



**7.3** **107A CANTERBURY ROAD MIDDLE PARK**  
**LOCATION/ADDRESS:** **107A CANTERBURY ROAD, MIDDLE PARK**  
**EXECUTIVE MEMBER:** **LILI ROSIC, GENERAL MANAGER, CITY STRATEGY AND SUSTAINABLE DEVELOPMENT**  
**PREPARED BY:** **PHILLIP BEARD, PRINCIPAL PLANNER**

## 1. PURPOSE

- 1.1 To determine an application to amend a planning permit for the Middle Park tram stop café building to alter (reduce) the proposed front awning.

## 2. EXECUTIVE SUMMARY

<b>WARD:</b>	Lake
<b>TRIGGER FOR DETERMINATION BY COMMITTEE:</b>	More than 15 objections
<b>APPLICATION NO:</b>	984/2018/A
<b>APPLICANT:</b>	OLA Studio
<b>EXISTING USE:</b>	Partly completed café/kiosk
<b>ABUTTING USES:</b>	Albert Park Reserve (including bowls club)
<b>ZONING:</b>	Public Use zone (PUZ 4)
<b>OVERLAYS:</b>	Nil
<b>STATUTORY TIME REMAINING FOR DECISION AS AT DAY OF COUNCIL</b>	Expired

- 2.1 This report does not assess the entire proposal for the construction of the café replacing that destroyed by fire. Planning permit P0984/2018 (issued 25 January 2019) allows the construction of a replacement café/kiosk building replacing (as closely as could reasonably be achieved) the previous building that was destroyed by fire. This report only assesses one amendment sought to the endorsed plans pertaining to that permit, being the extent that the awning would project from of the replacement building towards the light rail tracks. It is currently approved to project approximately 4.2m forward much like the original building. It is sought to amend the permit to reduce this to 2m.
- 2.2 No other changes are proposed to the plans or conditions of the permit.
- 2.3 The plans that are the subject of this report have been advertised and 34 objections have been received along with three letters of support. No consultation meeting was called as there was no prospect that it could achieve a compromise given the key objector concerns that what is proposed would not replicate the previous building



destroyed by fire and reduced weather protection and the applicant's inability to extend the canopy due to regulatory requirements.

- 2.4 The site is not covered by a Heritage Overlay.
- 2.5 The report outlines why the proposal is considered supportable.

### 3. RECOMMENDATION

- 3.1 That the Responsible Authority, having caused the application to be advertised and having received and noted the objections, issue a Notice of Decision to Amend a Permit.
- 3.2 That a Notice of Decision to Amend Permit be issued for construction a single storey building at Light Rail/Tram Stop 130 (replacing the previous Middle Park station building) with reduced awning projection and use of the building for the purposes of a cafe/restaurant and reduction in car parking requirements
- 3.3 That all existing conditions from permit 984/2018 be transposed onto permit 984/2018/A
- 3.4 Amend the existing plans to reduce the distance that the approved awning projects towards the tracks to 2m.

### 4. RELEVANT BACKGROUND

Permit 984/2018 was issued in early 2018 and allowed construction of a new café/restaurant which sought as close as practicable to replicate the previous café building which was destroyed by fire. All that remained of the original building were the two steel supports for the original front awning.

The application was advertised and no objections were received. It was supported mainly due to its very low level of impact and the fact that it achieved a very close visual likeness to the original building notwithstanding some modifications accord with modern day standards. The two steel support posts were to be retained and the front awning was approved as having the same dimensions as those of the original building.

Yarra Trams advise that shortly prior to commencement of construction, their engineers indicated that their Energy Safe Victoria (ESV) regulations would prevent the awning from coming as close to the tram overhead power as approved. Yarra Trams has commenced construction of the balance of the building whilst the canopy issue is being resolved. The remainder of the building would be as currently approved. Yarra Trams advise have now advised that their building contractor requires a Certificate of Compliance from ESV issue at the end of works, and that would be unable to obtain an dispensation from ESV to allow the issue of such a Certificate.

ESV has advised that: *“ESV will not grant dispensation to the regulations that has the potential to provide an unsafe outcome to persons and the general public. The purpose of the regulations is to provide a level of safety and comfort to stakeholders, public and the community as a minimum”.*



Yarra Trams has also advised that the steel supports were in poor condition and could not be retained and have since been removed (no planning permit required).

**5. PROPOSED AMENDMENTS**

**Proposed amendments to plans**

Amend the existing plans so as to reduce the distance that the currently approved awning projects forwards towards the tracks from approximately 4.2m to 2m.

**6. SUBJECT SITE AND SURROUNDS**

This section of the light rail reserve currently comprises two raised passenger platforms (inbound and outbound). There is one pathway behind the building site and one immediately to its south-east. Immediately to the north-east (within Albert Park reserve) is a fenced tennis court with small shade pavilion. Further to the site's north-west is a vehicle/pedestrian tunnel under the light rail tracks accessing a paved car park with approximately 33 car spaces. This car park appears to be generally used by the Middle Park Bowls Club.

This section of the light rail reserve is raised above nearby ground level by approximately 1.3m to 1.4m, with a combination of bluestone and red brick retaining walls being present that either define pathway or rail platform edges.

Directly opposite the site, on the other side of Canterbury Road, is the Middle Park hotel and a group of single and double storey buildings mostly used for commercial purposes. Also opposite is the north-east end of Armstrong Street which also comprises a collection of one and two storey commercial buildings.

