



Agenda

Planning Decisions Committee

6.30pm, Wednesday 29 September 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 Edward Crossland

Cr Stephen Jolly

Cr Sophie Wade

Council officers

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

Madeleine Moloney (Senior Planner)

Rhys Thomas (Senior Governance Advisor)

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 15 September 2021 be confirmed.

6. Committee business reports

Item	Page	Rec. Page
6.1 PLN19/0384.01 - 219 Gore Street, Fitzroy - Section 72 amendment for approval to construct a wall on boundary to the existing dwelling	5	14
6.2 PLN19/0655 - 413 Swan Street, Richmond CONFIDENTIAL ITEM		

6.1 PLN19/0384.01 - 219 Gore Street, Fitzroy - Section 72 amendment for approval to construct a wall on boundary to the existing dwelling

Executive Summary

Purpose

1. This report provides Council with an assessment of the proposed amendment application to construct a wall on the southern boundary of the subject site. The report recommends approval with no changes to the permit preamble or conditions.

Key Planning Considerations

2. Key planning considerations include:
 - (a) Clause 54 – One Dwelling on a Lot

Key Issues

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

Submissions Received

4. Seven objections were received to the application. These can be summarised as:
 - (a) Overshadowing of open space;
 - (b) Lack of due process;
 - (c) Impact that construction of the new wall has had on the adjacent outhouse;
 - (d) Incorrect and misleading information shown on the plans associated with the original planning permit application;
 - (e) Impact the new wall has had on the ability to attach garden features;
 - (f) Loss of parking associated with building contractors;
 - (g) That a building permit was not displayed on the subject site; and
 - (h) The impacts of construction noise and dust.
5. One letter of support was received to the application.

Conclusion

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

CONTACT OFFICER: Erryn Megennis
TITLE: Statutory Planner
TEL: 0392055485

6.1 [PLN19/0384.01 - 219 Gore Street, Fitzroy - Section 72 amendment for approval to construct a wall on boundary to the existing dwelling](#)

Reference D21/130477
Author Erryn Megennis - Statutory Planner
Authoriser Senior Coordinator Statutory Planning

Ward: Langridge
Proposal: Section 72 amendment for approval to construct a wall on boundary to the existing dwelling
Existing use: Dwelling
Applicant: Matt Gibson Architecture & Design
Zoning / Overlays: Neighbourhood Residential Zone 1
Heritage Overlay 166
Development Contributions Plan Overlay
Date of Application: 05 May 2021
Application Number: PLN19/0384.01

Planning History

1. Planning Permit PLN19/0384 was issued on 09 August 2019 for the construction of a ground floor addition to the existing dwelling. Works in accordance with this permit have been completed, therefore the permit remains current. Additional works have also been undertaken on the site, including the demolition and reconstruction of part of the southern wall. These works were not approved under the original planning permit and now form the subject of this current amendment application.

Background

2. The subject site is on the Victorian Heritage Register No. HO166. Pursuant to Clause 43.01-3 of the Yarra Planning Scheme (the Scheme), a planning permit is not required *to develop a heritage place which is included in the Victorian Heritage Register, other than an application to subdivide a heritage place of which all or part is included in the Victorian Heritage Register.*
3. As such, the proposed demolition and construction of the southern boundary wall is not required to be assessed against Clause 43.01 (Heritage Overlay) or Clause 22.02 (Development Guidelines for Sites Subject to the Heritage Overlay) of the Scheme.
4. Part of the existing southern wall of the subject site is constructed within the title boundary of No. 217 Gore Street. As this property is also included on the Victorian Heritage Register (Heritage Overlay 165, Heritage Victoria Reference No. H156), a planning permit is not required for the demolition of the existing wall on boundary.

[Planning Scheme Amendments](#)

Amendment C238

5. 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. The overlay requires a monetary contribution from the developer. However, as there is no increase in the number of dwellings, a contribution is not required in this instance.

Amendment C269

6. 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 clause is of most relevance:

- 15.01 – 2L – Building Design

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

The Proposal

7. The amendment application is for retrospective approval of a new wall on the southern boundary of the site. Further details of the proposal are as follows:

Demolition (no permit required)

- (a) Demolition of the existing 4.3m long by 2.9m high southern wall (located on both Nos. 217 and 219 Gore Street), associated with the storeroom located at the rear of the site.

