



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

**to be held virtually**  
**on Wednesday 10 June 2020 at 6.30pm**

**Rostered Councillor membership**

Councillor Misha Coleman  
Councillor Daniel Nguyen  
Councillor Danae Bosler

- I. ATTENDANCE**  
Danielle Connell (Senior Co-Ordinator Statutory Planning)  
Julian Larkins (Co-Ordinator Statutory Planning)  
Gary O'Reilly (Senior 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 Woi-wurrung 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."***

### **Internal Development Approvals Committee Submissions**

“Prior to the consideration of any Committee Business Report at a meeting of the Internal Development Approvals Committee, members of the public shall be invited by the Chairperson to make a verbal submission. In determining the order of submissions, the Chairperson shall first invite the applicant or their representatives to submit, followed by formal objectors and finally any other interested persons.

All submitters accepting the invitation to address the meeting shall make submissions in accordance with these guidelines (or a variation of these guidelines as determined by the Chairperson at their sole discretion).

- Speak for a maximum of five minutes;
- Direct their submission to the Chairperson;
- Confine their submission to the planning permit under consideration;
- If possible, explain their preferred decision in relation to a permit application (refusing, granting or granting with conditions) and set out any requested permit conditions.
- Avoid repetition and restating previous submitters;
- Refrain from asking questions or seeking comments from the Councillors, applicants or other submitters;
- If speaking on behalf of a group, explain the nature of the group and how the submitter is able to speak on their behalf.

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

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

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

*Extract from the Council Meeting Operations Policy, September 2019*

## 1. Committee business reports

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**1.1 PLN19/0241 - 7/1 Bik Lane, Fitzroy North - Development of the land for the construction of 4 dwellings and a reduction in the car parking requirement**

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## **Executive Summary**

### **Purpose**

1. This report provides an assessment of the development of the site at No. 7/1 Bik Lane, Fitzroy North for the construction of four dwellings and a reduction in the associated car parking requirement of the Scheme.

### **Key Planning Considerations**

2. Key planning considerations include:
  - (a) Built form (Clauses 15.01, 21.05, 22.07 and 22.10);
  - (b) Off-site amenity (Clauses 15.01, 22.05 and 55); and
  - (c) Internal amenity (Clause 55); and
  - (d) Car Parking (Clause 18.02, 21.06, 52.06) of the Scheme

### **Key Issues**

3. The key issues for Council in considering the proposal relate to:
  - (a) Strategic context;
  - (b) Built form and design;
  - (c) Clause 55;
  - (d) Off-site amenity impacts;
  - (e) Car parking; and
  - (f) Objector concerns.

### **Submissions Received**

4. The application was advertised and 12 objections were received to the application. The issues/concerns raised are summarised as the following:
  - (a) Neighbourhood character (height, scale, bulk, design details).
  - (b) Car parking;
  - (c) Off-site amenity (overshadowing, daylight to adjoining windows, overlooking)
  - (d) Lack of bicycle spaces & inconveniently located;
  - (e) Excessive site coverage and lack of permeability affecting stormwater runoff;
  - (f) Development could potentially hamper maintenance and the removal of combustible cladding on adjoining property to the south;
  - (g) Loss of views;
  - (h) Damage to adjoining properties;
  - (i) Setting a precedent for future developments;
  - (j) Excessive timeframes to complete the development.

### **Conclusion**

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

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

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**1.1 PLN19/0241 - 7/1 Bik Lane, Fitzroy North - Development of the land for the construction of 4 dwellings and a reduction in the car parking requirement**

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Reference: D20/88323  
 Authoriser: Coordinator Statutory Planning

**Ward:** Nicholls Ward  
**Proposal:** Development the site for the construction of 4 dwellings and a reduction in the associated car parking requirement of the Scheme.  
**Existing use:** Warehouse  
**Applicant:** Map Architecture  
**Zoning / Overlays:** Mixed Use Zone, Environmental Audit Overlay  
**Date of Application:** 23 April 2019  
**Application Number:** PLN19/0241

**Planning History**

1. Planning Permit SP05/0010 was approved on the 30 June 2005 for the *subdivision of the land into seven lots and common property (to the rear of 650 Nicholson Street)*. The subject site is known as Unit 7/1 Bik Lane and is one of the 13 lots created within the subdivision.
2. Planning permit PLN14/0036 was issued at 7/1 Bik Lane, Fitzroy North on 9 February 2015 for the construction of a four-storey mixed-use building (permit not required for uses), a reduction in car parking requirements and a waiver of loading bay requirements. The permit was not acted upon and has since expired.

**The Proposal**

3. The application proposes the construction of four dwellings ranging in height from 3 to 4 storeys and a reduction in the statutory car parking requirements.
4. More specifically the proposal is for the following:  
Demolition (no permit required)
5. Full demolition of the existing single storey brick/galvanised iron warehouse.  
Buildings and works
6. Construction of four dwellings, to comprise the following:
7. Four, three-bedroom dwellings varying in height between three and four storeys.
8. Dwellings 1-3 are similar in layout and comprise the four storey portion of this application. At ground floor, each of these dwellings is provided with a single width garage and separate pedestrian entry to the common property towards the north, lift, bedroom, en-suite and 4.4sqm courtyard. At first floor are two bedrooms with en-suites, lift and staircase. At second floor is an open plan living, kitchen and dining room area. At third floor is a retreat area with bathroom and accessed via the lift and staircase. A north-facing terrace is provided to the retreats, varying in size of between 16.6sqm to 23sqm.
9. Dwelling 4 is the easternmost unit and is 3 storey in height. At ground floor, the dwelling contains a single width garage and separate pedestrian entry, bedroom, en-suite and 4.4sqm courtyard. At first floor is an open plan living, kitchen and dining room area and north-facing terrace (12sqm in area). At second floor are two bedrooms and two bathrooms.
10. Access to all dwellings is via the common property to the north. Each dwelling is provided with a single car garage and separate pedestrian entry.
11. Maximum overall height is 12.64m above natural ground level.

### Setbacks

12. The ground floor is generally constructed to all of the lot boundaries, with four 1m deep recessed entries along the northern boundary and 1.6m to 2m deep recesses provided along the eastern and southern boundaries to provide courtyards.
13. The first floor incorporates the following setbacks:
  - (a) A varied zero metre to 1.8m setback to the northern (front) boundary.
  - (b) A varied zero metre to 1.8m setback to the eastern (side) boundary.
  - (c) A varied zero metre to 2.7m setback to the southern (rear) boundary.
  - (d) A zero metre setback to the western (side) boundary.
14. The second floor incorporates the following setbacks:
  - (a) A zero metre setback to the northern (front) boundary.
  - (b) A varied 1.2m to 7.3m setback to the eastern (side) boundary.
  - (c) A varied 0.7m (rainwater tank) to 4.6m setback to the southern (rear) boundary.
  - (d) A zero metre setback to the western (side) boundary.
15. The third (roof terrace) floor incorporates the following setbacks:
  - (a) A zero metre setback to the northern (front) boundary.
  - (b) A varied 7.4m to 8.6m setback to the eastern (side) boundary.
  - (c) A 2m setback to the southern (rear) boundary.
  - (d) A zero metre setback to the western (side) boundary.

### Landscaping

16. It is proposed to install planter boxes along the northern and western boundaries of the roof terraces to dwellings 1-3. Metal trellis are to be installed along the southern boundary courtyards to support creeper vines.

### Colours and materials

17. A combination of recycled red brick, selected timber lining/cladding (natural finish), cassette panels (powder coated black), perforated metal sheeting in a powder coated black finish (25% and 62% openings) and black aluminium window frames.

### ESD commitments

18. Four, 1,000 litre rainwater tanks, EV charging points and solar panels to each dwelling. Good access to daylight and natural ventilation, energy efficient lighting / heating / cooling / hot water and water efficient taps and fixtures.

### Access and car parking

19. Each dwelling will be provided with a single width garage accessed via the common property along the northern boundary. This common property forms part of the subdivision of 1 Bik Lane into 13 lots. The common property is centrally located and provides pedestrian and vehicular access to all lots within the subdivision (i.e. 1-7/1 Bik Lane).

### Private open space

20. Dwelling 1-3 are provided with roof terraces with good solar access to the north/north-west. The terraces vary in size between 16.8sqm to 28sqm.
21. Dwelling 4 is provided with a 12sqm, north-facing terrace along the first floor.

## **Existing Conditions**

### Subject Site



22. The subject site (7/1 Bik Lane) is located within a larger subdivision of 13 lots, which comprises a series of former industrial warehouse buildings circa 1960s that have since been converted into residences or maintained as commercial properties. Access to the larger subdivision is from Bik Lane which leads into a common property area for all lots.
23. The plan of subdivision identifies that lots, 3B, 4A, 4B, 5A and 6A have tandem car spaces adjacent to the common property, near the entry of the site along Bik Lane. Additional car spaces appear to be provided within individual lots.

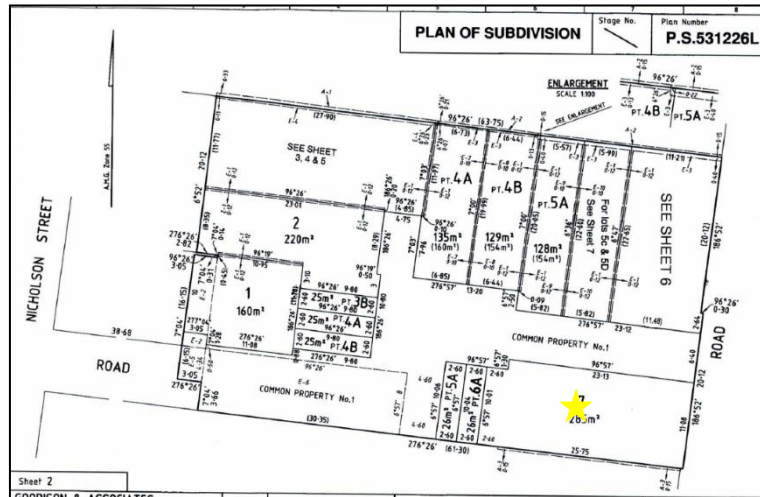


Figure 1 – Plan of subdivision for 1 Bik Lane

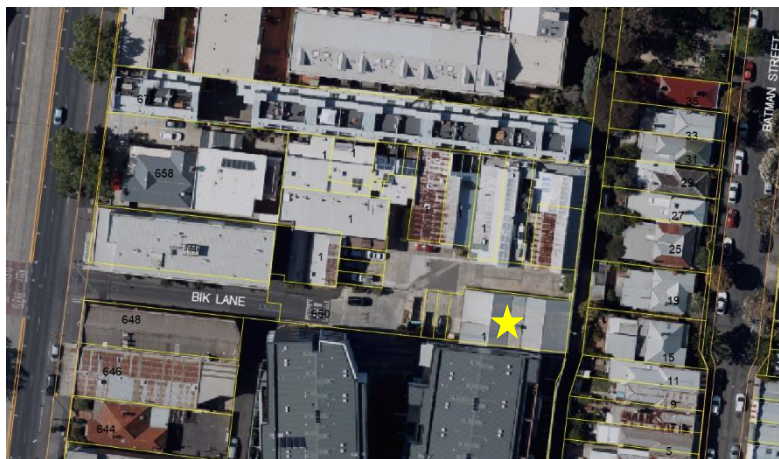


Figure 2 – Aerial photo of subject site and surrounds

24. The subject site, 7/1 Bik Lane, is generally rectangular in shape with a 25.73m wide frontage to the common property, a maximum depth of 11.08m and yielding an area of 285sqm. The subject site is developed with a single-storey warehouse. The building is located on the southern side of the larger subdivision, within the south-east corner.
25. The common property is located adjacent to the northern boundary of the subject site and provides vehicle and pedestrian access to all lots within the original subdivision (figure 1).
26. The building has a single width roller entry along its northern façade (figure 3).



**Figure 3 – Subject site No. 7/1 Bik Lane, Fitzroy North (Source: Applicant)**

Surrounding Land

27. The land surrounding the larger subdivision is a mix of residential and commercial uses. The commercial uses are generally located on the west side of Nicholson Street, between Scotchmer Street to the north and Reid Street to the south. In terms of built form, there is a mix of Victorian to Edwardian-era buildings and more contemporary in-fill developments with heights varying between single-storey commercial buildings to six storey apartment blocks.
28. Immediately to the north of the subject site is common property (with a varied width of between 6.5m to 10.3m at the site frontage). On the opposite side of the common property is the front façades of Nos. 5/1 and 6/1 Bik Lane (figure 4). These properties are double storey in height and are constructed to the front boundary. The ground floor level provides pedestrian and vehicle access, with habitable room windows with outlook to the subject site at first floor.



**Figure 4 – Nos. 5/1 & 6/1 Bik Lane, Fitzroy North (Source: Applicant)**

29. Immediately to the east of the subject site is 3.3m wide laneway, running in a north-south orientation. Beyond the laneway are the rear boundaries of residential properties along Batman Street. All dwelling front Batman Street, with the rear setback occupied but outbuildings/sheds and the dwellings secluded private open space.
30. Immediately to the south is No. 4 Bik Lane (previously part of 648A Nicholson St), which is occupied by a 7storey apartment building (Roi Apartments) developed under Planning Permit PL07/1209. Directly facing the subject site is a four storey boundary wall, which contains a number of windows at the second and third floors. A review of the endorsed plans for this site indicates that 6of these windows are habitable.
31. Immediately to the west of the subject site arethe open-air tandem car spaces associated with Lots 5A and 6A. Beyond the car spaces is the bin storage area and eastern end of Bik Lane.

32. The subject site is well serviced by public transport and public open space, including:
- (a) The 96 tram route servicing Nicholson Street, 70m to the east (stop at the junction of Nicholson and Reid/Scotchmer Streets).
  - (b) The 11 tram route servicing Brunswick Street, 340m to the south-east (stop at the junction of Brunswick Street and Reid Street).
  - (c) The 250 and 251 bus routes servicing Rathdowne Street, 471m to the west.
  - (d) Edinburgh Gardens, located approximately 360m to the south-east.

## Planning Scheme Provisions

### Zoning

#### *Clause 32.04 – Mixed Use Zone*

33. Pursuant to Clause 32.04-2 of the Scheme, a planning permit is not required to use land for a dwelling.
34. Pursuant to Clause 32.04-6 of the Scheme, a planning permit is required to construct two or more dwellings on a lot.
35. The decision guidelines at Clause 32.04-14 of the Scheme specify that for two or more dwellings on a lot, dwellings on common property and residential buildings, the objectives, standards and decision guidelines of Clause 55 apply.

