



Confidential Matter

5.1 253-273 NORMANBY ROAD, SOUTH MELBOURNE

The information contained in this Council report is considered to be Confidential Information in accordance with Section 77(2)(a) and Section 89(2) of the Local Government Act 1989 (as amended); as it relates to:

89(2)(h). A matter which the Council or special committee considers would prejudice the Council or any person.



5.1 **253-273 NORMANBY ROAD, SOUTH MELBOURNE**
LOCATION/ADDRESS: 253-273 NORMANBY ROAD, SOUTH MELBOURNE
EXECUTIVE MEMBER: LILI ROSIC, GENERAL MANAGER, CITY STRATEGY AND SUSTAINABLE DEVELOPMENT
PREPARED BY: SANDRA STEWART, SUBDIVISION OFFICER

1. PURPOSE

- 1.1 To determine Council's position on the upcoming Victorian Civil and Administrative Tribunal (VCAT) hearing regarding condition 3(d) of Planning Permit 1146/2017 which was issued by Council, in light of the recently updated planning controls for the Fishermans Bend Urban Renewal Area.

2. EXECUTIVE SUMMARY

WARD:	Gateway
TRIGGER FOR DETERMINATION BY COMMITTEE:	Fishermans Bend Subdivision
APPLICATION NO:	1146/2017
APPLICANT:	SM253 Pty Ltd
EXISTING USE:	Warehouse, office and at grade parking
ABUTTING USES:	Warehouses and Commercial uses
ZONING:	Capital City Zone Schedule 1 Abuts Road Zone Category 1
OVERLAYS:	Design and Development Overlay Schedule 30 Development Contributions Plan Overlay Schedule 2 Parking Overlay Schedule 1 Special Building Overlay Schedule 2
STATUTORY TIME REMAINING FOR DECISION AS AT DAY OF COUNCIL	A rescheduled hearing has been listed for 1 November 2018

- 2.1 This report relates to an application for a staged subdivision of the buildings approved under Planning Permit PA170223 which allows a staged development including



demolition of the existing building, the construction of a multi-storey building, use of land for accommodation, and to create or alter access to a road in a Road Zone Category 1.

- 2.2 Council considered the planning permit for the subdivision of the site on 26 April 2018 and directed that the permit issue as recommended in the report.
- 2.3 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.
- 2.4 Condition 3 of the planning permit issued by Council requires the owner to enter into a Section 173 Agreement to control the sale and leasing of car parks within the site.
- 2.5 Condition 3(d) requires that “No more than one car park lot may be owned or leased in conjunction with any lot containing a dwelling unless a planning permit has issued to exceed the maximum car spaces set out in the Schedule 1 of the Parking Overlay”.
- 2.6 The applicant lodged an appeal to VCAT against the imposition of Condition 3(d).
- 2.7 A hearing was scheduled at VCAT on Friday 5 October, 2018. On the morning of the hearing, the Minister for Planning announced, through the media, that the planning controls for Fishermans Bend were to change during that day. Due to the uncertainty regarding the controls, Council’s legal representative requested and was granted an adjournment to the hearing. The hearing will now be heard on 1 November, 2018.
- 2.8 Council officers have considered the amended planning controls, and received further legal advice regarding the imposition of condition 3(d). As a result of the changes to scheme, it is considered that the condition should be altered to control the allocation of car spaces and to delete the reference to the Parking Overlay.
- 2.9 The condition as amended would provide an acceptable outcome to ensure that car parking is allocated on an equitable basis.
- 2.10 It is recommended that Council informs the Tribunal (VCAT) and all parties to the appeal that it supports condition 3(d) as amended below. This would be Council’s position at the upcoming hearing.



3 RECOMMENDATION

- 3.1 That Council adopt Recommendation “Part A” and “Part B” to advise VCAT that it supports the amended wording of Condition 3(d) and in the event that VCAT determines to amend the permit, that it should incorporate the amended condition 3(d)
- 3.2 Authorise the Manager City Development to instruct Council’s Statutory Planners and / or Solicitors on the VCAT application for review.

RECOMMENDATION “PART A”:

- 3.3 That the Responsible Authority advise VCAT and other parties to the appeal, that on the basis of the amended planning controls for Fishermans Bend, that Council changes its position and now supports amended wording for condition 3(d):

3 Agreement under Section 173 of the Planning and Environment Act 1987. (Carparking)

Prior to the issue of the statement of compliance for any stage of the subdivision, the applicant must enter into an agreement under Section 173 of the Planning and Environment Act 1987 with the Responsible Authority. The agreement must be in a form to the satisfaction of the Responsible Authority, and the applicant must be responsible for the expense of the preparation and registration of the agreement, including the Responsible Authority’s reasonable costs and expense (including legal expenses) incidental to the preparation, registration and enforcement of the agreement. The agreement must contain covenants to be registered on the Title of the property so as to run with the land, and must provide for the following:-

