



7.4 **312 BEACONSFIELD PARADE, MIDDLE PARK**

LOCATION/ADDRESS: **312 BEACONSFIELD PARADE, MIDDLE PARK**

EXECUTIVE MEMBER: **LILI ROSIC, GENERAL MANAGER, CITY STRATEGY AND SUSTAINABLE DEVELOPMENT**

PREPARED BY: **MATT SPENCER, PRINCIPAL PLANNER**

1. PURPOSE

- 1.1 To determine an application to amend a Planning Permit relating to the layout and design of a 17 dwelling, five storey building.

2. EXECUTIVE SUMMARY

WARD:

Lake

**TRIGGER FOR DETERMINATION
BY COMMITTEE:**

More than 15 objections

APPLICATION NO:

439/2014/B

APPLICANT:

The Edge Development Group P/L

EXISTING USE:

Residential

ABUTTING USES:

Residential

ZONING:

General Residential Zone – Schedule 2

OVERLAYS:

Design development Overlay – Schedule 5,
Area DDO5-2

**STATUTORY TIME REMAINING FOR
DECISION AS AT DAY OF COUNCIL**

Expired

- 2.1 This report relates to a Section 72 application to amend an existing planning permit and endorsed plans relating to the site.
- 2.2 The existing permit allows for construction of a five storey building with 17 dwellings. Construction of the building is currently underway and is close to completion.
- 2.3 The amendment seeks changes to the plans including reduction of the ground floor front setback, internal reconfiguration, use of the roof as a deck for the sole use by the uppermost dwelling and changes to the rooftop plant.
- 2.4 The application has received 23 objections citing concerns regarding the height of the building, potential amenity impacts from the proposed roof deck and the retrospective nature of the proposed amendments.



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- 2.5 It is considered that the proposed amendments raise no planning or amenity concerns.
- 2.6 It is recommended that Council issue a Notice of Decision to Amend the Permit, subject to conditions.

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 for the construction of a five storey building above two levels of basement car parking for 37 cars and dispensation from car parking requirements at 312 Beaconsfield Parade, Middle Park with the following amendments:

3.2 New (re-imposed) condition

1. Amended plans required

Before the development starts, two complete sets of amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be generally in accordance with the plans submitted with the application but modified to show:

- e) Provision of 1.7m high screening and/or fixed obscure glass a minimum of 1.7m above the finished floor level to each north facing master bedroom window at levels one to three inclusive in accordance with Standard B22 of Clause 55 of the Port Phillip Planning Scheme

3.3 Amended Plans

- *Basement 1 Plan (Rev M)* – reconfiguration of storage
- *Ground Floor (Rev N)* – 1m reduction in the ground floor setback from Beaconsfield Parade (from 5.97m to 4.97m)
- *Level 04 (Rev M)* – reconfiguration of Unit 17 at level 4 including reconfiguration of windows facing Ashworth Street (refer *North Elevation – Rev O*) and the west (side) boundary (refer *West Elevation Rev O*)
- *Roof Plan (Rev L)* - introduction of a roof deck associated with apartment 17 and deletion of solar panels. Solar panels would be introduced on the roof of the lift overrun
- *Roof Plan (Rev L)* – reconfiguration and enlargement of rooftop services including 1.7m reduction in the west (side) boundary setback (from 4.3m to 2.6m). These changes are also shown at each elevation.

4. RELEVANT BACKGROUND

The original permit application (P0439/2014) received 38 objections and was considered by the Statutory Planning Committee at its meeting dated 10 December 2014. Council

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approved a Notice of Decision to Grant a Permit for construction of a five storey building comprising dwellings above two levels of basement car parking for 39 cars and a reduction from car parking requirements the site. This decision was not the subject of a VCAT appeal and the permit was issued on 3 February 2015.

An amended permit (P0439/2014/A) was approved under delegation on 12 February 2018. The key changes approved by this permit were the reduction in the number of approved dwellings from 34 to 17 and the reduction in car parking spaces from 39 to 37. It is noted that two objections to this application were received.

The current amendment seeks to ‘further refine the development’. It is understood that the current application also seeks to rectify a mistake made by the builder who was working off incorrect plans that showed a reduced 1m setback.