### Overlays

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

36. Pursuant to Clause 45.03-1 of the Scheme, “before a sensitive use (residential use, child care centre, pre-school centre or primary school) commences or before the construction or carrying out of buildings and works in association with a sensitive use commences, either:
- (a) a certificate of environmental audit must be issued for the land in accordance with Part IXD of the Environment Protection Act 1970; or
  - (b) an environmental auditor appointed under the Environment Protection Act 1970 must make a statement in accordance with Part IXD of that Act that the environmental conditions of the land are suitable for the sensitive use.
37. A Statement of Environmental Audit dated 22 December 2006 has been issued by an Environmental Auditor appointed under the *Environment Protection 1970* for 650 Nicholson Street (Plan of Consolidation PC353171. Vol. 10093 Fol. 721) and for 650A Nicholson Street (Plan of Consolidation CP151410, Vol. 10882 Fol. 197), Fitzroy North. It is noted that the subject site, 7/1 Bik Lane, was previously known as 650 Nicholson Street.
38. The Statement of Environmental Audit confirms the following:
- The site is suitable for the following beneficial uses subject to the conditions attached thereto:*
- (a) *High density residential use, and commercial and industrial use, subject to compliance with the environmental management plan Report on Site Management Plan, 650 Nicholson Street North Fitzroy, Project: 42116, prepared by Douglas Partners Pty Ltd and dated 16 November 2006 that is included in the attached environmental audit report.*
  - (b) *The condition of the site is detrimental or potentially detrimental to any (one or more) beneficial uses of the site. Accordingly, I have not issued a Certificate of Environmental Audit for the site in its current condition, the reasons for which are presented in the environmental audit report. The terms and conditions that need to be complied with before a Certificate of Environmental Audit may be issued are set out as follows:*

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

39. As there appear to be on-going conditions associated with the Statement of Environmental Audit, notations regarding the EAO requirements will be included on any planning permit issued.

Particular Provisions

Clause 52.06 – Car Parking

40. Clause 52.06-2 of the Scheme states that before a new use commences, the number of car spaces required under Clause 52.06-5 must be provided to the satisfaction of the Responsible Authority.

41. The requirements of Clause 52.06-5 are shown in the table below:

Use	Rate required under the Scheme	Car parking spaces required under the Scheme	Car parking spaces proposed	Variation (reduction) required
Dwellings (4 x 3 bed dwellings)	2 spaces for a 3 bedroom dwelling	8	4	4

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

*Clause 52.34*

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

Use	Statutory Requirement	Spaces required	On-site Provision	Reduction requested
Dwelling	In developments of four or more storeys, 1 to each 5 dwellings	0	0	0
	In developments of four or more storeys, 1 to each 10 dwelling.	0	0	0
<b>Total</b>		0	0	0

44. As the proposed development is less than 5 dwellings, there is not requirement for any bicycle spaces.

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

45. This clause applies as the development is for the construction of two or more dwellings on the lot. A development should meet all the standards and must meet all the objectives.

General Provisions

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

*Clause 65.01 – Approval of an application or plan*

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

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

Planning Policy Framework (PPF)

Clause 11.02 - Managing Growth

47. Clause 11.02-1 Supply of Urban Land

48. The objective is:

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

Clause 13.04-1S Contaminated and potentially contaminated land

49. The relevant objective of this clause is:

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

Clause 13.05-1S – Noise abatement

50. The relevant objective of this clause is:

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

Clause 13.07 - Amenity

Clause 13.07-1S Land use compatibility

51. The objective of this clause is:

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

Clause 15.01-1S – Urban design

52. The relevant objective of this clause is:

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

Clause 15.01-2S – Building design

53. The relevant objective of this clause is:

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

Clause 15.01-5S Neighbourhood character

54. The relevant objective of this clause is:

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

Clause 15.02 – Sustainable Design

55. The objective of this clause is:

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

Clause 16.01 – Residential development

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

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

Clause 16.01-2S Location of residential development

57. The objective of this clause is:

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

Clause 18.01 integrated transport

58. The objective of this clause is:

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

Clause 18.02 Movement Networks

59. The objective of this clause is:

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

Clause 18.02-2S Public Transport

60. The objective of this clause is:

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

Clause 18.02-2R Principal Public Transport Network

61. The objective of this clause is:

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

Local Planning Policy Framework (LPPF)

Clause 21.04-1 Accommodation and Housing

62. The objectives of this clause are:

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

63. Clause 21.05 Built environment

- (a) *To protect and enhance Yarra's heritage places;*
- (b) *To reinforce the existing urban framework of Yarra;*

- (c) *To retain Yarra's identity as a low-rise urban form with pockets of higher development;*
- (d) *To ensure that new development contributes positively to Yarra's urban fabric;*
- (e) *Ensure development is designed having particular regard to its urban context and specifically designed following a thorough analysis of the site, the neighbouring properties and its environs;*

#### Clause 21.06 Transport

64. The objectives of this clause are:

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

#### Clause 21.07 Environmental Sustainability

65. The relevant objectives of this clause are:

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

#### Clause 21.08 Neighbourhoods

66. Clause 21.08-8 of the Scheme describes the Fitzroy North neighbourhood as, "*largely residential. The northern part of North Fitzroy has a low density residential character consisting of late Victorian and early Edwardian double fronted dwellings. Further south dwellings are more likely to be single fronted and one or two storeys*".

#### Relevant Local Policies

##### Clause 22.05 Interface uses policy

67. This policy applies to applications for use or development within the Mixed Use Zone (amongst others). The objectives of this clause are to enable the development of new residential uses within and close to activity centres, near industrial areas and in mixed use areas while not impeding the growth and operation of these areas as service, economic and employment nodes and to ensure that residential uses located within or near commercial centres or near industrial uses enjoy a reasonable level of amenity.

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

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

##### Clause 22.17 Environmentally Sustainable Development

69. 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**

70. The application was advertised under the provisions of Section 52 of the *Planning and Environment Act (1987)* 364 letters sent to surrounding owners and occupiers and by a sign displayed on site.

71. Council received 12 objections, the grounds of which are summarised as follows:

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

- (b) Car parking;
- (c) Off-site amenity (overshadowing, daylight to adjoining windows, overlooking);
- (d) Lack of bicycle spaces & inconveniently located;
- (e) Excessive site coverage and lack of permeability affecting stormwater runoff;
- (f) Development could potentially hamper maintenance and the removal of combustible cladding on adjoining property to the south;
- (g) Loss of views;
- (h) Damage to adjoining properties;
- (i) Setting a precedent for future developments;
- (j) Excessive timeframes to complete the development.

72. Due to the Covid-19 restrictions, a public consultation meeting was not held.

### **Referrals**

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

#### External Referrals

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

#### Internal Referrals

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

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

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

### **OFFICER ASSESSMENT**

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

- (a) Strategic context;
- (b) Clause 55 – ResCode;
- (c) Environmental sustainability;
- (d) Car parking / traffic; and
- (e) Objector concerns

#### Policy and Strategic Support

78. The proposal is consistent with the various development objectives outlined in State Planning Policy Frameworks (PPF) and Local PPF in the Scheme, by providing an acceptable level of compliance with the relevant policies within the Scheme.
79. The subject site is located within a Mixed Use Zone (MUZ) and is in close proximity to a commercial strip along Nicholson Street (the east side of Nicholson Street is located in the MUZ and the west side is located within the Commercial 1 Zone (C1Z)).
80. The subject site is within easy walking distance to public transport and services (Nicholson Street and St Georges Road). Policy encourages the urban consolidation/higher densities developments within and in close proximity to activity centre locations and the concentration of such developments in established areas.



Policy supports proposals which achieve the urban growth objectives at clauses 11.01, 11.02 and 16.01-2S of the Scheme through the development on land close to existing transport corridors and services.

81. The proposed development is consistent with the purpose of the MUZ which seeks “to provide for housing at higher densities” and “to encourage development that responds to the existing or preferred neighbourhood character of the area”. The housing growth encouraged under the MUZ combined with the subject site’s close proximity to existing infrastructure will be a key driver of change within the surrounding area.
82. Clause 21.04-4 of the Scheme encourages new developments to provide for a diversity of housing types. The proposal is for 4 new dwellings (4 x 3 bedrooms) in an inner city location, which will contribute to the diversity of housing in the area.
83. The proposal will result in the efficient use of existing infrastructure, consistent with Clause 21.04-1 of Council’s MSS. Related strategies encourage the adaptation and reuse of land in established urban areas to reduce development pressures on the metropolitan fringe and encourage sustainable transport.
84. Clause 16.01-3S seeks to provide a mix of housing types in well-designed, medium density housing developments that respect the neighbourhood character; improve housing choice; make better use of existing infrastructure and improve the energy efficiency of housing. Clause 16.01-4S aims to deliver more affordable housing closer to jobs, transport and services. It is considered that the subject site’s locational benefits and strategic policy context support a medium-density residential development. The proposal would achieve multiple objectives and is ideally located for higher density development. The proposal however must also address and take into account the off-site amenity of adjoining properties.
85. As discussed earlier in this report, an application of this scale must be accompanied by a Sustainable Development Assessment (SDA). These typically take the form of a STORM report and BESS report. Subject to amended SDA, the proposal will comply with Clause 22.16 Stormwater Management (WSUD) and Clause 22.17 Environmental Sustainable Developments. A full assessment of both clauses is discussed later in this report.

#### Clause 55

86. Clause 55 comprises 33 design objectives and standards to guide the assessment of new residential development. Given the site’s location within a built up inner city residential area, strict application of the standard is not always appropriate, whether the proposal meets the objective is the relevant test.
87. The following objectives are however not relevant to the assessment of this proposal:
  - (a) Dwelling diversity – The development consists of less than 10 dwellings.
  - (b) Street setback – The subject site does not have a street frontage.
  - (c) Open space – There is no communal space proposed within this development.
  - (d) Access – No vehicle access from the street frontage proposed.
  - (e) Common property – There is no common property proposed within this development

#### *Standard B1 – Neighbourhood Character*

88. In assessing neighbourhood character, in addition to Standard B1, consideration is required to be given to Council’s local policies at Clause 22.07 and 22.10 of the Scheme. Clause 22.10 provides design guidelines at Clause 22.10-3.2 (*Urban form and character*), Clause 22.10-3.3 (*Setbacks & building heights*), and Clause 22.10-3.4 (*Street and Public Space Quality*). Clause 22.07 provides specific guidance on assessing applications which about a laneway and provide a safe environment and maintains the unique laneway character.
89. The dwellings will be separated in a more fine grain subdivision pattern, with all dwellings fronting the common property to the north. Each dwelling is provided with a single width garage and recessed entry along the northern boundary.

Council’s Urban Design Unit have raised concerns as to the extent of garages along the northern boundary and lack of activation on this level. However, given the immediate surrounding context where there are a number of garages fronting the common property within the subdivision, it is considered an acceptable design response. The recessed dwelling entries combined with the use of timber cladding to the garage doors soften the overall appearance at street level and do provide some relieve and a clear sense of address to each dwelling.

- 90. It has been identified that there is a discrepancy in the garage style. The garage doors are noted as “roll up” on the plan, this should be amended to “tilt up” or similar, to be consistent with the elevation and to suit the timber cladding. This will be addressed via condition of the permit.
- 91. The northern façade extends up three storeys, with a recessed fourth level. Clause 22.10-3.3 of the Scheme encourages the use of massing or articulation or changes of surface treatment, or a combination of these, to relate taller buildings to the scale of their surrounds, and to diminish visual bulk. They also seek the use of appropriate materials, finishes and colours, which add visual interest and, assist in breaking up the mass and bulk of new development. To provide articulation, the facade incorporates a mix of cassette panel cladding and perforated metal in a powdercoated black finish. The vertical cassette panel cladding provides a break between the perforated metal and differentiates between the dwellings, in line with the dwelling entries (figure 5). The incorporation of a saw tooth roof line to the terraces respects the commonly found roof design within the Bik Lane subdivision.

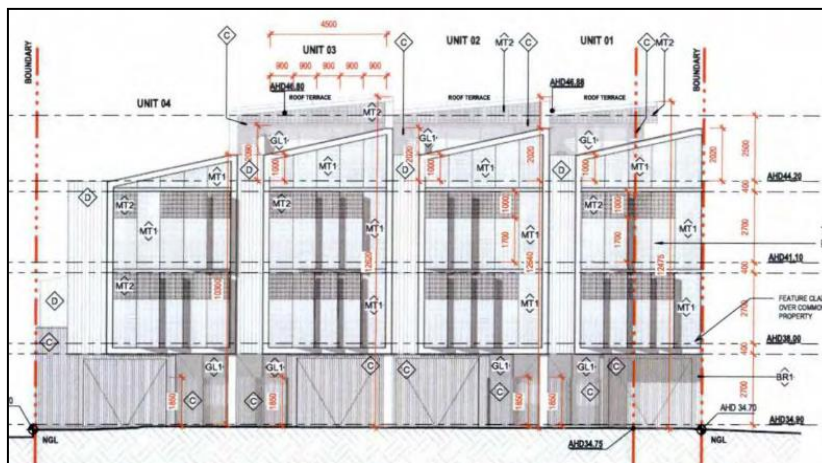


Figure 5 – North elevation

- 92. Due to the proximity of adjoining habitable room windows to the north, perforated metal screens have been incorporated along the first and second floors to prevent overlooking. This does reduce the level of street activation and has been raised as a concern by Council’s Urban Design Unit. To provide some outlook and visual interest the applicant has incorporated perforated metal which will allow for some outlook. In addition, restricted opening of 20 degrees have been incorporated along both levels to allow for some passive surveillance onto the common property (figures 6 and 7).

