



**6.1** **80 WESTBURY STREET, BALACLAVA**  
**LOCATION/ADDRESS:** 80 WESTBURY STREET, BALACLAVA  
**EXECUTIVE MEMBER:** LILI ROSIC, ACTING GENERAL MANAGER PLACE STRATEGY AND DEVELOPMENT  
**PREPARED BY:** KATHRYN POUND, PRINCIPAL URBAN PLANNER

**1. PURPOSE**

1.1 To determine Council's position in the upcoming Victorian Civil and Administrative Tribunal (VCAT) hearing for Planning permit application 1165/2016.

**2. EXECUTIVE SUMMARY**

<b>WARD:</b>	Canal
<b>TRIGGER FOR DETERMINATION BY COMMITTEE:</b>	More than 16 objections
<b>APPLICATION NO:</b>	<b>Council Ref:</b> P1165/2016 <b>VCAT Ref:</b> P2914/2017
<b>APPLICANT:</b>	Human Habitats
<b>EXISTING USE:</b>	Dwelling
<b>ABUTTING USES:</b>	Dwellings
<b>ZONING:</b>	General Residential Zone – Schedule 1 (GRZ1)
<b>OVERLAYS:</b>	Special Building Overlay – Schedule 1 (SBO1)
<b>STATUTORY TIME REMAINING FOR DECISION AS AT DAY OF COUNCIL</b>	Expired

- 2.1 This report relates to an application for the construction of a four storey building comprising 20 dwellings above a basement car park and a reduction of the standard car parking requirement (one visitor car space).
- 2.2 The application was notified and Council received 17 objections. The objections relate to insufficient car parking, insufficient bicycle parking, traffic impacts, loss of light and overshadowing to apartments and courtyards at 82 Westbury Street, overlooking to 4 Orange Grove, visual bulk, noise, streetscape impact, character, height, bulk, heritage significance of the dwelling and loss of the palm tree and other vegetation.
- 2.3 A consultation meeting was held on 10 October 2017. No matters were resolved.



- 2.4 The applicant lodged an appeal with VCAT against Council's failure to determine the application within the prescribed time (60 days) on 20 December 2017. Council has received seven Statements of grounds.
- 2.5 Council Officers undertook an assessment of the application and determined not to support the proposal. The Tribunal and all parties to the appeal were notified of this position on 23 March 2018.
- 2.6 A compulsory conference was held on 9 April 2018. No agreement was reached.
- 2.7 A full hearing is scheduled for three days on 28, 29 and 30 May 2018. The applicant circulated amended plans which they intend to rely on at the hearing on 18 April 2018. These make a number of changes to the plans, including revised layout and setbacks, removal of one dwelling, provision of one additional visitor car space and retention of the canary island date palm tree. The amended plans omitted a 2pm shadow diagram, so this was subsequently circulated on 26 April 2018.
- 2.8 Council Officers have assessed the amended plans and have formed the view that they should be supported. The applicants have addressed the issues that led to the previous refusal position.
- 2.9 The proposal would be an acceptable response to the character of the area which comprises residential development from a range of eras including apartment buildings of two to four storeys in height.
- 2.10 The proposal would comply with the majority of the Clause 55 standards and would meet all of the objectives (subject to some conditions). It would not cause any unreasonable off-site amenity impacts and complies with the standards relating to Side and rear setbacks, Daylight to existing windows and North facing windows. The Overlooking standard would also be met, subject to conditions. While the Overshadowing open space standard would not be met, only a small amount of additional shadow would be caused to the courtyards to the south.
- 2.11 A reduction of one visitor car space is supported in this instance. In particular, the site is proximate to the Carlisle Street Major Activity Centre and various public transport services.
- 2.12 It is recommended that Council informs the Tribunal (VCAT) and all parties to the appeal that it supports the application as shown on the amended plans circulated on 18 April 2018, subject to conditions.



### 3. RECOMMENDATION

- 3.1 That the Committee adopts Recommendation “Part A” and “Part B” to advise VCAT
- It supports the application with conditions.
  - In the event that VCAT determines to grant a permit for the application, any permit issued should incorporate the conditions to this permit.
  - Authorise the Manager City Development to instruct Council’s Statutory Planners and/ or Council Solicitors on the VCAT Application for review.

