



<b>8.8</b>	<b>165-167 GLADSTONE STREET, SOUTH MELBOURNE</b>
<b>LOCATION/ADDRESS:</b>	<b>165-167 GLADSTONE STREET, SOUTH MELBOURNE</b>
<b>RESPONSIBLE MANAGER:</b>	<b>GEORGE BORG, MANAGER CITY DEVELOPMENT</b>
<b>AUTHOR:</b>	<b>SANDRA STEWART, SUBDIVISION OFFICER</b>
<b>TRIM FILE NO.:</b>	<b>P1053/2016</b>
<b>ATTACHMENTS:</b>	<b>NIL</b>
<b>WARD:</b>	Gateway
<b>TRIGGER FOR DETERMINATION BY COMMITTEE:</b>	Fishermans Bend Subdivision
<b>APPLICATION NO:</b>	1053/2016
<b>APPLICANT:</b>	Bosco Jonson Pty Ltd
<b>EXISTING USE:</b>	Building under construction
<b>ABUTTING USES:</b>	Automotive repairs / warehouse
<b>ZONING:</b>	Capital City – Schedule 1
<b>OVERLAYS:</b>	Development Contributions – Schedule 2 Parking – Schedule 1
<b>STATUTORY TIME REMAINING FOR DECISION AS AT DAY OF COUNCIL</b>	Expired

## **PROPOSAL**

71 lot subdivision of building under construction

### **I. EXECUTIVE SUMMARY**

- 1.1 It is proposed to subdivide the land into 71 lots and common property.
- 1.2 Council issued Planning Permit 1140/2014 on 24 April 2015 to demolish the existing buildings, construct an eight level building containing a retail tenancy, dwellings, and car and bicycle parking in the Capital City Zone, construct and carry out works including remove the existing vehicle crossing at the front of the site and make good the footpath etc. in the Capital City Zone, use the land for Accommodation in the CCZI, and waive the requirement for the provision of a loading bay for the retail tenancy.
- 1.3 Construction has commenced on site for an eight storey building in accordance with the approved permit and plans.
- 1.4 The proposed subdivision of the building would be in accordance with the endorsed plans allowed by the development permit as mentioned above.



- 1.5 The application is exempt from the notice requirements of Section 52(1)(a), (b) and (d) of the Planning and Environment Act 1987 pursuant to Clause 37.04-3 of the Port Phillip Planning Scheme.

**KEY ISSUES**

1. Ensuring compliance with the requirements of the permit for the development of the site I140/2014.
2. Ensuring that the allocation of car spaces and storage spaces are reasonable.
3. Ensuring access and servicing to each lot.
4. Ensuring a Public Open Space requirement of 8% is included on any approval.

**2. RELEVANT BACKGROUND**

The following relevant applications have previously been considered for the subject site:

Application No.	Proposal	Decision	Date of Decision
I140/2014	<i>Demolish the existing buildings, construct an eight level building containing a retail tenancy, dwelling, and car and bicycle parking in the Capital City Zone, construct and carry out works including remove the existing vehicle crossing at the front of the site and make good the footpath etc. in the Capital City Zone, use the land for Accommodation in the CCZ1, and waive the requirement for the provision of a loading bay for the retail tenancy.</i>	<i>Approval by Council</i>	<i>24 April 2015</i>

**3. PROPOSAL**

- 3.1 The application is to subdivide the building, currently under construction into 71 lots and common property. The building would provide one retail space, 45 dwellings, 25 car spaces and 46 stores.
- 3.2 Lot IR would contain the retail area and includes a refuse and store area. Lots I01 to I705 would contain a one, two or three bedroom dwelling and a store. Lots P1 to P25 would contain one car space each within the stacker. The structure, all access areas, all shared facilities, bike parking and the area outside the building would be included within common property number 1.

**4. SUBJECT SITE AND SURROUNDS**

- 4.1 The subject site is located on the south eastern side of Gladstone Street between Boundary Street and Montague Street. A bluestone laneway (Road) abuts the north eastern and south eastern boundaries of the site.



