



# Agenda

## Planning Decisions Committee

6.30pm, Wednesday 30 June 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)

Chris Stathis (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 9 June 2021 be confirmed.

## 6. Committee business reports

Item		Page	Rec. Page
6.1	PLN18/0328.02 - 459 - 471 Church Street and 20 - 26 Brighton Street Richmond - Section 72 Amendment to the permit and plans to change the ground floor tenancies from restricted retail (as of right) to Food and Drinks Premises (permit required), introduce a restricted recreation premises (gym) in the basement (permit required use), introduce the sale and consumption of liquor (restaurant and cafe licence) for all Food and Drinks Premises, further reduce the car parking requirements of the Scheme and associated minor built form alterations.	5	40
6.2	PLN17/0744.02 - 196 Nicholson Street Abbotsford - Section 72 Amendment to Planning Permit No. PLN17/0744 to construct a first-floor studio above the single-storey garage at the rear of the site.	58	76
6.3	PLN21/0042 - 46-52 Smith Street, Collingwood - Full demolition of Nos. 46 & 48 Smith Street and partial demolition of Nos. 50-52 Smith Street, construction of an 8-storey building containing office, a food and drink premise (no permit required for uses) and use of the land for restricted recreation facility (gymnasium), and a reduction in the statutory car parking requirement.	79	132
6.4	PLN20/0747 - 1-13 Oxford St Collingwood	142	197
6.5	PLN13/0538.01 - 45 Rose Street Fitzroy	208	230

- 6.1 PLN18/0328.02 - 459 - 471 Church Street and 20 - 26 Brighton Street Richmond - Section 72 Amendment to the permit and plans to change the ground floor tenancies from restricted retail (as of right) to Food and Drinks Premises (permit required), introduce a restricted recreation premises (gym) in the basement (permit required use), introduce the sale and consumption of liquor (restaurant and cafe licence) for all Food and Drinks Premises, further reduce the car parking requirements of the Scheme and associated minor built form alterations.**
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## **Executive Summary**

### **Purpose**

1. This report provides Council with an assessment of an application at No. 459 – 471 Church Street and 20 – 26 Brighton Street Richmond to amend the permit and plans to change the ground floor tenancies from restricted retail (as of right) to Food and Drinks Premises (permit required), introduce a restricted recreation premises (gym) in the basement (permit required use), introduce the sale and consumption of liquor (Restaurant and cafe licences) for all Food and Drinks Premises, further reduce the car parking requirements of the Scheme and associated minor built form alterations.

### **Key Planning Considerations**

2. Key planning considerations include:
  - (a) Use – Clause 32.04 (Commercial 2 Zone) and Clause 22.05 (Interfaces Uses policy)
  - (b) Sale and consumption of liquor – Clause 22.09 (Licenced premises) and Clause 52.27 (Licenced premises)
  - (c) Car parking – Clause 52.06 (Car parking) and Clause 18.02-4S (Car parking)
  - (d) Bicycle – Clause 52.34 (Bicycle facilities) and Clause 18.02-R (Sustainable personal transport – Metropolitan Melbourne)
  - (e) Built form – Clause 15.01 (Built environment), Clause 21.05 (Built form) and Clause 22.10 (Built form and design policy)

### **Key Issues**

3. The key issues for Council in considering the proposal relate to:
  - (a) Strategic context
  - (b) Uses (Food and drink premises and Restricted recreation)
  - (c) Sale and consumption of liquor
  - (d) Car parking, traffic and bicycle parking
  - (e) Built form
  - (f) Objector concerns
  - (g) Other matters

### **Submissions Received**

4. Thirteen (13) objections were received to the application, these can be summarised as:
  - (a) Adverse amenity impacts associated with the sale and consumption of liquor (litter, anti-social behaviour, safety, cumulative impact, smokers, queuing of patrons)
  - (b) Car parking (demand, provision and availability)
  - (c) Traffic (congestion and road safety)



- (d) Noise from use (Food and Drinks premises, outdoor seating areas, patron movement/dispersal)
- (e) Commercial activities disruptive to residential area (setup and pack up, deliveries, rubbish removal)
- (f) Lack of detail in plans (internal layout of restaurants, location of flues)
- (g) Light spill
- (h) Obstruct pedestrian movements along Shamrock Street

**Conclusion**

5. Based on the following report, the proposal is considered to comply with the relevant planning policy and should therefore be supported subject to the following key recommendations (with various other recommendations outlined in the recommendation section of this report):
- (a) Food and drinks premises (FDP) 1 and 2 operating between 6am and 1am (the following day), seven days a week.
  - (b) Food and drinks premises (FDP) 3 and 4 operating between 6am and 10pm (the following day)
  - (c) The outdoor dining areas associated with FDP3 and FDP4 to operate between 7am and 6pm, every day of the week.

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

- 6.1 [PLN18/0328.02 - 459 - 471 Church Street and 20 - 26 Brighton Street Richmond - Section 72 Amendment to the permit and plans to change the ground floor tenancies from restricted retail \(as of right\) to Food and Drinks Premises \(permit required\), introduce a restricted recreation premises \(gym\) in the basement \(permit required use\), introduce the sale and consumption of liquor \(restaurant and cafe licence\) for all Food and Drinks Premises, further reduce the car parking requirements of the Scheme and associated minor built form alterations.](#)

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**Reference** D21/57734  
**Author** Jessica Sutherland - Statutory Planner  
**Authoriser** Coordinator Statutory Planning

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**Ward:** Melba ward

**The Permit:** The use of the land as a child care centre, the construction of a building, alterations of access and buildings and works to a Road Zone category 1 and the reduction in the number of car parking spaces pursuant to Clause 52.06 of the Yarra Planning Scheme

**Proposal:** **Section 72 Amendment to the permit and plans to change the ground floor tenancies from restricted retail (as of right) to Food and Drinks Premises (permit required), introduce a restricted recreation premises (gym) in the basement (permit required use), introduce the sale and consumption of liquor (restaurant and cafe licence) for all Food and Drinks Premises, further reduce the car parking requirements of the Scheme and associated minor built form alterations**

**Existing use:** Mixed use development currently under construction (previously warehouses)

**Applicant:** Human Habitats

**Zoning / Overlays:** Commercial 2 Zone and General Residential Zone (Schedule 2)  
 Design and Development Overlay (Schedule 2 and 5)  
 City Link Project Overlay  
 Development Contributions Plan Overlay (Schedule 1)

**Date of Application:** 23 December 2020

**Application Number:** PLN18/0328.02

## Planning History

### No. 459 – 471 Church Street Richmond

1. Planning permit No. 981362 was issued for the land at No. 459 – 471 Church Street Richmond on 8 February 1999 for *building and works to an existing warehouse*.
2. Planning permit No. 990572 was issued for the land at No. 459 – 471 Church Street Richmond on 9 June 1999 for *business identification signage*.

3. Planning application PLN16/0379 was withdrawn on 19 July 2016 for a change of use to a place of assembly (exhibition and function centre), restaurant (greater than 100sqm), shop, studio and an office, and a reduction in the association car parking, bicycle and loading bay requirements of the Yarra Planning Scheme.
4. Planning Permit PLN18/0246 was for the land at No. 459 – 471 Church Street Richmond issued 6 September 2018 for *display of business identification signage*.
5. Planning Application PLN20/0657 was submitted to Council on 21 September 2020 to allow for the construction of 29 business identification signs across the north and west facades of the 9 and 5 storey buildings approved by the subject permit (PLN18/0328) at No. 459 – 471 Church Street Richmond. The application was advertised in February 2021 and is currently being processed by Council at the time of this report.

**No. 459 – 471 Church Street and 20 – 26 Brighton Street Richmond**

6. Planning Permit PLN18/0328 was issued for the land at No. 459 – 471 Church Street and No. 20 – 26 Brighton Street Richmond, at the direction of the VCAT on 15 May 2019 for:
  - *the use of the land for 'childcare centre' under clauses 32.08 and 34.02;*
  - *the construction of a building or the construction or carrying out works associated with a section 2 use under clause 32.08;*
  - *the construction of a building or construction or carrying out of works under clause 34.02 and 43.02;*
  - *alteration of access and building and works to a Road Zone Category 1 Road under clause 52.29; and*
  - *the reduction in the number of car parking spaces under clause 52.06-3.*
7. The following are matters of process from the original application which are relevant to the amendment:
  - (a) On 8 October 2018, Council received notice that an application had been lodged at the VCAT by the Applicant under section 79 of the *Planning and Environment Act 1987* (the Act) for the failure of Council to determine the application in the statutory time period.
  - (b) On 18 January 2019, the planning application was presented at Council's internal Development Assessment Panel (DAP) meeting where it was determined that, had Council been in a position to, it would have issued a Notice of Refusal to Grant a Planning Permit.
  - (c) A compulsory conference occurred on 22 January 2019. No agreement was reached.
  - (d) The Application for Review was amended on 3 February 2019 by the permit applicant in accordance with the VCAT Practice Note No. 9.
  - (e) On 27 February 2019, the amendment application was presented at Council's Internal Development Approvals Committee where it was determined that Council would advise the VCAT that it did not support the substituted plans, and that had it been in a position to, it would have issued a Notice of Refusal.
  - (f) The VCAT hearing took place over five days, beginning on the 18 March 2019.
  - (g) On 15 May 2019, Planning Permit PLN18/0328 was issued at the direction of the VCAT.
8. Pursuant to Sections 73 and 74 of the Act the permit was amended on 4 March 2020 to amend the wording of Condition 38 to allow for the widening of Shamrock Street to occur within 6 months of the commencement of the development.



9. Pursuant to Section 73 and 74 of the Act the permit was amended on 15 June 2021 to amend the approved use of the land as a child care centre by way of an increase in children from 80 to 104, resulting in a further reduction in the car parking requirements, and associated built form changes to Building C.
10. Works have commenced and the permit is still live.

## Background

11. The subject amendment application was submitted on 23 December 2020. Following the submission of further information on 22 February 2021, the application was advertised and thirteen (13) objections were received.
12. No consultation meeting was held as a result of the state of emergency declared in Victoria of the current health advice related to the Covid-19 pandemic.

## Planning Scheme Amendments

13. Amendment C238 was introduced into the Yarra Planning Scheme on 1 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 and it applies to 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.
14. This will be discussed further within the body of this report.

## The Proposal

15. Section 72 Amendment to amend the permit and plans as follows:

### *Use*

16. Amend the use of a tenancy to the south of the foyer from Restricted retail premises to Office (*no permit required*).
17. Change the ground floor tenancies of Buildings A and B from Restricted retail premises to Food and drinks premises (FDP), resulting in the following:
  - (a) FDP1 located on the north-west corner of the site (corner of Church Street and Shamrock Street), accessed from Church Street and 217sqm in area. The premises is an amalgamation of two separate retail premises. A secondary access to the internal foyer area of Building 1 is retained. Proposed to operate 24 hours a day, seven days a week, with a maximum of 100 patrons.
  - (b) FDP2 located on the south-west corner of the site, accessed from Church Street and 228sqm in area. Proposed to operate 24 hours a day, seven days a week, with a maximum of 200 patrons. A secondary entry is provided to the lift/foyer area as is currently approved.
  - (c) FDP3 located on the northern side of the development and 378sqm in area, internally. The principal entry is located on Shamrock Street, 51 metres east of Church Street. Two outdoor dining areas are provided for the premises, a 65sqm outdoor dining area located in the courtyard and a 25sqm area provided within the front setback of the building to Shamrock Street. It is noted that the latter outdoor area is associated with footpath dining, but only the area within the subject site's title boundaries can be considered under the Planning Application (the remainder outside the title boundary is the responsibility of Council's Local Laws Department). The internal area is proposed to operate between 6am to 11pm, seven days a week, whilst the outdoor areas are proposed to close at 10pm. A maximum of 130 patrons internally, 40 patrons in the courtyard and 15 patrons on the Shamrock Street dining area is proposed.

- (d) FDP4 located on the northern side of the development and 172sqm in area. The principal entry is located to Shamrock Street, 68 metres east of Church Street. An outdoor seating area (55sqm) is provided in the courtyard. The internal area is proposed to operate between 6am to 11pm, seven days a week, whilst the outdoor areas are proposed to close at 10pm. A maximum of 80 patrons internally and 33 patrons in the courtyard dining area is proposed.
  - (e) The retention of the approved FDP5, located within the building foyer and now associated with the office uses (54sqm in area), previously the Restricted retail premises. This FDP is ancillary to the office uses, which is an as-of-right use and therefore has not been restricted with regards to the operating hours.
  - (f) Resulting in a total of 1,194sqm of Food and Drinks Premises for the site.
18. Introduction of a Restricted Recreation Premises (gym) to Basement level 1 (previously car parking and services area), with the following details:
- (a) Proposed to operate between the hours of 5am and 11pm, 7 days a week, with a maximum of 60 customers and 4 staff at any one time.
  - (b) The gym reception is located at ground floor (50sqm) with the entry provided to Shamrock Street, approximately 35 metres east of Church Street.
  - (c) A lift and stairs provide access from reception to the gym within the basement (388sqm) and a secondary entrance is provided to the basement car parking.

*Liquor*

19. The inclusion of redline plan, allowing for the sale and consumption of liquor on the premises (Restaurant and café licence), to FDP1, FDP2, FDP3 and FDP4, including all associated outdoor areas. The sale and consumption of liquor will occur between the following hours:
- (a) FDP1 and FDP2: 9am to 1am (the following day), seven days a week.
  - (b) FDP3 and FDP4: 9am to 11pm, seven days a week (with the outdoor area closing at 10pm).

*Car parking and bicycle facilities*

20. Nine (9) car parking spaces removed to allow for the creation of the gym, resulting in a total of 160 car parking spaces remaining for Buildings A and B.
21. Eight (8) car parking spaces allocated to the Food and Drinks Premises (previously 13 provided to the retail premises) and the remainder (152) allocated to the office uses (previously 156 spaces).
22. No changes to the approved bicycle facilities (176 employee spaces, 40 visitor spaces, 19 showers and 188 lockers provided for all three buildings).

*Built form changes*

23. The following built form changes are proposed to allow for the new uses:
- (a) Deletion of an internal wall in FDP1 to create a larger premises (in lieu of two separate premises).
  - (b) The ground floor, north elevation amended to introduce the gym entry to Shamrock Street.
  - (c) Internal alterations to the ground floor and Basement level 1 to create the Restricted recreation premises (gym) and associated car parking re-arrangement, including the construction of stairs to connect each level.
  - (d) Alteration to the approved ground floor courtyard to provide for outdoor seating areas.
  - (e) The western “void” over the ground floor lobby reduced in size, resulting from the widening of the first-floor link from 4.7 metres to 16.4 metres wide.

## Existing Conditions

### Subject Site

24. The subject site is located on the eastern side of Church Street and is bound by Shamrock Street to the north and Brighton Street in the east, in Richmond. The site is generally rectangular in shape, save for a cut-out in the north-eastern corner associated with No. 16 Brighton Street which is not part of the subject site.
25. The site has a frontage to Church Street of 46.92 metres and Shamrock Street of 92.99 metres, yielding an overall site area of 5,276sqm.
26. The site is currently being developed in accordance with Planning Permit PLN18/0328 which approves:
  - (a) Building A: a ten-storey building constructed to the west to Church Street.
  - (b) Building B: a six-storey building constructed central to the site and abutting Shamrock Street.
  - (c) Building C: a three-storey building constructed to the east to Brighton Street.
27. The subject application relates solely to the use and development of Buildings A and B, which can be broadly described as follows:
  - (a) All buildings are interconnected, however, Building A fronts to Church Street and the western end of Shamrock Street, and Building B, located 17 metres to its east faces Shamrock Street. Building B can be accessed from Shamrock Street or via the foyer through Building A on Church Street.
  - (b) Provided with two basement car parking and service areas, servicing the office buildings and accessed from Shamrock Street. 169 car parking spaces are provided in the basement levels, 13 of which are allocated to the ground floor retail premises. It is noted that the car parking spaces allocated to Building C (the childcare centre) are provided in a separate basement accessed from Brighton Street.
  - (c) Ground level works undertaken which include widening the pedestrian pavement on the southern side of Shamrock Street and road pavement widening west of the car parking access, in order to provide two-way access in and out of Church Street. East of the vehicle entry, Shamrock Street will remain one-way heading east.
  - (d) The amendment application relates to the ground floor tenancies. Two tenancies are accessed via Church Street, are constructed flush to the street boundary and are separated by the buildings main lobby entrance. Two tenancies front north to Shamrock Street and are setback between 300mm and 2.94 metres from the northern title boundary to create a wider pedestrian footpath along Shamrock Street. A 17.17 metre wide courtyard separates the two tenancies and is partially covered by a glass canopy.
28. The subject site is made up of 18 lots, none of which show any covenants, restrictions or easements.

### Surrounding Land

29. The subject land is located within two zones – Commercial 2 and General Residential (Schedule 2). The existing development in the wider area is mixed and consists of residential, commercial and industrial uses, resulting in a diversity of built form. Land zoned residential is located to the north, east and partially to the south-east of the subject site. A map of the immediate zoning is provided below.

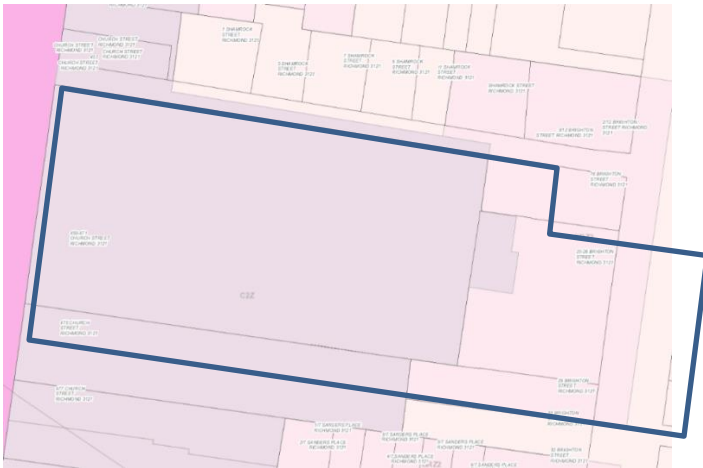


Image 1: zoning of the land, purple represents the Commercial 2 Zone pink represents the residential zones (hot pink denotes the Road Zone) (source: VicPlan Map, 2021)

30. Further north of the site is East Richmond Train Station (50 metres) and the Swan Street Major Activity Centre (**MAC**) (100 metres) which includes various commercial uses.

*North*

31. Shamrock Street is generally a one-way street (entering from Church Street and exiting onto Brighton Street). On the corner of Shamrock Street and Church Street is a three-storey commercial building (occupied by a showroom at ground floor). Further east along Shamrock Street are residential properties (No. 1 – 11 Shamrock Street) which are generally developed with single storey dwellings from the Victorian-era. These dwellings present to Shamrock Street with small front setbacks and habitable room windows facing the street. Some of the dwellings are provided crossovers and on-site vehicle spaces. On the corner of Shamrock Street and Brighton Street, to the east, is No. 12 Brighton Street which is developed with two-storey townhouses.

*East*

32. On the south-east corner of Shamrock Street and Brighton Street is No. 16 Brighton Street which is currently developed with a single storey dwelling with private open space at the rear (west). Planning Permit PLN11/0673 was issued on 21 May 2012 and allows for four, part-two, part-three storey townhouses (with basements). The works have not yet commenced however, a recent extension of time was issued (letter dated 11 May 2021) so that works must now commence no later than 21 May 2022.
33. To the east, across Brighton Street which is 15 metres wide, are dwellings facing Brighton Street and the subject site. Generally, the dwellings are single storey, semi-attached and with narrow side setbacks. Typically, small private open space (**POS**) areas are provided to the rear (east). The dwellings are generally not provided on-site car parking.

*South*

34. Immediately to the south of the subject site, facing Church Street, is No. 475 Church Street which is developed with a single storey furniture showroom occupying 100% of the site and accessed via Church Street.

*West*

35. To the west of the subject site is Church Street which is a Category 1 Road Zone with a tram route running north to south and parking and bicycle lanes either side. On the opposite side of Church Street are larger sites developed with commercial buildings, generally occupied by furniture showrooms and offices.

*General*

36. Car parking within the area includes:
  - (a) No parking in Shamrock Street.

- (b) 2 hour ticketed parking on the east and west sides of Church Street.
  - (c) No parking on the side streets, across Church Street to the west.
  - (d) No parking on Sanders Place (a side street to the south).
  - (e) 2 hour parking (7am – 7pm Monday to Saturday) on the west side of Brighton Street (to the east of the site)
  - (f) Permit parking on the east side of Brighton Street
  - (g) Permit parking on the south side of Lesney Street (a side street to the north of the site)
37. Bike lanes are provided on either side of Brighton Street and Church Street.
38. Nearby public transport routes include:
- (a) Tram routes 78 along Church Street and 70 along Swan Street, 100 metres north of the subject site.
  - (b) Richmond Train Station and East Richmond Train Station, 700 metres north-west and 50 metres north of the site respectively.
39. Other licenced venues (not including packaged or limited licences) in this section of Church Street (within 250 metres of the site) include:
- (a) Harlow Hotel (General Licence) at 447 Church Street - 7am to 3am, 540 patrons
  - (b) Public House (General Licence) at 433 – 435 Church Street – 10am to 2am, 450 patrons
  - (c) Royal Saxon Hotel (General licence) at 545 Church Street – 12noon to 1am, 385 patrons
  - (d) Swan Hotel (General licence) at 425 Church Street – 7am to 3am, 400 patrons
  - (e) The Palm Royal (On-premises) at 438 Church Street – 10am to 1am, 85 patrons
  - (f) Maeve Fox (On-premises) at 472 Church Street – 4pm to 3am, 300 patrons
  - (g) Thai Style Restaurant (Restaurant and café licence) at 455 Church Street – 7am to 11pm
  - (h) Sabai (Restaurant and cafe) at 460 Church Street – 7am to 11pm, 97 patrons
  - (i) Thai Ayothaya (Restaurant and cafe) at 468 Church Street – 7am to 11pm, 40 patrons
  - (j) Naruto (Restaurant and café) at 462 Church Street – 11am to 10pm, 60 patrons
40. These premises are shown in the below map (orange diamonds) with the Swan Street Major Activity Centre (MAC) shown in pink. The Swan Street MAC, to the west of Church Street, is recognised as a Core Entertainment Precinct by Clause 22.09 (Licenced premises).



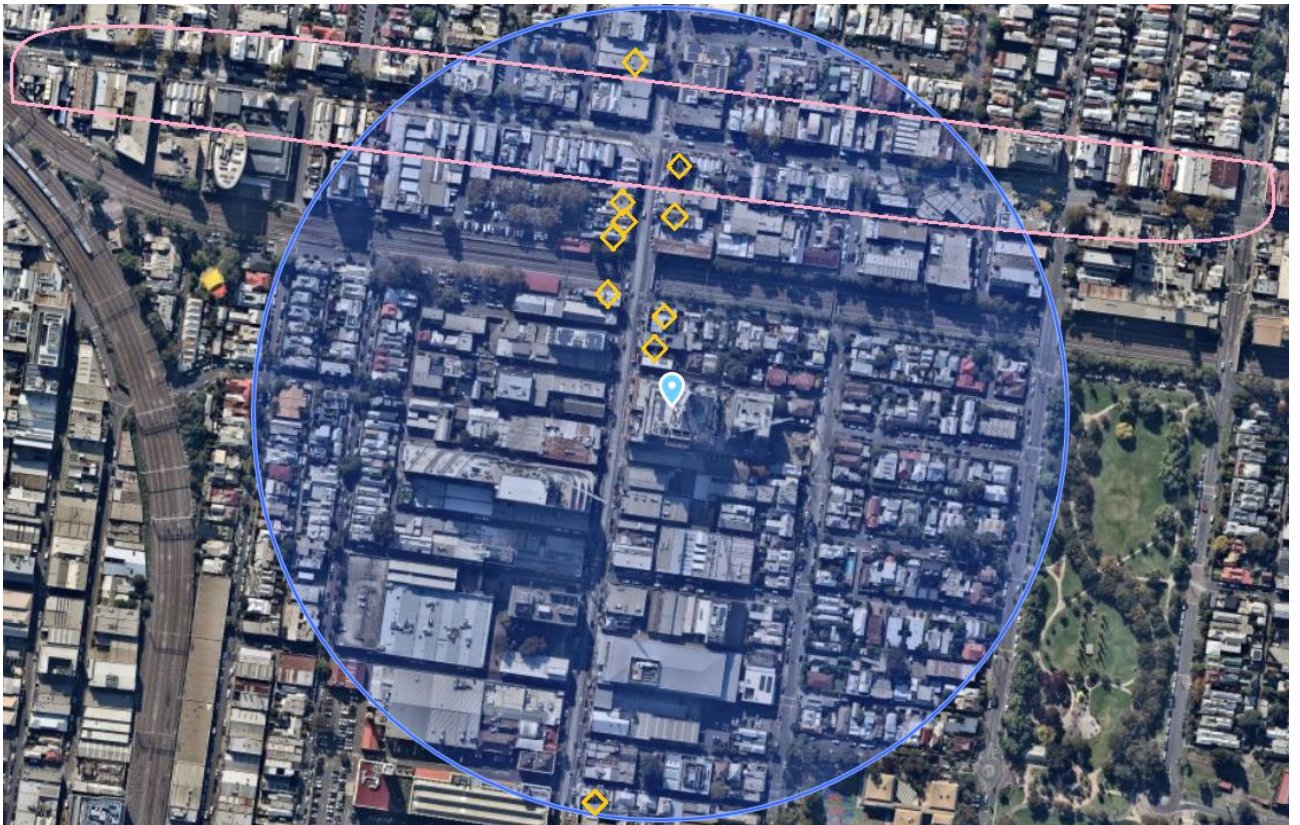


Image 2: the location of licenced premises with a 250 metre radius of the subject site (source: created by Council Officer using NearMap, 2021)

## Legal Provisions

41. 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, 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.*
42. Planning Permit PLN18/0328 was issued on 15 May 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.
43. 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 it was an application for a permit.

## Scheme Provisions

### Zoning

44. The site is a zoned *General Residential Zone (Schedule 2)* to the east and *Commercial 2 Zone* to the west. The following is applicable to the proposed amendments.
- Commercial 2 Zone*
45. Pursuant to Clause 32.04-1, the use of the land as an office is a Section 1 use, no permit required use.



46. Pursuant to Clause 32.04-1, the use of the land as a Food and drinks premises requires a permit as the leasable floor area exceeds 100sqm. As the proposal results in 1,194sqm of leasable floor area, a permit is triggered.
47. Pursuant to Clause 32.04-1, the use of the land for Restricted Recreation (gym) is a section 2 use, thus a permit is triggered.
48. Pursuant to Clause 32.04-4, a permit is required to construct a building or construct and carry out works.

*General Residential Zone (Schedule 2)*

49. None of the proposed amendments are located within the part of the site affected by the General Residential Zone.

Overlays

*Design and Development Overlay (Schedule 2 and 5)*

50. Pursuant to 43.02-2, a permit is required to construct a building or construct or carry out works, unless a schedule to this overlay specifically states that a permit is not required.

*Schedule 2 (Main Roads and Boulevards)*

51. Schedule 2 to the overlay is silent on permit triggers, thus a permit is required to construct a building or to construct and carry out works.

*Schedule 5 (City Link Exhaust Stack Environs)*

52. Pursuant to Clause 2.0 of Schedule 5 (City link Exhaust Stack Environs) of the overlay, buildings and works are specifically exempt from requiring a planning permit.
53. Pursuant to Clause 4.0 of Schedule 5, where a permit is required to use and or for the construction of a building or the construction or carrying out works under another provision in this scheme, notice must be given under section 52(1)(c) of the Planning and Environment Act 1987 to the person or body to be notified in Clause 66.06 or schedule to the clause.
54. A planning permit is triggered for the amended use and buildings and works under the zones and overlays, thus, notice of the application must be given to the Environment Protection Authority, Transurban City Link Limited and the Roads Corporation (VicRoads).

*City Link Project Overlay*

55. Pursuant to Clause 45.07-1 of the Scheme, a permit is required to develop land, given that the development is not part of the Melbourne City Link Project or the Exhibition Street Extension Project.
56. Pursuant to Clause 45.07-6, the Roads Corporation (VicRoads) is listed as being a section 55 referral authority.

*Development Plan Contributions Overlay*

57. 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.*
58. An application does not benefit from transitional provisions, however, as a building permit has been issued and the wider development is under construction, the requirements of the clause are applicable only to the commercial uses subject to this amendment. Council's standard condition and a note will be included on any amended permit that is to issue requiring the levy to be paid prior to the commencement of the proposed commercial uses.

Particular Provisions

*Clause 52.06 Car Parking*

59. Pursuant to Clause 52.06-1, the clause applies to a new use or an increase in the floor area of an existing or approved use.
60. Pursuant to Clause 52.06-2, before a new use commences or the floor area of an existing use is increased, the number of car parking spaces required under the clause 52.06-5 must be provided to the satisfaction of the responsible authority.
61. Pursuant to Clause 52.06-3, a permit is required to reduce the number of car parking spaces required under Clause 52.06-5.
62. The subject site is located in the Principal Public Transport Network (PPTN) Area, thus column B of table 1 of the Clause 52.06-5 applies to the amendment application.
63. Under this amendment, the approved Restricted retail premises are replaced with Food and drinks premises, a Restricted recreation premises (gym) and a partial extension of the Office use. Further, the Restricted recreation premises (gym) is introduced in the basement, resulting in the loss of 9 car parking spaces.
64. At table 1 at clause 52.06-5, Restricted recreation is not listed (nor is Leisure and Recreation, being the umbrella use). Pursuant to Clause 52.06-2, where a use is not specified in the table, an adequate number of car spaces must be provided to the satisfaction of the responsible authority. It is noted that no car parking spaces are allocated to this use.
65. The following table outlines the difference in the statutory car parking requirements resulting from the change of use from Restricted retail premises to Food and drinks premises, and minor changes in the floor area associated with the office uses.

Use	Quantity/ Size	Statutory Parking Rate	No. of Spaces Required by the Scheme	No. of Spaces Allocated	Reduction Approved/ Required
<b>Permitted</b>					
Restricted retail	1,206sqm of leasable floor area	2.5 spaces to each 100sqm of leasable floor area	30	13	<b>374</b>
Food and Drinks Premises	152sqm of leasable floor area	3.5spaces to each 100sqm of leasable floor area	5		
Office	16,940sqm of leasable floor area	3.0 spaces to each 100sqm of leasable floor area	508	156	
<b>Overall application including amendment</b>					
Restricted recreation (gym)	438sqm in leasable floor area	To the satisfaction of the RA.			<b>399</b>
Food and Drinks Premise	1,194sqm of leasable floor area	3.5 spaces to each 100sqm of leasable floor area	41	8	

Office	17,288sqm of leasable floor area	3.0 spaces to each 100sqm of leasable floor area	518	152	
<b>Additional Car Park reduction required from the amendment</b>					<b>25</b>

66. As outlined in the above table, an additional reduction of 25 spaces is sought, and as part of this application it must be determined if the responsible authority deems it satisfactory to provide no car parking to the Restricted Recreation premises (gym). These matters will be discussed in the Assessment section of this report.

*Clause 52.34 Bicycle Facilities*

67. Pursuant to Clause 52.34-1, a new use must not commence of the floor area of an existing use must not be increased until the required bicycle facilities have been provided on the land.
68. As discussed, the provision of the bicycle facilities is not proposed to be altered in this amendment application. Nonetheless, the proposed uses are amended, thus a new assessment is required. The below table assesses the amendment application against the bicycle provision outlined at Clause 52.34-5 of the Scheme (noting that the approved childcare centre is provided bicycle spaces also).

Use	Quantity/ Size	Statutory Rate	No. of Spaces Required by the Scheme	No. of Spaces Allocated	Reduction Approved/ Required
<b>Permitted</b>					
Restricted retail	1,206sqm of leasable floor area	1 to each 300sqm of leasable floor area (employees)  1 to each 500sqm of leasable floor area (visitors)	4 (employees)  2 (visitors)	176 (employees)  40 (visitors)	<b>0</b>
Restaurant	152sqm of leasable floor area	1 to each 100sqm of floor area available to the public (employee) 2 plus 1 to each 200sqm of floor area available to the public if the floor area available exceeds 400sqm (visitor)	1 (employees)  0		
Office	16,940sqm of leasable floor area	1 to each 300sqm of net floor area if the net floor area exceeds 1000sqm (employee)  1 to each 1000sqm of net floor area if the	56 (employees)  16 (visitors)		

		net floor area exceeds 1000sqm (visitor)			
Child care centre	104 children	N/A	N/A		
<b>Overall application including amendment</b>					
Restricted recreation (gym) listed as Minor sports and recreation facility	438sqm in leasable floor area	1 to 4 employees 1 to each 200sqm of net floor area (visitors)	1 (employees) 2 (visitors)	176 (employees) 40 (visitors)	<b>0</b>
Restaurant	1,194sqm of leasable floor area	1 to each 100sqm of floor area available to the public (employee)  2 plus 1 to each 200sqm of floor area available to the public if the floor area available exceeds 400sqm (visitor)	11 (employees)  7 (visitors)		
Office	17,288sqm of leasable floor area	1 to each 300sqm of net floor area if the net floor area exceeds 1000sqm (employee)  1 to each 1000sqm of net floor area if the net floor area exceeds 1000sqm (visitor)	57 (employees)  17 (visitors)		
Child care centre	104 children	N/A			

69. As shown above, the amendment application exceeds the bicycle space requirements of the Scheme, however, the appropriateness of the access and layout of the bicycle spaces will be discussed in the *Assessment* section of this report.

*Clause 52.27 Licensed Premises*

70. Pursuant to Clause 52.27 of the Scheme, a planning permit is required to use the land to sell or consume liquor is a license is required under the *Liquor Control Reform Act 1998*.
71. Before deciding on an application, the Responsible Authority must consider as appropriate:
- (a) *The Municipal Planning Strategy of the Planning Policy Framework;*
  - (b) *The impact of the sale or consumption of liquor permitted by the liquor licence on the amenity of the surrounding area;*
  - (c) *The impact of the hours of operation on the amenity of the surrounding area;*
  - (d) *The impact of the number of patrons on the amenity of the surrounding area; and*

- (e) *The cumulative impact of any existing licensed premises and the proposed licensed premises on the amenity of the surrounding area.*

### General Provisions

#### *Clause 65 – Decision Guidelines*

72. 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 11.03-1S (Activity Centres)*

73. 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 11.03-1R (Activity centres – Metropolitan Melbourne)*

74. Relevant strategies are:

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

#### *Clause 13.05-1S (Noise abatement)*

75. The objective is:

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

#### *Clause 13.07 (Amenity)*

#### *Clause 13.07-1S (Land Use Compatibility)*

76. The relevant 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 (Built Environment and Heritage)*

#### *Clause 15.01-1S (Urban design)*

77. 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)*

78. The objective is:

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

#### *Clause 15.01-2S (Building design)*

79. The objective of this clause is *'to achieve building design outcomes that contribute positively to the local context and enhance the public realm'*.  
Clause 17 (Economic Development)  
Clause 17.01-1S (Employment)
80. The objective of this is:  
(a) *To strengthen and diversify the economy.*
81. Relevant strategies include:  
(a) *Protect and strengthen existing and planned employment areas and plan for new development areas.*  
(b) *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.*  
(c) *Improve access to jobs closer to where people live.*  
Clause 17.02.-1S (Business)
82. The objective of this clause is *'to encourage development which meets the communities' needs for retail, entertainment, office, and other commercial services'*.  
Clause 18.01-1S (Land use and transport planning)
83. The objective of this clause is:  
(a) *To create a safe and sustainable transport system by integrating land-use and transport.*
84. 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)
85. The objective of this clause is:  
(a) *To promote the use of sustainable personal transport.*  
Clause 18.02-1R (Sustainable personal transport – Metropolitan Melbourne)
86. 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)
87. 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)
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88. 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)*
89. The objective of this clause is:
- (a) *To ensure an adequate supply of car parking that is appropriately designed and located.*
90. 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 \(LPPF\)](#)

*Clause 21 – Municipal Strategic (MSS)*

*Clause 21.04-2 – Activity centres*

91. The relevant objective of this clause is:
- (a) *To maintain the long term viability of activity centres.*
92. Relevant strategies to achieve this objective include:
- (a) *Strategy 5.2 Support land use change and development that contributes to the adaptation, redevelopment and economic growth of existing activity centres.*
- Clause 21.04-3 Industry, office and commercial*
93. The objective of the clause is:
- (a) *To increase the number and diversity of local employment opportunities.*
- Clause 21.05-2 – Industry, office and commercial*
94. The objective of this clause is 'to increase the number and diversity of local employment opportunities'.
- Clause 21.05-2 – Urban design*
95. A relevant objective of this clause is to 'encourage the provision of universal access in new development.
- Clause 21.06 – Transport*
96. 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*
97. 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 21.08-2 - Burnley – Cremorne - South Richmond*
98. Clause 21.8-2 recognises Church Street as "an activity centre based on furniture and homewares, professional and business services and hospitality". It also recognises that there is an opportunity to enhance the activity centre through consistent active frontages.

[Relevant Local Policies](#)

*Clause 22.05 – Interface uses policy*

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99. This policy applies to applications for use or development within Commercial Zones (amongst others).
100. 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'
101. Decision guidelines at clause 22.05-6 include:
- (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.*

*Clause 22.09 Licensed Premises*

102. The policy applies to an application under Clause 52.27 (Licensed Premises)
103. The objectives of this clause are:
- (a) *To protect the amenity of nearby properties and areas by effectively managing the location, size, operation and hours of licensed premises.*
  - (b) *To encourage best practice venue design and venue operation for licensed premises.*
  - (c) *To protect residential and other commercial uses from excess noise, traffic and car parking issues.*
  - (d) *To provide for daytime trade and active street frontages in retail strips, while providing the reasonable commercial opportunities for the trading of licensed premises.*

*Clause 22.10 – Built form and design policy*

104. This policy provides guidelines to assess the scale, form and appearance of new development in areas where heritage overlay controls do not apply.
105. The policy aims to ensure that the design of new buildings limit the impact on the amenity of surrounding land while making a positive contribution to the streetscape through high standards in architecture and urban design.

## Advertising

106. The application was advertised under the provisions of Section 52 of the *Planning and Environment Act (1987)* by 101 letters sent to surrounding owners and occupiers and by three (3) signs displayed on site. Council received thirteen (13) objections, the grounds of which are summarised as follows:
- (a) Adverse amenity impacts associated with the sale and consumption of liquor (litter, anti-social behaviour, safety, cumulative impact, smokers, queuing of patrons)
  - (b) Car parking (demand, provision and availability)
  - (c) Traffic (congestion and road safety)
  - (d) Noise from use (Food and Drinks premises, outdoor seating areas, patron movement/dispersal)
  - (e) Commercial activities disruptive to residential area (setup and pack up, deliveries, rubbish removal)
  - (f) Lack of detail in plans (internal layout of restaurants, location of flues)

- (g) Light spill
- (h) Obstruct pedestrian movements along Shamrock Street

107. No consultation meeting was held as a result of the state of emergency declared in Victoria of the current health advice related to the Covid-19 pandemic.

## Referrals

108. The referral comments are based on the advertised plans.

### External Referrals

109. The application was referred to the following authorities:

- (a) Head, Transport for Victoria
- (b) Roads Corporation (VicRoads)
- (c) Transurban
- (d) Environmental Protection Authority (EPA)

110. Referral responses/comments have been included as attachments to this report.

### Internal Referrals

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

- (a) Engineering Services Unit
- (b) Waste Management Unit
- (c) External Acoustic Consultants (SLR)
- (d) Social Planning Unit
- (e) Community Amenity Branch

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

## OFFICER ASSESSMENT

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

- (a) Strategic context
- (b) Uses (Food and drink premises and Restricted recreation)
- (c) Sale and consumption of liquor
- (d) Built form
- (e) Car parking and bicycle parking
- (f) Objector concerns
- (g) Other matters

### Strategic Context

114. There is policy support within the State and Local Planning Policy Frameworks for the proposed uses of the site for Food and drinks premises and a Restricted recreation premises (gym), given the commercial zoning, that the site is located near to a Major Activity Centre (**MAC**) and is within walking distance of public transport and the Swan Street Core Entertainment Precinct.

115. With regards to this amendment, consideration must be given to these proposed uses as well as the implications of the sale and consumption of liquor (on-premises), with particular regard to the purpose of the Commercial 2 Zone and the interface to residential dwellings across Shamrock Street. The operation of the amended proposal will be considered against the cumulative impact, off-site amenity impacts and land use conflicts of the site.

116. Nonetheless, turning our mind solely the location of the proposed Food and drinks premises and Restricted recreation premises, it is considered to have strong strategic support given that state and local planning policies encourage the concentration of commercial and entertainment uses in and near to Major Activity Centres, such as Swan Street, which are well connected to public transport and benefit from existing infrastructure (clauses 17.02-1S, 17.02-2S and 18.02-2R). The subject site is within 100 metres of the Swan Street MAC and associated Core Entertainment Precinct, and also benefits from access to various sustainable transport modes including the trams along Church Street and Swan Street, the East Richmond Train Station within 50 metres of the site and extensive bicycle networks throughout the immediate area.
117. The commercial zoning of the land aims to *create vibrant mixed use commercial centres, for retail, office, business, entertainment and community uses*, an objective that is further reinforced by policies within the Yarra Planning Scheme that encourage the strengthening of Yarra's entertainment and cultural offerings, particularly in already established commercial precincts (clauses 17.02-1S, 19.02-3S, 21.02, 21.03 and 21.04-2). As stated in Clause 21.04-2 (Activity Centres), *the presence of service, retail and entertainment uses creates active and vibrant activity centres with good access to services and facilities, which is an important attribute of the municipality*.
118. Moreover, Clause 17.01-1S (Diversified Economy) and Clause 21.04-3 (Industry, office and commercial) encourage growth that strengthens and diversifies the economy and job opportunities, encouraging that any growth *improve(s) access to jobs closer to where people live*. As discussed, the site is highly accessible, is zoned for commercial use and is near to where people live, thereby providing for an appropriate location for the proposed Food and drinks premises and Restricted recreation premises.

#### Uses (Food and drinks premises and Restricted recreation)

119. The discussion of the appropriateness of the amended uses will be guided by the purpose and decision guidelines of the Commercial 2 Zone (C2Z) at Clause 34.02-7 and the requirements of the Interfaces use policy at Clause 22.05 of the Scheme. Although the sale and consumption of liquor is proposed in association with the Food and drinks premises, this aspect of the amendment application will be assessed against the relevant policies of the Scheme in the *Sale and Consumption of Liquor* section of this report.

##### *Food and drinks premises*

120. The Food and drinks premises requiring a planning permit are as follows:
- (a) FDP1 - 217sqm in area. Proposed to operate 24 hours a day, seven days a week with a maximum of 100 patrons.
  - (b) FDP2 - 228sqm in area. Proposed to operate 24 hours a day, seven days a week with a maximum of 200 patrons.
  - (c) FDP3 –
    - (i) 378sqm in area internally, proposed to operate between 6am to 11pm, seven days a week with 130 patrons.
    - (ii) 65sqm outdoor dining area located in the courtyard and a 25sqm area provided within the front setback of the building to Shamrock Street. Proposed to operate between 6am to 10pm with 40 patrons and 15 patrons, respectively.
  - (d) FDP4 –
    - (i) 172sqm in area internally. Proposed to operate between 6am to 11pm seven days a week, with 80 patrons.
    - (ii) An outdoor seating area (55sqm) is provided in the courtyard. Proposed to operate between 6am to 10pm, with 33 patrons.

121. It is considered that the use of the land as a Food and drinks premises is consistent with the purpose of the Commercial 2 Zone, which is to *encourage commercial areas for offices, appropriate manufacturing and industries, bulky goods and retailing, other retail uses, and associated business and commercial services*. It is therefore anticipated by the Scheme that land located within this zone will be developed and used for commercial purposes; this is reiterated by the fact that land uses such as Art galleries, Cinemas, Offices and smaller scale Food and Drinks premises are as-of-right in the Commercial 2 Zone.
122. The location of the proposed Food and drinks premises is acceptable in a strategic sense; however, consideration must be given to the potential impacts on the surrounding area and interfacing sensitive uses.
123. Clause 22.05-1 of the Scheme identifies that there is a need to support commercial uses and ensure they are well managed with regard to the amenity impacts and their proximity to residential uses. The policy includes various considerations for non-residential uses located near residential properties, with decision guidelines (relevantly) relating to noise, light spill, loading and unloading, rubbish removal and storage and other operational disturbances that may cause detriment to the amenity of nearby residential sites. These requirements are further reiterated by the objectives of the Commercial 2 Zone.
124. As discussed, at this location Food and drinks premises only trigger a planning permit should it exceed 100sqm, and as such, policy provides clear support for this use to operate in these locations, subject to considerations being given to the scale and management of premises larger than 100sqm. The Food and drinks premises 3 & 4 are located directly opposite dwellings within residential zones and as such, specific consideration to this interface is necessary.

*Management and operations*

125. The Food and drinks premises are associated with Restaurant and Café licences and as such are anticipated to function in this manner, as opposed to a higher impact use such as a bar/hotel. Parameters should be set to ensure that the Food and drinks premises operate as restaurants/cafes and do not significantly transform into higher impact uses. To assist this, the definition of a 'restaurant' pursuant to Clause 73.03 of the Scheme is relied upon:
- Land used to prepare and sell food and drink, for consumption on the premises. It may include:*
- (a) *entertainment and dancing;*
  - (b) *the supply of liquor other than in association with serving of meals, provided that tables and chairs are set out for at least 75% of patrons present on the premises at any one time;*
  - (c) *It does not include the sale of packaged liquor.*
126. In relation to the above, the submitted floorplans have included a notation to confirm that a minimum of 75% of all patrons will be seated. Further, a Patron Capacity Report (dated 17 December 2020 and prepared by McKenzie Group) was submitted to demonstrate that the number of patrons proposed to each premises could be reasonably provided for within the corresponding floor areas. Nevertheless, a condition will require that the floorplans be updated to include floor layouts, including the kitchen and bathroom facilities in accordance with the patron capacity report, and indicative seating layouts to provide chairs for at least 75% of the proposed patrons, all of which is consistent with the land use requirements of a Restaurant Use.
127. Moreover, the principal purpose of a restaurant/cafe is the service of food and drinks, where as a bar or function centre (or similar) can often be associated with a greater consumption of liquor and a lesser focus on a seated food experience. As such, to ensure the premises have a greater food focus, a condition will be included on any permit issued requiring that food be served at all times that liquor is available (to be discussed further under *Sale and consumption of liquor*). The amended permit preamble will also define the Food and drinks premises as restaurants.

Noise

128. It is noted that objections were received from residents with regards to the potential noise impacts. Despite the sites residential interface (within 10 metres to the north), the subject site is located within the Commercial 2 Zone which encourages areas for commercial uses. It is also on the periphery of the Swan Street MAC and associated Core Entertainment Precinct, within which active and vibrant commercial uses and retail activity is present and expected. As such, the amenity expectations of residents in the area need to be somewhat tempered in order to maintain the viability of industrial and business areas, as recognised in Clause 22.05 (Interface uses policy). This position is consistently agreed upon at the VCAT, with the following statement included in the decision for *Goldfields Richmond Management Pty Ltd v Yarra CC* [2021] VCAT 528:
- [160] *We accept that residential uses adjacent to an activity centre (and in a commercial zone) must have a reduced expectation for amenity compared to residential uses adjacent to other residential zones. However, we find that this also operates in reverse: a commercial use adjacent to a residential zone must have some reduced expectation about what can be achieved*
129. Council Officers consider that, subject to conditions, a reasonable level of amenity can be experienced by neighbouring uses whilst still allowing for the viability of the commercial uses of the site.
130. The key considerations of noise emissions relevant to the Food and drinks premises relate to music and patron noise, patron ingress and egress and mechanical equipment, with particular regard given to the premises on Shamrock Street given their proximity to residential properties. Each aspect will be discussed in turn.
131. An acoustic report (prepared by Cundall and dated 15 February 2021) was submitted with the application and considers noise to the closest residential uses, that being on the northern side of Shamrock Street (receiver located outside of No.7 Shamrock Street). The report was reviewed by Council's external Acoustic Consultants, SLR, who considered the location of the receiver to be appropriate. SLR also noted that the noise monitoring was undertaken on Friday and Saturday, rather than during the quieter nights of the week; however, given that it was undertaken during Stage 4 lockdown SLR was satisfied that the background noise measurements are likely to be lower than typical for this area and can be relied upon.
132. With regard to patron noise, there are currently no legislative controls or noise guidelines which can be applied to assess patron noise from the proposed Food and drinks premises. Therefore, Cundall have relied upon a background-based limit to guide the levels of patron noise, that being 'background + 10 dB' for the daytime and evening periods and 'background + 5 dB' for the night-time periods. Moreover, maximum noise levels from patrons are also proposed to be assessed to sleep disturbance targets of 65 dBA L<sub>max</sub> outside operable windows of the residential properties along Shamrock Street.
133. With regard to music noise, Cundall identified a day and evening limit of 54 dBA and 53 dBA, respectively, as calculated from the average of the day and evening background noise levels measured.
134. SLR consultants were generally satisfied with this approach, however, raised concerns with some of the 'background' measurements relied upon given that they represent the average of the daytime and evening recordings. They consider that that the background measurements relied upon for any given noise limit should reflect the actual assessment time for music/patron noise. For example, the later period of the evening (ie 9pm to 11pm) should rely on a background noise level recordings from these times rather than the average of recordings from both daytime and evening measurements, given that the measurements of the evening period are likely to be lower.
135. In light of this, they recommend a condition be included any permit issued requiring that the evening noise limits for music and patron noise be recalculated using background data for the quietest hours of the evening that the food and drink tenancies are proposing to operate.



136. Council Officers consider this to be a reasonable approach and are satisfied that the recalculated limits can be reasonably achieved from within each Food and drinks premises, particularly the premises fronting Church Street given that they are located on a main road and are not as near to the residential noise receivers. This requirement will be included as a condition on any permit issued. It is further noted that Restaurant and Café licences must only operate background music past 11pm under the Liquor Control Act, which further ensures that music noise will be at an appropriate level.
137. Consideration must also be given to the use of the outdoor dining areas (associated with FDP3 and FDP4 along Shamrock Street) and the potential noise disturbance of the ingress and egress of patrons from each premises. These noise impacts cannot be as easily mitigated with physical acoustic attenuation methods and as such, often the hours of operation and management of the premises are relied upon to appropriately limit amenity impacts to nearby sensitive uses.
138. Given the proximity of FDP3 and FDP4 to residential properties within a residential zone, and the narrow, 'side street' character of Shamrock Street, the movement of patrons along Shamrock Street is a particular concern. Similarly, the outdoor dining areas are within 10 to 20 metres of the residential properties and as such, noise from these areas is also a key consideration. SLR consultants deemed the patron noise impact from these outdoor areas to be too great in the context and recommend that these areas operate only during the day period, as defined in the Noise Protocol for commercial noise, that being 7am to 6pm Monday to Saturday.
139. In response to these concerns, the Applicant has offered (email dated 8 June 2021) that pedestrian access to FDP3 be provided from the internal foyer only from 8pm onwards and the associated external courtyard also close at 8pm. No changes to the operation of FDP4 were submitted.
140. Although this goes some way in mitigating the potential noise impacts from the food and drinks premises, Council Officers agree with SLR's more conservative recommendation of 7am to 6pm for all outdoor areas given the proximity to sensitive interfaces. Further, no speakers will be permitted in these outdoor areas to ensure that there will not be a disturbance from music noise or from patrons raising their voices to speak over amplified music.
141. Finally, having regard to the movement of patrons along Shamrock Street, the cumulative impact of both premises along Shamrock Street poses a notable risk for the amenity of a small side street with a residential interface. Following 6pm (when the outdoor areas will be required to close), FDP3 and FDP4 will still provide for 130 and 80 patrons, respectively. As these are the maximum patrons at any one time, it is likely that the movement of patrons along Shamrock Street will be significantly greater when accounting for multiple sittings within any given evening. Council Officers consider the potential impacts of this to be too great and will require that FDP3 and FDP4 to close at 10pm. Further, the Applicant offered to direct patron movement, associated with FDP3, through a doorway to the internal foyer of the approved building after 8pm. This would encourage patrons to filter onto Church Street rather than Shamrock Street further protecting the amenity of Shamrock Street in the evening period when residential areas are typically more sensitive.
142. In light of above, and the advice received from SLR, it is the Council Officers recommendation that the following conditions be included on any permit issued with regards to FDP3 and FDP4:
  - (a) The outdoor dining areas for both FDP3 and FDP4 operate between 7am and 6pm every day of the week and no speakers permitted in these areas.
  - (b) That northern windows and doorways associated with the outdoor dining areas of FDP3 and FDP4 to be closed after 6pm.
  - (c) Both FDP3 and FDP4 to operate between 6am and 10pm every day of the week.

- (d) Patron ingress/egress to FDP3 to be provided only from the entry to the central foyer after 8pm on any evening.
  - (e) A post-commencement acoustic assessment to be carried out and any further acoustic treatments required to meet the evening targets as required by SLR consultants be provided and shown in plans.
143. It is considered that these conditions will reasonably limit any potential for off-site amenity impacts to the residents of Shamrock Street for the following reasons:
- (a) The closure of the outdoor dining areas at 6pm will not only reduce the noise impacts from the premises but will also reduce the number of patrons in FDP3 and FDP4 by 88 for the evening period.
  - (b) The closure of the windows and doors after 6pm will assist in achieving the evening noise targets recommended by SLR consultants.
  - (c) The closure of the FDP3 entry to Shamrock Street after 8pm will redirect patrons from the larger premises (maximum of 130 patrons) towards Church Street, rather than Shamrock Street, to mitigate any disturbance relating to the movement of patrons in the street. It is recognised that the entry to FDP4, which allows for 80 patrons, will still be provided along Shamrock Street until 10pm, however on balance, this is considered to be a reasonable result for a commercial area.
  - (d) The closure of the both premises by 10pm will ensure no disturbance to the nearby residential properties late into the evening and night-time.
144. Having regard to the FDP1 and FDP2 fronting Church Street, SLR consultants were satisfied with the night-time noise limits (after 11pm). Furthermore, noise from patrons arriving and leaving the site will not unreasonably impact the residential properties along Shamrock Street given that patrons will likely filter north along Church Street to either venues along Church Street, to the Swan Street MAC, or to various public transport opportunities. Nevertheless, the proposed operating hours of 24 hours, seven days a week, is not appropriate in this instance. Although restaurants are generally considered a low amenity risk, not enough information has been provided with the application to ensure that the operation of these premises all night will not adversely affect the amenity of the area with regards to noise and patron behaviour. Despite being located near to Swan Street, Church Street itself is not designated as a Core Entertainment Precinct in which these types of late-night offerings may be more appropriate. As such, a condition will require that FDP1 and FDP2 close at 1am, in-line with the proposed hours of the sale and consumption of liquor.
145. Finally, all mechanical equipment must comply with SEPP N-1 (Control of noise from industry, commerce and trade). This compliance is a mandatory requirement under Section 46 of the Environment Protection Act 1970.
146. Council Officers consider that these conditions relating to the operating hours of each premises provide for an appropriate balance between the amenity of the adjacent residential area whilst still allowing for the commercial viability of the Food and Drinks premises on site as is encouraged by Clause 22.05 (Interface uses policy) and in the VCAT decision of *Goldfields Richmond Management Pty Ltd v Yarra CC*.
- Loading and unloading*
147. The approved development provides for loading and unloading to occur in a designated area on site, as accessed from Shamrock Street. This arrangement was considered in the VCAT decision and was deemed acceptable. No changes to the loading and unloading provisions are proposed through this amendment that would impact this assessment.

148. The deliveries associated with Food and drinks premises would not be dissimilar to the expected frequency of deliveries for the approved Restricted retail premises. With the deliveries of Food and drinks premises likely to be less bulky than those associated with a Restricted retail premises such as furniture or homewares. For this reason, it is not expected that loading/unloading associated with this amended proposal will adversely impact the amenity of the area or Shamrock Street.
149. The endorsed acoustic report commits to deliveries to occur between 7am – 10pm Monday to Saturday and 9 am – 10pm Sunday. This commitment has been carried over to the amended acoustic report (prepared by Cundall and dated 15 February 2021) and continues to be acceptable.

*Light spill*

150. The VCAT decision for this development found that, in considering the approved use of the land for offices, any associated light spill would not be unreasonable given that “*this is a mixed use precinct of Richmond where office and commercial development is encouraged. It is inevitable that there will be additional night lighting in the area. It is not a matter that we consider should lead to refusal of the proposal.*”
151. Regardless, lighting associated with Food and drinks premises is unlikely to adversely affect the nearby residential properties for the following reasons:
- (a) The outdoor areas will not be in use after 6pm.
  - (b) Light spill from a restaurant is expected to be consistent with a habitable use, that being ambient or white light, rather than strobe, colourful or fluorescent lighting which may be at odds with a residential interface.
  - (c) The Food and drinks premises are buffered from the nearest dwellings by a road. As such, lighting of the Food and drinks premises would be less apparent in the presence of on street lighting and car lights.

*Waste management*

152. The Waste Management Plan (prepared by Irwin Consultants and dated 9 February 2021) was referred to Council’s City Works Branch who considered the report to be satisfactory.

*Conclusion*

153. Overall it is considered that the proposed Food and drinks premises will support the purpose of the Commercial 2 Zone and will increase employment opportunities in the area. Subject to various conditions aimed at protecting the amenity of nearby residential land, the Food and drinks premises will operate without adversely impacting upon the amenity of the neighbouring residential properties and is therefore supported.

*Restricted recreation premises (gym)*

154. Policies within the Scheme support uses such a restricted recreation facilities within active inner city areas. Clause 17.01-2 (Out-of-Centre development) of the State Planning Policy Framework gives preference to recreational facilities “*in or on the border of activity centres*” and encourages locations which are highly accessible to their catchment of users. The subject site, which is on the periphery of the Swan Street MAC and near to residential areas achieves this. It is also likely that the gym will cater to the office workers of the approved development currently under construction on the site.
155. The proposed hours of operation are between 5am and 11pm, seven days a week, with a maximum of 60 patrons. Patrons will access the gym via a dedicated reception on Shamrock Street, with access to the main basement level provided internally. The hours of operation are considered to be appropriate and the number of patrons is relatively low, particularly when considering the scale of the office use on the land.

156. The submitted acoustic report (prepared by Cundall and dated 15 February 2021) assesses the use of the gym against the relevant noise limits (discussed previously). SLR consultants are supportive of the use, subject to the soundlock between the basement and street level being provided (as committed to by Cundall in the acoustic report) and a post-commencement review to be conducted to ensure that the gym's sound system is set to appropriate levels. These recommendations will be included on any permit issued.
157. Finally, the Applicant has confirmed (email dated 8 June 2021) that the gym will operate as membership only and will provide for classes that will need to be pre-booked (no walk-ins). This is supported as it will appropriately moderate the frequency of visitors to the site. A Management Plan will be required by condition to any permit issued, to include this commitment as well as any other relevant operational details.
158. Subject to condition, it is considered that the proposed Restricted recreation premises (gym) will serve the local community's needs and responds to the purpose of the Commercial 2 Zone whilst not detrimentally impacting the amenity of nearby residential uses.

#### Sale and consumption of liquor

159. The assessment will be directed by the policy guidelines of Clause 52.27 (Licensed premises) and Clause 22.09 (Licensed premises – local policy) of the Scheme.
160. The amended application proposes the sale and consumption of liquor on the premises (Restaurant and café licence), to FDP1, FDP2, FDP3 and FDP4, including all associated outdoor areas. The sale and consumption of liquor will occur between the following hours:
  - (a) FDP1 and FDP2: 9am to 1am (the following day), seven days a week.
  - (b) FDP3 and FDP4: 9am to 11pm, seven days a week (with the outdoor area closing at 10pm).
161. However, for reasons substantiated earlier in this report, FDP3 and FDP4 will operate until 10pm and all outdoor areas will cease at 6pm.
162. With regards to the sale and consumption of liquor on the premises, an assessment will be carried out against the design of the venues, hours of operation, patron numbers and the decision guidelines of Clause 52.27 which require consideration of the cumulative impact of any existing licensed premises and the proposed licensed premises on the amenity of the surrounding area. The decision guidelines of Clause 22.09 and Clause 52.27 will be considered in turn.

#### *Venue design*

163. Licensed premises should ensure that:
  - (a) *The layout and design of new licensed premises incorporate safe design principles as detailed in the Design Guidelines for Licensed Venues (Victorian Commission of Gambling and Liquor Regulation 2017).*
  - (b) *The entry and exits points of a licensed premise and the areas for queuing of patrons are located away from sensitive land uses.*
  - (c) *Waste management and storage is provided on-site, and noise enclosures are provided where bottle crushers are to be used.*
164. The premises are generally consistent with the approved building, with the exception of the internal alterations to FDP1 which amalgamates two tenancies into one. Nevertheless, the premises generally meet the relevant layout and design guidelines for the following reasons:
  - (a) The glazing to both Church Street and Shamrock Street provide opportunities for informal and passive surveillance of the street environment which enhances perceptions of safety.

- (b) The entry to each premises is clearly distinguishable, with no opportunities for concealment, such as recessed doors and alcoves provided. FDP4, which is located furthest along Shamrock Street has been designed to have the entry face westward to Church Street so that it is highly visible from the main road.
- (c) The entries are provided to Church Street, or within a reasonable distance to Church Street (maximum of 70 metres east) providing safe and easy navigation for patrons to public transport, taxis and ride share on Church Street or the nearby Swan Street MAC.
- (d) The submitted Patron Capacity report (prepared by McKenzie group and dated 17 December 2020) commits to unisex and ambulant bathrooms provided to each premises and a condition will require that these provisions be shown in the floorplan.

165. In addition to the above, a condition is recommended to be included on any permit issued requiring a sign be erected at the exit of the venue to advise patrons to respect the amenity of adjacent residential areas and to leave in a quiet and orderly manner.

*Hours of operation*

166. Clause 22.09 (Licensed premises policy) provides the following guidelines, relevant to the proposal:

- (a) *Licensed Premises within 30 metres of a residential zone should not provide for the sale and consumption of liquor beyond 11pm, unless the responsible authority is satisfied that it will not adversely affect the amenity of the area.*
- (b) *Licensed premises (including packaged liquor outlets) should not commence the sale and consumption of liquor before 9am.*
- (c) *For outdoor areas, including smoking areas, rooftops and open courtyards, the sale and consumption of liquor should not occur after 10pm, unless the responsible authority is satisfied that it will not adversely affect the amenity of the area.*
- (d) *Licensed premises in a Mixed Use Zone should provide for the sale and consumption of liquor beyond 10pm, unless the responsible authority is satisfied that it will not adversely affect the amenity of the area.*

167. The proposed hours of the sale and consumption of liquor are consistent with the relevant local policy guidelines, however, the operating hours of FDP3 and FDP4 will be reduced to 10pm on every night with the associated outdoors areas closing at 6pm.