#### RECOMMENDATION “PART A”:

- 3.2 That the Responsible Authority, having caused the application to be advertised and having received and noted the objections, advise VCAT and other parties to the appeal that on the basis of the amended plans circulated on 18 April 2018, that Council changes its position and now supports the issuing of a planning permit, with conditions, for the construction of a four storey building comprising 20 dwellings above a basement car park and a reduction in the standard car parking requirement (one visitor car space) at 80 Westbury Street, Balaclava.

- 3.3 That the decision be issued as follows:

#### 1. Amended Plans required

Before the development starts, 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 drawn to scale with dimensions and electronic copy provided. The plans must be generally in accordance with the amended plans circulated on 18 April 2018 but modified to show:

- a) The height of the side and rear boundary fences being a minimum of 1.7 m above the ground floor level of the dwellings.
- b) The third floor habitable room windows and terraces screened and/ or otherwise treated to prevent downwards views to adjacent habitable room windows and secluded private open spaces.
- c) Cross section elevation drawings of the screens to the balconies which are:
  - i. Drawn to scale and fully dimensioned.
  - ii. Clearly delineate any solid parts of the screen and any louvre or batten parts of the screen.
  - iii. Clearly illustrate how any louvre or batten system may allow horizontal or upward views but will prevent downward views to neighbouring properties.
  - iv. Show the exact width and thickness of each louvre or batten, the exact spacing between each louvre or batten and a section detail from behind the screen demonstrating that direct views of adjacent private open space are precluded, while allowing outlook horizontally and upward from the balcony and/ or window.



- d) Habitable room windows located within 1.5 m of the shared accessway being treated with double glazing or similar to limit vehicle noise within the dwellings.
- e) At least 25% of car stackers having a minimum clearance height of 1.8 m in accordance with Clause 52.06.
- f) That suitable clearance has been provided into the end parking spaces so that a B85 vehicle can access/ egress these spaces. The platform width of each mechanical car space must also be indicated on the plans.
- g) That suitable height clearance has been provided along the access ramp and within the basement car park so that scraping/ bottoming does not occur. An assessment of grade changes must be submitted to demonstrate this.
- h) Compliance with the design layout requirements of Standard B41 at Clause 55.07-7 Accessibility objective for 50% of the dwellings.
- i) Compliance with the minimum storage requirements of Standard B44 at Clause 55.07-10 Storage objective.

## **2. No Alterations**

The development and colours, materials and finishes as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority, unless the Port Phillip Planning Scheme exempt the need for a permit.

## **3. Satisfactory continuation**

Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.

## **4. Walls on or facing the boundary**

Prior to the occupation of the building(s) allowed by this permit, all new or extended walls on or facing the boundary of adjoining properties and/or the laneway must be cleaned and finished to a uniform standard. Unpainted or unrendered masonry walls must have all excess mortar removed from the joints and face and all joints must be tooled or pointed to the satisfaction of the responsible authority. Painted or rendered or bagged walls must be finished to a uniform standard to the satisfaction of the responsible authority.

## **5. Sustainable Management Plan**

Before the development starts (other than demolition or works to remediate contaminated land) an amended Sustainable Management Plan that addresses the issues raised by Council's ESD advisor and outlines proposed sustainable design initiatives must be submitted to, be to the satisfaction of and approved by the Responsible Authority. When approved, the Plan will be endorsed and will then form part of the permit and the project must incorporate the sustainable design initiatives listed

## **6. Incorporation of Sustainable Design initiatives**

The project must incorporate the sustainable design initiatives listed in the endorsed Sustainable Design Assessment or Sustainable Management Plan (delete whichever not applicable) to the satisfaction of the Responsible Authority.

## **7. Implementation of Sustainable Design Initiatives**

Before the occupation of the development approved under this permit, a report from the author of the Sustainable Management Plan approved pursuant to this permit, or similarly



qualified person or company, must be submitted to the satisfaction of the Responsible Authority. The report must confirm that all measures and recommendations specified in the Ecologically Sustainable Design report have been implemented and/or incorporated in accordance with the approved report to the satisfaction of the Responsible Authority.

#### **8. Water Sensitive Urban Design**

Before the development starts (other than demolition or works to remediate contaminated land) an amended Water Sensitive Urban Design Report that addresses the issues raised by Council's ESD Advisor and outlines proposed water sensitive urban design initiatives must be submitted to, be to the satisfaction of and approved by the Responsible Authority. The report must demonstrate how the development meets the water quality performance objectives as set out in the Urban Stormwater Best Practice Environmental Management Guidelines (CSIRO) or as amended.

