



Council Meeting Agenda

Monday 26 September 2022 at 7 PM

**Council Chamber, Malvern Town Hall
Corner Glenferrie Road & High Street Malvern**

Information for the Community

Welcome

Welcome to a City of Stonnington Council meeting.

The Council has adopted Governance Rules in accordance with the Local Government Act 2020 which determine the way in which the Council will make decisions.

About this meeting

The agenda lists all the items to be considered by the Council. Each report is written by a Council Officer and outlines the purpose of the report, relevant information and a recommendation for the Council. The 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 present at the meeting.

Arrangements to ensure meetings are accessible to the public

Council meetings are generally held at the Malvern Council Chamber, corner High Street and Glenferrie Road (entry via Glenferrie Road via the door closest to the Malvern Police Station). The Malvern Council Chamber is accessible to all. Accessible toilets are also available. If you require translation, interpreting services or a hearing loop, please contact the Council's Civic Support Officer on 03 8290 1331 to make appropriate arrangements before the meeting.

To ensure that people in the Hall can follow proceedings, the meeting agenda, recommendations and proposed alternate recommendations are displayed on 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 the Council website after the meeting (usually within 48 hours). Live captioning is occurring during the meeting. Only Councillors and Council Officers are visible. People in the public gallery will not be filmed, but if you speak, you will be recorded.

Governance Matters

This Council Meeting is conducted in accordance with the Local Government Act 2020 and the City of Stonnington Governance Rules.

Recording of Council Meetings

In accordance with the Governance Rules 2020 clause 67 meetings of the Council will be audio recorded and made available for public access, with the exception of matters identified as confidential items in the agenda.

Disclosure of Conflict of Interest

In accordance with the Local Government Act 2020, a Councillor must declare any Conflict of Interest pursuant to Section 130 of the Act in any items on the Agenda.

At the time indicated in the agenda, a Councillor with a conflict of interest in any item on the agenda must indicate they have a conflict of interest by clearly stating"

- The item for which they have a conflict of interest;

- Whether their conflict of interest is general or material; and
- The circumstances that give rise to the conflict of interest.

Immediately prior to the consideration of the item in which they have a conflict of interest, a Councillor must indicate to the meeting the existence of the conflict of interest and leave the meeting.

Behaviour at meetings

Members of the public present at the meeting must remain silent during the proceedings other than when specifically invited to address the meeting.

The Chair may remove a person from the meeting for interjecting or offensive gesture after being asked to desist, and the Chair may cause the removal of any object or material that is deemed by the Chair to be objectionable or disrespectful.

The Chair may call a break in the meeting for either a short time, or to resume another day if the behaviour at the Council table or in the gallery is significantly disrupting the Meeting.

Your cooperation would be appreciated.

Mayor, Deputy Mayor and Councillors, Stonnington City Council

Statement of Reconciliation

The Chair will open the meeting and recite the following Statement of Reconciliation.

We acknowledge we are meeting on the Traditional Lands of the Wurundjeri Woi Wurrung and Bunurong peoples of the East Kulin Nations and pay our respects to their Elders past, present and emerging.

We extend that respect to all Aboriginal and Torres Strait Islander peoples. We acknowledge their living connection to Country, relationship with the land and all living things extending back tens of thousands of years.

Statement of Commitment

The Chair will recite the following Statement of Commitment.

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.

Council Meeting Agenda Monday 26 September 2022 Order of Business

1	Reading of the Statement of Reconciliation	7
2	Reading of the Statement of Commitment.....	7
3	Introduction of Councillors & Executive Staff	7
4	Apologies	7
5	Confirmation of the Minutes of the previous meeting	7
5.1	Minutes of the Council Meeting held on 12 September 2022	7
6	Disclosure of Conflicts of Interest	7
7	Questions From the Community	7
8	Business.....	7
8.1	Governance Rules - Council Meetings Physical and Remote Attendance	7
8.2	Planning Amendment 0457/13 - 145 Williams Road, Prahran	11
8.3	Planning Application 0052/22 - G12, 670 Chapel Street, South Yarra	26
8.4	Planning Application 1118/21 - 329-333 Toorak Road, South Yarra	36
8.5	Community Grants Program Annual Acquittals	57
9	Correspondence	59
10	Tabling of Petitions and Joint Letters	59

11 Notices of Motion	59
12 Reports by Councillors	59
12.2 Record of Councillor Briefing Session Meeting held on 19 September 2022	59
13 Questions to Council Officers	60
14 Urgent Business	60
15 General Business	61
16 Confidential Business	61
16.1 Service Review	61

- 1 Reading of the Statement of Reconciliation
- 2 Reading of the Statement of Commitment
- 3 Introduction of Councillors & Executive Staff
- 4 Apologies
- 5 Confirmation of the Minutes of the previous meeting

5.1 Minutes of the Council Meeting held on 12 September 2022

Officer Recommendation

That the Minutes of the Meeting of the Stonnington City Council held on 12 September 2022 be confirmed as an accurate record of the proceedings.

- 6 Disclosure of Conflicts of Interest
- 7 Questions From the Community
- 8 Business

8.1 Governance Rules - Council Meetings Physical and Remote Attendance

Executive Manager Legal & Governance: David Thompson
Manager Councillor & Civic Support: Tony McIlroy

Linkage to Council Plan

Direction 1: A thriving and unique place

1.1 Identity and destination

Direction 2: An inclusive and healthy community

2.1 Health and wellbeing

Direction 3: A people-centred and future ready city

3.1 Community focus, connection and engagement

Purpose of Report

Recognising the Council adopted its 2022 meeting schedule in November 2021 and in light of the Council adopting revised Governance Rules at its meeting on 12 September 2022, to

avoid any ambiguity the report seeks a Council resolution to determine its preference for the Council meetings to be conducted:

- a) wholly in person;
- b) wholly by electronic means; or
- c) partially in person and partially by electronic means.

Officer Recommendation

That Council RESOLVE to conduct the remaining 2022 Council meetings wholly in person.

Executive Summary

1. Recent amendments to the Local Government Act 2020 (the Act) concerning 'attendance' and 'remote' Council Meetings took effect on 2 September 2022 requiring the Council Governance Rules to be amended to make provision for:
 - holding meetings by electronic means; and
 - requesting and approving attendance at Council meetings by electronic means.
2. Section 61(6A) of the Act provides that a Councillor may attend and be present at a Council meeting by electronic means of communication. This enables Council meetings to take place with some Councillors being physically present in the Council Chamber and others being in attendance and present electronically.
3. Accordingly, the Council adopted revised Governance Rules at its meeting on 12 September 2022 which came into operation on 13 September 2022 to facilitate the above.
4. The revised Governance Rules provide for the following new provisions:
 - a. Whether meetings are to be wholly attendance meetings, wholly virtual meetings or partially attendance and partially virtual meetings.
 - b. How, if a meeting is intended to be a wholly attendance meeting, a Councillor can request that they attend by electronic means; and
 - c. A decision by the Council as to whether it accedes to such a request.
5. These provisions are set out at Chapter 2, Part C - Meeting Procedure, Division 17 - Physical and Remote Attendances. The revised Governance Rules assume the Council will not unreasonably refuse a Councillor's request to participate remotely in a meeting that is earmarked to take place in person. If a Council meeting is to be conducted wholly in person a Councillor may nonetheless request to attend by electronic means. Any such request must:
 - a. be in writing.
 - b. be given to the Chief Executive Officer no later than 3 hours prior to the scheduled commencement time.
 - c. specify the reasons why the Councillor is unable or does not wish to attend the Council meeting in person.
6. The Chief Executive Officer must ensure any request received from a Councillor to attend by electronic means is made known at the commencement of the meeting.
7. Rule 78 of the revised Governance Rules deals with Mode of Attendance and under sub-rule 78.1 each notice of meeting must indicate whether the relevant Council meeting is to be conducted:
 8. 78.1.1 wholly in person
 9. 78.1.2 wholly by electronic means; or
 10. 78.1.3 partially in person and partially by electronic means.
11. Under sub-rule 78.2 the indication in the notice of meeting must be consistent with any resolution of the Council that has expressed a preference.

12. It is now a matter for the Council to determine its preference for the conduct of the remaining Council meetings for 2022.
13. A report is scheduled to be presented to the Council meeting in November 2022 recommending the 2023 Council meeting schedule.

Governance Compliance

Policy Implications

14. The Governance Rules ensure good governance by incorporating the overarching governance principles and the supporting principles contained within the Act.
15. The Governance Rules also prescribe the conduct of Council and Delegated Committee meetings, disclosure of conflicts of interest and incorporate the Council's Election Period Policy.

Financial and Resource Implications

16. The financial and resource implications associated with preparing this report have been met within the current Legal and Governance department budget.

Conflicts of Interest Disclosure

17. No member of Council staff involved in advising or in preparing this report has declared a material or general conflict of interest in relation to the matter of the report.

Legal / Risk Implications

18. Failure by the Council to determine its preference for the Council meetings to be conducted:
 - a) wholly in person;
 - b) wholly by electronic means; or
 - c) partially in person and partially by electronic means
19. will result in the Council not achieving compliance with the Governance Rules.

Community Consultation

20. There was no requirement for community consultation.

Human Rights Consideration

21. The implications of this report have been assessed in accordance with the requirements of the Victorian Charter of Human Rights and Responsibilities Act 2006 (the Charter).
22. The Council determining its preference for the Council meetings to be conducted:
 - a) wholly in person;
 - b) wholly by electronic means; or
 - c) partially in person and partially by electronic means
23. are not considered to infringe unreasonably upon any prescribed human rights, freedoms or responsibilities contained in the Charter.

Attachments

Nil

8.2 Planning Amendment 0457/13 - 145 Williams Road, Prahran

Acting Manager Statutory Planning: Phillip Gul
Director Planning & Place: Annaliese Battista

Purpose of Report

For Council to consider a planning amendment to a permit to amend the hours of operation associated with use of the land for motor vehicle repairs and construction of buildings and works at 145 Williams Road, Prahran.

Abstract

Proposal

The proposal seeks to amend the hours of operation stipulated under condition 5 of Planning Permit No. 457/13 for part of the building. Construction of buildings and works involving new solid garage doors and a stop-go traffic light system is also proposed.

Officer Recommendation Summary

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

- The proposal enjoys strategic support by State and Local Planning Policy.
- The proposed extension of the commercial use is a beneficial addition to the local economy of the activity centre.
- Subject to recommended condition of permit, the amended hours of operation will not have unreasonable impacts on the amenity of neighbouring residential properties.
- The proposed works will effectively reduce adverse amenity impacts currently experienced by local residents.

Issues

The following are the key issues in respect of this application:

- Whether the extended hours of operation are reasonable having regard to the context of the site and the applicable planning policy and controls (refer to Strategic Context and Hours assessments).
- Amenity impacts on the adjoining properties (refer to Amenity Impacts assessment);

Officer's response

The proposed expansion of the hours of operation will support the needs of an existing service business located within a commercial precinct and enable its ongoing viability in this long-standing location, whilst also contributing to the local economy. This is consistent with local policy objectives which seek to strike a balance between potentially conflicting land uses and is therefore considered appropriate subject to off-site amenity impacts being suitably limited.

Subject to recommended conditions of permit relating to the operational details of the use and noise mitigation measures, it is considered that the use can successfully operate within the extended hours proposed without unreasonable impacts on the amenity of neighbouring residential properties.

Existing noise issues currently experienced by residents will likely be reduced as a result of the proposed works and control measures put in place via recommended permit conditions.

Existing compliance matters should be treated independently of the proposed amendments which must be assessed against the relevant planning policy and controls to determine reasonableness. Should an amended permit be approved, any breaches of associated planning conditions can be investigated and enforced by Council as required.

Executive Summary

Applicant:	South Yarra BMW C/- Bold Urban Planning Pty Ltd
Ward:	South
Zone:	C1Z
Overlay:	Design and Development Overlay Environmental Audit Overlay Special Building Overlay
Commercial Precinct:	Hawksburn Village
Date Lodged:	2 May 2022
Statutory Days: (as at Council Meeting date)	49
Trigger for Referral to Council:	Number of objections
Number of Objections:	17
Consultative Meeting:	Yes – held on 30 August 2022
Officer Recommendation	Notice of Decision to Amend a Permit

Background

History

Historically, the site has been used for the purpose of a one-stop new and used car sales and service centre with related facilities since 1988. Planning Permit 88/773 was issued in November 1988 for a “car sales showroom, workshop and associated car parking”. This permit did not restrict the hours of operation, numbers of cars or numbers of staff / visitors at the site. A further permit, 88/889, issued in December 1988 to allow for the construction of a three-level building to accommodate the aforementioned use.

Planning Permit 457/13 was issued on 17 April 2014. The permit allows for “the use of the land for motor vehicle repairs, buildings and works, variations to the requirements of Clause 52.14 (Motor Vehicle, Boat or Caravan Sales), a waiver of loading facilities in a Commercial 1 Zone, advertising signage and a Special Building Overlay”.

Plans to comply with Condition 1 were endorsed to form part of the permit on 31 July 2014. The permit and plans were subsequently amended on 15 May 2015 to allow replacement of existing signage on the north and east façades.

The approved works have been completed and the use continues to operate under the 2014 planning permit.