168. Although local guidelines consider this type of setting (ie premises within a commercial zone but within 30 metres of a residential zone) Council Officers determined that this particular site context, where the FDP3 and FDP4 are within 10 metres of residential properties, is more consistent with a mixed-use area. As such, the relevant local guideline recommends that the sale and consumption of liquor should cease at 10pm, consistent with the operating hours substantiated previously in this report.

169. FDP1 and FDP2 are located further than 30 metres from the residential zone across Shamrock Street and thus, comply with the relevant policy that prescribes that the sale and consumption of liquor does not go beyond 1am. Council's Community Amenity Branch and Social Planning Unit did not object to the proposed hours of the sale and consumption of liquor on these grounds.

170. In summary, a condition will be included on any permit issued requiring that the sale and consumption of liquor occur as follows:

- (a) between 9am to 1am (the following day), every day of the week, for FDP1 and FDP2;
- (b) between 9am to 10pm, everyday of the week, for FDP3 and FDP4; and
- (c) between 7am to 6pm, every day of the week, for the outdoor dining areas.

*Patron numbers*

171. The following maximum patron capacities are proposed:

- (a) FDP1 with 100 patrons;
- (b) FDP2 with 200 patrons;
- (c) FDP3 with 130 patrons (with 55 patrons outdoors);
- (d) FDP4 with 80 patrons (with 33 patrons outdoors).

172. No objection was raised by Council's Social Planning Unit or Community Amenity Branch with regard to the proposed patrons. Moreover, as discussed, a patron capacity report was submitted with the application to demonstrate that the capacities are appropriate for each premises.

173. The patrons capacities are also consistent with the directions provided at Clause 22.09-3 which directs for larger venues, with capacities greater than 200 patrons, to be provided in Core Entertainment Precincts. None the proposed premises provide for more than 200 patrons.

174. For these reasons, the number of patrons to each premises is supported and will form a condition on any permit issued.

*Noise*

175. Noise has been substantially discussed in association with the use, with conditions included to mitigate any adverse amenity impacts. The nature of the sale and consumption of liquor, in association with the use of the site for Food and drinks premises, means that the two are ultimately linked. All conditions relating to the use with regards to compliance with noise limits, SEPP N-1 and SEPP N-2, from both music and patrons, will apply to the use and the sale and consumption of liquor.

*Noise and Amenity Action Plan (NAAP)*

176. The policy at Clause 22.09 stipulates that a NAAP is not required for a restaurant and as such was not provided with this amendment application. Food and drinks premises, such as restaurants and cafes, are less likely to result in adverse amenity impacts from alcohol consumption than other licenced venues such as bars or nightclubs. Litter and anti-social behaviour on the street is unlikely given the sit-down dining focus of a Food and drinks premises. Moreover, all outdoor areas have been conditioned to close at 6pm in this instance limiting opportunities for this to occur. Similarly, queuing of patrons is rarely associated with Food and drinks premises given the tendency of patrons to pre-book sittings for busier venues.

177. Nevertheless, given four separate premises are proposed on the site, it is appropriate for a NAAP to be required by a condition to any permit issued. A NAAP should be provided for each individual premises and should include (but not be limited to) the following:

- (a) The venues complaint procedure.
- (b) Waste collection and management within the premises.
- (c) Management of any outdoor area.
- (d) Confirmation of the permitted operating hours, patron capacity and any other relevant conditions included in the permit.
- (e) Booking procedures and management of the ingress and egress of patrons, including directing patrons to public transport opportunities or assisting the bookings of taxis (etc).

178. A condition is recommended to be included on any permit issued requiring that the operation of the business is carried out in strict adherence to the NAAP.



*Cumulative Impact*

179. The subject site is located within a ‘cluster’ of licenced premises, as there are three or more (including the proposed premises) within a radius of 100 metres of the subject site. The “Corner Hotel” decision (*Swancom Pty Ltd T/as Corner Hotel v Yarra City Council & ORs*) provides a potential assessment methodology for considering applications that may result in a cumulative impact. The decision also acknowledges that depending on the nature of the use, the required level of assessment will vary.
180. Applying the matrix of risk below, a reasonable consideration would suggest that a score of 1-3 would be no risk, but that a score higher than 3 would be a potential risk and require a cumulative impact assessment.

Type of Premise	Risk Factor
Café / Restaurant	0
Bar / Restaurant / Café	1
Bar	3
Hotel / Tavern	3
Night Club	3
Place of Assembly	2
Size of Premise	Risk Factor
0 – 49 patrons	0
50 – 99 patrons	1
100 – 199 patrons	2
200+	3
Closing hours	Risk factor
11pm	0
12am	1
1am	2
2am	3
3am	3
After 3am	4

181. In this instance FDP3 and FDP4, which close at 10pm, achieves a maximum score of 2, and therefore are not considered to be a risk. However, FDP1 and FDP2 achieve a score of 4 and therefore are considered to be a risk and to require a cumulative impact assessment.
182. In the absence of any benchmarks within the Scheme to measure cumulative impact, Council relies on the assessment methodology for cumulative impact in the VCAT decision *Swancom Pty Ltd v Yarra CC (Red Dot)* [2009] VCAT 923 as an appropriate methodology for the assessment of this proposal.
183. The assessment methodology has three key considerations:
- What is the density of licenced premises in the area?*
  - What is the mix and type of licenced premises in the area?*
  - What are the existing amenity levels of the area?*
184. To undertake such an assessment, the relevant area must first be defined:
- What is the specific precinct or area within the licensed premises is located? Is the area a dedicated entertainment precinct?*
  - What is the extent of the nearby or surrounding area within which the amenity impacts should be considered, have regard to the pattern of settlement and development (existing and proposed) and the extent of any sensitive uses?*

185. A number of these factors such as policy context and land mix of the surrounding area have been discussed previously within this report, with anticipated amenity impacts also considered in detail. An assessment including the mix of licensed premises and potential impact mitigation will need to be undertaken.

*The mix of licensed premises*

186. In order to provide a comprehensive assessment of the potential cumulative impact of the venue, Council undertook a survey of licenced premises within a 250 metre radius of the subject site, generally bound by Swan Street to north, Barkley Gardens to the east, the railway line to the west and Balmain Street to the south. This will generally exclude premises located in the Core Entertainment Precinct to the north-west on Swan Street. Venues which cease trading prior to 11pm have been specifically excluded from the table below, as it is considered these venues contribute minimal risk to the cumulative impact for the sale of liquor in the surrounding area. Further, these types of venues are typically focused on food and drinks as opposed to ‘vertical drinking’.

<b>Business name</b>	<b>Address</b>	<b>License Type</b>	<b>(Maximum) closing time</b>	<b>Patron capacity</b>
<b>Swan Hotel</b>	Corner of Swan and Church Street	Late night (General)	3am	400 patrons
<b>Jimmy Grants</b>	427 – 429 Church Street	Restaurant and café licence	11pm	100 patrons
<b>Public House</b>	433 – 435 Church Street	Late night (General)	2am	450 patrons
<b>Harlow Hotel</b>	447 Church Street	Late night (General)	3am	540 patrons
<b>Royal Saxon Hotel</b>	545 Church Street	General licence	1am	385 patrons
<b>Maeve Fox</b>	438 Church Street	On-premises licence	3am	300 patrons
<b>Thai Style restaurant</b>	455 Church Street	Restaurant and café licence	11pm	Unknown
<b>Sabai</b>	460 Church Street	Restaurant and café licence	11pm	97 patrons
<b>Thai Ayothaya</b>	468 Church Street	Restaurant and café licence	11pm	60 patrons

187. With regard to the above results, there are five large-scale premises (with over 200 patrons) within the defined radius of the subject site, two of which are located across the train line and on the border to the Core Entertainment Precinct on Swan Street.

*Transport and dispersal*

188. The practice note requests consideration of the dispersal routes of patrons from the premises in order to assess potential impacts on the amenity of the surrounding area, noting that how patrons leave the licensed premises at closing time can have a significant impact on the amenity of an area.
189. Of the nine licensed premises outlined in the table above, only one is located to the south of the site (The Royal Saxon) and none are located to the east. This ensures that the movement of patrons will likely be northward, along Church Street towards Swan Street and not into the sensitive residential area to the east. In addition, the dispersal of patrons from the venue is likely to be staggered due to the dining focus of the premises, as opposed to bars or function centres where patrons may delay leaving until closing time.

190. Given the locality of the premises (and involving the consumption of liquor), it can be expected that the primary modes of dispersal would be by walking, public transport and taxi. Whilst some car travel from the venue could be expected, it is unlikely to be the main mode of transport for patrons given the inner-city location and the limited availability of non-permit or ticketed parking in the area.
191. As there is only one main entry/exit for patrons from the venues on Church Street, people are likely to disperse along the main thoroughfare to access public transport and taxis or other licensed venues within the area. There is no need for patrons to pass through the quieter streets to the east in order to access these services.
192. Based on the location of the subject site on the periphery of a major activity centre and Core Entertainment Precinct, the nature of the venue and the likely dispersal routes to be used, it is not considered that the sale and consumption of liquor in association with the proposed FDP1 and FDP2 will create unreasonable additional impacts within the surrounding area.

*Impact mitigation*

193. To ensure a venue is managed appropriately, Council's local policy at Clause 22.09 requires the submission of a NAAP which outlines management procedures aimed at ensuring good patron management. The NAAP has been discussed earlier within this assessment and will be required by a condition to any permit issued.
194. The consumption of liquor will only occur in association with the primary use of the site for food and dining experiences and will not act independently as a bar (ensured by various conditions to be included on any permit issued). Thus, it is unlikely to result in excessive drinking or anti-social behaviour.
195. In addition to these measures, Council's Local Law No.8 prohibits the consumption of liquor in public places and Council's Community Amenity Unit and Victoria Police are charged with ensuring these venues operate in an appropriate manner.

[Buildings and works](#)

196. The minor works to the approved building relates to internal alterations to create the Restricted recreation premises (gym), construction of a doorway at ground level to reception of the gym, and internal alterations to FDP1. The largest built form amendment relates to reduction of western void over the ground floor lobby, resulting from the widening of the first-floor link from 4.7 metres to 16.4 metres wide.
197. These works are considered minor in relation to overall scale of the approved buildings and are considered to meet the relevant Decision guidelines within the C2Z at and the Design and Development Overlay at Clause 43.02-6, for the following reasons:
  - (a) The appearance of the building to the both streetscapes will remain mostly unchanged and will continue to activate the relevant street and provide for a high level of accessibility. The only change perceptible for the street will be the introduction of an entry door associated with the gym, in lieu of glazing associated with the retail premises.
  - (b) The minor amendments will not adversely impact the amenity of the nearby residential properties to the north with regards to overshadowing, overlooking or visual bulk given the built form changes are generally consistent with what is approved.
  - (c) The internal alterations to FDP1 will improve the functionality of the premises for its intended use and will not impact the overall developments amenity or functionality.
  - (d) The amendment to the internal foyer relating to the increase in the width of the first floor 'link' which connects commercial office areas at first floor is supported for the following reasons:
    - (i) Located internally to the site, the increase to the width of the link will have no impact on off-site amenity impacts.

- (ii) Although narrowing the void over the ground floor lobby it will not have an adverse impact on the amenity (with regards to daylight access) or functionality of this area given that the lobby is entirely enclosed from above by level 2.

198. It is noted that, although clearly outlined in the submitted ground floorplan, an amended first-floor plan should be required by a condition to any permit issued to show the increased width of the link.

Car parking and bicycle facilities

199. As discussed, the amended proposal requires a further reduction of 25 car parking spaces, resulting from the change of use from Restricted retail premises to Food and drinks premises and from the nine (9) spaces lost in the creation of the Restricted recreation premises (gym). Further, the restricted recreation component is not prescribed a car parking rate at clause 52.06 of the Scheme and on-site car parking provision is therefore required to be provided to the satisfaction of the Responsible Authority and will be assessed against clause 52.06-9 of the Scheme.

*Parking availability/demand*

- 200. The amended proposal will provide eight (8) spaces to the Food and drinks premises, 152 spaces to the office and no spaces to the Restricted recreation premises (gym). This would result in the office being provided an onsite parking rate of 0.88 spaces per 100sqm, the Food and drinks premises being provided a rate of 0.66 spaces per 100sqm and no provision for the gym.
- 201. In the VCAT decision for the original application, it was considered by the member that a rate of 0.8 spaces to every 100sqm was appropriate for an office use. The amended proposal is similar, if not marginally higher, and therefore continues to be supported.
- 202. With regard to the Restricted recreation premise (gym), no on-site parking is allocated to this use. Various Restricted recreation facilities in the municipality (including pilates studios, gymnasiums, dance schools etc) have been approved with either no on-site parking or with one or two on-site spaces. The table below provides some recently approved recreation facilities in Yarra:

Development Site	Approved Parking
<b>Cremorne</b>	
Yoga Studio 94 Cubitt Street PLN15/0019 issued 4 May 2016	2 on-site spaces (32 patrons)
<b>Abbotsford</b>	
Gymnasium (24 hour) 563 Victoria Street PLN16/0948 issued 3 February 2017	No on-site car parking (40 patrons)
Yoga Studio 96 Nicholson Street PLN14/1065 issued 27 July 2015	No on-site car parking (12 patrons)
<b>Fitzroy</b>	
Gymnasium (24 hour) 224 Brunswick Street PLN14/0892 issued 14 January 2015	No on-site car parking (40 patrons)

203. The proposed Restricted recreation premises is generally consistent with the number of patrons permitted in these approvals. Council's Engineering Services Unit supported the provision of no on-site car parking spaces for this use acknowledging that it would attract patrons from nearby businesses and local residents. The nature of gyms is to service local residents/employees needs and does not typically draw patrons from further afield given the prevalence of restricted recreation opportunities throughout the municipality.
204. With regards to the Food and drinks premises, eight (8) car parking spaces have been allocated to the staff associated with these uses. Council's Engineering Services Unit consider this provision appropriate, however, 13 spaces were provided to the retail uses on site in the original application and Council Officers consider that the provision should not be notably reduced from these levels. There is a lack of long-stay on-street parking in the immediate area and given that FDP1 and FDP2 will operate until 1am staff should be reasonably catered for. In light of this concern, the Applicant has committed to ten (10) spaces being allocated Food and drinks premises staff, therefore reducing the allocation of spaces to the office use to 150. This is considered to be appropriate given the consistent view taken by the VCAT that offices be provided with less car parking to encourage workers to utilise the public and sustainable transport options available to them *Grocon (Northumberland St) Developer Pty Ltd v Yarra CC [2017] VCAT 753* and *Ronge v Moreland CC [2017] VCAT 550*). In light of the above, the provision of ten (10) spaces for staff of the Food and drinks premises will be required by condition to any permit issued.
205. More generally, the further reduction to the office car parking provision is considered acceptable for the following reasons:
- (a) The site has excellent access to the public transport network, bicycle and walking routes and the proposal exceeds to provision of bicycle spaces by 111.
  - (b) Office land uses are particularly conducive to alternative transport modes given that trips typically occur within peak hour when public transport services are most frequent. The regularity and familiarity of the journey is also a factor that encourages alternative travel modes. Employees are also more likely to cycle to avoid peak hour traffic delays.
  - (c) There is limited on-street parking in the area, with restrictive controls (short stay parking and permit zones) acting as a disincentive for visitor or employees to travel to site by car. Employee or visitor parking permits will not be issued for the development.
  - (d) A Green Travel Plan has been endorsed for the site, encouraging (through management practices and procedures) the use of public transport and cycling as a means of transport for employees and visitors.
  - (e) Lower provisions of on-site car parking positively correlates with less local traffic and congestion given staff and visitors are discouraged to drive to the site.
  - (f) The reduction aligns with the objectives contained in Council's *Strategic Transport Statement (2006)* which includes the following:
    - (i) *Yarra's Council Plan, its Municipal Strategic Statement and Municipal Public Health Plan all strongly reinforce the need to reduce car dependence in the City of Yarra by promoting walking, cycling and public transport use as viable and preferable alternatives. This is also a key message of the State Government's plan for Metropolitan Melbourne - Melbourne 2030.*
    - (ii) *To improve our community's way of life, we must increase the range of personal transport options. The more sustainable transport choices people make, the better the environment will be for everyone's health and well-being. Sustainable transport, by definition, puts the emphasis on walking, cycling and public transport.*
206. In light of the above, the reduction sought is considered appropriate, having regard to the site's accessibility to public transport services and sustainable transport opportunities and the needs of the proposed uses.

*Vehicle access and layout*

207. To allow for the proposed gym, the car parking arrangement in basement level 1 is proposed to be altered. The revised car parking was referred to Council's Engineering Services Unit who raised no concerns to the proposal.

*Bicycle parking and facilities*

208. As discussed, the proposal exceeds the bicycle parking provisions of Clause 52.34 by 111 spaces. End-of-trip facilities also continue to be provided within an appropriate and accessible proximity to the bicycle spaces.
209. Given the bicycle spaces and associated facilities are an approved condition that are not proposed to be amended, Council Officers are generally supportive of this aspect of the proposal. However, the existing spaces and facilities are located in the lobby/foyer to the office area and do not appear to be readily accessible to visitors associated with the Restricted recreation premises and Food and drinks premises. The Applicant has confirmed that four (4) bicycle spaces can be provided in more accessible locations in the site for visitors to these uses and as such this will be required by a condition to any permit issued.

Objector concerns

*Adverse amenity impacts associated with the sale and consumption of liquor (litter, anti-social behaviour, safety, cumulative impact, smokers, queuing of patrons)*

210. These concerns have been discussed in paragraphs 159 - 195 of this report. Various conditions have been included, regarding operating hours, hours of sale and consumption of liquor, amenity action plans and noise limits, ensuring an appropriate degree of amenity is achieved for nearby residential areas.

*Car parking (demand, provision and availability)*

211. This concern has been discussed in paragraphs 199 - 209 and 59 – 66 of this report. The provision of car parking is considered to meet the relevant policy of the Yarra Scheme and to address the broader objectives of Plan Melbourne 2020.

*Traffic (congestion and road safety)*

212. Given that the number of spaces provided on-site is lower than currently approved, it is not expected that the amendment will increase traffic in the area. The vehicle access of the site from Shamrock Street is an approved condition and there is nothing to suggest that the amendment would adversely impact the safety of abutting roads.

*Noise from use (Food and Drinks premises, outdoor seating areas, patron movement/dispersal)*

213. These concerns are discussed at paragraphs 128 - 146 of this report. Various conditions have been included regarding operating hours, provision of speakers externally, access points and hours of outdoor areas, ensuring an appropriate degree of amenity is achieved for nearby residential areas.

*Commercial activities disruptive to residential area (setup and pack up, deliveries, rubbish removal)*

214. As discussed at paragraphs 147 – 158 of this report, the land is zoned commercial and as activities of a commercial nature are to be expected and encouraged in these locations. Nevertheless, as substantiated throughout the report, it is not expected that the proposed amendments relating to the commercial uses will unreasonably impact nearby neighbours.

*Lack of detail in plans (internal layout of restaurants, location of flues)*

215. This has been discussed at paragraphs 163 – 165 and 196 - 198 of this report and the information has been requested by a condition to any permit issued. Nevertheless, Council Officers were able to carry out an accurate assessment with the submitted plans and reports.

*Light spill*

216. This matter was discussed at paragraphs 150 – 151 of this report and was considered to be reasonable within the context and commercial zoning.

*Obstruct pedestrian movements along Shamrock Street*

217. The provision of outdoor dining within the front setback of the building is not out-of-keeping with the traditional footpath seating throughout the municipality. The dining area continues to allow for adequate movement along the southern side of Shamrock Street.

Other matters

218. If an amended were to issue the following is noted:

(a) The permit preamble would be amended from:

*In accordance with the endorsed plans:*

*the use of the land for 'childcare centre' under clauses 32.08 and 34.02;*

*the construction of a building or the construction or carrying out of works associated with a section 2 use under clause 32.08;*

*the construction of a building or construction or carrying out of works under clause 34.02 and 43.02;*

*alteration of access and building and works to a Road Zone Category 1 Road under clause 52.29; and*

*the reduction in the number of car parking spaces under clause 52.06-3,*

*and subject to the following conditions.*

To

In accordance with the endorsed plans:

the use of the land for 'childcare centre' under clauses 32.08 and 34.02;

the use of the land for Food and drinks premises (Restaurant and café) and Restricted recreation premises (gym) under clause 34.02;

the sale and consumption of liquor on the premises (restaurant and café licence);

the construction of a building or the construction or carrying out of works associated with a section 2 use under clause 32.08;

the construction of a building or construction or carrying out of works under clause 34.02 and 43.02;

alteration of access and building and works to a Road Zone Category 1 Road under clause 52.29; and

the reduction in the number of car parking spaces under clause 52.06-3,

and subject to the following conditions.

219. Conditions 1(d) to 1(h) would be included.

220. Conditions 29 (Waste management plan), 39 – 41 (Acoustic reports) and 76 (permit expiry) would be amended.

221. Conditions 8 – 16 (relating to Food and drinks premises), 17 – 21 (sale and consumption of liquor), 22 – 26 (restricted recreation premises), 75 (Development contribution levy) would be included and the remaining conditions renumbered accordingly.



## Conclusion

222. Based on the report, the proposal is considered to generally comply with the relevant policies of the Yarra Planning Scheme and is recommended for approval, subject to the above condition beings being amended/included on any amended permit issued.

## RECOMMENDATION

That having considered all objectives and relevant planning policies, the Committee resolve to issue a Notice of Decision to Amend a Planning Permit PLN18/0328 at No. 459 – 471 Church Street and 20 – 26 Brighton Street Richmond with the following changes:

The permit preamble to read:

In accordance with the endorsed plans:

- the use of the land for 'childcare centre' under clauses 32.08 and 34.02;
  - the use of the land for Food and drinks premises (Restaurant and café) and Restricted recreation premises (gym) under clause 34.02;
  - the sale and consumption of liquor on the premises (restaurant and café licence);
  - the construction of a building or the construction or carrying out of works associated with a section 2 use under clause 32.08;
  - the construction of a building or construction or carrying out of works under clause 34.02 and 43.02;
  - alteration of access and building and works to a Road Zone Category 1 Road under clause 52.29; and
  - the reduction in the number of car parking spaces under clause 52.06-3,
- and subject to the following conditions.

Conditions amended as follows (**amended and new conditions in bold**):

1. Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of this permit. The plans must be drawn to scale with dimensions and three copies must be provided. **Building C must be generally in accordance with the architectural plans prepared by Architectus, drawing nos. DA1003, DA1004, DA1007, DA2003, DA2001A, DA2002, DA1006 and the External Finishes Schedule (dated 18 December 2020), and Buildings A and B must be generally in accordance with the architectural plans prepared by Architectus, drawing Nos. DA1002 and DA1003 (dated 25 January 2021) but modified to show:**
  - (a) retention of the entirety of the existing boundary wall to 28 Brighton Street and its height shown correctly.
  - (b) the screen on the boundary to No. 28 Brighton Street deleted.
  - (c) any requirement of the endorsed Acoustic Report under condition 22 (where relevant to show on plans).
  - (d) **The internal layout of the Food and drinks premises, including bathroom facilities in accordance with the Patron Capacity Report (prepared by McKenzie Group and dated 17 December 2020) and indicative seating for at least 75% of the patrons.**

- (e) **The sound lock in the Restricted recreation premise (gym) as committed to in the Acoustic Report (prepared by Cundall and dated 15 February 2021).**
  - (f) **The increased width of the first floor 'link' on DA1004.**
  - (g) **Ten (10) car parking spaces allocated to the staff of the Food and drinks premises, with the remainder allocated to the office uses.**
  - (h) **Four (4) bicycle spaces provided in accessible locations for visitors of the Food and drinks premises and Restricted recreation premises.**
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.
3. As part of the ongoing consultant team, Architectus or an architectural firm to the satisfaction of the Responsible Authority must be engaged to:
- (a) oversee the design and construction of the development; and
  - (b) ensure the design quality and appearance of the development is realised as shown in the endorsed plans or otherwise to the satisfaction of the Responsible Authority.

#### **Childcare Centre Use**

4. Except with the prior written consent of the Responsible Authority, the childcare centre use authorised by this permit may only operate between the hours of 7am and 7pm, Monday to Friday.
5. Except with the prior written consent of the Responsible Authority, no more than 22 staff are permitted on the land at any one time.
6. Except with the prior written consent of the Responsible Authority, no more than 104 children are permitted on the land at any one time.
7. Before the child care use commences, a Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Management Plan will be endorsed and will form part of this permit. The Management Plan must include (or show, or address):
- (a) General programs/schedules for outdoor play, accounting for discrepancies in season, which should be made publicly available for parents and neighbours.
  - (b) A contact phone number for the centre's management should be made available to neighbours to facilitate communication and resolve concerns.
  - (c) The number of children playing outside be limited to the numbers outlined in the acoustic report.
  - (d) Noise minimisation methods to be undertaken by staff, such as comforting crying children and taking them indoors.
  - (e) Details of staff training.

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

#### **Food and drinks premises Use**

8. **No more than 100 patrons are permitted in Food and drinks premises 1 (FDP1) at any one time.**

9. No more than 200 patrons are permitted in Food and drinks premises 2 (FDP2) at any one time.
10. No more than 130 patrons are permitted internally for Food and drinks premises 3 (FDP3) at any one time. No more than 40 patrons are permitted in the associated outdoor dining area in the ground floor courtyard and no more than 15 patrons are permitted in the associated outdoor dining area within the front setback of Shamrock Street.
11. No more than 80 patrons are permitted internally for Food and drinks premises 4 (FDP4) at any one time. No more than 33 patrons are permitted in the associated outdoor dining area in the ground floor courtyard.
12. Except with the prior written consent of the Responsible Authority, the Food and drinks premises authorised by this permit may only operate as follows:
  - (a) FDP1 and FDP2 between 6am and 1am (the following day), seven days a week
  - (b) FDP3 and FDP4 between 6am and 10pm, seven days a week.
  - (c) The outdoor dining areas associated with FDP3 and FDP4 between 7am and 6pm, seven days a week.
13. The northern windows and doorways associated with the outdoor dining areas of FDP3 and FDP4 to remain closed at 6pm on every day.
14. Patron ingress/egress to FDP3 to be provided only from the entry to the central lobby after 8pm on any evening.
15. Speakers external to the building must not be erected or used.
16. The predominant activity in the restaurants, at all times, must be the preparation and serving of meals for consumption by patrons on the premises, during the times that liquor is allowed to be sold and consumed under this permit.

#### Sale and consumption of liquor

17. Except with the prior written consent of the Responsible Authority, the sale and consumption of liquor (on the premises) authorised by this permit may only operate as follows:
  - (a) FDP1 and FDP2 between 9am and 1am (the following day), seven days a week
  - (b) FDP3 and FDP4 between 9am and 10pm, seven days a week.
  - (c) The outdoor dining areas associated with FDP3 and FDP4 between 9am and 6pm, seven days a week.
18. Before the sale and consumption of liquor commences, a Noise and Amenity Action Plan must be submitted to and approved by the Responsible Authority. When approved, the Noise and Amenity Action Plan will be endorsed and will form part of this permit. The Noise and Amenity Action Plan must include, but not be limited to, those matters outlined at Clause 22.09-4.3 of the Yarra Planning Scheme and the following:
  - (a) The venues complaint procedure.
  - (b) Waste collection and management within the premises.
  - (c) Management of any outdoor areas.

- (d) **Confirmation of the permitted operating hours, patron capacity and any other relevant conditions included in the permit.**
  - (e) **Booking procedures and management of the ingress and egress of patrons, including directing patrons to public transport opportunities or assisting the bookings of taxis (etc).**
19. **The provisions recommendation and requirements of the endorsed Noise and Amenity Action Plan must be implemented and complied with to the satisfaction of the Responsible Authority.**
20. **Emptying of bottles and cans into bins may only occur between 7am and 10pm on Monday to Saturday or after 9am on a Sunday or public holiday.**
21. **Before the commencement of the sale and consumption of liquor, the applicant must, to the satisfaction of the Responsible Authority, display a sign at the exit of the licensed premises advising patrons to respect the amenity of adjacent residential areas and to leave in a quiet and orderly manner.**

**Restricted recreation premises**

22. **No more than 60 patrons are permitted on the land at any one time in association with the Restricted recreation premises (gym).**
23. **No more than four (4) staff are permitted on the land associated with the Restricted recreation premises at any one time.**
24. **Except with the prior written consent of the Responsible Authority, the Restricted recreation use authorised by this permit may only operate between the hours of 5am to 11pm, seven days a week.**
25. **Before the Restricted recreation use commences, a Management Plan must be submitted to and approved by the Responsible Authority. When approved, the Management Plan will be endorsed and will form part of this permit. The Management Plan must include, but not be limited to, the following:**
- (a) **Class types, frequency of classes and maximum attendance in classes.**
  - (b) **Details of membership and booking procedures.**
  - (c) **Reception procedures and management of patrons in the morning and evening.**
  - (d) **Waste collection and management within the premises.**

**Sustainable Management Plan**

26. **Before the development commences, an amended Sustainable Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Sustainable Management Plan will be endorsed and will form part of this permit. The amended Sustainable Management Plan must be generally in accordance with the Sustainable Management Plan prepared by Cundall in April 2018 and the provisions of the evidence statement of Mr Talacko of Ark Resources dated 4 March 2019, but modified to include or show:**
- (a) **a 5 Star Green Star Design and As Built rating generally in accordance with the Statement of Evidence provided by Ark Resources (prepared on 4 March 2019);**
  - (b) **a 5 Star NABERS Energy rating generally in accordance with the Statement of Evidence provided by Ark Resources (prepared on 4 March 2019);**

- (c) compliance with the Urban Stormwater Best Practice Environmental Management Guidelines generally in accordance with the Statement of Evidence provided by Ark Resources (prepared on 4 March 2019);
- (d) more information on the expected daylight performance of the buildings and ensure that 30% of floor area can reach a minimum 2% df standard, and provide a suitable VLT for each area to assist achieve this standard generally in accordance with the Statement of Evidence provided by Ark Resources (prepared on 4 March 2019);
- (e) a completed JV3 energy modelling report, or equivalent, demonstrating the 6 points or 30% improvement in NCC requirements;
- (f) include all MUSIC model inputs and outputs including catchment area, storage locations and volume and location and number of toilet connections to ensure that best practice in WSUD can be met;
- (g) ensure the WMP has sufficient spaces allocated to recycling and all waste streams. Ensure recycling is just as convenient as general garbage;
- (h) the provision of a composting system or provision of an organic waste collection service; and
- (i) the provision of any electric vehicle charging facilities.

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

#### **SMP Implementation Report**

28. Before the development is occupied or by such later date as agreed to by the responsible authority in writing, a report from the author of the Sustainability Management Plan, approved under this permit, or similarly qualified person or company, must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm all measures specified in the Sustainability Management Plan have been implemented in accordance with the approved plan.

#### **Waste Management Plan**

**29. The provisions, recommendations and requirements of the endorsed Waste Management Plan (prepared by Irwin Consultants and dated 9 February 2021) must be implemented and complied with to the satisfaction of the Responsible Authority.**

30. The collection of waste from the site must be by private collection, unless with the prior written consent of the Responsible Authority.

#### **Landscape Plan**

31. Before the development commences, an amended Landscape Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Landscape Plan will be endorsed and will form part of this permit. The amended Landscape Plan must be generally in accordance with the Landscape Plan prepared by MALA Studio prepared on 28 February 2019, but modified to include (or show, or address):

- (a) a detailed planting plan indicating the location and quantity of the species proposed;
- (b) confirm mulch used on the higher levels is a wind tolerant material;

- (c) further details on the raised planter beds such as information on drainage, waterproofing, irrigation and mulch;
  - (d) details on the custom furniture proposed;
  - (e) deletion of *Pennisetum clandestinum* on Plant Mix C and replacement with a suitable alternative species;
  - (f) additional details regarding the mounded planter beds such as maintenance and how to ensure there is no mulch run off from the slope of the garden bed to the adjacent paving areas;
  - (g) additional details regarding the relationship between the *Jacarada mimosifolia*, associated garden bed and decking in the courtyard including the provision of a section;
  - (h) additional details regarding the landscape feature proposed at the corner of Church and Shamrock Streets;
  - (i) deletion of where the internal paving from the courtyard is shown encroaching into the public realm and replace the public realm paving with an asphalt treatment;
  - (j) that the 300mm bluestone kerb is maintained (provide a section through that treatment);
  - (k) street tree cut outs as being 1m depth x1.5m width and sitting directly behind the bluestone pitcher;
  - (l) confirmation that there is sufficient circulation space around the eastern most proposed street tree and the building, with the minimum path of travel and deletion of any obstructions.
32. 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 to the satisfaction of the Responsible Authority including 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.

**Tree Management Plan**

33. Before the development commences, a Tree Management Plan to the satisfaction of the Responsible Authority must be prepared by a suitably qualified Arborist and must be submitted to and approved by the Responsible Authority. When approved the Tree Management Plan will be endorsed and will form part of this permit. The Tree Management Plan must make recommendations for the protection of the Manchurian Pear trees located on the adjacent property at 28 Brighton Street:
- (a) pre-construction;
  - (b) during construction; and



- (c) post construction
  - (d) the provision of any barriers;
  - (e) any pruning necessary; and
  - (f) watering and maintenance regimes,
- to the satisfaction of the Responsible Authority.

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

### **Street Trees**

35. Before the development commences, the permit holder must provide an Asset Protection Bond of \$10,000 (ex GST) for the three (3) trees in Church Street adjacent the frontage of the development and one (1) tree opposite 22 Brighton Street to the Responsible Authority. The security bond:
- (a) must be provided in a manner, and on terms, to the satisfaction of the Responsible Authority;
  - (b) may be held by the Responsible Authority until the works are completed to the satisfaction of the Responsible Authority; and
  - (c) in accordance with the requirements of this permit; or
  - (d) otherwise to the satisfaction of the Responsible Authority.
36. Before the development commences, the permit holder must make a one off contribution of \$17,633.25 to the Responsible Authority to be used for:
- (a) the cost of supply, planting and establishment maintenance four trees (one in Church St and three in Brighton St).

### **Wind**

37. Before the development commences an updated wind assessment must be submitted and approved by the responsible authority.
38. The provisions, recommendations and requirements of the endorsed Environmental Wind Assessment must be implemented and complied with to the satisfaction of the Responsible Authority.

### **Acoustic report**

39. **Before the uses commence as permitted in the amended permit, an amended Acoustic Report to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Acoustic Report will be endorsed and will form part of this permit. The amended Acoustic Report must be generally in accordance with the Endorsed Acoustic Report and updated to include the commitments relating to the Food and drinks premises and Restricted recreation premises in the acoustic report prepared by Cundall and dated 15 February 2021, but further modified to include (or show, or address):**
- (a) the screen on the boundary to No. 28 Brighton Street deleted;

- (b) confirmation that any acoustic fencing, screening and boundary walls may be constructed of any suitable cladding material so long as it has a mass of at least 10kg/m<sup>2</sup>;
  - (c) The northern elevation of the first floor balcony to be enclosed fully (either by a solid barrier, or by providing glass between the top of the barrier and the second floor soffit above), and the entire ceiling of the first floor balcony area is to be provided with an acoustically absorptive finish with a minimum acoustic absorption performance of NRC 0.8;
  - (d) confirmation that acoustic fencing and screening will have no gaps or holes in it, or the likelihood of such occurring through natural causes, landscaping or deformations, thus allowing noise to easily pass through.
  - (e) **The maximum number of children permitted in the child-care centre in accordance with Condition 6.**
  - (f) **The hours of operation for the Food and drinks premises in accordance with Conditions 12.**
  - (g) **The evening noise limits for music and patron noise recalculated using the average of the background noise levels measured in the evening period.**
40. **The provisions, recommendations and requirements of the endorsed Acoustic Report must be implemented and complied with to the satisfaction of the Responsible Authority.**
41. Within 3 months of occupying the building, an updated post-occupation Acoustic Report to the satisfaction of the Responsible Authority must be prepared by a suitably qualified acoustic engineer and must be generally in accordance with the endorsed acoustic report. The report must be submitted to and approved by the Responsible Authority. When approved, the updated post-occupation Acoustic Report will be endorsed and will form part of this permit. The Acoustic Report must (assess) address the following:
- (a) Confirm the recommendations of the endorsed acoustic report required as part of **Condition 39** have been implemented;
  - (b) Assess mechanical plant noise to SEPP N-1; and
  - (c) If non-compliance with **Condition 39(g)** is measured, additional acoustic measures as recommended by the amended post-occupation acoustic report are to be implemented within one month of the date of the amended acoustic report.
42. The provisions, recommendations and requirements of the endorsed post-occupation Acoustic Report must be implemented and complied with to the satisfaction of the Responsible Authority.

**Transport for Victoria Conditions**

43. The permit holder must take all reasonable steps to ensure that disruption to tram operation along Church Street is kept to a minimum during the construction of the development. Foreseen disruptions to tram operations during construction and mitigation measures must be communicated to Yarra Trams and Public Transport Victoria thirty five days (35) prior.

44. The permit holder must ensure that all track, tram and overhead infrastructure is not damaged. Any damage to public transport infrastructure must be rectified to the satisfaction of the Public Transport Victoria at the full cost of the permit holder.

**VicRoads Conditions**

45. Before the use approved by this permit commences the following roadworks on Church Street, Richmond must be completed at no cost to and to the satisfaction of the Roads Corporation:
- (a) The provision of Keep Clear line-marking at the intersection of Church Street and Shamrock Street, Richmond.
46. Prior to the commencement of the development, excluding demolition works, an Engineering report from a suitably qualified Engineer outlining the design, management and construction techniques to be implement prior, during and following excavation to prevent any impact on the Burnley Tunnel is to be submitted to VicRoads and CityLink for approval. Once approved, the Engineering Report will form part of the planning permit. Without limiting the scope of the report, it must consider all relevant structural and geotechnical issues, including, but not limited to, demonstrating:
- (a) That the development will not compromise the structural integrity of the Burnley Tunnel;
  - (b) What is the load applied to the ground by the development;
  - (c) What is the depth of the excavation;
  - (d) That the development will not cause changes to groundwater conditions that will result in adverse effect on the Burnley Tunnel.
  - (e) Any holding points requiring VicRoads and CityLink inspection and approval prior to releasing the hold points.
47. Prior to the commencement of and during the course of construction the following details must be submitted to the satisfaction of VicRoads and CityLink for approval:
- (a) Initial groundwater level;
  - (b) Expected and confirmation of actual flows and total volume drained during the construction of the basement;
  - (c) if the completed basement is tanked or drained;
  - (d) If drained, confirm flow rate into the basement and the height and extent of the permanent lowering of the water-table.
  - (e) Temporary or permanent groundwater drawdown greater than 2 metres below existing levels requires the developer to demonstrate the impact of the proposed development on the regional groundwater regime. The developer shall describe how groundwater drawdown will be managed, and demonstrate that there will be an insignificant impact on CityLink assets.

**Road Infrastructure**

48. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, any redundant vehicular crossing must be demolished and re-instated as standard footpath and kerb and channel:
- (a) at no cost to the Responsible Authority (inclusive of the cost of modifying any parking signs or road markings for parking bays (where required)); and

- (b) to the satisfaction of the Responsible Authority.
49. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, any roads, footpaths and other road related infrastructure adjacent to the development site damaged as a result of the construction works, including trenching and excavation for utility service connections must be reconstructed and re-sheeted as single full width areas (with any areas of pavement failure as a consequence of construction traffic must be reinstated with full depth pavement):
- (a) at no cost to the Responsible Authority; and
  - (b) to the satisfaction of the Responsible Authority.
50. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, the footpath immediately outside the subject site's Brighton Street, Shamrock Street and Church Street road frontages must be reconstructed:
- (a) with the footpath having a cross-fall of 1 in 40 or unless otherwise specified by Council;
  - (b) at no cost to the Responsible Authority; and
  - (c) to the satisfaction of the Responsible Authority.
51. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, the new vehicular crossing on the west side of Brighton Street and the new vehicle crossing on the properties Shamrock Street road frontage must be constructed:
- (a) to satisfy the vehicle ground clearance requirements for the B99 design vehicle;
  - (b) at no cost to the Responsible Authority; and
  - (c) to the satisfaction of the Responsible Authority.

#### **Streetscape Improvement Plan**

52. Before the development commences, or by such later date as approved in writing by the Responsible Authority, a Streetscape Improvement plan for the development's Shamrock Street frontage (inclusive of the widening of Shamrock Street) to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority.
53. Before the building is occupied, all works associated with the Streetscape Improvement plan as shown on the endorsed plans and Streetscapes Improvement plan (referred to in **Condition 52**) must be fully constructed and completed, at no cost to the Responsible Authority and to the satisfaction of the Responsible Authority.

#### **Drainage**

54. Before the development commences, an amended Drainage Investigation report to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Drainage Investigation will be endorsed and will form part of this permit. The amended Drainage Investigation must be generally in accordance with the Drainage Investigation prepared by Northrop Pty Ltd prepared on 31 January 2019, but modified to include (or show, or address):
- (a) a plan showing the location of the pits referenced in the CCTV report prepared by Rapid Cam dated 2 November 2018;
  - (b) the use of a back-up system such as a flood gate at the driveway or an internal pump system which discharges to Church Street through the property stormwater; and

- (c) an updated flood risk assessment using a 200mm diameter pipe to determine if this will affect the flood level results.

**Widened section of Shamrock Street**

- 55. Within 6 months of the commencement of development, the design of the widened section of Shamrock Street must be prepared by an independent and suitably qualified engineering professional to the satisfaction of the Responsible Authority and in consultation with the Responsible Authority. The design must be submitted to and approved by the Responsible Authority. The design of the widening of Shamrock Street must provide details including pavement widths, surface treatment, road infrastructure items, landscaping (where applicable) and drainage including the installation of any additional drainage pits and associated connecting drainage to the satisfaction of the Responsible Authority.
- 56. Before the building is occupied, all works associated with the widening of Shamrock Street (referred to in **Condition 55**) must be carried out, at no cost to the Responsible Authority and to the satisfaction of the Responsible Authority.
- 57. Within six months of the commencement of works, the owner (or another person in anticipation of becoming the owner) must enter into an agreement with the Responsible Authority under section 173 of the *Planning and Environment Act 1987*, providing for the following:
  - (a) The Owner must provide unfettered 24 hour public access over (and inclusive of the provision of lighting) over that part of the land to be used for the widened section of Shamrock Street between Church Street and the eastern boundary of the development's Shamrock Street frontage;
  - (b) The owner is responsible for maintaining at all times the areas that are private land open to the public described in **condition 57(a)** at the cost of the owners of the site and to the satisfaction of the Yarra City Council;
  - (c) The owner(s) must obtain and maintain insurance, approved by Yarra City Council, for the public liability and indemnify Yarra City Council against all claims resulting from any damage, loss, death or injury in connection with the public accessing the land described in **condition 57(a)**.
- 58. The owner, or other person in anticipation of becoming the owner, must meet all of the expenses of the preparation and registration of the agreement, including the reasonable costs borne by the Responsible Authority.

**Car parking**

- 59. Before the development is occupied, a Car Park Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Car Park Management Plan will be endorsed and will form part of this permit. The Car Park Management Plan must address, but not be limited to, the following:
  - (a) the management of any visitor car parking spaces and security arrangements for occupants of the development, including details on how visitors are to access car parking;
  - (b) details of way-finding, cleaning and security of end of trip bicycle facilities;
  - (c) the number and allocation of storage spaces;
  - (d) any policing arrangements and formal agreements;

- (e) a schedule of all proposed signage including directional arrows and signage, informative signs indicating location of disabled bays and bicycle parking, exits, restrictions, pay parking system etc;
  - (f) the collection of waste and garbage including the separate collection of organic waste and recyclables, which must be in accordance with the Waste Management Plan required by **Condition 29**; and
  - (g) details regarding the management of loading and unloading of goods and materials.
60. The provisions, recommendations and requirements of the endorsed Car Park Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.
61. 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, all to the satisfaction of the Responsible Authority.
62. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, a notice showing the location of car parking must be placed in a clearly visible position near the entry to the land. The notice must be maintained thereafter to the satisfaction of the Responsible Authority.

**Green Travel Plan**

63. Before the development is occupied, an amended Green Travel Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Green Travel plan will be endorsed and will form part of this permit. The amended Green Travel Plan must be generally in accordance with the Green Travel Plan prepared by Impact Traffic Engineering prepared on 2 July 2018, but modified to include (or show, or address):
- (a) deletion of any language such as ‘could be introduced’ and instead of ‘should’ or otherwise committing to a particular action;
  - (b) the Action Plan at Appendix A to references to all actions included in the report, including any carpooling actions;
  - (c) the promotion of various public transport smartphone apps such as the Public Transport Victoria app and/or train or tram tracker;
  - (d) a description of the location in the context of alternative modes of transport;
  - (e) employee welcome packs (e.g. provision of Myki/transport ticketing);
  - (f) the provision of real time passenger information displays for nearby stops within each lobby;
  - (g) sustainable transport goals linked to measurable targets, performance indicators and monitoring timeframes;



- (h) a designated 'manager' or 'champion' responsible for coordination and implementation;
- (i) details of bicycle parking and bicycle routes;
- (j) details of GTP funding and management responsibilities;
- (k) the types of bicycle storage devices proposed to be used for employee and visitor spaces (i.e. hanging or floor mounted spaces);
- (l) the types of lockers proposed within the change-room facilities, with at least 50% of lockers providing hanging storage space;
- (m) security arrangements to access the employee bicycle storage spaces;
- (n) signage and wayfinding information for bicycle facilities and pedestrians pursuant to Australian Standard AS2890.3;
- (o) reference to a minimum 40A single phase electrical sub circuit should be installed to the car park areas for 'EV readiness'; and
- (p) provisions for the Green Travel Plan to be updated not less than every 5 years.

64. The provisions, recommendations and requirements of the endorsed Green Travel Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

#### **Lighting**

65. 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 pedestrian and vehicular entrances must be provided on the subject site. Lighting must be:

- (a) located;
- (b) directed;
- (c) shielded; and
- (d) of limited intensity,

all to the satisfaction of the Responsible Authority.

#### **General**

66. Finished floor levels shown on the endorsed plans must not be altered or modified without the prior written consent of the Responsible Authority.

67. The amenity of the area must not be detrimentally affected by the development and 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.

68. The use and development must comply at all times with the State Environment Protection Policy – Control of Noise from Commerce, Industry and Trade, N-1 (SEPP N-1).

69. 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.
70. All buildings and works must be maintained in good order and appearance to the satisfaction of the Responsible Authority.
71. 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.
72. 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 9am or after 3pm; or
  - (c) Sundays, ANZAC Day, Christmas Day and Good Friday at any time.

**Construction Management**

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

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

74. During the construction:

- (a) any stormwater discharged into the stormwater drainage system must be in compliance with Environment Protection Authority guidelines;
- (b) 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;
- (c) vehicle borne material must not accumulate on the roads abutting the land;
- (d) the cleaning of machinery and equipment must take place on the land and not on adjacent footpaths or roads; and
- (e) all litter (including items such as cement bags, food packaging and plastic strapping) must be disposed of responsibly.

**Development Contributions levy**

**75. Prior to the issue of a building permit, commencement of the development, or issue of a Statement of Compliance (whichever occurs first) 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 amount of the levy within a time specified in the agreement.**

**Time expiry**

76. This permit will expire if:

- (a) the development is not commenced within two years of the date of this permit; or
- (b) the development is not completed within four years of the date of this permit; or
- (c) the child care use has not commenced within five years of the date of this permit;
- (d) the food and drinks premises and restricted recreation uses have not commenced within two years of the date this permit was amended;**
- (e) the sale and consumption of liquor is not commenced with two years from the date this permit was amended;**
- (f) the sale and consumption of liquor is discontinued for a period of two years.**

77. 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 maybe required before development is commenced. Please contact Council's Building Services on 9205 5095 to confirm.

A vehicle crossing permit is required for the construction of the vehicle crossing(s). Please contact Council's Construction Management Branch on 9205 5585 for further information.

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

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

Any services poles, structures or pits that interfere with the proposal must be adjusted, removed or relocated at the owner's expense after seeking approval from the relevant authority.

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.

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

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

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

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

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

Contaminated ground water seepage into basements from above the water table must be discharged to the sewer system through a trade waste agreement with the relevant authority or in accordance with EPA guidelines.

Contaminated groundwater from below the water table must be discharged to the sewer system through a trade waste agreement from the relevant sewer authority.

Council will not permit clean groundwater from below the groundwater table to be discharged into Council's drainage system. Basements that extend into the groundwater table must be waterproofed/tanked.

Overhead power lines run along the east side of Church Street and west side of Brighton Street, close to the property boundary.

The developer needs to ensure that the building has adequate clearances from overhead power cables, transformers, substations or any other electrical assets where applicable. Energy Safe Victoria has published an information brochure, Building design near powerlines, which can be obtained from their website:

<http://www.esv.vic.gov.au/About-ESV/Reports-and-publications/Brochures-stickers-and-DVDs>

**Prior to the issue of a building permit for the development allowed by this permit, the Community Infrastructure Levy must be paid to Yarra City Council in accordance with the approved Development Contributions Plan.**

#### VicRoads Note

Separate consent may be required from VicRoads (the Roads Corporation) under the Road Management Act 2004 for buildings and works (i.e. canopies and architectural features/ projections) undertaken outside the title boundary within a Road Zone Category 1 (i.e. Church Street). Please contact VicRoads prior to commencing any works.

## Attachments

- 1 PLN18/0328.02 - 459 - 471 Church Street and 20 - 26 Brighton Street Richmond - Site Location Map
- 2 PLN18/0328.02 - 459 - 471 Church Street and 20 - 26 Brighton Street Richmond - Decision Plans (1)

- 3** PLN18/0328.02 - 459 - 471 Church Street and 20 - 26 Brighton Street Richmond - Decision Plans (2)
- 4** PLN18/0328.02 - 459 - 471 Church Street and 20 - 26 Brighton Street Richmond - Referral comments



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**6.2 PLN17/0744.02 - 196 Nicholson Street Abbotsford - Section 72 Amendment to Planning Permit No. PLN17/0744 to construct a first-floor studio above the single-storey garage at the rear of the site.**

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## **Executive Summary**

### **Purpose**

1. This report provides Council with an assessment of the proposed amendment application to Planning Permit No. PLN17/0744 at No. 196 Nicholson Street, Abbotsford which seeks to construct a first-floor studio above the single-storey garage at the rear of the site.

### **Key Planning Considerations**

2. Key planning considerations include:
  - (a) Clause 22.02-2 – Development guidelines for sites subject to the heritage overlay;
  - (b) Clause 32.09 – Neighbourhood Residential Zone (Schedule 1);
  - (c) Clause 43.01 – Heritage Overlay;
  - (d) Clause 54 – One dwelling on a lot (ResCode);

### **Key Issues**

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

### **Submissions Received**

4. Twelve (12) objections were received to the application, these can be summarised as:
  - (a) Impact on heritage streetscape along Yarra Street;
  - (b) Built form (setbacks, height, material, design and overdevelopment);
  - (c) Amenity impacts (visual bulk, overlooking, noise);
  - (d) Use (AirBnb, teenager retreat and second dwelling);
  - (e) Non -planning related matters:
    - (i) Reduce financial value of properties;
    - (ii) Construction damage to existing properties; and
    - (iii) Piece meal development.

### **Conclusion**

5. Based on the following report, the proposal is considered to comply with the relevant planning policy and should therefore be supported subject to the following key condition:
  - (a) The northern wall of the first-floor studio to be set back an overall 1.0m from the northern boundary, with any associated internal changes.

**CONTACT OFFICER:** Emily Zeng  
**TITLE:** Statutory Planner  
**TEL:** 03 9205 5363

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**6.2**      **PLN17/0744.02 - 196 Nicholson Street Abbotsford - Section 72 Amendment to Planning Permit No. PLN17/0744 to construct a first-floor studio above the single-storey garage at the rear of the site.**

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**Reference**            D21/57465  
**Author**                Emily Zeng - Statutory Planner  
**Authoriser**          Senior Coordinator Statutory Planning

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**Ward:**                    Langridge  
**Proposal:**            Section 72 amendment to Planning Permit No. PLN17/0744 to include the addition of a first-floor studio above the single-storey garage at the rear of the site.  
**Existing use:**        Dwelling  
**Applicant:**            DWH Aitken and Associates P/L  
**Zoning / Overlays:** Neighbourhood Residential Zone (Schedule 1)  
Heritage Overlay (Schedule 313)  
Development Contributions Overlay (Schedule 1)  
**Date of Application:** 5 August 2020  
**Application Number:** PLN17/0744.02

### Planning History

1. Planning Permit No. PLN14/0837 was issued by Council on 5 January 2015 for the *development of the land for part demolition and a ground floor extension to the rear of the dwelling.*
2. Planning Permit No. PLN17/0113 was issued by Council on 20 February 2017 for *alterations to the front façade and associated demolition.*
3. Planning Permit No. PLN17/0744 was issued by Council at the direction of the Victorian Civil and Administrative Tribunal (VCAT) on 31 August 2018 for the *development of the land for the construction of a garage at the rear of the existing dwelling, including alterations to the front façade and part demolition.*
  - (a) A Section 72 Amendment was approved by Council on 19 September 2019, allowing *further demolition and the construction of a ground and first floor addition to the rear of the existing dwelling, including the replacement of roof gutters, part of which are located within No. 198 Nicholson Street, Abbotsford.*
4. At the time of writing this report, the bullnose front verandah and front timber picket fence along the Nicholson Street frontage, as well as, the rear single-storey garage approved by Planning Permit No. PLN17/0744 have been constructed on site. The ground and first floor extension at the rear of the existing dwelling approved under the Section 72 Amendment to Planning Permit No. PLN17/0744 is yet to be constructed.
5. As works have commenced on site in accordance with Planning Permit No. PLN17/0744, the permit expiry for completion is 31 August 2022. Therefore, the permit is still valid at the time of this report.

6. The subject amendment application does not propose any additional demolition or works outside of title boundaries of the subject site.

## Background

7. The application was received by Council on 5 August 2020.
8. The application was advertised in October and November 2020 and 12 objections were received.
9. No consultation meeting was held given the COVID-19 pandemic.

### Planning Scheme Amendment C238

10. On 1 February 2021, the Minister for Planning formally gazetted Planning Scheme Amendment C238, which introduces a Development Contributions Plan Overlay over the entire municipality. This overlay requires developers to pay a contribution towards essential city infrastructure like roads and footpaths, as well as community facilities. The requirements of this provision have immediate effect. However, a replacement building or dwelling is exempt from these requirements, and as such does not apply to this application.

### Lodgement of Section 57A amended plans:

11. The permit applicant submitted a revised proposal to Council under Section 57(a) of the Planning and Environment Act (1987) (the “Act”) on 4 March 2021 in response to concerns raised by Council’s Heritage Advisor. The Section 57(a) amendment includes the following changes:
  - (a) Modify proposed design of first floor studio, including a hipped roof;
  - (b) Increase maximum height to 5.87m above natural ground level; and
  - (c) Alter previously proposed window configurations.
12. The amended proposal was re-advertised in March and April 2021 under Section 57(b) of the Act to adjoining properties and objectors.

## The Proposal

13. The amendment application proposes the construction of a first-floor studio to the approved single-storey garage at the rear of the site. The site already has approval for the works to the front façade, single-storey garage, and the ground and first floor addition to the existing dwelling. The proposal is summarised as follows:

### Demolition

14. No additional demolition works are sought by the amendment application.

### Construction

15. The studio will contain a bathroom and cupboard storage area as well as the studio space with south and west-facing windows and one skylight.
16. The following setbacks are proposed:
  - (a) 0.5m from the northern boundary,
  - (b) 1.24m from the southern boundary (Yarra Street) and 0.35m from the eastern boundary.
  - (c) 23.69m from the Nicholson Street (western boundary).

17. An external spiral staircase with 1.7m high permanently fixed timber screen/balustrading with a maximum transparency of 25% will provide direct access to the first-floor studio from the secluded private open space (SPOS) of the subject site.
18. The proposal will have a hipped roof form resulting in a maximum height of approximately 5.87m above Natural Ground Level (NGL).
19. The amendment also proposes the following alterations and additions:
  - (a) Increase the height of a portion of existing and retained northern boundary paling fence from 2.1m to 2.35m above NGL.
  - (b) The maximum height of the approved garage under Planning Permit No. PLN17/0744 along the northern decreased from 2.8m to 2.65m above NGL.
  - (c) Relocate pedestrian gate along Yarra Street further to the east, abutting the approved garage door. It is of note that the relocated position of the pedestrian gate is only shown on the proposed south elevation whilst the proposed ground and first floor plans show the pedestrian gate in the location approved by Planning Permit No. PLN17/0744.
  - (d) Change finish of the approved garage door from Woodland Grey to Manor Red.

#### Material/Finishes

20. The studio is proposed to have the following finishes:
  - (a) Walls – Timber weatherboard cladding to match existing dwelling profile painted white.
  - (b) Roofing – Unpainted and galvanised heritage grade Z600.
  - (c) Windows – Timber painted white to match wall finish.
  - (d) Staircase screen – Vertical timber screen/balustrade.

#### Existing Conditions

##### Subject Site

21. A description of the subject site was provided within the original officer's Internal Development Assessment Committee (now Planning Decision Committee) dated 31 January 2018 as follows:
  22. *The subject site is located on the east side of Nicholson Street, between Abbotsford Street (to the north) and Yarra Street (to the south), in Abbotsford. The site is situated on a corner lot with residential properties bordering the northern and eastern boundaries.*
  23. *The site is rectangular in shape with a street frontage of 6.44m to Nicholson Street, a depth of 28.46m along the southern boundary and a depth of 28.51m along the northern boundary. The site has an overall area of 177sqm.*
  24. *Occupying the site is a detached and single-storey Victorian-era weatherboard dwelling with a tiled hipped roof, two chimneys, and a bullnose front verandah. Along the dwelling's street frontage is a metal fence and pedestrian gate built at a height of 1.2m. Along the northern and southern boundaries, towards the rear of the site are two sections of a weatherboard structure and paling fence ranging from 2m to 3.7m high respectively.*
  25. *The dwelling is setback 2.95m from the western (front) boundary, constructed along the northern boundary for a length of 14.82m, and is partly constructed along the southern boundary for a length of 4m and partly setback 1.65m. The dwelling is setback 10.64m from the eastern (rear) boundary. Private open space is located at the rear of the dwelling which is accessible from the rear of the dwelling and a pedestrian gate along Yarra Street.*
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26. Since the permit has been granted, the approved bullnose I front verandah, 1.25m high white timber picket fence and single-storey garage located at the rear of the dwelling have been constructed on site. Secluded private open space (SPOS) continues to be located within the eastern portion of the site between the existing dwelling and the approved garage and is accessible from the dwelling and a separate pedestrian gate along Yarra Street. It is of note that the finish of the constructed garage door does not reflect the finish (i.e. “Woodland Grey”) nominated on the endorsed plans for amended Planning Permit PLN17/0744.01. this matter will be addressed later in the report
27. From a review of City of Yarra’s Heritage Gap Study by Graeme Butler and Associates (2007), the subject site is identified as graded “not contributory” to the Charles Street Heritage Precinct.

### Surrounding Land

28. A description of the surrounding land was provided within the previous officer’s Internal Development Assessment Committee (now Planning Decision Committee) dated 31 January 2018 as follows:
29. *The surrounding neighbourhood is residential in nature with a mixture of single and double-storey dwellings. Nicholson Street consists of a variety of weatherboard, brick and rendered dwellings with a mix of bullnose, hipped and skillion front verandahs.*
30. *To the north is an attached, single-storey Victorian-era, weatherboard dwelling with a skillion front verandah and a ground and first floor addition. The proposed garage will be located along the southern boundary, directly abutting the rear private open space of this dwelling.*
31. *To the south, across Yarra Street is a [double]-storey Edwardian-era brick dwelling with a hipped front verandah. The dwelling is also located on a corner lot with two street frontages to Nicholson and Yarra Streets. The dwelling has zero setbacks along the Yarra Street frontage with the inclusion of a single brick garage and crossover to the east.*
32. *To the east is a single-storey Victorian-era polychromatic brick dwelling which graded ‘contributory’ to the Charles Street Heritage Precinct. The dwelling includes a skillion verandah, gable roof, an existing crossover and a first floor addition located at the rear of the site. The proposed garage will abut the existing boundary wall of the ‘contributory’ dwelling.*
33. *To the west, across Nicholson Street is an attached, single-storey building which is currently occupied by Abbots Dental Clinic.*
34. Within the surrounding area, there has not been significant changes to the character and built form since the amended planning permit was issued on 19 September 2019. However, No. 201 Nicholson Street directly to the west of the subject site appears to have completed construction approved by Planning Permit No. PLN15/1022 which allows for the *use and development of the land for a medical centre, part demolition and buildings and works, an associated reduction of the car parking requirement and advertising signage*. The approved buildings and works have resulted in the construction of a double-storey extension to the rear of the heritage building.

## Planning Scheme Provisions

### Zoning

#### *Neighbourhood Residential Zone (Schedule 1)*

35. The subject site is located within the Neighbourhood Residential Zone (Schedule 1). The purposes of the Neighbourhood Residential Zone as relevant to this application are:
  - (a) To recognise areas of predominantly single and double storey residential development.

- (b) To manage and ensure that development respects the identified neighbourhood character, heritage, environmental or landscape characteristics.
36. Pursuant to the mandatory provisions within Clause 32.09-4 of the Yarra Planning Scheme (the “Scheme”), an application to construct or extend a dwelling or residential building on a lot between 400 -500sqm must provide a minimum garden area of 25%. The subject site has an overall area of 177sqm; therefore, is not required to provide a minimum garden area of 25%.
37. Pursuant to Clause 32.09-5 of the Scheme, a planning permit is required to construct or extend one dwelling on a lot less than 500sqm. As the subject is 177sqm, a planning permit is required and must meet the requirements of Clause 54 (ResCode).
38. Pursuant to Clause 32.09-10 of the Scheme, a building must not exceed nine metres and must not contain more than two storeys at any point. The proposed development will have two storeys with a maximum height of approximately 5.87m and therefore complies with the maximum building height.

### Overlays

#### *Heritage Overlay (Schedule 313)*

39. The subject site is affected by a Heritage Overlay (Schedule 313). The purposes of the heritage overlay relevant to this application are:
- (a) *To conserve and enhance those elements which contribute to the significance of heritage places.*
- (b) *To ensure that development does not adversely affect the significance of heritage places.*
40. Pursuant to Clause 43.01-1 of the Scheme, a permit is required to construct a building or construct or carry out works.
41. Appendix 8 to the City of Yarra Review of Heritage Areas, 2007 – The site is identified as being “not contributory” to the Charles Street Heritage Precinct.