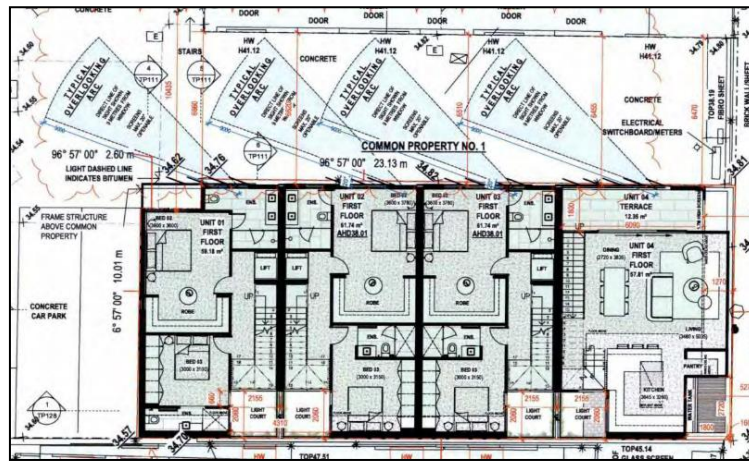


Figure 6 – First floor plan

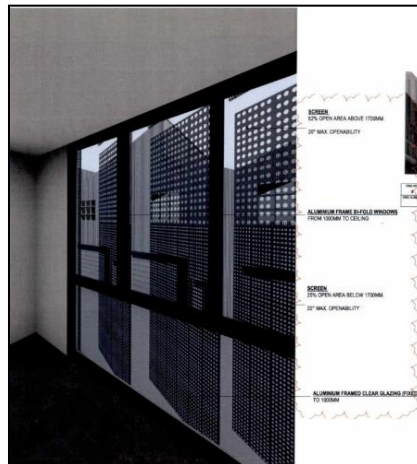


Figure 7 – Internal view onto common property to north

93. Towards the eastern boundary, the proposed development incorporates a double storey wall to the laneway, with a recessed second floor varying between 1.2m to 7m. This maintains the typical double storey built form on the laneway found on the two adjoining properties at No.6/1 Bik Lane and No. 4 Bik Lane. A recessed second floor is proposed with no third floor which reduces the off-site amenity impacts to the apartments to the south and dwellings along the opposite side of the laneway. This will also reduce the overall massing to both interfaces. An assessment as to the off-site amenity impacts to this properties will be discussed later in this report. This interface incorporates a mix of recycled red brick along the lower levels and cassette panel cladding along the upper levels.
94. Council's Urban Design Unit has recommended that openings along the ground floor of Dwelling 4 to the laneway be incorporated, to provide some laneway activation. An example can be found at No. 5/1 Bik Lane. This response however, is not typical along the laneway and does not form part of this proposal. The activation of this laneway would also most likely require some significant alterations.
95. Towards the southern interface with the Roi Apartments, four, 2m deep lightcourts are proposed. Between the lightcourts the ground and first floors are constructed to the common boundary and constructed simultaneously with the existing boundary wall on the opposite side. Setbacks are provided along the second (0.7m to 1m) and third (2m) floors. This is to ensure no unreasonable off-site amenity impacts to the adjoining apartments.
96. The western interface provides a three storey façade presenting to Bik Lane and Nicholson Street beyond. The wall incorporates a mix of recycled red brick on the lower level and a mix of perforated metal and cassette panel cladding. Council's Urban Design Unit have recommended that this interface could benefit from additional fenestration to provide additional articulation. Given the interface with an adjoining lot, this is not considered an appropriate design response.

The use of red brick and perforated metal is considered to provide a good contrast. The red brick can be associated with the original industrial uses in the area and perforated metal common on more recent infill developments. An examples of which can be seen at the recently approved 5 storey development at 4A/1 Bik Lane. Furthermore, the site does not have a direct interface with a street, with Nicholson Street located approximately 75m to the west.



**Figure 8 – Perspective of western interface to Bik Lane**

97. Overall, the proposed five storey built form in its submitted form is considered an appropriate design response for the site and the emerging character within the immediate area.

*Standard B2 – Residential policy objectives*

98. There is strong strategic policy support for high density residential development within well serviced areas close to public transport and employment. This would include the Nicholson Street Neighbourhood Activity Centre, which is within 75m from the site. In this regard the development meets State and Local policy for housing location.

*Standard B4 – Infrastructure objectives*

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

*Standard B5 – Integration with the street objective*

100. The subject site does not have a direct interface to Bik Lane and is only accessed via common property. The proposal retains its vehicle access from the north of the site into common property and will provide individual pedestrian entries to each dwelling also via the common property. The entries will be identifiable through the use of timber fencing. Although the fencing is high in scale, the entries will not have a direct street interface and therefore need to provide some level of security.

*Standard B7 – Building height objective*

101. The MUZ states that, “a building must not be constructed that exceeds the maximum building height specified in a schedule to this zone”. The schedule to the zone does not specify a maximum height.

102. The proposed development incorporates a maximum four storey built form, with an overall height of 12.8m. As discussed earlier in this report, one of the main purposes of the MUZ is to provide housing at higher densities. A review of the immediate area has also identified that built forms in the area vary in heights of between 2 storeys to 7 storeys. Given this surrounding context and the purpose of the Zone, the proposed height is considered acceptable in this instance.

*Standard B8 – Site coverage objective*

103. A site coverage of approximately 96% (272sqm) is identified in the site analysis, which requires a variation of 36% in the above standard.

104. Clause 22.10-3.6 states that a new development should not exceed a maximum site coverage of 80% unless the pattern of site coverage in the immediate area is higher. This is particularly the case for the subject environs, with all other lots within the 1 Bik Lane subdivision having full or near full site coverage (demonstrated in Figure 2). Furthermore noting that the existing building on the subject site contains 100% site coverage. On this basis, the site coverage at 96% is considered acceptable.

*Standard B9 – Permeability objective*

105. The Design Response plan identifies a site permeability of 8.25sqm (or 2.8% of the site), which corresponds to approximately half of each courtyard. This requires a variation of 17.2% in the above standard. The variation is considered acceptable given the surrounding context is one of high site coverages (as discussed above) and as such, low areas for permeability. However, to reduce the impact of increased stormwater run-off on the drainage system, the proposed development incorporates a 1,000 litre rain water tank to each dwelling (total of 4,000L). This results in a STORM rating exceeding best practice at 122%. Water collected within the rainwater tanks is also to be used for toilet flushing and irrigation.

*Standard B10 – Energy efficiency objective*

106. The proposal will achieve an appropriate level of energy efficiency, consistent with the objective of the standard. The dwellings will achieve adequate levels of solar access and natural ventilation through the provision of fenestration to all habitable rooms. The dual-aspect living areas also allow for cross-ventilation opportunities. Furthermore, each dwelling is to have a solar PV panel array.
107. The proposed development will cast some additional shadows to the apartments within the Roi Apartment block to the south and the rear setbacks of dwellings along Batman Street in the afternoon period. However, as will be discussed later in this report, the extent of overshadowing is in accordance with the overshadowing objective and reasonable given the inner-city context.

108. There are no solar panels on adjoining sites affected by the proposed development.

*Standard B12 – Safety objective*

109. The pedestrian entries will be located along the northern boundary interfacing with the common property, which is accessed from Bik Lane. This is the case with all the properties within the 1 Bik Lane subdivision, so whilst the entrances will not be visible from a street, the entrances will be sufficiently visible from other sites within the subdivision, thereby facilitating an appropriate level of safety. As discussed earlier in this report, the dwelling entries are also identifiable with the provision of recessed entries and timber gates to each dwelling.

*Standard B13 – Landscape objective*

110. Soft landscaping is not a characteristic of the immediate surrounds, which contains high site coverages and hard edge built form. The submitted floor plans show indicative landscaping within the ground floor courtyard (creeper vines) and balconies to dwellings 1-3 (rooftop terrace plan), however, a landscape plan has not been provided. Submission of a formal landscape plan is not considered necessary given that soft landscaping is atypical of the area, also, the proposed landscaping is limited in scope and therefore is not integral to the overall design response.

*Standard B15 – Parking location objective*

111. All car parking has direct access to their respective dwellings via the common property and provides an appropriate level of security, safety and efficient movements.
112. There are no habitable room windows located within 1.5 metres horizontal distance of the common property/accessway.

*Standard B17 – Side and rear setbacks objective*

113. Standard B17 generally requires that:

114. "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.”*

115. Standard B17 is applicable to the eastern (side) and southern (rear) boundaries, with the other boundaries facing the common property. The following table provides an assessment against Standard B17:

Boundary	Wall height	Setback required	Setback provided	Variation required
Eastern (first floor)	5.9m	1.69m	1.8m	N/A
Eastern (second floor)	9.5m	4.5m	1.27m	3.23m
Southern (second floor)	9.6m to 10.6m	4.69m to 5.69m	1m	3.69m to 4.69m
Southern (third floor)	12.6m to 12.8m	7.69m to 7.89m	2.06m	5.63m to 5.83m

116. A variation of between 3.23m to 5.83m is required along the eastern and southern boundaries as identified above. These variations are considered acceptable for the following reasons:

- (a) The subject site is located within a MUZ where a purpose of the zone is to provide for housing at higher densities. A review of the surrounding area has identified two/three storey built forms within the 1 Bik Lane subdivision, four storey built forms at No. 672 Nicholson Street to the north and four/seven storey built forms within the No. 4 Bik Lane (Roi Apartment) to the south. The proposed scale of the development is akin to the expectations of the surrounding area.
- (b) To the east, the 3.3m wide laneway provides a buffer between the proposed development and the secluded private open spaces of properties fronting Batman Street. The upper floor setbacks provide a stepping back in the built form to reduce the perceived visual bulk and ensure that no unreasonable overshadowing of the adjacent private open space area occurs, which will be discussed later in this report.
- (c) To the south, it is proposed to provide a varied 1m to 2.06m setback at second floor and a 2.06m setback at the third floor, with the exception for the easternmost unit, Unit 4, which is proposed to be have a minimum setback of 3m from the southern boundary at the second floor and has no third floor.
- (d) Interfacing with the majority of the southern boundary, is a four storey boundary wall associated with the Roi Apartment block. The easternmost section, where adjacent Unit 4, comprises balconies for the adjacent apartments. The generous southern setback for Unit 4 responds appropriately to this sensitive interface. The boundary wall of the Roi Apartment block contains a number of habitable room windows built on the boundary. As will be discussed within the assessment of daylight to these windows, their on-boundary construction does not enable protection.
- (e) Rainwater tanks are proposed within the 1m setback at second floor, notwithstanding the lack of protection afforded to the existing boundary windows, these will not have a significant impact given that they do not extend above the sill heights of windows along the second floor.

117. Given the above, it is considered that there would be no unreasonable adverse amenity impacts, such as visual bulk, and therefore the setbacks proposed are considered acceptable and meet the objective.

*Standard B18 – Walls on boundaries objective*

118. This standard stipulates the following:

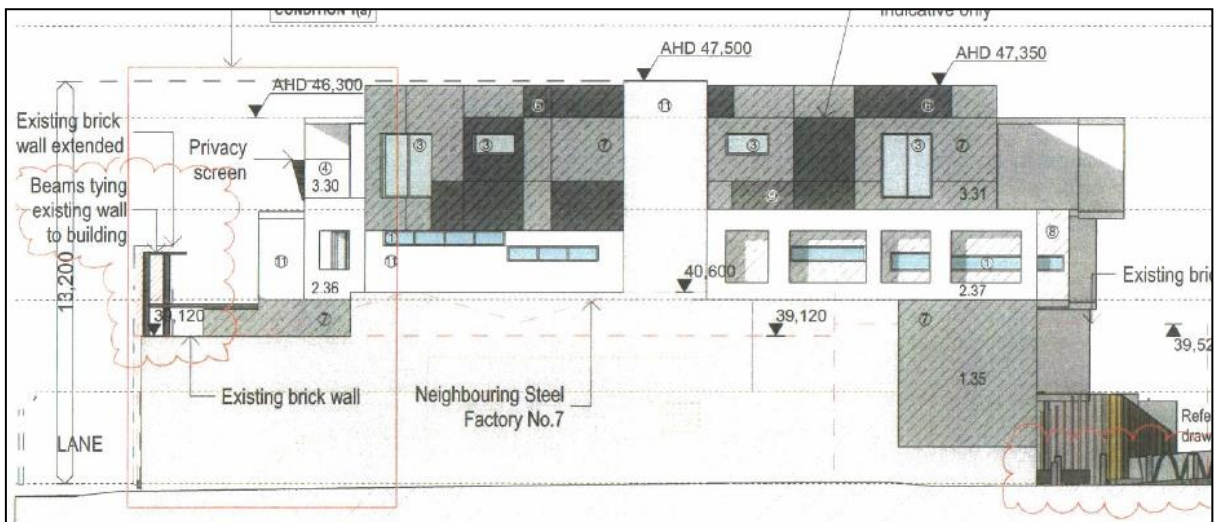
*“A new wall constructed on or within 200mm of a side or rear boundary of a lot or a carport constructed on or within 1 metre of a side or rear boundary of lot should not abut the boundary:*

- (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.”*

119. It is proposed to construct walls along the eastern, southern and western boundaries.
120. It is proposed to construct a 17.3m wall along the majority of the southern boundary, with four lightcourts providing spacing. Under the above standard, a maximum wall length of 13.93 is permitted, requiring a variation of 3.37m. A variation to the above standard with respect to wall length is considered acceptable given that the existing building on the site has a wall extending the full length of the boundary, boundary to boundary construction is typical of the surrounding context and furthermore, the majority of the wall is constructed adjacent to an existing boundary wall of No. 4 Bik Lane and will therefore not result in unreasonable the off-site amenity impacts.
121. The eastern boundary wall is to have a length of 11.08m and the western wall is to have a length of 10.01m, requiring a variation of 1.08m and 0.01m respectively. A variation to the wall lengths is considered acceptable given that the laneway interface to the east provides a buffer to properties to along Batman Avenue, reducing the off-site amenity impacts such as visual bulk. Further, the existing warehouse on the subject site has similar boundary wall lengths as do a number of properties within the immediate area.
122. A variation is also required in relation to the boundary wall heights along the northern and southern boundaries and are as follows:

<b>Boundary</b>	<b>Maximum wall height</b>	<b>Average wall height</b>	<b>Variations required</b>
Eastern	4.2m	2.4m	0.6m (max height)
Southern	6.8m	4.1m	3.2 (max height) 0.9m (average height)
Western	11.5m	11.48m	7.9m (max height) 8.28m (average height)

123. A variation in the wall height is considered acceptable in this instance for the following reasons:
- (a) There are examples of boundary walls constructed in excess of the above standard within the immediate area, with No. 4 Bik Lane to the south having a four storey wall constructed to the boundary (figure 9).
  - (b) The southern boundary wall is largely constructed adjacent to an existing four storey boundary wall associated with No. 4 Bik Lane (figure 9).



**Figure 9 - Endorsed plans (north elevation) - No. 4 Bik Lane – PL07/1209**

- (c) The built form towards the east of the site, where it is opposite the east-facing balconies of No. 4 Bik Lane is reduced to three storeys (Dwelling 4), with the third storey well set back to reduce off-site amenity impacts to the adjoining balconies to the south and along Batman Avenue.
- (d) The eastern boundary wall faces a laneway, providing a 3.3m buffer to the nearest residential property/sensitive interface.
- (e) The western wall has a non-sensitive interface with car spaces and bin storage area associated with the Bik Lane subdivision.

