amended Acoustic Report must be generally in accordance with the Acoustic Report prepared by WatsonMossGrowcott and dated 9th May 2019, but modified to include (or show, or address):**
- (a) **The details of the attended measurements (times and results for each location).**
 - (b) **Residential receivers to be provided at the upper levels of 3 – 6 Christine Crescent.**
 - (c) **Identification of the rectification method to be applied to the mechanical plant (not options).**
 - (d) **Deletion of Section 9.2.3 Consideration of patrons located externally during ceremony events on Page 23 and the Outdoor Ceremonies section on Page 27.**
 - (e) **Installation of a noise limiter.**
13. **The provisions, recommendations and requirements of the endorsed Acoustic Report be implemented and complied with to the satisfaction of the Responsible Authority.**
14. **Before the use commences, all acoustic attenuation measures and recommendations contained within the report required pursuant to Condition 12 are to be constructed and implemented to the satisfaction of the Responsible Authority.**
15. **Within 3 months of the commencement of the use, an Acoustic Report to the satisfaction of the Responsible Authority must be prepared by a suitably qualified acoustic engineer and must be submitted to and approved by the Responsible Authority. When approved, the updated post-commencement Acoustic Report will be endorsed and will form part of this permit. The Acoustic Report must assess the following:**

- (a) Confirm that the recommendations of the endorsed acoustic report required as part of Condition 13 have been implemented;
 - (b) Assess their effectiveness in meeting the predicted patron noise level and SEPP N-1 and SEPP N-2 requirements as outlined within the endorsed acoustic report required as part of Condition 12;
 - (c) Include an assessment from a location exposed to noise from the venue roof, as well as the glazed walls, undertaken for a period of time that would allow for an indication of noise leakage vis external doors onto the deck; and
 - (d) If non-compliance with Condition 16(b) is measured, the venue must implement additional acoustic measures as recommended by the amended acoustic report within one month of the date of the amended acoustic report.
16. The provisions, recommendations and requirements of the endorsed post-occupational Acoustic Report be implemented and complied with to the satisfaction of the Responsible Authority.
17. Prior to the commencement of the use authorised by this permit, a Noise Limiter must be installed on the land. The Noise Limiter must:
- (a) be set at a level specified by a qualified acoustic engineer in accordance with the requirements of the Acoustic Report prepared by WatsonMossGrowcott, dated 9 May 2019;
 - (b) ensure the emission of noise from amplified music does not exceed the levels specified in the State Environment Protection Policy – Control of Music Noise from Public Premises (SEPP N-2); and
 - (c) be maintained and operated at all times.
- to the satisfaction of the Responsible Authority.
18. Except with the prior written consent of the Responsible Authority, the provision of music and entertainment external to the building is not permitted.
19. Before the commencement of the use, the applicant must, to the satisfaction of the Responsible Authority, display a sign at the exit of the licensed premises advising patrons to respect the amenity of adjacent uses and to leave in a quiet and orderly manner.
20. The use must comply at all times with the State Environment Protection Policy – Control of Noise from Commerce, Industry and Trade (SEPP N-1).
21. The use must comply at all times with the State Environment Protection Policy – Control of Music Noise from Public Premises (SEPP N-2).

Waste

22. Before the use commences, a Waste Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The Waste Management Plan must provide for waste storage inside of the building. Once approved, the Waste Management Plan will be endorsed and will form part of this permit.
23. Except with the prior written consent of the Responsible Authority, the collection of waste by a private contractor must not occur after 10pm on any day, before 7am Monday to Saturday, or before 9am on a Sunday or public holiday.

24. Except with the prior written consent of the Responsible Authority, emptying bottles into bins in outdoor areas must not occur after 10pm on any day, before 7am Monday to Saturday, or before 9am on a Sunday or public holiday.
25. The collection of waste from the site must be by private collection, unless with the prior written consent of the Responsible Authority.
26. Except with the prior written consent of the Responsible Authority, delivery and collection of goods to and from the land must not occur after 10pm on any day, before 8am Monday to Saturday, or before 9am on a Sunday or public holiday.

Expiry

27. This permit will expire if the use is not commenced within one year from the date of this amended permit.
28. Within one month from the date of the amended planning permit, the unlawful structures identified at Condition 1 (b) and 1 (c) must be removed by the owner of the land.

NOTES:

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

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

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

CONTACT OFFICER: Michelle King
TITLE: Senior Statutory Planner
TEL: 9205 5333

Attachments

- 1 000410.02 - Site Plan
- 2 000410.02 - Plans
- 3 000410.02 - Noise and Amenity Action Plan
- 4 000410.02 - Applicant Acoustic Report
- 5 000410.02 - Peer review (SLR) of Applicant Acoustic Report
- 6 000410.02 - Existing Liquor Licence No. 32257530

1.2 36-38 Kerr Street, Fitzroy - Planning Application No. PLN18/0404 - Part demolition to allow for the construction of three dwellings.

Executive Summary

Purpose

1. This report provides Council with an assessment of Planning Permit Application PLN18/0404 relating to land at 36 – 38 Kerr Street, Fitzroy and recommends approval, subject to conditions.

Key Planning Considerations

2. Key planning considerations include the following:
 - (a) Built form (Clauses 15.01, 21.05, 22.07 and 52.35).
 - (b) Heritage (Clauses 43.01 and 22.02).
 - (d) Decision guidelines (Clause 65).

Key Issues

3. The key issues for Council in considering the proposal relate to:
 - (a) Planning Policy Framework and Local Planning Policy Framework;
 - (b) Heritage;
 - (c) Clause 55 (ResCode); and
 - (d) Objector concerns.

Objector Concerns

4. Following advertising, a total of 11 objections were received to the application. Issues raised can be summarised as follows:
 - (a) Neighbourhood character.
 - (b) Design including height, massing, scale, bulk, site coverage and permeability.
 - (c) Overdevelopment.
 - (d) Off-site amenity impacts including overshadowing / loss of daylight, overlooking and noise.
 - (e) Car parking and traffic impacts and impact on laneway.
 - (f) Impacts on the structural integrity of surrounding properties during the construction phase.
 - (g) The area being prone to flooding.
5. One letter of support was received citing that the development is appropriate in the surrounding context.

Conclusion

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

CONTACT OFFICER: John Theodosakis
TITLE: Senior Statutory Planner
TEL: 9205 5307

1.2 36-38 Kerr Street, Fitzroy - Planning Application No. PLN18/0404 - Part demolition to allow for the construction of three dwellings.

Reference: D19/144129
 Authoriser: Senior Co-ordinator Statutory Planning

Proposal: Part demolition to allow for the construction of three dwellings.
Existing use: Single-storey warehouse
Applicant: Hilary Sleigh of Kirstin Thompson
Zoning / Overlays: Mixed Use Zone
 Heritage Overlay – Schedule 334
 Environmental Audit Overlay
Date of Application: 08 June 2018
Application Number: PLN18/0404

Planning History

7. Planning Permit PL07/1157 was issued on 05 May 2008 for *change of use to a commercial kitchen (food preparation of raw and canned food only and the cooking of rice only) for wholesale food distribution*. This permit was not acted on and has expired.
8. Planning Permit Application No. PLN16/0322 was refused by Council on 29 September 2016. The application sought approval for *full demolition of the existing building, the construction of a ten storey building containing 18 dwellings and a reduction in the car parking and bicycle requirements*. Council's decision to refuse the application was upheld at the Victorian Civil and Administrative Tribunal (VCAT) (VCAT Reference No: P2137/2016).
9. At the time of the VCAT proceedings associated with Planning Permit Application No. PLN16/0322, the permit applicant lodged a set of substituted plans for a four storey apartment building with car parking from the rear laneway, essentially reducing the building from ten storeys to four storeys. However, for the reasons detailed within the VCAT order (attached to this report) the VCAT affirmed Council's refusal. The assessment of this application will turn its mind to some of the findings within the VCAT order and Council's decision to refuse Planning Permit Application No. PLN16/0322 as relevant to this proposal.

Background

10. The application for Planning Permit (PLN18/0404) was received by Council on 08 June 2018 and following the submission of further information on 15 August 2018 the application was advertised on 19 September 2018. At the time, the application proposed *construction of four dwellings and reduction in the associated car parking requirement*. The application was advertised and a total of eleven (11) objections were received.
11. The permit applicant submitted a set of amended plans to Council under Section 57(a) of the *Planning and Environment Act (1987)* (the "Act") on 10 May 2019 in an attempt to address concerns raised by objectors and Council Officers. The amended plans show the following key changes to the advertised plans:
 - (a) The deletion of one dwelling and reconfiguration of the building footprint and internal areas to make way for three dwellings.

- (b) A reduction in the overall building height of between 0.830m and 1.5m (as measured above the natural ground level) by increasing the extent of excavation and dropping the ground floor below the natural ground level, sinking the basement lower.
 - (c) Deletion of the lift tower elements.
 - (d) The western wall setback 1.46m for the length of the dwellings at the lower and upper ground floors (i.e. not the garage) and the courtyards increased in size.
12. Said plans show improvements that respond to some of the objector concerns particularly in relation to the visual mass, overshadowing and setbacks of the proposed development from the subject site's western and eastern boundaries. The plans were not re-advertised and were formally exempted from the notice provisions of the Act at a Development Assessment Panel on 21st August 2019 based on the fact that they show a reduction in the built form shown on the advertised plans. The plans were however circulated to all objectors with their invitations to the planning consultation meeting that was held on 09 July 2019.
13. Said plans are the "decision plans" given that they were submitted to Council under Section 57(a) of the Act.

Planning Scheme Amendments

Amendment VC148

14. On 31 July 2018, Amendment VC148 was gazetted by the Minister for Planning. Amongst other changes the amendment deleted the State Planning Policy Framework (SPPF) and replaced it with a new integrated Planning Policy Framework (PPF) in Clauses 10 to 19 of the Scheme. Relevant to this application, there is no longer a requirement under the Scheme for the proposed development to provide on-site visitor car parking spaces.

The Proposal

15. The application is for the part demolition of the former warehouse building on site to develop the land with a row of three, three-storey dwellings in a townhouse-style development with roof terraces, a basement level and car parking at the rear of the site. The proposed development will be described as a "building" throughout this report given that all three townhouses and the rear garage (housing a mechanical car stacker) are in an attached row.
16. The facets of the proposed development can be summarised as follows:

Development

17. *Part demolition / excavation (no permit required)*
- (a) Part demolition of the existing former warehouse building (i.e. roof, internals, most front and all of the rear walls, including clearance of the land inclusive of the demolition of fences (not shown on plans).
 - (b) Excavation to make way for a split level containing a lower and upper ground floor and basement.
18. *Layout*
- (a) Construction of a row of three attached three-storey dwellings (the "building") each with a roof-top terrace and basement.
 - (b) A car stacker providing a total of 6 car spaces (2 car spaces to each townhouse) accessed from the laneway at the rear.
 - (c) Shared pedestrian entrance is provided from Kerr Street, with all three primary pedestrian entrances accessed via a walkway along the eastern site boundary.

