

Agenda

Planning Decisions Committee

6.30pm, Wednesday 27 October 2021

Microsoft Teams

The Planning Decisions Committee

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

Participating in the Meeting

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

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

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

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

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

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

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

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

Arrangements to ensure our meetings are accessible to the public

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

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

1. Appointment of Chair

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

2. Statement of recognition of Wurundjeri Woi-wurrung Land

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

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

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

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

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

3. Attendance, apologies and requests for leave of absence

Anticipated attendees:

Councillors

Cr Claudia Nguyen

Cr Amanda Stone

Cr Gabrielle de Vietri (substitute for Cr Mohamud)

Council officers

Amy Hodgen (Senior Co-ordinator Statutory Planning)

Robert Galpin (Senior Statutory Planner)

Rhys Thomas (Senior Governance Officer)

Cindi Johnston (Governance Officer)

4. Declarations of conflict of interest

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

5. Confirmation of Minutes

RECOMMENDATION

That the minutes of the Planning Decisions Committee held on Wednesday 13 October 2021 be confirmed.

6. Committee business reports

Item	Page	Rec. Page
6.1 PLN19/0426 – 35-41 Spensley Street, Clifton Hill - Part demolition of the existing building and construction of a multi-storey building, use of the land for dwellings and a reduction in the car parking requirements associated with a hotel (no permit required for hotel use).	5	56
6.2 PLN10/1063.01- Lot 12&11A/156 George Street, Fitzroy (including common property) - Amend the approved use of the land as an education centre by way of an increase of students from 78 to 220, extension of the floor area, extended hours of operation and associated buildings and works and demolition and reduction in the car parking requirements.	66	93
6.3 PLN21/0504 - 42 O'Grady Street Clifton Hill – Use of the land as a medical centre, a reduction in the car parking requirements of the Yarra Planning Scheme and the display of business identification signage.	98	116

- 6.1 **PLN19/0426 – 35-41 Spensley Street, Clifton Hill - Part demolition of the existing building and construction of a multi-storey building, use of the land for dwellings and a reduction in the car parking requirements associated with a hotel (no permit required for hotel use).**
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Executive Summary

Purpose

1. This report provides the Planning Decision Committee (PDC) with an assessment of planning permit application PLN19/0426 against the provisions of the Yarra Planning Scheme (the Scheme) and recommends that Council notify the Victorian Civil and Administrative Tribunal (VCAT) and all parties to the proceeding that if Council were in a position to determine the application a Notice of Decision to grant a permit would issue, subject to conditions

Key Planning Considerations

2. Key planning considerations include:
 - (a) Clause 15 – Built Environment and Heritage;
 - (b) Clause 21.05 – Built Form;
 - (c) Clause 22.02 – Development Guidelines for Sites Subject to the Heritage Overlay;
 - (d) Clause 22.05 – Interface Uses Policy;
 - (e) Clause 22.16 – Stormwater Management (Water Sensitive Urban Design);
 - (f) Clause 22.17 – Environmentally Sustainable Development
 - (g) Clause 34.01 – Commercial 1 Zone;
 - (h) Clause 43.01 – Heritage Overlay;
 - (i) Clause 52.06 – Car Parking.
 - (j) Clause 52.34 – Bicycle Facilities
 - (k) Clause 58 – Apartment Developments

Key Issues

3. The key issues for Council in considering the proposal relate to:
 - (a) Strategic justification
 - (b) Built Form/Heritage.
 - (c) On-site amenity (including ESD).
 - (d) Off-site amenity.
 - (e) Car parking, traffic, access, bicycle parking and loading/unloading
 - (f) Objector's concerns.

Submissions Received

4. 267 objections were received to the application, these can be summarised as:

- (a) Heritage – loss of original heritage fabric/facade and domination of the heritage streetscape
- (b) Light spill – from vehicle headlights using the laneway
- (c) Potential structural impacts to adjoining dwellings
- (d) Loss of historic meeting place/ Loss of village character
- (e) Noise - from basement access roller door and vehicles using the laneway
- (f) Loss of affordable housing
- (g) Poor amenity of apartments – poor daylight access, small size, poor outlook
- (h) Overlooking
- (i) Sustainability issues
- (j) Bad precedent
- (k) Overshadowing
- (l) Parking Issues
- (m) Excessive demolition
- (n) Excessive height/bulk
- (o) Bike parking issues – inaccessible at basement level and insufficient for the development size.

VCAT Proceedings

- 5. On 25 August 2021, Council was informed that the applicant had lodged a Section 79 'failure to determine within the prescribed time' appeal with the Victorian Civil and Administrative Tribunal (VCAT).
- 6. A total of 55 statements of grounds have been received.
- 7. A Compulsory Conference is listed for 8 November 2021 with a Full Hearing scheduled for five days beginning on 11 March 2022 (if the matter does not settle at Compulsory Conference).

Conclusion

- 8. Based on the following report, the proposal is considered to generally comply with the relevant planning policy and should therefore be supported.

6.1 **PLN19/0426 – 35-41 Spensley Street, Clifton Hill - Part demolition of the existing building and construction of a multi-storey building, use of the land for dwellings and a reduction in the car parking requirements associated with a hotel (no permit required for hotel use).**

Reference D21/152472
Author Robert Galpin - Statutory Planner
Authoriser Senior Coordinator Statutory Planning

Ward: Langridge Ward

Proposal: Part demolition of the existing building and construction of a multi-storey building, use of the land for dwellings and a reduction in the car parking requirements associated with a hotel (no permit required for hotel use).

Existing use: Boarding House, Take away bottle shop

Applicant: Planning Studio On Peel

Zoning / Overlays: Commercial 1 Zone
Heritage Overlay (Schedule 316)
Environmental Audit Overlay
Development Contributions Overlay (Schedule 1)

Date of Application: 3 July 2019

Application Number: PLN19/0426

Planning History

1. Planning Permit 000810 was issued on 18 February 2003, at the direction of VCAT, for the use and development of the site for the purpose of partial demolition, buildings and works for serviced apartments and caretaker's dwelling, and a reduction of car parking.
2. Planning Permit PL08/0001 was issued on 4 February 2009 for a waiver of the car parking requirements associated with (as of right) use of land as an office.
3. Planning Permit PLN11/1103 was issued on 11 January 2012 for the development of the land for buildings and works, including part demolition.

Background

VCAT Proceedings

4. On 25 August 2021, Council was informed that the applicant had lodged a Section 79 'failure to determine within the prescribed time' appeal with the Victorian Civil and Administrative Tribunal (VCAT).
5. A total of 55 statements of grounds have been received.
6. A Compulsory Conference is listed for 8 November 2021 with a Full Hearing scheduled for five days beginning on 11 March 2022 (if the matter does not settle at Compulsory Conference).

Lodgement of additional “without prejudice” documents

7. On 11 October 2021, the applicant provided a response to the referral comments received from Council’s ESD Advisor. A sketch plan was provided demonstrating internal reconfiguration of levels 1 and 2. The plans demonstrate the following changes;
- (a) Reduction in the overall number of apartments from 17 to 15
 - (b) Deletion of apartments 105 and 205 and the west facing balconies
 - (c) Extension of Apartments 104, 106, 204 and 206.
 - (d) Reconfiguration of Apartments 102 and 202
 - (e) Reconfiguration of the windows to the western light court.

The sketch plans result in the number dwelling decreasing from 17 to 15. With the make up of the dwellings comprising;

- (a) 3 x 2 Bedroom, plus SOHO (small office, home office)
 - (b) 6 x 2 Bedroom
 - (c) 6 x 3 Bedroom
8. The sketch plans submitted provide additional information and have not been formally substituted. They are provided on a ‘without prejudice’ basis for information purposes on how the identified ESD issues could be addressed. They have been included as an attachment to the report.
9. Additional 3D shadow diagrams for the morning hours were supplied by the applicant on 19 October 2021 to assist with Council Officers assessment, these have been included as an attachment to the report.

Planning Scheme Amendments

Amendment C269

10. Amendment C269 proposes to update the local policies in the Yarra Planning Scheme by replacing the Municipal Strategic Statement (MSS) at Clause 21 and Local Planning Policies at Clause 22 with a Municipal Planning Strategy and Local Policies within the Planning Policy Framework (PPF), consistent with the structure recently introduced by the State Government.
11. Amendment C269 was adopted by Council on 3 August 2021 and will proceed to a panel hearing in October 2021. In relation to this current planning application, the following clauses are of most relevance:
- 11.03-1L – Activity Centres
 - 13.07 – 1L – Interfaces and Amenity
 - 15.01 – 2L – Building Design

12. The above clauses are largely reflected in current planning policy and will not be contradictory to the proposed re-write of Clauses 21 and 22.

Amendment C238

13. Amendment C238 was introduced into the Yarra Planning Scheme on 01 February 2021 and inserts Clause 45.06 (Development Contributions Plan Overlay) with Schedule 1 into the Scheme. This overlay applies to all land in the City of Yarra (note: there are some exempted sites including schools DHHS properties and public hospitals) and it applies to all new development where there is an increase in the number of dwellings and/or an increase in retail, commercial and industrial floor space. It requires a monetary contribution from the developer.

The Proposal

14. The proposal seeks part demolition of the existing building and the construction of a multi-storey building, use of the land for dwellings and a reduction in the car parking requirements associated with a hotel (no permit required for hotel use or sale and consumption of alcohol).

Use

Ground level

- (a) Hotel (Wine bar) –137sqm combined floor area, cool store and waste area (no permit required for use).
- (b) Three (3) Small Office Home Offices (SOHOs) connected to apartment dwellings above

First to fourth floors

- (c) 17 dwellings; 4 x three bedrooms and 13 x two bedrooms, three with access to the SOHOs at ground floor

Development

Demolition

- (d) Demolition of the majority of the building with the exception of the primary eastern and northern façades and portions of the three storey southern and western wall returns.
- (e) Demolition of the existing windows.
- (f) Demolition of all non-original signage.
- (g) Demolition of roof form and chimneys.
- (h) Demolition of entry doors.
- (i) Removal of awnings on the eastern and northern façade.

Buildings and works

- (j) Construction of a five-storey building with basement, beyond the original three storey hotel façade.
- (k) The development will have a maximum height of 17.73m, not including the plant screen which will sit an additional 2.1m higher.
- (l) The original façade constructed to Spensley and Berry Streets will act as a podium with the upper two floors set back from street frontages.
- (m) To the west of the original heritage façade, an infill two storey street wall will be constructed to the Spensley Street boundary with a second-floor set back 2.3m and incorporating a balcony beyond the parapet.
- (n) To the south eastern corner, the development will be set back 2.15m from the eastern façade and title boundary to a height of three storeys (12.92m) allowing the southern façade return to remain visible for its full height.
- (o) The fourth floor will be set back 4.35m from Spensley Street (north) and between 3.36m – 4.71m from Berry Street (east).
- (p) The fifth floor will be set back 4.7m from Berry Street with balconies projecting 1.4m into this setback. From the north, the fourth floor will be set back 6.63m from Spensley Street with a balcony projecting 2.11m into the setback.

- (q) To the west, a boundary wall ranging in height from 5.64m – 11.39m will extend the full length of the western boundary with a 14m long, 2.2m deep central light court from the first floor allowing for balconies to the lower level dwellings.
- (r) Levels 4 and 5 will also be set back 2.2m from the western boundary.

General

- (s) Vehicle access to the basement car park will be to the south via the laneway.
- (t) A total of 24 car spaces and 6 bicycle spaces are proposed within the basement.
- (u) Residential storage cages will be provided at ground floor level as well as residential and commercial waste.
- (v) A hotel (wine bar) will be located to the north eastern corner of the ground floor accessed via Berry Street and the corner splay.
- (w) Site services will be located to the south, fronting the laneway.
- (x) Balconies will be provided to each dwelling ranging in size from 8sqm – 102sqm.
- (y) Dwellings will range in size from 76sqm – 136sqm.
- (z) Three SOHOs will be provided at ground level affiliated with first floor dwellings.

ESD Measures

- (aa) A 15,000L rainwater tank connected to toilets (STORM Score 109%).
- (bb) Natural daylight and ventilation for all dwellings.
- (cc) Shrouding for north facing windows.

Materials

- (dd) The materials and colours schedule comprise a combination of concrete, recycled brick, render, aluminium battens and glass and a colour palette which aside from the use of brick mainly comprises off greys, charcoal and black. The proposal also seeks to repaint the heritage façade in light white/grey.

Existing Conditions

Subject Site

15. The subject site is located on the south-west corner of the Spensley Street and Berry Street intersection in Clifton Hill. The site has a frontage to Spensley Street of 20.11m and a frontage of 36.58m to Berry Street, with an overall area of approximately 735sqm. The site has no appreciable fall. The site is made up of two allotments;
 - (a) Lot 2 on TP664551S (No. 35 Spensley Street located to the west).
 - (b) Lot 1 on TP410655Y (No. 37-41 Spensley Street, located to the east with frontages to Spensley and Berry streets).
16. No restrictive covenants or easements are shown on the Certificates of Title for the Site.
17. The subject site is occupied by a triple-storey, Victorian-era hotel known as the Royal Hotel. The building is constructed to all site boundaries with the exception of a small recessed vehicle entry to the rear laneway (south). A latter two storey addition is located to the west on the smaller allotment with a single storey brick shopfront complete with awnings and a roller door fronting Spensley Street. The building increases to two storey to the rear with vehicle access located off the laneways. The building is constructed with a boundary wall abutting the full length of the western boundary.
18. The larger site contains the original hotel which is constructed of painted rendered brick on bluestone foundations. The building is largely intact and described in the *Collingwood Conservation Study* by Andrew Ward (April 1989) as follows;

“A three storeyed Italianate stuccoed hotel with rusticated lower section with round arched openings. The corner splay has a bayed configuration at the first and second floor which also has a recessed round arched porch surmounted by a pediment with face and bearded face in entablature and tympanum respectively.”

Pilasters have Corinthian capitals at third floor and Iconic at second floor levels, whilst the pediment treatment is repeated on the east elevation. A roof lantern is concealed from view”

19. The building is currently occupied by a takeaway bottle shop at ground level fronting Berry Street. The remainder of the ground floor is currently vacant having previously been occupied by a hotel, which closed in 2017.
20. At first and second floors the building contains an office and 23 hotel rooms currently operating as a residential boarding house.



Image 1: The subject site as viewed from the intersection of Spensley and Berry Streets.

Surrounding Land

21. The site is located within the Spensley Street Neighbourhood Activity Centre and is serviced by public transport options, local retail/service facilities and public open space, including;
 - (a) Immediate access to the neighbourhood retail/service facilities of the Spensley Street Neighbourhood Activity Centre.
 - (b) Access to the Queens Parade Neighbourhood Activity Centre, 450m to the west.
 - (c) Access to Clifton Hill Train Station approximately 150m to the west, bus services along Hoddle Street 180m to the west, tram route 86 (Bundoora) and bus routes located along Queens Parade, 450m to the west.
 - (d) Collingwood Leisure Centre and Mayors Park 220m to the west, Darling Gardens 280m to the south west and Quarries Park 350m to the east.
 - (e) Convenient access to the Melbourne CBD.
22. Built form surrounding the land is predominantly single storey or double-storey in scale, with a range of commercial and residential buildings largely of the Victoria- era. Modern infill dwellings are present throughout. The broader Eastern Clifton Hill area also includes modern and 70s style walk up apartment buildings ranging in height from 3 to 6 storeys.



Image 2: The Subject site (Source Nearmap April 2021)

23. The immediate interfaces and zoning of the surrounding land are outlined below;
24. The site is located within a small Commercial 1 zoned pocket encompassing the Berry Street and Spensley Street intersection. The surrounding land is predominantly residential with a Mixed Use Zone located to the west adjacent Clifton Hill Station and a further small Commercial 1 Zone further to the south covering the Ramsden Street Neighbourhood Activity Centre.

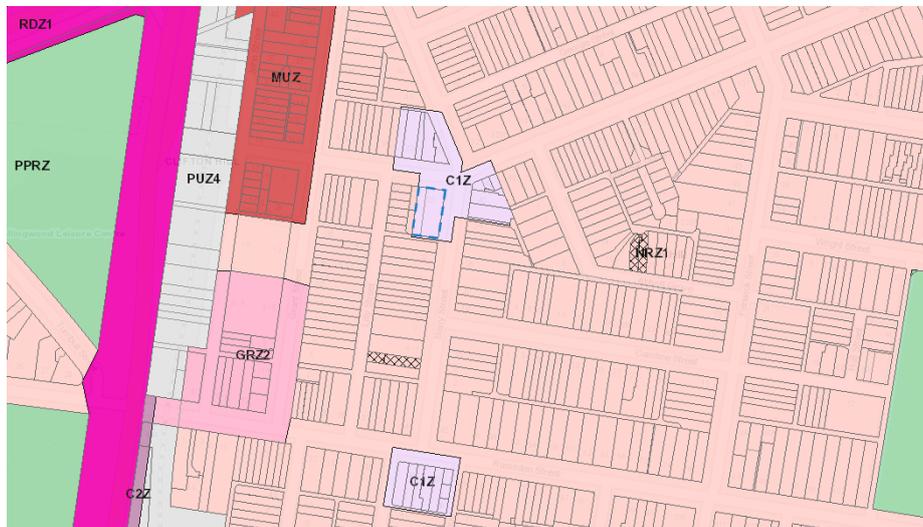


Image 3: The subject site and surrounding Zoning

North

25. Land to the north is located within the Commercial 1 Zone, with Spensley Street extending along the site's northern boundary. Spensley Street, running east to west, connects the Neighbourhood Activity Centre with Clifton Hill Station to the west.
26. On the opposite side of Spensley Street to the north is a row of double storey Victorian era commercial buildings. Whilst some of these appear to be used for commercial purposes including a doctor's clinic, a number of the buildings appear to be used as privately occupied dwellings.

South

27. The subject site has a 3.7m wide laneway to the south separating the site from the neighbouring Neighbourhood Residential Zone, which encompasses the southern end of Berry Street. Uses and buildings reflect the residential zoning with single and double storey Victorian-era dwellings making up the bulk of the streetscape.
28. The building directly to the south of the laneway is a single storey Victorian dwelling with a modern first floor addition to the rear. The dwelling is set back from Berry Street and constructed to the laneway boundary. The dwelling has habitable room windows at ground and first floors fronting the laneway.

West

29. To the west, the land is zoned Neighbourhood Residential with the uses reflecting this. A single storey former industrial building has been converted to dwellings ranging in height from one to four storeys with dwellings fronting the rear lane, Lilly Street and Spensley Street.
30. To the southwest of the site is a three storey dwelling known as 33 Lilly Street. The dwelling is constructed to all site boundaries aside from a small light court to the northwest of the site. At ground floor, the dwelling comprises a garage and entry fronting the laneway, with a workshop and store located to the north. At first floor is a central bathroom separating two bedrooms located to the north and south. the bedrooms have windows fronting the north western light court and laneway. At the second floor is an open plan living/kitchen/dinning constructed to the eastern boundary and partially set back from the western and northern boundaries. Habitable room windows are located to the north, south and west of the site. SPOS is in the form of a second floor terrace located to the north of the site.
31. To the northwest of the site is a currently vacant lot, with the exception for the front façade. Planning Permit PLN18/0101 was issued on 17 September 2018 for part demolition and construction of a double storey dwelling plus a basement and roof terrace. The extension to the commencement date expiry of the permit has recently been extended, with this development now required to be completed by 17 September 2024.
32. The endorsed plans show the development will have a full site basement comprising a gym and bathroom. At first floor a car port and pedestrian entry will be accessed from Spensley Street. A living room, bathroom and master bedroom will also be located at ground floor with the dwelling constructed to the full site boundaries. The master bedroom will have access to daylight and ventilation with operable skylights to the south. the first floor will have an open plan kitchen/living/dinning will be constructed to the eastern and western boundaries and partially setback from the north and south allowing for two terraces and operable windows/doors providing light and ventilation. A rooftop terrace will also be located on the roof with 1.7m high privacy screening to the south, west and east.

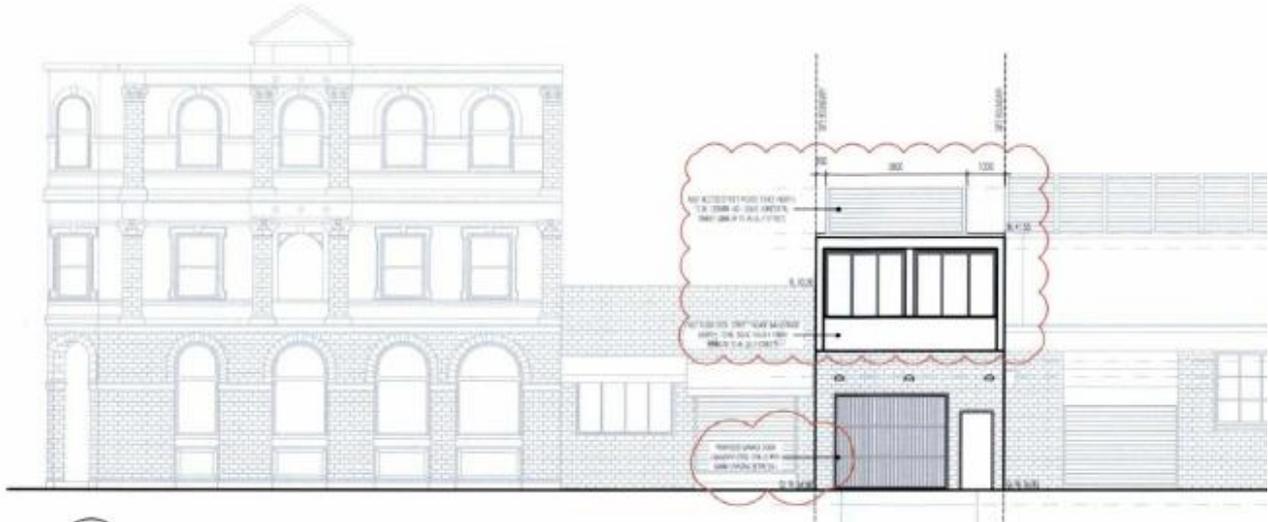


Image 4: The approved northern elevation of 33 Spensley Street (PLN18/0101).

East

33. To the east, on the opposite side of Berry Street is the continuation of the Spensley Street Neighbourhood Activity Centre. A heavily modified single storey Victorian-Era building is located on the north eastern corner of Berry and Spensley streets. The building is occupied by a number of commercial tenancies including a fish and chip shop, a pizza restaurant, hairdressers and a wine bar.
34. The building is constructed to the front boundary with a large awning extending over the full width of the footpath. Business identification signage is located to the southern end of the awning with a decorative parapet above.
35. To the south of this commercial building and to the south east of the subject site, a single storey bluestone dwelling marks the termination of the Commercial 1 Zone and the Neighbourhood Activity Centre and the commencement of the Neighbourhood Residential Zone.

Overlays

Clause 43.01 – Heritage Overlay (HO316 – Clifton Hill Eastern Precinct)

36. Pursuant to Clause 43.01-1 of the Scheme, a planning permit is required to demolish a building and construct a building or construct or carry out works. External paint controls do not apply to the Clifton Hill Eastern Heritage Precinct.

City of Yarra Database of Heritage Significant Areas, July 2020

37. The building on the subject site is located within the Clifton Hill Eastern Heritage Precinct (Schedule 316) and is identified as 'Individually Significant' to this precinct.

38. The statement of significance for the Clifton Hill Eastern Heritage Precinct recognises the hotel and surrounding commercial centre as significant to the precinct as follows;

“For its distinctive village-like commercial centre, at the junction of Spensley and Berry Streets and near the railway station, with the Royal Hotel as an important focal point, being unusual among Melbourne's Victorian and Edwardian-era suburbs because of its location central to the residential area rather than on its perimeter, as was typical in the 19th and early 20th centuries along main thoroughfares.”

Clause 45.03 – Environmental Audit Overlay

39. Pursuant to Clause 45.03–1 of the Scheme, before a sensitive use (residential use, child care centre, pre-school centre, primary school, secondary school or children's playground) commences or before the construction or carrying out of buildings and works in association with a sensitive use commences, either:
- (a) A preliminary risk screen assessment statement in accordance with the Environment Protection Act 2017 must be issued stating that an environmental audit is not required for the use or the proposed use; or
 - (b) An environmental audit statement under Part 8.3 of the Environment Protection Act 2017 must be issued stating that the land is suitable for the use or proposed use.
40. A note will be added to any permit issued reminding the permit applicant of these obligations.
- Clause 45.06 – Development Contributions Plan Overlay (Schedule 1) (DCPO1)*
41. The Development Contributions Plan applies to the proposed new dwellings, requiring the developer to pay a cash contribution towards essential city infrastructure like roads and footpaths.
42. Pursuant to Clause 45.06-1 a permit granted must:
- (a) Be consistent with the provisions of the relevant development contributions plan.
 - (b) Include any conditions required to give effect to any contributions or levies imposed, conditions or requirements set out in the relevant schedule to this overlay
43. Schedule 1 of the Development Contributions Plan Overlay (DCPO1) applies to the proposal. The subject site is located within Charge Area 3 (Clifton Hill) and the development infrastructure levy and community infrastructure levy are applicable to the new dwellings.
44. As the retail space is existing, the levies are not applicable to the hotel (wine bar)
45. A planning permit is not required for works under the overlay. The requirements of the DCPO have been included as a condition in the recommendation.

[Particular Provisions](#)

Clause 52.06 - Car Parking

46. Pursuant to Clause 52.06-2, the car parking spaces required under Clause 52.06-5 must be provided on the land. Clause 52.06-3 requires a planning permit to reduce the number of car parking spaces required under this clause. As the land is within the Principal Public Transport Network Area, the car parking rates in Column B apply.
47. The Clause 52.06-5 requirements, the proposal provision and the subsequent shortfall are shown below:

Proposed Use	Quantity/ Size	Statutory Parking Rate*	No. of Spaces Required	No. of Spaces Allocated
Two-bedroom dwelling	10	1 space per dwelling	10	24
Two-bedroom SOHO**	3	2 spaces per dwelling	3	
Three-bedroom dwelling	4	2 spaces per dwelling	8	
Food and Drink	111 m ²	3.5 spaces per 100 m ² of leasable floor area	3	0
Total			24 spaces	24 spaces

48. For the purposes of the above assessment, the two bedroom plus SOHO dwellings are conservatively considered three bedroom dwellings.

49. In this instance, a planning permit is required to reduce the statutory requirement by 4 spaces.

Clause 52.11 Home Based Business

50. The Purpose of Clause 52.11 is to ensure that the amenity of the neighbourhood is not adversely affected by a business conducted in or from a dwelling. Pursuant to Clause 52.11 a home based business does not need a planning permit if the listed requirements of Clause 52.11-1 are met.

Clause 52.27 – Licensed Premises

51. Pursuant to Clause 52.27 A permit is required to use land to sell or consume liquor if any of the following apply:

- (a) A licence is required under the Liquor Control Reform Act 1998.
- (b) A different licence or category of licence is required from that which is in force.
- (c) The hours of trading allowed under a licence are to be extended.
- (d) The number of patrons allowed under a licence is to be increased.
- (e) The area that liquor is allowed to be consumed or supplied under a licence is to be increased.

52. The site benefits from an existing active General Licence (VCGLR Licence No. 3192276) and does not propose to extend the current red line area, increase the patron numbers or alter the operating hours; therefore a planning permit is not required.

Clause 52.34 – Bicycle Facilities

53. 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 has been provided on the land.

54. The Clause 52.34-5 requirements are shown below:

Proposed Use	Quantity/ Size	Statutory Parking Rate	No. of Spaces Required	No. of Spaces Allocated
Dwellings	17 dwellings	1 resident space per 5 dwellings	3 resident spaces	
		1 visitor space per 10 dwellings	2 visitor spaces	
Retail premises	111 sqm	1 employee space to each 300 sqm of leasable floor area	0 employee spaces	
		1 visitor space to each 500 sqm of leasable floor area	0 visitor spaces	
Bicycle Parking Spaces Total			3 resident spaces	4 resident spaces
			2 visitor spaces	2 visitor spaces
Showers / Change rooms		1 to the first 5 employee spaces and 1 to each additional 10 employee spaces	0 showers / change rooms	0 showers / change rooms

55. With 6 bicycle spaces proposed, the proposal meets the statutory requirement. Change room/showers are not required pursuant to table 3 of Clause 52.34-5.

Clause 58 - Apartment developments

56. This clause applies as the development is for the construction of an apartment development. A development should meet all the standards and must meet all the objectives.

Clause 53.18 – Stormwater Management in Urban Development

57. This clause applies to an application under a provision of a zone to construct a building or construct or carry out works. An application to construct a building or to construct or carry out works:
- (a) *Must meet all of the objectives of Clauses 53.18-5 and 53.18-6.*
 - (b) *Should meet all of the standards of Clauses 53.18-5 and 53.18-6.*

General Provisions

Clause 65 – Decision Guidelines

58. The decision guidelines outlined at Clause 65 of the Scheme are relevant to all applications. This clause notes *'because a permit can be granted does not imply that a permit should or will be granted. The responsible authority must decide whether the proposal will produce acceptable outcomes in terms of the decision guidelines of this clause'*.

Clause 65.01 – Approval of an application or plan

59. *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 11.03-1S Activity Centres

60. The relevant objectives of this clause include:
- (a) *To encourage the concentration of major retail, residential, commercial, administrative, entertainment and cultural developments into activity centres that are highly accessible to the community.*

Clause 13.04-1S Contaminated and potentially contaminated land

61. 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

62. 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

63. 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

64. The relevant objective of this clause is:
- (a) *To create urban environments that are safe, healthy, functional and enjoyable and that contribute to a sense of place and cultural identity.*

Clause 15.01-2S Building design

65. 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

66. The relevant objective of this clause is:
- (a) *To recognise, support and protect neighbourhood character, cultural identity, and sense of place.*

Clause 15.02 Sustainable Development

67. The objective of this clause is:
- (a) *To encourage land use and development that is energy and resource efficient, supports a cooler environment and minimises greenhouse gas emissions.*

Clause 15.03 Heritage

68. The objective of this clause is:
- (a) *To ensure the conservation of places of heritage significance.*

Clause 16.01 Residential Development

69. 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

70. The objective of this clause is:
- (a) *To locate new housing in designated locations that offer good access to jobs, services and transport.*

Clause 17.02 Commercial

71. The relevant objective of this clause is:
- (a) *To encourage development that meets the communities' needs for retail, entertainment, office and other commercial services.*

Clause 18.01 Integrated Transport

72. 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

73. The relevant objectives of this clause are:
- (a) *To promote the use of sustainable personal transport.*
 - (b) *Require the provision of adequate bicycle parking and related facilities to meet demand at education, recreation, transport, shopping and community facilities and other major attractions when issuing planning approvals.*
 - (c) *Ensure provision of bicycle end-of-trip facilities in commercial buildings.*

Clause 18.02-2S Public Transport

74. 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

75. 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

76. 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.*

Clause 21.04-2 Activity Centres

77. The relevant objectives of this clause are:

- (a) *To maintain the long term viability of activity centres.*
- (b) *Permit residential development that does not compromise the business function of activity centres.*

Clause 21.04-3 Industry, Office and Commercial

78. The objective of this clause is:

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

Clause 21.05 Built Form

79. The relevant objectives of this clause are:

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

Clause 21.06 Transport

80. 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

81. The relevant objectives of this clause are:

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

Clause 21.08 Neighbourhoods

82. Clause 21.08-4 of the Scheme describes the Clifton Hill neighbourhood as *'largely residential neighbourhood has good public open space including the parklands associated with the Yarra River and Merri Creek to its east and Darling Gardens and Mayors Park located within the neighbourhood.'*
83. Clause 21.08-4 also describes the Spensely Street neighbourhood centre as *'a small convenience centre based around the intersection of Spensely and Berry streets. The centre has a village atmosphere and an attractive streetscape and landscaping. There is limited scope for more intense development of this centre.'*
84. The Figure 12 - Built Form Character Map: Clifton Hill shows the subject site located within the heritage overlay. The guiding urban design principle is to *'ensure that development does not adversely affect the significance of the heritage place'*.