There is one other building (used for commercial purposes) on the same side of Canterbury Road as the subject building and it is approximately 50m from the building site, it is single storey and it directly abuts Canterbury Road. It is immediately on the other side of the vehicle access tunnel.

**7. PLANNING SCHEME PROVISIONS**

**7.1 Permit Triggers**

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

Zone or Overlay	Why is a permit required?
<p><b>Clause 36.01 Public Use Zone 4</b></p>	<p>A planning permit is not required for the use 'tramway' or 'transport' and must be by PTV or on its behalf. For both these reasons, a private café/restaurant use falls into section 2 and a permit was required. No change to use is proposed.</p> <p>Permission is required under Section 72 of the Act to amend a permit or endorsed plans under a permit.</p> <p>A permit was also originally required for the buildings and works under the provisions of Clause 36.01-2 being those required for any use in section 2.</p>



**8. EXTERNAL REFERRALS**

None were required.

**9. INTERNAL REFERRALS**

None were required. Note that the site is not included within a Heritage Overlay and internal heritage comments were not therefore sought and no heritage matters can technically be assessed.

**10. PUBLIC NOTIFICATION AND OBJECTIONS**

The proposal was advertised by way of the applicant sending notices to adjacent owners and occupiers, including Parks Victoria (two notices sent) and by requiring three signs to be placed on the land and at nearby entrances to the station/stop. The signs were erected for a minimum 14 day period, in accordance with s.52 of the *Planning and Environment Act 1987*.

There have been 31 objections and three letters of support received with the objections summarised as follows:

- Poor visual outcome diminishing the current proposal, reducing the current approval's authenticity and diluting the integrity of the previous process and its outcome,
- Reduced weather protection,
- Potential decrease in user safety.

These are assessed in the following section of this report.

It is considered that the objections do not raise any matters of significant social effect under Section 60 (1B) of the Planning and Environment Act 1987.

**11. OFFICER ASSESSMENT**

**11.1 Key issues**

Assessment of this application is unusual for one key reason being the fact that there is no discretion to vary the regulation affecting the awning's forward projection.

The Council must decide the application purely on planning grounds. However, there would be little merit in (for example) rejecting the proposal – thus insisting that the currently approved awning size remains unchanged – if the approved awning cannot be constructed.

The relevant regulation is the Electrical Safety (Installation) Regulations, 2009. This regulation stipulates minimum distances between any structure and aerial power lines. As relevant to this proposal, the regulation stipulates a minimum distance of 2.7m between the closest part of the building (the awning's outer edge) and the light rail overhead power lines. Due to the 'sag' or 'sway' of the overhead lines, the minimum distance between the awning and the overhead lines is 3m.

The amended plans depict the amended building to be the same, in all practical terms, as that approved aside from the reduced awning size.

**11.2 Would the amendments result in any conflict with Planning Scheme or policy provisions?**



Planning Policies:

The subject site is within a light rail reserve and not within a public park and recreation reserve, a commercial or a residential zone. There are no planning policies directly applicable to this type of case.

Neither is the site within a Heritage Overlay. Accordingly, a contemporary café replacement could have been sought, but it was by choice that this did not happen and a replica style was chosen.

Noting that the site is not in a Heritage Overlay, the revised awning size would not offend any relevant policy objectives. Apart from the canopy variation, the overall height, width and form of the building would remain unchanged and as a result, it is considered that it would remain a satisfactory contextual response to its wider setting. The reduced awning dimension would not result in a building that would become out of keeping with its immediate context or setting.

**11.3 Would the amended proposal diminish the heritage character of the building?**

Despite the age of the previous building, it was not in a Heritage Overlay. The new and almost complete building as a structure has no built form heritage significance.

It is agreed that the reduced awning size represents a poorer replica compared to the current approval and it would reference the original building to a lesser extent. However, in a context where there is no Heritage Overlay it cannot be concluded that the heritage character of the building would be diminished.

It is agreed that the permitted awning is preferable but the reduced awning is still acceptable.

**11.4 Would the revised awning size lead to reduced weather protection and/or decreased levels of patron safety?**

The extent of weather protection would clearly be reduced as compared to the current approval. However, this is not a planning matter. There is no planning requirement for any awning on this building. It was added to better replica the fire destroyed building.

**11.5 Other matters**

The proposed amendments do not give rise to any other planning matters (most particularly car parking and potential nearby amenity impacts) as the size and intensity of the permitted use is not proposed to change.

**12 COVENANTS**

12.1 There is no restrictive covenant on the land preventing assessing the proposed amendments.

**13. OFFICER DIRECT OR INDIRECT INTEREST**

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

**14. OPTIONS**

14.1 Approve as recommended



14.2 Approve with changed or additional conditions

14.3 Refuse - on key issues

## 15. CONCLUSION

The change in awning size is regrettable and it is understood that Yarra Trams would have been content to build the replacement café as currently approved. However, contemporary regulations must be complied with and in this instance, one such regulation would not permit the currently approved awning to be constructed.

There are no relevant planning grounds or controls which would lead to a refusal of the proposed amendment.

**TRIM FILE NO:**

**P0984/2018**

**ATTACHMENTS**

1. objector map
2. 984/2018 - ADV - advertised plans