



Ordinary Council Meeting Agenda

Monday 7 December 2020 at 7 PM

Main Hall, Malvern Town Hall

Corner Glenferrie Road & High Street Malvern

Vision

Stonnington will be an inclusive, healthy, creative, sustainable and smart community.

Council's vision will be implemented through four key pillars:

- **Community:** An inclusive City that enhances the health and wellbeing of all residents, where people can feel safe, socially connected and engaged.
- **Liveability:** The most desirable place to live, work and visit.
- **Environment:** A cleaner, safer and better environment for current and future generations to enjoy.
- **Economy:** A City that will grow its premier status as a vibrant, innovative and creative business community.

These pillars reflect the shared priorities of our community and Council, and are consistent with our history and vision for a liveable future. For each pillar, there is a framework for our strategies, actions and measures which outline the key services and projects to be delivered to our community. The Strategic Resource Plan sets out how Council will provide the resources needed to implement strategies and actions within the Council Plan.

Councillors

Cr Kate Hely, Mayor
Cr Melina Sehr, Deputy Mayor
Cr Jami Klisaris
Cr Alexander Lew
Cr Polly Morgan
Cr Marcia Griffin
Cr Matthew Koce
Cr Mike Scott
Cr Nicki Batagol

Chief Executive Officer

Jacqui Weatherill

Executive Staff

Chris Balfour – Acting Director Planning & Place
Cath Harrod – Director Covid Response
Rick Kwasek – Director Environment & Infrastructure
Greg Curcio – Director Customer & Technology
James Rouse – Acting Director Community & Wellbeing

Reconciliation Statement

We acknowledge that we are meeting on the traditional land of the Boonwurrung and Wurundjeri people and offer our respects to the elders past and present. We recognise and respect the cultural heritage of this land.

Affirmation Statement

We are reminded that as Councillors we are bound by our Oath of Office to undertake the duties of Councillor in the best interests of the people of the City of Stonnington and to faithfully and impartially carry out the functions, powers, authorities and discretions vested in us under the Local Government Act and any other relevant Act.

Welcome

Welcome to a Stonnington City Council meeting. The role of a Council is to provide good governance in its municipal district for the benefit and wellbeing of the municipal community. These meetings are an important way to ensure that the democratically elected Councillors work for the community in a fair and transparent way. Council business is conducted in accordance with Part C – Meeting Procedure section of Council’s Governance Rules.

Councillors carry out the functions, powers, authorities and discretions vested with them under the **Local Government Act 2020**, and any other relevant legislation. Councillors impartially perform the Office of Councillor duties, in the best interests of the City of Stonnington residents, to the best of their skills and judgement.

Councillors must formally declare their conflicts of interest in relation to any items listed on the agenda at the start of the meeting and immediately prior to the item being considered, in accordance with Part 6 – Council integrity, Division 2 – Conflict of Interest of the Act.

About this meeting

The agenda, as specified in Stonnington’s Governance Rules, lists of all the items to be discussed. Each report is written by a Council Officer and outlines the purpose of the report, relevant information and a recommended decision for Councillors. Council will consider the report and either accept, reject or make amendments to the recommendation. Council decisions are adopted if they receive a majority vote from the Councillors at the meeting.

Arrangements to ensure meetings are accessible to the public

Council meetings are generally held at the Malvern Town Hall, corner High Street and Glenferrie Road (entry via Glenferrie Road via the door closest to the Malvern Police Station). Accessible toilets are also available. If you require translation, interpreting services or a hearing loop, please contact Council’s civic support on 03 8290 1331 to make appropriate arrangements before the meeting.

To ensure that people can follow proceedings, the meeting agenda, motions and proposed alternate resolutions (also known as ‘yellows’), are displayed on a screen.

Live webcasting

Council meetings are broadcast live via Council’s website, allowing those interested to view proceedings without needing to attend the meeting. This gives people who are unable to attend, the ability to view Council decisions and debate. A recording of the meeting is available on our website after the meeting (usually within 48 hours). Only Councillors and Council officers are visible. People in the public gallery will not be filmed, but if you speak, you will be recorded.

Members of the gallery

If you choose to attend a Council Meeting as a member of the public gallery, you should note the role of the Chairperson (usually the Mayor) and your responsibilities under the City of Stonnington Governance Rules – Division 8 – Questions to Council from Members of the Public, Division 12 – Recording of Proceedings and Division 13 Behaviour.

Your cooperation is appreciated. We hope you enjoy the meeting.

Mayor, Deputy Mayor and Councillors, Stonnington City Council

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1 Reading of the Reconciliation Statement and Affirmation Statement

2 Introductions

3 Apologies

4 Adoption and confirmation of minutes of previous meeting(s)

4.1 Minutes of the Ordinary Council Meeting held on 19 October 2020 and 23 November 2020

Officer Recommendation

That the Council confirms the Minutes of the Ordinary Council Meeting of the Stonnington City Council held on 19 October 2020 and 23 November 2020 as an accurate record of the proceedings.

5 Disclosure by Councillors of any conflicts of interest

6 Questions to Council from Members of the Public

7 Correspondence (only if related to Council business)

8 Questions to Council Officers from Councillors

9 Tabling of Petitions and Joint Letters

10 Notices of Motion

Nil.

11 Reports of Special and Other Committees - Informal Meetings of Councillors

12 Reports by Delegates

13 Urgent Business

14 General Business

14.1 Percy Treyvaud Memorial Park - Masterplan Update

Director Environment & Infrastructure: Rick Kwasek

Linkage to Council Plan

Community: An inclusive City that enhances the health and wellbeing of all residents, where people can feel safe, socially connected, and engaged.

- C5** Increase participation in physical activity through long-term recreation planning and service delivery.
- C7** Support local community organisations with equitable access to facilities, training and resources.

Liveability: The most desirable place to live, work and visit.

- L1** Strategically invest in open spaces, sporting fields and community facilities, and optimise use according to community needs.

Purpose of Report

To provide an update on the implementation of the Percy Treyvaud Memorial Park Masterplan. The report includes information on property matters, design development, budget and program.

Officer Recommendation

That Council:

- 1. NOTE the project update on the Percy Treyvaud Memorial Park Masterplan.**
- 2. NOTE that no further works will be undertaken on the masterplan implementation until after the Victorian Supreme Court has provided its findings in relation to the modification and/or removal of covenants associated with the Percy Treyvaud Memorial Park site.**
- 3. NOTE that once Recommendation 2 above is finalised, a further report will be brought for Council consideration on the next key project phases including contractor procurement and construction.**

Executive Summary

This report outlines the next key phase of the project which includes a determination by the Supreme Court of Victoria to discharge, interpret or in the alternative, modify covenants which burden the land known as Percy Treyvaud Memorial Park. The report also provides an overview of design, procurement, program and budget allocation associated with the proposed project.

Background

On 30 October 2017 Council resolved to proceed with the development of a masterplan for a new multipurpose sport and recreation facility at Percy Treyvaud Memorial Park. The

proposed facility will host four (4) indoor sports courts, plus upgraded facilities for the Chadstone Recreation and Civic Club and its sport sections of the Chadstone Bowls Club and Chadstone Tennis Club, as well as seasonal sporting clubs (East Malvern Tooronga Cricket Club and Chadstone Lacrosse Club) and casual users of the park.

Council have since considered a number of reports on this project and on 6 May 2019, Council resolved to adopt the Masterplan for Percy Treyvaud Memorial Park and proceed with the design and development of a new multipurpose facility (refer **Attachment 1 Council Report 06 May 2019**). Since adopting the masterplan Council have worked with clubs and user groups to finalise the design development phase of the project in readiness for procurement (see **Attachment 2 Masterplan Report 2020**).

It should be noted that since its inception, this has been a contentious major project. In particular adjoining property owners have been vocal in their strong opposition to the proposed development, and their intense desire to see the project relocated away from the Percy Treyvaud Memorial Park site. Conversely many sectors within the Stonnington sporting community, and in particular Stonnington netball clubs, have been strong advocates in favour of the project on this site. The project responds to an identified significant deficit in community sporting infrastructure, in particular sporting facilities for womens sport and indoor high court stadium facilities.

Key Issues and Discussion

Design Update

Since adopting the masterplan the principal design consultant has progressed with the design process and met with each of the user groups to discuss the design development of the facility. Site investigations have continued allowing for the design of the associated structure and footings. The Architects have further developed both the interior fittings, finishes and layouts to incorporate the needs of the user groups. The landscape areas and park improvements have also been further developed in parallel with the building as part of the overall process of masterplan implementation (refer **Attachment 3 Percy Treyvaud Memorial Park Renders**).

The design of the Bowling green is a single green with 8 by 8 rinks incorporating an all-weather shelter. This provides more flexibility in the way the facility is used and offers year-round usage for members. Bowls Australia have indicated the proposal is in line with contemporary bowling green design and offers improved usability for bowlers of all ages. The requested design has been modelled by the Architects and provides improved accessibility, usability and help to manage light spill and aid in noise suppression.

The proposal reduces the deck area over the car park and allows for the provision of additional trees and landscaping within the western part of the car park which will be open air. The all-weather shelter will help with shading the green and shelter from the elements providing improved use through the various seasons through the year.

Designs have now been completed to design development phase and all administrative, investigation and construction works have ceased pending the outcome of the Supreme Court determination of the covenants. Following the courts findings, a report will be brought to Council for consideration prior to proceeding to the procurement of the Principal Contractor for the project.

Property Matters

Easements and Drainage Reserve

There are several redundant easements and road reserves across the site. The road reserves have gone through a statutory 223 process and have been discontinued and retained by Council. The easements on the site are redundant and are not required by the responsible authorities. Advice provided by the land surveyors is that the easements will also be consolidated into the site as part of the title consolidation. The consolidation of the titles will occur as an administrative function following the completion of the construction of the facility. An application has been made to the drainage authority in respect of the reserve who has requested that council provide an easement over the exiting drain upon removal of the reserve status (refer **Attachment 4 Property Plan**)

Covenants

Percy Treyvaud Memorial Park is burdened by a series of covenants dating from 1925 and 1945, the type of restriction in the covenants is commonly referred to as a 'no quarrying' covenant and is common across Melbourne.

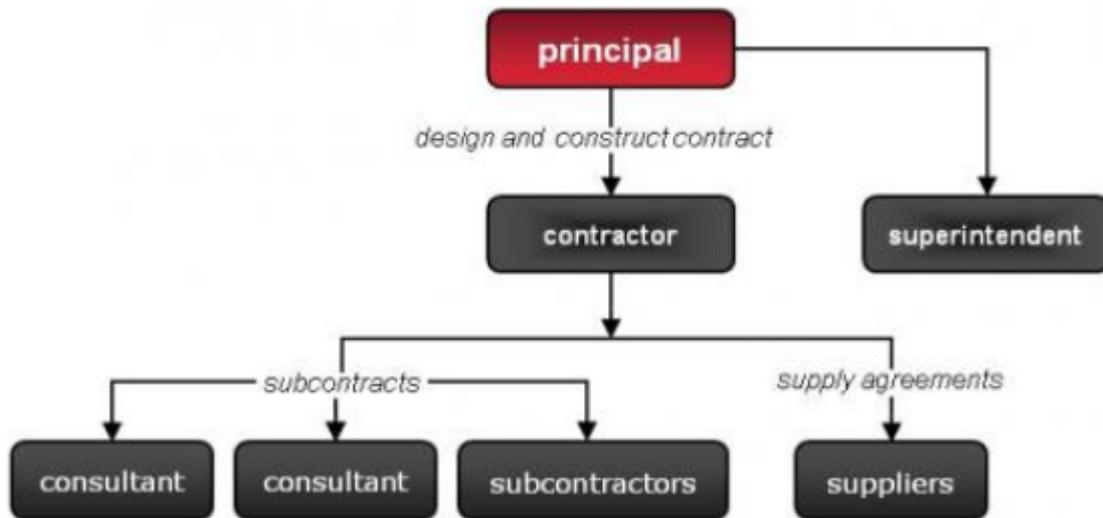
In order to confirm the intent and meaning of the covenants Council is seeking a determination from the Supreme Court of Victoria to discharge, interpret or in the alternative, modify these covenants. The first directions hearing was held on 22 July 2019 where the court considered the application on 41 covenants over Percy Treyvaud Memorial Park. The Court looked at the evidence and identify the benefited lots of land that are in the immediate vicinity of the burdened land and those lots that are further away but may still be affected. The court is required to consider the nature of the restriction, the configuration of the subdivision, the uniformity and character of the subdivision, whether there have been any previous similar modifications or discharges of similar restrictive covenants, the location of roads and the topography of the neighborhood.

A number of directions hearings have been held with the case scheduled to be heard at the Supreme Court of Victoria on 30 November 2020 and is expected to run for 4 days. Those opposing the application must be joined as defendants. It should be noted that the ultimate power to make an order under the Act resides in the Court.

More recently, residents opposing the proposed development changed legal counsel and the number of defendants has reduced. There are currently 23 defendants opposing the implementation of the masterplan for the site.

Procurement

The proposed procurement model is a standard two (2) stage process which will include an expression of interest (Stage 1) and tender (Stage 2). The process involves an invitation to contractors to express an interest in tendering for the works. Following an initial evaluation short listed proponents will be invited to proceed to the next stage (Tender). The second stage of the process involves the shortlisted proponents providing submissions that address the project brief, specifications and drawings and will be evaluated in order to provide Council with a best value outcome in line with Section 186 of the local Government Act 1989 and Council's Procurement Policy.



The proposed project procurement model, as discussed with the Steering Committee, will be a Design Construct (D&C) procurement model. This type of project lends itself to the D&C form of contract. Outlined above is a graphical representation of the structure of the D&C model showing the design consultant novated to the contractor with Council as Principal. Council will engage appropriate project resources to assist with the delivery of the project who will act as superintendent on the project on behalf of Council.

The benefit of the D&C process includes the ability of the contractor to review the documentation early and by having early contractor engagement ensures that buildability advice and early design options in relation to footings and structure can be incorporated in the design reducing the design risk for Council during construction. This enhances collaboration in the final stages of design improving the overall outcome.

The D&C contract model is seen to reduce risk during the build as it makes the contractor responsible for design and construction related issues. This results in less scope for variations relating to design during delivery.

In considering this contract model it is noted that the consultant team moves from working for Council to the contractor with the principal having less control over the consultants during construction. In novating the Architects to the contractor, the cost of that commission will be reduced however these costs will be added to the contractor's fee which will also include overheads for associated design coordination risk.

The D&C contract model has well established standard form of contracts available and on balance will provide the best overall outcome for Council facilitating early contractor involvement reducing risk during construction and allowing for a more streamlined coordinated delivery.

Program

The high-level program outlined in the table below summarises the key projects steps and allocates an estimated timeframe. It should be noted that to finalise documentation for the tender further investigation needs to be undertaken on the bowling greens to evaluate soil profile and makeup. This will enable the design team to finalise the tender documentation.

Design Development	June/Sept 2020
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Covenant Hearing	Nov/Dec 2020
Supreme Court orders	March/April 2021
Report to Council	March/April 2021
Tender Documentation	April 2021
Procurement	April/June 2021
Council Report Contract Award	June 2021
Construction	July 2021
Completion	December 2022

The above preliminary Program is subject to modifications and will be adjusted to align with the contractors approved program following tender.

Conclusion

The next key phase of the project requires a determination from the Supreme Court of Victoria to discharge, interpret or in the alternative, modify restrictive covenants that burden the land at Percy Treyvaud Memorial Park. The case is listed to be heard on 30 November 2020 and is scheduled for four days. It is anticipated that the court will provide orders in the first quarter of 2021. Following the findings, a further report will be brought to Council for consideration prior to proceeding with procurement for the Principal contractor.

Governance Compliance

Policy Implications

Stonnington Recreation Strategy 2014-224 includes *Equitable Provision* as one of its six priorities. The need for additional resources for court sports (both indoor and outdoor) such as tennis, netball and basketball has been identified as a priority area for Council.

The Council Plan 2017-2021 identifies the key challenges that Council is facing. The Multipurpose Sports Facility project supports strategies to:

- increase participation in physical activity through long term recreation planning and service delivery.
- strategically invest in open spaces, sporting fields and community facilities, and optimise use according to community needs.

An objective of the Municipal Public Health and Wellbeing Plan 2017-21 is to increase physical activity across all life stages, and to ensure the built environment supports residents to lead active and healthy lives.

Financial and Resource Implications

The draft 2019/2020 budget includes a provision of \$44.65M which reflects the scope of the project as adopted by Council for the delivery of the multipurpose facility at Percy Treyvaud Memorial Park. The forecast budget and funding sources are detailed in the following table and are subject to budget approval.

Table 1 - Forecast Budget and funding sources

Financial Year	Funding	
2018/19	Council	\$ 0.79m
2019/20	Council	\$ 1.025
2020/21	Council	\$ 0.60m
2021/22	Council	\$ 20.00m
2022/23	Council	\$ 18.24m
TBC	Federal Government Funding	\$ 4.00m
	Total	\$ 44.65m

External funding of \$4m was announced for the indoor stadium as part of the last federal election. The funding agreement has been finalised and will be included in the overall budget once the funding milestones are confirmed. Additional funding may be available through state and federal infrastructure grants or through reduced interest loan grants.

Conflicts of Interest Disclosure

No Council Officer and/or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

Legal / Risk Implications

There are no legal / risk implications relevant to this report.

Stakeholder Consultation

There has been significant engagement on this project since Council confirmed the location of the proposed facility as Percy Treyvaud in October 2017 which is summarised below.

Since October 2017:

- 9,184 visits to the project site on Connect Stonnington engagement portal;
- 1,809 documents downloaded from Connect Stonnington engagement portal;
- 12,780 letters/notices/postcards sent to residents;
- 2,643 submissions/surveys/feedback received;
- 16 public community meetings held; and
- 7 project stakeholder meetings held.

Council acknowledges the many hours the community and stakeholders have invested in meeting with Councillors and council officers, reviewing documentation, attending stakeholder meetings, responding to surveys, meeting with fellow stakeholders and neighbors, and making submissions.

Human Rights Consideration

Complies with the Charter of Human Rights & Responsibilities Act 2006.

Attachments

1. Council Report 06 May 2019 - Percy Treyvaud Memorial Park Masterplan [14.1.1 - 12 pages]
2. Masterplan Report 2020 [14.1.2 - 62 pages]
3. Percy Treyvaud Memorial Park Renders [14.1.3 - 6 pages]

4. Property Plan [**14.1.4** - 2 pages]

14.2 Planning Application 0600/19 - 723 Orrong Road, Toorak

Manager Statutory Planning: Alex Kastaniotis
Acting Director Planning & Place: Chris Balfour

Purpose of Report

For Council to consider a planning application for extension to an existing residential building in a General Residential Zone at 723 Orrong Road, Toorak.

Officer Recommendation Summary

That Council authorise Officers to issue a Notice of Decision to Grant a Planning Permit subject to conditions outlined in the Officer Recommendation.

The proposal is supported for the following reasons:

- The proposal broadly accords with the State and the Local Policies which seeks to diversify housing types and housing growth in suitable locations.
- The proposal will improve the onsite amenity by way of incorporating an additional communal open space.
- The proposed repair and maintenance works to the existing building will greatly improve the onsite amenities at various levels and enhance the streetscape presentation to Orrong Road and Trawalla Avenue.

Executive Summary

Applicant:	Watson Young Architects
Ward:	North
Zone:	Clause 32.08 – General Residential Zone (Schedule 11)
Overlay:	N/A
Neighbourhood Precinct:	Garden River Neighbourhood Character Precinct
Date Lodged:	30 July 2019
Statutory Days: (as at Council Meeting date)	186
Trigger for Referral to Council:	Cr Koce Call-up / More than 4 storeys in height
Number of Objections:	Two (2)
Consultative Meeting:	No
Officer Recommendation	Notice of Decision to Grant a Permit

Background

The Proposal

The plans that form part of the basis of Council's consideration were prepared by *Watson Young* and are known as File No. 19047 and Council date stamped 4 June 2020.

Key features of the proposal are:

- An additional dwelling is proposed to the southern half of the existing 7th floor level.
- The proposed dwelling is setback 9.31 metres from the western boundary, 8.6 metres from the southern boundary and 7.32 metres from the eastern boundary.
- The proposed dwelling is comprised of three (3) bedrooms, an open plan kitchen / dining / living room and amenities.
- Secluded private open space is provided by way of a terrace located to the north-west of the proposed dwelling.
- Internal access is gained from the existing lift and existing staircase.
- Vehicle access is provided via two existing crossovers from Trawalla Avenue and Orrong Road.
- Two (2) car parking spaces are provided under two (2) freestanding, steel framed carports located along the northern boundary.
- A communal roof terrace, located to the east of the existing lift, is proposed with access via a proposed external staircase between Level 7 and the roof.
- 1 metre high balustrade screening is proposed surrounding the proposed communal roof terrace.
- The proposed materials to the proposal include standing seam charcoal, dark grey render, dark grey powdercoated aluminium and clear glazing.
- The following repair and maintenance works are proposed to the original building:

Main entry

- Paint existing soffits to entry canopy dark grey.
- Paint existing columns dark grey.
- Replace existing framed glazing front to slimline aluminium framed automatic sliding door to the south and fixed panel to the north.
- Replace existing signage with backlit signage.
- Replace existing light fittings with surface mounted cylindrical lights.

General Façade

- Replace existing solid balustrade with aluminium palisade and solid balustrade in dark grey powder coat.
- Render existing slab edges dark grey from ground level to Level 2 and paint existing slab edges Charcoal from Level 3 to Level 7.
- Paint underside of existing balconies dark grey.

Site and Surrounds

The subject site is located on the north western corner of the intersection of Orrong Road and Trawalla Avenue, approximately 70 metres south of the intersection with Robertson Street and 250 metres north of the intersection with Toorak Road. The existing building is commonly known as 'Orrong Towers'.

The site has the following significant characteristics:

- The site is rectangular in shape and has a total site area of approximately 1852 square metres.
- The site provides dual frontage: to the east, it provides a frontage of 62.3 metres to Orrong Road; and to the south, it has a frontage of 29.3 metres to Trawalla Avenue.
- The site slopes down to north.

- The site is improved by an 8-storey residential building comprising 25 dwellings. Due to the significant slope, the southern end of the building appears to be 7-storey in height and the northern end to be 8-storey in height.
- The main pedestrian entrance is provided via the Orrong Road frontage.
- Vehicle access is provided via two existing crossovers from Trawalla Avenue and Orrong Road respectively.

Key features of the adjoining sites are as follows:

- To the immediate east, the site abuts Orrong Road. On the opposite side of the street are apartment buildings at a height of 3-4 storeys.
- To the immediate north is the land at No. 729 Orrong Road, Toorak, which houses a B-graded Interwar Georgian style house and is individually protected by HO510 (Former M H Baillieu House).
- To the immediate south, the site abuts Trawalla Avenue. On the opposite side of the street is an allotment spanning No. 24 Lascelles Avenue, 12, 12A and 14 Trawalla Avenue, Toorak, and sitting at the junction of Lascelles Avenue, Trawalla Avenue and Orrong Road. The western half of the allotment is improved by the 'Trawalla Court' that is 4-storey in height, graded A2 and identified as the large art deco style building on the corner of Lascelles Avenue and Trawalla Avenue. The eastern half of the allotment is improved by a double storey apartment building.
- To the immediate west is the land at No. 11 Trawalla Avenue, Toorak, which houses a 5-storey apartment building, approved under a Planning Permit No. 122/08.

Previous Planning Application/s

A search of Council records indicates the following relevant planning application/s

- Planning Permit No. 524/08 was issued on 16 July 2008 under officer delegation. The permit allowed alterations and additions to two or more dwellings on a lot comprising an extension to the external staircase located on the western side of the building providing access between the ground level and the first floor level.

The Title

The site is described on Certificate of Title Volume 11909 Folio 963 / Common Property 1 on Plan of Subdivision 735779E and no covenants affect the land. In addition, a drainage easement runs along the western boundary.

As identified in the submitted Certificate of Title (Council date stamped 30 July 2019), Common Property 1 is all the land in the Plan excerpt Lots 1-21, 23-24 and includes the structure of these walls, floors, ceilings and balustrades which define boundaries except for those marked 'M'.

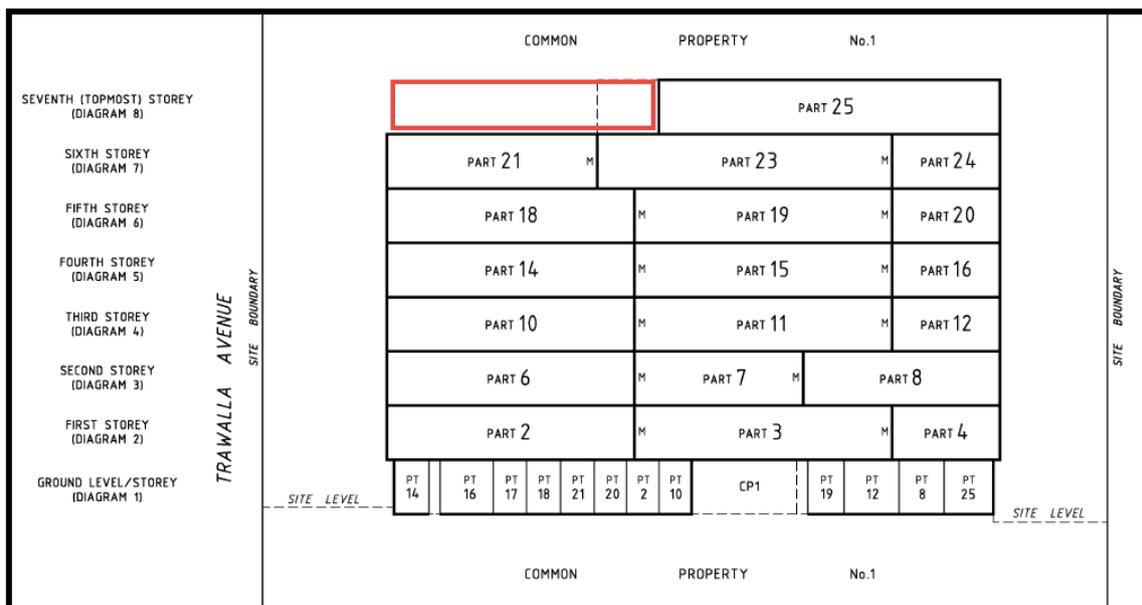


Figure 1: Section A-A, the location of the proposed dwelling outlined

Planning Controls

The following controls/permit triggers are considerations for this application:

Zone

Clause 32.08 – General Residential Zone (Schedule 11)

Pursuant to Clause 32.08-6, a planning permit is required to construct or extend a residential building. An apartment development of five or more storeys, excluding a basement, must meet the requirements of Clause 58.

Garden Area Requirement

Clause 32.08-4 requires a minimum Garden Area of 35% for a lot of 650sqm or more. The subject site has a total area of 1852 square metres, a minimum 35% of garden area (equivalent to 386.4 square metres) is required for the proposal.

Height Control

Pursuant to Schedule 11 of the Zone, a building used as a dwelling or a residential building must not exceed 12 metres unless the slope of the natural ground level at any cross section wider than 8 metres of the site of the building is 2.5 degrees or more, in which case the height of the building must not exceed 13 metres.

However, pursuant to Clause 32.08-10, an extension to an existing building may exceed the applicable maximum building height or contain more than the applicable maximum number of storeys if it does not exceed the building height of the existing building or contain a greater number of storeys than the existing building.

As the existing building is 8-storey in height measured from the natural ground level to the highest point of the roof parapet, the applicable maximum building height requirement is that the application must not exceed the building height of the existing building or contain a greater number of storeys than the existing building.

As dimensioned on the West Elevation, the existing building has a maximum building height of 23.485 metres measured from natural ground level and terminated at F.F.L. 62.000. In this application, as dimensioned on the South Elevation, the proposed extension has a

maximum building height of 21.96 metres measured from natural ground level and terminated at F.F.L. 62.000. As such, the proposal does not exceed the existing building height and complies with the height control requirement.

Overlay

N/A

The site is not affected by any Overlays.

Particular Provisions

Clause 52.06 - Car Parking

Pursuant to Clause 52.06-2, before a new use commences the number of car parking spaces required under Clause 52.06-5 must be provided on the land.

Pursuant to Clause 52.06-5, a dwelling requires 1 car space to each one or two bedroom dwelling, and 2 car spaces to each three or more bedroom dwelling.

In this application, two (2) car parking spaces are provided to the proposed 3-bedroom dwelling. As such, the Clause is satisfied.

Clause 58 - Apartments Developments

Provisions in this clause apply to an application to construct or extend an apartment development, or to construct or extend a dwelling in or forming part of an apartment development, if:

- The apartment development is five or more storeys, excluding a basement, and is in the General Residential Zone, Residential Growth Zone, Mixed Use Zone or Township Zone, or
- The apartment development is in the Commercial 1 Zone, Commercial 3 Zone, Special Use Zone, Comprehensive Development Zone, Capital City Zone, Docklands Zone, Priority Development Zone or Activity Centre Zone.

Relevant Planning Policies

Clause 11.01-1S	Settlement
Clause 11.01-1R	Settlement – Metropolitan Melbourne
Clause 15.01	Built Environment
Clause 16	Housing
Clause 16.01-2S	Location of residential development
Clause 16.01-2R	Housing opportunity areas – Metropolitan Melbourne
Clause 16.01-3S	Housing Diversity
Clause 21.03	Vision
Clause 21.05	Housing
Clause 21.06	Built Environment and Heritage
Clause 22.18	Stormwater Management (Water Sensitive Urban Design) Policy
Clause 32.08	General Residential Zone
Clause 58	Apartments Developments

Advertising

The original application has been advertised pursuant to Section 52 of the *Planning and Environment Act 1987* by sending notices to the owners and occupiers of adjoining land (and by placing two (2) signs on the site. The public notification of the application has been completed satisfactorily.

Two (2) objections from two (2) affected properties have been received. The grounds of objections are summarised as follows:

- Potential impact on street trees and existing vegetation within the site
- Non-compliance with the maximum building height control
- Inconsistency with neighbourhood character policy
- Visual bulk
- Overlooking and noise impact arising from the roof terrace

On 4 June 2020, the applicant submitted revised plans to Council pursuant to Clause 57A of the *Planning and Environment Act 1987*. These plans superseded the originally advertised plans (Council date stamped 26 November 2019) and consist of the following key changes:

- The roof level of the proposed dwelling is amended to align with the existing roof level that sits at R.L. 62.000.
- The advertised roof terrace extended along the northern, western and eastern edges of the roof. The revised plans show a roof terrace located to the east of the existing lift and the external staircase. Resulting from this change, the size of the roof terrace is reduced from 193m² to 85.7m².
- Planter boxes around all edges of the roof terrace are deleted and replaced with 1 metre high balustrade.

The revised plans were circulated to all previous objectors via email. One (1) further objection was received from existing objectors during the notification of the revised plans. Overall, objections from two (2) affected properties remain valid. Additional grounds of objections are summarised as follows:

- The material proposed to the carports along the northern boundary is unclear. -
- Potential loss of vegetation along the northern boundary may result in overlooking on the northern adjoining land at No. 729 Orrong Road, Toorak.
- It is unclear whether any tree management / protection measures would be implemented in the absence of a Tree Management Plan. -

Referrals

Parks

Referral comments from Council's Parks are summarised as follows:

- There are 5 significant trees within the site, located in the northern, eastern and southern setbacks.
- There is no tree located along the western boundary where the communal driveway and car park are located.
- Given the location of the existing trees, it is unlikely that these trees will be unreasonably compromised during the construction stage.
- The oak tree located in the garden bed along the northern boundary may be impacted when installing the proposed carports. A Non-destructive Root Investigation Report and a Tree Management Plan should be required by way of permit conditions.