The Proposal

The plans that form part of the basis of Council's consideration are the plans prepared by Era Architects and amended by the applicant, known as TP110, TP111, TP200, TP201, TP202, TP203, TP204, TP300, TP301, TP302, TP303 and TP304, Council date stamped 2 May 2022.

Key features of the proposal are:

- Extend the hours of operation stipulated under Condition 5 of the permit to allow the use to operate between 7.30am to 12am (midnight) Monday to Friday (currently 8.30am to 6pm). No changes are proposed to Saturday hours of operation (currently 9am to 5pm).
- Only the basement workshop and lower ground internal car parking area will operate between 8pm to midnight, with all external roller doors closed to vehicles from 8pm until the following day to prevent any external vehicle movements during this timeframe.
- No music is proposed to be played within the basement workshop after 6pm and before 8.30am.
- Undertake buildings and works to replace existing external roller doors with solid doors and install a 'stop-go' traffic light system along the vehicular ramp at the rear of the site.
- No changes are proposed to existing loading/unloading arrangements.

Site and Surrounds

The site is located on the west side of Williams Road on the northern corner of its intersection with Clarke Street and approximately 65 metres south of Malvern Road in Prahran. The site has the following significant characteristics:

- An irregular shaped allotment with a frontage to Williams Road of 69 metres, a secondary street frontage to Clarke Street of 51 metres and a total land area of 3887sqm.
- The land interfaces with an unnamed lane to the north-west extending from Malvern Road in the north and terminating at the subject adjacent to its rear boundary.
- The land slopes down from east to west (front to rear).
- The site is occupied by a motor vehicle sales yard (BMW dealership). The activities include both motor vehicle sales as well as a service centre involving motor vehicle servicing and repairs.
- The land is developed with a large building over three levels. The building comprises a basement workshop; lower ground floor with staff parking and car storage bays, carwash and detailing facilities, training room and storerooms; ground floor comprising sales and vehicle display area, customer facilities, amenities, offices, storerooms and

workshop; and administration and staff areas at first floor level which is located toward the northern end of the building.

- An external car parking area is located at ground level on the southern side of the building, and is used for both customer parking and demo vehicles. A further small external parking area is located to the north-west corner of the building adjacent to the parts receiving area within the lower ground level. This parking area is not used by customers.
- The loading and unloading of vehicles is undertaken on Williams Road within a dedicated loading zone in front of the site, between the hours of 9am to 4pm Monday to Friday.

The site is situated on the southern edge of the Hawksburn Village Neighbourhood Activity Centre. Land to the north is commercial and includes a service station on the corner of Williams Road and Malvern Road, and a McDonalds restaurant at 484 Malvern Road which comprises a car parking area directly abutting the site's northern boundary.

Residential properties are located to the east, including two properties at 13 and 11 Miller Street which share a common boundary with the subject site. 13 Miller Street is developed with a two-storey apartment building with the rear setback occupied by a paved communal car parking area. 11 Miller Street is occupied by a two-storey townhouse development. A ground level secluded private open space is located in the north-east corner, and the dwelling is constructed to its eastern boundary abutting the subject site. A first-floor balcony accessed from an adjoining bedroom is located at first floor.

Further north beyond the laneway is a double storey apartment building at 9 Miller Street and single storey detached dwellings at both 3 and 5 Miller Street. To the south-west corner of the site is a two-storey dwelling 69 Clarke Street. Residential properties are also located across Clarke Street to the south and across Williams Road to the east of the site.

Previous Planning Application/s

The application history of the site, including Planning Permit 457/13 which this application seeks to amend, is detailed within the Background section above.

There are no planning applications pertaining to surrounding sites which are considered of relevance to this assessment.

The Title

The land is formally described as Land in Plan of Consolidation 372568D, in Volume 11269, Folio 405.

An Agreement pursuant to Section 55A Building Control Act 1981 is registered on title. The Agreement relates to modifications to building regulations in respect of the approved development on the site and stipulates that should the adjoining site to the north be redeveloped within 3m of the boundary, the building on the subject site within 3m of the boundary would need to be modified if required to conform with Building Regulations in force at that time. As previously indicated, the site to the north remains undeveloped to date and is occupied by an open car park.

Planning Controls

Section 73(1) of the *Planning and Environment Act 1987* states that Sections 47 to 62 apply to an application to amend a permit as if the application were an application for a permit and any reference to a permit were a reference to the amendment to the permit.

Therefore, the amendments to the permit and plans are to be assessed against the relevant planning controls affecting the proposal.

Note: Only the changes to the approved proposal are considered as part of this application for amendment.

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

Zone

Clause 34.01 – Commercial 1 Zone

Pursuant to Clause 34.01-01 a permit is not required to use the land for motor vehicles sales (retail premises). A permit is however required to use the land for motor repairs (service industry). Noting that these uses are already in operation at the site, the ambit of discretion in terms of land use is therefore limited to whether the hours of operation associated with the motor repairs component ought to be extended.

Pursuant to Clause 34.01-4 a permit is required to construct a building or construct or carry out works.

Overlay

Clause 43.02 – Design and Development Overlay, Schedule 21

Pursuant to Clause 43.02-2 a permit is required to construct a building or construct or carry out works, unless a schedule to the overlay specifies otherwise.

Pursuant to part 2.0 of Schedule 21, a permit is required to construct or carry out works for services normal to a building other than a dwelling, including chimneys, flues, skylights, heating and cooling systems, hot water systems, security systems and cameras, downpipes, window shading devices, or similar if the works are visible from a street (other than a lane) or public park.

Clause 44.05 – Special Building Overlay, Schedule 2

The overlay only affects a small portion of the site along its eastern boundary. As no buildings or works are proposed within the affected area, the overlay is not relevant to the assessment of this application.

Clause 45.03 – Environmental Audit Overlay

Pursuant to Clause 45.03-1 the requirements of this clause apply to a new use of land for a sensitive use. The overlay is therefore not relevant to the assessment of this application.

Particular Provisions

Clause 53.10 – Uses with Adverse Amenity Potential

Pursuant to Clause 53.10-1 a 100m separation distance is recommended between a premises used for 'automotive body, paint and interior repairs' and land within a Commercial 1 Zone or any residential zone.

An application to use land for the listed purpose must be referred to the Environment Protection Authority under section 55 of the Act if the threshold distance is not met.

Relevant Planning Policies

Clause 11.03-1S - Activity Centres

Clause 21.03 - Vision

Clause 21.04 - Economic Development

Clause 21.08 – Infrastructure

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 three signs on the site). The public notification of the application has been completed satisfactorily.

The site is located in South Ward and objections from 17 different properties have been received. The objections can be summarised as follows:

- Noise, vibrations, humming and associated impacts on health and wellbeing
- Light emissions
- Use is currently disruptive to residential area
- Parking and traffic congestion
- Loading/unloading of vehicles
- Proposed hours are excessive
- Existing issues will be exacerbated

A Consultative Meeting was held on 30 August 2022. The meeting was attended by Councillor Batagol, representatives of the applicant, objectors and a Council planning officer. The meeting did not result in any changes to the plans.

Referrals

The application was referred to an external referral authority as well as relevant internal departments of Council. The comments received are summarised below.

Environment Protection Agency (EPA)

- The EPA do not object to the proposal and do not require any permit conditions. They have however recommended a permit note be included to ensure the applicant is aware of their General Environmental Duty obligations under the Environment Protection Act 2017.

Public Health

- The submitted acoustic report relies upon installing acoustic roller doors that will reduce the noise to an acceptable level. In addition, there are a number of operational controls that are relied upon. These should be enforced.
- Day noise period - looks to be well within EPA guidelines and there is no change or issue.
- Evening noise period (6pm-10pm) – With all controls in place, the modelling shows that the actual noise will be just within the EPA noise limit for the properties 9 and 11 Miller Street.

- Night noise period (after 10pm) – Appears okay, with the modelled value being less than the measured background noise.

Transport and Parking

- On balance, this would appear to be an improvement to the current conditions.
- Ideally with a traffic light system there would be a clearly marked waiting area within the site, but it does not appear that this is possible. However, it appears the current access arrangement operates without this, so the change would be minimal.
- The applicant is to ensure that the clear height of the new roller doors is fit for purpose.
- No concerns raised with traffic or parking impacts.

Key Issues and Discussion

As previously indicated, the amendments to the permit and plans are to be assessed against the relevant planning controls affecting the proposal. However, it must be noted that only the changes to the permitted use and development are to be considered as part of this assessment.

Strategic Context

The overarching policies and objectives at both a State and Local level support the development and growth of activity centres that are highly accessible to the community, and encourage a broad range of land uses, such as retail, office, services, entertainment and residential.

Council's Municipal Strategic Statement (MSS) identifies the site as being within a Large Neighbourhood Activity Centre, known as Hawksburn Village, which caters to everyday needs and wider specialty retail, office, and service markets. Relevant objectives of the MSS are to support proposals that will achieve more effective use of commercial properties and encourage businesses that will provide services and employment opportunities for the local community.

Furthermore, the MSS acknowledges the need for activity centres to adapt to change by providing for a broader range of uses, and the need to manage the challenge of increasing residential development in and beside activity centres combined with the increased after hours opening of commercial uses and the resultant amenity and residential interface issues arising from the close proximity of conflicting uses.

Specifically in relation to industrial uses, the MSS seeks to address the challenge of loss of industries (in particular small scale service industries serving local needs) which are moving out of activity centres and being replaced by higher order uses.

The application seeks to respond to the increased operational demands of the long-established business on site. It also serves to provide an improved level of service to the local community, as the expanded hours of operation for the servicing of vehicles will effectively enable customers to drop their vehicles at the site outside of typical business hours and to collect their vehicle prior to going to work the following day.

The proposed expansion of the hours of operation will support the needs of an existing service business located within a commercial precinct and enable its ongoing viability in this long-standing location, whilst also contributing to the local economy. This is consistent with

local policy objectives which seek to strike a balance between potentially conflicting land uses and is therefore considered appropriate subject to off-site amenity impacts being suitably limited.

Hours

Condition 5 of the current planning permit restricts use of the land for vehicle repairs to operate between 8.30am to 6pm Monday to Friday and between 9am to 5pm on Saturday. The application is limited to the expansion of opening hours only on Monday to Friday, with no change to permitted hours on Saturday.

The business proposes to open at 7.30am, ie. for one additional hour in the morning. As indicated above, this facilitates customers dropping off their vehicles prior to the morning traffic peak period and prior to attending their place of employment. In terms of vehicle servicing, only the basement workshop is proposed to be used during the hour between 7.30am to 8.30am, and the ground level workshop will not be utilised during this time except to drive through to access the lower ground.

The opening of a business from 7.30am during weekdays is not uncommon and is considered reasonable given the commercial zoning of the land and its location within a large activity centre.

It is proposed that between the hours of 6pm to 8pm on Mondays to Fridays, i.e. after typical business hours, customers can either drop off a vehicle for overnight service or collect a vehicle which has been serviced during the day. This provides more flexibility for customers and is also likely to result in the number of visitors to the site being spread over a broader time period, rather than this activity being more concentrated within a condensed timeframe at the end of the typical working day.

Customers will enter the site via Williams Road and will be directed by a staff attendant to park their vehicle within the ground floor of the building adjacent to the primary vehicle entrance, or in the external car parking area if other spaces are full. Afterwards, customers will then leave the building through the main pedestrian exit onto Williams Road.

The movement of vehicles within the site beyond the customer drop-off point will be undertaken solely by BMW staff members (not customers) for occupational health and safety reasons. By 8pm, all vehicles received for overnight servicing will have been relocated to the lower ground car park or basement workshop. At 8pm it is proposed to close all external vehicular access doors via an automated timer, including the south facing door at the primary ground level entrance adjacent to the external car park, the west facing door between the ground floor workshop and external access ramp, and both the north and west facing doors to the lower ground level accessed from the rear laneway. These doors will not be reopened until 7.30am the following morning (or 9am on Saturdays). Any test driving of vehicles that have been serviced will not be permitted to occur after 8pm as they will not be able to exit the building.

The closing of external doors ensures that night-time operations between 8pm and midnight are limited to internal areas within the building. Specifically, the servicing of vehicles after 6pm will occur only within the basement workshop, and cars will be relocated between the basement workshop and the lower ground level parking area. There will be no external movement of customer vehicles between 8pm and 7.30am the following morning.

With regard to staff, it is proposed that between 6pm and 8pm there will be a maximum of 10 staff on site. From 8pm to midnight there will be 9 staff on site, as the 'attendant' staff member will leave at 8pm once the roller doors are closed.

All evening/night shift staff will park on site within the external car park accessed via Williams Road between 5.30pm-6pm. All sales staff finish between 5pm-5.30pm thereby freeing up available spaces within the car park for the evening staff.

Upon conclusion of the night shift, all staff will exit the building via the pedestrian doors into the external car park. This enables staff to safely, quickly and quietly depart the premises at the conclusion of their shift without the need to open any garage doors.