#### *Development Contributions Plan Overlay (Schedule 1)*

42. The subject site is affected by the Development Contributions Plan Overlay (Schedule 1). The purpose of the Development Contributions Plan Overlay is:
- (a) *To identify areas which require the preparation of a development contributions plan for the purpose of levying contributions for the provision of works, services and facilities before development can commence.*
43. Pursuant to Clause 45.06-1 of the Scheme, 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. This does not apply to the construction of a building, the construction or carrying out of works or a subdivision specifically excluded by a schedule to this overlay.
44. Given the amendment is for an extension to the existing dwelling on a lot, the total number of dwellings on the subject site is not proposed to be increased. Therefore, the Development Contributions Plan requirements are not applicable.

### Particular Provisions

#### *Clause 54 – One dwelling on a lot*

45. Pursuant to Clause 54 of the Scheme, the provisions apply to construct or carry out works associated with one dwelling on a lot under 500sqm in a Neighbourhood Residential Zone.
46. This policy will be discussed further in the *Assessment* section of this report.

### General Provisions

#### *Clause 65 – Decision Guidelines*

47. 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 provisions

### Planning Policy Framework (PPF)

#### *Clause 15.01-1S – Urban design*

48. The 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 15.01-1R – Urban design – Metropolitan Melbourne*

49. The objective of this clause is:
- (a) *To create a distinctive and liveable city with quality design and amenity.*

#### *Clause 15.01-2S – Building design*

50. 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*

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

#### *Clause 15.03-1S – Heritage conservation*

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

### Local Planning Policy Framework (LPPF)

#### *Clause 21.05-1 – Heritage*

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

#### *Clause 21.05-2 – Urban design*

54. The relevant objectives of this clause are:



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

*Clause 21.05-3 – Built form character*

55. The relevant objectives of this clause are:

- (a) *Objective 23 – To maintain and strengthen the identified character of each type of identified built form within Yarra*
- (b) *Objective 24 – To maintain and reinforce preferred character (Residential areas).*

*Clause 21.08-1 – Abbotsford*

56. The subject site is located within the Abbotsford neighbourhood which is “*a highly varied neighbourhood with a substantial number of industrial and commercial buildings of various types and eras. The residential precincts are surrounded by industrial development located in the vicinity of Hoddle Street and the Yarra River.*”

57. Figure 6, the built form character map, shows the subject site covered by a Heritage Overlay. The objective 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*

58. Clause 22.02 of the Scheme applies to all developments where a planning permit is required under the Heritage Overlay.

*Clause 22.02-5.7 – New Development, Alterations or Additions*

59. The relevant policies of Clause 22.02-5.7.1 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.*

[Advertising](#)

60. The application was advertised in October and November 2020 under the provisions of Section 52 of the *Planning and Environment Act (1987)* by 16 letters sent to surrounding owners and occupiers and by one sign displayed on site along Yarra Street.

61. As highlighted earlier, amended plans were submitted to Council under Section 57(a) of the Act on 4 March 2021 in response to concerns raised by Council’s Heritage Advisor.



62. The amended proposal was re-advertised in March and April 2021 under Section 57(b) of the Act with 13 letters sent to adjoining properties and objectors and by one sign displayed on site along Yarra Street.
63. Overall, Council received twelve (12) objections, the grounds of which are summarised as follows):
- (a) Impact on heritage streetscape along Yarra Street;
  - (b) Built form (setbacks, height, material, design and overdevelopment);
  - (c) Amenity impacts (visual bulk, overlooking, noise);
  - (d) Use (AirBnb, teenager retreat and second dwelling);
  - (e) Non -planning related matters:
    - (i) Reduce financial value of properties;
    - (ii) Construction damage to existing properties; and
    - (iii) Piece meal development).
64. No consultation meeting was held given the COVID-19 pandemic.

## Referrals

### External Referrals

65. The application was not required to be externally referred under the Scheme.

### Internal Referrals

66. The original amendment application was referred to Council's Heritage Advisor, with comments included as attachments to this report.

## OFFICER ASSESSMENT

67. The primary considerations for this application are as follows:
- (a) Clause 54 (ResCode);
  - (b) Heritage;
  - (c) Objector concerns; and
  - (d) Other Matters;

### Clause 54 (ResCode)

68. The particular provision (Clause 54) comprises 19 design objectives and standards to guide the assessment of new residential development. Given the site's location within an urban inner-city residential area, strict application of the standard is not always appropriate, whether the proposal meets the objective is the relevant test.

### *Standard A1 – Neighbourhood Character*

69. The neighbourhood character is characterised by a mixture of heritage dwellings with a growing number of contemporary extensions located beyond the principal façade, as well as several contemporary infill developments. Along Nicholson Street is a diverse mixture of single and double storey Victorian and Edwardian-era buildings constructed of brick and weatherboard cladding with hipped roof forms. Also along Yarra Street is a mixture of heritage buildings constructed of brick, rendering and weatherboard cladding, as well as the incorporation of single and double-storey boundary walls of buildings fronting both Nicholson Street and Hunter Street.

70. The proposed first floor studio extension will front the secondary frontage along Yarra Street. The extension will be built within the eastern portion of the site, directly above the approved single-storey garage. The streetscape within the surrounding area along Nicholson Street and Yarra Street incorporates a varied mixture of Victorian and Edwardian-era buildings, as well as contemporary infills. Within the surrounding area, there is a consistent materiality of mostly brickwork and weatherboard, with some rendering, as well as a presence of hipped roof forms. At the three other corner lots of the intersection between Nicholson Street and Yarra Street are three double-storey brick buildings, including the contemporary addition at No. 201 Nicholson Street (described within the 'surrounding land' assessment) built directly along the Yarra Street boundaries.
71. While "heritage" will be considered separately later in the report, the neighbourhood character is largely defined by heritage fabric. The proposed extension has drawn upon the existing built form and contributory elements of the surrounding streetscapes including retaining a consistent street setback from Yarra Street in line with the front wall of No. 96 Yarra Street and adopting a simple built form with a hipped metal roof and window configurations. The proposal references the materiality of the surrounding streetscape and the similar heights and built form character of the existing and approved buildings on the other corner allotments.
72. In this context, the inclusion of a contemporary first floor extension above the approved garage on the corner allotment will maintain a similar front setback as adjacent dwellings along Yarra Street and references the presence of taller elements on corner sites as found within the double-storey dwellings at Nos. 194 and 199 Nicholson Street, as well as the double-storey extension to the rear of No. 201 Nicholson Street. Therefore, the proposal is considered to be an acceptable response to the surrounding neighbourhood.
73. The overall design of the dwelling is contemporary yet respectful to the surrounding neighbourhood with regards to form, materials and finishes.

*Standard A2 - Integration with the street*

74. Not relevant to application. The dwelling on the subject site will continue to be orientated to face Nicholson Street to the west and will have a low, 1.25m high timber picket front fence to allow for passive surveillance of the public realm.

*Standard A3 – Street setback*

75. Complies with the standard. Pursuant to Table A1 of Clause 54.03-1, the minimum side street setback is the same distance as the setback of the front wall of any existing building on the abutting allotment facing the side street or 2m, whichever is the lesser.
76. The subject site is located on a corner allotment with Nicholson Street to the west and Yarra Street to the south. The proposed first floor studio is located above the approved single-storey garage and is set back 1.24m from the Yarra Street frontage. To the immediate east of the site at No. 96 Yarra Street is a single-storey dwelling which also provides a 1.24m front setback from Yarra Street, with a front verandah projecting to the street boundary. As the proposed first floor studio is setback the same distance as the front wall of the adjoining property, the standard is met.

*Standard A4 – Building height*

77. Complies with the standard. The maximum height of the first-floor studio will be approximately 5.87m above NGL which is below the maximum height of the approved ground and first floor extension (7.7m) and the maximum height of 9m allowed by the zone; Neighbourhood Residential Zone (Schedule 1).

*Standard A5 – Site coverage*

78. Complies with the objective. The standard for site coverage states that the coverage should not exceed 60%. The proposed spiral staircase within the rear garden providing access to the first floor studio covers an area of approximately 2.7sqm. Under the proposal and excluding the area covered by the proposed spiral staircase, the amendment will increase site coverage from the previously approved 73.26% (129.67sqm) to 74.78% (132.37sqm) which continues to exceed the requirement of the standard.
79. A further variation is considered acceptable given the context of the site within an inner urban environment with smaller and narrower lot sizes, where site coverage is often between 60% and 80%. Within the immediate surrounding streetscape, there are lots which feature similar levels of site coverage to that of the proposal, such as No. 194 Nicholson Street and No. 83 Yarra Street to the south which have site coverages of approximately 86% and 71% respectively. Although the proposal will result in a higher site coverage at 74.78% as a result of the spiral staircase, the increase is limited to an area of 2.7sqm as the proposed first floor studio is located directly above the approved garage. The subject site will continue to provide open spaces (i.e. front and rear gardens) for the dwelling which respects the existing neighbourhood, built form pattern.

*Standard A6 – Permeability*

80. Complies with the standard. The standard for permeability states that the site area covered by pervious surfaces should be at least 20% of the site. Under the amended proposal, permeable surfaces will continue to be provided within the front garden setback and within the rear POS between the dwelling and outbuilding by vegetated areas (i.e. lawn and garden). As stated within the applicant's Clause 54 assessment, the proposed spiral staircase will allow stormwater run-off to discharge between the gaps of the stairs to the existing permeable surface below at ground level. As the proposed staircase will be located above a permeable surface, the amended proposal will continue to provide a site permeability of 26.69% (47.25sqm) as per the previously assessed amendment (amended Planning Permit No. PLN17/0744.01).
81. Under the current amendment, the first-floor studio extension calculates to 20.79sqm of additional floor area to the overall development. As this extension is less than 50sqm, the application does not need to address Clause 22.16 (Stormwater Management (Water Sensitive Urban Design)). However, a minimum 2000L underground rainwater tank will continue to be provided as approved by amended Planning Permit No. PLN17/0744.01

*Standard A7 – Energy efficiency protection*

82. Complies with the standard. The standard for energy efficiency aims to achieve and protect energy efficient dwellings and to ensure the orientation and layout of developments reduces fossil fuel energy usage and makes appropriate use of daylight and solar energy.

83. The first-floor studio will be provided three south and west-facing awning windows which incorporates restricted openings to a maximum of 0.125m, as well as one skylight above the proposed bathroom. The installation of three windows to the space will provide adequate levels of natural daylight and ventilation into the habitable room.
84. With regard to existing rooftop solar energy facilities, whilst not shown on plans, there appears to be a number of existing solar panels located on the north-facing roof fall of the heritage dwelling and first floor extension of No. 96 Yarra Street to the east- refer to Figure 1 below. However, the panels on the first-floor extension are located beyond the proposed first floor studio extension and would not be impacted by the proposal.
85. According to the standard, buildings should be sited and designed to ensure that the performance of existing rooftop solar energy facilities on dwelling on adjoining lots in a General Residential Zone, Neighbourhood Residential Zone or Township Zone are not unreasonably reduced. From an assessment carried out by Officers, the development would appear to cast shadows over the existing solar panels along the north-facing roof fall of the heritage dwelling between 1pm and 3pm as shown in the figure below. The subject site and the adjoining property (No. 96 Yarra Street) directly to the east are located within a Neighbourhood Residential Zone which allows for double-storey developments up to a maximum height of 9m above NGL. Additionally, given the narrow constraints of land within the inner urban context, the full protection and complete avoidance of new shadows to existing solar facilities is not always possible and would unreasonably constrain any new development.
86. Nonetheless, the amount of overshadowing to the existing solar panels between 1pm and 3pm is limited to the westernmost portion of the north-facing roof fall of the heritage dwelling. Between 9am and 1pm, these solar panels will continue to benefit from solar energy as per existing conditions. The solar panels on the first-floor addition is not impacted by the proposal at any point in time. On balance, the proposed extent of overshadowing is not considered to unreasonably reduce the energy efficiency and performance of the existing rooftop solar energy facility.

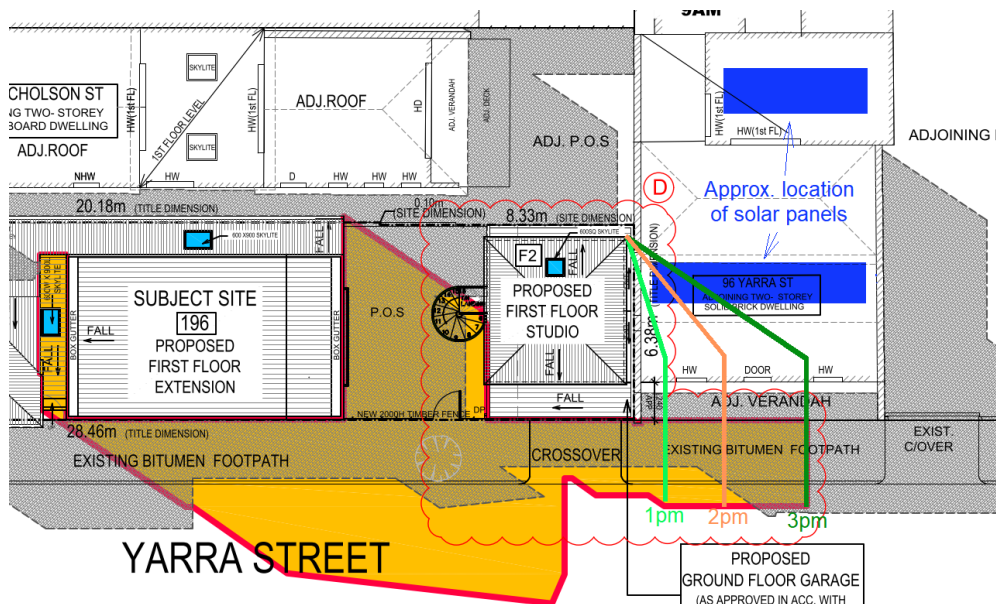


Figure 1: 3pm shadow diagram with 1pm, 2pm and 3pm shadows drawn and labelled on the plan, including location of adjoining solar panels at No. 96 Yarra Street drawn in blue (Applicant Submission 4 March 2021 with Council's Planning Officer's annotations)

*Standard A8 – Significant trees*

87. Not relevant. There are no significant trees on the site that will be affected by the proposed first floor studio.

*Standard A10 – Side and rear setbacks*

88. Complies with the objective. The standard requires a building not on or within 200mm of a boundary to be setback from the side or rear boundaries 1m, plus 0.3m for every metre of height over 3.6m up to 6.9m, plus 1m for every metre of height over 6.9m.
89. As shown in the table below, the proposed setbacks from the northern and eastern walls of the first-floor studio do not comply with the requirements of the standard. The southern setback from Yarra Street has been assessed within Standard A3 – Street setback objective.

	<b>Setback Provided</b>	<b>Wall Height</b>	<b>Setback Required</b>	<b>Complies?</b>
Northern setback	0.5m	5.05m	1.435m	No
Eastern setback	0.35m	5.05m – 5.25m	1.435m – 1.495m	No

90. The 0.5m setback of the northern wall of the studio fails to meet the required setback by 0.935m. The northern wall associated with the bathroom and cupboard will have an overall length of approximately 4.48m and will be directly opposite the adjoining SPOS of No. 198 Nicholson Street to the north which has an area of approximately 31sqm. The orientation of the proposed wall to the south of the adjoining SPOS will not result in any overshadowing impacts; however, the proposed 0.5m setback from the northern boundary is not acceptable as the northern wall will have a maximum height of 5.05m above NGL. Given the adjoining SPOS already has an outlook to a double-storey extension at No. 96 Yarra Street, the 0.5m setback of the proposed studio extension to the south will unreasonably create a closed-in environment for the adjoining SPOS.
91. This concern was raised with the applicant who agreed to increase the setback of the northern wall by an additional 0.5m (i.e. total 1m from the northern boundary) in order to reduce visual bulk impacts to the adjoining SPOS of No. 198 Nicholson Street. Whilst the increased setback is still short of the requirement, it is considered acceptable given its southern location and therefore zero overshadowing impacts, and inner-city location with narrow lot size. Further, the proposed northern wall will be constructed of a weatherboard cladding painted white which would have a lightweight appearance and would not have a dominating impact. On balance. The variation is considered acceptable and should a permit be issued; a condition will require the northern wall of the first-floor studio to be set back 1m from the northern boundary.
92. The 0.35m setback of the eastern wall of the studio fails to meet the required setback by between 1.085m and 1.145m. Whilst this portion of wall does not comply with the requirements of the standard, it will be built directly opposite an on-boundary wall with an minimum height of approximately 3.4m and a maximum height of 5.77m above NGL. As the proposed eastern wall will directly face an existing on-boundary wall, it is not considered to unreasonably impact the amenity of the adjoining property given the wall will not be located adjacent any areas of SPOS or habitable room windows. Therefore, the variation to the eastern wall of the first-floor studio is considered to comply with the objective of the standard.

*Standard A11 – Walls on boundaries*

93. Not relevant to application as no new walls are proposed on the boundary

*Standard A12 – Daylight to existing windows*

94. Complies with the standard. The standard requires buildings opposite an existing habitable room window to provide a lightcourt to the existing window that has a minimum area of 3sqm and a minimum dimension of 1m clear to the sky.
95. Under the proposal, the first-floor studio will not be located directly opposite any existing habitable room windows of the adjoining properties to the north (No. 198 Nicholson Street) or to the east (No. 96 Yarra Street).

*Standard A13 – North-facing windows*

96. Not relevant to application as there are no north-facing windows within 3m of the proposed first floor studio.

*Standard A14 – Overshadowing open space*

97. Complies with the standard. The standard for overshadowing *states where sunlight to the secluded private open space of an existing dwelling is reduced, at least 75%, or 40sqm with minimum dimension of 3m, whichever is the lesser area, of the secluded private open space should receive a minimum of five hours of sunlight between 9am and 3pm on 22 September.* The standard only protects SPOS from shadows.
98. The subject site is orientated in an east-west direction and as such, causes shadows to the south-west in the morning over Nicholson Street and Yarra Street, and south-east in the afternoon over Yarra Street and No. 96 Yarra Street. From the advertised shadow diagrams (under Section 57B of the Act), no areas of SPOS will be affected by the proposed amendment between the hours of 9am and 3pm. All shadows proposed by the amendment will fall over the subject site itself, existing built form, as well as Yarra Street.

*Standard A15 – Overlooking*

99. Complies with the standard. The standard for overlooking requires *a habitable room window, balcony, terrace, deck or patio to be located and designed to avoid direct views within 9m and a 45 degree arc into the secluded private open space (SPOS) and habitable room windows of an existing dwelling.*
100. Whilst not required to be screened, the spiral staircase and landing which provides access to the first-floor studio will incorporate 1.7m high fixed timber screen/balustrading with a maximum transparency of 25%.
101. The first-floor studio will be provided two south-facing and one west-facing awning windows. The west-facing window will incorporate obscure glazing up to a height of 1.7m above Finished Floor Level (FFL) and a restricted opening to a maximum of 0.125m. The obscure glazing and restricted window opening will suitably limit views into the adjoining SPOS and any south-facing habitable room windows of No. 198 Nicholson Street. In addition, as the window is located to the south of the staircase screening, this will provide further screening from the west-facing window.

102. The two south-facing windows of the first-floor studio does not require screening in compliance with the standard as no adjoining habitable room windows nor areas of SPOS are located within a distance of 9m.

*Standard A16 – Daylight to new windows*

103. Complies with the objective. The standard for daylight to new windows requires *new habitable room windows to receive adequate amounts of daylight access, and to be provided an outdoor space clear to the sky or a lightcourt with a minimum area of 3sqm and minimum dimension of 1m clear to the sky.*
104. Under the proposed development, the three windows within the first-floor studio will not be provided an outdoor space clear to the sky as a result of the approximately 0.2m deep roof eave associated with the proposed hipped roof form. The roof eave which is located approximately 2.2m above FFL of the first floor is not considered to unreasonably reduce the amount of natural daylight into the habitable space as the studio will be provided dual aspect south and west-facing glazing, Furthermore, the roof eave will provide the habitable room windows with weather protection; therefore, the variation is considered to comply with the objectives of the standard.

*Standard A17 – Private open space*

105. Complies with the standard. The standard for private open space (POS) states that a *dwelling should have POS consisting of an area of 80sqm or 20% of the area of the lot, whichever is the lesser, but not less than 40sqm with a minimum of 25sqm of secluded private open space.*
106. Open space is provided within the front garden setback and the rear area between the dwelling and the outbuilding (approved garage and proposed first floor studio). The proposed spiral staircase within the rear SPOS providing access to the first-floor studio has an area of approximately 2.7sqm. Under the proposal and excluding the area covered by the proposed spiral staircase, POS will comprise approximately 46.67sqm (23.37%) and SPOS will comprise approximately 27.66sqm (15.63%) of the subject site. The amended areas of open space continue to comply with the minimum requirements of 40sqm for POS and 25sqm of SPOS.

*Standard A18 – Solar access to open space*

107. Not applicable to dwelling extensions.

*Standard A19 – Design detail*

108. The standard for design detail encourages development to be designed to respect the existing or preferred neighbourhood character including, façade articulation, window and door proportions, roof form and verandah, eaves and parapets.
109. The material palette proposed for the first-floor extension is simple and does not contain a large number of materials, with white painted weatherboards being the predominant component, as well as timber window frames and unpainted Heritage Grade Z600 roof sheeting. Other contemporary materials such as the aluminium door frame and vertical timber screening associated with the spiral staircase are considered to complement and provide a contrast to the weatherboard built form.

110. The design of the first-floor extension is simple and utilises elements found within the existing built form and materiality of surrounding sites. The extension respectfully integrates the weatherboard and hipped metal roof form characteristics of the Victorian-era dwellings along Nicholson Street, Yarra Street and Hunter Street with regard to building design, setbacks, fenestration and materiality.
111. Overall, it is considered that the first-floor extension provides an appropriate built form which respects and reflects the design detail of the existing neighbourhood character.

*Standard A20 – Front fences*

112. Not relevant to application. The amendment does not seek any additions or alterations to the front fence which was approved by Planning Permit No. PLN17/0744. Furthermore, the approved 1.25m high white timber picket fence with northern and southern returns has already been constructed on site.

Heritage

113. The decision guidelines from Clause 43.01-4 (Heritage Overlay) and policy from Clause 22.02 (Development Guidelines for Sites Subject to the Heritage Overlay) of the Scheme are used to assess the proposed works, in-order to ensure that there is consistency achieved with the heritage values of the surrounding area.
114. As mentioned previously within the report, the amendment application does not propose any additional demolition works to the existing dwelling.

*Proposed works*

115. Clause 22.02-5.7 of the Scheme seeks to ensure that new development respects the pattern, rhythm, fenestration, roof form, materials and heritage character of the surrounding streetscape, and is articulated and massed to correspond with the prevailing built form of the heritage place. The key consideration for assessing the application is whether the new first floor extension will adversely affect the significance, character or appearance of the broader heritage precinct. In addition, Clause 22.02-5.7.2 (Corner Sites and Sites with Dual Frontage) provides direction as to the specific requirements of new developments on corner sites and sites with dual frontages.
116. The proposed first floor studio extension above the single-storey garage will be set back approximately 23.7m from Nicholson Street. As the subject site is located on a corner lot, the proposed first floor extension would be visible from both Nicholson Street and Yarra Street.
117. Along the secondary street frontage, the first-floor studio will incorporate a setback of 1.24m from Yarra Street; in line with the existing alignment of the front wall of No. 96 Yarra Street; a “contributory” graded, Victorian-era dwelling. This setback is appropriate along Yarra Street as it ensures the extension does not project beyond the heritage façade of No. 96 Yarra Street and does not obscure views of its principal frontage when observed along Yarra Street, as well as oblique views from Nicholson Street. Council’s Heritage Advisor considered this setback to be acceptable.
118. The proposed scale and height of the development is considered to be acceptable as it respects the varying single and double-storey buildings heights within the surrounding area.



As mentioned within the assessment of Standard A1 – neighbourhood character, the other corner sites at the intersection of Nicholson Street and Yarra Street are all occupied by double-storey built form, including a recently completed double-storey extension at No. 201 Nicholson Street which has a maximum height of 6.65m above NGL (Planning Permit No. PLN15/1022). As a result of the hipped roof form, the overall height of the first-floor extension will be approximately 5.87m. Although this height will be 0.1m taller than the existing maximum height of the single-storey heritage dwelling at No. 96 Yarra Street, Council’s Heritage Advisor considered this to be acceptable as the difference in height associated with the hipped roof form would not be perceptible. The overall height of the outbuilding is not considered to unreasonably obscure principal views of the adjoining heritage dwelling; No. 96 Yarra Street. Furthermore, the first-floor extension will allow a gradual transition from the maximum height of the approved ground and first floor extension to the dwelling (7.7m above NGL) as shown in the figure below.

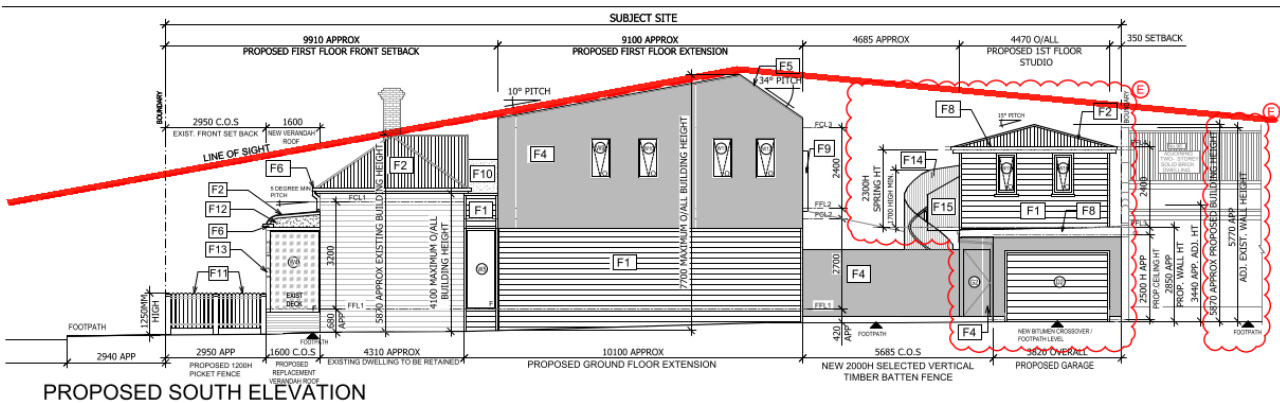


Figure 2: Proposed south elevation with transition in building heights across subject site to No. 96 Yarra Street shown by red line (Applicant Submission 4 March 2021 with Council’s Planning Officer’s annotations)

119. Although the subject site is identified as ‘not contributory’, the proposal takes into consideration the contributory elements of the surrounding streetscape and the wider Charles Street Heritage Precinct. Within the ‘Statement of Significance’ from the Victorian Heritage Council, elements such as expressed steeply gable or hipped roofs, with some façade parapets, one storey wall heights, weatherboard, facebrick (red, bichrome and polychrome), or stucco walls) and corrugated iron roof cladding, are considered contributory to the Charles Street Heritage Precinct. With respect to the surrounding streetscape, the first-floor extension will incorporate a simple weatherboard clad extension topped with a hipped metal roof with traditional 2:1 proportioned windows. As such the extension is not considered overly contemporary in its design and material palette, not considered to dominate the front façade of No. 96 Yarra Street as well as the immediate streetscape along Yarra Street between Nicholson Street and Hunter Street. The combination of the corner lot built form design, street setback and materiality is considered to draw upon the rhythm, fenestration, roof form and materials of the surrounding heritage streetscape.
120. Overall, the proposed extension is considered acceptable and will not adversely impact the surrounding streetscape nor the wider heritage precinct. The proposal appropriately responds to the heritage streetscape in terms of materials and fenestration along the Yarra Street frontage, and provides an appropriate height transition across the entire subject site to respect the varying heights along both Nicholson Street and Yarra Street.

On this basis, the proposal is considered to appropriately respond to the particular requirements within Clause 22.02 and Clause 43.01 of the Scheme, and therefore is considered acceptable in relation to the heritage context of the street.

### Objector Concerns

121. The majority of issues associated with the objector concerns have been discussed throughout this report; the remaining objection topics which have yet to be assessed are discussed below.

- (a) *Impact on heritage streetscape along Yarra Street;*
  - (i) Issues associated with heritage streetscape have been discussed earlier within the report (paragraphs 69-73, 115-120).
- (b) *Built form (setbacks, height, material, design and overdevelopment);*
  - (i) Issues associated with built form have been discussed earlier within the report (paragraphs 70-71, 75-76, 77, 78-79, 88-92 & 108-111).
- (c) *Amenity impacts (visual bulk, overlooking, noise);*
  - (i) Issues associated with amenity impacts have been discussed earlier within the report (paragraphs 88-91, 99-102).
  - (ii) Any noise created as a result of this proposal can be directly attributed to typical residential noises associated with typical residential land use.
- (d) *Use (AirBnb, teenager retreat and second dwelling);*
  - (i) The issue of the use of the studio is not a planning consideration. The proposal is not for a second dwelling on a lot and should a permit be issued, Council's standard note for outbuildings will be included, "*unless with further planning permission, the proposed outbuilding must not be used as a separate dwelling*".
- (e) *Reduce financial value of properties;*
  - (i) Property devaluation is not a planning matter and there is no evidence to suggest that higher density housing will devalue surrounding properties.
- (f) *Construction (damage to existing properties); and*
  - (i) Concerns regarding damage to the adjoining property's boundary wall during the construction of the approved garage are not a planning consideration and should be addressed through the building permit process
- (g) *Process (piece meal development).*
  - (i) Whilst planning permission have been sought for several development proposals on the subject site, namely a ground and first floor extension to the existing dwelling, construction of a garage, and now the subject application for a first floor addition above the approved garage, Officers are required to consider all proposals against the provisions of the Yarra Planning Scheme to determine its acceptability. The number of amendments made to a permit does not influence the assessment.

### Other matters

122. As mentioned previously within the report, the pedestrian gate along the Yarra Street interface has not been shown consistently across the proposed floor plans and elevations. The applicant has confirmed that the correct location of the pedestrian gate along Yarra Street is within the SPOS as shown on the proposed floor plans. Therefore, the location of the gate under the garage verandah shown on the proposed south elevation is incorrect. Should a permit be issued, a condition will correct this plan error.

### Conclusion

123. The proposal demonstrates an acceptable level of compliance with the policy requirements outlined in the Yarra Planning Scheme. Based on the report, the proposal is considered to generally comply with the relevant policies of the Yarra Planning Scheme and is recommended for approval subject to conditions.

## **RECOMMENDATION**

That the Planning Decisions Committee resolves to issue a Notice of Decision (NOD) to Grant Amended Planning Permit No. PLN17/0744 to allow the construction of a first floor studio above the single-storey garage at the rear of the site at No. 196 Nicholson Street, Abbotsford VIC 3067, generally in accordance with the “decision plans” received by Council on 4 March 2021 and subject so the following conditions:

- Delete all Condition 1 requirements (a-d) and replace with new conditions (a) and (b).
1. Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of this permit. The plans must be drawn to scale with dimensions, and three copies must be provided. The plans must be generally in accordance with the decision plans but modified to show:
    - (a) **The northern wall of the first-floor studio to be set back an overall 1.0m from the northern boundary, with any associated internal changes; and**
    - (b) **The pedestrian gate along the Yarra Street interface consistently depicted on the proposed south elevations as per the proposed floor plans (i.e. gate providing direct access into the secluded private open space and not under the garage verandah).**
  2. The development as shown on the endorsed plans must not be altered (unless the Yarra Planning Scheme specifies that a permit is not required) without the prior written consent of the Responsible Authority.
  3. 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.
  4. Before the development is occupied, or by such later date as approved in writing by the Responsible Authority, all screening and other measures to prevent overlooking as shown on the endorsed plans must be installed to the satisfaction of the Responsible Authority. Once installed the screening and other measures must be maintained to the satisfaction of the Responsible Authority.
  5. Before the development commences, the permit holder must make a one-off contribution to the Responsible Authority to be used for:

- (a) the removal of the existing street tree;
  - (b) the replacement and planting of the new street tree;
  - (c) all costs associated with the replanting, plus two year establishment costs at the expense of the property owner; and to the satisfaction of the Responsible Authority.
6. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, any damage to Council infrastructure resulting from the development must be reinstated:
- (a) at the permit holder's cost; and
  - (b) to the satisfaction of the Responsible Authority.
7. 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.
8. This permit will expire if:
- (a) the development is not commenced within two years of the date of this permit; or
  - (b) the development is not completed within four years of the date of this permit.

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

**Notes:**

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

A building permit may be required before development is commenced. Please contact Council's Building Services on 9205 5428 to confirm.

Provision must be made for drainage of the site to a legal point of discharge. Please contact Council's Building Services on 9205 5428 for further information.

A vehicle crossing permit is required for the construction of the vehicle crossing(s). Please contact Council's Construction Management Branch on 9205 5585 for further information.

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

**Unless with further planning permission, the proposed outbuilding must not be used as a separate dwelling.**

**Attachments**

- 1 PLN17/0744.02 - 196 Nicholson Street Abbotsford - Subject Site Map
- 2 PLN17/0744.02 - 196 Nicholson Street Abbotsford - S57B Advertising - Section 57A Amended Plans

- 3** PLN17/0744.02 - 196 Nicholson Street Abbotsford - Section 57A - Heritage Referral Comments
- 4** PLN17/0744.02 - 196 Nicholson Street Abbotsford - S57B Advertising - Section 57A Clause 54 Assessment
- 5** PLN17/0744.02 - 196 Nicholson Street Abbotsford - S57B Advertising - Section 57A Heritage Assessment
- 6** PLN17/0744.02 - 196 Nicholson Street Abbotsford - S57B Advertising - Section 57A Cover Letter
- 7** PLN17/0744.02 - 196 Nicholson Street Abbotsford - Advertising S52 - Plans (Previously Advertised Plans Oct/Novr 2020)
- 8** PLN17/0744.02 - 196 Nicholson Street Abbotsford - Heritage Referral Comments (Previously Advertised Plans Oct/Nov 2020)
- 9** PLN17/0744.02 - 196 Nicholson Street Abbotsford - Current Planning Permit
- 10** PLN17/0744.02 - 196 Nicholson Street Abbotsford - Current Endorsed Plans

- 6.3 PLN21/0042 - 46-52 Smith Street, Collingwood - Full demolition of Nos. 46 & 48 Smith Street and partial demolition of Nos. 50-52 Smith Street, construction of an 8-storey building containing office, a food and drink premise (no permit required for uses) and use of the land for restricted recreation facility (gymnasium), and a reduction in the statutory car parking requirement.**
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## Executive Summary

### Purpose

1. This report provides an assessment of the full demolition of Nos. 46 & 48 Smith Street and partial demolition of Nos. 50-52 Smith Street, construction of an 8-storey building containing office, a food and drink premise (no permit required for uses) and use of the land for restricted recreation facility (gymnasium), and a reduction in the statutory car parking requirement at No. 46-52 Smith Street, Collingwood.

### Key Planning Considerations

2. Key planning considerations include:
  - (a) Clause 15.01-1S (Urban design);
  - (b) Clause 15.01-2S (Building design);
  - (c) Clause 15.02-1S (Energy Efficiency);
  - (d) Clause 17.01 (Employment);
  - (e) Clause 18.01 (Integrated Transport);
  - (f) Clause 21.05-2 (Urban design);
  - (g) Clause 21.05-3 (Built form character);
  - (h) Clause 21.07 (Environmental Sustainability);
  - (i) Clause 21.08 (Neighbourhoods);
  - (j) Clause 22.02 (Development Guidelines for Site Subject to the Heritage Overlay);
  - (k) Clause 22.05 (Interface Uses Policy);
  - (l) Clause 22.07 (Development Abutting Laneways);
  - (m) Clause 22.16 (Stormwater Management (Water Sensitive Urban Design));
  - (n) Clause 22.17 (Environmentally Sustainable Development); and
  - (o) Clause 52.06 (Car Parking).

### Key Issues

3. The key issues for Council in considering the proposal relate to:
  - (a) Strategic justification;
  - (b) Land Use;
  - (c) Built Form/Heritage;
  - (d) On-site amenity (ESD);
  - (e) Off-site amenity;
  - (f) Car parking;
  - (g) Bicycle Parking;
  - (h) Waste Management/Loading; and,
  - (i) Objector's concerns.

### Submissions Received

4. Forty-six (46) objections were received to the application, these can be summarised as:
  - (a) Lack of on-site car parking;
  - (b) Excessive height/overdevelopment of the site;
  - (c) The development does not respond to the neighbourhood/heritage character;

- (d) Potential off-site amenity impacts (loss of daylight, overlooking, overshadowing);
- (e) Impacts during the construction phase; and,
- (f) Over-supply of offices in the area.

5. Two letters of support were 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 subject to the following key requirements:
- (a) The removal of Level 6;
  - (b) All setbacks from Smith Street from Level 2 to the Level 5 to increase by a minimum of 1m;
  - (c) The design of the horizontal banding in the southern wall of the tower and the colour of the roof terrace altered to reflect the changes shown in the Sketch Plan submitted to Council on 3 June 2021, with the material proposed for the horizontal banding to be clearly identified.

**CONTACT OFFICER:** Lara Fiscalini  
**TITLE:** Principal Planner  
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- 6.3** [PLN21/0042 - 46-52 Smith Street, Collingwood - Full demolition of Nos. 46 & 48 Smith Street and partial demolition of Nos. 50-52 Smith Street, construction of an 8-storey building containing office, a food and drink premise \(no permit required for uses\) and use of the land for restricted recreation facility \(gymnasium\), and a reduction in the statutory car parking requirement.](#)

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<b>Reference</b>	D21/54746
<b>Author</b>	Lara Fiscalini - Principal Planner
<b>Authoriser</b>	Senior Coordinator Statutory Planning

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<b>Ward:</b>	Nicholls ward
<b>Proposal:</b>	Full demolition of Nos. 46 & 48 Smith Street and partial demolition of Nos. 50-52 Smith Street, construction of an 8-storey building containing office, a food and drink premise (no permit required for uses) and use of the land for restricted recreation facility (gymnasium), and a reduction in the statutory car parking requirement
<b>Existing use:</b>	Three commercial premises
<b>Applicant:</b>	Three Towers Group PTY LTD
<b>Zoning / Overlays:</b>	Commercial 1 Zone (C1Z)/Heritage Overlay (HO464)/ Development Contributions Plan Overlay (Schedule 1)
<b>Date of Application:</b>	27 January 2021
<b>Application Number:</b>	PLN21/0042

### Planning History

- Recent planning history for the sites include the following;
  - Planning Permit PLN11/0030 was issued for No. 46-48 Smith Street, Collingwood on 15 September 2011 for *building and works including partial demolition and external painting for additions to the existing dwelling.*
  - Planning Permit PLN14/0338 was issued for Nos. 50-52 Smith Street, Collingwood on 19 June 2014 for *development of the land for painting of the façade;*
  - Planning Permit PLN13/0474 was issued for Nos. 50-52 Smith Street, Collingwood on 24 September 2013 for a *two lot subdivision and buildings and works to the façade, including partial demolition.*

### Planning Scheme Amendments

- On 17 December 2019, Council requested the Minister for Planning to consider the approval of proposed interim built form controls (interim Design and Development Overlays/DDOs) for activity centres in Fitzroy & parts of Collingwood (Amendment C270) under Section 20(4) of the *Planning and Environment Act 1987* (Amendment without giving of notice).
- Of note, the subject site is included in the proposed DDO37, which outlines future built form in the area of Smith Street containing the subject site (Smith Street North and South). In particular, the DDO supports a mid-rise character (ranging from 6-10 storeys) behind a low, consistent heritage street wall.



4. A relevant objective of the proposed DDO is to encourage development that retains the prominence and integrity of corner heritage buildings and responds to sensitive interfaces by ensuring the overall scale and form of new development provides a suitable transition to low scale residential areas. The DDO outlines mandatory height requirements that would apply to the subject site, with a maximum building height of 20.8m attributed to this land.

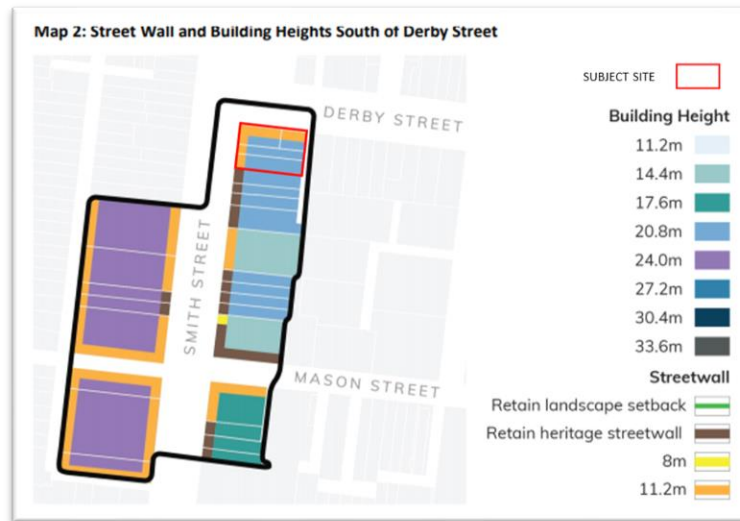


Figure 1: Map 2 (Street wall and Building Heights) from proposed interim DDO37

5. This Amendment has not yet been approved by the Minister and does not form part of the Yarra Planning Scheme (the Scheme). The Council advised that, on 17 December 2019, it requested the Minister for Planning to approve interim Design and Development Overlays for activity centres in Collingwood and Fitzroy under section 20(4) of the *Planning and Environment Act 1987*. The Design and Development Overlays form part of proposed Amendment C270 to the Planning Scheme, for which the Council has not yet sought authorisation from the Minister to prepare and place on exhibition. Given the Amendment has not progressed further through the amendment process (i.e. Exhibition/Independent Panel), it does not carry any statutory weight.
6. The status of this Amendment was discussed in the VCAT decision for No. 84-104 Johnston Street (*SMA No. 17 Pty Ltd v Yarra CC [2020] VCAT 1364*), which noted the following;
- (a) *We agree with the applicant that, given the stage of the Amendment, not having been adopted by the Council and yet to undergo the further community engagement referred to in the Council resolution, we are unable to give it weight. That said, we agree with the Council that it does provide an indication of the scale of development which the Council desires to see in this section of Johnston Street, and this has been noted.*

## Background

7. The application was submitted on 27 January 2021 and subsequently referred to a number of Council departments and external consultants. Recommendations were received from an external Urban Design Consultant (Simon McPherson – Global South); these recommendations included design changes to the southern interface of the development. In response to these comments, the Applicant submitted a Sketch Plan to Council on 3 June 2021. This Sketch Plan included the following changes;
- (a) The design of the banding on the southern wall of the proposal was altered from an angled to a horizontal design; and,
- (b) The colour of the roof terrace was altered from dark grey to white.

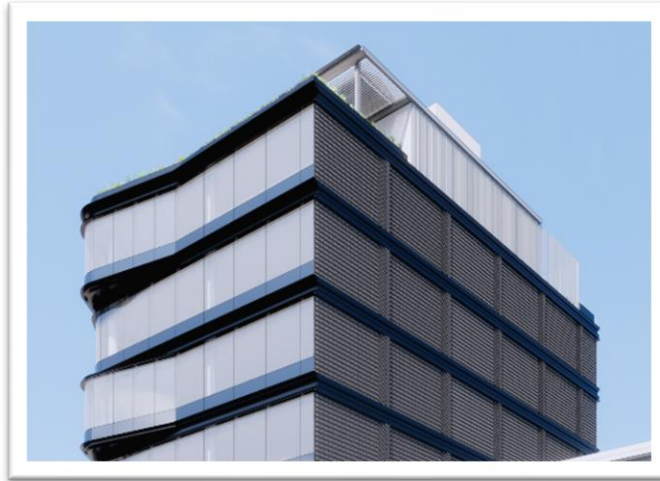


Figure 2: Sketch plan with revised southern elevation

8. The Sketch Plan will be referenced where relevant throughout this report.

### **The Proposal**

9. The proposal seeks the construction of an 8-storey, mixed-use commercial development. The building will primarily comprise office space, with a retail element including 2 x food and drink premises at ground level and a restricted recreation facility (gym) within the basement. The specifics of the proposal are summarised below;

#### *Uses*

10. Office – The proposed development will include 2,168sqm (GFA) of office space. The offices will be located on the upper levels of the building, with access located on the ground floor from Smith Street.
11. Food and Drink premises;
- (a) A restaurant/bar will be located in the north-west corner (floor area of 244sqm), with access from Smith Street and the corner splay of Smith Street and Derby Street.
  - (b) A café will be located in the north-east corner (floor area of 130sqm), addressing both Derby Street and the rear (east) laneway, with access from this corner.
12. Restricted Recreation Facility (gym) – Located in the basement, with a floor area of 272sqm (as shown on the plans, with the Town Planning Report and Traffic Report noting this area as 302sqm). The gym will be accessed via Derby Street. The proposed hours of operation are 6am to 9pm, Monday to Friday and 10am to 4pm on Saturday and Sunday, with a maximum of 45 patrons.

#### *Demolition*

13. The extent of the proposed demolition includes:
- (a) Nos. 46 and No. 48 Smith Street (full demolition);
  - (b) Nos. 50-52 Smith Street, excluding the west (Smith St) façade and the western portion of the north wall to No. 52 Smith Street;
  - (c) Sections of walls/windows within the retained facades of No. 50-52 Smith Street;
  - (d) The canopy in the north-west corner.

#### *General*

14. Building height of 26.5m to parapet (as measured from the adjoining laneway), with roof terrace (Level 7) extending to 29.55m in height.
15. Lift overrun 1.2m above the roof terrace pergola.

*Basement*

16. The basement will extend under the entire site and include the following;
  - (a) A gym;
  - (b) A total of 33 bicycle parking spaces with 4 showers and 50 lockers;
  - (c) Bin storage room;
  - (d) 15Kl rainwater tank.

*Ground level*

17. The ground floor will extend to the north, south and west boundaries, with small splays in the north-west and south-east corners. The eastern wall will be set back 0.963m from the right-of-way (ROW) extending along this boundary.
18. This level will contain the following;
  - (a) Office entrance within the Smith Street frontage;
  - (b) Two entrances to the restaurant/bar from Smith Street and the north-west corner;
  - (c) An entrance to the café in the north-east corner, from Derby Street;
  - (d) A loading bay to the east, with access from the adjacent ROW;
  - (e) Services, including a substation and gas meter within the eastern wall and a fire booster cabinet within the Smith Street façade;
  - (f) A curved canopy will extend along parts of the north and west façade.

*Levels 1-6 (Offices)*

19. All of these levels will abut the southern boundary;
20. A curved design is adopted for the upper levels, with varying setbacks from the north and west boundaries;
21. Level 1 will abut part of the north/west boundaries, with a setback of 0.963m from the east boundary;
  - (a) The north-western walls will be setback between 3m to 8.8m from the north and from 5.12m to a total of 18.6m from the west, with an external terrace located within this setback. A canopy will extend above the north-west corner of the terrace.
22. Level 2 will have varied setbacks from the east, north and west, with a terrace located within much of this setback. Planter boxes will extend along the perimeter of the terrace.
  - (a) The northern wall will be set back 3m, with the western wall set back between 3.62m to 5m from the west. The eastern wall will be setback 2.96m from the eastern boundary.
23. Levels 3 & 5 will have a straight façade, set back 5m from Smith Street, with a slight overhang in the north-west corner.
  - (a) The northern wall will be predominantly set back 3m, with the overhang extending 0.834m into this setback. The eastern wall will be set back 2.96m from the eastern boundary.
24. Levels 4 & 6 will largely mirror the setbacks of Levels 3 & 5, with the exception of a smaller 'overhang' to the north and a larger 'overhang' to the west.
  - (a) The western façade will be set back between 4.17m to 5m from the Smith Street façade.

25. These 'staggered' setback designs are demonstrated in Figures 3 & 4.

*Level 7 & Roof terrace*

26. This level will mirror the setbacks below, with planter boxes surrounding the perimeter. Services will abut the southern boundary, with a pergola extending over half of the terrace.
27. Solar PV panels will be located on the roof of the pergola.



Figure 3: View from north-west (along Smith Street)



Figure 4: View from north-east (along Derby Street)



*Materials and finishes*

28. The following material palette is proposed;
- (a) The podium will be composed of a mixture of grey/white render and light grey/white brickwork. A bluestone plinth will extend along part of the Derby Street frontage;
  - (b) The tower element will contain a significant extent of glazing, including double-glazed grey toned glazing and double-glazed clear glazing, with slab edges in dark bronze anodized aluminium;
  - (c) The southern wall of the tower will be composed of grey brick, with angled joinery in between each level;
  - (d) Planter boxes will be dark bronzed anodized aluminium, as will the canopy at ground level.
  - (e) Balustrades will have metal handrails;
  - (f) Shading fins, 150mm in depth, will extend from part of the tower façade.
29. Figure 5 provides a visual guide for the proposed materiality of the proposal.



Figure 5: Materials and finishes

*ESD Commitments*

30. The Sustainable Management Plan (prepared by Ark Resources and dated 23 December 2020) outlines the following ESD commitments;
- (a) The proposal will achieve a 5 Star Green Star Rating, defined as 'Australian Excellence'. It will also be able to achieve a 5.5 Star NABERS Energy Rating of 'Excellence', and best practice outcomes for stormwater quality;
  - (b) A total of 72 rooftop solar panels with a capacity to produce 21.6kWp;
  - (c) Shared electric bikes for staff;
  - (d) Electric vehicle charging infrastructure;
  - (e) Rainwater harvesting system for toilet flushing and irrigation via a 15,000L rainwater tank located under the basement;

- (f) High-performance glazing and energy efficient building services, appliances and fixtures;
- (g) A design oriented to maximise the use of sunlight available to the site, with broad north-facing windows; and,
- (h) Landscaping on Levels 2 and 7, incorporating a range of native species.

### Existing Conditions

#### Subject Site

31. The subject site is located on the north-west intersection of Smith Street and Derby Street. The site is composed of three properties, with a combined street frontage along Smith Street of 19.25m, and a 29.26m side frontage along Derby Street. The overall site area is approximately 556sqm. There is a significant slope across the site from the western end down to the east, with a drop of 2.1m along the Derby Street façade. The corner building (No. 50-52 Smith Street) is demonstrated in Figure 6, with the façades of Nos. 46 & 48 Smith Street demonstrated in Figure 7.



Figure 6: View of subject site from north-west (Source: Urban Context report)



Figure 7: View of Nos. 46 & 48 Smith Street facades (Source: Google Streetview image dated December 2020 accessed 1.6.2021)

32. The site currently accommodates three single-storey, single-fronted brick shopfronts addressing Smith Street. Due to the slope of the land, the corner building increases to 2-storeys at the rear of the site, directly abutting a right-of-way (ROW) along the rear boundary (Figure 8).



Figure 8: View from Derby Street (Source: Google Streetview image dated December 2020 accessed 1.6.2021)

33. No. 50-52 Smith Street is a 'contributory' building to the heritage precinct (HO464 – Smith Street South), whereas No. 46 and No. 48 Smith Street are listed as 'not-contributory'. No.50-52 Smith Street dates from c.1875 to 1880; and has a modified rendered masonry facade, including modified openings. There is a chamfered corner entrance with a modern door set under a modern box awning. The Derby Street elevation of this building has also been modified with later windows and a door opening and a parapet which has been raised in brickwork.
34. The buildings currently do not have vehicle access from the ROW.

*Title*

35. The certificate of title shows that the land is known formally as;
- (a) No. 50-52 Smith Street, Collingwood – Lot 1 LP26183
  - (b) No. 48 Smith Street, Collingwood – Lot 2 LP26183
  - (c) No. 46 Smith Street, Collingwood – Lot 1 TP321271
36. The titles submitted with the application do not show any covenants. Party wall easements are located between the buildings; these will become redundant with the removal of the walls.

Surrounding Land

37. The subject site is located within the Smith Street Major Activity Centre (MAC) which, having once comprised generally one to three-storey buildings, is undergoing significant change and seeing higher density development along this corridor. The more intensive development is located further to the north along Smith Street.



38. The original building stock is generally from the Victorian and inter-war eras, with various levels of heritage significance. Built form surrounding the site is generally single to double-storey in height, with some higher development occurring, and contains a mixture of commercial, retail and office uses.
39. In a wider context, the subject site is well serviced in terms of proximity to existing infrastructure and is serviced by the following:
- (a) Collingwood Train Station (1.2km north-east) servicing South Morang and Hurstbridge lines.
  - (b) Parliament Train Station (1.2km south-west) within the City Loop.
  - (c) Tram Route 86 (Bundoora RMIT to Waterfront City Docklands) traversing Smith Street with the closest stop located approximately 70m to the north.
  - (d) Tram Route 12 (Victoria Gardens to St Kilda, Fitzroy St) and 109 (Box Hill to Port Melbourne) traversing Victoria Parade with the closest stop located approximately 220m metres south.
  - (e) Multiple bus route between Collingwood and wider metropolitan area, the closest stop is located on Hoddle Street approximately 1.1km to the south.



Figure 9: Aerial image of site and surrounds

40. The immediate interfaces with the site are as follows;

*North*

41. The subject site extends along Derby Street along its northern interface. Derby Street is a local two-way street running in an east-west direction, linking Smith Street to Wellington Street. Derby Street accommodates angled parking on the southern side of the street and parallel parking on the northern side, with mature street trees located within the footpath on both sides of the street.



42. On the opposite side of Derby Street is No. 54-56 Smith Street; a double-storey heritage style building currently under commercial use. The double-storey building extends to the Smith Street and Derby Street boundaries, with a single-storey carport and open space at the rear. Vehicle access is provided via Derby Street.
43. No. 2 Derby Street is also directly to the north of the subject site, this site is developed with a double-fronted single-storey workers cottage, currently used as a dwelling. This dwelling is constructed hard-edge along the Derby Street footpath.

*South*

44. No. 44A Smith Street abuts the site to the south; this site is occupied by a single-storey shop. Further south is a row of double-storey, Victorian-era buildings, also operating as commercial premises. These buildings have access to the rear ROW from Derby Street.

*West*

45. On the opposite side of Smith Street, are a number of single and double-storey, single-fronted shopfronts (No's. 65, 63, 59-61 and 57 Smith Street) which house a variety of commercial premises.

*East*

46. Directly to the east of the subject site, on the opposite side of the ROW, is a double-fronted, double-storey heritage building, used as a dwelling. This building extends to the boundaries to the north, south and west, with open space in the middle of the site, along its eastern side. Adjacent to this, further east, is a row of similarly constructed double-storey dwellings, at Nos. 3 to 9 Derby Street. All of these buildings are graded 'individually significant' within the Heritage Overlay – Schedule 98 (HO98) and are located within the Mixed Use Zone (MUZ).
47. Beyond this are a mixture of single and double-storey buildings, with an eight-storey residential development constructed at No. 15 to 21 Derby Street and No. 27 Little Oxford Street. This development is not located within the heritage overlay.

**Planning Scheme Provisions**

Zoning

*Commercial 1 Zone*

48. The following provisions apply:
- (a) Pursuant to Clause 34.01-1 of the Yarra Planning Scheme (the Scheme), a planning permit is not required to use the land for 'office' or 'retail' (food and drink premises), however a planning permit is required to use the land as a 'restricted recreation facility'.
  - (b) Pursuant to Clause 34.01-4, a planning permit is required to construct a building.

Overlays

*Heritage Overlay (HO464 – Smith Street South Precinct: Fitzroy and Collingwood)*

49. The following provisions apply:
- (a) Pursuant to Clause 43.01-1, a planning permit is required for demolition, and to construct a building and carry out works.
50. As per the *City of Yarra Database of Heritage Significant Areas July 2020*, the property gradings are as follows:
- (a) Nos 46 & 48 Smith Street are 'not-contributory'

(b) Nos 50 & 52 Smith Street are ‘contributory’.

Particular Provisions

*Clause 52.06- Car parking*

51. The site is located within the Principal Public Transport Network Area, therefore the parking rates in Column B of Clause 52.06-5 apply. Under the provisions of Clause 52.06-5 of the Yarra Planning Scheme, the development’s parking requirements are as follows:

Proposed Use	Quantity/ Size	Statutory Parking Rate*	No. of Spaces Required	No. of Spaces Allocated
Office	2,168 m <sup>2</sup>	3.0 spaces per 100 m <sup>2</sup> of net floor area	65	0
Restricted Recreation Facility	242 m <sup>2</sup>	Rate Not Specified	To the satisfaction of the Responsible Authority	
Food and drink premises	130 m <sup>2</sup>	3.5 spaces per 100 m <sup>2</sup> of leasable floor area	4	
Restaurant	244 m <sup>2</sup>	3.5 spaces per 100 m <sup>2</sup> of leasable floor area	8	
<b>Total</b>			<b>77 Spaces plus Spaces for the Restricted Recreation Facility</b>	<b>0 Spaces</b>

52. Pursuant to clause 52.06-3, a planning permit is required to reduce 77 car parking spaces.

*Clause 52.34 - Bicycle facilities*

53. Pursuant to Clause 52.34-1, a new use must not commence until the required bicycle facilities and associated signage are provided on the land. The following table identifies the bicycle parking requirement under Clause 52.34-3 and the provision on site.

Proposed Use	Quantity/ Size	Statutory Parking Rate	No. of Spaces Required	No. of Spaces Allocated
Office	2,168 sqm	1 employee space to each 300 sqm of net floor area if the net floor area exceeds 1000 sqm	7 employee spaces	
		1 visitor space to each 1000 sqm of net floor area if the net floor area exceeds 1000 sqm	2 visitor spaces.	
Restaurant	244 sqm	1 employee space to each 100 sqm of floor area available to the public	2 employee spaces	
		2 plus 1 visitor space to each 200 sqm of floor area available to the public if the floor area exceeds 400 sqm	0 visitor space	

Food and Drink Premises	130 sqm	1 employee space to each 100 sqm of floor area available to the public	1 employee spaces	
		2 plus 1 space to each 200 sqm of floor area available to public if floor area available exceeds 400 sqm	0 visitor spaces.	
Minor sports and recreation facility (Gym)	302 sqm 2 staff	1 employee space per 4 employees	1 employee spaces	
		1 space per 200 sqm of net floor area	2 visitor spaces	
<b>Bicycle Parking Spaces Total</b>			<b>11 employee spaces</b>	<b>30 employee spaces</b>
			<b>4 visitor spaces</b>	<b>3 visitor spaces</b>
<b>Showers / Change rooms</b>		1 to the first 5 employee spaces and 1 to each additional 10 employee spaces	<b>1 showers / change rooms</b>	<b>4 showers / change rooms</b>

54. The proposal includes 33 bicycle spaces (30 employee/3 visitor), thus exceeding the minimum statutory requirement for employee spaces. The proposal also includes 4 showers and associated changing room facilities, also exceeding the minimum requirement. A reduction of 1 visitor space is sought.