Urban Design

Referral comments from Council's Urban Design Advisor are summarised as follows:

- This part of Orrong Road slopes down to the north. The 7-8 storey building '*Orrong Towers*' is a product of the 1960's/70's and is an aberration in the streetscape. The 7-storey southern end of the building abuts Trawalla Avenue; and, due to the slope of the land, the northern end of the building has a height of 8 storeys. This is the tallest building in the street, and the tallest in the neighbourhood, and dominates its surroundings. The predominant scale of the street is characterised by 2-storey houses and 3-storey flats.

- Adding another level to the southern half of the building will create an appreciable degree of additional bulk to an already visually bulky and dominant slab tower-
- Adding additional height and bulk to the largest building in the street is unjustifiable; and would further dissociate the building from its predominantly 2-3 storey surroundings in the street. As such, this proposal is not supported.

Key Issues and Discussion

Strategic Direction

The General Residential Zone applies to the site, a purpose of which is to encourage a diversity of housing types and housing growth that respects the neighbourhood character of an area, particularly in locations offering good access to services and transport.

The overarching policies and objectives at both a State and Local level encourage urban consolidation in established urban areas and residential development in and around neighbourhood activity centres and close to public transport. These strategies call for well-designed medium-density development that respects neighbourhood character, improves housing choice, makes better use of existing infrastructure and improves energy efficiency.

Local Policies

At local level, the following policies within the Stonnington Planning Scheme are of relevance:

Clause 21.05 (Housing)

- *Acknowledging the potential impact of increased residential density on the heritage and neighbourhood character and amenity of the established residential areas.*

Clause 21.06 (Built Environment and Heritage)

- *Ensure new developments incorporate a designated landscape setting with substantial canopy tree vegetation.*
- *Avoid extensive site coverage in medium and higher density developments so as to provide canopy landscaping, having regard to the existing or preferred character of the area.*
- *Ensure new development provides a sensitive transition with adjoining lower density development in terms of built form, scale, setbacks and visual bulk.*
- *Ensure that new development avoids full or excessive site coverage (including basements) so as to provide adequate space for in-ground landscaping and visual breaks between buildings.*
- *Encourage front, side and rear setbacks of buildings to respect the existing character or contribute to the preferred neighbourhood character (as applicable).*

Whilst it is inevitable that a different and more intense built form than traditional housing stock will result in locations where higher density housing is encouraged, the key is to manage the level of change to ensure it appropriately integrates into the neighbourhood setting and to achieve a balanced planning outcome that responds appropriately to the policies and the established character of the area.

In this application, Council's Urban Design Advisor raised concerns with regard to potential visual bulk. This is acknowledged. However, it should be noted that:

- The proposal will not result in any unreasonable impact on the existing vegetation within the site and ensure that the landscape setting will not be compromised.

- The proposal does not alter the existing site coverage and maintains the same level of permeability within the site.
- Although the proposal introduces an additional dwelling on the southern half of the 7th floor, it is noted - that the proposed built form is keeping with the linearity of the existing building and sits within the existing building height. As such, the proposal will contribute to the continuity of the existing building.
- The proposal will not result in any obstructive outcome to the established neighbourhood character. This will be further discussed in detail below.

Clause 22.23 – Neighbourhood Character Policy:

The subject site is located in the *Garden River Neighbourhood Precinct* as defined by Council’s Local Neighbourhood Character Policy at Clause 22.23. The statement of preferred character for this precinct is as follows:

The Garden River (GR) character precinct comprises buildings that contribute to the Yarra River and its landscaped setting, with innovative architectural styles set among Victorian, Edwardian and Interwar dwellings and well-planted, spacious gardens. New buildings of varying styles and scales are designed to complement and respect the river environs. Consistent front and side setbacks allow for substantial planting that contributes to the tree canopy, and softens the appearance of built form. Where adjoining or visible from the Yarra, buildings address both the street and the River. Low or permeable front fences provide views of building facades and front gardens. Areas within a Residential Growth or Mixed Use Zone or within a substantial change area will accommodate more development with a more compact setting but with space for canopy trees and other vegetation and high quality, responsive design.

The policy outlines a number of design guidelines to achieve the preferred character. The following is noted with regard to the applicable design objectives that apply to this *Precinct*:

Design objectives	Design response	Planner comments
<i>To encourage the retention of intact, older dwellings that contribute to the character of the area.</i>	Attempt to retain Victorian, Edwardian and Interwar era buildings that are intact and in good condition, where possible	As the site is not protected by a Heritage Overlay, demolition works do not require planning permission. Furthermore, the proposed demolition works primarily consist of the removal of the existing southern wall at the 7 th floor level and internal reconfiguration works. As these demolition works are essential to the proposed dwelling, it is considered acceptable. Lastly, given that the proposed dwelling largely sits within the existing building footprints, the overall presentation to the streets remains consistent with the existing. As such, it can be supported.
<i>To ensure buildings make a positive</i>	Minimise the visual impact of development on the	The site is located approximately 820 metres south of the Yarra River banks. Given the distance, the building will not

<p><i>contribution to the Yarra River environs</i></p>	<p>Yarra River and its environs.</p> <p>Design buildings to reflect the undulating topography in their form, scale and layout and minimise the need for cut and fill.</p> <p>Minimise site coverage and hard surfaces on sites adjoining sensitive river environs.</p>	<p>have any unreasonable visual impact on the Yarra River environs.</p> <p>Furthermore, as the proposed dwelling sits on the southern half of the existing building, it will not be visible when viewed from the Yarra River that is located to the north.</p> <p>Lastly, the proposal does not alter the existing site coverage or introduce any additional hard surfaces within the site.</p> <p>Overall, the objective is considered met.</p>
<p>To ensure new buildings and extensions do not dominate the streetscape.</p>	<p>For sites within a Residential Growth or Mixed Use Zone or within a substantial change area, any upper levels should be designed to minimise impact on any adjoining residential property.</p> <p>For sites in other areas, buildings should reflect the predominant scale of the streetscape.</p>	<p>The application proposes to extend an existing residential building that sits within the building footprint and the existing building height. Furthermore, as the site slopes down from south to north and the proposed dwelling sits on the southern half, the proposal will not introduce a visually obstructive element especially when viewing from the streets.</p>
<p><i>To encourage a high quality of building detailing that references, without mimicking, the details of buildings in the area.</i></p>	<p>New buildings should respond to the streetscape character in an innovative and contemporary manner.</p> <p>Articulate the facades of buildings with the use of recesses, verandahs, balconies, window openings and variations in materials and colours.</p> <p>Roof forms should incorporate eaves.</p>	<p>The proposal maintains the overall built form of the existing building and does not introduce an element that sits beyond the existing footprints or the height.</p> <p>In terms of the material treatment, it proposes to incorporate cladding in Charcoal standing seam which is consistent with the refurbishment works to the existing balconies and main entry. This provides a simple and contemporary treatment to the existing building.</p> <p>With regard to the roof, the proposal incorporates a flat roofing form so as to minimise any potential visual impact.</p> <p>Overall, the objective is considered met.</p>
<p><i>To maintain and reinforce the rhythm of spacing between and around buildings.</i></p>	<p>Provide adequate space between and around buildings to accommodate vegetation.</p>	<p>The siting patterns in this area show consistent and generous side and rear boundary setbacks where adequate landscaping is incorporated.</p> <p>The proposal sits within the linearity of the existing building, and all boundary setbacks will largely remain unchanged. As such,</p>

		existing landscaping in the boundary setbacks will not be unreasonably impacted.
<i>To maintain and strengthen the garden settings of buildings and the tree canopy of the neighbourhood.</i>	<p>Include canopy trees and shrubs in landscape plans.</p> <p>Retain established or mature trees where possible and provide for the planting of new canopy trees.</p> <p>Include planting around the perimeter of the site to strengthen the garden setting.</p> <p>Setback basements from all property boundaries to allow for in-ground planting.</p>	The application does not result in unreasonable loss in established vegetation within the site including the identified significant trees. As such, the proposal will not have any unreasonable impact on the current landscaping within the site.
<i>To prevent the loss of front garden space and the dominance of car parking structures.</i>	<p>Car parking structures should be located behind the front facade of the dwelling or incorporated into the building in a recessive form.</p> <p>Hard paving for car parking should be minimised and permeable surfaces used as an alternative to impermeable hard surfacing.</p>	<p>The application proposes two (2) carports located along the northern (i.e. rear) boundary with vehicle access gained from the two (2) existing crossovers.</p> <p>The proposed location of the two (2) carports are concealed behind the existing landscaping within the northern and eastern setbacks and will not result in any unreasonable visual impact on the streetscape or neighbouring properties. Furthermore, as the proposed carports have a total site area of 27 square metres, the proposal will result in a reduction of permeability by 27 square metres. However, as the subject site has a total site area of 1852 square metres, the reduced permeability area is equivalent to 1.5% of the site area, which is considered negligible in nature. As such, the existing permeability will not be unreasonable compromised and the proposal continues to meet the minimum 20% permeability requirement.</p>
<i>To ensure fences complement the predominant style of front boundary treatment in the street and retain views to</i>	<p>Provide either no front fence or a low, open style front fence constructed of materials appropriate to the dwelling style and era.</p> <p>On main roads higher front fences may be constructed where they provide approximately 20%</p>	No changes to the existing boundary fencing are proposed.

<i>dwelling and gardens.</i>	permeability and recesses for landscaping.	
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Amenity Impacts

Noting that whilst Clause 58 (not Clause 55) is triggered, the following particular provisions of Clause 55 serve as a useful guide for an assessment against amenity impacts.

Daylight to existing windows

An assessment of daylight to existing windows - is provided as follows:

- To the south and the east, the site abuts Trawalla Avenue and Orrong Road respectively. As such, no habitable windows will be unreasonably impacted.
- To the west, the site shares a common boundary with the land at No. 11 Travalla Avenue, Toorak which houses a 3-storey apartment building. As shown on the West Elevation, the proposed wall height is 23.1 metres. As required by this Standard, a setback of 11.5 metres from the existing windows at ground level at No. 11 Travalla Avenue, Toorak should be provided. In this application, the proposed dwelling has a minimum distance of 11.8 metres from the eastern wall of the apartment building at No. 11 Trawalla Avenue. As such, the Standard is satisfied.
- To the north, the proposed dwelling adjoins an existing dwelling on this level and no changes are proposed in this interface.

Overshadowing

The relevant assessment mechanism for overshadowing of neighbouring areas of private open space is the Overshadowing Open Space Objective, including Standard B21. This Standard states the following:

Where sunlight to the secluded private open space of an existing dwelling is reduced, at least 75 per cent, or 40 square metres with minimum dimension of 3 metres, whichever is the lesser area, of the secluded private open space should receive a minimum of five hours of sunlight between 9 am and 3 pm on 22 September.

If existing sunlight to the secluded private open space of an existing dwelling is less than the requirements of this standard, the amount of sunlight should not be further reduced.

The Objective states: *To ensure buildings do not significantly overshadow existing secluded private open space.*

An assessment of overshadowing impacts to each interface is provided as follows:

- To the north, due to the orientation, the proposal will not cast any shadow.
- To the south, the proposed shadow will fall onto the footpath and Trawalla Avenue, and no secluded private open space will be impacted.
- To the east, the proposed shadow will be cast onto Orrong Road and no secluded private open space will be impacted.
- To the west, a level of increased shadows will be cast onto the front setbacks associated with the land at No. 9 and 11 Trawalla Avenue, Toorak. However, no shadow will be cast onto any secluded private open space or habitable room windows.

Overall, the Objective is considered met.

Overlooking

The key assessment tool to determine unreasonable overlooking is the Overlooking Objective, including Standard B22. The standard provides a 9m 45 degree angle arc that determines unreasonable overlooking, and windows or balconies that are located in such a position must be screened to a height of 1.7m above finished floor level accordingly. The Standard does not apply to any overlooking issues from the proposed ground level as the existing and proposed fences will prevent any unreasonable overlooking issues.

An assessment of overlooking impacts from the upper levels to each interface is provided as follows:

- To the east and the south, the site abuts Orrong Road and Trawalla Avenue. The Standard does not apply to the proposed dwelling or the roof terrace.
- To the west, the proposal contains a window to the living room and a balcony (annotated as 'terrace' on the Assessed Plans). The proposed window to the living room has a setback of 9.31 metres from the common boundary shared with the western adjoining land at No. 11 Trawalla Avenue, meaning that there will be no direct view cast from this window in question with a 45 degree arc within 9 metres. As such, no screening is required by this Standard. With regard to the balcony (annotated as 'terrace' on the Plans) at Level 7, it is setback 8.8 metres from the shared boundary and 9.5 metres from the eastern wall of the apartment building at No. 11 Travalla Avenue. Given that the distance exceeds 9 metres and no secluded private open space is located in this interface, no screening is required to the balcony at Level 7. With regard to the proposed communal roof terrace, it is noted that this roof terrace is located to the east of the existing lift overrun. Due to the location, it is well concealed behind the existing lift overrun. It is also noted that the communal roof terrace has a setback of 15.5 metres from the shared boundary with the land at No. 11 Travalla Avenue. Given the setback, no screening is required by this Standard.
- To the north, the proposed dwelling adjoining an existing dwelling in the subject building. Given that no new windows are proposed in this interface, the Standard does not apply. In addition, there was an overlooking concern raised by the objector with regard to the northern boundary fence. The applicant supplied photos of the existing northern boundary fence, which is 2.3m in height comprising a 0.5m high brick base with 1.8m high slated timber fence above. As no habitable space is proposed at ground level in this interface and no changes are proposed to the existing boundary fence, the Standard is not triggered.

Overall, the Objective is considered met.

On-site Amenity and Facilities

Private open space

As required by this Standard, a dwelling should have private open space consisting of:

- An area of 25 square metres, with a minimum dimension of 3 metres at natural ground floor level and convenient access from a living room, or
- An area of 15 square metres, with a minimum dimension of 3 metres at a podium or other similar base and convenient access from a living room, or
- A balcony with an area and dimensions specified in Table D5 and convenient access from a living room, or
- A roof-top area of 10 square metres with a minimum dimension of 2 metres and convenient access from a living room.

As further stipulated by Table D5, the proposed dwelling should be provided with a balcony with a minimum area of 12 square metres and a minimum dimension of 2.4 metres.

In this proposal, a balcony with a minimum dimension of 3 metres and a minimum area of 18 square metres is proposed. It is also noted that the balcony is provided with easy access from the living room. Overall, it meets the requirement.

Storage

As required by the Standard, a total minimum storage volume of 18 cubic metres should be provided to a 3 or more bedroom dwelling including 12 cubic metres within the dwelling. As shown on the Plans, adequate storage space is provided by way of storage cupboards internally. A condition is recommended requiring the volume of the storage to be annotated on the Floor Plan as required by this Standard. Subject to the condition, the Standard is considered satisfied.

Internal Amenity

Functional layout

The Standard sets out the following requirements:

Table D7 Bedrooms dimensions		
Bedroom type	Minimum width	Minimum depth
Main bedroom	3 metres	3.4 metres
All other bedrooms	3 metres	3 metres

Table D8 Living room dimensions		
Bedroom type	Minimum width	Minimum area
Studio or 1 bedroom dwelling	3.3 metres	10 sqm
2 or more bedroom dwelling	3.6 metres	12 sqm

This application proposes a 3-bedroom dwelling. As shown on the Plans, the proposed dwelling contains a living room that has an area of 39sqm with dimensions of 7.5 x 5.2m, a master bedroom with dimensions of 3 x 3.4m and two bedrooms with dimensions of 3 x 3m. Overall, the Standard is considered met.

Room depth

As shown on the Plans, two single aspect bedrooms have a room depth of 3 metres which does not exceed 2.5 times the ceiling height. With regard to the open plan living / dining / kitchen area, although the overall depth exceeds 9 metres, it is noted that all spaces have direct interface with a window or a door to the north or the west. As such, adequate daylight can be provided into all habitable rooms and the Standard is considered met.

Windows

All habitable rooms are provided with at least one window in an external wall. The objective is considered met.

Garden Area / Landscaping

Garden Area

The existing garden area is 37% of the site which meets the garden area requirement. In this application, although a small amount of landscaping may be removed to accommodate the proposed carports, the altered garden area would continue to meet the minimum 35% requirement. A condition is recommended to ensure that the proposed garden area will be no less than 35% of the site and is clearly shown on the Site Plan.

Landscaping

The application does not propose to remove any significant trees from the site and all existing vegetation within the boundary setbacks will be largely retained. It is however noted that a small amount of landscaping in the garden bed along the northern boundary is proposed to be removed to accommodate the proposed carports. As one of the significant trees (i.e. the Oak Tree as notated on the Plans) is located within proximity of the carports, conditions are recommended requiring the submission of a Non-destructive Root Investigation Report and a Tree Management Plan to ensure the viability of this Oak Tree.

Car parking

The application proposes to provide two (2) car parking spaces under the proposed two (2) carports constructed against the northern boundary. It is also noted that the proposed carports will have a maximum height of 2.4 metres and installed as freestanding structure constructed of steel frame and with a flat roof.

In terms of vehicle access, as shown on the Site Plan, vehicles access is provided via two (2) existing crossovers located on Orrong Road and Trawalla Avenue respectively. It is also noted that no alterations are proposed to the two existing crossovers. As such, the proposed vehicle access is acceptable.

With regard to onsite car parking maneuverability, as the existing roofed car park extends along the western boundary and the proposed carports are adjacent to the communal driveway to the west of the existing building, it is considered that adequate space can be provided for onsite maneuverability.

In addition, it is noted that pedestrian crossing is proposed between the proposed carports and the existing building (a small section to the north of the existing building). The applicant submitted that the treatment of the pedestrian crossing in this location will be a line marking and no pavement works are proposed. As such, the pedestrian crossing will not affect vehicle access from the Orrong Road crossover and can be supported.

Other Considerations

This application also proposes various repair and maintenance works to the existing building including (but not limited to) painting works to the facades and the main entry, refurbishment to the frames and all balconies. As advised by the applicant, these repair and maintenance works are essential and urgent. Due to the insufficient funds, there has been a delay in the repair works. Should the proposal be approved, the Owners Corporate may be able to conduct these repair and maintenance works to improve the onsite amenities in particular with regards to safety and the façade presentations. This is considered a reasonable consideration as it will lead to a beneficial outcome not only in terms of building presentations to the streets but also with regard to an improvement in safety and onsite amenities. To ensure these repair and maintenance works will be conducted as part of the planning decision, a condition is recommended requiring a Schedule of Repairs and Maintenance Works to be included on all elevations.

Water Sensitive Urban Design Response

Clause 22.18 (Stormwater Management) applies to applications for new buildings, extensions to existing buildings which are 50 square metres in floor area or greater, and a subdivision in a commercial zone.

In this application, it proposes to extend an existing residential building by 191.2m² in floor area. The Clause therefore is triggered. The applicant has not provided a *Water Sensitive*

Urban Design (WSUD) Response. A condition is therefore recommended requiring the submission of a WSUD Response as required by the Policy.

Objections

In response to the grounds of objection not already discussed in the report, the following comments are made:

Non-compliance with the maximum building height control

The Assessed Plans show that the proposed roof level aligns with the existing roof level and sits at R.L. 62.000. As such, the proposal sits within the existing building height and meets the maximum height control.

The material proposed to the carports along the northern boundary is unclear.

As discussed above, the proposal incorporates two (2) freestanding, steel framed carports with a flat roof. It is a concern raised by the objector with regard to the details of the carports. To fully address this, a condition is recommended requiring that additional information of the proposed carports must be provided. This can be achieved by way of product information sheets.

Conclusion

Having assessed the application against the relevant planning controls, it is recommended that the proposal be supported for the following reasons:

- The proposal broadly accords with the State and the Local Policies which seeks to diversify housing types and housing growth in suitable locations.
- The proposal does not introduce additional components that sit beyond the existing building footprints or the overall heights. As such, it will contribute to the continuity of the existing built form.
- The proposal will improve the onsite amenity by way of incorporating an additional communal open space of approximately 85 square metres in area.
- The proposed repair and maintenance works to the existing building will greatly improve the onsite amenities at various levels and enhance the streetscape presentation to Orrong Road and Trawalla Avenue.

Governance Compliance

Conflicts of Interest Disclosure

No Council Officer and/or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

Human Rights Consideration

This application has been assessed in accordance with the requirements of the Planning and Environment Act 1987 (including the Stonnington Planning Scheme), reviewed by the State Government and which complies with the Charter of Human Rights & Responsibilities Act 2006.

Attachments

1. 0600/19 - 723 Orrong Road, Toorak [14.2.1 - 28 pages]

Officer Recommendation

That Council AUTHORISE Officers to issue a Notice of Decision to Grant a Planning Permit No: 600/19 for the land located at 723 Orrong Road, Toorak under the

Stonnington Planning Scheme for Extension to a residential building in a General Residential Zone subject to the following conditions:

- 1. Before the commencement of the development, 1 copy of plans drawn to the scale of 1:100 or 1:200 and fully dimensioned, must be submitted to and approved by the Responsible Authority. The plans must be generally in accordance with the plans prepared by Watson Young described as No.s: TP02 (Design Response Plan rev E), TP04 (Proposed Level 7 Penthouse Plan rev E), TP05 (Roof Top Access Plan rev F), TP09 (Elevations – Proposed Sheet 1 rev E), TP10 (Elevations – Proposed Sheet 2 rev E) and TP11 (Sections – Sheet 1 rev F) Council received on 4 June 2020 but modified to show**
 - a) The proposed Garden Area must achieve a minimum 35% of the site and be clearly outlined with the total area annotated on TP02 (Design Response Plan rev E).**
 - b) A Schedule of Repairs and Maintenance Works must be detailed and included on all Elevation including TP09 (Elevations – Proposed Sheet 1 rev E), TP10 (Elevations – Proposed Sheet 2 rev E) and TP11 (Sections – Sheet 1 rev F).**
 - c) Elevations of the proposed two (2) carports must be provided separately depicting the height, the detail and the material. Information sheets of the proposed carports may be provided as supporting documentation.**
 - d) A total minimum storage volume of 18 cubic metres including 12 cubic metres within the proposed dwelling must be shown and annotated on the Floor Plan as required by Standard D20 (Storage objective) of Clause 58 of the Stonnington Planning Scheme.**
 - e) Any amendment required by Condition 3**
 - f) Any amendment required by Condition 5**

All to the satisfaction of the Responsible Authority.
- 2. The layout of the site and the size, levels, design and location of buildings and works shown on the endorsed plans must not be modified for any reason without the prior written consent of the Responsible Authority.**
- 3. Concurrent with the endorsement of any plans pursuant to Condition 1, a Water Sensitive Urban Design Response must be submitted to and approved by the Responsible Authority. The report must include, but not limited to, the following:**
 - a) A site plan showing the location of proposed stormwater treatment measures and the location and area (square metres) of impermeable surfaces that drain to each treatment measure.**
 - b) A report outlining how the application achieves the objectives of this policy including stormwater treatment modelling. Please note that for the modeling requirement you can use the following free program to demonstrate best practice, which is equivalent to a score of 100% or more: <http://storm.melbournewater.com.au>**
 - c) If any water tank is proposed the plans must indicate the tank's capacity in litres and what the tank is connected to (e.g. toilets).**

- d) ***If any rain garden is proposed, design details must be provided including cross sections which show details of the depth and materials for each layer of the rain garden.***
- e) ***Details of proposed maintenance measures for stormwater treatment measures including location of maintenance access to rainwater tanks if below ground.***
- 4. ***The project must incorporate the Water Sensitive Urban Design initiatives detailed in the endorsed site plan and/or stormwater management report.***
- 5. ***Concurrent with the endorsement of development plans a Tree Management Plan (TMP) prepared by a suitably qualified arborist must be submitted to and approved by the Responsible Authority. When approved, the TMP will form part of this permit and all works must be done in accordance with the Tree Management Plan (AS 4970). The Tree Management Plan (TMP) must include:***
 - a) ***Measures to protect and ensure the viability of Oak Tree located along the Northern Boundary must be detailed.***
 - b) ***A non-destructive root investigation (NDRI) must be carried out to determine the locations of the carports to ensure that no works are constructed with the structural root zone of the retained Oak Tree along the northern boundary. Subject to the findings, any buildings and works that potentially impact upon the health and the stability of the tree must be deleted from the plans.***
 - c) ***Details of arboricultural supervision during demolition must be provided, demonstrating how the demolition works will not adversely impact upon the health and stability of the retained Oak Tree along the northern boundary, in particular with regards to the works (if any) occurring within the Tree Protection Zone of Oak Tree.***
 - d) ***Any other amendment required as a result of the non-destructive root investigation (NDRI).***
 - e) ***Among other things, the tree management plan must include the following information:***
 - i. ***Pre-construction (including demolition) – details to include a tree protection zone, height barrier around the tree protection zone, amount and type of mulch to be placed above the tree protection zone and method of cutting any roots or branches which extend beyond the tree protection zone. A plan must be submitted detailing any tree protection fencing, where the fencing is clearly identified and dimensioned.***
 - ii. ***During-construction – details to include watering regime during construction and method of protection of exposed roots.***
 - iii. ***Post-construction – details to include watering regime and time of final inspection when barrier can be removed and protection works and regime can cease.***

Pre-construction works and any root cutting must be inspected and approved by the Responsible Authority's Parks Unit. Removal of protection works and

cessation of the Tree Management Plan must be authorised by the Responsible Authority's Parks Unit.

- 6. Prior to a building permit being issued, a report for the legal point of discharge must be obtained from Council and a drainage design for the development must be prepared by a suitably qualified Engineer in accordance with all 'recommendations' and requirements contained in that report. All drainage must be by means of a gravity based system. The relevant building surveyor must check and approve the drainage design and ensure that protection of the building is provided from a 1 in 100 A.R.I. rainfall event as required by the Building Regulations.**
- 7. Any poles, service pits or other structures/features on the footpath required to be relocated to facilitate the development must be done so at the cost of the applicant and subject to the relevant authority's consent.**
- 8. All utility services to the subject land and buildings approved as part of this permit must be provided underground to the satisfaction of the Responsible Authority by completion of the development.**
- 9. This permit will expire if one of the following circumstances applies:**
 - a) The development is not started within two years of the date of this permit.**
 - b) The development is not completed within four years of the date of this permit.**

In accordance with Section 69 of the Planning and Environment Act 1987, a request may be submitted to the Responsible Authority within the prescribed timeframes for an extension of the periods referred to in this condition.

NOTES

- A. This permit does not constitute any authority to carry out any building works or occupy the building or part of the building unless all relevant building permits are obtained.**
- B. Nothing in this permit hereby issued shall be construed to allow the removal of, damage to or pruning of a significant tree (including the roots) without the further written approval of Council.**

"Significant Tree" means a tree or palm:

- i. with a trunk circumference of 140 cm or greater measured at 1.4 m above its base;**
- ii. with a total circumference of all its trunks of 140 cm or greater measured at 1.4 m above its base;**
- iii. with a trunk circumference of 180 cm or greater measured at its base; or**
- iv. with a total circumference of all its trunks of 180 cm or greater measured at its base.**

Please contact the Council Arborists on 8290 1333 to ascertain if permission is required for tree removal or pruning or for further information and protection of trees during construction works.

- C. Nothing in the permit hereby issued may be construed to allow the removal of, damage to or pruning of any street tree without the further written consent of the**

Stonnington City Council. Contact the Council Arborists on 8290 1333 for further information.

- D. At the permit issue date, Section 69 of the Planning and Environment Act 1987 stated` that the Responsible Authority may extend the periods referred to if a request is made in writing within the following timeframes:***
- a) Before or within 6 months after the permit expiry date, where the development allowed by the permit has not yet started; and***
 - b) Within 12 months after the permit expiry date, where the development allowed by the permit has lawfully started before the permit expires.***

14.3 Planning Amendment 0947/96 - 52 Darling Street, South Yarra

Manager Statutory Planning: Alex Kastaniotis
Acting Director Planning & Place: Chris Balfour

Purpose of Report

For Council to consider a planning application to amend a permit and plans to allow for the conversion of the existing building to 'dwellings' (from 'serviced apartments'), a reduction in car parking and bicycle parking requirements, internal and external changes at 52 Darling Street, South Yarra.

Officer Recommendation Summary

That Council authorise Officers to issue a **Notice of Refusal to Amend a Planning Permit** on the grounds outlined in the Officer Recommendation namely:

- The change of use from serviced apartments to permanent dwellings is considered inappropriate.
- The development does not provide for an adequate level of internal amenity for use as permeant dwellings.
- The waste management provision is considered inadequate. It is substandard and does not meet Council's standard for conventional residential developments.
- The waiver of bicycle parking requirements is contrary to the State and Local policies which seek to promote and facilitate the use of sustainable transport modes. The deletion of landscaping requirements as specified in conditions are considered inappropriate.

Executive Summary

Applicant:	Planning & Property Partners Pty Ltd
Ward:	North
Zone:	General Residential Zone, Schedule 9
Overlay:	Design and Development Overlay, Schedule 1
Neighbourhood Precinct:	Garden River Precinct
Date Lodged:	9 January 2019
Statutory Days: (as at Council Meeting date)	218
Trigger for Referral to Council:	Councillor call up (Councillor Koce)
Cultural Heritage Plan	Yes
Number of Objections:	One (1)
Consultative Meeting:	No
Officer Recommendation	Notice of Refusal to Amend a Planning Permit

Background

History

Planning Permit 947/96 (the permit) was issued on 6 January 1997, following consideration by Council at its meeting held on 2 December 1996. The permit allowed for *'alterations and additions to existing building including a 7 level addition to the rear and a 1 level addition above the existing building and associated carparking for use as serviced apartments'*.

Notably, the permit allowed for the redevelopment of an existing motel and use as serviced apartments, construction of a 7 storey addition at the rear of the property as well as the addition of another level above the existing building.

It is important to note that at the time the permit was issued, the subject land was zoned Residential C Zone and was not affected by any overlays.

In 1997, Council and the Administrative Appeals Tribunal (AAT) (now known as Victorian Civil and Administrative Tribunal (VCAT)) approved three separate amendments to the permit and the endorsed plans. The amendments allowed for, amongst other things, a series of changes to the internal and external composition of the building, increase in the number of apartments from 54 (as first approved) to 62, and increase in the car parking spaces from 39 (as first approved) to 44.

On 4 March 1998, Planning Permit S1521/97 was issued allowing for subdivision of 107 allotments and common property.

On 23 April 1998, the building was subdivided into individual allotments and the plan of subdivision was registered at the Titles Office.

On 17 July 2018, Adina Apartment Hotel South Yarra notified Council's Rates Department on the cease of their lease. The lease of operating as a hotel by Adina ceased on 31 July 2018.

The Proposal

The plans that form the basis of Council's consideration were prepared by Bruce Henderson Architects and are known as Drawing No's TP-200, TP-201, TP-202, TP-203, TP-204, TP-205, TP-206, TP-301, TP-302, TP-303, and TP-304 (all Rev 1) with Council date stamped 30 March 2020.

It is noted that this amendment application arises from an enforcement action. The amendment application seeks retrospective approval to convert the building use from serviced apartments to permanent dwellings with associated reduction in car parking and bicycle parking requirements, and make internal and external changes to reflect the existing as-built conditions.

The application seeks amendments to the permit preamble to read as follows:

'Alterations and additions to existing building including a 7-level addition to the rear and a 1 level addition above the existing building and reduction in the standard car parking and bicycle parking rate'

The application seeks amendments to the permit conditions to modify landscaping and to reflect the as-built site conditions as follows:

- Delete condition 1(f) requiring landscaping along the south boundary. Condition 1(f) currently reads as follows:

The provision of a 1 metre wide landscaping strip along the southern boundary of the site from the eastern boundary to 10 metres to the west. This strip shall be planned with semi-mature trees with a minimum height of 3.5 metres to the satisfaction of the Responsible Authority

- Delete condition 3(a) requiring canopy tree planting along the north boundary. Condition 3(a) currently reads as follows:

The planting of semi-mature canopy trees along the northern boundary to provide a screen to 56 Darling Street.