The applicant is actively seeking to minimise any potential impacts of the use within the extended hours on nearby properties and to this end has proposed the preparation of an Operations Management Plan (OMP) to appropriately manage the ongoing long-term operations of the site. The OMP will cover all of the above details and provide clear guidance on the following:

- Use of internal spaces within the building including:
 - all servicing and repair of vehicles between the hours of 7.30am-8:30am and 6pm-12am (Monday to Friday) is only to be undertaken within the basement workshop;
 - ground floor workshop to only be used for vehicle movements between 7.30am-8.30am and 6pm-8pm (Monday to Friday);
 - high pressure washers within the lower ground to only be used between 8.30am-6pm, with hand washing and detailing of cars undertaken between 7.30am-8.30am and between 6pm-8pm (Monday to Friday);
 - music is not to be played within the basement workshop outside the hours of 8.30am -6pm (Monday to Friday) and 9am-5pm (Saturday);
 - all external roller doors at ground and lower ground level to close at 8pm and remain closed until 7.30am. This results in no external vehicle movements on the ramp and rear laneway between the hours of 8pm and 7.30am Monday to Friday;
 - movement of vehicles and people following vehicle drop off from Williams Road between 6pm-8pm (Monday to Friday);
- Movement of staff when ending night shift including designation of on-site car parking spaces (towards Williams Road) for staff working night shift;
- Installation of automated timers that close all external roller doors at 8pm; and
- Installation of automated timers to turn off all exhaust fans at 6pm other than those that are required for essential ventilation of the basement workshop.

The requirement for an OMP to be prepared forms a recommended condition of permit. Once approved, the OMP would be endorsed to form part of the permit ensuring that the operational details of the approved use contained within the plan can be enforced if required.

Based on the above, it is considered that the use can successfully operate within the extended hours proposed without unreasonable impacts on the amenity of neighbouring residential properties. This is discussed in further detail below.

Amenity Impacts

In addition to the operational measures above which seek to control which parts of the site can be used at various times of the day, the application proposes to undertake buildings and works to further reduce noise impacts on nearby residents. The works include replacement of the existing external roller doors to the lower ground level at the rear of the building. Specifically, the perforated north-facing door to the lower ground car wash area and the west-facing roller door to the lower ground parts receiving area will be replaced with solid roller doors with a minimum sound insulation rating of 14 dB Rw. These measures, in addition to the operational controls outlined above, are the result of a detailed acoustic investigation and associated recommendations contained with the submitted acoustic report prepared by Clarity Acoustics. The report concludes that subject to implementation of the aforementioned works and control measures, the proposed extension to the operating hours can successfully meet relevant EPA noise criteria.

This is supported by the EPA's referral response to the application, in which they confirm no objection to the amendment of the permit and state the following:

Based on the specific design of the facility with a basement works area, lack of community complaints over many years and the outcomes of the acoustic investigation, EPA believes the amendment to operating hours can be successfully undertaken at the site. EPA recommends control measures outlined in the Clarity Acoustics report, mentioned above, be included as a permit condition, if issued.

Whilst they have not imposed any specific permit conditions, to reinforce the applicant's responsibility to minimise harm to the environment and human health, the EPA have recommended a note be included on the permit to serve as a reminder of the legislative requirements. This note has been included within the officer's recommendation.

The application also proposes the installation of a 'stop-go' traffic light system along the vehicular ramp at the rear (western side) of the site. The purpose of the system is to manage the potential conflict of vehicles along the single-width access ramp between the ground and lower ground levels. The current practice is to use car horns to alert oncoming traffic, which is disruptive to neighbouring residential properties and has resulted in complaints from local residents. This system ultimately serves to improve the existing amenity impacts on nearby dwellings during the current hours, yet will also assist during the extended hours proposed, noting that the ramp will only be used for vehicle movements between 7.30am and 8pm at night.

In addition to the OMP referred to above, the applicant also proposes the preparation of a Noise Management Plan (NMP) to be prepared by a suitable qualified acoustic engineer. The NMP would implement the operational controls set out in the acoustics report together with any additional works specified by the acoustic engineer to ensure that all external mechanical plant and equipment, including rooftop exhaust fans, comply with the evening period (6pm-10pm) and night period (10pm-12am) Noise Protocol Limits and the Environment Protection Regulations.

Condition 12 of the current permit refers to plant and equipment being located, screened and baffled to minimise visibility and the emission of unreasonable noise to the environment. It is recommended this condition is updated to reflect current requirements.

On balance, based on the implementation of the operational control measures, the replacement of the external roller doors with acoustic doors, the introduction of a traffic light system resulting in the ceasing of car horns being used within the site, and the requirements for an Operations Management Plan and Noise Management Plan, it is considered that the existing noise issues experienced by residents will be reduced and the use can successfully operate within the proposed expanded hours of operation without resulting in unreasonable amenity impacts on the adjacent residential area.

Building works

Schedule 21 to the Design and Development Overlay applies to the Hawksburn Village Neighbourhood Activity Centre and seeks to ensure the new development responds to the area's character and does not cause unreasonable amenity impacts on nearby residential land. The schedule includes built form requirements relating to building height and setbacks, none of which are of relevance to this proposal.

The minor nature of works proposed will have no impact on the built form character of the site or the broader area as the alterations to the building will not be visible from the public realm beyond the laneway.

Objections

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

- Council's Planning Compliance unit is investigating reported breaches of current permit conditions. Whilst the impacts of non-compliance on residents is acknowledged, it is important to separate this matter from the proposed amendments which must be assessed against the relevant planning policy and controls. Should an amended permit be approved, any breaches of associated planning conditions can be investigated and enforced by Council as required.
- In regard to potential parking and traffic congestion, Council's traffic engineers have not raised any concerns. It is considered that any additional traffic resulting from the extended hours of operation can be readily absorbed within the road network.

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. 0457/13 - 145 Williams Road, Prahran [8.2.1 - 13 pages]

Officer Recommendation

That Council AUTHORISE Officers to issue a Notice of Decision to Amend a Planning Permit No: 457/13 for the land located at 145 Williams Road, Prahran under the Stonnington Planning Scheme for use of the land for motor vehicle repairs, buildings and works, variations to the requirements of Clause 52.14 (Motor Vehicle, Boat or Caravan Sales), a waiver of loading facilities in a Commercial 1 Zone, and advertising signage in a Special Building Overlay subject to the following conditions (new and amended permit conditions are underlined for clarity):

- 1. 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.***
- 2. 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 and three copies must be provided. The landscape plan must show details of the proposed landscaping along the landscape strip on the western boundary of the site and along the Clarke Street frontage.***
- 3. Before the use starts 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.***
- 4. The use hereby permitted in the Basement and Lower Ground Floor must operate only between the hours of Monday to Friday 7.30am to 12am (midnight) and Saturday 9.00am to 5.00pm.***
- 5. The Ground Floor workshop must operate only between the hours of Monday to Friday 8.30am to 6.00pm and Saturday 9.00am to 5.00pm.***
- 6. The roller door to the customer drop off point at Ground Floor, the roller door servicing the top of the vehicle ramp at the Ground Floor and the two roller doors servicing the Lower Ground Floor adjacent to the rear laneway must operate on a timer system and may only be open between the following hours:***
 - a) Monday to Friday 7.30am and 8.00pm; and***
 - b) Saturday 9.00am to 5.00pm.***

At all other hours these roller doors must remain closed and there must be no activity within the open area at the rear of the site.
- 7. The high pressure washers located within the Lower Ground Floor must not be used prior to 8.30am or after 6.00pm Monday to Friday and on Saturdays before 9.00am and after 5.00pm.***

8. **Any vehicle (including staff vehicles) entering or exiting the site before 8.30am and after 8.00pm Monday to Friday and on Saturdays before 9.00am and after 5.00pm must do so via the Williams Road access point.**
9. **Any vehicle arriving at the site for servicing must enter the site between 7.30am and 8.00pm Monday to Friday and 9.00am to 5.00pm on Saturday.**
10. **No music is to be played within the site after before 8.30am or after 6.00pm Monday to Friday 6.00pm or before 9.00am and after 5.00pm on Saturday.**
11. **Prior to the commencement of the extended use approved by the amended permit the stop / go lighting system at the rear of the site must be installed and operating.**
12. **Vehicular horns may only be sounded within the site in the event of an emergency.**
13. **Prior to the commencement of the extended hours of the use approved by the amended permit, the two roller doors at the rear of the Lower Ground Floor must be replaced with solid roller doors that have a minimum sound insulation rating of 14 dB Rw in accordance with the endorsed plans.**
14. **Prior to the commencement of the extended hours of the use approved by the amended permit, an Operations Management Plan must be submitted to and approved by the Responsible Authority. When approved, the Operations Management Plan will form part of this permit and all activity at the site must be in accordance with the Plan to the satisfaction of the Responsible Authority. The Plan must include:**
 - a) **Hours of operation for all parts of the site.**
 - b) **Identification of the activities carried out within the different areas of the site.**
 - c) **Details of staffing arrangements including on site attendants to manage vehicular movements and the location of night shift staff parking.**
 - d) **Standard procedures as to how amenity complaints will be managed by staff.**
 - e) **Details of waste management including storage and hours and means of collection.**
 - f) **Any other measures to be undertaken to ensure minimal impacts from the premises.**
 - g) **How the use of vehicular horns will be avoided.**
 - h) **Details of the 'stop / go' traffic light system, including a dimensioned elevation.**
 - i) **A maintenance plan for the roller doors at the rear of the site, including a commitment to immediately service the existing door to be retained (to remove the existing issue of the doors catching on the roller door guide) and to carry out an annual review and service of these doors.**

15. **Prior to the commencement of the extended hours of the use approved by the amended permit, a Noise Management Plan must be submitted to and approved by the Responsible Authority. When approved, the Noise Management Plan will form part of this permit and all activity at the site must be in accordance with the Plan to the satisfaction of the Responsible Authority. The Plan must include:**
 - a) **Details of the operational controls and noise mitigation works in accordance with the recommendations contained in the Report R01 22056 (Amendment Application Acoustic Assessment) prepared by Clarity Acoustics dated 2 May 2022.**
 - b) **The identification of noise sensitive areas including residential uses and accommodation in close proximity to the site.**
 - c) **Measures to be undertaken to address all noise sources identified, including on and off-site noise attenuation measures.**
 - d) **Location and operation of air-conditioning, exhaust fan systems and security alarms.**
 - e) **Standard procedures as to how noise complaints will be managed by staff.**
 - f) **Detail as to how staff will be made aware of the need to minimise noise from the premises, particularly prior to 8.30am and after 6.00pm on any day.**
16. **All plant and equipment (including air conditioning units and any exhaust fans) shall be located or screened to minimise visibility from surrounding footpaths and adjoining properties and shall be baffled so as to minimise emission of unreasonable noise to the satisfaction of the Responsible Authority.**
17. **Unless with the prior written approval of the Roads Corporation and the Responsible Authority, all loading and unloading of vehicles and goods associated with the use are to be conducted within an appropriate loading zone, between the hours of 9:00am to 4:00pm Monday to Friday.**
18. **Loading and unloading activities associated with the approved use and development must not occur within Clarke Street.**
19. **The loading and unloading of vehicles and the delivery of goods to and from the premises must at all times be conducted entirely within the site and in a manner that limits interference with other vehicular traffic to the satisfaction of the Responsible Authority.**
20. **No vehicle for sale or hire may be displayed on an adjacent road.**
21. **Panel beating must not occur on the site.**
22. **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.**
23. **Any waste from vehicles must be disposed of in manner that accords with the relative Environment Protection requirements.**
24. **Water from the site must be discharged by an underground pipe to an approved outlet to the satisfaction of the Responsible Authority.**

25. ***All vehicular crossings made redundant by the proposal must be removed and the naturestrip and kerb reinstated at the owner's cost to the satisfaction of Council.***
26. ***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 that report prior to a building permit being issued. The drainage must be constructed in accordance with the Engineer's design.***
27. ***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.***
 - c) ***The extended use is not commenced within five years of the date of issue of this amended permit.***
 - d) ***The use is discontinued for a period of two years or more.***

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:

- i. ***The amended Environment Protection Act 2017 comes into effect on 1 July 2021. The amended Environment Protection Act 2017 imposes new duties on individuals and/or businesses undertaking the activity permitted by this permit. If your business engages in activities that may give rise to a risk to human health or the environment from pollution or waste, you must understand those risks and take action to minimise them as far as reasonably practicable.***
- ii. ***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.***
- iii. ***Unless a permit is not required under the Stonnington Planning Scheme, signs must not be constructed or displayed without a further planning permit.***
- iv. ***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.***

8.3 Planning Application 0052/22 - G12, 670 Chapel Street, South Yarra

Acting Manager Statutory Planning: Phillip Gul
Director Planning & Place: Annaliese Battista

Purpose of Report

For Council to consider a planning application for use of the land for the sale and consumption of liquor (Restaurant and Café liquor licence) in association with a food and drink premises (as of right) in an Activity Centre Zone at G 12/670 Chapel Street, South Yarra.

Abstract

Proposal

The application relates to a proposed restaurant and café liquor licence associated with use of the land as a restaurant (as of right use). The hours for the sale and consumption of liquor are between: 7am and 12midnight. The maximum number of seats will be 51.

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 proposal is consistent with the requirements of Clause 22.10 (Licensed Premises Policy) and Clause 52.27 (Licensed Premises).
- The proposal will not have an unreasonable impact on the amenity of the area, including nearby residential properties.

Issues

The following are the key issues in respect of this application:

- Amenity impacts on surrounding residential properties.

Officer's response

The subject site is located within the Chapel Street Activity Centre. Relevant planning policy encourages licensed premises within activity centres, whilst acknowledging that the licensed premises must be appropriately managed to minimise adverse amenity impacts on the surrounding area, including residential uses.