Relevant Local Policies

Clause 22.02 Development Guidelines for Sites Subject to the Heritage Overlay

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

Clause 22.05 Interface Uses Policy

86. This policy applies to applications for use or development within Commercial 1 Zones (amongst others). The objectives of this clause is to enable the development of new residential uses within and close to activity centres, near industrial areas and in mixed use areas while not impeding the growth and operation of these areas as service, economic and employment nodes and to ensure that residential uses located within or near commercial centres or near industrial uses enjoy a reasonable level of amenity.

Clause 22.07 Development Abutting Laneways

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

Clause 22.12 Public Open Space Contribution

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

Clause 22.16 Stormwater Management (Water Sensitive Urban Design)

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

Clause 22.17 Environmentally Sustainable Development

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

Other Documents

Urban Design Guidelines for Victoria (DELWP, 2017)

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

Apartment Design Guidelines for Victoria (DELWP, 2017)

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

Advertising

93. The application was advertised under the provisions of Section 52 of the *Planning and Environment Act (1987)* by 205 letters sent to surrounding owners and occupiers and by three (3) signs displayed on site. Council received 267 objections, the grounds of which are summarised as follows):

- (a) Heritage – loss of original heritage fabric/facade and domination of the heritage streetscape
- (b) Light spill – from vehicle headlights using the laneway
- (c) Potential structural impacts to adjoining dwellings
- (d) Loss of historic meeting place/ Loss of village character
- (e) Noise - from basement access roller door and vehicles using the laneway
- (f) Loss of affordable housing
- (g) Poor amenity of apartments – poor daylight access, small size, poor outlook
- (h) Overlooking
- (i) Sustainability issues
- (j) Bad precedent
- (k) Overshadowing
- (l) Parking Issues
- (m) Excessive demolition
- (n) Excessive height/bulk
- (o) Bike parking issues – inaccessible at basement level and insufficient for the development size.

94. No consultation meeting was held.

Referrals

95. The referral comments are based on the advertised plans. Council's heritage advisor has also prepared an addendum to the original heritage comments, which provides additional consideration to the proposed height.

External Referrals

96. The application was not required to be referred to any external authorities.

Internal Referrals

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

- (a) Heritage;
- (b) Urban Design;
- (c) City Works Unit (Waste);
- (d) Engineering;
- (e) Streetscapes and Natural Values Unit;
- (f) ESD Advisor;
- (g) Strategic Transport Unit; and
- (h) SLR Consulting (Acoustic Engineers).

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

OFFICER ASSESSMENT

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

- (a) Strategic justification;
- (b) Use of the land for dwellings;
- (c) Built form and heritage;
- (d) Off-site amenity impacts;
- (e) On-site amenity, including Clause 58 and ESD;
- (f) Car parking, traffic, access, bicycle parking and loading/unloading;
- (g) Development contributions;
- (h) Environmental Audit Overlay; and
- (i) Objector concerns

100. The assessment below considers both the advertised plans and 'sketch plan' material provided by the Applicant.

Policy and Strategic Support

101. The proposal has strong strategic planning policy support at both State and local levels. The subject site is within the C1Z and forms part of the Spensley Street Neighbourhood Activity Centre (NAC). The key purpose of the C1Z is:

- (a) *To create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses; and*
- (b) *To provide for residential uses at densities complementary to the role and scale of the commercial centre.*

102. The PPF and LPPF at Clause 11.03-1S and at Clause 21.04-2 encourage the concentration of retail, residential, commercial, administrative, entertainment and cultural developments into activity centres that are highly accessible to the community and support the long term viability of activity centres.

103. Clause 11.03-1R (Activity Centres – Metropolitan Melbourne) and Clause 21.04-2 encourages development and growth in and around activity centres, with the Spensley Street Street NAC location supporting more intensive development.
104. The PPF at Clause 16.01-1R requires management of the supply of new housing to meet population growth and create a sustainable city by developing housing and mixed-use development opportunities in locations that are in a NAC (especially those with good public transport connections).
105. Consistent with the zone, the use of the land for retail (a hotel) does not require a planning permit and only the use of the land for dwellings (due to frontage condition not met) and buildings and works are triggered by the zone and overlay provisions. This indicates strategic support for retail and office uses within the precinct, which will continue to provide activation along Spensley and Berry streets at the proposed ground level.
106. The development provides opportunities for new employment within the proposed hotel and SOHO spaces, consistent with clause 17.01-1S (Diversified Economy) and clause 17.02-1S (Business). These provisions, along with clause 21.04 (Land Use), recognise and support land uses and development that contributes '*to increase the number and diversity of local employment opportunities*'.
107. Policy encourages the concentration of higher density developments in established areas and supports proposals which achieve the urban growth objectives at clause 11.02-1 through the provision of a mixed-use development on land close to existing transport corridors and services. In this instance, the site is located close to several public transport options with close proximity to Clifton Hill Train Station, bus routes along Hoddle Street, Queens Parade and trams operating along Queens Parade. Dedicated bicycle lanes are located along Heidelberg Road to the north and provides a better-connected journey for cyclists. This is also consistent with clause 21.06 (Transport), which aims to reduce car dependency by promoting walking, cycling and public transport use as viable and preferable alternatives. The site's proximity to public transport assists in achieving this objective.
108. The site is located in an area suitable for redevelopment, with a proposed built form that generally includes elements of the diverse pattern of urban form found in the neighbourhood. The proposal's design response references the historical industrial and commercial nature of the area within its design and seeks to create a new built form character that results in no unreasonable off-site amenity impacts, improves connectivity of the area and appropriately responds to the strategic location and policy direction for higher density built form within the NAC.
109. Having regard to the above, the proposed development of the site including the hotel and dwellings is considered to have strategic planning support, however regard must be had to the appropriate scale of the proposal, based on the individual context and constraints of the land. This aspect of the development will be discussed below.

[Use of the land for dwellings](#)

110. A permit is required to use the land for 'dwellings' given the proposed dwellings that front Spensley and Berry street exceed 2m (approximately 28m) in width at ground level, as outlined earlier in this report.
111. The intent of this permit trigger for dwellings is to ensure ground floor interfaces in commercial areas are appropriately activated with commercial uses, as opposed to residential frontages that would otherwise weaken the retail function of activity centres.

112. In this instance, the site has dual frontages to Berry Street and Spensley Streets. The proposal seeks to maintain the existing hotel heritage façade and incorporate an activate frontage to both streets with the hotel on the north eastern corner fronting both street frontages.
113. The design also incorporates home offices (SOHOs) at ground floor which will be attached to the above residential apartments however can be occupied as small home office space separate from the primary dwelling. The SOHOs will have dedicated access from the street separate from the upper floor dwellings and kitchenettes and access to bathroom facilities making them suitable for occupiers running a small home-based business. The concept supports the local scale of the Neighbourhood Activity Centre and is reminiscent of a traditional 'shop top' dwelling often seen in commercial heritage buildings.
114. As previously identified, the existing Spensley and Berry Street streetscapes at present exhibit a varied built form and land use mix, which includes the presence of commercial buildings occupied by local retailers (predominantly food and drink), offices and dwellings.
115. It is considered that the proposal will result in an appropriate land use outcome having regard to the following:
- (a) The proposal will continue to allow for active street frontage through the proposed hotel.
 - (b) The SOHOs located at ground floor will provide opportunities for small local services.
 - (c) The existing mixed-use nature of both streetscapes.
 - (d) The heritage façade will be retained ensuring the physical streetscape is not dramatically altered.

Built form and heritage

116. In considering the design and built form of the proposed development, the most relevant aspects of the Scheme are provided at Clause 15 (Built Environment and Heritage), Clause 21.05 (Built Form), Clause 22.02 (Development Guidelines for Sites Subject to the Heritage Overlay) and the Heritage Overlay (HO 316). All of these provisions and guidelines support development outcomes that respond to the existing or preferred built form character and seek a contextual heritage and urban design response reflective of the aspirations for the area. Particular regard must be given to the acceptability of the design in terms of works to the heritage building, height and massing, street setbacks and the relationship to adjoining buildings.

Demolition

117. Clause 22.02 outlines policies where the removal of 'part' of a heritage place is proposed. These include:
- (a) *Encourage the removal of inappropriate alterations, additions and works that detract from the cultural significance of the place.*
 - (b) *Generally, discourage the demolition of part of an individually significant or contributory building or removal of contributory elements unless:*
 - (i) *That part of the heritage place has been changed beyond recognition of its original or subsequent contributory character(s).*
 - (ii) *For individually significant building or works, it can be demonstrated that the removal of part of the building or works does not negatively affect the significance of the place.*
118. Whilst the extent of demolition proposed is extensive, demolition is largely limited to fabric that is not readily visible from the principal facades. The primary presentation of the building to Spensley Street and Berry Street would remain through retention of these facades. The proposal also seeks to retain portions of the original western and southern three storey return walls, which will ensure a three-dimensional appearance of the building is retained.

119. There is no issue with the demolition of the existing two storey building at 35 Spensley Street and the single storey southern addition at 37-41 Spensley Street, being non-contributory, consistent with Clause 22.02 criteria for demolition and also supported by Council's heritage advisor.
120. Council's heritage advisor was largely supportive of the extent of demolition of the building.
121. Council's Heritage Advisor stated the following with regard to the demolition of the western and southern walls;
- (a) *"The existing south and west walls of the subject building will be fully concealed by the proposed five-storey additions to the sides of the original hotel. Removal of these walls will not affect the overall character and appearance of the subject building or have a detrimental impact on the significance of the subject building or the broader heritage precinct*
 - (b) *The retention of about 2.5m long corner returns on the south end of the east elevation of the three storey portion of the building along Berry Street, and at the west end of the north elevation along Spensley Street are considered appropriate for maintaining some semblance of the original hotel building in a three-dimensional sense."*
122. With regard to the proposed demolition of the existing roof, Council's Heritage Advisor stated the following;
- (a) *"The removal of the full extent of the roof from a heritage building is not usually supported on heritage grounds as roof forms often make a strong contribution to the architectural character of a building.*
 - (b) *In this case, the original roof form of the subject building is not visible from directly opposite the street frontages. Parts of the original hipped roof are visible from viewpoints looking northwards along Berry Street and from distant viewpoints looking eastwards along Spensley Street.*



Image 5: View of the Royal Hotel from the south

- (c) *The roof form visible in the image above will be fully concealed by the proposed addition to the south end of the original hotel building. The part of the roof visible from the west along Spensley Street is already partially concealed by the adjacent development at no. 33 and will be fully concealed by the proposed addition to the west side of the original hotel building.*

- (d) *For a building to continue to be a Contributory place, it should normally be retained in its original three dimensional form. Inadequate retention of fabric can result in Facadism and should be avoided. Given that the original roof form will be fully concealed from the public realm (following the construction of the proposed side additions), it is considered that its removal will have no impact on the character and appearance of the existing building, provided that the two chimneys that are close to the Berry Street façade and clearly visible from the surrounding streets are retained (or at least reconstructed to match in appearance exactly)."*

123. Given that the existing roof form is only visible from oblique angles and not from the principal street presentations, its removal is subsequently supported.
124. The proposed internal demolition of the hotel is also support as the site is not covered by internal heritage controls. It is however noted that the proposal seeks to respect the original floor levels of the hotel, ensuring that the relationship with retained window openings remains.
125. Accordingly, it is considered that proposed extent of demolition to the former Royal Hotel building is acceptable and consistent with Clause 22.02 and 43.01, and that the significance of the heritage place when viewed from Berry and Spensley streets will be conserved.
126. A condition is recommended requiring the structural engineering report to be submitted for endorsement, with a conservation management plan, to ensure that the original fabric to be retained is appropriately protected during the demolition and construction phases of the development.

External alterations (Retained façade)

127. The proposed external alterations to the original facade include the following:
- (a) Removal and replacement of the windows.
 - (b) Paint the retained façade
 - (c) Removal of the signage and canopies.
 - (d) Infill previously removed portions of the windows and facade
 - (e) Reconstruction of the eastern chimneys
128. With the exception for the removal of the windows, these proposed works are principally to restore the façade. The following Clause 22.02 policies are relevant regarding reconstruction and restoration works:
- (a) *Encourage restoration of a heritage place or contributory element if evidence exists to support its accuracy.*
 - (b) *Encourage the reconstruction of a building or works which previously existed in a heritage place if:*
 - (i) *The reconstruction will enhance the heritage significance of the heritage place*
 - (ii) *Evidence exists to support the accuracy of the reconstruction.*
 - (c) *Encourage the reconstruction of original or contributory elements where they have been removed. These elements include, but are not limited to, chimneys, fences, verandahs, roofs and roof elements, wall openings and fitting (including windows and doors), shopfronts and other architectural details and features.*
129. Council's Heritage Advisor noted that given the scope of the proposed restoration works to the retained facades a Conservation Management Plan was not required but rather an identified schedule of restoration and conservation works should be prepared.

A Conservation Management Plan prepared by a suitably qualified professional providing clear detail of the proposed restoration works will however allow Council an opportunity to review the proposed works and ensure the works are to be undertaken to satisfaction prior to endorsement and subsequently will be required via condition on any permit that issues.

Removal and replacement of the windows.

130. The proposal seeks to remove all windows to the original façade. Glazing within the retained openings is to be replaced with performance glazing offering higher thermal and acoustic shielding to the apartments. Where windows are to act as balcony openings the glazing is to be fully removed. Council's Heritage Advisor has reviewed the proposed works stating;
- (a) *“Where balconies have been intended, the removal of the existing window frames has been proposed. This will have an impact on the original pattern of fenestration which is not appropriate. The removal of glass may be acceptable however the appearance of the existing frames must be maintained to avoid the appearance of ‘holes’ in the principal façade.”*
131. A condition of any permit will subsequently require the retention of the original (or like-for-like replacement) window frames within the balcony openings.

Infill previously removed portions of the windows and façade

132. The proposal seeks to infill and reinstate previously removed sections of the ground floor eastern and western façades including reinstating the base details of the previously altered arch windows, removal of the glass block and reinstate the original arch window to Berry Street, reduce the opening created by the bottle shop frontage to reflect that of the upper levels and to remove the cellar window. The proposal also seeks to replace the existing splayed door.
133. These works are appropriate and supported by the above policy at Clause 22.02. Council's Heritage Advisor was also supportive of the proposed works however suggested that the further works to reinstate the original window and door detail should be undertaken. This should be addressed within the recommended conservation management plan condition.

Paint the façade

134. The proposal seeks to repaint the façade. Details of the proposed colour have not been supplied, however Rn1 notations on the supplied elevations suggest that it will be 'light white/grey render'. The applicant has confirmed this is an error and the intention is to paint the façade. Whilst there is an absence of external paint controls within the Clifton Hill Eastern Overlay, given the 'individually significant' nature of the building, care needs to be taken to ensure the works do not detract from the façade. Council's Heritage Advisor noted that *‘that the selected colours should be based on professional paint analysis of the external walls and joinery’*. With *“the aim should be to restore the presentation of the building to its original intended appearance”*. This will be dealt with by the recommended conservation management plan condition.

Removal of the signage and canopies.

135. The proposal seeks to remove all canopies and non- original signage including the projecting 'Carlton draught' signs from the roof and eastern façade. As non-original elements, these works are supported.

Reconstruction of the eastern chimneys

136. The proposal seeks to reconstruct the east facing chimneys behind the original façade. As prominent significant features within the streetscape, these works are also important to preserve the perception of depth to the retained facade. These works will need to be undertaken accurately with the height, location and detailing maintained. This will be addressed by the Conservation Management Plan condition.

Buildings and works

137. Clause 22.02-5.7.1 of the Yarra Planning Scheme encourages the design of new development to:
- (a) *Respect the pattern, rhythm, orientation to the street, spatial characteristics, fenestration, roof form, materials and heritage character of the surrounding historic streetscape.*
 - (b) *Be articulated and massed to correspond with the prevailing building form of the heritage place or contributory elements to the heritage place.*
 - (c) *Be visually recessive and not dominate the heritage place.*
 - (d) *Be distinguishable from the original historic fabric.*
 - (e) *Not remove, cover, damage or change original historic fabric.*
 - (f) *Not obscure views of principle façades.*
 - (g) *Consider the architectural integrity and context of the heritage place or contributory element.*
 - (h) *Encourage setbacks from the principal street frontage to be similar to those of adjoining contributory buildings; where there are differing adjoining setbacks, the greater setback will apply.*
 - (i) *Encourage similar façade heights to the adjoining contributory elements in the street. Where there are differing façade heights, the design should adopt the lesser height.*
138. The proposed development is considered to achieve these outcomes.
139. The new development will be set back between 2.25m from the street and the retained façade to the south, allowing for the full height of the retained southern wall return to remain visible. The built form will match the height of the street wall to Berry Street, consistent with that of the existing parapet. Infill to the northern façade will be constructed to the street boundary to a height of two storeys (9.33m) incorporating balconies at ground and first floor. Levels above will be set back between 3.36m to 6.63m from the original façade and primary street frontages of Berry and Spensley Street (with decks located within these setbacks), thereby reducing visibility of the higher built form from both the north and east, ensuring that the upper floors levels will not dominate the heritage building or broader streetscape.
140. This approach is consistent with the requirements of Clause 22.02-5.71 which seeks to encourage new development, alteration and additions to be designed to with;
- (a) *'similar façade heights to the adjoining contributory elements in the street. Where there are differing façade heights, the design should adopt the lesser height'*
141. and to minimise the visibility of new additions by;
- (a) 'Locating ground level additions and any higher elements towards the rear of the site'
142. Council's Heritage Advisor was also supportive of this approach stating;
- (a) *"Based on this policy it can be considered that the scale and form of the existing heritage place is being respected as the additional two floor levels will be set back from the lower built form of the retained facades."*

143. This design response will also be reflected to the rear with the southern and western façades largely constructed to the title boundaries to a height of three storeys and then set back at the upper levels. Whilst the appearance of the proposed new building from these interfaces is of less heritage concern than the primary streetscapes to the north and east, the proposed lightwell to the western interface is considered to be a good design approach by breaking up the massing when viewed from the west. From a heritage perspective, the setbacks, scale and height of the proposed additions is acceptable.
144. Council's Heritage advisor however did raise concerns with the proposed roof plant screen, noting that the overall area and 2.1m height of the screen was considerable. The supplied acoustic report notes that the rooftop acoustic screen will need to extend 500mm above the tallest item of mechanical plant equipment, as such it is likely that this can be reduced. A condition should require that the acoustic screen is reduced in height to a maximum height of 1.8m, which should readily accommodate any requirement plant material whilst still providing appropriate clearance.
145. The contemporary design of the new sections of façade to the east and north integrates well with the contributory features within the existing heritage façade on the site. The proportions of the proposed window openings and the proposed floor to ceiling heights will be consistent with the façade of the adjoining heritage building. Whilst the contemporary design will appropriately distinguish the additions from the retained heritage fabric.

Materials and finishes

146. The proposed external materials for the new development will be reclaimed brick, light and dark grey render, grey permeable mesh, black aluminium battens, concrete and glazing.
147. With regard to the proposed mesh finish to the eastern and northern infilled sections, Council's Heritage Advisor was supportive noting that;
- (a) *"This will allow the appearance of the additions to be distinguishable from the heritage building whilst still maintaining a sense of the original building's fenestration but without the decorative architectural detailing"*
148. A condition is recommended to ensure the metal mesh has a non-reflective finish to ensure it does not unreasonably compete with the prominence of the heritage building.
149. To the west, a precast concrete boundary wall is proposed abutting the boundary. Much of the wall will be obscured by existing built form and that of the approved development at 33 Spensley Street (under planning permit PLN18/0101). However as demonstrated within the image below, the northern portion of the western wall will extend 4.7m above the approved roofline and 3m above the proposed privacy screening. Given the 9m height limit within the Neighbourhood Residential Zone to the east, this will not be built up against. A condition of the permit will require that the wall be of a textured finish to provide articulation.

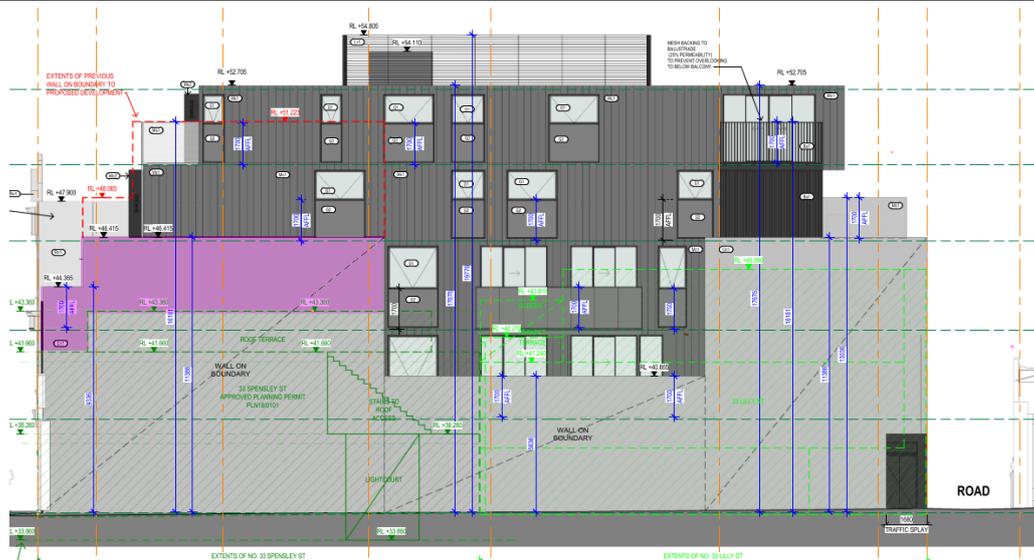


Image 6: The proposed western elevation, with the exposed concrete wall shown in pink

150. The upper floors and roof plant screen are proposed to be predominantly constructed of two variations of black aluminium battens. Council’s Heritage Advisor was not supportive of the proposed dark finish noting that;

(a) *“It is considered that the appearance of additional black coloured built form rising above the height of the remaining heritage façade will create a strong contrast against the sky when viewed from almost any vantage point. Such an outcome would not satisfy the policy that the additions should be treated in a manner that makes them less apparent. The use of a lighter colour is strongly recommended.”*

151. A condition of any permit should require that materials ‘Ba1’ and ‘Mc1’ both noted as aluminium black battens be amended to a lighter colour such as light to mid grey.
152. Based on these changes, the proposed development integrates well with the heritage character of the streetscape and respects the significance of the heritage place. Compliance with the provisions of Clause 22.02 is achieved.

The Public Realm & Pedestrian spaces

153. The introduction of a hotel (wine bar) at ground level addressing the intersection of Spensley and Berry Streets provides an active frontage within the Neighbourhood Activity Centre. This outcome is consistent with the public realm, pedestrian spaces and street and public space quality policies at clauses 15.01-2 and 21.04-2 of the Scheme.
154. The proposal does not seek to include any works to the public realm with the retained heritage façade of the hotel offering little opportunities to do so. Council’s Urban Design Team have reviewed the proposal and have not raised any concerns provided that the existing seat on the corner of Spensley and Berry Streets is retained and street trees are protected. Council’s Urban Design Team also requested the existing bicycle hoop to Berry Street be replaced, this is discussed in the bicycle parking section of the report.
155. The design locates the services to the rear of the site within the laneway interface at ground level. This outcome is supported.

Impact to Council Street Trees

156. A Tree Management Plan prepared by Galbraith and Associates dated 14 September 2019 has been provided by the applicant to assess the potential impacts the proposed development to the street trees on the Berry and Spensley Street frontages. The report identifies two *Tristaniopsis laurina* trees and two *Gleditsia trcanthos* ranging in size from 4m to 8m in height and between 1.9m and 2.9m from the existing building façade. All trees are noted as being in 'fair condition'.
157. The supplied report notes that the foundations of the existing building façade will presently be acting as a root barrier, so no root development is expected underneath the existing building. As such the proposed basement will not impact the root zones of these trees. This view was supported by Council's Open Space team.
158. The supplied arborist report made several recommendations regarding protection of the trees during construction works including;
- (a) Gantries have a minimum ground clearance of 5m
 - (b) Pruning in accordance with Australian Standard 4373:2007
 - (c) The erection of Tree Protection Zones for the duration of construction
 - (d) Routine inspections
159. The proposed tree protection measures have been reviewed by Council's Open Space Team and are deemed appropriate. Should a permit be issued a condition will require the endorsement of the tree management plan and ongoing compliance with the measures specified.

Laneway interface

160. Council's local policy at Clause 22.07 relates to development abutting laneways. Relevantly, the policy seeks to provide an environment which has a feeling of safety for users of the laneway and to ensure that development along a laneway acknowledges its unique character. The policy specifically calls for development that respects the scale of the surrounding built form.
161. The ground floor of the development is to the boundary on the laneway. This is an acceptable design response given the substantial 3.7m -3.8m width of the rear lane will allow for the safety of cars and pedestrians within the ROW. The ramp and gate to the basement entry ramp is set back 1.68m from the lane's edge, with an additional splay provided to the east. Council's Engineers have confirmed that this setback and splay allows for suitable vehicle navigation into the proposed basement, and as will be discussed in greater detail within the traffic assessment, the additional vehicle movements generated by the proposed development are not expected to be detrimental to the operation of the laneway.
162. Pedestrian access to Apartment 103 is also proposed from the laneway, with primary access available from the main entry and lobby. The proposal incorporates 650mm deep recess with inward opening door which ensures pedestrian safety when entering and exiting via the laneway. As demonstrated within the image below the existing laneway surfacing is in poor condition. Council Engineers have identified that further works including the construction of the basement will further degrade the laneway surface. As such a condition is to be included in any permit issued requiring the reconstruction of this laneway from Berry St to the western edge of the property, at the cost of the applicant.



Image 7: The existing southern laneway as viewed from Berry Street

163. The windows and balconies addressing the laneway at the first and second-floors will allow for passive surveillance, but do not unreasonably overlook private open space or habitable rooms on the opposite side of the laneway. This detail will be discussed in further detail later within this assessment.
164. The scale of the proposed wall abutting the laneway is considered acceptable, with a degree of articulation provided via the recycled brick construction and the presence of window and balcony openings. The proposed height reflects the height of existing built form addressing the laneway immediately to the west, associated with the three-storey dwelling at 33 Lilly Street.
165. It is considered that the proposed height of the wall on the laneway, when combined with the setback to the upper levels, adequately acknowledges the character of the laneway and provides a suitable transition to the low-rise residential developments to the south. The development will not obstruct the laneway and access for emergency vehicles will be maintained. The provisions of this policy will be met.

Light and Shade

166. The height of the existing triple-storey façade and the proposed setbacks of the upper levels above from Berry Street ensure that there will be minimal additional overshadowing affecting the eastern or western footpaths along Berry Street during the September 22 equinox. Existing shadows will affect the eastern footpath from 1pm and the western footpath from 3pm. Additional shadow will affect a small portion of the eastern side of Berry Street at 4pm, given it is outside the key daytime hours (i.e. 9am to 3pm) and the limited affected section of the footpath, this is considered acceptable. Additional overshadowing will affect the western footpath from 1pm to 4pm however will be confined to a small section of footpath in front of 31 Berry Street, given the minor extent of additional overshadowing, this is not considered unreasonable. Overshadowing onto private properties will be discussed later in this report.

Site Coverage

167. The proposal will occupy approximately 98% of the site area which consistent with the current site conditions. This outcome is acceptable.

Architectural Quality

168. The development is considered to be of high architectural quality and integrates well with the existing streetscape. The contemporary design is appropriate, with a number of features incorporated into the scheme that reflect heritage characteristics found within adjoining buildings.
169. The proposed perforated mesh will provide texture to the façade and will not compete with the original painted heritage façade. Elements of red brickwork within the rear lane will reflect traditional materials found in the area and will positively contribute to the laneway interface. A good balance between the ratio of solid to void is achieved, through the provisions of balconies and windows to all facades, with the setback to the southeast and the provision of landscaping providing a good response at the lower levels.
170. Black aluminium batten cladding is proposed for the majority of the upper two levels, as previously discussed this offers a harsh contrast to the original façade and skyline and will be required to be replaced with a light to mid grey via condition.
171. As previously discussed, the western boundary wall is proposed to be finished in pre-cast concrete, with no further articulation provided. Given the 9m height limit within the residential zone to the west, this wall will be highly visible within the Spensley Street streetscape, following the development of 33 Spensley Street. Articulation to this wall would reduce its visual impact. This could be achieved through the addition of texture, horizontal and vertical joints, breaking up the mass and reducing the sheer finish of this wall. If a permit is to issue, a condition will facilitate this change.
172. Overall, subject to condition, the proposal will present a sophisticated design that has been actively informed by the adjacent heritage building and the wider streetscape. The design is considered to contribute to the surrounding area based on its architectural quality and well perceived design.

Off-site amenity impacts

173. Clause 15.01-2S of the Scheme aims to provide building design that minimises the detrimental impact of development on neighbouring properties, the public realm and the natural environment, with potential impacts relating to overshadowing of SPOS, loss of daylight to windows, visual bulk, overlooking of sensitive areas and equitable development. The relevant policy framework for amenity considerations is contained within clause 22.05 (Interface uses policy) of the Scheme.
174. The context of the site, being located within a C1Z, with commercially zoned land to the north and east, limits potential off-site amenity impacts on surrounding, more sensitive, sites. Sensitive interfaces are located to the south on the opposite side of the laneway at No. 31 Berry Street and the townhouses immediately to the west at No. 33 Spensley & 33 Lilly Streets and dwellings further to the west facing Lilly Street. The following assessment will therefore focus on potential amenity impacts to these residential uses.
175. The acceptability of off-site amenity impacts (i.e. daylight impacts, noise, visual bulk, overlooking and overshadowing) are considered below

Daylight to windows

176. No. 31 Berry Street located on the southern side of the laneway has north facing habitable room windows (HRW) fronting the subject site on the opposite side side of the laneway and are separated from the rear boundary of the subject site by 3.7m – 3.8m (width of the ROW). At ground floor the dwelling does not have any habitable room windows fronting the subject site, with the two kitchen/living room highlight windows located adjacent 33 and 35 Lilly Street. This room also benefits from a large western window that will not be impacted by the proposal.
177. At first floor the dwelling has habitable room windows associated with Bedroom 2 and the Retreat set back 1.05m from the northern boundary fronting the subject site. The top of the proposed third storey privacy screen will be 5.65m higher than the first floor finished floor level of 31 Berry Street and set back a total of 4.85m, inclusive of the laneway width. Whilst the requirements of Clause 55 are not applicable, applying Standard B20 (north facing windows) assessment, a setback of 2.23m is required for a 5.65m high wall.
178. Furthermore, these north facing windows are also fitted with 1.7m high louvered screening impacting the existing outlook and daylight access. Both these rooms also benefit from secondary windows with Bedroom 2 having an east facing window and the retreat having a south facing window. As such the proposal is not considered to unreasonably impact sunlight or daylight to these windows.