When approved, the Report will be endorsed and will then form part of the permit and the project must incorporate the sustainable design initiatives listed.

#### **9. Incorporation of Water Sensitive Urban Design initiatives**

Before the occupation of the development approved under this permit, the project must incorporate the water sensitive urban design initiatives listed in the endorsed Water Sensitive Urban Design Report to the satisfaction of the Responsible Authority, and thereafter maintained to the satisfaction of the Responsible Authority.

#### **10. Maintenance Manual for Water Sensitive Urban Design Initiatives (Stormwater Management)**

Before the development starts (other than demolition or works to remediate contaminated land) a Maintenance Manual for Water Sensitive Urban Design Initiatives must be submitted to and approved by the Responsible Authority.

The manual must set out future operational and maintenance arrangements for all WSUD (stormwater management) measures. The program must include, but is not limited to:

- a) Inspection frequency.
- b) Cleanout procedures.
- c) As installed design details/diagrams including a sketch of how the system operates.

The WSUD Maintenance Manual may form part of a broader Maintenance Program that covers other aspects of maintenance such as a Building User's Guide or a Building Maintenance Guide.

#### **11. Site Management Water Sensitive Urban Design**

The developer must ensure that:

- a) No water containing oil, foam, grease, scum or litter will be discharged to the stormwater drainage system from the site;
- b) All stored wastes are kept in designated areas or covered containers that prevent escape into the stormwater system;
- c) The amount of mud, dirt, sand, soil, clay or stones deposited by vehicles on the abutting roads is minimised when vehicles are leaving the site.



- d) No mud, dirt, sand, soil, clay or stones are washed into, or are allowed to enter the stormwater drainage system;
- e) The site is developed and managed to minimise the risks of stormwater pollution through the contamination of run-off by chemicals, sediments, animal wastes or gross pollutants in accordance with currently accepted best practice.

### **12. Urban Art Plan**

Before the occupation of the development allowed by this permit, an urban art plan in accordance with Council's Urban Art Strategy must be submitted to, be to the satisfaction of and approved by the Responsible Authority. The value of the urban art must be at least 0.5% of the total building cost of the development to the satisfaction of the Responsible Authority. Urban art in accordance with the approved plan must be installed prior to the occupation of the building to the satisfaction of the Responsible Authority.

### **13. Tree Management Plan**

Before the development starts, a report and plan by a suitably qualified Arborist to comply with AS 4970 - 2009 Tree protection on development sites setting out how the existing trees to be retained will be protected during construction, must be submitted to, approved by and be to the satisfaction of the Responsible Authority. When approved the report and plan will be endorsed and form part of the permit. The tree protection measures outlined in the report must be complied with to the satisfaction of the Responsible Authority. The plan must:

- a) Address all retained trees (including those within the southern neighbour's property) which references AS4970 - Protection of trees on development site.
- b) Make recommendations for the retention of Tree 3 on site, which can be relocated (transplanted) to a new location within the property. This which must be done by a suitably qualified contractor who has extensive experience with transplanting large Phoenix Palms; a Significant Tree Permit must be obtained prior to undertaking this work.
- c) Explain design and construction methods proposed to minimize impacts on retained trees within the property, or on neighbouring properties, where there is encroachment into the Tree Protection Zone (TPZ).
- d) Recommend tree protection measures to protect the trees throughout all demolition and construction stages.
- e) Include an accurate tree protection plan drawing showing the TPZ areas of trees being retained.

### **14. Tree Protection**

Before the development starts, a tree protection fence must be erected around the trees being retained to comply with AS 4970 - 2009 Tree protection on development sites to the satisfaction of the Responsible Authority.