General Provisions

55. 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 or any other provision. An assessment of the application against the relevant sections of the Scheme is contained in this report

Planning Policy Framework (PPF)

56. Relevant clauses are as follows:

*Clause 11.02 (Managing Growth)*  
*Clause 11.02-1S (Supply of Urban Land)*

57. The objective is:

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

*Clause 13.07 (Amenity)*  
*Clause 13.07-1S (Land use compatibility)*

58. 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 (Built Environment and Heritage)*  
*Clause 15.01-1S (Urban design)*

59. 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 15.01-1R (Urban design - Metropolitan Melbourne)*

60. The objective is:  
(a) *To create distinctive and liveable city with quality design and amenity.*

*Clause 15.01-2S (Building design)*

61. 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.*
62. Relevant strategies of this clause are:  
(a) *Require a comprehensive site analysis as the starting point of the design process.*  
(b) *Ensure the site analysis provides the basis for the consideration of height, scale and massing of new development.*  
(c) *Ensure development responds and contributes to the strategic and cultural context of its location.*  
(d) *Minimise the detrimental impact of development on neighbouring properties, the public realm and the natural environment.*  
(e) *Ensure the form, scale, and appearance of development enhances the function and amenity of the public realm.*  
(f) *Ensure buildings and their interface with the public realm support personal safety, perceptions of safety and property security.*  
(g) *Ensure development is designed to protect and enhance valued landmarks, views and vistas.*  
(h) *Ensure development provides safe access and egress for pedestrians, cyclists and vehicles.*
63. This clause also states that planning must consider as relevant:  
(a) *Urban Design Guidelines for Victoria (Department of Environment, Land, Water and Planning, 2017).*

*Clause 15.02 (Sustainable Development)*

*Clause 15.02-1S (Energy Efficiency)*

64. 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 17.01 (Employment)*

*Clause 17.01-1S (Diversified economy)*

65. The objective of this clause is:  
(a) *To strengthen and diversify the economy.*
66. The relevant strategies of this clause are:  
(a) *Protect and strengthen existing and planned employment areas and plan for new employment areas.*  
(b) *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.*  
(c) *Improve access to jobs closer to where people live.*

*Clause 17.02 (Commercial)*

*Clause 17.02-1S (Business)*

67. The relevant objective of this clause is:

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

68. The relevant strategies of this clause is:

- (a) *Plan for an adequate supply of commercial land in appropriate locations.*  
(b) *Ensure commercial facilities are aggregated and provide net community benefit in relation to their viability, accessibility and efficient use of infrastructure.*  
(c) *Locate commercial facilities in existing or planned activity centres.*

*Clause 18.01 (Integrated Transport)*

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

69. 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)*

*Clause 18.02-1S (Sustainable personal transport)*

70. The relevant objectives of this clause is:

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

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

71. Strategies of this policy are:

- (a) *Improve local travel options for walking and cycling to support 20 minute neighbourhoods.*  
(b) *Develop local cycling networks and new cycling facilities that support the development of 20-minute neighbourhoods and that link to and complement the metropolitan-wide network of bicycle routes - the Principal Bicycle Network*

*Clause 18.02-2S (Public Transport)*

72. 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)*

73. 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)*

74. The objective of this clause is:

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

75. A relevant strategy is:

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

#### Municipal Strategic Statement

76. The relevant policies in the Municipal Strategic Statement can be described as follows:

*Clause 21.04-3 (Industry, office and commercial)*

77. The objective of this clause is:

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

*Clause 21.05-2 (Urban design)*

78. The relevant objectives of this Clause are:

- (a) *Objective 16 - To reinforce the existing urban framework of Yarra;*  
(b) *Objective 17 - To retain Yarra's identity as a low-rise urban form with pockets of higher development:*  
(i) *Strategy 17.2 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:*  
- *Significant upper level setbacks*  
- *Architectural design excellence*  
- *Best practice environmental sustainability objectives in design and construction*  
- *High quality restoration and adaptive re-use of heritage buildings*  
- *Positive contribution to the enhancement of the public domain*  
- *Provision of affordable housing.*  
(c) *Objective 18 - To retain, enhance and extend Yarra's fine grain street pattern;*  
(d) *Objective 20 - To ensure that new development contributes positively to Yarra's urban fabric;*  
(i) *Strategy 20.1 Ensure development is designed having particular regard to its urban context and specifically designed following a thorough analysis of the site, the neighbouring properties and its environs.*  
(ii) *Strategy 20.3 Reflect the fine grain of the subdivision pattern in building design where this is part of the original character of the area.*

*Clause 21.05-3 (Built form character)*

79. The general objective of this clause is:

- (a) *To maintain and strengthen the identified character of each type of identified built form within Yarra. The subject site is located within the 'main roads' area, where the built form objective is to "maintain the hard edge of the strip".*

*Clause 21.05-4 (Public environment)*

80. The relevant objective and strategies of this clause are:

- (a) *Objective 28 - To provide a public environment that encourages community interaction and activity*  
(i) *Strategy 28.1 - Encourage universal access to all new public spaces and buildings*  
(ii) *Strategy 28.2 - Ensure that buildings have a human scale at street level.*  
(iii) *Strategy 28.3 - Require buildings and public spaces to provide a safe and attractive public environment.*

*Clause 21.06 (Transport)*

81. This policy recognises that Yarra needs to reduce car dependence by promoting walking, cycling and public transport use as viable and preferable alternatives. Relevant objectives and strategies of this Clause are as follows:

- (a) *Objective 30 – To provide safe and convenient pedestrian and bicycle environments.*  
(i) *Strategy 30.2 – Minimise vehicle crossovers on street frontages.*  
(ii) *Strategy 30.3 – Use rear laneway access to reduce vehicle crossovers.*

- (b) *Objective 31 – To facilitate public transport usage.*
- (c) *Objective 32 – To reduce the reliance on the private motor car.*
- (d) *Objective 33 – To reduce the impact of traffic.*
  - (i) *Strategy 33.1 Ensure access arrangements maintain the safety and efficiency of the arterial and local road network.*

*Clause 21.06-1 (Walking and cycling)*

82. This clause builds upon the objectives outlined at Clause 18, promoting cycling, walking and public transport as alternatives to private motor vehicle usage. The relevant objectives and strategies of this clause are:
- (a) *Objective 30 - To provide safe and convenient bicycle environments:*
    - (i) *Strategy 30.2 Minimise vehicle crossovers on street frontages.*
  - (b) *Objective 32 - To reduce the reliance on the private motor car.*
  - (c) *Objective 33 - To reduce the impact of traffic.*
    - (i) *Strategy 33.1 Ensure access arrangements maintain the safety and efficiency of the arterial and local road network.*

*Clause 21.06-2 (Public transport)*

83. The relevant objectives and strategies of this clause are:
- (a) *Objective 31 To facilitate public transport usage.*
    - (i) *Strategy 31.1 Require new development that generates high numbers of trips to be easily accessible by public transport.*

*Clause 21.06-3 (The road system and parking)*

84. *Objective 32 To reduce the reliance on the private motor car.*

*Clause 21.07-1 (Ecologically sustainable development)*

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

*Clause 21.08-5 (Collingwood)*

86. This clause outlines the Cremorne neighbourhood as follows;
- (a) *Much of Collingwood is industrial in character with the residential precincts surrounded by or interspersed with industrial buildings.*
  - (b) *The Smith Street major activity centre serves multiple roles for local residents whilst attracting visitors from a larger catchment. It is a classic main road strip generally consisting of buildings of two to four storeys interspersed with the occasional building of up to 6 storeys.*

Relevant Local Policies

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

87. The relevant objectives of this clause are;
- (a) *To conserve Yarra’s natural and cultural heritage.*
  - (b) *To conserve the historic fabric and maintain the integrity of places of cultural heritage significance.*

- (c) *To retain significant viewlines to, and vistas of, heritage places.*
- (d) *To preserve the scale and pattern of streetscapes in heritage places.*
- (e) *To encourage the preservation, maintenance, restoration and where appropriate, reconstruction of heritage places.*
- (f) *To ensure that additions and new works to a heritage place respect the significance of the place*
- (g) *To encourage the retention of 'individually significant' and 'contributory' heritage places.*

*Clause 22.05 (Interfaces Uses Policy)*

88. This policy applies to applications within the Industrial Zone (among others), and aims to reduce conflict between commercial, industrial and residential activities. The policy acknowledges that the mix of land uses and development that typifies inner city areas can result in conflict at the interface between uses.
89. It is policy that:
- (a) *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.*

*Clause 22.07 (Development Abutting Laneways)*

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

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

91. Clause 22.16-3 requires the use of measures to “improve the quality and reduce the flow of water discharge to waterways”, manage the flow of litter from the site in stormwater and encourage green roofs, walls and facades in buildings where practicable.

*Clause 22.17 (Environmentally Sustainable Design)*

92. This policy applies to (as relevant) the development of a non-residential building with a gross floor area of more than 1000sqm. 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 relevant documents

*Plan Melbourne*

93. Released in May 2017, Plan Melbourne 2017-2050 (Plan Melbourne) outlines the key strategic directions with regard to the provision of housing and commercial activity within Melbourne's urban areas. The strategic outcomes outlined in the document are required to be considered as part of Council's decision-making process and include (inter-alia):
- (a) *Outcome 1: 'Melbourne is a productive city that attracts investment, supports innovation and creates jobs.'*



- (i) Direction 1.2 of Plan Melbourne is to *'Improve access to jobs across Melbourne and closer to where people live'*

94. The strategy promotes '20-minute neighborhoods' where there is access to local shops, schools, parks, jobs and a range of community services within a 20 minute trip from your front door.

### **Advertising**

95. The application was advertised under the provisions of Section 52 of the *Planning and Environment Act 1987* by 563 letters sent to surrounding owners and occupiers and by four signs displayed on site. Council received 46 objections and 2 letters of support. The grounds for objection are summarised as follows:

- (a) Lack of on-site car parking;
- (b) Excessive height/overdevelopment of the site;
- (c) Does not respond to the neighbourhood/heritage character;
- (d) Potential off-site amenity impacts (loss of daylight, overlooking, overshadowing);
- (e) Impacts during the construction phase;
- (f) Over-supply of offices in the area.

96. The letters of support highlighted the quality of the architectural design, the activation of Derby Street and the reduction in on-site car parking.

### **Referrals**

#### External Referrals

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

#### Internal Referrals

98. The application was referred to the following internal departments and advisors and external consultants;

- (a) Engineering Services Unit;
- (b) Strategic Planning;
- (c) Environmentally Sustainable Development (ESD) Advisor;
- (d) Strategic Transport Unit;
- (e) Open Space (landscaping);
- (f) Urban Design (public realm works);
- (g) Streetscapes and Natural Values Team; and
- (h) City Works (Waste Management).

99. External consultants

- (a) Urban Design consultant (Global South – Simon McPherson);
- (b) Wind consultant (MEL Consultants);
- (c) Heritage Consultant (Anita Brady).

100. All referral comments have been included as attachments to this report

### **Assessment**

101. The considerations for this amendment application are as follows, as required:

- (a) Strategic justification;
- (b) Land Use;
- (c) Built Form/Heritage;
- (d) On-site amenity (ESD);
- (e) Off-site amenity;

- (f) Car parking;
- (g) Waste Management/Loading;
- (h) Other matters; and
- (i) Objector's concerns.

Strategic justification

- 102. The proposal enjoys considerable support from both State and local policy for accommodating increased development and employment in the given location. The site is appropriately placed for the proposal, due to its location within the Smith Street Major Activity Centre (MAC), as well as its proximity to numerous public transportation options, including multiple bus routes, tram routes, and key arterial roads.
- 103. The C1Z encourages both residential and non-residential uses, with a purpose of the zone '*To create vibrant mixed-use commercial centres for retail, office, business, entertainment and community uses*'. The development of the site achieves this outcome, and is consistent with strategies outlined in clause 11.01-1S (Settlement) which aim to '*promote and capitalise on opportunities for urban renewal and infill redevelopment*' and '*ensure retail, office-based employment, community facilities and services are concentrated in central locations*'.
- 104. Clause 11.03-1R (Activity Centres – Metropolitan Melbourne) encourages development and growth in and around activity centres, with the Smith Street location supporting more intensive development. This is evident in the emerging mid-rise character within the immediate area, and the increasing scale of high-rise development further to the north along Smith Street..
- 105. The development provides opportunities for new employment within the proposed office and retail 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*'.
- 106. The development supports and promotes the use of sustainable personal transport by providing 33 on-site bicycle spaces and associated end-of-trip facilities, as sought by Clause 18.02-1S (Sustainable personal transport). Further to this, compliance with clause 18.01-2S (Integrated Transport) is achieved, with the development providing for communities' needs for commercial services by locating facilities within an existing activity centre with an established public transport system. This provides for a sustainable outcome with regards to land-use and transport integration.
- 107. 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.

Land Use

- 108. The proposal includes three distinct uses; with a café/restaurant at ground level, gym in the basement and offices in the levels above. Of these uses, the only one that requires a planning permit is the restricted recreation facility (gym). The proposed café and restaurant at ground level and offices to levels above do not require planning permission within the C1Z and are therefore considered entirely appropriate for the area.
- 109. Located within the Smith Street MAC, it is fitting that the proposed building will offer a mix of uses. The proposed commercial tenancies will contribute to the street activity and will provide a vibrant and effective development outcome. Such uses appropriately respond to the purpose of the C1Z and complement the surrounding uses.

110. With respect to the gym, the proposed hours of operation are 6am to 9pm on Monday to Friday and 10am to 4pm on Saturday and Sunday, with a maximum of 45 patrons. Patrons will access the gym via a dedicated entrance from Derby Street. The basement location will ensure there is limited impact to any residents to the east, particularly given the laneway separation and the buffer provided by the development's back of house areas. The hours of operation are considered to be appropriate and the number of patrons is relatively low, particularly when considering the number of people who already live and work in this area. Off-site amenity impacts associated with this use will be discussed in greater details within the 'off-site amenity impacts' section later in this report.
111. In terms of land uses, the supporting mix of uses is consistent with policy at Clauses 11.03-1S, 21.03 and 21.04-2 as they will complement the role and function of the Smith Street MAC and surrounding area, as well as strengthening its long term viability as a destination for the local and broader community.
112. It is considered that the proposed uses will serve the local community's needs and are appropriate given the location of the site on Smith Street. Based on the above, the uses are supported.

#### Built form and Heritage

113. 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) and clause 22.02 (Development Guidelines for Sites Subject to the Heritage Overlay). All of these provisions and guidelines support a development outcome that responds to the existing or preferred neighbourhood character and provides a contextual urban design response reflective of the aspirations for the area. Particular regard must be given to the acceptability of the design in terms of height and massing, street setbacks and relationship to adjoining buildings. These aspects will be addressed in the following discussion.

#### *Context*

114. The immediate context surrounding the site is predominantly fine-grain heritage buildings, single to double-storey in scale. This area of Smith Street has not been significantly developed with high-density contemporary buildings, with these types of development more prevalent further to the north. The exception to this is the development at No. 9-17 Smith Street; this residential development extends to 7-storeys in height. A 5-storey building is also located to the south-west of the land (No. 41-49 Smith Street). Both of these buildings are located within the heritage precinct.
115. The Town Planning Report submitted with the application contains a more comprehensive list of 'nearby developments', with these ranging in heights from 5 to 14-storeys. However, of these developments, only two are located within Smith Street (with one of these being the aforementioned development at No. 9-17 Smith Street). The second is located at No. 88-92 Smith Street; this development has been approved at 8-storeys in height and is yet to be constructed. The remaining developments are predominantly located to the north and east of the subject site and are not located within the heritage precinct. Therefore, whilst it is acknowledged that higher built form is occurring in the area, the context and planning controls of the highlighted sites are different to that being discussed in this assessment.
116. As noted within the 'Planning Scheme Amendments' section of this report, the subject site is included within a proposed Design and Development Overlay (DDO37) sought via Planning Scheme Amendment C270, which outlines future built form in this area of Smith Street (Smith Street North and South). Whilst this Amendment has been adopted by Council, it has not been formally approved by the Minister and subsequently the DDO does not form part of the Scheme.

However, it provides guidance as to the future scale sought by Council within this section of Smith Street, and supports a mid-rise character behind a low, consistent heritage street wall. This policy acknowledges that the existing character within this area will change.

117. In their review of the proposal, Council's Strategic Planning Unit highlighted the following requirements outlined in the requested interim DDO, as follows;
- (a) New discretionary street wall of maximum 11.2m;
  - (b) Discretionary upper level setback of minimum 8m;
  - (c) Discretionary maximum building height of 20.8m (excl. lift overrun) – numerous conditions need to be met to exceed the discretionary building height, including not causing additional overshadowing; and,
  - (d) Common boundary separation of 4.5m, measured from the laneway.
118. With regard to overshadowing, the proposed DDO contains a mandatory overshadowing requirement to not overshadow the opposite footpath of Smith Street at the equinox (September 22).
119. Compliance with these requirements will be discussed in further detail throughout this report, however it is noted that the development does not comply with points (b) and (c), being the upper level setbacks and the overall height.
120. As noted within the 'Planning Scheme Amendments' section earlier in this report, this Amendment has not yet been approved by the Minister and does not form part of the Scheme; on this basis, it does not carry any statutory weight. However, in the absence of any other specific built form controls for this site, it provides a reflection of Council's strategic position for this section of Smith Street.

#### *Demolition*

121. The proposal includes the full demolition of the non-contributory buildings at Nos. 46 & 48 Smith Street, with partial demolition of the contributory building at No. 50-52 Smith Street. Given the grading of the two non-contributory buildings, the full demolition of this built form is acceptable.
122. The proposed partial demolition of the contributory building at No. 50-52 Smith Street involves the full demolition of these building excluding the western façade to Smith Street and part of the double storey wall along Derby Street for a length of approximately 18. The modern box awning over the chamfered entrance will be removed, and modifications to the existing windows/wall fabric along the northern elevation will occur. These works will allow for new, larger windows to be installed within this secondary frontage.
123. Clause 22.02-5.1 of the Scheme generally discourages the demolition of part of a contributory building or removal of contributory elements unless:
- (a) *That part is not visible from the street frontage (other than a laneway), abutting park or public open space, and the main building form including roof form is maintained; or;*
  - (b) *The removal of the part would not adversely affect the contribution of the building to the heritage place.*
124. The proposal was referred externally to Anita Brady for heritage comments. Ms Brady raised no concerns with the full demolition of the non-contributory building and was largely supportive of the extent of demolition proposed for the contributory building, noting the following;
- (a) *The proposed removal of the rear wings and roof is also largely acceptable. The roof is not a highly visible element of the contributory building, and the rear wings are utilitarian later elements. The partial demolition also retains most of the remaining Victorian-era facades and visible fabric, which are the more contributory elements of the subject site.*

125. However, Ms Brady did note that whilst the northern wall of No. 50-52 Smith Street already has non-original and modified window openings; a combination of the removal of wall fabric and increased size of the existing openings will result in three large windows taking up most of the retained elevation. She noted this would have the effect of giving the building an *'unsympathetic 'hollowed out' appearance'*.

To be more sympathetic to the traditional form, Ms Brady recommended a reduction in the extent of glazing, which at a minimum, would entail a reduction in the width/extent of the largest of the three windows (middle window). This window is circled in Figure 10.

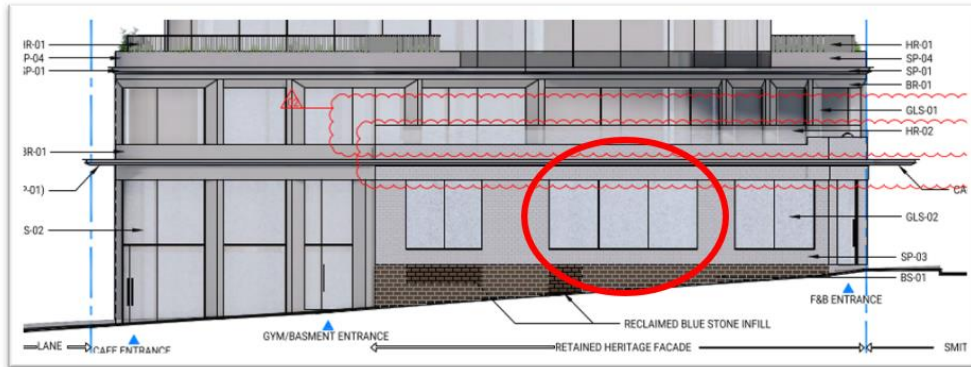


Figure 10: Proposed windows within northern wall

126. Planning Officers agree that a reduction in the width of the middle window would result in a more consistent design and increase the extent of solidity within this section of the façade. To achieve this, a condition is recommended to any permit issued, requiring the removal of the third, western-most panel of glazing to this window.
127. Further to this, it is highlighted that relatively limited sections of the building façade at No. 50-52 Smith Street will be retained and a basement is proposed directly below; this may result in structural integrity issues. To ensure that this aspect is appropriately managed and addressed, it is recommended that a Structural Report be provided as part of the planning permit.

#### Height

128. The development proposes the construction of an 8-storey building, with the upper-most level set back from both street interfaces and less visible than the remaining building form. This allows the building to largely present as 7-storeys in height. As outlined above, the building would extend to 26.55m to the parapet (as measured from the adjoining laneway), with Level 7/roof terrace extending to 29.55m in height. Upper level setbacks from Smith Street will range from 3.6m to 5m, with relatively consistent 3m setbacks from Derby Street.
129. The site is predominantly surrounded by double-storey heritage-style buildings. The proposed street wall extending along both street frontages will reference these heights appropriately. However, given the immediate low-scale context, the proposal would be a highly visible element within the Smith Street corridor. Discussion regarding the visibility of taller built form was undertaken by the Tribunal in *Rowcliffe Pty Ltd v Stonnington CC [2004] VCAT 46 (29 January 2004)* as follows;

*[54] If mere visibility becomes the test across metropolitan Melbourne, then it will be virtually impossible to construct buildings above the prevailing scale. This, in turn, would render it impossible to achieve the clearly stated urban consolidation objectives expressed in the Planning Scheme, objectives which Clause 11 requires us "to give effect to". The Tribunal rejects the notion that, because some of the buildings would be visible above the existing built form, they are therefore unacceptable. Rather, the test is whether the proposal is complementary to the surrounding area, and of a scale that can be assimilated without unreasonably disturbing the surrounding built environment.*

130. It is acknowledged that higher built form can be accommodated on the site, given its location within the C1Z and the Smith Street MAC. The issue in this instance therefore is; how high is appropriate, and what scale will fit comfortably within both adjacent streetscapes.
131. The proposal was referred externally for urban design comments to Simon McPherson (Global South). In his review, Mr McPherson noted that *'There is no definitive, prescriptive policy guidance or controls for built form in this location in the Yarra Planning Scheme. Consideration of any proposal needs to factor the current and emerging context and character, and how the proposal will contribute to or impact on these'*.
132. Mr McPherson highlighted the emerging built form context in the area and noted that there are multiple developments nearby in the range of 5-8 levels, with higher built form to the east on Wellington Street (8-14 levels approximately) and to the north on Smith Street (6-10 levels approximately). He also noted that the width of both Smith and Derby Streets would allow for an acceptable 'width-to-height' ratio and would result in a suitable outcome with respect to the building proportions. As stated in his review *'I do not consider the height to be excessive or overbearing in relation to the streetscapes of existing built fabric'*. Based on the above, Mr McPherson was supportive of the proposal in its current form.
133. It is highlighted that the heritage context of the site, and the lack of heritage controls on surrounding land containing these higher-density buildings, were not discussed in Mr McPherson's review. With an absence of formal height controls for guidance, it is important to consider the heritage context of the site, and the different expectations of land within and outside the heritage precinct. Objectives at Clause 22.02 of the Scheme aim to (amongst others) preserve the scale and pattern of streetscapes in heritage places, ensure that additions and new works to a heritage place respect the significance of the place and for new additions to be visually recessive and not dominate the heritage place. Further to this, relevant objectives for corner sites at clause 22.02-5.7.2-1 aim to *'encourage new building and additions on a site with frontages to two streets, being either a corner site or a site with dual street frontages, to respect the built form and character of the heritage place and adjoining or adjacent contributory elements to the heritage place'*.
134. As noted previously, the subject site is in the Smith Street South Precinct (HO464), with two 'individually significant' buildings directly adjacent to the land to the east (No. 1 & No. 3-7 Derby Street). In her review, Ms Brady references the Smith Street heritage precinct as being *'comparatively small and contained and not including any of the more substantial recent developments referred to in the planning application'*. She further notes that the subject site is a prominent and highly visible corner in the precinct and on this basis, concludes that the new building is *'out of scale with development in this precinct. It is also out of scale with the adjoining heritage development on Derby Street. The nearby recently completed eight storey development to the east on Derby Street, to the corner of Oxford Street, is not in the Heritage Overlay'*.
135. Ms Brady references a recent VCAT decision at No. 14-18 Smith Street, Collingwood (18 *Smith Street Pty Ltd v Yarra CC [2020] VCAT 1319*), in which a 7-storey development was refused by the Tribunal. Whilst this building was refused, the reason for the refusal was not based on height and instead based on the retention of heritage elements associated with the existing building. In the decision, Member Wilson made the following comments;

*[113] Concurrent with the heritage provisions, there is support for growth, change, intensification of development and higher built form in the C1Z provisions and in policies that apply to this activity centre location.*

*[114] Although the review site sits within a heritage streetscape, the nearby buildings in Smith Street are of diverse character in terms of heritage significance, built form and height. This existing diversity combined with the potential for new higher built form on nearby sites, as sought for activity centres, creates an environment that, as put by Mr Raworth, 'is reasonably able to accommodate change of the character and scale proposed without diminishing its key heritage values'.*

136. With reference to this decision, and based on the heritage context of the site, Ms Brady recommended the removal of one level from the proposed development. She states; *As noted, the proposal is broadly similar in its height and general approach to what VCAT considered reasonable for 14-18 Smith Street, albeit this development was not approved by the Tribunal. Relating that development and decision to the subject proposal, this is a situation where more limited setbacks are proposed for a lesser graded building but one which largely shares the heritage context and sensitivities of 14-18 Smith Street in terms of the height and interface with the HO464 precinct and Smith Street. This proposal also has the added heritage sensitivities of the adjacent Heritage Overlays on Derby Street. Having regard for all the above, a reduction in the height of the proposed building, by one storey, will bring it in line with the VCAT decision for 14-18 Smith Street'.*
137. The generous setback of the uppermost level allows the building to read as 7-storeys when viewed from the north, east and west. This level will be most visible from the south; however, given this interface is with land also within the C1Z and MAC, higher development is likely to occur to a similar scale in this direction. Clause 21.05 (Urban Design) contains Objective 17, which aims to retain identity as a low-rise urban form with pockets of higher development, and in particular, Strategy 17.2 reads as follows:
- (a) *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.*
138. Aspects of this policy, (ii), (iv) and (v), are considered to be met. Setbacks and ESD credentials will be discussed later and (vi) is not applicable given the proposed uses. However, irrespective of this, the removal of one level from the building would allow the development to present largely as a 6-storey building to most interfaces, if the level to be removed was from the tower element (and not the smaller upper-most level). This would align with Strategy 17.2, provide a scale that is in better proportion to the adjacent 'individually significant' dwelling to the east and is more respectful of the prevailing streetscape scale along Smith Street.
139. This outcome would also align with the proposed DDO for the land, by achieving a 'mid-rise' scale as sought in this section of the street and bringing the height more in line with the future height controls being sought. As outlined earlier, the discretionary maximum building height for this site is proposed at 20.8m (excl. lift overrun).
140. On this basis, Council officers agree with Ms Brady and support a reduction of one level. The removal of Level 6 would achieve the preferred outcome, with the increased setback of Level 5 below providing a better transition to the roof terrace if Level 6 is removed. If a planning permit is issued, a condition is recommended to facilitate this outcome.

141. As touched on previously, the height of the proposed streetwalls along both Smith Street and Derby Street is supported. Whilst one level higher than the adjacent site to the south; a difference of one level for streetwalls along Smith Street is a common characteristic. The canopy and alignment of the ground floor will match these elements to the south and retain a consistent pattern of heights along the streetscape.
142. The proposed DDO for the site outlines a discretionary street wall height of a maximum 11.2m. The podium height to Smith Street will be 7.4m; this will increase to 9.8m at the eastern end of the Derby Street façade. These heights would comply with the proposed DDO requirements. The height of 9.8m on the eastern boundary would be approximately 2m higher than the double-storey dwelling to the east. Whilst the difference in heights between these buildings was not raised as a concern by either Ms Brady or Mr McPherson; the latter recommend that further 'alignments' and references to the neighbouring buildings should be explored, with the current design failing to clearly fit into the adjoining context.
143. This is not a concern shared by Council officers or raised by Ms Brady. As demonstrated in Figure 11, the façade elements in the two adjoining dwellings do not consistently align, with the horizontal banding on No. 1 Derby Street sitting slightly higher than that on Nos. 3-7 Derby Street. The proposal responds to this, with the horizontal banding in the new streetwall being slightly higher again (Figure 12). This responds to the topography of the land along Derby Street. Given the separation provided by the laneway and the minor changes in height as the buildings sit further up the slope; this outcome is considered acceptable.



Figure 11: Adjacent dwellings at Nos. 1-7 Derby Street



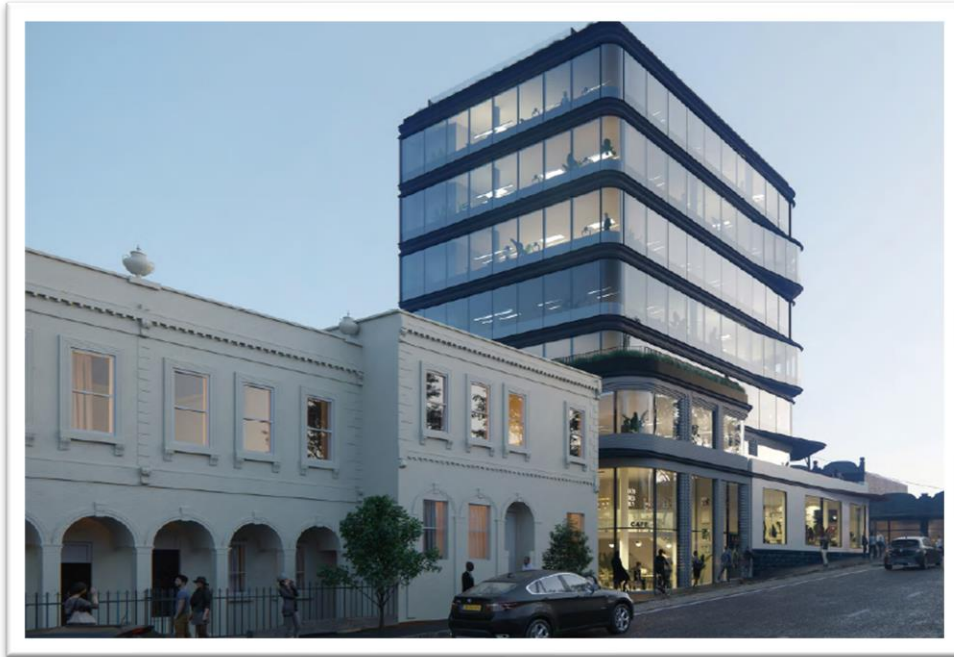


Figure 12: Streetwall view along Derby Street

### Setbacks

144. The curved design of the upper levels and areas of 'overhang' to Levels 4 & 6 result in varied setbacks from Smith Street, with Level 2 set back between 3.6m to 5m, Levels 3 & 5 set back a consistent 5m and Levels 4 & 6 set back between 4.16m to 5m. These setbacks are demonstrated in Figure 13.
145. Clause 22.02-5.7.2 of the Scheme encourages new upper level additions to commercial buildings to 'respect the scale and form of the existing heritage place or contributory elements to the heritage place by being set back from the lower built form elements. Each higher element should be set further back from lower heritage built forms'.

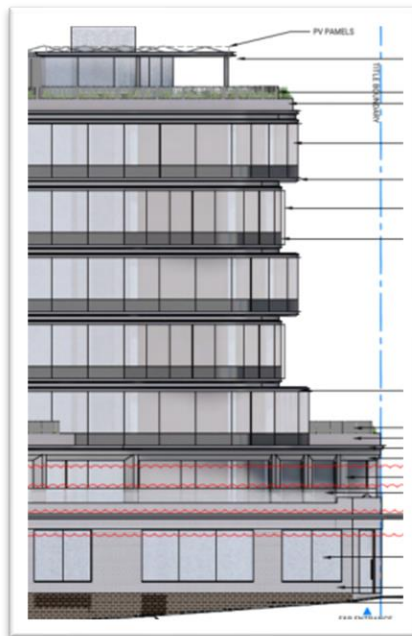


Figure 13: Staggered setbacks from Smith Street

146. In his review, Mr McPherson referenced the front setbacks of a number of developments along Smith Street. The majority of these setbacks are 6m or greater. Irrespective of this, he is supportive of the maximum 5m setback proposed in this instance. This support is coupled with his overall acceptance of the building height, as he notes *'I consider the proposed 5m setback to be appropriate in relation to the relatively modest upper-level height of 5 storeys above the 2-storey street wall/podium'*.
147. By contrast, Ms Brady recommends an increase in setbacks by 1m from Smith Street (i.e. from 5m to 6m). She notes that this increase *'will help moderate the scale of the building in the lower-scale precinct and assist the new development to be less prominent to Smith Street. It will also help to reinforce the complementary streetscape height of the lower levels of the development to the precinct'*.
148. Council's Strategic Planning officer notes that the upper level setbacks from Smith and Derby Streets would not be compliant with the proposed DDO for the site, however they acknowledge that whether these setbacks are appropriate would depend on the overall assessment and how the proposal fits in with its surrounds.
149. In this instance, Council officers support an increased setback of the upper levels (Levels 2 to the new Level 5) from Smith Street, as long as the 'staggered' setback pattern and curved design is retained. An increase to all of the front setbacks by 1m will maintain the contrasting design and provide a cohesive response that reduces the prominence of the tower within the adjacent street. A setback of all levels by 1m is proposed to be facilitated via a permit condition, should a planning permit be issued.
150. An additional setback of the roof terrace/pergola is not considered necessary. These elements, including the roof plant and services screen, are already further setback from both street interfaces, with views to these elements appropriately restricted. Limited visibility will be retained, even with the removal of Level 6 as required.
151. With regard to the northern setbacks; the upper levels are set back a consistent 3m from Derby Street. Whilst Mr McPherson supported this setback, Ms Brady recommended an additional setback of all levels by 0.5m, noting that this alteration, together with the reduction in height, would *'improve the outcome for the sensitive heritage context on the north and east of the site, and help moderate the impact of the scale of the new building on this section of lower scale streetscape and adjoining heritage buildings.'*
152. In this instance, an increase to the setbacks from Derby Street is not considered necessary by Council officers. A 3m setback (or less) from side streets is a consistent outcome for upper levels along the Smith Street corridor, as demonstrated in the approvals below;
- (a) No. 229 Smith Street, Fitzroy (PLN16/1175) – 4 level street wall to Moor Street, with 2 upper levels set back 2.17m from this side street;
  - (b) No. 411-425 Smith Street, Fitzroy (PLN18/0888) – Levels 3-6 setback between 1.5m to 3m from Leicester Street;
  - (c) No. 423 Smith Street, Fitzroy (PLN16/0843) – Levels 3-6 setback 2.5m from Leicester Street.
153. Derby Street is a relatively wide street when compared to others in the immediate area, including those listed above, and on this basis, the proposed setback is considered appropriate within this context subject to the reduction in height by one storey as previously outlined.

*Architectural quality/design*

154. Policy at clause 15.01-2S encourages high standards in architecture and urban design, whilst clause 22.02 encourages the design of new development to respect the pattern, rhythm, orientation to the street, spatial characteristics, fenestration, roof form, materials and heritage character of the surrounding historic streetscape, and the architectural integrity and context of the heritage place. This policy also encourages new additions to be *'distinguishable from the original historic fabric'*.
155. The proposal is largely considered to achieve this outcome, with the articulated design creating a fine-grained rhythm along each street frontage. This is further enhanced by the verticality of the windows, with the brickwork at the lower levels breaking up the glazing and resulting in a visually interesting design. The retention of the heritage facades on the corner and the reinstatement of the bluestone plinth along Derby Street further assists in this integration, with the tower element a clearly contemporary and distinguishable addition within the streetscape.
156. Mr McPherson is supportive of the design, with the main elements highlighted in his review being the use of extensive glazing, the curved glass, the patterned brickwork and the metal banding. He considers this approach to be an appropriate urban design response, with the following positive attributes;
- (a) *It provides a high level of detail, texture and tactility at the public realm interfaces, where it is directly experienced by pedestrians, and where it integrates with the masonry heritage facades;*
  - (b) *It reflects a high degree of design consideration and detail, and a sense of 'craft';*
  - (c) *It creates visual complexity;*
  - (d) *The Level 1 'peeling pack' from the street frontages aligns with, and frames, the retained heritage facades;*
  - (e) *The upper-level facades and alignments create a sense of movement and complexity, supporting visual interest;*
  - (f) *The use of straight edges with curved corners achieves a balance of a regular overall form, with subtle shifting and 'disruption', while the curves indicate a sense of quality and craft in construction;*
  - (g) *A fine-grain expression is established in the Smith Street frontage through vertical brick piers, and the new built form is clearly distinct from the heritage fabric on site and nearby; and,*
  - (h) *The design of the new built form is bold and contemporary but is adequately recessive and restrained to complement and not dominate the heritage fabric.*
157. Similarly, Ms Brady is supportive of the design response, noting that the *'architectural design and expression of the new building/levels is generally acceptable, including the materials and the brick treatment of the new levels to Smith and Derby Streets'*.
158. Council Officers agree that the design is an acceptable response to the site, and achieves a good level of quality and refinement.
159. The only element of concern raised by Mr McPherson is the appearance of the southern elevation. This interface comprises a full height solid wall on the boundary and is expressed with grooves which step up in height, with patterned or corbelled brickwork in between (Figure 14). It is not entirely clear what material is proposed for the 'grooves' or banding in between each level. Clarification of this material is required via a permit condition.
160. Given the single-storey height of the neighbouring building at No. 44 Smith Street, until such time that the adjacent site is developed, this wall will be highly visible in the streetscape.



Figure 14: Proposed southern elevation

161. Whilst Mr McPherson considers the extent of the boundary wall to be acceptable, he makes the following recommendations to alter the design;
- (a) A 'peeling back' of the upper 1-2 levels from the southern boundary, to create a more varied three-dimensional interface;
  - (b) Replacing the angled 'steps up' with consistent horizontal banding, to better reflect the remaining facades of the building; and
  - (c) Create a more 'lightweight expression' for the roof deck.
162. Of the amendments outlined above, Mr McPherson concedes that the 'peeling back' of the upper most levels from the southern boundary may potentially create unsatisfactory outcomes if the neighbouring site was to redevelop to a similar scale. Council officers agree with this change may impact future equitable development opportunities on the southern site. However, the remaining alterations are considered reasonable.
163. Whilst additional setbacks to the upper levels from this interface are not supported by Council Officers, given future impacts to equitable development opportunities to the south; the remaining alterations are considered reasonable. In response, the Applicant submitted a sketch plan on 3 June 2021; this plan incorporated the remaining recommendations by providing horizontal joinery/banding to the upper levels and changing the colour palette of the roof terrace. These changes are demonstrated in Figure 15.



Figure 15: Amended southern elevation

164. The amended design as demonstrated in this sketch plan is considered to achieve an improved outcome. The horizontal banding (when combined with the reduction in height of one level) will reduce the perceived scale of the building, with the previous design making the tower element appear higher due to the ‘stepping up’ of the angled banding. The lightweight finish and colour of the roof terrace also reduces the prominence of this feature. If a planning permit is issued, a condition is recommended to integrate these changes into the final design.
165. Clarification was sought by Ms Brady with regards to whether the existing paint on the bluestone plinth along Derby Street will be removed. The plinth is currently painted dark grey. Mr Brady would prefer that the paint be removed, and the entire plinth (existing and proposed) be reinstated as bluestone. This outcome is supported by Council Officers and is recommended via a condition, should a permit be issued.
166. With regards to the upper level, the extensive use of glazing may result in unreasonable reflectivity and glare. To ensure this is addressed, a condition can be added to the permit that requires a low-reflective glazing to be used. A standard condition placed on permits for commercial buildings in the Melbourne CBD (where a high level of glazing is proposed), is as follows; *Glazing materials used on all external walls must be of a type that does not reflect more than 20% of visible light, when measured at an angle of 90 degrees to the glass surface*, with an example of this condition found in a 2018 VCAT decision *Perpetual Trustee Company Limited v Minister for Planning (Corrected)* [2018] VCAT 567. This requirement will be required via permit conditions.
167. In addition to the above, a Façade Strategy and Materials and Finishes Plan is recommended via a permit condition to ensure that the required quality of the design is achieved in accordance with the detail captured on the rendered images, such as the corbelled brickwork within the podium and the southern elevation. Overall, based on the conditions discussed, it is considered that the proposed development achieves a high level of architectural quality and provides an appealing aesthetic and visually interesting design response.



*The Public Realm, Landscaping & Pedestrian spaces*

168. The design of interfaces between buildings and public spaces should enhance the visual and social experience of the user. In this instance, the works to the ground floor facades within both frontages and adjacent to the rear laneway will enhance the building's street activation and visual permeability. The proposed design will ensure that a good level of passive on-street surveillance and opportunities for views into and out of the building are available. The office entrance will be clearly identifiable at the southern end of the Smith Street façade, with separate entrances and considerable glazing provided for both food and drink tenancies at ground level.



Figure 16: View of Derby Street and laneway frontage

169. As demonstrated in Figure 16, the frontage to Derby Street incorporates the café tenancy, with extensive glazing in double-height windows which curve around the corner and extend along part of the laneway. This frontage, combined with the office windows and external terrace at Levels 1 & 2, will support passive surveillance and activation of Derby Street and the adjacent ROW.
170. This outcome is supported by Council's Urban Designer and Mr McPherson, stating that *'the proposed interfaces to the public realm are highly responsive to the activity centre context and will support extensive interaction between the building and the streetscape'*.

*Services*

171. A fire booster cupboard is positioned within the Smith Street frontage, with the remaining services, including the substation, confined to the rear laneway interface. This maximises active and articulated frontages at the ground level, which is supported. Further activation however of the Smith Street façade is preferred, with the Applicant confirming that the fire booster cabinet can be reduced to half of the proposed height, with glazing provided above. This alteration is supported and is recommended via a permit condition. Council's urban design comments highlight that access to the fire cupboard may be obscured by an existing street tree, with existing bicycle hoops potentially inhibiting emergency vehicle access to this cabinet (Figure 17).

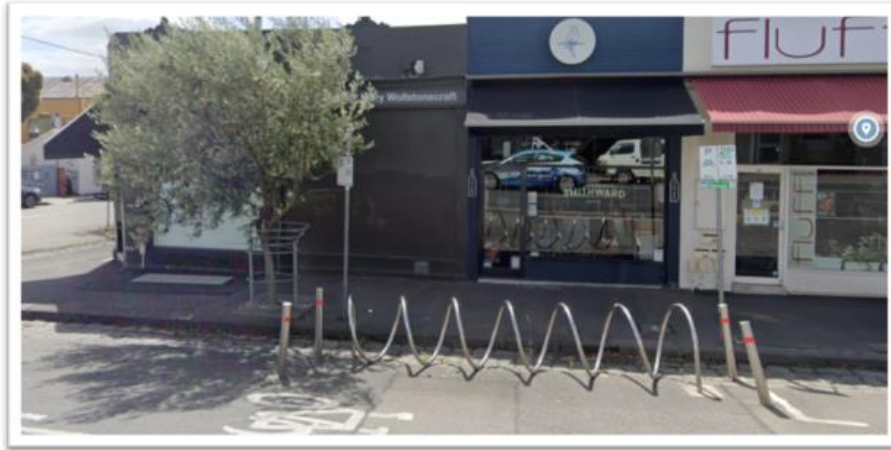


Figure 17: Existing Smith Street facade

172. It is also not clear from the drawings whether the doors to the cabinet would obstruct the adjacent footpath when open. If a permit was issued, confirmation would be required that the booster location is compliant with all relevant standards and access requirements, with a notation added to the plans to confirm that the doors would be designed to swing at 180-degrees and be latched onto the building wall when in service.
173. This notation regarding the service doors would also be required for those addressing the rear laneway, ensuring that truck access along the ROW is not affected. A permit condition would facilitate this.

#### *Pedestrian Entrances/Pavements*

174. Five separate pedestrian entrances are located within the Smith Street and Derby Street frontages. It is not clear whether all of these entrances are DDA compliant, with level differences between the footpath and the restaurant and café entrances on Derby Street. If any steps, handrails, or tactiles are required to achieve this compliance, these features must be located within the subject site boundary and must not protrude or be located within the public realm/footpath space. A condition is recommended to ensure this occurs. Further to this, the type of paving material located within the slivers of land between building and asphalt footpaths should be specified (with these areas located within the north-west corner and along part of the Derby Street frontage). Council's urban design team also noted that existing asphalt footpaths along both street frontages should be repaired if damaged; this aspect is addressed later in this report in relation to the advice from Council's Engineering Services Unit.

#### *Canopy*

175. The canopy along the Smith Street frontage is set back 750mm from the edge of the kerb and has a clearance height above the footpath of 3.825 to satisfy the *Building Regulations 2008 – Reg 103*. The canopy along the Derby Street frontage is set back 1.26m from the edge of the kerb. The clearance height of the canopy above Derby Street is not dimensioned, however given the slope of the land to the east, the height will exceed 3.8m. This is supported.
176. The northern elevation demonstrates a very minimal area of the canopy will overhang the property line and into the laneway. To allow a 6.4m long Small Rigid Vehicle with a height of 3.5m to pass under the canopy, the clearance height of the canopy along the laneway must be greater than 3.5m. It is clear that the height of the canopy exceeds this, however a condition will ensure that this dimension is clearly shown on the drawings.

*Street trees*

177. There are three existing street trees adjacent to the land; one on the Smith Street footpath and two in Derby Street. There was another tree within the Derby Street road formation, which Council's Streetscapes and Natural Values Unit has advised is to be replanted after having been hit by a car. The drawings indicate that a new tree is proposed within the footpath adjacent the aforementioned tree. A condition is recommended that the location of this tree is updated to reflect its future location within the Derby Street road formation.
178. To protect the existing street trees, a Tree Management Plan (TMP) will be required; this will outline protection measures to be undertaken during construction. A bond (\$10,000) would also be required to cover the cost of amenity and replacement should the trees be damaged during the build. It is not expected that the permit applicant will fund the replacement tree within the Derby Street road formation as this tree is to be replanted imminently, however a bond will be required for the protection of this tree. A condition will be added to any permit issued accordingly.

*Landscaping*

179. A relatively limited degree of landscaping is proposed throughout the development, with planter boxes proposed along the perimeter of the terraces. Limited details were provided for this landscaping in a one-page Landscape Plan prepared by XO Projects and dated 24 February 2021.
180. To ensure that the proposed landscaping is appropriate for the location and maintained properly, Open Space comments have specified that the following details will be required;
- (a) show the type, location, quantity, height at maturity and botanical names of all proposed plants;
  - (b) provide details of the raised planters and terrace/rooftop planting (including planter box materials and dimensions, mulch layer – something that won't blow away, growing media – suitable in weight and content for roof top gardens, filter media, irrigation method, drainage system, root barrier / water proofing layer);
  - (c) provide details of the proposed method for irrigation and drainage;
  - (d) detail the maintenance (duration, regime) and irrigation;
  - (e) show the materiality of the proposed spaces;
  - (f) provide a specification of works to be undertaken prior to planting;
  - (g) further detail on any sustainable treatments and water harvesting methods; and
  - (h) detail plant/planting maintenance schedules and requirements.
181. All of these details will be incorporated into an updated Landscape Plan, which will be required via a condition of any permit issued.

*Site Coverage*

182. The existing buildings occupies a significant portion of the land (with the only uncovered area being a concrete courtyard along the southern boundary). The proposal will extend over 100% of the site. This level of site coverage is consistent with existing built form within the area and is considered to be an appropriate outcome.



*Light and Shade*

183. The subject site is located in a predominantly commercial location, where some degree of overshadowing is inevitable due to the hard-edge built form character which has been established. It is considered that the shadowing from the development would not affect the usability of the public realm, with no shadows affecting the western footpath of Smith Street from 10am onwards on the September equinox. Whilst parts of the eastern footpath will be in shadow at 11am; this is consistent with existing conditions. The development will result in no additional shadow impacts to either footpath from midday onwards.
184. A mandatory requirement of the new DDO states that; *new development must not overshadow:*
- (a) *the opposite footpath of Smith and side streets over 10 metres wide (boundary to boundary), as applicable, measured as 3.0 metres from the relevant property frontage between 10am and 2pm at 22 September; and*
  - (b) *any opposite kerb outstands, seating and/or planting areas (as applicable), between 10am and 2pm at 22 September.*
185. As outlined, the proposal would meet this requirement.

*Built form and design summary*

186. Permit conditions to reduce the development by one level and increase the setbacks from Smith Street are considered to achieve a balanced outcome which will alleviate concerns discussed in this assessment (i.e. height and setbacks) and result in a contemporary development that is more responsive to the existing and emerging context surrounding the site.

On-site amenity

187. New development should optimise the internal amenity for future occupants by providing well-designed and functional spaces that contribute to a sense of comfort within the site and its immediate environs. With this in mind, the proposal is considered to offer good on-site amenity for future users of the site, with excellent access to natural daylight and generous facilities that will contribute to a safe and usable workplace.
188. Daylight will be provided from the north, east and west interfaces, with the street frontages/laneway abuttal ensuring that daylight access will not be unreasonably compromised by any future development on adjacent sites.
189. There are external terraces provided at various levels throughout the building, with the communal roof terrace providing a generous area of outdoor landscaped space for all occupants. These terraces will contribute to natural ventilation opportunities for the office spaces.
190. The substantial amount of bicycle parking and end-of-trip facilities contribute to excellent on-site amenity, by offering future occupants alternative methods in which to access the site and ensuring that a high level of comfort would be afforded to all bicycle users.
191. Based on the above, the internal environment of the building for future users is supported.

*Energy and Resource Efficiency*

192. Policy at clauses 15.01-2S, 21.07, 22.16 and 22.17 of the Scheme encourages ecologically sustainable development with regard to water and energy efficiency, building construction and ongoing management. Council's ESD Advisor reviewed the ESD measures proposed and concluded that the proposal does not currently meet Council's ESD best practice standard, with opportunities for improvement identified.
193. There are a number of positive attributes of the development identified within the ESD advice and outlined within the Sustainable Management Plan (SMP) provided by Ark Resources; these were outlined within the 'proposal' section of this report. The deficiencies and opportunities for improvement are outlined below;
- (a) Given the extensive glazing provided in 3 facades of the building, there is concern for the overall shading performance, particularly for the northern façade. There are 150mm vertical fins proposed at various intervals along the facades, however Council's ESD Advisor recommended that either these fins be increased in depth and number, or a separate external shading solution be provided for floors not shaded by an overhanging storey above;
  - (b) The SMP and STORM rating rely upon a 16,000L rainwater tank; this is inconsistent with the 15,000L tank shown in the basement;
  - (c) A JV3 report is required. This report must include the following components;
    - (i) articulate comparison with a reference building in terms of building fabric and proposed services;
    - (ii) Clarify reductions in heating and cooling;
    - (iii) Clarify reduction in peak energy demand;
    - (iv) Clarify reductions in Greenhouse Gas emissions;
    - (v) Provide more details on heating, ventilation and air conditioning (HVAC) system and energy use;
    - (vi) Confirm reduction in Illumination Power Density (IPD) and provide more details on lighting energy efficiency; and,
    - (vii) Include solar generation.
194. In addition to the above, the following clarification/confirmation is required;
- (a) Clarification of window operability and natural ventilation opportunities at all levels;
  - (b) Clarify standard upon which low volatile organic compounds (VOC) and formaldehyde limits are specified;
  - (c) Confirm floor by floor metering for water loads;
  - (d) Confirm post-development stormwater flows will not exceed pre-development levels;
  - (e) Confirm whether any additional retention tanks are included in the design;
  - (f) Confirm whether any additional treatment devices (i.e. SPEL) are proposed;
  - (g) Clarify whether the proposed design intends to use recycled materials, and if not consider their inclusion (i.e. recycled bricks, or insulation with post-consumer content);
  - (h) Clarify strategy to reduce cement and meaning of environmentally sustainable steel design;
  - (i) Confirm extent of sustainably sourced timber (by weight or cost);
  - (j) Confirm extent of PVC strategy (by components, weight or cost);
  - (k) Provide a statement as to how the proposal aims to reduce the impacts of urban heat associated with the increase in urban mass;
  - (l) Provide more information on each innovation (i.e. ultra-low VOC paints etc.) to justify inclusion in Green Star pathway;
  - (m) Confirm the provision of a Building Users Guide explaining optimal usage of building services to minimise energy and water consumption; and,
  - (n) Clarify that an Environmental Management Plan will be developed by the building contractor to monitor and control activities undertaken during construction.
195. All of these recommendations and clarifications can be facilitated via a permit condition requiring an updated SMP.

196. Recommendations relating to visitor bicycle parking, car share facilities, a Green Travel Plan and Landscape Plan were also provided. These will all be covered in other areas of this assessment.
197. Based on the information provided, and the further details required via permit conditions, the proposal will satisfactorily address the requirements of the policy under clause 22.10-3.5 (Environmental Sustainability), clause 22.16 (Stormwater Management) and clause 22.17 (Environmentally Sustainable Development) of the Scheme. The current SMP will be updated via the conditions outlined, with this document to be endorsed to form part of the permit.

Off-site amenity

198. The policy framework for external amenity considerations is contained within 22.05 (Interface uses policy) of the Scheme, with this policy noting that new non-residential use and development within Business (Commercial) zones should be designed to minimise noise and visual amenity impacts upon nearby, existing residential properties.
199. The subject site is zoned C1Z, as are the properties to the north, south and west. The land to the east (and south-east) is within the MUZ; this constitutes the only sensitive interface within proximity to the site. The acceptability of amenity impacts (i.e. noise, visual bulk, overlooking and overshadowing) need to be considered within their strategic context, with the dwellings to the east located directly adjacent to a commercial zone and a MAC.
200. This issue is discussed within the Tribunal matter of *Calodoukas v Moreland CC* [2012] VCAT 180:  
[13] ...owners of residential properties next to a business or industrial zone cannot realistically expect the same level of residential amenity as someone residing in the middle of a purely residential area. Similarly, owners of commercial or industrial sites abutting residential properties cannot expect the same opportunities as owners of sites well removed from residential areas.
201. With the above in mind the following assessment is provided.

*Noise*

202. The proposal is considered unlikely to result in unacceptable noise emissions to the nearby residential properties. The gym is located within the basement; this will limit noise impacts from this space to the residential uses on Derby Street and the offices within the levels above. The gym entrance is located approximately 12m to the west of the closest dwelling on Derby Street and will be buffered by the existing laneway. This separation will alleviate unreasonable noise impacts to this dwelling due to the arrival/departure of gym patrons.
203. The larger of the two food and drink premises will be oriented to Smith Street and Derby Street. Whilst patron noise will occur, it will be directed towards the land within the commercial zone. The smaller café is located adjacent to the dwelling to the east; however, given the limited size of this tenancy and its fully enclosed design, it is not expected to generate unreasonable noise emissions to the residential interface. To ensure that music noise from this use (and from the gym) does not unduly impact adjacent dwellings, a condition can be added to any permit issued to specify that only background music levels can be played within the site, with no external speakers allowed. Further to this, a condition can specify that the uses and development must comply at all times with the *State Environment Protection Policy — Control of Music Noise from Public Premises (SEPP N-2)*.
204. Given the majority of the building would be used for offices, and as the office area is predominantly enclosed, it is unlikely that the adjacent residential sites will be unduly affected. It is widely accepted that office use does not generate high external noise levels.

205. The adjacent ROW will be used for waste collection and loading activities associated with the development. This laneway is currently used for back of house activities for sites addressing Smith Street; the use of the laneway will not alter. Standard conditions can be added to the permit to control the timing of deliveries and collection.
206. The location of services/plant equipment is demonstrated on the roof, with services also located within the basement levels. A condition will require that the noise and emissions from plant equipment comply at all times with the State Environment Protection Policy – *Control of Noise from Commerce, Industry and Trade* (SEPP N-1).
207. In light of the above it is considered unlikely that the uses proposed within the development would result in any unreasonable noise impacts to the adjacent residential sites.

*Visual bulk*

208. The north, south and west interfaces with the subject site are to commercial premises or Smith and Derby Streets. Visual impacts will not affect the commercial property to the south, with no direct views to the development from this land. Visual impacts have been discussed earlier with regards to views from the streetscapes; it is considered that the reduction in height and increased setbacks from Smith Street will address these concerns.
209. The dwelling immediately to the east will be separated by the laneway, with windows addressing the eastern wall of the proposal. This wall is 9.8m in height and set back 0.963m from the rear boundary. The upper levels of the proposal are set back 4.5m from the centre of the laneway.
210. These windows already address a double-storey wall, with the existing wall extending along the laneway boundary. The setback provided for the new wall along this interface will increase the distance between the two buildings. As evident in Figure 18, the line of sight from both windows will be oriented towards the podium, with limited upward views available to the higher elements. This will ensure that unreasonable visual impacts will be restricted.

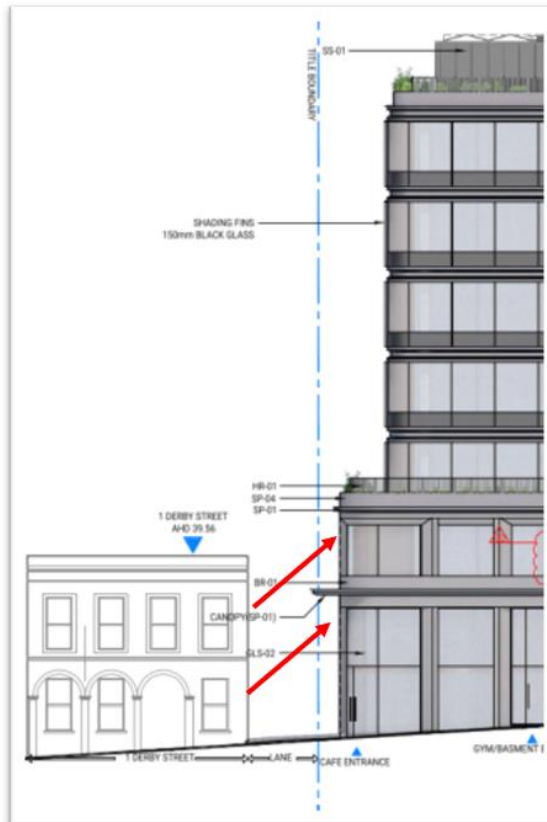


Figure 18: Views from adjacent dwelling

### Overlooking

211. Whilst technically not applicable to this development given its proposed uses, it is an accepted principle that unreasonable overlooking should be limited to habitable rooms (i.e. bedrooms and living rooms) and private open spaces within a 9m radius. The ground floor windows within the dwelling to the east appear to be full screened with limited internal views available, however given the location of these windows adjacent to the public realm, overlooking would already occur from the ROW.
212. It is not clear whether overlooking is possible to the first-floor windows from the mezzanine level of the café, however based on the section at Figure 19, there is potential for this to occur. Downward views from the levels above are likely to be restricted by the canopy extending along the eastern boundary, with these levels beyond 9m from the windows. If a planning permit is issued, a condition is recommended for the submission of an overlooking diagram to confirm whether unreasonable views to these windows are available (i.e. views within 9m), and if so, measures to mitigate these views must be incorporated into the design (e.g. max 25% openings).

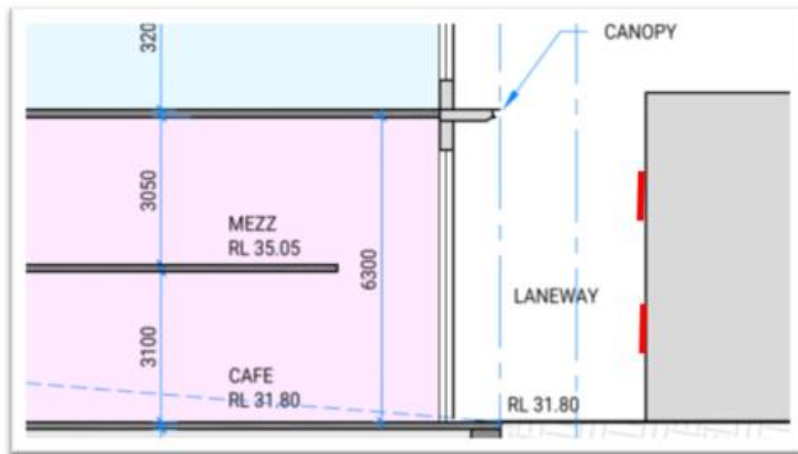


Figure 19: Café and dwelling interface

213. Figure 20 demonstrates the location of secluded private open space (SPOS) for this dwelling (circled in red), with a blue star indicating the proximity of the subject site. Views to this space will be obscured by the existing dwelling and roofline, given it is located on the eastern side of the site. Whilst views from the upper levels may be available, the distance between these levels and the SPOS will exceed 9m, ensuring that the views are reasonably limited.



Figure 20: Location of SPOS of adjacent dwelling

*Overshadowing*

214. Given the restricted interface with residential properties, the development will result in no additional overshadowing impacts to residential land during the morning/midday hours. The SPOS associated with the dwelling to the east will not be impacted; given its location on the eastern side of the existing dwelling, this open space is already fully in shadow throughout the afternoon. The proposal would result in little difference to the solar amenity of this space.
215. There is a row of townhouses to the south-east of the site. These townhouses have first-floor, north-facing balconies, and as demonstrated in Figures 21 & 22, additional shadows will affect between 2 to 4 of these balconies from 2pm onwards at the September equinox. Areas of SPOS further to the east (associated with dwellings on Derby Street) would also be affected later in the afternoon.



Figure 21: Additional 2pm shadows in red

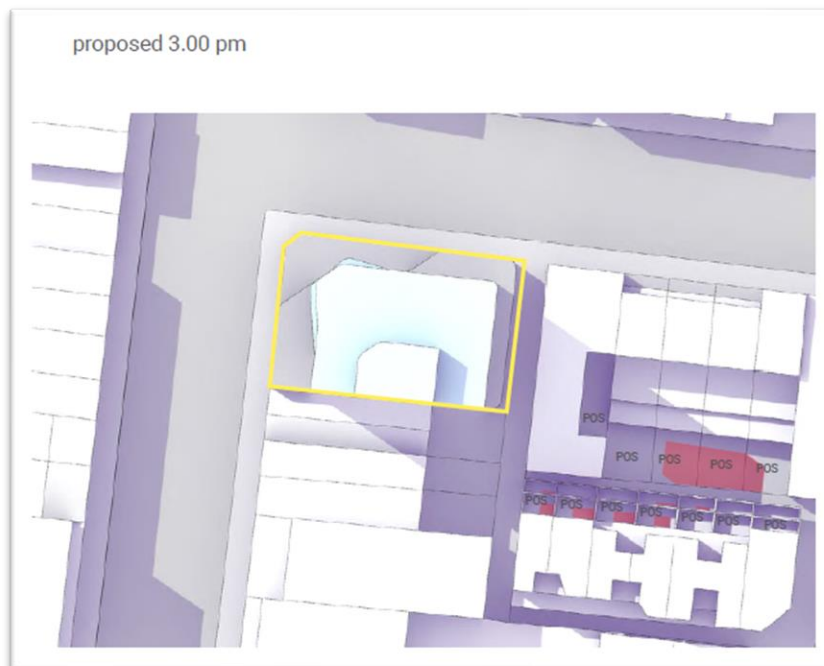


Figure 22: Additional 3pm shadows in red

216. The shadow diagram at Figure 21 demonstrates the extent of the 2pm shadows to these balconies, with the clouded shadow line indicating that the full extent of these two balconies would be in shadow at this time. The solid green line in Figure 23 is based on the removal of one level at 2pm, as recommended via a permit condition. It is clear from this diagram that with a level removed, the 2pm shadows would be substantially reduced and would be likely to fall within existing shadows cast by the terrace screen. On this basis, whilst the removal of one level would result in an improved heritage outcome, it will also result in a reduction of overshadowing to these balconies. This outcome is supported.

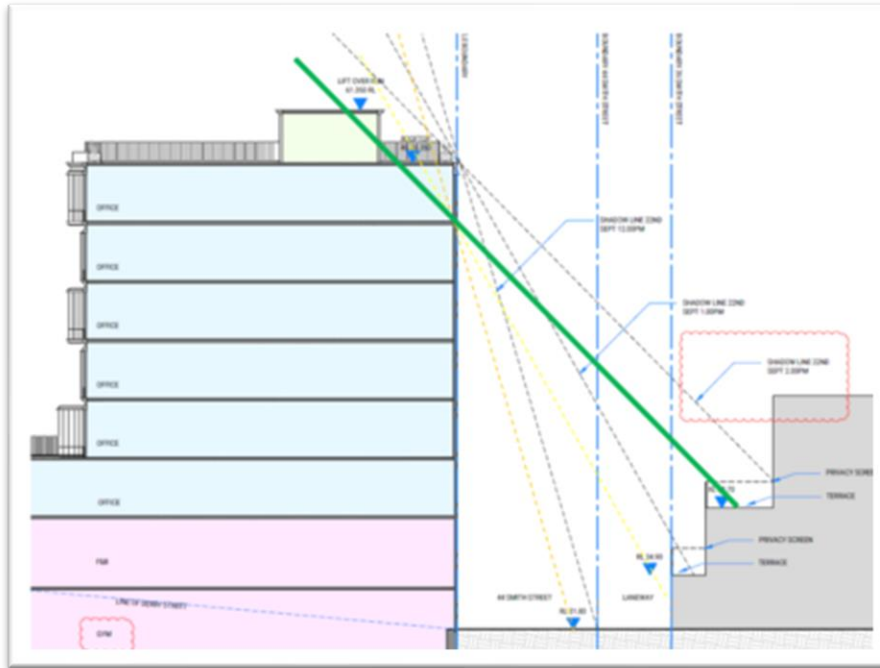


Figure 23: 2pm shadow based on removal of Level 6

217. Additional shadows will affect these terraces at 3pm, however again, given the removal of one level, the extent of overshadowing will decrease from that demonstrated in Figure 22. This outcome is considered reasonable, given the direct abuttal of these dwellings to the C1Z and a MAC, and the limited time in which these balconies are affected.