*Standard B19 & B20 – Daylight to existing windows & North-facing windows objectives*

124. Standard B19 stipulates the following:

*“Buildings opposite an existing habitable room window should provide for a light court to the existing window that has a minimum area of 3 square metres and minimum dimension of 1 metre clear to the sky. The calculation of the area may include land on the abutting lot. Walls or carports more than 3 metres in height opposite an existing habitable room window should be set back from the window at least 50 per cent of the height of the new wall if the wall is within a 55 degree arc from the centre of the existing window.”*

125. Standard B20 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 metre 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. A north-facing window is a window with an axis perpendicular to its surface oriented north 20 degrees west to north 30 degrees east.”*

126. As discussed earlier in this report, there are six, north-facing habitable room windows constructed on or proximate to the boundary with the subject site associated with apartments within No. 4 Bik Lane. These are located at second and third floor levels. It is proposed to provide a varied 1m to 2m setback along the second floor and a 2m setback along the third floor.

127. The applicant has provided legal advice from HWL Ebsworth Lawyers dated 23 October 2019. The advice examines whether the north-facing windows in the development to the south at No. 4 Bik Lane, Fitzroy North enjoy any legal rights to light and can lawfully be built against as part of the proposed development.

128. The advice has concluded that the adjoining windows do not have legal rights to light unless any of the following apply:

- (a) There is an easement on title that protect such rights. Of which there is not.



- (b) Pursuant to Section 195 of the *Property Law Act 1958* (Vic), an easement of 'long user' for the right to light was established prior to 7 October 1907.
  - (c) Pursuant to Section 196 of the *Property Law Act 1958* (Vic), an easement of 'long user' for the right to air was established prior to 13 October 1924.
  - (d) There is a specific planning scheme condition that stipulates the above protection.
129. A review of the title has identified no such easements apply to the adjoining properties and there is no specific planning permit condition that stipulates the above protection. As these windows are not protected by any specific light and air easements associated with the windows and were constructed after 1924 they do not have any rights to light or air access (as per sections 195 and 196 of the *Property Law Act 1958*). There is therefore no requirement for the development to provide setbacks from these windows.
130. A similar position was taken in *Anassis and Jolly v Yarra City Council* [2005] VCAT 2454, where the Tribunal noted at [23] that:
- (a) *There was no indication that there is in existence an easement of light that would give [the objector] some right to a consideration of his request that the proposed building should be setback from the windows on the boundary.*
131. And further at [24]
- (a) *There is nothing that prevents the permit applicant from construction the proposed development to the boundary and thereby blocking both windows.*
132. Nevertheless, the applicant has included a minimum 1m setback from these windows to ensure that they will continue to receive some daylight access and ventilation. Further to this, each of the living rooms have a secondary source of light from the windows leading out to the balconies. While the affected bedroom windows do not have an alternative direct source of light, by their very nature, bedroom windows typically do not have the same daylight requirements as their primary function is for sleeping. Furthermore, these bedrooms are to single bedroom apartments only, and appear to receive additional borrowed light from the main living area. The dwellings will continue to retain their primary outlook from their apartments which is either east or west from their balconies.
- Standard B21 – Overshadowing objective*
133. This standard requires, where sunlight to the secluded private open space of an existing dwelling is reduced, at least 75%, or 40 square metres with a minimum dimension of 3 metres to receive a minimum of five hours of sunlight between 9am and 3pm on 22 September. If existing sunlight to the secluded private open space (POS) of an existing dwelling is less than the requirements of this standard, the amount of sunlight should not be further reduced.
134. As a result of the east-west orientation of the subject site, overshadowing will be contained to two balconies at No. 4 Bik Lane and secluded private open space associated with No. 15 Batman Street to the east on the opposite side of the laneway. Given the inner city context and site orientation, this open space experiences overshadowing from existing built forms, fencing and the shadowing caused by the dwelling on the property itself. As a result, the property does not currently meet the above standard, which is a common occurrence within an inner city context.
135. Shadow diagrams submitted only assess the lower (first floor) 27sqm balcony of the No. 4 Bik Lane and does not assess the second floor balcony. A review of the extent of overshadowing into the second floor balcony shows it will receive in excess of 82% solar access when additional overshadowing occurs (i.e. 9am and 10am). From 11am onwards, this balcony is overshadowing by existing shadows.
136. The lower balcony to No 4 Bik Lane, has a total area of 27sqm and is impacted by the proposed development as follows:
137. No. 4 Bik Lane – Total Area – 27.45sqm

	9am	10am	11am	12pm	1pm	2pm	3pm
Existing shadow to POS	25.34m <sup>2</sup>	19.55m <sup>2</sup>	14.09m <sup>2</sup>	11.59m <sup>2</sup>	17.83m <sup>2</sup>	24.33m <sup>2</sup>	27.31m <sup>2</sup>
Proposed shadow to POS	25.36m <sup>2</sup>	20.55m <sup>2</sup>	15.79m <sup>2</sup>	13.75m <sup>2</sup>	20.08m <sup>2</sup>	26.95m <sup>2</sup>	24.45m <sup>2</sup>
Increase shadow	0.026m <sup>2</sup>	1.00m <sup>2</sup>	1.70m <sup>2</sup>	2.16m <sup>2</sup>	2.25m <sup>2</sup>	2.62m <sup>2</sup>	0.14m <sup>2</sup>

138. From the above table it can be seen that this open space already experiences some significant overshadowing in the afternoon period. The proposed development will create some increased overshadowing from 10am to 3pm, ranging between 0.14sqm to 2.62sqm. From 10am to 1pm, this open space will still receive a reasonable area of solar access which could be expected to be found within a MUZ where higher densities are a purpose of the zone. These areas range from 6.5sqm to 13sqm, which for an open space associated with an apartment is considered reasonable.

139. No. 15 Batman Street – Total area – 53.15sqm

	1pm	2pm	3pm
Existing shadow to POS	21.3m <sup>2</sup>	28.81m <sup>2</sup>	36.04m <sup>2</sup>
Proposed shadow to POS	N/A	31.75m <sup>2</sup>	50.10m <sup>2</sup>
Increase shadow	0m <sup>2</sup>	2.94m <sup>2</sup>	14.06m <sup>2</sup>

140. The open space associated with the above property is a more traditional type, with a total of 53sqm within the rear setback of a dwelling. This property is located within a Neighbourhood Residential Zone (NRZ) and separated by a laneway. Because of the orientation of the site, overshadowing does not occur until later afternoon as identified in the above table. The table shows that this property is only affected for two hours in the afternoon, with additional overshadowing in the range of 2.9sqm (2pm) and 14sqm (3pm). Taking into account existing overshadowing into this open space, this will still leave a usable area of between 21.4sqm at 2pm.

141. While there will be limited solar access at 3pm (with 3sqm remaining), at all other hours (within the 9am to 3pm assessment period), this open space will receive a reasonable and usable level of solar access for residents living within an inner city context. Furthermore, occupants of the site also have convenient access to Batman Street Reserve approximately 50m to the north.

*Standard B22 – Overlooking objective*

142. The overlooking standard requires that any habitable room windows or balconies are located or designed to avoid direct views into the secluded private open space and habitable room windows of an existing dwelling within a horizontal distance of 9 metres.

Northern interface

143. Plans identify four habitable room windows directly to the north at Nos. 5/1 and 6/1 Bik Lane, approximately 6.5m to 7m from the subject site. To prevent overlooking, perforated metal screens are proposed to all habitable room windows and balconies along the first and second floors. The perforated metal screens have a maximum transparent of 25% below 1.7m (measured from the respective finished floor level) and 62% above, in accordance with the above standard. In addition, the screens are to have a restrictive opening of 20 degrees (figures 6 and 7). The combined use of perforated metal and restrictive openings ensure no overlooking to the properties to the north and the ability to provide some passive surveillance of the common property.

144. Dwellings 1-3 are proposed to have north-facing terraces at the third floor (rooftop level). To prevent overlooking into habitable room windows at 5/1 and 6/1 Bik Lane, it is proposed to use a combination of planter boxes 2m high wall associated with the sawtooth roof profile. Typical overlooking diagrams have been provided which demonstrates that no overlooking occurs (figure 10).

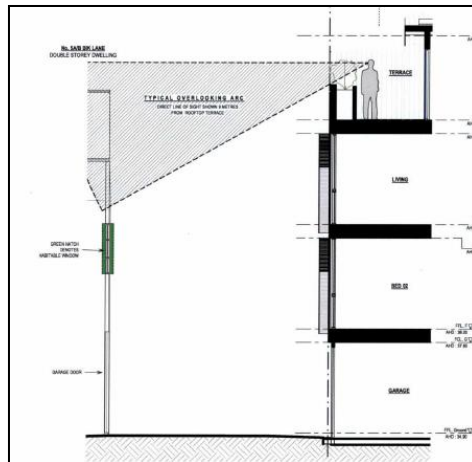


Figure 10 – Typical overlooking section from roof terrace

145. This section is applicable to all of the terraces and windows to the north, with these located along the same level and of the same proportion (figure 11).



Figure 11 - Southern facades of 5/1 and 6/1 Bik Lane (Source: Google)

Eastern interface

146. There are two, first floor habitable room windows identified on the elevations associated with the living room of Dwelling 4. As neither window is identified on the floor plans, a condition will be included for both windows to be shown on the floor plan. The windows are also within 9m of the open spaces of properties along Batman Avenue and are not screened. A condition will be included for both windows to be screened in accordance with the above standard.

Southern interface

147. The southern boundary interfaces with the boundary wall associated with No. 4 Bik Lane. As discussed earlier in this report, there are a number of windows constructed on or near to the common boundary with the subject site.
148. A review of the proposal has identified a number of habitable room windows (kitchen and dining room) along the second floor, which potentially have direct views into a number of north-facing habitable room windows. To prevent unreasonable overlooking opportunities, a condition will be included for all habitable to be screened in accordance with the above standard.
149. Additional windows are proposed along the third floor (rooftop level). Elevations state that louvered glazing is proposed to allow for stack ventilation, presumably via the staircase.

However, no screening details of these louvers have been provided. If these are clear, overlooking may be possible via the third floor retreat. A condition will therefore be included for louver details to be provided and to be in accordance with the overlooking standard.

150. Further potential overlooking has also been identified from the southern section of the third floor terrace associated with Dwelling 1. This section of the terrace only has a 1m balustrade and a door, which presumably is for maintenance access to the air conditioners. A condition will be included for screening to be provided to this section of the terrace and for the screening to be fixed including deletion of the door.

Western interface

151. No overlooking has been identified along the western interface.

*Standard B23 – Internal views objective*

152. The above standard states, “Windows and balconies should be designed to prevent overlooking of more than 50 per cent of the secluded private open space of a lower-level dwelling or residential building directly below and within the same development”.

153. To prevent overlooking between the roof terraces, 2m high party walls have been incorporated, meeting the above standard.

*Standard B24 – Noise objective*

154. The proposed development will be residential and it is therefore considered that there will be no unreasonable off-site amenity (noise) impacts to the surrounding area. Any noise levels as a result of the use of the dwellings would be typical of a residence.

155. It is proposed to locate 6 air conditioning units along the southern wall of the third (rooftop terrace) floor. These AC units have a minimum setback of 2m to the adjoining north-facing habitable windows associated with No. 4 Bik Lane. Pursuant to Clause 62.02-2 of the Yarra Planning Scheme, air conditioners and other services normal to a dwelling do not trigger a planning permit, unless specifically required by the Planning Scheme (which it does not in this instance). Therefore, their location cannot be controlled under the planning permit process. There are however EPA regulations regarding the location and noise from domestic building services.

*Standard B25 – Accessibility objective*

156. The ground level entries of all the proposed dwellings are at grade with the common property, thereby enabling access into all dwellings by persons of limited mobility. Dwellings 1 to 3 also include a lift, as such, they could also be occupied by persons of limited mobility.

*Standard B26 – Dwelling entry objective*

157. Each dwelling will front the common property and be provided with separate recessed entries, clearly visible from the common property. A covered (sheltered) area has been provided to all entries by cantilevering the first floors. This ensures shelter as well as providing a transitional space in accordance with the objective and standard.

*Standard B27 – Daylight to new windows objective*

158. This 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”.

159. All habitable room windows are provided with an outdoor space clear to the sky or lightcourts along the southern boundary which have a minimum area of 4sqm.

160. The north-facing windows along the first and second floors are screened with perforated metal sheets which extend floor to ceiling. To prevent overlooking, the screens have a restricted opening of 20 degrees to the west. In addition, transparency of the screening varies between 25% below 1.7m and 62% above (figures 6 and 7). This again is to prevent overlooking to the habitable room windows to the north at Nos. 5/1 and 6/1 Bik Lane.

161. The 20 degree openings, combined with the 62% transparency in the perforated metal is considered to allow an acceptable level of daylight into the affected rooms. In addition, the open plan living, dining and kitchens along level 2 of Dwellings 1-3 are dual aspect, with additional a number of south-facing windows present.
162. Council's ESD Officer has raised some concerns with respect to the level of daylight the habitable room will receive. Given that the level of perforation to the north-facing windows can be altered above 1.7m and that the second floor living areas are dual aspect, it is considered that sufficient daylight can be received.

*Standard B28 – Private open space objective*

163. In assessing the above application, this standard requires either:
- (a) A balcony of 8 square metres with a minimum width of 1.6 metres and convenient access from a living area; or
  - (b) A total area of 40sqm to be provided to each dwelling. This area is also to provide a minimum area of 25sqm, with a minimum width of 3m; or
  - (c) A roof-top area of 10sqm with a minimum width of 2m and convenient access from a living room.
164. Dwellings 1-3 are provided with a roof terraces with areas varying from 16sqm to 26sqm and provided with a minimum width of 2m in accordance with the above standard. These areas are directly accessed via a secondary retreat area and also accessible via the living area along the second floor.
165. Dwelling 4 is provided with a north-facing 12sqm first floor balcony which is directly accessed from the living room. The balcony has a minimum width of 1.8m in accordance with the above standard.