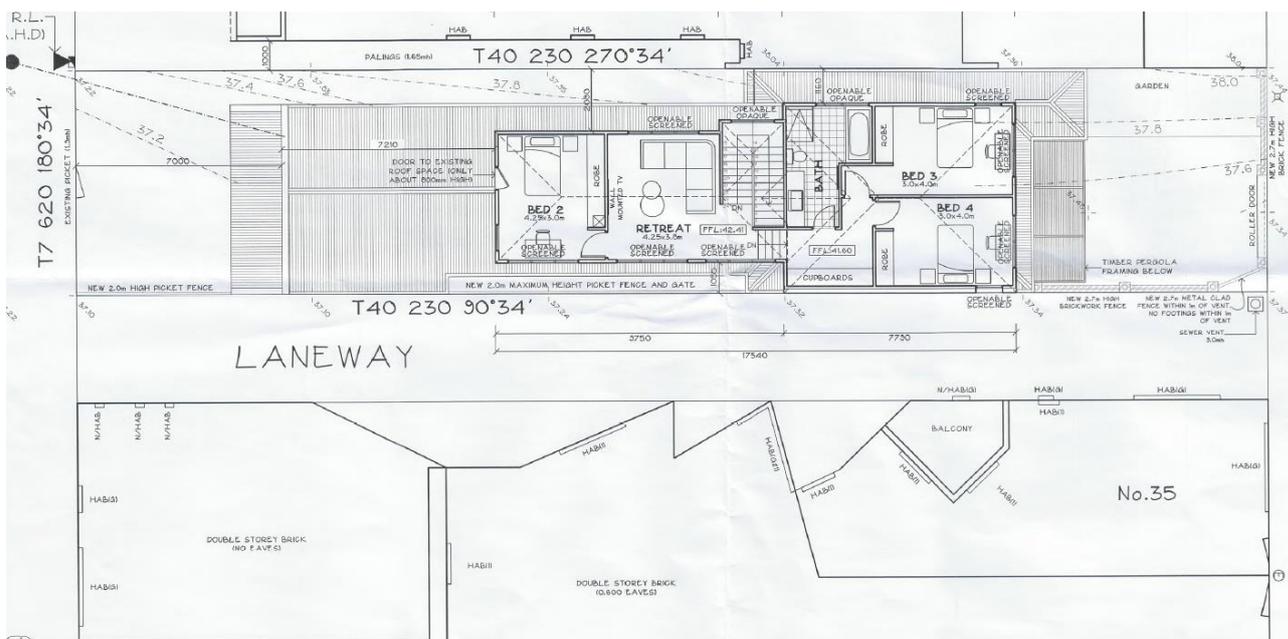


Image 8: The first floor plan of 31 Berry Street as approved under planning permit PLN13/0803

179. To the west, the dwelling at 33 Lilly Street and the approved development at 33 Spensley Street do not have any habitable room windows fronting the subject site. Whilst both the existing dwelling and proposed dwelling have skylights these are not considered habitable room windows. This position is affirmed by VCAT where it has previously been determined that skylights are not habitable room windows and therefore cannot be provided the same level of protection (See *Hancock v Yarra CC* [2018] VCAT 321 paragraph 46).

The issue to be decided in this case is whether the affect on energy efficiency is unreasonable (my emphasis). However, I was not referred to any quantifiable guidelines in the planning scheme that would assist in determining the reasonableness of a proposal's impact on an adjoining property. In these circumstances, there is an onus on the Applicants for Review in this case to demonstrate how new development will impact upon them.

Submissions that a proposal will reduce solar access though skylights and therefore energy efficiency will be reduced, will rarely be sufficient to establish that the impact is unreasonable^[6]. I have not been presented with quantifiable information that would persuade me that the proposal's impact is unreasonable. In any event, the application plans demonstrate that solar access will continue to be available through the skylights albeit at a reduced level."

180. Nevertheless, the proposal adopts a sympathetic design response by providing a 2.2m deep lightwell through the central section of the western boundary where abutting the location of the affected skylights. Whilst the proposal is anticipated to reduce the access to direct sunlight during the morning hours the supplied shadow diagrams indicate that these skylights will be unaffected by 11am. This is considered an appropriate outcome.

Overlooking

181. As with above, potential overlooking impacts to HRW or SPOS is associated with No. 31 Berry Street to the south, and the dwellings located within the former industrial building to the west, which include rooftop terraces to 33 Lilly Street and the approved 33 Spensley Street.
182. Standard B22 (Overlooking) at Clause 55, whilst again not strictly applicable to this application, provides guidance as to whether any unreasonable overlooking impacts from the proposed development will occur. This Standard notes that any 'habitable room window, balcony, terrace, deck or patio should be located and designed to avoid direct views into the secluded private open space of an existing dwelling within a horizontal distance of 9m (measured at ground level) of the window, balcony, terrace, deck or patio. Views should be measured within a 45 degree angle from the plane of the window'.
183. Windows and balconies to the southern and west interfaces are generally fitted with privacy screening (maximum 25% permeable) or obscure glazing to a maximum height of 1.7m from the internal finished floor level appropriately restricting views. The exception is the fifth floor living room southern windows, which will consist of clear glazing. The applicant has however provided a sectional diagram (below) demonstrating that views to habitable room windows and areas of SPOS within 9m will not be available.

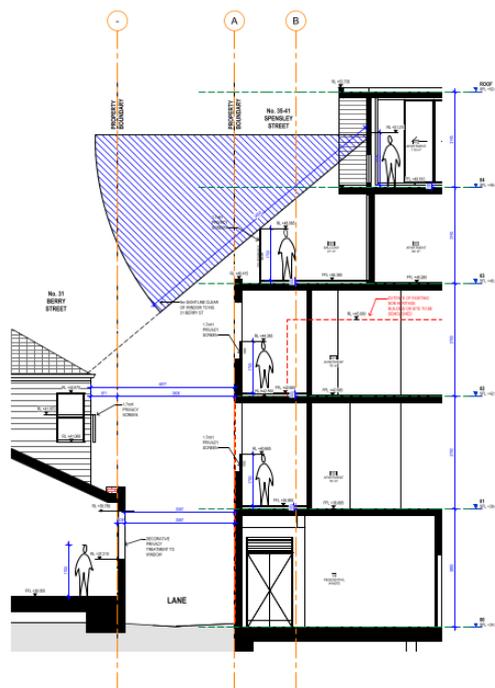
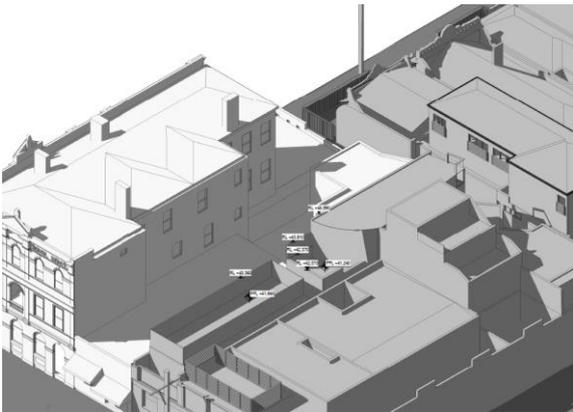


Image 9: Overlooking from the fifth floor southern windows.

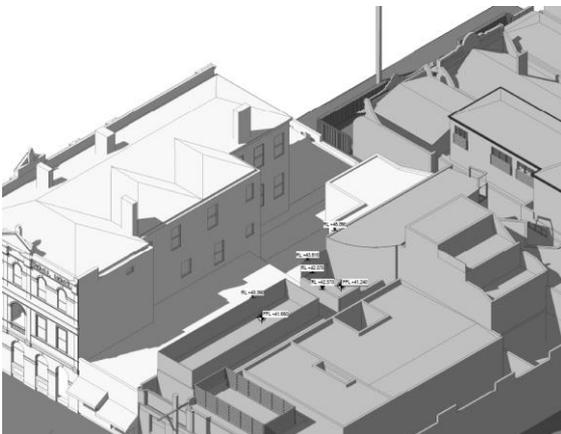
184. The Sketch Plans submitted propose to delete the second floor west facing balcony. Annotations on the plans state the bedroom windows fronting the light court will be 3m high and 1.4m wide. It is unclear if these are proposed as clear or obscure glazing. Should a permit be issued, a condition will subsequently require views (within 9m) from habitable rooms and balconies to the adjacent habitable room windows and areas of SPOS to be appropriately screened to a height of 1.7m and 25% maximum permeability to prevent overlooking.

Overshadowing

185. Shadow diagrams have been submitted for the September Equinox (22 September), however these are drawn as if the land surrounding the subject site was flat and do not account for existing built form. As a result, the shadows appear to extend further than would occur accounting for surrounding built form. Furthermore, the shadow diagrams submitted with the application do not depict shadows cast from existing structures of surrounding sites.
186. This was raised with the applicant, who subsequently submitted revised 3D shadow diagrams on 19 October 2021. These illustrate that there will be additional shadows at 9am on terraces at No. 33 Spensley Street, 33 to 39 Lilly Street and SPOS of No. 31 Berry Street. However, from 10am, only the immediately adjacent terraces at No. 33 Spensley and No. 33 Lily Street are expected to be affected, with the impact reducing to only a small sliver at 11am as illustrated in the images below. From 12pm there will be no additional shadows cast on any secluded private open spaces areas.



10am shadow (September equinox)



11am shadow (September equinox)



187. The increased shadow impact at 9am is considered acceptable in an inner-city context, whereby significant shadow is already cast by existing structures at this time. It is not considered the shadow impact on these properties at 9am will unreasonably impact the amenity of these spaces.
188. The extent of 10am shadow is considered tolerable given that the adjacent terraces are already substantially shadowed by their own existing balustrading at this time. The increase is not considered to be unreasonably detrimental to the amenity of these spaces, noting that by 11am, there will be only a slight increase and from after this time, no additional shadow will be cast on these spaces for the remainder of the day. As such, these areas will continue to receive excellent solar access during the key recreational part of the day i.e. 12pm to 2pm. On this basis, the shadow cast by the proposed development is considered acceptable.

Visual bulk

189. The height and appearance of the proposed development has been discussed previously within this assessment, with the setbacks of the highest levels appropriately set back from all sensitive interfaces to reduce potential visual impacts to surrounding sites. Whilst the height of the proposed walls along the southern and western boundaries would exceed the requirements of Standard B19 (Walls on boundaries) if a Clause 55 assessment was applicable, the context of the site in a C1Z and the direct abuttal with the laneway allows this additional height to be acceptable. Further, the dwellings have a direct abuttal with land in the C1Z, with a number of Tribunal decisions acknowledging that amenity expectations of residents with direct commercial interfaces should be tempered.

Noise

190. Policy at Clause 22.05-4.2 requires non-residential development to provide a high level of acoustic protection to adjoining properties. On-site acoustic impacts will be addressed later in the report under the Clause 58 assessment.

[On-site amenity, including Clause 58 and ESD](#)

191. The following is an assessment of the design objectives and standards of Clause 58 applicable to the assessment of new apartment development.

Standard D1 – Urban context

192. The purpose of this Standard is to ensure that the design responds to the existing urban context or contributes to a preferred future development of the area. These aspects have been discussed in detail earlier within this report, with the proposal considered to be an acceptable response within the character of the Spensley Street Neighbourhood Activity Centre and Clifton Hill Eastern Precinct. The Standard is met.

Standard D2 – Residential Policies

193. As outlined within the Strategic Context section of this report, the proposed development has strong policy support under the purpose of the C1Z and relevant policies of the Scheme. The site can clearly support higher density residential development, based on its proximity to public transport, community infrastructure and services, and limited off-site amenity impacts. The Standard is met.

Standard D3 – Dwelling diversity

194. The advertised plans depict a that proposal will provide 10 x 2 bedroom apartments, with 4 x 3 bedroom dwellings and 3 x 2 Bedroom plus SOHO apartments.

195. The Sketch Plans submitted amend this arrangement to 6 x 2 bedroom apartments, with 6 x 3 bedroom dwellings and 3 x 2 bedroom plus SOHO apartments, both arrangements allow for a range of dwelling types. The Standard is met.

Standard D4 - Infrastructure

196. The proposal is located within an established area containing existing utility services and infrastructure; there is no evidence to suggest that the proposed development would unreasonably overload the capacity of these existing services. The Standard is met.

Standard D5 – Integration with the street

197. The building will address Spensley Street and Berry Street at all levels, with the proposed commercial uses at ground level providing an active frontage within the activity centre. The Standard is met.

Standard D6 – Energy efficiency

198. This Standard notes that buildings should be oriented to make appropriate use of solar energy and sited and designed to ensure that the energy efficiency of existing dwellings on adjoining lots is not unreasonably reduced.
199. Confirms that an average 6.9 Stars is maintained overall, falling just short of the required 7 Star NatHERS rating.
200. Policy at clauses 15.01-2S, 21.07, 22.16 and 22.17 of the Scheme encourages ecologically sustainable development with regards to water and energy efficiency, building construction and ongoing management. The Sustainable Management Plan (SMP) prepared by Energy Lab and dated April 2021 outlines that the following key ESD attributes will be incorporated into the development;
- (a) A Building User Guide will be provided to building managers and residents with the intent to reduce energy and water consumption;
 - (b) The design includes an electronic metering system that will be integrated into the building to monitor and report on energy and water consumption, and control the building services;
 - (c) All apartments will be provided with access to outdoor air via operable windows and doors to each habitable room;
 - (d) The residential energy ratings achieve a weighted average of 6.9 Stars
 - (e) Water efficient fixtures and fittings;
 - (f) A 109% STORM score will be achieved, via a 15,000L rainwater tank connected to residential toilet flushing; and,
 - (g) Convenient recycling facilities and the provision of compost green/waste collection
201. Whilst these features are supported and will contribute to positive ESD outcomes, there were also a number of deficiencies and concerns raised by Council's ESD Advisor, as outlined below.
- (a) Daylight access will be poor to the level 1 and 2 dwellings facing the adjoining wall on the western boundary
 - (b) Other dwellings also have deep or convoluted floor plans that will also result in a lower standard of daylight that does not meet our best practice standards of Clause 22.17
 - (c) Natural ventilation will also be poor to the level 1 or 2 dwellings on the western boundary, as well as the several dwellings with a single aspect, deep floor plans and no access to cross ventilation.

- (d) Whilst the average 6.9 Stars is nearly satisfactory as an overall thermal energy figure, the exposed west, east and north facing glazing to dwellings on levels 3 and 4 has resulted in higher cooling loads than the BADS standards for this climate zone (30MJ/m²) which is not an acceptable design response.
- (e) 6 bicycle racks for 17 dwellings and the wine bar staff is not adequate and is far below best practice standards.
- (f) The Urban Ecology section of the report does not contain any information relating to Urban Ecology nor do the plans contain any landscaping or greening features
- (g) Insufficient detail regarding recycling, hard waste and organic waste streams.
- (h) The language within the SMP is generally vague; the language should be amended to include firm commitments to all of the proposed outcomes;

202. Council’s ESD Advisor raised significant concern with regard to the daylight access of dwellings at Levels 1 and 2, with daylight access to Apartments 105 and 205 facing the adjoining wall on the western boundary particularly poor.

203. Other dwellings such as Apartments 102 and 202 were identified as having convoluted floor plans with daylight to the primary living areas limited by single retained window opening in the heritage façade. Resulting in a lower standard of daylight that does not meet best practice standards of Clause 22.17. It was recommended by Council’s ESD Advisor that;

The building is redesigned to ensure best practice natural ventilation and daylight to all habitable rooms. Recommend that a redesign considers lower levels of the building are redesigned to ensure that no dwelling is reliant on the adjoining western boundary for access to daylight and ventilation.



Image 13: The advertised Level 1 floor plan.

204. In order to address these concerns sketch plans were submitted to Council on 11 October 2021 amending the internal configurations of the Levels 1 and 2. The sketch plans propose the following (demonstrated within Image 14 below);

- (a) Reduction in the overall number of apartments from 17 to 15
- (b) Deletion of Apartments 105 and 205 and associated the west facing balconies
- (c) Extension of Apartments 104, 106, 204 and 206
- (d) Reconfiguration of Apartments 102 and 202
- (e) Reconfiguration of the windows to the western light court.

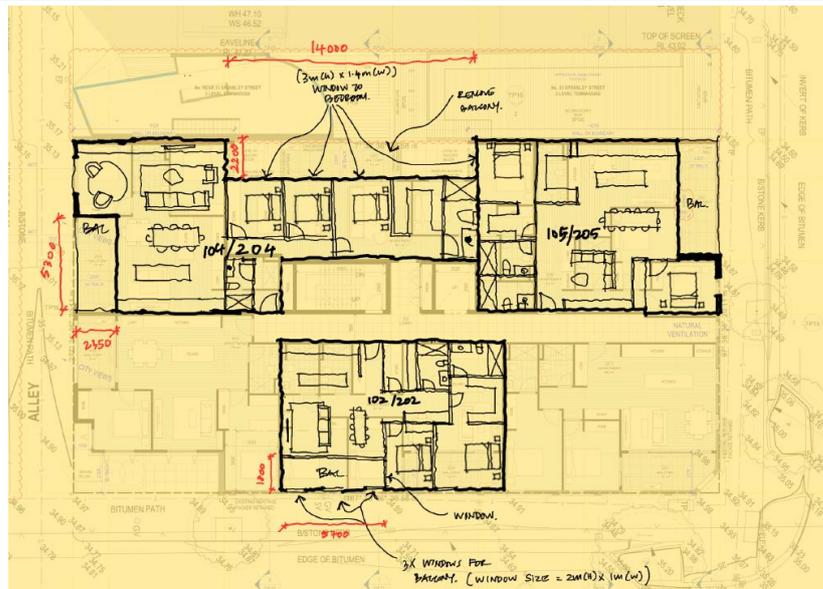


Image 14: The revised Levels 1 & 2 floor plan within the submitted sketch plans.

205. As demonstrated within Image 14 above, no dwellings will be reliant on the western interface for their primary outlook and access to daylight and ventilation. Furthermore Apartments 102 and 202 have revised floor plans with the balconies providing daylight access to the main living area now benefitting from 3 existing openings within the heritage façade as opposed to the previous single opening shown within the advertised plans.
206. It is acknowledged that balancing heritage objectives via the retention of the existing façade places constraints on the extent of openings and hence, the extent of daylight able to access these dwellings. However, the amended design will result in an improvement on internal daylight levels to the dwellings at first and second floor. This outcome is considered to achieve an acceptable balance between the respectful adaptation and reuse of a heritage building, and an acceptable level of internal amenity to the new dwellings. If a permit were to issue, a condition would require that the internal rearmament of the dwellings generally in accordance with the Sketch Plans.
207. The Standard also notes that dwellings located in the Melbourne Climate zone should not exceed the relevant maximum NatHERS annual cooling load, which in this instance is 30MJ/m². At the upper levels Council’s ESD Advisor raised concerns with regards to the exposed west, east and north facing glazing to dwellings on Levels 3 and 4, which result in higher cooling loads than the BADS standards for this climate zone (30MJ/m²), stating that this is not an acceptable design response.
208. Council’s ESD Advisor recommended that a new façade strategy to upper two levels that includes shading through fixed eaves or overhangs, vegetation or adjustable shading, louvers, etc, or combinations of similar design elements to optimise winter solar gain and minimise summer solar gain. Ensuring an average 7 Stars NatHERS and cooling loads to all dwellings are under the 30MJ/m²/year. This can readily be addressed by condition of the permit
209. Waste detail regarding general waste, recycling and hard waste is provided within the WMP. Organic waste streams are not addressed within the supplied WMP with the proposed residential dwellings seeking to rely on Council Collection. A condition will require both the SMP and the WMP is updated to reflect details of organic waste collection for both the residential and commercial use.

210. Further deficiencies highlighted by Council's ESD Advisor in paragraph 201 can also be addressed. To ensure that the relevant policies are met, and a suitable level of energy efficiency is achieved, conditions will be added to ensure that all of these items are addressed via an updated SMP and shown on amended plans where necessary. The amended SMP will be endorsed accordingly

Standard D7 – Communal open space

211. This Standard only applies to developments which propose forty (40) or more dwellings.

Standard D8 – Solar access to communal open space

212. No communal open space is proposed as part of this development.

Standard D9 – Safety

213. The residential entrance will be recessed 2.25m from the Berry Street boundary and front facade. Apartments 103 and 106 will also have individual access arrangements from Berry and Spensley Street respectively, these entrances are via the private terraces. The proposed entrances are clearly visible, without being obscured or isolated from the street. The Standard is met.

Standard D10 – Landscaping

214. Limited landscaping is proposed as part of the development. This is due to the retained heritage façade which occupies the majority of the to the Spensley and Berry street frontages.

Whilst landscaping is prevalent within the residential areas of the surrounding streets with landscaped front setbacks forming the predominate character of residential streets, the commercial buildings within the Neighbourhood Activity Centre are constructed to the site boundaries and do not incorporate any landscaping including the existing conditions of the subject site.

215. The plans indicate that a small planter will be incorporated into south eastern corner of the site at ground level next to the services cupboard. It is however recommended that additional planters are incorporated within the design to assist in reducing the heat island effect and respond to Council's ESD Officers concerns regarding urban ecology. These could be accommodated on the Level 3 terraces and Level 4 south-western balcony. The additional vegetation will also provide visual interest to the façade and soften the built form response, whilst responding to the residential land to the south. Should a permit be issued the additional planting and an accompanying landscape plan will be required by condition.

216. The site is less than 750sqm; therefore, no deep soil area is required. Subject to additional landscaping provision as previously discussed, the Standard is achieved.

Standard D11 – Access

217. This Standard seeks to ensure that the number and design of vehicle crossovers respects the urban context, whilst maximising the retention of on-street car parking spaces. In this instance, the development will be reliant on an existing ROW at the rear (south) of the site, with all vehicle access limited to this interface. The proposal seeks to incorporate a 5.95m wide apron to the south western corner of the site providing access to the basement level by a ramp. As will be discussed later in this report, this provides adequate access to the development, without impacting the streetscape.

218. No on-street car parking spaces will be affected by these works. Access for service, emergency and delivery vehicles is available. The Standard is met.

Standard D12 – Parking location

219. Car parking is contained within the basement level of the development, accessed via the rear laneway. Occupants will benefit from convenient access to these spaces via the central lift and stair core.
220. The proposal provides 24 car spaces within the basement with 6 at grade and 18 within 7 stacker bays. The supplied swept path diagrams for the B85 design vehicle entering and exiting the car parks are considered satisfactory by Council Engineers. Conditions on any permit that issues will require mechanical stacker systems to be regularly maintained.

Standard D13 – Integrated water and stormwater management

221. A STORM report with a 109% STORM score was submitted with the application; this report demonstrates best practice and relies on 471sqm of roof and balconies connected to a 15,000L rainwater tank located within the basement. The tank will be connected to all residential toilets. This is in line with the policy direction under clause 22.16 (Stormwater Management (Water Sensitive Urban Design)) and the Standard is met.

Standard D14 – Building setbacks

222. This Standard seeks to ensure that building setbacks respond to the surrounding context of the site and allow adequate internal and off-site amenity to be achieved. As discussed earlier in the report, the proposed development responds appropriately to the existing surrounding context and will not result in any unreasonable off-site amenity impacts.
223. In regard to internal amenity, as detailed under Standard D6 – Energy efficiency, the advertised plans offered a poor outlook to Apartments 105 and 205, with the 2.2m deep lightwell forming the only outlook and source of daylight. The Sketch Plans resolve this issue by ensuring that no dwellings will have SPOS or a primary orientation to the western lightcourt.
224. As a result, adequate outlooks for each dwelling are provided fronting the north, south and east, with all apartments receiving adequate daylight from north, south, west and east-facing windows. The individual internal layouts of each dwelling, as will be discussed in detail later within this assessment, are considered appropriate.
225. There are no sensitive interfaces located to the north or east with the development fronting Berry and Spensley Streets. To the south on the opposite side of the laneway is the northern interface of 31 Berry Street. As discussed within the off site amenity section of the report, this dwelling is oriented east-west with limited northern windows. Nevertheless, the proposal adopts an acceptable design approach with the 3 storey (11.33m) high southern wall constructed to the lanes edge generally consistent with the existing built form of 33 Lilly Street to the west, with the upper floors set further back.
226. To the west a boundary wall ranging in height of 5.63m-11.38m is constructed adjacent the dwellings at 33 Lilly Street and the approved dwelling at 33 Spensley Street. Both these dwellings are constructed to the common boundary with no windows fronting the subject site. SPOS is provided in the form of terraces to both these dwellings at second floor level. The development responds to these conditions by locating boundary walls away from the terrace of 33 Lilly Street and by providing a central 2.2m deep light court to full height of the development.

227. The approved roof terrace to 33 Spensley Street spans almost the full length of the dwelling. A boundary wall is proposed to extend 4.7m above the rooftop terrace finished floor level. Given that the terrace is located on the boundary directly abutting Commercially zoned land, it is not afforded the same amenity considerations to that of a dwelling in the heart of a residential zone. Furthermore, the proposed rooftop terrace is considered secondary SPOS with the dwelling having access to a deck at first floor level directly off the living room that will have an unobstructed northern orientation. As previously discussed, a condition of any permit would require that the exposed concrete boundary wall be treated through texture, banding or detailing to provide greater articulation.

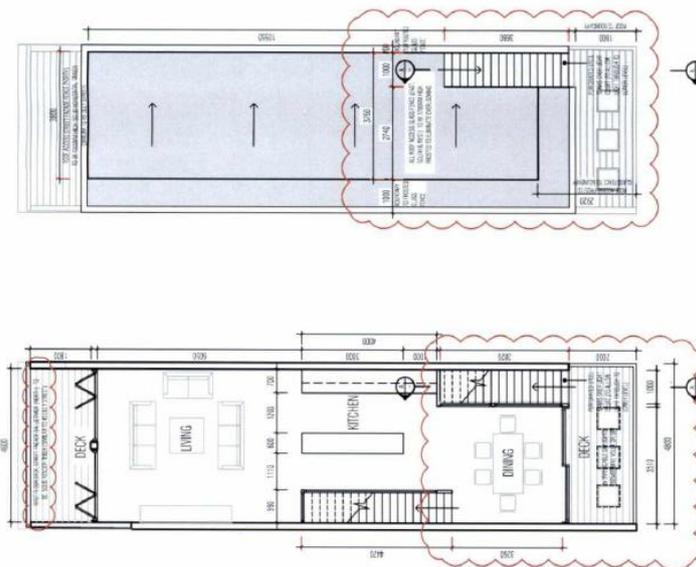


Image 15: The endorsed first floor and roof plan of 33 Spensley Street permitted by Planning Permit PLN18/0101

Standard D15 – Internal views

228. The only potential internal overlooking opportunities are restricted to the western light well of the development. With the ground, first and second-floor windows and balconies reliant on the light well.
229. 1.7m high obscure screening is utilised between the bedroom balcony of Apartment 104 and the primary balcony of Apartment 105.
230. The provision of 1.7m high obscure screening is utilised to the balcony of apartment 205 to restrict overlooking to the lower apartment balconies. High sill windows (minimum 1.7m) are used to restrict overlooking between the kitchen of apartment 205 and the northern bedroom of apartment 204. The western windows of apartments 303, 301, 402 and 401 also utilise 1.7m high sill windows to restrict overlooking to the lower level apartments.
231. The Sketch Plans delete Apartments 105 and 205 and associated second floor balcony of Apartment 205. Revised Apartments 104, 204, 105 and 205 now have bedrooms facing into the light court. The level one balcony previously associated with Apartment 105 can be retained and shared between revised apartments 104 and 105. It is however unclear if there will be any internal overlooking, a condition of any permit that issues will require that the requirements of Standard D15 are met with respect to the revised apartment layouts.

Standard D16 – Noise impacts

232. The Standard notes that new dwellings should be designed and constructed to include noise attenuation measures to reduce noise levels from off-site noise sources, with new buildings that are located within a noise influence area specified in Table D3 of this Standard to be designed to achieve the following noise levels:
- (a) *Not greater than 35dB(A) for bedrooms, assessed as an LAeq,8h from 10pm to 6am.*
 - (b) *Not greater than 40dB(A) for living areas, assessed LAeq,16h from 6am to 10pm.*
233. The objectives of the Standard also seek to contain noise sources in developments that may affect existing dwellings.
234. The applicant has supplied an acoustic report prepared by Cogent Acoustics dated 3/9/21. The supplied report indicated that The Standard D16 does not strictly apply to the proposed development because of the following:
- (a) There is no industrial area within 300m of the proposed development.
 - (b) The major roads in the vicinity of the development (Hoddle Street and Heidelberg Road) carry fewer than 40,000 vehicles (AADT). According to VicRoads (Vic Roads, 2017), the section of Hoddle Street to the west of the proposed development carries 38,000 AADT and the section of Heidelberg Road to the north of the proposed development carries 35,000 AADT.
 - (c) The distance between the proposed development and the railway line to the west is more than 135 m.
235. The supplied acoustic report however acknowledges, that since the Average Annual Daily Traffic (AADT) on Hoddle Street (west of the proposed development) is approaching the 40,000 AADT threshold for inclusion in a “Noise Influence Area”, it is prudent to design the proposed development based on the indoor sound level criteria specified in Standard D16 to account for potential future traffic growth in the area. As such the proposal has been designed to meet the indoor sound levels as per the requirements of Standard D3.
236. A number of noise attenuation measures have been outlined in the Acoustic Report, including the following;
- (a) Double glazing to all external windows
 - (b) Solid apartment entry doors
 - (c) Sound insulation for roof/ceiling construction;
 - (d) Maximum sound power specified for air-conditioning units on balconies;
 - (e) Acoustic screen to rooftop plant equipment
237. The acoustic report was reviewed by SLR Consulting (SLR). A discussion of each potential noise source, with comments from SLR, is undertaken below.

Traffic Noise

238. SLR reviewed the proposed construction methodology of the proposal noting the calculations and proposed attenuation measures advice provided in the report appears reasonable for addressing the measured levels of traffic noise, and internal noise levels associated with traffic within each dwelling will be acceptable;

“The constructions appear reasonable given the minimal traffic noise levels from local roads. We note that upper levels of the development may have some exposure to Hoddle Street and Heidelberg Road traffic noise. These roads are however in the order of 200 m from the development and unlikely to trigger further upgrades to the glazing requirements.”