- 4.2 The site is under construction for an eight storey building as per the approved permit and endorsed plans.
- 4.3 The site is within the Montague Precinct of the Fishermans Bend Urban Renewal Area. The area is currently characterised by low rise, mainly commercial development, with some older residential development. However, this is one of many sites which are being redeveloped, have planning approvals for redevelopment or have current applications for development with Council or the State Government.
- 4.4 On each side of the site are single storey automotive repair/warehouses. To the north of the site, on the opposite side of Gladstone Street are single storey warehouse/offices. To the south of the site, facing Buckhurst Street are one and two storey office/warehouse buildings.

**5. PERMIT TRIGGERS**

The following zone and overlay controls apply to the site, with planning permission required as described.

<i>Zone or Overlay</i>	<i>Why is a permit required?</i>
Clause 37.04 Capital City Zone	A <b>Planning Permit is required to subdivide land pursuant to Clause 37.04-3.</b> A permit granted must be generally in accordance with the incorporated Fishermans Bend Strategic Framework Plan, July 2014 (amended April 2015).

**6. PLANNING SCHEME PROVISIONS**

**6.1 State Planning Policy Frameworks (SPPF)**

The following State Planning Policies are relevant to this application:

Clause 21.04 Land Use, including

- Clause 21.04-1 Housing and Accommodation
- Clause 21.04-2 Activity Centres
- Clause 21.04-3 Office and Mixed Activity Areas
- Clause 21.04-4 Industry
- Clause 21.04-5 Public Open Space and Foreshore
- Clause 21.04-7 Subdivision

**6.2 Local Planning Policy Framework (LPPF)**

The following local planning policies are relevant to this application:

Clause 22.05 Subdivision Policy

**6.3 Other relevant provisions**

- Clause 52.01 Public Open Space Contribution and Subdivision
- Clause 65 – Decision Guidelines



**7. REFERRALS**

**7.1 Internal referrals**

The application was referred to the following areas of Council for comment.

- Council Valuers will provide street numbering for the proposal.
- Council’s drainage engineer have no objections.

**7.2 External referrals**

Referral Authority	Response	Conditions
Melbourne Water	No objection subject to conditions.	Refer condition 3
South East Water	No objection subject to conditions.	Refer condition 4
Citipower	No objection	
Comdain Infrastructure / Multinet Gas	No objection	

**8. PUBLIC NOTIFICATION/OBJECTIONS**

8.1 The application is exempt from the Notice requirements of Section 52(1)(a), (b) and (d) of the Planning and Environment Act 1987 pursuant to Clause 37.04-3 of the Port Phillip Planning Scheme.

**9. OFFICER’S ASSESSMENT**

**9.1 Local Policy**

The site is within the Montague Urban Village, referenced in the Fishermans Bend Strategic Framework. The building has been approved and will provide accommodation and a retail space in proximity to the light rail, the proposed open space and the existing school. The subdivision of the building will allow the sale of the dwellings and retail space to the future residents and workers of this precinct.

**9.2 Assessment**

Development Permit

The plan of subdivision accords with the plans endorsed under Planning Permit 1140/2014 for the development of the site. Construction of the building has commenced. Condition 10 would require that the development is externally complete prior to issue of the Statement of Compliance.

Car Parking



The development approved includes one, two and three bedroom apartments, with a total of 25 car spaces for the 45 dwellings and retail space. The proposed plan of subdivision creates separate lots for each car parking space. Schedule 1 to the Parking Overlay at Clause 45.09 specifies a maximum number of spaces for each use. The overlay specified a maximum of 1 space for each dwelling and 1 space for each 100m<sup>2</sup> of retail space. A section 173 agreement is required to ensure that the spaces are only sold and used in conjunction with the development on the subject site. The agreement would also ensure that not more than one space would be sold to, or used by a lot without a further planning permit. Condition 3 would require the owners to enter into an agreement with the Responsible Authority pursuant to section 173 of the *Planning & Environment Act 1987*.

#### Environmental Audit

Condition 12 of the development permit (1140/2014) requires that the Responsible Authority must be provided with a Certificate of Environmental Audit or a Statement of Environmental Audit prior to the start of the development. A Statement of Environmental Audit has been provided.