*Standard B29 – Solar access to open space objective*

166. The principal open spaces to Dwellings 1-3 are provided in the form of 16sqm to 26sqm north-facing roof terraces which will receive uninterrupted solar access, in accordance with the objective and standard.
167. Dwelling 4 is provided with a 12sqm north-facing, first floor balcony. The balcony is screened by a perforated metal screen, however it is considered to provide an appropriate level of sunlight via the perforation which ranges from 25% to 62%. The screen also can be opened up to 20 degrees. While sunlight could be further improved by removing the screen, this would also result in overlooking opportunities. On balance, the proposed screen is considered an acceptable outcome. .

*Standard B30 – Storage objective*

168. The above standard states that each dwelling should have convenient access to at least 6 cubic metres of externally accessible, secure storage space.
169. Only Dwelling 4 has been provided with a minimum storage area of 6 cubic metres. Plans submitted show Dwellings 1-3 are only provided with an area of 2.5 cubic metres in the form of above bonnet cages. For 3-bedroom dwellings a storage area of 2.5 cubic metres is not considered suitable.
170. A condition will therefore be included requiring a minimum of 6 cubic metres of storage, excluding wardrobes and kitchen cabinetry. While the location of storage does not meet the standard i.e. externally accessible, this is considered acceptable for this housing typology, with little need to store garden equipment such as lawnmowers or similar. Excluding storage areas within wardrobes and kitchen cabinetry will also ensure that adequate storage is available for bulky household items such as sporting and cleaning equipment.

*Standard B31 – Design detail objective*

171. The proposed materials are generally respectful of the existing and emerging neighbourhood character, with a mix of recycled red brick, cassette panels, timber cladding, black perforated metal sheets and fenestration. These materials are considered acceptable and consistent with materials used in recent developments within the area.

*Standard B32 – Front fences*

172. It is proposed to construct four 1.85m high fences to each entry along the common property. Dwellings within the Bik Lane subdivision do not generally have front fences, with predominantly only entries and garage doors presenting to the common property. Given that there is not front fence character in the immediate area and as the subject site does not front a street, a 1.8m high fence is considered acceptable in this surrounding context and to provide a sense of security.

*Standard B34 – Site services objective*

173. A Waste Management Plan (WMP) submitted with the application indicates that it is proposed to continue the existing waste disposal arrangements of the existing building, which involve the use of rubbish and recycling bins located within the bin enclosure adjacent to the entry off Bik Lane. As a result of the proposed development, introducing 4 new dwellings on the land, these existing arrangement may not be sufficient. The WMP has been reviewed by Council's City Works unit, but found the detail provided was unsatisfactory. A condition will be included for an amended WMP to be submitted to address the outstanding items.
174. The applicant has stated in there ResCode assessment that mailboxes are to be located either within the dwelling entries or along Bik Lane where the existing mailboxes for the other properties within 1 Bik Lane are located. Both arrangements are considered acceptable and a condition will be included for the final location of the mailboxes to be identified on the plans.

Environmental sustainability

175. A Sustainable Development Assessment (STORM and BESS) was provided as part of the application in accordance with Clause 22.17 of the Scheme. The applicant has made various ESD commitments, which include the provision of four, 1,000 litre rainwater tanks, solar panels, EV charging in each garage and use of efficient fixtures, taps and appliances.
176. Council's ESD Advisor has identified a number of deficiencies which include:
- (a) The cooling loads to dwellings 1, 2 and 3 exceed 30MJ/sqm. It is recommended the cooling loads be reduced to below 30MJ/sqm.
  - (b) The NatHERS rating to Dwelling 1 is identified at 5.3 stars, which is below the 6 star average. It has been recommended that the proposal demonstrate at least a 6.5 Star average overall rating with no unit below 6 star.
  - (c) Require a commitment for a minimum of 70% of construction and demolition waste to be recycled.
177. All of the above deficiencies can be addressed via condition of the permit.

Car parking / traffic

178. For the proposal, the Scheme requires 8 car parking spaces. The subject site will have 4 car spaces in the form of a single width garage to each dwelling, therefore a reduction of 4 car spaces in required. The car parking reduction is considered acceptable for the following reasons:
- (a) Each dwelling will have provision for one car space.
  - (b) The site has excellent access to public transport and a range of services making it an appropriate location for people to live who do not own a car.
  - (c) Planning policy under Clause 21.06 supports provision of less car parking in activity centres and within the PPTN area and seeks to reduce the reliance on the private motor car.

- (d) Permit parking zones and restricted parking in the area protects the availability of on-street car parking for existing residents. Future occupants of the development will not be entitled to parking permits..
- (e) The 2011 and 2016 ABS Census data has recorded that there are proportions of three-bedroom dwellings throughout the municipality that contain one car or no cars. Parking demand for the residential properties would be influenced by lack of on-site parking, access to residential parking permits, proximity to public transport, shops, facilities etc., or active use of more sustainable forms of transport (for example, bicycles).
- (f) Council's Traffic Engineers have also not raised any concerns with the reduction in the car parking requirements.

*Access and Layout*

179. Access to the garages is via common property along the northern boundary. It has been identified that all of the garage dimensions comply with the required minimum dimensions (i.e. 3.5m width & 6m length) specified in Clause 52.06. The accessway to the garages has a minimum width of 6.5m and satisfies Table 2: minimum dimensions of car parking spaces and accessways of Clause 52.06-9 of the Yarra Planning Scheme.

*Construction Management*

180. A Construction Management Plan (CMP) has been submitted as part of this application and was referred to Council's Construction Management Unit for review. Their preliminary review identified that the plan did not contain the necessary information for this to be assessed. As construction management plans are typically prepared by the contracted builder prior to the commencement of works, this is applied as a standard permit condition to be addressed closer to the commencement of construction, when the relevant details are known. For this reason, rather than seeking an amended CMP to be submitted, Council's Standard CMP condition will be included on any permit that issues.

*Objector concerns*

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

- (a) Neighbourhood character (height, scale, bulk, design details).  
Paragraphs 93-105
- (b) Car parking;  
Paragraphs 187 –190
- (c) Off-site amenity (overshadowing, daylight to adjoining windows, overlooking)  
Paragraphs 127 –165
- (d) Excessive site coverage and lack of permeability affecting stormwater runoff;  
Paragraphs 114 –118

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

- (a) *Development could potentially hamper maintenance and the removal of combustible cladding on adjoining property to the south;*

This is not a relevant planning consideration. While the proposed boundary wall construction would limit access to the existing northern boundary of No. 4 Bik Lane, there is no requirement for the proposed development to step back from the boundary to enable access to the neighbouring wall, nor would it be reasonable to impose this by way of permit condition. Matters relating to fire and building safety are to be considered at the building permit stage.

- (b) *Loss of views;*

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

(c) *Damage to adjoining properties;*

Any possible damage to adjoining properties as a result of the proposed development is addressed under the building permit process.

(d) *Setting a precedent for future developments;*

When assessing a planning application, each proposal is considered on its own merits and compliance with the Planning Scheme and *Planning and Environment Act 1987*. The setting of any precedent is not applicable.

(e) *Lack of bicycle spaces & inconveniently located;*

Pursuant to Clause 52.34 (Bicycle Facilities) of the Yarra Planning Scheme, there is not requirement for bicycle spaces to be provided in development of less than 5 dwellings. Therefore, bicycle spaces cannot be considered as part of this application.

(f) Excessive timeframes to complete the development.

A condition of the planning permit will require the construction to commence within 2 years and to be completed within 4 years from the issue of the planning permit. These timeframes are reflective of those outlined under Section 68(3) of the *Planning and Environment Act 1987*.

## Conclusion

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

## RECOMMENDATION

That having considered all objections and relevant supporting documents, the Committee resolves to issue a Notice of Decision to Grant a Permit (PLN19/0241) for the development the site for the construction of 4 dwellings and a reduction in the car parking requirements at 7/1 Bik Lane, Fitzroy North subject to the following conditions:

1. Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of this permit. The plans must be drawn to scale with dimensions, and three copies must be provided. The plans must be generally in accordance with the decision plans but modified to show the following:
  - (a) The two, first floor, east facing living room windows associated with Dwelling 4 to be shown on the floor plans.
  - (b) The two, first floor, east facing living room windows associated with Dwelling 4 to be screened in accordance with Clause 55.04-4 (Overlooking) of the Yarra Planning Scheme.



- (c) Details of the proposed screening to the eastern section of the first floor terrace associate with Dwelling 4, in accordance with Clause 55.04-4 (Overlooking) of the Yarra Planning Scheme.
  - (d) All south-facing, second floor habitable room windows to be screened in accordance with Clause 55.04-4 (Overlooking) of the Yarra Planning Scheme.
  - (e) Details of the proposed south-facing, louvered glazing associated with the third floor, and demonstrate any views from the retreat are in accordance with Clause 55.04-4 (Overlooking) of the Yarra Planning Scheme.
  - (f) The southern side of the third floor terrace associated with Dwelling 1 to be screened in accordance with Clause 55.04-4 (Overlooking) of the Yarra Planning Scheme.
  - (g) The deletion of the door along the southern side of the third floor terrace associated with Dwelling 1.
  - (h) A minimum storage capacity of 6 cubic metres for Dwellings 1-3 (excluding kitchen cabinetry and bedroom wardrobes)
  - (i) The location of the mailboxes.
  - (j) The garage doors to be noted as being "tilt up" or similar.
  - (k) Any changes as a result of the endorsed Sustainable Management Plan pursuant to Condition 3 of this planning permit.
  - (l) Any changes as a result of the endorsed Waste Management Plan pursuant to Condition 5 of this planning permit
2. Before development as shown on the endorsed plans must not be altered (unless the Yarra Planning Scheme specifies that a permit is not required) without the prior written consent of the Responsible Authority.

#### Sustainable Management Plan

3. Before the development commences, an amended Sustainable Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Sustainable Management Plan will be endorsed and will form part of this permit. The amended Sustainable Management Plan must be generally in accordance with the Sustainable Management Plan prepared by M3 Consult dated 19 August 2019, but modified to include (but not limited to) the following:
- (a) Dwelling 1, 2 and 3 to have cooling loads no greater than 30MJ/m<sup>2</sup>.
  - (b) The proposed development to demonstrate a NatHERS rating of at least 6.5 Star average overall, with no dwelling below 6 stars
  - (c) Commitment to a minimum of 70% of construction and demolition waste to be recycled.
  - (d) Demonstrate daylight compliance for all habitable rooms as per the Built Environment Sustainability Scorecard (BESS) best practice daylight factor standards
  - (e) Clarify whether the reference to 4kW refers to the capacity of the PV solar system or the batteries.
4. The provisions, recommendations and requirements of the endorsed Sustainable Management Plan must be implemented and complied with at all times to the satisfaction of the Responsible Authority.

#### Waste Management Plan

5. Before the development commences, an amended Waste Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Waste Management Plan will be endorsed and will form part of this permit. The amended Waste Management Plan must be generally in accordance with the Waste Management Plan prepared by M3 Consult and dated 30 October 2019, but modified to include:
- (a) A bin store plan showing path of access, hard waste and e-waste storage areas.

- (b) The size of the bin store in square metres.
  - (c) Detail how e-waste will be managed.
  - (d) Detail how green waste will be managed.
  - (e) Final calculations of expected waste for the development.
  - (f) Explanation of how risk will be managed.
  - (g) A clause must be included in the plan regarding potential review into the service if operational requirements change.
6. The provisions, recommendations and requirements of the endorsed Waste Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.
7. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, any damage to Council infrastructure resulting from the development must be reinstated.
- (a) at the permit holder's cost; and
  - (b) to the satisfaction of the Responsible Authority
8. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, external lighting capable of illuminating the dwelling entrances must be provided within the property boundary. Lighting must be:
- (a) Located;
  - (b) Directed;
  - (c) Shielded; and
  - (d) Of limited intensity.
9. Finished floor levels shown on the endorsed plans must not be altered or modified without the prior written consent of the Responsible Authority.
10. 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.
11. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, all new on-boundary walls must be cleaned and finished to the satisfaction of the Responsible Authority.
12. All buildings and works must be maintained in good order and appearance to the satisfaction of the Responsible Authority.
13. Before the development commences, a Construction Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will form part of this permit. The plan must provide for:
- (a) A pre-conditions survey (dilapidation report) of the land and all adjacent Council roads frontages and nearby road infrastructure;
  - (b) works necessary to protect road and other infrastructure;
  - (c) remediation of any damage to road and other infrastructure;
  - (d) containment of dust, dirt and mud within the land and method and frequency of clean up procedures to prevent the accumulation of dust, dirt and mud outside the land,
  - (e) facilities for vehicle washing, which must be located on the land;

- (f) the location of loading zones, site sheds, materials, cranes and crane/hoisting zones, gantries and any other construction related items or equipment to be located in any street;
  - (g) site security;
  - (h) management of any environmental hazards including, but not limited to, :
    - (i) contaminated soil; Agenda Page 162 Yarra City Council – Internal Development Approvals Committee Agenda – Wednesday 24 October 2018
    - (ii) materials and waste;
    - (iii) dust;
    - (iv) stormwater contamination from run-off and wash-waters; (v) sediment from the land on roads;
    - (v) washing of concrete trucks and other vehicles and machinery; and
    - (vi) spillage from refuelling cranes and other vehicles and machinery
  - (i) the construction program;
  - (j) preferred arrangements for trucks delivering to the land, including delivery and unloading points and expected duration and frequency;
  - (k) parking facilities for construction workers;
  - (l) measures to ensure that all work on the land will be carried out in accordance with the Construction Management Plan;
  - (m) an outline of requests to occupy public footpaths or roads, or anticipated disruptions to local services;
  - (n) an emergency contact that is available for 24 hours per day for residents and the Responsible Authority in the event of relevant queries or problems experienced;
  - (o) the provision of a traffic management plan to comply with provisions of AS 1742.3-2002 Manual of uniform traffic control devices - Part 3: Traffic control devices for works on roads.
14. The provisions, recommendations and requirements of the endorsed Construction Management Plan must be implemented and complied with at all times to the satisfaction of the Responsible Authority.
15. Except with the prior written consent of the Responsible Authority, demolition or construction works must not be carried out:
- (a) Monday-Friday (excluding public holidays) before 7 am or after 6 pm;
  - (b) Saturday and public holidays (other than ANZAC Day, Christmas Day and Good Friday) before 9 am or after 3 pm; or
  - (c) Sundays, ANZAC Day, Christmas Day and Good Friday at any time.
16. This permit will expire if:
- (a) The development is not commenced within two years of the date of this permit; and
  - (b) The development is not completed within four years of the date of this permit.

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

Notes:

A building permit may be required before development is commenced. Please contact Council's Building Services on 9205 5555 to confirm.