*Wind*

218. A Desktop Wind Assessment Report was prepared by Global Wind Technology Services (GWTS) and reviewed externally for Council by MEL Consultants (MEL). In their assessment, GWTS concluded that a minor increase in wind speeds were observed in the pedestrian level wind environment as a result of the proposed development, and that wind speeds are predicted to approach or marginally exceed the limit for the recommended criteria in some locations. Each area will be discussed in turn.

*Building entrances/footpaths*

219. The entrances are on the west, north-west, north and north-east sides of the building. GWTS recommended that the standing criterion should be met at all entrances, with the walking criterion to be met within the footpaths surrounding the site. A curved canopy with a depth of approximately 1.5m wraps around the north-west corner of the building, with a section also sitting above the office entrance on Smith Street. A 0.963m wide canopy will extend along the eastern boundary, adjacent to part of the café entry.
220. The assessment concludes that the canopies will protect these entrances from 'downwash', and that the standing criterion would subsequently be met. In their review, whilst MEL agree that this level of comfort should be met at the entrances within the north and west walls, they raised concerns whether the standing criterion can be achieved at the north-east and north-west corner entrances. The review notes that the downwash from the north and west faces would be expected to flow around the corners and under the corner canopies. MEL note that these canopies may need to extend further along both street interfaces to deflect downwash from the broad faces of the building.
221. To confirm whether the location, length and depths of the canopies require amending, MEL agree with the recommendation made by GWTS that a more stringent Wind Tunnel test should be prepared.



222. MEL Consultant noted that GWTS did not provide an assessment of the wind conditions in the streetscapes away from the entrances and whether these conditions would satisfy the recommended walking comfort criterion. An assessment of these areas should be included in the Wind Tunnel testing.

*Outdoor terraces*

223. GWTS recommended that the external terraces on Levels 1, 2 and 7 should meet the 'walking' criterion. They note that this level of comfort is acceptable for terraces, given the following;
- (a) The use of these areas is optional;
  - (b) The use of these areas can be avoided during a high wind events; and
  - (c) These areas are not public spaces and their use is not required all the time.
224. To ensure this criterion is met, GWTS recommended that balustrades of a minimum height of 1.2m surround these terraces. Balustrades to this height have been included on the plans. It is also recommended that safety and precaution is taken by the building occupants to securely fix lightweight items in the balcony areas. The report notes however that the final height of the balustrades will have to be confirmed via the Wind Tunnel testing. MEL Consultants raised no issue with these recommendations.
225. Overall, MEL agreed that Wind Tunnel testing must be conducted to accurately investigate and address potential wind impacts caused by the development. This testing must be undertaken prior to the endorsement of any plans, in case further changes or wind mitigation measures are required to the design. The testing must not include any of the vegetation proposed as part of the development, with these elements variable and not forming part of the permanent building fixture. A condition will be added to the permit accordingly.

*Equitable development*

226. The site abuts Smith Street to the west and Derby Street to the north, thereby ensuring that equitable development opportunities in these directions will not be affected by the proposed development. To the east, the laneway provides a degree of separation from the adjacent dwelling. The 'individually significant' grading of this dwelling within the heritage precinct will limit future development of this site, with heritage policy dictating that any additional built form would have to be located to the rear of the original roof ridge and with limited visibility from Derby Street. As evident in Figure 18, which shows the location of the original ridged roof, this would result in extremely limited, if any, additional built form directly adjacent to the subject site. It is therefore considered that the proposal would not impact development opportunities on this land.
227. Putting aside the heritage protection, it is still considered that equitable development opportunities will be maintained to this site. Any replacement building would be likely to extend directly along the laneway boundary for one or two levels, to match existing, with the setbacks of the upper levels of the development from the middle of the laneway of 4.5m ensuring that adequate distance between any higher future built form would be maintained.
228. The proposed development will extend along the majority of the southern boundary to its full height. This would allow future development within the southern site to mirror this; and therefore should not impact equitable development opportunities within this land.

Car Parking

229. In accordance with clause 52.06 of the Scheme, the application is seeking a full car parking reduction associated with all three uses, with no on-site car parking to be provided. The statutory requirements, and subsequent reductions being sought, are outlined in the following table.

<b>Proposed Use</b>	<b>Quantity/ Size</b>	<b>Statutory Parking Rate*</b>	<b>No. of Spaces Required</b>	<b>No. of Spaces Allocated</b>
<b>Office</b>	2,168 m <sup>2</sup>	3.0 spaces per 100 m <sup>2</sup> of net floor area	65	0
<b>Restricted Recreation Facility</b>	302 m <sup>2</sup>	Rate Not Specified	To the satisfaction of the Responsible Authority	
<b>Food and drink premises</b>	130 m <sup>2</sup>	3.5 spaces per 100 m <sup>2</sup> of leasable floor area	4	
<b>Restaurant</b>	244 m <sup>2</sup>	3.5 spaces per 100 m <sup>2</sup> of leasable floor area	8	
<b>Total</b>			<b>77 Spaces plus Spaces for the Restricted Recreation Facility</b>	<b>0 Spaces</b>

230. 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.*

231. Due to the COVID-19 restrictions, car parking occupancy surveys were not undertaken, as this would not provide an accurate representation of the car parking demands in the surrounding area. However, the traffic report noted that the on-street parking in this part of Collingwood/Fitzroy is generally high during business hours and in the evenings. The area surrounding the subject site is blanketed in time-based parking restrictions which ensure that parking turns over frequently.

232. Based on this context, whilst clients and customers should be able to find a short-stay parking space near the development, due to frequency of turnover of these spaces, it is acknowledged that long-term parking availability is extremely limited throughout the day.

*Parking Demand for Office Use.*

233. The office use would have no on-site car parking and given the parking availability outlined above, there is limited opportunity for employees to park on the street. The actual parking demand generated by the office use is expected to be lower than the statutory parking rate of 3 spaces per 100sqm of floor space, since the area has very good access to public transport services and is located within a MAC. Throughout Collingwood, a number of developments have been approved with no car spaces or a reduced office rate, as shown in the following table:

Development Site	Approved Office Parking Rate
<b>Collingwood</b>	
<b>71-93 Gipps Street PLN16/1150 issued 30 August 2017</b>	0.96 spaces per 100 m <sup>2</sup> (86 on-site spaces; 8,923 m <sup>2</sup> )
<b>2-16 Northumberland Street PLN16/1150 issued 14 June 2017</b>	0.89 spaces per 100 m <sup>2</sup> (135 on-site spaces; 15,300 m <sup>2</sup> )
<b>51 Langridge Street PLN17/0332 (Amended) issued 18 May 2018</b>	0.54 spaces per 100 m <sup>2</sup> (18 on-site space; 3,335 m <sup>2</sup> )
<b>48-50 Gipps Street PLN18/0902 issued 9 August 2019</b>	No on-site car parking
<b>33 Peel Street PLN17/1059 (Amended) issued 10 May 2021</b>	No on-site car parking

234. It is widely recognised in transport planning that an office is one land use that is particularly conducive (and important to target) in achieving a mode shift away from private cars to public transport, cycling, walking, etc. This is particularly the case as journey to work trips for office uses are typically made during the commuter peak hours and predominantly involve single occupant vehicles.
235. To support these findings, in a Tribunal decision regarding the car parking reduction associated with an office development, *KM Tram Enterprise Pty Ltd v Boroondara CC* [2018] VCAT 1237, the Member agreed that office developments “are prime candidates” for modal shifts to reduce reliance on private motor vehicles, with the following relevant comments:

*[29] In this context of a change from the ‘business as usual’ approach, I agree with Ms Dunstan that office workers are prime candidates for a mode change given their commuting patterns of travel to and from work during peak times. This is the time when public transport services run at highest frequencies and when Melbourne’s roads are most congested. The combination of ‘carrot’ and ‘stick’ makes it viable for many office workers commuting to a site such as this to change from private vehicle to public transport.*

*[30] I am not persuaded that the council’s option of reducing the amount of office space so that it better aligns with on-site parking supply is consistent with planning policy. Plan Melbourne which promotes ‘20-minute neighbourhoods’ where most of a person’s everyday needs can be met locally within a 20 minute journey from home by walking, cycling or local public transport. The everyday needs referred to include local employment opportunities along with shopping, education and community facilities.*

*[31] Local employment opportunities in this context are not limited to retail or community services. There is a benefit in encouraging office uses in the ‘20-minute neighbourhood mix’, as it provides opportunities for business owners and their staff to work locally. I find this line of argument is far more persuasive than the council’s position of limiting the amount of office floor space so that more cars can be brought into this part of Hawthorn.*

236. There is further support for changes to private motor vehicle reliance demonstrated in a Red Dot VCAT decision (*Ronge v Moreland CC* [2017] VCAT 550), which expanded on policy behind this approach. The Member clearly advocated for a reduction in the statutory car parking provision in inner-city sites such as this. Whilst this decision pertains to a site in Brunswick, the context is similar, being located in an inner-city suburb within proximity to public transport opportunities. Relevant statements within the summary of this decision are applicable to this application, as follows;

- (a) *State and local planning policies are already acknowledging the change that is required in the way in which people travel with Plan Melbourne 2017-2050 and State policies referring to 20-minute neighbourhoods and greater reliance on walking and cycling*
- (b) *Our roads are already congested and will be unimaginably so if a 'business-as-usual' approach is accepted through until 2050. The stark reality is that the way people move around Melbourne will have to radically change, particularly in suburbs so well served by different modes of public transport and where cycling and walking are practical alternatives to car-based travel.*
- (c) *A car parking demand assessment is called for by Clause 52.06-6 when there is an intention to provide less car parking than that required by Clause 52.06-5.*
- (d) *However, discussion around existing patterns of car parking is considered to be of marginal value given the strong policy imperatives about relying less on motor vehicles and more on public transport, walking and cycling. Census data from 2011 or 2016 is simply a snapshot in time, a base point, but such data should not be given much weight in determining what number of car spaces should be provided in future, for dwellings with different bedroom numbers.*
- (e) *Policy tells us the future must be different.*
- (f) *Oversupplying parking, whether or not to comply with Clause 52.06, has the real potential to undermine the encouragement being given to reduce car based travel in favour of public transport, walking and cycling.*
- (g) *One of the significant benefits of providing less car parking is a lower volume of vehicle movements and hence a reduced increase in traffic movements on the road network.*

237. Following on from this, within the Tribunal decision (*Grocon (Northumberland St) Developer Pty Ltd v Yarra CC* [2017] VCAT 753) regarding an office development at No. 2 – 16 Northumberland Street, Collingwood, the Member supported a significantly reduced office car parking rate (405 spaces reduction) and made the following comments:

*[54] We have concluded that the reduced car parking provision is justified in the circumstances of this application. In doing so, we have had regard to the location within an inner city environment that is earmarked as an employment precinct, with convenient access to a range of alternative transport modes and a constrained supply of on-street parking. We consider that the reduced parking provision will not compromise the viability of the development or precinct, nor will it result in an unacceptable demand for on-street parking, given the saturated conditions that are presently experienced.*

*[55] We agree that employees who are not allocated a car space will utilise alternative transport modes rather than attempt to seek out long term parking in the surrounding street network. This may well include walking to the site for persons who reside in the nearby residential and mixed-use areas. To constrain development of the land for a purpose that is in accordance with the zone purpose on the basis of car parking provision would not be consistent with the policy framework when read as a whole.*

*This includes policies aimed at fostering economic development, employment and environmental sustainability. We reach this conclusion mindful of the site's strategic and physical context and its accessibility by a range of transport modes. In a different context without the level of policy support and more remote from alternative transport modes, there may be less justification for a reduction of the magnitude proposed here.*

*Parking Demand for the Restricted Recreational Facility Use.*

238. All parking for patrons to the restricted recreational facility would be accommodated off-site. Restricted recreation facilities in the municipality (including pilates studios, gymnasiums, dance schools etc) have been approved with either no on-site parking or with one or two on-site spaces. The table below provides some recently approved recreation facilities in Yarra:

<b>Development Site</b>	<b>Approved Parking</b>
<b>Cremerne</b>	
Yoga Studio 94 Cubitt Street, Cremerne PLN15/0019 issued 4 May 2016	2 on-site spaces (32 patrons)
<b>Abbotsford</b>	
Gymnasium (24 hour) 563 Victoria Street, Abbotsford PLN16/0948 issued 3 February 2017	No on-site car parking (40 patrons)
Yoga Studio 96 Nicholson Street, Abbotsford PLN14/1065 issued 27 July 2015	No on-site car parking (12 patrons)
<b>Fitzroy</b>	
Gymnasium (24 hour) 224 Brunswick Street, Fitzroy PLN14/0892 issued 14 January 2015	No on-site car parking (40 patrons)

239. The site is located close to tram and bus services allowing staff and patrons to commute to and from the site by public transport.

*Parking Demand for Food & Drink Use and Restaurant Use*

240. A staff parking demand of 1 space per 100sqm of floor area for this use could be adopted. Using this rate would equate to 3 spaces. This reflects the precinct approach for similar food and drink and restaurant uses and acknowledges that a proportion of customers for this use will be drawn from employees and residents from surrounding businesses and residences.
241. The full reduction of on-site car parking for this proposal is further supported by the following;
- (a) The constrained parking environment (with particular regard to long-term parking) in Collingwood would discourage employees from driving or attempting to park on-street. The new offices should not result in a detrimental impact on existing car parking conditions, which are already close to saturation point;
  - (b) The site is ideally located with regard to sustainable transport alternatives and the lack of on-site car parking would discourage private motor vehicle use;
  - (c) The site has good pedestrian access to public transport nodes and the Smith Street MAC. The site is ideally located with regards to sustainable transport alternatives as follows;
    - (i) Smith Street-Gertrude Street tram services – 70m;

- (ii) Victoria Parade tram/bus services – 200m to the south;
  - (iii) Brunswick street tram services – 300m to the west;
  - (iv) Nicholson Street tram services – 500m to the west;
  - (v) Punt Road bus services – 810m to the east;
  - (vi) North Richmond railway station – 900m to the east;
  - (vii) Parliament railway station – 960m to the south-west.
- (d) The site has the advantage of being within walking distance of rail, tram and bus services, and within walking distance of the Melbourne CBD;
  - (e) The proposal includes secure bicycle parking spaces in excess of rates specified within the Scheme, with end-of-trip facilities incorporated into the design. Future employees would be able to take advantage of the nearby bicycle infrastructure, with on-road and informal bicycle lanes surrounding the site. The site has good connectivity to the on-road bicycle network;
  - (f) Employee or visitor parking permits will not be issued for the development, which will discourage people from driving to the site given the high utilisation of existing on-street car parking. The office use is particularly conducive to encouraging those with a car to not drive, given trips are made in peak public transport availability periods, trips are planned in advance and the lack of on-site and off-site parking availability is known in advance. These factors support employees to use other modes of transport;
  - (g) Office clients might combine their visit by engaging in other activities or business whilst in the area. Visitors would also be aware of the car parking constraints in the area which would discourage driving for alternative modes such as public transport, cycling or taxis; and,
  - (h) The lack of on-site car parking will limit traffic impacts within the surrounding street networks.

*Relevant Local Policy or Incorporated Document.*

242. In addition to the above, the proposed reduction in car parking aligns with objectives contained in Council's *Strategic Transport Statement (2006)* and relevant policy within the Yarra Planning Scheme. The following excerpts from the *Strategic Transport Statement* highlight the future vision for transport within the municipality;

- (a) *Yarra's Council Plan, its Municipal Strategic Statement and Municipal Public Health Plan all strongly reinforce the need to reduce car dependence in the City of Yarra by promoting walking, cycling and public transport use as viable and preferable alternatives. This is also a key message of the State Government's plan for Metropolitan Melbourne - Melbourne 2030.*
- (b) *To improve our community's way of life, we must increase the range of personal transport options. The more sustainable transport choices people make, the better the environment will be for everyone's health and well-being. Sustainable transport, by definition, puts the emphasis on walking, cycling and public transport.*

243. 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. The increased provision of bicycles within the development also foster this change. This outcome is consistent with Clauses 18.02-1S and 21.06-1 of the Scheme, and particularly with relevant objectives and strategies as follows;

- (a) *Clause 18.02-1S (Sustainable personal transport) – Ensure provision of bicycle end-of-trip facilities in commercial buildings.*

244. The development offers end-of-trip facilities for cyclists, with separate change rooms/showers provided.

- (a) *Clause 21.06 (Transport) – Yarra needs to reduce car dependence by promoting walking, cycling and public transport use as viable and preferable alternatives.*

- (b) *Clause 21.06-1 (Walking and cycling)*
  - (i) *Objective 30 To provide safe and convenient pedestrian and bicycle environments.*
  - (ii) *Strategy 30.2 Minimise vehicle crossovers on street frontages.*

245. The existing laneway will be used for on-site delivers/waste collection. No new crossovers are proposed.

- (a) *Clause 21.06-2 (Public Transport)*
  - (i) *Objective 31 To facilitate public transport usage;*
  - (ii) *Strategy 31.1 Require new development that generates high numbers of trips to be easily accessible by public transport.*

246. As previously noted, the site is within proximity to a number of public transport options, and within easy walking distance to the CBD.

- 247. *Clause 21.06-3 (The road system and parking)*
  - (a) *Objective 32 To reduce the reliance on the private motor car;*
  - (b) *Objective 33 To reduce the impact of traffic.*

248. The lack of on-site car parking will have positive effects on traffic congestion in the nearby streets.

249. *Practice Note 22 – Using the Car Parking Provisions* (June 2015) indicates that car parking should be considered on a centre-basis rather than on a site/individual basis. This is applicable to activity centres, where spare on-street car parking capacity would be shared amongst sites within the activity centre.

250. From a traffic engineering perspective, the full waiver of parking associated with the site is considered appropriate in the context of the development and the surrounding area. The Engineering Referral team has no objection to the reduction in the car parking requirement for this site.

Bicycle parking

251. Under the provisions of Clause 52.34-3 of the Yarra Planning Scheme, the development’s bicycle parking requirements are as follows:

Proposed Use	Quantity/ Size	Statutory Parking Rate	No. of Spaces Required	No. of Spaces Allocated
Office	2,168 sqm	1 employee space to each 300 sqm of net floor area if the net floor area exceeds 1000 sqm	7 employee spaces	
		1 visitor space to each 1000 sqm of net floor area if the net floor area exceeds 1000 sqm	2 visitor spaces.	
Restaurant	244 sqm	1 employee space to each 100 sqm of floor area available to the public	2 employee spaces	
		2 plus 1 visitor space to each 200 sqm of floor area available to the public if the floor area exceeds 400 sqm	0 visitor space	
	130 sqm	1 employee space to each 100 sqm of floor area available to the public	1 employee spaces	



Food and Drink Premises		2 plus 1 space to each 200 sqm of floor area available to public if floor area available exceeds 400 sqm	0 visitor spaces.	
Minor sports and recreation facility (Gym)	302 sqm 2 staff	1 employee space per 4 employees	1 employee spaces	
		1 space per 200 sqm of net floor area	2 visitor spaces	
<b>Bicycle Parking Spaces Total</b>			<b>11 employee spaces</b>	<b>30 employee spaces</b>
			<b>4 visitor spaces</b>	<b>3 visitor spaces</b>
<b>Showers / Change rooms</b>		1 to the first 5 employee spaces and 1 to each additional 10 employee spaces	<b>1 showers / change rooms</b>	<b>4 showers / change rooms</b>

*Employee spaces*

252. 30 employee spaces are proposed, which exceeds Council’s best practice recommendation of 26 employee spaces, however it is unclear whether these spaces are available for all employees (i.e. gym/restaurant and café) or only for office employees. The accessibility of these spaces should be clarified in a Green Travel Plan, which will be discussed in turn.
253. The location and design of employee bike parking is adequate for the following reasons:
- (a) All employee bicycle spaces are provided within a secure facility at the basement level, with access via the entrance at Smith Street and lift;
  - (b) The provision of two-tier bicycle racks satisfies the AS2890.3 requirement for at least 20% of bicycle storage spaces to be provided as horizontal at ground-level spaces;
  - (c) Dimensions of bicycle spaces are noted on the plans and demonstrate the layout is in accordance with access and clearance requirements of AS2890.3;
  - (d) An end of trip facilities area is located adjacent to the bicycle parking and includes four shower / change rooms and 50 lockers, which meets Council’s best practice recommendation of 3 shower / change rooms.

*Visitor spaces*

254. The following comments are provided in relation to provision of visitor bicycle spaces:
- (a) 3 visitor spaces are provided within the gym (with these spaces hanging style and requiring patrons to access them either via the lift or stairs). No publicly accessible visitor spaces are proposed. Council’s best-practice rate recommends a total of 6 visitor spaces.
  - (b) It is noted that there is currently a generous bicycle hoop structure directly in front of the site, however Council’s Strategic Transport Unit confirmed that this ‘bicycle corral’ is already well-used by visitors to the area and is often at capacity.
  - (c) On this basis, it is recommended that additional visitor spaces are provided at the street level to cater for increased activity generated by the proposed development, including 2 hoops at the Derby Street footpath and 2 hoops at the easement, as per the locations marked up in blue in Figure 24.
  - (d) All visitor spaces should be provided as a horizontal at-grade space and positioned in accordance with access and clearance requirements of AS2890.3 and Council’s urban design standard hoop detail.
255. These additional visitor spaces can be added via a condition, should a planning permit be issued.

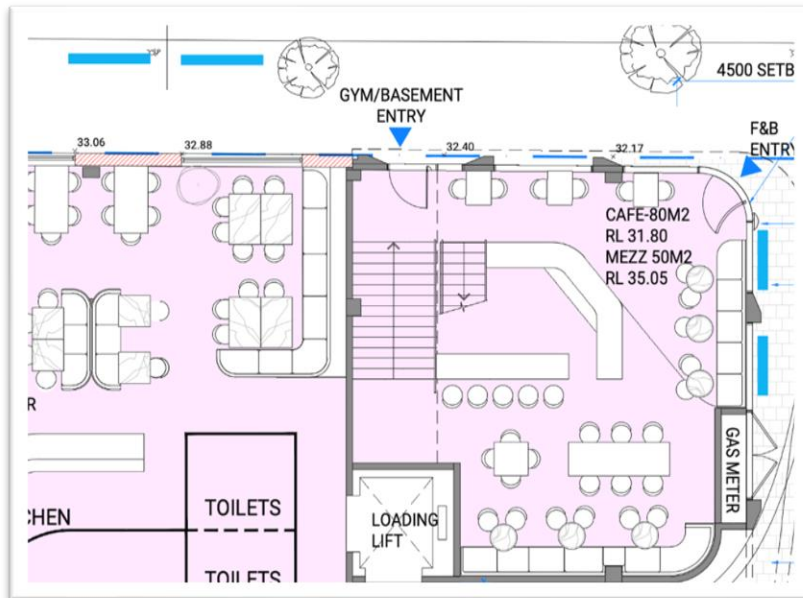


Figure 24: Recommended location of visitor bicycle spaces

### Green Travel Plan

256. Given the development has a total non-residential floor area of more than 1,000sqm, pursuant to Clause 22.17-4 a Green Travel Plan (GTP) must be provided. The following information should be included:
- Confirmation that all employees (e.g. including staff of the gym and food and drink premises) have access to the employee bicycle spaces in the basement;
  - Description of the location in the context of alternative modes of transport;
  - Employee welcome packs (e.g. provision of Myki/transport ticketing);
  - Sustainable transport goals linked to measurable targets, performance indicators and monitoring timeframes;
  - A designated 'manager' or 'champion' responsible for co-ordination and implementation;
  - Details of bicycle parking and bicycle routes;
  - Details of Green Travel funding and management responsibilities;
  - The types of bicycle storage devices proposed to be used for employee and visitor spaces (i.e. hanging or floor mounted spaces);
  - Security arrangements to access the employee bicycle storage spaces;
  - Signage and wayfinding information for bicycle facilities and pedestrians pursuant to Australian Standard AS2890.3; and
  - Provisions for the GTP to be updated not less than every five years.
257. A permit condition is recommended for a Green Travel Plan to be provided including the above information.

### Waste management

258. Bin storage for the entire building is provided within the basement, with direct access to the loading lift. Areas for hard/e-waste are provided, along with storage for waste streams to include general garbage, co-mingled recycling, organics and glass recycling.
259. A private contractor shall collect waste on-site, within the ground level loading bay. Collection staff shall have access to the bin store, and would transfer bins to the truck and back to the store. The waste collection would be undertaken rear-lift vehicles (nom. 6.4m long, 2.1m high and 6.4 tonnes gross vehicle mass).

Council Engineers have confirmed that the swept path diagrams for the 6.4m long waste collection vehicle demonstrates adequate access into the and out of the site off the laneway. They have also confirmed that the proposed location of two bicycle hoops, proposed to be conditioned within the laneway will not affect this access.

260. A Waste Management Plan (WMP) outlining all of these procedures (prepared by Leigh Design and dated 13/11/20) was reviewed by Council's City Works branch and deemed satisfactory. This WMP will be endorsed as part of the planning permit.

*Loading/unloading*

261. The development provides an on-site loading bay with access via the ROW. As outlined previously, the entrance to the ROW will be widened as part of this application.
262. The loading bay has been designed for vehicles up to and including the 6.4m long, 2.08m high mini waste truck, as well as vehicles up to and including the B99 design car (as per AS2890.1-2004). This caters for a range of minor delivery vehicles, such as vans.
263. Council Engineers confirmed that the entrance to the loading bay (width of 6.27m) is acceptable, with the internal dimensions adequate to accommodate a 6.4m long Small Rigid Vehicle as per *Australian/New Zealand Standard AS/NZS 2890.2:2002*.
264. To ensure other aspects of the entrance and loading bay are acceptable, the following information has been requested by Council's Engineering Services Unit;
- (a) A clearance check for the loading bay entrance is to be undertaken to confirm that a B99 design vehicle can enter and exit the property without scraping or bottoming-out; and,
  - (b) The headroom clearance at the loading bay entrance is to be dimensioned on the drawings.
265. Conditions can be added to any permit issued accordingly.
266. A number of additional conditions, largely relating to civil works on Smith Street and Derby Street, were recommended to be placed on any permit issued. These relate primarily to crossovers, the re-sheeting of footpaths, electrical poles, parking signs and sensors and stormwater pits and can be readily addressed via conditions or notes of the permit.

Objector concerns

267. Lack of on-site car parking;
- (a) This aspect is discussed in paragraphs 233 to 250 of this report.
268. Excessive height/overdevelopment of the site;
- (a) These concerns are discussed in paragraphs 128 to 153 of this report.
269. Does not respond to the neighbourhood/heritage character;
- (a) The neighbourhood context is discussed in paragraphs 154 to 167 of this report.
270. Potential off-site amenity impacts (overshadowing, overlooking);
- (a) Off-site amenity impacts are addressed in paragraphs 198 to 228 of this report.
271. Impacts during the construction phase;

- (a) A Construction Management Plan has been incorporated into the permit conditions to appropriately manage this concern.

272. The development results in an oversupply of offices;

- (a) The use of the land as an office does not require a planning permit within the Commercial 1 Zone. The suitability of this site for office use is discussed in more detail in paragraphs 102 to 107 of this report.

## Conclusion

273. Based on the above report, the proposal is considered to substantially comply with the relevant planning policy 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 PLN21/0042 for full demolition of Nos. 46 & 48 Smith Street and partial demolition of Nos. 50-52 Smith Street, construction of a multi-storey building containing office, a food and drink premise (no permit required for uses) and use of the land for restricted recreation facility (gymnasium), and a reduction in the statutory car parking requirement at 46-52 Smith Street, Collingwood subject to the following conditions:

1. Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of this permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the decision plans prepared by XO Projects and dated 24 February 2021, but modified to show:
  - (a) The removal of Level 6;
  - (b) All setbacks from Smith Street from Level 2 to the Level 5 to increase by a minimum of 1m;
  - (c) The middle window in the Derby Street façade to be reduced in width by one panel (the western-most panel) and replaced with wall to match the remaining façade;
  - (d) The design of the horizontal banding in the southern wall of the tower and the colour of the roof terrace altered to reflect the changes shown in the Sketch Plan submitted to Council on 3 June 2021, with the material proposed for the horizontal banding to be clearly identified;
  - (e) The entire plinth along the Derby Street frontage to be composed of bluestone, with the existing paint removed;
  - (f) The proposed street tree to be located within the Derby Street road reserve (to replace the former tree in this location) instead of within the Derby Street footpath;
  - (g) Either the proposed 150mm shading fins be increased in depth and number, or a separate external shading solution be provided for floors not shaded by overhanging storey above;
  - (h) The rainwater tank capacity to be shown as 16,000L, consistent with the endorsed Sustainable Management Plan in accordance with Condition 3.
  - (i) Clarification of window operability and natural ventilation opportunities at all levels;
  - (j) Glazing materials used on all external walls/windows must be of a type that does not reflect more than 20% of visible light, when measured at an angle of 90 degrees to the glass surface, to the satisfaction of the Responsible Authority;
  - (k) The fire booster cabinet within the Smith Street façade to be reduced in height, with glazing integrated into the façade above;

- (l) Confirmation that the fire booster cabinet will meet all relevant Standards and access requirements, with notations added to the plans to confirm that the doors associated with all ground level services will be designed to swing at 180-degrees and be latched onto the building wall when in service;
  - (m) Confirmation that DDA compliance is achieved for at least one entrance to each use. If any steps, handrails, or tactiles are required to achieve this compliance, these features must be located within the subject site boundary and must not protrude or be located within the public realm/footpath space;
  - (n) Clarification of the type of paving material located within the slivers of land between building and asphalt footpaths;
  - (o) All canopy dimensions above footpaths and the ROW (height and depth);
  - (p) An overlooking diagram to demonstrate whether unreasonable overlooking is available from the east-facing windows of the café into the dwelling windows to the east, with mitigation measures incorporated into the design if required;
  - (q) The installation of 2 bicycle hoops on Derby Street (immediately to the west of the gymnasium entrance) and 2 bicycle hoops in the ROW (directly adjacent to the café frontage). These bicycle spaces must be provided as a horizontal at-grade space and positioned in accordance with access and clearance requirements of AS2890.3 and Council's urban design standard hoop detail.
  - (r) A cross sectional diagram of the loading bay entrance at 1:20 scale showing;
    - (i) Reduced levels of the west and east edge of the laneway, the centreline of the laneway and the finished floor level of the slab with the 40mm edge of the laneway
    - (ii) A clearance check for the loading bay entrance to confirm that a B99 design vehicle can enter and exit the property without scraping or bottoming-out;
  - (s) Dimensions of the headroom clearance at the loading bay entrance;
  - (t) Any changes required by the endorsed Sustainable Management Plan pursuant to Condition 3;
  - (u) Any changes required by the endorsed Landscape Plan pursuant to Condition 10;
  - (v) Any changes required by the endorsed Green Travel Plan pursuant to Condition 15;
  - (w) Any changes required by the endorsed Wind Tunnel Test pursuant to Condition 17.
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.

### **Sustainability Management Plan**

3. Before the development commences, an amended Sustainable Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Sustainable Management Plan will be endorsed and will form part of this permit. The amended Sustainable Management Plan must be generally in accordance with the Sustainable Management Plan prepared by Ark Resources and dated 23 December 2020, but modified to include:
- (a) Details of additional shading comprising either the shading fins to be increased in depth and number, or a separate external shading solution be provided for floors not shaded by overhanging storey above;
  - (b) The provision of a JV3 report, including the following components;
    - (i) A comparison with a reference building in terms of building fabric and proposed services;
    - (ii) Clarify reductions in heating and cooling;
    - (iii) Clarify reduction in peak energy demand;
    - (iv) Clarify reductions in Greenhouse Gas emissions;
    - (v) Provide more details on the Heating, Ventilation and Air-conditioning (HVAC) system and energy use;

- (vi) Confirm reduction in Illuminated Power Density (IPD) and provide more details on lighting energy efficiency; and,
- (vii) Include solar generation.
- (c) Clarification of window operability and natural ventilation opportunities at all levels;
- (d) Clarify standard upon which low volatile organic compounds (VOC) and formaldehyde limits are specified;
- (e) floor by floor metering for water loads;
- (f) Confirm post-development stormwater flows will not exceed pre-development levels;
- (g) Confirm whether any additional retention tanks are included in the design;
- (h) Confirm whether any additional treatment devices (i.e. SPEL) are proposed;
- (i) Clarify whether the proposed design intends to use recycled materials, (i.e. recycled bricks, or insulation with post-consumer content);
- (j) Clarify strategy to reduce cement and meaning of environmentally sustainable steel design;
- (k) Confirm extent of sustainably sourced timber (by weight or cost);
- (l) Confirm extent of PVC strategy (by components, weight or cost);
- (m) Provide a statement as to how the proposal aims to reduce the impacts of urban heat associated with the increase in urban mass;
- (n) Provide more information on each innovation (i.e. ultra-low VOC paints etc.) to justify inclusion in Green Star pathway;
- (o) provision of a Building Users Guide explaining optimal usage of building services to minimise energy and water consumption; and,
- (p) Environmental Management Plan to be developed by the building contractor to monitor and control activities undertaken during construction.

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

#### **Waste Management Plan**

5. Before the development commences, an amended Waste Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Waste Management Plan will be endorsed and will form part of this permit. The amended Waste Management Plan must be generally in accordance with the Waste Management Plan prepared by Leigh Design and dated 13 November 2020, but modified to include:
- (a) Any changes required by Condition 1 requirements of this permit.
6. The provisions, recommendations and requirements of the endorsed Waste Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

#### **Structural Report**

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

#### **Façade Strategy**

9. In conjunction with the submission of development plans under Condition 1, a Façade Strategy and Materials and Finishes Plan to the satisfaction of the Responsible Authority must be submitted to and be approved by the Responsible Authority. When approved, the Façade Strategy and Materials and Finishes Plan will be endorsed and will then form part of this permit. This must detail:
- (a) elevation drawings at a scale of 1:20 illustrating typical podium details, entries and doors, and utilities and typical tower facade details;
  - (b) corbelling brickwork to the podium and southern elevation in accordance with the rendered images;
  - (c) section drawings to demonstrate façade systems, including fixing details and joints between materials or changes in form;
  - (d) information about how the façade will be maintained; and
  - (e) a sample board and coloured drawings outlining colours, materials and finishes.

### **Landscape Plan**

10. Before the development commences, an amended Landscape Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Landscape Plan will be endorsed and will form part of this permit. The amended Landscape Plan must be generally in accordance with the Landscape Plan prepared by XO Projects and dated 24 February 2021, but modified to include;
- (a) show the type, location, quantity, height at maturity and botanical names of all proposed plants;
  - (b) provide details of the raised planters and terrace/rooftop planting (including planter box materials and dimensions, mulch layer – something that won't blow away, growing media – suitable in weight and content for roof top gardens, filter media, irrigation method, drainage system, root barrier / water proofing layer);
  - (c) provide details of the proposed method for irrigation and drainage;
  - (d) detail the maintenance (duration, regime) and irrigation;
  - (e) show the materiality of the proposed spaces;
  - (f) provide a specification of works to be undertaken prior to planting;
  - (g) further detail on any sustainable treatments and water harvesting methods; and
  - (h) detail plant/planting maintenance schedules and requirements.
11. 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.

### **Tree Management Plan**

12. Before the development commences, a Tree Management Plan to the satisfaction of the Responsible Authority must be prepared by a suitably qualified Arborist and must be submitted to and approved by the Responsible Authority. When approved the Tree Management Plan will be endorsed and will form part of this permit. The Tree Management Plan must make recommendations for:
- (a) the protection of the trees on Smith Street and Derby Street, adjacent to the site:
    - (i) pre-construction;
    - (ii) during construction; and
    - (iii) post construction



- (b) the provision of any barriers;
- (c) any pruning necessary; and
- (d) watering and maintenance regimes,

to the satisfaction of the Responsible Authority.

13. The provisions, recommendations and requirements of the endorsed Tree Management Plan must be complied with and implemented to the satisfaction of the Responsible Authority.
14. Before the development commences, the permit holder must provide an Asset Protection Bond of \$10,000 (ex GST) for the trees in Smith Street and Derby Street adjacent to the frontage of the development to the Responsible Authority. The security bond:
  - (a) must be provided in a manner, and on terms, to the satisfaction of the Responsible Authority;
  - (b) may be held by the Responsible Authority until the works are completed to the satisfaction of the Responsible Authority; and
  - (c) in accordance with the requirements of this permit; or
  - (d) otherwise to the satisfaction of the Responsible Authority.

### **Green Travel Plan**

15. Before the development commences, a Green Travel Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Green Travel Plan will be endorsed and will form part of this permit. The Green Travel Plan must include;
  - (a) Confirmation that all employees (e.g. including staff of the gym and food and drink premises) have access to the employee bicycle spaces in the basement;
  - (b) Access to employee bicycle spaces for all uses.
  - (c) Description of the location in the context of alternative modes of transport;
  - (d) Employee welcome packs (e.g. provision of Myki/transport ticketing);
  - (e) Sustainable transport goals linked to measurable targets, performance indicators and monitoring timeframes;
  - (f) A designated 'manager' or 'champion' responsible for co-ordination and implementation;
  - (g) Details of bicycle parking and bicycle routes;
  - (h) Details of Green Travel funding and management responsibilities;
  - (i) The types of bicycle storage devices proposed to be used for employee and visitor spaces (i.e. hanging or floor mounted spaces);
  - (j) Security arrangements to access the employee bicycle storage spaces;
  - (k) Signage and wayfinding information for bicycle facilities and pedestrians pursuant to Australian Standard AS2890.3; and
  - (l) Provisions for the Green Travel Plan to be updated not less than every five years.
16. The provisions, recommendations and requirements of the endorsed Green Travel Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

### **Wind Tunnel Test**

17. Before the development commences, a Wind Tunnel Test to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Wind Tunnel Test will be endorsed and will form part of this permit. The Wind Tunnel Report must include (or show);
  - (a) Testing of assumptions as contained within the Desktop Wind Study prepared by Global Wind Technology Services and dated 5 March 2021;
  - (b) Testing of potential wind conditions within adjacent streetscapes;
  - (c) Achieve recommended criteria at each point (i.e. not an average) without the reliance upon vegetation.

18. The provisions, recommendations and requirements of the endorsed Wind Tunnel Test must be implemented and complied with to the satisfaction of the Responsible Authority.

**Uses**

19. Except with the prior written consent of the Responsible Authority, the restricted recreation facility (gymnasium) use authorised by this planning permit may only operate between
- (a) 6am to 9pm, Monday to Friday; and,
  - (b) 10am to 4pm on Saturday and Sunday.
20. No more than 45 patrons are permitted within the gymnasium at any one time.
21. The amenity of the area must not, to the satisfaction of the Responsible Authority, be detrimentally affected by the development and uses, 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.
  - (d) The presence of vermin.
22. The uses and development must comply at all times with the State Environment Protection Policy — Control of Noise from Commerce, Industry and Trade (SEPP N-1).
23. The uses and development must comply at all times with the State Environment Protection Policy — Control of Music Noise from Public Premises (SEPP N-2).
24. Music must be at background music levels only, with no external speakers provided.
25. The collection of waste from the site must be by private collection, unless with the prior written consent of the Responsible Authority.
26. 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.
27. The loading and unloading of vehicles and the delivery of goods to and from the land must be conducted entirely within the land to the satisfaction of the Responsible Authority.

**General**

28. 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 pedestrian and vehicular entrances must be provided on the subject site. Lighting must be:
- (a) located;
  - (b) directed;
  - (c) shielded; and
  - (d) of limited intensity

to the satisfaction of the Responsible Authority.

29. All buildings and works must be maintained in good order and appearance to the satisfaction of the Responsible Authority.
30. 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.

31. Before the building is occupied, any wall located facing public land must be treated with a graffiti proof finish to the satisfaction of the Responsible Authority.
32. All pipes, fixtures and fittings servicing any building on the land must be concealed in service ducts or otherwise hidden from view to the satisfaction of the Responsible Authority.
33. 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) Line-marked or provided with some adequate means of showing the car parking spaces.

to the satisfaction of the Responsible Authority.

### **Civil Works**

34. Except with the prior written consent of the Responsible Authority, Council assets must not be altered in any way.
35. Before the building is occupied, or by such later date as approved, in writing by the Responsible Authority, any damage to Council infrastructure resulting from the development must be reinstated:
  - (a) at the permit holder's cost; and
  - (b) to the satisfaction of the Responsible Authority.
36. Any services poles, structures or pits that interfere with the proposal must be adjusted, removed or relocated at the permit holder's expense after seeking approval from the relevant authority.
37. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, the following works must be undertaken, at the permit holder's cost and to the satisfaction of the Responsible Authority:
  - (a) The footpath immediately outside the site on Smith Street and Derby Street must be stripped and re-sheeted.

### **Construction Management Plan**

38. 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 Construction Management Plan will be endorsed and will form part of this permit. The Construction Management Plan must provide for:
  - (a) a pre-conditions survey (dilapidation report) of the land and all adjacent Council roads frontages and nearby road infrastructure;
  - (b) works necessary to protect road and other infrastructure;
  - (c) remediation of any damage to road and other infrastructure;
  - (d) containment of dust, dirt and mud within the land and method and frequency of clean up procedures to prevent the accumulation of dust, dirt and mud outside the land;
  - (e) facilities for vehicle washing, which must be located on the land;
  - (f) the location of loading zones, site sheds, materials, cranes and crane/hoisting zones, gantries and any other construction related items or equipment to be located in any street;
  - (g) site security;
  - (h) management of any environmental hazards including, but not limited to,:

- (i) contaminated soil;
- (ii) materials and waste;
- (iii) dust;
- (iv) stormwater contamination from run-off and wash-waters;
- (v) sediment from the land on roads;
- (vi) washing of concrete trucks and other vehicles and machinery; and
- (vii) spillage from refuelling cranes and other vehicles and machinery;
- (i) the construction program;
- (j) preferred arrangements for trucks delivering to the land, including delivery and unloading points and expected duration and frequency;
- (k) parking facilities for construction workers;
- (l) measures to ensure that all work on the land will be carried out in accordance with the Construction Management Plan;
- (m) an outline of requests to occupy public footpaths or roads, or anticipated disruptions to local services;
- (n) an emergency contact that is available for 24 hours per day for residents and the Responsible Authority in the event of relevant queries or problems experienced;
- (o) the provision of a traffic management plan to comply with provisions of AS 1742.3-2002 Manual of uniform traffic control devices - Part 3: Traffic control devices for works on roads;
- (p) a Noise and Vibration Management Plan showing methods to minimise noise and vibration impacts on nearby properties and to demonstrate compliance with Noise Control Guideline 12 for Construction (Publication 1254) as issued by the Environment Protection Authority in October 2008. The Noise and Vibration Management Plan must be prepared to the satisfaction of the Responsible Authority. In preparing the Noise and Vibration Management Plan, consideration must be given to:
  - (i) using lower noise work practice and equipment;
  - (ii) the suitability of the land for the use of an electric crane;
  - (iii) silencing all mechanical plant by the best practical means using current technology;
  - (iv) fitting pneumatic tools with an effective silencer;
  - (v) other relevant considerations; and
- (q) Any site-specific requirements.

39. During the construction:

- (a) any stormwater discharged into the stormwater drainage system must be in compliance with Environment Protection Authority guidelines;
- (b) 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;
- (c) vehicle borne material must not accumulate on the roads abutting the land;
- (d) the cleaning of machinery and equipment must take place on the land and not on adjacent footpaths or roads; and
- (e) 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.

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

41. Prior to the issue of a building permit, commencement of the development, or issue of a Statement of Compliance (whichever occurs first) 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 amount of the levy within a time specified in the agreement.

**Construction hours & noise**

42. Except with the prior written consent of the Responsible Authority, demolition or construction works must not be carried out:
- (a) Monday to Friday (excluding public holidays) before 7:00am or after 6:00pm.
  - (b) Saturdays and public holidays (other than ANZAC Day, Christmas Day and Good Friday) before 9:00am or after 3:00pm.
  - (c) Sundays, ANZAC Day, Christmas Day and Good Friday at any time

**Permit Expiry**

43. 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; or
  - (c) the use is not commenced within five years of the date of this permit.

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

**Notes:**

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

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

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.

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

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

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

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

The developer needs to ensure that the building has adequate clearances from overhead power cables, transformers, substations or any other electrical assets where applicable. Energy Safe Victoria has published an information brochure, *Building design near powerlines*, which can be obtained from their website.

Prior to the issue of a building permit for the development allowed by this permit, the Community Infrastructure Levy must be paid to Yarra City Council in accordance with the approved Development Contributions Plan.

## Attachments

- 1 PLN21/0042 - 46 - 52 Smith Street Collingwood - Advertising S52 - Plans
- 2 46-52 Smith Street, Collingwood - Sketch Plan
- 3 46-52 Smith Street, Collingwood - Wind referral comments
- 4 46-52 Smith Street, Collingwood - Streetscapes comments
- 5 46-52 Smith Street, Collingwood - Strategic Planning comments
- 6 46-52 Smith Street, Collingwood - Open Space comments
- 7 46-52 Smith Street, Collingwood - Internal UD comments
- 8 46-52 Smith Street, Collingwood - Heritage referral comments
- 9 46-52 Smith Street, Collingwood - External UD comments
- 10 46-52 Smith Street, Collingwood - ESD referral comments
- 11 46 - 52 Smith Street, Collingwood - Strategic Transport comments
- 12 46-52 Smith Street, Collingwood - Engineering comments
- 13 46-52 Smith Street, Collingwood - City Works comments

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**6.4 PLN20/0747 - 1-13 Oxford St Collingwood**

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## **Executive Summary**

### **Purpose**

1. This report provides an assessment of the proposal at 1 – 13 Oxford Street, Collingwood, for the use and development of the land for a seven storey office building, with rooftop terrace and plant above (permit required for office use, operating 7am to 6pm, Monday to Friday) and a full reduction in the car parking requirement.

### **Key Planning Considerations**

2. Key planning considerations include:
  - (a) clause 15.01 – Urban Environment;
  - (b) clause 21.05 – Built Form and clause 22.10 – Built Form and Design;
  - (c) clause 22.05 – Interface Uses Policy;
  - (d) clause 32.04 – Mixed Use Zone; and
  - (e) clause 52.06 – Car Parking.

### **Key Issues**

3. The key issues for Council in considering the proposal relate to:
  - (a) Policy and strategic support;
  - (b) Use of the land as office;
  - (c) Built form and Urban Design;
  - (d) On-site amenity including Environmentally Sustainable Design;
  - (e) Off-site amenity impacts;
  - (f) Car parking, loading and unloading and bicycle facilities;
  - (g) Waste management; and
  - (h) Objector concerns.

### **Submissions Received**

4. Seventeen (17) objections were received to the application, these can be summarised as:
  - (a) Built form and design (overdevelopment, inappropriate height, limited setbacks, architectural expression out of character; out of keeping with heritage);
  - (b) Amenity impacts (waste arrangements, ESD, lack of landscaping and public realm overshadowing);
  - (c) Off-site amenity (loss of views and privacy, overshadowing, noise and overlooking);
  - (d) Increased traffic, lack of car parking and loading facilities;
  - (e) Construction impacts;
  - (f) Loss of views to No. 6 Oxford Street;
  - (g) Concern office will be converted to residential in future; and
  - (h) No need for additional office floor space.
5. One letter of support was also 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 subject to the following key recommendations:
  - (a) Restriction of the office use to 7:00am to 6:00pm, Monday to Friday, in accordance with the proposed operating hours.
  - (b) A Façade Strategy and Materials and Finishes Plan;
  - (c) Provision of a kerb outstand along Mason Street; and



- (d) Provision of a post completion Acoustic Report demonstrating compliance of the mechanical plant with both State Environment Protection Policy (Noise from Commerce, Industry and Trade) No. N-1, sleep disturbance targets and Noise Protocol (as relevant) at existing dwellings.

**CONTACT OFFICER:** Michelle King  
**TITLE:** Principal Planner  
**TEL:** 9205 5333

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## 6.4 [PLN20/0747 - 1-13 Oxford St Collingwood](#)

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<b>Reference</b>	D21/57299
<b>Author</b>	Michelle King - Principal Planner
<b>Authoriser</b>	Manager Statutory Planning

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<b>Ward:</b>	Langridge
<b>Proposal:</b>	Use and development of the land for a seven storey office building, with rooftop terrace and plant above (permit required for office use, operating 7am to 6pm, Monday to Friday) and a full reduction in the car parking requirement
<b>Existing use:</b>	Vacant commercial building
<b>Applicant:</b>	Oxford Mason Pty Ltd
<b>Zoning / Overlays:</b>	Mixed Use Zone Design and Development Overlay – Schedule 23 Environmental Audit Overlay Development Contributions Overlay – Schedule 1
<b>Date of Application:</b>	16 October 2020
<b>Application Number:</b>	PLN20/0747

### Planning History

1. There is no relevant planning permit history for this site.

### Background

#### [Lodgement of additional documentation \(26 March 2021\)](#)

2. On 26 March 2021 the applicant provided Council with the original survey that was issued to the architect, at the request of Council's Engineering Unit. The survey assisted the Engineering Unit in their assessment of the application.

#### [Lodgement of additional documentation \(16 April 2021\)](#)

3. On 16 April 2021 the applicant provided Council with a copy of the STORM Rating Report and associated documents referenced within the Sustainable Management Plan, at the request of Council's ESD Advisor. The additional information assisted the ESD Advisor in their assessment of the application.

#### [Lodgement of additional documentation \(2 June 2021\)](#)

4. On 2 June 2021 the applicant provided Council with sketch plans demonstrating how the internal Urban Design recommendations could be satisfied through revisions to the ground floor plan.
5. These sketch plans are provided on a without prejudice basis for information purposes on how the identified urban design issues could be addressed and are included as an attachment to this report. The assessment is based on the advertised plans, with reference made to the sketch plans received on 2 June 2021, where relevant.
6. The applicant also submitted an updated Waste Management Plan (WMP) and memo prepared by One Mile Grid outlining how the issue identified by Council's City Works Unit could be rectified.
7. The WMP provides additional information and has not been formally substituted. It has also been provided on a without prejudice basis for information purposes on how the identified issues could be addressed.

8. The updated WMP was reviewed by Council's City Works Unit with their updated comments included as an attachment to this report and referred to in the assessment of the application, where relevant.

## The Proposal

9. The proposal is for the use and development of the land for a seven storey office building, with rooftop terrace and plant above (permit required for office use, operating 7am to 6pm, Monday to Friday) and a full reduction in the car parking requirement. Key features of the proposal include:

### Use (permit required)

10. A total of 3,885 sqm of open-plan office space from ground level to Level 06. A permit is required for the office use. The office is proposed to operate between the hours of 7am and 6pm, Monday to Friday and cater to 360 staff.
11. Access to the ground floor tenancy is proposed from Oxford Street through the end-of-trip bicycle storage room into an internal lobby. The lobby also provides access to communal service rooms and the lift lobby to facilitate access to the upper levels. Direct access to the ground floor tenancy is also provided from Mason Street to the south through an existing opening replaced with glazed doors. The applicant confirmed via email on 9 June that the existing recessed opening, to the south of the proposed end-of-trip facilities, also provides direct access to the ground floor tenancy. A condition can require this to be shown as a door on the plans to avoid ambiguity.
12. Primary access to the building and all upper level office tenancies is from Mason Street, with the lift core and stair well to all levels provided within the north-western corner of the building at the end of a generously sized (predominately 5.5 metre wide) lobby.
13. External terraces are provided throughout along the Oxford and Mason Street interfaces, as follows:
- (a) Level 02 – 85sqm;
  - (b) Level 03 – 52sqm;
  - (c) Level 04 – 18sqm (landscaping only);
  - (d) Level 05 – 69.5sqm; and
  - (e) Level 06 – 36sqm.
14. A roof terrace is also proposed (132sqm) and is to cater to a maximum 50 staff members at any one time. The roof terrace includes a 73.5sqm green roof.
15. Bicycle parking for employees and end-of-trip facilities are provided at the ground floor level, with access from Oxford Street. No on site car parking is proposed.

### Construction

#### *Demolition (no permit required)*

16. Demolition of all existing doors and roller doors facing Oxford Street, Mason Street and the Right-of-Way (ROW). Retention of the substantive built form and existing signage with the demolition and replacement of all existing glass lites facing Oxford Street and Mason Street. The existing glazing frames are to be retained and restored. Internal demolition and the demolition of the existing roof structure is also proposed.

#### *Construction*

#### *East and South*

17. The building retains its existing footprint at the ground floor level and Level 01 except for the following:

- (a) At the ground floor level mesh sliding panels are to be built between 0 metres and 0.4 metres from the eastern boundary in the area previously utilised as undercroft car parking and roller door;
- (b) Glazed doors are proposed to replace the side door facing Oxford Street to the east and the side door facing Mason Street to the south;
- (c) A new glazed entrance is proposed to replace the roller door facing Mason Street to the south; and
- (d) A metal clad booster cupboard is proposed within the Mason Street façade to the east of the main entrance.

18. At Level 02 and above, the respective setbacks to Oxford Street and Mason Street is identified below:

Level	Oxford Street setback	Mason Street setback
Level 02	2.78 metres	2.82 metres
Level 03	4.59 metres	4.63 metres
Level 04	5.16 metres	5.21 metres
Level 05	9.66 metres	9.70 metres
Level 06	11.63 metres	11.66 metres
Level 07	11.75 metres	11.79 metres

- 19. The building setbacks as referenced above are set below a draped façade veil of metal mesh with nib walls and terraces extending into the setback area. The veil is configured in two arcs, one across Levels 02 – 04 and the other across Levels 05 – Level 07, with a horizontal fold between the two arcs at Level 05.
- 20. A service enclosure is located within the veil at the northern end of each east-facing terrace at Levels 02 – 06. Perforated Metal with nominal 50% openings will be applied to the service enclosures behind the veil.
- 21. At the internal southern boundary shared with No. 6-12 Mason Street, the development retains its existing footprint at the ground floor level and Level 01. At Level 02, the existing wall is proposed to be extended in height by 2.2 metres.



Figure: Southern elevation (left) and eastern elevation (right)  
Source: Advertised Plans

North

22. The building retains its existing footprint at the ground floor level and Level 01 where interfacing with the northern boundary.
23. At Level 02 the building is built against the full length of the northern boundary, above this the building is built to the northern boundary for the following lengths:

Level	Northern on-boundary wall length
Level 03	26.84 metres
Level 04	24.74 metres
Level 05	22.57 metres
Level 06	19.18 metres
Level 07	17.67 metres (mesh screening around roof terrace) 5.75 metres (stair core behind mesh screening)

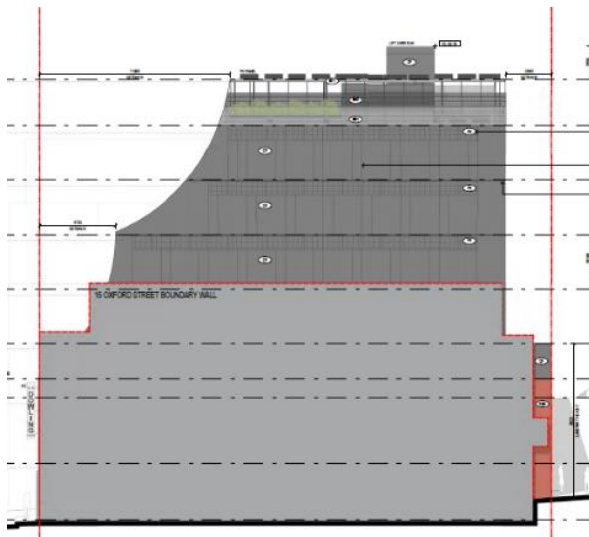


Figure: Northern elevation  
Source: Advertised Plans

24. The wall is proposed to be clad in cement panels and articulated through the provision of expressed metal trim within the horizontal seams and shadow gaps within vertical seams. Solar panels are also proposed on the northern boundary wall, above the existing neighbouring built form.

*West*

25. The building retains its existing footprint at the ground floor level and Level 01 where interfacing with the western boundary, except for the following:
  - (a) Grey metal doors are proposed to replace the side door facing the ROW.
26. Where interfacing with the ROW and at Level 02, an extension of 2.2 metres in height is proposed to the western boundary wall, except for the windows that are setback 3 metres to the frame and 3.21 metres to the glazing (3 metres and 3.21 metres from the centreline of the ROW). Level 03 and above is setback 2.86 metres from the ROW (5.154 metres from the centreline of the ROW).
27. At Level 02 the building is built against the length of the common boundary with No. 6-12 Mason Street to the west, above this the building is built to the western boundary for the following lengths:

Level	Western on-boundary wall length to No. 6-12 Mason Street
Level 03	14.93 metres
Level 04	13.57 metres
Level 05	11.40 metres
Level 06	8 metres
Level 07	6.49 metres (mesh screening around roof terrace)

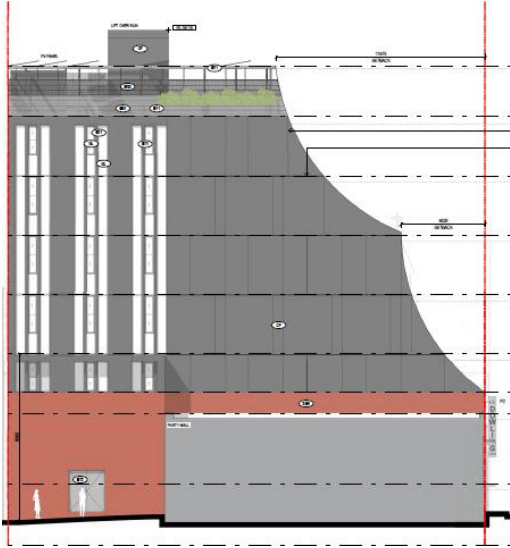


Figure: Western elevation  
Source: Advertised Plans

28. The wall is proposed to be clad in cement panels and articulated through the provision of expressed metal trim within the horizontal seams and shadow gaps within vertical seams.

#### Overall Height

29. The overall maximum building height is 27.45 metres to the top of the rooftop level pergola structure. The lift overrun extends 2.05 metres above this. The pergola structure is open and solar panels are proposed to sit upon the pergola structure.
30. The proposal retains the existing street wall and is between 7 metres and 8.56 metres in height presenting to Mason Street and between 8.56 metres and 9.12 metres in height presenting to Oxford Street. Where interfacing with the ROW the on-boundary wall adopts an overall height of 9.57 metres (including 2.2 metres of new built form above the retained form).

#### Materials and finishes

31. The primary material palette for the proposed built form consists of a Concrete (CON), Cement Panel (CP), Grey Metal (MT1), Grey Metal (MT2), Small Scale Mesh with nominal 60% openings (MS1), Large Scale Mesh with nominal 60% openings (MS2), Perforated Metal with nominal 50% openings (PFM), Photovoltaic Panels (PV) and Clear Glazing (GL).





Figure: Renders of proposed development  
Source: Applicant Documentation (Site Context Report)

## Existing Conditions

### Subject Site

32. The subject site is located on the north-western corner of Oxford Street and Mason Street, in Collingwood. Whilst formally known as 1 – 13 Oxford Street the site is also referenced as 14 Mason Street within the submitted documentation.
33. The site has frontages to Oxford Street of 27.9 metres and Mason Street of 29.2 metres, resulting in a site area of 841 square metres. The site is generally rectangular except for an L-shaped portion where interfacing with the ROW for approximately 8.7 metres. The site has a fall of approximately 1.63 metres from west to east along Mason Street and 0.5 metres from south to north along Oxford Street.



Figure: Aerial photograph of No. 1 – 13 Oxford Street, Collingwood  
Source: Nearmap, image capture date: 29 April 2021

34. The land is developed with a two storey, modernist brick building built in the 1960s and previously used as a textile warehouse. The building has a distinctive treatment to the south-east corner with recessed, curved brickwork from street level up to the first level where it reverts to a right-angled corner, occupying the full title boundary. The subject site currently has access via a dual width crossover to Mason Street and a wider crossover (approximately 13 metres) along the eastern boundary to Oxford Street that provides access to a loading area/undercroft parking.



Figure: Subject site at the corner of Oxford and Mason Streets  
Source: Officer image, taken 21/05/2021

*Title Documents*

- 35. The title submitted with the application does not show any covenants, restrictions or easements.

Surrounding Land

- 36. The site is approximately 70 metres east of Smith Street, a Major Activity Centre (MAC), containing a wide range of retail, entertainment, dining and service offerings. Yarra Planning Scheme Amendment C269 seeks to include the Collingwood Mixed Use precinct, including the subject site, within the Smith Street MAC. A tram route is accessible from Smith Street providing access to the CBD and Bundoora.
- 37. The built form types in the area are mixed. Evident in the area are buildings industrial in nature reflective of the area’s historic uses; intermixed with remnant workers cottages, modern residential developments and warehouse residential conversions. This area has experienced substantial growth encouraged by the Mixed Use Zoning of the land. One and two storey buildings are being replaced with 6 to 13 storey buildings.
- 38. The subject site is located within a Mixed Use Zone (MUZ) and the existing development in the wider area is mixed, as described above, consisting of residential, commercial and industrial uses resulting in diverse built form. The surrounding area and zoning is shown below.