### **15. Landscape plan**

Before the development starts (other than demolition or works to remediate contaminated land), a detailed Landscape Plan must be submitted to, approved by and be to the satisfaction of the Responsible Authority. When the Landscape Plan is approved, it will



become an endorsed plan forming part of this Permit. The Landscape Plan must incorporate:

- a) A survey plan, including botanical names, of all existing vegetation/trees to be retained;
- b) Buildings and vegetation (including botanical names) on neighbouring properties within 3m of the boundary;
- c) Significant trees greater than 1.5m in circumference, 1m above ground;
- d) All street trees and/or other trees on Council land;
- e) A planting schedule of all proposed vegetation including botanical names; common names; pot sizes; sizes at maturity; quantities of each plant; and details of surface finishes of pathways and driveways;
- f) Landscaping and planting within all open space areas of the site;
- g) Landscaping below 0.9m in height in the pedestrian sight triangles adjacent to the accessway;
- h) Water sensitive urban design;
- i) 5% of the site area having deep soil plantings with 1 small tree per 30 sqm of deep soil in accordance with Standard B38;
- j) Advanced tree stock (minimum 45 litre pot or bag 2.5 metres tall when planted unless otherwise agreed to in writing by the Responsible Authority) in the front yard and north east corner of the site (and elsewhere as deemed appropriate). Trees are not to be sited over easements.

All species selected must be to the satisfaction of the Responsible Authority

#### **16. Completion of landscaping**

The landscaping as shown on the endorsed Landscape Plan must be carried out and completed to the satisfaction of the Responsible Authority before the occupation of the development and/or the commencement of the use or at such later date as is approved by the Responsible Authority in writing.

#### **17. Landscaping maintenance**

The landscaping as shown the endorsed Landscape Plan must be maintained, and any dead, diseased or damaged plant replaced in accordance with the landscaping plan to the satisfaction of the Responsible Authority.

#### **18. Waste Management Plan**

Before the development starts (other than demolition or works to remediate contaminated land), an amended Waste Management Plan which addresses the issues raised by Council's Waste Officer must be submitted to the satisfaction of the Responsible Authority and endorsed as part of this permit. Once submitted and approved, the waste management plan must be carried out to the satisfaction of the Responsible Authority.

#### **19. Car Parking Stacker Maintenance and Provision**

The mechanical car stackers are to be maintained in a good working order and be permanently available for the parking of vehicles in accordance with their purpose, to the satisfaction of the Responsible Authority.



Prior to the occupation of the approved development, the owner/ permit holder must prepare and have approved in writing by the Responsible Authority, a car stacker system management plan including but not limited to the following:

- a) Allocation of car parking spaces according to vehicle size and type;
- b) Ongoing maintenance of the car stacker system;
- c) Instructions to owners/occupiers about the operation of the car stacker system; and
- d) Communicating to prospective residents about the availability of car stacker spaces and sizes.

Once approved this document must be complied with to the satisfaction of the Responsible Authority and must not be varied except with the written approval of the Responsible Authority.

#### **20. Vehicle Crossings**

Before the occupation of the development allowed by this permit, vehicle crossings must be constructed in accordance with Council's current Vehicle Crossing Guidelines and standard drawings to the satisfaction of the Responsible Authority. All redundant crossings must be removed and the footpath, naturestrip, kerb and road reinstated as necessary at the cost of the applicant/owner and to the satisfaction of the Responsible Authority.

#### **21. Piping and ducting**

All piping and ducting (excluding down pipes, guttering and rainwater heads) must be concealed to the satisfaction of the Responsible Authority.

#### **22. No equipment or services**

Any plant, equipment or domestic services visible from a street (other than a lane) or public park must be located and visually screened to the satisfaction of the responsible authority.

#### **23. Privacy screens must be installed**

Privacy screens as required in accordance with the endorsed plans must be installed prior to occupation of the building to the satisfaction of the Responsible Authority and maintained thereafter to the satisfaction of the Responsible Authority.

#### **24. Melbourne Water condition 1**

The dwellings and entry foyer must be constructed with finished floor levels set no lower than 10.52 metres to Australian Height Datum (AHD) which is 300mm above the applicable flood level of 10.22m to AHD.

#### **25. Melbourne Water condition 2**

The entry / exit driveway of the basement car park must incorporate a flood proof apex of a minimum of 10.52 metres to AHD which is 300mm above the applicable flood level of 10.22m to AHD.

#### **26. Melbourne Water condition 3**

Prior to the issue of an Occupancy Permit, a certified survey plan, showing finished floor levels (as constructed) reduced to the AHD, must be submitted to Melbourne Water to demonstrate that the floor levels have been constructed in accordance with Melbourne Water's requirements.



### **27. Time for starting and completion**

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 two years of the date of commencement of works.