- (d) The building provide a total of three townhouses (identified correctly as Townhouses 1, 2 and 3 on the Level 02 Plan but incorrectly labelled as Townhouses 02, 03 and 04 on the Proposed Lower and Upper Ground Plans) that would proceed in a consecutive manner from north to south.
- (e) An area of approximately 88.2sq.m. designated to Townhouse 1. Townhouse 1 would comprise three bedrooms, a private courtyard of 15.6sq.m. and an open plan living, kitchen and dining area with a breezeway to the north and access to a roof terrace of 37sq.m. and service amenities, including lift.
- (f) Townhouse 2 would follow and would occupy an area of approximately 76sq.m of the lot. Townhouse 2 would comprise three bedrooms, a private courtyard of 15sq.m. and an open plan living, kitchen and dining area and access to a roof terrace of 29sq.m. and service amenities, including lift.
- (g) Townhouse 3 would follow and would occupy an area of 45sq.m. of the area of the lot at the lower ground level and a further 53sq.m. above the car stacker / garage (at the second level) equating to a total area of approximately 98sq.m. of the lot. Townhouse 3 would also comprise three bedrooms, a courtyard of 8.8sq.m. and an open plan living, dining and kitchen area with access to a roof terrace of 30sq.m. and service amenities, including lift.
- (h) Each townhouse would have a basement level that will include a laundry and store room with secondary service amenities that range between 41sq.m. and 77sq.m.

19. *Heights and setbacks*

- (a) The predominant height is 9.12m above the natural ground level, with a maximum building height of 11.33m to the highest point of the sawtooth roof form.
- (b) To the north (front), the building is hard-edged for a length of 4.22m with the remainder setback 1.5m at the north-west corner and to the north-east.
- (c) To the west and east, the building retains the existing on-boundary walls of the former warehouse building, with new walls constructed behind and setback between 1.46m and 1.61m from the western boundary and setback between 1.44m and 1.69m from the eastern boundary (with the latter inclusive of the walls of the garage).
- (d) The garage with the car stacker would extend to the western boundary for a length of 6.17m and to the southern boundary for a length of 7.58m (combined length of the garage and the bin store).
- (e) The proposed site coverage will be approximately 70% (i.e. approximately 217sq.m. will be occupied by the building), with some site permeability in the front (northern) and side (western and eastern) setbacks.

20. *Design detailing, colours and materials*

- (a) The building adopts a contemporary design with the new walls constructed of masonry (combinations of solid and hit-and-miss bricks) with large expanses of opaque glass channels. Balustrades would be constructed of a combination of brick and mesh metal screens.
- (b) All elevations are punctuated with windows / openings.
- (c) The building has a saw-tooth roof form with three saw-tooth pitches.

21. *ESD Features*

- (a) Operable windows and doors providing good cross-ventilation opportunities.
- (b) Provision of three water tanks (one to each basement) with a minimum 2000lt water capacity and connected to the toilets within the 3 townhouses.
- (c) Most living areas will be provided with large areas of west and east-facing glazing, providing for extensive areas of natural light to the main activity areas within each townhouse.

22. *Car parking and vehicle access*

- (a) A total of 6 car spaces within the rear car stacker.
- (b) Vehicle access provided from the laneway to the south.

Subject Site

23. The subject site is a rectangular-shaped site located on the southern side of Kerr Street, situated approximately halfway between Fitzroy Street to the east and Spring Street to the west. The site has a frontage of 8.9m, a western boundary length (depth) of 35.89m, and an eastern boundary length of 34.56m, yielding an overall site area of 313sqm. The site is formally described as Lot 1 on TP 605163L associated with Certificate of Title Volume No. 11486 and Folio No. 008 on the title plan submitted with the application.



Subject site

24. The subject site is developed with a single storey brick warehouse building (as identified in the image above) set back 1.5m from Kerr Street and up to 5.76m from the rear (southern boundary). The building extends across both side (western and eastern) site boundaries.
25. There is a party wall easement (7.92m long and 0.22m wide) along the western boundary. There are no restrictive covenants evident on the title.

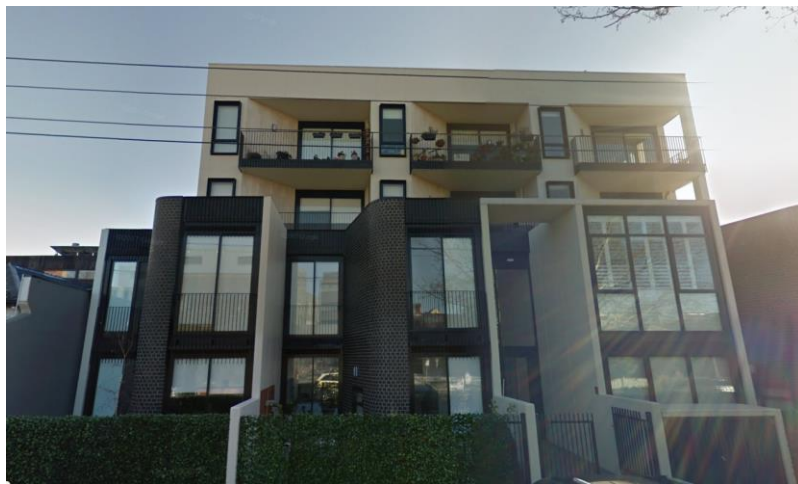
Surrounding Land

26. The subject site is located within a former industrial pocket, west of the Brunswick Street Major Activity Centre (MAC) that is still experiencing some built form and land use change as a result. Infill residential developments and warehouse conversions of former industrial / warehouse buildings have occurred over recent years, with most industrial buildings in the immediate area converted to residential or office buildings. As a result, the surrounding area has an established mixed-use character with taller buildings interspersed with single and double storey terrace housing. Taller built forms range from four to six storeys with a street wall height of two to three storeys will taller built form recessed from the street (i.e. such as the neighbouring property to the west).



Aerial image

27. To the north of the subject site is Kerr Street, a two-way street with angled parking to the north and parallel parking to the south. The immediate property to the north (amongst other more traditional single and double-storey housing) supports a four to six storey apartment building (as per the image below) with a two storey podium to Kerr Street. This site is approximately three times the width of the subject site and extends the block from Kerr Street to Rose Street further to the north. The ground and first floor levels of this building are set back from Kerr Street and extend boundary to boundary, comprising private open space areas within the front setback. The frontage is fenced with a steel balustrade fence. The second and third floors are further recessed from Kerr Street. The fourth and fifth storeys are located to the northern portion of the site, approximately 30m from Kerr Street so that they are not readily visible to Kerr Street.



Property immediately to the north side of Kerr Street

28. Immediately to the west of the subject site is a four storey building (as per the image below and developed under planning permit No. PL03/0782 – endorsed plans) with seven townhouses on a lot approximately twice the width of the subject site. To Kerr Street, the building presents a three storey street wall with operable perforated metal bi-fold shutters at the first and second floors on the boundary. The top floor is recessive to Kerr Street and to the side boundaries. The ground level comprises two home/offices fronting the street and rear car parking accessed from the rear laneway. The endorsed plans show extensive shopfront clear glazing to the home offices; however it appears that the as-constructed glazing is tinted thereby restricting views into these areas.



Adjoining building to the west

29. The rear (southern) portion of the western abutting building is detached from the front building, with a 4m separation. The building tapers away from the side boundaries up to 4.5m. The setback contains private open space areas for three of the townhouses as well as numerous habitable room windows facing the boundary.
30. To the south of the subject site is a laneway and beyond that are properties fronting onto Argyle Street that are hard-edged and range between two and five-storeys. Directly opposite is a five storey apartment building on a comparable-sized lot to the subject site. The development comprises a car park at ground floor (accessed from the laneway) with deep balconies overlooking the lane from levels one to four. The building is robust in design and hard edged to Argyle Street (that also provides vehicle access into this site). To the east of this is a three-storey building with up to ten dwellings with three that have north-facing areas of secluded private open space in the form of roof decks with access from the second floor.
31. Immediately to the east of the subject site is a similar sized lot to the subject site and is occupied with a double-fronted, single-storey, weatherboard Victorian building. The building is setback approximately 1.2m from the front title boundary (i.e. as measured to the edge of the front verandah), with the original front section built boundary to boundary. To the rear a shed is located on the eastern boundary and there is an extensively concreted secluded area of private open space which is also used for car parking. Vehicle access is provided from the laneway.



Adjoining properties to the east of the subject site

32. Beyond the dwelling to the east, are further single-storey, single-fronted Victorian and Edwardian dwellings. The dwelling further east also has rear vehicle access into a garage that wraps around the south-east corner of the dwelling to the immediate east of the subject site.
33. The subject site is well serviced in terms of services, park land and public transport given that it is located (amongst other services) within 160m and 140m from Brunswick and Nicholson Street, respectively. There are also bus services operating along Johnston Street 130m to the south.

Planning Scheme Provisions

Zoning

Mixed Use Zone (MUZ)

34. The subject site is zoned Mixed Use.
35. Pursuant to Clause 32.04-6 of the Yarra Planning Scheme (the 'Scheme'), a planning permit is required to construct two or more dwellings on a lot.

Overlays

Heritage Overlay (HO334 – South Fitzroy Precinct)

36. Clause 43.01-1 (Heritage Overlay) states that a planning permit is required to demolish or remove a building and construct a building or construct or carry out works.

City of Yarra Review of Heritage Areas 2007 Appendix 8 (Revised May 2018)

37. The building on the subject site is located within Schedule 334 and is identified as "not-contributory" to this precinct as outlined in the incorporated document.

Environmental Audit Overlay (EAO)

38. Pursuant to Clause 45.03-1 of the Scheme it is a requirement that:
 - (a) *Before a sensitive use (residential use, child care centre, pre-school centre or primary school) commences or before the construction or carrying out of buildings and works in association with a sensitive use commences, either:*
 - (i) *A certificate of environmental audit must be issued for the land in accordance with Part IXD of the Environment Protection Act 1970, or*
 - (ii) *An environmental auditor appointed under the Environment Protection Act 1970 must make a statement in accordance with Part IXD of that Act that the environmental conditions of the land are suitable for the sensitive use.*
39. This provision is a requirement of the Scheme and will be captured by way of a note on any planning permit issued.