Due to the nature of restaurant and café liquor licences, which requires seating for at least 75% of patrons and that the predominant activity carried out on premises is the preparation and serving of meals, they are considered to be lower risk premises.

Overall, it is considered that the proposal will not result in unreasonable amenity impacts on the area. The proposal can be appropriately managed by the conditions in the recommendation if a permit is to issue.

Executive Summary

Applicant:	Peter Koutsovasilis Zeus Street Greek Food
Ward:	North
Zone:	ACZ1
Overlay:	EAO, LSIO1, IPO3
Date Lodged:	7 February 2022
Statutory Days: (as at Council Meeting date)	149 days
Trigger for Referral to Council:	More than 7 objections
Patron Numbers	51 seats (27 internal, 24 external)
Cultural Heritage Plan	No
Number of Objections:	Nine (9)
Consultative Meeting:	Yes – held on 23/08/2022
Officer Recommendation	Notice of Decision to Grant a Planning Permit

Background

The Proposal

The plan that forms the basis of Council's consideration was prepared by St Style and is known as the Red Line Plan, Council date stamped 22 February 2022. A Noise and Amenity Action Plan was also prepared by St Style, Council date stamped 29 March 2022.

Key features of the proposal are:

- The proposed maximum number of seats is 51, with 27 internal seats and 24 external seats located within the footpath trading area.
- The proposed hours for the sale of liquor are as follows:
– 7am to midnight, all days
- The proposal does not entail the provision of any on-site car parking or bicycle spaces.
- Light background music to be played during hours of operation

Site and Surrounds

The site is located on the eastern side of Chapel Street, between Toorak Road to the south and Alexandra Avenue to the north. The site has the following significant characteristics:

- The site is located within the Chapel Street Activity Centre which comprises of a variety of uses including shopping, offices, civic, cultural, entertainment and residential use and development
- The building at 670 Chapel Street, known as the Vogue Plaza, occupies an irregular shaped site with a frontage of 75 metres to Chapel Street on the western side, 110 metres to Malcolm Street on the northern side and 155 metres to River Street on the western side.
- The subject tenancy (G 12) is located at the southern edge of the building at ground floor level, adjacent to the car park entry. It is an irregular shaped lot with a 9.10 metre

frontage to Chapel Street, a maximum depth of 18.83 metres and an internal site area of approximately 180 square metres.

- The site was most recently tenanted by 'Frozen Eatery', a cafe/restaurant with footpath trading but no liquor licence.
- To the north, the tenancy forms part of a strip of similar food and drink premises including 'Hunky Dory' and 'Grill'd' that activate the ground floor of the Vogue Plaza building.
- To the east is the Vogue Plaza site which is developed as a 27-storey mixed use building comprising a shopping centre at lower levels with residential above.
- To the south, on the opposite side of a driveway and pedestrian walkway is No. 666 Chapel Street. The site is occupied with a mixed-use building which include a number of tenancies at ground floor with residential above.
- To the west is Chapel Street providing north-south access between the Yarra River to the north and Toorak Road to the south.

Previous Planning Application/s

A search of Council records indicates the following relevant planning applications:

- Planning Permit No. 0010/08 for the parent site at 670 Chapel Street was issued on 9 January 2009 under the direction of the Victorian Civil and Administrative Tribunal. The permit allowed for use and development of the land for shops, dwellings, home offices, restricted recreation facility (day spa), food and drink premises (café), a reduction in the car parking and altered access to a Road Zone 1. The approved development has since been constructed and is now commonly known as the Vogue building.
- Amended Planning Permit No. 0887/13–4 was issued for the nearby tenancy at G 16 / 670 Chapel Street (Grill'd) on the 25 November 2019 to allow:

'Restaurant and café licence in association with the use of the site as a restaurant (as of right use) in an Activity Centre Zone and installation and display of business identification, promotion and internally illuminated signage in accordance with the endorsed plans'.

Relevant conditions include:

- Sale of liquor (incl. outdoor area) between 7am to 11pm (Mon – Sat), 10am to 11pm (Sun and public holidays)
- Maximum 94 patrons (including 34 internal, 30 external seating and 30 footpath trading)
- Background music only + SEPP

The permit is current.

The Title

The site is identified as Lot S2 on Plan of Subdivision 631823 in Volume 11231 Folio 589 and no covenants or easements affect the land.

Planning Controls

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

Zone

Clause 37.08 – Activity Centre Zone, Schedule 1

Pursuant to Clause 37.08-2 (Table of Uses) land uses are detailed in Schedule 1. Pursuant to Schedule 1 a permit is not required for a food and drink premises on the condition that it is located at ground or first floor. This condition is met, therefore a permit for the use is not required.

Overlays

Clause 43.03 – Incorporated Plan Overlay

Pursuant to Clause 43.03-1 a permit granted must be generally in accordance with the incorporated plan, unless a schedule to this overlay specifies otherwise.

Pursuant to Clause 1 of Schedule 3 the provisions of this overlay only applies to licensed hotels, taverns and nightclubs, the proposal is not for one of these uses therefore this provision is not applicable.

Clause 44.04 – Land Subject to Inundation Overlay

Pursuant to Clause 44.04-2, a permit is required to construct a building or to construct or carry out works.

As this application relates only to the use of the land for the sale and consumption of liquor (ie. No building or works), no permit is triggered under this overlay

Clause 45.03 – Environmental Audit Overlay

Pursuant to Clause 45.03-1, before the commencement of a sensitive use, an environmental audit must be undertaken. Food and drink premises are not considered a “sensitive use”, the requirements under this provision are therefore not applicable.

Particular Provisions

Clause 52.27 – Licensed Premises

Pursuant to Clause 52.27 a permit is required to use land to sell or consume liquor if a licence is required under the Liquor Control Reform Act 1998. Accordingly, a permit is required for the restaurant and café liquor licence associated with the food and drink premises.

Relevant Planning Policies

- Clause 11.03-1S – Activity Centres
- Clause 17 – Economic Development
- Clause 21.04 – Economic Development
- Clause 22.10 – Licensed Premises Policy
- Clause 65 – Decision Guidelines

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 one (1) sign on the site). The public notification of the application has been completed satisfactorily.

The site is located in North Ward and objections from nine (9) different properties have been received

- Use of outdoor area for consumption of alcohol
- Operating hours
- Noise impacts
- Waste management
- Exhaust/odours flu not adequate and cumulative impact
- Impact of additional foot and car traffic in the area
- Safety issues regarding the proximity of outdoor seating to driveway entrance
- Removal of outdoor furniture and barriers at close of business

A Consultative Meeting was held on 23 August 2022. The meeting was attended by Councillor Hely, Councillor Griffin and Councillor Koce, and Council planning officers. No objectors or representatives of the applicant were in attendance. The meeting did not result in any changes to the proposal or plans.

Referrals

Local Laws (Liveability and Compliance)

Based on the Red Line Plan, Council date stamped 22/02/2022 the following advice was received on 1 April 2022:

- It is noted that there is no footpath trading in place. The applicant will need to contact the Footpath Trading Team to get this sorted before diners will be permitted on the footpath.
- Pending the footpath trading permit being granted, there is no reason for local laws not to support the application.

Planner comment

Footpath Trading - Dining Area Permit LFD22/00033 was issued on 14/07/2022

Environmental Health approved plans in accordance with the Food Act 1984 on 20/05/2022, subject to conditions.

Key Issues and Discussion

Strategic Justification

The site is within the Chapel Street Activity Centre. Council's Local Policy at Clause 21.04-1 classifies the Chapel Street Activity Centre as a 'principal activity centre' within the municipality, which is further reinforced through the zoning of the land within the Activity Centre Zone. Council's Local Policies (Clause 17.02-1S and 21.04) recognise the importance of licensed premises in contributing to the vibrancy and economic strength of the municipality, whilst acknowledging that licensed premises should be managed to minimise adverse amenity impacts on surrounding residential uses. Furthermore, the Activity Centre Schedule 1 seeks to enhance the liveability of the Chapel Street precinct whilst, managing potential conflicts between residential and hospitality uses and ensure that the location and scale of the uses contribute to the liveability and role of the activity centre. Where there are

surrounding residential uses, policy focuses on the effective management of the licensed premises rather than exclusion of such premises from the area.

It is considered that the subject site is suitably located within the Chapel Street Activity Centre for a licensed premises and will contribute to the vibrancy and activation of the street. The potential amenity impacts, and their management are discussed in detail below.

Liquor

Consideration of new liquor licence applications is guided by Clause 22.10 (Licensed Premises Policy) and Clause 52.27 (Licensed Premises). Clause 22.10 seeks to establish an appropriate mix of licensed premises relative to other uses, including residential, within activity centres and seeks to encourage daytime uses and active frontages. Pursuant to Clause 22.10 and Clause 52.27, licensed premises should not have an unreasonable impact on the amenity of the surrounding uses in relation to noise, hours of operation, light spill, and car parking demand. An assessment of these factors is undertaken below.

Cumulative Impact

Whilst there are a number of licensed premises in the Chapel Street precinct, due to the nature of restaurant and café liquor licences they are generally considered low risk and there is minimal risk of cumulative impact as a result of the proposal. The primary use of the land is for the preparation and serving of meals, while the sale and supply of liquor on the premises is a secondary aspect. Pursuant to Section 9A of the *Liquor Control Reform Act 1998* (Vic) and *Standard Licence Obligations – Restaurant and Café* set out by the *Victorian Commission for Gambling and Liquor Regulations*, the following requirements apply to restaurant and café liquor licenses:

- The predominant activity to be carried out on the premises is the preparation and serving of meals to be consumed on the licensed premises; and
- Tables and chairs must be placed in position on the licensed premises so as to be available to at least 75% of the patrons attending the premises at any one time.

Therefore, ensuring that under the proposed licence the tenancies must operate predominantly as a food and drink premises. On this basis, it is unlikely that this proposal will lead to intoxication and anti-social behaviour, but rather will positively contribute to the high level of activity in this area and add to the overall vibrancy of the precinct.

Patron numbers and hours of operation

A total of 51 seats are proposed across the tenancy, with 27 internal seats and 24 external seats located within the footpath trading area.

A review of other premises within the South Yarra end of Chapel Street that include footpath trading for the sale and consumption of liquor indicate that external seating numbers are typically between 30 to 60 patrons. The number of seats proposed to be housed in the footpath area is considered in keeping with other approvals.

The opening hours proposed by the applicant are 7am to midnight, seven days a week.

Council's Licensed Premises Policy at Clause 22.10 preferences any trading after 11pm to occur in a Principal or Major Activity Centre but also discourages trading after 11pm adjacent to residential uses unless the use will not adversely affect the amenity of the area.

The proposed use of the site is predominantly indoors which generally minimises adverse amenity impacts as a result of the use on the surrounding area. Therefore, the use of the internal areas until 11pm is generally considered acceptable. A condition will be included requiring the finish time of 11pm rather than midnight.

24 of the proposed seats are proposed to be housed externally within the footpath trading area. The external areas are considered to have potential for greater impacts on the amenity of the area. A review of the other permits in the area indicates that conditions on the permit require the sale and consumption of liquor in external areas to cease at 11pm. However, it is noted that this particular tenancy is located closer to residential properties, particularly to the south.

As outlined above, objectors have requested that the proposed hours for the sale and consumption of liquor outside reflects the stated operating hours of the business, which cease at 9:30pm. The applicant is agreeable to this also. This condition is considered appropriate for the location of the site and will reasonably limit the use of the external area to an appropriate time and in line with policy, as such if a permit is to issue this will be included as a condition.

In response to objections, the applicant provided a written statement that noted the business' opening hours begin at 11am. A review of the other permits in the area indicates that conditions on the permit require the sale and consumption of liquor to be allowed from 7am Monday to Saturday, and 10am on Sundays and Public Holidays. This condition is considered an appropriate response to the mixed-use location and will be included if a permit is to issue.

Subject to conditions, the hours and seating numbers are deemed to be reasonable for a restaurant and café within the Chapel Street precinct and will not result in significant adverse amenity impacts on the surrounding area, including residential properties.

Noise and Amenity

The area consists of a mixture of commercial tenancies, including cafes, restaurants and retail shops, as well as a number of residential apartments. In support of the application a Noise and Amenity Action Plan (NAAP) dated 29 March 2022, as well as a response to objections dated 15 June 2022, has been prepared by the applicant in accordance with Clause 22.10. The plan outlines the details of potential noise sources, sensitive areas, measures to control noise emissions, details of staffing, waste management and other details of the operation. It is considered that the submitted NAAP outlines appropriate measures commensurate to the scale of the use and type of license which will assist in protecting the amenity of the surrounding area.

An updated NAAP is recommended as a condition on the permit to reflect the updated operating hours.

Conditions will also be included on the permit, should one issue, requiring that noise emanating from the subject site must conform with Environment Protection Regulations under the Environment Protection Act 2017 and the incorporated Noise Protocol (Publication 1826.2, Environment Protection Authority, November 2020), that only background noise may be played internally and that there must be no external speakers.

Waste

Waste at the site is proposed to be stored within the kitchen and then taken to the designated Waste management zone within the larger Vogue Plaza Centre. To ensure that the waste management does not impact on the amenity of the area a standard condition will be included on the permit that the collection of waste is in accordance with Council's Local Law.