Condition 13 of Planning Permit 1140/2014 requires that where a Statement of Environmental Audit has issued, that prior to issue of a Statement of Compliance, a letter prepared by an Environmental Auditor appointed under Section 53S of the *Environment Protection Act 1970* must be submitted to the Responsible Authority to verify that the directions and conditions contained within the statement have been satisfied. Condition 8 would require that the letter is provided prior to compliance.

Condition 13 of Planning Permit 1140/2014 also requires that where a Statement of Environmental Audit has issued for the land, and any condition of that statement requires any maintenance or monitoring of an on-going nature, the owner(s) must enter into an agreement with the Responsible Authority pursuant to Section 173 of the *Planning & Environment Act 1987*, which must be executed before the certification of the plan of subdivision. As there are on-going maintenance conditions required, condition 3 would require the inclusion of such a requirement within the Section 173 agreement referred to above.

#### Road Widening

Condition 15 of Planning Permit 1140/2014 requires that the lane on the northerly side of the site must be widened by 1.25m. The condition requires the construction of the additional part of the road and requires that the 1.25m is transferred as Road to Council. The plan of subdivision provided does not show an area of Road, therefore condition 1 would require that amended plans are provided showing an additional 1.25m of Road, limited in height to 5.7m above the site level and unlimited in depth.

Condition 9 would require that the Road must be constructed to the satisfaction of the Responsible Authority prior to the issue of the Statement of Compliance.

## **10. COVENANTS**

The applicant has completed a restrictive covenant declaration form declaring that there is no restrictive covenant on the titles for the subject site, being Certificates of Title Volume 6348 Folio 576 and Volume 1574 Folio 752.



**11. OFFICER DIRECT OR INDIRECT INTEREST**

- 11.1 No officers involved in the preparation of this report have any direct or indirect interest in the matter.

**12. OPTIONS**

- 12.1 Approve as recommended  
12.2 Approve with changed or additional conditions  
12.3 Refuse - on key issues

**13. CONCLUSION**

- 13.1 The proposed subdivision accords with the plans endorsed under Planning Permit I140/2014 for the development of the site and complies with the State and Local Planning Provisions contained within the Planning Scheme. It complies with the Fishermans Bend Strategic Framework Plan.
- 13.2 It is considered that the creation of lots for car spaces is reasonable subject to the imposition of the restrictions in a Section 173 Agreement to ensure they are tied to the approved development.
- 13.3 It is considered that the subdivision is worthy of support and it is recommended that a Planning Permit be issued subject to conditions

**14. RECOMMENDATION - Planning Permit**

- 14.1 That a Planning Permit be issued for a 71 lot subdivision of the site at 165-167 Gladstone Street, South Melbourne.
- 14.2 That the decision be issued as follows:

**1. Amended plans required**

Before the plan of subdivision can be certified, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When the plans are endorsed they will then form part of the permit. The plans must be substantially in accordance with the plans described as PS 738898E Version A but modified to show:

- (a) The creation of a 1.25m wide Road, to be vested in the City of Port Phillip, along the north eastern boundary. The Road is to be restricted in height to 5.7m above the site level and unlimited in depth.

**2. No Alterations**

The size, layout, level and location of the lots as shown on the endorsed plan of subdivision shall not be altered or modified without the consent of the Responsible Authority.



**3. Agreement under Section 173 of the Planning and Environment Act 1987. Re: Carparking and Environmental Audit requirements.**

Prior to the Certification of the subdivision, the owner shall enter into an agreement with the Responsible Authority pursuant to *Section 173 of the Planning and Environment Act 1987* under which it specifically covenants that:-

- (a) The car park lots (lots P1 to P25) must only be sold to the owner or purchaser of the retail or dwelling lots (lots IR and lots I01 to 705);
- (b) The car park lots (lots P1 to P25) must only be leased to the occupier of the retail or dwelling lots (lots IR and lots I01 to 705);
- (c) No more than one car park lot may be owned or leased in conjunction with any retail or dwelling lot unless a planning permit has issued to exceed the maximum car spaces set out in the Schedule I of the Parking Overlay;
- (d) The site must be maintained in accordance with the conditions of the Statement of Environmental Audit contained in the Audit Report prepared by Coffey, dated 28 April 2016. The Environmental Management Plan must continue to be implemented by the Owners Corporation in relation to maintaining the building elements and vapour mitigation system that provide a barrier between building users and residual contaminated soil/vapour; and
- (e) It shall pay the Responsible Authority's Solicitor/client costs in respect to the preparation and registration of the agreement.