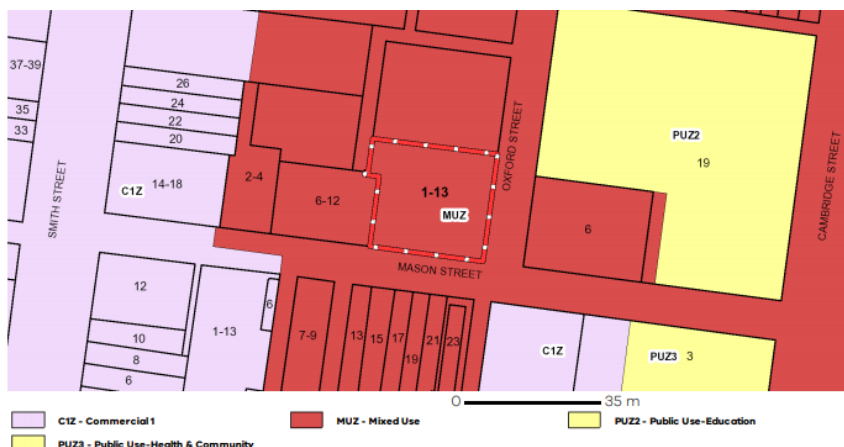


Figure: The subject site and surrounding land shown as MUZ, with C1Z to the south-east and further to the west  
Source: DELWP





Figure: Aerial photograph of the subject site and surrounding built form  
Source: Nearmap image capture date: 29 April 2021

39. The site's immediate interfaces are as follows:

*North*

40. Directly abutting the site to the north is a four-storey apartment building with several balconies and windows from the first floor and above facing north, east or west. The development presents as a blank wall along the common boundary. This building is not included within a Heritage Overlay.
41. To the north of this is a 4.4 metre wide ROW, beyond which the site at No. 27-29 Oxford Street and No. 15-21 Derby Street has recently been developed under Planning Permit PLN16/0092 for an eight-storey building comprising commercial tenancies and dwellings. Along Oxford Street, the development has a part-three, part four storey podium ranging in height from 13.94 metres at the corner with Derby Street to 10.22 metres at the southern edge. Above the podium, the development is setback a minimum 2 metres from Oxford Street at Level 04, 3.6 metres at Level 05 – 06 and 5 metres at Level 07, The Oxford Street elevation is shown below:

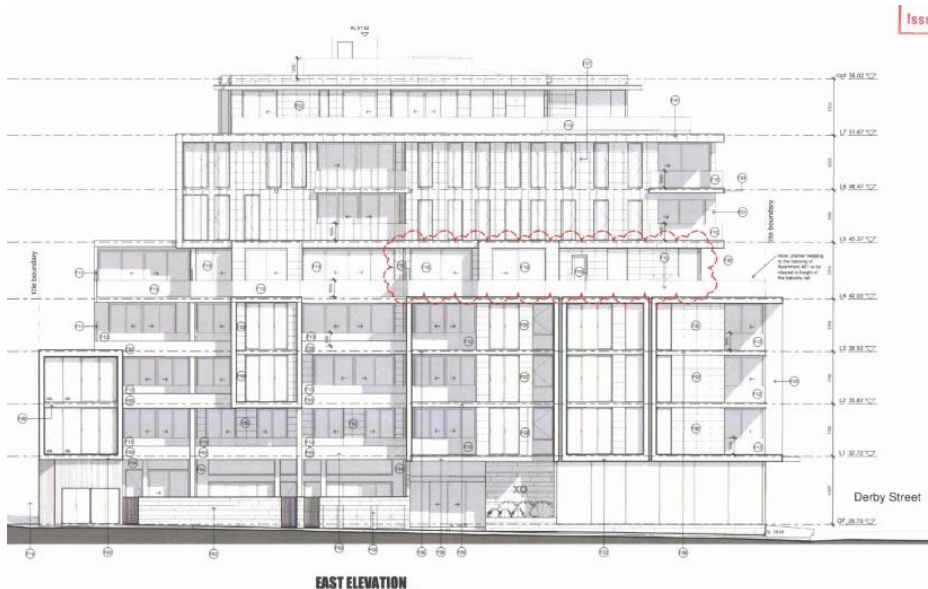


Figure: Oxford Street elevation of proposal approved pursuant to PLN16/0092  
Source: Endorsed plans of PLN16/0092

*South*

42. South of the site is Mason Street, a one-way street with a single lane for eastbound traffic and kerbside parking on both sides. Further south on the opposite side of Mason Street is a series of terrace houses (No. 13 to 21 Mason Street) that are designated as 'contributory' or 'non-contributory' to the Victoria Parade Heritage Precinct and an open air car park (No. 23 Mason Street). The rear of No. 45 Victoria Parade is developed with a three-storey converted factory building that is 'individually significant' to the Victoria Parade Heritage Precinct.

*East*

43. East of the site is Oxford Street, a two-way street with kerbside parking on both sides. On the opposite side of Oxford Street is a residential church conversion known as No. 6 Oxford Street. This building is 'individually significant' to the Victoria Parade Heritage Precinct. To the north and east of this building is the Collingwood English Language School, the building associated with this school positioned along Mason Street is also 'individually significant' to the Victoria Parade Heritage Precinct.

*West*

44. Immediately west of the site is a brick commercial building at 6-12 Mason Street which is single storey along Mason Street and double storey behind. The building is generally built to all title boundaries adopting a blank wall along the common boundary. This building is not included within a Heritage Overlay. To the north-west, the site interfaces with a ROW that runs north-south before turning a corner to become east-west with access from Oxford Street.

*Broader area*

45. The Collingwood area is currently going through a period of transition from lower scale buildings to higher density development. In addition to the approval identified above, there have been several approvals within the Collingwood Mixed Use precinct, some of which are under construction or already constructed. These approvals include:
- (a) No. 6-10 Peel Street (6 storeys);
  - (b) No. 20-22 Peel Street (6 storeys);
  - (c) No. 33 Peel Street (8 storeys).
  - (d) No. 41 Peel Street (6 storeys);
  - (e) No. 132 Smith Street (Banco Development) (9 storeys);
  - (f) No. 9-17 Smith Street (7 storeys);
  - (g) No. 7 & 9-15 Little Oxford Street (8 storeys);
  - (h) No. 1-57 Wellington Street and 71-77 Victoria Parade (11 storeys);
  - (i) No. 61-71 Wellington Street and No. 37-39 Langridge Street (14 storeys);
  - (j) No. 73-77 Wellington Street (10 storeys);
  - (k) No. 93 Wellington Street (10 storeys);
  - (l) No. 109 Wellington Street (10 storeys);
  - (m) No. 195 Wellington Street (9 storeys);
  - (n) No. 27-29 Oxford Street and No. 15-21 Derby Street (8 storeys);
  - (o) No. 42-44 Oxford St, 61-63 Cambridge St & 16-20 Langridge St (11 storeys);
  - (p) No. 107 Cambridge Street (6 storeys);
  - (q) No. 72 - 94 Cambridge Street (10 storeys);
  - (r) No. 46-74 Stanley Street & 23-35 Napoleon Street (9 storeys);
  - (s) No. 51 Langridge Street (11 storeys); and
  - (t) No. 4 – 12 Langridge Street (8 storeys).
46. The above constructed, under construction and approved planning applications show that Collingwood is an area undergoing transition with larger scale developments.

## Planning Scheme Provisions

### Zoning

#### *Clause 32.04 – Mixed Use Zone (MUZ)*

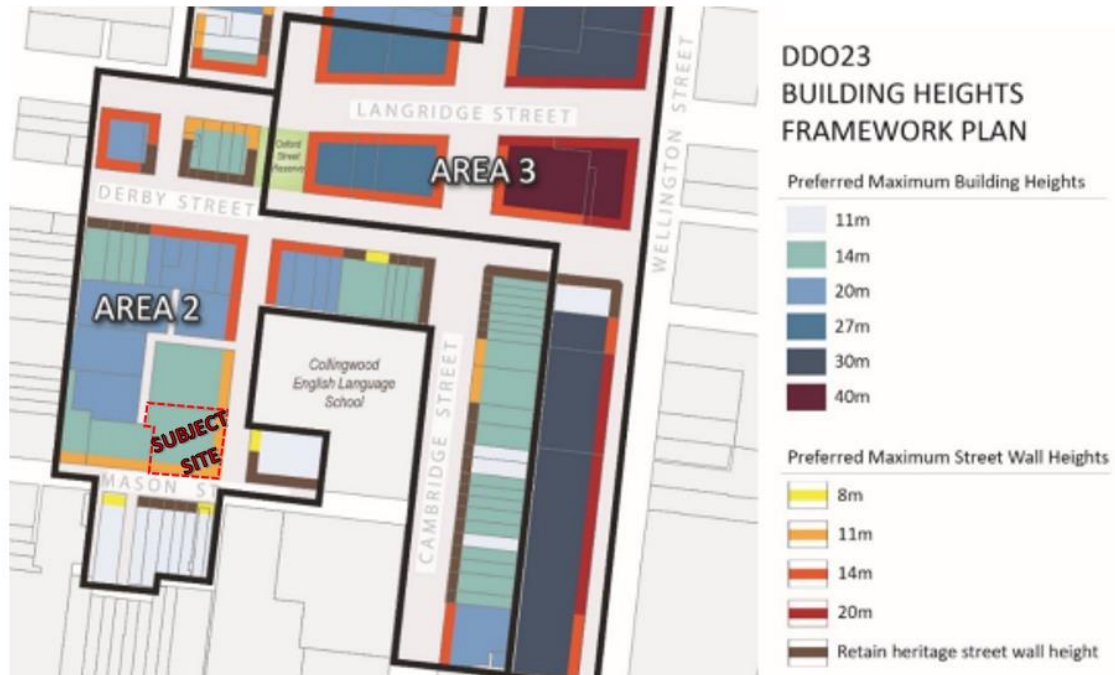
47. The purposes of this zone are:
- (a) *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
  - (b) *To provide for a range of residential, commercial, industrial and other uses which complement the mixed-use function of the locality.*
  - (c) *To provide for housing at higher densities.*
  - (d) *To encourage development that responds to the existing or preferred neighbourhood character of the area.*
  - (e) *To facilitate the use, development and redevelopment of land in accordance with the objectives specified in a schedule to this zone.*
48. The use of the site for an office requires a planning permit under clause 32.04-2 because the total leasable floor area exceeds 250sqm.
49. Pursuant to clause 32.04-8 a permit is required to construct a building or construct or carry out works for a use in section 2 of clause 32.04-2.

### Overlays

#### *Clause 43.02 – Design and Development Overlay (Schedule 23 – Collingwood South (Mixed-Use) Precinct) (DDO23)*

50. The site is located within the DDO23. Pursuant to Clause 43.02-2 of the Scheme, a planning permit is required to construct a building or construct or carry out works within this overlay.
51. This Schedule relates to the Collingwood South Mixed Use Precinct with the site located within Area 1. The general design objectives of this Schedule are as follows:
- (a) *To foster an emerging, contemporary, mixed-use character with a prominent street-wall edge, incorporating upper level setbacks and design features that create a distinction between lower and upper levels.*
  - (b) *To ensure that the overall scale and form of new buildings is mid-rise (ranging from 3 to 12 storeys) and responds to the topography of the precinct, by providing a suitable transition in height as the land slopes upwards, whilst minimising amenity impacts on existing residential properties , including visual bulk, overlooking and overshadowing.*
  - (c) *To maintain the prominence of the corner heritage buildings on Wellington Street, and respect both individual and groups of low-scale heritage buildings through recessive upper level development and a transition in scale from taller form towards the interface with heritage buildings.*
  - (d) *To promote and encourage pedestrian activity through street edge activation and the protection of footpaths and public open spaces from loss of amenity through overshadowing.*
  - (e) *To ensure that development provides for equitable development outcomes through building separation and a design response that considers the development opportunities of neighbouring properties.*

52. This Schedule contains preferred parameters to guide future built form outcomes within the precinct. An excerpt of the Building Heights Framework Plan is provided below, with the subject site identified.



53. The built form parameters that apply to the subject site are outlined below:
- (a) Overall building height (preferred):
    - (i) 14m (definition excludes some non-structural elements such as lift overruns).
  - (b) Street wall height to Oxford Street and Mason Street (preferred):
    - (i) 11m maximum.
  - (c) Upper Level setbacks to Oxford Street and Mason Street (preferred):
    - (i) Minimum 6m.
54. For streets that extend in a north-south direction, development must not overshadow the eastern and western footpaths to a distance of 2 metres from the kerb between 10am and 2pm on September 22.
55. The following design requirements apply:
- (a) *The street frontage of development must:*
    - (i) *provide a prominent, well-articulated street-wall edge that provides a distinction between the lower and the upper levels of the building;*
    - (ii) *address all street frontages and, where heritage elements are not a constraint, incorporate design elements/features that contribute to an engaging streetscape, avoiding blank walls and provide active frontages, where appropriate to the proposed use at ground level;*
    - (iii) *be designed to accommodate (or can be adapted to accommodate) commercial activity at the ground floor incorporating a suitable commercial floor height, where heritage elements are not a constraint;*
    - (iv) *locate service entries/access doors away from the primary street frontage, or where not possible, be sensitively designed to integrate into the façade of the building;*

- (v) *respond to the topography of the east-west oriented streets through transition and “stepping” of the ground floor to appropriately address the street.*
  - (b) *The design of upper levels of development must:*
    - (i) *be well-designed and articulated to break up the building mass across sites with a wide frontage;*
    - (ii) *distinguish between the lower and upper levels through materials and articulation;*
    - (iii) *be designed so that side walls are articulated and read as part of the overall building design and not detract from the streetscape when viewed from direct and oblique views along the streetscape;*
    - (iv) *provide passive surveillance of adjacent streets and public open space.*
56. As referenced under the building separation, amenity and equitable development requirements, the following apply:
- (a) *An application for development must provide a design response that considers the future development opportunities of adjacent properties in terms of outlook, daylight and solar access to windows, as well as managing visual bulk.*
  - (b) *Where development shares a common boundary, upper level development must:*
  - (c) *be setback a minimum of 4.5m from the common boundary, where a habitable window or balcony is proposed*
  - (d) *be setback a minimum of 3.0m from the common boundary where a commercial or non habitable window is proposed.*
57. The following decision guidelines apply to an application for a permit under this clause, and must be considered, as appropriate:
- (a) *Whether the Built Form Requirements in Clause 2.0 are met.*
  - (b) *Whether the Heritage Building Design Requirements in Clause 2.0 are met (where the land is affected by a Heritage Overlay or immediately adjacent to a Heritage Overlay).*
  - (c) *Whether the proposal has considered the development rights/potential of neighbouring properties in terms of achieving good internal amenity for future proposals through building separation and design.*
  - (d) *Whether the proposal responds to the presence of heritage buildings either on, or in close proximity to the site through a suitable transition in scale of street-wall, upper level setbacks and building height.*
  - (e) *How the proposal responds in terms of scale and transition to the sloping topography of the area.*
  - (f) *The design response at the interface with existing low-scale residential properties, including the overshadowing of secluded private open space.*
  - (g) *Whether the proposal provides a high quality public realm interface that either activates the street edge or provides an engaging and well-designed street interface, and contributes positively to the pedestrian environment and other areas of the public realm.*
  - (h) *How any proposed buildings and works will impact on solar access to footpaths and public open spaces.*
  - (i) *The wind effects created by the development.*
58. Schedule 23 to the Design and Development Overlay is an interim control, as identified within the schedule the requirements of the schedule cease to have effect after 30 June 2021. On 18 May 2021, Council resolved to write to the Minister for Planning, requesting that the interim controls be extended by a further 12 months (Amendment C292). These controls have been extended for a further 12-month period.

*Clause 45.03 – Environmental Audit Overlay (EAO)*

59. Pursuant to Clause 45.03-1 of the Scheme, the following requirements apply:



*Before a sensitive use (residential use, child care centre, pre-school centre or primary school) commences or before the construction or carrying out of buildings and works in association with a sensitive use commences, either:*

- (a) *A certificate of environmental audit must be issued for the land in accordance with Part IXD of the Environment Protection Act 1970, or*
- (b) *An environmental auditor appointed under the Environment Protection Act 1970 must make a statement in accordance with Part IXD of that Act that the environmental conditions of the land are suitable for the sensitive use.*

60. The use of the site for office is not a sensitive use and the requirements of this overlay are not relevant to the application.

*Clause 45.06 – Development Contributions Plan Overlay (Schedule 1) (DCPO1)*

61. The Development Contributions Plan applies to the proposed additional office floor area, requiring the developer to pay a cash contribution towards essential city infrastructure like roads and footpaths.

62. 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

63. Schedule 1 of the Development Contributions Plan Overlay (DCPO1) applies to the proposal. The subject site is located within Charge Area 6 (Collingwood) and the development infrastructure levy is applicable to the office and retail floor space.

64. A planning permit is not required for works under the overlay.

Particular Provisions

*Clause 52.06 – Car parking*

65. Clause 52.06-1 identifies that a new use must not commence or the floor area of an existing use must not be increased until the required car spaces have been provided on the land. Pursuant to Clause 52.06-3 a permit is required to reduce the number of car parking spaces required under this clause.

66. Pursuant to Clause 52.06-5, Column B of Table 1 applies if any part of the land is identified as being within the Principal Public Transport Network Area as shown on the *Principal Public Transport Network Area Maps* (State Government of Victoria, August 2018). The subject site is shown as being within the Principal Public Transport Network Area and therefore Column B applies.

67. 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 the decision guidelines at clause 52.06-6 of the Scheme. The provision of car parking is as follows:

Proposed Use	Size	Statutory Parking Rate	No. of Spaces Required	No. of Spaces Allocated
Office	3,885 sqm	3 spaces to each 100m <sup>2</sup> of net floor area	116	0
<b>Total</b>			116	0

68. As no on-site car parking spaces are to be provided as part of this proposal, a planning permit for the full reduction of 116 car parking spaces is required.

*Clause 52.34 – Bicycle Facilities*

69. 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. The purpose of the policy is to encourage cycling as a mode of transport and to provide secure, accessible and convenient bicycle parking spaces
70. Under the provisions of Clause 52.34-3 of the Scheme, the development’s bicycle parking requirements are as follows:

Proposed Use	Quantity/ Size	Statutory Parking Rate	No. of Spaces Required	No. of Spaces Allocated
Office (other than specified in the table)	3,885 sqm	1 employee space to each 300 sqm of net floor area if the net floor area exceeds 1000 sqm	13 employee spaces	38 employee spaces
		1 visitor space to each 1000 sqm of net floor area if the net floor area exceeds 1000 sqm	4 visitor spaces	4 visitor spaces
<b>Showers / Change rooms</b>	1 to the first 5 employee spaces and 1 to each additional 10 employee spaces		<b>2 showers / change rooms</b>	<b>5 showers / change rooms</b>

71. The development proposes a total of 25 additional employee spaces on-site. Four on-site bicycle spaces are provided for visitors, meeting the Scheme requirements. Clause 52.34-4 provides design standard for bicycle spaces and signage.
72. There is no planning permit required pursuant to the requirements of clause 52.34-3.

*Clause 53.18 – Stormwater Management in Urban Development*

73. 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*

74. 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 or any other provision.



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

75. Relevant clauses are as follows:

*Clause 11.02 (Managing Growth)*  
*Clause 11.02-1S (Supply of Urban Land)*

76. The objective is:

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

*Clause 11.03 (Planning for Places)*  
*Clause 11.03-1S (Activity Centres)*

77. 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 13.05-1S (Noise abatement)*

78. The relevant objective of this clause is:

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

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

*Clause 13.07 (Amenity and Safety)*  
*Clause 13.07-1S (Land use compatibility)*

80. 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 (Built Environment and Heritage)*  
*Clause 15.01-1S (Urban design)*

81. 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 15.01-1R (Urban design - Metropolitan Melbourne)*

82. The objective is:

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

*Clause 15.01-2S (Building design)*

83. 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.*

84. Relevant strategies of this clause are:

- (a) *Require a comprehensive site analysis as the starting point of the design process.*
- (b) *Ensure the site analysis provides the basis for the consideration of height, scale and massing of new development.*
- (c) *Ensure development responds and contributes to the strategic and cultural context of its location.*
- (d) *Minimise the detrimental impact of development on neighbouring properties, the public realm and the natural environment.*
- (e) *Ensure the form, scale, and appearance of development enhances the function and amenity of the public realm.*
- (f) *Ensure buildings and their interface with the public realm support personal safety, perceptions of safety and property security.*
- (g) *Ensure development is designed to protect and enhance valued landmarks, views and vistas.*
- (h) *Ensure development provides safe access and egress for pedestrians, cyclists and vehicles.*
- (i) *Ensure development provides landscaping that responds to its site context, enhances the built form and creates safe and attractive spaces.*
- (j) *Encourage development to retain existing vegetation.*

85. This clause also states that planning must consider as relevant:

- (a) *Urban Design Guidelines for Victoria (Department of Environment, Land, Water and Planning, 2017).*

*Clause 15.01-4S (Healthy neighbourhoods)*

86. 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 15.01-4R (Healthy neighbourhoods - Metropolitan Melbourne)*

87. The strategy is:

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

*Clause 15.01-5S (Neighbourhood character)*

88. The relevant objective of this clause is:

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

89. Relevant strategies are:

- (a) *Ensure development responds to cultural identity and contributes to existing or preferred neighbourhood character.*

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

*Clause 15.02 (Sustainable Development)*

*Clause 15.02-1S (Energy Efficiency)*

90. 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 17.01 (Employment)*

*Clause 17.01-1S (Diversified economy)*

91. The objective of this clause is:

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

92. The relevant strategies of this clause are:

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

*Clause 17.02 (Commercial)*

*Clause 17.02-1S (Business)*

93. The relevant objective of this clause is:

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

94. The relevant strategies of this clause are:

- (a) *Plan for an adequate supply of commercial land in appropriate locations.*
- (b) *Ensure commercial facilities are aggregated and provide net community benefit in relation to their viability, accessibility and efficient use of infrastructure.*
- (c) *Locate commercial facilities in existing or planned activity centres.*

*Clause 18.01 (Integrated Transport)*

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

95. The objective of this clause is:

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

96. 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.*
  - (iii) *Requiring integrated transport plans to be prepared for all new major residential, commercial and industrial developments.*
- (c) *Integrate public transport services and infrastructure into new development.*

*Clause 18.02 (Movement Networks)*

*Clause 18.02-1S (Sustainable personal transport)*

97. The relevant objectives of this clause is:

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

98. Relevant strategies of this policy are:

- (a) *Encourage the use of walking and cycling by creating environments that are safe and attractive.*
- (b) *Develop high quality pedestrian environments that are accessible to footpath-bound vehicles such as wheelchairs, prams and scooters.*
- (c) *Ensure cycling routes and infrastructure are constructed early in new developments.*
- (d) *Provide direct and connected pedestrian and bicycle infrastructure to and between key destinations including activity centres, public transport interchanges, employment areas, urban renewal precincts and major attractions.*
- (e) *Ensure cycling infrastructure (on-road bicycle lanes and off-road bicycle paths) is planned to provide the most direct route practical and to separate cyclists from other road users, particularly motor vehicles.*
- (f) *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.*
- (g) *Provide improved facilities, particularly storage, for cyclists at public transport interchanges, rail stations and major attractions.*
- (h) *Ensure provision of bicycle end-of-trip facilities in commercial buildings*

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

99. Strategies of this policy are:

- (a) *Improve local travel options for walking and cycling to support 20 minute neighbourhoods.*
- (b) *Develop local cycling networks and new cycling facilities that support the development of 20-minute neighbourhoods and that link to and complement the metropolitan-wide network of bicycle routes - the Principal Bicycle Network*

*Clause 18.02-2S (Public Transport)*

100. 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)*

101. 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)*

102. The objective of this clause is:

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

103. 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 \(LPPF\)](#)

*Municipal Strategic Statement (MSS)*

104. The relevant policies in the MSS can be described as follows:

*Clause 21.04-2 (Activity Centres)*

105. The relevant objectives of this clause are:

- (a) *To maintain the long term viability of activity centres.*

106. Relevant strategies to achieve this objective include:

- (a) *Strategy 5.2 - Support land use change and development that contributes to the adaptation, redevelopment and economic growth of existing activity centres.*
- (b) *Strategy 5.3 - Discourage uses at street level in activity centres which create dead frontages during the day.*

*Clause 21.04-3 (Industry, office and commercial)*

107. The objective of this clause is:

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

*Clause 21.05 (Built Form)*

108. Relevant objectives and strategies include;

- (a) *Objective 14 To protect and enhance Yarra's heritage places.*
  - (i) *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*

*Clause 21.05-2 (Urban Design)*

109. Relevant objectives and strategies include:

- (a) *Objective 16 To reinforce the existing urban framework of Yarra.*

- (b) *Objective 17 To retain Yarra's identity as a low-rise urban form with pockets of higher development.*
  - (i) *Strategy 17.1 Ensure that development outside activity centres and not on Strategic Redevelopment Sites reflects the prevailing low-rise urban form.*
- (c) *Objective 18 To retain, enhance and extend Yarra's fine grain street pattern.*
  - (i) *Strategy 18.2 Enhance the amenity of laneways by applying the Development Abutting Laneway policy at Clause 22.07.*
- (d) *Objective 19 To create an inner city environment with landscaped beauty.*
  - (i) *Strategy 19.2 Encourage opportunities for planting suitable trees and landscape areas in new development.*
- (e) *Objective 20 To ensure that new development contributes positively to Yarra's urban fabric.*

*Clause 21.05-3 (Built form character)*

110. The general objective of this clause is:

- (a) *To maintain and strengthen the identified character of each type of identified built form within Yarra.*

111. The subject site is located within a non-residential area, where the built form objective is to “*improve the interface of development with the street*”.

112. The strategies to achieve the objective are to:

- (a) *Strategy 27.1 - Allow flexibility in built form in areas with a coarse urban grain (larger lots, fewer streets and lanes).*
- (b) *Strategy 27.2 - Require new development to integrate with the public street system.*

*Clause 21.05-4 (Public environment)*

113. The relevant objective and strategies of this clause are:

- (a) *Objective 28 - To provide a public environment that encourages community interaction and activity:*
  - (i) *Strategy 28.1 - Encourage universal access to all new public spaces and buildings*
  - (ii) *Strategy 28.2 - Ensure that buildings have a human scale at street level.*
  - (iii) *Strategy 28.3 - Require buildings and public spaces to provide a safe and attractive public environment.*
  - (iv) *Strategy 28.5 - Require new development to make a clear distinction between public and private spaces.*
  - (v) *Strategy 28.8 - Encourage public art in new development.*

*Clause 21.06 (Transport)*

*Clause 21.06-1 (Walking and cycling)*

114. Relevant objectives and strategies include;

- (a) *Objective 30 To provide safe and convenient pedestrian and bicycle environments.*
  - (i) *Strategy 30.1 Improve pedestrian and cycling links in association with new development where possible.*

*Clause 21.06-2 (Public transport)*

115. Relevant objectives and strategies include;

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

*Clause 21.06-3 (The road system and parking)*

116. Relevant objectives include;

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

*Clause 21.07-1 (Ecologically sustainable development)*

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

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

*Clause 21.08 – Neighbourhoods*

*Clause 21.08-5 – Collingwood*

118. This clause outlines the Collingwood neighbourhood as follows:

- (a) *Much of Collingwood is industrial in character with the residential precincts surrounded by or interspersed with industrial buildings.*
- (b) *To the south of Johnston Street development is Victorian overlaid with subsequent periods of development. This part of Collingwood is varied in built form and character, ranging from large Victorian factory buildings to small pockets of low rise residential development. The most outstanding feature of the precinct is the Foy and Gibson complex of retail and warehouse of buildings which belong to the suburb's commercial past. The buildings have large dominating built forms with rhythmic facade design. They are imposing and visually cohesive.*
- (c) *The Smith Street major activity centre serves multiple roles for local residents whilst attracting visitors from a larger catchment. It is a classic main road strip generally consisting of buildings of two to four storeys interspersed with the occasional building of up to 6 storeys. The subdivision pattern is consistent, and the pattern of the streetscape is generally fine grain. Unlike many other Victorian shopping strips the street is also characterised by the variance in profile and design of buildings. It has a high proportion of individually significant heritage buildings, supported by contributory buildings from the Victorian-era and Edwardian-eras.*

119. As identified at Clause 21.08-5, the following relevant built form strategies include the following:

- (a) *In the precinct bounded by Johnston Street, Wellington Street, Victoria Parade and Smith Street (including both sides of Smith Street depicted as the 'Smith Street Major Activity Centre' in the Built Form Character Map).*
  - (i) *Maintaining the varied profile of the skyline and the built form character of Smith Street.*
  - (ii) *Ensuring that no new development presents as a dominating built form along Smith Street.*



- (iii) *Retaining the prominence of the key 'icon' (landmark) buildings in the Smith Street streetscape such as Pattersons, Safeway, Post Office.*
- (iv) *Maintaining the Foy and Gibson complex of buildings as a large dominating visually cohesive group of buildings.*
- (v) *Retaining the uniformity of the streetscapes associated with the Foy and Gibson buildings.*
- (vi) *Ensuring new development respects the scale of adjoining existing clusters of low rise residential development.*

### Relevant Local Policies

#### *Clause 22.03 – Landmarks and Tall Structures*

120. This policy applies to all development. Whilst the site is not within proximity to an identified sign or landmark within the policy, the following is relevant: *Ensure the profile and silhouette of new tall structures adds to the interest of Yarra's urban form and skyline.*

#### *Clause 22.05 – Interfaces Uses Policy*

121. This policy applies to all development and use applications and aims to reduce conflict between commercial, industrial and residential activities. The policy acknowledges that the mix of land uses and development that typifies inner city areas can result in conflict at the interface between uses. It is policy that:

- (a) *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.*

122. Decision guidelines at clause 22.05-6 include:

- (a) *Before deciding on an application for non-residential development, Council will consider as appropriate:*
  - (i) *The extent to which the proposed 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.*

#### *Clause 22.07 – Development Abutting Laneways*

123. 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 22.10 – Built form and design policy*

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

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

125. The clause includes various design objectives and guidelines that can be implemented to achieve the above objectives. The design elements relevant to this application relate to:

- (a) *urban form and character;*
- (b) *setbacks and building height;*
- (c) *street and public space quality;*
- (d) *environmental sustainability;*
- (e) *site coverage;*
- (f) *on-site amenity;*
- (g) *off-site amenity;*
- (h) *landscaping and fencing;*
- (i) *parking, traffic and access; and*
- (j) *service infrastructure.*

*Clause 22.16 – Stormwater Management (Water Sensitive Urban Design)*

126. Clause 22.16-3 requires the use of measures to “*improve the quality and reduce the flow of water discharge to waterways*”, manage the flow of litter from the site in stormwater and encourage green roofs, walls and facades in buildings where practicable.

*Clause 22.17 – Environmentally Sustainable Design*

127. 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 Relevant Documents](#)

*Plan Melbourne*

128. The plan outlines the vision for Melbourne’s growth to the year 2050. It seeks to define what kind of city Melbourne will be and identifies the infrastructure, services and major projects which need to be put in place to underpin the city’s growth. It is a blueprint for Melbourne’s future prosperity, liveability and sustainability.

129. It is policy to create mixed-use neighbourhoods at varying densities to offer more choice in housing and create opportunities for local businesses and new jobs whilst also delivering better access to local services and facilities. In respect of commercial use, the plan identifies the following:

- (a) *Between now and 2031 it is estimated that approximately 11.9 million square metres of commercial floorspace will be required across metropolitan Melbourne to meet projected demand.*

*Of this total, 57 per cent would be required for office uses.*

*Yarra Planning Scheme Amendment C269 – Rewrite of Local Policies*

130. Amendment C269 proposes to introduce new and revised local planning policies into the Yarra Planning Scheme. The amendment was on public exhibition between 20 August 2020 and 4 December 2020.
131. The revised local planning policy seeks to include the entire site as well as the Collingwood Mixed Use precinct within the Smith Street, Collingwood / Fitzroy Major Activity Centre. The following relevant strategies for the revised Major Activity Centre are provided below:
- (a) *Encourage development that responds to the different built form conditions in Collingwood South precinct, with taller built form towards Wellington St and south of Peel Street and retain the visual dominance and integrity of the existing industrial warehouse buildings north of Peel Street.*
  - (b) *Encourage employment through mixed use and commercial development, including in the mixed use zoned land behind Smith Street.*

*Amendment C293 – Proposed Permanent DDO23*

132. On 18 May 2021, Council resolved to refer Amendment C293 (proposed permanent DDO23) to the Minister for Planning. Amendment C293 was requested to be referred to an Advisory Committee. Council's Strategic Planning Department advised on 4 June 2021 that Amendment C293 is not seriously entertained as the amendment process has not yet formally commenced.
133. No changes are proposed to be made to the preferred height, street wall and upper level setback requirements set out for the subject site.

## Advertising

134. The application was advertised under the provisions of Section 52 of the *Planning and Environment Act (1987)* by 914 letters sent to surrounding owners and occupiers and by signs displayed on site. Council received seventeen (17) objections and one (1) letter of support, the grounds of the objections are summarised as follows:
- (a) Built form and design (overdevelopment, inappropriate height, limited setbacks, architectural expression out of character; out of keeping with heritage);
  - (b) Amenity impacts (waste arrangements, ESD, lack of landscaping and public realm overshadowing);
  - (c) Off-site amenity (loss of views and privacy, overshadowing, noise and overlooking);
  - (d) Increased traffic, lack of car parking and loading facilities;
  - (e) Construction impacts;
  - (f) Loss of views to No. 6 Oxford Street;
  - (g) Concern office will be converted to residential in future; and
  - (h) No need for additional office floor space.
135. No consultation meeting was held as a result of the state of emergency declared in Victoria and the current health advice related to the COVID-19 pandemic.

## Referrals

### External Referrals

136. The application was not required to be referred to external authorities.

### Internal Referrals

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

- (a) Environmentally Sustainable Design (ESD) Advisor;
- (b) Strategic Transport Unit.
- (c) Engineering Services Unit;
- (d) Urban Design Unit (public realm only);
- (e) Open Space Unit;
- (f) City Works Unit;
- (g) Streetscapes and Natural Values Unit;
- (h) Strategic Planning Unit;

External Consultants

- (i) Acoustic Consultant (SLR Consultants);
- (j) Wind Consultant (MEL Consultants); and
- (k) Urban Design Consultant (Simon McPherson [Global South]).

## OFFICER ASSESSMENT

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

- (a) Policy and strategic support;
- (b) Use of the land as office;
- (c) Built form and Urban Design;
- (d) On-site amenity including Environmentally Sustainable Design;
- (e) Off-site amenity impacts;
- (f) Car parking, loading and unloading and bicycle facilities;
- (g) Waste management; and
- (h) Objector concerns.

### Policy and Strategic Support

139. The proposal satisfies the various land use and development objectives within the Planning Policy Framework (PPF), providing an acceptable level of compliance with the relevant policies within the Scheme, and is considered to provide a positive strategic opportunity for development within a well-resourced inner-urban environment.
140. The Mixed Use Zone (MUZ) objectives readily encourage commercial uses and higher built form, subject to individual site constraints. State and local policies encourage the concentration of development in and around activity centres and intensifying development on sites well connected to public transport.
141. At a State level, the metropolitan planning strategy *Plan Melbourne* seeks to create 20-minute neighbourhoods, where people can access most of their everyday needs (including employment) within a 20-minute walk, cycle or via public transport. These neighbourhoods must be safe, accessible and well connected for pedestrians and cyclists.
142. The site fulfils this criteria, with tram routes along Smith Street, bus routes along Hoddle Street and Johnston Street and North Richmond Station approximately 810 metres to the east. Yarra's Copenhagen style bicycle lanes are also located along Wellington Street, providing a better-connected journey for cyclists, encouraging the use of alternative modes of transport to and from the site, rather than encouraging the reliance on motor vehicles. This is encouraged by clauses 18.02 – *Movement Networks*; 21.06-3 – *The Road System and Parking*; and 21.03 – *Vision* of the Scheme.

143. The site is located in an area suitable for redevelopment, with a proposed built form that generally includes elements of a diverse pattern of urban form in the neighbourhood, creates a new built form character and would result in no unreasonable off-site amenity impacts, subject to conditions, as outlined later in this report.
144. Having regard to the above, the proposed development of the site for a greater provision of floor area for office 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 as office

145. The use of the land as office requires planning permission pursuant to the requirements of the MUZ. Clause 22.05 (*Interface Uses Policy*) requires new non-residential use and development within the MUZ to be designed to minimise noise and visual amenity impacts upon nearby, existing residential properties.
146. The use of the site as an office building is supported by the PPF and the objectives of the zone, as outlined previously, and promotes urban consolidation within proximity to an activity centre that is well serviced by existing infrastructure and services.
147. Council's external Urban Designer reviewed the proposed office land use identifying that it exhibited a high level of compliance with policy contained within the Scheme. Mr McPherson identified the following:
- (a) *The proposed office spaces will contribute to the established mix of land uses in this locality close to a Major Activity Centre, and to daytime activation and passive surveillance opportunities, while supporting employment outcomes.*
  - (b) *Ground Floor office space is appropriate in this location, as opposed to retail or hospitality uses, because the site is not within an Activity Centre or in a location of high pedestrian movement levels.*
148. The applicant has provided indicative staff numbers for the office as part of the application material, advising that approximately 360 staff members would be present across the site. This is generally consistent with the building regulations which anticipate 1 worker per 10sqm of office area and is considered acceptable for a proposal of this size and scale. This will not form a condition as it is likely the total area available would be reduced once internal fit-outs are undertaken. In addition, off-site amenity impacts are largely caused by hours of operation, noise and car parking (albeit no car parking is proposed within this application), all of which will be considered within this report.
149. There is limited guidance in the Scheme as to what appropriate opening hours are in the MUZ. Clause 22.01 (*Discretionary Uses in a Residential 1 Zone*) stipulates that permit required uses in a Residential 1 Zone (e.g. Neighbourhood and General Residential Zones) should have hours of operation limited to 8am to 8pm.
150. The closing time of 6pm would comply, however, the opening time of 7am would not. In light of these hours being supported by the Scheme in a purely residential area and that the proposed use is located in a MUZ where commercial uses are explicitly encouraged, it is reasonable to permit the office use to operate for a maximum of one hour more in the morning from 7am on Monday to Friday.
151. The proposed hours of operation, from 7am to 6pm Monday to Friday, would operate outside of the more sensitive night time period (between 10pm and 7am) and as such it is expected that the use would not unreasonably interrupt typical rest times. A condition will therefore be included to restrict the office use to these hours and days.



152. The development includes a number of terraces that provide additional amenity for the proposed office tenancies. As these terraces are linked directly to the office use, a condition will be included to ensure that these terraces are not used outside of the office hours permitted by any permit issued (e.g. only utilised between 7am and 6pm, Monday to Friday). A further condition will ensure that no more than 50 people are accommodated on the roof terrace, in accordance with the documentation submitted to support the application by the applicant.
153. The proposed office use is largely considered to generate minimal off-site amenity impacts, given the limited hours of operation and surrounding context and is unlikely to cause unreasonable noise, odour, visual or other impacts to adjacent land. However, this will be discussed later in the report under 'Off-Site Amenity Impacts'.

#### Built form and Urban Design

154. This section of the report considers the built form of the proposed development and is guided principally by the DDO23. This assessment is also based upon the decision guidelines of the Mixed Use Zone at clause 32.04-14 and State and local planning policy at clauses 15.01-2 – Urban design principles; 21.05 – Urban design; 22.05 – Interface Uses Policy and 22.10 – Built form and design policy.
155. All of the provisions and guidelines support development that responds to the existing or preferred neighbourhood character. Particular regard must be given to the acceptability of the design in terms of height and massing, street setbacks and relationship to nearby buildings.

#### *Heritage*

156. The subject site is not affected by a Heritage Overlay and as such, no consideration is warranted for the proposed demolition of part of the existing building on site (as this does not trigger a planning permit). However, the site is adjacent to the Victoria Parade Heritage Precinct (Heritage Overlay – Schedule 336) which applies to the allotments on the eastern side of Oxford Street and southern side of Mason Street where opposite the site.
157. Of these buildings, No. 6 Oxford Street, No. 19 Cambridge Street (English Language School) and No. 45 Victoria Parade are individually significant to the precinct, whilst the dwellings at No. 13 – 21 Mason Street are contributory to the precinct. The open car park located at No. 23 Mason Street is not contributory to the precinct.
158. The Heritage Building Design Requirements contained within the DDO23 do not apply to the development as the site is not within a Heritage Overlay and is not a site that is adjacent to a heritage building. The development is, however, required to address the following design objective and decision guideline of the DDO23, relating to heritage:
- (a) *To maintain the prominence of the corner heritage buildings on Wellington Street, and respect both individual and groups of low-scale heritage buildings through recessive upper level development and a transition in scale from taller form towards the interface with heritage buildings.*
  - (b) *Whether the proposal responds to the presence of heritage buildings either on, or in close proximity to the site through a suitable transition in scale of street-wall, upper level setbacks and building height.*
159. With regard to the heritage sensitivities within the surrounding area, the built form and massing results in the bulk of the development being positioned within the north-western corner of the site. This will ensure that the taller form will be in proximity to the least sensitive interfaces as the adjoining properties to the west and north that are not located within a Heritage Overlay.

160. The design of the eastern and southern facades, with a veil of two large arcs across Levels 02 – 04 and Levels 05 - 07, ensures the form scales down to the east and to the south acknowledging the form of the lower scale heritage buildings. This transition is evident upon review of the street wall elevation analysis prepared by the applicant, provided below:

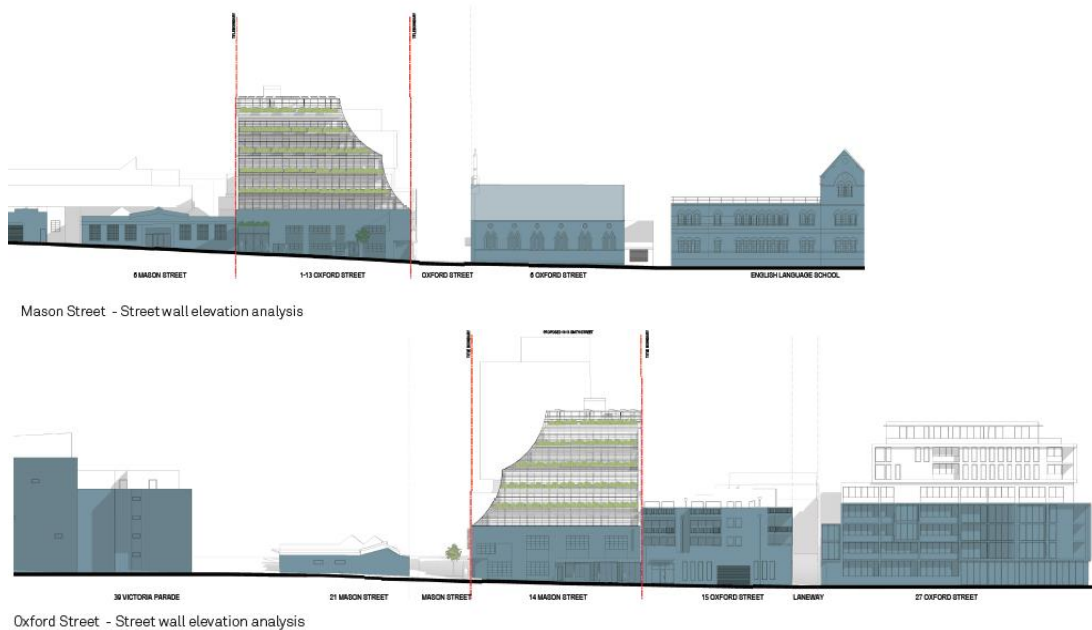


Figure: Mason Street (top) and Oxford Street (bottom) street wall analysis  
 Source: Applicant Documentation (Site Context Report)

161. As identified above, when viewed within the street, the retained street wall will be the prominent feature of the development. With no consistent street wall height present along both Mason and Oxford Streets, the retention of the existing (building) street wall ensures that the developments relationship with these buildings is consistent with the existing properties along both street frontages.
162. The development will not detrimentally impact the significance of the adjacent heritage precinct as the new development above the street wall will clearly be read as a separate, contemporary building separated from the precinct by the two road frontages.
163. This separation is accentuated by the design of the building scaling down to the east and south. This was confirmed by Council's external Urban Designer who advised that the proposal's upper level form was recessive in relation to heritage built form to the south and east.
164. As evidenced above, the relevant design objective and decision guideline of the DDO23, relating to heritage, are met.

*Building height and massing of the development*

*Building Height*

165. The proposal is an overall seven storeys in height with roof terrace above which equates to 27.45 metres (including pergola and excluding lift overrun).



166. The lift overrun protrudes 2.05 metres above the building height referenced above and is not considered to contribute to the overall building height in accordance with the definitions contained within DDO23. As defined within the DDO23, *'building height does not include non-structural elements that project above the building height and service equipment including plant rooms, lift overruns...'* provided the following criteria is met:

- (a) *Less than 50% of the roof area is occupied by the equipment (other than solar panels);*
- (b) *Any equipment is located in a position on the roof so as to avoid additional overshadowing of either public or private open space, or windows to habitable rooms of an adjacent property;*
- (c) *Any equipment does not extend higher than 3.6 metres above the proposed height of the building; and*
- (d) *Any equipment and any screening is integrated into the design of the building to the satisfaction of the Responsible Authority.*

167. With regard to (a), the lift overrun takes up less than 10% of the roof area above the overall height. In addressing (b), the lift overrun will not generate additional overshadowing to surrounding land due to the generous setbacks from the boundaries of the site. With regard to (c) and (d), the lift overrun extends 2.05 metres above the building height and the generous setbacks from property boundaries ensure that the overrun would not be visually dominating when viewed from outside of the subject site. For these reasons, the lift overrun protrusion does not contribute to the overall building height of the development and is satisfactory.

168. The development has been assessed against the building height controls of the DDO23 in the table below.

<b>Item</b>	<b>DDO23</b>	<b>Proposal</b>	<b>Complies?</b>
Preferred maximum building height	14m	27.45m	No
Mandatory maximum building height	N/A		

169. As demonstrated above, the development seeks to exceed the preferred building height (14 metres) by 13.45 metres. The DDO23 states that a permit cannot be granted to exceed the preferred maximum building height unless the following criteria are met:

- (a) *the built form outcome as a result of the proposed variation satisfies the Design Objectives in Clause 1.0, the Heritage Building Design Requirements and the Overshadowing and Solar Access (Public Realm) Requirements;*
- (b) *the proposal will achieve each of the following:*
  - (i) *greater building separation than the minimum requirement in this schedule;*
  - (ii) *housing for diverse households types, including people with disability, older persons, and families, through the inclusion of varying dwelling sizes and configurations;*
  - (iii) *universal access, and communal and / or private open space provision that exceeds the minimum standards in Clauses 55.07 and 58;*
  - (iv) *excellence for environmental sustainable design measured as a minimum BESS project score of 70%.*

170. With regard to (a), the proposed height satisfies the Design Objectives in Clause 1.0 of the DDO23 as follows:

- (a) The proposal contributes to the emerging, contemporary, mixed-use character of the Collingwood South (Mixed-Use) precinct. The design is contemporary in nature, incorporating the retained brick street wall flush to the street and adopting a fluted upper level profile that presents as a draped mesh veil providing an appreciable distinction between lower and upper levels. Council's Strategic Planning Unit concurs, stating that '*the proposal seems to generally fit within the contemporary, emerging built form in the mixed character the Collingwood South Precinct consists of.*'
- (b) The development is mid-rise. At seven storeys the development would sit within the nominated range anticipated for the precinct of between 3 to 12 storeys. The design of the building with a metal mesh veil configured in two arcs ensures that the development provides an adequate transition to lower forms to the east and south and expected taller forms to the west and north with regard to the topography of the site. Amenity impacts are minimised and are acceptable, this will be discussed further later under 'Off-Site Amenity Impacts.'
- (c) As discussed above under heritage, the design respects the individual and groups of low-scale heritage buildings within the immediate surrounds.
- (d) The development promotes and encourages pedestrian activity through street edge activation and as discussed further below fully complies with the stated Overshadowing and Solar Access (Public Realm) Requirements of the DDO23.
- (e) Equitable development outcomes are provided to both adjoining properties in accordance with the stated Building Separation, Amenity and Equitable Development Requirements of the DDO23. This will be discussed further, later in detail under 'Off-Site Amenity Impacts.'

171. Council's external Urban Designer agreed that the building achieved compliance with the Design Objectives of Clause 1.0, making the following key points:

- (a) *The proposal does contribute to a contemporary, mixed-use character, has a prominent street wall edge, with upper-level setbacks and visual distinction between lower and upper levels;*
- (b) *The proposed scale is mid-rise.*
- (c) *The proposal does have a recessive upper-level form in relation to heritage built form to the south and east.*
- (d) *The proposal contains extensive windows and doors at Ground Floor, which encourage street-level activation, and visual connection between the lobby and office spaces, and the public realm.*
- (e) *The site has adjoining properties to the north and west, and proposes to build up to both boundaries to full building height, noting the recessive profile at the outer (street) edges. The site to the north has already been developed for apartments, with a blank side boundary wall interfacing the subject site.*

172. As previously identified, the Heritage Building Design Requirements do not apply to the site.

173. Shadow diagrams submitted identify that the opposing Oxford Street footpath is not shadowed between the hours of 10am and 2pm on the 22 September, in accordance with the Overshadowing and Solar Access (Public Realm) Requirements of the DDO23. Council's Strategic Planning Unit concurred that the development met the overshadowing requirements of the DDO23.

174. With regard to (b) (i) the development satisfies the requirement for greater building separation than the minimum requirement specified within the DDO23. The DDO23 specifies (relevant to commercial proposals) that where development shares a common boundary upper levels are to be setback a minimum of 3 metres from the common boundary where a commercial or non-habitable window is proposed. Where the common boundary is a laneway, the setback is measured from the centreline of the laneway.

175. Where facing a common boundary the only windows proposed are facing west to the ROW at Levels 03 – 06. These windows are required to be setback in excess of 3 metres from the centreline of the ROW to achieve greater building separation than required by the DDO23. As shown on the plans, at Level 03 the west-facing windows are setback 3.21 metres from the centreline of the ROW and at Levels 04 – 06 the west-facing windows are setback 5.154 metres from the centreline of the ROW, providing greater building separation than the minimum 3 metres required.
176. With regard to (b) (ii) and (iii), these relate to apartment developments and are therefore not applicable.
177. With regards to (b)(iv), the proposal demonstrates excellence in sustainable design with a BESS project score of 79%, exceeding the minimum 70% required by the DDO23.
178. In addressing the above requirements of the DDO23 it is considered that the development also demonstrates a high level of compliance against policy direction contained at clause 21.05 – *Urban Design* in that the requirements of Strategy 17.2, which specify criteria for developments to meet where they exceed 5-6 storeys, are also considered to have been met.
179. In light of the above considerations, the proposed building height is supported against the above criteria. The development will achieve very strong ESD performance whilst imposing no unreasonable amenity impacts which is discussed at length further later in the report.
180. Whilst it is acknowledged that the building will be taller than adjoining developments, there are recent approvals for higher developments in this area, with some having already been constructed or under construction.
181. Most notably, within the immediate streetscape, it is acknowledged that the existing recently constructed building at No. 27-29 Oxford Street and No. 15-21 Derby Street, which was approved prior to the introduction of the DDO23, adopts a predominate height of 27.57 metres (roof plant proposed above this height) with upper level setbacks falling short of meeting the DDO23 requirements specified for the site at every level in respect of Oxford Street.
182. This demonstrates that the emerging character of the area includes built form that is taller than some heights anticipated within DDO23, however complies with the Objective of the DDO23 to provide a mid-rise character ranging from 3 to 12 storeys. The application which seeks to introduce a commercial building to this corner that responds to this emerging character in both scale and setbacks while being respectful to surrounding heritage context being consistent with both local and state policy directives.
183. The issue of development which is higher than surrounding built form was further discussed in the Red Dot Tribunal decision, *Pace Developments v Port Phillip CC* (includes Summary) (Red Dot) [2012] VCAT 1277:
- [58] We accept that the building will be taller and will be seen, but the notion of respectful development does not mean that new buildings must replicate that which exists nor does it imply that they will not result in change. As we have noted, change must be contemplated in an area where growth is encouraged by the MSS and chance to improve, or perhaps in this case repair, the urban environment.*
184. Continuing the discussion regarding visibility of taller built form, the following comments were made by the Tribunal in *Rowcliffe Pty Ltd v Stonnington CC* [2004] VCAT 46 (29 January 2004):

[54] *If mere visibility becomes the test across metropolitan Melbourne, then it will be virtually impossible to construct buildings above the prevailing scale. This, in turn, would render it impossible to achieve the clearly stated urban consolidation objectives expressed in the Planning Scheme, objectives which Clause 11 requires us "to give effect to". The Tribunal rejects the notion that, because some of the buildings would be visible above the existing built form, they are therefore unacceptable. Rather, the test is whether the proposal is complementary to the surrounding area, and of a scale that can be assimilated without unreasonably disturbing the surrounding built environment.*

185. It is considered that the proposed design response offers a contemporary, well resolved and sophisticated design response that has demonstrated an exemplary and innovative design response worthy of support.

*Massing*

*Podium*

186. The podium height, as per the existing conditions, meets the Street Wall Height Requirements contained within the DDO23, identified below:

Item	DDO23	Proposal	Complies?
Preferred maximum street wall height (Oxford Street)	11m	8.56m – 9.12m (existing)	Yes
Preferred maximum street wall height (Mason Street)	11m	7m – 8.56m (existing)	Yes
Preferred ROW interface (part western boundary wall height)	11m	9.56m	Yes

187. The existing forms are retained to Oxford Street and Mason Street and are therefore acceptable, fitting comfortably within the identified preferred maximum street wall requirement. The ROW interface, at 9.56 metres (inclusive of the 2.2 metre on-boundary height increase at Level 3) also comfortably complies with the preferred ROW interface requirements.

188. Council's external Urban Designer supported the retained street wall, making the following comment:

(a) *The retention of the existing street facades allows the proposal to retain this part of the local character and the resultant industrial aesthetic at the lower levels.*

189. As discussed under the heritage section of this report, the retention of the existing facades as the podium ensures that the development is consistent with the existing properties along both street frontages.

*Upper levels*

190. The DDO23 prescribes preferred upper level setbacks of 6 metres for both the Oxford Street and Mason Street frontages. The DDO23 does not include any requirements for the development to address if the development does not achieve compliance with the preferred upper level setbacks as the site is not directly adjoining a heritage building.

191. In addition to the preferred upper level setback requirement, the DDO23 requires upper level development to:

- (a) *be well-designed and articulated to break up the building mass across sites with a wide frontage;*  
 (b) *distinguish between the lower and upper levels through materials and articulation;*

- (c) *be designed so that side walls are articulated and read as part of the overall building design and not detract from the streetscape when viewed from direct and oblique views along the streetscape;*
- (d) *provide passive surveillance of adjacent streets and public open space.*

192. Above the maximum podium height of 11 metres the DDO23 stipulates a preferred upper level setback of 6 metres to both street frontages. The below diagrams indicate the level of non-compliance where the development does not meet the 6 metre preferred upper level setback requirement (Level 02 has not been included as under the DDO23 built form is permitted to be built to the street boundary in these locations):

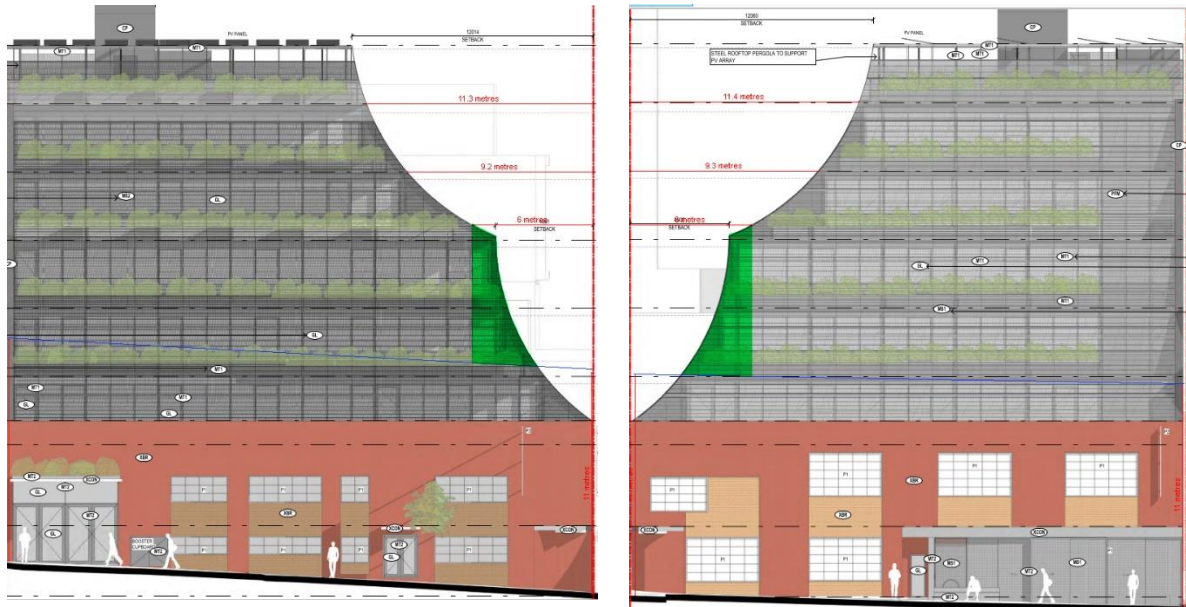


Figure: Southern elevation (left) and eastern elevation (right)  
 Source: Application Documentation (Decision Plans) with annotations

- 193. As demonstrated above, the non-compliance with the upper level setback requirement is largely restricted to Levels 03 to 04. The lower arc at these levels have minimum and maximum setbacks of 2.8 metres and 4.8 metres to Oxford Street and 2.6 metres to 4.9 metres to Mason Street.
- 194. At Level 05 the development transitions in setbacks to exceed the upper level setback requirements which is further accentuated at Levels 06 and 07.
- 195. Whilst the application seeks a variation to the preferred upper level setback, on balance, the design outperforms the preferred controls with Levels 05 to 07 being highly recessive. The variation at the lower levels allows for a successful and fluid transition through a contemporary and innovative design response which clearly differentiates between the retained street wall and upper levels as encouraged by the DDO23. For these reasons the massing response to Oxford Street and Mason Street is supported.
- 196. In terms of the presentation of the side walls Council's Strategic Planning Unit identified that the design presents a relatively exposed blank wall towards the northern elevation. Given the existing four-storey form directly to the north and significant upper level setbacks above four storeys, Officers do not share this concern. The visible northern boundary wall would not be a prominent feature in the streetscape, notwithstanding, the proposed wall to be constructed of cement panels and articulated through the provision of expressed metal trim within the horizontal seams and shadow gaps within vertical seams combined with the application of solar panels would ensure the elevation is provided with visual interest.

Further details on the wall treatment will be required via condition, as discussed below in relation to the western elevation.

197. The prominence of the western elevation is of concern to Officers. The western elevation shows that the wall will be cement panels and will be articulated through the provision of expressed metal trim within the horizontal seams and shadow gaps within vertical seams.
198. Council's Urban Designer was complimentary of this treatment to the boundary wall, however, the renders submitted with the application fail to show how this would be incorporated into the elevation (shown below). A condition should therefore require this to be addressed within the materials and façade strategy. This will ensure that the treatment of the western boundary wall is finished to Council's satisfaction, providing a high degree of depth and texture.



Figure: Render showing the western elevation when viewed along Mason Street  
Source: Application Documentation (Urban Context Report)

#### *Architectural Quality*

199. The development is considered to be of high architectural quality and in that regard responds to the design objectives clauses 15.01-2 and 22.10-3.4. The contemporary design is appropriate and responds well to this part of Collingwood. Council's external Urban Designer was complementary of the proposed architectural design and quality, making the following assessment:
  - (a) *The retention of the existing street facades allows the proposal to retain this part of the local character and the resultant industrial aesthetic at the lower levels.*
  - (b) *The proposal is equally defined, however, by the upper-level façade, comprising a curved mesh 'veil' or screen which appears to be 'draped' over the building. The mesh has a higher density to the east, presumably for solar protection, than to the south façade, although both MS1 and MS2 are labelled as 'nominal 60% open' on drawing TP500 (Finishes Schedule).*
  - (c) *This façade device gives the building a robust, substantial visual quality, particularly in more distant views, while also appearing delicate, light and transparent, at closer viewing distance, as shown in the perspective views.*
  - (d) *In note that the 'Mason Street View West' montage in the Urban Context Report (page 51) includes a proposed Smith Street building in the background, which to my knowledge has been refused by VCAT, so should not be shown here.*
  - (e) *I observe that Collingwood's emerging built form context comprises a range of distinctive and innovative building designs. I consider that this proposal will contribute to this context, being a distinctive and visually engaging design.*

(f) *The side boundary wall to the west contains vertical bands of continuous glazing above the rear laneway frontage, while the 'blank' boundary wall facing the adjoining site is articulated with vertical shadow gaps, and horizontal metal trims. I consider this subtle extent of articulation to be adequate given the limited extent of blank façade and the presence of windows in the northern part of this façade.*

200. One recommendation was made by the external Urban Designer, who requested the durability and maintenance requirements/provisions for the façade mesh (labelled MS1 and MS2 on the plans) materials, and the side boundary wall 'cement panel' (labelled CP) be further investigated, to ensure that these components retain their appearance over the long term, and can be effectively maintained, to avoid visual degradation.

201. The above concern can be addressed via condition within a detailed materials and façade strategy.

202. Whilst the proposed external materials schedule provided an indication of the different materials and finishes proposed throughout the design, it is considered that the descriptions of each material is too broad. A façade strategy and materials and finishes schedule is to be submitted via condition to demonstrate:

- (a) elevations at a scale of 1:20 illustrating typical podium details, entries and doors, and utilities and typical mid and upper level facade details;
- (b) section drawings to demonstrate façade systems, including fixing details and joints between materials or changes in form;
- (c) information about how the façade will be maintained, including any vegetation; and
- (d) a sample schedule and coloured drawings outlining colours, materials and finishes specifying the following:
  - (i) Maintenance requirements for the following materials: 'MS1,' 'MS2' and 'CP,' demonstrating the durability of the materials to retain their appearance over the long term.
  - (ii) Details of the proposed treatment to the western on-boundary wall as shown on the western elevation, demonstrating a high degree of depth and texture.
  - (iii) Details of the ribbed texture of material 'MT2' including depth of ridges.

203. This will ensure that the materials to be utilised for the development are reviewed prior to construction, with higher degree of detail provided to ensure they are of a high architectural quality in accordance with the plans submitted to date.

#### *Landmarks, Views and Vistas*

204. It is policy at clause 15.01-2S of the Scheme that important landmarks, views and vistas be protected or enhanced. The impact on long range views and vistas are only relevant where they form part of an identified character of an area (within planning policy) and typically apply to landscapes or natural features.

205. Concern was raised within the objections regarding loss of views to No. 6 Oxford Street. As identified under the heritage section of this report, it was determined that the development provided an adequate transition in scale to this individually significant graded heritage property in line with policy requirements of the DDO23 and public views of this building will not be lost from the public realm.

206. In respect of obscuring views of the church building and church tower, this particular church known as St Saviours Church of England Mission Church, later Holy Virgins Protection Russian Orthodox Church (currently used as a dwelling), is not a key landmark listed within clause 22.03 and as such the Scheme does not require views to this church to be protected.



207. Irrespective of the above, the applicant demonstrated within their Urban Context Report how view lines of the church tower were considered during the design and development phase of the building when viewed along Mason Street from the west. As demonstrated below, the retention of the existing building facades without increasing the street wall height to that preferred under the DDO23 (11 metres) coupled with the veil design of two arcs ensures that views of the church tower will be retained.

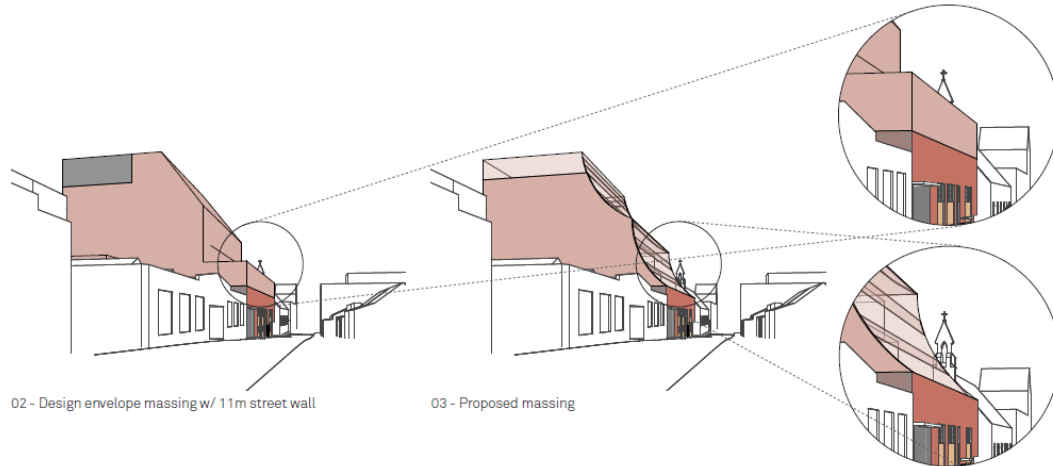


Figure: Massing Development

Source: Applicant Documentation (Site Context Report)

208. The proposed development does not compete with any identified landmarks given its location and is considered to be an acceptable response to the local policy direction under clause 22.03-4 of the Scheme.