Buildings and Works

- (a) Construction of a new 4.3m long by 3.1m high wall on the southern boundary of No. 219 Gore Street; and
(b) The proposed wall will be constructed of recycled red bricks.

Existing Conditions

Subject Site

8. A description of the subject site was provided in the original officer's report:

The subject site is located on the western side of Gore Street, approximately 20m south of the intersection of Moor Street in Fitzroy. The site has a 6.61m wide frontage, a depth of 30.49m, and an area of 201.9sqm. A laneway (Freeland Lane) abuts the south-west corner of the subject site, and it appears there is no rear access from the subject site to this laneway. There is a fall across the site, with the finished floor level of the existing dwelling being 0.9m above ground level towards the front of the site and 0.2m towards the rear of the dwelling. The store at the rear of the site is approximately 0.6m higher than the abutting land to the west and the laneway.

Developed on site is a two-storey, Victorian-era dwelling with an ornate front verandah and parapet. This dwelling forms a row of 6 terraces which are on the Victorian Heritage Register (HO166).

The attached dwelling is constructed along the north and south boundaries with the north-west portion of the site being private open space. The dwelling accommodates formal living, dining, kitchen, and storage areas at ground level. At first floor there is a sitting room, 2 bedrooms, and a bathroom.

There is a 1.95m high boundary fence along the north boundary; a 1.85m high fence and a 2.1m high brick wall along the west boundary and a 3m high brick wall along the south boundary.

It is also noted that the existing southern boundary wall associated with the storeroom is partially constructed over the shared boundary with No. 217 Gore Street.

9. Since that time, the construction of the ground floor addition as approved by planning permit PLN19/0384 (excepting the new southern boundary wall) has been completed.



Figure 1: View of subject site from Gore Street (Planning Officer, August 2021)

Surrounding Land

10. A description of the surrounding area was provided in the original officer's report:

The surrounding area is residential and generally consists of one and two-storey dwellings. Located on the north-east corner of George and Moor Streets (approximately 43 from the subject site) facing Moor Street are properties in a Commercial 1 Zone (as continuation from Smith Street).

To the north and west is a two-storey dwelling (No. 221 Gore Street) which forms part of the row of two-storey, Victorian-era terraces. This site is a L-shaped lot which wraps towards the rear of the subject site. The dwelling is constructed on the north and south boundaries towards the front part of the dwelling, with later extensions extending along the entire length of its north boundary, and includes a roof terrace above. A large private open space area is located, generally to the south of the existing dwelling, and contains a carport abutting the shared boundary with the subject site.

To the south is another similar two-storey Victorian-era terrace. This dwelling is constructed along the north boundary. The private open space is located at the rear (west and south) of the dwelling, and contains a small shed located in the north-west corner of the site.

To the east is Gore Street, and on the opposite side are single-storey dwellings facing Gore Street; and also the rear private open space of a dwelling located on the north-east corner of Condell and Gore Streets.

There have not been any notable changes since the previous report was written, other than the northern wall on No. 219 Gore Street's SPOS being demolished.



Figure 2: Nearmap aerial imagery of subject site and surrounds (July 2021)

Planning Scheme Provisions

Zoning

Clause 32.09 – Neighbourhood Residential Zone (Schedule 1)

11. The subject site is in the Neighbourhood Residential Zone (Schedule 1) (NRZ1). The following provisions apply:
 - (a) Pursuant to Clause 32.09-5, a planning permit is required to extend a dwelling on a lot less than 500sqm;
 - (b) Pursuant to Clause 32.09-4, the minimum garden area provisions do not apply as the subject site area is less than 400sqm; and
 - (c) Pursuant to Clause 32.09-10, the maximum building height must not exceed 9m or two storeys at any point.

Overlays

Clause 43.01 – Heritage Overlay, Schedule HO166

12. The subject site is affected by the Heritage Overlay, Schedule HO166. The following provisions apply:
 - (a) Pursuant to Clause 43.01-3 of the Scheme, no permit is required under this overlay:
 - (i) *To develop a heritage place which is included in the Victorian Heritage Register, other than an application to subdivide a heritage place of which all or part is included in the Victorian Heritage Register.*
 - (b) *City of Yarra Database of Heritage Areas, July 2020* – The site is on the Victorian Heritage Register No. HO166.