Mechanical plant treatment

239. Potential noise from the domestic air condition units located on the balconies and domestic exhaust fans has been reviewed with SLR not raising any concerns.
240. The supplied report indicates that a detailed mechanical services design is not available at this stage of the project. With the preliminary assessment based on two air-conditioning units located on the roof, one kitchen exhaust fan located on the roof and one carpark exhaust fan located in the basement. The report identified that this equipment is calculated to result in an excess of 15 dB above the night period SEPP N-1 noise limit for the level 4 terrace within the site. The report also recommends treatment to the underside the plant deck. The preliminary proposed treatment methods have been reviewed by SLR and deemed appropriate. However the report conclusions (section 9) state that the acoustic treatments will “need to be reviewed once the building services design and mechanical plant specifications are confirmed”. A condition of any permit issued should require that an updated report is submitted clarifying these aspects of the proposal.
241. In addition, SLR highlighted potential concerns with regards to the impact of plant equipment to the existing neighbouring dwellings which have not been assessed in the supplied Cogent Acoustics Report, specifically;
- (a) To the location of the fire pump room and the proposed bedroom of 33 Spensley Street.
 - (b) The location of the substation and the windows of 31 Berry Street.
242. Given the proximity to sensitive receivers, SLR recommended that if a planning permit is to issue, a condition be incorporated into the permit requiring an updated acoustic report demonstrating compliance with both SEPP N-1 and Lmax targets at existing and future dwellings.
243. Since the receipt of SLR’s report, the EPA guidelines regarding noise have been updated with SEPP no longer the relevant criteria. As such, a condition will require compliance to be demonstrated with the Environment Protection Regulations under the Environment Protection Act 2017 and the incorporated Noise Protocol (Publication 1826.4, Environment Protection Authority, May 2021) or any other requirement to the satisfaction of the Responsible Authority.

Car stackers/Carpark Gate

244. The basement includes two noise sources the proposed carpark gate and stackers. The carpark gate (a perforated construction) is shown as being located approximately 6m to the dwelling at 31 Berry Street and adjacent to the dwelling at 33 Lilly Street. the supplied report recommends vibration isolation for the car stackers and associated equipment. Noise from the car stacker has been assessed using the SEPP N-1 noise limits and the report states that compliance is expected. SLR has reviewed the supplied report and stated the following;
- (a) *“While the car stacker is within a basement and generally away from residential uses, the carpark entry door is in close proximity to existing residential uses at 31 Berry Street. The report should provide an assessment to both SEPP N-1 and sleep disturbance Lmax targets for this source, and provide a specification or recommendations to ensure these targets are met.*
 - (b) *The report’s recommendation of reviewing the car stacker design for SEPP N-1 compliance when further details are available should be added to Section 9 (Conclusions) and/or Table 2 of the report, as should any such recommendation for the carpark entry door.”*

245. Again, noting the updated EPA noise standards, a condition will require these items to be addressed, demonstrating compliance to the relevant criteria.

Noise from Vehicles Accessing the Carpark

246. The supplied report does not provide any comment or assessment of the issue of vehicles accessing the basement. SLR notes that the carpark is located within close proximity to the residential dwelling at 31 Berry street. although not identified in either reports, 33 Lilly Street also has a bedroom window fronting the laneway directly to the west. SLR has highlighted this, in addition to the noise from the carparking gate to have a potential risk of noise impacts particularly so during the night where there is a risk of sleep disturbance impacts.
247. A condition of any permit should require an updated report providing assessment and mitigation measures on potential noise amenity and sleep disturbance impacts from the carpark entry, due to vehicles accessing the subject site to these dwellings.

Noise from Deliveries and Waste Collection

248. A residential bin room is proposed for the southern end of the ground floor, located directly across the laneway from the dwelling at 31 Berry Street. The report recommends that deliveries are conducted between 7am and 10pm Monday to Saturday (9am to 10pm Sundays and Public Holidays) and waste collections are conducted from 7am to 8pm on Monday to Saturday (9am to 8pm on Sundays and public holidays). SLR considered this appropriate and would be conditioned appropriately.

Patron and music noise from the hotel

249. Whilst a planning permit is not required for the use of the land as a hotel or the sale and consumption of liquor, the modifications to the existing hotel to support a wine bar and 17 dwelling development, does raise a new interface consideration with the new dwellings, as well as the existing interfaces with the adjoining dwelling to the north and east. The Cogent Submitted Acoustic Report provided an assessment the potential noise impacts of the wine bar on new and existing dwellings. A number of noise mitigation measures were recommended to ensure compliance with noise regulations are met, including;
- (a) Close all external doors and windows of the wine bar after 6 pm
 - (b) A minimum 200mm concrete wall between the wine bar and adjacent apartment
 - (c) window glazing to the wine bar should provide a minimum acoustic rating of Rw 44 and Rw + Ctr 36
 - (d) Music restricted to 'background' level.
250. SLR has reviewed the proposed impacts and mitigation measures stating the following;
- (a) *“Since the characteristics of the wine bar (such as the seating layout) are not yet available, we cannot comment yet on whether the Hayne calculation is appropriate for this venue. Nonetheless, patron noise at existing dwellings is considered a low risk issue given the anticipated use as a wine bar and the proposed mitigation measures.”*
 - (b) *A relatively small increase in the music noise level could result in the SEPP N-2 limits being exceeded, and the assessment is highly dependent on the acoustic performance of the glazing in the 63 Hz octave band (which is not always addressed by Rw or Rw+Ctr ratings of glazing) . Therefore, we recommend that a method be presented for ensuring that source levels do not exceed those used as the basis for this assessment.”*
251. Should a permit be issued a condition would be required to address music noise to the nearest noise sensitive receiver against the current relevant EPA standards.
-

Standard D17 – Accessibility objective

252. To ensure the design of dwellings caters for people with limited mobility, the Standard notes that at least 50% of new dwellings should provide;
- (a) *A clear opening width of at least 850mm at the entrance to the dwelling and main bedroom;*
 - (b) *A clear path with a minimum width of 1.2m that connects the dwelling entrance to the main bedroom, an adaptable bathroom and the living area;*
 - (c) *A main bedroom with access to an adaptable bathroom;*
 - (d) *At least one adaptable bathroom that meets all of the requirements of either Design A or Design B specified in Table D4.*

The floor templates indicate that 8 of 17 dwellings (47%) will provide a clear opening width of at least 850mm at the entrance to the dwelling and main bedroom, as well as a clear path with a minimum width of 1.2m that connects the dwelling entrance to the main bedroom, an adaptable bathroom and the living area. Apartments 106 and 301 are also likely to comply with adequate paths and adaptable bathrooms provided, however confirmation of doorway widths is required. This would increase compliance to 59%.

253. However, it is noted that the bathrooms do not entirely comply with the bathroom requirements of either Design A or Design B as specified in Table D4. Specifically, the location of the toilet and the design of the door. Additionally, it is not clear on the plans that a hobless shower is proposed. These matters will need to be addressed via condition on any permit that issues.
254. The Sketch Plans delete Apartments 105 and 205 and revises the layout of Apartments 102, 104, 105, 202 and 204. Detail of clear paths and door widths have not been provided however these apartments are generous in size and would likely have no issues meeting the accessibility requirements of Standard D17. Should a permit be issued a condition will require this information is supplied with a minimum of 50% of dwellings demonstrating compliance.

Standard D18 – Building entry and circulation

255. The entrances to the commercial and residential components have been clearly separated, with the Hotel to be accessed via the splay. The entrance for the dwellings will be located on Berry Street. This outcome is acceptable, with the residential entrance clearly identifiable and providing a sense of address within this secondary frontage. The Standard is met.

Standard D19 – Private open space

256. Of relevance to this development, the dwellings should have access to balconies that meet the dimensions outlined in Table 5 of this Standard. This table specifies that a 2 bedroom dwelling should have access to a balcony with a minimum area of 8sqm and minimum dimension of 2m, with convenient access from a living room, with the balcony dimensions for a 3 bedroom dwelling increasing to 12sqm and 2.4m respectively. Policy also states that If a cooling or heating unit is located on a balcony, the balcony should provide an additional area of 1.5 square metres.
257. Dwellings will largely meet these requirements, with balconies ranging from 8sqm to 102sqm, and widths between 2m to 4.7m. However, Apartments 101, 103, 201 and 203 fail to meet these requirements by either falling short of the minimum depth or providing a heating/cooling device without allowing for the additional area required.

258. The supplied Sketch Plans, which seek to delete Apartments 105 and 205 and convert Apartments 104 and 204 from 2 bedroom dwellings to 3 bedroom dwellings also fail to comply with the minimum 2.4m dimensions and 13.5sqm area (given they are fitted with heating/cooling units). The extent of non-compliance is however minimal with a 2.35m depth and 12sqm area.
259. A condition of the permit will require that all apartments meet the design requirements of Standard D19. This should be achieved by relocating the heating/cooling services or increasing the building setbacks.

Standard D20 – Storage

260. This Standard notes that the following usable and secure storage space should be provided for each dwelling;
- (a) 2 bedroom – a minimum of 14 cubic metres, with 9 cubic metres located within the dwelling;
 - (b) 3 bedrooms – a minimum of 18 cubic metres, with 12 cubic metres located within the dwelling.
261. The floor templates indicate that all apartments will exceed these requirements and the Standard will be met.
262. Storage details for revised apartment layouts demonstrated in the Sketch Plans have not been supplied. Should a permit be issued a condition will require all dwellings to demonstrate compliance with the requirements of Standard D20.

Standard D21 – Common property

263. The common property areas within the development are clearly delineated and would not create areas that are difficult to maintain into the future. The lobby and vehicle access areas are well conceived and cohesive with the overall building design and are therefore considered to be in line with the objectives of this Standard.

Standard D22 – Site services

264. Site services are located to the rear lane and within the lobby accessed via Berry Street, with a generous bin storage room also located at ground level accessed internally via the lobby or externally via the lane. Mailboxes are directly adjacent to the residential entrance. These locations are acceptable and the Standard is met.

Standard D23 – Waste and recycling

265. A Waste Management Plan (WMP) was prepared by Salt Consultants and referred to Council's City Works Unit. A number of deficiencies were highlighted within this document and the associated management procedures to be undertaken. These are outlined as follows;
- (a) *Waste generation rates and collection day frequency table for the residential component of this development must be updated in line with Councils current 3 bin service consisting of:*
 - (i) *Garbage collected **weekly** (2 bedroom home office should align with standard generation rates however happy for this to be upgraded to 80 litre garbage per week and 120 litre recycling per week for the 3 SOHO units)*
 - (ii) *Recycling collected **fortnightly** (same as above but must allow capacity for fortnightly collection of this stream)*
 - (iii) *Glass collected **fortnightly** (2 x 240 Litre Purple lidded glass bins should be sufficient for this site)*

- (b) *Food waste diversion should be included for the commercial component of the development.*
- (c) *The details for management of hard waste (commercial) and e-waste*
- (d) *(both) must be defined, e-waste cannot be disposed of in waste bins. Council only provides hard waste collections for residential properties however a drop off centre for e-waste and other recyclables is available to all rate payers. Please refer to Council website for details.*
- (e) *A clause must be included in the plan regarding potential review into the service if operational requirements change.*

266. If a planning permit is to issue, an amended WMP reflecting these comments and those previously mentioned by Council's ESD Advisor will be required via condition of the permit.

Standard D24 – Functional layout

Bedrooms

267. This Standard notes that main bedrooms should have a minimum width of 3m and minimum depth of 3.4m, with other bedrooms to be 3m x 3m in dimension. All bedrooms within the advertised plans comply with the requirements.

Living areas

268. This Standard notes that living rooms associated with 2 or more bedroom dwellings should have minimum widths of 3.6m and minimum areas of 12sqm. All dwellings meet this Standard.

269. The minimum bedroom and living room dimensions are not shown on the sketch plans. A condition of any permit will require that all living areas and bedrooms comply with the minimum dimensions prescribed by Standard D24.

Standard D25 – Room depth

270. This standard requires that single aspect habitable rooms should not exceed a room depth of 2.5 times the ceiling height. In respect of the living areas, this standard allows for open plan, habitable room depths to be increased to 9 metres if the kitchen is located furthest from the window and are within a combined living, dining area and kitchen, and the ceiling height is at least 2.7m.

271. The supplied sectional diagrams for the full building do not show the floor to ceiling height of all bedrooms and living rooms, providing only a sample of the typical configuration for each floor. A condition of the permit will require that floor to ceiling heights are shown on all sections, confirming compliance with Standard D25.

272. The supplied sections demonstrate that bedrooms will have ceiling heights of 2.55m- 3.22m., with all single-aspect bedrooms complying with the standard and do not exceed a depth of 6.37 metres.

273. In respect of living areas, all are provided within the development are open plan combined living, dining and kitchen areas and those provided with sections having a minimum ceiling height of 2.7m. All living areas are either double aspect or have a maximum depth of less than 6.75m. The only exception is apartment 303 which has a ceiling height of 2.7m and maximum depth of 7.2m exceeding the permitted 6.75m depth (where the kitchen not located against the rear wall). The apartment however could be readily reconfigured to locate the kitchen on the rear wall, this will could be required by condition.

274. Whilst the majority of apartments comply with the requirements of Standard D25, access to daylight to a number of apartments is a concern as raised previously in the Standard D6 Energy Efficiency section of the report. These concerns have been addressed within the Sketch Plans. The revised layouts will comply with the minimum room depths with the exception of apartments 104 and 204 which include single aspect living rooms with a maximum depth of approximately 8.5m (as measured by Council officers using measuring software Trapeze) and the indicative location of the kitchen not against the back wall. It is considered that due to the usable width of these apartments they could easily be reconfigured to comply with the requirements of Standard D25 via condition.

Standard D26 – Windows

275. All habitable rooms within the proposed development contain a window within an external wall to the building, with no reliance on 'borrowed light'.

276. As discussed within the Standard D6 Energy Efficiency of the report, in response to concerns relating to daylight access Sketch Plans were submitted revising the internal arrangement of a number of apartments. The changes saw the reconfiguration of Apartments 102 and 202. As a result of the reconfiguration, the secondary bedrooms are now reliant on a window to the covered and partially enclosed balcony; a site constraint of retaining the heritage façade. This approach is however, considered appropriate as the balconies will now have improved daylight access through three openings in the original heritage façade (as opposed to single opening within the advertised plans). the windows are to be of substantial size, noted on the plans as being 2m high and 1m wide. This design response is considered acceptable.

Standard D27 – Natural ventilation

277. Standard D27 requires the design and layout of dwellings should maximise openable windows, doors or other ventilation devices in external walls of the building, where appropriate.

- (a) At least 40 per cent of dwellings should provide effective cross ventilation that has:
- (i) A maximum breeze path through the dwelling of 18 metres.
 - (ii) A minimum breeze path through the dwelling of 5 metres.
 - (iii) Ventilation openings with approximately the same area.

The breeze path is measured between the ventilation openings on different orientations of the dwelling.

278. The advertised plans suggest that 58% of dwellings comply with the requirements of this standard. However, the supplied plans depict front entry doors as a source of ventilation in some case. This is not compliant with the requirements of the standard. The diagrams also need to be updated to reflect the sketch plans submitted.

279. A condition of the permit will require updated breeze paths to be accurately shown in accordance with Standard D27.

[Car parking, traffic, access and bicycle parking](#)

Car parking reduction

280. Under Clause 52.06 of the Scheme, the applicant is seeking a parking reduction of 4 car parking spaces, with 24 on-site car parking spaces proposed. A breakdown on the car parking requirements of the proposal and the allocation is provided in the table within the planning control section earlier.

281. The sketch plans will result in a deletion of two dwellings, however concurrently, two apartments will increase from two, to three bedrooms. Thus, the net car parking requirement will be unchanged.
282. The proposal seeks to waive the 4-space car parking requirement for the hotel (wine bar). Before a requirement for car parking is reduced, the applicant must satisfy the Responsible Authority that the provision of car parking is justified having regard to the assessment requirements of Clause 52.06-6.

Availability of Car Parking.

283. The subject site is located within an area containing predominantly time-restricted car parking, with periods ranging from 1 hour to 4 hours. Within the surrounding residential neighbourhood, a large proportion of parking is also restricted by permits.
284. There are currently five car parking spaces provided along the Berry Street frontage of the site and two along the Spensley Street frontage; these will not be impacted by the development.
285. To ascertain parking availability within the surrounding area, SALT3 undertook a parking occupancy survey on Friday 1 September 2017, 11am-1pm, Saturday 2 September 2017, 11am – 1pm and Saturday 2 September 2017, 6pm – 8pm. The survey area encompassed sections of Spensley Street, Lilly Street, Berry Street, Caroline Street, Grant Street, Abbott Grove, George Street and O’Grady Street. The time and extent of the survey was considered appropriate by Council Engineers.
286. A parking inventory of 277 publicly available parking spaces was identified, with a minimum of 51 and maximum of 124 of these spaces vacant. This equates to an occupancy rate of 65%, which indicates that parking was in moderate demand. This data suggests that short-stay parking overflow from the site could be accommodated on-street.

Parking Demand for Hotel

287. It is anticipated that the hotel customers would be drawn from, nearby workplaces and local residents. Employees of the hotel would be aware of the scarcity of long-stay parking in the surrounding area and would likely choose to commute to the site by alternative transportation modes.

Appropriateness of Providing Fewer Spaces than the Likely Parking Demand

288. The additional reduction in car parking being sought by the proposal is supported by the following:
- (a) The site is located within an area that consists of a number of retail, food and drink and commercial premises, with the majority of these uses offering no on-site car parking provision;
 - (b) Visitors to the site might combine their visit by engaging in other activities or business whilst in the area;
 - (c) The area is well serviced by public transport, located 150m from Clifton Hill Train Station, 180m from buses on Hoddle Street and 450m from trams and buses servicing Queens Parade;
 - (d) The site has good connectivity to the on-road bicycle network;
 - (e) It is considered that the hotel would heavily rely on walk-up trade. Pedestrians in the area and employees at local businesses would likely account for the majority of patrons to the hotel;
 - (f) The lack of opportunities for long term on-street parking in the surrounding area would be a disincentive for employees to commute to work by car, with the short-term parking restrictions allowing hotel patrons to park for limited periods if necessary;

- (g) The proposed development is considered to be in line with the objectives contained in Council’s *Strategic Transport Statement*. The site is ideally located with regard to sustainable transport alternatives and the reduced provision of on-site car parking would potentially discourage private motor vehicle ownership and use.
- (h) The nature of hotel use would likely limit the number of patrons driving to the venue.
- (i) there is also a long historical use of the site as a hotel (which ceased operation 4 years ago) with no on-site parking provided.

289. The reduction in the car parking requirement associated with the hotel use is considered appropriate in the context of the development and the surrounding area.

Car park access and layout

290. The proposed car parking layout and access was assessed by Council’s Traffic Engineers, who confirmed that the entranceway, swept paths and headroom clearance was satisfactory and met all relevant standards and guidelines, and the dimensions of the garage were suitable for the type of car stacking system proposed

291. Swept path diagrams were submitted, which demonstrated that entering and exiting the car stackers is satisfactory for the B85 design vehicle. In some instances, a correctional movement would be required, however this is permissible under AS/NZS 2890.1:2004 and supported by Council Engineers. As all car parking spaces are allocated to the dwellings, users of the car stackers will become accustomed to the manoeuvres required to access this space.

292. The following recommendations were included in the Engineering advice;

- (a) The provision of a convex mirror at the car park entrance to improve sight lines to the west;
- (b) The aisle servicing the at-grade parking spaces and the stackers to be dimensioned on the drawings as a minimum width of 6.4m.
- (c) The finished floor levels along the edge of the slab must be set 40mm above the edge of the ROW.
- (d) That convex mirrors be installed within the basement to assist motorists when circulating in the car park, located as per the image below.

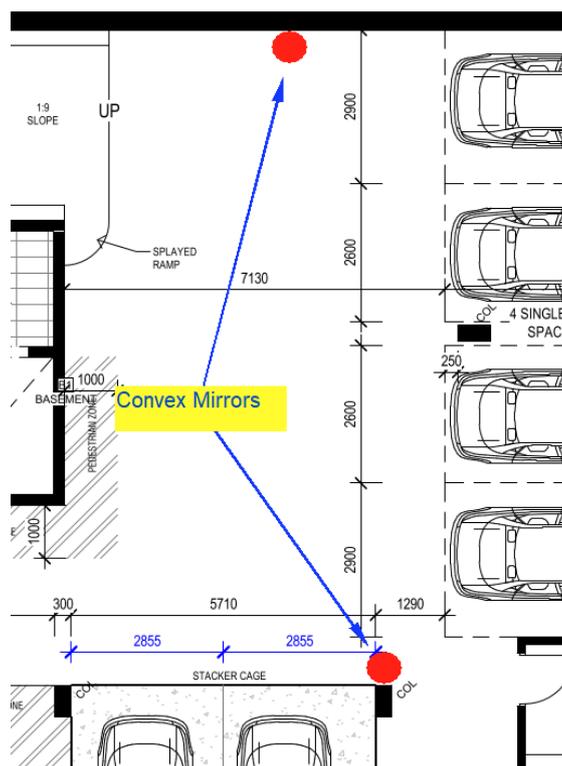


Image 17: Suggested location of convex mirrors

293. If a permit is to issue these items will be required to be addressed via condition.

Bicycle parking

294. The proposal meets the statutory requirement of 6 bicycle spaces (4 resident and 2 visitor spaces), as per clause 52.34 of the Scheme. Whilst a reduction is not required, the proposal does not meet Council's BESS best practice of 17 resident spaces (a minimum of 1 per dwelling). Concerns with regard to the proposed provision of bicycle parks was raised by both Council's ESD Advisor (as previously discussed) and Sustainable Transport Officer. A condition of any permit will subsequently require a minimum of 1 bicycle space per dwelling.

295. The replacement of the existing Berry Street bicycle hoop has been requested by Council's Urban Design Team, however this is not considered necessary given the bicycle hoop is in reasonable condition and remains functional. Council's Sustainable Transport Advisor recommended however that an additional on street bicycle hoop be provided along either Berry or Spensley Streets. A condition of the permit will subsequently require an additional bicycle hoop to be installed along the site frontage to either Spensley or Berry Streets.

296. Council's Sustainable Transport Advisor also made the following comments with regarding to the bicycle parking provision;

- (a) All bicycle spaces are provided as horizontal at-grade bicycle spaces and dimensions of the layout of resident bicycle spaces are noted on the plans and demonstrates the layout of bicycle spaces is in accordance with access and clearance requirements of AS2890.3.
- (b) It is recommended that the resident bicycle parking is increased to a minimum of 17 bicycle spaces, provided within a secure area. At minimum 20% of bicycle storage spaces should be provided as horizontal at ground-level spaces.
- (c) Provision of two visitor spaces meets the statutory rate, however, visitor bicycle spaces should ideally be located in an area that is visible and publicly accessible.
- (d) It is recommended that at least one additional bicycle hoop is provided at either the Berry Street or Spensley Street footpath.
- (e) Visitor spaces must be installed in accordance with clearance and access requirements of AS2890.3 and as per Urban Design's bicycle hoop standard detail.

297. These items will also be required to be addressed via condition.

Traffic

298. Given the allocation of all on-site car parking spaces to the dwellings, any traffic generated by the site will be restricted to the residential use. SALT3 estimated that each dwelling could be expected to generate traffic of a rate of 3 -7.5 vehicle trips per dwelling, per day. With 17 dwellings proposed, this results in an estimate of 102 car trips per day (based on 6 trips per dwelling), with approximately 10 trips per hour during the AM and PM peak.

299. The deletion of two dwellings shown within the submitted sketch plans will likely further reduce the number of vehicle movements.

300. This level of traffic is considered to be low, and it is unlikely that the traffic associated with the development would have a discernible impact upon traffic levels in Berry Street or Spensley Street. The primary use of the ROW is for vehicles, with 33 Lilly Street the only dwelling with principal access for pedestrians reliant on this interface. The increased use of the laneway by vehicle traffic is considered reasonable, and given the substantial laneway width at 3.7-3.8m, this outcome is supported by Council's Traffic Engineers.

Loading and unloading

301. There is no provision for on-site loading; this is similar to existing conditions. There is a loading zone directly to the east of the site, on Berry Street. This will provide acceptable loading and unloading opportunities for the hotel use proposed on the land.

Objector Concerns

302. Many of the objector issues have been discussed within the body of the report as shown below. Outstanding issues raised are addressed as follows.

- (a) *Heritage – loss of original heritage fabric and domination of the heritage streetscape*

This is discussed within paragraphs 116 - 152.

- (b) *Light Spill – from vehicle headlights using the laneway*

Traffic impacts are discussed within paragraphs 298-300. As a laneway it is reasonable to expect that the ROW will be used by vehicles.

- (c) *Potential Structural Impacts to adjoining dwellings*

The potential for damage arising to the property during construction are outside the scope of the planning process and are not sufficient to warrant the refusal of the application. These matters are to be addressed as part of the building permit process.

- (d) *Loss of historic meeting place/ Loss of Village Character*

The planning assessment is limited to the application before it and it would be unreasonable to refuse an application based upon a desire to retain a previous use. As discussed at paragraph 153, the site proposes to retain a commercial activity of the site, with the hotel (wine bar) use.

The response to the heritage streetscape/village character is discussed at paragraphs 116 - 151

- (e) *Noise - from basement access roller door and vehicles using the laneway*

This is discussed within paragraphs 194-195 dwelling diversity.

- (f) *Loss of affordable housing*

There are no policies or provisions within the Yarra Planning Scheme that require affordable or social housing to be provided. However, the proposed development incorporates a mix of apartment sizes and typologies which will contribute to house availability for a variety of household sizes as discussed at paragraphs 194 -195.

- (g) *Poor Amenity of Apartments*

Internal amenity has been discussed within paragraphs 202-206, 223-224, 228-262 and 267-279

- (h) *Overlooking*

This is discussed within paragraphs 181-184 and 228-231.

(i) *Sustainability Issues*

This is discussed within paragraphs 198-210.

(j) *Bad Precedent*

All applications are assessed on their own merit, based upon relevant planning policy, their specific site conditions and context.

(k) *Overshadowing*

This is discussed within paragraphs 166 and 185-189.

(l) *Parking Issues*

This is discussed within paragraphs 280-292.

(m) *Excessive Height/ Excessive Bulk*

This is discussed within paragraphs 137-152, 164-165, 167, 189 and 222-227.

(n) *Bike Parking Issues*

This is discussed within paragraphs 294-297.

Conclusion

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

RECOMMENDATION

That having considered all submissions and relevant planning policies, the Committee resolves to advise the Victorian Civil and Administrative Tribunal that had it been in the position to, it would have issued a Notice of Decision to Grant a Planning Permit PLN19/0426 for part demolition of the existing building and construction of a multi-storey building, use of the land for dwellings and a reduction in the car parking requirements associated with a hotel (no permit required for use) at 35-41 Spensley Street, Clifton Hill, subject to the following conditions:

Amended Plans

1. Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of this permit. The plans must be drawn to scale with dimensions. The plans must be generally in accordance with the advertised plans, prepared by One Design Office (dated 20.04.2021) but modified to show:
 - (a) The changes as generally depicted on the without prejudice 'sketch plans' prepared by One Design Office and dated 11 October 2021 that show;
 - (i) Reduction in the overall number of apartments from 17 to 15

- (ii) Deletion of Apartments 105 and 205 and associated second floor, west facing balcony
- (iii) Extension of Apartments 104, 106, 204 and 206
- (iv) Reconfiguration of Apartments 102 and 202
- (v) Reconfiguration of the windows to the western light court.

But further modified to show:

- (b) Balcony within the western light court retained at Level 1 and accessible by Apartments 104 and 105.
- (c) The retention (or like-for-like replacement) of window frames within the heritage façade adjacent to the balcony openings
- (d) That the colour of materials Mc1 and Ba1 at Levels four and five (including the rooftop plant screen) amended to a colour palate of light to mid grey.
- (e) The height of the roof plant screen reduced to a maximum of 500mm above the highest item of plant equipment, with this to be no higher than 1.8m.
- (f) Details regarding the proposed mesh to the side additions confirming it will be non-reflective
- (g) Greater articulation (e.g. variation in materials, textured finish) to the second floor western boundary wall adjacent to 33 Spensley Street
- (h) The windows fronting the western light court screened (to a height of 1.7m from the internal FFL with a maximum of 25% permeability or similarly limited) to prevent views into any habitable room windows or areas of Secluded Private Open Space located within 9m.
- (i) Operable windows provided to all habitable rooms, without compromising overlooking measures.
- (j) The dwellings fronting the western light court meeting the requirements of Standard D15 (internal views) of Clause 58.04-2 of the Yarra Planning Scheme
- (k) A minimum of 50% of dwellings meeting the requirements of Standard D17 (accessibility) of Clause 58.05-1 of the Yarra Planning Scheme, including either bathroom Design Option A or B in Table D4.
- (l) All dwellings meeting the requirements of Standard D19 (Private Open Space) of Clause 58.05-3 of the Yarra Planning Scheme, with no decreases to the existing setbacks.
- (m) All dwellings meeting the requirements of Standard D20 (Storage) of Clause 58.05-4 of the Yarra Planning Scheme
- (n) All living areas and bedrooms meeting the requirements of Standard D24 (Functional Layout) of Clause 58.07-1 of the Yarra Planning Scheme.
- (o) Floor to ceiling heights dimensioned on all sections, demonstrating all living areas and bedrooms meet the requirements of Standard D25 (Room Depth) of Clause 58.07-1 of the Yarra Planning Scheme.
- (p) Breeze paths annotated on the plans in accordance with the requirements of Standard D27 (Natural Ventilation) of Clause 58.07-4 of the Yarra Planning Scheme i.e. excluding front door openings.
- (q) The provision of a convex mirror at the car park entrance to improve sight lines to the west;
- (r) The aisle servicing the at-grade parking spaces and stackers dimensioned at a minimum of 6.4m

- (s) Convex mirrors installed within the basement to assist motorists when circulating in the car park.
 - (t) The finished floor levels along the edge of the slab set 40mm above the edge of the ROW.
 - (u) Confirm that service cabinet doors opening outward into the laneway will be able to swing 180 degrees and be latched when fully open.
 - (v) Existing/proposed public realm conditions outside of title boundaries including street trees, light poles, surface materials and fixtures.
 - (w) The provision for a minimum of one bicycle space per dwelling, with:
 - (i) A minimum 20% of bicycle storage spaces provided as horizontal at ground-level spaces
 - (ii) The layout of bicycle spaces is in accordance with access and clearance requirements of AS2890.3
 - (x) A minimum of two visitor bicycle spaces on site, located in a publicly accessible and visible area and designed in accordance with AS2890.3.
 - (y) A minimum of one additional bicycle hoop to either the Berry or Spensley footpath, installed in accordance with clearance and access requirements of AS2890.3 and Council's standard detail
 - (z) The seat on the corner of Spensley and Berry Street retained
 - (aa) Any changes required by the endorsed Sustainable Management Plan pursuant to Condition 7
 - (bb) Any changes required by the endorsed Acoustic Report at Condition 9.
 - (cc) Any changes required by the endorsed Waste Management Plan pursuant to Condition 11
 - (dd) Any requirement of the endorsed Tree Management Plan pursuant to Condition 13 (where relevant to show on plans).
 - (ee) Any changes required by the endorsed Landscape Plan pursuant to Condition 15
2. The use and development as shown on the endorsed plans must not be altered (unless the Yarra Planning Scheme specifies that a permit is not required) without the prior written consent of the Responsible Authority.

Conservation Management Plan

3. In conjunction with the submission of development plans under Condition 1, a Conservation Management Plan, prepared by a suitably qualified heritage consultant, to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Conservation Management Plan will be endorsed and will form part of this permit. The Conservation Management Plan must include, but not be limited to, the following:
- (a) Fully dimensioned and accurately measured plans at a scale of no less than 1:50 prepared by a suitably qualified heritage practitioner/ architect, detailing:
 - (i) The existing façade, eastern chimneys and southern and western return walls, including sections to show the thickness of architectural elements;
 - (ii) Details of the infill works, replacement windows and doors to the heritage façade with original details reinstated.
 - (iii) Reconstruction of the eastern chimneys
 - (b) A written description of the demolition, conservation and construction
 - (c) the approved heritage maintenance plan to form part of the proposed Owners Corporation documents.