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. 0052/22 - G12, 670 Chapel Street, South Yarra [8.3.1 - 2 pages]

Officer Recommendation

That Council AUTHORISE Officers to issue a Notice of Decision to Grant a Planning Permit No: 52/22 for the land located at G 12/670 Chapel Street, South Yarra under the Stonnington Planning Scheme for use of the land for the sale and consumption of liquor (Restaurant and Café liquor licence) in association with a food and drink premises (as of right) in an Activity Centre Zone subject to the following conditions:

1. ***The plans endorsed to accompany the permit must not be amended without the written consent of the Responsible Authority.***
2. ***Before the commencement of the use, an amended Noise and Amenity Action Plan (NAAP), must be submitted to and approved by the Responsible Authority. The NAAP must be generally in accordance with the plan submitted with the application, but modified to reflect the updated operating hours. When approved, it will form part of the permit and the tenancy must operate in accordance with the applicable plan to the satisfaction of the Responsible Authority.***
3. ***A maximum of 51 seats may be housed on the premises (including 27 internal and 24 footpath trading) at any one time to the satisfaction of the Responsible Authority.***
4. ***Without the prior written consent of the Responsible Authority, the sale and consumption of liquor shall only occur within the licensed area between the following hours:***

Internal areas:

Monday to Saturday, 7am to 11pm

Sunday and Public Holidays, 10am to 11pm

Footpath trading / external areas:

Monday to Saturday, 7am to 9:30pm

Sunday and Public Holidays, 10am to 9:30pm

5. **The predominant activity carried out at all times on the licensed premises must be the preparation and serving of meals to be consumed on the premises to the satisfaction of the Responsible Authority.**
6. **Tables and chairs must be placed in position on the licensed premises so as to be available for at least 75% of the patrons in each area at any one time, to the satisfaction of the Responsible Authority.**
7. **No speakers are to be located externally.**
8. **Noise emanating from the subject land must comply with Environment Protection Regulations under the Environment Protection Act 2017 and the incorporated Noise Protocol (Publication 1826.2, Environment Protection Authority, November 2020), to the satisfaction of the Responsible Authority. Any works required to ensure and maintain the noise levels from the premises are in compliance with this policy must be completed prior to the commencement of the use or occupation of the site and maintained thereafter, all to the satisfaction of the Responsible Authority.**
9. **Without the prior written consent of the Responsible Authority, the provision of music and entertainment on the premises must be limited to background music or entertainment by performers using non-amplified instruments or equipment.**
10. **Bottles and rubbish must not be removed from within the premises to the waste storage area between the hours of 11pm and 7am the following day.**
11. **Bottles and rubbish must not be removed from within the premises to the waste storage area between the hours of 11pm and 7am the following day.**
12. **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.**
13. **The use must be managed so that the amenity of the area is not detrimentally affected through the:**
 - a) **Transport of materials, goods or commodities to or from the land;**
 - b) **Appearance of any building, works or materials;**
 - c) **Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, and**
 - d) **Presence of vermin.**
14. **This permit will expire if one of the following circumstances applies:**
 - a) **The use is not started within two years from the date of this permit.**
 - b) **The use is discontinued for a period of two years or more.**

In accordance with Section 69 of the Planning and Environment Act 1987, the Responsible Authority may extend the periods referred to if a request is made in writing within the prescribed timeframes, where the use allowed by the permit has not yet started.

NOTES

- A. This permit is for the use of the land and/or buildings and does not constitute any authority to conduct a business requiring Health Act/Food Act registration without prior approval from the Council's Health Services.***
- B. 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.***
- C. Unless a permit is not required under the Stonnington Planning Scheme, signs must not be constructed or displayed without a further planning permit.***
- D. Background music level, in relation to premises, means a level that enables patrons to conduct a conversation at a distance of 600 millimetres without having to raise their voices to a substantial level.***
- E. This permit does not give any authority to occupy the footpath for trading without prior approval from Council's Local Laws department. A permit must be obtained for footpath trading and it must accord with the relevant Footpath Trading Code.***
- F. 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:***
 - i. Before or within 6 months after the permit expiry date, where the development allowed by the permit has not yet started; and***
 - ii. Within 12 months after the permit expiry date, where the development allowed by the permit has lawfully started before the permit expires.***

8.4 Planning Application 1118/21 - 329-333 Toorak Road, South Yarra

Acting Manager Statutory Planning: Phillip Gul
Director Planning & Place: Annaliese Battista

Purpose of Report

For Council to consider a planning application for construction of a mixed-use development in an Activity Centre Zone and Land Subject to Inundation Overlay and a reduction in the car parking and visitor bicycle parking requirements at 329-333 Toorak Road, South Yarra.

Abstract

Proposal

The proposal seeks to construct a seven-storey mixed-use development, comprising of a ground floor food and drink premises (cafe) and offices above at Levels 1-6 (both as of right land uses).

Car parking will be provided in a three-level basement comprising of 21 car spaces, with 20 spaces allocated to the office use and 1 space allocated to the food and drink premises use. Vehicular access to the site is provided via Time Lane, providing access to a car lift.

The existing significant London Plane street tree on Tivoli Road is to be protected and retained.

Officer Recommendation Summary

That the Council authorise Officers to advise VCAT that had a Failure to Determine appeal not been lodged, it would have issued a **Notice to Refuse a Planning Permit** subject to the grounds outlined in the Officer Recommendation. **The proposal is not supported** for the following reasons:

- Melbourne Water has objected to the grant of a permit as the proposed development is subject to inappropriate and unacceptable flood risk. Melbourne Water is a determining referral authority meaning that with its objection, pursuant to Section 61(2) of the *Planning and Environment Act*, this application must be refused.
- The ease, functionality and safety with which vehicles access the car lift is inadequate for a basement accommodating 21 spaces given the accessway is unable to accommodate an on-site passing/waiting area in the event the car lift is in use. This will result in unacceptable traffic impacts along the laneway and the surrounding local road network.

Issues

The following are the key issues in respect of this application:

- Building height and massing (refer to Built Form assessment);
- Amenity impacts on the adjoining properties (refer to Built Form assessment);
- Car parking and traffic matters (refer to Car Parking & Traffic assessment).

- Floodplain management and the Land Subject to Inundation Overlay (LSIO) (refer to Melbourne Water Referral Response).

Officer's response

The permit applicant proposes to redevelop the subject site located within the Forrest Hill Precinct of the Chapel Street Activity Centre, with a new seven-storey mixed-use building.

The maximum height of the building (at 27.2 metres to the top of the roof parapet) exceeds the discretionary building height set down in the Activity Centre Zone (of 21 metres) although is considered to achieve the Height and Massing Requirement of ACZ in that it meets the broader objectives, requirements and guidelines of this policy.

The building is well designed and supported by Council's Urban Designer. It sensitively manages its relationship to existing surrounding properties in a manner which will not unreasonably compromise amenity and will reasonably protect equitable development rights.

Melbourne Water has objected to the grant of a permit as the proposed development is subject to inappropriate and unacceptable flood risk. Melbourne Water is a determining referral authority meaning that with its objection, this application must be refused.

The application seeks a car parking reduction. This is supported. Forrest Hill has excellent access to public transport and an already heavily utilised traffic network.

No space is provided within the accessway for a vehicle exiting the car lift to pass a vehicle waiting for the car lift. This access arrangement is not supported. It is not considered acceptable for a vehicle waiting for the car lift to wait within the public road network and this will result in unacceptable traffic impacts along the laneway and the surrounding local road network.

Executive Summary

Applicant:	Shem Curry Contour Consultants Aus P/L
Ward:	North
Zone:	Activity Centre Zone- Schedule 1
Overlay:	Land Subject to Inundation Overlay- Schedule 1
Neighbourhood Precinct:	Forrest Hill (FH-10)
Date Lodged:	21 December 2021
Statutory Days: (as at Council Meeting date)	164
Trigger for Referral to Council:	Development of four or more storeys
VCAT Hearing Date	Compulsory Conference scheduled for 10 October 2022. Hearing scheduled for 16, 17 and 18 January 2023.
Number of Objections:	6
Consultative Meeting:	Yes – held on 30 August 2022

Officer Recommendation	That Council advise VCAT that had a Failure to Determine appeal not been lodged, a Notice of Refusal of a Planning Permit would have been issued.
------------------------	---

Background

This application was lodged with Council on 21 December 2021. Following the advertising period and ongoing discussions with Council Officers and Melbourne Water, the Applicant lodged an appeal against Council's failure to determine the application within the prescribed timeframe with the Victorian Civil and Administrative Tribunal (VCAT).

A VCAT Compulsory Conference is scheduled for 10 October 2022 with a 3-day hearing set down for 16, 17 and 18 January 2023.

The purpose of this report is to formalise Council's position on the proposal prior to the VCAT Compulsory Conference.

The Proposal

The plans that form part of the basis of Council's consideration were prepared by Warren and Mahoney and are known as Drawing No's TP03.01-TP03.03, TP10.01-TP10.10, TP10.12, TP20.01-TP20.04, TP30.01-TP30.05, TP10.42-TP10.47, TP40.02 and Landscape Plans TP01-TP06 all Council date stamped 16 March 2022.

Supplementary documentation provided with the application includes:

- Urban Context Report prepared by Warren and Mahoney, Council date stamped 16 March 2022;
- Transport Assessment prepared by Traffix Group; Council date stamped 16 March 2022;
- Waste Management Plan prepared by Leigh Design, Council date stamped 21 December 2021;
- Sustainability Management Plan prepared by ADP Consulting Council date stamped 16 March 2022;
- Tree Management Report and Protection Plan prepared by Arbor Survey, Council date stamped 21 December 2021.

Key features of the proposal are:

- Construction of a seven-storey mixed-use development, comprising of a ground floor food and drink premises (cafe) and offices above at Levels 1-6 (both as of right land uses).
- The building reaches a height of 27.2 metres (or RL 30.8) to the top of the roof parapet, plus an additional 0.72 metres to the roof services (RL31.52).
- Car parking will be provided in a three-level basement comprising of 21 car spaces, with 20 spaces allocated to the office use and 1 space allocated to the food and drink premises use.
- Vehicular access to the site is provided via Time Lane, providing access to a car lift. The existing crossover on Tivoli Road will be reinstated to kerb and channel.
- A total of 12 bicycle spaces are proposed within the basement levels for office staff.

- The ground floor level comprises of Food and drink premises (cafe) fronting Toorak Road and Tivoli Road (151 square metres). The ground floor level also comprises of a separate office lobby and entrance on Tivoli Road. This level is proposed to be built to the boundaries, with the exception of architectural cut out features and a setback to the lobby entrance from Tivoli Road.
- Canopies are proposed above the entrances on Toorak Road and Tivoli Road.
- At Levels 1 to 6 are office tenancies (totaling 1,382sqm) which include 'end of trip' facilities. To the rear of these levels are two lifts, stairs and an area housing building services. Balconies are also provided to each of these levels.
- Levels 1-6 comprise of varying setbacks above the podium from the southern (Toorak Road) and western (Tivoli Road) boundaries. The building is proposed to be constructed on the northern (Time Lane) and eastern boundaries.
- The existing significant London Plane street tree on Tivoli Road is to be protected and retained.
- The building is of a contemporary architectural expression and utilises a lighter material palette comprising of limestone tile cladding, precast concrete, porcelain tiles and white ash aluminum powdercoat screen battens.

Site and Surrounds

The site is located on the northern side of Toorak Road with a frontage of approximately 15.12 metres and a western frontage to Tivoli Road of approximately 27.43 metres. The site also has a frontage to the north to Time Lane. The site has the following significant characteristics:

- It is rectangular in shape and comprises a total site area of approximately 412sqm.
- The site is currently improved by 3 x two-storey attached shops which are built to the Toorak Road front boundary and built to the side boundaries for a length of approximately 14.5 metres.
- A central area of open space is sited to the rear/north of the three lots fronting Toorak Road and further north is a single storey garage orientated east-west, built to the northern boundary which abuts Time Lane.
- Vehicle access is via a single-width crossover on Tivoli Road to a roller door garage.
- A significant London Plane street tree is located on the Tivoli Road frontage.

The subject site is located within the Prahran/South Yarra Principal Activity Centre. It is strategically located on Toorak Road and in close proximity to Chapel Street, providing good access to shopping, services, tram routes and the South Yarra Railway Station approximately 500 metres west. The Como Centre is 100 metres to the west and the South Yarra library is approximately 80 metres south-east. The site is also surrounded by open space including Rockley Gardens located 45 metres to the east of the subject site.

The built form varies from single storey dwellings, three to four storey flat buildings, and multi-level high density developments. In addition to the five-storey building opposite and 8 storey building located to the east, major high-rise development exists approximately 100 metres to the west.

Land immediately adjoining the site is described below:

- North: across Time Lane, 339-345 Toorak Road (east) and 4-6 Tivoli Road (north) are consolidated as an 'L' shaped site. The site is occupied by an eight-storey mixed use development approved under planning permit 214/10 known as the 'Rockley Gardens' development. The building reaches a height of 26 metres in height (RL 29.3) and extends an additional 2.3 metres to the top of the roof services (RL31.8).