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

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

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

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

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

The applicant must apply for a Legal Point of Discharge under Regulation 133 – Stormwater Drainage of the Building Regulations 2018 from Yarra Building Services unit. Any storm water drainage within the property must be provided and be connected to the nearest Council pit of adequate depth and capacity (legal point of discharge), or to Council's satisfaction under Section 200 of the Local Government Act 1989 and Regulation 133.

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

#### **Attachments**

- 1 PLN19 0241 - 7-1 Bik Lane, Fitzroy North - Site Plan
- 2 PLN19 0241 - 7-1 Bik Lane, Fitzroy North - Engineering comments
- 3 PLN19 0241 - 7-1 Bik Lane, Fitzroy North - ESD comments
- 4 PLN19 0241 - 7-1 Bik Lane, Fitzroy North - Urban Design comments
- 5 PLN19 0241 - 7-1 Bik Lane, Fitzroy North - Waste comments
- 6 PLN19/0241 - 7 / 1 Bik Lane Fitzroy North - S52 Advertising Plans Part 1
- 7 PLN19/0241 - 7 / 1 Bik Lane Fitzroy North - S52 Advertising Plans Part 2
- 8 PLN19/0241 - 7 / 1 Bik Lane Fitzroy North - S52 Advertising Plans Part 3
- 9 PLN19/0241 - 7 / 1 Bik Lane Fitzroy North - S52 Advertising Shadow Diagrams Part 1
- 10 PLN19/0241 - 7 / 1 Bik Lane Fitzroy North - S52 Advertising Shadow Diagrams Part 2
- 11 PLN19/0241 - 7 / 1 Bik Lane Fitzroy North - S52 Advertising Shadow Diagrams Part 3
- 12 PLN19/0241 - 7 / 1 Bik Lane Fitzroy North - S52 Advertising Shadow Diagrams Part 4

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**1.2 PLN19/0663 - 151 Barkly Avenue, Burnley - Construction and display of an electronic, major promotional, sky sign**

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## **Executive Summary**

### **Purpose**

1. This report provides an assessment of the development of the site at No. 151 Barkly Avenue, Burnley for the construction and display of an electronic, major promotion, sky sign.

### **Key Planning Considerations**

2. Key planning considerations include:
  - (a) Clause 22.04 – Advertising Signs Policy
  - (b) Clause 52.05 – Signs

### **Key Issues**

3. The key issues for Council in considering the proposal relate to:
  - (a) Signage

### **Submissions Received**

4. Ten objections were received to the application, these can be summarised as:
  - (a) Pedestrian safety (driver distraction);
  - (b) Size and scale and visual impact of the proposed sign on surrounds;
  - (c) Effect on surrounding wildlife;
  - (d) Energy consumption of the sign;
  - (e) Noise from the sign; and
  - (f) Improper content displayed on the sign.

### **Conclusion**

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

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

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**1.2 PLN19/0663 - 151 Barkly Avenue, Burnley - Construction and display of an electronic, major promotional, sky sign**

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Reference: D20/92681

Authoriser:

**Ward:** Melba  
**Proposal:** Construction and display of an electronic, major promotional, sky sign  
**Existing use:** Offices  
**Applicant:** Octopus Property (VIC) Pty Ltd c/ Human Habitats  
**Zoning / Overlays:** Commercial 2 Zone, Design and Development Overlay (Schedules 2 and 5); and Significant Landscape Overlay (Schedule 1)  
**Date of Application:** 1 October 2019  
**Application Number:** PLN19/0663

**Planning History**

1. There is no planning history for the subject site.

**Background**

Aboriginal Cultural Heritage Significance

2. The subject site is located in an 'area of cultural heritage sensitivity' as defined under the *Aboriginal Heritage Regulations 2018*. Under these regulations, a significant land use change (e.g. a subdivision into 3 or more lots) or a 'high impact activity' would trigger the requirement for a 'Cultural Heritage Management Plan'. The proposed display of signage is not considered to be a high impact activity, given there will be no significant ground disturbance. As such, the proposal does not require the preparation of a Cultural Heritage Management Plan.

Sketch plans (visual amenity document)

3. Following notification of the application, the applicant submitted a visual amenity document on the 19 February 2020 at the request of Council officers. This document has been prepared by Orbit Solutions Pty Ltd and includes a statement of methodology along with two photomontages taken from both sides of the Yarra River.
4. This document was referred to Council's Urban Design Unit and has been made available online to all objectors, who were notified of the document within the consultation meeting invitations (which was later cancelled due to Covid-19) dated 24 February 2020.

**The Proposal**

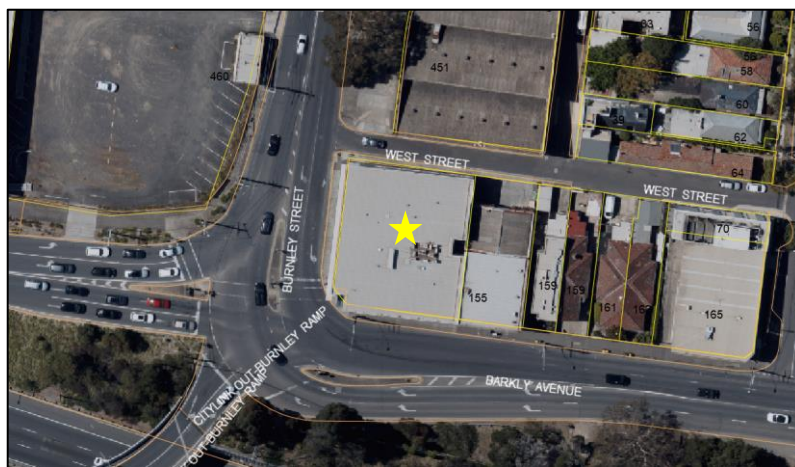
5. The application is for the construction and display of an electronic, major promotional, sky sign. Details of the proposed signage are discussed below.
  - (a) Construction a Light Emitting Diode (LED) major promotional sign above the roof of the existing building.
  - (b) It is proposed to construct a single-sided electronic panel that is 12.07m wide by 4.03m tall, resulting in a total area of 48.64sqm and orientated towards the south-west of the subject site.
  - (c) The sign will sit above a 1.5 to 2m support structure (perforated charcoal grey metal) which extends above the roof resulting in a total height of 6.06m (LED screen and support structure).
  - (d) The top of the sign is 14.85m above the ground level.

- (e) The sign will display static images, with each image having a dwell time of no less than 30 seconds and with instantaneous transition times between images. Signage content will be updated electronically.
- (f) The application does not include any animated images,
- (g) The LED lighting can be electronically controlled to tailor the level of illumination according to the prevailing light conditions so as to manage the intensity of the lighting.

**Existing Conditions**

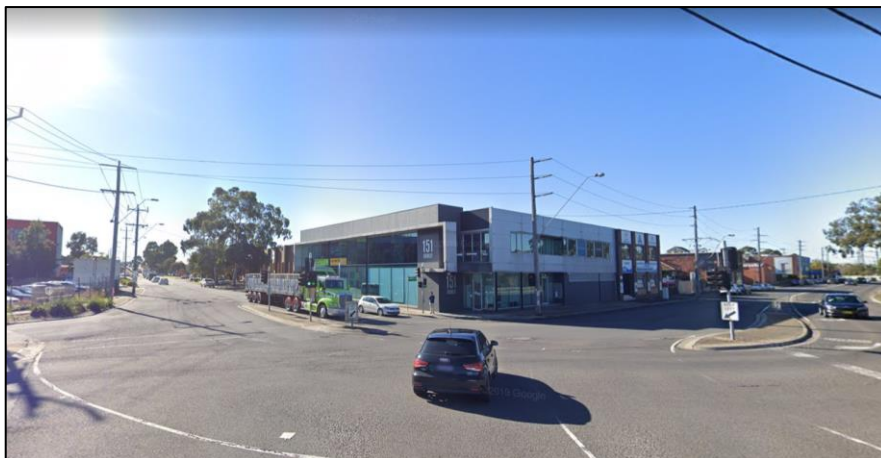
Subject Site

- 6. The subject site is located at the north side of Barkly Avenue, at the junction of Barkly Avenue and Burnley Street, in the suburb of Burnley. The subject site is irregular in shape, with a primary frontage to Barkly Avenue of 23.77m, and a side frontage to Burnley Street of 27.43m, a splayed frontage of 4.34m to both Barkly Avenue and Burnley Street. The site has a northern boundary length of 26.82m (abutting West Street) and an eastern (side) boundary of 30.48m. Overall the site has an area of approximately 812sqm.



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

- 7. Occupying the site is a two-storey commercial building, which appears to be used as offices. The building has a predominantly glazed appearance to Burnley Street and glazed/cladded appearance to Barkly Street with the main entrance via the splayed segment of the lot fronting Burnley Street (figure 2). The subject site is subdivided with a total of 7 lots occupying both floors. Vehicle access is via West Street along the rear. There is some limited business identification signage along the Burnley Street and Barkly Avenue frontages.



**Figure 2 – Subject site No. 151 Barkly Avenue, Burnley**

- 8. The site is not affected by any restrictive covenants or easements.

Surrounding Land

9. The subject site and immediate surrounds is located within a Commercial 2 Zone (C2Z) and interfaces an Industrial 3 Zone (I3Z) to the west. Both Barkley Avenue and Burnley Street are designated as Category 1 Road Zone roads and provide access to and from the CityLink freeway further to the south.
10. To the north of the subject site is West Street, which is a two way street providing access to Adam Street to the east and Burnley Street to the west. On the opposite side of West Street is No. 451-459 Burnley Street which is occupied by a double storey warehouse, located within the same C2Z. The building has a frontage to Burnley Street and has a limited number of business identification signs along both Burnley Street and West Street.
11. To the east is No. 155-157 Barkly Avenue and is also located with the C2Z. This property is occupied by a double storey commercial building and is used as a warehouse/restricted retail premises. There are a total of 6 large business identification signs facing Barkly Avenue located along the ground and first floors.
12. To the south of the subject site is Barkly Avenue, which is designated as a Road Zone Category 1 road. As discussed earlier in the report, this provides access to the CityLink freeway, which is further to the south. Barkly Avenue varies in width from 22m to 24m, with a nature strip on the opposite (southern) side of the street. Beyond the landscaped area is the CityLink freeway, which is a major arterial road within Melbourne. The road has a total of 4 lanes each way with entry and exit ramps along both sides of the freeway. The freeway at this point has a varied width of between 44m to 53m.
13. Beyond the freeway is the Yarra River and Main Yarra Trail along the northern bank. The subject site is approximately 117m away from the river bank and because of the surrounding topography, the subject site, as well as the freeway and Barkly Street, are elevated above the river. The landscaping along the river bank and southern portion of Barkly Avenue (which includes canopy trees), generally blocks views to and from the subject site and the river.
14. To the west of the subject site is Burnley Street, which is also designated as a Road Zone Category 1 road. On the opposite (western) side of the street is No. 460 Burnley Street, which is occupied by an open air car park, located within an Industrial 3 Zone (I3Z). Beyond the car park and to the car park's north is the Burnley Melbourne Fire Brigade (MFB) facility. The main building is three storeys in height, has frontage to Burnley Street and appears to be used as an incident response centre. There are a limited number of signs along Burnley Street associated with MFB facility.
15. To the south-west of the subject site are two exit ramps from the CityLink Freeway (Burnley Tunnel) and Monash Freeway. The location of the subject site and orientation of the proposed sign make the two exit ramps the primary focus of the sign.
16. The nearest residential zone is 18m to the north-east, with the properties fronting Adam Street. As discussed above, the proposed sign is orientated to the west, towards Burnley Street and the two exit ramps. The sign will therefore have no direct interface with properties to Adam Street. The other nearest residential properties are located approximately 326m to the west at Rooney Street, Richmond and 220m to the south on the opposite side of the Yarra River at Alexandra Avenue, Toorak.
17. Given the context of the surrounding area around the CityLink/Monash there are other examples of major promotional sky signs. There are two major promotional signs to the south-west of the subject site, along the northern interface to the Monash Freeway. Additional major promotional signs can be found along the freeways, typically to the bridges above.

## **Planning Scheme Provisions**

### Zoning

18. The subject site is zoned Commercial 2 Zone. The following provisions apply:
  - (a) Pursuant to Clause 34.02-8, sign requirements are at Clause 52.05. This zone is in Category 1.



## Overlays

### *Significant Landscape Overlay (Schedule 1)*

19. The subject site is affected by the Significant Landscape Overlay. The following provisions apply:
- (a) Pursuant to Clause 62.02-2, the construction and display of signage does not require a permit unless specifically required by a provision of the scheme. As the schedule to the overlay does not specifically state that a permit is required for the display of signage, no permit is required under this overlay.

### *Design and Development Overlay (Schedules 2 and 5)*

20. The subject site is affected by the Design and Development Overlay (Schedules 2 and 5). The following provisions apply:
- (a) Pursuant to Section 4.0 of Schedule 5 of the overlay and the schedule to Clause 66.06, where a permit is required to use land or for the construction of a building or the construction or carrying out of works, notice of the application must be given to the Environment Protection Authority, Transurban City Link Limited and the Roads Corporation (Department of Transport formally VicRoads).
  - (b) Pursuant to Clause 62.02-2, the construction and display of signage does not require a permit unless specifically required by a provision of the scheme. As the above provisions do not specifically state that a permit is required for the display of signage, no permit is required under this overlay.

## Particular Provisions

### *Clause 52.05 - Signs*

21. The following provisions apply:
- (a) Pursuant to Clause 52.05-11 (Category 1 – Commercial Areas), a permit is required for any sign not in Section 1. This includes a major promotional, electronic and sky sign.
  - (b) Pursuant to Clause 52.05-3, an application to display an electronic sign within 60m of a freeway or arterial road declared under the *Road Management Act 2004* must be referred in accordance with section 55 of the Act to the referral authority specified in Clause 66.03.