Particular Provisions

Clause 52.06 – Car Parking

40. Pursuant to Clause 52.06-2, the car parking spaces required under Clause 52.06-5 must be provided on the land. Clause 52.06-3 requires a planning permit to reduce the number of car parking spaces required under this clause.

41. The requirement of Clause 52.06-5 of the Scheme are shown below:

Proposed Use	No. of houses	Statutory Parking Rate	No. of Spaces Required	No. of Spaces Provided
Three (or more) bedroom dwellings	3	2 spaces per dwelling	6	6
Total			6	6

42. The proposed dwellings require two car parking spaces each. Two spaces per dwelling is provided in the form of a car stacker at the rear of the site with vehicle access from the laneway. The proposal therefore meets the minimum Scheme requirement for the on-site car parking provision. In relation to the requirements at Clause 52.06-9 (design standards for car parking) of the Scheme, Council's Engineer has reviewed the design including access and egress to the laneway, garage design and manoeuvrability on site, and found the design response to be satisfactory subject to conditions.

Clause 52.34 – Bicycle facilities

43. Clause 52.34 of the Scheme only applies to dwellings in developments of four or more storeys. The overall proposal is three storeys in height and therefore these provisions do not apply.

Clause 55 – Two or more dwellings on a lot and residential buildings

44. Pursuant to clause 55 of the Scheme this provision applies to an application to construct or extend two or more dwellings on a lot within the Mixed Use Zone. A development must meet the objectives of Clause 55 but does not need to meet the standard.

General Provisions

Clause 65 – Decision guidelines

45. The Decision Guidelines outlined at Clause 65 of the Scheme are relevant to all applications. Because a permit can be granted does not imply that a permit should or will be granted. Before deciding on an application, the Responsible Authority must consider a number of matters. Amongst other things, the 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)

Clause 15.01-1S – Urban Design

46. The relevant objective of this clause is *“to create urban environments that are safe, functional and provide good quality environments with a sense of place and cultural identity”*.

Clause 15.01-2S – Building Design

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

Clause 15.01-5S – Neighbourhood Character

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

Clause 15.02 – Sustainable Development

49. The objective of this clause is *“to encourage land use and development that is energy and resource efficient, supports a cooler environment and minimises greenhouse gas emissions”*.

Clause 15.03 Heritage

Clause 15.03-1S – Heritage conservation

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

51. Strategies include:

- (a) *Identify, assess and document places of natural and cultural heritage significance as a basis for their inclusion in the planning scheme.*
- (b) *Provide for the protection of natural heritage sites and man-made resources.*
- (c) *Provide for the conservation and enhancement of those places that are of aesthetic, archaeological, architectural, cultural, scientific or social significance.*
- (d) *Encourage appropriate development that respects places with identified heritage values.*
- (e) *Retain those elements that contribute to the importance of the heritage place.*
- (f) *Encourage the conservation and restoration of contributory elements of a heritage place.*
- (g) *Ensure an appropriate setting and context for heritage places is maintained or enhanced.*
- (h) *Support adaptive reuse of heritage buildings where their use has become redundant.*

Clause 16.01 Residential Development

Clause 16.01-1S – Integrated housing

52. The objective of this clause is *“to promote a housing market that meets community needs”*.

Clause 16.01-1R – Integrated housing- Metropolitan Melbourne

53. Strategies for this clause are:

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

Clause 16.01-2S Location of residential development

54. The objective of this clause is *“to locate new housing in designated locations that offer good access to jobs, services and transport”*.

55. Relevant strategies for this clause are:

- (a) *Increase the proportion of new housing in designated locations within established urban areas and reduce the share of new dwellings in Greenfield and dispersed development areas.*

- (b) *Encourage higher density housing development on sites that are well located in relation to jobs, services and public transport.*
- (c) *Ensure an adequate supply of redevelopment opportunities within established urban areas to reduce the pressure for fringe development.*
- (d) *Facilitate residential development that is cost effective in infrastructure provision and use, energy efficient, water efficient and encourages public transport use.*
- (e) *Identify opportunities for increased residential densities to help consolidate urban areas.*

Clause 16.01-2R – Housing opportunity areas- Metropolitan Melbourne

56. Relevant strategies for this clause are:

- (a) *Identify areas that offer opportunities for more medium and high density housing near employment and transport in Metropolitan Melbourne.*
- (b) *Manage the supply of new housing to meet population growth and create a sustainable city by developing housing and mixed use development opportunities in locations that are:*
 - (i) *In and around the Central City.*
 - (ii) *Urban-renewal precincts and sites.*
 - (iii) *Areas for residential growth.*
 - (iv) *Areas for greyfield renewal, particularly through opportunities for land consolidation.*
 - (v) *Areas designated as National Employment and Innovation Clusters.*
 - (vi) *Metropolitan activity centres and major activity centres.*
 - (vii) *Neighbourhood activity centres - especially those with good public transport connections.*
 - (viii) *Areas near existing and proposed railway stations that can support transit oriented development.*
- (c) *Facilitate increased housing in established areas to create a city of 20 minute neighbourhoods close to existing services, jobs and public transport.*

Clause 16.01-3S – Housing diversity

57. The objective of this clause is “to provide for a range of housing types to meet increasingly diverse needs”.

58. Strategies of this policy are:

- (a) *Ensure housing stock matches changing demand by widening housing choice.*
- (b) *Facilitate diverse housing that offers choice and meets changing household needs through:*
 - (i) *A mix of housing types.*
 - (ii) *Adaptable internal dwelling design.*
 - (iii) *Universal design.*
- (c) *Encourage the development of well-designed medium-density housing that:*
 - (i) *Respects the neighbourhood character.*
 - (ii) *Improves housing choice.*
 - (iii) *Makes better use of existing infrastructure.*
 - (iv) *Improves energy efficiency of housing.*

- (d) *Support opportunities for a range of income groups to choose housing in well-serviced locations.*
- (e) *Ensure planning for growth areas provides for a mix of housing types through a variety of lot sizes, including higher housing densities in and around activity centres.*

Clause 16.01-3R – Housing diversity - Metropolitan Melbourne

59. The strategy of this policy is “*create mixed-use neighbourhoods at varying densities that offer more choice in housing*”.

Clause 18.01 – 1S – Land use and transport planning

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

Local Planning Policy Framework (LPPF)

Clause 21 – Municipal Strategic Statement (MSS)

Clause 21.03 – Vision

61. Clause 21.03 of the Scheme outlines strategic objectives for land use, built form, transport and environmental sustainability within the City. Strategies to achieve the objectives are set out in the following clauses of the MSS.

Clause 21.04 – Land use

Clause 21.04-1 – Accommodation and Housing

62. The objectives of this clause are:

- (a) *To accommodate forecast increases in population.*
- (b) *To retain a diverse population and household structure.*
- (c) *To reduce potential amenity conflicts between residential and other uses.*

Clause 21.05 Built form

Clause 21.05-1 Heritage

63. This clause acknowledges that new development can still proceed whilst paralleling the objective to retain the nineteenth century character of the City. Conservation areas seek to conserve the City's heritage places whilst managing an appropriate level of change.

64. Relevant objectives include:

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

Clause 21.05-2 – Urban design

65. This clause incorporates the following relevant objectives:

- (a) *Objective 16 - To reinforce the existing urban framework of Yarra; and*
- (b) *Objective 20 - To ensure that new development contributes positively to Yarra's urban fabric.*

Clause 21.07 – Environmental Sustainability

66. The relevant objectives of this clause are:

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

Clause 21.08 Neighbourhoods

67. Clause 21.08-7 (Fitzroy) describes this area as follows:

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

Relevant Local Policies

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

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

69. The relevant policies with regard to demolition/removal of a building of this clause are:

- (a) *Generally encourage the retention of a building in a heritage place, unless:*
 - (i) *The building is identified as being not contributory*
 - (ii) *The building is identified as a contributory building, and*
 - *New evidence has become available to demonstrate that the building does not possess the level of heritage significance attributed to it in the incorporated document, City of Yarra Review of Heritage Areas 2007 Appendix 8 (as updated from time to time) and*
 - *The building does not form part of a group of similar buildings.*
- (b) *Encourage the removal of inappropriate alterations, additions and works that detract from the cultural significance of the place.*
- (c) *Generally discourage the demolition of part of an individually significant or contributory building or removal of contributory elements unless:*
 - (i) *That part of the heritage place has been changed beyond recognition of its original or subsequent contributory character(s).*
 - (ii) *For individually significant building or works, it can be demonstrated that the removal of part of the building or works does not negatively affect the significance of the place.*

70. The relevant policies with regard to alterations and additions of a building of this clause are:
- (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.*
 - (b) *Encourage setbacks from the principal street frontage to be similar to those of adjoining contributory buildings; where there are differing adjoining setbacks, the greater setback will apply.*
 - (c) *Encourage similar façade heights to the adjoining contributory elements in the street. Where there are differing façade heights, the design should adopt the lesser height.*
 - (d) *Minimise the visibility of new additions by:*
 - (i) *Locating ground level additions and any higher elements towards the rear of the site;*
 - (ii) *Encouraging ground level additions to contributory buildings to be sited within the 'envelope' created by projected sight lines (see Figure 1);*
 - (iii) *Encouraging upper level additions to heritage places to be sited within the 'envelope' created by projected sight lines (for Contributory buildings refer to Figure 2 and for Individually significant buildings refer to Figure 3);*
 - (iv) *Encouraging additions to individually significant places to, as far as possible, be concealed by existing heritage fabric when viewed from the front street and to read as secondary elements when viewed from any other adjoining street.*
 - (e) *Discourage elements which detract from the heritage fabric or are not contemporary with the era of the building such as unroofed or open upper level decks or balconies, reflective glass, glass balustrades and pedestrian entrance canopies.*

Clause 22.16 – Stormwater Management (Water Sensitive Urban Design)

71. This policy applies to new buildings. The objective of this clause is “*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)*”.