The building comprises of ground floor apartments and a retail shopfront to Toorak Road with apartments above (42 apartments). Three levels of basement car parking comprising 71 car spaces are accessed off Tivoli Road. This building fully abuts its southern boundary with Time Lane (opposite the subject site) as well as its western boundary (which faces the subject site). Habitable windows are located on the southern façade of the building constructed on Time Lane; however, all these windows are provided with fixed screening to 1.7 metres above finished floor level.
- South: across Toorak Road, at 316 Toorak Road, is a five-storey mixed use development with ground floor retail and a yoga studio with apartments above. The southern side of Toorak Road has a mixture of two-storey shop fronts and higher density mixed-use commercial/residential buildings.
- Directly east, at 335 and 337 Toorak Road, are two buildings which feature a decorative parapet and form a continuous double storey street wall with the existing development on the subject site. No. 337 Toorak Road is a double storey building used for retail. No. 335 Toorak Road (directly adjoining the subject site) is a three-storey building comprising of a ground floor shop and a dwelling above. The dwelling comprises of two rooftop terraces to the north and to the south.
- West: across Tivoli Road, at 317-325 Toorak Road, is a Coles petrol station. In addition to the petrol station, a single-storey Coles convenience store is sited on the north-west corner. This presents as a brick wall facing Tivoli Road for approximately 15m.

Previous Planning Application

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

- Planning Application No. 887/03 for 329-333 Toorak Road (the subject site) was refused by Council on 14 April 2005. The proposal involved extending the three existing shops, construction of car spaces to the rear of the property, construction of a car park level above the shops, and the construction of four levels of apartments above the car park level. Council refused this application on grounds broadly relating to an unsatisfactory car parking layout, compromised internal amenity of the apartments, the lack of architectural merit of the proposed building, non-compliance with the building height and flooding concerns.

The permit applicant appealed Council's decision at the Tribunal and the Tribunal upheld Council's decision to refuse the application.

The Title

The site is described as lots 1, 2, 3 and 4 on Certificate of Title Volume 10202 Folio 564 and no covenants affect the land. Lots 1, 2, and 3 share a party wall easement.

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, land uses are detailed in Schedule 1 to the ACZ. In this case, the proposed use of the land for a food and drink premises is a Section 1 (permit not required) use given it is located at ground floor. The use of the upper levels as offices is also a Section 1 (permit not required) use subject to the following conditions being met:

- Must not be located on ground floor on land designated for Main Street Uses.
- Any frontage at ground floor must not exceed 2 metres.
- Must not be located on land with a frontage to Percy Street in Sub-Precinct Greville Village-6 (GV-6).

The proposed office use is located at Level 1 and above, its frontage at ground level does not exceed 2 metres, and the subject site is within Precinct FH-10. The office use therefore does not require a planning permit.

Pursuant to Clause 37.08-5, a permit is required for construction of buildings and works. Schedule 1 to the zone includes requirements relating to various aspects of design and development including height, setbacks, materials, access, landscaping, public realm, etc.

Pursuant to Clause 37.08-6 a permit may be granted to construct buildings or works which are not in accordance with any discretionary design and development requirement specified in Schedule 1.

The relevant design and development requirements in this case are listed below.

- The site has a preferred maximum height of 21 metres (six storeys) as per the Forrest Hill Built Form Requirements.
- The site has a preferred maximum street wall height of 12 metres to Toorak Road, Tivoli Road and Time Lane.
- The site has preferred setbacks above the street wall height as follows:
 - Toorak Road: 4 metres
 - Tivoli Road: Differentiate materials and form above 12 metres, with a 4 metre setback above 21 metres
 - Time Lane: 3 metre setback above 12 metres and 6 metre setback above 21 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 are as follows:
 - 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).

- The following Building Adaptability Requirements apply:
 - 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.
- The Open Space and Landscaping Requirement is to:
 - 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 FH10, and is designated for Main 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 to construct or carry out works. In this case, the relevant flood plain manager is Melbourne Water.

Melbourne Water has objected to the grant of a permit (refer to refusal grounds in referral section below).

Melbourne Water is a determining referral authority meaning that with its objection, this application must be refused.

Particular Provisions

Clause 52.06 Car Parking

Clause 52.06 states that before a new use commences, the number of car parking spaces required under Clause 52.06-5 must be provided.

Pursuant to Clause 52.06-5, the following statutory parking rates are applicable to the development:

- Retail/food and drink premises: 3.5 spaces to each 100 square metres of leasable floor area.
- Office: 3 spaces to each 100 square metres of net floor area.

As the site is located within the Principal Public Transport Network area, there is no requirement for visitor car parking.

The proposed uses generate a total statutory requirement of 46 car parking spaces, broken down as 5 for the food and drink premises and 41 for the offices. The development provides for 21 parking spaces on site, with 1 allocated to the food and drinks premises and 20 allocated to the offices. The application therefore seeks a permit to reduce the car parking requirements associated with the food and drinks premises and office uses.

Clause 52.34 Bicycle Parking

Pursuant to Clause 52.34-1, a new use must not commence until the required bicycle facilities and associated signage has been provided on the land. Pursuant to Clause 52.34-3, the following requirements apply to each of the uses:

- 1 space per 300 square metres for staff of the office;

- 1 space per 1,000 square metres for customers of the office;
- 1 space per 300 square metres for staff of the food and drink premises;
- 1 space per 500 square metres for customers of the food and drink premises

The proposal triggers a need to provide 5 office staff spaces, 1 visitor office space and one food and drink premises staff space (7 spaces).

The proposed development includes 12 spaces for staff of the office/food and drink premises within the basement. The proposal seeks a reduction to the 1 bicycle space required for visitors / customers.

End of Trip facilities with three shower and change rooms are also provided. This is in excess of the requirements in the Planning Scheme.

Relevant Planning Policies

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 21.08 Infrastructure
Clause 22.05 Environmentally Sustainable Development
Clause 22.18 Stormwater Management (Water Sensitive Urban Design)

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 three signs on the site). The public notification of the application has been completed satisfactorily.

The site is located in North Ward and objections from six (6) different properties have been received which can be summarised as follows:

- Overdevelopment of the site;
- Architectural/massing response is inconsistent with the streetscape;
- Flooding concerns;
- Car parking provision and access arrangement;
- Traffic generation;
- Loss of daylight;
- Overshadowing of Toorak Road;
- Retail/Office uses are not necessary;
- Poor response to ESD;
- Impacts on property values;

- Construction impacts.

A Consultative Meeting was held on 30 August 2022. The meeting was attended by Councillors Hely, Koce and Griffin, representatives of the applicant, objectors and a Council planning officer. The meeting did not result in any changes to the plans.

Referrals

Urban Design

- In its form, scale and massing, this proposal responds well to the importance of its prominent location at the corner of Toorak Road and Tivoli Road.
- The overall scale of the building is comparable to the existing 8-storey development at 339-345 Toorak Road & 4-6 Tivoli Road.
- The 2-storey street wall to Toorak Road and continuing into Tivoli Road integrates well with the streetscape.
- Whilst there are some departures from aspects of the ACZ-Schedule 1 interface provisions, in my opinion these are acceptable in this particular case and in this context.
- The proposed cladding materials and colour schedule are satisfactory.
- Overall, this is an exceptionally good design response to this important corner site; and the proposed design represents a quality addition to the evolving Toorak Road streetscape. I support the application.

Transport & Parking

- A parking shortfall for an office is not uncommon in the area, and the high availability of public transport in the area supports the use of alternative travel modes to reach the site.
- Considering the statutory requirement of 5 spaces for food and drink premises portion of the development, the proposal would result in a shortfall of 4 spaces for the food and drink premises.
- Considering the location and the high availability of alternative travel modes, the proposed shortfalls are acceptable.
- The Transport Assessment estimates that of the 21 proposed car spaces, 50% of the available parking supply will fill within the morning peak hour, and 50% will vacate within the evening peak hour. This estimation is considered acceptable. The development is anticipated to generate 10 vehicle movements within each peak hour.
- This traffic generation is not anticipated to significantly impact the surrounding road network.
- A VL35 car lift is proposed for access to the basement level garages. The car lift can accommodate a B99 design vehicle, has an average service time of 77 seconds, and is anticipated to have a 98th percentile queue of 1.7 vehicles. The Transport Assessment calculates a 5.5% chance of the car lift being in use with a queue of one or more vehicles.
- Considering the above details of the VL35 car lift, and the assessment completed within the Traffic Assessment, the use of a car lift is considered acceptable.

- No space is provided within the accessway for a vehicle exiting the car lift to pass a vehicle waiting for the car lift. The Transport Assessment shows a vehicle waiting within Time Lane, where an indicator light is provided, while the car lift is in use and driving past the development to allow the vehicle within the car lift to exit the accessway. This is not acceptable, a vehicle waiting for the car lift cannot wait within the public road network. A passing/waiting area must be provided on site for this proposal to be considered acceptable.
- The plans do not indicate the proposed floor gradient of the basement garages. The minimum gradient of covered areas is to be 1:200 (0.5%) to allow for adequate drainage as stated in AS2890.1.
- No splay is proposed at the corner of Toorak Road and Tivoli Road. It is noted that the previous building did not have a corner splay, but as this is a new development a 1m by 1m corner splay is required for pedestrian safety. A 1.26m by 5.7m splay is proposed at the corner of Tivoli Road and Time Lane. This is supported.

Planner Response:

The lack of passing space provided within the accessway is a key concern and is discussed in further detail in the assessment section of this report.

The lack of corner splay on Toorak Road and Tivoli Road is considered acceptable in this instance and is discussed further in the assessment section of this report.

Environmentally Sustainable Design

- The proposed development could provide an acceptable outcome from an ESD/WSUD perspective provided that details in the report and on plans are consistent.
- These outstanding items could be addressed via way of permit conditions requiring the follow notations on the plans:
 - Utility metres are to be provided for all individual commercial tenants.
 - All major common area services are to be separately sub-metered.
 - The basement carpark mechanical ventilation system is to have Carbon Monoxide (CO) monitoring.
 - A notation confirming the landscape irrigation system is to be connected to the rainwater tank.

Planner Response:

Had a permit been recommended to issue, conditions could have been included in the recommendation seeking to resolve the outstanding items above.

Waste Management

A comprehensive Waste Management Plan accompanied this proposal.

Parks

- One minor change required to the Tree Management Plan to state '*All pruning of the street tree is to be undertaken by the Responsible Authority (Council)*'.
- One minor correction required to the Landscape Plan. TP02 has the wrong 'common name' for the *Olea europea*.

Planner Response:

Had a permit been recommended to issue, conditions could have been included in the recommendation seeking to resolve the outstanding items above.

Infrastructure

- The access ramp to the basement must be fully contained within the property and must not extend into the abutting right-of-way (Time lane). The existing level at the property line must be maintained.
- Conditions are required relating to a report for the legal point of discharge, requirement for a stormwater drainage system, and for existing footpath levels of Toorak Road and Tivoli Street to be maintained and not to be raised.

Planner Response:

Had a permit been recommended to issue, these requirements could have formed conditions in the recommendation.

Melbourne Water

Melbourne Water, pursuant to Section 56(1) of the *Planning and Environment Act 1987*, objects to the proposed development on the following grounds:

1. *The proposed development is inconsistent with the Planning Policy Framework relating to floodplain management.*
2. *The proposed development is inconsistent with the purpose and decision guidelines set out in the Land Subject to Inundation Overlay (LSIO) within the Stonnington Planning Scheme.*
3. *The proposed development is subject to inappropriate and unacceptable flood risk, where the safety of land users may be affected and potential for flood damage is excessive.*
4. *The proposed development does not comply with DELWP's Guidelines for Development in Flood-prone Areas, specifically the core criteria relating to site and access safety, flood damage and off-site impacts.*

As Melbourne Water have objected to the application and they are a determining authority, pursuant to Section 61(2) of the *Planning and Environment Act 1987*, the application must be refused.

Key Issues and Discussion

Strategic Justification

The purpose of the Activity Centre Zone is, amongst other things, to encourage a mixture of uses and is a focus for business, shopping, working, housing, leisure, transport and community facilities.

The site is located in the South Yarra Precinct, an area highlighted at both State and Local policy level as a place to concentrate retail, office-based employment, community facilities and services in central locations. Strategies call for commercial facilities to be aggregated and to provide net community benefit in relation to their viability, accessibility and efficient

use of infrastructure. Specific precinct objectives seek, amongst other things, to achieve a vibrant, higher density, true mixed-use precinct and to provide continuous, visible and active retail or commercial frontages.

The proposal seeks to provide a mixed-use development in a location that benefits from the services and infrastructure which presently exist in the Activity Centre. More specifically, the subject site is located within an area characterised by both commercial and residential uses, and which is easily accessible by public transport.

The food and drinks premises at the ground level will activate the street and serve the needs of the local community, while the office spaces on the upper levels will add to employment opportunities. The uses are an appropriate inclusion in this location, and will positively diversify the local land use mix, which is one of the key objectives for the Forrest Hill Precinct.

Essentially, the subject site is well placed to accommodate a mixed-use development which makes efficient use of the land by improving employment choices and services for the local community. This is consistent with the aspirations of the ACZ1, Clause 17 (Economic Development) and Clause 21.04 (Economic Development).

Overall, the subject site has strategic support for higher scale development of a commercial nature on a corner site. The proposed land uses are as-of-right within the ACZ and are considered to be compatible with nearby mixed-use developments in the vicinity. The introduction of an office building with a ground floor food and drink premises is deemed to be an appropriate outcome for the subject site that will assist in improving the viability and self-sufficiency of the activity centre.

Schedule 1 to the ACZ provides a number of Design and Development Requirements and Guidelines which give clear guidance on the preferred use and development outcomes sought for the site. An assessment of the relevant requirements is provided below.