Clause 45.06 – Development Contributions Plan Overlay

13. The subject site is affected by the Development Contributions Plan Overlay (Schedule 1). This overlay requires developers to pay a contribution towards essential city infrastructure like roads and footpaths, as well as community facilities. The overlay is not applicable to the proposed development as the proposed works do not increase the number of dwellings on the site.

Particular Provisions

Clause 54 – One dwelling on a lot

14. This clause applies as the development is for the extension of a dwelling on a lot under 500sqm. A development should meet all the standards and must meet all the objectives.

General Provisions

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

Planning Policy Framework (PPF)

16. The following clauses are relevant to the amendment:
- (a) 15.01-2S – Building Design; and
 - (b) 15.01-5S – Neighbourhood Character.

Local Planning Policy Framework (LPPF)

17. The following clauses are relevant to the amendment:
- (a) 21.05-2 – Urban Design;
 - (b) 21.05-3 – Built Form Character; and
 - (c) Clause 21.08-7 – Fitzroy
 - (i) Clause 21.08-7 states: *Fitzroy is a mixed commercial and residential neighbourhood notable for the consistency of its Victorian streetscapes. It comprises a dense combination of residential areas, shopping precincts and commercial/ industrial activities.*

Relevant Local Policies

18. The following clauses are relevant to the amendment:
- (a) Clause 22.07 – Development Abutting Laneways.

Legislative Provisions

19. The amendment has been requested pursuant to Section 72 of the *Planning and Environment Act 1987* (the Act). Section 72 of the Act states:

- (1) *A person who is entitled to use or develop land in accordance with a permit may apply to the responsible authority for an amendment to the permit.*
- (2) *This section does not apply to—*
 - (a) *a permit or a part of a permit issued at the direction of the Tribunal, if the Tribunal has directed under section 85 that the responsible authority must not amend that permit or that part of the permit (as the case requires); or*
 - (b) *a permit issued under Division 6.*

20. The planning permit was issued on 09 August 2019. The Tribunal has not directed that the responsible authority must not amend the permit, nor was the permit issued under Division 6 of the Act.

21. Section 73 of the Act states that Sections 47 to 62 of the Act apply to the amendment application. This allows the Responsible Authority to apply the abovementioned sections of the Act to the amendment application as if it was an application for a permit.

Advertising

22. The application was advertised under the provisions of Section 52 of the *Planning and Environment Act (1987)* by 2 letters sent to adjoining owners and occupiers. Council received 7 objections and 1 letter of support. The grounds for objection are summarised as follows:
- (a) Overshadowing of open space;
 - (b) Lack of due process;
 - (c) Impact that construction of the new wall has had on the adjacent outhouse;
 - (d) Incorrect and misleading information shown on the plans associated with the original planning permit application;
 - (e) Impact the new wall has on the ability to attach garden features;
 - (f) Loss of parking associated with building contractors;
 - (g) A building permit was not displayed on the subject site; and
 - (h) The impacts of construction noise and dust.

Referrals

External Referrals

23. The application was not required by the Scheme to be referred to external parties

Internal Referrals

24. The application was not referred to Council's internal departments as the proposed amendments can be adequately assessed under the relevant policies and provisions of the Scheme.

OFFICER ASSESSMENT

25. The primary considerations for this application are:
- (a) Clause 54 (ResCode); and
 - (b) Objector Concerns.

Clause 54 – ResCode

26. Clause 54 comprises design objectives and standards to guide the assessment of new residential development. Given the site's location within a built-up inner-city residential area, strict application of the standard is not always appropriate, whether the proposal meets the objective is the relevant test. In considering the amendments, the following objectives and standards are not relevant:
- (a) Standard A2 - Integration with the street – There are no changes proposed to the dwelling's existing presentation to Gore Street;
 - (b) Standard A3 - Street setback – There are no changes proposed to the existing street setback;
 - (c) Standard A5 – Site coverage – There is no change to the approved site coverage, which remains at 68.1%;
 - (d) Standard A6 – Site permeability – There is no change to the approved site permeability, which remains at 10.8%;
 - (e) Standard A7 – Energy efficiency – There are no changes proposed to the location of habitable rooms and private open space and there are no rooftop solar energy facilities on adjoining properties.
 - (f) Standard A8 - Significant trees objectives – There are no significant trees on the subject site;
 - (g) Standard A10 – Side and rear setbacks – There are no changes to the approved side and rear setbacks;
 - (h) Standard A12 – Daylight to existing windows – The proposed southern boundary wall will not abut existing habitable room windows;