Clause 22.17 – Environmentally Sustainable Design

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

Advertising

73. The submitted application was advertised between September and October 2018 under the provisions of Section 52 of the *Planning and Environment Act (1987)* (the Act) by 137 letters sent to surrounding owners and occupiers, and by one (1) sign displayed on the Kerr Street frontage.
74. The grounds of the eleven (11) objections received to the application are summarised as follows:
- (h) Neighbourhood character.
 - (i) Design including height, massing, scale, bulk, site coverage and permeability.
 - (j) Overdevelopment.
 - (k) Off-site amenity impacts including overshadowing / loss of daylight, overlooking and noise.
 - (l) Car parking and traffic impacts / impact on laneway.
 - (m) Impacts on the structural integrity of surrounding properties during the construction phase.
 - (n) The area being prone to flooding.
75. The permit applicant submitted a set of amended plans to Council under Section 57(a) of the *Planning and Environment Act (1987)* (the "Act") on 10 May 2019 in an attempt to address concerns raised by objectors and Council Officers. These plans were not re-advertised (as they show a reduction in built form to the advertised plans) and were formally exempt from the notice provisions at a Development Assessment Panel on 21st August 2019. Said plans are the "decision plans" and copies were sent to all objectors with their invitations to the planning consultation meeting.
76. The planning consultation meeting held on 09 July 2019 was attended by the Applicant, Objectors and Planning Officers. At the meeting, one Objector agreed to provide Planning Officers with their shadow diagrams that related to the previous scheme (Planning Application No. PLN16/0322) refused by Council and later considered and refused by the VCAT (as outlined under the *Planning history* heading of this report). At the meeting, the permit applicant also agreed to provide Planning Officers with a response to the traffic implications of vehicles waiting in the laneway to access the car stackers and the consequences of this. Both, the sectional shadows and a response by the Objector and Permit Applicant respectively, were submitted to Council. See Attachment 8 for Permit Applicant's response.

Referrals

External Referrals

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

Internal Referrals

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

- (a) Heritage Advisor
- (b) Engineering Services Unit

79. Referral comments have been included as attachments to this report (Attachment 5 and 6).

80. The amended plans were referred internally to Council's Engineering Services Unit due to the increase in the number of car spaces within the car stacker. Further referral advice in relation to this component of the proposal was provided by Council's Engineering Services Unit (see Attachment 6).

OFFICER ASSESSMENT

81. The key issues for Council in considering the proposal relate to:

- (a) Relevant Planning Policy in the Scheme;
- (b) Heritage;
- (c) Clause 55 (ResCode); and
- (d) Objector concerns.

82. The proposed development will be described as a "building" throughout this assessment given that all three townhouses are in an attached row.

Relevant Planning Policy in the Scheme

83. The development will increase the density on site (i.e. replacing a single-storey former warehouse building with a total of three dwellings). When assessed against the relevant Planning Policy Framework and Local Planning Policy Frameworks (PPF & LPPF), there is strategic support for the development with regard to its location within an area that contains many resources.
84. The purpose of the MUZ is:
- (a) *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
 - (b) *To provide for a range of residential, commercial, industrial and other uses which complement the mixed-use function of the locality.*
 - (c) *To provide for housing at higher densities.*
 - (d) *To encourage development that responds to the existing or preferred neighbourhood character of the area.*
 - (e) *To facilitate the use, development and redevelopment of land in accordance with the objectives specified in a schedule to this zone.*
85. The proposal fulfils the above by providing what will present to the street as a single modern building on a site within an inner-city context that is ideally located to take advantage of existing public transport services along the Brunswick Street MAC and Nicholson Street.
86. Clause 11 of the Scheme supports an increase in diversity of choice, economic viability, accessibility and land use and transport integration, whilst facilitating sustainable development that takes full advantage of existing settlement patterns. The future residents of the building (3 townhouses) will use the services available in the nearby commercial environments.
87. The proposed building also complies with a number of key strategic policies within the Scheme, in particular policy at clause 15.01-1S and 18.01-1S, by providing higher density housing with connections to public transport/cycling networks and by increasing and consolidating the supply and diversity of housing in existing urban areas. For all of the reasons outlined above, the proposal is considered to achieve sufficient compliance with the relevant planning policies.
88. Pursuant to clause 52.06 of the Scheme, the proposed development is required to provide a minimum of 6 on-site car parking spaces. There are 6 car parking spaces provided within the car stacker. However, objectors have raised concerns with the location of car spaces within a car stacker type arrangement.

Council's Engineering Services Unit have reviewed the on-site car parking provision and also the principle of having a mechanical car stacker and the design of the car stacker against the relevant design standards at clause 52.06 of the Scheme (including the access and egress from the laneway and vehicle manoeuvrability) and have provided comments of support.

Heritage

89. The urban design assessment for this proposal is principally guided by clauses 15.01-2 (Urban design principles), 21.05 (Urban design), 22.02 (Development Guidelines for Sites Subject to the Heritage Overlay and 22.07 (Development Abutting Laneways) of the Scheme.

Demolition

90. The warehouse building on the subject site is classified as 'not contributory' to the South Fitzroy Heritage Precinct. Clause 22.02-5.1 of the Scheme generally discourages the full demolition of a building unless the building is not contributory. As the building is 'not contributory' the extent of demolition of the building proposed is acceptable and supported by heritage policy. Whilst further comments in relation to the decision plans have not been sought from Council's Heritage Advisor, their advice on the originally submitted application supported the full demolition of the existing building. Given that the decision plans intend to maintain and incorporate some of the original walls of the warehouse building into the scheme, concealing part of the building from the west and east, it is assumed that the reduced amount of demolition would also be supported by Council's Heritage Adviser.

New built form

91. Surrounding built form along Kerr Street includes single-storey buildings such as those to the east but there is also a number of double and four-storey buildings such as that to the immediate west, and five and six-storeys. As identified earlier under the *Surrounding Land* heading, the property to the immediate north supports a four to six storey apartment building with a two storey podium to Kerr Street. The taller buildings are characterised as having a rectilinear form with flat roofs and a number of windows and balconies facing the street.
92. To the east, Kerr Street is primarily characterised by single-storey, dwellings of the Victorian era. Kerr Street is a 20m wide street that is comprised of two lanes of cars (west and east bound), angled parking on the northern side and parallel car parking on the southern side. The building on the site is consistent with the typology and appearance of the mixed character of the area more broadly where there is further evidence of hard-edged former warehouse / industrial building interspersed amongst more traditional housing and contemporary and angular apartment buildings such as this instance.
93. The immediate property to the west is graded 'not contributory' whilst the two single-storey dwellings to the east are graded 'contributory' to the heritage precinct. The proposal ensures that it is distinguishable from the heritage fabric of identified buildings with heritage significance to the east and has also considered the context of the heritage place as policy at Clause 22.02-5.7.1 of the Scheme directs.
94. The proposed building, whilst comprised of a row of townhouses, will have the appearance of an apartment building which reflects the prevailing building form of the more contemporary buildings in the area (particularly that to the west) which is compliant with policy at Clause 22.02-5.7.1 of the Scheme.
95. The decision plans have also addressed Council's Heritage Advisor's recommendation with regard to reducing the height of the lift shaft of Townhouse 01 by deleting all lift shafts and have responded to the visual prominence of the balustrade associated with Townhouse 01's roof terrace by cleverly blending this into the façade wall and modifying the material to masonry.

Whilst an increase to the roof terrace setback has not been adopted to reduce visibility of activity from the street, any activity on the roof terrace will not be any different to that in the front yards of surrounding dwellings, or balconies of surrounding apartments currently visible to the street, therefore a further setback will not be adopted.

96. Council's Heritage Advisor also had a preference for the adoption of more traditional masonry to the front walls of the building, *similar in colour to traditional red common, Hawthorn, or cream*. However, the decision plans include grey masonry and this is directly derived by the colour scheme of the immediate building to the west that has a grey brutalist appearance to the street. In fact, the presentation of the building will be softer in appearance compared to the western building, with the combination of materials chosen and setbacks that provide scope for soft landscaping.
97. The new front portion of the building is setback at the north-west and north-east corners (i.e. where the original walls of the former warehouse building is maintained) clearly demarcating separation points that reference the setback of the adjoining dwelling to the east. The extended portion of wall that is hard-edged appropriately references the hard-edged interface of the adjoining property to the west. Overall, it is considered that the building can be supported from a heritage perspective.
98. In addition to the above, the current scheme is generally consistent with the Tribunal's deliberations of the previously refused four-storey scheme (in *David Watson Architect v Yarra* [2017] VCAT 588) that provide the following comments in determining whether or not to support the scheme from a streetscape perspective at pages 6-7:
 22. *The size and robust character of the heritage precinct influences our finding. We find that the height of proposed building will not adversely affect the significance of the precinct, because it is one of many three or four storey buildings on non-contributory sites in the precinct. We find that there is a clear distinction between the old and the new throughout the precinct, and great diversity in the new architectural treatments. In this proposal, the heritage references in the proposed façade are subtle, yet acceptable as they are within the range found in the precinct.*
99. The same can be argued with regard to the current scheme for this application. In this instance the proposal would provide a contemporary outcome at a height and scale that has been informed by surrounding buildings. The building utilises the on-boundary walls of the original building by maintaining these at the ground floor and providing an appropriate transition with the dwelling to the east whilst being shorter than the adjoining four-storey building to the west. The use of masonry is also derived from surrounding buildings, both old and new and is similar to the grey colour tone of the adjoining four-storey building.

Clause 55 (ResCode)

100. Clause 55 (ResCode) provides an assessment tool for the appropriateness of the design of two or more dwellings on a lot. Given the site's location within a built-up inner-city residential area and Mixed Use zoning, strict application of the standard is not always appropriate. The relevant test is whether the proposal meets the objectives. The following provides an assessment against the relevant standards of ResCode and shows the proposal achieves a reasonable level of compliance with relevant objectives.

Standard B1 – Neighbourhood Character (with regard to Clause 22.07 - Development abutting laneways policy)

101. Complies. The proposal seeks to develop the site with a building (townhouses style development) that will be fitting to the character of this precinct. Kerr Street contains some varied building heights, and the proposed interface is acceptable in this context.

It would be a reasonable expectation that this site would experience further intensification in use and development. The proposed building would replace a warehouse building that is appropriate within the context of its location on an inner-city street.

102. In terms of more specific street interfaces, the proposed building as it presents to the street reflects the existing character of high walls, high levels of glazing facing the street and rectilinear form with flat roofs. The proposal has responded to its context as per the objectives of clause 15.01-1. The proposed scale with a more recessive saw-tooth fronting Kerr Street has kept to a height that would read as being one-storey taller than the adjoining dwelling to the east (given the pitch of the roof of this dwelling and excavation associated with sinking the lower ground), and comparable to the three-storey podium of the adjoining four-storey building to the west (as identified in the northern elevation below) and therefore complies with the design objectives of clauses 15.01 and 21.05 of the Scheme.