5. PROPOSAL

- 5.1 *Basement 1 Plan (Rev M)* – reconfiguration of storage
- 5.2 *Ground Floor (Rev N)* – one metre reduction in the ground floor setback from Beaconsfield Parade (from 5.97m to 4.97m)
- 5.3 *Level 03 (Rev O)* - opaque bedroom windows to Unit 16 replaced with clear glazed windows. These windows face Ashworth Street, which abuts the rear boundary of the site. This change is also shown at *North Elevation – Rev O*
- 5.4 *Level 04 (Rev M)* –reconfiguration of Unit 17 at level 4 including reconfiguration of windows facing Ashworth Street (refer *North Elevation – Rev O*) and the west (side) boundary (refer *West Elevation Rev O*)
- 5.5 *Roof Plan (Rev L)* - introduction of a roof deck associated with apartment 17 and deletion of solar panels. Solar panels would be introduced on the roof of the lift overrun
- 5.6 *Roof Plan (Rev L)* – reconfiguration and enlargement of rooftop services including 1.7m reduction in the west (side) boundary setback (from 4.3m to 2.6m). These changes are also shown at each elevation
- 5.7 *It is noted that the application does not seek any changes to permit conditions*

6. SUBJECT SITE AND SURROUNDS

Description of Site and Surrounds	
Site Area	951 m ²
Existing building & site conditions	<p><i>The site has a frontage to Beaconsfield Parade of 20.12 metres and a depth of 47.27 metres. The northern boundary of the site abuts Ashworth Street, which is approximately 6 metres wide and constructed of bluestone.</i></p> <p><i>The approved development is currently being constructed on the site.</i></p>



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Surrounds/neighbourhood character	<p><i>To the east of the site, located on the opposite corner of Fraser Street and Beaconsfield Parade, is a 1960's era, eight storey brick apartment building. This building is setback approximately 8.8 metres from Beaconsfield Parade and 4.1m from Fraser Street. It is noted that this site is located within Heritage Overlay 444 and Design and Development Overlay 6-10. The heritage policy map identifies the site as contributory, in terms of its heritage value. Design and Development Overlay 6-10 describes the area as including an 'eclectic mix of heritage and contemporary buildings'.</i></p> <p><i>To the west of the site exists a two storey red brick and cream rendered apartment building comprising four dwellings. This building is setback approximately 4.5 metres from Beaconsfield Parade and is setback a minimum of approximately 1.3m from the boundary it shares with the subject site. A number of ground and first floor habitable room windows face the subject site. Single storey garages are located at the rear of the building and are accessed from Ashworth Street.</i></p> <p><i>Land at the rear of the site, on the opposite side of Ashworth Street, accommodates a four storey block of cream brick 1970's flats. These flats are provided with a stepped setback from Ashworth Street of 3.6m and 5.8m. The setback area accommodates four car parking spaces with direct access from Ashworth Street.</i></p> <p><i>To the west of the flats, opposite the northwest corner of the subject site, is a double storey dwelling (233 Ashworth Street). The ground floor of this dwelling faces Ashworth Street, is constructed across the entire width of the site and comprises pedestrian entry alcove and a single garage that is constructed on the Ashworth Street boundary. The first floor of this dwelling is also constructed on the Ashworth Street boundary and includes windows facing Ashworth Street and a balcony at its southeast corner.</i></p> <p><i>Further west, the remainder of Ashworth Street comprises single storey garages, some of which include a first floor addition and the rear car parks to a number of 1970's flat developments.</i></p>
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7. PERMIT TRIGGERS

- 7.1 The application for an amended permit is made subject to the provisions of Section 72 of the Planning and Environment Act, 1987.
- 7.2 The Victorian planning system recognises that a permit holder's intentions may change over time. Rather than requiring a new permit application to be made every time a change is proposed; Section 72 of the Planning and Environment Act allows applicants to apply to the responsible authority for an amendment to a permit.
- 7.3 An application to amend a permit under Section 72, including any plans, drawings or other documents approved under a permit, follows the same process as an application

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for a permit. It has the same requirements for giving notice and referral. However, the assessment for an application to amend a permit applies only on the amendment itself and does not reopen issues associated with the existing permit.

8. PLANNING SCHEME PROVISIONS

8.1 Zoning and Overlays

The site is located within a General Residential Zone, Schedule 2 and is also affected by Design Development Overlay, Schedule 5, Area DDO5-2.

The table to Schedule 5 of the Design and Development Overlay prescribes an absolute maximum height of 15m, noting that the overlay allows for building services to exceed the maximum height by 4m provided such services do not exceed 10% of the floor area of the rooftop.