Built Form

Building height

Pursuant to the ACZ1, the subject site has preferred maximum height of 21 metres (6 storeys). The building reaches a height of 27.2 metres (or RL30.8) to the roof parapet, plus an additional 0.72 metres to the roof services.

It is therefore approximately 6.2 metres higher than the preferred maximum (excluding the roof services which are not included in the calculation of building height). ACZ1 allows the height of a building to exceed the preferred maximum building heights where the building otherwise achieves an acceptable design outcome. 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.*

While the resulting overall building height will exceed the preferred maximum height specified by the ACZ1, the current proposal is deemed to be of a high-quality architectural standard and will sit comfortably within the Forrest Hill Precinct of the activity centre and the

environs of the site. The site is located within the Chapel Street Activity Centre and in a Precinct that is promoted for high-density development and substantial change, and as such, it is apparent that the immediate area is already undergoing significant land use and built form intensification.

Generally, the northern side of Toorak Road (in particular west of River Street) consists of taller building elements such as the Como development and the Forrest Hill Precinct. The existence of a high number of building approvals within Forest Hill above the preferred height limits imposed by ACZ1 demonstrate that within the Forrest Hill Precinct there are sites that have opportunities beyond that foreseen by the ACZ preferred height limits.

The proposed building height is comparable to other buildings in the existing physical context, in particular the existing eight-storey development at 339-345 Toorak Road & 4-6 Tivoli Road which is built to approximately 26 metres in height (RL 29.3) and extends an additional 2.3 metres to the top of the roof services (RL31.8).

It is considered that a seven-storey building would complement and achieve an acceptable 'fit' within the emerging, transformed built form of this precinct. The podium retains the fine grain rhythm of the existing shops to the east, and the larger built form is consistent with the height and massing of the emerging built form of this area. The height increase is not considered significant within the existing physical context. It is also noted that the substantive parts of the proposed building that are over the preferred maximum height is at Level 6, which has smaller building footprint, and whilst will have some visibility, this is not a significant part of the built form that will be the most prominent parts of the overall form. The highest section of the new building will be located away from the street frontages to minimise the extent to which the new building is perceived in the streetscape.

Council's Urban Designer has also supported the proposal. It is agreed by Council's Urban Designer that the proposed building is generally consistent with the scale of a number of existing and recently approved developments along Toorak Road and within the Principal Activity Centre.

In relation to the matter of significant community benefit, it has been established in VCAT case law that this is not a mandatory requirement that creates an impediment to the granting of a permit for a proposal that exceeds the preferred maximum height. In this case, it is considered that the proposal meets the relevant design and siting outcomes under the ACZ1 and will continue to meet built form objectives in relation to visual impact, overshadowing and increased upper-level setbacks. As noted above, the height increase in this proposal is not considered significant within the existing physical context and the proposed built form is considered acceptable when balancing all other relevant considerations within the ACZ1.

Furthermore, it is considered that there will be no unreasonable off-site amenity impacts to neighbouring properties as a consequence of the additional height sought. This is discussed further below.

Building Massing and Design

'Toorak Road interface'

The site has a preferred maximum street wall height of 12 metres to Toorak Road, with a 4-metre setback above.

The development proposes a two-storey street wall height of 9.35 metres (to the top of parapet to Level 2 / balustrade to Level 3) to Toorak Road and part of Tivoli Road. Above the street wall, the building is setback between 4-4.6 metres at Levels 2-6. The design response complies with the setback requirements within the ACZ1.

As expressed by Council's Urban Designer, the two-storey street wall to Toorak Road and continuing into Tivoli Road integrates well with the streetscape. More specifically, it responds to the existing Victorian shop fronts by replacing the existing two-storey shops with similar built form, reinterpreting their grain and rhythm in a contemporary way.

The upper-level walls are adequately setback to reduce the visual dominance of the building on the streetscape and to ensure that the lower levels create a strong base that relates to the surrounding buildings. When viewed on oblique angles along Toorak Road, the building will be successfully recessed so as not to dominate the streetscape.

The extensive use of glazing at the ground floor level ensures that the development presents an active frontage to both Toorak Road and Tivoli Road.

A canopy is proposed on the Toorak Road frontage and above the main office entry on Tivoli Road to provide pedestrian weather protection. This further enhances the public realm and improves pedestrian and streetscape amenity.

'Tivoli Road interface'

Under the Activity Centre Zone provisions, this site has a preferred maximum street wall height of 12 metres to Tivoli Road, with a requirement to differentiate materials and form above 12 metres, and a 4 metre setback above 21 metres.

The two-storey 9.35-metre-high street wall to Toorak Road carries to the south-west portion of the development as it presents to Tivoli Road. The two-storey base is created by recessing Level 2 by 2.6 metres, and then the upper levels 3-5 cantilever to the street boundary. The setback of Level 2 creates a 'negative break' from the upper commercial floors. Level 6 is then setback between 4.2-4.6 metres from the boundary (with terraces constructed on the boundary that encroach within this setback).

The north-west corner adopts an angled street wall to Tivoli Road and a five-storey street wall height of approximately 20.24 metres (to the top of the parapet to Level 4). It is considered that the proposed podium appropriately responds to the preferred 12 metre street wall height with differentiate materials and form above 12 metres up to 21 metres as set out in the ACZ1 provisions. The building's podium and upper levels are delineated by a change in architectural forms and incorporate variations in materiality and built form expression to provide visual interest.

The preferred upper-level setback to Tivoli Road is 4 metres above the 21-metre preferred street wall height. The top portion of Level 5 and Level 6 encroach within this setback. Level 5 is constructed to the boundary with the exception of the north-west corner which is setback 4.3 metres. Level 6 is setback between 4.2-4.6 metres (with terraces encroaching within this setback built to the boundary). Whilst the development does not strictly comply with the prescriptive requirements, overall, it represents a satisfactory outcome. The proposed building is of a high architectural quality and articulated with recessed upper levels. The design of the building has been broken down into two distinctive forms (podium and upper levels) and the visual bulk presented to this façade is diminished through architectural

variation, setbacks and landscape devices, including through the protection of the existing significant street tree to Tivoli Road. This breaks up the built form and provides more visual interest so that the building does not read as one large heavy mass within the street.

The buildings on the west side of Tivoli Road, opposite the subject site are built to the street boundary, whilst dwellings north of the right of way in the residential area have a front setback. The lesser setback to Tivoli emphasizes that this building forms part of the Toorak Road precinct, a precinct that is denser and has a more robust built form.

Clear glazing is provided to the office facades and combined with terraces oriented to Tivoli Road and Toorak Road at all upper levels, this facilitates passive surveillance of the public realm from upper levels to both Tivoli Road and Toorak Road.

'Time Lane Interface'

The preferred street wall height for the rear lane way (Time Lane) is 12m, with an upper-level setback of 3 metres above 12 metres and a 6 metre upper-level setback above 21 metres. The proposal adopts a street wall height of between 20.24 metres and 27.2 metres to Time Lane.

The variation from the ACZ1 provisions is considered appropriate having regard to the site context. Directly to the north is a 4.2 metre wide laneway (Time Lane) and an eight-storey mixed-use building constructed on Time Lane with a 25.95 metre high boundary wall. The southern façade of the adjoining building constructed on Time Lane consists of a series of habitable room windows, however each window is provided with screening in anticipation of a development to the south and to protect equitable development rights of the subject site. As such, the apartment building essentially "turns its back" to the subject site. Outlook from the living rooms of these apartments is also to the north and west, away from the subject site.

Due to orientation of the subject site being sited to the south of 4 - 6 Tivoli Road and the existing screening on the neighbouring building, the proposed building would not unreasonably overlook or overshadow habitable room windows or private open space of the neighbouring dwellings. The submitted shadow diagrams depict that the existing conditions to the laneway are shaded from 10am to 3pm and the proposed development does not overshadow any existing windows on the property opposite Time Lane. The proposed development also seeks to further protect the privacy of existing habitable room windows and balconies to the north through the placement of the two full length glazed windows at Level 1 and 3 to the west of the façade (i.e. not opposite any windows of the neighbouring building), and siting of all other windows 1.7 metres above floor level with aluminium batten screening.

The proposed treatment to Time Lane is also considered acceptable having regard to the laneway interface, as Time Lane is a service lane and does not have a footpath, therefore it is not appropriate to activate this northern aspect of the proposed development.

Entry to the car park positioned toward the rear off Time Lane has maximised the opportunity to activate the main frontages around the corner of Toorak Road and Tivoli Road. This design adequately responds to the precinct objective of the Forrest Precinct within which seeks to 'provide continuous, visible and active retail or commercial frontages and to 'create a continuous and well-defined street wall to complement a high level of street activity by requiring vehicle access from rear laneways'.

Car parking and bin storage being located within the basement levels are concealed from views from the public realm. Coupled with the scale and height of the building, the rooftop service platform being positioned toward the rear north-east corner of the building will not be readily visible from the streets and will minimise its visual impact to the streetscape.

'Eastern Interface'

The interface setback requirements in ACZ1 require a 4.5 metre building separation from side boundaries above the podium where there are adjacent lots with existing or proposed habitable room windows and balconies. To the east, the development interfaces with a three storey building built to all site boundaries comprising of a ground floor shop and a dwelling above. The dwelling comprises of two rooftop terraces to the north and to the south. The building comprises a solid boundary wall on the common boundary with the subject site to a height of approximately 10 metres. A single car garage at the rear is accessed off Time Lane.

The building is proposed to be built to the eastern boundary at all levels and this is considered appropriate in this context. The north side of Toorak Road within the activity centre is an inevitable candidate for higher building form. Therefore, the blank wall presenting to the east is likely to be an interim condition.

The interface requirements in the ACZ1 seek to provide appropriate separation between buildings to ensure, amongst other things, outlook, privacy, ventilation, daylight and solar access. These outcomes need to be tempered somewhat in consideration of the high-density context within which the site is located as well as other approvals allowing development on or close to title boundaries in Forrest Hill. Building to side and rear boundaries with high solid walls is not uncommon in this precinct, as is evidenced by the neighbouring site further east at 339-345 Toorak Road (Rockley Gardens development) which features a 26-metre-high blank boundary wall along its western boundary. This is to protect equitable development rights of the existing row of shops west in this section of Toorak Road.

The proposal does not prejudice the reasonable future development potential of the adjoining site to the east as no window openings are proposed on this boundary. It is envisaged that any future development on this site would essentially fully abut the proposal on the common boundary, thus maximising its potential floor area.

The abutting street (Toorak Road) and laneway (Time Lane) combined with the depth of the site at 335 Toorak Road ensure that if this site were to be redevelopment in the future with a residential development, the dwellings on the land would have adequate access to daylight and ventilation from the north and south. While the eastern and western boundaries would have no access to daylight, this is not considered an unreasonable outcome in this strategic context.

With regard to the rooftop terraces to the north and to the south, from 1pm to 3pm the proposal will overshadow these terraces at the Equinox. However, these terraces are already in shadow having regard to the existing on-site conditions (i.e. boundary wall construction of 335 Toorak Road and shadows cast by the Rockley Gardens development at 4-6 Tivoli Road.

Regarding overshadowing to the shop-top residences on the south side of Time Lane, the VCAT decision of the Rockley Gardens development found that the overshadowing was acceptable and noted the following:

82. Mr Govenlock and Mr Sheppard thought the proposed development would overshadow the dwellings on the south side of Time Lane for most of the period between 9.00am and 3.00pm on the equinox. They thought this to be acceptable given the location of the site within a Business 1 zone and within a principal activity centre. We concur and note that a building of 19 metres with the setbacks preferred by Council would generate a similar outcome. We think that lesser amenity that is likely to arise for residents at the rear of the shops would be offset by their opportunities to enjoy the ambience and vibrancy of South Yarra and Toorak

It should also be noted that the extent of overshadowing to the shop-top residence is consistent with that which would be experienced by a proposal which was to the preferred building height under the ACZ1.

Overall, the exterior massing and design of the building does not present any issues in terms of urban design. As agreed by Council's Urban Designer, the architectural response is of a high calibre. The overall composition and materiality of the design is well resolved, and this is an important part of the proposal's acceptability.

Overshadowing requirements and guidelines

The ACZ1 overshadowing requirements specify that buildings and works should not cast shadows over footpaths along south side of Toorak Road between 10.00am and 3.00pm at the 22 September Equinox. The shadow diagrams submitted indicate that the proposed development will not cast shadows over the footpath on the southern side of Toorak Road, between 10.00am and 3.00pm on 22 September. The overshadowing requirements stipulated in the ACZ1 therefore are met. The shadows are deemed to be acceptable and are as anticipated by the design outcomes sought by the ACZ1 controls.

Building adaptability requirements and guidelines

The development has been designed to exceed the minimum 4.0 metres floor to floor height at ground floor with a 4.48 metre floor to floor height proposed. At the first and second floor level the 3.8 metres floor to floor height has been provided in accordance with this requirement. The minimum floor to floor clearance at lower building levels is intended to provide flexibility and adaptable internal layouts for a mix of commercial uses and easy conversion between different uses, as the needs of the community and economy change. The proposed heights are considered to be adequately flexible and adaptable to provide for a variety of uses over time.