103. A visual connection with the immediately abutting buildings is provided through the interesting combination of glass panels, including grey masonry that is a direct reference to the four-storey building to the west. Portions of the façade of the former warehouse building would also be incorporated and reference the height of the adjoining dwelling to the east, before transitioning to the new walls that would provide a narrow podium to the street. This is considered to strike a reasonable balance between referencing two significantly different buildings.
104. The building provides windows and a terrace to the street therefore providing opportunities for passive surveillance from the front most townhouse over the public domain. The decision plans also include landscaping in the corner setbacks that further reference the landscaping arrangements of surrounding properties.
105. The laneway interface is also another facet of the development that is required to be considered with regard to neighbourhood character. The proposed building satisfies the Development Abutting Laneways policy at Clause 22.07 of the Scheme as follows:
- (a) Principle pedestrian access will continue to be provided at the Kerr Street frontage, away from the rear lane, as is encouraged by policy.
 - (b) Vehicles will ingress and egress efficiently within the laneway, without the need for multiple movements, pursuant to the Development abutting laneways policy at Clause 22.07 and Council's Engineering Services Unit is satisfied with vehicle access from the laneway.

- (c) A condition will require all entries, including the laneway entry to provide external lighting for pedestrian safety. Pursuant to the policy requirements, lighting at the laneway interface must avoid light spill into adjacent private open space and habitable room windows. This will be facilitated by Council's standard condition of permit.
- (d) The hard-edged walls of the garage housing the car stacker are comparable to the hard-edged walls of surrounding more contemporary buildings and in this context, are appropriately sited with regard to the existing character of the laneway.
- (e) A condition will require the vehicle access gate to open into the site to ensure that this does not obstruct access to the laneway when open.
- (f) The building will have a bin enclosure area on site at the south-west corner. As such, bins will not spill out onto or be stored within the laneway as required by policy. Further, a condition will require the submission of a waste management plan that includes private collection.
- (g) Council's Engineering Unit support the car stacker that would provide for six on-site car spaces, meeting the minimum car parking provision for the dwellings under the Scheme.

106. Overall, the modern rectilinear form as well as the colour and material scheme that includes a charcoal paint finish to the existing walls and new grey walls, with varied glass panels to the windows are considered to introduce an interesting design within the streetscape and will add to the vitality of the surrounding area. The proposed development will be an improvement in the streetscape from the existing building.

Standard B2 – Residential Policy

107. Complies. The building satisfies the PPF and LPPF given that:

- (a) it will provide higher density housing within close proximity to public transport and retail facilities; and
- (b) it takes advantage of and maximizes the existing local infrastructure.

108. As demonstrated above, the building will adequately respect the neighbourhood character.

Standard B3 – Dwelling Diversity

109. This standard seeks, "to encourage a range of dwelling sizes and types in developments of ten or more dwellings". Accordingly, this standard is not applicable to this development.

Standard B4 – Infrastructure

110. The development is located within an existing established residential area. It is not expected the dwellings would overload the utility services and infrastructure. The proposed development would be readily connected to the required utility services and infrastructure which are present at the site.

111. Furthermore, the application has been referred to Council's Engineering Services Unit who raise no objection to this aspect of the proposed development. As such the site is considered capable of supporting the proposed dwellings.

Standard B5 – Integration with the street

112. The primary pedestrian entrance to the building will be orientated to Kerr Street and Townhouse 01 will have windows and a terrace that will allow for passive surveillance to the main street frontage in compliance with policy objectives. The building will give the impression of an apartment style building to the street, which is fitting to the context and neighbourhood character.

Standard B6 – Street setback

113. Complies with the objective. The building will provide a good pedestrian link to Kerr Street. The building will have a northerly orientation with frontage and primary pedestrian access to Kerr Street.
114. The building will integrate well with Kerr Street, pursuant to the objective which is “*to ensure that the setbacks of buildings from a street respect the existing or preferred neighbourhood character and make efficient use of the site*”. The retention of existing setbacks as a consequence of partially maintaining and incorporating the façade walls of the former warehouse building respond to the front setback of the wing wall associated with the front verandah of the adjoining dwelling to the east. The new façade wall will respond to both the height and zero setback of the adjoining apartment building to the west.

Standard B7 – Building height

115. Complies with the objective. The predominant height is 9.12m above the natural ground level, with a maximum building height of 11.33m to the highest point of the sawtooth roof form. Whilst this height exceeds 9m as prescribed by the standard, it is in accordance with the objective which is ‘*To ensure that the height of buildings respects the existing or preferred neighbourhood character*’. In this instance the adjoining building to the west, justifies a taller building on the subject site given that this building has a height of approximately 12.3m above the natural ground level. The subject building is comparable to the height of the adjoining four-storey building whilst providing an appropriate height transition (as discussed in earlier section) within the single-storey dwelling to the east.

Standard B8 – Site coverage

116. Complies with the objective. The overall degree of built form coverage on the site (as shown on the decision plans) equates to approximately 217sq.m. or 70% of the total site area, thereby exceeding the 60% standard specified in the Scheme. The degree of site coverage proposed is considered acceptable given the 313sq.m. of the allotment and the context of the site within a dense inner urban area where there is an expectation of greater density.
117. The proposed site coverage in this instance is considered to meet the objectives of this standard and is acceptable within its inner city context whereby the site is surrounded by properties with varied percentages of site coverage, including some of which are 100% (i.e. surrounding sites occupied by apartment building to the west, south of the laneway and north of Kerr Street).

Standard B9 – Permeability

118. Variation required. Landscaping would be provided within the front setbacks at both north-west and north east corners to Kerr Street, and the side setbacks to the west that comprise courtyards. Each townhouse would have a rainwater tank with a 2,000lt capacity in its basement. The percentage of permeability is not shown or identified on the decision plans but there is further scope to improve this by including ground surface treatments within the pedestrian walkway along the east side of the building and courtyards that are pervious and therefore achieve compliance with the standard. A condition will address this.
119. A condition will also require a plan notation to state that the stormwater collected by the rainwater tank of each townhouse will be re-used on site for the flushing of toilets.

Standard B10 – Energy efficiency, Clause 22.16 – Stormwater Management (Water Sensitive Urban Design) and Clause 22.17 – Environmentally Sustainable Design

120. A Sustainable Design Assessment (SDA) was submitted with the original application plans for four townhouses. Whilst some of the information may still be relevant to the current scheme for three townhouses, a condition of any permit issued will require an updated SDA that makes reference to the provision of three townhouses. Nonetheless some of the commitments outlined within the SDA report that can be transposed to the three townhouses are the following:

- (a) Provision of standard fluorescent and LED lighting throughout;
- (b) Minimum average 6 NatHERS rating;
- (c) 5 star heating and 4 star cooling systems;
- (d) 4 star WELS rated toilets;
- (e) 3 star WELS rated shower heads;
- (f) Low VOC paints;
- (g) Water tanks to each townhouse with a 2000lt water capacity; and
- (h) Large north-facing windows within the saw-tooth that will filtrate solar access into the living arrangements below.

121. A STORM report will also be required as part of that updated SDA report to ensure compliance with the Best Practice Standards outlined in Clause 22.16 – *Stormwater Management (Water Sensitive Urban Design)* and Clause 22.17 – *Environmentally Sustainable Design*.

Standard B11 – Open Space

122. Not applicable as no communal open space is proposed. However, soft landscaping is proposed in the north-west and north-east setbacks of the site and courtyards of the townhouses, including planter boxes on the roof terraces of Townhouses 02 and 03.

Standard B12 – Safety

123. Complies with the objective. Pursuant to the standard all pedestrian entries will be visible from the internal walkway located along the east of the development, with a canopy provided each entry door. To improve resident and visitor safety and security, a condition of any permit issued will require bollard / garden lighting to be provided at the communal entry area at the street frontage and along the length of the eastern walkway.

124. Subject to a permit condition having regard to the lighting, the proposed building will provide an acceptable level of safety for future residents and visitors.

Standard B13 - Landscaping

125. Landscaping opportunities are provided at the street frontage which is reflective of the character of the area. Other areas are provided on the western sides, within the courtyards of all townhouses and the terraces of Townhouses 02 and 03.

126. These areas, as well as the amount of planting that would be achievable in each, would be consistent with the character of the area which typically sees limited areas of landscaping, particularly within the front setbacks of smaller allotments, and some medium density developments.

Standard B14 – Access

127. The existing vehicle crossover to Kerr Street will be made redundant. As such, a condition of any permit issued will require this to be demolished and reinstated to Council's satisfaction and at the Permit Holder's cost.

128. A separate condition will require the footpath along the property's Kerr Street road frontage to be striped and re-sheeted to Council's satisfaction and at the Permit Holder's cost.

Standard B15 – Parking location

129. The on-site car parking spaces are conveniently located for the future residents of the building in the form of a car stacker located within a garage. The design of the car stacker and manoeuvrability of vehicles from the laneway has been assessed by Council's Engineer and found to be satisfactory. Conditions of any permit issued will require the plans to dimension the garage door widths, provide a convex mirror at the garage entrance to improve visibility to the laneway and details in relation to the car stacker model. A condition will also require plans to dimension internal floor to ceiling heights of the garage as requested by Council's Engineer. Despite these details not being shown on plans Council's Engineer supports this component of the proposal.
130. Subject to these conditions, the objectives of the standard will be met.