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

Structural Report Requirement

5. Before the demolition commences, a structural report to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the structural report will be endorsed and will form part of this permit. The structural report must be prepared by a suitably qualified structural engineer, or equivalent, and demonstrate the means by which the retained portions of building will be supported during demolition and construction works to ensure their retention.
6. The provisions, recommendations and requirements of the endorsed structural report must be implemented and complied with to the satisfaction of the Responsible Authority.

Sustainable Management Plan

7. In conjunction with the submission of development plans under Condition 1, an amended SMP must be submitted to and approved by the Responsible Authority. When approved, the amended SMP will be endorsed and will form part of this permit. The amended SMP must be generally in accordance with the Sustainable Management Plan dated April 2021, prepared by Energy Lab, but updated to include the following:
 - (a) Vague language amended to include firm commitments to all of the proposed outcomes;
 - (b) An average rating of 7 Stars NatHERS is achieved
 - (c) No dwellings to exceed the maximum NatHERS annual cooling load of 30MJ/m²
 - (d) A minimum of 1 bicycle space per dwelling
 - (e) A minimum of two visitor bicycle spaces
 - (f) Additional detail regarding composting in accordance with the endorsed Waste Management Plan required pursuant to Condition 11.
 - (g) A landscaping strategy demonstrating best practice in urban ecology through the use of planter boxes, green roofs, walls or facades to increase canopy, improve urban heat and increase biodiversity
8. The provisions, recommendations and requirements of the endorsed Sustainable Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

Acoustic Report

9. In conjunction with the submission of development plans under Condition 1, an amended Acoustic Report to the satisfaction of the Responsible Authority. When approved, the Acoustic Report will be endorsed and will form part of this permit. The amended Acoustic Report must be generally in accordance with the Acoustic Report dated 09 March 202, prepared by Cogent Acoustics but updated to assess the following:
 - (a) The final mechanical plant specifications;
 - (b) Impacts of the fire pump room to the approved ground floor bedroom of 33 Spensley Street.
 - (c) The impacts of the rear laneway substation to the habitable room windows of 31 Berry Street.
 - (d) Impacts of the basement car park entry gate and car stackers to 31 Berry Street and 33 Lilly Street,
 - (e) Music noise limits from the hotel (wine bar) to the nearest noise sensitive receiver
 - (f) The report must demonstrate compliance with the noise limits determined in accordance with the EPA Noise Protocol, including the sleep disturbance criteria to the satisfaction of the Responsible Authority

10. The recommendations and requirements of the endorsed Acoustic Report must be implemented and complied with to the satisfaction of the Responsible Authority.

Waste Management Plan

11. In conjunction with the submission of development plans under Condition 1, 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 Salt3 and dated 6 April 2021, but modified to include:
- (a) Waste generation rates and collection day frequency table for the residential component updated in line with Council's current three bin service consisting of:
 - (i) Garbage collected weekly
 - (ii) Recycling collected fortnightly
 - (iii) Glass collected fortnightly
 - (b) Food waste diversion included for the commercial component of the development
 - (c) Details for management of hard waste (commercial) and e-waste (both) must be defined, e-waste cannot be disposed of in waste bins.
 - (d) Detail regarding food waste consistent with the endorsed SMP at condition 7
 - (e) Reference included in the plan regarding potential review if operational requirements change.
12. The provisions, recommendations and requirements of the endorsed Waste Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

Tree Management Plan

13. The provisions, recommendations and requirements of the endorsed Tree Management Plan generally in accordance with the Tree Management Plans prepared by Galbraith and Associates dated 14 September 2019 must be complied with and implemented thereafter to the satisfaction of the Responsible Authority.
14. Any pruning required to be undertaken for the four street trees along the subject site's Berry and Spensley Street frontages must be completed by an approved tree maintenance contractor (to the satisfaction of the Responsible Authority) with all associated costs to be borne by the permit holder.

Landscape Plan

15. Before the plans under Condition 1 are endorsed, a Landscape Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Landscape Plan will be endorsed and will form part of this permit. The Landscape Plan must:
- (a) Provide a plant schedule and planting plan with the following information including:
 - (i) Planter boxes located at the Level 3 terraces and Level 4 south-western balcony;
 - (ii) Show the type, location, quantity, height at maturity and botanical names of all proposed plants;
 - (iii) A legend containing key features, materials and surfaces;
 - (iv) Soil media and the dimensions for the planters;
 - (v) Information on irrigation and drainage systems;
 - (vi) Maintenance schedule, tasks and duration;

- (vii) Load bearing weights for the building to be checked and confirmed by a suitably qualified structural engineer against the saturated bulk density of soil media, planter box and plant mass proposed.

to the satisfaction of the Responsible Authority.

- 16. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, the landscaping works shown on the endorsed Landscape Plan must be carried out and completed to the satisfaction of the Responsible Authority. The landscaping shown on the endorsed Landscape Plan must be maintained by:

- (a) Implementing and complying with the provisions, recommendations and requirements of the endorsed Landscape Plan;
- (b) Not using the areas set aside on the endorsed Landscape Plan for landscaping for any other purpose; and
- (c) Replacing any dead, diseased, dying or damaged plants,

to the satisfaction of the Responsible Authority.

Car parking

- 17. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, the area set aside on the endorsed plans for the car parking spaces, access lanes, driveways and associated works must be:

- (a) constructed and available for use in accordance with the endorsed plans;
- (b) formed to such levels and drained so that they can be used in accordance with the endorsed plans;
- (c) treated with an all-weather seal or some other durable surface; and
- (d) line-marked or provided with some adequate means of showing the car parking spaces;

to the satisfaction of the Responsible Authority.

- 18. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, the car stackers must be installed in accordance with the manufacturer's specifications by a suitably qualified person. The car stackers must be maintained thereafter to the satisfaction of the Responsible Authority

Bicycle hoop

- 19. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, an additional bicycle hoop must be installed within the streetscape adjacent to the subject site:

- (a) at the permit holder's cost; and
- (b) in a location and manner,

to the satisfaction of the Responsible Authority.

Road Infrastructure

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

- 21. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, any damage to Council infrastructure resulting from the development must be reinstated, including by the re-sheeting of the entire Berry Street and Spensley Street footpath for the width of the property frontage if required by the Responsible Authority:

- (a) at the permit holder's cost; and

- (b) to the satisfaction of the Responsible Authority.
- 22. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, The laneway, from Berry Street to the site's western boundary, must be reconstructed:
 - (a) at the permit holder's cost; and
 - (b) to the satisfaction of the Responsible Authority.
- 23. Before the building is occupied, or by such later date as approved in writing by the responsible authority the relocation of any service poles, structures or pits necessary to facilitate the development must be undertaken:
 - (a) at the developer's cost; and
 - (b) to the satisfaction of the responsible authority.

General

- 24. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, external lighting capable of illuminating access to the car park and pedestrian entrances must be provided within the property boundary. Lighting must be:
 - (a) located;
 - (b) directed;
 - (c) shielded; and
 - (d) of limited intensity,
to the satisfaction of the Responsible Authority
- 25. Finished floor levels shown on the endorsed plans must not be altered or modified without the prior written consent of the Responsible Authority.
- 26. Before the building is occupied, any wall located on a boundary facing public property must be treated with a graffiti proof finish to the satisfaction of the Responsible Authority.
- 27. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, all new on-boundary walls must be cleaned and finished to the satisfaction of the Responsible Authority.
- 28. All buildings and works must be maintained in good order and appearance to the satisfaction of the Responsible Authority.
- 29. All pipes, fixtures, fittings and vents servicing any building on the land must be concealed in service ducts or otherwise hidden from view to the satisfaction of the Responsible Authority.

Construction Management Plan

- 30. 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;
- (j) materials and waste;
- (k) dust;
- (l) stormwater contamination from run-off and wash-waters;
- (m) sediment from the land on roads;
- (n) washing of concrete trucks and other vehicles and machinery; and
- (o) spillage from refuelling cranes and other vehicles and machinery;
- (p) the construction program;
- (q) preferred arrangements for trucks delivering to the land, including delivery and unloading points and expected duration and frequency;
- (r) parking facilities for construction workers;
- (s) measures to ensure that all work on the land will be carried out in accordance with the Construction Management Plan;
- (t) an outline of requests to occupy public footpaths or roads, or anticipated disruptions to local services;
- (u) 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;
- (v) 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;
- (w) a Noise and Vibration Management Plan showing methods to minimise noise and vibration impacts on nearby properties and to demonstrate compliance with Noise Control Guideline 12 for Construction (Publication 1254) as issued by the Environment Protection Authority in October 2008. The Noise and Vibration Management Plan must be prepared to the satisfaction of the Responsible Authority.

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

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

During the construction:

- (x) any stormwater discharged into the stormwater drainage system must be in compliance with Environment Protection Authority guidelines;
- (y) stormwater drainage system protection measures must be installed as required to ensure that no solid waste, sediment, sand, soil, clay or stones from the land enters the stormwater drainage system;
- (z) vehicle borne material must not accumulate on the roads abutting the land;
- (aa) the cleaning of machinery and equipment must take place on the land and not on adjacent footpaths or roads; and
- (bb) all litter (including items such as cement bags, food packaging and plastic strapping) must be disposed of responsibly.

If required, the Construction Management Plan may be approved in stages. Construction of each stage must not commence until a Construction Management Plan has been endorsed for that stage, to the satisfaction of the Responsible Authority.

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

32. Except with the prior written consent of the Responsible Authority, demolition or construction works must not be carried out:
- (a) Monday-Friday (excluding public holidays) before 7 am or after 6 pm;
 - (b) Saturdays and public holidays (other than ANZAC Day, Christmas Day and Good Friday) before 9 am or after 3 pm; or
 - (c) Sundays, ANZAC Day, Christmas Day and Good Friday at any time.

Development Infrastructure Levy

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

Community Infrastructure Levy

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

Time expiry

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

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

Notes:

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

The site is subject to the Heritage Overlay. A planning permit may be required for any further external work.

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

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

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

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

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

No parking restriction signs or line-marked on-street parking bays are to be removed, adjusted, changed or relocated without approval or authorisation from Council's Parking Management unit and Construction Management branch. Any on-street parking reinstated (signs and line markings) as a result of development works must be approved by Council's Parking Management unit.

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

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

Attachments

- 1 Location Plan
- 2 Advertised Plans
- 3 'Without Prejudice' Sketch Plans - 11 October 2021
- 4 3D Shadows 19 October 2021
- 5 Heritage Comments
- 6 Heritage Comments (Regarding Height)
- 7 Engineering comments
- 8 Acoustic Comments
- 9 Urban Design Comments
- 10 ESD Comments
- 11 City Works Comments
- 12 Open Space Comments
- 13 Strategic Transport Comments

- 6.2 PLN10/1063.01- Lot 12&11A/156 George Street, Fitzroy (including common property) - Amend the approved use of the land as an education centre by way of an increase of students from 78 to 220, extension of the floor area, extended hours of operation and associated buildings and works and demolition and reduction in the car parking requirements.**
-

Executive Summary

Purpose

1. This report provides Council with an assessment of an application at Lot 12&11A/156 George Street, Fitzroy (including common property) to amend the approved use of the land as an education centre by way of an increase of students from 78 to 220, extension of the floor area, extended hours of operation and associated buildings and works and demolition and reduction in the car parking requirements.

Key Planning Considerations

2. Key planning considerations include:
 - (a) Use - Clause 32.09 (Neighbourhood Residential Zone), Clause 22.02 (Discretionary Uses in the Residential Zone) and Clause 22.05 (Interfaces uses policy)
 - (b) Built form – Clause 32.09-9 (Neighbourhood Residential Zone) Clause 43.01 (Heritage Overlay) and Clause 22.02 (Development Guidelines for sites subject to the Heritage Overlay)
 - (c) Car parking – Clause 52.06 (Car parking) and Clause 18.02-4S (Car parking)

Key Issues

3. The key issues for Council in considering the proposal relate to:
 - (a) Policy and Strategic Support
 - (b) Use
 - (c) Built form
 - (d) Car parking and bicycle spaces
 - (e) Objector concerns

Submissions Received

4. Nineteen (19) objections were received to the application, these can be summarised as:
 - (a) Traffic and car parking impacts
 - (b) Heritage impact of pedestrian door design (streetscape)
 - (c) Noise and security issues from use
 - (d) Construction concerns

Conclusion

5. Based on the following report, the proposal is considered to comply with the relevant planning policy and should therefore be supported subject to the following key recommendation:
 - (a) A revised acoustic report to demonstrate all acoustic commitments adequately protect the amenity of the dwelling adjoining the second-floor education centre use.

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

6.2 **PLN10/1063.01- Lot 12&11A/156 George Street, Fitzroy (including common property) - Amend the approved use of the land as an education centre by way of an increase of students from 78 to 220, extension of the floor area, extended hours of operation and associated buildings and works and demolition and reduction in the car parking requirements.**

Reference D21/84853
Author Laura Condon - Senior Statutory Planner
Authoriser Senior Coordinator Statutory Planning

Ward: Langridge
Proposal: Amend the approved use of the land as an education centre by way of an increase of students from 78 to 220, extension of the floor area, extended hours of operation and associated buildings and works and demolition and reduction in the car parking requirements.
Existing use: Education centre
Applicant: CS Town Planning
Zoning / Overlays: Neighbourhood Residential Zone (Schedule 1)
Heritage Overlay (Schedule 334)
Development Contributions Plan Overlay (Schedule 1)
Date of Application: 23/02/2021
Application Number: PLN10/1063.01

Planning History

6. Planning permit 1940 issued for the entire first floor of both 144 and 156 George Street on 14 September 1992 for the use and development for the purpose of offices, warehouse and to erect an antenna issued.
7. Planning Permit 97/506 issued for lot 8, 9 and 10/144 George Street on 30 April 1997 for an education centre with up to 60 students and hours of operation of 9.00am to 9.00pm Monday to Friday and 9.30am to 4.00pm on Saturdays. Based on the endorsed plans associated with this permit, the approved education centre was located on level 1 (see figure 10 for current position of this site being at lot 8, 9&9 and 10).
8. Planning Permit 980768 issued on 23 July 1998 for an education centre at 144 George Street. This was a retrospective application for additional floor space which was already being used by the existing education centre approved under planning permit 97/506 described above. As per planning permit 97/506, the education centre was located in Lots 8, 9&9 and 10 as depicted in figure 10 but was extended to include Lots 10B and 10C. The hours of operation and student numbers were retained as per planning permit 97/506 described above.
9. In 2000 the parent lot 144-156 George Street Fitzroy was divided into a variety of lots with addresses either at 144 George Street or 156 George Street.

10. Planning permit application PL05/0193 was submitted on 23 March 2005 for an increase in floor space associated with the existing education centre at 144 George Street approved under permit 980768 described above. This application was withdrawn on 23 March 2006.
11. Planning permit application PL09/0089 was submitted on 20 February 2009 for retrospective permission to increase in floor space associated with the existing education centre at 144 George Street approved under permit 980768 described above. The application was lodged as a result of enforcement action by the City of Yarra with the operation having been extending to include Lots 46, 47 and 48 at first floor (see figure 10) and lot 55, 56B and 56C at ground floor (see figure 9). The application sought approval for 200 students, changed hours of operation to of 10.00am to 9.30pm Monday to Fridays and 10.00am to 5.00pm on Saturdays and a further waiver of car parking requirements. This application lapsed on 23 October 2009. This fashion school subsequently vacated the building.
12. Planning permit PLN10/1063 issued the 26 May 2011 for the change of use for an education centre (fashion school) at 7/156 George Street Fitzroy. The current amendment application seeks to amend this permit. This permit allowed for 78 students on the premises at any one time and the following hours of operation:
 - (a) Monday to Thursday 8.00am to 10.00pm
 - (b) Friday to Saturday 8.00am to 5.00pm
 - (c) Sunday Closed
13. Planning permit application PLN20/0690 was lodged on the 30 September 2020 for the use of the subject site as an education centre for 220 students and associated car parking reduction. Officers advised the applicant that given the site was already operating as an education centre under Planning permit PLN10/1063, it was appropriate to amend that existing permit rather than apply for a new permit. As a result, this application was subsequently withdrawn and the current amendment application lodged instead.

Background

[Planning Scheme Amendments](#)

Amendment C238

14. Amendment C238 was introduced into the Yarra Planning Scheme on 01 February 2021 and inserts Clause 45.06 (Development Contributions Plan Overlay) with Schedule 1 into the Scheme. This overlay applies to all land in the City of Yarra (note: there are some exempted sites including schools DHHS properties and public hospitals) and it applies to all new development where there is an increase in the number of dwellings and/or an increase in retail, commercial and industrial floor space. It requires a monetary contribution from the developer.

Amendment C269

15. Amendment C269 proposes to update the local policies in the Yarra Planning Scheme by replacing the Municipal Strategic Statement (MSS) at Clause 21 and Local Planning Policies at Clause 22 with a Municipal Planning Strategy and Local Policies within the Planning Policy Framework (PPF), consistent with the structure recently introduced by the State Government. Amendment C269 was adopted by Council on 3 August 2021 and will proceed to a panel hearing in October 2021. In relation to this current planning application, the following clauses are of most relevance.
 - (a) 13.07 – 1L – Interfaces and Amenity
 - (b) 15.03 – 1L – Heritage
 - (c) 18.01 - 4L – Car parking
16. The above clauses are largely reflected in current planning policy and will not be contradictory to the proposed re-write of Clauses 21 and 22.

Retrospective Works

17. Retrospective permission is sought for the following:
- (a) Extend into the north-west portion of the building at Level 2, marked as 'occupied by others' on the endorsed plans (refer to Figure 3). This area is to be used as a sewing room and two lecture rooms (i.e. Studios 5, 6 and 7).
 - (b) Provision for comedy/performance/media education as well as the approved fashion school.
 - (c) Four 1-on-1 teaching pods (unamplified music teaching rooms) in the existing basement (installed in May 2020).
 - (d) Increase student numbers to 220 patrons.

Enforcement History

18. Given the above history, the application was referred to Council's Community Amenity Team to understand the history of any complaints received by Council in relation to the operation of the college. They indicated that no complaints were lodged in relation to breeches of the planning permit, with the only complaints received relating to construction noise.

Lodgement of S57A plans

19. On the 16th September 2021 the applicant formally amended the application pursuant to Section 57A of the *Planning and Environment Act 1987* (the Act) to reduce the scope of works within the basement. The originally advertised application plans proposed the following works within the basement (see Figure 1):
- (a) It was proposed to extend the education centre to occupy the existing basement. The following works were proposed in the basement:
 - (i) Vertically cut the existing roller door to allow for two pedestrian doors of which one is to be a fire safety exit.
 - (ii) Inside the basement, the driveway ramp will be divided; maintaining vehicular access along the eastern side for the other tenancies. The western side will be divided into a fire access corridor and a ramp for pedestrian access for students into the basement,
 - (b) The following basement teaching areas were proposed:
 - (i) a black box stage craft classroom,
 - (ii) a screening room,
 - (iii) a video cast recording room,
 - (iv) 2 x podcast recording rooms,
 - (v) 2 x pod cast/video cast editing rooms,
 - (vi) an accessible toilet and 2 further toilets,
 - (vii) a lobby/circulation area, and
 - (viii) 4 x 1on1 teaching pods (unamplified music teaching rooms - Retrospective).

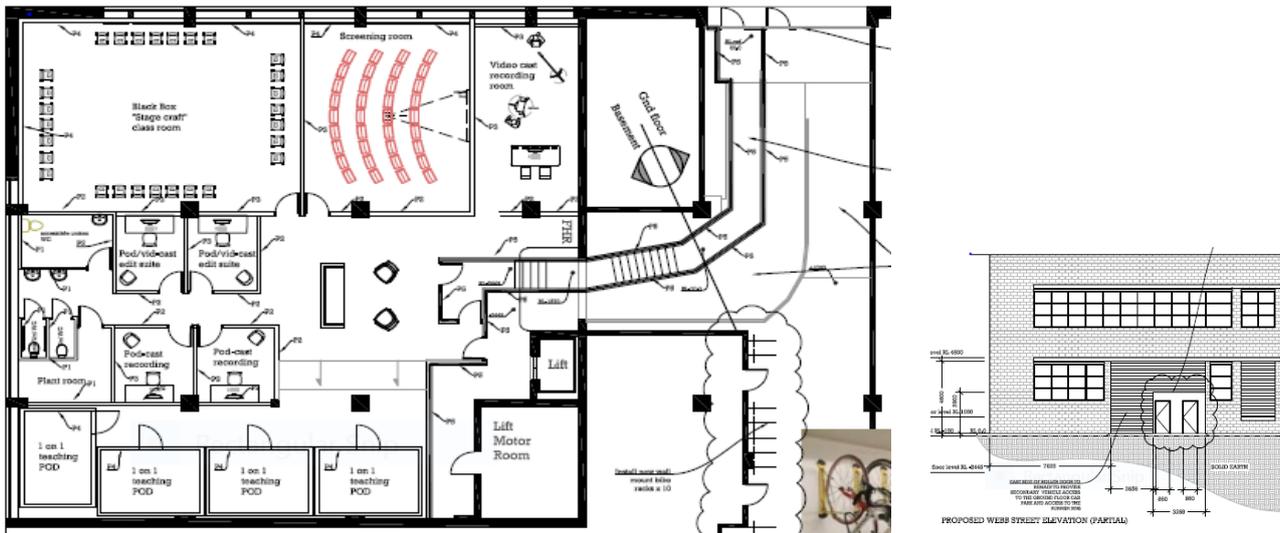


Figure 1: Original advertised basement and new door insert to existing Webb Street roller door

20. The section 57A amended plans deleted these proposed items apart from the 4 X 1on1 teaching pods. A new partition wall is to be installed in front of the teaching pods. The originally proposed doors to the Webb Street rollers are to be deleted and the existing roller door modified to include 1 pedestrian access door. Twenty-eight bicycle spaces (and 37 lockers) and three carparking spaces are proposed (with one being accessible). See figure 2 for detail.

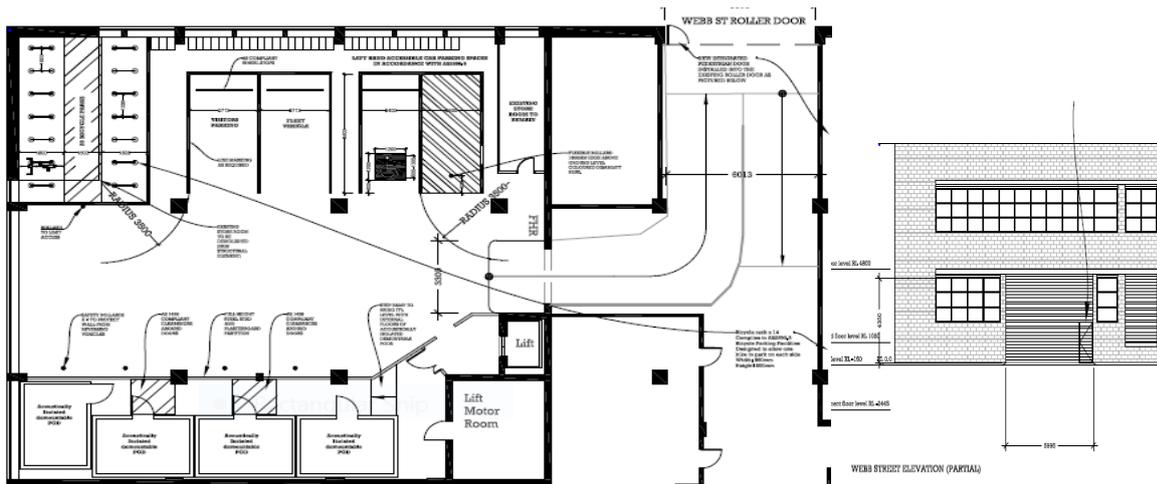


Figure 2: Section 57A advertised basement and new door insert to existing Webb Street roller door

The Section 57A amended plans were readvertised with 1 new objection received and further submissions from 8 existing objectors. These are discussed in the advertising section later in the report.

The Proposal

21. Amendment to extend the existing education centre use at level 2 - 156 George Street to:

- (a) Include the basement at 156 George Street (including use of common property for access to both the basement and level 2),
- (b) Increase approved student numbers from 78 to 220,
- (c) Increase the approved hours of operation by 1 hour on Fridays from a 5pm close to 6pm close.

22. Further details of the proposal are as follows:

23. Figure 3 below shows the approved layout of the education centre under the original permit while figure 4 show the proposed layout under the current permit.

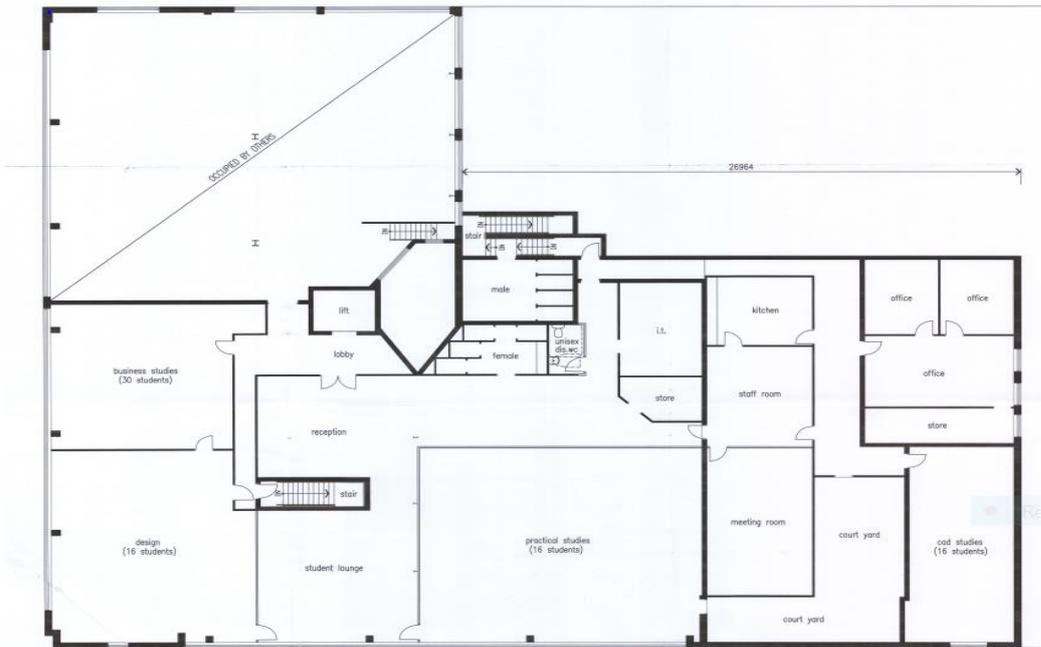


Figure 3: Approved level 2 layout of education centre under current permit

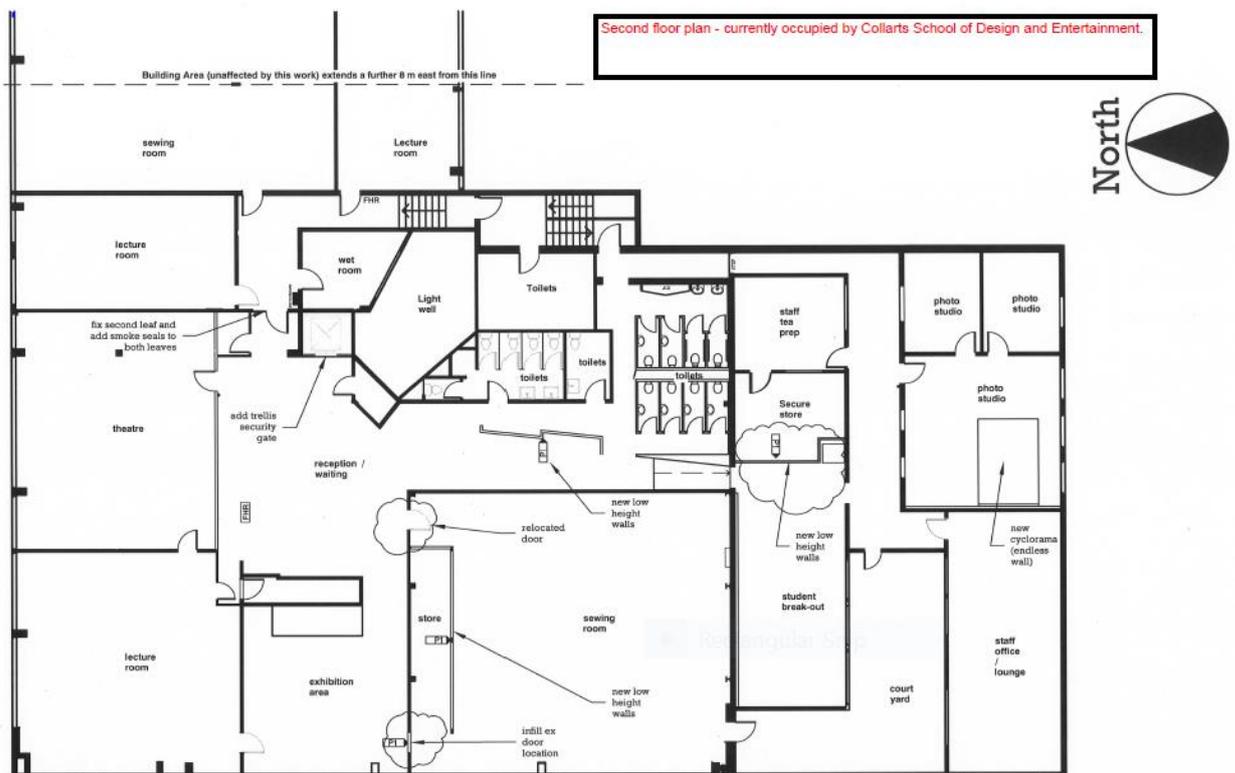


Figure 4: Proposed level 2 layout of education centre

- (a) Retrospective permission is sought to increase the area of the use at level 2 to extend into the north-west portion of the building that was previously occupied by an office (marked on Figure 3 plans as 'occupied by others'). This area is now occupied by a sewing room and two lecture rooms.
- (b) The uses of the remaining rooms at first floor include,

- (i) 2 x sewing rooms accommodating a max of 72 seats across the two rooms,
 - (ii) a wet room (for fabric dyeing and fabric screen printing),
 - (iii) a staff room (with separate tearoom) and student break out rooms with both rooms accessing an existing terrace,
 - (iv) 3 photography studios (2 small for developing images etc and one large for taking photos including cyclorama),
 - (v) 3 lecture rooms/stagecraft studios/theatre accommodating a max of 118 seats across all four rooms- all being for teaching purposes only and unamplified,
 - (vi) a reception with attached exhibition area,
 - (vii) 3 areas occupied by toilets and 6 storage rooms/cupboards of various sizes,
 - (viii) Previous IT room and store replaced with new toilets.
- (c) Internal buildings and works have been already carried out at Level 2 to accommodate the changed room uses (no permit required).