8.2 Planning Policy Framework (PPF)

The following Planning Policies are relevant to this application:

- Clause 11 Settlement
- Clause 15 Built Environment and Heritage
- Clause 16 Housing
- Clause 19 Infrastructure

8.3 Local Planning Policy Framework (LPPF)

The following local planning policies are relevant to this application:

- Clause 21.03 Ecologically Sustainable Development
- Clause 21.04 Land Use
- Clause 21.05 Built Form
- Clause 22.06 Urban Design Policy for Non - Residential Development and Multi - Unit Residential Development
- Clause 22.12 Stormwater Management (Water Sensitive Urban Design)
- Clause 22.13 Environmentally Sustainable Development

8.4 Other relevant provisions

Clause 65 Decision Guidelines

9. REFERRALS

9.1 Internal referrals

It was considered unnecessary to internally refer the application.

9.2 External referrals

The application was not required to be externally referred.



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10. PUBLIC NOTIFICATION/OBJECTIONS

- 10.1 It was determined that the proposal may result in material detriment therefore Council directed that notice be given of the proposal by ordinary mail to the owners and occupiers of surrounding properties (124 letters) and directed that the applicant give notice of the proposal by posting three notices on the site for a 14 day period, in accordance with Section 52 of the Planning and Environment Act 1987.
- 10.2 The application has received 23 objections. The key concerns raised are the additional height of the building and the amenity impacts of the rooftop deck.
- 10.3 Objectors are also concerned with the retrospective nature of the proposed amendments. In response to this concern, '*Turnbull v Knox CC [2018] VCAT 739*' states:

"The principles relating to applications for retrospective approval are well-established. Essentially, the principle is that a permit applicant should not gain any benefit or advantage from using or development of the land without approval, nor should a permit applicant be penalised as a result of using or developing the land without approval. The merits of a use or development started or carried out without approval should be assessed as if this had not occurred."
- 10.4 A consultation meeting was held on 25 July 2019. The meeting was attended by a Ward Councillor, applicants, objectors and Planning Officers. The meeting did not result in any changes to the proposal.
- 10.5 It is noted that at the consultation meeting, objectors requested that any permit that may issue include conditions to control the use of the rooftop deck, such as a limit on numbers of people allowed on the deck and a restriction on the hours of use that the deck may be used.

Further discussions have occurred between the parties since the consultation meeting regarding a formal agreement around controlling the use of the deck. Council officers have advised the permit applicant that it would be inappropriate for Council to be a party to such an agreement or to include permit conditions controlling the use of the deck, as the use of the deck is associated with a single dwelling.

- 10.6 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'S ASSESSMENT

11.1

Proposed amendment	Assessment
Basement 1 Plan (Rev M)	



<ul style="list-style-type: none"> Reconfiguration of storage 	<p>Each dwelling would be provided with 6 cubic metres of storage.</p> <p>Clause 55 (ResCode) is considered an appropriate guide for assessment purposes. Standard B30 recommends that each dwelling should have convenient access to at least 6 cubic metres of externally accessible, secure storage space.</p> <p>The proposal would satisfy this standard.</p>
Ground Floor (Rev N)	
<ul style="list-style-type: none"> One metre reduction in the ground floor setback from Beaconsfield Parade (from 5.97m to 4.97m) 	<p>The relevant design objective of the Design Development Overlay seeks:</p> <p><i>To ensure that the frontage setback of new development on sites containing or adjacent to a heritage place is consistent with the frontage setback of the heritage place and does not diminish the setting, appearance or significance of the heritage place</i></p> <p><i>Buildings and works are considered to meet the design objectives for setbacks if:</i></p> <p><i>Setbacks of any heritage place adjoining the land are matched. If the land adjoins more than one heritage place then the setback should be no greater than the largest setback and no less than the smaller setback.</i></p> <p>Notwithstanding that the site does not adjoin a heritage place, the proposed development would be setback 0.4m further from Beaconsfield Parade than the neighbouring dwelling to the west, which is setback 4.6m from Beaconsfield Parade.</p> <p>Accordingly, the proposed change to the ground floor front setback would continue to comply with the Planning Scheme.</p> <p>The reduced setback would not impact upon the amenity of neighbouring dwellings.</p>
Level 03 (Rev O)	
North Elevation (Rev O)	
<ul style="list-style-type: none"> opaque bedroom windows to Unit 16 replaced with clear glazed windows 	<p>The screening of this window was required as a condition on the original permit (condition 1e) to protect neighbouring windows and balconies from overlooking.</p>