## General Provisions Clause 65 – Decision Guidelines

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

## Operational Provisions

### Clause 73.01 – Sign Terms

23. The following is the definitions for the proposed signs within the application.
- (a) Electronic sign – *A sign that can be updated electronically. It includes screens broadcasting still or moving images.*
  - (b) Major promotional sign – *A sign which is 18 square metres or greater that promotes goods, services, an event or any other matter, whether or not provided, undertaken or sold or for hire on the land or in the building on which the sign is sited.*
  - (c) Sky sign –

*A sign:*

- (i) *On or above the roof of a building, but not a verandah;*

- (ii) *Fixed to the wall of a building and which projects above the wall; or*
- (iii) *Fixed to a structure (not a building) so that part of it is more than 7 metres above the ground.*

Planning Policy Framework (PPF)

24. Relevant clauses to this application are as follows:

- (a) Clause 15.01 – Built Environment

*Clause 15.01-1S – Urban Design*

25. The objective of this clause is *to create urban environments that are safe, healthy, functional and enjoyable and that contribute to a sense of place and cultural identity*. The relevant strategies of this policy are as follows:

- (a) *Require development to respond to its context in terms of character, cultural identity, natural features, surrounding landscape and climate.*
- (b) *Ensure development contributes to community and cultural life by improving the quality of living and working environments, facilitating accessibility and providing for inclusiveness.*
- (c) *Ensure the interface between the private and public realm protects and enhances personal safety.*
- (d) *Ensure development, including signs, minimises detrimental impacts on amenity, on the natural and built environment and on the safety and efficiency of roads.*

26. *Promote good urban design along and abutting transport corridors*

Local Planning Policy Framework (LPPF)

27. The clauses of the Municipal Strategic Statement (MSS) that are relevant to this application are as follows:

- (a) Clause 21.05 – Built Form
- (b) Clause 21.08 – Neighbourhoods

*Clause 21.05-2 – Urban design*

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

- (a) *To reinforce the existing urban framework of Yarra*
  - (i) *Reinforce the Yarra River Corridor as the key ecological and open space element of the urban framework.*
  - (ii) *Maintain and strengthen the preferred character of each Built Form Character Type within Yarra.*
  - (iii) *Maintain key vistas along the Yarra River Corridor.*
- (b) *To ensure that new development contributes positively to Yarra's urban fabric.*
  - (i) *Ensure development is designed having particular regard to its urban context and specifically designed following a thorough analysis of the site, the neighbouring properties and its environs.*

*Clause 21.08-2 – Burnley, Cremorne, South Richmond*

29. This clause sets out the locally specific implementation of the objectives and strategies for Yarra's neighbourhoods. The subject site is located within the 'Burnley – Cremorne – South Richmond' neighbourhood, and is identified as having the 'Freeway River Edge' built form character. The specific objective for this built form character is to *ensure that development does not dominate the river*. The clause also sets out that the implementation of built form strategies in Clause 21.05 includes:

- (a) *Supporting development that maintains and strengthens the preferred character of the relevant Built Form Character type.*
- (b) *Ensuring that development of land adjacent to the Yarra River downstream of Church Street does not dominate the River.*
- (c) *Maintain the visual prominence of the Ball Tower of Dimmeys, the Nylex Sign, and Slade Knitwear Sign.*

#### Relevant Local Policies

- 30. The only relevant local policy to this application is Clause 22.04.  
Clause 22.04 – Advertising Signs Policy
- 31. This policy applies to all permit applications for development that incorporate signage. The relevant objectives of this policy are:
  - (a) *To ensure that signs contribute to and do not detract from the visual amenity of commercial precincts, activity centres and residential areas.*
  - (b) *To minimise visual clutter.*
  - (c) *To ensure that signs are not the dominant element in the streetscape.*
  - (d) *To protect and enhance the character and integrity of places of heritage significance.*
  - (e) *To maintain vehicular and pedestrian safety.*

#### **Advertising**

- 32. The application was advertised under the provisions of Section 52 of the *Planning and Environment Act (1987)* by 81 letters sent to surrounding owners and occupiers and by three signs displayed on site. Council received 10 objections, the grounds of which are summarised as follows:
  - (a) Pedestrian safety (driver distraction);
  - (b) Size and scale and visual impact of the proposed sign on surrounds;
  - (c) Effect on surrounding wildlife;
  - (d) Energy consumption of the sign;
  - (e) Noise from the sign; and
  - (f) Improper content displayed on the sign.
- 33. Notice of the application was also sent to Parks Victoria given the site's close proximity to the Yarra River. No response was received from this authority.
- 34. Due to the Covid-19 restrictions, no consultation meeting was held.

#### **Referrals**

- 35. The referral comments are based on the advertised (decision) plans and sketch plans.

#### External Referrals

The application was referred to the Roads Corporation (Department of Transport (formally VicRoads)) under Section 55 of the Act

- 36. Notice of the application was also required to be given to Transurban pursuant to the requirements of DDO5.
- 37. Referral responses/comments from the Department of Transport have been included as attachments to this report. No response was received from Transurban.
- 38. Notice of the application was not given to the EPA, based upon an agreement between the City of Yarra and the EPA dated 10 July 2019, whereby an application under the DDO5 does not require notice to be given to the EPA if the following requirements are met:
  - (a) The title boundary of the subject site is more than 50 metres from the centre of the Burnley Tunnel exhaust stack

- (b) The proposed building height is less than 10 stories or 30 metres, whichever is lesser.
39. The subject site is more than 30m from the street and has a maximum height of 14.85m, as such, notice did not need to be given.

#### Internal Referrals

40. The application was referred to the following units within Council:
- (a) Engineering Services;
  - (b) Urban Design
41. Referral comments have been included as attachments to this report.

### **OFFICER ASSESSMENT**

42. The primary considerations for this application are as follows:
- (a) Signage;
  - (b) Traffic; and
  - (c) Objector concerns.

#### Signage

43. The proposed sign will be assessed against the decision guidelines of Clause 52.05 and the local advertising signs policy of Clause 22.04. The signage provisions of Clauses 52.05 and 22.04 have consistent objectives pertaining to the protection of the visual amenity of the area – particularly the minimisation of visual clutter – as well as major view corridors and vistas, and the amenity of dwellings.

#### *Design*

44. The decision guidelines contained within Clause 52.05 requires the Responsible Authority to consider, “*the relationship to the site and building*”. Clause 52.05-8 identifies the following guidelines when assessing this relationship and includes:
- (a) *The scale and form of the sign relative to the scale, proportion and any other significant characteristics of the host site and host building.*
  - (b) *The extent to which the sign displays innovation relative to the host site and host building.*
  - (c) *The extent to which the sign requires the removal of vegetation or includes new landscaping.*
45. The design policy at Clause 22.04 (Advertising Signs) also encourages signage to be proportional to the host building. The proposed host building is 9.32m high, with the proposed sign and its support structure adding an additional 5.53m to the building height. Council’s Urban Design Unit has raised concerns with the potential imposing presence of the sign within the streetscape, extending the equivalent of 1.5 storeys above the host building (figure 3).

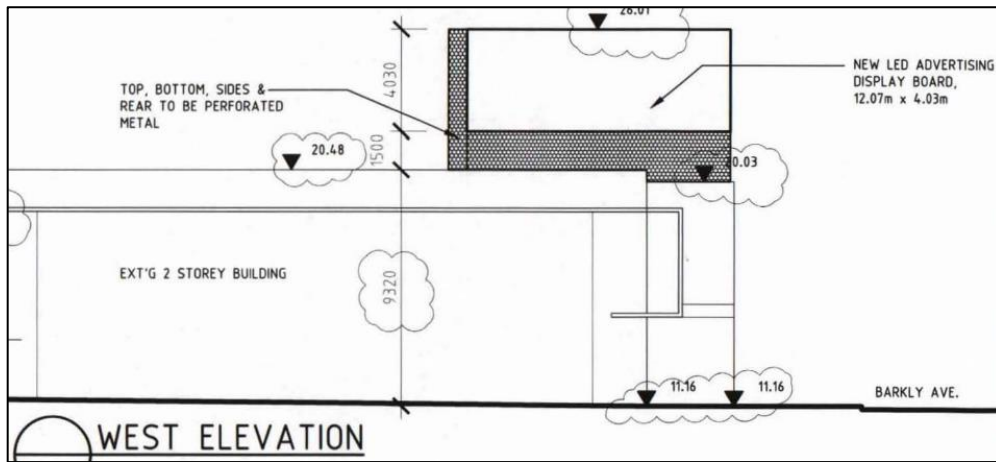


Figure 3 – West elevation of proposed sign and host building

46. To address this concern, Council’s Urban Design Unit has recommended that the overall size of the sign (including the support structure) should be reduced to the equivalent of one storey, with maximum height of 4.5m and with the width scaled proportionally.
47. Having regard to the proportions of the host building and the urban design advice, it is considered appropriate to reduce the height of the signage area from 4.03m to 3m, resulting in an overall height of 4.5m (inclusive of the supporting structure) above the host building. However, Council officers do not agree that it is necessary to reduce the length of the sign to maintain the proposed sign proportions as suggested by Council’s Urban Design Unit. A more linear sign would also be a suitable design outcome for the site. The length of the sign, as proposed, accommodates an acceptable proportion of the overall roof space and is therefore not considered to dominate the host building at its existing length.
48. The support structure is typical for signs of this nature and the use of black perforated metal is common. The purpose of the structure is to elevate the sign above the roof level, particularly as the proposed sign is setback from the boundary, to allow views to the entirety of the screen. The use of the perforated metal combined with the black finish allows for a transparent finish in a recessive colour where the eye is drawn to the electronic sign. The support structure is therefore considered an acceptable design response.
49. Whilst the host building already has existing signage, given the small scale of these signs, their varying heights and locations, combined with the surface area of the host building, ensures that the combination of all signage will not result in visual disorder or clutter. Furthermore, the rectilinear form of the sign and the supporting structure will complement the contemporary design of the host building.
50. Whilst Clause 22.04 discourages signs on the roof of a building, the policy also states that on main roads and boulevards, sky signs should be considered where the general policy requirements are met. Given the existing office building directly abuts two Category 1 Road Zones (Barkly Avenue and Burnley Street), has views to the CityLink and Monash Freeway to the south and west and where the sign will directly face this motorway/off-ramps, the sky sign should be considered on its merits against the general policy requirements.
51. Additionally and importantly, in *Drive by Developments Pty Ltd v Kingston CC [2016] VCAT 473* the Tribunal did not accept that “local policy on outdoor advertising effectively prohibits” certain types of signage because it is specifically discouraged. Instead the Tribunal argued that discouraged signs “can be considered an acceptable outcome provided that it reasonably responds to the policy framework and the particular guidelines of Clause 52.05”. The Tribunal added “the guidelines of Clause 52.05 mainly address a sign’s context and its potential impact on road safety”. The design response of the signage to the surrounding context is assessed in detail below.

*Streetscape/Yarra River interface*

52. In addition to the relationship to the site and host building, Clause 52.05-8 also requires consideration be given to the relationship to the streetscape, setting or landscape. Clause 52.05-8 identifies the following guidelines when assessing this relationship and includes:
- (a) *The proportion scale and form of the proposed sign relative to the streetscape, setting or landscape.*
  - (b) *The position of the sign, including the extent to which it protrudes above existing buildings or landscape and natural elements.*
  - (c) *The ability to screen unsightly built or other elements.*
  - (d) *The ability to reduce the number of signs by rationalising or simplifying signs.*
  - (e) *The ability to include landscaping to reduce the visual impact of parts of the sign structure.*
53. The proposed signage is appropriate having regard to the character of its immediate context, located at the intersection of two Category 1 Road Zone roads, connecting to two freeway off ramps, within a Commercial 2 Zoning (of the subject site in which the office building sits) and interfacing with an Industrial 3 Zone to the west. The proposed sign is orientated to the south-west towards the industrial zone and freeway. Signage, including large major promotional signs are common along the motorway (such as the two shown in the images below, approximately 200m and 250m from the subject site).



**Figure 4 - Existing major promotional signs along the Monash Freeway proximate to the site**



**Figure 5 – Existing major promotional signs along the Monash Freeway proximate to the site**

54. The proposed sign will be visible to drivers from the exit ramps (figure 6) and the CityLink/Monash Freeway, however given the relative size of the sign and the existing presence of signage along this motorway, the signs will not result in a detrimental impact to this streetscape. As will be discussed later, the proposed sign will not interfere with any traffic signals, directional signs or street signs as encouraged by Clause 22.04-3.2. The impact of illumination on driver safety is discussed further below.



**Figure 6 – Proposed sign viewed from Burnley Tunnel off-ramp**

55. Clause 22.04 also states that signs should “*not obscure important views of vistas*”. Clause 52.05 breaks down the impacts on views and vistas into four decision guidelines:
- (a) *The potential to obscure or compromise important views from the public realm.*
  - (b) *The potential to dominate the skyline.*
  - (c) *The potential to impact on the quality of significant public views.*
  - (d) *The potential to impede views to existing signs*
56. The proposed sign is not anticipated to obscure any views of the CBD as viewed from the public realm, with these views already obstructed by other built forms to the west of the site (primarily the MFB facility). Furthermore, given the robust built form on the northern side of the river, and the size of the proposed sign relative to this built form, the signage will not dominate the skyline.
57. As outlined earlier in the report, the sign is 117m from the Yarra River, and separated by an arterial road and an 8 lane freeway (City Link/Monash Freeway), as such the sign is not expected to have a noticeable visual impact upon the Yarra River environs. Furthermore, any incidental views of the sign from the Yarra environs would be partially obscured by existing landscaping along the northern section of the bank and by landscaping located between the CityLink and Barkly Avenue.
58. To assess the impact of the proposed sign on the river, photomontages have been provided. These confirm that the proposed sign would be largely obscured from view and therefore would not adversely impact upon the river environs (figures 7 and 8).



**Figure 7 – Photo montage from northern bank of the Yarra River (Main Yarra Trail)**



**Figure 8 – Photo montage from southern bank of the Yarra River (Alexandra Avenue, Toorak)**

59. From the photos above, the proposed sign can be identified in a yellow outline. From both photos, the sign is largely concealed from view to the river and located below the main canopy line. Where glimpses of the sign are possible; the size, scale and location of the sign is considered appropriate to ensure that these views will not detract from the landscaped character to the river.

*Construction and support*

60. The proposed sign will not impede upon the movement of pedestrians or vehicles given the sign will be fixed to the roof of the building. All electrical equipment and supports will be integrated into the overall structure and will be concealed from view from surrounding streets. Whilst the rear side of the sign is exposed to the north-east, these views will be largely blocked by the host building. As discussed above, the siting of the sign and its supporting structures and equipment will not result in any impact to important views or vistas, as encouraged by the policy.