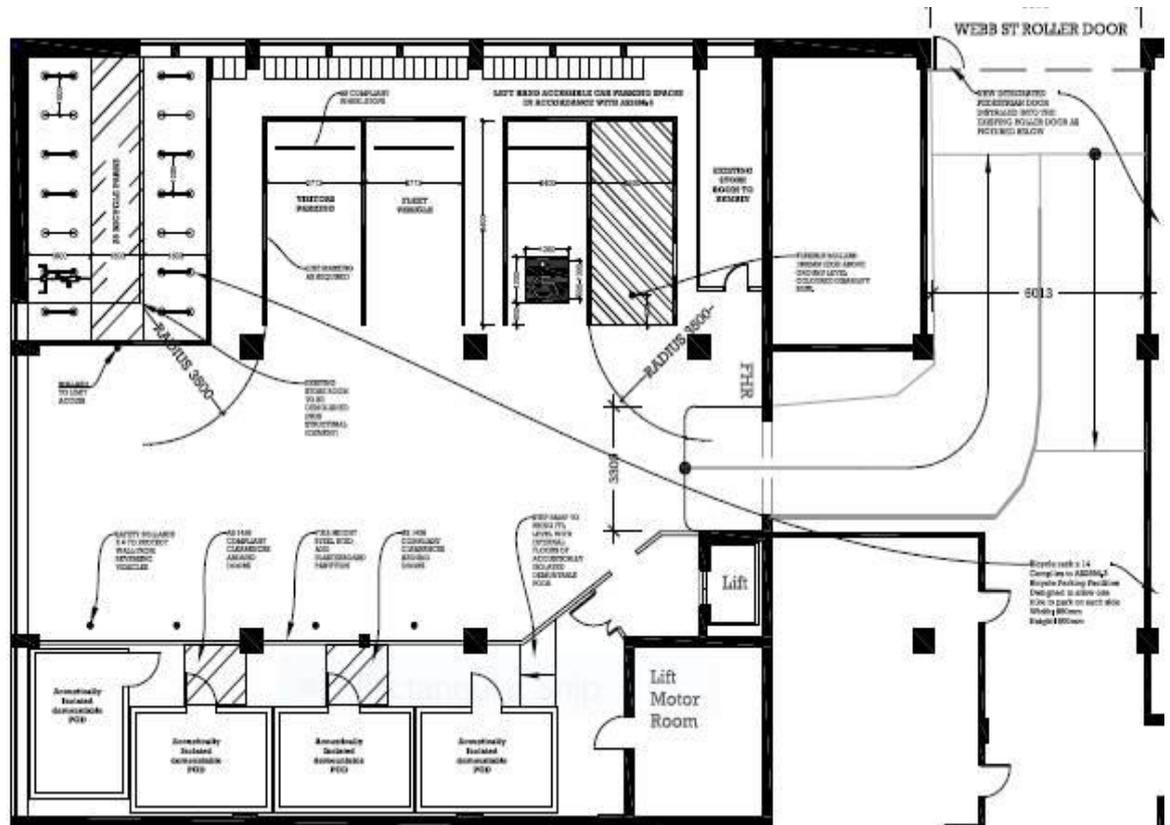


Figure 5: Proposed basement layout

- (d) It is proposed to extend the education centre to partially occupy the existing basement. The following works are proposed in the basement:
- (i) 4 x 1on1 teaching pods (unamplified music teaching rooms - Retrospective).
 - (ii) A new partition wall is to be installed in front of the teaching pods.
 - (iii) The existing roller door modified to include 1 pedestrian access door.
 - (iv) Twenty-eight bicycle spaces,
 - (v) 37 lockers along the northern boundary (not annotated, to be addressed via condition) and
 - (vi) Three carparking spaces (one being accessible).



Figure 6: 4 x 1on1 teaching pods that have been installed

- (e) In terms of acoustic protection measures, an acoustic report was submitted as part of the original application material. A revised acoustic report was not submitted as part of the section 57A amendment and so a number of the measures that relate to basement are no longer relevant (as outlined below).
- (f) The submitted acoustic report outlines that the 1on1 teaching pods will be for the teaching only of unamplified musical instruments. The installed pods have been constructed using metal alloy, lined with insulation and have double glazing and airlock doors (with compressions seals installed). A supply and return air vent is located in the ceiling of the pods.
- (g) There was also discussion and recommendations for the screening room, edit suite and video cast rooms, which is no longer relevant as these aspects of the proposal have been deleted from the Section 57A plans, as discussed earlier.

Existing Conditions

Subject Site

24. The subject site is located within a three-storey commercial building (plus basement) on the eastern side of George Street and on the southern side of its intersection with Webb Street. The site is rectangular in shape with a street frontage to George Street of 60.44m and a frontage to Webb Street of 39.6m. The building is part of an overall larger building previously known as 144-156 George Street which was divided into two sites in 2000. The northern 3 storey part of the building is now known as 156 George Street and the two storey southern part of the building known as 144 George Street. Within the three storey part of the building, the subject site occupies level 2 and a 400sqm basement area (see figure 3, 5 and 7 (yellow highlight)). The building covers the entire site, however level 2 and the basement do not extend the full extent of the site.



Figure 7: Building that contains the subject site.

25. There are three pedestrian entrances into the building; the main pedestrian entrance to 156 George is from George Street near its intersection with Webb Street with another from Little Gore Street, and an entrance to 146 George Street further along George Street. The vehicular entrance is accessed off Webb Street with a further vehicle entrance from George Street. The George Street entrance is the main vehicle entrance with the Webb Street entrance used mainly for loading and unloading purposes and with part of the vehicle ramp also partially occupied by a rubbish storage area.
26. The vehicle ramp from Webb Street is a split ramp with the downward ramp accessing the basement that is part of the subject site. The tenancy currently has access to the basement area that was approved under the original permit to accommodate 4 bicycle spaces and 6 car spaces. This is the only basement area in the building. This area measures 20m x 20m yielding a floor area of 400sqm.



Figure 8: Split ramp

27. The upward ramp services the ground floor car park. See figure 9 which shows the ground floor layout of both 156 and 144 George Street. Car parking is accommodated to the rear of the building. The tenancies highlighted in yellow are residential and the one highlighted in yellow with red dots is residential and is located immediately above the proposed basement of the education centre. The remainder of tenancies coloured white are commercial tenancies or car spaces.



Figure 9: Ground level

28. Figure 11 shows level 1 of 156 and 144 George Street. The tenancies highlighted in yellow are residential and the one highlighted in yellow with red dots is residential and is located immediately below the Level 2 education centre. The remainder of tenancies coloured white are commercial tenancies, with the largest one being an office.

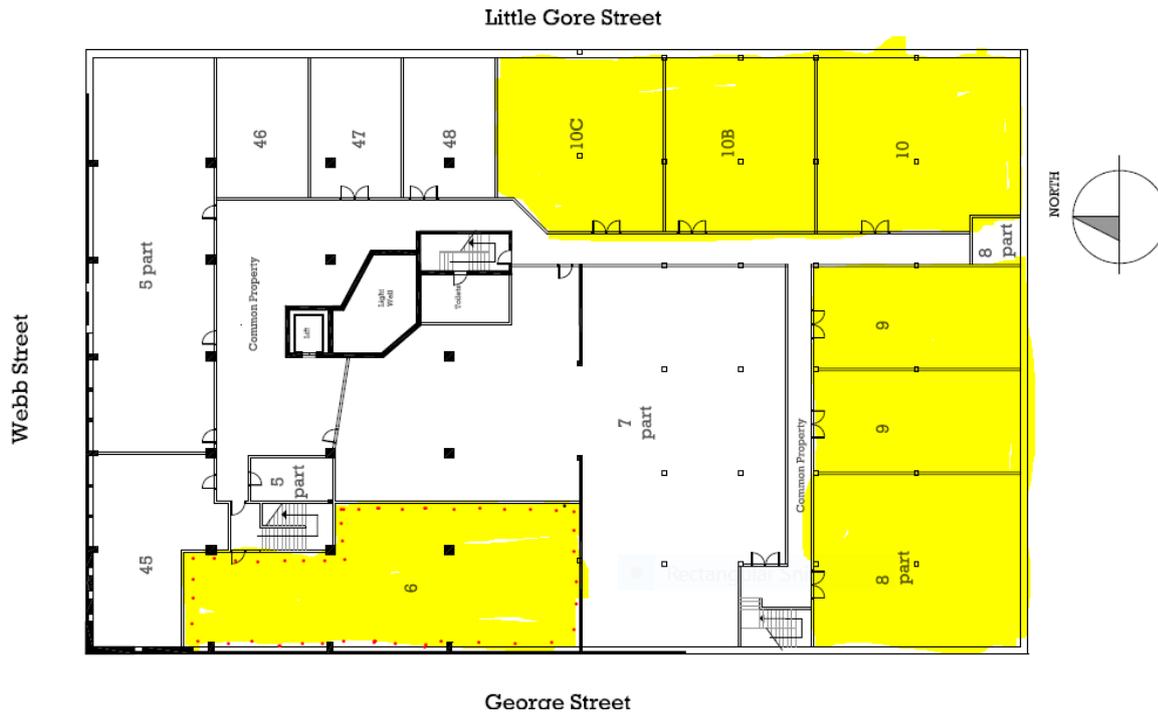


Figure 10: Level 1

Surrounding Land

29. The surrounding area is a mixture of residential and commercial uses. To the south of the host building are dwellings facing George Street and 180m further south is the Gertrude Street shopping strip. This area includes a variety of commercial uses including art supplies stores, cafes, restaurants, retail premises and art galleries.
30. To the north and east of the site, across Webb and Little Gore Streets are residential dwellings. Approximately 160m to the east, is the Smith Street Major Activity Centre which has a wide range of commercial uses. As does the Brunswick Street Major Activity Centre which is located 250m to the west, with residential areas and Atherton Gardens Public Housing situated between them. Tram lines operate along Brunswick, Smith and Gertrude Streets.

Planning Scheme Provisions

Zoning

Neighbourhood Residential Zone (Schedule 1)

31. The site is located within a Neighbourhood Residential Zone (Schedule 1) (NRZ1). The purpose of the NRZ1 is as follows;
- To implement the Municipal Planning Strategy and the Planning Policy Framework.*
 - To recognise areas of predominantly single and double storey residential development.*
 - To manage and ensure that development respects the identified neighbourhood character, heritage, environmental or landscape characteristics.*
 - To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.*

32. Pursuant to Clause 32.09-2, the use of the land as an education centre is a Section 2 use and thus a planning permit is triggered.
33. Pursuant to Clause 32.09-9, a permit is required to construct a building or to construct or carry out works associated with a Section 2 use.
34. Decision Guidelines are at clause 32.09-13 as follows:
- (a) *Non-residential use and development*
- (i) *In the local neighbourhood context:*
- *Whether the use or development is compatible with residential use.*
 - *Whether the use generally serves local community needs.*
 - *The scale and intensity of the use and development.*
 - *The design, height, setback and appearance of the proposed buildings and works.*
 - *The proposed landscaping.*
 - *The provision of car and bicycle parking and associated accessways.*
 - *Any proposed loading and refuse collection facilities.*
 - *The safety, efficiency and amenity effects of traffic to be generated by the proposal.*

Overlays

Heritage Overlay (HO334 – South Fitzroy Heritage Precinct)

35. Pursuant to clause 43.01-1 of the Scheme, a planning permit is required to demolish or remove a building, construct a building or construct or carry out works.
36. City of Yarra Database of Heritage significant Areas, July 2020 – The site is identified as being contributory to the HO334 South Fitzroy Precinct.

Development Plan Contributions Overlay

37. Pursuant to Clause 45.06-1, a permit granted must:
- (a) Be consistent with the provisions of the relevant contributions plan.
- (b) Include any conditions required to give effect to contribution or levies imposed, conditions or requirements set out in the relevant schedule to this overlay.
38. Pursuant to Schedule 1 of the DCPO, developer contributions do not apply to the construction of a building or carrying out of works that do not generate a net increase in additional demand units, including (as relevant) *renovations or alterations to an existing building*. As the buildings and works proposed do not create a net increase in additional demand units, the requirements of the DCPO do not apply.

Particular Provisions

Clause 52.06 Car Parking

39. Pursuant to Clause 52.06-1, the clause applies to a new use or an increase in the existing use by the relevant measure specified in Column C of Table 1 in Clause 52.06-5. The amendment application proposes to increase the number of permitted students from 78 to 220 (increase of 142) and with the 6 spaces required under the original permit reduced to 3.

Use	Quantity/ Size increase	Statutory Parking Rate	No. of Spaces Required by the Scheme	No. of Spaces Allocated	Reduction Required
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Education Centre	142 students	0.3 spaces to each student.	42	3	39
Loss of existing approved car spaces for education centre				3	3
Car Parking reduction required for amended education centre					42

40. Pursuant to Clause 52.06-3, a permit is required to reduce the number of car parking spaces required by Clause 52.06-5. As such, the amendment application requires planning permission to further reduce the car parking spaces required by 41.

Clause 52.34 – Bicycle Facilities

41. Pursuant to clause 52.34, a new use must not commence until the required bicycle facilities and associated signage has been provided on the land. Under the provisions of Clause 52.34-3 of the Scheme, the development's bicycle parking requirements are as follows:

Proposed Use	Statutory Parking Rate	Proposed numbers by amendment	No. of Spaces Required	Reduction required
Education centre	1 to each 20 employees	No additional staff proposed	0	
	1 to each 20 full time students	142 additional students proposed	7	
Bicycle Parking Spaces Total		4 provided under original permit for 78 Students		Nil
		Further 24 proposed for the current amendment bring space provided to a total of 28		

42. The proposal does not generate a requirement for a reduction in the bicycle requirements.

[General Provisions](#)

Clause 65 – Decision Guidelines

43. 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 provision.

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

Clause 11.02 (Managing Growth)

Clause 13.05-1S (Noise abatement)

44. The objective is:

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

Clause 15.01 (Built Environment and Heritage)

Clause 15.01-1S (Urban design)

45. The objective is:

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

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

46. The objective is:

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

Clause 15.01-2S – Building Design

47. The objective of this Clause is:

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

Clause 15.01-5S – Neighbourhood Character

48. The objective of this Clause is:

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

Clause 15.02-1S – Energy and Resource Efficiency

49. The objective of this Clause is:

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

Clause 15.03-1S – Heritage Conservation

50. The objective of this Clause is:

- (a) *Encourage appropriate development that respects places with identified heritage values.*
- (b) *Retain those elements that contribute to the importance of the heritage place.*

Clause 17 (Economic Development)

Clause 17.02-1S (Business)

51. The objective of this clause is:

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

Clause 17.02-2S (Innovation and Research)

- (b) *To create opportunities for innovation and the knowledge economy within existing and emerging industries, research and education.*

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

52. The objective of this clause is:

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

53. Relevant strategies to achieve this objective include

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

Clause 18.02-1S (Sustainable personal transport)

54. The objective of this clause is:

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

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

55. Strategies of this policy are:

- (a) *Improve local travel options for walking and cycling to support 20 minute neighbourhoods.*

Clause 18.02-2S (Public transport)

56. 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)

57. A relevant strategy of this clause is to:

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

Clause 18.02-4S (Car parking)

58. The objective of this clause is:

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

59. A relevant strategy is:

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

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

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

Clause 21 – Municipal Strategic Statement(MSS)

Clause 21.03 – Vision

61. The relevant sections of this Clause are:

- (a) *Yarra will have increased opportunities for employment.*
(b) *The complex land use mix characteristic of the inner city will provide for a range of activities to meet the needs of the community.*

Clause 21.05-2 – Industry, office and commercial

62. The objective of this clause is:

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

Clause 21.05-1 Heritage

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

64. Relevant objectives include:

- (a) *Objective 14 To protect and enhance Yarra's heritage places:*
(b) *Strategy 14.1 Conserve, protect and enhance identified sites and areas of heritage significance including pre-settlement ecological heritage.*

- (c) *Strategy 14.2 Support the restoration of heritage places.*
- (d) *Strategy 14.3 Protect the heritage skyline of heritage precincts.*
- (e) *Strategy 14.4 Protect the subdivision pattern within heritage places.*
- (f) *Strategy 14.6 Protect buildings, streetscapes and precincts of heritage significance from the visual intrusion of built form both within places and from adjoining areas.*
- (g) *Strategy 14.8 Apply the Development Guidelines for Heritage Places policy at clause 22.02.*

Clause 21.05-2 – Urban design

65. A relevant objective of this clause is to:

- (a) *encourage the provision of universal access in new development.*

Clause 21.06 – Transport

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

Clause 21.06-1 – Walking and cycling

67. This clause builds upon the objectives outlined at Clause 18, through promoting cycling, walking and public transport as alternatives to private motor vehicle usage and provides the following relevant objectives:

- (a) *Objective 32 – To reduce the reliance on private motor car.*
- (b) *Objective 33 – To reduce the impact of traffic.*

Clause 21.08-7 - Fitzroy

68. Figure 18 of the clause identifies the subject site as affected by a heritage overlay and encourages proposals to '*ensure development does not adversely affect the heritage place*'.

[Relevant Local Policies](#)

Clause 22.02 Discretionary Uses in the Residential Zone.

69. *It is policy that:*

- (a) *Existing buildings constructed for non-residential purposes are the preferred location for non-residential uses.*
- (b) *The scale of the proposed use should be compatible with providing service to the local residential community.*
- (c) *Hours of operation should be limited to 8am to 8pm except for convenience shop.*
- (d) *Noise emissions should be compatible with a residential environment.*

Clause 22.02 Development Guidelines for Sites Subject to the Heritage Overlay

Clause 22.02-5.1 – Demolition

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

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

Clause 22.02-5.7 – New Development, Alterations or Additions

71. The relevant policies of Clause 22.02-5.7.1 of the Scheme encourages the design of new development to a heritage place or a contributory element to:

- (a) *Respect the pattern, rhythm, orientation to the street, spatial characteristics, fenestration, roof form, materials and heritage character of the surrounding historic streetscape.*

- (b) *Be articulated and massed to correspond with the prevailing building form of the heritage place or contributory elements to the heritage place.*
- (c) *Be visually recessive and not dominate the heritage place.*
- (d) *Be distinguishable from the original historic fabric.*
- (e) *Not remove, cover, damage or change original historic fabric.*
- (f) *Not obscure views of principle façades.*
- (g) *Consider the architectural integrity and context of the heritage place or contributory element.*

Clause 22.05 – Interface uses policy

- 72. This policy applies to applications for use or development within Residential zone where a use is with 30m of an existing business (amongst others).
- 73. Clause 22.05-3 states that it is policy that ‘new non-residential use and development within Business and Mixed Use and Industrial Zones are designed to minimise noise and visual amenity impacts upon nearby, existing residential properties’
- 74. Decision guidelines at clause 22.05-6 include as relevant:
 - (a) *Before deciding on an application for non-residential development, Council will consider as appropriate:*
 - (i) *The extent to which the propose buildings or uses may cause overlooking, overshadowing, noise, fumes and air emissions, light spillage, waste management and other operational disturbances that may cause unreasonable detriment to the residential amenity of nearby residential properties.*
 - (ii) *Whether the buildings or uses are designed or incorporate appropriate measures to minimise the impact of unreasonable overlooking, overshadowing, noise, fumes and air emissions, light spillage, waste management and other operational disturbances on nearby residential properties.*

Advertising

- 75. The original application was advertised under the provisions of Section 52 of the *Planning and Environment Act (1987)* by 144 letters sent to surrounding owners and occupiers and by 3 signs displayed on site. Council received a total of 19 objections, the grounds of which are summarised as follows:
 - (a) Traffic and car parking impacts
 - (b) Heritage impact of pedestrian door design (streetscape)
 - (c) Noise and security issues from use
 - (d) Construction concerns
- 76. Further detail of the concerns raised are as follows:
 - (a) Security risk to existing dwellings due to additional students and visitors in the complex,
 - (b) Reducing car parking provisions creating increase demand for on-street car parking,
 - (c) Insufficient provision of on-site car parking and student toilets,
 - (d) Planned works in common property areas cannot occur without Body corporate consent,
 - (e) Concerns re waste management,
 - (f) Concern with impact of the construction of the pedestrian door to the roller door will have on the heritage significance of the building,

- (g) Concerns that proposed basement area may not be compliant with relevant fire regulations,
 - (h) Behaviour of students;
 - (i) Concern with proposed extended hours of operation,
 - (j) Cleaners cleaning the education centre causing noise disturbance late at night, and
 - (k) Concern that acoustic report noise logging occurred during COVID-19 lockdown.
77. The Section 57A amended plans were readvertised to all occupants of the building and all original objectors. One (1) new objection was received and eight (8) existing objectors outlined the changes to the plans did not address their concerns. New concerns raised included the following:
- (a) Seeking detail of bicycle and car access arrangements to basement.
 - (b) Concern bicycle area too small.

Referrals

78. The Community Amenity, City Works Unit and Council's Acoustic Consultant's referral comments are based on the original advertised plans. Council's Strategic Transport Unit, Heritage Advisor and Engineering comments are based on the Section 57A advertised plans (with their previous comments on the original advertised plans no longer relevant due to the changes proposed to the basement). Council's Acoustic Consultant also provided supplementary comments on the Section 57A amended plans.

External Referrals

79. The application was referred to the following authorities:
- (a) Head for Transport Victoria.
80. Head for Transport Victoria responded and offered no objection to the application.

Internal Referrals

81. The application was referred to the following units within Council:
- (a) Engineering Services Unit;
 - (b) Strategic Transport Unit;
 - (c) Heritage Advisor;
 - (d) Community Amenity; and
 - (e) City Works Unit (Waste Management).

External consultants

- (f) Council's Acoustic Consultant (SLR).
82. All referral comments have been included as attachments to this report.

OFFICER ASSESSMENT

83. The primary considerations for this application are as follows:
- (a) Policy and Strategic Support
 - (b) Use
 - (c) Built form
 - (d) Car parking and bicycles
 - (e) Objector concerns

Policy and Strategic Support

84. The amendment application proposes to increase the number of students from 78 to 220 at any one time, extend the use at second floor and into the basement, to increase the approved hours of operation by 1 hour from a 5pm close to 6pm close on Fridays with associated car parking reduction and buildings and works and demolition.
85. Within State policy such as clause 17.01-1 relating to business, uses are encouraged which meet the community's needs and provide net community benefit in relation to efficient infrastructure use. It is also important to note that within this building, commercial uses have operated for at least 30 years (based on the planning permit history), with the existing building form reflecting these commercial origins. A fashion school operated within the building from 1997 until 2009, with the use commencing again in 2011 on the approval of the current permit.
86. This historic use of the building supports the use for commercial purposes, in line with policy at clause 22.01-3 and 32.09-13 which state that existing buildings constructed for non-residential purposes are the preferred location for non-residential uses. Given the site has been operating legitimately as an education centre for 24 years, it would be unreasonable to proposit that the use cannot be reasonably accommodated at the site. Impacts on residential amenity will be discussed in greater detail later in this assessment.
87. As outlined in the officer's report for the original approval, the proposal supports the development of a specialised activity cluster which has many benefits for the broader community, as follows:
- (a) *Fitzroy and particularly Gertrude Street is an example of the type of cluster or specialised land use precinct that is important to the economic and creative wellbeing of Melbourne. The importance of supporting specialised clusters was acknowledged in the recent Tribunal Red Dot decision 'The University of Melbourne v Minister for Planning (includes Summary) (Red Dot) [2011] VCAT 469'.*
 - (b) *In Paragraph 32, it was stated that:
"Benefits flow to successful cities from clusters of specialised activities and their capacity to capture and retain the intellectual capital developed by institutions within those clusters"*
 - (c) *The addition of a new fashion school will reinforce the strength of the area which in turn will reinforce the policy objective in clause 17 to support and foster economic growth and development in Melbourne. Gertrude Street is known for its diverse and innovative fashion retailers, it can be assumed that a cluster of fashion minded people will be living in the vicinity or at least regularly visit the area. The proposed use will therefore service a local need, as well as reinforcing a valued characteristic. It should also be important to note that the students will have a chain-reaction effect on the surrounding businesses including art supplies stores and food and drinks premises, adding to the economic activity in the area.*
88. This view of the benefits of supporting the clustering of knowledge and education to create specialised hubs/areas is recognised at clause 17.02-2 (*Innovation and Research*). Policy at clause 21.06 encourages this sort of use to be located in areas which can be integrated with local and regional communities. The proposal satisfies this policy objective given its position in an area which is highly accessible to public transport. The subject site is located within 160m of the Smith Street Major Activity Centre to the east, 180m to the south is the Gertrude Street neighbourhood activity centre and 250m to the west is the Brunswick Street Major Activity Centre. Public transport runs along all of these streets and all are within walking distance from the subject site.

Use

89. Clause 22.05 (*Interface uses policy*), 32.09-13 (*Neighbourhood Residential Zone*) and 22.01 (*Discretionary Uses in a Residential Zone*) of the Scheme identifies that there is a need to support commercial uses and ensure they are well managed with regard to amenity impacts and their proximity to residential uses. As demonstrated above, the location of the use is supported in a strategic sense, however, policy also recognises that when residents are located nearby to commercial uses there are inherent interface conflicts where some uses are not well managed. As such, Clause 22.05, 32.09-13 and 22.01 requires that non-residential uses and development is designed and managed to minimise noise and amenity impacts upon nearby, existing residential properties. The policy provides decision guidelines which, relevant to the proposed amendment, includes noise and rubbish removal (noting that car parking and traffic will be discussed later in this report).

Noise

90. The applicant submitted an acoustic report (prepared by Acoustic Dynamics and dated 19 February 2021) to address the proposed increase in students. The acoustic report was referred to Council's acoustic consultants (SLR). It is noted the applicant did not provide an amended acoustic report as part of the section 57A amendment material. As the Section 57A amended plans deleted the screening room, edit/recording suite, video and stage craft rooms in the basement, the discussion in the applicant's acoustic report and SLRs discussions that relates to these deleted items are no longer relevant. As such the following assessment will not consider these deleted items in detail but will instead focus on all remaining acoustic issues of relevance (including the acoustic impact implications the of changes shown in the Section 57A plans). A condition will require that applicant's acoustic report is amended to reflect the changes to the basement shown in the section 57A amended plans. Council's Acoustic Consultant SLR reviewed the submitted report under a number of topics as follows:

Noise Criteria

91. SLR were generally satisfied with the noise criteria, background noise measurements and assumed noise levels used by applicant's acoustic engineers but pointed out that the relevant legislation has been recently changed and requested the acoustic report be reviewed and subsequently revised to take in to account these new criteria. The applicant is accepting of a condition to this effect. This required revision of the report will also allow for the additional acoustic testing to be conducted when COVID-19 restrictions are not in place. The acoustic engineers and objectors raised concerns that testing was done during this atypical time when the Education centre was not occupied by students.

This requirement for future testing also allows for this matter to be appropriately addressed, along with a condition requiring that additional acoustic treatments be employed should this further testing reveal more stringent acoustic measures are necessary.

Basement noise

92. See figure 9 for the position of a ground floor dwelling above the basement (highlighted in yellow with red dotted outline-lot 56A). Common access areas are also located above with the only remaining private lot directly above the basement being a commercial tenancy at lot 01 (see figure 9). As discussed earlier, the Section 57A amended plans delete the screening room, edit/recording suite, video and stage craft rooms in the basement. Hence advice in relation to these items is no longer relevant and will not be discussed in detail. In terms of remaining basement noise sources, Council's Acoustic Consultant concurred with the applicant's Acoustic Consultant's advice that footfall and voice noise from students was not a concern from the basement.
93. In relation to the section 57A amended plans, further advice from Council's Acoustic Consultant was sought in relation to the remaining acoustic 1on1 teaching pods, the car spaces and bicycle parking area.

Based on the advice provided in the applicant's submitted acoustic report that outlined the acoustic properties of the basement construction, Council's Acoustic Consultant could determine that further acoustic testing was not warranted in relation to the car parking spaces and student bicycle area located below the commercial tenancy and dwelling. Based on this advice, it is not anticipated these areas would generate unreasonable noise disturbance to the properties above.

94. It is noted that Council's Acoustic Consultant advice on the originally advertised plans, outlined the applicant's acoustic analysis, was based on noise monitoring locations located in the basement. Council's Acoustic Consultant recommended conditions requiring the installation of noise limiters in the amplified pod/video cast rooms, the stage craft room and screening rooms and further acoustic testing be done inside the apartment above to allow for a more accurate assessment of the noise impact inside the dwelling. As these rooms have been deleted, conditions to this effect will not be imposed. This same acoustic advice based on the originally advertised plans also indicated this same testing within the apartment above was not required for the 1on1 teaching pods given the high acoustic performance of the pods and that only acoustic instruments with no amplification, are proposed to be played in them.
95. As these 1on1 teaching pods are proposed to be retained as part of the Section 57A amended plans, Council officers sought further confirmation from Council's Acoustic Engineers that acoustic testing was still not required in the dwelling above the 1on1 pods. Council's Acoustic Advisor confirmed this advice however indicated that further acoustic testing and noise limiters should be required in the event that amplified music was to be proposed. Given the applicant's acoustic report states only non-amplified acoustic instruments are to be played in the teaching pods, it is not considered necessary to require further testing be provided based on a scenario where the pods might be used for amplified music in the future.
96. However, given the sensitivity of the residential interface above the pods, a condition require the plans note the 1on1 teaching pods in the basement are used for acoustic non-amplified instruments/music only and with signage to this effect also provided (as recommended by Council's Acoustic Consultant), to supplement the information provided in the applicant's acoustic report. Subject to a condition to this effect, the operation of the basement is considered acceptable from an acoustic perspective.

Level 2 noise

97. Council's Acoustic Consultant raised further concerns that the acoustic testing for noise transfer through the level 2 education centre floor to the level below was conducted only in the commercial areas and not the residential property. See figure 10 for the position of a ground floor dwelling, highlighted in yellow with red dotted outline. As with the basement, Council's Acoustic Consultant indicated that noise transfer to the commercial areas below on level 1 was acceptable.
98. However, Council's Acoustic Consultant indicated that noise from the Level 2 sewing room (studio 2), the lecture room (studio 3) and the quiet study/library/exhibition area to the dwelling below has not been adequately quantified and the location of the sewing room, which is effectively a light industrial space, above a residential dwelling is a high risk item for acoustics. They suggested this noise is quantified by measurements in the potentially impacted apartment while the sewing room, the lecture room and the quiet study/library/exhibition area are operating and occupied at capacity. If an exceedance is measured, they requested advice should be provided for achieving compliance.
99. They acknowledged that while the building appears to have good air borne sound insulation, and the proposed matting suggested to be installed to control impact noise for chairs banging and being dragged appear reasonable, it remains that this cannot be confirmed until testing is done inside the residential apartment below. The acoustic engineers also requested that this review testing would also take into consideration footfall noise from students and noise from cleaners occupying the facility at night. Finally, the plans do not detail the full extent of the sewing room in the north-west corner. A condition will require this detail.

Other noise sources and increased student numbers

100. All of the conditions outlined above are thought to adequately address the noise impacts from the proposed education centre. However, objectors have raised concerns in relation to noise impacts from students loitering in common areas in the building and outside the building. It is considered that this noise can be further managed through additional mitigation methods such as an Operation Management Plan. As such, an Operation Management Plan will be required via condition and will be required to include the following details/commitments relating the use:
- (a) Staffing and other measures which are designed to ensure the orderly arrival and departure of patrons including prevention of student loitering in common areas and immediately outside the building.
 - (b) A contact phone number for the centre's management should be made available to neighbours to facilitate communication and resolve concerns.
 - (c) Details of staff training.
101. The combination of these management methods in addition to the other acoustic measures described earlier, the education centre operation should be appropriately managed to control noise impacts resulting from the increase in students. On-balance, the proposed increase in student population from 78 to 220 is considered acceptable, particularly given the history of an education centre being in operation in the building since 1997 as outlined in the Permit History assessment.