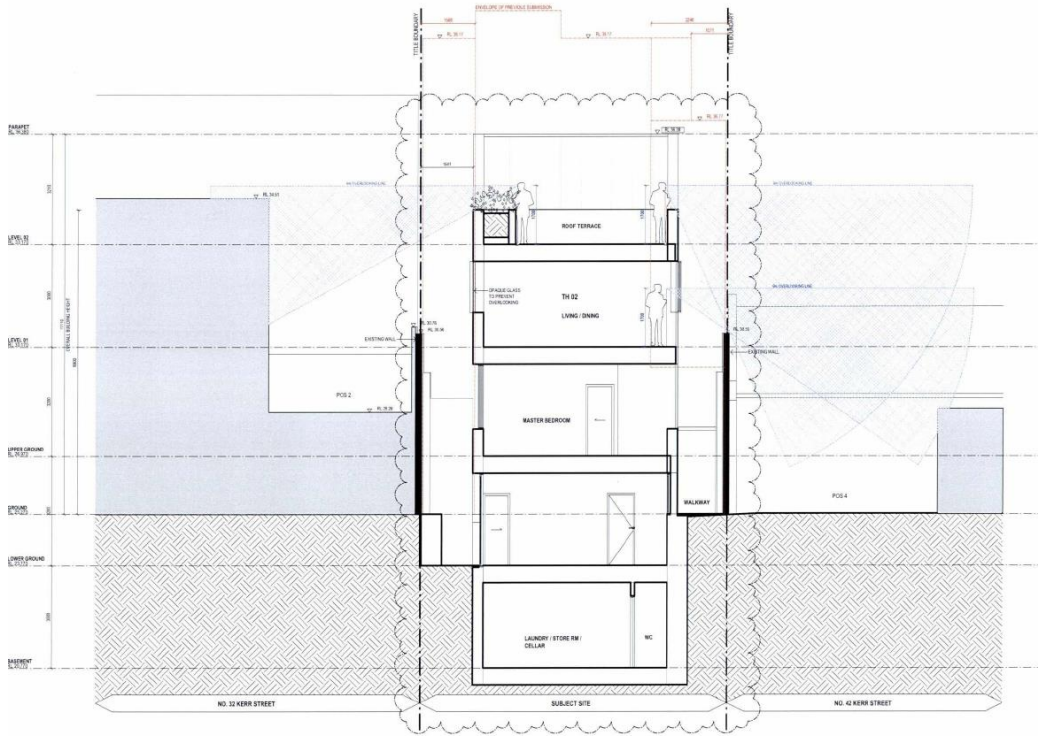
Standard B17 – Side and rear setbacks

131. This standard stipulates the following:

"A new building not on or within 200mm of a boundary should be set back from side or rear boundaries:

- (a) At least the distance specified in a schedule to the zone, or*
- (b) If no distance is specified in a schedule to the zone, 1 metre, plus 0.3 metres for every metre of height over 3.6 metres up to 6.9 metres, plus 1 metre for every metre of height over 6.9 metres".*

132. The adopted setbacks at the lower and upper ground floor walls measuring up to 3.6m are compliant with the standard, as are walls that measure up to 5.1m above the natural ground level. Where these walls fail to comply with the standard are at heights above 5.1m (i.e. at Level 02 of the building as identified on the plans). At this level and upwards the standard requires wall setbacks of up to 4.19m as these progress to a height of 9.12m above the natural ground level and up to 6.39m where these progress to 11.33m (i.e. the side walls to the saw teeth) above the natural ground level.
133. However, the adopted setbacks are supported in this instance and a variation to the standard is supported. The walls (where opposite the private open spaces at the first floor of townhouses that form part of the four-storey building to the west) are generously separated and have been reduced in height. Further, the upper floor walls will be seen in association with the existing on-boundary walls (i.e. those that form part of the former warehouse and those that form part of the adjoining property) on the boundary measuring up to 5.29m with regard to the walls of the former warehouse as demonstrated through the section below (thick bold lines). Further discussion in relation to these walls is provided in later sections of this assessment.



134. The same can be also be said with regard to the setbacks adopted to the east in relation to the eastern elevation when read in association with the existing on-boundary walls of up to 5.2m in height. The existing walls extend a length of 13.2m where adjacent to the extensively concreted secluded area of private open space of the eastern adjoining dwelling (noting that that this doubles as a car park in part). It is considered that there will be minimal visual bulk to the east as a result of the continuous built form.

The new walls atop the existing walls will be softened with interesting fenestration detail and would essentially present a height transition of one-storey with a saw tooth roof form. This is a significant departure from the previous design presentation that was 'busy' in appearance with lift shafts and walls that presented a height transition of two-storeys above the existing on-boundary wall.

135. The adopted side setbacks at the front will provide a visual break from the adjoining properties and will assist the building in transitioning between the single-storey dwelling to the east and the four-storey building to the west.

Standard B18 – Walls on boundaries

136. This standard stipulates the following:

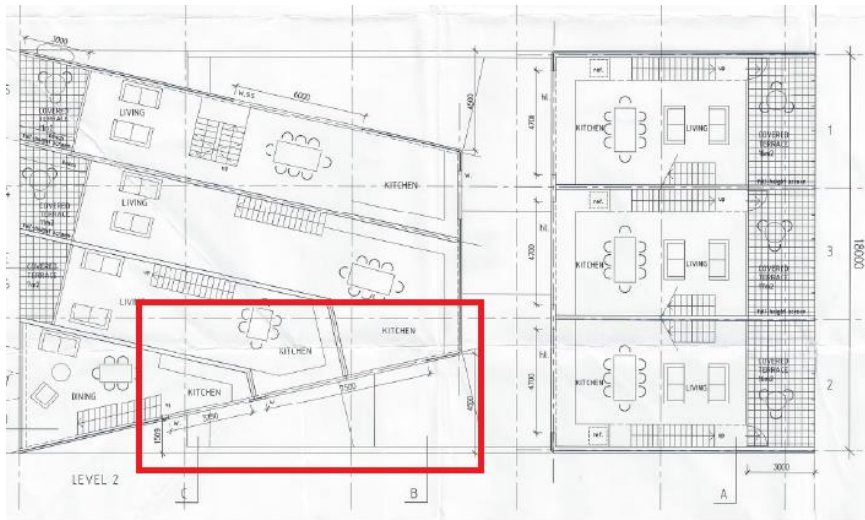
A new wall constructed on or within 200mm of a side or rear boundary of a lot or a carport constructed on or within 1 metre of a side or rear boundary of lot should not abut the boundary:

- (a) *For a length of more than the distance specified in a schedule to the zone; or*
- (b) *If no distance is specified in a schedule to the zone, for a length of more than:*
 - (i) *10 metres plus 25 per cent of the remaining length of the boundary of an adjoining lot, or*
 - (ii) *Where there are existing or simultaneously constructed walls or carports abutting the boundary on an abutting lot, the length of the existing or simultaneously constructed walls or carports whichever is the greater.*

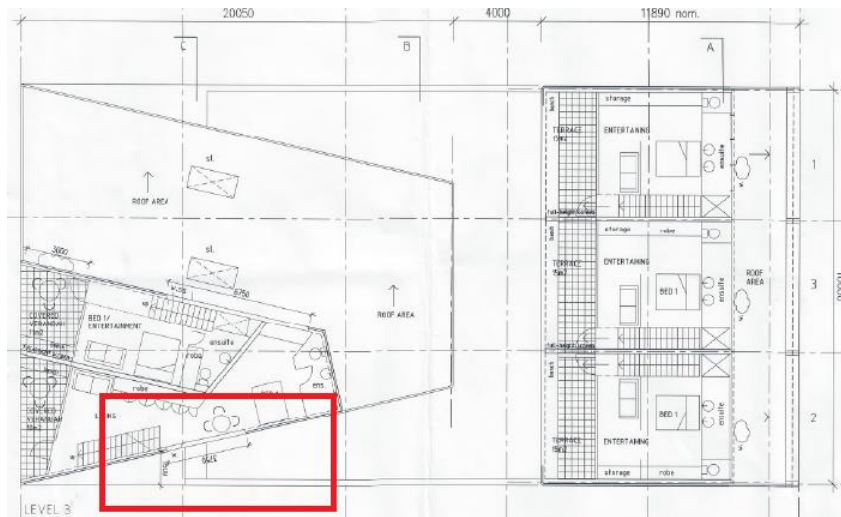
140. Complies with the standard and the objective. The proposed building would be located opposite several east-facing windows of the adjoining property to the west (commencing from Level 1 through to Level 3 where the building tapers away from the shared boundary). These windows are identified in the images below (extracted from the endorsed plans for planning permit No. PL03/0782):



Endorsed level 1 floor plan of western adjoining building



Endorsed level 2 floor plan of western adjoining building



Endorsed level 3 floor plan of western adjoining building

141. The standard is applied to the walls of the upper most floor levels of Townhouses 02 and 03 that extend between 3.6m and 5.82m above the existing on-boundary walls (that will be maintained and measure 5.29m above the natural ground level). Applying the standard, a minimum separation distance of 1.8m is required (progressively increasing to a minimum separation distance of 2.91m where the side wall of the saw-tooth is exposed). In this instance, the separation distances range between 3.5m (i.e. combined setbacks proposed and those existing as measured from mid-way of the kitchen window of the townhouse at the south-east corner of Level 2 of the adjoining building to the west) and 5.3m (i.e. combined setbacks proposed and those existing as measured from mid-way of the east-facing kitchen window of the townhouse north on Level 2 of the adjoining building to the west where this tapers at a greater distance from the shared boundary).

Standard B20 – North-facing windows

142. This standard stipulates the following:

‘If a north-facing habitable room window of an existing dwelling is within 3 metres of a boundary on an abutting lot, a building should be setback from the boundary 1 metre, plus 0.6 metres for every metre of height over 3.6 metres up to 6.9 metres, plus 1 metre for every metre of height over 6.9 metres, for a distance of 3 metres from the edge of each side of the window’.

143. There are no north-facing windows located within 3m of the subject site.

Standard B21 – Overshadowing

144. Standard B21 seeks to ensure buildings do not significantly overshadow existing secluded private open space. The closest areas of secluded private open space are located at Level 1 of the west adjoining four-storey building, to the east of the adjoining single-storey dwelling, including several north-facing balconies on the opposite side of the laneway to the south. It should be noted that in the morning and afternoon, due to the orientation of these secluded private open space areas (particularly with regard to the adjoining western areas), they are significantly shadowed by their own built form at the equinox.

145. For the purpose of the following assessment, the northern-most area opposite the subject site will be referenced as area “A”, that to its immediate south as area “B” and that further south as area “C” as shown in the diagram below (extracted from the endorsed Level 1 floor plans for planning permit No. PL03/0782):



146. The shadow diagrams submitted with the decision plans show that the only increase in the shadow cast to the west is at 10am into area B. This area currently enjoys solar access into approximately 5.2sq.m of its area (that is 16sq.m.) and at 10am at the Equinox this will be reduced by up to 2.2sq.m. This increase is not considered to be unreasonable given that the impact is limited to this single area of private open space at 10am only (one hour).
147. The shadow diagrams show an increase in shadow cast into the 119sq.m secluded private open area of the east adjoining dwelling. The proposal will increase shadows cast into this area by between one square metre and approximately 21.4sq.m between 1pm and 3pm at the Equinox. The shadow diagrams clearly demonstrate that this dwelling will continue to enjoy solar access to at least 40 square metres between 9am and 1pm. In this regard the proposal does not result in unreasonable levels of shadowing and meets the policy objective which is *to ensure buildings do not significantly overshadow existing secluded private open space*.
148. Shadows cast to the south and south-east will not impact the north-facing balconies of the building opposite but will be confined to the laneway.
149. The proposal has considered the Tribunal's findings in its deliberations of the previous four-storey scheme (in David Watson Architect v Yarra [2017] VCAT 588) that did not support this. In deciding whether to support the previous scheme the Tribunal stated at paragraph 41 on page 9 *that a strict implementation of ResCode's standards is inappropriate in this case and considered that a good planning outcome requires a proposed development to consider its context and to respond accordingly*. The current scheme is considered to appropriately respond to both western and eastern neighbouring properties given that it largely complies with this standard.