The application also seeks approval for amendments to the plans to reflect the as-built site conditions as outlined below:

- A number of internal changes to the apartment layouts to reflect the existing as-built conditions.
- Changes to Apartments LG06 and LG07.
- Changes to Apartment 305 and common property.
- Changes to internal layouts.
- Repurpose of room use.
- Alterations to common corridor utility cupboards and stairwell.
- Changes to car grates.
- Modifications to elevations.
- Modifications to various window openings to reflect internal layout changes.
- Increase in balcony rail height at Levels 3 and 4.
- Addition of a balcony at Level 4 to correct omission on the endorsed east elevation and correspond with the floor plans.
- Addition of west facing balconies on the north elevation to correct omission on the endorsed plans and to correspond with the floor plans.
- Addition of waste storage enclosure at lower ground floor to correspond with the floor plans.
- Extension to balcony of Apartments 406 and 407.
- Modification and replacement of door openings with windows to ground floor waiting room.
- Reduction in height of two rendered entry gate piers.
- Removal of Apartment G01 bathroom window on the north elevation.
- Addition of port cochere on the north elevation to correspond with the floor plans.
- Addition of services cabinets on the south elevation to correct omission on the endorsed plans.
- Addition of external finishes legend.
- Deletion of landscaping strip along the south boundary.
- Deletion of canopy tree planting along the north boundary.

This is the fifth amendment to the permit.

Site and Surrounds

The subject site is located on the eastern side of Darling Street directly opposite the intersection with Domain Road in South Yarra.

The subject site is rectangular in shape and has a street frontage of 35.97 metres to Darling Street and a depth of 42.58 metres with a total area of 1532 square metres. The rear boundary abuts the Sandringham-Frankston railway line.

The site is occupied by a 7-storey serviced apartment building that comprises 62 apartments. The building was first constructed in the 1950's and was previously used as a motel before Planning Permit 947/96 was issued in 1997. The building is viewed as a 5 storey building from Darling Street due to the slope of the land. The lower ground level of the building is entirely subterranean and the southern section of the ground floor is partially

beneath natural ground level. A total of 44 car parking spaces are provided over two levels of car park at basement and lower ground levels.

Vehicle access to the building is from Darling Street via two driveways along the northern and southern boundaries of the site and a porte cochere located along the Darling Street frontage. The basement car park is accessed by the northern driveway whilst the lower ground car park is accessed by the southern driveway.

Contextually, the site forms part of a residential area comprising a mixture of single dwellings (predominantly single or double storey) and multi-storey flats and apartment buildings.

To the north at 56 Darling Street is occupied by an A2 graded circa 1940 art-deco style residential building comprising 12 apartments and is affected Heritage Overlay, Schedule 122 (HO122).

To the south at 50 Darling Street is a block of 1960's flats containing 12 apartments. An at-grade car park is located to the rear of the building and is accessed from Darling Street via a driveway along the south boundary.

Opposite the site at 283 Domain Road is a 3 storey apartment building featuring octagonal shape with undercroft car parking and 18 apartments.

To the northwest at 286 Domain Road is a double storey dwelling, which is a A2 graded heritage building and is affected by HO122, Design and Development Overlay, Schedules 1 and 3 (DDO1 and DDO3), and Significant Landscape Overlay, Schedule 1 (SLO1).

To the east is the rail corridor with the South Yarra Railway Station located approximately 330 metres to the south.

Previous Planning Application/s

A search of Council records indicates the following relevant planning application/s:

- Planning Permit 33729 issued on 10 June 1964 for use for the purpose of a Convalescent Home.
- Planning Permit 73/866 issued on 22 August 1973 for signage.
- Planning Permit S1521/97 issued on 4 March 1998 for subdivision of 107 allotments and common property.
- Planning Permit 963/98 issued on 24 August 1998 for construction and display of internally illuminated signage.

The Title

The amendment application relates to all allotments, including common property, on Plan of Subdivision 409413V. No covenants encumber the allotments.

A 2.67 wide easement E-1 for sewer drain runs across the centre of the site in an east-west direction.

Planning Controls

The following controls/permit triggers are considerations for this amendment application:

Condition 4 of the Permit

The use or development allowed by this permit and shown on the drawings and/or schedules endorsed to accompany the permit shall not be amended for any reason without the consent of the Responsible Authority.

Zone

Clause 32.08 – General Residential Zone, Schedule 9 (GRZ9)

Pursuant to Clause 32.08-2, a permit is not required to use the land as Dwelling.

Pursuant to Clause 32.08-6, a permit is required to construct two or more dwellings on the lot.

Overlay

Clause 43.02 – Design and Development Overlay, Schedule 1 (DDO1)

Pursuant to Clause 43.02-1 a permit is required to construct a building or construct or carry out works.

Clause 2.0 of Schedule 1 to DDO, a permit is not required for a building or works to be constructed up to 12 metres in height.

Despite the above, the development benefits from an accrued right under Design and Development Overlay. Therefore, it is not a permit trigger for this amendment.

Particular Provisions

Clause 52.06 – Car Parking

The proposed use of Dwelling generates a demand for 61 spaces at Clause 52.06-5.

The development contains 44 spaces on site. This results in a shortfall of 17 spaces.

Pursuant to Clause 52.06-3, a permit is required to reduce the car parking requirements.

Clause 52.34 – Bicycle Facilities

Pursuant to Clause 52.34-1 a new use must not commence until bicycle facilities as specified by Clause 52.34-5 are provided on the land. Based on a rate of 1 space to each 5 dwellings for resident and 1 space to each 10 dwellings for visitor, the proposed use of Dwelling generates a demand for 18 bicycle spaces, including 12 spaces for resident and 6 spaces for visitor.

The development provides zero bicycle spaces on site.

Pursuant to Clause 52.34-2, a permit is required to waive the bicycle parking requirements.

Relevant Planning Policies

Clause 15	Built Environment and Heritage
Clause 16.01	Residential Development
Clause 18	Transport
Clause 21.03	Vision
Clause 21.05	Housing
Clause 21.06	Built Environment and Heritage
Clause 21.06-3	Amenity
Clause 21.08	Infrastructure
Clause 65	Decision Guidelines

Advertising

The amendment application has been advertised pursuant to Section 52 of the *Planning and Environment Act 1987* by sending notices to the owners and occupiers of adjoining land and

by placing one sign on the site. The public notification of the amendment application has been completed satisfactorily.

The site is located in North Ward and one objection has been received. The objection is summarised as follows:

- Inadequacy of storing bicycles within apartments.
- Inconsistency with Council's vision and commitment on support of sustainable transport.
- No on-site bicycle parking is inconsistent with other development approvals in Stonnington.
- No on-site bicycle parking would disadvantage both current and future occupants.

Referrals

Urban Designer

- Should the application be permitted, it would set a dangerous precedent. Contemporary standards for apartment living cannot be dismissed as being unnecessary, simply because it is asserted that the existing sub-standard amenity of the amalgamated serviced apartments is acceptable to the current owners.
- Should the current owners seek to convert the permitted use of the building from serviced apartments to dwellings (apartments); this would require more extensive re-planning and building re-configuration to achieve contemporary apartment amenity standards.
- This proposed approach to a change of use is unacceptable and is not supported.

ESD Officer

- There are significant concerns regarding the apartment layout and daylight access.
- It is clear from the general configuration of the plans the development has been designed for a more transient use, serviced apartments which is not readily translatable into permanent dwellings.
- In order to address the concerns regarding the apartment layout and daylight access, a significant reconfiguration would be required, which in reality is not possible therefore a change of use from Serviced Apartments to Dwellings is not supported.

Transport and Parking Unit

Car parking Provision

- The provision of providing a shortfall of spaces is suitable given the proximity to alternate transport modes, and is consistent with other 'zero parking' developments that are located within this area.
- The provision of no off-street parking can be considered satisfactory on condition that the applicant ensure that all prospective residents be made aware in advance if they do not have a parking space. Any prospective resident would not be able to rely on on-street parking in lieu of off-street parking provision.
- The applicant states that some residents may choose to park in an off-street car park with the option to pay for all-day parking. Although this may occur, this is considered not to be an effective solution for long term residents due to the high costs involved, and that availability cannot be guaranteed.
- It should also be noted that there are other apartment developments in the area, with more to be constructed, and therefore it is anticipated that on-street parking availability will be further limited as these developments are occupied. As such, it is important that

any prospective residents of the development be aware that car parking in the vicinity is unlikely to be available.

Bicycle Parking Provision

- The applicant is not proposing any additional bicycle parking spaces. A shortfall of off-street car parking is also proposed so it is unreasonable to not provide any additional bicycle parking facilities. It is understood that the site is currently constructed, however in order to promote other modes of transport, as noted by the applicant in their notes, bicycle parking facilities must be provided to promote this mode of travel.
- The notes do state that residents would be able to store the bicycles in their apartments. However, the Planning Scheme has a requirement for a development of this size and it should be provided as an absolute minimum.

Parks Unit

- No objection to the proposal.

Key Issues and Discussion

The amendment application arises from an enforcement action. It seeks retrospective approval to convert the building use from serviced apartments to permanent dwellings, reduce associated car parking and bicycle parking requirements, and make internal and external changes to reflect the as-built conditions of the site.

In *Jurkic v Manningham CC* [2005] VCAT 1162, President Justice Morris considered the principles for dealing with matters where development has been undertaken without authorisation. At paragraph 11, the Tribunal found:

11. *In considering the application on its merits the tribunal must proceed upon the assumption that the unlawful development has not been carried out, because to do otherwise would be to reward the applicants for unlawfully erecting the building. Nonetheless the existing building can be utilised to better understand, and assess, the impact it would have if it was permitted. As Osborn J noted in Knox City Council v Tulcany Pty Ltd [2004] VSC 375 at [13(b)], the statement of principle contained in Van Egmond:*

Expressly identifies the paradox that unlawful commencement of a use (or construction of a development) may enable a better appreciation of its impact on its context that plans or other descriptions of a proposal ever could. This is self-evidently correct.

Each aspect of the proposed changes is discussed in turn below.

Land Use

The amendment application seeks to convert the use from Serviced Apartments to Dwellings.

The intended use of the site as permanent, conventional dwellings in no doubt has broad strategic policy support. State and Local Policies support higher density housing on sites that are well located in relation to activity centres, employment corridors and public transport. Most notably the subject site is located in close proximity to the Chapel Street Major Activity Centre, which is identified in the Strategic Framework Plan of the Municipal Strategic Statement (MSS) as a preferred location for higher density housing, and is well accessible by public transport.

Nonetheless, the appropriateness of the change of use needs to be assessed in the context of internal amenity offered by the development, not in isolation of merely the broader strategic support of Dwelling use.

'Serviced apartments' is an innominate use in the Stonnington Planning Scheme. The characterisation of the use has been considered at length by VCAT in a number of case law.

In *Tribe v Whitehorse CC* [2014] VCAT 2012, Member Cimino found that 'serviced apartments' is a use in its own right as a form of short term accommodation. It was noted:

15. *'Serviced apartments' typically provide short stay accommodation. The fundamental purpose and nature of the accommodation is not the same as 'dwelling', a form of accommodation that provides a permanent place of residence. That difference has been recognised by the Tribunal and lead to 'serviced apartments' being assessed differently to 'dwellings', particularly having regard to 'internal amenity'. 'Accommodation' is a very broad land use term, and would need to be qualified in some way, such as suggested in one submission to the Tribunal in *Surrooee* by bracketing 'serviced apartments' to better describe and limit the nature of the permission being granted. The same approach would need to be taken with 'Residential hotel', a land use that clearly contemplates 'accommodation in serviced rooms', but also may include other activities such as sale of liquor, function or conference rooms, entertainment, dancing etc. Again, the definition contemplates a range of activities that are not part of this proposal. The broader definition of 'Residential Building', within which 'Residential Hotel' is nested, raises the same issue. (underlined my emphasis)*

16. *Accordingly, I find that 'Serviced Apartments' is a use in its own right, albeit that it has not been defined as a specific land use in the planning scheme for some time. 'Serviced Apartments' have their own specific qualities and characteristics, distinguishing them from other defined land uses. These include the provision of self-contained accommodation, serviced and controlled under central management regime, suitable for travellers or other persons seeking short term stays away from their usual place of residence. The alternative is that this use falls within the broader definition of 'Accommodation'.*

The above findings were adopted by the Tribunal in a number of VCAT decisions, including *Parc Vue Projects Pty Ltd v Darebin CC* (Corrected) [2017] VCAT 1602, and the latest *Spinosa v Boroondara CC* [2019] VCAT 1838.

In addition, the Tribunal has dealt with the internal amenity of 'serviced apartments' in a number of VCAT decisions over the years and has found that serviced apartments are different to standard dwellings which are designed for long term occupants.

In *Adamco Developments v Monash CC* [2004] VCAT 2359, the Tribunal said:

48. *We also note that there is a distinction to be made between permanent and temporary accommodation (in this case between dwellings and serviced apartments) and adopt the findings in *487-497 Flinders Lane Pty Ltd v Melbourne City Council* [1998] VCAT 192 and *Australian Conservation Foundation Inc. and Surowee Pty Ltd v Melbourne City Council and Anor.* [2002] VCAT 1.*

49. *In essence, these decisions support the proposition that different standards for “liveability” or internal amenity can be applied to dwellings occupied by residents on a more permanent basis compared to more temporary accommodation in the form of serviced apartments. We agree with this.*

In *Elland Development Pty Ltd v Whitehorse CC* [2013] VCAT 2104, the Tribunal said:

30. *I am not assessing these apartments as permanent dwellings. Some are 30 square metres in area, south facing and have a balcony less than 8 square metres. They are clearly for temporary accommodation, mostly without a car space but have a range of services and facilities within easy walking distance.*
31. *I am of the view that the reduced apartment area and balcony area is appropriate given they are used for temporary accommodation or serviced apartments (I note that the serviced apartments are generally in the order of 30 square metres)...*

In *Tribe v Whitehorse CC* [2014] VCAT 2012, the Tribunal found that:

62. *While it would be acceptable to design serviced apartments to a standard that they could also be used as permanent dwellings, Jinlin clearly states its intention here is to provide temporary accommodation and the apartments have been design accordingly. By and large, I do not see any difficulty with apartments of the size and type proposed being used for temporary accommodation. However, I would not approve them for dwellings providing permanent accommodation given the standard of amenity they provide. The absence of open space for some apartments, the internal layouts and absence of facilities do not make the proposed units suitable for permanent accommodation.*

In *Spinosa v Boroondara CC* [2019] VCAT 1838, the Tribunal found that:

53. *When assessing the internal amenity of each serviced apartment I have also placed weight on the fact that this building is intended to be used for short term accommodation and not as permanent homes for the occupants of the dwellings.*

...

56. *A number of apartments contain bedrooms which rely on borrowed light. These apartments must be assessed against those apartments which have no separate bedroom at all. These arrangements would not be acceptable for permanent dwellings, however given that these are to be used for short term accommodation I consider that they are acceptable. Similarly, a number of dwellings have no secluded private open space, or less secluded private open space than what would be expected for a normal dwelling. However, again given the nature of the use I find this arrangement to be acceptable, noting that Surrey Gardens, located 270 metres from the site in Union Road, will provide additional recreational space to meet the needs of the occupants of the serviced apartments.*

Having considered the relevant case law, it is clear that ‘serviced apartments’ provides a form of short term, temporary accommodation for persons away from their normal place of residence. ‘Serviced apartments’ has its own specific qualities and characteristics, and clearly distinguishes from permanent, conventional dwellings. There is fundamental difference between the nature, purpose and internal amenity of serviced apartments to that of permanent dwellings. The distinct shift in category of user, reliance on shared facilities and temporal aspect of the use represent distinguishable differences. The difference in

occupant demands has also led to a different format of building with smaller units, minimal or no secluded open spaces, and less car parking.

In this case, it is clear that the building as approved was purposely designed for and built as serviced apartments, more like hotel suites as opposed to self-contained dwellings. As part of the original approval, the assessment contained within the Council Report provided the following commentary with regard to the intended building use:

'The composition of the rooms within the building are predominantly single bedroom and bedsits. The small nature of these rooms are such that they are unlikely to be used as dwellings. Many of the rooms range between 40-50m² in size and are therefore purpose built for serviced apartments. It is therefore considered highly unlikely that the building would be converted to dwellings. Council should however consider the possibility if this were to occur.'

The Council Report further stated that:

It is the applicant's intent to subdivide the property, sell each of the units and then manage the property as serviced apartments as an investment for the purchasers...'

In deciding the condition appeal, which related to the visitor car parking arrangement of the original approval, Member Mainwaring also made the conclusion regarding the intended building use:

'The Tribunal was informed that the Applicant intended to finance the development by subdividing the property and selling into private investors who would then lease them back to the operating company through a serviced apartment operator. The Applicant wished in these circumstances to be able to sell all of the car parking spaces off as packages with groups of units.'

...

'The Tribunal is satisfied that the property will continue to be used as serviced apartments and that it would be impractical to use it for any other purpose, and further, in the circumstances envisaged where all indications are that the number of car parking spaces available are more than adequate to cater for guests and their visitors, there is no advantage to be gained by designating a number of spaces as common property for visitor use only.'

It is evident that the applicant at the time relied on the use of the land by a restricted category of occupants to justify a finding of acceptability of the built form, floor layout and car parking provision, compared with conventional residential development.

The building may offer occupants acceptable levels of internal amenity as serviced apartments, however, this could not be said if they were more permanently occupied as dwellings. Clause 21.06-3 (Amenity) in the Municipal Strategic Statement seeks to achieve high standards of amenity within new developments, and with adjoining developments.

Amongst others, the clause seeks to:

- 1.4 *Require high standards of internal amenity in multi-unit residential developments, particularly in relation to access to daylight and sunlight and noise environment.*
- 1.5 *Require adequate provision of practical and useable private open space and encourage the provision of on-site communal open space where possible in multi-unit residential developments.*

If the development was to be used for permanent accommodation, it would have found the internal layouts of some of the apartments to be unacceptable. Principal design faults are access to daylight as well as minimal and absence of secluded private open space.

Daylight Access

The design and floor layout of the building, as currently approved, provide poor and substandard internal amenity to some of the apartments for permanent dwelling use. Amongst the whole building, the apartments at lower ground level are of particular concern.

All apartments at lower ground level are single aspect and subterranean. They do not achieve Council's best practice standard for daylight to apartments as confirmed by Council's ESD Officer. With the exception of Apartments LG06 and LG07, a small sunken terrace of only 6 and 7 square metres in area provides the sole source of light into the bedroom and living area of the lower ground level apartments. The poor daylight access to living areas is further compounded by the location and configuration of the sunken terrace (which is located to the side of the living area) and the size of door openings to the sunken terrace. Overall, the daylight access and outlook from these subterranean apartments are poor and do not achieve the expectation of internal amenity for normal dwelling.

The design of Apartment LG07 is also of concern. The kitchen is internalised within the unit layout and does not receive any daylight. The apartment has no secluded private open space for recreational needs of the occupants. The level of amenity of this apartment does not meet what would be expected for a normal dwelling.

The design of Apartment LG06 does not provide a satisfactory level of amenity for use as permanent dwelling. The bedroom does not have external window and relies on borrowed light. The kitchen is wholly internalised and does not have a source of daylight and natural ventilation. The bedroom and balcony are adjacent to an existing substation, which is a noise source. The occupants could be unreasonably affected by noise generated by the substation. Based on the drawings, the substation does not appear to have direct external access from common property. Instead it is only accessible internally via Apartment L06 and its balcony. The amenity of this apartment and balcony is completely compromised. These arrangements might be more acceptable in a temporary accommodation situation where occupants are very much staying in the apartment for short stay, but clearly is not unacceptable for permanent dwelling which any one person might live in all year around. The liveability and internal amenity of this apartment is considered very poor and is below the expectation for permanent dwelling and long term accommodation.

In addition, kitchens to a number of apartments are either internalised within the unit layout or located away from external windows, and thus have limited daylight access.

Overall, the design as approved does not achieve a reasonable daylight access for some of the apartments.

Private Open Space

The building design has inadequate provision of secluded private open space for permanent dwelling use. Whilst Clause 58 (Apartment Standards) is not strictly applicable to the proposal, it is considered a useful benchmark to assess amenity of the apartments as permanent dwelling.

The floor areas of terraces and balconies depicted on the drawings and in the Area Schedule are incorrect and do not correctly match with the dimensions on the drawings. For instance, the lower ground level plan depicts that LG02 terrace has 6 square metres in area. However, this terrace measures 1.805 metres by 2.745 metres, which equates to 4.95

square metres. Similarly, the ground floor plan depicts that G02 balcony has 9 square metres where the correct size should be 6.65 square metres based on the dimensions of 2.035 metres by 3.27 metres. In essence, the majority of the secluded private open spaces are in fact well smaller than what depicted on the drawings and in the Area Schedule.

Setting the issue of inadequacy of drawings aside, the size, layout and arrangement of the secluded private open space of the majority of the apartments have fundamental issues. Amongst 62 apartments, only 16 of them have an acceptable provision of secluded private open space. The remainder of the apartments have absence of or very minimal secluded private open spaces in the order of 2.73 to 11 square metres. Many of the balconies are fairly shallow, with a width of as low as 970mm. Some 2-bedroom apartments are only provided with a small balcony of 3 square metres in area with 1 metre in width. Furthermore, 8 out of 62 apartments (Apartments LG07, G03, G12, 105, 109, 205, 209, and 305) do not have balconies or terraces for private open space. The size and dimensions of the secluded private open space are below the benchmark of Clause 58 and clearly are inadequate for use as permanent dwellings.

In addition to the shortcoming of the size, the layout and arrangement of some secluded private open spaces are considered to be unacceptable and dysfunctional for use as permanent dwellings. For instance, apartments (Apartments 113, 213, and 310) are provided with balconies, which are their sole private open space, accessed from bedrooms rather than living areas.

The VCAT decisions outlined above have set out a clear benchmark for provision of secluded private open space between the uses of serviced apartments and permanent dwellings. It was commonly found that the reduced area or the absence of open space would not be suitable and acceptable for use as permanent dwellings. As such, given to the reasons explained above, it is considered that the provision of secluded private open space is inadequate for use as permanent dwellings.

Waste Management

There are fundamental issues with the location, size and functionality of the bin storage room.

According to Council's records, the number of bins for the development has significantly increased from 8 (as originally requested by the operator of the serviced apartments) to 40 (20 x 240 litres garbage bins and 20 x 240 litres recycling bins), as a result of the change of building use. It is noted that the provision of 40 bins is below Council's standard for 'shared bin' arrangements in mixed use developments and apartment buildings. Based on Council's standard, a conventional apartment building comprising 62 dwellings will generally require 62 x 240 litres bins (31 x 240 litres garbage bins and 31 x 240 litres recycling bins) if 'shared bin' arrangements are selected.

It is evident that the existing bin storage room is not capable of fitting 40 x 240 litres bins. Furthermore, Council has recently received complaints from residents in the area concerning the overflow of bins from this development onto the street and footpath. This caused safety concern and nuisance to passing pedestrians. The arrangement for waste storage within the development is considered inadequate and unacceptable.

For the reasons outlined above, the amount of space required for bin storage for 62 permanent dwellings is significantly higher than that of currently available on the site. The current arrangement of a small bin storage room accessed from a basement ramp does not meet Council's standard and expectation for conventional residential developments. The overflow of bins with no designated waste storage facilities is considered inappropriate and

unacceptable from both safety and amenity perspectives. This could obstruct vehicle maneuvering and create hazard to vehicles and residents using the car parks. The potential odour and hygiene issues would result in poor amenity for residents within the building and possibly the neighbouring properties, and cause issue of public health. This is considered to be unacceptable and is a poor planning outcome.

On balance, the fault of the waste management further demonstrates that the building was designed for the purpose and function as serviced apartments and was not suitable for use as permanent dwellings without modifications.

Conclusion

The expectation of amenity standards for permanent dwellings is higher than that of serviced apartments. This is not to say that amenity considerations for serviced apartment developments are not relevant; rather, the bar is set higher for dwellings which provide permanent as opposed to temporary accommodation. It is acknowledged that some of the apartments may be suitable for converting into normal dwelling. Nevertheless, the development, as a whole, does not provide an acceptable standard of internal amenity for use as permanent dwellings. The acceptance of amenity for some 'good' apartments do not provide sufficient justification for compromised levels of amenity for other substandard one. The shortcoming with waste management further demonstrates the dysfunction of the building as conventional residential development.

The lawful existence of the building as serviced apartments does not mean approval of the building as multiple dwellings is automatic. The constraints offered by the existing building does not provide automatic support for substandard conventional residential development. Rather, an assessment against the different and higher standards that apply to multi dwelling developments is still required. The building was purposely designed and constructed as serviced apartments and does not function as conventional residential development. For the reasons outlined above, the conversion of the whole building into Dwelling is considered inappropriate and is not supported.

Car Parking

The proposed use of Dwelling generates a statutory requirement of 61 car parking spaces under Clause 52.06. The development currently provides 44 car parking spaces on site, which equates to a rate of 0.71 spaces per apartment. The amendment application therefore seeks approval for a reduction of 17 car parking spaces.

Although a considerable reduction in the number of car parking spaces is sought, there is strong strategic support for a reduction of on-site car parking provision in this location. The site is located in close proximity to the Chapel Street Major Activity Centre and has excellent access to public transport. It is within walkable distance of the South Yarra Railway Station, tram routes on Toorak Road, bus routes on Alexandra Avenue and bicycle trail. Traffic within the South Yarra Precinct is becoming more difficult and it is a broadly accepted by traffic professionals as well as VCAT that a reduction in the availability of car parking encourages a shift to alternative modes of transport. As confirmed by Council's Transport and Parking Unit, the shortfall of on-site car parking can be broadly accepted.

Bicycle Parking

The proposed use of Dwelling generates a demand for 18 bicycle spaces, including 12 spaces for resident and 6 spaces for visitor. No bicycle parking facilities are proposed on site. The amendment application therefore seeks a full waiver of bicycle parking requirements.

The full waiver of bicycle parking requirement is contrary to the State and Local policies which seek to promote and facilitate the use of sustainable transport modes, particularly cycling, in preference to private vehicle use. The subject site has convenient access to bicycle routes on Alexandra Avenue and Toorak Road and provides good opportunity for bicycle travel. Given the considerable extent of reduction in on-site car parking provision sought and the opposition from Council's Transport and Parking Unit, waiver of on-site bicycle parking cannot be justified and thus is not supported.

As expressed by the objector, it has been found that bicycles have been stored within the car park areas due to lack of designated bicycle parking facilities on the site. This causes issue of vehicle manoeuvring and poses significant concerns on safety of pedestrians and vehicles. Storage of bicycles within the car park areas is considered unacceptable as the car parks were not purposely designed with adequate space to accommodate for bicycle parking. Storage of bicycles within apartments is also constrained by the small size of the apartments and balconies/ terraces as well as the limited storage space within the apartments. This shortcoming further demonstrates that the building, without alterations, is not suitable for the use as permanent accommodation.

Notwithstanding the above, it is considered that there is ability to provide on-site bicycle parking facilities by converting and retrofitting the services rooms/ areas vacated by the use for serviced apartments. This matter could be addressed by way of permit conditions if an amended permit were to issue.

Changes to Apartments LG06 and LG07

The apartment layouts of LG06 and LG07 have been reconfigured by repositioning the party walls between the units. As a consequence, Apartment LG06 has been altered from a studio/bedsit to a one-bedroom apartment. As discussed above, there are concerns with the layout of Apartment LG06, particularly the bedroom.

Changes to Apartment 305 and common property

It is proposed to delete the 'maid' room and extend the adjacent 'store' room and Apartment 305 bathroom. The changes improve the functionality of the apartment without compromising the shared facilities. The changes are considered acceptable.

Changes to internal layouts

The amendment application seeks a number of changes to the internal layouts of various apartments and adjacent common property areas to reflect the existing as-built conditions. The internal reconfigurations across several apartments and common property areas are relatively minor in nature. The changes are internal within the development and will not create any detriment beyond the property boundaries.

Repurpose of room use

The amendment application proposes to repurpose the use of several rooms to reflect the current use as follows:

- Basement level – from 'Laundry' to 'electrical switch room'.
- Lower ground level, ground level, Level 1, Level 2, and Level 4 – from 'maid' to 'storage'.
- Lower ground level – from 'staff room' to 'building manager' office.
- Ground level – from 'office' and 'reception' to 'store' room. This comprises works to remove of internal partition wall between office and reception and install internal walls to close up reception area

The change is a result of the conversion of building use from serviced apartments to conventional apartments. The change is internal within the development and will not create consequential impact beyond the property boundaries.

Alterations to common corridor utility cupboards and stairwell

It is proposed to make minor alterations to the utility cupboards in the common corridor between ground floor and Level 4. The stairwell at Level 4 is also to be altered to reflect as built conditions of the roof access. The changes are of no consequence and acceptable.

Changes to car grates

It is proposed to change the duty car grates located adjacent to the south wall of the basement car park from two (2) to four (4). The change is minor and inconsequential.

Modifications to elevations

The amendment application seeks a number of changes to the elevations to reflect the as-built conditions on the site and to correct drafting errors in the endorsed plans. The key changes include:

- Modifications to various window openings to reflect internal layout changes.
- Increase in balcony rail height at Levels 3 and 4.
- Addition of a balcony at Level 4 to correct omission on the endorsed east elevation.
- Addition of west facing balconies on the north elevation to correct omission on the endorsed plans.
- Addition of waste storage enclosure at lower ground floor to correspond with the floor plans.
- Extension to balcony of Apartments 406 and 407.
- Modification and replacement of door openings with windows to ground floor waiting room.
- Reduction in height of two rendered entry gate piers.
- Removal of Apartment G01 bathroom window on the north elevation.
- Addition of port cochere on the north elevation to correspond with the floor plans.
- Addition of services cabinets on the south elevation to correct omission on the endorsed plans.
- Addition of external finishes legend.

The majority of the proposed changes are to correct omission and drafting errors in the endorsed plans. No real changes to the built form are proposed. The changes are considered inconsequential and are supported.

The modifications to various window openings, minor balcony extension to Apartments 406 and 407, and increase in balcony rail height are considered minor in nature. The built form, articulation and appearance of the building remains largely unchanged. It will not create unreasonable visual impact to the street and the neighbouring properties. The changes are considered acceptable and are supported.

Changes to landscaping

The amendment application proposes two major changes to the landscaping within the development. More specifically, the landscaping strip along the south boundary and the canopy tree planting along the north boundary.

Landscaping along the south boundary

It is proposed to delete the landscaping strip along the south boundary as required by condition 1(f) of the permit, which reads as follows:

The provision of a 1 metre wide landscaping strip along the southern boundary of the site from the eastern boundary to 10 metres to the west. This strip shall be planned with semi-mature trees with a minimum height of 3.5 metres to the satisfaction of the Responsible Authority.

It is noted that the vegetation along the south boundary was already removed and a retrospective approval is sought.

The applicant provided the following explanation to the unauthorised vegetation removal:

The health of the semi-mature tree planting along the south boundary notably deteriorated in the years following the completion of the development. The deterioration was likely due to growing restrictions caused by the limited 1 metre wide landscaping strip and competition caused by the number of plants shown on the landscaping plan. The landscaping strip adjacent to the southern boundary is otherwise surrounded by impervious concrete surfaces which further constrained the successful growth of the specimens. Accordingly, the vegetation along the southern boundary was removed in the years following the completion of the development.

In response to the proposed deletion of condition 1(f), the applicant proposes to amend the landscape plan to include treatments capable of responding of minimal growing room available in the garden bed adjacent to the southern boundary. Notwithstanding this, it is noted that an amended landscape plan has not been submitted as part of the amendment application.