- (a) The car park lots (appended with the letter C) must only be sold to the owner or purchaser of a lot containing a hotel room, retail space or a dwelling;
- (b) The store lots (appended with the letter S) must only be sold to the owner or purchaser of a lot containing a dwelling;
- (c) The car park lots must only be leased to the occupier of a lot containing a hotel room, retail space or a dwelling;
- (d) **No more than two car park lots may be owned or leased in conjunction with any lot containing a three or more bedroom dwelling and not more than one car park lot may be owned or leased in conjunction with any lot containing a one or two bedroom dwelling. The number of car park lots allocated to dwellings must not exceed the total of 0.83 car spaces per dwelling specified in condition 15 of Planning Permit PA170223;**
- (e) No more than 1 car space per 100m² of retail/commercial floor area (including the residential hotel) may be owned or leased in conjunction with such a lot; and
- (f) It shall pay the Responsible Authority’s Solicitor/client costs in respect to the preparation and registration of the agreement.



The agreement will be registered on Title in accordance with Section 181 of the Planning and Environment Act 1987. A dealing number must be provided to the Responsible Authority

RECOMMENDATION “PART B”:

- 3.4 Authorise the Manager City Development to instruct Council’s Statutory Planners and/ or Solicitors on the VCAT application for review

RECOMMENDATION “PART C”:

- 3.5 Council makes public this resolution following the determination of the Victorian Civil and Administrative Tribunal matters for P1248/2018 and P1249/2018.

4 RELEVANT BACKGROUND

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

Application No.	Proposal	Decision	Date of Decision
<i>PA170223</i>	<i>Staged development including demolition of the existing building, the construction of a multi-storey building, use of land for accommodation, and to create or later access to a road in a Road Zone Category 1</i>	<i>Approved</i>	<i>5 December 2017</i>
<i>1135/2017</i>	<i>Two lot subdivision (stage 1 of a staged subdivision) of the site</i>	<i>Approved</i>	<i>14 February 2018</i>

On 26 April 2018, Council considered and approved Planning Permit 1146/2017 for the staged subdivision of the site.

5 PROPOSAL

- 5.1 The application proposed to subdivide the proposed building into 2084 lots and 8 different common properties. The proposed lots consist of:

- 9 retail lots;
- 755 car space lots;
- 416 store lots;
- 10 townhouse lots;
- 820 apartment lots; and
- 76 lots containing between 1 and 3 hotel rooms in each lot.



5.2 It was proposed that the subdivision would be completed in 5 stages, in addition to the stage already approved under Planning Permit 1135/2017.

6 SUBJECT SITE AND SURROUNDS

Description of Site and Surrounds	
Site Area	7,661m ²
Existing building & site conditions	<p>The subject site is located on the south-east corner of Normanby Road and Boundary Street, in South Melbourne. The site is flat and slightly irregular in shape, with a frontage to Normanby Road of 118m, a rear abuttal to Woodgate Street of 110.5m, and a side abuttal to Boundary Street of 68.47m, yielding an overall site area of approximately 7,661m².</p> <p>The subject site is currently developed with a four storey office and warehouse building and associated at grade car parking. Two existing crossovers are located on the Normanby Road frontage of the site, and the Woodgate Street frontage also contains one crossover.</p>
Surrounds/neighbourhood character	<p>The subject site is located within the Montague Precinct of the Fishermans Bend Urban Renewal Area, as identified within the Fishermans Bend Vision. The surrounding area is primarily occupied by industrial and commercial uses, generally of one and two storeys in height, typically located on large allotments with some smaller subdivisions located in the southern area of the precinct.</p> <p>The land surrounding the subject site can be described as follows:</p> <ul style="list-style-type: none"> • To the immediate east of the subject site is 245-251 Normanby Road, currently developed with two double storey commercial buildings. Planning Permit No. PA1500028 was issued by the Minister in accordance with a VCAT order on 25 January 2018. The permit allows demolition of the existing building, the construction of a multi-storey mixed use building, use of land as dwellings, and to create or alter access to a road I Road Zone Category 1. Further west of this site is a row of generally double storey commercial buildings, and a five storey self-storage facility at the intersection with Montague Street. • To the west of the subject site is Boundary Street, and on the opposite side of Boundary Street are a number of double storey commercial buildings. To the south-west, across Boundary Street, is Fennel Reserve, located to the south of Evans Street. This reserve is a public open space. • To the north of the subject site (across Normanby Road) is a row of one and two-storey commercial buildings. Five planning permit applications for towers ranging from 38 to 40 storeys in height have been lodged for sites on the northern side of Normanby Road. These applications have been called in by the Minister, and are pending further consideration.