Open Space and Landscaping Requirement

The requirement seeks to provide generously sized, accessible, useable and well-designed communal open space areas in developments with more than 1,000 square metres of office. This development incorporates some form of terrace at each level in addition to a communal rooftop terrace (totaling 225sqm) which will add to the on-site amenity of the commercial building and meets the open space requirement.

Sustainable Design Assessment

The building has been designed with the intent of meeting the objectives of Council's ESD Policy at Clause 22.05 and Stormwater Management (WSUD) Policy at Clause 22.18. A BESS score of 58% is achieved (and exceeds the best practice being a minimum 50%). ESD commitments include targeting a recycling rate of 80% of construction and demolition waste, installing carbon monoxide (CO) sensors to the basement carpark, a rainwater harvesting system for toilet flushing and irrigation, installation of electric vehicle charges, a 7.56kW rooftop solar photovoltaic system, water efficient fixtures and appliances, high performance glazing, high daylight performance, environmentally preferable internal finishes and bicycle parking and end of trip facilities.

Council's ESD Officer has reviewed the proposal and advised that the proposed development could provide an acceptable outcome from an ESD perspective provided that that details in the Sustainable Management Plan report and plans are consistent.

Had a permit been recommended to issue, conditions could have been included in the recommendation seeking to resolve the outstanding items (additional plan notations required).

Car Parking and Traffic

Car Parking Provision

The proposed uses generate a total statutory requirement of 46 car parking spaces, broken down as 5 for the food and drink premises and 41 for the offices. The development provides for 21 parking spaces on site, with 1 allocated to the food and drinks premises and 20 allocated to the offices.

The application therefore seeks a permit to reduce the car parking requirements associated with the food and drinks premises and office uses.

As the site is located within a Major Activity Centre and enjoys easy access to a variety of public transport services, there is strong justification to reduce the on-site parking provision. The Chapel Street Activity Centre is well known for high traffic volumes and car parking challenges. The reduced car parking provision will also help to minimise the impact of the development on the functioning of the local street network, which has been raised as a concern by objectors.

The 1 space allocated to the food and drink premises is acceptable given the likelihood that it would only service people already in the area (rather than being a destination in its own right). Staff of the Food and Drink Premises and office workers can conveniently catch public transport to the site or utilise the on-site bicycle parking. If staff members wanted to drive to work (and they were not allocated an on-site space) there are private paid parking options in the area. The highly restricted availability of on street parking is unsuited to all day parking, and staff of the building will be aware of this. Given the need to shift to alternate transport modes and move people away from utilising a private car to access their place of employment when located in an activity centre, the reduction in parking can be supported in this instance and this is supported by Council's Transport Department.

Laneway access/lack of passing area within basement

On site vehicular parking is provided within 3 basement levels accessed via Time Lane, providing access to a car lift. The existing crossover on Tivoli Road will be reinstated to kerb and channel.

The use of the rear laneway for vehicle access to the development is supported in principle. It is considered that use of the existing roadway infrastructure, will minimise impacts on the footpath along Tivoli Road and this is the safest and most suitable design outcome for the site and the surrounds, as it directs vehicles to one key access point, which assists pedestrians in knowing where cars are coming and going. The use of the laneway for access adequately responds to the precinct objective of the Forrest Precinct within which seeks to *'create a continuous and well-defined street wall to complement a high level of street activity by requiring vehicle access from rear laneways'*. However, there is concern with the lack of passing area within the basement.

The application was accompanied by a Transport Impact Assessment prepared by Traffic Group which estimates that of the 21 proposed car spaces, 50% of the available parking supply will fill within the morning peak hour, and 50% will vacate within the evening peak hour. The development is anticipated to generate 10 vehicle movements within each peak hour.

The car lift is able to accommodate a B99 design vehicle, has an average service time of 77 seconds, and is anticipated to have a 98th percentile queue of 1.7 vehicles. The Transport Assessment calculates a 5.5% chance of the car lift being in use with a queue of one or more vehicles.

No space is provided within the accessway for a vehicle exiting the car lift to pass a vehicle waiting for the car lift. The Transport Assessment shows a vehicle waiting within Time Lane, where an indicator light is provided, while the car lift is in use and driving past the development to allow the vehicle within the car lift to exit the accessway. Council's Transport Department have advised that it is not acceptable for a vehicle waiting for the car lift to wait within the public road network.

The Transport Impact Assessment notes that given the minimal risk of a conflict between cars and the familiarity of employees using the car park, no passing/waiting bay is acceptable.

Considering the volume of vehicles that will access the car lift (21 cars), this is not considered sufficient justification to allow for vehicles to wait within the public road network to utilise the car lift. The possibility does exist that queuing of vehicles may occur and it is noted that future development may further increase the number of vehicle movements in the laneway. This is why a queuing area should be provided on-site so that any vehicles waiting for the car lift to access the site can do so on site rather than on public land (i.e. Time Lane or Tivoli Road).

In the event that a vehicle arrives at the car lift and the car lift is already in use, vehicles would be required to queue past the subject site in Time Lane in front of 335 and 337 Toorak Road, which also have their vehicle access directly off the laneway, and this is not an appropriate outcome.

Ultimately, the Forrest Hill Precinct expects a major increase in use, including an increase in pedestrian and vehicular movements. By not providing a queuing area on site, the development will compromise the safety and operation of the road network. As such, the lack of any queuing area on site is not supported.

It is noted that the applicant has provided additional swept path diagrams within the basement depicting that an on-site waiting area would result in reconfiguration of the car lift

and a further reduction in the number of car parking spaces provided on the site. Given the subject sites location in a Major Activity Centre, a reduction in parking provision at the site is not a significant concern.

Splay

Council's Transport Department have recommended the inclusion of a 1 x 1 metre corner splay for pedestrian safety at the intersection of Toorak and Tivoli Road. Whilst it is the preference of Council's Transport and Parking Department to require the splay, the provision of a splay is not a requirement in the Planning Scheme, and it is considered the lack of splay in this location is considered appropriate in this instance. The existing site does not include a splay in this location, and the design response maintains the existing street wall rhythm along Toorak Road. The inclusion of a corner splay would interrupt this street wall rhythm in this important junction. Council's Urban Designer supports the street wall articulation and overall massing response to this important corner site.

Additionally, the proposal allows for good passive surveillance and general pedestrian awareness. It will be artificially lit externally to improve safety and security in and around site extents. Coupled with the clear glazing of the shopfront at this corner and the footpath extent being retained at 2.7 metres to the kerb line, this will still be sufficient to provide all users with clear lines of sight to any hazards.

Bicycle Provision

The proposed development includes 12 spaces for staff of the office/food and drink premises within the basement. This exceeds the requirement for staff by 5 spaces. However the proposal seeks a reduction to the 1 bicycle space required for visitors / customers. Given the minor reduction required and the exceedance in staff spaces, this reduction is considered acceptable.

End of Trip facilities with three shower and change rooms are also provided. This is in excess of the requirements in the Planning Scheme.

This will encourage staff to use this sustainable mode of personal transport. The location of the bicycle storage within the basement levels is considered convenient as it can be accessed via a lift, and it is also safe and secure.

Objections

Retail/offices are not necessary in the area

Firstly, it is noted that these land uses are as-of-right (i.e. planning permit not required) within the Activity Centre Zone.

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 land uses are consistent with the Precinct Objectives of the ACZ1 which seeks to provide continuous, visible and active retail or commercial frontages.

Depreciation of property values

Depreciation of property values is not a consideration under a town planning assessment.

Construction Activity

Construction activities are outside the realm of town planning and will be managed during the building permit processes. Construction is an inevitable component of the urban transformation which Council intended for this area and is not a legitimate reason to prevent such development.

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. 1118/21 - 329-333 Toorak Road, South Yarra [8.4.1 - 46 pages]

Officer Recommendation

That Council AUTHORISE Officers to advise VCAT that had a Failure to Determine appeal not been lodged, a Refusal to Grant a Planning Permit No: 1118/21 would have been issued for the land located at 329-333 Toorak Road, South Yarra under the Stonnington Planning Scheme for the construction of a mixed use development in an Activity Centre Zone and Land Subject to Inundation Overlay and a reduction in the car parking and visitor bicycle parking requirements subject to the following grounds:

1. ***Melbourne Water has objected to the grant of a permit and pursuant to Section 61(2) of the Planning and Environment Act, Council must refuse this application.***
2. ***The proposed development is inconsistent with the Planning Policy Framework relating to floodplain management.***
3. ***The proposed development is inconsistent with the purpose and decision guidelines set out in the Land Subject to Inundation Overlay (LSIO) within the Stonnington Planning Scheme.***
4. ***The proposed development is subject to inappropriate and unacceptable flood risk, where the safety of land users may be affected and potential for flood damage is excessive.***
5. ***The proposed development does not comply with DELWP's Guidelines for Development in Flood-prone Areas, specifically the core criteria relating to site and access safety, flood damage and off-site impacts.***
6. ***The ease, functionality and safety with which vehicles access the car lift is inadequate for a basement accommodating 21 spaces given the accessway is unable to accommodate an on-site passing/waiting area in the event the car lift is in use. This will result in unacceptable traffic impacts along the laneway and the surrounding local road network.***

8.5 Community Grants Program Annual Acquittals

Manager Aged, Diversity & Community Planning: Liz Daley
Director Community & Wellbeing: Cath Harrod

Linkage to Council Plan

Direction 2: An inclusive and healthy community

- 2.1 Health and wellbeing
- 2.2 Diverse, inclusive and safe

Purpose of Report

To update Council on implementation of the 2021-2022 Community Grants Program and the COVID-19 Community Recovery Grants Program.

Officer Recommendation

That the Council:

- 1. *NOTE the acquittals of the 2021-2022 Community Grants Program and the return of unspent funds.***

Executive Summary

1. Acquittals in the 2021-2022 Community Grants Program have resulted in the return of unspent grants. Of \$609,495.70 cash funding distributed; \$36,874.96 has been returned.
2. Four (4) recipients have not complied with acquittal procedures; none of these applied to the 2022-2023 Community Grants program.
3. Acquittals and return of funds in the COVID-19 Community Recovery Grants have resulted in the return of unspent grants. Of \$225,305 distributed; \$66,824.25 has been returned.

Background

4. The 2021-2022 Community Grants Program opened for application on 14 June and closed 12 July 2021. These included annual Capacity Building Grants and three-year funded Partnership Grants. A total of 91 applications were funded; with a cash value of \$609,495.70.
5. Council (20 September 2021) resolution in the 2021-2022 Community Grants Program included the requirement for applicants unable to expend grant funding during the 2021/22 financial year to return unspent funds to council.
6. COVID-19 Community Recovery Grant Program opened on 22 February 2021 and closed 16 April 2021. These included Strategic Partnership Grants, aimed at supporting larger, sustainable strategic capacity building initiatives, and Community Adaptation and Resilience Grants, aimed to support small-scale projects and programs to mitigate impacts of the pandemic. A total of 14 applications were funded, with a cash value of \$225,305.

7. It was discussed at the 11 April 2022 Council Meeting that a report on Community Grants Acquittals would be brought to Council.

Key Issues and Discussion

8. All grant recipients are required to enter into a funding agreement that includes strict provisions on the use of funds and required to submit an acquittal demonstrating how funds have been used in accordance with the funding agreement.
9. In the 2021-2022 Community Grants Program, nine grant recipients returned unspent cash funds at a value of \$36,874.96 (Attachment 1).
10. Four 2021-2022 Community Grant recipients have not returned an acquittal report. Of these, one is cash funding and three are in-kind grants. Under Grant Guidelines future funding will not be considered for applicants who have not acquitted previous grants.
11. In the COVID-19 Recovery Grants Program, five grant recipients returned unspent cash funds totalling \$66,824.25 (Attachment 1).

Governance Compliance

Policy Implications

12. Community Grants Policy provides the strategic grants framework; programmatically grants comply with relevant Guidelines.

Financial and Resource Implications

13. Transparent grant management has resulted in the return of funds in grants programs.

Conflicts of Interest Disclosure

14. 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

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

Environmental Implications

16. There are no environmental implications relevant to this report.

Community Consultation

17. There was no requirement for community consultation.

Human Rights Consideration

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

Attachments

1. Attachment 1 - Acquittal Report - Return of Funds - August 2022 [8.5.1 - 1 page]

9 Correspondence

10 Tabling of Petitions and Joint Letters

11 Notices of Motion

12 Reports by Councillors

12.2 Record of Councillor Briefing Session Meeting held on 19 September 2022

Purpose of Report

The Governance Rules provide that a summary of the matters discussed at an informal meeting of Councillors is tabled at the next convenient Council meeting and recorded in the minutes of that Council meeting.

Officer Recommendation

That the Council RECEIVE the Record of the Councillor Briefing Session held on 19 September 2022.

Governance Compliance

Policy Implications

1. There are no policy implications associated with the report.

Financial and Resource Implications

2. There are no financial and resource implications associated with the report.

Conflicts of Interest Disclosure

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

Legal / Risk Implications

4. There are no legal / risk implications relevant to the report.

Community Consultation

5. There was no requirement for community consultation.

Human Rights Consideration

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

Attachments

1. Record - Councillor Briefing Session (19 September 2022) [12.2.1 - 3 pages]

13 Questions to Council Officers

14 Urgent Business

15 General Business

16 Confidential Business

16.1 Service Review

Director Planning & Place: Annaliese Battista

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) (a) Council business information, being information that would prejudice the Council's position in commercial negotiations if prematurely released.

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.