It is considered that the location of the basement walls underneath heavily restricts the landscaping opportunity above ground. As the landscaping strip is located on the south side of the building, this aspect further affects and limits the establishment and full growth of the planting. Despite these challenges, as also voluntarily proposed by the applicant, there is scope to replant and incorporate landscaping buffer within the southern side setback with appropriate species and treatment measures. It is therefore considered inappropriate to remove condition 1(f) outright. Instead, condition 1(f) could be reworded if an amended permit were to issue:

The provision of a 1 metre wide landscaping strip along the southern boundary of the site from the eastern boundary to 10 metres to the west. ~~This strip shall be planned with semi-mature trees with a minimum height of 3.5 metres to the satisfaction of the Responsible Authority.~~

A new sub-condition would need to be imposed in condition 3 to require submission of landscape plan to show provision of a 1 metre wide landscaping strip with appropriate species to the satisfaction of the Responsible Authority.

Canopy tree planting along the north boundary

The amendment proposes to delete the canopy tree planting along the north boundary as required by condition 3(a) of the permit below:

The planting of semi-canopy trees along the northern boundary to provide a screen to 56 Darling Street.

Similar to the landscaping strip along the south boundary, the canopy tree planting along the north boundary had been removed without Council approval. The applicant provided the following justification to the unauthorised vegetation removal:

...the canopy trees previously located along the northern boundary were removed due to their deteriorating health in the years following the completion of the development.

The deterioration similarly arose due to growing restrictions resulting from the minimal 3.5m width of the garden bed, the number of canopy trees competing in a small space and the significant encroachment of the basement level into the garden bed. The trees were subsequently removed in the years following the completion of the development.

Similar to the approach undertaken in condition 1(f), in response to the proposed removal of condition 3(a), the applicant proposes to amend the landscape plan to include treatments capable of responding to the minimal growing room and basement encroachment into the garden bed adjacent to the northern boundary.

Compared to the site constraints along the south boundary, the basement walls are setback further away from the north boundary. The landscaping area is located on the north side of the building, which will assist in establishment and growth of the planting provided they are right species with appropriate treatment measures. In addition, the setbacks in the order of 1 to 1.84 metres, which are similar to other recent apartment approvals, will provide adequate room for landscaping buffer/ screen. Coupled with the voluntary amendment to the landscape plan proposed by the applicant, the deletion of condition 3(a) is considered inappropriate and therefore is not supported. If an amended permit were to issue, condition 3(a) could be reworded to replace the wording of 'semi-canopy trees' with 'landscaping buffer'.

Conclusion

Having assessed the application against the relevant planning controls, it is recommended that the amendment application be refused for the following reasons:

- The change of use from serviced apartments to permanent dwellings is considered inappropriate.
- The development does not provide for an adequate level of internal amenity for use as permanent dwellings.
- The waste management provision is considered inadequate. It is substandard and does not meet Council's standard for conventional residential developments.
- The waiver of bicycle parking requirements is contrary to the State and Local policies which seek to promote and facilitate the use of sustainable transport modes. Coupled with the extent of car parking reduction sought, the waiver of bicycle parking requirements cannot be justified.
- The deletion of landscaping requirements as specified in conditions 1(f) and 3(a) are considered inappropriate.

Governance Compliance

Conflicts of Interest Disclosure

No Council Officer and/or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

Human Rights Consideration

This application has been assessed in accordance with the requirements of the Planning and Environment Act 1987 (including the Stonnington Planning Scheme), reviewed by the State Government and which complies with the Charter of Human Rights & Responsibilities Act 2006.

Attachments

1. 0947/96 - 52 Darling Street, South Yarra [14.3.1 - 31 pages]

Officer Recommendation

That Council AUTHORISE Officers to issue a Notice of Refusal to Amend a Planning Permit No: 947/96 for the land located at 52 Darling Street, South Yarra under the Stonnington Planning Scheme for a Section 72 Amendment to approved Planning Permit and plans comprising conversion of the existing building to 'dwellings' (from 'serviced apartments'), reduction in car parking and bicycle parking requirements, internal and external changes on the following grounds:

- 1. The change of use from serviced apartments to dwellings is considered inappropriate as the development does not provide for an adequate level of internal amenity for use as permanent dwellings.***
- 2. The waste management provision is considered inadequate. It is substandard and does not meet Council's standard for conventional residential developments.***
- 3. The waiver of bicycle parking requirements is contrary to the State and Local policies which seek to promote and facilitate the use of sustainable transport modes, particularly cycling, in preference to private vehicle use.***
- 4. The deletion of landscaping requirements as specified in conditions 1(f) and 3(a) is considered inappropriate, as there is scope for landscaping with appropriate species and measures.***

14.4 Planning Application 0254/19 - 25 Dixon Street, Malvern

Manager Statutory Planning: Alex Kastaniotis
Acting Director Planning & Place: Chris Balfour

Purpose of Report

For Council to consider a planning application for demolition and construction of two dwellings on a lot in a Neighbourhood Residential Zone and Neighbourhood Character Overlay at 25 Dixon Street, Malvern.

Officer Recommendation Summary

That Council authorise Officers to issue a **Notice of Decision to Grant a Planning Permit** subject to conditions outlined in the Officer Recommendation.

The proposal is supported for the following reasons:

- The proposal responds appropriately to the relevant State and Local Planning Policies.
- The proposal provides an appropriate design response to the existing and the preferred neighbourhood character of the area.
- The proposal will not result in any unreasonable off-site amenity impacts, by way of visual bulk, overlooking or overshadowing.
- The proposal will achieve an appropriate level of internal amenity for future occupants.

Executive Summary

Applicant:	Hellier McFarland
Ward:	East
Zone:	Clause 32.09 – Neighbourhood Residential Zone (Schedule 4)
Overlay:	Clause 43.05 – Neighbourhood Character Overlay (Schedule 5)
Neighbourhood Precinct:	Garden Suburban 1
Date Lodged:	15 April 2019
Statutory Days: (as at Council Meeting date)	75
Trigger for Referral to Council:	Number of objections
Cultural Heritage Plan	No
Number of Objections:	Fourteen (14) affected properties
Consultative Meeting:	Yes – held on 17 September 2019
Officer Recommendation	Notice of Decision

Background

The Proposal

The plans that form part of the basis of Council's consideration were prepared by *Architecton* and are Council date stamped 3 September 2020.

Key features of the proposal are:

- The demolition of the existing dwelling and outbuildings;
- The construction of two double storey dwellings with Dwelling 1 fronting Dixon Street and Dwelling 2 fronting Ray Street;
- Each dwelling containing an open plan living / dining / kitchen at ground level and two bedrooms plus a retreat / study nook on the first floor;
- One (1) car parking provided to each dwelling within a single garage, accessed via a new crossover centrally located to Ray Street;
- The existing crossover, located at the western end of the Ray Street frontage, to be reinstated;
- Pedestrian access to Dwelling 1 via the Dixon Street frontage, and to Dwelling 2 via the Ray Street frontage;
- Each dwelling to be provided with ground level secluded private open space to the north;
- The proposed maximum building height is 8.8 metres, measured from natural ground level and dimensioned on the proposed south elevation;
- The building design references key elements of the Edwardian Era buildings, including (but not limited to) red-orange brick, light grey roofs and stucco render.
- A 1.6 metre high front fence to be constructed along Dixon Street frontage, comprising 0.6 metre high face brickwork foundation with black metal batten louvre infill.

Site and Surrounds

The site is located on the western side of Dixon Street and the northern side of Ray Street. It is approximately 36 metres east of the intersection with Thanet Street and 245 metres north of the intersection with Wattletree Road.

The site has the following significant characteristics:

- The site is rectangular in shape and has a total site area of approximately 404 square metres.
- The site has dual frontage:
 - To the east, it provides a frontage of 11.5 metres to Dixon Street;
 - To the south, it provides a frontage of 36.6 metres to Ray Street.
- The site is currently improved by a single storey Edwardian dwelling.
- Pedestrian access is provided via a centrally located entrance on the Dixon Street frontage.
- Vehicle access is provided via an existing crossover located towards the western end of the Ray Street frontage leading to a carport at the rear.
- A 0.8 metre high brick fence is constructed along the Dixon Street frontage and a 2 metre high paling fence along the Ray Street frontage.

The site has four interfaces, which can be summarised as follows:

- To the immediate north is 27 Dixon Street, Malvern, which houses a single storey Edwardian dwelling. Planning Permit No. 1086/03 was issued on 29 December 2003 under delegation. The permit allowed alterations and ground floor addition along the southern boundary on a lot of less than 500 square metres. More specifically, the permit allowed a studio addition along the southern boundary. Resulting from this permit, there are three (3) habitable room windows on the south elevation and one (1)

habitable room window on the west elevation. It is also noted that the secluded private open space remains to the west with canopy trees planted along the northern and southern boundary.

- To the immediate east, the site adjoins Dixon Street. On the opposite side of the street is 32 Dixon Street, Malvern, which houses two (2) single storey brick dwellings in a one behind the other layout arrangement.
- To the immediate south, the site adjoins Ray Street. On the opposite side of the street is 21 Dixon Street, Malvern, which houses a double storey Edwardian dwelling with the first floor within the attic facing Ray Street.
- To the immediate west is the land at 31 Thanet Street, Malvern, which houses a double storey dwelling in a contemporary architectural form.

Previous Planning Application/s

A search of Council records indicates no relevant planning application.

The Title

The site is described on Certificate of Title Volume 06148 Folio 536 / Lot 1 on Title Plan 407666M and no covenants or easements affect the land.

Planning Controls

The following controls/permit triggers are considerations for this application:

Zone

Clause 32.09 – Neighbourhood Residential Zone (Schedule 4)

Pursuant to Clause 32.09-6, a permit is required to construct two or more dwellings on a lot. A development must meet the requirements of Clause 55.

Pursuant to Clause 32.09-4, a minimum garden area of 25 per cent is required to be provided at ground level. The development provides 38 per cent of the site as garden area and thus complies.

Pursuant to Clause 32.09-10, if no maximum building height or maximum number of storeys is specified in a schedule to the zone, the building height must not exceed 9 metres and the building must contain no more than 2 storeys at any point. As the maximum building height and the maximum number of storeys are not specified in Schedule 4 to the zone, the maximum building height is 9 metres and the maximum number of storeys is 2. The development has a maximum building height of 8.8 metres and contains no more than 2 storeys and thus complies.

In addition, Schedule 2 sets out variations to requirements stipulated in Clause 55 of the Stonnington Planning Scheme, which are outlined below:

Standard	Requirement
B8 – Site coverage	Basements should not exceed 75% of the site area.

Overlay

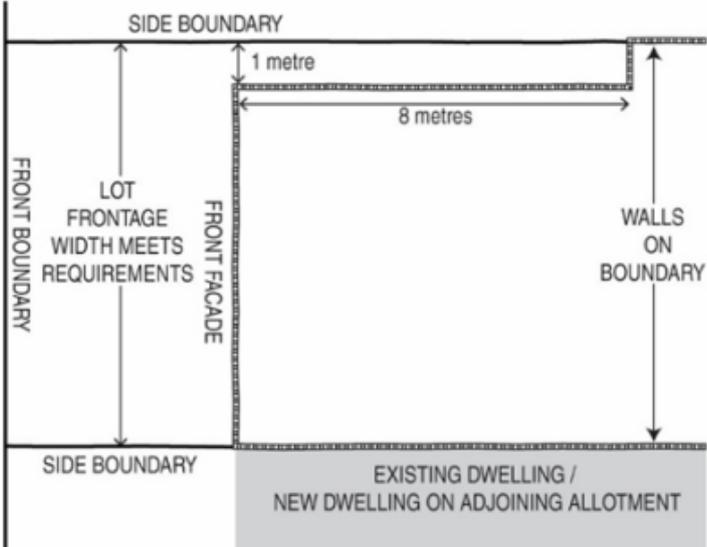
Clause 43.05 – Neighbourhood Character Overlay (Schedule 5)

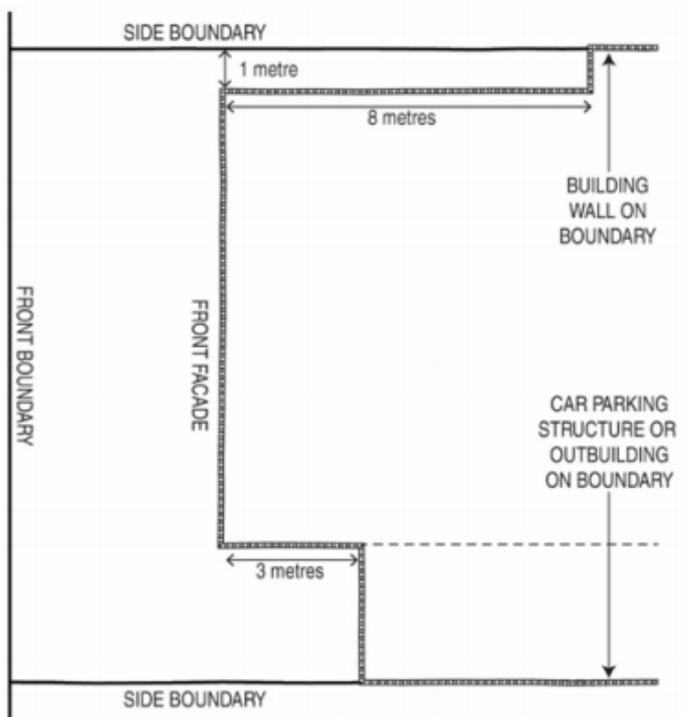
Pursuant to Clause 43.05-2, a permit is required to:

- Construct a building or construct or carry out works.
- Demolish or remove a building if specified in a schedule to this overlay.
- Remove, destroy or lop trees if specified in a schedule to this overlay.

- Pursuant to sub-section 3.0 of Schedule 5 to this overlay, a permit is required to:
- Construct or extend an outbuilding normal to a dwelling.
- Demolish or remove a building.

Schedule 5 to this overlay also sets out variations to requirements stipulated in Clause 55 of the Stonnington Planning Scheme, which are outlined below:

Standard	Modified Requirement						
<p>Street setback B6</p>	<p>Street setback table</p> <table border="1"> <thead> <tr> <th data-bbox="432 517 687 607">Development context</th> <th data-bbox="687 517 1050 607">Minimum setback from front street (metres)</th> <th data-bbox="1050 517 1423 607">Minimum setback from a side street (metres)</th> </tr> </thead> <tbody> <tr> <td data-bbox="432 607 687 801">All buildings</td> <td data-bbox="687 607 1050 801">Equal to the prevailing setback from the front street of all dwellings within the same Overlay area.</td> <td data-bbox="1050 607 1423 801">Equal to the prevailing setback from the side street of all dwellings on a corner allotment within the same Overlay area.</td> </tr> </tbody> </table>	Development context	Minimum setback from front street (metres)	Minimum setback from a side street (metres)	All buildings	Equal to the prevailing setback from the front street of all dwellings within the same Overlay area.	Equal to the prevailing setback from the side street of all dwellings on a corner allotment within the same Overlay area.
Development context	Minimum setback from front street (metres)	Minimum setback from a side street (metres)					
All buildings	Equal to the prevailing setback from the front street of all dwellings within the same Overlay area.	Equal to the prevailing setback from the side street of all dwellings on a corner allotment within the same Overlay area.					
<p>Walls on boundaries B18</p>	<p>Properties with pairs of attached dwellings</p> <p>The following walls on boundaries requirements apply for pairs of lots in:</p> <ul style="list-style-type: none"> • Dixon and Jordan Streets where each lot frontage width is less than 7.5 metres. • Closeburn Avenue where each lot frontage width is less than 8 metres • Stanhope Street where each lot frontage width is than 10 metres <p>Where a pair of adjoining lots is developed simultaneously, walls may be constructed on the boundary to form a common party wall.</p> <p>Where one lot is redeveloped, a wall should be constructed on the boundary to conjoin with the existing wall on the boundary of the adjoining allotment.</p> <p>On the other side boundary, a wall on the boundary may be constructed where the wall is setback a minimum of 1 metre from the side boundary for a minimum distance of 8 metres from the front facade of the building.</p>  <p>Other properties</p>						

	<p>In other areas, a wall may be constructed on a boundary where:</p> <p>It is a car parking structure or outbuilding that is setback at least 3 metres from the front facade of the building, and located on one side boundary only; or</p> <p>It is any other part of the building and is setback a minimum of 1 metre from one side boundary for a distance of 8 metres from the front facade of the building (see the following sketch which shows the minimum setbacks).</p>  <p>All areas</p> <p>All other requirements of Standards A11 and B18 continue to apply</p>
<p>Design details B31</p>	<p>The design of buildings and extensions should respect the preferred neighbourhood character of the area, specifically in relation to:</p> <ul style="list-style-type: none"> • Scale and form, • Roof form, pitch and eaves, • Number of storeys, • Materials and finishes, • Façade articulation, • Building siting, and • Siting and design of vehicle access and car parking structures. <p>New buildings should interpret the detailed elements of original dwellings that contribute to the neighbourhood character significance of the area in an innovative and contemporary manner that complements, rather than replicates, period dwelling styles.</p> <p>Pairs of attached dwellings should present to the street as a single dwelling particularly through its scale, form, roof design and siting.</p> <p>Second storey elements of new dwellings, and second storey additions to existing dwellings should be sited and designed so that the single storey part of the building, including its roof form, is the dominant visual element</p>

	<p>when viewed from the street. This will require second storey elements to be:</p> <ul style="list-style-type: none"> • Set back 8 metres from the front building façade where the main ridge line of the roof is perpendicular to the street, or located behind the main ridgeline of the roof where this is parallel to the street, and • Designed to complement the form and proportions of the existing dwelling or, if a new dwelling, other dwellings in the street. <p>A car parking structure should be:</p> <ul style="list-style-type: none"> • Visually unobtrusive and compatible with the development and the preferred neighbourhood character. • A maximum width of 4 metres where visible from the street. • Located at least 3 metres behind the front facade of the building. <p>Hard paving surfaces within the front setback should be kept to a minimum to maximise landscaping.</p> <p>All other requirements of Standards A19 and B31 continue to apply</p>
<p>Front fences B32</p>	<p>The design of front fences should complement the era and design of the dwelling. For front fences within 3 metres of a street frontage along Stanhope Street this includes:</p> <ul style="list-style-type: none"> • A timber picket fence up to 1.5 metres; or • A timber picket fence up to 1.5 metres with low fence with brick columns up to 1.8 metres. <p>For front fences within 3 metres of a street frontage along Ardrie Road this includes:</p> <ul style="list-style-type: none"> • A timber picket fence up to 1.2 metres. <p>For front fences within 3 metres of a street frontage in other areas this includes:</p> <ul style="list-style-type: none"> • A timber picket fence up to 1.2 metres; or • A brick or rendered masonry fence up to 0.8 metres.

Particular Provisions

Clause 52.06 – Car parking

Pursuant to Clause 52.06-2, before a new use commences the number of car parking spaces required under Clause 52.06-5 must be provided on the land.

Pursuant to Clause 52.06-5, a dwelling requires 1 car space to each one or two bedroom dwelling, and 2 car spaces to each three or more bedroom dwelling.

The proposal comprises two (2) x 2-bedroom dwellings with one (1) car parking space provided to each dwelling, and thus complies.

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

A development must meet all of the objectives of this clause and should meet all of the standards of this clause.

Relevant Planning Policies

Clause 15.01-1S Urban Design

Clause 15.01-5S	Neighbourhood Character
Clause 16.01-4S	Housing Affordability
Clause 21.03	Vision
Clause 21.05	Housing
Clause 21.06	Built Environment and Heritage
Clause 22.05	Environmentally Sustainable Development
Clause 22.18	Stormwater Management
Clause 22.23	Neighbourhood Character Policy
Clause 32.09	Neighbourhood Residential Zone
Clause 43.05	Neighbourhood Character Overlay
Clause 55	Two or more dwellings on a lot
Clause 65	Decision Guidelines

Advertising

The original application was advertised pursuant to Section 52 of the *Planning and Environment Act 1987* by sending notices to the owners and occupiers of adjoining land and by placing two (2) signs on the site. The public notification of the application was completed satisfactorily.

Objections from sixteen (16) properties were received during the initial advertising. The grounds of objections are summarised as follows:

- Demolition of the original Edwardian house undermining the purpose of the Neighbourhood Character Overlay
- Inconsistent with the neighbourhood character policy
- Out of character
- Visual bulk
- Overdevelopment
- Overlooking
- Insufficient car parking
- A number of non-compliance with Clause 55 (ResCode)
- Insufficient landscaping
- Sewerage issue
- Encroachment of the title boundary concerning the adjoining land at 27 Dixon Street, Malvern

One (1) objection was unconditionally withdrawn on 12 August 2019-

A Consultative Meeting was held on 17 September 2019. The meeting was attended by Former Councillors Atwell and Davis, representatives of the applicant, objectors and a Council planning officer. In response to objections and concerns raised by Council's planning officer, there are two (2) stages of revised plans:

- On 30 October 2019, the applicant submitted revised plans to Council on 30 October 2019 pursuant to Clause 57A of the Planning and Environment Act 1987. These plans superseded the originally advertised plans (Council date stamped 10 July 2019) and were circulated to all previous objectors via email. One (1) objection from the initial advertising was unconditionally withdrawn. Four (4) further objections were received

from existing objectors during the notification of the revised plans. - The first stage of revised plans consisted of the following key changes:

- At ground level, the minimum street setback from Ray Street is increased from 1.5 to 2 metres;
- At first floor level, a west facing balcony and two balconies facing Ray Street are deleted;
- Dwelling 2 is converted from 3-bedroom to 2-bedroom by way of internal reconfigurations;
- The colour of the roof is amended from black to grey.
- The above changes resulted in improvement to the advertised plans, however there were still concerns regarding amenity impacts to neighbouring properties. On 3 September 2020, the applicant submitted revised plans pursuant to Clause 57A of the *Planning and Environment Act 1987*. These plans supersede the above plans (including the advertised plans and the first revised plans), and were circulated to all previous objectors via email. Four (4) further objections from existing objectors were received. Overall, the total number of objections counts fourteen (14).
 - At ground level, the northern setback of Dwelling 2 is increased from 3 to 3.3 metres;
 - At first floor level, the northern setback of Dwelling 2 is increased from 2 to 4 metres and associated internal reconfigurations.

Referrals

Parks

Comments received from Council's Parks are summarised as follows:

- None of the trees within the site are considered 'significant' by Council's Local Laws definition. As such, removal of onsite vegetation is not opposed.
- Correct protective measures to the three (3) street trees should be implemented by way of permit conditions-
- The proposed landscaped areas as shown on the Landscape Plan is supported.
- The proposed raingarden along the northern boundary may compromise a significant tree in the northern adjoining property if it is to be installed in the Structural Root Zone of the Tree in question.
- Due supervision by a qualified arborist may be required should any works be carried out in the vicinity of the street trees.

Planner comments

A detailed discussion will be included below. Conditions will be recommended to ensure that no significant trees and street trees are unreasonably compromised by this development.

Urban Design

Comments received from Council's Urban Design Advisor are summarised as follows:

- This is a well-conceived contemporary response to a new infill development within this Neighbourhood Character Precinct and is supported subject to the following changes:
 - The proposed 'black' roof should be replaced with a 'slate grey' or 'terra-cotta' colour.
 - A Landscape Plan that addresses the proposed loss of existing vegetation.
 - The first-floor terrace abutting the neighbouring property to the West should be removed.

Planner comments

In response to the above comments, the applicant has:

- Replaced the colour of the roofing from black to grey;
- Submitted a Landscape Plan that is considered acceptable by Council's Parks Unit;
- Deleted the west facing first floor terrace; and
- Increased the northern setbacks at both levels of Dwelling 2.

As a result of the above changes, concerns from Council's Urban Design Advisor are considered addressed. Detailed discussions are included in the assessment below.

Transport

Comments from Council's Transport Unit are summarised as follows:

- The traffic generated by this proposal, being the addition of one (1) dwelling, is unlikely to negatively impact traffic on the surrounding road network.
- The width of the accessway leading to each garage should be no less than 3.2 metres.
- Sight distance triangles should be included.
- The proposed floor gradient for any parking spaces shall be no less than 1 in 200 (0.5%) for covered areas.
- The proposed crossing should comply with Council's Vehicle Crossing Policy.
- A 2m x 2m splay should be shown at the property corner with low planting to be limited to 0.9 metres in height.

Planner comments

Detailed discussions are included in the assessment below.

Infrastructure

Comments from Council's Infrastructure Unit recommend the following conditions:

- *Prior to a building permit being issued, a report for the legal point of discharge must be obtained from Council and a drainage design for the development must be prepared by a suitably qualified Engineer in accordance with all 'recommendations' and requirements contained in that report. All drainage must be by means of a gravity based system with the exception of agricultural drains which may be pumped. The relevant building surveyor must check and approve the drainage design and ensure that protection of the building is provided from a 1 in 100 A.R.I. rainfall event as required by the Building Regulations.*
- *The existing footpath levels must not be lowered or altered in any way at the property line (to facilitate the proposed driveway levels).*

Planner comments

The above conditions will be included forming part of the recommendations.

Key Issues and Discussion

Strategic Directions

The overarching policies and objectives at both a State and Local level encourage urban consolidation in established urban areas and residential development in and around neighbourhood activity centres and close to public transport.

These strategies call for well-designed medium-density development that respects neighbourhood character, improves housing choice, makes better use of existing infrastructure and improves energy efficiency.

Council's Strategic Framework defines the site within a "minimal change area" as it falls within a Neighbourhood Character Overlay. Medium density development is accepted in the residential hinterland, provided it is in accordance with the requirements of the relevant overlay and other local planning policies.

The site is located in close proximity to a tram route along Wattletree Road to the south and is within walking distance of the Glenferrie Road Major Activity Centre to the west and a local Neighbourhood Activity Centre on Tooronga Road to the east. It is also within close proximity to Cabrini Hospital to the south-west. Overall, the site is considered suitably located to support the modest increase in density proposed in line with the policy direction.

Demolition of the existing dwelling

The Neighbourhood Character Overlay provisions at Clause 43.05 include a purpose, which is 'to prevent, where necessary, the removal of buildings before the neighbourhood character features of the site and new development have been evaluated'. This is different to the purpose of the Heritage Overlay (at Clause 43.01), which specifically seeks to conserve and enhance the significance of heritage places.

The *Planning Practice Note – PPN28* (Using the neighbourhood character provisions in planning schemes) directs that the demolition control in the Neighbourhood Character Overlay is intended to hold the existing pattern of development until the character features of the site and the new development have been evaluated. The demolition control is not to be used to conserve existing buildings, but to ensure that demolition does not occur until the Responsible Authority is satisfied that the new development meets the desired neighbourhood character objectives for the area. Simply put, the demolition control stipulated in the Neighbourhood Character Overlay is not based on the heritage significance of the building, but a mechanism to ensure that the replacement building is a suitable one before a building can be demolished.

Furthermore, design guidelines in Schedule 5 to the Neighbourhood Character Overlay requires Council to consider:

- *The extent to which the proposed buildings or works assist in respecting the preferred neighbourhood character of the area; and*
- *The extent to which any building to be demolished, extended or otherwise modified, contributes to the preferred neighbourhood character of the area.*

The preferred character, as set out in the Schedule, is defined by the continued presence of Edwardian dwellings and new dwellings that reflect the key characteristics of the streetscape. In the proposal, the new built forms maintain an unobtrusive profile against the dominant characteristics of the Precinct. On this basis, the demolition of the existing dwelling is acceptable given that the proposed new scale, form and appearance are keeping with the surrounding development. The proposed built form will be discussed in greater detail below.

Neighbourhood Character

The objectives of Council's Neighbourhood Character Policy at Clause 22.23-2 seek:

- *To ensure that development and works contribute to the preferred character of the area.*
- *To ensure that development and works reflect the intention of the statement of preferred neighbourhood character and design guidelines for each precinct.*

The site is located in a Garden Suburban 1 Precinct. The relevant statement of preferred neighbourhood character is:

The Garden Suburban 1 (GS1) precinct comprises leafy streetscapes with a range of Victorian, Edwardian or Interwar era and contemporary buildings set in established garden surrounds. In typical streets regular front and side setbacks provide space around buildings and allow for small, well designed garden areas that contribute to the landscape quality of the street. New buildings or additions offer innovative and contemporary design responses while complementing the key aspects of form, general one-two storey scale and design detail of the older buildings. Low, visually permeable front fences retain views to gardens and dwellings from the street. Areas within a Residential Growth or Mixed Use Zone or within a substantial change area will accommodate more development with a more compact setting but with space for canopy trees and other vegetation and high quality, responsive design.

Furthermore, Schedule 5 to the Neighbourhood Character Overlay sets out the following objectives:

- *To ensure that new buildings and works contribute to the preferred neighbourhood character of the area.*
- *To encourage the retention of intact, original dwellings that contribute to the preferred neighbourhood character of the area.*
- *To maintain the established pattern of front and side setbacks in the street.*
- *To ensure that new dwellings or extensions to existing dwellings respect the dominant building height, form, façade articulation, materials and roof forms of the streetscape.*
- *To ensure that the use of design detail in new buildings complements, rather than mimics, that of the predominant building styles in the street.*
- *To maintain the pattern of low front fencing that creates a sense of openness in the streetscape, allows views of dwellings, front lawns and gardens, and complements the building era and style.*
- *To minimise the loss of front garden space due to car parking and driveways, and minimise the dominance of car parking structures in the streetscape.*
- *To ensure space is available for the planting of trees and gardens.*

More specifically, Schedule 5 to the overlay outlines the key characteristics that should be reflected in new buildings:

- *Single storey detached built form, with second storeys recessed behind the front façade.*
- *Asymmetrical building form of projecting front room with gable end and front verandahs.*
- *Parallel orientation of buildings to the street with consistent front and side setbacks.*
- *Established planting, including canopy trees, in the front, side and rear setbacks.*
- *Use of red-orange brick cladding, light-coloured render or painted weatherboard.*
- *Pitched, hipped roofs with gables, clad in corrugated iron or terracotta tiled.*
- *Car parking and car parking structures located behind the dwelling with side driveway access, where present.*
- *Low brick or painted timber picket front fences.*

The neighbourhood generally has a consistent neighbourhood character which requires a particular form of response from new development. This is reflected in the application of the Neighbourhood Character Policy and the Neighbourhood Character Overlay. A number of design aspects are modelled into the proposal which ensures that it is an appropriate response to the pattern of development on surrounding sites and guided by the policy. Specifically, it is noted that:

- The overall height of the development, as two storeys, is consistent with the scale of many of the surrounding properties. While the proposal presents more obviously as a two-storey built form, the height is successfully managed in the following ways:
 - Managing floor to ceiling heights in a way that the ridge height is generally consistent (the existing RL52.60 and the proposed RL54.20 and RL54.70), and lower than the adjacent dwelling to the west thereby preventing a contrast-built form to the immediate abutments;
 - Proposing a roof form that has an appropriate level of variety with consideration of the dominant character of the existing roofs but without unreasonably seeking to repeat one detailed roof form of a historic nature;
 - Setting the entire development adequately behind landscaped street setbacks to Dixon Street and Ray Street. The proposal maintains the landscape setting and softens the development to the street.
- The proposed street setbacks are consistent with the broader streetscape.
- The proposed first floor of the development is well setback 12.4 metres from the Dixon Street frontage, ensuring it is a recessive element with a predominantly low scale single storey presentation maintained to the streetscape.
- The proposal is set back from title boundaries, in particular with respect to the northern interface, it provides a minimum side setback of 2.1 metres at both the ground and the first-floor levels. Coupled with reasonable street setbacks to Dixon Street and Ray Street, the proposal provides adequate space around the building to maintain the rhythm of this streetscape in which side setbacks are typically minimal.
- The proposed two storey development proposes a relatively modest height, being 6.9 metres to the parapet or 8.8 metres to the roof. The overall presentation does not exceed the scale of double storey developments within the immediate area where two storey development forms an emerging character.
- The proposal does not create a contrast-built form to the immediate surrounds and is considered generally in line with the mixed character of the streets in particular with regard to the adjacent development to the west.
- The design detailing of the development seeks to reference the key characteristics of the Edwardian areas without strictly mimicking it. The proposal features well-articulated façades to both streets with verandahs at moderate scales, pitched roofing structure and appropriate external materials.
- The Colorbond roof sheeting in grey is compatible with the streetscape. Whilst not the predominant material there are several dwellings that employ this material. Other materials comprising rendered finishes, face brickwork and metal batten louvres also complement the predominant material palette of the neighbourhood.
- Council's Urban Designer has not raised any issues with the proposed materials. A materials schedule incorporating proposed colours will be required via permit condition.
- The vehicle access is provided to the side of the frontage which is consistent with the streetscape and provides for a landscaped front garden. The adequate setback to the Ray Street frontage together with the external materials ensures that car parking structures do not dominate the streetscape.
- The proposal provides for adequate space around the development to accommodate meaningful landscaping including the provision of canopy trees to the front and screen planting to the side setbacks. The existing vegetation proposed to be removed is not significant to the character of the area and removal is supported by Council's Parks Unit.