	<ul style="list-style-type: none">• To the south of the subject site is Woodgate Street, and rail infrastructure associated with the light rail route 109 and the Southbank Tram Depot
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7 PLANNING SCHEME PROVISIONS

7.1 State Planning Policy Frameworks (SPPF)

The following State Planning Policies are relevant to the application:

- Clause 21.04 Land Use, including
- Clause 21.04-7 Subdivision
- Clause 21.06 Neighbourhoods, including
- Clause 21.06-8 Fishermans Bend Urban Renewal Area

7.2 Local Planning Policy Framework (LPPF)

The following local planning policies are relevant to this application:

- Clause 22.05 Subdivision Policy

7.3 Other relevant provisions

- Clause 45.09 Parking Overlay (Schedule 1)
- Clause 65 Decision Guidelines

7.4 Relevant Planning Scheme Amendment/s

GC81 was introduced into the Port Phillip Planning Scheme on Friday 5 October 2018. The amendment updated zone and overlay controls for the Fishermans Bend Urban Renewal Area to implement the revised Fishermans Bend Framework. In particular, amendments to Schedule 1 of the Parking Overlay at Clause 45.09 affect the way that Council officers have interpreted the controls.

8 REFERRALS

No referrals were required in regard to the changes to the condition.

9 PUBLIC NOTIFICATION/OBJECTIONS

- 9.1 It is noted that an application to subdivide in the Capital City Zone is exempt from the notice requirements of Section 52(1)(a), (b) and (d), the decision requirements of Section 64(1), (2) and (3) and review rights of Section 82(1) of the Act.
- 9.2 An application affected by the Special Building Overlay is exempt from the notice requirements of Section 52(1)(a), (b) and (d), the decision requirements of Section 64(1), (2) and (3) and review rights of Section 82(1) of the Act.



- 9.3 No exemptions to the notice provisions are provided within Clause 52.29 (Land Adjacent to a Road Zone, Category 1). It is considered that no material detriment would occur and the proposal does not require advertising considering that the proposal is for the subdivision of an approved development and won't make any physical changes to the site.

10 OFFICER'S ASSESSMENT

10.1 Car Parking Requirements

The proposed plan of subdivision creates separate lots for each car parking space. Condition 3 of the permit was included to ensure that the car spaces were retained to be used and owned in conjunction with the development on the site; and to ensure that the allocation of car spaces was in accordance with the planning scheme.

Schedule 1 to the Parking Overlay at Clause 45.09 specifies a maximum rate of car parking spaces for each use. That schedule was updated on 5 October, 2018. The previous schedule stated that the maximum rate of car parking spaces was 1 to each dwelling. Council officers interpretation was that a planning permit was required if any dwelling was to be provided with more than one car parking space. Condition 3(d) restricted the ownership or leasing of car parking spaces to no more than one car parking space for each dwelling, unless a planning permit issued in accordance with the Parking Overlay which allowed more than one space per dwelling. The applicant appealed Council's decision to impose condition 3(d) and made it clear that they disagreed with Council's interpretation of the parking overlay.

The updated Schedule 1 to the Parking Overlay approved by GC81 specifies that the maximum rate of car spaces is 0.5 to each one or two bedroom dwelling, and 1 to each three bedroom dwelling. It is clear from the updated schedule that the rate refers to the car parking spaces allocated to the building as a whole. It would be nonsensical to provide 0.5 car spaces to a dwelling. Council's lawyers concur that the updated schedule makes it clear that the proposed condition 3(d) needs to be updated.

As proposed, the plan of subdivision would allow car spaces to be sold or leased in accordance with market forces. Condition 3 requires the owners to enter a Section 173 Agreement to ensure that car spaces are only sold or leased to owners and/or occupiers of the development. To ensure that the car spaces are allocated equitably within the development, it is recommended that a revised condition 3(d) be included in the permit. The revised condition 3(d) would allow a maximum of two car spaces to be allocated to each three or more bedroom dwelling and a maximum of one car space to be allocated to each one or two bedroom dwelling. The car spaces must only be allocated from the rate as approved in Planning Permit 170223, being 0.83 spaces per dwelling.

11 COVENANTS

- 11.1 The applicant has completed a restrictive covenant declaration form declaring that there is no restrictive covenant on the title for the subject site being Volume 11415 Folio 350,



12 OFFICER DIRECT OR INDIRECT INTEREST

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

13 OPTIONS

- 13.1 Approve as recommended
- 13.2 Approve with changed or additional conditions
- 13.3 Refuse

14 CONCLUSION

- 14.1 The proposed amended condition 3(d) would be legally enforceable as its interpretation would be consistent with the updated Schedule 1 to the Parking Overlay and Clause 45.09 of the Port Phillip Planning Scheme.
- 14.2 The proposed amended condition 3(d) would provide an equitable outcome in regard to the allocation of car spaces.
- 14.3 It is recommended that Council informs the Tribunal (VCAT) and all parties to the appeal that it supports the amended wording to condition 3(d), as per Recommendation "Part A".

TRIM FILE NO: PF17/326404

ATTACHMENTS

- 1. Locality plan**
- 2. Plan of Subdivision**
- 3. Original Council Report**