#### *Light, Shade and Public Realm*

209. Planning policy encourages the design of interfaces between buildings and public spaces to enhance the visual and social experience of the user. In this respect, the proposal represents an improvement in streetscape, public space quality and perceived safety.

210. A decision guideline of the DDO23 requires consideration of the following:

- (a) *Whether the proposal provides a high quality public realm interface that either activates the street edge or provides an engaging and well-designed street interface, and contributes positively to the pedestrian environment and other areas of the public realm.*

211. The following guidance is also provided for the street frontages of new development, requiring the development to:

- (a) *provide a prominent, well-articulated street-wall edge that provides a distinction between the lower and the upper levels of the building;*
- (b) *address all street frontages and, where heritage elements are not a constraint, incorporate design elements/features that contribute to an engaging streetscape, avoiding blank walls and provide active frontages, where appropriate to the proposed use at ground level;*
- (c) *be designed to accommodate (or can be adapted to accommodate) commercial activity at the ground floor incorporating a suitable commercial floor height, where heritage elements are not a constraint;*
- (d) *locate service entries/access doors away from the primary street frontage, or where not possible, be sensitively designed to integrate into the façade of the building;*
- (e) *respond to the topography of the east-west oriented streets through transition and “stepping” of the ground floor to appropriately address the street.*

212. The site presently contributes little to the street. Interfacing with Mason Street toward the western boundary is a large solid roller door with the pedestrian door at this interface also solid. Interfacing with Oxford Street is another recessed solid pedestrian door and an undercroft car parking area with a solid roller door behind.

The building has fallen into disrepair with graffiti applied extensively along the ground floor interfaces. There are two crossovers along each frontage, a double crossover along Mason Street and a crossover approximately 13 metres wide along Oxford Street.

213. The proposal provides an active frontage to Mason Street through the large glazed entrance and smaller glazed doors direct to the ground floor tenancy. A booster cupboard is proposed to the east of the larger entrance, in an area that was previously blank wall and is therefore acceptable. Whilst the infill façade of the bicycle store room along Oxford Street is to be finished in dense mesh, the operable elements of the façade and design features including the publicly accessible bench will ensure that this elevation is adequately activated. The transparency of the mesh will also allow for light and to a lesser extent views in and out of this space.

214. Council's external Urban Designer was supportive of the interfaces to both street frontages, making the following comments:

**(a) Interface to Oxford Street**

- (i) The Ground Floor frontage to Oxford Street comprises two large windows to the internal office tenancy, and metal mesh screening to the frontage cycle store. While I do not consider cycle storage to comprise 'active' frontage because it will contain limited activity, I support its prominence and visibility from the street, which supports internal amenity and 'promotes' sustainable transport, and enhances the end-of-trip experience.*
- (ii) This frontage also incorporates an external bench facing the street, below a shallow canopy, and a bottle-filling tap for cyclists and pedestrians. These devices will facilitate engagement with the building frontage by pedestrians.*
- (iii) Four large windows at Level 1 also overlook the Oxford Street public realm, providing additional activation and passive surveillance opportunities.*
- (iv) I consider this public realm interface to be appropriate and effective in supporting safety, visual interest and activation of the public realm, through visible internal spaces and direct visual connections with the public realm.*
- (v) As noted above, I accept that this location is unlikely to be effective for retail, café, or other hospitality uses, and I support the incorporation of office space at Ground Floor level.*

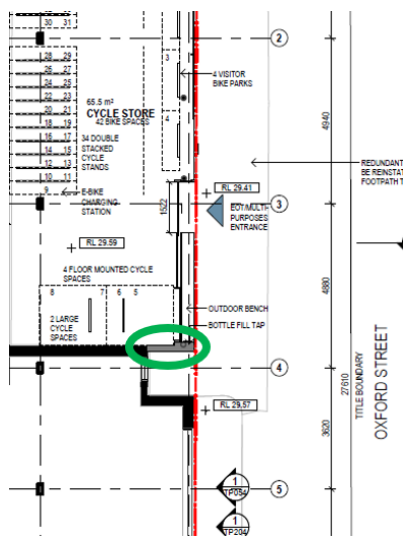
**(b) Interface to Mason Street**

- (i) The Ground Floor frontage to Mason Street comprises wide windows at Ground Floor and Level 1, and a glazed entry to the lobby space, which will accommodate pedestrian movements throughout the day.*
- (ii) I also consider this public realm interface to be appropriate and effective in contributing positively to the public realm.*

215. Council's internal Urban Design Unit was generally supportive of the ground floor interface, however, they made one recommendation as follows:

- (a) There is an opportunity to enhance the Oxford Street frontage and entrance, through the widening of the inset entrance. Providing a generous recessed entrance will provide increased space for pedestrian circulation, seating and proposed facilities. The integration of seating to the entrance is supported and should be wholly contained within the site (including sufficient setback for legroom) to ensure the footpath is free from obstructions.*

216. The applicant submitted diagrammatic sketch plans on 2 June 2021 to demonstrate that the issue identified above could be addressed through design changes, requesting that a permit condition be implemented. The sketch plans demonstrated that the inset entrance could be widened from 1.522 metres to 2.3 metres and that the bench seat could be setback further into the site to ensure the bench and subsequent legroom is provided on the title boundary. The location of the large bicycle spaces could also be modified to enable the above.
217. The applicant has demonstrated the above concern can be addressed via condition. A condition will therefore require the main inset entrance to Oxford Street to be widened and the bench seat setback into the site (with sufficient legroom provided within the title boundaries of the site). The location of the large cycle spaces can be modified, if required, to address these aspects.
218. There is some concern however with the new wall proposed between the infill façade to the bicycle store room and the secondary pedestrian entrance to the ground floor tenancy, circled below in green, as this may result in an unsafe concealment space.



219. The applicant advised via email on 9 June 2021 that the separation of this entrance from the bicycle store is intentional, to serve as a fire egress as well as a private entrance. The applicant advised that there is scope to remove the wall or incorporate the entrance into the broader building entry and screen at this location. A condition will therefore require the entrance to be incorporated into the broader building entrance (with the bottle tap to be relocated) or lighting to illuminate this entrance shown. It is considered that either measure would alleviate the concern.
220. The internal Urban Design Unit identified that there was an opportunity to provide a flush cut planting area on Mason Street within the no standing zone close to the intersection of Oxford Street. The applicant reviewed this request and provided within the sketch plans submitted 2 June 2021 an indication of how this could be accommodated. A condition will therefore require this to be provided in association with the development, with detailed design plans prepared.
221. The internal Urban Design Unit also recommended the reinstatement of the footpaths along both street frontages which is consistent with the requirements of Council's Engineering Unit. The redundant vehicle crossovers will also be required to be reinstated, this is annotated on the plans in respect of the Oxford Street crossover but not the Mason Street crossover. This shall form conditions and will provide an enhanced pedestrian experience and offer opportunities for increased on-street parking and street tree planting.

222. Council's Urban Design Unit identified that Mason Street and Oxford Street are proposed to incorporate increased street tree planting as an outcome of Council's Urban Forest Strategy (2017). The Unit requested a contribution of \$3,045 be provided to facilitate the supply, planting and 2 years establishment maintenance for 3 new street trees. These will be planted during Council's planting season post development. Given the scale of development, this can be facilitated via condition.
223. Consideration of public realm overshadowing in accordance with the requirements of the DDO23 have been assessed under building height. The development complies with the requirements and is acceptable.
224. Lastly, Objective 5.1.4 of the Urban Design Guidelines for Victoria (UDGV) requires new buildings within activity centres to minimise adverse wind effects. Furthermore, a key decision guideline of the DDO23 is the wind effects created by the development.
225. The application was accompanied by a desktop wind assessment prepared by Windtech Consultants. The wind assessment identified that wind effects identified in the report could be ameliorated with consideration to the retention of the proposed porous mesh screening enclosing the above terrace areas.
226. The plans submitted to Council for assessment clearly show porous mesh screening enclosing all terrace areas. It is unclear what plans Windtech Consultants reviewed in forming their opinion, as the report does not reference a plan set. This was also identified by Council's external wind consultant, who commented that it is assumed the plan set reviewed were those submitted with the application. A condition will therefore require the report to be updated to review the latest set of plans, confirming all assumptions made.
227. The report concluded the following:
- (a) It is expected that the surrounding footpaths will satisfy the walking criterion and the building entrances will satisfy the short exposure (standing) criterion.
  - (b) It is expected that the Level 02 and Level 05 communal terraces and Level 07 roof terrace will satisfy the short exposure (standing) criterion.
228. Whilst the terraces at Levels 03 and Levels 06 have not been assessed it is considered the limited width of the terraces (maximum 0.7 metres and 0.6 metres respectively) at these levels restricts their ability to be primary areas for recreation. Their exclusion is therefore acceptable.
229. This wind report has been peer reviewed externally. The external wind consultant raised no concerns with the proposed analysis approach, site exposure, regional wind climate and description of the development used in the preparation of the assessment. Council's external wind consultant agreed with the conclusions made, making the following summary:
- (a) *MEL Consultants would agree with the Windtech assessment of the expected wind conditions in the surrounding streetscapes and on the terrace areas. It has been noted that the porous mesh covering the east and south faces of the building would be important for mitigating the wind effects and has an open area of 60%. This mesh open area should be maintained since any changes to the open area would have an impact on the assessed terrace and streetscape wind conditions.*
230. Subject to the above-mentioned condition confirming the plan set assessed, it is considered that wind is adequately addressed and will ensure the development would not generate safety concerns for the pedestrian wind environment.

*Site Coverage*

231. The proposed site coverage of 100% is considered acceptable as the existing building with a site coverage of 100% is to be retained. Council's external Urban Designer made the following comment in regards to the siting of the development:

- (a) *By retaining the existing facades to both street frontages, the proposal occupies the full extent of the site. The retention of street facades contributes to retaining the established character of the public realm interfaces.*

232. Furthermore, the existing level of site coverage in the surrounding (and immediate) area is similar and within zoning that encourages higher density development (MUZ). Commercial and mixed-use buildings in this precinct traditionally have high levels of site coverage with this characteristic being evident throughout Collingwood.

*Landscape Architecture*

233. Landscaping is not a typical feature of commercial land in the Collingwood area, however, the proposal includes significant amounts of landscaping which have been incorporated as part of the overall design of the building, including a 73.5sqm green roof.

234. Council's Open Space Unit reviewed the submitted landscape plan and commented that they were supportive of the landscape concept put forward and that the landscape plan was satisfactory, providing a sufficient level of information.

235. The level of landscaping proposed is supported noting that the DDO23 contains no requirements nor decision guidelines regarding landscaping. A condition can be included requiring the landscaping to be carried out and completed in accordance with the plan.

236. There is an existing street tree within the Mason Street road reserve in front of the subject site. To ensure this trees protection during construction, Council's Streetscapes and Natural Values Unit requires a bond for the amenity value of the tree and a tree management plan to be provided. This is considered a typical requirement and will form conditions to ensure that the tree is adequately protected during construction.

[On-site amenity including Environmentally Sustainable Design](#)

237. Policy at clauses 15.01-2S, 21.07, 22.16 and 22.17 of the Scheme encourage ecologically sustainable development, with regard to water and energy efficiency, building construction and ongoing management.

238. The redevelopment of the site located in an existing built-up area makes efficient use of existing infrastructure and services, and the proximity of the subject site to numerous public transport modes reduces reliance on private vehicles.

239. Council's ESD Advisor reviewed the development plans and submitted Sustainable Management Plan (SMP) identifying one area of deficiency and outstanding information that is required to be provided. Council's ESD Advisor commented that should a permit issue, these should be conditioned to ensure Council's ESD Standards are fully met.

240. The identified deficiencies and outstanding information identified is identified below:

**(b) Application ESD Deficiencies:**

- (i) *No information regarding construction waste management provided. Confirm provision of a site-specific Environmental Management Plan – with a target recycling rate of 80% of construction and demolition waste to minimise the volume of waste to landfill.*

**(c) Outstanding Information:**

- (i) *Confirm operable windows are provided on the east and south facades as obscured by mech screening in elevations.*
- (ii) *Confirm all internal sealants and paints, adhesives, and carpets will be low VOC, and engineered timber products will be E0.*
- (iii) *Provide Section J to support NCC improvement claims.*
- (iv) *Clarify reduction in GHG emissions within Section J report.*
- (v) *Confirm HWS, consider using a heat pump and include in Section J report.*
- (vi) *Clarify reduction in Peak Energy Demand within Section J report.*
- (vii) *Clarify location of internal blinds.*
- (viii) *Confirm HVAC system, consider 3 pipe VRF and include within Section J report.*
- (ix) *Confirm improvement over NCC and include savings within Section J report.*
- (x) *Clarify total solar PV system size, and locations on rooftop and façade. Include generation within Section J report.*
- (xi) *Confirm WELS ratings for fixtures and fittings.*
- (xii) *Confirm floor-by-floor / tenancy metering.*
- (xiii) *Confirm rainwater tank size and amend plans accordingly. The Tool 'work around' does not work as the tool will assume the difference between the impervious area draining to tank and the site area is permeable ground which is not the case. This method is satisfactory if the site area is also adjusted downwards by 75%.*
- (xiv) *Clarify post-development flows will not exceed pre-development levels.*
- (xv) *Confirm extent of timber to be recycled or from accredited sustainably harvested plantation sources (FSC or AFS).*
- (xvi) *Confirm pipes, cabling, flooring to do not contain PVC or meeting best practice guidelines for PVC.*
- (xvii) *Clarify discrepancy between SMP (8 visitor bicycle spaces) and GTP (4 visitor bicycle spaces).*
- (xviii) *The GTP and plans indicate 1x eBike charging point. Clarify 'additional' charging points as per SMP.*
- (xix) *Amend plans (TP120) or WMP to identify bin locations within waste room.*
- (xx) *Provide a statement as to how the building mitigates urban heat – such as high SRI external finishes / roofing, and additional climbing vegetation at ground level to shield heavy mass (i.e. bricks) from heat gain.*
- (xxi) *Please provide more details on these innovative initiatives to solidify their understanding and acceptance in design as innovations.*
- (xxii) *Confirm all energy and water management systems will be commissioned in accordance with the manufacturer's specifications.*
- (xxiii) *Confirm head contractor to be ISO 14001 accredited.*

241. It is considered that all items can be addressed via condition as these items request further detailed analysis of the ESD measures. Item (c) (i) and (c) (xix) should be referenced within the condition 1 requirements with the balance required to be provided within an amended SMP.

242. The SMP will also be required to be updated to include the copy of the STORM Rating Report and associated documents submitted by the applicant on 16 April 2021.

#### *Daylight and Ventilation*

243. The proposed development is considered to provide a good level of amenity and indoor environmental quality. Specifically, this is achieved through good access to daylight for the office space being located on a corner with a part western abuttal to a laneway. The development provides large expanses of glazing at all levels and the provision of terraces throughout.

244. The SMP demonstrated that the project achieved a 2% daylight factor for 60% of the leasable office floor area, exceeding the BESS standards that require a daylight factor of 2% for at least 30% of floor area. Council's ESD Advisor raised no issue with the daylight modelling provided and this aspect is satisfactory.



245. The SMP submitted with the application indicates that operable windows to reduce reliance on mechanical air conditioning and to provide natural ventilation is proposed. Council's ESD Advisor raised no concern with the proposed ventilation, however, as identified previously requested confirmation that operable windows are provided on the east and south facades. This will form a condition.

#### *Circulation Spaces*

246. The main pedestrian entrance to the ground floor is easily identifiable from the street as a new entrance to Oxford Street is proposed. Secondary access from both Mason Street and Oxford Street direct to the tenancy is also provided.
247. Access to the upper levels of the building will be provided from Mason Street and will be easily identifiable from a new glazed entrance from the street. The circulation spaces afford a good level of amenity to future building occupants and the two double doors provide access to a generous lobby space with clear view lines to the main lift lobby, as demonstrated in the below internal render:

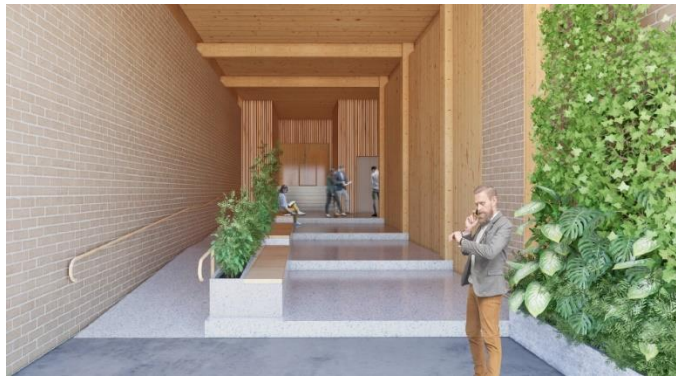


Figure: Renders of the development entrance along Mason Street  
Source: Applicant Documentation (Site Context Report)

#### *Facilities*

248. Bathrooms are provided at each level for the office tenants. Whilst kitchen facilities are not currently shown on the floor plans, it is considered that this will be designed in the detail design stage once the building becomes tenanted and is acceptable.
249. Bicycle parking and end-of-trip facilities are also incorporated into the design, within the ground floor level with direct access to Oxford Street. External terraces are provided at varying levels. These features will further enhance the amenity of the development.

#### Off-site amenity impacts

250. The relevant policy framework for amenity considerations is contained within clause 22.05 (Interface uses policy). As the site surrounds description identifies, there are dwellings located immediately adjoining the site to the north and across Oxford Street to the east and Mason Street to the south. All of these properties are located within the MUZ.
251. The decision guidelines at Clause 22.05-6 specify that Council should consider (as appropriate):
- The extent to which the proposed 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.*



*Noise*

252. Policy at Clause 22.05 of the Scheme seeks to ensure new commercial development is adequately managed having regard to its proximity to residential uses.
253. The proposal is unlikely to result in unacceptable noise emissions to the nearby residential properties given the majority of the building would be used for offices (subject to consideration of hours and sleep disturbance criteria). Due to the nature of the office use there will be minimal noise generated by pedestrian activity, with this activity limited to weekdays between 7am and 6pm.
254. The applicant submitted an acoustic report to address noise impacts from the proposal on surrounding residential properties. The report was peer reviewed by Council's acoustic consultant, SLR Consulting, who confirmed that the report generally addresses the acoustic issues related to the proposal however they suggested the following matter in relation to the commercial plant noise be addressed further:
- (a) *For this reason we have suggested that a conservative approach is taken during the design and lower noise limits are targeted, or that site specific background monitoring be conducted to confirm the noise limits. Any compliance testing, if required to be conducted in the future, should assess noise from the site to noise limits determined in accordance with SEPP N-1 or the Noise Protocol (as relevant).*
255. As a result of the above, it is considered that a condition should be implemented that requires a review of all acoustically significant mechanical plant prior to the occupation of the development. The acoustic report submitted with the application should also form part of the endorsed documentation associated with the application, this can be facilitated via condition.
256. Subject to this condition, it is considered that noise is adequately addressed noting that the proposed hours and days of operation, 7am to 6pm Monday to Friday, would negate a number of negative noise impacts in the more sensitive night time hours.

*Visual bulk*

257. In regards to visual bulk impacts to the dwellings to north at No. 15 – 25 Oxford Street, the apartment balconies of this development at Level 01 and Level 02 where facing Oxford Street are enclosed along the common boundary, therefore views of the building from these balconies and windows behind would not be possible.
258. At Level 03, the topmost level, where facing Oxford Street it appears that a solid balustrade exists along the balconies edge at the common boundary, as demonstrated below:



Figure: Subject site with neighbouring balcony interface highlighted

Source: Officer image, taken 21/05/2021

259. The balustrade appears to be standard height and whilst primary views are maintained to Oxford Street, views to the subject site from this balcony would be possible. As the northern elevation demonstrates, the arced veil is designed to ensure that the substantive built form is not directly opposite this balcony, limiting visual bulk to an acceptable level.

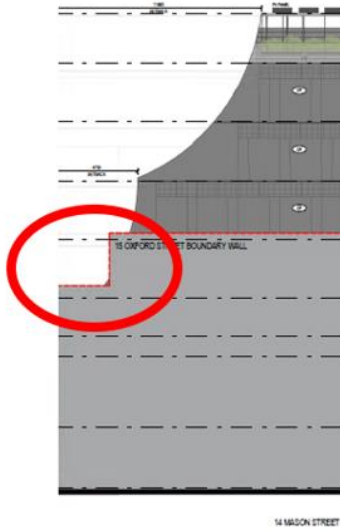


Figure: Northern elevation with area of interest highlighted  
Source: Advertised Plans

260. The apartment balcony at Level 02 of this development where facing the ROW is also enclosed at the common boundary, therefore restricting views from this open space area to the development. The apartment balcony on Level 01 is partly enclosed and partly open along the common boundary with the Level 03 balcony where facing the ROW providing a solid balustrade along the common boundary with a standard height, as indicated below:



Figure: Neighbouring balcony interface highlighted where facing the ROW  
Source: Officer image, taken 21/05/2021

261. Where adjoining the Level 01 balcony the on-boundary wall of the development will extend in height by 2.2 metres, resulting in a wall with an overall height of approximately 6.6 metres above this balconies floor level. Where adjoining the Level 03 balcony the development is generally setback to align with the building setback of the adjoining development apart from a 0.2 metre encroachment. With regard to the primary outlook of both balconies to the west it is considered that the above is acceptable and would not result in unreasonable visual bulk.

262. In respect of the apartment buildings/townhouse developments further north and north-west, it is considered that within this built form context views from windows to built form is not an unreasonable expectation.

263. To the east and south, it is considered that views from any street-facing habitable room windows or open space areas would be possible. The width of Oxford and Mason Streets would provide adequate separation distance to mitigate unreasonable visual bulk impacts.

The bulk associated with the building is considered typical of development occurring within the MUZ and the atypical design of the building scaling down to the east and south would further assist in ameliorating visual bulk associated with the development.

264. Several objections raised loss of views as a primary concern. The Victorian Civil and Administrative Tribunal (VCAT) has consistently found that although impact upon views can be considered amongst the amenity impacts of a proposal, there cannot be considered a right to any particular view. In the absence of particular planning controls which might require the protection of, or sharing of views, loss of views is afforded very limited weight. This is especially the case where a view is obtained across adjoining land and the views are not afforded any special consideration in a planning control.

265. This particular issue was discussed within VCAT decision *Harker & Anor v Yarra CC* [2009] VCAT 1358 where Member Read made the following comments at paragraph 18:

(a) *...I must also bear in mind that buildings of this proposal's height are now common in this locality and, in some respects, it is fortuitous that a building of at least similar height has not already been constructed or proposed further south. Because there is no planning policy or control in the Yarra Planning Scheme that is designed to identify and protect valued views, I conclude that I would be acting unreasonably if I were to refuse a permit for the proposed building on this ground. This would be an unreasonably and arbitrary imposition on one property owner in order to protect another from a reasonably foreseeable outcome.*

[emphasis added]

266. In this case the development is not considered to intrude unreasonably upon the skyline to reduce the amenity of neighbours through their outlook or access to daylight.

#### *Overlooking*

267. In relation to overlooking, it is an accepted principle that overlooking only occurs between habitable rooms (i.e. bedrooms and living rooms) and private open spaces within a 9 metre radius. The proposed development is for an office, and therefore is not subject to the same requirements.

268. Notwithstanding, the development is separated from dwellings to the east and south by greater than 9 metres due to Oxford Street and Mason Street. There are no habitable room windows or secluded private open space areas to the west within 9 metres.

269. The development is built to the northern boundary with no north-facing windows, however, consideration must be given to the east and west facing windows and balconies due to the proximity with the east and west facing balconies of the development to the north.

East

270. There would be no overlooking concerns at Ground - Level 02 as a solid wall separates the subject site from the northern adjoining property. At Levels 06 – 07 the neighbouring balcony would be outside of the 9 metre overlooking arc therefore removing any overlooking concerns regarding these levels.
271. The applicant submitted the following diagrams to demonstrate that the overlooking arc would not extend into the adjoining properties balcony area at Levels 03 – 04 due to the position of the services enclosure.

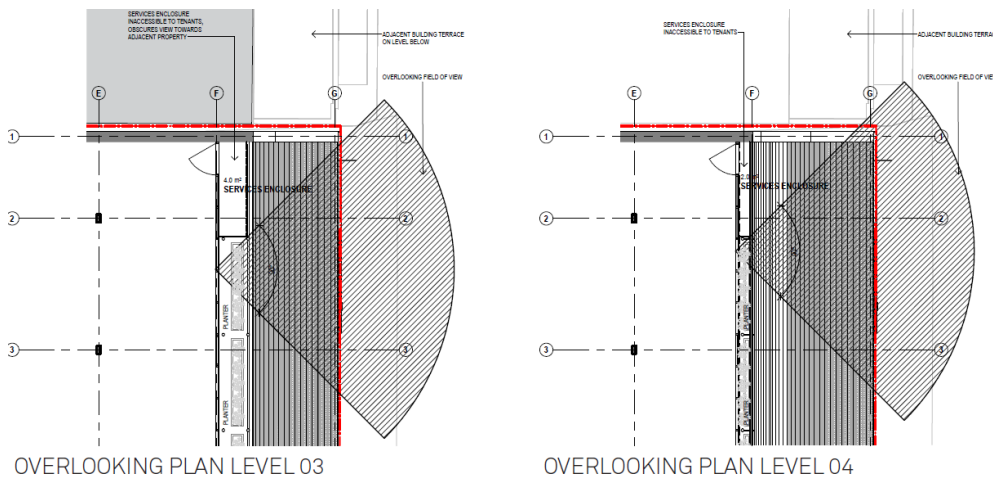


Figure: Overlooking Plans  
Source: Applicant Documentation (Site Context Report)

272. There is some concern with overlooking from the Level 05 terrace into the adjoining balcony. A review of potential sightlines using Trapeze Software that can scale and measure the plans indicates that views may be possible, as shown below:

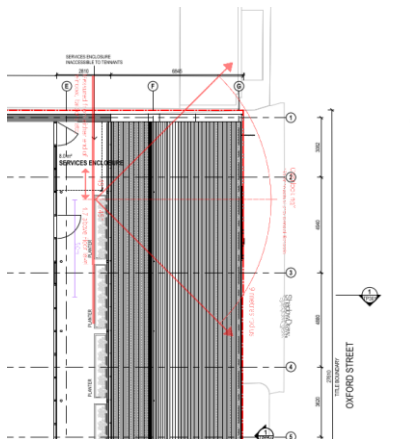


Figure: Potential Overlooking at Level 04  
Source: Applicant Documentation (Decision Plans annotated using Trapeze software)

273. It is likely that the built form below would obscure this sightline. This should be confirmed and can be via condition. If overlooking were to occur, additional screening could be implemented. Subject to conditions, overlooking from the east-facing terraces and windows has been addressed.

West

274. There would be no overlooking concerns at Ground – Level 01 as there are no west-facing windows at this level. At Level 02 the neighbouring balcony to the north would be outside of the 9 metre overlooking arc therefore removing any overlooking concerns regarding this level.

At Level 07 the location of the plant area would ensure there are no trafficable areas in proximity to the northern adjoining balconies.

275. At Levels 03 – 06 whilst the northernmost west-facing window includes deep recesses that block the majority of direct views, some direct views are possible as the following diagram indicates:

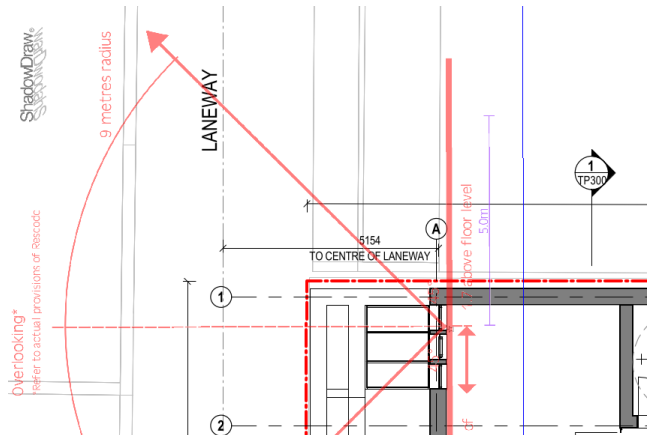


Figure: Potential Overlooking at Levels 03 - 06  
Source: Applicant Documentation (Decision Plans annotated using Trapeze software)

276. This is particularly important at Levels 03 and Level 04 given the proximity of the windows to the balcony area. This should be required to be addressed via condition. Additional screening or obscure glazing could be implemented. Subject to conditions, overlooking from the west-facing windows has been addressed.
277. Whilst there are two balcony areas on the western side of the ROW associated with No. 6 – 12 Mason Street, these balconies are associated with a commercial use and as such there are no overlooking concerns to these balconies. The location of the balconies are shown below.

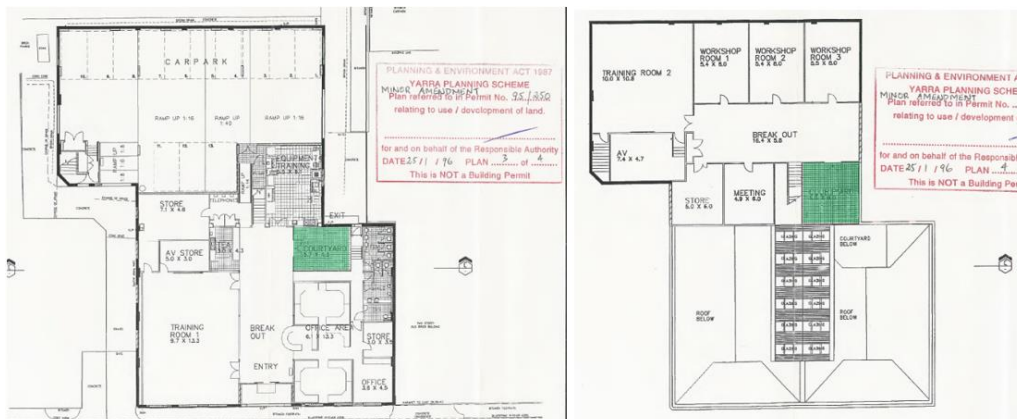


Figure: Location of commercial balconies located to the west at ground floor (left) and first floor (right)  
Source: Endorsed Plans of Planning Permit PL95/250 (No 6-12 Mason Street)

**Overshadowing and daylight to existing windows**

278. Due to the layout and position of the surrounding residences, no additional shadowing would occur to any area of secluded private open space in the surrounds.
279. In respect of daylight, the proposal is adequately setback from windows associated with the surrounding dwellings to allow for access to daylight. Whilst directly abutting residences to the north, the windows of these dwellings are oriented to face north, east and west, away from the subject site and would not be impacted.

*Fumes and air emissions, light spillage*

280. The majority of the office space is enclosed and the use conducted indoors (with the exception of the outdoor terraces). The proposed use is not considered to result in unreasonable air emissions, with light spill from the upper level offices limited due to the nature of the use that is proposed to operate between 7am and 6pm on weekdays only. As stated earlier a condition will ensure the terraces to the offices are not used outside of these hours. There would be no fumes associated with the office use.

*Equitable development*

281. To ensure the 'fair, orderly, economic and sustainable development of land' in accordance with the objective of the Act, matters of equitable development should be considered. Furthermore, a decision guideline of the DDO23 requires consideration of the following:
- (a) *Whether the proposal has considered the development rights/potential of neighbouring properties in terms of achieving good internal amenity for future proposals through building separation and design.*
282. Further to the above, the DDO23 prescribes upper levels setbacks for commercial developments where a common boundary is shared is as follows:
- (i) *be setback a minimum of 3.0m from the common boundary where a commercial or non habitable window is proposed.*
283. The site is separated from land to the south and east, with the only direct abuttals being the properties to the north and west. As previously identified, the proposal exceeds the setback requirements in relation to the western interface with the ROW where commercial windows are proposed.
284. The direct abuttal of the northern and western walls along the boundary with No. 15 - 25 Oxford Street and No. 6 – 12 Mason Street will allow any new building to build 'hard-up' against these walls. Given the overall size of the adjoining allotment to the west and the potential allotment to the north (reliant on consolidation of apartments) this is considered satisfactory, noting that redevelopment of the site to the north is not likely in the immediate future.
285. The Level 04 to Level 06 floor plans include a notation 'windows to fire stair' relating to the northern boundary wall. It is considered this is a plan error resulting from an earlier amendment to the plans that removed on-boundary windows from the northern elevation. A condition will require this notation to be deleted.
286. Council's external Urban Designer was supportive of the development commenting that it provides for equitable development potential of adjoining sites, with particular regard to the undeveloped site to the west.
287. Lastly, solar panels are proposed to be provided on the northern building elevation. Council's external Urban Designer did not foresee this as an issue, however, Officers are concerned that this may prejudice future development of the northern adjoining site in future.
288. The applicant identified in a letter dated 22 December 2020 that the solar panels were entirely sacrificial in the event of neighbouring development. It is important to note that if covered or demounted in future the SMP provided by the applicant confirms that the overall BESS Energy Score would not be reduced.



289. To address this concern conditions should be included within the façade strategy requiring details of the solar panels to be provided ensuring they are located within the title boundaries of the site and details of how the solar panels on the northern boundary wall will be removed/forfeited in the event of the northern adjoining property developing.
290. Given the context of the site, it is considered that future equitable development opportunities have been provided within this development.

#### Car parking, loading and unloading and bicycle facilities

291. Under clause 52.06 of the Scheme, the applicant is seeking a parking reduction of 116 car parking spaces, with no on-site car parking spaces proposed. To support a full reduction in the statutory rate, a car parking demand assessment was undertaken by OneMileGrid, with car parking inventory in the neighbourhood also reviewed. These results are captured in the assessment below.

##### *Parking Availability*

292. The applicant's traffic engineers, OneMileGrid, conducted a car parking inventory survey of the car parking available within approximately 200 metres of the site. Due to COVID-19 restrictions in place, on-street parking at that time would not have been representative when under normal operating conditions.
293. The inventory survey identified that within the surrounds there were a total of 164 spaces in the area (including 5 DDA spaces) that are available for short-stay users. The survey confirmed that there was limited car parking in the area for long-stay users.
257. With respect to the location of the subject site, it is understood that on-street parking demand is very high and close to saturation point. It is acknowledged that existing patterns of car parking usage is not useful given policy within Clause 52.06 encourages the use of other forms of transport.
294. Council's Traffic Engineers confirmed that the availability of short-stay parking would provide regular turnover throughout the day, thereby allowing customers and clients to park near the site or access the site via alternative transport modes. The limited availability of long-term on-street parking would discourage employees from driving to work and encourage them to travel by alternative forms of transport. The Unit identified that if required there were off-street car parking facilities available (e.g. 3 Cambridge Street) to cater to those individuals.

##### *Parking Demand*

295. With regards to the car parking demand generated by the proposed office use, it is acknowledged that the statutory car parking rates outlined in the Scheme are conservative when applied in this instance, given the inner-city location of the subject site and proximity to alternative transport means.
296. It is well documented through recent decisions made by VCAT that modal shifts to reduce the reliance on the use of private motor vehicles is not only welcomed, but required, to ensure that a holistic planning approach to commercial precincts that are designated for greater change is applied.
297. A VCAT decision *Grocon (Northumberland St) Developer Pty Ltd v Yarra CC* [\[2017\] VCAT 753](#) regarding an office development at No. 2 – 16 Northumberland Street, Collingwood, discusses this specific precinct with regard to supporting a significant reduction in car parking (386 car parking spaces) with the following assessment made:



[54] *We have concluded that the reduced car parking provision is justified in the circumstances of this application. In doing so, we have had regard to the location within an inner city environment that is earmarked as an employment precinct, with convenient access to a range of alternative transport modes and a constrained supply of on-street parking. We consider that the reduced parking provision will not compromise the viability of the development or precinct, nor will it result in an unacceptable demand for on-street parking, given the saturated conditions that are presently experienced.*

[55] *We agree that employees who are not allocated a car space will utilise alternative transport modes rather than attempt to seek out long term parking in the surrounding street network. This may well include walking to the site for persons who reside in the nearby residential and mixed-use areas. To constrain development of the land for a purpose that is in accordance with the zone purpose on the basis of car parking provision would not be consistent with the policy framework when read as a whole. This includes policies aimed at fostering economic development, employment and environmental sustainability. We reach this conclusion mindful of the site's strategic and physical context and its accessibility by a range of transport modes. In a different context without the level of policy support and more remote from alternative transport modes, there may be less justification for a reduction of the magnitude proposed here.*

298. Further to the above decision, in the VCAT Red Dot Decision *Ronge v Moreland CC [2017] VCAT 550* the Tribunal made the following key statements:

*Our roads are already congested and will be unimaginably so if a 'business-as-usual' approach is accepted through until 2050. The stark reality is that the way people move around Melbourne will have to radically change, particularly in suburbs so well served by different modes of public transport and where cycling and walking are practical alternatives to car based travel.*

*A car parking demand assessment is called for by Clause 52.06-6 when there is an intention to provide less car parking than that required by Clause 52.06-5.*

*However, discussion around existing patterns of car parking is considered to be of marginal value given the strong policy imperatives about relying less on motor vehicles and more on public transport, walking and cycling. Census data from 2011 or 2016 is simply a snapshot in time, a base point, but such data should not be given much weight in determining what number of car spaces should be provided in future, for dwellings with different bedroom numbers.*

*Policy tells us the future must be different.*

*Oversupplying parking, whether or not to comply with Clause 52.06, has the real potential to undermine the encouragement being given to reduce car based travel in favour of public transport, walking and cycling.*

*One of the significant benefits of providing less car parking is a lower volume of vehicle movements and hence a reduced increase in traffic movements on the road network.*

*Based upon the findings within this recent decision, it would be inappropriate to merely adopt current car parking trends for the proposed development. Consideration needs to be given to the context and opportunities to encourage sustainable transport alternatives.*

299. Based upon the findings within these decisions, it would be inappropriate to merely adopt current car parking trends for the proposed development. Consideration needs to be given to the context and opportunities to encourage sustainable transport alternatives.

300. In support of the lack of car parking on-site, examples of existing offices within the City of Yarra with no on-site car parking were provided by Council Engineering Unit, as follows:

- (a) PLN17/0867 – 187 – 195 Langridge Street, Collingwood – 470 sqm
- (b) PLN18/0072 – 100 – 102 Islington Street, Collingwood – 207 sqm

301. Council's Engineering Unit noted that the above examples were associated with small scale offices. The following are examples of support provided for larger offices in the City of Yarra:

- (a) PLN15/0630 – 113 – 115 Bridge Road, Richmond – 844 sqm
- (b) PLN18/0697 – 37 – 39 Stewart Street, Richmond – 1,330 sqm
- (c) PLN18/0902 – 48 – 50 Gipps Street, Collingwood – 1,871 sqm
- (d) PLN20/0214 – 6 – 10 Peel Street, Collingwood – 2,294 sqm
- (e) PLN17/1059.02 – 33 Peel Street, Collingwood - 1,132 sqm

302. No provision for on-site car parking would encourage a modal shift from private vehicle use to more sustainable travel. Council's Engineering Unit are supportive of the application on the basis that it is in line with the objectives of Council's *Strategic Transport Statement* noting that the site is ideally located with regard to sustainable transport alternatives and the reduced provision of on-site parking would discourage private motor vehicle use.

303. Specifically, in relation to the particular benefits of the site location, the reduction being sought by the proposal is further supported by the following:

- (a) The site is located within walking distance of several public transport services, as identified below:
  - (i) Victoria Parade trams – 200 metre walk
  - (ii) Victoria Parade buses (Clarendon Street interchange) – 240 metre walk
  - (iii) Smith Street-Gertrude Street trams – 270 metre walk
  - (iv) Brunswick Street trams (St Vincent's Plaza) – 750 metre walk
  - (v) North Richmond railway station – 950 metre walk
  - (vi) Hoddle Street buses – 900 metre walk
  - (vii) Parliament railway station – 1.3 km walk
- (b) The site has excellent access to the bicycle facilities and a wide range of retail, dining and commercial services within the Smith Street MAC and Gertrude and Johnston Street NACs, which in turn will reduce the dependence on private vehicle by future employees;
- (c) The proposal includes secure bicycle parking spaces in excess of rates specified within the Scheme. Future employees and visitors would be able to take advantage of the Copenhagen bike lanes along Wellington Street;
- (d) With no provision of on-site car parking there would be limited, if any, impacts associated with traffic generated by the development;
- (e) Office land uses are particularly conducive to alternative transport modes given that trips typically occur within peak hour when public transport services are most frequent. The regularity and familiarity of the journey is also a factor that encourages alternative travel modes. Employees are also more likely to cycle to avoid peak hour traffic delays;
- (f) There is limited on-street parking in the area, with restrictive parking controls acting as a disincentive for employees to travel to work by car. Employee or visitor parking permits will not be issued for the development and building tenants would be entering leases aware of the lack of on-site car parking. Therefore, businesses with a high reliance on car parking are unlikely to take up a lease at the site;
- (g) Visitors would likely be aware of the car parking constraints in the area or otherwise be made aware by the occupants of the building, thus also encouraging use of alternative modes such as public transport, cycling or taxis/rideshare; and
- (h) The proposed retained building forms significantly reduce the ability for the development to provide substantial car parking.

304. The provision of no on-site parking for the office use is considered appropriate, having regard to the site's accessibility to public transport services and its proximity to the Melbourne CBD. As previously stated, Council Engineers raised no objection to the proposed reduction in the car parking requirement.
305. Several engineering conditions regarding civil works, road asset protection, and construction management, impacts of assets on the proposed development and modification to car parking signage have been recommended. These conditions are considered standard and will be included as conditions.

*Loading and unloading*

306. With regards to the proposed use of the site for office, it is not considered that an on-site loading bay is required. It is anticipated that loading associated with the office would be infrequent and undertaken by smaller trucks/vans that can utilise the nearest public on-street Loading Zone (on the east side of Oxford Street, south of Derby Street) or public parking within the area.
307. A condition can require deliveries and waste collections to be undertaken in accordance with the times prescribed by Council's Local Law.

*Bicycle parking and facilities*

308. The proposal provides a total of 42 bicycle parking spaces on-site (38 employee & 4 visitor) that can be accessed directly from Oxford Street. Generous end-of-trip facilities are provided with five shower/change rooms and 56 lockers provided, meeting the Scheme and best practice requirements. These features are considered necessary given the full reduction in on-site car parking spaces being sought.
309. The proposal provides a total of 38 bicycle parking spaces on-site for employees, with end-of-trip facilities provided at the ground floor level. The number of bicycle spaces for employees exceeds the statutory rate outlined in Clause 52.34 and meets the rate outlined within Category 6 of the Built Environment Sustainability Scorecard (BESS) (requiring 13 employee spaces and 38 employee spaces respectively).
310. Council's Strategic Transport Unit reviewed the layout of bicycle parking advising that the dimensions of the bicycle spaces and the layout meets the clearance access requirements of AS2890.3. Furthermore, the development satisfies the requirement for at least 20% of employee spaces to be horizontal at-grade. The proposed provision of employee bicycle parking is satisfactory.
311. In respect of visitor parking, the proposal provides four spaces on-site within the employee bicycle room, meeting the statutory rate outlined in Clause 52.34. The Strategic Transport Unit commented that the location and provision of visitor parking was acceptable with particular regard to the Oxford and Mason Street frontages where on-street bicycle hoops cannot be accommodated due to the narrow footpath widths.
312. The design and layout of the visitor spaces are considered acceptable, with all four provided as horizontal at-grade spaces, in a location easily accessible to visitors of the site. The Strategic Transport comments confirmed that these spaces meet the standards set out in AS890.3.

### *Green Travel Plan*

313. Council's Strategic Transport Officer reviewed the submitted Green Travel Plan (GTP) advising that the document included all of the information required and could be endorsed. The conditions suggested throughout the report are inconsequential to the information contained within the GTP, and therefore it is not required to be updated.
314. A condition will therefore require the provisions, recommendations and requirements of the GTP to be implemented and complied with to the satisfaction of the Responsible Authority.

### Waste management

315. The proposal provides for a waste storage room within the ground floor of the site to the east of the lift core. As identified within the Waste Management Plan (WMP) the waste room will accommodate 1 x 660 litre bin for garbage, 2 x 660 litre bins for recycling, 1 x 660 litre bin for organics and 1 x 80 litre bin for glass. The plans show that the waste room can accommodate the 4 x 660 litre bins, however, the 1 x 80 litre bin is not shown. A condition can require this to be shown.
316. All waste collection will be private and is intended to be undertaken from Oxford Street to the east. The waste bins will be transferred to the Oxford Street frontage on the designated collection days for kerbside collection. The WMP indicates when the bins are located on-street a clear path of 0.7 metres will be provided for pedestrian movement.
317. Following a review of the WMP (authored by OneMileGrid and dated 16 December 2020), Council's City Works Unit advised that the WMP is to be updated to remove the kerbside collection as a sufficient clearance of 1.5 metres is required to be available on the footpath when bins are positioned on the kerb and this cannot be provided.
318. The applicant submitted on 2 June 2021 an updated WMP (authored by OneMileGrid and dated 2 June 2021) and memo prepared by One Mile Grid outlining how the issue identified by Council's City Works Unit could be rectified. The updated WMP identifies that the waste vehicle will prop within Oxford Street whilst the collection staff transfer bins to the truck and back with no bins being left kerbside at any time.
319. Council's City Works Unit reviewed the updated WMP and advised that the revised arrangements were satisfactory. A condition will therefore require this version of the WMP be updated to include the location of the 1 x 80 litre bin for glass. Subject to this change being shown in the updated WMP the waste arrangements are satisfactory.

### Objector concerns

320. 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) *Built form and design (overdevelopment, inappropriate height, limited setbacks, architectural expression out of character; out of keeping with heritage)*
- This is discussed within paragraphs 154 to 203
- (b) *Amenity impacts (waste arrangements, ESD, lack of landscaping and public realm overshadowing)*
- This is discussed within paragraphs 173, 233 to 236, 237 to 245 and 315 to 319.
- (c) *Off-site amenity (loss of views and privacy, overshadowing, noise and overlooking)*

This is discussed within paragraphs 250 to 290.

- (d) *Increased traffic, lack of car parking and loading facilities*

This is discussed within paragraphs 291 to 307.

- (e) *Construction impacts*

Whilst this will be handled at the Building Permit stage, a Construction Management Plan will be required via condition to ensure the construction is managed in accordance with Council policies and procedures.

- (f) *Loss of views to No. 6 Oxford Street*

This is discussed within paragraphs 204 to 208.

- (g) *Concern office will be converted to residential in future*

The applicant has not applied for construction nor extension of dwelling/s. If this was to alter in the future, further planning approval would be required.

- (h) *No need for additional office floor space*

The Melbourne Industrial and Commercial Land Use Plan anticipates an additional 3.3 million square metres of office floor space will be required across the Inner Metro Region by 2031.

## Conclusion

321. 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.
322. 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 objections and relevant planning policies, the Planning Decisions Committee resolves to issue a Notice of Decision to Grant a Planning Permit for the construction of a multi-storey building, use of the land for office and a reduction in the car parking requirements at 1 – 13 Oxford Street, Collingwood subject to the following conditions:

1. Before the use and/or development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of this permit. The plans must be drawn to scale with dimensions, and three copies must be provided. The plans must be generally in accordance with the decision plans, prepared by Kerstin Thompson Architects Pty Ltd, Sheets: TP120, TP124 – TP128, TP200, TP201, TP204, TP300, TP301 (dated 11.12.2020), TP121, TP123, TP203, TP500 (dated 04.02.2021) and TP122, TP202 and TP205 (dated 19.02.2021) but modified to show:

### Layout

- (a) The main inset pedestrian entrance to Oxford Street widened and the bench seat setback into the site (with sufficient legroom provided within the title boundaries of the site). The location of the large cycle spaces can be modified, if required, remaining compliant with the requirements of AS2890.3.

- (b) The entrance door to the ground floor tenancy from Oxford Street to be shown and incorporated into the broader building entrance (with the bottle tap to be relocated) or lighting to illuminate this entrance shown.
- (c) A notation on the Level 01 plan indicating that the Mason Street crossover is to be reinstated as footpath, kerb and channel.
- (d) Confirmation operable windows are provided on the east and south facades.
- (e) Bin locations within waste room identified.
- (f) Detailed diagrams demonstrating no overlooking from the Level 05 terrace into secluded private open space areas and habitable room windows to the north within 9m. Any additional screening measures used to achieve compliance are to be shown.
- (g) Detailed diagrams demonstrating no overlooking from the Level 03-06 west-facing windows into secluded private open space areas and habitable room windows to the north within 9m. Any additional screening measures used to achieve compliance are to be shown.
- (h) Deletion of the notation 'windows to fire stair' as shown on the Level 04, Level 05 and Level 06 floor plans.

### Reports and Plans

- (i) Any changes required by the amended Sustainable Management Plan at Condition 5;
  - (j) Any changes required by the amended Wind Impact Assessment at Condition 10;
  - (k) Any changes required by the amended Waste Management Plan at Condition 12; and
  - (l) Any changes required by the Public Realm Plan at Condition 35.
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.
3. In conjunction with the submission of development plans under Condition 1, a Façade Strategy and Materials and Finishes Plan to the satisfaction of the Responsible Authority must be submitted to and be approved by the Responsible Authority. When approved, the Façade Strategy and Materials and Finishes Plan will be endorsed and will then form part of this permit. This must detail:
- (a) elevations at a scale of 1:20 illustrating typical podium details, entries and doors, and utilities and typical mid and upper level facade details;
  - (b) section drawings to demonstrate façade systems, including fixing details and joints between materials or changes in form;
  - (c) information about how the façade will be maintained, including any vegetation; and
  - (d) a sample schedule and coloured drawings outlining colours, materials and finishes specifying the following:
    - (i) Maintenance requirements for the following materials: 'MS1,' 'MS2' and 'CP,' demonstrating the durability of the materials to retain their appearance over the long term.
    - (ii) Details of the proposed treatment to the western on-boundary wall as shown on the western elevation, demonstrating a high degree of depth and texture.
    - (iii) Details of the ribbed texture of material 'MT2' including depth of ridges.
    - (iv) Details of the northern on-boundary wall solar panels demonstrating:
      - i. the panels being located wholly within the title boundaries of the site; and
      - ii. how the solar panels will be removed/forfeited in the event of the northern adjoining property developing.
4. As part of the ongoing consultant team, Kerstin Thompson Architects Pty Ltd or an architectural firm to the satisfaction of the Responsible Authority must be engaged to:
- (a) oversee design and construction of the development; and

- (b) ensure the design quality and appearance of the development is realised as shown in the endorsed plans or otherwise to the satisfaction of the Responsible Authority.

### Sustainable Management Plan

- 5. Before the use and/or development commences, an amended Sustainable Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Sustainable Management Plan will be endorsed and will form part of this permit. The amended Sustainable Management Plan must be generally in accordance with the Sustainable Management Plan prepared by ARUP dated 10 December 2020, but modified to include or show:
  - (a) Information regarding construction waste management including confirmation on the provision of a site-specific Environmental Management Plan (EMP). The EMP is to include a target recycling rate of 80% of construction and demolition waste to minimise the volume of waste to landfill.
  - (b) Confirmation all internal sealants and paints, adhesives, and carpets will be low VOC, and engineered timber products will be E0.
  - (c) Provision of a Section J to support NCC improvement claims, including the following information:
    - (i) Clarify reduction in GHG emissions.
    - (ii) Confirm HWS with consideration of a heat pump.
    - (iii) Clarify reduction in Peak Energy Demand.
    - (iv) Confirmation on HVAC system with consideration to 3 pipe VRF.
    - (v) Confirmation on improvement over NCC and include savings.
    - (vi) Generation of total solar PV systems.
  - (d) Clarify total solar PV system size, and locations on rooftop and façade.
  - (e) Clarify the location of internal blinds.
  - (f) Confirm WELS ratings for fixtures and fittings.
  - (g) Confirm floor-by-floor / tenancy metering.
  - (h) Confirm rainwater tank size.
  - (i) Clarify post-development flows will not exceed pre-development levels.
  - (j) Confirm extent of timber to be recycled or from accredited sustainably harvested plantation sources (FSC or AFS).
  - (k) Confirm pipes, cabling, flooring to do not contain PVC or meeting best practice guidelines for PVC.
  - (l) Clarify discrepancies between SMP and GTP.
  - (m) Clarify 'additional' charging points as per SMP, in addition to the 1 x e-charging point.
  - (n) Provide a statement as to how the building mitigates urban heat – such as high SRI external finishes / roofing, and additional climbing vegetation at ground level to shield heavy mass (i.e. bricks) from heat gain.
  - (o) Provision of more details on the innovative initiatives to solidify their understanding and acceptance in design as innovations.
  - (p) Confirm all energy and water management systems will be commissioned in accordance with the manufacturer's specifications.
  - (q) Confirm head contractor to be ISO 14001 accredited.
  - (r) Inclusion of the STORM Rating Report (dated 17 August 2020) and associated documents submitted via email on 16 April 2021.
- 6. 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

- 7. The provisions, recommendations and requirements of the endorsed Acoustic Report must be implemented and complied with to the satisfaction of the Responsible Authority.



8. Following completion of the development, and prior to its occupation, an Acoustic Report to the satisfaction of the responsible authority must be submitted to, and be approved by, the responsible authority. The Acoustic Report must be prepared by a suitably qualified acoustic engineer and must demonstrate compliance of the mechanical plant with both State Environment Protection Policy (Noise from Commerce, Industry and Trade) No. N-1, sleep disturbance targets and Noise Protocol (as relevant) at existing dwellings. When approved, the Acoustic Report will be endorsed and will then form part of this permit.
9. The provisions, recommendations and requirements of the post completion endorsed Acoustic Report must be implemented and complied with to the satisfaction of the Responsible Authority.

#### Wind Impact Assessment

10. Before the use and/or development commences, an amended Wind Assessment to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Wind Assessment will be endorsed and will form part of this permit. The amended Wind Assessment must be generally in accordance with the Wind Assessment prepared by Windtech Consultants and dated 22 January 2021, but modified to include or show:
  - (a) Assess the proposal as amended pursuant to Condition 1 with the following confirmed:
    - (i) Walking criterion achieved for the surrounding footpaths;
    - (ii) Short exposure criterion achieved for the building entrances, the Level 02 and Level 05 communal terraces and Level 07 roof terrace.
11. The provisions, recommendations and requirements of the endorsed Wind Assessment Report must be implemented and complied with to the satisfaction of the Responsible Authority.

#### Waste Management Plan

12. Before the use and/or development commences, an amended Waste Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Waste Management Plan will be endorsed and will form part of this permit. The amended Waste Management Plan must be generally in accordance with the Waste Management Plan prepared by OneMileGrid, dated 2 June 2021, but modified to include or show:
  - (a) The location of the 1 x 80 litre bin for glass.
13. The provisions, recommendations and requirements of the endorsed Waste Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.
14. The collection of commercial waste from the site must be by private collection, unless with the prior written consent of the Responsible Authority.

#### Landscape Plan

15. 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.

### Street Trees

16. Before the use and/or development commences, a Tree Management Plan to the satisfaction of the Responsible Authority must be prepared by a suitably qualified Arborist and must be submitted to and approved by the Responsible Authority. When approved the Tree Management Plan will be endorsed and will form part of this permit.

The Tree Management Plan must make recommendations for the protection of the street tree located within the Mason Street road reserve, including:

- (a) pre-construction;
- (b) during construction; and
- (c) post construction
- (d) the provision of any barriers;
- (e) any pruning necessary; and
- (f) watering and maintenance regimes,

to the satisfaction of the Responsible Authority.

17. The provisions, recommendations and requirements of the endorsed Tree Management Plan must be complied with and implemented to the satisfaction of the Responsible Authority
18. Before the use and/or development commences, the permit holder must provide a security bond of \$5,000 for the retained street tree to the Responsible Authority. The security bond:
- (a) must be provided in a manner, and on terms, to the satisfaction of the Responsible Authority;
  - (b) may be held by the Responsible Authority until the works are completed to the satisfaction of the Responsible Authority; and
  - (c) in accordance with the requirements of this permit; or
  - (d) otherwise to the satisfaction of the Responsible Authority.
19. Before the buildings are occupied, or by such later date as approved in writing by the Responsible Authority, the permit holder must make a one-off contribution of \$3,045 to the Responsible Authority for the sourcing, installation and 2 year maintenance of three street trees within Mason and Oxford Streets.

### Green Travel Plan

20. The provisions, recommendations and requirements of the endorsed Green Travel Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

### Use

21. Except with the prior written consent of the Responsible Authority, the office use authorised by this permit may only operate between the following hours:
- (a) Monday to Friday: 7:00am – 6:00pm.
22. Except with the prior written consent of the Responsible Authority, the use of the office terraces are restricted to the hours referenced within Condition 21.
23. No more than 50 staff members are permitted on the roof terrace at any one time.

24. The amenity of the area must not be detrimentally affected by the use or development, including through:
- (a) the transport of materials, goods or commodities to or from land;
  - (b) the appearance of any buildings, works or materials;
  - (c) the emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or
  - (d) the presence of vermin.
- to the satisfaction of the Responsible Authority.
25. 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.

#### Lighting

26. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, external lighting capable of illuminating 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.

#### General

27. Finished floor levels shown on the endorsed plans must not be altered or modified without the prior written consent of the Responsible Authority.
28. 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.
29. Before the development is occupied, or by such later date as approved in writing by the Responsible Authority, all screening and other measures to prevent overlooking as shown on the endorsed plans must be installed to the satisfaction of the Responsible Authority. Once installed the screening and other measures must be maintained to the satisfaction of the Responsible Authority.
30. 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.
31. All buildings and works must be maintained in good order and appearance to the satisfaction of the Responsible Authority.
32. 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.
33. The development must comply at all times with the State Environment Protection Policy – Control of Noise from Commerce, Industry and Trade (SEPP N-1).
34. The development must comply at all times with the State Environment Protection Policy – Control of Music Noise from Public Premises (SEPP N-2).

### Public Realm Plan

35. Before the use and/or development commences, or by such later date as approved in writing by the Responsible Authority, a Public Realm Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The Public Realm Plan must show the following:
- (a) Detailed design plans of a flush cut planting area on Mason Street within the no-standing zone near the intersection of Oxford Street must be prepared to Council's satisfaction and in accordance with any requirements or conditions imposed by Council.
  - (b) A swept path diagram assessment (for a 10m service vehicle turning from Mason Street into Oxford Street) is to be provided demonstrating that the proposed planting area does not conflict with road traffic.

All to the satisfaction of the Responsible Authority.

36. Before the building is occupied, all works associated with the Public Realm Plan as shown on the endorsed plans and Public Realm Plan (referred to in Condition 35) must be fully constructed and completed by the permit holder, with all costs borne by the permit holder, to the satisfaction of the Responsible Authority.

### Road Infrastructure

37. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, the footpath along the frontages to Oxford Street and Mason Street must be profiled and re-sheeted:
- (a) at the permit holder's cost; and
  - (b) to the satisfaction of the Responsible Authority.
38. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, the redundant vehicular crossings on Oxford Street and Mason Street must be demolished and re-instated as standard footpath and kerb and channel:
- (a) at the permit holder's cost; and
  - (b) to the satisfaction of the Responsible Authority.
39. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, any damage to Council infrastructure resulting from the development (including trenching and excavation for utility service connections) must be reinstated:
- (a) at the permit holder's cost,
  - (b) to the satisfaction of the Responsible Authority.
40. Except with the prior written consent of the Responsible Authority, Council assets must not be altered in any way.
41. Prior to the completion of the development, subject to the relevant authority's consent, the relocation of any service poles, street line markings, car parking sensors, service structures or service pits necessary to facilitate the development must be undertaken:
- (a) at the permit holder's cost; and
  - (b) to the satisfaction of the Responsible Authority.

42. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, the removal of any kerbside parking sensors and any reinstatement of parking sensors will require the Permit Holder to pay Council the cost of each parking sensor taken out from the kerb/footpath/roadway. Any costs associated with the reinstatement of road infrastructure due to the removal of the parking sensors must also be borne by the Permit Holder.

#### Development Infrastructure Levy

43. Prior to the issue of a building permit, commencement of the development, or issue of a Statement of Compliance (whichever occurs first) 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 amount of the levy within a time specified in the agreement.

#### Construction Management Plan

44. Before the use and/or development commences, a Construction Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will form part of this permit. The plan must provide for:
- (a) a pre-conditions survey (dilapidation report) of the land and all adjacent Council roads frontages and nearby road infrastructure;
  - (b) works necessary to protect road and other infrastructure;
  - (c) remediation of any damage to road and other infrastructure;
  - (d) containment of dust, dirt and mud within the land and method and frequency of clean up procedures to prevent the accumulation of dust, dirt and mud outside the land;
  - (e) facilities for vehicle washing, which must be located on the land;
  - (f) the location of loading zones, site sheds, materials, cranes and crane/hoisting zones, gantries and any other construction related items or equipment to be located in any street;
  - (g) site security;
  - (h) management of any environmental hazards including, but not limited to,:
    - (i) contaminated soil;
    - (ii) materials and waste;
    - (iii) dust;
    - (iv) stormwater contamination from run-off and wash-waters;
    - (v) sediment from the land on roads;
    - (vi) washing of concrete trucks and other vehicles and machinery; and
    - (vii) spillage from refuelling cranes and other vehicles and machinery;
  - (i) the construction program;
  - (j) preferred arrangements for trucks delivering to the land, including delivery and unloading points and expected duration and frequency;
  - (k) parking facilities for construction workers;
  - (l) measures to ensure that all work on the land will be carried out in accordance with the Construction Management Plan;
  - (m) an outline of requests to occupy public footpaths or roads, or anticipated disruptions to local services;
  - (n) an emergency contact that is available for 24 hours per day for residents and the Responsible Authority in the event of relevant queries or problems experienced;
  - (o) the provision of a traffic management plan to comply with provisions of AS 1742.3-2002 Manual of uniform traffic control devices - Part 3: Traffic control devices for works on roads;

- (p) a Noise and Vibration Management Plan showing methods to minimise noise and vibration impacts on nearby properties and to demonstrate compliance with Noise Control Guideline 12 for Construction (Publication 1254) as issued by the Environment Protection Authority in October 2008. The Noise and Vibration Management Plan must be prepared to the satisfaction of the Responsible Authority. In preparing the Noise and Vibration Management Plan, consideration must be given to:
  - (i) using lower noise work practice and equipment;
  - (ii) the suitability of the land for the use of an electric crane;
  - (iii) silencing all mechanical plant by the best practical means using current technology;
  - (iv) fitting pneumatic tools with an effective silencer;
  - (v) other relevant considerations.
- (q) any site-specific requirements.