- To Dixon Street, it is proposed to construct a 1.6 metre high front fence comprising 0.6 metre high face brickwork foundation with black metal batten louvre infill. To Ray Street, the vehicle crossing remains open to the street. For the remainder, it is proposed to construct 1.6-1.8 metre high fully landscaped fencing to enclose the two courtyards and 1.2 metre high fence constructed of black batten louvres. Overall, the design of street fences allows for high transparency to the streets and provides an active integration with the streets. It is considered complementary to the design of the development.

Built Form

Street Setback

Schedule 5 to the Neighbourhood Character Overlay modifies Standard B6. As the site is located on a corner, the following requirements apply:

- *The minimum setback to Dixon Street should be equal to the prevailing setback of all dwellings within the same overlay;*
- *The minimum setback to Ray Street should be equal to the prevailing setback of all dwellings on a corner allotment within the same overlay.*

As shown on the Site Context Analysis Plan, the prevailing setback of all dwellings to Dixon Street is between 4 and 4.5 metres, and the prevailing setback of a corner allotment to Ray Street is approximately 2 metres.

At ground level, the proposal allows for a minimum setback of 4.7 metres to Dixon Street, and a setback of 2 metres to Ray Street. At first floor, the proposal allows for a minimum setback of 12.4 metres to Dixon Street and 2.5 metres to Ray Street. As such, the proposal meets the above requirement.

Building height

The proposal has a maximum building height of 8.8 metres above natural ground level and dimensioned on the south elevation. This complies with the maximum 9 metre height limit permitted by the Neighbourhood Residential Zone.

Site coverage and permeability

The development represents site coverage of 56% which is less than the 60% permitted by Standard B8.

The development provides on-site permeability of 26% which is well in excess of the 20% minimum required by Standard B9.

Design details

Schedule 5 to the Neighbourhood Character Overlay modifies Standard B31 and calls for developments to specifically respond to the following character elements of the neighbourhood:

- Scale and form,
- Roof form, pitch and eaves,
- Number of storeys,
- Materials and finishes,
- Façade articulation,
- Building siting, and
- Siting and design of vehicle access and car parking structures

As outlined in the neighbourhood character assessment above, the proposed design complements the detailed features of the Edwardian areas that contribute to the neighbourhood character in terms of the above elements.

As detailed above, the proposed new development incorporates key characteristics of the original dwellings and will contribute to the area in a respectful yet contemporary manner. The second storey element is effectively set back from the main street and will not create a dominant visual element when viewed from the street. The proposed car parking structure will not be visually obtrusive to the preferred neighbourhood character given that it faces a side street and is minimised by way of landscaping.

Amenity Impacts

Side and rear setback objective

To the east and the south, the site adjoins Dixon Street and Ray Street. The street setbacks are assessed above under the Street Setbacks Objective.

To the north, it is noted that:

- At ground level, as the proposed wall height does not exceed 3.6 metres, the required setback should be 1 metre. In the proposal, Dwelling 1 provides a setback between 2.1 and 3 metres from the northern boundary; and Dwelling 2 provides a setback between 2 and 3.3 metres. As such, it complies.
- At first floor level, as the proposed maximum wall height is 6.75 metres, the required setback should be 1.945 metres. In the proposal, Dwelling 1 is setback 2 metres from the northern boundary, and Dwelling 2 is setback 4 metres from the northern boundary. As such, the proposal complies. In addition, it is noted that landscaping is provided within the northern setbacks to soften the built form when viewed from the northern adjoining allotment.

To the west, it is noted that:

- At ground level, boundary walls are proposed and will be discussed below.
- At first floor level, as the proposed wall height is 6.5 metres, the required setback should be 1.87 metres. The proposal provides setbacks ranging between 1.5 metres and 1.75 metres. A variation of 0.12-0.37 metres is considered appropriate as the wall is not against any secluded private open space and has no impact on the adjoining property.

Walls on boundary objective

Boundary walls are proposed along the northern and the western boundary. More specifically, it is noted that:

- To the north, the boundary walls are set back 11.2 metres from the Dixon Street façade and comply with the modified requirement under Schedule 5 to the Neighbourhood Character Overlay. With respect to the length, as required by the Standard, the permissible maximum length of the boundary should be 16.65 metres. The proposal boundary walls have a total length of 10.3 metres and thus comply. With respect to the height, as dimensioned on the proposed north elevation, the proposed boundary walls have a consistent height of 2.9 metres and thus comply (Note: ResCode allows an average height of 3.2 metres).
- To the west, - With respect to the length, as required by the Standard, the permissible maximum length of the boundary should be 10.255 metres. The proposal boundary wall has a total length of 5.5 metres and thus complies. With respect to the height, as

dimensioned on the proposed west elevation, the proposed boundary wall has an average height of 2.7 metres and a maximum height of 2.8 metres, and thus complies.

Daylight to existing windows

The Standard states that:

Buildings opposite an existing habitable room window should provide for a light court to the existing window that has a minimum area of 3 square metres and minimum dimension of 1 metre clear to the sky. The calculation of the area may include land on the abutting lot.

Walls or carports more than 3 metres in height opposite an existing habitable room window should be set back from the window at least 50 per cent of the height of the new wall if the wall is within a 55 degree arc from the centre of the existing window. The arc may be swung to within 35 degrees of the plane of the wall containing the existing window.

To the east and the south, the proposal adjoins Dixon Street and Ray Street. Given the physical distance defined by the streets, the proposal will not create any unreasonable impacts on the existing windows in these two interfaces.

To the west, the proposal partially interface with one habitable room window contained in the dwelling at No. 31 Thanet Street, Malvern. As shown on the West Elevation, the wall on the ground floor has a maximum height of 3 metres. As measured on the Plan, this window has a minimum setback of 1.1 metres from the common boundary and has a light court of approximately 4.5m² including part within the subject site. As such, the Standard is considered satisfied. With regard to the first floor setback, the West Elevation indicates that the wall, opposite the window in question, has a maximum height of 5.7 metres. As required by the Standard, a minimum setback of 2.85 metres from the window in question should be provided. As shown on the First Floor Plan, the proposal is setback 2.7 metres from the window. A condition is recommended to ensure that the proposal fully complies with this Standard.

To the north, there are three south facing habitable room on the neighbouring dwelling at 27 Dixon Street, Malvern. On the ground floor, the table below outlines the setbacks from the existing windows:

	Proposed wall height (metres)	Required setback / light court (metres / m ²)	Proposed setback / light court (metres/ m ²)	Whether complies (Y or N)
Most westerly located	2.9	1x3 = 3m ²	1.65 x 3 = 4.9 m ²	Y
In the middle	2.9	1x3 = 3m ²	1.1 x 4.6 = 5 m ²	Y
Most easterly located	3.25	1.63	1.65	Y

On the first floor, the table below outlines the setbacks from the existing windows:

	Proposed wall height (metres)	Required setback (metres)	Proposed setback (metres)	Whether complies (Y or N)
Most westerly located	6	3	3.6	Y

In the middle	5.8	2.9	3.1	Y
Most easterly located	5.8	2.9	3.3	Y

Overall, the proposal is considered acceptable subject to conditions.

Overshadowing objective

The relevant assessment mechanism for overshadowing of neighbouring areas of private open space is the Overshadowing Open Space Objective, including Standard B21. This Standard states the following:

Where sunlight to the secluded private open space of an existing dwelling is reduced, at least 75 per cent, or 40 square metres with minimum dimension of 3 metres, whichever is the lesser area, of the secluded private open space should receive a minimum of five hours of sunlight between 9 am and 3 pm on 22 September.

If existing sunlight to the secluded private open space of an existing dwelling is less than the requirements of this standard, the amount of sunlight should not be further reduced.

The Objective of Standard B21 (Overshadowing) states: To ensure buildings do not significantly overshadow existing secluded private open space.

As depicted on the proposed shadow diagrams, it is noted that:

- To the west, the proposed shadow will be cast onto the side setback of the dwelling at No. 31 Thanet Street, Malvern and no shadow will be cast onto any secluded private open space that is located to the north.
- To the east and the south, as the site adjoins Dixon Street and Ray Street respectively, the proposal shadow will be cast onto the streets and no secluded private open space will be affected.
- To the north, due to the orientation, the proposal will not cast any shadow.

Overall, the objective is satisfied.

Overlooking objective

The relevant assessment mechanism to determine unreasonable overlooking is the Overlooking Objective at Clause 54.04-5, including Standard B22. The standard provides a 9m 45 degree angle arc that determines unreasonable overlooking, and windows or balconies that are located in such a position must be screened to a height of 1.7m above finished floor level accordingly.

To the east and the south, the site adjoins Dixon Street and Ray Street respectively. In the absence of any neighbouring habitable room windows and/or secluded private open space, the Standard does not apply.

To the north, as shown on the Proposed North Elevation, it is noted that:

- On the ground floor, a 1.8 metre high timber paling fence, measured from the neighbour's level, is to be constructed and thus meets the objective.
- On the first floor, all habitable room windows are provided with fixed screening. Annotations are also included stating that the screening allows for a maximum 25 per cent transparency as required by the Standard. However, the details of the proposed screening are not provided as to how the 25 percent maximum transparency can be achieved. A condition is therefore recommended requiring sections diagrams that outline the depth and spacing of the louvres to be provided so as to demonstrate the full compliance with this Standard.

To the west, as shown on the Proposed West Elevation, it is noted that:

- On the ground floor, a sectional boundary wall is proposed in the front section. At the rear, 1.8 metre high timber paling fence, measured from the neighbour's level, is to be constructed and thus meets the objective.
- On the first floor, no windows are proposed. The Standard does not apply.

Overall, the objective is satisfied.

Landscaping

The layout of the development will allow adequate opportunities for sufficient landscaping throughout the site. The submitted landscape plan includes twenty-four (24) canopy trees, shrubs, ground covers and climbers in the boundary setbacks. This is consistent with the character of the streetscape and will assist to soften the built form presentation to the street. As advised by Council's Parks Unit, this proposed landscape design is an appropriate response in this context and is supported.

With regard to the raingarden proposed against northern boundary of Dwelling 2, as advised by Council's Parks Unit, it may compromise the health of a significant tree in the northern adjoining allotment at No. 27 Dixon Street, Malvern if the raingarden is installed in the Structure Root Zone of the tree in question. As such, reallocation of the proposed raingarden is preferred. As such, a condition is recommended to ensure that the proposed raingarden will be installed outside the Structure Root Zone of the neighbouring tree to the north. Subject to this condition, the development will not result in loss of any significant trees or unreasonably impact on any neighbouring trees.

In addition, with regard to the street tree, conditions will be recommended to ensure that due protective measures and supervision will be carried out during the construction stage.

Internal Amenity

Dwelling entry objective

The proposed dwellings are provided with separate entries defined by pedestrian pathways from Dixon Street and Ray Street respectively. The proposed entries are visible and easily identifiable from the streets and provide the sense of identity. Overall, the objective is considered met.

Daylight to existing windows objective

The proposal allows adequate daylight into new habitable room windows as all habitable windows are facing an outdoor space clear to the sky. Solar access is also provided to the secluded private open space that has a northerly aspect and conveniently accessible from a living room. Overall, the objective is considered met.

Private open space objective

The proposal provides adequate private open space for the reasonable recreation and service needs of residents. Specifically, it is noted that:

- Dwelling 1: a total private open space of 118 square metres including the secluded private open space of 28 square metres in area;
- Dwelling 2: a total private open space of 64 square metres including the secluded private open space of 25 square metres in area.

In light of the above, the objective is considered met.

Storage objective

Each dwelling is provided with conveniently accessible storage space in the respective garage and the secluded private open space. The objective is considered met.

Car Parking and Traffic

In conjunction with the referral comments from Council's Transport Unit, the proposal is acceptable for the following reasons:

- The proposal provides one (1) car parking space to each dwelling and satisfies the car parking requirement under Clause 52.06 (Car parking) of the Stonnington Planning Scheme.
- The width of the accessway leading to each garage is dimensioned 3.4 metres on the proposed ground floor plan and thus considered satisfactory.
- Pedestrian splays at the corner of the site and on both sides of the proposed crossing are dimensioned on the Proposed Ground Floor Plan with annotations confirming that hard and soft landscaping treatments within the area do not exceed 0.9 metres in height. This is considered satisfactory.
- To construct the proposed crossing, a separate consent from Council's Local Laws Unit is required. This will be reflected by way of Notes in the recommendation below.
- With respect to the proposed floor gradient and the minimum headroom clearance, permit conditions are recommended in line with Council's Traffic Engineer's referral comments so as to improve the level of detail on the plans.

Environmentally Sustainable Development (ESD)

A Sustainable Design Assessment Report (SDA) was submitted with the application as required by Clause 22.05 of the Stonnington Planning Scheme. As detailed in the Report, the proposed development seeks to incorporate several ESD initiatives to ensure the development achieves a BESS score of 53%. This is considered to meet Council's best practice and is satisfactory.

Moreover, a Water Sensitive Urban Design Response (WSUD) was submitted with the application. The WSUD Response includes a STORM Rating Report showing that one (1) 3000L rainwater tank and a 1m² 100mm raingarden are provided to each dwelling and the development will achieve 100% storm rating. As shown on the Proposed Ground Floor Plan, the proposed rainwater tanks (underground) and the raingardens are located in the northern secluded private open space respectively. Overall, the proposed development is considered satisfactory.

Objections

In response to the grounds of objection not already discussed in the report, the following comments are made:

Overdevelopment

For reasons outlined above, the proposal is not considered an overdevelopment for the following reasons:

- The proposal results in the addition of one (1) dwelling. This is considered reasonable and moderate in nature.
- The proposed height, built form and appearance are considered responsive and respectful to the surrounds and the policy.
- The proposed site coverage complies with the requirement.
- The proposed boundary setbacks are consistent with the rhythm of the established development within the area.

- The proposal will not result in any unreasonable amenity impacts as detailed above.
- The proposed landscaping is suitable for the development and will soften the development from various viewpoints from the street.

Sewerage issue

Council's Infrastructure Unit have provided referral comments. The recommended conditions are included in the recommendation below. Any specific sewerage issues will be dealt with during the building permit stage.

Conclusion

Having assessed the application against the relevant planning controls, it is recommended that the proposal be supported for the following reasons:

- The proposal responds appropriately to the relevant State and Local Planning Policies.
- The proposal provides an appropriate design response to the existing and the preferred neighbourhood character of the area.
- The proposal will not result in any unreasonable off-site amenity impacts, by way of visual bulk, overlooking or overshadowing.
- The proposal will achieve an appropriate level of internal amenity for future occupants.

Governance Compliance

Conflicts of Interest Disclosure

No Council Officer and/or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

Human Rights Consideration

This application has been assessed in accordance with the requirements of the *Planning and Environment Act 1987* (including the Stonnington Planning Scheme), reviewed by the State Government and which complies with the *Charter of Human Rights & Responsibilities Act 2006*.

Attachments

1. 0254/19 - 25 Dixon Street, Malvern [14.4.1 - 57 pages]

Officer Recommendation

That Council AUTHORISE Officers to issue a Notice of Decision to Grant a Planning Permit No: 254/19 for the land located at 25 Dixon Street, Malvern under the Stonnington Planning Scheme for demolition and construction of two dwellings on a lot in a Neighbourhood Residential Zone and Neighbourhood Character Overlay subject to the following conditions:

1. ***Before the commencement of the development, 1 copy of plans drawn to scale and fully dimensioned, must be submitted to and approved by the Responsible Authority. The plans must be generally in accordance with the development plans prepared by Architecton and Council date stamped 3 September 2020 but modified to show:***
 - a) ***Annotations must be included on the Proposed Ground Floor Plan, stating that 'The minimum gradient of the parking area shall be 1 in 200 (0.5%) for covered areas to allow for adequate drainage as per AS2890.1'.***

- b) ***A section diagram must be provided depicting that the headroom clearance of the garages exceeds 2.1 metres in height, measured when the garage doors are in an open position.***
 - c) ***In accordance with Standard B19 (Daylight access to existing windows) of Clause 55.04 of the Stonnington Planning Scheme, the western wall of Bedroom 2 of Dwelling 2 must be set back a minimum 2.85 metres from an existing habitable room window at ground level of the dwelling at No. 31 Thanet Street, Malvern.***
 - d) ***In accordance with Standard B22 (Overlooking) of Clause 55.04 of the Stonnington Planning Scheme, details of the proposed louvre screening to the first floor north facing windows must be provided. This may be achieved in the following ways:***
 - i. ***A certificate of verification from the manufacturer certifying that the proposed louvre screening are no more than 25% transparent.***
 - ii. ***A section plan detailing the spacing, the width, the angle and calculation of the total transparency of the proposed louvres demonstrating how the maximum 25% transparency is achieved.***
 - e) ***The proposed raingarden against the northern boundary of Dwelling 2 must be installed / reallocated to be positioned outside the Structural Root Zone of the Silver Tarata located at No. 27 Dixon Street, Malvern.***
 - f) ***Any amendment required by Condition 3 (Sustainable Design Assessment Report).***
 - g) ***Any amendment required by Condition 6 (Landscape Plan).***

All to the satisfaction of the Responsible Authority.
2. ***The layout of the site and the size, levels, design and location of buildings and works shown on the endorsed plans must not be modified for any reason without the prior written consent of the Responsible Authority.***
3. ***Prior to the endorsement of any plans pursuant to Condition 1, a Sustainable Design Assessment (SDA) Report must be submitted to and approved by the Responsible Authority. Upon approval the SDA will be endorsed as part of the planning permit and the development must incorporate the sustainable design initiatives outlined in the SDA to the satisfaction of the Responsible Authority. Amendments to the SDA must be incorporated into plan changes required under Condition 1. The Report must be generally consistent with the Sustainable Design Assessment Report (prepared by Frater Consulting Services and Council date stamped 10 July 2019) but modified to show:***
 - a) ***Any amendment required by Condition 1***

All to the satisfaction of the Responsible Authority.
4. ***All works must be undertaken in accordance with the endorsed Sustainability Design Assessment Report to the satisfaction of the Responsible Authority. No alterations to the Sustainable Design Assessment Report may occur without written consent of the Responsible Authority.***
5. ***The project must incorporate the Water Sensitive Urban Design initiatives detailed in the endorsed site plan and/or stormwater management report.***

6. ***Prior to the endorsement of plans, a landscape plan to be prepared by a landscape architect or suitably qualified or experienced landscape designer, must be submitted to and approved by the Responsible Authority. When approved, the landscape plan will be endorsed and will then form part of the permit. The landscape plan must be drawn to scale with dimensions. The landscape plan must be generally in accordance with the Landscape Plan prepared by John Patrick Landscape Architects Pty Ltd and Council date stamped 3 September 2020 but modified to show:***
 - a) ***Any amendment required by Condition 1.***

All to the satisfaction of the Responsible Authority.
7. ***Before the occupation of the development, the landscaping works as shown on the endorsed plans must be carried out and completed to the satisfaction of the Responsible Authority. Landscaping must then be maintained to the satisfaction of the Responsible Authority, including that any dead, diseased or damaged plants are to be replaced.***
8. ***Supervision by a qualified arborist must be carried out before any works to be conducted in the vicinity of existing street trees, including Fraxinus raywoodii (Claret Ash) street tree on the Dixon Street frontage and the Lophostemon confertus (Brushbox) and Melaleuca linariifolia (Snow In Summer) street trees on the Ray St frontage. All works must not compromise the health of the existing street trees to the satisfaction of the Responsible Authority.***
9. ***Protection fencing must be afforded to the Fraxinus raywoodii (Claret Ash) street tree on the Dixon Street frontage at this location. Fencing must comply with Section 4 of AS 4970 and form a 3m x 3m protection zone around the tree.***
10. ***Protection fencing must be afforded to the Lophostemon confertus (Brushbox) and Melaleuca linariifolia (Snow In Summer) street trees on the Ray St frontage prior to construction works occurring. Fencing must comply with Section 4 of AS 4970 and form a 2m x 2m protection zone around the trees.***
11. ***No vehicular or pedestrian access, trenching or soil excavation is to occur within the tree protection zone without the written consent of the Responsible Authority. No storage or dumping of tools, equipment or waste is to occur within the tree protection zone.***
12. ***Prior to a building permit being issued, a report for the legal point of discharge must be obtained from Council and a drainage design for the development must be prepared by a suitably qualified Engineer in accordance with all 'recommendations' and requirements contained in that report. All drainage must be by means of a gravity based system with the exception of agricultural drains which may be pumped. The relevant building surveyor must check and approve the drainage design and ensure that protection of the building is provided from a 1 in 100 A.R.I. rainfall event as required by the Building Regulations.***
13. ***The existing footpath levels must not be lowered or altered in any way at the property line (to facilitate the proposed driveway levels).***
14. ***Prior to the occupation of the development, the relocation or the removal and subsequent replacement of the street tree must be conducted by Council at the cost of the permit holder and to the satisfaction of the Responsible Authority.***

15. ***Prior to occupation of the building or commencement of use, any existing vehicular crossing made redundant by the building and works hereby permitted must be broken out and re-instated as standard footpath and kerb and channel at the permit holders cost to the approval and satisfaction of the Responsible Authority.***
16. ***Prior to the occupation of the building, fixed privacy screens (not adhesive film) designed to limit overlooking as required by Standard B22 of Clause 55.04-6 in accordance with the endorsed plans must be installed to the satisfaction of the Responsible Authority and maintained to the satisfaction of the Responsible Authority thereafter for the life of the building.***
17. ***Any poles, service pits or other structures/features on the footpath required to be relocated to facilitate the development must be done so at the cost of the applicant and subject to the relevant authority's consent.***
18. ***All utility services to the subject land and buildings approved as part of this permit must be provided underground to the satisfaction of the Responsible Authority by completion of the development.***
19. ***All plant and equipment (including air-conditioning units) shall be located or screened so as to minimise visibility from any of the surrounding footpaths and from overhead views and must not be located on balconies. All plant and equipment shall be baffled so as to minimise the emission of unreasonable noise to the environment in accordance with Section 48A of the Environment Protection Act 1970 to the satisfaction of the Responsible Authority.***
20. ***This permit will expire if one of the following circumstances applies:***
 - a) ***The development is not started within two years of the date of this permit.***
 - b) ***The development is not completed within four years of the date of this permit.***

In accordance with Section 69 of the Planning and Environment Act 1987, a request may be submitted to the Responsible Authority within the prescribed timeframes for an extension of the periods referred to in this condition.

NOTES:

- A. ***This permit does not constitute any authority to carry out any building works or occupy the building or part of the building unless all relevant building permits are obtained.***
- B. ***Nothing in this permit hereby issued shall be construed to allow the removal of, damage to or pruning of a significant tree (including the roots) without the further written approval of Council.***

“Significant Tree” means a tree or palm:

- a) ***with a trunk circumference of 140 cm or greater measured at 1.4 m above its base;***
- b) ***with a total circumference of all its trunks of 140 cm or greater measured at 1.4 m above its base;***
- c) ***with a trunk circumference of 180 cm or greater measured at its base; or***
- d) ***with a total circumference of all its trunks of 180 cm or greater measured at its base.***

Please contact the Council Arborists on 8290 1333 to ascertain if permission is required for tree removal or pruning or for further information and protection of trees during construction works

- C. The crossover must be constructed to Council's Standard Vehicle Crossover Guidelines unless otherwise approved by the Responsible Authority. Separate consent for crossovers is required from Council's Building and Local Law Unit.***
- D. At the permit issue date, Section 69 of the Planning and Environment Act 1987 stated that the Responsible Authority may extend the periods referred to if a request is made in writing within the following timeframes:***
 - a) Before or within 6 months after the permit expiry date, where the development allowed by the permit has not yet started; and***
 - b) Within 12 months after the permit expiry date, where the development allowed by the permit has lawfully started before the permit expires.***

14.5 Planning Application 0248/20 - 49 & 51 Claremont Street, South Yarra

Manager Statutory Planning: Alex Kastaniotis
Acting Director Planning & Place: Chris Balfour

Purpose of Report

For Council to consider a planning application for construction of a mixed use building comprising office and food and drinks premises in an Activity Centre Zone and Land Subject to Inundation Overlay, reduction of the car parking requirements and removal of an easement at 49 & 51 Claremont Street, South Yarra.

Officer Recommendation Summary

That Council authorise Officers to issue a **Notice of Decision** subject to conditions outlined in the Officer Recommendation. The proposal is supported for the following reasons:

- The proposed built form presents an appropriate response to the opportunities present at the site.
- Subject to conditions, the new building will not create any unreasonable off-site impacts.
- The proposed monetary contribution towards the streetscape and public realm improvements will provide a significant community benefit commensurate with the building uplift.

Executive Summary

Applicant:	Urbis Pty Ltd
Ward:	North
Zone:	Activity Centre Zone (Schedule 1)
Overlay:	Environmental Audit Overlay Special Building Overlay (SBO1)
Date Lodged:	2 April 2020
Statutory Days: (as at Council Meeting date)	165
Trigger for Referral to Council:	More than 6 objections Greater than 4 storeys Cr Call Up – Councillor Koce
Number of Objections:	21
Consultative Meeting:	Yes – held on 10 September 2020
Officer Recommendation	Notice of Decision to Grant a Planning Permit

Background

The Proposal

The plans that form part of the basis of Council's consideration were prepared by *Bird de la Coeur Architects* and are known as Drawing No.s: TP00, TP01, TP11.00, TP11.0G, TP11.01, TP11.02, TP11.03, TP11.B1, TP20, TP21, TP22, TP23, TP24, TP25, TP30, TP31, TP32, TP50, TP55 and Council date stamped 25 June 2020.

Key features of the proposal are:

- Construction of an 18-storey office development comprising 5140 square metres of office floor area and a food and drink premises at Level 1.
- Three levels of basement car parking for 27 parking spaces accessed via a car lift. All parking space are to be allocated to the office use.
- Vehicular access to the site via Claremont Street through a single width crossover along the northern boundary.
- The ground level will comprise 70 bicycle spaces and end of trip facilities.
- The terrace level will provide the main entrance into the building with two terraces facing the street associated with a small café, alongside the office lobby.
- Levels 2 to 17 will contain office floors with north and east facing glazing.
- The rooftop will comprise of services and solar panels as well as a rooftop garden.
- The building will occupy the entire site and will reach an overall height of 63.77 metres (RL66.12), excluding plant and lift overrun.
- The proposal also includes upgrades to the streetscape in front of the site, including streetscape paving, landscaping and traffic calming.
- The removal of existing easements on titles, which pertain to party walls between the existing buildings on site.

Discussion plans were submitted to Council on 10 August 2020 to address a number of concerns raised by Melbourne Water. The plans are known as Architectural Plan Set prepared by *Bird de la Coeur Architects* dated 7 August 2020, Revision 2. Changes to the plans are as follows:

- Car lift, waste area and stairs revised to achieve a 4.8 metre finished floor level
- Associated changes in ramping to the car lift
- Windows lower than the freeboard level areas on the eastern elevation removed.

Further discussion plans were submitted to Council on 29 September 2020 in the form of an updated Shadow Plan TP50 Rev 3. The amendments include a reduction in the built form at the upper level. The changes specifically show a reduction in the upper level built form by ending the south-western stairwell at the level below, and reducing the extent of the solar panels on the rooftop along the western edge. The development can still meet a Green Star Best Practice rating with the removal of the solar panels. The changes will reduce the extent of overshadowing cast to the southern roof terrace of No. 47 Claremont Street by 19% compared to what was previously proposed at 10am, and a further 1% at 11am.

These plans have not been formally substituted and the above changes will be required via conditions of any permit granted.

Site and Surrounds

The site is located on the north-west corner of Claremont Street in South Yarra. The site has the following significant characteristics:

- A frontage along the eastern boundary of approximately 25 metres, and a frontage along the northern boundary of approximately 22 metres.
- A total site area of 537.89 square metres.

- The site currently contains two double storey brick buildings, generally constructed to the boundaries. These buildings have previously operated as commercial and office uses.
- 49 Claremont Street comprises undercroft car parking on the ground level accessed by a triple-width crossover, and one level of office above.
- 51 Claremont Street is a corner block, also with a triple width crossover and one level of office above.
- The subject site is one of the few remaining sites in the Forrest Hill Precinct to be redeveloped.
- There is an existing splay to the north-east corner of the site which is used by the public as a footpath.

Key features of the adjoining properties are detailed below:

To the north, across Claremont Street, is the Melbourne High School oval. The school currently has a secondary vehicle and pedestrian entry via Claremont Street.

At the far north-eastern end of Claremont Street is No. 56-58 Claremont Street, which is occupied by a 4 storey office building. Air rights above the existing building have been negotiated to allow use of the roof as a common terrace for the adjoining development at 50-54 Claremont Street.

No. 50-54 Claremont Street has been developed with a 21-storey multi storey apartment building approved by Planning Permit 1030/08. Level 5 of the building contains a common space for residents, which includes a north facing terrace and swimming pool. The lower 6 levels of this building comprise above ground car parking.

To the south at No. 47 Claremont Street is a multi dwelling development, comprising a 15 storey building plus roof terrace approved under Planning Permit PL475/12. The rooftop of this building is utilized as common open space and there are some solar panels positioned centrally on alongside the lift core. This building is constructed to the northern boundary with the exception of a 1 metre wide void, which provides limited natural light to some of the bedrooms within the apartments. The light court is not the primary source of daylight to any of the living areas within the building, as the apartments are oriented to the east and west.

Directly to the west is a vacant block of land at No. 55 Claremont Street. A current Planning Permit 1087/14 has issued for the land, which allows for the construction of a 16 storey residential building with an overall height of 50 metres. This permit issued on 17 September 2015 and is still valid. An extension of time has been granted so that works must commence by 17 September 2021 and be completed by 17 September 2023. No works have commenced under this permit. Notably, a new Planning Permit Application No. 889/20 was submitted to Council on 19 October 2020, which proposes the construction of a 19 storey office building, ground level food and drink premise and associated on-site podium car parking for 18 vehicles. The proposed building has a height of approximately 67 metres. At the time of writing this report, this application is undergoing preliminary review.

Other applications to note include a proposed development at 14-16 Yarra Street and 35-41 Claremont Street, which is located to the south of the site. This application is currently being considered by the Planning Department and combines two of the few remaining undeveloped sites in this area of Forrest Hill to create a large site between Yarra Street and Claremont Street. The application proposes two towers, one facing Yarra Street and one facing Claremont Street. The Yarra Street tower is proposed as 30 storeys (99.25 metres) and the Claremont Avenue tower 21 storeys (69.94 metres). The proposal also includes a

privately owned public pedestrian link at ground level between Yarra Street and Claremont Street.

Previous Planning Application/s

A search of Council records indicates there are no recent planning applications for the subject site.

The Title

The subject site comprises of two parcels of land described on Certificate of Title Volume 08063 Folio 029 and Volume 08063 Folio 028 as Lots 1 and 2 on Plan of Subdivision 030094 and no covenants affect the land. The lots share a party wall.