Standard B22 – Overlooking

150. The standard requires *a habitable room window, balcony, terrace, deck or patio should be located and designed to avoid direct views into the secluded private open space of an existing dwelling within a horizontal distance of 9 metres (measured at ground level) of the window, balcony, terrace, deck or patio. Views should be measured within a 45 degree angle from the plane of the window or perimeter of the balcony, terrace, deck or patio, and from a height of 1.7 metres above floor level*.
151. Plans show that views into adjoining secluded areas of private open spaces from habitable room windows will be blocked by the existing on-boundary walls or will be screened with opaque windows. Sections also identify that views from the terraces are also restricted by the existing on-boundary walls or planter boxes. Whilst the plans have adopted some measures to prevent overlooking, a condition will require the plans to clearly identify all screening measures in accordance with the standard on the floor plans and include plan notations confirming compliance. The materials schedule will also be required to be amended as this also shows two different variations of glass (i.e. clear and opaque) incorrectly identified in both instances as "GL2".

Standard B23 – Internal views

152. It is unclear whether the internal partitions between courtyards and upper level windows go far enough to address internal overlooking requirements of the standard. A condition will therefore require the plans to demonstrate full compliance with the standard.

Standard B24 – Noise impacts

153. The dwellings are not located in close proximity to existing noise sources and it is not considered necessary to require additional acoustic treatments for the proposed dwellings.

With no large plant areas proposed, it is not necessary to require to protect nearby dwellings (especially as the use as dwellings does not require a planning permit).

154. Objectors have raised noise from the car stacker as a concern including services. However, the building will be required to be attenuated for noise impacts and mechanical systems such as A/C units are generally designed to meet the relevant EPA noise requirements and so are not considered to have unreasonable noise impacts.

Standard B25 – Accessibility objective

155. The walkway and entrances of each new townhouse are located at the natural ground level and will be generally accessible for those with limited mobility in accordance with the standard. The townhouses would also have a lift, providing access to the upper and lower levels, including the basement and roof terrace of each. The objective of the standard is met.

Standard B26 – Dwelling entry objective

156. Complies with the standard and the objective subject to conditions. The primary pedestrian entrance is from Kerr Street with the entrances to the new dwellings clearly visible from within the shared walkway. The building will be clearly identified as one that houses multiple dwellings similar to any apartment building. Mail boxes have also been included at the north-east corner adjacent to the footpath of Kerr Street and next to the walkway, with gas meters provided within the front setback and electrical meters provided to the east of Townhouse 01.

Standard B27 – Daylight to new windows

157. The standard requires all habitable room windows to face an “*outdoor space clear to the sky or a light court with a minimum area of 3 square metres and minimum dimension of 1 metre clear to the sky*”. The position of all new windows satisfies this standard.

Standard B28 – Private open space

158. Standard B28 generally requires that:

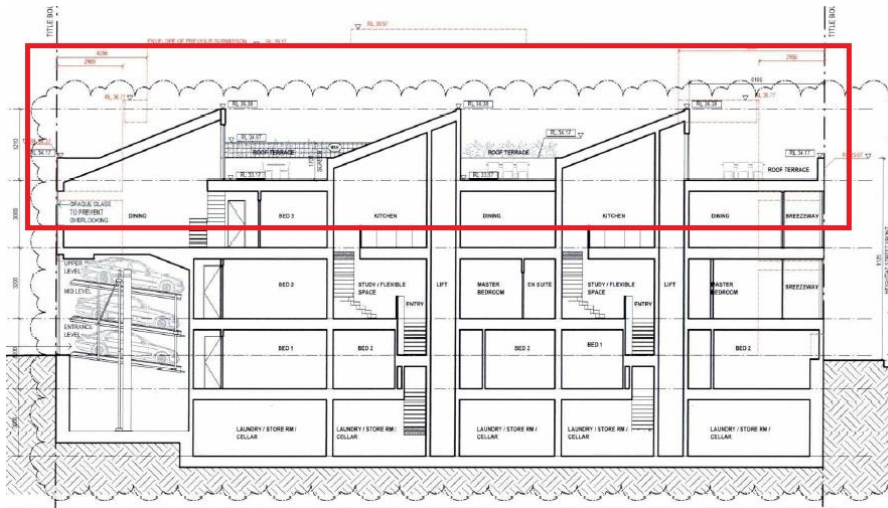
..a dwelling or residential building should have private open space consisting of:

- (a) *An area of 40 square metres, with one part of the private open space to consist of secluded private open space at the side or rear of the dwelling or residential building with a minimum area of 25 square metres, a minimum dimension of 3 metres and convenient access from a living room, or*
- (b) *A balcony of 8 square metres with a minimum width of 1.6 metres and convenient access from a living room, or*
- (c) *A roof-top area of 10 square metres with a minimum width of 2 metres and convenient access from a living room.*

159. The roof terraces range between 29sqm and 37sq.m. with a minimum dimensions of 4.3m and comply with the standard. The plans also provide lower courtyards to the west, accessed from the bedrooms of the townhouses that range between 8.8sq.m and 15.6sq.m. complying with the standard.

Standard B29 – Solar access to open space

160. Complies with the standard and the objective. The roof terraces will have an outlook to the north with saw-tooth roof forms angled to graduate to a reduced height to their southern side to ensure adequate levels solar access into these areas i.e.:



Standard B30 – Storage

- 161. The standard requires that all dwellings are provided with 6 cubic metres of externally accessible storage. Storage areas have been provided in the form of basements and evidently exceed these minimum requirements.

Standard B31 – Design detail

- 162. Complies with the standard. The proposed development is contemporary in design, yet complementary to the existing surrounding built form in terms of typology, form and materiality. It will integrate into the surrounding context along Kerr Street and the laneway which host tall buildings and a mix of styles from the Victorian era through to contemporary.
- 163. The building adopts masonry (combinations of solid and hit-and-miss bricks) to the walls with large expanses of opaque glass channels. Balustrades to terraces would also be constructed of a combination of brick and mesh metal screens with elevations punctuated with windows and a saw-tooth roof form with three saw-tooth pitches. The selected materials are supported given the location of the development and surrounding context with the added benefit of the adjoining building to the west which justifies the adopted design response to Kerr Street, including taller built forms evident in the laneway.
- 164. The design of the garage at the rear effectively integrates into the character of the laneway that provides vehicle access to several properties. It is also visually compatible with the local area, and other vehicle access points along the laneway. The dwellings will contribute to the design styles and housing choice found within the area. The proposal will present a development of acceptable quality within a built-up inner-city context and residential area zoned Mixed Use. The varied materials and contemporary approach, will emphasize a clear delineation between the old and new built form therefore providing an appropriate and distinguished built form outcome very separate to the heritage dwellings evident to the east.

Standard B32 – Front fences

- 165. Not applicable as there is no new front fence proposed.

Standard B33 – Common property

- 166. Common property is appropriately located to ensure its efficient ongoing management (likely to be a Body Corporate), in compliance with the standard.

Standard B34 – Site Services

167. There is common bin storage and meters enclosures proposed, in compliance with the standard.

Standard B35 – B49 Energy efficiency

168. Not applicable as these provisions are only relevant to apartments.

Objector concerns

169. The majority of the issues which have been raised by the objectors have been addressed within this report. However, each point will be addressed for clarity.

- (a) Neighbourhood character.
- (b) Design including height, massing, scale, bulk and site coverage and permeability.
- (c) Overdevelopment.

170. Neighbourhood character, height, massing, scale, bulk, site coverage and permeability have been discussed at paragraphs 86 to 106 with setbacks and walls on boundaries discussed at paragraphs 131 to 138. The strategic context, zoning of the land and size of the lot supports higher density. The site area is 313sq.m and occupied by a building formerly used as a warehouse. The building design and height has been informed by the immediate context to the west and has been sensitively designed and reduced in scale (compared to the original application plans) to address the eastern interface as this is seen from the adjoining property to the east. As such, the building is not considered to be an overdevelopment of the site in the existing site context that contains taller buildings with greater density than that proposed.

- (d) Off-site amenity including overshadowing / loss of daylight, overlooking and noise impacts.

171. Off-site amenity impacts have been discussed at paragraphs 131 to 154. More specifically:

- (i) overshadowing has been discussed at paragraphs 144 to 149;
- (ii) loss of daylight has been discussed at paragraphs 139 to 141;
- (iii) overlooking has been discussed at paragraphs 150 to 151; and
- (iv) noise has been discussed at paragraphs 153 to 154.

172. Daylight to surrounding dwellings will not be impacted as a consequence of the additional shadows given that windows of existing dwellings closest to the development are either west or east-facing or in the case of the building to the west clearances to the sky in excess of a 1m dimension and 3sq.m and where there are walls proposed opposite, separated by a dimension in excess of that required by the relevant standard of ResCode.

173. A condition will require noise emissions from plant and equipment to comply with the State Environment Protection Policy or any other standard recommended by the EPA (including but not limited to SEPP N-1).

174. As detailed at paragraph 151 Conditions for clarity around limiting any overlooking will also be included. It is acknowledged that some measures to prevent overlooking have been adopted in the proposal, however a condition will require the plans to clearly identify all screening measures on the floor plans and include plan notations confirming compliance with the standard. A condition will also require the materials schedule to be amended as this currently shows two different variations of glass (i.e. clear and opaque) incorrectly identified in both instances as "GL2".

- (e) Car parking and traffic impacts / impact on the laneway.

175. The development provides the required number of car parking spaces prescribed under Clause 52.06 of the Scheme and will utilise the existing laneway for vehicle access, similar to the other surrounding developments. Council's Engineer has also provided the following comments in relation to the queue of vehicles in the laneway:
- (a) *The 98th percentile queue length for the car stacker during the AM and PM peak hour is one car length. Based on this calculation, we are satisfied the proposed car stacker unit can adequately operate without adversely impacting on the traffic operation of the Right of Way.*
 - (b) *The delays that are likely to be expected with the operation of the car stacker will be just slightly longer compared to the operation of the automated gates that are currently in use at adjacent properties off the Right of Way*
176. As such, Council's Engineer anticipates no negative traffic implications. Council's Engineer is also supportive of the car park arrangement in terms of access and egress and manoeuvrability into the site from the laneway with regard to the car stacker.
- (f) Impacts on the structural integrity of surrounding properties during the construction phase.
177. Given the excavation involved with the construction of this development, a Construction Management Plan (CMP) will be required by way of condition and will manage any impacts during the construction stage. This will be further considered during the building permit stage.
- (g) The area being prone to flooding.
178. The subject site is not identified in the Scheme as one which is subject to flooding. Whilst it is acknowledged that the proposal includes excavation for a basement and part subterranean level, appropriate weatherproofing measures will need to take place to ensure that the site can appropriately drain without flooding or impacting its neighbouring properties. These are matters that will be considered at the building permit stage.