The Responsible Authority may extend the periods referred to if a request is made in writing:

- before or within 6 months after the permit expiry date, where the use or development allowed by the permit has not yet started; and
- within 12 months after the permit expiry date, where the development allowed by the permit has lawfully started before the permit expires.

### **RECOMMENDATION “PART B”**

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

## **4. RELEVANT BACKGROUND**

There is no relevant planning permit history or background for this site.

## **5. PROPOSAL**

5.1 The proposal as shown on the amended plans circulated on 18 April 2018 is for the construction of a four storey building comprising 20 dwellings above a basement car park and a reduction in the standard car parking requirement (one visitor car space). The 20 dwellings would comprise:

- Six, one-bedroom dwellings
- Thirteen, two-bedroom dwellings, and
- One, three-bedroom dwelling.

### **Height and design**

5.2 The building would have a maximum height of 13.22 m to the top of the level 4 parapet and 14.12 m to the top of the lift overrun.

5.3 The building would have a contemporary design with flat roof form and materials being a mix of metal cladding, brick, render and Alucobond cladding.

### **Layout**

5.4 Pedestrian access into the building would be via a central entry facing Westbury Street, into a corridor and central access core with lift and stair well.



- 5.5 Each dwelling would be provided with either a courtyard of 20 to 73 sqm in area, a balcony of 8 to 11 sqm in area or a terrace with area of 9 to 50 sqm in area.
- 5.6 It would contain parking for 24 cars, three visitor spaces and 21 for residents in car stacker arrangement. It would also contain storage cages, bin storage room, bicycle storage room (to accommodate 12 bicycles) and services.
- 5.7 Vehicle access would be via the existing crossover in the south west corner of the site.
- 5.8 All vegetation would be removed from the site, apart from the canary island date palm tree which would be relocated to the front setback.
- 5.9 1.5 m high fencing is proposed along the front boundary.

#### **Setbacks**

- 5.10 The basement would be setback 4.5 m from Westbury Street, 1.2 to 3 m from the north boundary, 1.2 m from the east (rear) boundary and would abut the south boundary.
- 5.11 The ground floor would be setback 4.6 to 5.7 m from Westbury Street and between 2.2 to 4 m from then north boundary. It would abut the east (rear) boundary for a length of 7 m and be setback from the remainder of it by 1.2 to 3.25 m. It would abut the south boundary for a length of 4.4 m and be setback from the remainder of it by 3 to 4m.
- 5.12 The first floor would be setback 5.7 to 5.8 m from Westbury Street, into which the balconies would project 1.6 m. It would be setback 3 to 4 m from the north boundary, into which the balconies would project 1.3 m. It would be setback 3 m from the east (rear) boundary, into which one balcony would project 1.6 m. it would be setback 3.9 to 4.2 m from the south boundary, into which the balconies would project up to 2.2 m.
- 5.13 The second floor would be setback 5.8 to 8.2 m from Westbury Street, into which the balcony and terrace would project up to 1.8 m. It would be setback 4.5 m from the north boundary, into which the terraces would project up to 1.4 m. It would be setback 6 m from the east (rear) boundary, into which the terraces would project 3 m. It would be setback 5.1 to 6.9 m from the south boundary.
- 5.14 The third floor would be setback 8.5 m from Westbury Street, into which the terrace would project 2.6 m. It would be setback 7.4 to 8.2 m from the north boundary, into which the terraces would project up to 2.8 m. It would be setback 10 m from the east (rear) boundary, into which the terrace would project 6 m. It would be setback 6.9 to 7.6 m from the south boundary.

## **6. AMENDMENTS TO THE PLANS**

- 6.1 The amended plans circulated on 18 April 2018 that are now under assessment include the following key changes from the original (advertised) plans:



- Changes to setbacks, including increase in setbacks from the south boundary and new ground floor walls on the east and south boundaries
- Reconfiguration of the basement layout, including provision of one additional visitor car parking space and use of car stackers for all resident spaces
- Reconfiguration of the other levels, to accommodate the changes to setbacks and the repositioned lift core and stair well
- Removal of one dwelling from the second floor, with one of the other dwellings becoming three-bedroom
- Changes to some balcony and terrace locations
- Increase in site coverage and permeable surface area
- Retention of the canary island date palm tree in the front yard
- Minor changes to the external design, to accommodate the setback and layout changes, and
- Reduction in height of the front fence.