- (i) Standard A13 – North-facing windows – There are no north-facing windows within 3m of the proposed southern boundary wall;
- (j) Standard A15 – Overlooking – There are no additional habitable room windows, balconies, terraces or patios proposed as a result of this amendment application;
- (k) Standard A16 – Daylight to new windows – There are no additional habitable room windows proposed;
- (l) Standard A17 – Private open space – There are no changes proposed to the approved private open space area;
- (m) Standard A18 – Solar access to private open space – This Standard does not apply to dwelling extensions; and
- (n) Standard A20 - Front fences objective – There are no alterations proposed to the existing front fence.

The remaining objectives and standards are assessed in detail below.

Neighbourhood character (Standard A1) and Design Detail (Standard A19) objectives

27. The proposed extension continues to be located in the south-west corner of the site and is fully concealed by the existing two-storey terrace dwellings from Gore Street. The proposed southern boundary wall will be constructed with recycled heritage red bricks which is a material typical in the area (particularly for boundary walls) as evidenced by the existing northern boundary wall of the subject site and the southern boundary wall at No. 217 Gore Street, which are also constructed of brick.

Building height (Standard A4) objectives

28. The proposed southern boundary is compliant, with a maximum height of 3.1m, below the 9m maximum permissible under the Standard.

Walls on boundaries (Standard A11) objectives

29. To meet the standard any new wall constructed on the boundary should not abut a boundary for a length of more than 10m plus 25% of the remaining length of the boundary of an adjoining lot or the length of an existing or simultaneously constructed boundary wall, whichever is greater. In terms of height, new boundary walls should not exceed an average 3.2m in height with a maximum height of 3.6m at any one point, unless abutting a higher existing or simultaneously constructed wall.
30. The combined length of walls along the southern boundary is 30.4m, the same as existing conditions. The average height of the proposed southern boundary wall is 3m and the maximum height is 3.1m. The proposed southern boundary wall is therefore compliant with the Standard.

Overshadowing (Standard A14) objectives

31. This Standard applies to secluded private open space. Due to the east-west orientation of the subject site, and the laneway to the west, overshadowing impacts are limited to the secluded private open space (SPOS) of No. 217 Gore Street. The submitted shadow diagrams assess the impacts of overshadowing on the SPOS of No. 217 Gore Street at 9am, 12pm and 3pm on September 22nd.
32. These shadow diagrams were assessed against Council's overshadowing template in the computer program Objective Trapeze. At 9am, the shadow diagrams have been drawn correctly. However, at 12pm and 3pm, the extent of overshadowing appears to be marginally underestimated. Figure 3 below illustrates the extent of existing and proposed overshadowing measured in Objective Trapeze at 12pm and 3pm. The blue outline denotes existing shadow and the pink outline denotes proposed shadow.