Planning Controls

The following controls/permit triggers are considerations for this application:

Zone

Clause 37.08 – Activity Centre Zone – Schedule 1 (Chapel Street Activity Centre)

Pursuant to Clause 37.08-2 (Table of Uses) land uses are detailed in Schedule 1. In this case, the proposed uses of Office requires a planning permit since its ground floor frontage exceeds 2m.

Pursuant to Clause 37.08-5 (Buildings and Works) a permit is required to construct a building or construct or carry out works unless the schedule to this zone specifies otherwise.

Pursuant to Clause 37.08-6, (Design and Development) a schedule to the zone may include design and development requirements. A permit may be granted to construct a building or construct or carry out works which is not in accordance with any design and development requirement in the schedule to this zone unless the schedule to this zone specifies otherwise.

Height and Massing Requirement

The site has a preferred maximum height of 50 metres as per the Forrest Hill Built Form Requirements.

The following massing requirements apply:

- A 3 metre setback to Claremont Street (east) above the street wall;
- A preferred maximum street wall height of 12 metres.

The height of the proposed building is 63.77 metres (excluding plant and lift overrun) which exceeds the preferred maximum building height of 50 metres.

The ACZ1 includes the following requirement at Clause 4.4:

- *The preferred maximum building height may be exceeded in some circumstances if:*
 - *It can be demonstrated that a significant community benefit can be achieved;*
and
 - *It continues to meet the objectives, requirements and guidelines in relation to visual impact and overshadowing with increased upper level setbacks*

Interface setback requirements

- A 4.5 metre building separation from side boundaries above the podium up to 27 metres where there are adjacent lots with existing or proposed habitable room windows and balconies (Excludes FH-2, FH-3 and FH-8). Above 27 metres, a further minimum side setback of 5.5 metres is recommended.

Building adaptability requirements

- Provide a minimum 4.0 metres floor to floor height at ground floor.
- Provide a minimum 3.8 metres floor to floor height at first floor and second floor of a building. This does not apply to second floor on a side street.

Open Space and landscaping requirement

- Provide generously sized, accessible, useable and well-designed communal open space areas in developments comprising ten or more dwellings or more than 1,000 square metres of office.

The site is located within the Forrest Hill Precinct of the Chapel Street Activity Centre. More specifically, it is located within sub-precinct FH6, which comprises of all properties in Claremont Street and is designated for Side Street Uses.

Overlay

Clause 44.04 – Land Subject to Inundation Overlay

Pursuant to Clause 44.04-2, a permit is required to construct a building or construct or carry out works. Melbourne Water is the relevant floodplain management authority.

Clause 45.03 Environmental Audit Overlay

The site is located within the Environmental Audit Overlay.

Pursuant to Clause 45.03-1 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 certificate of environmental audit must be issued for the land in accordance with Part IXD of the Environment Protection Act 1970, or
- 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.

Given a sensitive use is not proposed by this application, an Environmental Audit is not required as a condition of permit.

Particular Provisions

Clause 52.02 Easement, Restrictions and Reserves

As noted above, this application proposes to remove the easements between the two lots which are for party walls. Pursuant to Clause 52.02, a permit is required before a person proceeds under Section 36 of the Subdivision Act 1988 to acquire or remove an easement or remove a right of way.

Clause 52.06 Car Parking

Clause 52.06-2 states that before a new use commences, the number of car parking spaces required under Clause 52.06-5 must be provided. Clause 52.06-3 states that a permit is required to reduce these requirements.

A summary of the requirements of Clause 52.06-5 is provided in the table below.

Usage	Number/Area	Rate	Required Spaces
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Office	5,140m ²	3 spaces to each 100m ² of leasable floor area	154
Food and Drink Premises	24m ²	3.5 spaces to each 100m ² of leasable floor area	0
Total spaces required			154

The application plans propose 27 car parking spaces and therefore a reduction in the requirements of Clause 52.06-5 of 127 spaces is sought.

Clause 52.34 Bicycle Parking

The following table shows the bicycle parking spaces to be provided to accord with the requirements of the Planning Scheme.

Usage	Number/Area	Rate	Required Spaces
Office	5,140m ²	1 to each 300sqm of net floor area if the net floor area exceeds 1000sqm	17
Office Visitor	5,140m ²	1 to each 1000sqm of net floor area if the net floor area exceeds 1000sqm	5
Retail	24m ²	1 to each 300sqm of leaseable floor area	0
Retail Visitor	24m ²	1 to each 500sqm of leaseable floor area	0
Total spaces required			22

Assessment of Available Parking	
Number of spaces required for the proposal	22
Number of spaces provided for the proposal	70
Surplus / Shortfall	48

The requirements of the Planning Scheme are for 22 bicycle spaces on site. 70 bicycle spaces have been proposed. This exceeds the requirements of the Planning Scheme. It is also noted that 6 shower facilities are proposed within the bicycle parking area. Based on the number of spaces provided, this is in excess of the Planning Scheme requirements for end of trip facilities.

Relevant Planning Policies

The following clauses of the Planning Scheme are particularly relevant to this application:

- Clause 11 Settlement

- Clause 15 Built Environment and Heritage
- Clause 17 Economic Development
- Clause 18 Transport
- Clause 19 Infrastructure
- Clause 21.01 Structure of MSS
- Clause 21.02 Overview
- Clause 21.03 Vision
- Clause 21.04 Economic Development
- Clause 21.06 Built Environment and Heritage
- Clause 21.07 Open Space and Environment
- Clause 21.08 Infrastructure
- Clause 22.05 Environmentally Sustainable Development
- Clause 22.18 Stormwater Management (Water Sensitive Urban Design)
- Clause 53.18 Stormwater Management in Urban Development

Advertising

The application has been advertised pursuant to Section 52 of the Planning and Environment Act 1987 by sending notices to the owners and occupiers of adjoining land (and by placing two signs on the site). The public notification of the application has been completed satisfactorily.

The site is located in North Ward and objections from 21 different properties have been received. The objector concerns can be summarized as follows:

- Insufficient car parking
- Loss of daylight
- Noise from rooftop garden
- Construction activity
- Depreciation in property values
- Loss of views
- Increased foot and vehicle traffic
- Excessive height
- Overshadowing
- Insignificant community benefit
- Overdevelopment
- Insufficient green space
- Overlooking
- Streetscape works impractical

A Consultative Meeting was held on 10 September 2020. The meeting was attended by Councillors Koce and Griffin, representatives of the applicant, objectors and a Council planning officer. The meeting did not result in any changes to the plans; however further information and proposed conditions have been put forward by the permit applicant to address some of the concerns raised.

In terms of the further information, the applicant has prepared additional shadow diagrams showing the overshadowing impacts to the east at No. 50-54 Claremont Street, as this was raised by several objectors at the consultative meeting. The shadows confirm that the proposed development will not overshadow the common space within No. 50-54 Claremont Street, any more than a 50 metre building (being the preferred height under the AZ1).

The following information and proposed conditions have been proposed by the permit applicant to address waste collection and overshadowing of the communal open space to the south (47 Claremont Street):

- Waste collection

The Applicant's traffic consultants have confirmed that waste collection can occur within the site. The waste truck will prop on the right side of the ramp (the exit side). This would reduce the access into the lift to a single lane. For these reasons, it is recommended that waste be undertaken in off-peak times. In light of the above, it is agreed that a condition be required, to update the Waste Management Plan to off-peak collection only with the propping area to be demarcated on the plans.

- Shadows cast to the southern roof terrace between 9am-11am

The built form at the upper level has been reviewed and the extent of overshadowing cast to the southern roof terrace can be reduced by 19% compared to what was previously proposed at 10am, and a further 1% at 11am. This has been achieved by ending the south-western stairwell at the level below, and reducing the extent of the solar panels on the rooftop along the western edge. This built form change (which reduces the building bulk to the south) can be addressed via conditions.

It is considered that the above should form conditions of any permit granted.

Referrals

Melbourne Water

These comments are based on the plans Architectural Plan Set prepared by Bird de la Coeur Architects dated 7 August 2020, Revision 2.

Melbourne Water, pursuant to Section 56 (1) of the Planning and Environment Act 1987, does not object to the proposal.

Conditions

1. Finished floor levels of the ground floor area inc main areas of cafés and counters, office lobby/ lift lobby and stair entries, car lift and surrounding area including the two staircase entries servicing the basements, must be constructed no lower than 4.80 metres to AHD which is 600mm above the applicable 1% ARI flood level of 4.20 metres to AHD.
2. All openings for the basements, entries and exits, vents, windows etc must be set above 4.80metres to AHD.
3. No habitable areas must be shown at levels lower than 4.80 metres to AHD. Transition area shown as 'café' at level than this (4.143m to AHD) is permitted to remain only as an open terrace with no loose objects. Any landscaping or other features within this area must be securely fixed so as to withstand overland flows.
4. All electrical installations within the building must be set no lower than 4.80 metres to AHD which is 600mm above the applicable 1% ARI flood level of 4.20 metres to AHD.
5. Prior to the issue of a Certificate of Occupancy, a certified survey plan, showing finished floor levels (as constructed) reduced to the Australian Height Datum, must be submitted to Melbourne Water to demonstrate that the floor levels have been constructed in accordance with Melbourne Water's requirements.

Urban Design

- The overshadowing appears to be relatively limited. Given the high-rise nature of the Forrest Hill precinct, it is expected that there will be some impacts as a result of the clustering of taller towers.
- Beyond occasional access for loading and building servicing, it would be desirable to eliminate additional vehicular movements across the Northern footpath. It is suggested that further discussions be held with the Applicant to seek alternative car-parking arrangements.
- Further information has been provided on the design and materiality of the façade; which is supported. A detailed Façade Strategy is to be provided as a condition of Permit.
- The proposed concept design for the street paving at the Claremont Street (North) corner is supported; however, the full extent of the proposed streetscape works is not clear.
- It is suggested that the full extent and detailed design of the range of streetscape works be dealt with by a condition of Permit; to enable sufficient time for discussions and agreement with Council departments on the detail design.

City Strategy

- Council officers are currently working on detailed designs for this section of Claremont Street. As such, there is real opportunity for this application to respond and contribute towards streetscape upgrades. Further discussions in relation to this matter are supported. More information is required in relation to the proposed streetscape upgrades.
- The proposed single crossover will continue to impact on the ability to fully activate the northern frontage of the site. It is considered that this warrants further consideration and discussion with the Applicant.

Infrastructure & Landscape Projects

Pedestrian priority zone:

We do not have any objections towards this proposal as a concept.

Considering the proposed pedestrian priority treatment was not identified within Council design for this location, further detail on these designs would be required to be provided by the applicant. This would need to be approved by relevant Council departments.

Investigation and approval of the following items would also be required:

- ✓ VicRoads approval for the shared pedestrian zone
- ✓ Relocation of disabled parking bays currently proposed for this location
- ✓ Impact towards flooding in this location
- ✓ All finish heights of kerbs and pavements

Council does not have a confirmed timeframe for construction of this section of Claremont Street. If the construction of the Street is not completed by Council at the time of completion of this project, the applicant should consider following:

- Build the footpath with proposed new material to their property boundary and reinstate the pavement from property boundary to the existing kerb.

Developer contribution for construction of extended footpath

- It is expected that the developer would fund these works. Our preference would be for a negotiated amount to be paid to Council to construct these works.

Transport and Parking

- Based on the close proximity to alternative modes of transport, it is unlikely that an objection to the proposal could be sustained for office parking shortfall. The shortfall of office parking on-site is considered reasonable.
- The applicant should look to reduce the number of car spaces for the office to further reduce the reliance on private vehicles and the amount of basement car parking required. The site is not as large as other sites in Claremont Street and it appears that the application is trying to fit as many spaces as possible, however the result is 3 basement levels accessed by a car lift which operationally may not be the best outcome.
- The level of traffic generated by this development is not expected to impact the surrounding road network, particularly due to the spread of movements during the peak hours and the low number of spaces provided on space.
- Swept path diagrams have been provided in the Traffic Engineering Assessment to show that access in and out of the car lift can be achieved by a B99 vehicle in one manoeuvre without impacting the layby parking spaces.
- The width of the entrance to the car park from Claremont Street to the garage door has not been provided. This section of the accessway is a single lane and must be at least 3m wide.
- The plans provide a sight triangle on the east side of the accessway. A convex mirror is proposed to assist with this sight lines to the west. This is supported, however the convex mirror must be wholly contained with the private property. In addition, the sight triangle shown has been drawn incorrectly and this must be corrected.
- Two lay-by parking spaces are provided within the internal accessway which are to be used as a waiting area. These spaces proposed have not been dimensioned. Whilst it is supported for these spaces to be included on-site for vehicles waiting for the lift, the applicant must confirm the dimensions to ensure a vehicle can be parked entirely within these spaces. It is recommended that these spaces be line marked on the ramp, to ensure that motorists have a clear visual guide of where to wait to ensure that they do not impact the car lift whilst a vehicle is exiting the lift at the same time.
- The applicant is proposing an entry ramp providing access from Claremont Street to the bicycle parking area. This ramp must have a width of 1.5m which is suitable for a one-way access path. This is to widen to 2.5m around any corners/landings on the ramp to facilitate two-way access. It is noted that the proposed gradient along this ramp is 1 in 8. The Australian Standards states that where possible the ramp gradient should be limited to 1 in 12 for the ease of the bicycle users travelling on the ramp.
- The design of the bicycle spaces has been generally designed in accordance to the standards, however the spacing between the rails is 400mm not 500mm. The standards require spacing of at least 500mm when staggered in height to ensure there is no overhang of the handlebars.
- Based on the use of the site the applicant has stated that the loading needs of the office could be maintained within the on-street loading facilities available in Claremont Street. This is supported.
- Waste collection should occur within the site without relying on the on-street parking arrangement

Infrastructure

- Infrastructure will not accept a basement under a Council footpath or road due to the potential liability issues including the ever likely problem with the ingress of seepage into the basement. Our approach to any basement that may be located under a

widened footpath is that the footpath must remain in the ownership of the property owner and that rights for the public be created as an easement over the splay at ground level.

- Require the creation of an easement over the splay in favour of the public with a S173 agreement indemnifying Council and requiring the owner to accept responsibility and liability for the land.
- The existing levels of the Claremont Street footpath must not be raised or altered in anyway.
- Prior to a building permit being issued, a report for the legal point of discharge must be obtained from Council and a drainage design for the development must be prepared by a suitably qualified Engineer in accordance with all 'recommendations' and requirements contained in that report. All drainage must be by means of a gravity based system and not pumped, with the exception of runoff from any basement ramp and agricultural drains which may be pumped. The relevant building surveyor must check and approve the drainage design and ensure that protection of the building is provided from a 1 in 100 A.R.I. rainfall event as required by the Building Regulations.
- Prior to an 'Occupancy Permit' being issued, a suitably qualified Engineer must carry out a detailed inspection of the completed stormwater drainage system and associated works including all water storage tanks to ensure that all works have been constructed in accordance with the approved design and the relevant planning permit conditions. Certification of the completed drainage from the Engineer must be provided to Council prior to a 'Statement of Compliance' being issued for the subdivision.
- The redundant vehicular crossings must be removed and the footpath and kerb reinstated at the owner's cost to the satisfaction of Council.

Environmentally Sustainable Design

- There are still some outstanding issue, such as providing supporting evidence of the Green Star credits claimed and the proposed development is able to achieve 45 points without reliance on Innovation points which are to be addressed by the applicant. However these issues can be addressed via way of conditions.

Parks

- Landscape detail should be provided for the rooftop garden.

Waste

- No concerns raised.

Key Issues and Discussion

Strategic Justification

The permit applicant seeks to develop a new office building on the subject site with a café and terraces at the entrance. The site is located at the northern end of Claremont Street, within the Forrest Hill Precinct and Chapel Street Activity Centre. Directly to the north is the Melbourne High School, while to the east, south and west are numerous high-rise buildings reaching heights of up to 88 metres.

The subject site is located within the Activity Centre Zone (ACZ) where the purpose of the zone is:

- *To implement the Municipal Planning Strategy and the Planning Policy Framework*
- *To encourage a mixture of uses and the intensive development of the activity centre:*

- *As a focus for business, shopping, working, housing, leisure, transport and community facilities.*
- *To support sustainable urban outcomes that maximise the use of infrastructure and public transport.*
- *To deliver a diversity of housing at higher densities to make optimum use of the facilities and services.*
- *To create through good urban design an attractive, pleasant, walkable, safe and stimulating environment.*
- *To facilitate use and development of land in accordance with the Development Framework for the activity centre.*

State planning policies at Clause 11.03-1S (Activity Centres) encourage the concentration of major retail, residential, commercial, administrative, entertainment and cultural developments into activity centres that are highly accessible to the community. The site is located approximately 400 metres from the South Yarra Railway Station, 340 metres from Toorak Road and approximately 220 metres from the Main Yarra Trail, making it highly accessible to public transport and cycling infrastructure.

At a local policy level, one of the key issues for activity centres at Clause 21.04-1 is the need to achieve the right balance of local and visitor uses, day and night-time uses, residential and commercial uses and retail and office / service uses. It is acknowledged that office buildings, unlike residential apartments, encourage a wide range of people to visit the activity centre during daytime hours. Generally, these visitors and employees increase spending in the local shops and cafes during the day, and in turn increase retail and hospitality employment.

The subject site is located within the Forrest Hill Precinct of the Chapel Street Activity Centre. More specifically, it is located within sub-precinct FH6, which comprises of all properties in Claremont Street and is designated for Side Street Uses. Some of the broad objectives for the Forrest Hill Precinct include:

- *To activate streets, particularly side streets, improve street level amenity, the streetscape and the public realm.*
- *To reduce car dependency and car parking rates within Forrest Hill.*
- *To reduce vehicle congestion by encouraging sustainable forms of transport, car free development and improvements to existing cycle infrastructure.*
- *To develop a predominantly higher density precinct where new buildings are of a pedestrian friendly scale and design at ground floor, with upper levels setback where necessary so as to minimise off site amenity impacts.*

Within Sub-Precinct FH-6 the following more specific objectives apply:

- *Ensure new development along Claremont Street will relate to and not dominate the open spaces of Melbourne High School.*
- *Build the street wall to the full width of the lot (i.e. boundary to boundary).*
- *Setback new development from side boundaries above the podium to provide a separation between towers.*
- *Encourage an enhanced and functional east west through block link and a plaza.*
- *Encourage vehicle access/egress, service delivery and loading to be undertaken via Daly Street where possible.*
- *Encourage well designed human scale development in Claremont Street.*

The proposal for a high density commercial building on the subject site with minimal car parking, measures favourably against these policy objectives and there is strong support both in the strategic and location context for a commercial building of significant scale on this site.

As will be discussed throughout this report, the proposal exceeds the building height recommended by the ACZ1, yet is deemed to be fitting to the surrounding context and will provide a significant community benefit to support the additional building height.

Built Form

Building Height

The Activity Centre Zone – Schedule 1 (ACZ1) suggests a preferred maximum building height of 50 metres for the subject site. The proposal is for a building of 18 storeys and 63.77 metres in height (excluding the lift overrun). Although the proposed building is higher than preferred under the ACZ1 by 13.77 metres, there are other examples of tall buildings in Claremont and Yarra Streets, including 42-48 Claremont Street (67 metres/23 storeys), 16-22 Claremont Street (88 metres /28 storeys), and 18 Yarra Street (76 metres/26 storeys). The building immediately to the east (No. 50-54 Claremont Street) has been developed with a 21 storey apartment building with a height of 63.55 metres.

The existence of building approvals above the limits imposed by ACZ1 demonstrate that within the Forrest Hill Precinct there are some sites that have opportunities beyond that foreseen by the ACZ. As a primary starting point in planning for new development, the Planning Scheme calls for site responsive design. While the ACZ remains a key determinative reference when considering applications, the context of these approvals lend weight for a taller building form at the site.

The ACZ1 preferred heights are not mandatory and the planning controls allow for taller buildings where the following criteria can be met:

The preferred maximum building height may be exceeded in some circumstances if:

- *It can be demonstrated that a significant community benefit is achieved; and*
- *It continues to meet the objectives in relation to visual impact, overshadowing with increased upper level setbacks.*

The applicant has proposed in support of the additional building height a number of streetscape works and public realm improvements in front of the subject site (refer to Figure 1).

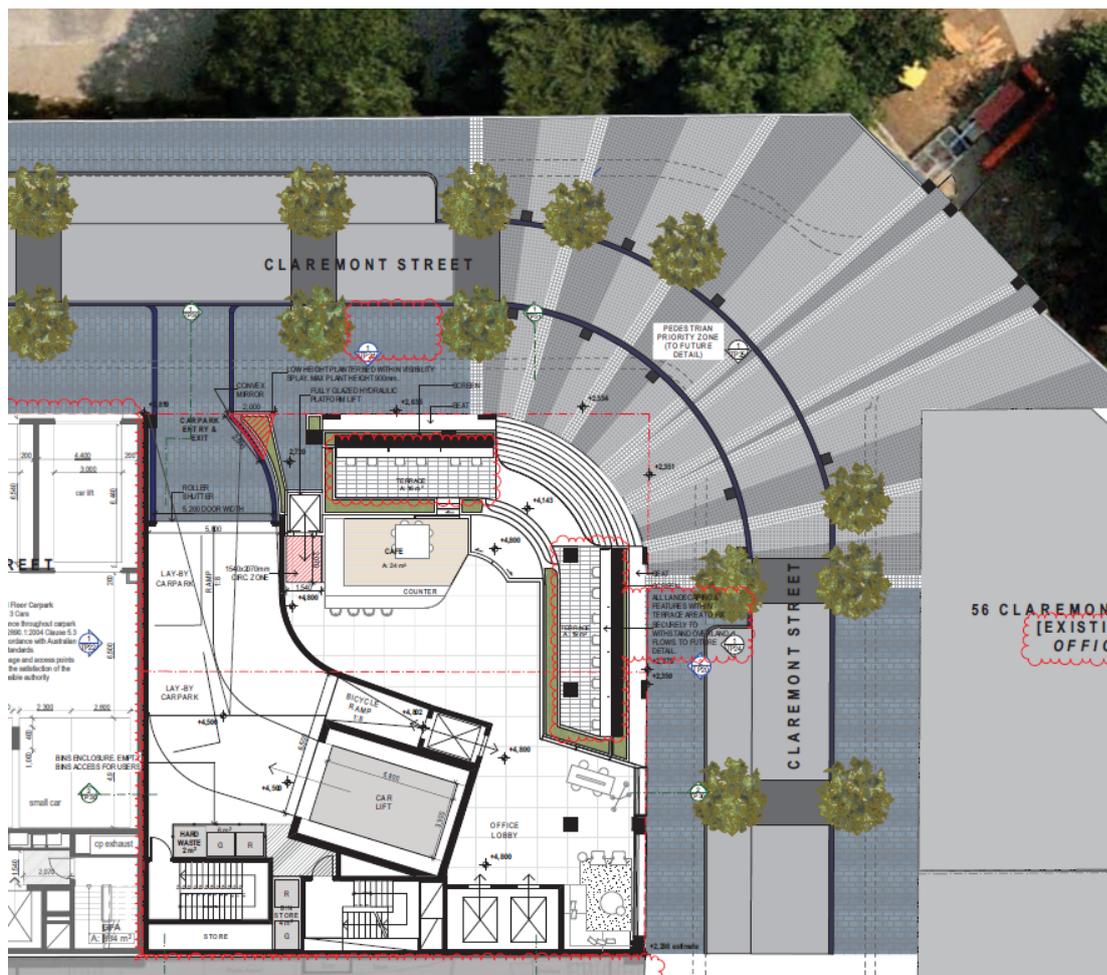


Figure 1: Extract from Level 1 Plan showing indicative streetscape works and pedestrian priority zone

The Forrest Hill precinct in South Yarra is a key area in Stonnington for higher density housing, mixed use and intensive built form.

In December 2005, Council adopted the Forrest Hill Precinct Structure Plan to help guide the significant change that was anticipated. The Structure Plan included an east-west pedestrian link, enhancements to the streetscape and public spaces, and infrastructure to accommodate high-density activity. In November 2008, the Council adopted the Forrest Hill Precinct Streetscape Masterplan. Specific features of the Masterplan included:

- Wider footpaths and new paving materials, colours and patterns,
- landscaping treatments in Yarra, Claremont and Daly streets and Almeida Crescent,
- feature node points in Yarra, Claremont and Daly streets to reinforce pedestrian priority along the east/west pedestrian link,
- entry threshold treatments throughout the precinct,
- pedestrian orientated spaces,
- road resurfacing of Yarra, Claremont and Daly streets and Almeida Crescent,
- signalling the Yarra Street/Alexandra Avenue intersection,
- undergrounding power lines,
- encourage installation of public art and street furniture, and
- graphically illustrate initiatives and opportunities for the precinct.

Currently there are no formal development contributions required within the Stonnington Planning Scheme to fund infrastructure works in Forrest Hill. Despite the lack of a Development Contribution Plan, voluntary contributions have been made by developers as

part of the planning permit process for many years. Council has been progressively implementing the Forest Hill Masterplan and have more recently advanced the design of the Claremont Street concept plans. The proposal put forward by the applicant differs from the current Claremont Street design and includes a pedestrian priority zone to improve the connection between the Melbourne High School and the southern side of Claremont Street. The works will also include new paving, landscaping and traffic calming.

The site is directly opposite Melbourne High School in a section of Claremont Street that is in need of activation, renewal and improvements to the streetscape. Melbourne High School have provided their in-principle support for a pedestrian priority zone and it is considered that the public realm works will improve student access to the South Yarra Railway Station. As detailed designs for this section of Claremont Street are currently being advanced by Council Officers, there is real opportunity for this application to respond and contribute towards the streetscape upgrades.

Council's Infrastructure and Landscape Projects Team are supportive of the public realm works shown on the proposed plans, subject to detailed design matters being dealt with via conditions. It is expected that the works will be carried out on behalf of Council at the permit applicant's expense. In determining the required contribution, it has been estimated that the additional floor area being sought above the preferred 50 metres height limit equates to approximately 1236 square metres and has a value of \$835,000.00. To ensure an equitable balance between building uplift and significant community benefit, conditions of the permit will require a contribution of \$835,000.00 for the public realm and streetscape works in front of the subject site. This agreement must be set down in the permit and required through the execution of a Section 173 Agreement.

In the absence of a definition of "significant community benefit" within the Stonnington Planning Scheme, it is considered that "significant community benefit" can be derived from a developer contribution to fund the streetscape upgrades that will support the wider community as the area continues to grow. Furthermore, it is considered that \$835,000.00 is sufficient to meaningfully contribute towards the public realm improvements and streetscape works at the northern end of Claremont Street in exchange for the additional building height.

Where a development seeks to exceed the recommended heights of the ACZ1, in addition to a "significant community benefit", development must also continue to meet the objectives in relation to visual impact, overshadowing and increased upper level setbacks.

As already mentioned in this report, the precinct is one where intensive development has occurred and there are examples of buildings that exceed the preferred maximum height. The building directly to the east (50-54 Claremont Street) has a height of 63.55 metres, being only marginally below the proposed building height. When viewed from the north the proposed building will appear to align with the parapet of the building to the east, with the higher tower at 18 Yarra Street setback from Claremont Street to the west. The proposed building will sit comfortably amongst the existing towers and will provide an acceptable transition in scale between the towers in Claremont Street and Yarra Street (refer to Figure 2 below).

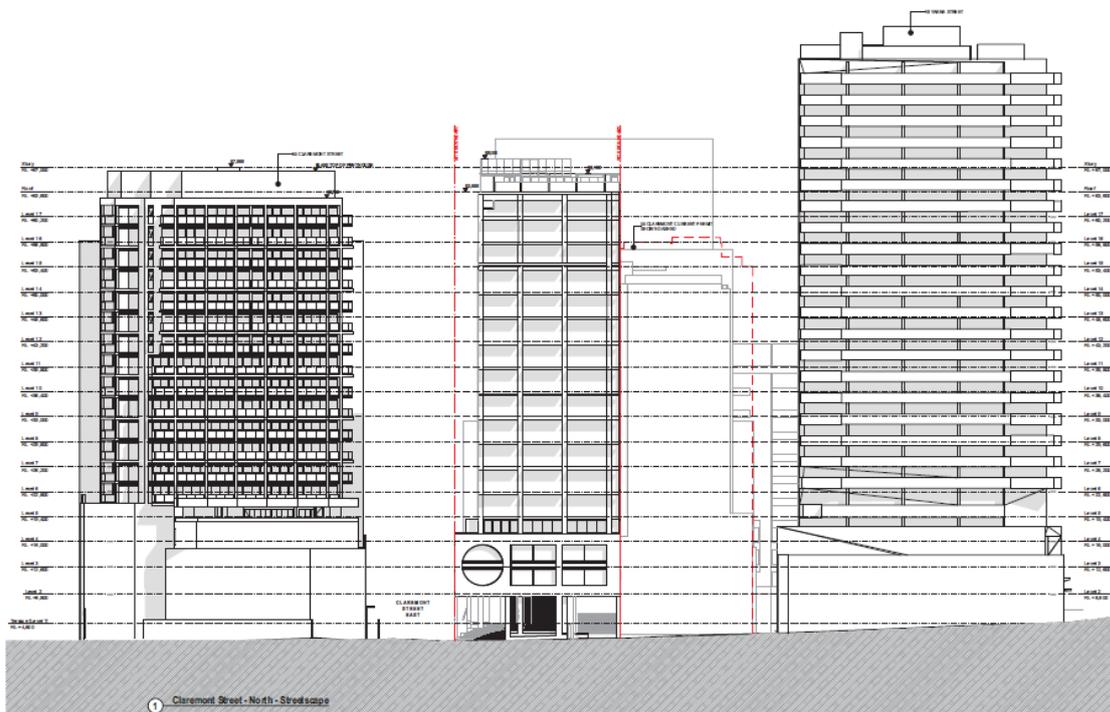


Figure 2: Proposed streetscape elevation from North

The proposed building meets the massing requirements by applying a 3 metre setback to Claremont Street (east) above the street wall. The ACZ1 recommends a preferred maximum street wall height of 12 metres and the development proposes a street wall of approximately 14.3 metres. The development immediately to the south (47 Claremont Street) has a street wall height of 12.77 metres and to the east No. 50-54 Claremont Street has a street wall height of approximately 13.7 metres. Although the street wall as proposed on the subject site is higher than the preferred 12 metres, it is important to acknowledge the challenges presented with regard to the flood levels on this site. Melbourne Water as the relevant floodplain management authority has required the floor levels to be raised well above street level. As a result, the terrace level has been raised approximately 2 metres above the footpath.

Being located on a corner where the land slopes down towards the north, the impacts of a higher street wall are minimal as it will not interrupt the continuity of the street. Moreover, the street wall as proposed is only slightly higher than the street wall to the east at No. 50-54 Claremont Street by 0.6 metres. This height difference is unlikely to be appreciated in this densely developed area.

Council's Urban Design is supportive of the proposed building and the public realm improvements and has not raised concerns with the street wall or the visual impact of the new building on the streetscape or the adjoining properties. The impacts of overshadowing on the public realm are as expected for a building up to 50 metres in height. The additional height above 50 metres will have no greater impact on the public realm than a 50 metre tall building.

Council's Urban Designer has suggested that the removal of on-site car parking may improve the pedestrian environment along the site's northern boundary. While eliminating additional vehicular movements across the Northern footpath would achieve an improved outcome, it is difficult to support this position as the vehicle crossing is proposed within the

current location of the existing vehicle crossing. As the vehicle crossing location is an existing condition, no further change to the northern façade is recommended. It is noted that other than the single lane vehicle entry, the north and east facades of the terrace level have been designed with terraces to provide a continuous, visible and active frontage to Claremont Street.