*Illumination and animation*

61. The sign will not be animated or flashing and will have a dwelling time of 30 seconds between images, which will be instantaneous. Conditions on any permit issued will also prevent this from occurring.
62. In assessing the impacts of illumination, the following criteria, design guidelines and standards have been assessed in the applicant's Light Impact Assessment prepared by Electrolight Australia Pty Ltd:
- (a) VicRoads Advertising Policy for Advertising on, over and adjacent to VicRoads declared Road Reserves.
  - (b) AS 4282-2019 Control of the Obtrusive Effects of Outdoor lighting
  - (c) Transport Corridor Outdoor Advertising & Signage Guidelines 2017.
63. The above standards provide permissible luminance levels, which in part is determined by the existing lighting environment of its surroundings. A light impact assessment has been prepared by the applicant and assessed against all of the above standards. The following table provides an assessment against the proposed luminance levels throughout the day and compliance with AS 4282.



<b>Luminance levels for digital advertisements</b>		
<b>Lighting conditions</b>	<b>Max permissible luminance (cd/m<sup>2</sup>)</b>	<b>Compliant</b>
Full sun on face of signage	No limit	Yes
Daytime luminance (typical sunny day)	6000	Yes
Morning and evening twilight and overcast weather	700	Yes
Night time	208	Yes

64. From the above table it can be seen that the proposed luminance levels are compliant with the relevant standards, of most relevance is the night time standard, which permits a maximum of 350cd/m<sup>2</sup>. It is proposed to have a maximum level of 208cd/m<sup>2</sup>, which is well below the maximum permitted for this location.
65. Additionally, the applicant has provided a lighting report that indicates the veiling luminance to the driver would not exceed the 0.25cd/sqm threshold requirement for VicRoads. Upon review of the application, Department of Transport raised no concerns regarding the impact of the signage on road safety and offered standard conditions, which will be included on any permit that issues.
66. It is considered that the illuminated signage will not result in unreasonable light spill to surrounding dwellings. The closest residential properties (No. 64 Adam Street) are approximately 18m to the north-east of the proposed sign. These dwellings will not be affected by lightspill given that the sign is orientated to the south-west, and as such, the dwellings will be behind the sign, with lines of sight blocked by the host building. The Light Impact Assessment report submitted with the application identifies Nos. 159 and 163 Barkly Avenue as the closest dwellings. Both these sites are within the Commercial 2 Zone where dwellings are prohibited. While No. 163 Barkly Avenue appears to be occupied by a building company, the use of No. 159 Barkly Avenue is unknown. Nevertheless, the report has assessed the veiling luminance to both these properties against the *Australian Standard AS 4282 – 2018 – Control of the Obtrusive Effects of Outdoor Lighting*, with the analysis showing that these buildings will experience an illuminance level of 0.00lux.
67. The nearest dwellings to the south-east i.e. facing the sign are at no. 159 Alexandra Avenue, Toorak. These are approximately 225m from the sign on the opposite side of the Yarra River. There will be limited visibility of this sign from this distance, with any views of the sign also expected to be obstructed by the existing road infrastructure and tree canopy.
68. Furthermore, there is already substantial luminance from the street and freeway lighting on Barkley Avenue and CityLink/Monash Freeway which would also mean that the illumination from the sign would be less noticeable.
69. Additionally, while it is considered that measures to block the light from the sign would not be necessary, in *oOh! Media Assets Pty Ltd v Yarra CC [2016] VCAT 1670* the Tribunal contended that “residents retain the opportunity to draw blinds to avoid excessive distraction that may arise if sitting in a darkened room with the blinds open” and that “deciding to close blinds or not, and indeed the type of blinds residents use is their choice”.
- Commercial and industrial areas*
70. The proposed sign is generally consistent with the policy for commercial areas, and as previously discussed, the scale and type of all signs are appropriate and are similar to other signage found on adjoining sites and in the wider surrounding area.
71. Overall, it is considered that the proposed signage is generally consistent with local advertising signs policy of Clause 22.04 and the decision guidelines of Clause 52.05.

Traffic

- 72. The proposal has been accompanied by a traffic engineering assessment which provides an assessment of the safety and operational issues associated with the proposed electronic billboard.
- 73. The report identified that the proposed sign will be visible from the Monash Freeway, CityLink, and both off-ramps from distances varying between 170m (CityLink – Figure 8) to 470m (Monash – figure 9). The report only identified one traffic accident within this survey area in the past 5 years on the east-bound portion of the CityLink.



Figure 8 – CityLink off-ramp approach – Eastbound (Source: Traffic Group)

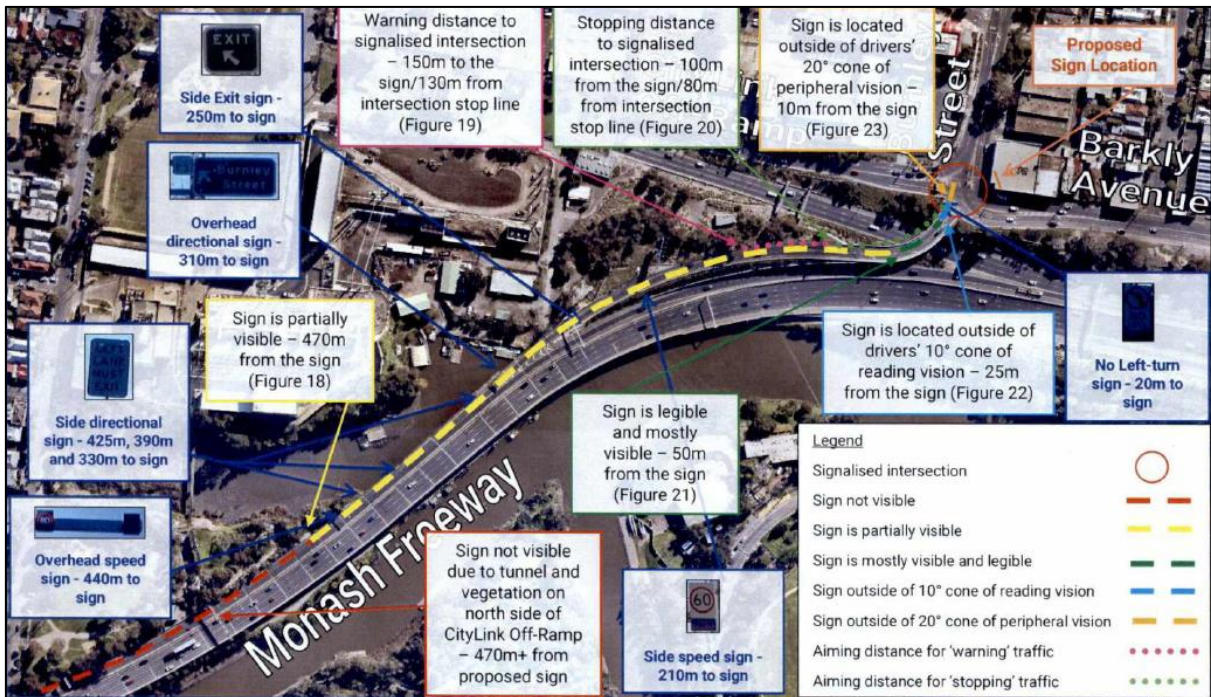


Figure 9 – CityLink off-ramp approach – Eastbound (Source: Traffic Group)

74. In summary, the report concludes that the proposed sign will be visible primarily from both off-ramps. The location of the sign along the roof top will ensure it will not obstruct or background a driver's line of sight to any traffic control device or traffic sign along both the CityLink and Monash Freeway Off-Ramps.
75. Previous studies which compared electronic billboards to convention billboards have also concluded that no significant driver distraction effect could be ascertained nor an impact on vehicle accidents. The purpose of advertising is intended to be a 'glance medium' with only short glances being required to read and interpret the message. With drivers spare attention capacity of approximately 30-50%, a glance of less than 2 seconds, "*would not have a significant impact on road safety*". In addition, the report has also noted that, "*drivers have the ability to shed any unnecessary information when they have an information overload, to focus on what is judged to be more important*". This is particularly relevant where there are traffic control devices that are clearly visible from both off-ramps.
76. The illumination of the sign has previously been discussed and conditions will be included to ensure the sign will not dazzle or distract drivers, as per the requirements of Department of Transport.
77. The application has been referred and reviewed by both the Department of Transport and Council's Traffic Engineering Unit. Both are supportive of the proposed sign subject to conditions.

Objector concerns

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

- (a) Pedestrian safety (driver distraction);

Paragraphs 72-77

- (b) Size and scale and visual impact of the proposed sign on surrounds;

Paragraphs 43-69

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

- (a) Effect on surrounding wildlife;

There is no evidence to suggest that the sign will have an adverse effect on surrounding wildlife, nor is it a relevant planning consideration under the Yarra Planning Scheme. Nevertheless, given the surrounding context, where there is other forms of illumination from the freeways and commercial/industrial uses, the proposed sign is not expected to cause an unreasonable impact on the surrounding wildlife. It is also noted that Parks Victoria was notified of the application and has not made a submission.

- (b) Energy consumption of the sign;

The energy consumption of the sign is not a relevant planning consideration in determining an application for a sign under the Yarra Planning Scheme.

- (c) Noise from the sign; and

It is not anticipated that noise from the sign will impact on adjoining properties, with the nearest residential zone approximately 18m to the north-east. Furthermore, the Department of Transport has directed a condition be imposed on any permit that issues preventing the use of sound to interact with road users.

- (d) Improper content displayed on the sign.

Any improper signage content is not regulated by the Planning Scheme or Planning and Environment Act 1987.

## Conclusion

80. Based on the above report, the proposal is considered to comply with the relevant planning policy and should therefore be supported, subject to standard conditions and conditions recommended by the Department of Transport.

## RECOMMENDATION

That a Notice of Decision to Grant a Planning Permit PLN19/0663 be issued for the Construction and display of an electronic, major promotional, sky sign at 151 Barkly Avenue, Burnley generally in accordance with the plans noted previously as the “decision plans” and subject to the following conditions:

1. Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of this permit. The plans must be drawn to scale with dimensions, and three copies must be provided. The plans must be generally in accordance with the decision plans but modified to show the following:
  - (a) Reduction in the height of the display area of the sign to a maximum of 3 metres.
2. The location and details of the sign, including the supporting structure, 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. The signs must be constructed, displayed and maintained to the satisfaction of the Responsible Authority.
4. The provisions, recommendations and requirements of the endorsed Lighting Report must be implemented and complied with to the satisfaction of the Responsible Authority.
5. The sign must not include any flashing or intermittent light.
6. The sign must be constructed, displayed and maintained to the satisfaction of the Responsible Authority.
7. The sign must not:
  - (a) Dazzle or distract drivers due to its colouring;
  - (b) Be able to be mistaken for a traffic signal because it has, for example, red circles, octagons, crosses or triangles;
  - (c) Be able to be mistaken as an instruction to drivers.

### *Department of Transport (VicRoads) conditions (conditions 8 – 22)*

8. No image may be displayed on the electronic sign for less than 30 continuous seconds.
9. The luminance of the advertising signs must be such that it does not give a veiling luminance to the driver, of greater than 0.25 cd/m<sup>2</sup>, throughout the driver’s approach to the advertising sign.
10. The control of the electronic sign must be in accordance with the submitted lighting reports, which must form part of any issued Planning Permit:
  - (a) Lighting impact assessment – Lighting Impact Assessment – Outdoor Signage at 151 Barkley Avenue, Burnley, Victoria, for Octopus Media by Electrolight Australia Pty Ltd dated 9 September 2019, reference number 2264.4.

11. The electronic sign is to be dimmable and have a suitable control system to enable maximum lighting levels to be set or adjusted if deemed necessary by the Responsible Authority or Department of Transport (roads).
12. Where illuminated during the day, the signage is to be fitted with Photocell/s (light sensor/s) that measure the ambient light and control system technology that enables the luminance of the signage to automatically adjust relative to the measured ambient light level.
13. For digital/electronic signage, any change to brightness levels must only be applied during an image transition, not while an image is being displayed.
14. The transition between images must be instantaneous.
15. The advertising content of the sign must not:
  - (a) Consist of more than one static image at a time
  - (b) Contain any animation.
  - (c) Consist of a sequence of images giving the illusion of movement from one image to the next.
  - (d) Contain or consist of images which are capable of being interpreted as projections beyond the face of the advertising screen, such as through the use of 3D technology.
  - (e) Contain or consist of video, movie or television broadcasts.
  - (f) Contain or consist of present-time or other contemporary update information such as relating to news, weather or time.
  - (g) Contain any flashing, blinking, brightening or fading elements that create the illusion of movement or change.
  - (h) Be capable of being mistaken for a traffic signal or a traffic control device. This includes the use of red, amber or green circles, octagons, crosses or triangles.
  - (i) Be a traffic instruction, or be capable of being mistaken as, an instruction to a road user. This includes the use of the wording stop, give way, slow, turn left or turn right.
16. The advertising area must not be split into 2 screens (horizontally or vertically) with different messages.
17. The sign and advertising content must not dazzle or distract road users' due to its colouring or content.
18. The sign and any displayed advertisement must not include ancillary extension, embellishment or accessorisation within or outside the permitted advertising area, unless VicRoads has agreed in writing, prior to installation.
19. The sign must be fully contained within the property boundaries and not into VicRoads airspace.
20. The use of sound or motion to activate the sign is not permitted.
21. The use of sound to interact with any road user is not permitted.
22. The advertising sign must shut down and cease any form of visual display (and must remain in shut down mode until the issues are resolved), in the event of:
  - (a) An attack by a computer hacker, virus or similar resulting in the unauthorised display of visual images or messages.
  - (b) Any malfunction of the advertising sign.

23. This permit will expire if the sign is not erected within 2 years of the date of this permit. The Responsible Authority may extend the period referred to if a request is made in writing before the permit expires or within six months afterwards for commencement or twelve months afterwards for completion.
24. This permit expires 15 years from the date of the permit.
25. On expiry of this permit the approved signs and structures built specifically to support or illuminate it must be removed.

Notes:

A building permit may be required before development is commenced. Please contact Council's Building Services on 9205 5555 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 5555 to confirm.

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

**Attachments**

- 1 PLN19 0663 - 151 Barkly Avenue, Burnley - Site Plan
- 2 PLN19 0663 - 151 Barkly Avenue, Burnley - S52 Advertising Plans
- 3 PLN19 0663 - 151 Barkly Avenue, Burnley - Orbit Photo Montages
- 4 PLN19 0663 - 151 Barkly Avenue, Burnley - Urban Design comments - February 2020
- 5 PLN19 0663 - 151 Barkly Avenue, Burnley - Urban Design comments - March 2020
- 6 PLN19 0663 - 151 Barkly Avenue, Burnley - Engineering comments
- 7 PLN19 0663 - 151 Barkly Avenue, Burnley - Dept. of Transport (VicRoads) comments