	<p>These neighbouring windows and balconies still exist; therefore, it is considered reasonable that they continue to be protected from overlooking.</p> <p>This permit condition should therefore be reimposed (refer condition 1e).</p>
Level 04 (Rev M)	
<ul style="list-style-type: none"> reconfiguration of Unit 17 level 4 including reconfiguration of windows facing Ashworth Street (refer North Elevation – Rev O) and the west (side) boundary (refer West Elevation Rev O) 	<p>The internal reconfiguration would not introduce any external amenity impacts. The relocation of the windows would essentially read as a change in materiality, noting that the design of the windows would not change. The change would not therefore introduce any detrimental amenity impacts upon a third party.</p>
Roof Plan (Rev L)	<ul style="list-style-type: none"> introduction of a roof deck associated with apartment 17 <p>The roof deck would not include any associated permanent structures and would be enclosed by an already approved 1m high handrail. It would not therefore impact upon the appearance of the roof when viewed from nearby properties.</p> <p>In terms of overlooking, existing windows and private open space to the east of the rooftop deck are in excess of 35m from the deck. This is considered adequate separation to ensure that unreasonable overlooking would not occur.</p> <p>To the north and west of the proposed deck, views to neighbouring properties would be screened by the roof eave of the building.</p> <p>In terms of noise, the location and elevated nature of the deck, being approx. 6m higher than the neighbouring roofs to the west and south and more than 35m from the apartment building on the opposite side of Fraser Street, would ensure that its use would not impact upon the amenity of the area beyond what is acceptable arising from a residential use in a residential area facing a main road.</p> <p>Commentary by the Tribunal at paragraph 15 in the matter of <i>Potts v Glen Eira CC [2003] VCAT 1129 (1 September 2003)</i>, provides a succinct and relevant consideration of noise impacts in residential contexts as follows:</p>



	<p><i>The potential for the general of noise is not a reason to refuse this proposal. It is possible to have neighbours who indulge in frequent loud parties, but that can occur in relation to detached houses, just as well as in relation to medium density townhouses. The prospect of finding oneself in close proximity to neighbours who create noise nuisances of that sort is one of the risks one takes in living in an urban area. Of course, if the noise generation amounts to a nuisance there are other laws appropriate to deal with that sort of problem.... I recognise that nuisances of this sort can occur, but if that was a reason for refusal there would be no more residential development. Children playing, people talking, motor mowers operating and the like are all part of the ordinary incidents of life in an urban situation. They are part of the give and take of urban life that neighbours are obliged to accept (unless the problems get to the stage of being nuisances against which the law provides protection).</i></p>
<ul style="list-style-type: none"> deletion of 25 solar panels ($45m^2$) from the roof. Five solar panels ($10m^2$) would be introduced on the roof of the lift overrun 	<p>Whilst this change would not impact upon the amenity of neighbouring properties it would impact on the ESD credentials of the development.</p> <p>It is noted that an amended Sustainable Management Plan (SMP) was not submitted with the current application material and the SMP endorsed under the original permit specifies the installation of 25 solar panels.</p> <p>It is considered appropriate therefore that the amended permit retains condition 5, which requires submission of an SMP to Council's satisfaction.</p>
<ul style="list-style-type: none"> reconfiguration and enlargement of rooftop services including 1.7m reduction in the west (side) boundary setback (from 4.3m to 2.6m). These changes are also shown at each elevation 	<p>The additional portion of the plant would not be highly visible from existing dwellings on the adjoining property as it would be screened by the roof eaves below and it would not introduce additional overshadowing of neighbouring secluded private open space.</p> <p>The footprint of the plant area would be 9.9% of the roof of the building and would therefore continue to satisfy the requirements of the DDO, which requires building services to comprise no more than 10% of the roof.</p>



	<p>In terms of height, the plant room and lift overrun, would be constructed to heights of 2.4m and 3.92m above the roof, noting that the roof is constructed to a height of 15m above natural ground level.</p> <p>The plant room and lift overrun would not therefore exceed the maximum (15m) height prescribed by the DDO by more than 4 metres and would therefore satisfy the requirements of the DDO.</p>
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12. COVENANTS

- 12.1 The applicant has completed a restrictive covenant declaration form declaring that there is no encumbrance on title such as a restrictive covenant, section 173 agreement or other obligation such as an easement or building on the title for the subject site known as Crown Allotment 1 Section 64D City of South Melbourne Parish of Melbourne South [Volume 07601 Folio 028].

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

- 15.1 The proposed amendments raise no planning concerns.
- 15.2 The reduced front setback would comply with the planning scheme and would represent an acceptable fit within the streetscape.
- 15.3 Whilst objectors particularly oppose the new roof deck, the deck is considered satisfactory as it would improve the amenity of future residents of the associated dwelling without introducing unreasonable amenity impacts upon neighbouring properties.
- 15.4 It is therefore recommended that Council supports the amendment application subject to the recommended permit conditions.

TRIM FILE NO: PF19/7757

ATTACHMENTS

- 1. 439/2014/B - ADV - plans
- 2. 439/2014/B - objector map