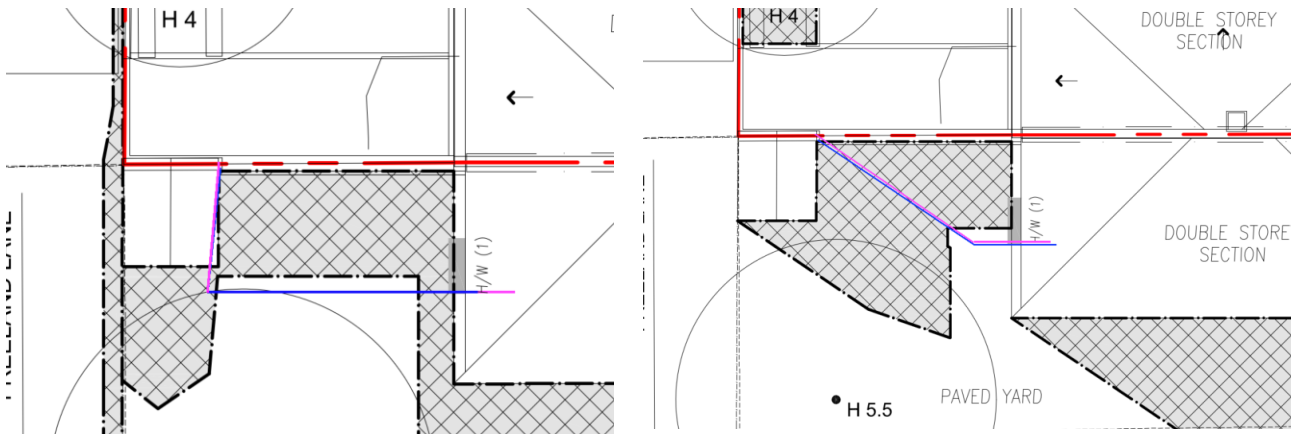


Figure 3: Overshadowing diagrams at 12pm (left) and 3pm (right)

33. The Standard requires that *if existing sunlight to the secluded private open space of an existing dwelling is less than the requirements of this standard, the amount of sunlight should not be further reduced.*
34. The submitted 9am shadow diagram, as well as the diagrams prepared in Objective Trapeze demonstrate that there will be no additional overshadowing as a result of the increase in the height of the southern boundary wall. At 9am, the shadow cast by the southern boundary wall falls within the shadow footprint of existing built form. At 12pm, the extent of overshadowing matches existing conditions. At 3pm, there is a marginal reduction (less than 0.1sqm) in overshadowing.
35. The existing southern boundary wall is partially constructed over the title boundary of No. 217 Gore Street (as illustrated in Figure 4 below), and the proposed southern boundary is constructed within the title boundaries of the subject site (as illustrated in Figure 5). As such, despite an increase in height of 0.2m, the proposed southern boundary wall has been set back from existing conditions and will not result in additional overshadowing of this SPOS. The proposed southern boundary wall is therefore compliant with the Standard.

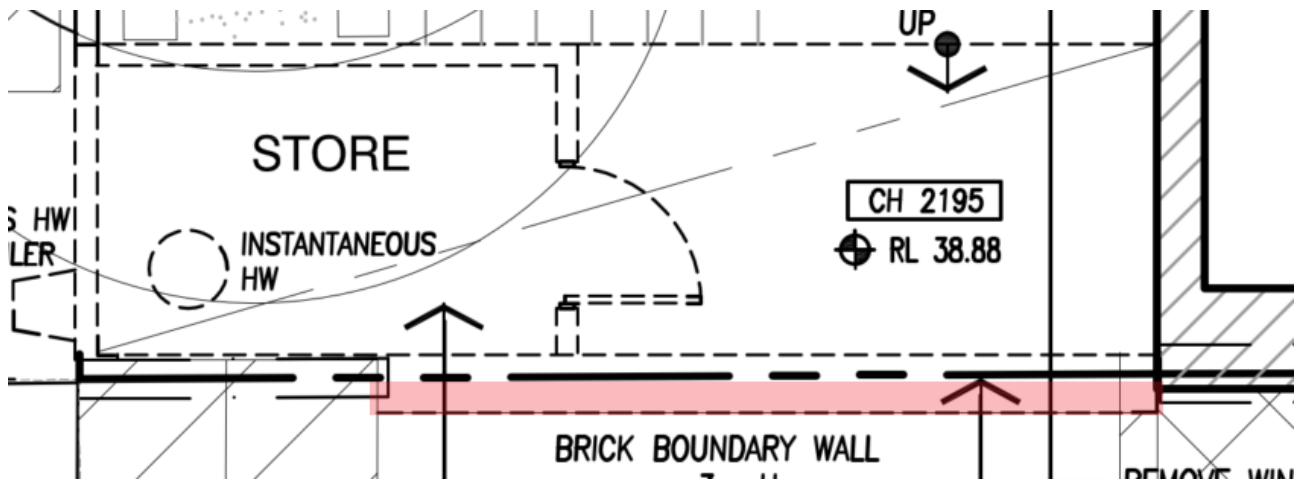


Figure 4: Existing ground floor plan showing extent of the existing southern boundary wall constructed over the title boundary (highlighted in red).