With respect to the wind impacts, a Wind Tunnel Test has been conducted by Vipac which assesses the pedestrian level winds for the proposed development. The wind tunnel test found that the podium terrace measured gust wind speeds exceeding the safety criterion. The high wind gusts are due to the downwash from the north façade as well as the corner acceleration from the tower. A porous wind screen has been shown on the plans to address this as recommended by Vipac. A seating area proposed on the footpath will be predominantly impacted by the direct exposure to north to northwest winds. This location is well outside of the building boundary and Vipac recommend not to propose any seating at this location. All seating areas on the footpath has been removed from the plans. Based on the plans as advertised, the development fulfils the recommended criterion for safety, walking, standing and sitting.

For the foregoing reasons, the proposal is considered to present an acceptable planning outcome for the subject site. Nonetheless, it proposes a density which exceeds that anticipated by the ACZ. However, the proposed contributions to the streetscape works and public realm improvements in front of the subject site represent a significant community benefit and satisfactorily off set the proposed height increase sought.

Amenity Impacts

The site is located within an Activity Centre context where there are numerous examples of mid and high rise developments, many that are in excess of the preferred maximum height for the precinct. The site's most sensitive abuttal is to the residential building to the immediate south (47 Claremont Street), which is largely constructed with a solid wall to the northern boundary with the exception of a 1 metre deep void.

To the immediate west (55 Claremont Street) a residential building was approved in September 2015. Despite the permit having been extended, no works have commenced and a new planning application has been lodged which seeks to develop the land for a 19 storey commercial building. The development plans as lodged on 19 October 2020 propose a wall constructed to the eastern boundary abutting the subject site with all services located to the east of the building.

The Interface Requirements of the ACZ1 seek to provide a separation distance of 4.5m and 5.5m between adjoining towers above the podium, to provide for such things as equitable development opportunities and privacy of habitable room windows and balconies; the protection of view lines; daylight and solar access; and outlook from within buildings.

The subject site is located on a corner and as such the two abutting sites contain (or will contain) buildings that have been constructed with walls to the site's common boundaries. As a result, the apartments in the building to the south have an outlook to the east and west, rather than to the north and will not appreciate the new building from any outlook within the building. Due to the positioning of windows within the narrow void on the northern boundary, the bedroom windows have a north-westerly outlook towards No. 55 Claremont Street. The common rooftop terrace at No. 47 Claremont Street will be overshadowed by the proposed building between 9am and 11am on the Equinox, with no impact from 12pm onwards. This is a common area and each of the apartments to the south have a private balcony that will be unaffected by the proposal. In any case, the applicant has proposed changes to the upper level to reduce the extent of overshadowing to the south by 19% compared to what was

previously proposed at 10am, and a further 1% at 11am. Based on the amended proposal the new building will overshadow 22 square metres of the common terrace to the south at 10am. The reduction in overshadowing has been achieved by ending the south-western stairwell at the level below, and reducing the extent of the solar panels on the rooftop along the western edge. This built form change will also reduce the visual impact and building bulk to the south, which is supported. The change to the upper level is to be addressed via conditions. It is noted that if the communal roof area of No. 47 Claremont Street was deemed private open space and the residential standards of Clause 55 applied, the proposed impacts of the new building would comply with the amenity test under Standard B21 (Overshadowing open space) by providing at least 75% of the open space area with solar access for a minimum of 5 hours between 10am and 3pm.

To the west at No. 55 Claremont Street, the approved residential building features a wall on the eastern boundary with the exception of a small light court for daylight access to the secondary bedrooms within the apartments. The apartments are logically orientated to the north and west with an outlook over Claremont Street. It is unclear if this development will proceed as a new application has been lodged in October 2020 for a commercial development.

Based on the existing and future conditions of the adjoining properties, the interface requirements for a tower setback are not considered to achieve an improved outcome for either the subject site or the adjoining properties. The existing building to the south has not incorporated a tower setback, nor has the approved and proposed buildings to the west. Therefore, the proposal to construct abutting existing walls on boundaries is logical and adequate daylight, ventilation and outlook can be achieved to the north and east.

Several objections were received from the apartments to the east at No. 50-54 Claremont Street. A number of apartments within this 21-storey building have an outlook to the north and west. A primary concern raised by the objectors is the impacts of overshadowing on the common terrace at Level 5 within this building. Following the consultative meeting the applicant provided a 3D model showing the overshadowing impacts of the proposed building on the common space to the east. The model confirms that the common space at No. 50-54 Claremont Street will be affected by shadows at 2pm and 3pm on the 22 September (Equinox). However, the same extent of overshadowing would result from a 50 metre high tower. Loss of views has also been raised; however this is not a relevant planning matter as views are not protected by the Planning Scheme. The new building on the subject site is to be setback a distance of approximately 16 metres from the apartments to the east at Level 6 and above. Ground to Level 5 contains a car parking podium. This distance is considered sufficient to limit overlooking and to provide adequate separation for daylight, solar access and ventilation in this higher density setting.

For the reasons already expressed above, the proposed massing of the building is not out of scale within this context and will not result in unreasonable amenity impacts on the surrounding properties.

Some objectors have raised concerns regarding the density of the proposal and the impacts upon the local pedestrian and traffic environments. Traffic considerations are discussed below. In terms of pedestrian density, it is considered that an increase in people in the area during the day is a positive aspect of this proposal. The Chapel Street Activity Centre is a principal activity centre, the purpose of which is to build up and intensify development, with a range of complementary uses. The proposal is consistent with this aspiration.

On-site Amenity

The proposed building includes a small café on the terrace level (level 1) as well as 5140 square metres of office floor space. A central lobby faces the north-east corner of the site where a prominent entrance into the building and two terraces face onto the street. This arrangement provides good activation and engagement with the public at the street level. A hydraulic lift is positioned on the northern side of the building to provide access to the terrace level for those with limited mobility.

A large bicycle parking facility and end of trip facilities is located at the lower ground level providing 70 bicycle parking spaces. This level is accessed via a ramp off Claremont Street.

The application was accompanied by a Waste Management Plan, which was generally found to be acceptable by Council's Waste Coordinator. Some concerns were raised by Council's Transport and Parking Department in relation to designated collection areas and ensuring that collection would not occur on the street. The applicant has since confirmed that waste collection will occur at off-peak times and a waste collection area will be located within the site boundaries. Both of the above are to be shown on the plans for endorsement, by way of conditions. The Transport and Parking Department are supportive of the waste collection arrangements now proposed.

The proposal meets the *Building Adaptability Requirements* of the ACZ1 with the terrace level (main entry level) having a floor to ceiling height of 4 metres and Level 2 and above provided 3.8 metre floor to ceiling heights. As already mentioned, the terrace level (level 1) has been raised approximately 2 metres above the street level due to the requirements of Melbourne Water. The purpose of this Requirement is to encourage commercial uses and the proposed building is commercial in nature.

The *Open Space and landscaping requirement* within the ACZ1 requires development with more than 1,000 square metres of office to provide generously sized, accessible, useable and well-designed communal open space areas. The proposal meets this requirement by providing an east facing terrace on the roof of the podium at Level 4 with an area of 112 square metres and a 190 square metre rooftop garden covered with solar panels. These open spaces will provide accessible and useable amenities for the future users of the building. Some objectors have raised concerns with noise from the rooftop garden. As has been required for other commercial buildings within this precinct, the rooftop garden will be restricted by way of a condition that it may only be used until 9pm on any day and at no times will live or amplified entertainment or music be permitted in the rooftop garden.

The application has been reviewed by Council's Environmentally Sustainable Design (ESD) Officer who has suggested some changes, which can be incorporated by way of permit conditions. The proposal includes the following environmentally sustainable commitments:

- Achieves a Green Star 4 Star Best Practice rating, however certification of the rating with the Green Building Council will not be undertaken,
- Achieves a STORM score of 109%,
- 69 kW total solar photovoltaic system (36kW rooftop and 33kW north façade mounted to provide shading),
- A 10,000L rainwater tank (RWT) collecting water from 380m² of roof area, connected to all toilets on level 2 and 3,
- 10% reduction in annual energy consumption of minimum NCC 2019 requirements,
- Water efficient fixtures include WELS 4 star toilets, 5 star taps and 3 star showers,
- Ultra-low VOC paints,
- 70 bicycle parking spaces with end of trip facilities (47 lockers and 8 showers),
- Electric vehicle charging point for 2 car spaces.

The submitted plans demonstrates that the project can meet Council’s ESD requirements without any wholesale changes to the building.

Overall, the building is well designed for the intended users.

Car Parking and Traffic

The site is located within a congested traffic environment, yet also benefits from excellent access to public transport being only 400 metres from the South Yarra Railway Station. The proposed office use is one which lends itself to public transport use, and building users should be discouraged from driving private vehicles to the site as much as possible in order to minimise the impact of the building on the local roads.

The proposed uses generate a statutory requirement for 154 car parking spaces, yet the proposal will provide 27 car parking spaces. While some objectors have raised concerns with insufficient car parking, Council Officers have suggested that the car parking should be further reduced to help to alleviate the traffic congestion in the area. The applicant has responded to this suggestion and advised that the 27 spaces proposed are required and no further reduction can be achieved.

In considering a reduced rate of car parking it is important to note that Council has previously prepared and exhibited Amendment C139 to the Planning Scheme, which proposed to introduce reduced parking rates in Forrest Hill. The Amendment ultimately lapsed although it is still considered to be provide useful benchmarks for parking in this area. These rates were intended to provide a maximum parking provision figure, in order to limit the impact of traffic in this area. An assessment of the proposal against these rates is provided below.

Usage	Number/Area	Rate	Required Spaces
Office	5,140m ²	1.48 spaces to each 100m ² of net floor area	76
Retail	24m ²	0.99 spaces to each 100m ² of net floor area	0
Total spaces required			76

The proposed rate of 27 spaces is considerably lower than the reduced rates referred to above, which in this location is positive. In supporting a further reduce rate it is important to acknowledge that office use is the most readily adaptable to other modes of transport and employees in this area are more likely to use alternative modes of transport rather than to drive. The proposed development is located in close proximity to bus, tram and train services, as well as car share locations and bicycle facilities. In addition, the proposed site is easily accessible for pedestrians.

On-street parking in the area is highly restricted with short term parking restrictions applying in the majority of the local area. As most of the parking is short term restricted parking and in high demand due to the location, there is limited availability for any long term on-street parking for office employees.

The provision of 27 car parking spaces is considered to be acceptable, and while it will still have some impact upon the local traffic environment, it is as low as can reasonably be requested while also ensuring a viable development. The proposed traffic consequences of the 27 vehicles is also considered to be acceptable.

Council's Transport and Parking Department has identified some issues with the car parking layout and these can be resolved by conditions of the permit.

With regard to bicycle parking, the 70 spaces and end of trip facilities provide well in excess of the statutory requirements and encourage a modal shift away from private vehicle use.

The bicycle parking spaces are accessed via a ramp from Claremont Street. Council's Transport and Parking Department have recommended that the ramp be altered from 1 in 8 to 1 in 12 to accord with the Australian Standards, unless an alternative grade is agreed to by Council. This will be required by conditions. The bicycle spaces have been positioned 400mm apart and it has been recommended that the space be increased to 500mm. The parking product to be used is a Pushbike Arc bicycle rank system which has been designed as a compact system with two tiers. The space that has been proposed on the plans accords with this bicycle parking system and therefore it is not necessary to widen the spaces between the racks.

Overall, and subject to conditions, the arrangements concerning traffic and parking are considered to be satisfactory.

Objections

Depreciation of property values

Depreciation of property values is not a matter for town planning.

Construction Activity

Construction activities are outside the realm of town planning and will be managed during the building permit processes.

Conclusion

Having assessed the application against the relevant planning controls, it is recommended that the proposal be supported for the following reasons:

- The proposed built form presents an appropriate response to the opportunities present at the site.
- Subject to conditions, the new building will not create any unreasonable off-site impacts.
- The proposal provides a well-designed commercial building which achieves an environmentally sustainable design outcome that meets Council's requirements subject to the additional conditions.
- The proposed monetary contribution towards the streetscape and public realm improvements will provide a significant community benefit commensurate with the building uplift.

Governance Compliance

Conflicts of Interest Disclosure

No Council Officer and/or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

Human Rights Consideration

This application has been assessed in accordance with the requirements of the Planning and Environment Act 1987 (including the Stonnington Planning Scheme), reviewed by the State Government and which complies with the Charter of Human Rights & Responsibilities Act 2006.

Attachments

1. 0248/20 - 49 & 51 Claremont Street, South Yarra [14.5.1 - 46 pages]

Officer Recommendation

That Council AUTHORISE Officers to issue a Notice of Decision to Grant a Planning Permit No: 248/20 for the land located at 49 & 51 Claremont Street, South Yarra under the Stonnington Planning Scheme for construction of a mixed use building comprising office and food and drinks premises in an Activity Centre Zone and Land Subject to Inundation Overlay, reduction of the car parking requirements and removal of an easement subject to the following conditions:

1. ***Before the commencement of the development, 1 copy of plans drawn to scale and fully dimensioned, must be submitted to and approved by the Responsible Authority. The plans must be generally in accordance with the plans as advertised TP00, TP01, TP11.00, TP11.0G, TP11.01, TP11.02, TP11.03, TP11.B1, TP20, TP21, TP22, TP23, TP24, TP25, TP30, TP31, TP32, TP50, TP55 and Council date stamped 25 June 2020, but modified to show:***
 - a) ***Changes as per the Architectural Plan Set prepared by Bird de la Coeur Architects dated 7 August 2020, Revision 2 to include:***
 - i. ***Car lift, waste area and stairs revised to achieve a 4.8 metre finished floor level***
 - ii. ***Associated changes in ramping to the car lift***
 - iii. ***Windows lower than the freeboard level areas on the eastern elevation removed.***
 - b) ***Variations to the built form at the upper level, specifically to show a reduction in the upper level built from by ending the south-western stairwell at the level below, and reducing the extent of the solar panels on the rooftop along the western edge as per the discussion plan TP50 Rev 3 submitted to Council on 29 September 2020;***
 - c) ***Solar panels that overhang the northern title boundary to be removed. All works must be contained within the site boundaries;***
 - d) ***The waste collection propping area to be demarcated on the plans;***
 - e) ***The location of the EV Charging station (including required electrical ampage) and associated electric vehicle dedicated carparks are to be detailed/noted on the plans;***
 - f) ***A notation is to be included on the roof plan confirming the extent of roof area (m2) which is to drain to the rainwater tank;***
 - g) ***The location of the fire test system water tank is to be specified on the floor plans including tank capacity and intended re-use;***
 - h) ***Sight triangles are to be drawn correctly and the convex mirror must be wholly contained with the private property.***
 - i) ***The width of the entrance to the car park from Claremont Street to the garage door to be dimensioned at least 3 metres wide;***
 - j) ***Dimensions of the two lay-by parking spaces which are to be used as a waiting area and confirmation via plan notations that these spaces will be***

line marked on the ramp, to ensure that motorists have a clear visual guide of where to wait;

- k) The entry ramp providing access from Claremont Street to the bicycle parking area must have a width of 1.5 metres and widen to 2.5m around any corners/landings on the ramp to facilitate two-way access;*
- l) The entry ramp to the bicycle parking area is to be amended to 1 in 12 in accordance with the Australian Standards, unless otherwise agreed with Council;*
- m) Notations confirming minimum gradient of the parking area shall be 1 in 200 (0.5%) for covered areas to allow for adequate drainage as per AS2890.1;*

All to the satisfaction of the Responsible Authority.

- 2. The layout of the site and the size, levels, design and location of buildings and works shown on the endorsed plans must not be modified for any reason, without the prior written consent of the Responsible Authority.*
- 3. Before the development commences, or by an agreed time in writing, an amended Claremont Streetscape Works plan (inclusive of the widening of the Claremont Street Corner and pedestrian priority zone) must be prepared in consultation with, submitted to and approved by the Responsible Authority.*

When approved, the amended Claremont Streetscape Works plan will be endorsed and form part of this permit. The amended Claremont Streetscape Works plan must be generally in accordance with the Streetscape Works sketch plan prepared by Bird de la Coeur Architects dated 28 February 2020 but modified to show:

- a) Claremont Street dimensions, setbacks and clearance heights as per Claremont Streetscape detail sections;*
- b) Tree planting/traffic calming measures (including the provision of swept path diagrams for vehicles);*
- c) Landscaping in the public realm;*
- d) Street furniture including public seating, bicycle parking and the like;*
- e) Measures to provide DDA access;*
- f) The location of tables and chairs in relation to the proposed terrace area;*
- g) The location of vehicle crossovers;*
- h) Materials to be of a Stonnington City Council Standard;*
- i) The location of all Shared Zone signage to be shown in the context of the other street furniture and trees;*
- j) 'Matching in works' if applicable;*
- k) The clear delineation of the site's title boundaries along Claremont Street;*
- l) Relocation of disabled parking bays currently proposed for this location;*
- m) Any changes required to address flooding in this location; and*
- n) All finish heights of kerbs and pavements.*

4. ***Prior to the occupation of the building, the owner of the land must enter into an agreement with the Responsible Authority under section 173 of the Planning and Environment Act 1987 to covenant that it will:***
- a) ***Allow free and unimpeded public access over the land between the external face of the ground floor north-east facing walls of the building and the north eastern boundary of the subject land ("public access land") at all times.***
 - b) ***Create an easement over the splay ("public access land") in favour of the public.***
 - c) ***Indemnify Council for any damage to the development by reason of, or in connection with, the use of the "public access land" by the public;***
 - d) ***Not make any claim for damages or loss of any kind against Council for any damage or injury caused to the "public access land" or to any person using the "public access land";***
 - e) ***Maintain public liability insurance for the use of the "public access land"; and***
 - f) ***Maintain the "public access land" in accordance with the endorsed plans and to a standard that is safe and fit for public access to the satisfaction of the Responsible Authority.***
 - g) ***Pay a monetary contribution to Council prior to the commencement of the development, capped at a total value of \$835,000.00, to fund the agreed streetscape and public realm works in front of 49-51 Claremont Street in exchange for the agreed building height.***

The agreement must be registered with the Registrar of Titles in accordance with section 181 of the Planning and Environment Act 1987 and will run with the land, including any common property that may be created as part of the subdivision of the land. All costs (including legal costs) associated with the preparation and review of the agreement and registration of the agreement on the Certificate of Title for the land must be paid by the owner.

5. ***Concurrent with the endorsement of plans pursuant to Condition 1, a Façade Strategy must be prepared to the satisfaction of the Responsible Authority and must be submitted to and approved by the Responsible Authority. Once approved, the Façade Strategy will be endorsed and will then form part of the permit. The Façade Strategy must include:***
- a) ***A concise description by the architect of the building design concept and how the façade works to achieve this.***
 - b) ***Example prototypes and/or precedents that demonstrate the intended design outcome as indicated on plans and perspective images, to produce a high-quality built form outcome in accordance with the design concept.***
 - c) ***A schedule of colours, materials and finishes, including the colour, type and quality of materials showing their application and appearance and confirmation that no material will have more than 20% reflectivity;***
 - d) ***Detailed elevations showing the location of the proposed materials, colours and finishes, building details, entries and doors, utilities and any***

special features, in accordance with plans endorsed under Condition 1 of this permit.

- e) Cross sections or other method of demonstrating the façade systems, including fixing details indicating junctions between panels.*
- f) Information about how the façade will be accessed, maintained and cleaned, including details of the ongoing maintenance, inspection and where necessary treatment of the façade.*

The provisions, recommendations and requirements of the endorsed Façade Strategy must be implemented and complied with to the satisfaction of the Responsible Authority

- 6. Concurrent with the endorsement of plans, a Waste Management Plan must be submitted to and approved by the Responsible Authority. The Waste Management Plan must be updated to include:**
 - a) Confirmation that waste collection will only occur at off-peak times and must be undertaken within the waste collection area within the boundaries of the subject site.*

When approved, the plan will be endorsed and will then form part of the permit. Waste collection from the development must be in accordance with the plan, to the satisfaction of the Responsible Authority.

- 7. Concurrent with the endorsement of plans, the applicant must provide a Water Sensitive Urban Design Response addressing the Application Requirements of the Water Sensitive Urban Design Policy to the satisfaction of the Responsible Authority. All proposed treatments included within the Water Sensitive Urban Design Response must also be indicated on the plans.**
- 8. The project must incorporate the Water Sensitive Urban Design initiatives detailed in the endorsed site plan and/or stormwater management report.**
- 9. Before the use commences, areas set-aside for parked vehicles and access lanes as shown on the endorsed plans must be:**
 - a) Constructed to the satisfaction of the Responsible Authority.*
 - b) Properly formed to such levels that they can be used in accordance with the plans.*
 - c) Surfaced with an all-weather sealcoat or surfaced with crushed rock or gravel to the satisfaction of the Responsible Authority.*
 - d) Drained and maintained to the satisfaction of the Responsible Authority.*
 - e) Line-marked to indicate each car space and all access lanes to the satisfaction of the Responsible Authority. Parking areas and access lanes must be kept available for these purposes at all times.*
- 10. The loading and unloading of vehicles and the delivery of goods to and from the premises must at all times be conducted in a manner that limits interference with other vehicular traffic to the satisfaction of the Responsible Authority.**
- 11. Concurrent with the endorsement of any plans pursuant to Condition 1, a Sustainable Management Plan (SMP) must be submitted to and approved by the Responsible Authority. Upon approval the SMP will be endorsed as part of the planning permit and the development must incorporate the sustainable design**

initiatives outlined in the SMP to the satisfaction of the Responsible Authority. Amendments to the SMP must be incorporated into plan changes required under Condition 1. The report must include, but not limited to, the following:

- a) Provide further supporting evidence for the Green Star points targeted similar to a Green Star Design & As Built v1.3 Design Review Submission – as per the Green Star Submission Guidelines.**
- b) Achieve a Green Star Best Practice rating with a minimum of 45 points without the reliance on points from the innovation category.**
- c) Preliminary thermal performance modelling against a Reference Building to confirm the points targeted under the Energy section of the Green Star assessment are achievable.**
- d) A Daylight assessment demonstrating as a minimum Council’s best practice standard of a daylight factor of 2% for at least 30% of the floor area of regularly occupied primary spaces is achieved.**

All works must be undertaken in accordance with the endorsed Sustainability Management Plan to the satisfaction of the Responsible Authority. No alterations to the Sustainable Management Plan may occur without written consent of the Responsible Authority.

- 12. Prior to the occupation of the development approved under this permit, a report from the author of the Sustainability Management Plan, approved pursuant to 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 that all measures specified in the Sustainability Management Plan have been implemented in accordance with the approved plan.**
- 13. Before the development starts, a landscape plan to be prepared by a landscape architect or suitably qualified or experienced landscape designer, must be submitted to and approved by the Responsible Authority. When approved, the landscape plan will be endorsed and will then form part of the permit. The landscape plan must be drawn to scale with dimensions. The landscape plan must show:
 - a) A planting schedule of all proposed trees, shrubs and ground covers, including botanical names, common names, pot sizes, sizes at maturity, and quantities of each plant and irrigation details for all planting within the rooftop garden.****
- 14. Before the occupation of the development, the landscaping works as shown on the endorsed plans must be carried out and completed to the satisfaction of the Responsible Authority. Landscaping must then be maintained to the satisfaction of the Responsible Authority, including that any dead, diseased or damaged plants are to be replaced.**
- 15. Prior to the occupation of the development, a report from the author of the Wind Tunnel Test, approved pursuant to 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 that all measures specified in the Wind Tunnel Test Report have been implemented in accordance with the approved Plan.**

16. ***Upon submission of plans to be endorsed in association with condition 1, the Applicant is to provide to Council's GIS department a digital 3D model of the development site (to Council's specification).***

Melbourne Water Conditions start

17. ***Finished floor levels of the ground floor area inc main areas of cafés and counters, office lobby/ lift lobby and stair entries, car lift and surrounding area including the two staircase entries servicing the basements, must be constructed no lower than 4.80 metres to AHD which is 600mm above the applicable 1% ARI flood level of 4.20 metres to AHD.***
18. ***All openings for the basements, entries and exits, vents, windows etc must be set above 4.80metres to AHD.***
19. ***No habitable areas must be shown at levels lower than 4.80 metres to AHD. Transition area shown as 'café' at level than this (4.143m to AHD) is permitted to remain only as an open terrace with no loose objects. Any landscaping or other features within this area must be securely fixed so as to withstand overland flows.***
20. ***All electrical installations within the building must be set no lower than 4.80 metres to AHD which is 600mm above the applicable 1% ARI flood level of 4.20 metres to AHD.***
21. ***Prior to the issue of a Certificate of Occupancy, a certified survey plan, showing finished floor levels (as constructed) reduced to the Australian Height Datum, must be submitted to Melbourne Water to demonstrate that the floor levels have been constructed in accordance with Melbourne Water's requirements.***

Melbourne Water Conditions end

22. ***Any poles, service pits or other structures/features on the footpath required to be relocated to facilitate the development must be done so at the cost of the applicant and subject to the relevant authority's consent.***
23. ***All utility services to the subject land and buildings approved as part of this permit must be provided underground to the satisfaction of the Responsible Authority by completion of the development.***
24. ***The collection of wastes and recyclables from the premises (other than normal Stonnington City Council collection) must be in accordance with Council's General Local Laws.***
25. ***The design of the building and basement must allow for the possibility of the heaviest permissible vehicles passing over the splay in the north-east corner of the site.***
26. ***Prior to a building permit being issued, a report for the legal point of discharge must be obtained from Council and a drainage design for the development must be prepared by a suitably qualified Engineer in accordance with all 'recommendations' and requirements contained in that report. All drainage must be by means of a gravity based system and not pumped, with the exception of runoff from any basement ramp and agricultural drains which may be pumped. The relevant building surveyor must check and approve the drainage design and ensure that protection of the building is provided from a 1 in 100 A.R.I. rainfall event as required by the Building Regulations.***

27. ***Prior to an 'Occupancy Permit' being issued, a suitably qualified Engineer must carry out a detailed inspection of the completed stormwater drainage system and associated works including all water storage tanks to ensure that all works have been constructed in accordance with the approved design and the relevant planning permit conditions. Certification of the completed drainage from the Engineer must be provided to Council prior to a 'Statement of Compliance' being issued for the subdivision.***
28. ***The redundant vehicular crossings must be removed and the footpath and kerb reinstated at the owner's cost to the satisfaction of Council.***
29. ***The existing levels of the Claremont Street footpath must not be raised or altered in anyway.***
30. ***Prior to occupation, access for persons with disabilities must be provided in compliance with the Disability Discrimination Act 1992 and such access must be maintained at all times the building is occupied or in use.***
31. ***Prior to the occupation of the building, the walls on the boundary of the adjoining properties must be cleaned and finished to the satisfaction of the Responsible Authority.***
32. ***External lighting must be designed, baffled and located so as to prevent any adverse effect on adjoining land to the satisfaction of the Responsible Authority.***
33. ***All plant and equipment (including air-conditioning units) shall be located or screened so as to minimise visibility from any of the surrounding footpaths and from overhead views and shall be baffled so as to minimise the emission of unreasonable noise to the environment in accordance with Section 48A of the Environment Protection Act 1970 to the satisfaction of the Responsible Authority.***
34. ***Except with the prior written consent of the Responsible Authority, the roof top garden may only be used until 9pm on any day.***
35. ***Except with the prior written consent of the Responsible Authority, no live or amplified entertainment or music must be provided on the roof top garden hereby approved.***
36. ***This permit will expire if one of the following circumstances applies:***
 - a) ***The development is not started within three years of the date of this permit.***
 - b) ***The development is not completed within five years of the date of this permit.***
 - c) ***The removal of the easement is not certified within two years of the date of this permit.***
 - d) ***The removal of the easement is not completed within five years of the date of certification.***

In accordance with Section 69 of the Planning and Environment Act 1987, a request may be submitted to the Responsible Authority within the prescribed timeframes for an extension of the periods referred to in this condition.

NOTES:

- A. This permit does not constitute any authority to carry out any building works or occupy the building or part of the building unless all relevant building permits are obtained.**
- B. At the permit issue date, Section 69 of the Planning and Environment Act 1987 stated that the Responsible Authority may extend the periods referred to if a request is made in writing within the following timeframes:**
 - a) Before or within 6 months after the permit expiry date, where the development allowed by the permit has not yet started; and**
 - b) Within 12 months after the permit expiry date, where the development allowed by the permit has lawfully started before the permit expires.**

14.6 Contract Award - T21013 Tree Planting and Establishment

Manager Open Space & Environment: Simon Holloway

Director Environment & Infrastructure: Rick Kwasek

Linkage to Council Plan

Environment: A cleaner, safer and better environment for current and future generations to enjoy.

E4 Protect, maintain and grow the City's street tree population to enhance the character, identity and liveability of the City of Stonnington.

Purpose of Report

To seek Council approval to award Contract T21013 Tree Planting and Establishment to preferred supplier, Sevron Pty Ltd.

Officer Recommendation

That Council resolve:

- 1. To AWARD Contract No. T21013, Tree Planting and Establishment to Sevron Pty Ltd (ABN 41 165 444 011) for an initial contract term of three (3) years with three additional one (1) year extension options at the tendered Schedule of Rates pricing for tree planting and establishment services.**
- 2. To AUTHORISE the Chief Executive Officer to execute the contract agreements with the above contractor.**
- 3. To NOTE that expenditure under this contract is in accordance with Council's Budget for Financial Year 2020-21, and provisions will be made accordingly for the associated future budget periods for this contract.**

Executive Summary

Please note that confidential information is contained in **Attachments 1 and 2**, as circulated in the confidential section of the agenda attachments, in accordance with Section 66 (2) (a) of the Local Government Act 2020, as the information relates to contractual matters and premature disclosure of the information could be prejudicial to the interests of Council or other persons. This item has been included in the public agenda to facilitate transparency and accountability in Council's decision making. If discussion of the confidential information in the attachments to this report is required in order for Council to make a decision, this item will be deferred to the confidential section of the agenda.

Contract No.	T21013
Contract Name:	Tree Planting and Establishment
Contract Supervisor:	Mark Phillips

Background

The City of Stonnington is committed to best practice public tree management to deliver on the strategic objectives of its Urban Forest Strategy.

Council is currently re-tendering six major tree management contracts, covering the full spectrum of urban forest management, of which this contract is one.

This contract covers tree planting and establishment services of Council owned or managed trees throughout the municipality, including street trees, open space trees and facility trees (Schedule of Rates).

This contract is set to commence on 1 January 2021, with an initial term of three (3) years, with the option to extend for a further three (3) one-year terms at the discretion of Council.

Procurement Method:	Public	Tender
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Tenders were advertised in The Age newspaper on Saturday 5 September 2020.

Six (6) submissions were received for Contract T21013 Tree Planting and Establishment in Council's electronic tender box, TenderLink, by the closing time (12 noon on Monday 28 September 2020).

Tenders were assessed against the Evaluation Criteria listed in the Tender Application by an Evaluation Panel and supported by an independent probity auditor.

Refer to the attached confidential Evaluation Report for:

- Tenders Received
- Tender Evaluation Panel Members
- Tender Submission Pricing
- Price Clarifications
- Tender Conformance / Compliance Assessment
- Pricing Basis for Evaluation
- Evaluation Matrix
- Evaluation Panel Recommendation and Commentary
- Contract Departures
- Referee Checks
- Financial Due Diligence

Conclusion

Council issued a tender for the provision of specialist tree planting and establishment services for an initial term of three years. Six tender submissions were received by Council for contract T21013 Tree Planting and Establishment.

Sevron Pty Ltd was assessed by the Tender Evaluation Panel as the preferred supplier, offering the best value to Council based on price, experience and capability, OHS, environmental sustainability and plant, equipment & resources.

Governance Compliance

Policy Implications

There are no policy implications associated with this report.

Financial and Resource Implications

The estimated total annual expenditure under this contract (based on schedule of rates) is identified in the attached confidential Evaluation Report.

Funding is provided from capital budgets:

- X9911 Urban Forest Strategy Implementation - Streets and Boulevard (\$450k)
- X9912 Urban Forest Strategy Implementation - Parks and Open Space (\$205k)

The projected cost of this tree management contract is within these budget allocations.