The agreement shall otherwise be on terms satisfactory to the Responsible Authority

**3. Melbourne Water**

- (a) Pollution and sediment laden runoff shall not be discharged directly or indirectly into Melbourne Water's drains or waterways.
- (b) Prior to Certification, the Plan of Subdivision must be referred to Melbourne Water, in accordance with Section 8 of the Subdivision Act 1988

**4. South East Water**

- (a) The owner of the subject land must enter into an agreement with South East Water for the provision of potable water supply and fulfil all requirements to its satisfaction.
- (b) The owner of the subject land must enter into an agreement with South East Water for the provision of sewerage and fulfil all requirements to its satisfaction

**5. Telecommunications**

The owner of the land must enter into an agreement with:

- (a) A telecommunications network or service provider for the provision of telecommunication services to each lot shown on the endorsed plan in accordance with the provider's requirements and relevant legislation at the time; and



- (b) A suitably qualified person for the provision of fibre ready telecommunication facilities to each lot shown on the endorsed plan in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre

**6. Telecommunications**

Before the issue of a Statement of Compliance for any stage of the subdivision under the Subdivision Act 1988, the owner of the land must provide written confirmation from:

- a) A telecommunications network or service provider that all lots are connected to or are ready for connection to telecommunications services in accordance with the provider's requirements and relevant legislation at the time; and
- (b) A suitably qualified person that fibre ready telecommunication facilities have been provided in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.

**7. Public Open Space Requirement**

Prior to the issue of the Statement of Compliance, the applicant or owner must make a financial contribution to open space of 8% of the site value in accordance with the schedule to Clause 52.01 of the Port Phillip Planning Scheme. The payment must be made no less than 7 days prior to the issue of a Statement of Compliance.

**8. Environmental Audit**

Prior to the issue of the Statement of Compliance, a letter prepared by an Environmental Auditor appointed under Section 53S of the *Environment Protection Act 1970* must be submitted to the Responsible Authority to verify that the directions and conditions contained within the Statement of Environmental Audit have been satisfied.

**9. Construction of Road**

Prior to issue of the Statement of Compliance, the area of Road is to be fully constructed to Council's specifications to the satisfaction of the Responsible Authority.

**10. Completion of Works**

Prior to issue of the Statement of Compliance, construction of the proposed buildings on the subject site authorised by Permit No. 2013/002601 is to reach a stage of practical completion, with building works which define boundaries complete to the satisfaction of the Responsible Authority.

**11. Time for starting and completion**

This permit will expire if one of the following circumstances applies:





- (a) The subdivision is not certified within two (2) years of the date of this permit.
  - (b) The certified plan is not registered at Land Registry within five (5) years of the date of the Plan of Subdivision being Certified by Council.
- The Responsible Authority may extend the period referred to in (a) if a request is made in writing before the permit expires or within six (6) months afterwards

Notes:

- (a) The Council has made this decision having particular regard to Sections 58, 59, 60, and 62 of the Planning and Environment Act 1987.
- (b) The following South East Water agreement options are available:
  - i. Application to enter into a Development Agreement-Works – If South East Water reticulated sewer/water/recycled water (as applicable) is required to be extended to service lots within the development
  - ii. Application to enter into an agreement-Non Works – If South East Water reticulated sewer/water/recycled water (as applicable) is available to the development and the owner only requires Statement of Compliance to release the titles (i.e. subdivision prior to building)
  - iii. Plumbing Industrial, Commercial, Units & Private Water application – If South East Water reticulated sewer/water/recycled water (as applicable) is available to the development and the owner wishes to commence construction of the building/s (i.e. building prior to subdivision).
- (c) If further information is required in relation to Melbourne Water's permit conditions shown above, please contact Melbourne Water on 9679 7517, quoting Melbourne Water's reference **283528**.