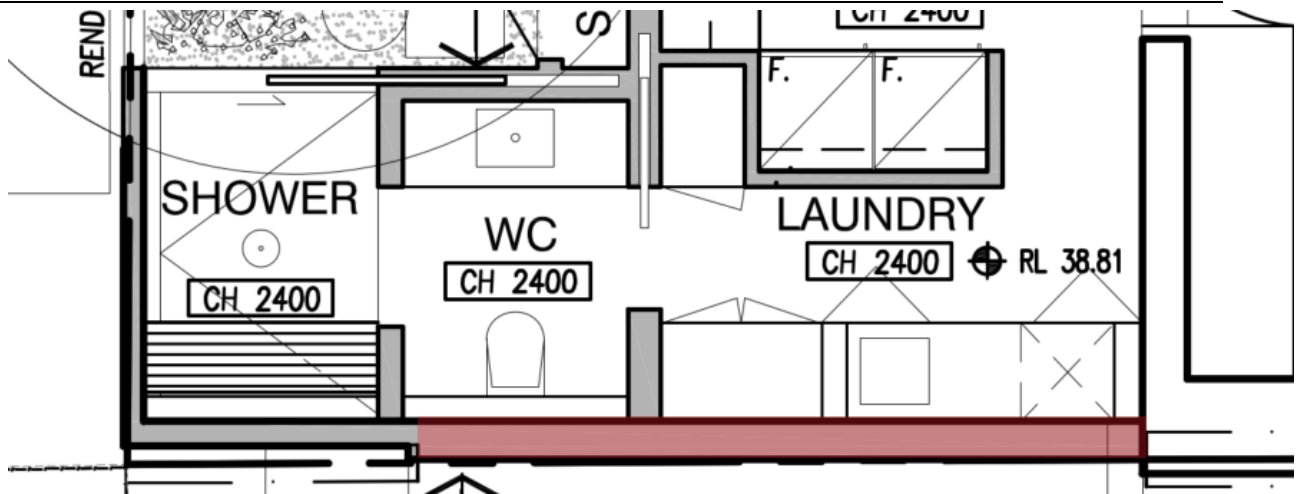


Figure 5: Proposed ground floor plan showing the extent of the proposed southern boundary wall, constructed within title boundary (highlighted in red)

Objector Concerns

36. Objector concerns have been addressed throughout this report as follows:
- (a) Overshadowing of open space - This has been discussed at paragraphs 31-35;
 - (b) Lack of due process – The *Planning & Environment Act 1987* (the Act) allows for amendments to permits, including those that are made retrospectively. In addition, this amendment application was advertised to affected parties. Therefore, the application has been processed in accordance with the obligations of the Act.
 - (c) Impact that construction of the new wall has had on the adjacent outhouse - Construction management, in relation to the damage of adjoining properties is not a planning consideration. This matter is addressed at the building permit stage.
 - (d) Incorrect and misleading information shown on the plans associated with the original planning permit application – This is not a planning consideration for the current application. However, the current plans have addressed this matter with updated demolition plans and elevations.
 - (e) Impact the new wall has on the ability to attach garden features – This is not a planning consideration.
 - (f) Loss of parking associated with building contractors – This is not a planning consideration.
 - (g) A building permit was not displayed on the subject site – This is not a planning consideration.
 - (h) The impacts of construction noise and dust – As stated previously construction management issues are not a planning consideration.

Conclusion

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

RECOMMENDATION

1. That a Notice of Decision to Grant an amended Planning Permit PLN19/0384.01 be issued for, *the construction of a ground floor addition to the existing dwelling* at 219 Gore Street, Fitzroy VIC 3065 generally in accordance with the plans noted previously as the “decision plans” with no changes to the permit preamble or conditions.

Attachments

- 1 PLN19/0384.01 - 219 Gore St Fitzroy - Locality Map
- 2 PLN19/0384.01 - 219 Gore Street Fitzroy - Advertising S52 - Plans
- 3 PLN19/0384 - 219 Gore Street Fitzroy - Existing Planning Permit
- 4 PLN19/0384 - 219 Gore Street Fitzroy - Existing Endorsed Plans