Conflicts of Interest Disclosure

No Council Officer and/or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

Legal / Risk Implications

There are no legal / risk implications relevant to this report.

Stakeholder Consultation

There was no requirement for external stakeholder consultation in this proposal.

Human Rights Consideration

Complies with the Charter of Human Rights & Responsibilities Act 2006.

Attachments

1. CONFIDENTIAL REDACTED - Confidential Evaluation Report (T21013) [14.6.1 - 6 pages]
2. CONFIDENTIAL REDACTED - Tender Probity Certificate (T21013) [14.6.2 - 3 pages]

This document is confidential information under Section 66 (2) (a) of the Local Government Act 2020. The matter is deemed to be confidential under Section 3 (1) (g) private commercial information, being information provided by a business, commercial or financial undertaking that -i) relates to trade secrets; or ii) if released, would reasonably expose the business, commercial or financial undertaking to disadvantage.

14.7 Contract Award - T21015 Programmed Street Tree Pruning and Maintenance

Manager Open Space & Environment: Simon Holloway

Director Environment & Infrastructure: Rick Kwasek

Linkage to Council Plan

Environment: A cleaner, safer and better environment for current and future generations to enjoy.

- E4** Protect, maintain and grow the City's street tree population to enhance the character, identity and liveability of the City of Stonnington.

Purpose of Report

To seek Council approval to award Contract T21015 Programmed Street Tree Pruning and Maintenance to preferred supplier, TreeServe Pty Ltd

Officer Recommendation

That Council resolve:

- To AWARD Contract No. T21015 Programmed Street Tree Pruning and Maintenance to TreeServe Pty Ltd (ABN 87 169 334 712) for an initial contract term of three (3) years with three additional one (1) year extension options at the:***
 - lump sum price of \$1,384,713.00 per annum including GST (\$1,258,830.00 ex GST) for the programmed street tree pruning and maintenance program and;*
 - tendered Schedule of Rates pricing for reactive tree pruning and maintenance services.*
- To AUTHORISE the Chief Executive Officer to execute the contract agreements with the above contractor.***
- To NOTE that expenditure under this contract is in accordance with Council's Budget for Financial Year 2020-21, and provisions will be made accordingly for the associated future budget periods for this contract.***

Executive Summary

Please note that confidential information is contained in **Attachments 1 and 2**, as circulated in the confidential section of the agenda attachments, in accordance with Section 66 (2) (a) of the Local Government Act 2020, as the information relates to contractual matters and premature disclosure of the information could be prejudicial to the interests of Council or other persons. This item has been included in the public agenda to facilitate transparency and accountability in Council's decision making. If discussion of the confidential information in the attachments to this report is required in order for Council to make a decision, this item will be deferred to the confidential section of the agenda.

Contract No.	T21015
Contract Name:	Programmed Street Tree Pruning and Maintenance

Contract Supervisor:	Mark Phillips
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Background

The City of Stonnington is committed to best practice public tree management to deliver on the strategic objectives of its Urban Forest Strategy.

Council is currently re-tendering six major tree management contracts, covering the full spectrum of urban forest management, of which this contract is one.

This contract covers:

- Programmed street tree pruning and maintenance to maintain tree health, amenity, community safety and compliance with electric line clearance regulations (Lump Sum).
- Reactive collection of street tree branches, removal of hanging branches and tree and stump removal (Schedule of Rates).

This contract is set to commence on 1 January 2021, with an initial term of three (3) years, with the option to extend for a further three (3) one-year terms at the discretion of Council.

Key Issues and Discussion

Procurement Method:	Public	Tender
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Tenders were advertised in The Age newspaper on Saturday 29 August 2020.

Five (5) submissions were received for Contract T21015 Programmed Street Pruning and Maintenance in Council's electronic tender box, TenderLink, by the closing time (12 noon on Monday 28 September 2020).

Tenders were assessed against the Evaluation Criteria listed in the Tender Application by an Evaluation Panel and supported by an independent probity auditor.

Refer to the attached confidential Evaluation Report for:

- Tenders Received
- Tender Evaluation Panel Members
- Tender Submission Pricing
- Price Clarifications
- Tender Conformance / Compliance Assessment
- Pricing Basis for Evaluation
- Evaluation Matrix
- Evaluation Panel Recommendation and Commentary
- Contract Departures
- Referee Checks
- Financial Due Diligence

Conclusion

Council issued a tender for the provision of specialist street tree pruning and maintenance services for an initial term of three years. Five tender submissions were received by Council for contract T21015 Programmed Street Pruning and Maintenance.

TreeServe Pty Ltd was assessed by the Tender Evaluation Panel as the preferred supplier, offering the best value to Council based on price, experience and capability, OHS, environmental sustainability and plant, equipment & resources.

Governance Compliance

Policy Implications

There are no policy implications associated with this report.

Financial and Resource Implications

The estimated total annual expenditure under this contract (based on the lump sum price and approximate amount of schedule of rates works) is identified in the attached confidential Evaluation Report.

Funding is provided from operating budget R3120 Arboriculture (4300 Major Contract Payments), in which there is a total budget of \$2,764,509 (ex GST) in 2020/21 – covers multiple contracts.

The projected cost of this tree management contract is within current budget allocation.

Conflicts of Interest Disclosure

No Council Officer and/or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

Legal / Risk Implications

There are no legal / risk implications relevant to this report.

Stakeholder Consultation

There was no requirement for external stakeholder consultation in this proposal.

Human Rights Consideration

Complies with the Charter of Human Rights & Responsibilities Act 2006.

Attachments

1. CONFIDENTIAL REDACTED - Confidential Evaluation Report (T21015) [14.7.1 - 5 pages]
2. CONFIDENTIAL REDACTED - Tender Probity Certificate (T21015) [14.7.2 - 3 pages]

This document is confidential information under Section 66 (2) (a) of the Local Government Act 2020. The matter is deemed to be confidential under Section 3 (1) (g) private commercial information, being information provided by a business, commercial or financial undertaking that -i) relates to trade secrets; or ii) if released, would reasonably expose the business, commercial or financial undertaking to disadvantage.

14.8 Contract Award - T21016 Reactive Tree Pruning and Maintenance

Manager Open Space & Environment: Simon Holloway

Director Environment & Infrastructure: Rick Kwasek

Linkage to Council Plan

Environment: A cleaner, safer and better environment for current and future generations to enjoy.

E4 Protect, maintain and grow the City's street tree population to enhance the character, identity and liveability of the City of Stonnington.

Purpose of Report

To seek approval to award Contract T21016 Reactive Tree Pruning and Maintenance to preferred supplier, Citywide Service Solutions Pty Ltd.

Officer Recommendation

That Council resolve:

- 1. To AWARD Contract No. T21016 Reactive Tree Pruning and Maintenance to Citywide Service Solutions Pty Ltd (ABN 94 066 960 085) for an initial contract term of three (3) years with three additional one (1) year extension options at the tendered Schedule of Rates pricing for reactive tree pruning and maintenance services.**
- 2. To AUTHORISE the Chief Executive Officer to execute the contract agreements with the above contractor.**
- 3. To NOTE that expenditure under this contract is in accordance with Council's Budget for Financial Year 2020-21, and provisions will be made accordingly for the associated future budget periods for this contract.**

Executive Summary

Please note that confidential information is contained in Attachments 1 and 2, as circulated in the confidential section of the agenda attachments, in accordance with Section 66 (2) (a) of the Local Government Act 2020, as the information relates to contractual matters and premature disclosure of the information could be prejudicial to the interests of Council or other persons. This item has been included in the public agenda to facilitate transparency and accountability in Council's decision making. If discussion of the confidential information in the attachments to this report is required in order for Council to make a decision, this item will be deferred to the confidential section of the agenda.

Contract No.	T21016
Contract Name:	Reactive Tree Pruning and Maintenance
Contract Supervisor:	Mark Phillips

Background

The City of Stonnington is committed to best practice public tree management to deliver on the strategic objectives of its Urban Forest Strategy.

Council is currently re-tendering six major tree management contracts, covering the full spectrum of urban forest management, of which this contract is one.

This contract covers reactive tree pruning and maintenance services on Council owned or managed trees throughout the municipality, including street trees, open space trees and facility trees and the provision of a 24 hour a day, 7 days a week, 365 days a year call out service (Schedule of Rates).

Key Issues and Discussion

Procurement Method:	Public	Tender
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Tenders were advertised in The Age newspaper on Saturday 29 August 2020.

Nine (9) submissions were received for Contract T21016 Reactive Tree Pruning and Maintenance in Council's electronic tender box, TenderLink, by the closing time (12 noon on Monday 28 September 2020).

Tenders were assessed against the Evaluation Criteria listed in the Tender Application by an Evaluation Panel and supported by an independent probity auditor.

Refer to the attached confidential Evaluation Report for:

- Tenders Received
- Tender Evaluation Panel Members
- Tender Submission Pricing
- Price Clarifications
- Tender Conformance / Compliance Assessment
- Pricing Basis for Evaluation
- Evaluation Matrix
- Evaluation Panel Recommendation and Commentary
- Contract Departures
- Referee Checks
- Financial Due Diligence

Conclusion

Council issued a tender for the provision of reactive tree pruning and maintenance services for an initial term of three years. Nine tender submissions were received by Council for contract T21016 Reactive Tree Pruning and Maintenance.

Citywide Service Solutions Pty Ltd was assessed by the Tender Evaluation Panel as the preferred supplier, offering the best value to Council based on price, experience and capability, OHS, environmental sustainability and plant, equipment & resources.

Governance Compliance

Policy Implications

There are no policy implications associated with this report.

Financial and Resource Implications

The estimated total annual expenditure under this contract (based on schedule of rates) is identified in the attached confidential Evaluation Report.

Funding is provided from operating budget R3120 Arboriculture (4300 Major Contract Payments), in which there is a total budget of \$2,764,509 (ex GST) in 2020/21 – covers multiple contracts.

The projected cost of this tree management contract is within current budget allocation.

Conflicts of Interest Disclosure

No Council Officer and/or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

Legal / Risk Implications

There are no legal / risk implications relevant to this report.

Stakeholder Consultation

There was no requirement for external stakeholder consultation in this proposal.

Human Rights Consideration

Complies with the Charter of Human Rights & Responsibilities Act 2006.

Attachments

1. CONFIDENTIAL REDACTED - Confidential Evaluation Report (T21016) [14.8.1 - 7 pages]
2. CONFIDENTIAL REDACTED - Tender Probity Certificate (T21016) [14.8.2 - 3 pages]

This document is confidential information under Section 66 (2) (a) of the Local Government Act 2020. The matter is deemed to be confidential under Section 3 (1) (g) private commercial information, being information provided by a business, commercial or financial undertaking that -i) relates to trade secrets; or ii) if released, would reasonably expose the business, commercial or financial undertaking to disadvantage.

14.9 Contract Award - T21008 Turf Management and Open Space Maintenance

Manager Open Space & Environment: Simon Holloway

Director Environment & Infrastructure: Rick Kwasek

Linkage to Council Plan

Liveability: The most desirable place to live, work and visit.

- L1** Strategically invest in open spaces, sporting fields and community facilities, and optimise use according to community needs.

Purpose of Report

To seek Council approval to award Contract T21008 Turf Management and Open Space Maintenance to preferred supplier, Urban Maintenance Systems Pty Ltd.

Officer Recommendation

That Council resolve:

- 1. To AWARD Contract No. T21008 Turf Management and Open Space Maintenance to Urban Maintenance Systems Pty Ltd (ABN 38 005 251 954) for an initial contract term of three (3) years with three additional one (1) year extension options at the**
 - lump sum price of \$1,924,532.46 per annum including GST (\$1,749,574.96 ex GST) for the programmed turf management and open space maintenance program (Fee Schedule Part 1 – Fixed Service Components) and;**
 - tendered Schedule of Rates pricing for reactive turf management and open space maintenance services (Fee Schedule Part 3 – Schedule of Rates Fees) and;**
 - lump sum price of \$427,327.08 per annum including GST (\$388,479.16 ex GST) for the optional turf wicket curation program and park litter waste collection & disposal program (Fee Schedule Part 2 – Optional Service Components, items 2.1 and 2.3), subject to resolution of staff engagement and transition to contract planning.**
- 2. To AUTHORISE the Chief Executive Officer to execute the contract agreements with the above contractor.**
- 3. To NOTE that expenditure under this contract is in accordance with Council's Budget for Financial Year 2020-21, and provisions will be made accordingly for the associated future budget periods for this contract.**

Executive Summary

Please note that confidential information is contained in **Attachments 1 and 2**, as circulated in the confidential section of the agenda attachments, in accordance with Section 66 (2) (a) of the Local Government Act 2020, as the information relates to contractual matters and premature disclosure of the information could be prejudicial to the interests of Council or

other persons. This item has been included in the public agenda to facilitate transparency and accountability in Council's decision making. If discussion of the confidential information in the attachments to this report is required in order for Council to make a decision, this item will be deferred to the confidential section of the agenda.

Contract No.	T21008
Contract Name:	Turf Management and Open Space Maintenance
Contract Supervisor:	Dominic Mazza

Background

The City of Stonnington is committed to best practice turf management and open space maintenance and the provision of high quality and well-maintained parks, gardens, sports grounds and other open spaces.

Council is currently re-tendering its major turf management and open space maintenance contract, covering a wide spectrum of open space management functions.

This contract covers:

- Programmed turf management and open space maintenance program - fixed service components (Lump Sum)
- Reactive turf management and open space maintenance (Schedule of Rates)
- Programmed turf management and open space maintenance program - optional service components (Lump Sum)

This contract is set to commence on 22 January 2021, with an initial term of three (3) years, with the option to extend for a further three (3) one-year terms at the discretion of Council.

Key Issues and Discussion

Procurement Method:	Public	Tender
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Tenders were advertised in The Age newspaper on Saturday 26 September 2020.

Five (5) submissions were received for Contract T21008 Turf Management and Open Space Maintenance in Council's electronic tender box, TenderLink, by the closing time (12 noon on Monday 26 October 2020).

Tenders were assessed against the Evaluation Criteria listed in the Tender Application by an Evaluation Panel and supported by an independent probity auditor.

Refer to the attached confidential Evaluation Report for:

- Tenders Received
- Tender Evaluation Panel Members
- Tender Submission Pricing
- Price Clarifications
- Tender Conformance / Compliance Assessment
- Pricing Basis for Evaluation

- Evaluation Matrix
- Evaluation Panel Recommendation and Commentary
- Contract Departures
- Referee Checks
- Financial Due Diligence
- Referee Checks
- Financial Due Diligence

Conclusion

Council issued a tender for the provision of specialist turf management and open space maintenance services for an initial term of three years. Five tender submissions were received by Council for Contract 21008 Turf Management and Open Space Maintenance.

Urban Maintenance Systems Pty Ltd was assessed by the Tender Evaluation Panel as the preferred supplier, offering the best value to Council based on:

- Price
- Relevant experience, performance, quality and reliability
- Service delivery methodology & innovation
- OHS
- Resourcing capacity
- Environmental sustainability

Governance Compliance

Policy Implications

There are no policy implications associated with this report.

Financial and Resource Implications

The total annual expenditure under this contract, based on the lump sum price for fixed and optional service components, is identified in the attached confidential Evaluation Report.

Due to the consolidation of multiple existing contracts, introduction of new contract services and transition from in-house service provision to contracted delivery, funding for the delivery of contract T21008 Turf Management and Open Space Maintenance in 2020/21 will be derived from multiple budgets, including:

- R3130 Parks Maintenance
 - 4300 - Major Contract Payments
 - 4310 - Minor Service Contracts
 - 4000 - Ordinary Hours (+ associated employee benefits)
 - 4201 - Operational Materials
 - 5228 - Inter-departmental Waste Removal
- X9830 Parks Cleaning and amenity service

The projected cost of this open space management contract, including the optional service components, is within current budget allocation.

Budget for contract delivery of T21008 will be consolidated into R3130 Parks Maintenance 4300 Major Contract Payments in the 2021/22 Council Budget.

Conflicts of Interest Disclosure

No Council Officer and/or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

Legal / Risk Implications

There are no legal / risk implications relevant to this report.

Stakeholder Consultation

There was no requirement for external stakeholder consultation in this proposal.

Human Rights Consideration

Complies with the Charter of Human Rights & Responsibilities Act 2006.

Attachments

1. CONFIDENTIAL REDACTED - Confidential Evaluation Report (T21008) [14.9.1 - 8 pages]
2. CONFIDENTIAL REDACTED - Probity Certification Report (T21008) [14.9.2 - 3 pages]

This document is confidential information under Section 66 (2) (a) of the Local Government Act 2020. The matter is deemed to be confidential under Section 3 (1) (g) private commercial information, being information provided by a business, commercial or financial undertaking that -i) relates to trade secrets;or ii) if released, would reasonably expose the business, commercial or financial undertaking to disadvantage.

14.10 Council Financial Report for the period ending 30 September 2020

Chief Financial Officer: Julia Gallace

Chief Executive Officer: Jacqui Weatherill

Linkage to Council Plan

Stewardship: Council will strive for excellence, ensuring that it has the capacity to deliver timely and efficient services to meet community needs and continually improve standards of service delivery.

S1 The City's capacity to deliver the objectives of the Council Plan is based on our service culture, people, good governance, business systems and technology, asset and risk management and responsible financial planning.

Purpose of Report

To provide Council with an update on Stonnington City Council's financial performance for period ending 30 September 2020.

Officer Recommendation

That Council RECEIVES and NOTES the Financial Report for Stonnington City Council for the period ending 30 September 2020

Executive Summary

Council's 2020/21 budget was adopted in August 2020. The council reports to the community on a quarterly basis on the progress against the adopted budget throughout 2020/21 financial year.

Since the adoption of the budget, the Melbourne metropolitan area was placed under further Covid-19 restrictions. The Victorian Premier' announcement of the continuation of Stage 4 Lockdown at the start of September resulted in travel bans, curfews and closures of all non-essential activities remaining in place until October.

During the first quarter of the reporting period all non-essential and core services were heavily impacted as a direct result of Covid-19 lockdown. Services that remained closed or were significantly impacted during the first quarter of the reporting period included Aquatic Centres, Chapel off Chapel, Libraries, Venues, Carparks and outdoor and community events.

At the end of September 2020, Council is projecting a full year operating surplus (Operating income less operating expenditure) of \$14.74m in comparison to the adopted budgeted surplus of \$19.96m (an unfavorable variance of \$5.22m). This variance has been driven by the following forecast to adopted budget movements:

- Operating Revenue – (\$7.36m) unfavorable variance; and
- Operating Expenditure - \$2.14m favorable variance.

The operating surplus comprises open space contributions income. These are levies placed on major developments and can be used for future project works and enhancements of open spaces within Council's area. Even though this money forms part of operating surplus, it can only be utilised for the acquisition, creation or enhancement of open spaces.

For the reporting period of 2020/21 Council is projecting open space contribution revenue of \$8m. Councils projected full year surplus excluding open space contribution is estimated to be \$6.74m compared to the budgeted surplus excluding open space contribution of \$11.96m (an unfavorable variance of \$5.22m).

Financially sustainable operating surpluses assist in funding Council's capital work's program. The budget includes a capital works program totaling \$72.249m. While there have been minor changes to the forecasted capital program at this time (net forecast adjustment total \$0.05m), a full review of the capital program is scheduled to be undertaken by December.

Council will be undertaking a mid-year budget review over the coming months to update operating and capital revenue and expenditure forecasts to 30 June 21. The outcome of this review will be the subject of a future report to Council in early 2021.

Despite the impact on forecast revenue resulting from COVID restrictions on services, Council remains in a strong financial position.

Background

Section 138 of the Local Government Act requires the provision of a quarterly financial report to an open Council Meeting comparing the budgeted revenue and expenditure for the financial year with the actual revenue and expenditure to date.

Key Issues and Discussion

Year-to-Date Position

The year-to-date surplus including open space contribution was \$98.47m against a budget of \$94.57m, resulting in a favorable variance of \$3.9m. This favorable result has been driven by the following actual to adopted budget variances:

Operating Income: \$0.523m favorable - predominantly resulting from:

Description	Variance F – Favorable U - Unfavorable	Main Driver(s)
Supplementary rates	\$0.501m F	Property supplementary rates higher than anticipated
Statutory fees and fines	(\$0.541m) U	Reduced parking infringement income due to continued work from home (WFH) arrangement and stage 4 lockdown and travel bans
User fees	(\$0.354m) U	Carpark operator income across all Council owned carparks - (\$0.299m) Ticket/meter income due to continued work from home arrangements and stage 4 lockdown and travel bans - (\$0.120m) Waste disposal, tipping fees and compliance activities - (\$0.182m) Income parking permit income due to WFH - \$0.153m

Grants Operating	(\$0.666m) U	Timing of State grants to be received
Grants Capital	(\$0.87m) U	Timing of State and Federal grants to be received
Contributions	\$3.12m F	Timing of developer payments in regard to public open space, drainage and car parking in accordance with planning permits issued for property development

Operating Expenditure: \$3.38m favorable - predominantly resulting from:

Description	Variance F – Favorable U - Unfavorable	Main Driver(s)
Materials & services	\$2m F	Timing of expenditure for property fire services levy, utilities, Council events & programs
Operating initiatives	\$1.4m F	Delay in various projects and programs as a Covid-19 restriction

Capital Works Expenditure: \$6.06m favorable - spending to date of \$4.9m compared to the budget of \$11.03m. This variance relates to delays in project works due to COVID-19 restrictions.

Full Year Forecast Position

The projected full year operating surplus is \$14.74m against the adopted budgeted surplus of \$19.96m, resulting in an unfavorable variance of (\$5.22m). This unfavorable result has been driven by the following full year forecast to adopted budget variances:

Operating Income: (\$7.4m) unfavorable - key variances impacting the forecast result are:

Description	Variance F – Favorable U - Unfavorable	Main Driver(s)
Statutory Fees & Fines	(\$2.6m) U	Reduction in parking infringements income as a result of Covid-19 state of emergency
User fees	(\$3.4m) U	Closure or reductions in carpark operations across all Council owned locations (\$0.922m) Parking tickets/meters (\$0.409m) Aquatic centres (\$0.705m), Learn to swim program (\$0.856m), Footpath trading fees (\$0.158m)

Other income	(\$1.25m) U	Reductions in rental income as a result of rental relief provided by Council in support of Covid-19 global pandemic
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Operating Expenditure: \$2.1m favorable - key variances impacting the forecast result are:

Description	Variance F – Favorable U - Unfavorable	Main Driver(s)
Employee cost	\$1.36m F	Position vacancies and changes to service requirements associated with Covid-19 closures
Material and services	\$0.755m F	Reductions in major contract costs \$1.16m, offset by increases in telecommunication expenses (\$0.163m) and legal appeals costs (\$0.95m)

Capital Works Expenditure: \$0.05m favorable - key variances impacting the forecast result are:

- MTH Precinct public realm spatial improvements - \$0.159m
- Landscape plans/masterplan for parks - \$0.25m
- Princes gardens masterplan - \$0.18m
- Toorak Park masterplan implementation - (\$0.250m)
- Haley Pavilion upgrade - (\$0.080m)
- Orrong Road Toorak stage 3 - (\$0.089m).

Cashflow

Total cash and investments are \$87.7m as at 30th September 2020. The Cash and investments balance is forecasted to be \$79.87m as at 30th June 2021, which is an unfavorable variance of (\$1.55m) compared to budget.

The attachment report provides Council with the following detailed financial statements and commentary as at 30th September 2020.

- Financial Overview.
- Income Statement.
- Full year Forecast major variances.
- Year to date Budget variance overview.
- Capital works expenditure.

- Capital works Project income.
- Balance Sheet.
- Statement of Cash Flow.

Conclusion

The 30th September 2020 financial report compares the budgeted revenue and expenditure for the financial year to date with the actual revenue and expenditure to date. The report also compares the full year forecast revenue and expenditure with full year adopted budget. The full year forecast surplus compared to full year adopted budget is expected to be (\$5.22m) unfavorable as a result of reduced activity as a result of Covid-19 global pandemic and Victoria's state of emergency lockdown and restrictions.

Council will be undertaking a mid-year budget review over the coming months to update operating and capital revenue and expenditure forecasts to 30 June 21. The outcome of this review will be the subject of a future report to Council in early 2021.

Despite the impact on forecast revenue resulting from COVID restrictions on services, Council remains in a strong financial position.

Governance Compliance

Policy Implications

There are no policy implications associated with this report.

Financial and Resource Implications

The annual budget sets out the financial resourcing required to deliver on the Council Plan.

Conflicts of Interest Disclosure

No Council Officer and/or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

Legal / Risk Implications

There are no legal / risk implications relevant to this report.

Stakeholder Consultation

There was no requirement for external stakeholder consultation in this proposal.

Human Rights Consideration

Complies with the Charter of Human Rights & Responsibilities Act 2006.

Attachments

1. Financial Report Council September 2020 [14.10.1 - 23 pages]

14.11 Council Committees, Delegates/Representatives

Chief Governance Officer: David Taylor

Linkage to Council Plan

Stewardship: Council will strive for excellence, ensuring that it has the capacity to deliver timely and efficient services to meet community needs and continually improve standards of service delivery.

S1 The City's capacity to deliver the objectives of the Council Plan is based on our service culture, people, good governance, business systems and technology, asset and risk management and responsible financial planning.

Purpose of Report

To confirm, determine or note the following:

- Councillor Representatives on Project Steering Committees
- Membership of the Audit & Risk Committee
- Metropolitan Local Governments' Waste Forum
- Municipal Association of Victoria (MAV) Delegate and substitute delegate
- Victorian Local Governance Association (VLGA) Representatives
- Representatives on other boards/committees as listed:
 - Stonnington Active Transport Group
 - Stonnington Disability and Access Committee
 - Ethnic Services Committee
 - Positive Ageing Committee
 - Stonnington History Committee
 - Prahran Mechanics Institute
 - Community Grants Working Group
 - IMAP (Inner Melbourne Action Plan)
 - Community Recovery Committee
 - Internal advisory committee (various)

Officer Recommendation

That Council:

1. ***NOTE that the Council can appoint Project Steering Committees for major projects e.g. Prahran Town Hall Redevelopment, and will consider these in early 2021. In the interim, the whole of Council will be informed about progress in relation to major projects.***
2. ***APPOINTS until such time as Council resolves otherwise, Councillor membership of Council's Audit & Risk Committee shall be comprised in accordance with the table below:***

Audit Committee	Member(s)
Stonnington City Council Audit & Risk Committee	The Mayor, Cr Kate Hely Cr Marcia Griffin

3. **APPOINTS until such time as Council resolves otherwise, Council's representative on external management Committees/boards shall be accordance with the table below:**

External Management Committees/Boards	Member(s)
Metropolitan Local Governments' Waste Forum	Cr Polly Morgan
Municipal Association of Victoria (MAV)	Cr Jami Klisaris Cr Polly Morgan (substitute)
Victorian Local Governance Association (VLGA)	All Councillors
Inner Melbourne Action Plan (IMAP)	Mayor, Cr Kate Hely

4. **APPOINTS until such time as Council resolves otherwise, Councillor membership of Council's External Advisory Committees shall be accordance with the table below:**

External Advisory Committee	Member(s)
Stonnington Disability and Access Committee	Cr Polly Morgan
Community Grants Working Group	All Councillors
Ethnic Services Committee	To be determined at a later date
Positive Ageing Committee	To be determined at a later date
Stonnington Active Transport Group (formerly Stonnington Cycling Reference Group)	Chair: Cr Mike Scott Deputy Chair: Cr Nicki Batagol
Stonnington History Committee	Cr Alexander Lew
Community Recovery Committee (New Committee)	Chair: Cr Mike Scott Deputy Chair: Cr Nicki Batagol

Prahran Mechanics Institute	Cr Alexander Lew
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5. APPOINTS that the until such time as Council resolves otherwise, Councillor to chair Council's internal advisory committees in accordance with the table below:

Internal Advisory Committee	Member(s)
Economic Stimulus and Organisational Viability Committee	Cr Marcia Griffin

Background

Council currently have a range of committees, both advisory, steering and community based as well as representation on a number of external boards/committees/groups. Each year Council is required to nominate a Chair for each Committee and Councillor or staff representation for the external boards/committees/groups. See attachment 1 for a detailed list of the committees/groups.

The Inner Melbourne Action Plan (IMAP) is a collaborative partnership between the cities of Melbourne, Port Phillip, Stonnington, Yarra and Maribyrnong. These Councils work together to strengthen the liveability, attraction and prosperity of the region through strong advocacy and cooperation.

Member Councils are represented by the Mayor and CEO, IMAP partners with relevant Government Departments and agencies.

COMMITTEE/GROUP	MEETING CYCLE	APPOINTMENTS
Audit & Risk Committee	Meets quarterly in the months of February, May, August and November at 4:30pm	Chair: Bruce Potgieter 1 year term - 17 Feb 2020 expires 30 April 2021 Deputy: David Ashmore 3 year term - 01 Oct 2018 expires 30 Sept 2021 Independent Member: Bev Excell 3 year term – 17 Feb 2020 expires 17 Feb 2023 Two Councillor representatives: (Mayor as substitute)
Metropolitan Local Governments' Waste Forum	Meets bi-monthly at 6.15pm on a Thursday at a city location	
Municipal Association of Victoria (MAV)	Attendance required at 2 State Council Meetings per year and Annual Conference	Representative: Cr Substitute: Mayor of the Day
Victorian Local Governance Association (VLGA)	Holds monthly 'Leading Edge' forums (except for January) on a Thursday at 6pm. Meetings held at VLGA offices, 60 Leicester Street, Carlton – all Councillors are welcome to attend.	Representatives: All Councillors (for noting)

Stonnington Active Transport Group (formerly Stonnington Cycling Reference Group)	Meets quarterly on a Wednesday at 6pm at the Depot	Two (2) Councillor Representatives (one as Chair)
Stonnington Disability & Access Committee	Meets quarterly on a Tuesday in the Council Chambers, Malvern Town Hall from 5.30-7.00pm.	One (1) Councillor Representatives (who will Chair the meeting)
Ethnic Services Committee	Meets quarterly on a Thursday in the Banquet Hall at Malvern Town Hall (from 10 – 11.30am)	One (1) Councillor Representatives (who will Chair the meeting)
Positive Ageing Committee	Meets quarterly	One (1) Councillor Representatives (who will Chair the meeting)
Stonnington History Committee	Meets twice a year (March and November) in the Stonnington History Centre	One (1) Councillor Representatives (who will Chair the meeting)
Prahran Mechanics Institute	Bi-monthly meetings, usually a Wednesday or Thursday (4.30pm), Prahran Mechanics Library, 140 High Street	Delegate: Mayor,
Community Grants Working Group	Meets as required, usually a Wednesday or Thursday (6:00pm)	Mayor as Chair (All Councillors)
IMAP (Inner Melbourne Action Plan Committee)	Delegated Committee under the Local Government Act 2020. Currently meets quarterly on a Friday (8:00am)	Mayor required to attend all meetings
Community Recovery Committee	Membership will include two Councillors in Chair and Deputy-Chair roles, Municipal Recovery Manager (ex officio), and up to 14 independent members, including two selected via an EOI process.	Two (2) Councillors
Internal Advisory Committee	Quarterly meetings at a time that is suitable for Chair. Chaired by one Councillor. Open to all Councillor to attend.	Chaired by nominated Councillor. All Councillors members and can attend.

Governance Compliance

Policy Implications

There are no policy implications associated with this report.

Financial and Resource Implications

There are no financial and resource implications associated with this report.

Conflicts of Interest Disclosure

No Council Officer and/or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

Legal / Risk Implications

There are no legal / risk implications relevant to this report.

Stakeholder Consultation

There was no requirement for external stakeholder consultation in this proposal.

Human Rights Consideration

Complies with the Charter of Human Rights & Responsibilities Act 2006.

Attachments

1. Council Committees External Committees Boards Groups 2020 [**14.11.1** - 5 pages]

15 Confidential Business