Increased hours of operation

102. It is proposed to increase the approved hours of operation by 1 hour on Fridays from 5pm to 6pm. This is not a significant increase and will not result in students being present at the site late in the evening and so is considered acceptable. The additional operating hour also conforms with policy at clause 32.09-13 (*Discretionary Uses in a Residential Zone*) which states '*Hours of operation should be limited to 8am to 8pm*'.

Waste removal

103. The applicant has provided a Waste Management statement which states that; given the education centre is currently operating with 220 students, there is no increase in existing waste management generation and with existing waste operation being acceptable. This is not considered to sufficiently address this matter as it does not detail whether the existing bin sizes and types are in accordance with the required rates under relevant guidelines. As such (and in line with the advice of Council City Works Unit) a condition will require that a full waste management plan is provided to ensure appropriate bin sizes are provided and that waste storage and collection will be appropriately managed. The floor plans also do not show the position of the bin storage area, a condition will require this detail.

[Built form](#)

104. With regards to the built form changes, the majority of the changes are internal and relate the fit out of the building and do not require a planning permit. These changes have been outlined in detail in the proposal section and are considered to be acceptable subject to the acoustic conditions outlined earlier that seek to manage noise issues associated with the repositioning of rooms, particularly those above the level 1 residential apartment.
105. Similarly, the internal fit-out of the basement does not require a planning permit and so are also acceptable.
106. Objectors have raised concerns that the internal fit out does not provide for enough toilets to be provided for the students. This is a building matter and not a relevant planning consideration. Regardless of this, the applicant has confirmed that the provision of toilet facilities is in line with the building regulation requirements.
107. Objectors have also raised concerns in relation to fire safety in the basement. This is a building matter and not a relevant planning consideration.

108. The addition of the pedestrian door to the roller entry from Webb Street will allow for bicycle access to the basement and continued vehicle access. The Webb Street entry will remain a secondary entry with main access to second floor education centre retained via George Street, and so it is considered that this entry would not unreasonably increase activity outside the building on this frontage. Students are able to access the 1on1 teaching pods via the existing lift to the basement with students only using the Webb Street entrance to drop-off and collect their bicycles and access lockers at the start and end of the day. This additional activity associated with bicycle drop off and collection is considered acceptable as the 28 spaces would allow for an approximate combined maximum 56 uses of the pedestrian door in the morning and evening peak. Further, this part of the building is currently used as a vehicle access point and is not immediately proximate to a sensitive residential use, as such, this is considered an appropriate position to locate the bicycle access and minimises disturbance to residential properties.
109. Objectors raised concerns with noise and loitering disturbances associated with students currently tying bicycle to poles along the George Street frontage. The relocation of the bicycle spaces to within the basement also resolves this issue. Objectors also raised concerns that the Section 57A application documentation did not clarify whether the roller would be open during operating hours, creating security concerns. The applicant has since clarified that to provide improved security, motor vehicle and bicycle access would be provided via swipe car access and so the doors will remain closed apart from ingress and egress. A condition will require this arrangement is formalised.
110. A permit is also required for the demolition of part of the roller door and a new pedestrian door (see figure 2) under the Heritage Overlay. It is noted the original application proposed two new pedestrian doors with a new infill wall around the doors (see figure 1). Council's Heritage Advisor provided informal advice on this item and indicated it would be preferable for the infill around the doors to be removed or to have a metal appearance to better blend with the appearance of the existing roller door. In response to this advice, the section 57A amended plans removed the infill material and one of the pedestrian doors. Council's Heritage Advisor has reviewed the amended design and indicated that the new single pedestrian door is acceptable from a heritage perspective.
111. Further to this, the pedestrian door is to be installed within a modern roller door. As such it will not result in the loss of any heritage fabric. It is appropriately placed away from the principal heritage facade (to George Street) and incorporated into a doorway that already has a modern appearance and so will not appear out of place. It is of simple design and typical of pedestrian doors that are inserted into roller doors and so will not have an incongruous appearance in the heritage streetscape. Based on this and the support from Council's Heritage Advisor, the proposed pedestrian door is considered acceptable. It is noted the plans do not show demolition required to accommodate the pedestrian door, a condition will address this.

Car parking and bicycles

Car parking reduction

112. Pursuant to clause 52.06 (*Car parking*) an education centre has a required rate of 0.3 spaces per student. The existing permit approved a waiver of thirty four (34) car parking spaces and required 6 car parking spaces for the education centre with 78 students. The subject amendment proposes to reduce the number of car spaces to 3 (one of these being an accessible space) so a reduction is required for the loss of 3 existing spaces. The amendment also proposes to increase the total student population to 220, allowing for an additional 142 students above the 78 currently approved. The table at paragraph 34 details a total car parking reduction of 42 spaces is required.
113. Pursuant to Clause 21.06-2 and 18.02-2R of the Yarra Planning Scheme, a reduction in the reliance on the private motor vehicle is one of the broader strategic objectives of Council's Municipal Strategic Statement and promotes development near high-quality public transport routes. Allowing for a reduction in the car parking provision for new development, where strategically appropriate, can assist in achieving the policy objective.

114. As outlined in the site description, the subject site has excellent access to various public transport modes and is provided with the required infrastructure to promote cycling and walking and as such, is identified as an appropriate location to consider reductions in the car parking requirements of Clause 52.06. The subject site is located on George Street, which is well serviced by public transport, such as the tram lines running along Brunswick, Gertrude and Smith Streets and routes 200, 201, 202, 203, 205, 207 and route 302 bus lines which run along Johnston Street to the north.
115. Along George Street is 4 hour restricted parking during business hours to the immediate site frontage. The remainder of the eastern side to Gertrude Street (to the south) is permit parking or 1 hour restricted. On the western side of George Street between Gertrude Street and Webb Street, permit and 1 hour restricted parking is provided. On both sides of George Street between Webb Street and Condell Street (to the north) parking is 2 hour restricted. Along the Webb Street, between George Street and Gore Street parallel parking is provided on both sides being 4 hour parking and including a loading zone on the south side and 1 hour on the opposite side.
116. A Traffic Impact Assessment (prepared by One Mile Grid and dated 15 April 2021) was submitted with the amendment application and surveyed 51 staff and students to establish their existing travel patterns which showed 4% travelled by bicycle, 75% travelled by public transport, 4% walk and 18% travel by car. The data suggested a parking demand rate of 0.18 spaces per person which equates to a reduction of 25 spaces. Significantly they noted that only one of the staff surveyed parked on site with the remainder using paid or timed parking in the area. This reflects the operation of education institutions where staff and students are often not on site all day but often only attend for part of day during teaching slots, which reduces and staggers the overall demand for car parking through the day.
117. The Traffic Impact assessment provides data of an empirical study of transit patterns and car parking demand for inner-city education centres from the Victorian Integrated Survey of Travel and Activity (VISTA) that identifies only 11% of education trips within Yarra were undertaken by car drivers, excluding any trips associated with primary or secondary education. Based on these expectations, it is forecast that the additional students would generate an actual demand for approximately 15 car parking spaces.
118. The expectation is that staff and students will take advantage of the numerous public transport options available within the immediate vicinity of the site, given the heavily restricted nature of on-street car parking in the area. This view that students and staff will gravitate to public transport options given the restricted nature of available car parking is further outlined in the applicants submitted traffic engineers report, as follows:
- (a) *For developments with reduced parking supply, and where on-street parking in the area is unrestricted, it is often observed that long term resident, visitor or employee parking may occur on-street. Conversely, where on-street parking surrounding a development with a reduced parking supply is restricted, this often drives a change in travel choice, as staff and visitors will know that long-term parking is generally unavailable in the area if they are not provided with an on-site parking space.*
 - (b) *A review of parking restrictions in the area surrounding the proposed development indicates that on-street parking is heavily restricted, with almost all parking protected with either Permit Zone or times restrictions to limit overstay and disincentivise car parking in the precinct.*
119. The amendment application and Traffic Impact Assessment was referred to Council's Engineering Services Unit who considered the assessment prepared by Impact to be consistent with their expectations of an education centre. There are also quite a few offices and residents also generating demand for on-street parking spaces. The key driver is the parking restrictions, with this disincentivizing students to drive given high demand, with this is discussed in the paragraphs above. The also expressed similar views to that outlined above in the applicants traffic report stating:

- (a) *The on-street parking demand in this part of Fitzroy is very high, especially during business hours. The introduction of parking sensors along Brunswick Street ensures the turnover of parking throughout the day. The high demand for short-stay on-street parking would be a disincentive for staff and students to commute to and from the site by private motor car. Staff and students who may require to drive would likely use a commercial off-street car park. Alternatively, staff and students may choose to commute to and from the site by using sustainable transportation options such as catching public transport, cycling, or walking.*

120. While the applicants traffic survey acknowledges that 18% of those surveyed currently travel to the site by car, the submitted of the Green Travel Plan aims to reduce this figure to 10% through encouraging the greater uptake of Green travel modes (discussed further later in this assessment). This commitment to reduce driving to the site is demonstrated by the provision of 28 on-site bicycle spaces. For these reasons and that Council's Engineers have supported the proposed car parking reduction, the on-site car parking provision is considered acceptable.

Green Travel Plan and bicycle spaces

121. The applicant has submitted a Green Travel Plan to support the take up of sustainable travel modes by staff and students with the aim to increase the proportion of sustainable transport use to 90% of trips to the site. It is noted the Green Travel Plan was submitted as part of the original application when 10 bicycle spaces were proposed and so does not reflect the 28 spaces currently proposed as part of the section 57A amended application. The original application also proposed hanging spaces only which has been amended to include only at grade hoops, which greatly improves their accessibility. A condition will require the Green Travel Plan is updated to reflect the increased bicycle provision and revised layout.
122. The applicant has committed to implement a number of other Green Travel Initiatives to encourage the use of pedestrian, bicycle and public transport travel to and from the site. The initiatives included in the package are outlined as follows.
- (a) A Green Travel Plan "Champion" will be appointed by the operator who will be responsible for the implementation and ongoing management of the Green Travel Plan.
 - (b) All new staff and students will be issued a digital 'welcome pack', which will include the following:
 - (i) Links to maps of surrounding bicycle facilities and routes;
 - (ii) Links to public transport maps and timetables;
 - (iii) A map depicting the site and the location of public transport stops in the vicinity;
 - (c) Real-time public transport information will be displayed within the building, comprising a display device connected to the PTV App, displaying departure times for public transport services in the vicinity of the site.
 - (d) To encourage public transport use, information sourced from Public Transport Victoria (PTV) will be provided on the company website and student/staff portals. The information detailed will address local services in regard to frequency, location and linkages to other networks.
 - (e) Information on how to utilise the public transport system, and in particular how to purchase a Myki, the costs of a Myki, and the nearest Myki purchase and top-up locations will also be provided.
 - (f) Staff will be encouraged to car pool to the site with links to popular car pool matching websites provided on staff portals.
 - (g) In order to monitor the success of the aforementioned initiatives, it is proposed that a monitoring system be implemented, and the Green Travel Plan "Champion" be responsible for the ongoing monitoring and assessment of the Green Travel Plan.

- (h) It is proposed that the staff and student travel mode survey be repeated at 12-month intervals and the results analysed to establish trends in private vehicle usage. The survey shall include questions to establish how sustainable transport could be better supported. The operator, in particular the Green Travel Plan “Champion”, shall be responsible for the maintenance of the Green Travel Plan, which shall be updated regularly to ensure it is still relevant, and achieving the required results.
123. Council’s Strategic Transport Unit has reviewed the submitted Green Travel Plan and has indicated it is suitable for endorsement. They also indicated the provision of 28 bicycle spaces exceeds the required provisions of clause 52.34 by 17 spaces. They also reviewed the bicycle layout and spacing on the Section 57A plans and indicated this aspect is acceptable, apart from a request that the pedestrian gate to Webb Street be widened to 1m to allow easier access. The applicant is accepting of a condition to this effect.
124. In summary, the further reduction in the car parking requirements is considered appropriate and should not result in an unreasonable impact on existing car parking conditions in the area. The site is well placed for easy pedestrian and bicycle access, lessening the potential for traffic and congestion near to the site. This is further supported by the location of the site near to both housing and commercial employment precinct which are likely to be the key catchment areas for the use.
125. Further the Green Travel Plan will be endorsed as part of this permit and will further reduce demand for on-street car parking generated by the proposal in the future. A further will condition will require the position of real-time public transport information screen is noted on plans to ensure it is within the education centre lobby rather than in the building common area lobby (to reduce the potential for students loitering in common areas causing disturbance to residents in the building). For all off these reasons, the further reduction to the car parking requirements of Clause 52.06 is supported.

Engineering conditions

126. Council’s traffic engineers were satisfied with the layout, the dimensions and allocation of the proposed car parking spaces. One visitor space is proposed, one fleet space (with the applicant confirming staff will access to the shared fleet vehicle) and one accessible space for the use of staff and visitors. The applicant has also confirmed that the admin team at the education centre will administer visitor access to the spaces. Staff and students will access the basement for vehicle and bicycle access using electronic swipe card system. They were also satisfied with the retention of the existing crossover for access and with the shared use of the ramp for motor vehicle and bicycle access. However, they did raise some concerns with the ramp as follows:
- (a) *It is noted the Section 57A advertised plans do not show the minimum width of the vehicle access ramp. The plans also show a nib wall protruding into the ramp where it enters the basement. The applicant confirmed the ramp has a minimum width of 3.0 metres and that the nib wall is not present (with photo provided to demonstrate this). The plans must be updated to notate the minimum 3.0 metre ramp width and the removal of the nib wall.*
- (b) *At 3.0 metres wide, the ramp is adequate to accommodate only B85 vehicles (cars) and not B99 vehicles (small vans and large SUVs). Of concern is that B99 vehicles may attempt to access the ramp, in particular, to access the accessible space. To prevent this, a condition should require signage be placed in a clearly visible position at the ramp entrance advising the basement is not accessible to larger vehicles including small vans and larger SUVs (B99 Vehicles).*
127. While the vehicle ramp is an existing condition and therefore not part of the current consideration, the applicant is accepting of a condition warning drivers as to the size restriction. As such a condition will be included. The proposed plans also show a slight re-alignment of the ramp, however the applicant has confirmed this is a plan drafting error and there are no changes proposed.

The applicant is accepting of a condition requiring this drafting error is corrected, along with the nib wall correction and ramp width notation as requested by Council's Engineers.

128. Council's traffic engineers also requested the imposition of standard conditions and notes relating to the repair of any damage Council infrastructure and relocation of any assets. Relevant permit conditions and notes will be imposed with the applicant raising no concerns with these requested items.

Objector concerns

129. Council received 19 objections, the grounds of which are summarised as follows:
- (a) Traffic and car parking impacts
 - (b) Heritage impact of pedestrian door design (streetscape)
 - (c) Noise and security issues from use
 - (d) Construction concerns
130. The majority of the issues which have been raised by the objectors have been addressed within this report. The following section provides a recap of the issues raised by objectors and further discussion provided on issues raised that have not be previously discussed in this report. Further detail of the concerns raised are as follows:
- (a) Reducing car parking provisions creating increase demand for on-street car parking,
 - (i) The car parking issues have been discussed in detail in the Car parking and bicycle spaces assessment between paragraphs 107 and 120.
 - (b) Insufficient provision of on-site car parking and student toilets,
 - (i) The existing male toilets have been retained with an additional 14 toilets provided on the second floor which would appear to be sufficient to accommodate the proposed use. The ratio of toilets required is a consideration under the Building Regulations and not a relevant planning matter.
 - (c) Planned works in common property areas cannot occur without Body corporate consent,
 - (i) This is not a planning consideration and is instead a civil matter.
 - (d) Concerns re waste management,
 - (i) This issue has been discussed in detail in the Waste assessment at paragraph 98.
 - (e) Concern with impact of the construction of the pedestrian door to the roller door will have on the heritage significance of the building,
 - (i) This issue has been discussed in detail in the *Built Form* assessment between paragraphs 105 and 106.
 - (f) Concerns that proposed basement area may not be compliant with relevant fire regulations,
 - (i) This issue has been discussed in detail at paragraph 102.
 - (g) Behaviour of students;
 - (h) Security risk to existing dwellings due to additional students and visitors in the complex,
 - (i) Concern with proposed extended hours of operation,
 - (j) Cleaners cleaning the education centre causing noise disturbance late at night, and
 - (k) Concern that acoustic report noise logging occurred during COVID-19 lockdown.
 - (i) These issues have been discussed in detail in the *Noise* assessment between at paragraphs 85-97 and 104.
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- (l) Seeking detail of bicycle and car access arrangements to basement.
 - (i) This issue has been discussed in detail at paragraph 104.
- (m) Concern bicycle area too small.
 - (i) This issue has been discussed in detail at paragraph 118.

Conclusion

131. Based on the above report, the proposal is considered to substantially comply with the relevant planning policy, subject to the conditions discussed throughout this report, and therefore should be supported.

RECOMMENDATION

That having considered all objections and relevant planning policies, the Planning Development Committee resolves to issue a Notice of Decision to Grant a Planning Permit PLN10/1063.01 for use as an education centre, buildings and works and partial demolition and associated reduction in the car parking requirements at lot 12&11A/156 George Street, Fitzroy (including common property) subject to the following conditions and amended permit preamble (with amended/new conditions in bold):

Existing permit preamble

Change of use for an education centre (fashion school).
Proposed per preamble

Use as an education centre, buildings and works and partial demolition and associated reduction in the car parking requirements.

1. **Within 3 months of the date of this amended permit (PLN10/1063.01) 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 No A02 (dated 05/09/2021), A07 (dated 01/12/2020), A08 (dated 05/09/2021) and C02 (dated 23/12/2019) but modified to show:**
 - (a) **An existing Webb Street elevation updated to show proposed demolition to accommodate the new pedestrian entry,**
 - (b) **Detail the position and wording of a sign at the entrance to the basement car park to advise drivers with a large SUV or small van (B99 vehicles) not to enter the basement car park ramp,**
 - (c) **Confirm the following for the basement ramp:**
 - (i) **Accurately show existing ramp conditions/position on all plans, confirming no change is proposed,**
 - (ii) **Detail a minimum width of 3.0 metres, and**
 - (iii) **Delete the protruding nib wall shown at the end of the ramp.**
 - (d) **Detail the position of real-time public transport information screen within the second-floor education centre lobby,**
 - (e) **Specify 1on1 teaching pods in the basement are used for acoustic and non-amplified instruments/music only with the position of advisory signage to this effect also noted,**
 - (f) **Annotate lockers shown within the basement,**

- (g) **Notation stating the pedestrian gate and roller door to Webb Street will remain closed apart from ingress and egress with staff and students provided with electronic/card access,**
 - (h) **Pedestrian/bicycle access gate to the Webb Street roller door to have a width of 1m,**
 - (i) **The full extent of the sewing room in the north-east corner of the site, and**
 - (j) **Position and size of the bin storage area in accordance with the endorsed Waste Management Plan pursuant to Condition 13.**
2. The use and development must accord with the endorsed plans. Any alterations must be approved by the Responsible Authority.
3. The **education centre** must operate between the following hours:
- (a) Monday to Thursday 8.00 am to 10.00 pm
 - (b) Friday 8.00 am to 6.00 pm
 - (c) Saturday 8.00 am to 5.00 pm
 - (d) Sunday Closed
4. The **education centre** is to have no more than **220** students on the premises at any one time.
5. **No fewer than twenty eight (28) bicycle spaces are to be provided on site for the use at all times.**

Green Travel Plan

6. **Within 6 months of the date of this amended permit (PLN10/1063.01), an amended Green Travel Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The amended Green Travel Plan must be generally in accordance with the Green Travel Plan prepared by One Mile Grid dated 15 2021, but modified to address the following:**
- (a) **The changes in the basement layout detailed in section 57A amended decision plan No A02 (dated 05/09/2021) and any subsequent changes pursuant to Condition 1.**
7. The provisions, recommendations and requirements of the endorsed Green Travel Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

Acoustic report

8. **Within 6 months of the date of this amended permit (PLN10/1063.01) or within 3 months of the education centre operating at full capacity, an Acoustic Report to the satisfaction of the Responsible Authority must be prepared by a suitably qualified acoustic engineer and must be submitted to and approved by the Responsible Authority. The amended Acoustic Report must be generally in accordance with the Acoustic Report prepared by Acoustic Dynamics and dated 19 February 2021, but modified to show/address the following:**
- (a) **The changes in the basement layout detailed in section 57A amended decision plans No A02 (dated 05/09/2021) and any subsequent changes pursuant to Condition 1,**

- (b) All noise including background, machinery/plant, footfall noise, furniture impacts and music noise emissions from the nominated 'sewing room' and other spaces at second level above the apartment located below the education centre on level 1 on at least two separate dates between 8:00am- 6pm and an assessment of noise from cleaning activities and whilst cleaning is undertaken out of hours,
 - (c) The report must demonstrate compliance with the noise limits determined in accordance with the EPA Noise Protocol, including the sleep disturbance criteria to the satisfaction of the Responsible Authority. If any exceedance is detected, the report must include remedial recommendations for approval by the Responsible Authority. All approved remedial action must be undertaken on site within 3 months of the submission of the acoustic report to Council, and
 - (d) The acoustic report must assess the compliance of the use and, where necessary, make recommendations to limit the noise impacts in accordance with Environment Protection Regulations under the Environment Protection Act 2017 and the incorporated Noise Protocol (Publication 1826.4, Environment Protection Authority, May 2021) or any other requirement to the satisfaction of the Responsible Authority.
9. The provisions, recommendations and requirements of the endorsed Acoustic Report must be implemented and complied with to the satisfaction of the Responsible Authority.
10. The use must at all times comply with the noise limits specified in the Environment Protection Regulations under the Environment Protection Act 2017 and the incorporated Noise Protocol (Publication 1826.4, Environment Protection Authority, May 2021).

Operation Management Plan

11. Within 6 months of the date of this amended permit (PLN10/1063.01) an Operation Management Plan must be submitted to the satisfaction of the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit. The plan must include:
- (a) Staffing and other measures which are designed to ensure the orderly arrival and departure of patrons including prevention of student loitering in common areas and immediately outside the building.
 - (b) A contact phone number for the centre's management should be made available to neighbours to facilitate communication and resolve concerns.
 - (c) Details of staff training.
12. The provisions, recommendations and requirements of the endorsed Operation Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

Waste Management Plan

13. Within 6 months of the date of this amended permit (PLN10/1063.01) 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 Lid and dated 21/09/2020, but modified to include:
- (a) Show on-site bin storage area,

- (b) Identify waste generation rates for general waste, recycling, glass and food waste
 - (c) Appropriate bin storage provided for each waste stream as outlined by condition 13(b),
 - (d) Address E-waste management and identify an e-waste storage area,
 - (e) Identify private collection will be provided a detail the frequency of collections, and
 - (f) Cleaning procedures/vermin management procedures for the bin room/area.
14. The provisions, recommendations and requirements of the endorsed Waste Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.
15. Rubbish must at all times be stored within the building and screened from external view. Refuse and recycling collection must not take place before 7.00 am and after 10.00 pm on any day.
16. Within 6 months of the date of this amended permit (PLN10/1063.01), 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.
17. Within 6 months of the date of this amended permit (PLN10/1063.01), or by such later date as approved in writing by the Responsible Authority and subject to the relevant authority's consent, the relocation, pits, structures and service poles necessary to facilitate the development must be undertaken:
- (a) in accordance with any requirements or conditions imposed by the relevant authority;
 - (b) at the permit holder's cost; and
 - (c) to the satisfaction of the Responsible Authority.
18. This permit will expire if:
- (a) the development is not commenced within two years of the date of this amended permit (PLN10/1063.01).
 - (b) the development is not completed within four years of the date of this amended permit (PLN10/1063.01).
 - (c) the use is not commenced within 2 years of the date of this amended permit (PLN10/1063.01).
 - (d) The use is discontinued for a period of two years.

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.

NOTES

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

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

Students and staff of the **education centre** will not be eligible for parking permits.

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

Attachments

- 1 PLN10/1063.01 - 156 George Street - Original Advertised Plans
- 2 PLN10/1063.01 - 156 George Street- Acoustic comments on originally advertised plans
- 3 PLN10/1063.01 - 156 George Street Fitzroy - Section 57A Amendment Plans
- 4 PLN10/1063.01 - 156 George Street - Section 57A acoustic comments
- 5 PLN10/1063.01 - 156 George Street - Section 57A Heritage comments.
- 6 PLN10/1063.01 - 156 George Street - Section 57A engineering comments
- 7 PLN10/1063.01 - 156 George Street - Section 57A Strategic Transport comments

6.3 PLN21/0504 - 42 O'Grady Street Clifton Hill – Use of the land as a medical centre, a reduction in the car parking requirements of the Yarra Planning Scheme and the display of business identification signage.

Executive Summary

Purpose

1. This report provides Council with an assessment of the application at No. 42 O'Grady Street Clifton Hill for the use of the land as a medical centre, a reduction in the car parking requirements of the Yarra Planning Scheme and the display of business identification signage.

Key Planning Considerations

2. Key planning considerations include:
 - (a) Clause 32.09 (Neighbourhood Residential Zone) and 22.01 (Discretionary Uses in the Residential Zone)
 - (b) Clause 52.06 and Clause 18.02-2R (Car Parking)
 - (c) Clause 52.05 and 22.04 (Signage)
 - (d) Clause 43.01 and Clause 22.02 (Heritage)

Key Issues

3. The key issues for Council in considering the proposal relate to:
 - (a) Use (Medical Centre)
 - (b) Car parking and traffic
 - (c) Advertising signage
 - (d) Objector concerns

Submissions Received

4. Thirteen (13) objections were received to the application, these can be summarised as:
 - (a) Not in keeping with residential area
 - (b) Set precedent for other non-residential uses
 - (c) Building and location is not appropriate for the proposed use
 - (d) Noise from visitors and patients
 - (e) Privacy concerns
 - (f) Traffic impacts and car parking availability
 - (g) Noise and pollution from waste collection
 - (h) Inadequate access to on-site car parking space
 - (i) The plans do not show the abutting dwelling correctly
 - (j) Business (with signage) will impact the sale and rental value of neighbouring properties
 - (k) Reducing options in the housing market
5. Five (5) letters of support were received to the application, these can be summarised as:
 - (a) Provides service for the community needs
 - (b) Any impact is likely to be minimal due to the proposed scale and nature of the use

- (c) Adequate availability of on-street car parking
- (d) Attest to the quality and character of the Applicant and their practice

Conclusion

6. Based on the following report, the proposal is considered to comply with the relevant planning policy and should therefore be supported subject to the following key recommendations:
- (a) No more than three (3) practitioners are permitted to operate from the land at any one time.
 - (b) Except with the prior written consent of the Responsible Authority, the use authorised by this permit may only operate between the hours of 8am to 8pm, seven days a week.
 - (c) Except with the prior written consent of the Responsible Authority, each practitioner must carry out no more than 10 appointments per day.

CONTACT OFFICER: Jessica Sutherland
TITLE: Statutory Planner
TEL: 9205 5365

6.3 [PLN21/0504 - 42 O'Grady Street Clifton Hill – Use of the land as a medical centre, a reduction in the car parking requirements of the Yarra Planning Scheme and the display of business identification signage.](#)

Reference D21/139724
Author Jessica Sutherland - Statutory Planner
Authoriser Coordinator Statutory Planning

Ward: Nicholls Ward
Proposal: Use of the land as a medical centre, a reduction in the car parking requirements of the Yarra Planning Scheme and the display of business identification signage.
Existing use: Single dwelling
Applicant: Nisha Brown – Due North Children's Heath Group
Zoning / Overlays: Neighbourhood Residential Zone (Schedule 1)
Heritage Overlay (Schedule 316)
Development Contributions Plan Overlay (Schedule 1)
Date of Application: 21 July 2021
Application Number: PLN21/0504

Planning History

1. Planning Permit PL08/0125 was issued on 22 July 2008 for *alterations and additions including the construction of a ground-floor extension, gates and fence to the rear of the existing dwelling including partial demolition*. The permit was acted on and works completed.

Background

2. The application was received by Council on 21 July 2021, with further information provided on 24 August 2021. The application was advertised in September 2021, with thirteen (13) objections and four (4) letters of support received.
3. No consultation meeting was held.
4. Although the business identification sign was identified in advertised plans, it was not specifically included in the advertising preamble (as advertised in September). The application was granted an exemption from re-advertising, at Council's internal panel held on 5 October 2021, given that the modest sized sign was clearly identified in plans and it would not result in a detriment to other persons.

[Planning Scheme Amendments](#)

Amendment C269

5. Amendment C269 proposes to update the local policies in the Yarra Planning Scheme by replacing the Municipal Strategic Statement (MSS) at Clause 21 and Local Planning Policies at Clause 22 with a Municipal Planning Strategy and Local Policies within the Planning Policy Framework (PPF), consistent with the structure recently introduced by the State Government.
6. Amendment C269 was adopted by Council on 3 August 2021 and has proceeded to a panel hearing (October 2021). In relation to this current planning application, the following clauses are of most relevance:
 - 13.07-1L – Interfaces and Amenity;

- 17.01-1L – Employment
- 18.02-4L – Car parking

7. The above clauses are largely reflected in current planning policy and will not be contradictory to the proposed re-write of Clauses 21 and 22.

The Proposal

Use

8. The use of the land as a medical centre to provide therapy services (physiotherapy and occupational therapy) to children.
9. Provided within an existing single storey building (133sqm in area) with three consultation rooms and a reception area.
10. No more than three (3) practitioners and an assistant on the land at any time.
11. To operate between 8am and 8pm every day of the week.
12. A maximum of 8 persons (visitors) on the land at any time, including all patients (children), carers and visitors in waiting rooms. Appointments will vary between 30 to 90 minutes in duration.
13. Appointments will be through an online booking system.
14. Each practitioner will see between 5 to 10 patients per day.

Car parking

15. One car parking space is provided at the rear, as accessed via existing gates to Rose Street. The space will be provided for visitors.

Signage

16. Display of business identification signage (not illuminated) on the building façade adjacent to the front entry. The sign will be 600mm by 600mm.

Existing Conditions

Subject Site

17. The subject site is located on the northern side of O'Grady Street, approximately 50 metres west of Fenwick Street, in Clifton Hill. The site is rectangular with a frontage to O'Grady Street of 6.4 metres and an approximate site area of 256sqm. The site is bound by Rose Street to the north.
18. The site is developed with a single storey building, previously used as a dwelling, which has a small front set back and metal fence. The building consists of an entry and corridor along the western boundary, three rooms off the corridor, a bathroom and large open room at the rear. The building is generally constructed to both side boundaries except for a 1 metre set back from the eastern boundary at the front, providing for a secondary entry to the building down the side set back. The building has windows facing south to O'Grady Street, east into the side setback and north to the outdoor area.
19. An outdoor area is provided at the rear (north) which is accessed via gates (with a width of 2.44 metres) from Rose Street.
20. A party wall easement is shown on the submitted title, however, it remains unaffected by the subject application. The title does not include any other restrictions or covenants.