6.2 In accordance with the standard requirements of VCAT, the applicant served notice of the amended plans on all parties to the appeal and on all persons who were notified of the original application or lodged an objection to the original application.

6.3 Notwithstanding this, it is considered that the amended plans would not cause any additional detriment to any adjoining property compared to the original plans. This is because the setbacks are generally increasing, the number of car spaces has increased and one less dwelling is proposed. Where the ground floor is now proposed to abut parts of the east and south boundaries, it would not cause any unreasonable impact. Specifically, it would abut a car parking area to the south and the laneway and the rear of the property at 4 Orange Grove adjacent to the studio outbuilding, not an area of private open space.

## **7. SUBJECT SITE AND SURROUNDS**

7.1 The subject site at 80 Westbury Street, Balaclava is rectangular with a frontage of 23.17 m, depth of 24.08 m and overall site area of approximately 953 sqm. It is relatively flat.

7.2 The subject site is occupied by a single storey federation era brick dwelling setback approximately 7.8 m from the street. There is a shed located at the rear of the site and a picket front fence.

7.3 Vehicle access is via a crossover located in the south west corner of the site.



- 7.4 Eleven exotic trees are spread across the site, including a 14 m high mature cypress in the north east corner and mature 10 m high canary island date palm tree on the north side of the dwelling.
- 7.5 The immediate area is residential, comprising a mix of single dwellings, units and apartment buildings. Development has occurred during a range of eras, and heights range from one to four storeys. There are limited four storey buildings, including an apartment building at 84 Westbury Street to the south, approved by VCAT in 2000.
- 7.6 To the immediate north of the site at 78A Westbury Street is a relatively recent two storey brick dwelling, partly constructed to the shared side boundary and partly setback 1.5 to 2.25 m, with several habitable room windows facing towards the subject site. Its rear yard abuts the north-east corner of the subject site.
- 7.7 Further to the north at 78B Westbury Street is a two and three-storey apartment building constructed in 2016-17.
- 7.8 Further to the north again at 76 Westbury Street (Cnr. Inkerman Street) is a three-storey apartment building, comprising a two-storey circa 1960s cream brick apartment building with a contemporary third-storey addition.
- 7.9 The north-east rear corner of the subject site abuts the return of the 'L' shaped car park associated with the three-storey apartment building at 76 Westbury Street further.
- 7.10 Below that, also abutting the subject site to the north east is a laneway providing vehicle access from Orange Grove.
- 7.11 Abutting the site to the east (rear) is a double storey building at the rear of 4 Orange Grove. It is setback approximately 1.9 m from the subject site.
- 7.12 Abutting the site to the south and south west side is a three-storey brick apartment building at 82 Westbury Street. It is setback between 2.84 and 4.78 m from the subject site with a number of habitable room windows facing towards it. A pedestrian walkway is located abutting the subject site, and beyond that are private courtyards. The building has a large open car park at the rear which abuts the south-east corner of the subject site.
- 7.13 Immediately opposite the site at 95, 97 and 99 Westbury Street are an original dwelling divided into two units, a three-storey apartment building and a two storey apartment building, respectively.
- 7.14 The subject site has good access to public transport, being 450 m from the Balaclava train station, 400 m from the 3/3a and 16 trams, 500 m from the 78 tram, 900 m from the 5 and 64 trams and 450 m from the 216 and 219 buses.
- 7.15 The site is located approximately 210 m north of the Carlisle Street Major Activity Centre.



## 8. PERMIT TRIGGERS

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

Zone or Overlay	Why is a permit required?
<i>Clause 32.08 General Residential Zone – Schedule 1 (GRZ1)</i>	<i>A <b>planning permit is required</b> to construct two or more dwellings on a lot pursuant to Clause 32.08-4. A development must meet the requirements of Clause 55. A minimum garden area of 35% must be provided and a maximum building height of 11m and 3 storeys is allowed. However, pursuant to Clause 32.08-14, transitional provisions apply to this application because it was lodged on 9 December 2016, before Amendment VC110 was introduced on 27 March 2017. Therefore the minimum garden area and maximum height requirements do not apply to this application.</i>
<i>Clause 44.05 Special Building Overlay – Schedule 1 (SBO1)</i>	<i>A <b>planning permit is required</b> to construct a building or construct or carry out works in the Special Building Overlay pursuant to Clause 44.05-1.</i>
<i>Clause 52.06 Car parking</i>	<i>A <b>planning permit is required</b> to reduce the number of car parking spaces required by Table 1 at Clause 52.06-5. Dwellings require 1 car space to each 1 or 2 bedroom dwelling and 2 spaces per 3 bedroom dwelling, plus 1 car space for visitors to every 5 dwellings. This equates to a requirement of 21 resident car spaces and 4 visitor car spaces: 25 in total. As 24 car parking spaces are proposed (21 for residents and 3 for visitors), a reduction of 1 visitor space is sought.</i>