Conclusion

179. The proposed development is considered to demonstrate a high level of compliance with policy objectives contained within the State and Local Planning Policy Framework. Notably, the proposal achieves the State Government's urban consolidation objectives.
180. The proposal, subject to the conditions recommended, is an acceptable planning outcome that demonstrates clear compliance with the relevant policies of the Scheme.

RECOMMENDATION

That having considered all relevant planning policies, the Committee resolves to issue a Notice of Decision to Grant a Planning Permit PLN18/0404 for the part demolition of the existing building and development of the land with three dwellings at 36 and 38 Kerr Street, Fitzroy subject to the following conditions:

1. Before the development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the plans received by Council on 10 May 2019 but modified to show the following:
 - (a) The townhouses labelled correctly on the floor plans.

- (b) The provision of lighting along the pathways leading up to the primary pedestrian entrances of each townhouse, and appropriately shielded and of limited intensity so as to avoid any light spillage into existing adjoining properties.
- (c) Plan notation confirming that ground surface treatments within the pedestrian walkway along the east side of the building will be pervious.
- (d) Plan notations confirming that the storm water collected on site will be used for the flushing of toilets within the development.
- (e) Plan notations confirming that the storm water collected on site will be used for the flushing of toilets within the development.
- (f) Details to demonstrate that windows and terraces will be screened in accordance with the standard at Clause 55.04-6 (Overlooking) of the Yarra Planning Scheme.
- (g) Details to demonstrate that windows and terraces will be screened in accordance in accordance with Clause 55.04-7 (Internal views) of the Yarra Planning Scheme.
- (h) The vehicle access gate shown to open into the site to ensure no obstruction to the laneway.
- (i) An updated schedule of all external materials and finishes showing the materials colour, finish and application methods of all external walls, roof, fascias, window frames, glazing types, cladding, doors and fences and labelled correctly to correlate with the elevations.
- (j) The garage door width and internal floor-to-ceiling heights of the garage dimensioned with further plan notations (including separate manufacturer details) of the car stacker model.
- (k) Provision of a convex mirror to the southern side of the development's vehicle entrance to improve the visibility of the laneway.
- (l) Design changes to implement recommendations of the Sustainable Development Assessment condition of this permit.
- (m) Design changes to implement any recommendations of the endorsed Waste Management Plan condition of this permit.

Endorsed Plans

- 2. The development as shown on the endorsed plans must not be altered (unless the Yarra Planning Scheme specifies that a permit is not required) without the prior written consent of the Responsible Authority
- 3. Finished floor levels shown on the endorsed plans must not be altered or modified without the prior written consent of the Responsible Authority.
- 4. Before the development is occupied, or by such later date as approved in writing by the Responsible Authority, all new on-boundary walls must be cleaned and finished to the satisfaction of the Responsible Authority.
- 5. Before the development is occupied, or by such later date as approved in writing by the Responsible Authority, all screening and other measures to prevent overlooking as shown on the endorsed plans must be installed to the satisfaction of the Responsible Authority. Once installed the screening and other measures must be maintained to the satisfaction of the Responsible Authority.
- 6. 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.

Environmentally Sustainable Design Principles (SDA)

- 7. Before the plans are endorsed, a Sustainable Development Assessment to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Sustainable Development Assessment will be endorsed and will form part of this permit.

The Sustainable Development Assessment must include a STORM rating report and include the following commitments:

- (a) Provision of standard fluorescent and LED lighting throughout;
- (b) Minimum average 6 NatHERS rating;
- (c) 5 star heating and 4 star cooling systems;
- (d) 4 star WELS rated toilets;
- (e) 3 star WELS rated shower heads;
- (f) Low VOC paints; and
- (g) Water tanks to each townhouse with a 2000lt water capacity.

8. The provisions, recommendation and requirements of the plans and endorsed Sustainable Development Assessment must be implemented and complied with to the satisfaction of the Responsible Authority.

Lighting

9. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, all external lighting capable of illuminating access to the pedestrian entries and basement level car parking area must be provided. Lighting must be:
- (a) located;
 - (b) directed;
 - (c) shielded; and
 - (d) of limited intensity.

to the satisfaction of the Responsible Authority.

General Parking Areas

10. The area set aside for the parking of vehicles, together with the associated access lanes as delineated on the endorsed plan must:
- (a) be designed, provided and completed to the satisfaction of the Responsible Authority;
 - (b) thereafter be maintained to the satisfaction of the Responsible Authority;
 - (c) be made available for such use at all times and not used for any other purpose;
 - (d) be properly formed to such levels that it can be used in accordance with the endorsed plan; and
 - (e) be drained and sealed with an all-weather seal coat;

all to the satisfaction of the Responsible Authority.

Council Infrastructure

11. Within 2 months of the completion of the development or by such later date as approved in writing by the Responsible Authority, any damage to Council infrastructure resulting from the development must be reinstated (including the full re-sheeting of the footpath at the front of the property if required by Council):
- (a) at the permit holder's cost; and
 - (b) to the satisfaction of the Responsible Authority.
12. Except with the prior written consent of the Responsible Authority, Council assets must not be altered in any way.

13. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, any redundant vehicular crossing must be demolished and re-instated as standard footpath and kerb and channel:
 - (a) at the permit holder's cost; and
 - (b) to the satisfaction of the Responsible Authority.

Waste Management

14. Before the plans are endorsed, a Waste Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. Once approved, the Waste Management Plan will be endorsed and will form part of this permit.
15. The provisions, recommendations and requirements of the endorsed Waste Management Plan must be implemented and complied with at all times to the satisfaction of the Responsible Authority.

Noise

16. Noise emissions from plant and equipment must comply with the State Environment Protection Policy or any other standard recommended by the Environment Protection Authority (including but not limited to SEPP N-1).

Construction

17. Before the development commences, a Construction Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will form part of this permit. The plan must provide for:
 - (a) a pre-conditions survey (dilapidation report) of the land and all adjacent Council roads frontages and nearby road infrastructure;
 - (b) works necessary to protect road and other infrastructure;
 - (c) remediation of any damage to road and other infrastructure;
 - (d) containment of dust, dirt and mud within the land and method and frequency of clean up procedures to prevent the accumulation of dust, dirt and mud outside the land,
 - (e) facilities for vehicle washing, which must be located on the land;
 - (f) the location of loading zones, site sheds, materials, cranes and crane/hoisting zones, gantries and any other construction related items or equipment to be located in any street;
 - (g) site security;
 - (h) management of any environmental hazards including, but not limited to:
 - (i) contaminated soil;
 - (ii) materials and waste;
 - (iii) dust;
 - (iv) stormwater contamination from run-off and wash-waters;
 - (v) sediment from the land on roads;
 - (vi) washing of concrete trucks and other vehicles and machinery; and
 - (vii) spillage from refuelling cranes and other vehicles and machinery;
 - (i) the construction program;
 - (j) preferred arrangements for trucks delivering to the land, including delivery and unloading points and expected duration and frequency;
 - (k) parking facilities for construction workers;
 - (l) measures to ensure that all work on the land will be carried out in accordance with the Construction Management Plan;

- (m) an outline of requests to occupy public footpaths or roads, or anticipated disruptions to local services;
- (n) an emergency contact that is available for 24 hours per day for residents and the Responsible Authority in the event of relevant queries or problems experienced;
- (o) the provision of a traffic management plan to comply with provisions of AS 1742.3-2002 Manual of uniform traffic control devices - Part 3: Traffic control devices for works on roads;
- (p) a Noise and Vibration Management Plan showing methods to minimise noise and vibration impacts on nearby properties and to demonstrate compliance with Noise Control Guideline 12 for Construction (Publication 1254) as issued by the Environment Protection Authority in October 2008. The Noise and Vibration Management Plan must be prepared to the satisfaction of the Responsible Authority. In preparing the Noise and Vibration Management Plan, consideration must be given to:
 - (i) using lower noise work practice and equipment;
 - (ii) the suitability of the land for the use of an electric crane;
 - (iii) silencing all mechanical plant by the best practical means using current technology;
 - (iv) fitting pneumatic tools with an effective silencer;
 - (v) other relevant considerations; and

During the construction:

- (q) any stormwater discharged into the stormwater drainage system must be in compliance with Environment Protection Authority guidelines;
 - (r) 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;
 - (s) vehicle borne material must not accumulate on the roads abutting the land;
 - (t) the cleaning of machinery and equipment must take place on the land and not on adjacent footpaths or roads; and
 - (u) all litter (including items such as cement bags, food packaging and plastic strapping) must be disposed of responsibly.
18. The provisions, recommendations and requirements of the endorsed Construction Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.
19. The development, once commenced, must be completed to the satisfaction of the Responsible Authority.
20. Except with the prior written consent of the Responsible Authority, demolition or construction works must not be carried out:
- (a) Monday-Friday (excluding public holidays) before 7 am or after 6 pm;
 - (b) Saturdays and public holidays (other than ANZAC Day, Christmas Day and Good Friday) before 9 am or after 3 pm;
 - (c) Sundays, ANZAC Day, Christmas Day and Good Friday at any time.
21. 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 external works.

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

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

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

Public lighting for pedestrian access must comply with the minimum lighting level of P4 as per the Australian Standard AS/NZS 1158.3.1:2005 *Lighting for roads and public spaces – Pedestrian area (Category P) lighting – Performance and design requirements*.

All future property owners, residents, employees and occupiers residing within the dwellings of the development approved under this permit will not be permitted to obtain resident, 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 5585 to confirm.

CONTACT OFFICER: John Theodosakis
TITLE: Senior Statutory Planner
TEL: 9205 5307

Attachments

- 1 Site Location - 36 - 38 Kerr Street, Fitzroy
- 2 36 - 38 Kerr Street Fitzroy - Plans pursuant to Section 57(a) - Decision Plans
- 3 36 - 38 Kerr Street Fitzroy - Advertised / Original Plans
- 4 36 - 38 Kerr Street Fitzroy - Advertised Shadows forming part of original plans
- 5 Heritage advice
- 6 Updated engineering comments in relation to Amended plans
- 7 VCAT Reference No: P2137 2016
- 8 Permit Applicant's Letter of Response following planning consultation meeting.
- 9 Endorsed Plans associated with western adjoining property