Image 1: the subject site as it presents to O'Grady Street (source: Officer site visit, October 2021)

Surrounding Land

21. The surrounding area is predominantly residential in nature and is characterised by rows of Victorian and Edwardian era terraces (located in the Clifton Hill Heritage Precinct).
22. Within walking distance of the subject site is:
 - (a) The Spensley Street Neighbourhood Activity Centre (**NAC**) which provides for retail opportunities and community services and is a 300 metre walk to the south-west.
 - (b) Clifton Hill Station, a 430 metre walk to the west.
 - (c) A bus route along Heidelberg Road (to the north), with the nearest stop a 100 metre walk from the subject site.
 - (d) Bicycle paths provided on nearby road networks (including Fenwick Street and Heidelberg Road) and extensive networks along the Merri Creek Corridor (within 300 metres) connecting to the Yarra Main Trail to the south-east of the site.

23. Immediately to the west of the subject site is No. 40 O’Grady Street which is developed with a single storey dwelling with a garage constructed to the rear boundary to Rose Street. The dwelling is constructed to the shared boundary so that no windows face the subject site. An area of secluded private open space (SPOS) is provided between the rear of the dwelling and the garage.
24. Immediately to the east is No. 44 O’Grady Street which is developed with a single storey dwelling with a double storey extension and double storey outbuilding (as approved by Planning Permit PL07/0868) constructed at the rear. The Decision Plans do not show the extension which was completed in 2014, however, the endorsed plans for the dwelling show a two storey extension and a garage with office above constructed to the rear title boundary to Rose Street. The first floor office above the garage has opaque glazing provided on the south elevation (facing into the site). The extension has highlight windows facing the subject site at first floor and is provided a lap pool along the shared boundary at ground floor.
25. To the north is Rose Street which functions similarly to a laneway and is characterised by rear fences and garages of properties facing south to O’Grady Street and north to Heidelberg Road.
26. On-street car parking in the immediate area is located along O’Grady Street, Rose Street and Fenwick Street with the following restrictions imposed:
 - (a) 4 hour parking between 7am and 7pm, Monday to Friday, (unrestricted at other times) on the north and south sides of O’Grady Street.
 - (b) 4 hour parking between 7am and 7pm, Monday to Friday, (unrestricted at other times) on the north and south sides of Rose Street.
 - (c) Unrestricted parking on Fenwick Street.



Image 2: Aerial of the subject site (source: NearMap, 1 September 2021)

Planning Scheme Provisions

Zoning

Neighbourhood Residential Zone (Schedule 1)

27. Pursuant to Clause 32.09-2, a medical centre does not require a permit if the following conditions are met:
 - (a) The gross floor area of the buildings does not exceed 250sqm.
 - (b) It is located in an existing building.
 - (c) The land is adjoined, or has access to, a Road Zone.
 - (d) Must not require a permit under Clause 52.06-3.
28. In this instance, the proposed medical centre is located within an existing building with a gross floor area less than 250sqm. However, the site does not have immediate access to a Road Zone and triggers a permit under Clause 52.06-3. Therefore, a permit is required for the medical centre under the Neighbourhood Residential Zone.
29. Pursuant to Clause 32.09-14, sign requirements are at Clause 52.05. This zone is in Category 3.

Overlays

Heritage Overlay (Schedule 316)

30. Pursuant to Clause 43.01-1, a permit is required to construct or display a sign.
31. Pursuant to Clause 43.01-4, an application to construct or display a sign is exempt from the notice requirements of section 52(1)(a), (b) and (d), the decision requirements of section 64(1), (2) and (3) and the review rights of section 82(1) of the Act.
32. The subject site is recognised as Contributory to the Clifton Hill Heritage Precinct (Schedule 316).

Development Contributions Plan Overlay (Schedule 1)

33. Pursuant to Clause 45.06-1, *a permit must not be granted to subdivide land, construct a building or construct or carry out works until a development contributions plan has been incorporated into this scheme.*
34. The subject application is not proposing to subdivide or to construct or carry out works and therefore, the requirements of the overlay are not applicable.

Particular Provisions

Clause 52.05 – Advertising signs

35. Pursuant to Clause 52.05-13 (Category 3 – High amenity areas), business identification signage requires a permit.

Clause 52.06 – Car parking

36. Pursuant to Clause 52.06-2, before a new use commences, the required car parking spaces must be provided on the land.
37. Table 1 at Clause 52.06-5 states that a medical centre is required to provide 3.5 spaces for every 100sqm of leasable floor area (noting that Column B applies as the subject site is located in the Principal Public Transport Network Area).
38. The leasable floor area is 133sqm and therefore the proposed use triggers a car parking requirement of four (4) spaces. One (1) car parking space is provided in the rear outdoor area as accessed via Rose Street, and therefore a car parking reduction of three (3) spaces is required.
39. Pursuant to Clause 52.06-3, a permit is required to reduce the number of car parking spaces required under Clause 52.06-5.

Clause 52.34 – Bicycle facilities

40. Pursuant to Table 1 at Clause 52.34-5, bicycle spaces are required to be provided for a medical centre where four (4) or more practitioners are proposed. As the subject application proposes a maximum of three (3) practitioners the provision is not applicable.

General Provisions

Clause 65 (Decision Guidelines)

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

Planning Policy Framework (PPF)

42. The relevant clauses are as follows:

Clause 11.01 (Victoria)

Clause 11.01-1S (Settlement)

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

Clause 11.02 (Managing Growth)

Clause 11.02-1S (Supply of urban land)

44. The objective of this clause is:

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

Clause 15.01-4S (Healthy neighbourhoods)

45. The objective of the 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 15.01-4R (Healthy neighbourhoods – Metropolitan Melbourne)

46. The strategy is to:

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

Clause 15.03 (Heritage)

Clause 15.03-1S (Heritage conservation)

47. The objective of this clause is:

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

Clause 17.01 (Employment)

Clause 17.01-1S (Diversified economy)

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

49. Strategies to achieve the objective relevantly include:

- (a) *Facilitate growth in a range of employment sectors, including health, education, retail, tourism, knowledge industries and professional and technical services based on the emerging and existing strengths of each region.*

(b) *Improve access to jobs closer to where people live.*

Clause 17.02 (Commercial)

Clause 17.02-1S (Business)

50. The objective of this clause is:

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

Clause 17.02-2S (Out-of-centre development)

51. The objective of this clause is:

(a) *To manage out-of-centre development.*

52. Strategies to achieve this objective include:

(a) *Ensure that out-of-centre proposal are only considered where the proposed use or development is of net benefit to the community in the region served by the proposal or provides small scale shopping opportunities that meet the needs of local residents and workers in convenient locations.*

Clause 18.02 (Movement Networks)

Clause 18.02-1S (Sustainable personal transport)

53. The objective of this clause is:

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

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

54. A relevant strategy of this clause is to:

(a) *Improve local travel options for walking and cycling to support 20 minute neighbourhoods.*

Clause 18.02-2S (Public Transport)

55. 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)

56. A relevant strategy of this clause is to:

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

Clause 18.02-4S (Car parking)

57. The objective of this clause is:

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

Clause 19.02-1S (Health facilities)

58. The objective of this clause is:

(a) *To assist the integration of health facilities with local and regional communities.*

59. The relevant strategies to achieve the objective include:

(a) *Facilitate the location of health and health-related facilities (including acute health, aged care, disability services and community car facilities) taking into account demographic trends, the existing and future demand requirements and the integration of services into communities.*

- (b) *Provide adequate car parking for staff and visitors of health facilities.*

Local Planning Policy Framework (LPPF)

Clause 21.04 (Land Use)

Clause 21.04-4 (Community facilities, hospitals and medical services)

60. The clause provides the relevant objectives and corresponding strategies:
- (a) *Objective 9: to provide community services that meet the needs of a diverse and changing community*
 - (b) *Objective 10: to provide accessible community services.*
 - (c) *Strategy 10.2: Encourage community facilities to locate where they are easily accessible by public transport.*

Clause 21.05 (Built Form)

Clause 21.05-1 (Heritage)

61. A relevant objective of this clause is:
- (a) *Objective 14 – To protect and enhance Yarra’s heritage places.*

Clause 21.06 (Transport)

Clause 21.06-2 (Public transport)

62. The objective of this clause is to “*facilitate public transport usage*”.

63. The strategy to achieve this objective is to:

- (a) *Require new development that generates high numbers of trips to be easily accessible by public transport.*

Clause 21.06-3 (The road system and parking)

64. The objectives of the clause are:

- (a) *To reduce the reliance on the private motor car.*
- (b) *To reduce the impact of traffic.*

Clause 21.08 (Neighbourhoods)

Clause 21.08-4 (Clifton Hill)

65. Figure 11 (*Neighbourhood Map: Clifton Hill*) shows the subject site being near to the Spensley Street NAC, which is identified to have “limited scope for more intense development”

Relevant Local Policies

Clause 22.01 (Discretionary Uses in the Residential 1 Zone)

66. This policy applies to land in the Residential 1 Zone and the objective of the clause is “*to ensure that residential amenity is not adversely affected by non-residential uses*”.

Clause 22.02 (Development guidelines for sites subject to the heritage overlay)

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

Clause 22.04 (Advertising signs)

68. This policy applies to all permit applications for advertising signs. The objective of the clause is to (relevantly) allow for the promotion of goods and services, and to ensure that signs do not detract from the visual amenity of the area.

Advertising

69. The application was advertised under the provisions of Section 52 of the *Planning and Environment Act (1987)* by 32 letters sent to surrounding owners and occupiers and by two signs displayed on site. Council received thirteen (13) objections, the grounds of which are summarised as follows:
- (a) Not in keeping with residential area
 - (b) Set precedent for other non-residential uses
 - (c) Building and location is not appropriate for the proposed use
 - (d) Noise from visitors and patients
 - (e) Privacy concerns
 - (f) Traffic impacts and car parking availability
 - (g) Noise and pollution from waste collection
 - (h) Inadequate access to on-site car parking space
 - (i) The plans do not show the abutting dwelling correctly
 - (j) Business (with signage) will impact the sale and rental value of neighbouring properties
 - (k) Reducing options in the housing market
70. As discussed early in this report, an application to construct or display a sign under the Heritage Overlay is exempt from the notice requirements of section 52(1)(a), (b) and (d), the decision requirements of section 64(1), (2) and (3) and the review rights of section 82(1) of the Act.
71. Five (5) letters of support were submitted, the grounds of which are summarised as follows:
- (a) Provides service for the community needs
 - (b) Any impact is likely to be minimal due to the proposed scale and nature of the use
 - (c) Adequate availability of on-street car parking
 - (d) Attest to the quality and character of the Applicant and their practice
72. No planning consultation meeting was held.

Referrals

73. The application was referred to Council's Engineering Services Unit. Their comments have been included as an attachment to this report.

OFFICER ASSESSMENT

74. The primary considerations for this application are as follows:
- (a) Use (Medical Centre)
 - (b) Car parking and traffic
 - (c) Advertising signage
 - (d) Objector concerns

Use (Medical centre)

75. While the proposed use of the land as a medical centre triggers a planning permit in this instance, if the various conditions outlined at Clause 32.09-2 (Neighbourhood Residential Zone) were met, the medical centre would be an as-of-right use (no permit required). Where specific non-compliance of a condition triggers a permit, the scope of discretion required in determining whether to grant a permit is also limited.

76. In the matter of *Alex Kanzburg v Bayside CC* (VCAT Ref: P1294/2014) Member Wright makes the following findings under Paragraph 21 of his decision:

It follows that where a use is permitted as of right and the only bar is noncompliance with a specified requirement the only considerations relevant to the exercise of discretion to grant a permit are those which arise from that requirement. So where, as in this case, the requirement relates to the provision of car parking, the adequacy of the proposed parking in the circumstances of the particular case is the only relevant consideration.

77. With the above in mind, the ambit of discretion for this application relates primarily to the conditions not met at Clause 32.09-2, that being the statutory car parking requirements at Clause 52.06 (*Car Parking*) of the Scheme, as well as the location of the subject site which does not adjoin or have access to a road in a Road Zone. It also attests to the clear support within the Planning Scheme for medical centres of this scale within residential areas.

78. Despite the guidance provided by the above VCAT decision, consideration of the acceptability of the use will still be given. The assessment will be directed by the relevant decision guidelines of the Neighbourhood Residential Zone at Clause 32.09 and applicable local planning policies - in particular, Clause 22.01 (*Discretionary Uses in the Residential 1 Zone*).

79. The relevant policies of the Discretionary Uses in the Residential 1 Zone at Clause 22.01-3 are as follows:

It is policy that:

- *Existing buildings constructed for non-residential purposes are the preferred location for non-residential uses.*
- *Except on land adjoining and gaining direct access from a road in a Road Zone:*
 - *all required car parking should be on-site*
 - *the scale of the proposed use should be compatible with providing service to the local residential community*
- *Hours of operation should be limited to 8am to 8pm except for convenience shop.*
- *Noise emissions should be compatible with a residential environment.*

80. The above policies are applicable to any non-residential use permitted within a residential zone, which includes a car wash, place of assembly, convenience restaurant and market. Comparatively, a medical centre is not typically associated with adverse amenity risks (such as noise) and as such the policy expectations of Clause 22.01 should be tempered accordingly.

Location

81. The site context within Clifton Hill is highly relevant to the appropriateness of the proposed use. Policies within the Scheme support community services (such as medical centres) within inner-city residential areas with good access to sustainable transport options. In a broader sense, there is a clear policy directive within the Planning Scheme to improve access to jobs and services closer to where people live (Clause 17.01-1S and Clause 21.04-4).
82. The strategy of Clause 15.01-4R (Healthy Neighbourhoods) to “*create a city of 20 minute neighbourhoods, that give people the ability to meet most of their everyday needs within a 20 minute walk, cycle or local public transport trip from their home*” is reflected in the permitted or as-of-right uses of the Neighbourhood Residential Zone, which includes medical centres.
83. More specifically, the Scheme gives clear direction of the appropriate locations for medical centres and health services. Clause 19.02-1S (Health facilities) and Clause 21.04-4 (Community facilities, hospitals and medical services) encourage an integration of health facilities with local communities to ensure that these services are accessible to the community and reflective of its needs.

Nevertheless, Clause 17.01-2 (Out-of-Centre development) of the State Planning Policy Framework aims to “*ensure that out-of-centre proposal[s] are only considered where the proposed use or development is of net benefit to the community and the region*”.

84. In this instance, the proposed use is located within close proximity to (within 400 metres of) a train station, bus routes, a Neighbourhood Activity Centre and various bicycle networks. In terms of its strategic context the subject site is therefore considered to be an example of such a location described in various Local and State policy. Moreover, the limited scale of the medical centre (that being a maximum of 3 practitioners) will ensure the service is commensurate with the local community needs. As submitted in the letters of support received, the proposed practice offers support and care to families with young children in the immediate area, thus providing a community benefit as encouraged by Clause 17.01-2.
85. Clause 22.01-3 states that existing buildings constructed for non-residential purposes are the preferred location for non-residential uses. Although the subject site is a Victorian-era terrace traditionally in use as a dwelling, no external or internal works are required to operate the medical centre at this location. The requirements for a small-scale medical centre are generally limited to consultation rooms, a waiting area and bathroom and, therefore, can be reasonably accommodated in a traditional dwelling. As a result of the modest built form requirements of consultative medical centres, coupled with it being a permitted use in the NRZ, medical centres within former dwellings is relatively common in established residential areas. As will be elaborated on later in this report, it is not expected that the medical centre will result in adverse amenity impacts with regards to noise, waste or light spill and as such, can be appropriately accommodated for in a residential style building without unreasonably impacting the amenity of the area.
86. Although the subject site does not have immediate access to a road zone, it does have indirect access to nearby Heidelberg Road with Rose Street being immediately parallel to the Road Zone and the vehicle access for the subject site being readily accessible from the junction of Heidelberg Road and Fenwick Street. Further, the policy does not indicate that this warrants the refusal of a medical centre. Rather, weighted consideration should be given to the appropriateness of the subject site and immediate context for the proposed use. This is reiterated by the decision guidelines of the Neighbourhood Residential Zone at Clause 32.09-13 which require that the responsible authority give consideration to the compatibility of the use with the residential nature of the area, whether the use generally serves the local community needs, the scale and intensity of the use and the loading and waste requirements. It is noted that the zone also gives consideration to the provision of car parking and traffic impacts however this will be discussed under the *Car Parking and Traffic* section of this report.

Scale of use and amenity impacts

87. The proposal is for a medical centre providing therapeutic services (physiotherapy and occupational therapy) for children, with a maximum number of 3 practitioners at any given time. The medical centre will provide pre-booked appointments between 30 and 90 minutes in duration. The Applicant has also indicated that each practitioner is likely to see between 5 to 10 patients per day. The scale of the use is considered to be generally consistent with servicing the local community, and aligns with one of the key objectives of the Neighbourhood Residential Zone, “*to allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations*”. The limited number of practitioners and the length of appointments would not result in large numbers of people frequenting the site and so is unlikely to generate unreasonable disturbance to nearby residential properties. A condition of any approval would restrict the number of practitioners on-site at any one time to a maximum of three (3).

Further, to ensure the scale of the proposed use does not increase over time, a condition will also be recommended requiring that there be no more than 10 appointments per practitioner on any given day.

88. The proposed hours of operation of 8am to 8pm every day of the week are consistent with the policy direction at Clause 22.01-3. Further, the proposed hours of operation are not anticipated to cause conflicts with surrounding residential uses, given they largely represent standard business hours and the use will not disturb the amenity of the area during the sensitive night-time hours. The medical centre will be restricted to these operating hours by way of condition of any approval granted.
89. With regards to noise emissions, the proposed medical centre is not anticipated to create unreasonable noise within the surrounding residential neighbourhood. The medical centre provides therapeutic and remedial health services to its patients, the nature of which would have similar noise emissions to a residential use. Each consultation room is enclosed, and the appointments would be conversational, rather than relying on any machinery. In terms of a non-residential use located in a residential zone, a medical centre is generally considered to pose little amenity risks in this regard.
90. It is acknowledged that the use will result in additional people in the area throughout the day. However, social activity and the movement of people within the street is to be expected in an inner-city area. General noise produced from people arriving and leaving (including talking and car noises) associated with a medical centre is not considered unreasonable for the site context and will be reasonably limited by the recommended conditions restricting the operating hours and the number of appointments to a maximum of 30 on any given day.
91. No new external equipment is proposed to facilitate the use. It is unlikely that the type of equipment required for a medical centre of this size and nature (consultative appointments) would create noise emissions greater than typical domestic services. Nonetheless, Council's standard conditions relating to noise emissions will be included as conditions in the recommendation, consistent with policy objectives at Clause 22.01 of the Scheme regarding noise.
92. Finally, given the operating hours are generally restricted to daytime hours, light spill is not a consideration in this instance. Regardless, any lighting on after hours would be no different to that of a residential use. The existing building is single storey and fenced and therefore would not result in any overlooking to neighbouring residential properties.

Waste and deliveries

93. It is anticipated that the waste generated by a consultative practice would be similar to or lesser than a residential use. Given the nature of the medical use, it is not expected that any toxic waste or large waste items will be produced. Council's standard condition requiring that waste be collected by a private contractor will be included in the recommendation. It is expected that the bins can be easily stored in the rear outdoor area, or in the side setback behind the gate, as would be typical of a residential dwelling.
94. Further, it is not anticipated that the use would require any bulky or frequent deliveries. The Applicant has identified that goods to be stored on the land would relate only to the therapy services and would include administrative equipment, toys, play mats and play equipment. Nonetheless, Council's standard condition restricting the hours of any deliveries will be included in the recommendation.
95. Finally, Council's standard condition will require that the use does not detrimentally affect the amenity of the area, including by:
- (a) the transport of materials, goods or commodities to or from land;
 - (b) the appearance of any buildings, works or materials;
 - (c) the emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or
 - (d) the presence of vermin.

96. In summary, it is considered that the proposed use, subject to conditions outlined, will not cause unreasonable material detriment to the surrounding residential properties and will be compatible with the subject site and surrounding land use context. The proposal addresses the relevant decision guidelines at Clause 32.09 and policies at Clause 22.01 and is supported.

Car parking and traffic

97. State and local planning policies including Clause 18.02-1S (Sustainable personal transport), Clause 18.02-2R (Principal Public Transport Network) and Clause 21.06 (Transport) encourage less private motor vehicle dependence and improved sustainable transport use. Hence, there is strategic support for the provision of less car parking than required under the provisions of the Scheme. However, each application for a reduction must be assessed on the individual merits of the proposal.
98. As mentioned earlier in the report, the proposed use of the land as a medical centre for a maximum of three (3) practitioners and a gross floor area of 133sqm generates a statutory car parking requirement of 4 spaces. As one (1) space is to be provided on-site; a reduction of 1 space is sought.
99. The car parking space and vehicle access from Rose Street is an existing condition and as approved under Planning Permit PL08/0125. Nonetheless, it is expected that the gates will be more frequently open to allow for vehicle access to the site and as such a condition will be included to ensure that the existing gates do not open outwards to restrict any vehicle or pedestrian movement along Rose Street. Further, although Council is satisfied that a vehicle could be easily accommodated in the rear outdoor area, a condition will require that the car parking space be clearly identified and dimensioned on the plans.
100. In assessing a proposal for a car parking reduction, the Responsible Authority must consider the relevant decision guidelines at Clause 52.06-6 (*Car Parking*) of the Scheme. The decision guidelines will frame this assessment including addressing the associated car parking demand the use may generate, assessing the availability and proximity of alternative transport options and any provisions for bicycle parking upon the site and the likelihood of multi-purpose trips within the locality.
101. The car parking demand associated with the medical centre in this location and of this scale is likely to be less than that stated under the Scheme for the following reasons:
- (a) The site has good access to public transport and an on-road cycling network thus reducing reliance on car parking for both staff and patients. The site is located within walking distance (less than 400 metres) of the Clifton Hill Train Station and bus routes along Heidelberg Road.
 - (b) The Applicant has submitted that both the principal practitioners live locally and intend to ride to the site. Although bicycle spaces have not been shown in the plans, bicycles could be easily stored in the rear outdoor area as accessed from Rose Street.
 - (c) The medical centre would be anticipated to draw most patients from the local area who can walk to the site. The site is located within 300 metres (walking) from the Goodstart Early Learning Centre on Heidelberg Road which may be a key catchment for the use and would increase the likelihood of multi-purpose trips to the area.
 - (d) The Applicant has stated that the duration of appointments will run between 30 to 90 minutes. The long appointments would reduce the turnover of vehicles in the area. Moreover, a condition has been recommended requiring that each practitioner have no more than 10 appointments per day, thereby restricting the frequency of people visiting the site.
 - (e) Council's Engineering Department have no objection to the application and support the proposed reduction of car parking.

102. In relation to the staff demand for car parking, the applicant has submitted that the two principal practitioners will ride to the site. Regardless, it is considered the limited availability of longer-term car parking within the surrounding area, combined with the accessibility of frequent public transport services (i.e. buses along Heidelberg Road and trains through Clifton Hill Station) would act as an incentive for staff to take public transport or find other alternatives.

103. As discussed, 4 hour parking is provided on O’Grady Street and Rose Street, the availability of which is considered to be good for an inner-city area. A review of 13 aerial images of the area from January 2019 to September 2021, show available car parking spaces in every image and would suggest that car parking spaces within O’Grady Street and surrounds are rarely at capacity. A selection has been provided below.

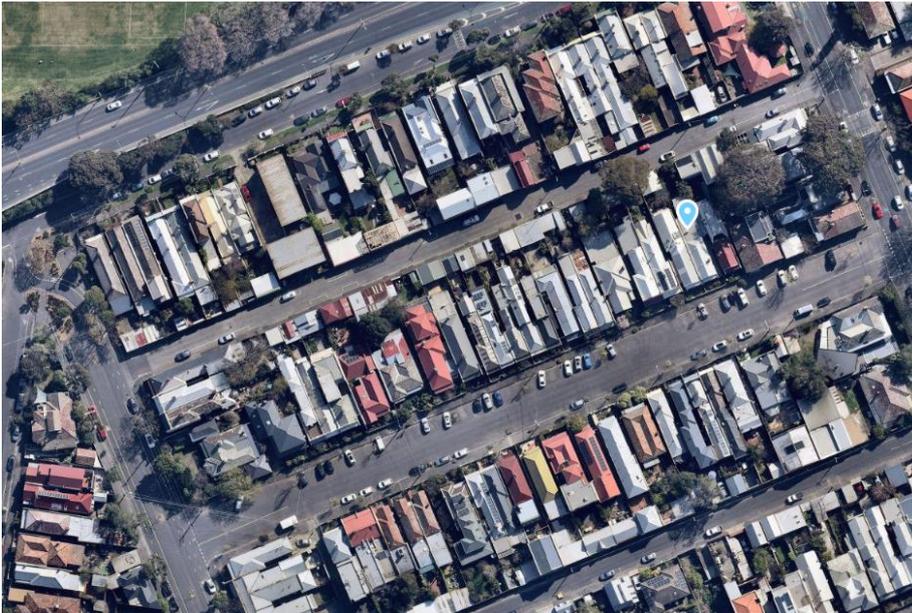


Image 3: aerial of subject site and surrounds (source: NearMap, Wednesday 1 September 2021)



Image 4: aerial of subject site and surrounds (source: NearMap, Tuesday 28 April 2020)



Image 5: aerial of subject site and surrounds (source: NearMap, Saturday 23 February 2019)

104. Regardless, the car parking demand and traffic generated by the proposed use is not expected to unreasonably impact the immediate area. As detailed previously, the medical centre will provide appointments ranging between 30 to 90 minutes and is restricted to 10 appointments per practitioner on any day, so would not have a large turnover. Council's Engineers did not raise any issue in regards to traffic generated by the proposed use in their advice. On balance, the additional traffic to be generated by the use (that being related a maximum of 30 appointments a day) will not unreasonably impact traffic conditions or car parking availability in the area.

Advertising signage

105. The decision guidelines are located at Clause 22.02 (local heritage policy), Clause 52.05 (Advertising signs) and Clause 22.04 (Advertising signs) of the Scheme. An assessment against each decision guideline is provided below, noting that the sign requires heritage consideration. The subject site is recognised as Contributory to the *Clifton Hill Heritage Precinct (Schedule 316)*.

106. The proposed business identification sign will be displayed on the façade of the building adjacent to the entry. It will 60cm by 60cm (0.36sqm in area) and will not be illuminated. A condition will be included in the recommendation requiring that the design of the sign be provided prior to construction and display. Nevertheless, as it is a business identification sign, it must only be limited to text identifying the business or a business logo.

107. The sign will not detract from the visual amenity of the heritage area as it is proposed in an appropriate location off the street, with a scale compatible with the subject building. Given the nature of the use, it is anticipated that it will be simplistic in style.

108. The subject site is located within a Neighbourhood Residential Zone, however, it is not expected to be at odds with the area, rather it would be similar in scale and appearance to house names (such as that already seen on the subject site), house numbers or a mounted letter box. Moreover, the sign is not to be illuminated (a condition will be included to ensure this).

109. For all the reasons discussed above, the sign will have no impact on the amenity of the residential area.

110. The sign, 0.36sqm in area and on the building's façade will provide for an appropriate level of business identification for the medical centre.

Objector concerns

111. *Not in keeping with residential area*

This matter has been discussed at paragraphs 75 – 78 and 81 – 96. A medical centre is a permitted, and subject to conditions, can be as-of-right use within the Neighbourhood Residential Zone. It is therefore recognised as a use that can be appropriate in a residential zone (subject to various other considerations set out in the assessment).

112. *Set precedent for other non-residential uses*

The Medical Centre, in this instance, is a permitted use in the Neighbourhood Residential Zone and has been assessed on its own merits. The non-residential uses permitted in the Neighbourhood Residential Zone are limited by the Scheme, and any future application for a permitted non-residential use would be assessed on its own merits and within its own context.

113. *Building and location is not appropriate for the proposed use*

The matter has been addressed at paragraphs 87 – 96 and it is considered that the consultative and therapeutic nature of the proposed practice is commensurate with a building traditionally used as a dwelling.

114. *Noise from visitors and patients*

This matter has been discussed at paragraphs 89 – 91 and it is considered that any noise from visitors to the site would not be unreasonable in the context.

115. *Privacy concerns*

The building, being a single storey, does not have views into neighbouring properties. It is not anticipated that the medical centre use or the movement of patients to and from the site would result in any anti-social behaviour that would impact the privacy or safety of residents.

116. *Traffic impacts and car parking availability*

This matter has been discussed at paragraphs 97 – 104 and the car parking reduction and traffic implications is considered acceptable in the context.

117. *Noise and pollution from waste collection*

Given the nature of the medical centre of consultation and therapy, it is determined that the noise/waste generated would be similar to a residential use.

118. *Inadequate access to on-site car parking space*

The car park and access from Rose Street is an existing condition and was approved under Planning Permit PL08/0125. Council's Engineering Services Unit are satisfied that one on-site car space can adequately be provided for.

119. *The plans do not show the abutting dwelling correctly*

The plans do not show the extension of the eastern abutting property; however, this does not have a notable bearing on the assessment on the proposed use. The neighbouring property is recognised to be for residential use and Council has relied upon the relevant endorsed plans to assess the site context where applicable.

120. *Business (with signage) will impact the sale and rental value of neighbouring properties*

Property values are speculative and not a planning consideration.

121. *Reducing options in the housing market*

The provision of a medical centre is considered to provide a net benefit to the community. Regardless, Council can only consider the application before them, which in this instance, proposes a medical centre.

Conclusion

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

RECOMMENDATION

1. Before the use 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:
 - (a) The design of the business identification sign.
 - (b) A notation confirming the rear gates do not protrude into Rose Street.
 - (c) The on-site car parking space dimensioned in accordance with the requirements of Clause 52.06 of the Yarra Planning Scheme.
2. The use and locations of the sign 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. No more than three (3) practitioners are permitted to operate from the land at any one time.
4. Except with the prior written consent of the Responsible Authority, the use authorised by this permit may only operate between the hours of 8am to 8pm, seven days a week.
5. Except with the prior written consent of the Responsible Authority, each practitioner must carry out no more than 10 appointments per day.
6. The amenity of the area must not be detrimentally affected by the use, including through:
 - (a) the transport of materials, goods or commodities to or from land;
 - (b) the appearance of any buildings, works or materials;
 - (c) the emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or
 - (d) the presence of vermin.to the satisfaction of the Responsible Authority.
7. The use must at all times comply with the noise limits specified in the Environment Protection Regulations under the Environment Protection Act 2017 and the incorporated Noise Protocol (Publication 1826.4, Environment Protection Authority, May 2021).
8. The collection of waste from the site must be by private collection, unless with the prior written consent of the Responsible Authority.
9. Delivery and collection of goods to and from the land may only occur between 7am and 10pm Monday to Saturday, or after 9am on a Sunday or public holiday except for those allowed under any relevant local law.
10. The sign must not be illuminated by external or internal light.

11. The sign must be constructed, displayed and maintained to the satisfaction of the Responsible Authority.
12. The signage component of this permit expires 15 years from the date of the permit.
13. This permit will expire if:
 - (a) the use is not commenced within two years from the date of this permit; or
 - (b) The use is discontinued for a period of two years; or
 - (c) 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.

Notes

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

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

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.

All future business (*whether as owners, lessees/tenants, occupiers*) within the development approved under this permit, will not be permitted to obtain business parking permits.

Attachments

- 1 PLN20/0504 - 42 O'Grady Street Clifton Hill - Decision Plans
- 2 PLN20/0504 - 42 O'Grady Street Clifton Hill - Engineering Services referral comments