45. During the construction:

- (a) any stormwater discharged into the stormwater drainage system must be in compliance with Environment Protection Authority guidelines;
- (b) 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;
- (c) vehicle borne material must not accumulate on the roads abutting the land;
- (d) the cleaning of machinery and equipment must take place on the land and not on adjacent footpaths or roads; and
- (e) all litter (including items such as cement bags, food packaging and plastic strapping) must be disposed of responsibly.

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

47. Except with the prior written consent of the Responsible Authority, demolition or construction works must not be carried out:

- (a) Monday-Friday (excluding public holidays) before 7 am or after 6 pm;
- (b) Saturdays and public holidays (other than ANZAC Day, Christmas Day and Good Friday) before 9 am or after 3 pm;
- (c) Sundays, ANZAC Day, Christmas Day and Good Friday at any time.

Time Expiry

48. 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 office use is not commenced within five 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

**Notes:**

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

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.

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.

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.

Any services poles, structures or pits that interfere with the proposal must be adjusted, removed or relocated at the owner's expense after seeking approval from the relevant authority.

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.

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

Council will not permit clean groundwater from below the groundwater table to be discharged into Council's drainage system. Basements that extend into the groundwater table must be waterproofed/tanked.

### **Environmental Audit Overlay**

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

## **Attachments**

- 1 PLN20/0747 - 1-13 Oxford Street, Collingwood - Decision Plans (advertised)
- 2 PLN20/0747 - 1-13 Oxford Street, Collingwood - Without Prejudice Sketch Plans and WMP (2 June 2021)
- 3 PLN20/0747 - 1-13 Oxford Street, Collingwood - ESD referral
- 4 PLN20/0747 - 1-13 Oxford Street, Collingwood - Strategic Transport referral
- 5 PLN20/0747 - 1-13 Oxford Street, Collingwood - Engineering referral
- 6 PLN20/0747 - 1-13 Oxford Street, Collingwood - Urban Design (internal) referral
- 7 PLN20/0747 - 1-13 Oxford Street, Collingwood - Open Space Unit referral
- 8 PLN20/0747 - 1-13 Oxford Street, Collingwood - City Works referral
- 9 PLN20/0747 - 1-13 Oxford Street, Collingwood - Streetscapes & Natural Values referral



- 10** PLN20/0747 - 1-13 Oxford Street, Collingwood - Strategic Planning referral
- 11** PLN20/0747 - 1-13 Oxford Street, Collingwood - Acoustic (external) referral
- 12** PLN20/0747 - 1-13 Oxford Street, Collingwood - Wind (external) referral
- 13** PLN20/0747 - 1-13 Oxford Street, Collingwood - Urban Design (external) referral

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**6.5 PLN13/0538.01 - 45 Rose Street Fitzroy**

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## **Executive Summary**

### **Purpose**

1. This report provides Council with an assessment of the proposed amendment application to Planning Permit No. PLN13/0538 at No. 45 Rose Street, Abbotsford which seeks to allow for the ground floor western-most tenancy to be used as a wine bar, the sale and consumption of liquor (on and off premises), external alterations and the construction and display of signage.

### **Key Planning Considerations**

2. Key planning considerations include:
  - (a) Clause 21.04 and 34.01 – Land Use and Mixed Use Zone
  - (b) Clause 22.05 – Interfaces Uses Policy
  - (c) Clause 22.09 and Clause 52.27 – Licensed Premises
  - (d) Clause 43.01 – Heritage Overlay
  - (e) Clause 52.05 - Signs

### **Key Issues**

3. The key issues for Council in considering the proposal relate to:
  - (a) Policy and Strategic Support.
  - (b) Sale and consumption of liquor.
  - (c) Signage.
  - (d) Buildings and works / Heritage.
  - (e) Objector Concerns.

### **Submissions Received**

4. Twenty Three (23) (one later withdrawn) objections were received to the application, these can be summarised as:
  - (a) Amenity impacts (noise, patrons queueing, smoking and entering/exiting the premises);
  - (b) Patron usage of communal areas including a toilet within the larger building;
  - (c) Sale and consumption of alcohol will impact the functioning of Garryowen Park;
  - (d) Amenity impacts from deliveries to and waste collection from the premises;
  - (e) Car parking requirements for patrons;
  - (f) Impacts from potential footpath trading;
  - (g) Venue will increase opportunities for Covid-19 transmission;
  - (h) Noise impacts from the emptying of bins/bottles; and
  - (i) The consent of the owners corporation has not been obtained by the applicant.
5. Fifteen (15) letters of support were 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 subject to conditions as detailed within the 'recommendation' section of this report.

**CONTACT OFFICER:** Jacob Martin  
**TITLE:** Statutory Planner  
**TEL:** 9205 5018

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## 6.5 [PLN13/0538.01 - 45 Rose Street Fitzroy](#)

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**Reference** D21/62410  
**Author** Jacob Martin - Statutory Planner  
**Authoriser** Co-Ordinator Statutory Planning

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**Ward:** Nicholls  
**Proposal:** Section 72 Amendment to Planning Permit PLN13/0538 to allow for the ground floor western-most tenancy to be used as a wine bar, the sale and consumption of liquor (on and off premises), external alterations and the construction and display of signage.  
**Existing use:** Multi-storey, mixed-use building  
**Applicant:** ReWine C/- GrayKinnane  
**Zoning / Overlays:** Mixed Use Zone  
 Heritage Overlay (Schedule 334)  
 Environmental Audit Overlay  
 Development Contributions Plan Overlay  
**Date of Application:** 4 December 2020  
**Application Number:** PLN13/0538.01

### Planning History

1. Following mediation between Council, the applicant and objectors, Planning Permit PLN13/0538 was granted at the direction of the Victorian Civil and Administrative Tribunal (VCAT) on 23/12/2013. The permit allows for the demolition of the existing building, development of a six storey building (not including basement) for a mixed studio / retail and residential development, and a reduction in the provision of car parking. This permit is subject to the currently considered amendment application.

### Background

2. The development as approved under PLN13/0538 was constructed and completed in mid-late 2015.
3. Planning permit SP15/0037 was issued by Council on 18 September 2015 for a 25 lot subdivision at the site. The proposal will utilise the common waste storage area located within the common property shown on the endorsed plan of subdivision.

### [Lodgement of S57A plans](#)

4. Following advertising of the application, the applicant submitted a set of plans under Section 57a of the Planning and Environment Act 1987 on 15 April 2021. These plans amended the proposal to include:
  - (a) The proposed ground floor wine bar reconfigured with a toilet within the tenancy itself (previously relying on the existing shared toilet within the larger building).
  - (b) A reduction in the licensed hours from 10am - 10pm (as previously advertised) to 10am - 9pm, 7 days a week.
  - (c) Various changes to the Noise and Amenity Action Plan.
5. These amended plans were re-advertised to all parties and now form the “decision plans” for the proposal.

6. It is noted that the amended plans no longer show the entire ground floor of the site (rather only the subject tenancy). The entire ground floor plan was previously shown on the advertised plans and is necessary to ensure details of the existing ground floor are retained on the plans. A condition is recommended to require these details be shown on the plans for consistency purposes.

## The Proposal

7. The proposal is for a Section 72 Amendment to Planning Permit PLN13/0538 to allow for the ground floor western-most tenancy to be used as a wine bar, the sale and consumption of liquor (on and off premises), external alterations and the construction and display of signage.

### *Use and Sale and Consumption of Liquor*

8. The proposed wine bar is to sell liquor on the premises as well as packaged wine for customers to consume off the premises.
9. The sale and consumption of liquor will occur between the hours of 10am to 9pm, 7 days a week.
10. The site is to have no more than 18 patrons at any one time.
11. Music will be limited to background music only. No live music is proposed.
12. The proposal will utilise the existing bins dedicated to the approved studio/office uses at ground floor.

### *Buildings and works*

13. The internal layout of the affected tenancy will be reconfigured to allow for the proposal, with a bar to the north-west corner, a toilet to the north-east and tables and chairs to the south:

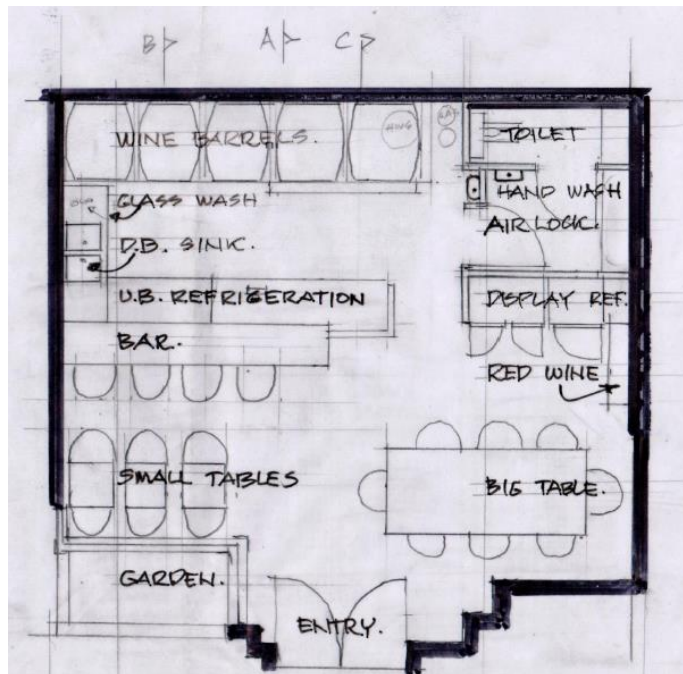


Image 1: Proposed internal layout of the wine bar (Decision Plans, 2021)

14. External alterations are limited to the front door to provide for a set of double doors (single door under the existing conditions).

### *Signage*

15. A total of 6 gold coloured, circular logos, 600mm wide and located on windows and the southern wall of the tenancy.

## Existing Conditions

### Subject Site

16. The wider subject site is the building as approved under PLN13/0538 which includes a central foyer to Rose Street flanked by two studios to the east and west. The studios are accessed directly from entrances to Rose Street, with no internal access to the larger building. The central foyer provides access to ground floor car parking to the north, and basement parking below as well as 5 levels of apartment dwellings above.
17. The subject tenancy is limited to the western-most of the two ground floor studios. It is formally known as Lot 1 on Plan of Subdivision 726100Y and is approximately rectangular with a projection portion towards the central Rose Street entrance. The tenancy has an approximate maximum width and depth of 7.6m and an overall area of 53sqm.
18. The subject tenancy faces south to Rose Street where it is primarily comprised of glazing, which surrounds the front entrance continuing to the west and along the west side of the tenancy of the site. A service cupboard surrounded by landscaping is located at the south-west corner of the tenancy (visible in images 2 and 3 below).



*Image 2: Site frontage to Rose Street (Officer Photo, 2021)*





*Image 3: Site frontage to Mechanics Lane (Officer Photo, 2021)*



*Image 4: Far side of the street, looking south-east (Officer Photo, 2021)*



*Image 5: Wider streetscape, looking west (subject site to right) (Officer Photo, 2021)*



## Surrounding Land

19. The surrounding land is predominantly located within a Mixed Use Zone. The zone terminates to the north of the site, but extends for a length of 180m to the north-east of the site, 243m to the south, 102m to the west and 127m to the east. The surrounding precinct can best be described as a mix of land uses (including dwellings, cafes, offices and historic commercial uses) and building types. There is an emerging character of mid-rise mixed use buildings as evident through significant recent construction and planning permit activity in the immediate surrounds.

### *North*

20. North of the subject tenancy is the rear ground floor car parking associated with the larger building. The bin room for the overall site is located towards the north-western corner of this car park.
21. Beyond the larger building is Garryowen Lane which runs against the rear of dwellings fronting Leicester Street further north. The surrounding area to the north is generally characterised by low-scale residential dwellings, with some interspersed commercial and industrial uses. Garryowen Park is located to the northwest.

### *East*

22. To the east of the subject tenancy is the common entry/lobby to the larger building, the subject tenancy is reasonably well separated from this residential entrance, with services cupboards separating the two entrances. The second studio space is located beyond.
23. Further east is No. 61 Rose Street, a multi-storey residential building as approved under PLN11/0576 which is of a similar scale to that at the subject site (at 6 storeys) but contains only residential uses. Immediately abutting the common boundary with the subject site is a ground floor 'waste' area with dwellings located above.

### *West*

24. Immediately west of the subject tenancy at ground level is narrow strip of land associated with the building to the east (No. 61 Rose Street), which contains space for parallel parking spaces accessed from Mechanics Lane. The larger building containing the subject tenancy partially cantilevers over these parking spaces. Mechanics Lane further west provides a connection to Garryowen Lane to the north, and Leicester Street beyond.
25. Further west is No. 35 Rose Street which is currently under construction in accordance with Planning Permit PL06/0640, which allows for partial demolition and the construction of three additional levels (a total of 5) and a reduction in the car parking requirements. Furthermore, Council has received Planning Permit Application PLN21/0261 on this site for a reduction in car parking requirements in association with retail uses at ground level. This application is currently awaiting further information pursuant to section 54 of the *Planning and Environment Act 1987*.

### *South*

26. On the opposite side of Rose Street are dwellings within a three storey residential building located at No. 42 Rose Street, developed under PL01/0187.
27. To the south-east at No. 48 Rose Street is a multi-storey mixed-use building as approved under PLN12/0951. This building includes ground floor commercial tenancies (food and drinks premises and shop) with dwellings located behind and above. These commercial uses include associated business identification signage located within their windows as well as projecting from the Rose Street façade. The Rose Street Market is at No. 60 Rose Street, which also includes a combination of business identification and promotional signage at the ground floor façade of the site.

*General Surrounds*

28. The area is well serviced by public transport with trams running along Brunswick Street (approx. 170m to the east) and Nicholson Street (approx. 130m to the west), which provide connections to the northern suburbs, south-eastern suburbs and the city. Bus routes are also present along Johnston Street (approx. 300m to the south) and Alexandra Parade (approx. 320m to the north) which connect the eastern suburbs and the city.
29. The following licensed premises are within 150m of the site (excluding Restaurants, Cafés and Limited Licenses):
- (a) Absinthesalon located at 78-82 Rose Street (approx. 100m to the east) appears to have closed but retains an active on-premises license through December 2021. The venue is permitted to operate between 12.00noon and 11pm Sunday to Wednesday and 12noon and 1am (the following day) Thursday to Sunday, with a maximum of 70 patrons.
- (b) Near & Far Bar located at 373 Brunswick Street (approx. 150m to the east) has a General License. The venue is permitted to provide liquor off-premises:
- (i) Good Friday and ANZAC Day, between 12noon and 11pm.
  - (ii) Sunday to Thursday, between 11am and 11pm.
  - (iii) Friday and Saturday, between 10am and 11pm.
- Liquor can be sold and consumed on-premises:
- (iv) Good Friday and ANZAC Day, between 12noon and 11pm.
  - (v) Sunday to Thursday, between 11am and 11pm.
  - (vi) Friday and Saturday, between 10am and 1am (the following morning).
- With a maximum of 150 patrons.
- (c) Commercial Club Hotel, located at No. 344 Nicholson Street (approx. 150m to the north-west) has a general license. The venue is permitted to provide liquor off-premises:
- (i) Sunday, between 10am and 11pm.
  - (ii) Good Friday and ANZAC Day, between 12noon and 11pm.
  - (iii) Any other day, between 7am and 11pm.
- Liquor can be sold and consumed on-premises:
- (iv) Sunday, between 10am and 11pm.
  - (v) Good Friday between 12noon and 11pm.
  - (vi) ANZAC Day (not being a Sunday) between 12noon and 1am (the following day).
  - (vii) Any other day, between 7am and 1am (the following day except for the morning of good Friday).
- After 12 midnight the venue has a maximum of 113 patrons across three rooms.
- (d) Avalon the Bar, located at No. 387 Brunswick Street (approx. 140m to the east) has an on-premises license. The venue is permitted to provide liquor on-premises:
- (i) Monday to Sunday, between 12 noon and 1am the following morning.
- The venue has a maximum capacity of 48 patrons.
- (e) Rice Queen Oriental Diner and Bar, located at No. 389-391 Brunswick Street (approx. 140m to the north-east) has a general license. The venue is permitted to provide liquor off-premises:
- (i) Good Friday & Anzac Day, between 12 noon and 11 p.m.

- (ii) On any other day, between 10 a.m. and 11 p.m.

Liquor can be sold and consumed on-premises:

- (iii) Good Friday & Anzac Day, between 12 noon and 12 midnight.
- (iv) On any other day, between 7 a.m. and 1 a.m. the following morning except for Good Friday & Anzac Day mornings.

The venue has a maximum capacity of 150 patrons.

- (f) Glamorama Bar, located at No. 393-395 Brunswick Street (approx. 150m to the north-east) has a late night (on-premises) license. The venue is permitted to provide liquor on-premises:

- (i) Sunday, between 10am and 3am the following morning.
- (ii) Good Friday & Anzac Day, between 12noon and 3am the following morning.
- (iii) Monday to Thursday, between 8am and 3am the following morning.
- (iv) Friday & Saturday, between 8am and 5am the following morning.
- (v) Eve of Public Holidays Allow trading until 5am the following morning.

The venue has a maximum capacity of 200 patrons.



Image 6: Site Surrounds – subject tenancy site yellow (Nearmap, 2021)

## Planning Scheme Provisions

### Zoning

#### *Mixed Use Zone*

- 30. It is noted that a 'wine bar' (with sale of liquor for consumption on and off premises) is not a defined land use in Clause 71 of the Scheme. As such, it is most appropriate to apply the broader 'food and drink premises' use as the most suitable land use term to describe the proposal.
- 31. Pursuant to Clause 32.04-2 of the Scheme, a food and drink premises (bar) is a section 1 use on the condition that it does not exceed 150sqm in leasable floor area. The proposal has a floor area of 53sqm and therefore a planning permit is not required for the use.
- 32. Pursuant to Clause 32.04-15 of the Scheme advertising sign requirements are contained at Clause 52.05. This zone is in Category 3 (High amenity areas) with regard to signage.

## Overlays

### *Environmental Audit Overlay*

33. Pursuant to Clause 45.03-1 of the Scheme, before a sensitive use (which includes a residential use) commences or before the construction or carrying out of buildings and works in association with a sensitive use commences, either:
- (a) *a certificate of environmental audit must be issued for the land in accordance with Part IXD of the Environment Protection Act 1970, or*
  - (b) *an environmental auditor appointed under the Environment Protection Act 1970 must make a statement in accordance with Part IXD of that Act that the environmental conditions of the land are suitable for the sensitive use.*
34. A note highlighting these requirements is present on the existing planning permit.

### *Heritage Overlay*

35. Pursuant to Clause 43.01-1 of the Scheme, a permit is required to construct a building or construct or carry out works and to construct or display a sign.

### *Development Contributions Plan Overlay*

36. Pursuant to the schedule to the Development Contributions Plan Overlay, a development infrastructure levy and community infrastructure levy applies to an application that generates an increase in gross floor area. Given that the gross floor area is not proposed to increase, a permit is not required under the overlay.

## Particular Provisions

### *Clause 52.05 – Signs*

37. Pursuant to Category 3 (High amenity areas), Business identification signs are Section 2 (permit required).

### *Clause 52.06 – Car parking*

38. Pursuant 52.06-2 of the Scheme states that before a new use commences, the number of car spaces required under Clause 52.06-5 must be provided on the land to the satisfaction of the Responsible Authority.
39. Table 1 of Clause 52.06-5 identify the following rates associated with the existing uses and proposed use:
- (a) Shop (i.e. retail) - 3.5 spaces per 100sqm of leasable floor area.
  - (b) Food and drink premises - 3.5 spaces per 100sqm of net floor area.
40. Pursuant to Clause 52.06-4, a permit is not required to reduce the number of car parking spaces required for a new use of land if the number of car parking spaces required under Clause 52.06-5 for the new use is less than or equal to the number of car parking spaces required under Clause 52.06-5.
41. The existing conditions on site are that the ground floor tenancy is used as a “studio/retail” (i.e. shop). Both shop and food and drinks premises generate a car parking demand of 3.5 spaces per 100sqm of leasable/net floor area. As this proposed car parking rate is equal to the existing car parking demand rate, there is no trigger for a reduction in car parking associated with the use as a food and drink premises.

### *Clause 52.27 Licensed Premises*

42. Pursuant to Clause 52.27 of the Scheme, a planning permit is required to use the land to sell or consume liquor if a licence is required under the *Liquor Control Reform Act 1998*. The requirement to obtain a planning permit is therefore triggered under Clause 52.27 of the Scheme.
43. The policy will be discussed further in the *Assessment* section of this report.

## General Provisions

### *Clause 65 – Decision Guidelines*

44. 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.

## Planning Policy Framework (PPF)

### *Clause 13.05-1S – Noise Abatement*

45. The objective of this clause is:
- (a) *To assist the control of noise effects on sensitive land uses.*

### *Clause 13.07-1S – Land use compatibility*

46. 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 15.01-2S – Building design*

47. The objective of this clause is:
- (a) *To achieve building 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 15.03-1S – Heritage conservation*

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

### *Clause 17.01-1S – Diversified economy*

50. The objective of this clause is:
- (a) *To strengthen and diversify the economy.*
51. The relevant strategies set out to achieve this objective 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 close to where people live.*

### *Clause 17.02-1S – Business*

52. The objective of this clause is:
- (a) *To encourage development that meets the community’s needs for retail, entertainment, office and other commercial services.*
53. The relevant strategies set out to achieve this objective includes:
- (a) *Ensure commercial facilities are aggregated and provide net community benefit in relation to their viability, accessibility and efficient use of infrastructure.*
- (b) *Locate commercial facilities in existing or planned activity centres.*

## Local Planning Policy Framework (LPPF)

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*Clause 21.03 – Vision*

54. A key vision for the city of Yarra is to include land use that:
- (a) *Will accommodate a diverse range of people, including families, the aged, the disabled, and those who are socially or economically disadvantaged.*

*Clause 21.04 – Land Use*

*Clause 21.04-3 – Industry, office and commercial*

55. The objective of this clause is:
- (a) *To increase the number and diversity of local employment opportunities.*

*Clause 21.08 – Neighbourhoods*

*Clause 21.08-7 – Fitzroy*

56. The clause specifies the following:
- (a) *Fitzroy is a mixed commercial and residential neighbourhood notable for the consistency of its Victorian streetscapes. It comprises a dense combination of residential areas, shopping precincts and commercial/ industrial activities.*
  - (b) *The role of the Brunswick Street centre can be characterised as hospitality, entertainment, clothing and footwear, art galleries and studios, and non-government community services, all with a metropolitan focus.*

[Relevant Local Policies](#)

*Clause 22.02 – Development guidelines for sites subject to the Heritage Overlay*

57. This policy provides guidance for the protection and enhancement of the City's identified places of cultural and natural heritage significance. The relevant objectives of this clause are:
- (a) *To conserve Yarra's natural and cultural heritage;*
  - (b) *To conserve the historic fabric and maintain the integrity of places of cultural heritage significance;*
  - (c) *To retain significant viewlines to, and vistas of, heritage places;*
  - (d) *To preserve the scale and pattern of streetscapes in heritage places;*
  - (e) *To encourage the preservation, maintenance, restoration and where appropriate, reconstruction of heritage places;*
  - (f) *To ensure the adaptation of heritage places is consistent with the principles of good conservation practice;*
  - (g) *To ensure that additions and new works to a heritage place respect the significance of the place.*

*Clause 22.04 – Advertising signs policy*

58. This policy applies to all permit applications for development that incorporate signage. The relevant objectives of this policy are:
- (a) *To allow for the promotion of goods and services.*
  - (b) *To ensure that signs contribute to and do not detract from the visual amenity of commercial precincts, activity centres and residential areas.*
  - (c) *To minimise visual clutter.*
  - (d) *To ensure that signs are not the dominant element in the streetscape*

*Clause 22.05 – Interface uses policy*

59. This policy applies to applications for use or development within the Mixed Use Zone. The relevant objectives of this clause are:

- (a) *To enable the development of new residential uses within and close to shopping 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.*
- (b) *To ensure that residential uses located within or near commercial centres or near industrial uses enjoy a reasonable level of amenity.*

*Clause 22.09 – Licensed Premises*

60. This policy applies to an application under Clause 52.27 (Licensed Premises). The objectives of this clause are:
- (a) *To protect the amenity of nearby properties and areas by effectively managing the location, size, operation and hours of licensed premises.*
  - (b) *To encourage best practice venue design and venue operation for licensed premises.*
  - (c) *To protect residential and other commercial uses from excess noise, traffic and car parking issues.*
  - (d) *To provide for daytime trade and active street frontages in retail strips, while providing the reasonable commercial opportunities for the trading of licensed premises.*

## Advertising

61. The application was advertised under the provisions of Section 52 of the *Planning and Environment Act (1987)* by 222 letters sent to surrounding owners and occupiers and by a sign displayed on site. Council received 23 objections (one later withdrawn) and 15 letters of support, the grounds of which are summarised as follows:
- (a) Amenity impacts (noise, patrons queueing, smoking and entering/exiting the premises);
  - (b) Patron usage of communal areas including a toilet within the larger building;
  - (c) Sale and consumption of alcohol will impact the functioning of Garryowen Park;
  - (d) Amenity impacts from deliveries to and waste collection from the premises;
  - (e) Car parking requirements for patrons;
  - (f) Impacts from potential footpath trading;
  - (g) Venue will increase opportunities for Covid-19 transmission;
  - (h) Noise impacts from the emptying of bins/bottles; and
  - (i) The consent of the owners corporation has not been obtained by the applicant.
62. A planning consultation meeting was not held given the COVID-19 Pandemic.
63. Following advertising and in response to objections raised a Section 57A amendment was lodged, these plans were re-advertised by a further 238 letters sent to those who were previously advertised to as well as objectors. Subsequently 1 objection was withdrawn.

## Referrals

64. The referral comments are based on the originally advertised plans as the decision plans amended under Section 57a do not result in additional amenity impacts (being largely in response to objections) and do not materially change the proposal.

### External Referrals

65. The application was not required to be referred (or notice given) to any referral authorities under Clause 66 of the Yarra Planning Scheme.

### Internal Referrals

66. The application was referred to the following units within Council:
- (a) Compliance (Community Amenity)



- (b) Social Planning
- (c) City Works

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

#### External Consultants

- 68. An Acoustic Assessment (dated 4 February 2021 and prepared by Marshall Day Acoustics) was referred to SLR Consulting (Acoustic Engineers).
- 69. The Acoustic report and referral comments from SLR consultants have been included as attachments to this report. The Acoustic Report will form the basis of the assessment and decision.

### OFFICER ASSESSMENT

- 70. The primary considerations for this application are as follows:
  - (a) Policy and Strategic Support;
  - (b) Sale and consumption of liquor;
  - (c) Signage;
  - (d) Buildings and works / Heritage; and
  - (e) Objector concerns.

#### Policy and Strategic Support

- 71. There is broad strategic support for the proposal within the Planning Policy Framework for the sale and consumption of liquor in this location, given the proximity to several Activity Centres including the Brunswick Street Major Activity Centre. These policies seek to encourage development which meets the communities' needs for retail, entertainment, office and other commercial services and provides net community benefit in relation to accessibility, efficient infrastructure use and the aggregation and sustainability of commercial facilities, provided that a balance is achieved in relation to off-site amenity impacts. The purpose of the Mixed Use Zone includes *to provide for a range of residential, commercial, industrial and other uses which complement the mixed-use function of the locality*. The proposal will serve to achieve this purpose.
- 72. The application is for sale and consumption of liquor on the premises in association with a proposed wine bar (food and drinks premises). The purpose of the Mixed Use Zone also seeks to provide for a range of residential, commercial, industrial and other uses, which complement the mixed use function of a location. It is also noted that within the Mixed Use Zone a food and drinks premises with a floor area of less than 150sqm (such as the proposal) is a Section 1 (permit not required) use. This shows that smaller boutique food and drink offerings are envisaged uses within the zone, as is proposed by the currently considered application. Accordingly, the proposal will therefore be consistent with the purpose of the Zone.
- 73. Clauses 13.04-1 and 21.04-2 of the Scheme identify that noise and the interface between uses must be managed appropriately, particularly in a municipality such as Yarra where almost all residents are within 400m of an activity centre. Abutting uses along the length of the strips are generally residential, creating interface conflicts where some uses are not well managed or inappropriate uses are permitted (Clause 21.04-2). Whilst the proposal has good strategic support from the Scheme, local policy 22.09 specifies decision guidelines. The specific implications of the sale and consumption of liquor will be discussed further in this report, with regard to the interface to residential dwellings around and above the site. The operation of the proposal will be considered against cumulative impact, off-site amenity impacts, and the land use conflicts of the area below.

74. The location of the proposed use is considered to have strategic support given the planning policies encourage the concentration of commercial and entertainment uses in and near Major Activity Centres, such as Brunswick Street, which are well connected to public transport and benefit from existing infrastructure (Clauses 17.02-1S, 17.02-2S and 18.02-2R).
75. Overall, the proposed licenced venue, within the Mixed Use Zone and proximate the Brunswick Street MAC, is considered to comply with strategic planning objectives. The proposed use will contribute to the vibrancy of Rose Street Street, where entertainment uses are specifically encouraged, and the proposed liquor licence will not contradict the related strategic planning objectives.

#### Sale and consumption of liquor

76. The decision guidelines at Clause 52.27 of the Scheme, include the consideration of the impact of the sale or consumption of liquor on the amenity of the surrounding area, the impact of the hours of operation and number of patrons on the amenity of the surrounding area and the cumulative impact of any existing licensed premises and the proposed licensed premises.
77. Clause 22.09 (Licensed premises policy) of the Scheme is Council's local policy to guide the assessment of new or extended licensed premises within the municipality. It contains six key elements that will be considered in the following section.
78. The application proposes the sale of liquor for consumption on and off-site.

#### *Location and Access*

79. The subject site is located approximately halfway between Nicholson Street to the west and Brunswick Street to the east, as discussed in the site surrounds section above, the site is has excellent access to public transport. This is reinforced by the sites location within the Principal Public Transport Network (PPTN) area. It is also anticipated that being proximate to nearby activity centres, taxis and rideshare services would be readily available.
80. With regard to venue's location policy indicates that licenced premises should be located *where the land is not zoned Residential excluding the Mixed Use Zone*. The Mixed Use Zone being specifically excluded from other residential zones is a clear acknowledgement of the purpose of the zone to provide for a mix of both residential and commercial uses with licensed venues specifically included in this mix.
81. The entrance to the proposed wine bar is physically separated from the primary entrance to the building, with red service cupboards providing a clear distinction between the two entryways. The distance between the doors is approximately 9m with the residential entrance clearly presenting as such, being provided with a recessed entryway with visible mailboxes and street numbering. Given this separation, a reasonable buffer between the two entrances is provided. Further discussion regarding impacts from patrons entering and existing or queuing is provided below.



Image 7: proposed south elevation showing separation between wine bar and residential entryways highlighted.

82. The proposal is proximate Garryowen Park to the north-west, given the limited patron numbers and as the closing time is restricted to 9pm, it is not expected that the proposed wine bar will result in any impacts in terms of the amenity or safety of the park. As discussed below, the nature and scope of the proposal is unlikely to result in antisocial behaviour from patrons. Furthermore, given that the proposal will result in an active use at ground floor (as opposed to a vacant tenancy), it is expected that the presence of patrons and staff will provide a level of passive observation, thereby improving the safety of the park and streetscape more broadly.
83. Overall, the location of the premises within the Mixed Use Zone and proximate the Brunswick Street MAC, as well as the access to the venue limited to Rose Street, separated from the residential access to the larger building is supported by policy at Clause 22.09.

*Venue design*

84. Licensed premises should ensure that:
- (a) *The layout and design of new licensed premises incorporate safe design principles as detailed in the Design Guidelines for Licensed Venues (Victorian Commission of Gambling and Liquor Regulation 2017).*
  - (b) *The entry and exits points of a licensed premise and the areas for queuing of patrons are located away from sensitive land uses.*
  - (c) *Waste management and storage is provided on-site, and noise enclosures are provided where bottle crushers are to be used.*
85. The premises meets the relevant layout and design guidelines for the following reasons:
- (a) The high level of glazing to the street along the Rose Street and the return facing Mechanics Lane provide opportunities for informal and passive surveillance of the street and public environment.
  - (b) The entry is provided to Rose Street, away from the residential entrance to the larger building (located further east), providing a clearly distinguishable entry point to the venue.
  - (c) As per the decision plans, a unisex bathroom is to be provided internally to the tenancy.

86. Although the Rose Street footpath is narrow, the setback of the existing building at ground floor provides for a reasonable space for any queuing patrons. Regardless, given the nature of the venue as a boutique offering and its limited size (with no more than 18 patrons) it is not expected that a high amount of queuing will occur. Furthermore, in the event where queuing does occur it will be within the operating hours of the venue, which cease at 9pm and as such will not result in unacceptable noise impacts to residents during hours when they would be asleep.
  87. With respect to waste management, the applicant has provided an updated Waste Management Plan (WMP) associated with the larger building but incorporating the proposed wine bar. The amended WMP does not alter any of the operational aspects of the waste management within the larger building, there is no change to the frequency or method of waste collection.
  88. It is noted that the approved building is provided with separate residential and retail bins, therefore waste produced by the proposed wine bar will have no impact on the residential waste stream (i.e. by taking up space in residential bins or similar).
  89. The amended WMP anticipates a similar (slightly smaller) level of waste to be produced by the proposed wine bar as the approved shop use (previously 0.2m<sup>3</sup> of each garbage and recycling, now 0.19m<sup>3</sup> of each garbage and recycling). The amended WMP has been referred to Council's City Works Branch who have confirmed that the proposed rates are in line with industry standard for a licensed premises.
  90. Furthermore, Council's City Works Branch have confirmed that the amended WMP is suitable subject to a permit condition requiring that provision be made for diverting any food waste from the proposed wine bar.
  91. Noise and Amenity Action Plan (NAAP) submitted confirms that no emptying of bottles into bins will occur after 9pm or before 9am on any day. This complies with policy at Clause 22.09-3 of the Scheme which requires *emptying bottles into bins in outdoor areas should not occur after 10pm on any day, before 7am Monday to Saturday, or before 9am on a Sunday or public holiday.*
  92. In addition, a condition is recommended on any permit issued requiring a sign to be erected at the exit of the venue to advise patrons to respect the amenity of adjacent residential areas and to leave in a quiet and orderly manner.
  93. The NAAP specifies that deliveries to the site will be made by a van and will typically occur during the hours of 10.00am to 12.00noon, Monday to Saturday from parking bays on rose street. This is considered a suitable time for deliveries to occur and will align within the timeframes as outlined at Clause 22.09-3 of the Yarra Planning Scheme , which specifies that *deliveries to and waste collection from a licensed premises should not occur after 10pm on any day, before 7am Monday to Saturday, or before 9am on a Sunday or public holiday except for those allowed under any relevant local law.*
  94. To ensure that deliveries to the site occur during these times it is recommended that this be reinforced by way of Council's standard permit condition.  
*Hours of operation*
  95. The application proposes the sale and consumption of liquor to be carried out between 10.00am and 9.00pm, seven days a week.
  96. Clause 22.09 (Licensed premises policy) provides the following guidelines, relevant to the proposal:
    - (a) *Licensed premises in a Mixed Use Zone should not provide for the sale and consumption of liquor beyond 10pm, unless the responsible authority is satisfied that it will not adversely affect the amenity of the area.*
    - (b) Licensed premises within 30 metres of a residential zone should not provide for the sale and consumption of liquor beyond 11pm, unless the responsible authority is satisfied that it will not adversely affect the amenity of the area.
-

- (c) Packaged liquor outlets should not provide for the sale of liquor after 11pm.
- (d) *Licensed premises (including packaged liquor outlets) should not commence the sale and consumption of liquor before 9am.*

97. The proposed hours for the sale and consumption of liquor comply with the relevant local policy guidelines and thus, it is considered that the sale of liquor for consumption on the premises from 10.00am until 9.00pm will not adversely affect the amenity of the area.

98. This is further confirmed by Council's Social Strategy and Community Development Unit as well as Council's Community Amenity (Compliance) Branch who have both advised that the proposed hours are acceptable.

*Patron numbers*

99. Policy at Clause 22.09 relating to patron numbers aims to ensure that the number of patrons do not exceed the safe and amenable operating capacity of the premises. Additionally, the number of patrons should reflect the strategic and physical context of the site and should not adversely affect the amenity of nearby properties or the surrounding area, including by any unreasonable cumulative impact.

100. The application proposes 18 patrons on the land at any one time. Based on VCGLR's guidelines for maximum patron numbers, a ratio of one (1) person per 0.75sqm should be achieved to prevent overcrowding inside a venue. The applicant has provided a report prepared by Anthony Midline & Associates Building Surveyors which has calculated that the premises will have a floor area of 20sqm accessible to patrons (excluding bar areas etc). This will result in a maximum of 26 patrons. Although it is noted that this calculation is based on the advertised plans and not the 57a plans, it is not anticipated that this will have a material change to this calculation.

101. As such the proposed 18 patron maximum is well within the maximum capacity of the venue and the proposal will not exceed the safe and amenable operating capacity of the premises. A permit condition is recommended to enforce these patron restrictions.

102. As per the guidelines specified in *Planning Practice Note 61: Licensed Premises: Assessing Cumulative Impact*, the subject site is located within a 'cluster' of licenced premises, as there are three or more (including the proposed premises) within a radius of 100 metres of the subject site. Within a 500m radius there are a substantial number of licensed venues.

103. The applicant has provided a cumulative impact assessment, which details the potential cumulative impact of the proposal. This cumulative impact assessment has been reviewed and found acceptable by Council's Social Strategy and Community Development Unit.

104. In terms of the cumulative impact of the proposal the following points are of particular relevance:

- (a) Many license premises within the broader area are concentrated along Johnston Street and Brunswick Street and not within the immediate surrounds of the subject site.
- (b) The proposed closing hours at 9pm are substantially earlier than many licensed venues in the surrounds and do not coincide with the closing hours of other venues.
- (c) The proposal is limited in size, with a maximum of 18 patrons at any one time.
- (d) As detailed above, substantial public transport and taxi/rideshare services are available to patrons.
- (e) The nature of the venue, being a boutique offering and providing seating for 100% of patrons is not anticipated to result in the same level of antisocial behaviour as a more traditional bar or nightclub.

*Noise*

105. In relation to noise, Clause 22.09-3 specifies that:

- (a) *Noise from the operation of the licensed premises should not have an unreasonable impact on the amenity of the area.*

- (b) *Noise emissions from licensed premises should comply with the standards specified in the State Environmental Protection Policy or any other relevant requirement such as accepted sleep disturbance criteria or relevant Australian Standards.*
- (c) *On-site noise attenuation measures should be applied for licensed premises where unreasonable amenity impacts on the surrounding area may result from the proposed activities.*
- (d) *Where required, a licensed premise must be designed and managed in accordance with an acoustic report approved by the responsible authority.*

106. As Condition 5 of the existing planning permit, an acoustic report was required to be prepared and endorsed under the permit. Prior to commencement of the permit, a report in accordance with this condition (prepared by Marshall Day Acoustics, dated 6 June 2014) was approved and endorsed by Council. As specified in this report, the larger building includes acoustic treatment measures to mitigate noise from the ground floor tenancies (amongst other noise sources in the surrounds).
107. In support of the currently considered application the applicant has submitted a further acoustic assessment (prepared Marshall Day Acoustics dated 4 February 2021) which assesses the potential noise impacts from the proposed wine bar. The assessment concludes that the noise from patrons and background music will not be unacceptable having regard to relevant Environmental Protection Authority policy and Association of Australian Acoustical Consultants criteria. Council's acoustic consultants (SLR Consulting) has undertaken a review of this report confirming its findings on the condition that the door to the tenancy remains closed during its operation, with the exception of patron ingress/egress.
108. To ensure that the endorsed acoustic report associated with the proposal remains consistent with the amended proposal it is recommended that a permit condition require that the endorsed acoustic report be updated to show the proposed wine bar and that this assessment include the requirement that the door to the wine bar remain closed during operation. Subject to the inclusion of this condition, it is expected that the proposal will not result in any unacceptable amenity impacts to the dwellings within the approved building and is suitable in terms of noise impacts.
109. The above will be further reinforced by the existing permit Condition 3, which requires that noise emissions from the site comply with the State Environment Policy or any other standard recommended by the Environmental Protection Authority. This condition will remain on the permit and will be applicable to the amended proposal, ensuring ongoing compliance with EPA requirements.
110. The existing permit also includes Council's standard condition specifying that the emptying of bottles into bins in the outdoor area should not occur after 10pm on any day (at Condition 9). It is recommended that this be updated to the contemporary equivalent which further requires that bottles not be emptied before 7am Monday to Saturday, or before 9am on a Sunday or public holiday. It is noted that the Noise and Amenity Action Plan (NAAP) for the proposal further limits the emptying of bottles into bins between 9am and 9pm daily.

*Noise and Amenity Action Plan (NAAP)*

111. Pursuant to Clause 22.09 of the Scheme A NAAP is required for the sale and consumption of liquor in association with the proposed wine bar. The applicant submitted a NAAP (dated April 2021). The Plan addresses relevant management procedures of the venue, including:
- (a) The venue will not utilise the Rose Street footpath for the seating of patrons
  - (b) Waste collection and management will occur in accordance with the existing building, with the emptying of bottles into bins occurring no earlier than 9am or no later than 9pm.
  - (c) No more than 18 patrons on the premises at any one time.
  - (d) The sale and consumption of liquor will be between 10.00am and 9.00pm, seven days a week.

- (e) Any music to be limited to background volume and in accordance with EPA requirements.
  - (f) The responsible service of alcohol at the premises.
112. The provisions within the NAAP are considered appropriate in managing the business operation without causing adverse amenity to the area. A condition is recommended to be included on any permit issued requiring that the operation of the business is carried out in strict adherence to the NAAP.

### Signs

113. It is proposed to install six business identification signs along the Rose Street façade. As identified in the planning controls section, a permit is triggered for the signs under the Mixed Use Zone.
114. The relevant decision guidelines are located at Clause 52.05 of the Scheme, more specific guidance is contained within Council's Advertising Signs policy at Clause 22.04, the proposed signs are consistent with the above policy guidance as follows:
- (a) The display of the proposed signage will be appropriate in the identification of the business address on site and in this location. The subject site is located proximate a major activity centre, where the proposed signage is typical of signs found in the area.
  - (b) The signs are proportional to the host building and will not dominate the Rose Street elevation.
  - (c) The signage is limited in display area comprising 6, circular 0.6m wide signs (0.36sqm each) for a total of 2.16sqm. This is not an unreasonable amount of signage for a business and the signage is considered subtle in terms of their proportions.
  - (d) The proposed signage will be appropriate within the Mixed Use Zone and to the host building, they will not detract from the mixed use character of the surrounding area, or cause visual disorder or clutter (particularly when compared with other nearby signage).
  - (e) There are no illuminated, animated, digital or flashing elements proposed and as such the signage will not impede on the safety of pedestrians and vehicles. The signage is not considered to impact on road safety and will not be a safety hazard.
115. In order to ensure amenity is not impacted by the proposed signs it is recommended that Council's standard conditions regarding signage be included on any permit issued.

### Heritage / Buildings and works

116. The proposed works are restricted to minor external works to the southern façade of the building. Works include only the replacement of a contemporary glazed single door with a double door.
117. Importantly, the building has no heritage value. The proposed works will have a negligible impact on the appearance of the host building or its impact in the wider streetscape, including the heritage precinct.
118. Similarly, the proposed signage, given it is contemporary and located on a contemporary building, it will not have a notable impact in terms of heritage.

### Objector Concerns

119. The majority of the issues raised by the objectors have been addressed within the body of this report, as follows:
- (a) Amenity impacts (noise, patrons queueing, smoking and entering/exiting the premises);  
Assessed throughout the above report at paragraphs 84 – 112.
  - (b) Sale and consumption of alcohol will impact the functioning of Garryowen Park;



Assessed at paragraph 82.

- (c) Amenity impacts from deliveries to and waste collection from the premises;

Assessed above at paragraphs 87 – 90.

- (d) Noise impacts from the emptying of bins/bottles;

Assessed above at paragraphs 91, 110 – 12.

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

- (a) Car parking requirements for patrons;

The proposed amendment does not trigger a permit for any further reduction in car parking as discussed in paragraphs 37 to 40. Therefore, car parking is not a relevant matter under this amendment.

- (b) Patron usage of communal areas including a toilet within the larger building;

Whilst the advertised proposal included the usage of the toilet area within the larger building by patrons, the amended proposal includes a toilet area within the proposed tenancy. Usage of the communal toilet no longer forms part of the NAAP and any arrangement regarding access to common areas is a matter for the Owners Corporation.

- (c) Impacts from potential footpath trading;

The NAAP states that *the footpath area in front of the site along Rose Street will not be used for seating in association with the bar*. Footpath trading does not form part of the proposal.

- (d) Venue will increase opportunities for Covid-19 transmission;

Neither the *Yarra Planning Scheme* nor the *Planning and Environment Act 1987* make any provision in relation to Covid-19 transmissibility. Restrictions in relation to COVID-19 safe practices are continually evolving depending on local transmission incidents and accessible venues must operate under the restrictions imposed by the Government of Victoria (over and above those outlined in permit conditions).

- (e) The consent of the owners corporation has not been obtained by the applicant.

Issues of unapproved works within common property have been addressed in several decisions of the Victorian Civil and Administrative Tribunal (VCAT), such as *H S Rekaris & Associates Pty Ltd v Stonnington CC [2009] VCAT 2585* affecting Unit 3 and common property at 55 Alexandra Avenue, South Yarra. This matter required a planning permit for a deck within common property and where the owners corporation did not consent the works. The tribunal found at Paragraph 14:

*...regardless of whether one or two owners would need to change their minds, [to allow works under the Owners Corporations Act 2006] it is my view that a change of mind (for whatever reason or motivation) is potentially a much simpler and quicker likelihood than a change of policy or a change in elected representatives (in the case of a Council or public authority). As such, I am not persuaded this application is futile.*

The tribunal went to conclude at Paragraph 15:

*The opposition of some of the owners at this time is a relevant factor in the consideration of the overall planning merits of this case. But, in my opinion, this factor is not a determinative one having regard to the overall planning merits and considerations I have already explained in these reasons. I find the proposed deck extension has no unreasonable amenity impacts and no adverse effect on the significance of the heritage place.*

In this instance, the proposal does not involve works within common property but rather external alterations to the southern side of the subject tenancy within Lot 1. However, the proposal does rely on the use of the commercial waste storage area located within common property of the Site.

This case is similar to the subject application, in that the approval of the owner's corporation is subject to change and the planning permit application is therefore not futile. The above assessment has considered the relevant planning merits. Any lack of consent from the owner's corporation is not relevant to this assessment and must be acquired outside of the planning permit process (i.e. as required under the *Owners Corporations Act 2006*).

### Planning Permit Changes

121. Given the new considerations as a result of proposed wine bar within the building, a number of changes are required to the planning permit. These are discussed below.

#### *Planning Permit Preamble*

122. Amended to include the sale and consumption of liquor and signage (new bold and underlined):

*Demolition of the existing building, development of a six storey building (not including basement) for a mixed studio / retail and residential development, a reduction in the provision of car parking, **the sale and consumption of liquor associated with a wine bar, and the construction and display of business identification signage.***

#### *Amended Plans*

123. Given the need to ensure consistency and a high level of detail on the endorsed plans (as discussed earlier in this report), Condition 1 should be deleted and replaced with a requirement for an amended set of plans that shows the entire extent of the ground floor.
124. It is recommended that Condition 2 is updated to reflect all applicable planning permit triggers (use, development, sale and consumption of liquor and signage).

#### *Acoustic*

125. To ensure that a single, consistent acoustic report is endorsed to incorporate the recommendation of Council's Acoustic consultants for the subject amendment, Condition 5 is recommended to be amended to request an updated acoustic report.

#### *Waste Management*

126. To ensure the recommendation of Council's City Works unit is incorporated Condition 7, this condition should be amended to require an amended Waste Management Plan.
127. It is also recommended that a new condition should be inserted to ensure ongoing compliance with the endorsed Waste Management Plan.
128. The existing condition regarding the emptying of bottles into bins (previously Condition 9) is recommended to be relocated to the liquor conditions section of the permit (discussed further below).

### *Landscaping*

129. No changes to the existing endorsed landscape plan are proposed under this amendment. The existing condition requiring an amended landscaping plan (previously Condition 10) is recommended to be deleted for clarity.

### *ESD*

130. As above, there are no changes to the existing endorsed Sustainable Management Plan, and the existing condition requiring its amendment should be deleted. To ensure the provisions of the existing SMP continue to be implemented a condition should be inserted to this effect.

### *Liquor*

131. A series of conditions (as discussed in the body of this report) are recommended to be inserted in a new liquor section of the permit, including the relocated condition regarding the emptying of bottles into bins, restrictions on the operating hours and patron numbers.

### *Signage*

132. Standard conditions ensuring that signage remains unilluminated and be provided to the satisfaction of council are recommended.

### *Expiry*

133. The permit expiry condition should be updated to reference additional permit triggers introduced by the subject amendment application and ensure commencement is aligned with the date of the amended permit.

## Conclusion

134. The proposal demonstrates an acceptable level of compliance with the policy requirements outlined in the Yarra Planning Scheme. Based on the report, the proposal is considered to generally comply with the relevant policies of the Yarra Planning Scheme and is recommended for approval subject to conditions.

## RECOMMENDATION

That the Planning Decisions Committee resolves to issue a Notice of Decision to Grant an amended planning permit PLN13/0538 for the ground floor western-most tenancy to be used as a wine bar, the sale and consumption of liquor (on and off premises), external alterations and the construction and display of signage at 43 Rose Street, Fitzroy VIC 3065, generally in accordance with the plans and reports noted previously as the “decision plans” subject to the following changes to the permit preamble/conditions (new conditions underlined and bold, deleted conditions strikethrough):

### Permit Preamble:

Demolition of the existing building, development of a six storey building (not including basement) for a mixed studio / retail and residential development, a reduction in the provision of car parking, **the sale and consumption of liquor associated with a wine bar, and the construction and display of business identification signage.**

Conditions:

*Amended Plans*

1. **Before the development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and two copies must be provided. The plans must be generally in accordance with the decision plans received by Council on 15 April 2021 but modified to show:**
  - (a) **A ground floor plan showing the entire tenancy of the site, in accordance with the endorsed plans, but updated to reflect the proposed use of the site inclusive of:**
    - (i) **The layout of the proposal consistent with the decision plans; and**
    - (ii) **The red line area;**
2. **The use, development, sale and consumption of liquor and locations and details of signage 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.**

*Amenity*

3. Noise emissions (including those from plant and equipment) must comply with the State Environment Policy or any other standard recommended by the Environmental Protection Authority to the satisfaction of the Responsible Authority.
4. The amenity of the area must not be detrimentally affected by the use or development, 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.

*Acoustic*

5. **Before the sale and consumption of liquor commences, an amended Acoustic Report to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Acoustic Report will be endorsed and will form part of this permit. The amended Acoustic Report must be generally in accordance with the endorsed Acoustic Report prepared by Marshall Day Acoustics, dated 6 June 2014 but modified to include:**
  - (a) **The details as per the Acoustic Assessment prepared by Marshall Day Acoustics, dated 4 February 2021;**
  - (b) **The amended floor plan of the building as per the decision plans received by Council on 15/4/2021; and**
  - (c) **The requirement that the door to the wine bar remain closed during regular operation;**
6. The recommendations and any works contained in the approved acoustic report must be implemented and completed and where there are recommendations of an ongoing nature must be maintained all to the satisfaction of the Responsible Authority.

*Waste Management*

**7. Before the sale and consumption of liquor commences, an amended Waste Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Waste Management Plan will be endorsed and will form part of this permit. The amended Waste Management Plan must be generally in accordance with the Waste Management Plan prepared by Leigh Design and dated 7/2/2021 but modified to include:**

(a) **Food waste diversion for the wine bar;**

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

9. Rubbish, including bottles and packaging material, must at all times be stored within the building and screened from external view. All waste collection and recycling collection to be undertaken in accordance with Council's Local Law No. 3.

~~9. No emptying of bottles into garbage bins located outside the approved waste storage areas is permitted after 10.00 pm on any night, or before 7.00 am on any day.~~

*Landscape Plan*

~~10. Before the plans are endorsed, a landscape plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The landscape plan must show the location, quantity and maturity of all proposed plants (including those to the balconies), the botanical name of plants, the location of all areas to be covered by other surface materials and provide a specification of works to be undertaken prior to planting.~~

10. All landscaping to be undertaken in accordance with the endorsed landscaping plans prior to occupation and thereafter maintained to the satisfaction of the Responsible Authority.

*ESD*

~~12. Prior to the endorsement of plans under Condition 1, an amended Sustainable Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the report will then form part of this permit. The Report must be generally in accordance with the report prepared by Ark Resources and dated 18 July 2013 but and further modified to details and show (as necessary):~~

~~(a) The methodology for apartments to take advantage of common area ventilation;~~

~~(b) The provision of highly efficient hot water systems for the commercial spaces;~~

~~(c) A PV system of a minimum 5.2kW;~~

~~(d) The provision of angled fins to the western facade in a north-westerly direction to gain the low angle winter sun (from the north-west) and protect from the low angle summer sun (from the south-west);~~

~~(e) Nominate bins for recycling in separated waste in bin storage area;~~

~~(f) The provision of external clothes drying facilities;~~

~~(g) A commitment to a minimum 30% recycled industrial waste content incorporated into the construction materials;~~

~~(h) A commitment to specifying accredited sustainable timbers by the (Forrest Stewardship Council (FSC) only;~~

~~(i) Kitchen joinery with separate recycling compartments;~~

~~(j) The provision of a Building Users Guide for residents and tenants to assist minimising waste and maximising comfort and energy efficiency prior to occupancy (if provided); and~~

~~(k) A commitment to building tuning and maintenance of all major building services quarterly, during first 12 months of operation, and every 12 months following.~~

**11. The provisions, recommendations and requirements of the endorsed Sustainable Design Assessment must be implemented and complied with to the satisfaction of the Responsible Authority.**

*Construction*

12. All new on boundary walls must be cleaned and finished to the satisfaction of the Responsible Authority.
13. Any damaged road(s) and footpath(s) or other Council infrastructure adjacent to the development site as a result of the proposed development must be reinstated at the cost of the developer to the satisfaction of the Responsible Authority prior to the occupation of the building.
14. The car parking area must be used for no other purpose to the satisfaction of the Responsible Authority.
15. Existing kerb and channel, and road pavement surface levels must not be altered, unless with the prior written consent of the Responsible Authority.
16. Prior to the occupation of the dwellings, the redundant vehicle crossing is to be broken out and reinstated with paving, kerb and channel of the surrounding area to the satisfaction of the Responsible Authority. The cost of these reinstatement works shall be borne by the developer.
17. All privacy screens must be installed prior to the occupation of the building and maintained thereafter.
18. The development must be provided with lighting capable of illuminating access to each car parking space, bicycle parking space, store, rubbish bin, recycling bin, pedestrian walkways, stairwells, lift, dwelling entrances and entry foyer. Lighting must be located, directed, shielded and of limited intensity so that no nuisance or loss of amenity is caused to any person within and beyond the site, to the satisfaction of the Responsible Authority.
19. Before any 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 as evidence of its approval. The plan must provide for or include the following:
  - (a) a pre-conditions survey (dilapidation report) of the subject site and all adjacent Council roads frontages and nearby road infrastructure;
  - (b) protection works necessary to road and other infrastructure (limited to an area reasonably proximate to the site);
  - (c) remediation of any damage to road and other infrastructure (limited to an area reasonably proximate to the site);
  - (d) containment of dust, dirt and mud within the site and method and frequency of clean up procedures in the event of build up of matter outside the site,
  - (e) on site facilities for vehicle washing;
  - (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 that the activities on-site pose including but not limited to: contaminated soil, materials and waste, dust, stormwater contamination from run-off and wash-waters, sediment from the site on roads, washing of concrete trucks and other vehicles and machinery, spillage from refuelling cranes and other vehicles and machinery;
  - (i) construction program;
  - (j) preferred arrangements for trucks delivering to the site including delivery and unloading points and expected frequency;
  - (k) parking facilities for construction workers;
  - (l) measures to ensure that sub-contractors/tradespersons operate in accordance with the Construction Management Plan;
  - (m) an outline of requests to occupy public footpaths or roads, or anticipated disruptions to local services;
  - (n) an emergency contact that is available for 24 hours per day for residents and the Responsible Authority in the event of relevant queries or problems experienced;
  - (o) the provision of a traffic management plan to comply with provisions of AS 1742.3-2002 Manual of uniform traffic control devices - Part 3: Traffic control devices for works on roads; and
  - (p) a noise and vibration management plan showing methods to minimise noise and vibration impacts on nearby properties and to demonstrate compliance with Noise Control Guideline 12 for Construction (Publication 1254) as issued by the Environment Protection Authority in October 2008, to the satisfaction of the Responsible Authority. In this regard, consideration (amongst other matters) may be given to:
    - (i) using lower noise work practice and equipment;
    - (ii) the suitability of the site for the use of an electric crane;
    - (iii) silencing all mechanical plant by the best practical means using current technology; and
    - (iv) fitting all pneumatic tools operated near a residential area with an effective silencer on their air exhaust port.
20. Except with the written consent of the Responsible Authority, demolition or construction works must only be carried out between: 7.00 am - 6.00 pm, Monday-Friday (excluding public holidays) and 9.00 am - 3.00 pm, Saturday and public holidays. No work is to be carried out on Sundays, ANZAC Day, Christmas Day or Good Friday without a specific permit. All site operations must comply with the relevant Environmental Protection Authority's Guidelines on Construction and Demolition Noise.

### Liquor

- 21. **No more than 18 patrons are permitted on the land at any time liquor is being sold or consumed.**
- 22. **Except with the prior written consent of the Responsible Authority, the sale and consumption of liquor may only occur between the hours of 9.00am to 9.00pm, 7 days a week.**
- 23. **Before the commencement of the sale and consumption of liquor, the applicant must, to the satisfaction of the Responsible Authority, display a sign at the exit of the licensed premises advising patrons to respect the amenity of adjacent residential areas and to leave in a quiet and orderly manner.**
- 24. **The provision of music and entertainment on the land must be at a background noise level.**
- 25. **Speakers external to the building must not be erected or used.**



26. **Emptying of bottles and cans into bins may only occur between 7am and 10pm on Monday to Saturday or after 9am on a Sunday or public holiday.**
27. **The provisions recommendation and requirements of the endorsed Noise and Amenity Action Plan must be implemented and complied with to the satisfaction of the Responsible Authority.**
28. **Delivery and collection of goods to and from the licensed premises 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.**

**Signage**

29. **The signs must not be illuminated by external or internal light.**
30. **The signs must be constructed, displayed and maintained to the satisfaction of the Responsible Authority.**
31. **The signage component of this permit expires 15 years from the date of the permit.**
32. **The signage component of this permit will expire if the signs are not erected within 2 years of the date of amendment PLN13/0538.01 to this permit. The Responsible Authority may extend the period referred to if a request is made in writing before the permit expires or within six months afterwards for commencement or twelve months afterwards for completion.**
33. **On expiry of this permit, the approved signs and structures built specially to support and/or illuminate signage must be removed.**

**Expiry**

34. This permit will expire if any of the following occur:
  - (a) **The development is not commenced within two (2) years from the date of amendment PLN13/0538.01 to this permit;**
  - (b) **The development is not completed within four (4) years from the date of amendment PLN13/0538.01 to this permit;**
  - (c) **The signs are not erected within 2 years of the date of amendment PLN13/0538.01 to this permit;**
  - (d) **the sale and consumption of liquor is not commenced within two years from the date of amendment PLN13/0538.01 to this permit; or**
  - (e) **The sale and consumption of liquor is discontinued for a period of two years.**

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

**NOTES**

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

This site is subject to a Heritage Overlay pursuant to the Yarra Planning Scheme. Unless hereby approved, a planning permit may be required for any demolition, re-painting or other external alterations, sandblasting, exterior works (including the installation of external air conditioning units, solar panels, and any other heating/cooling units) to an existing building or buildings, construction of a building or fence, changes to the natural topography of the land or the subdivision or consolidation of land.

The site must be drained to the legal point of discharge to the satisfaction of the Responsible Authority.

A building permit may be required before development is commenced. Please contact Council's Building Services Unit on Ph. (03) 9205 5351 to confirm.

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

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.

All 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), to Council's satisfaction.

The new vehicle crossing must be constructed in accordance with City of Yarra Standard Drawings and Specifications.

The vehicle crossing must be designed and constructed to satisfy the requirements of Council's Community Amenity unit's Vehicular Access into Properties (Info Sheet and Application Form) before a vehicle crossing permit can be issued.

The developer must liaise and consult with Council's Traffic Unit (telephone 9205 5731) prior to undertaking any public lighting works.

This food premises is required to comply with health and food safety regulations before commencing operation. Please contact Council's Public Health Unit on 9205 5166.

## Attachments

- 1 PLN13/0538.01 - 45 Rose Street Fitzroy - Site Map
- 2 PLN13/0538.01 - 45 Rose Street Fitzroy - Endorsed Acoustic Report
- 3 PLN13/0538.01 - 45 Rose Street Fitzroy - Endorsed Waste Management Plan
- 4 PLN13/0538.01 - 45 Rose Street Fitzroy - Existing Endorsed Plans
- 5 PLN13/0538.01 - 45 Rose Street Fitzroy - Waste Management Plan
- 6 PLN13/0538.01 - 45 Rose Street Fitzroy - Building Surveyor Report
- 7 PLN13/0538.01 - 45 Rose Street Fitzroy - Acoustic Report
- 8 PLN13/0538.01 - 45 Rose Street Fitzroy - Town Planning Report

- 9** PLN13/0538.01 - 45 Rose Street Fitzroy - S57 Advertising - Amended Plans
- 10** PLN13/0538.01 - 45 Rose Street Fitzroy - S57 Advertising - Amended Noise and Amenity Action Plan
- 11** PLN13/0538.01 - 45 Rose Street Fitzroy - 3rd party review of Acoustic Report (SLR)
- 12** PLN13/0538.01 - 45 Rose Street Fitzroy - Community Amenity Referral Comments
- 13** PLN13/0538.01 - 45 Rose Street Fitzroy - Waste Management Plan Referral Comments
- 14** PLN13/0538.01 - 45 Rose Street Fitzroy - Social Planning referral comments