## 9. PLANNING SCHEME PROVISIONS

### State Planning Policy Frameworks (SPPF)

9.1 The following State Planning Policies are relevant to this application:

Clause 11	Settlement
Clause 11.06	Metropolitan Melbourne
Clause 15	Built Environment and Heritage
Clause 16	Housing
Clause 18	Transport
Clause 19	Infrastructure

### Local Planning Policy Framework (LPPF)

9.2 The Municipal Strategic Statement (MSS) contains a number of clauses which are relevant to this application as follows:

Clause 21.03	Ecologically Sustainable Development, including
Clause 21.03-1	Environmentally Sustainable Land Use and Development



Clause 21.03-2	Sustainable Transport
Clause 21.04	Land Use, including
Clause 21.04-1	Housing and Accommodation
Clause 21.05	Built Form, including
Clause 21.05-1	Heritage
Clause 21.05-2	Urban Structure and Character
Clause 21.05-3	Urban Design and the Public Realm
Clause 21.06	Neighbourhoods, including
Clause 21.06-1	East St Kilda and Balaclava

9.3 The following local planning policies are relevant to this application:

Clause 22.12	Stormwater Management (Water Sensitive Urban Design)
Clause 22.13	Environmentally Sustainable Development

#### **Other relevant provisions**

9.4 The following particular and general provisions are relevant to this application:

Clause 52.06	Car Parking
Clause 52.34	Bicycle Facilities
Clause 55	Two or More Dwellings on a Lot and Residential Buildings (ResCode)
Clause 65	Decision Guidelines

#### **Relevant Planning Scheme Amendment/s**

9.5 There are no relevant planning scheme amendments relevant to this application.

## **10. REFERRALS**

#### **Internal referrals**

10.1 The application was referred to the following areas of Council for comment. The comments are discussed in detail in Section 9.

#### **Heritage Advisor & Strategic Planning**

10.2 Council's Heritage Advisor identified that the site may have heritage significance. Consequently, a preliminary heritage assessment (dated March 2017) was prepared by Context Pty Ltd for Council. This reached the following conclusion and recommendation:

*The house at 80 Westbury St, East St Kilda is an unusual example. No firm conclusion has been reached as to whether the dwelling is likely to reach the threshold for individual significance. The potential for individual significance has*



*however been identified and therefore it is recommended that a full assessment be carried out to determine whether it is appropriate for the building to be included on Heritage Overlay for the City of Port Phillip.*

- 10.3 It was subsequently determined in consultation with the Place and Design Department (Strategic Planning) that it was not appropriate to pursue an individual interim heritage control for the site.

Planner comment:

- 10.4 Given that it was determined not to pursue an individual interim heritage control for the site, consideration of heritage matters must be limited.

#### **Urban Design Officer**

- 10.5 Council's Urban Design Officer provided comments in relation to the original (advertised) plans. The proposal was generally supported subject to the following matters being addressed:

- *Lower the front fence height to an average of 1.5m.*
- *Provide opportunities for urban art contribution.*
- *Increase permeability through use of permeable materials and decrease the site coverage to comply with minimum standard.*
- *Plants along the ramp side should have enough soil depth to ensure healthy growth (1.0 metre for trees and 0.50 metre for shrubs).*
- *Consider portions of balconies to be vegetated areas in planter boxes or provide vertical gardens.*
- *Possibly develop portions of rooftop for communal garden purposes.*
- *Indicate storm water storage area.*

Planner comment:

- 10.6 The amended plans have addressed many of these issues. The front fence has been lowered to 1.5 m, the permeable surface area has increased from 15.2 % to 21.1 %, plants along the ramp are shown in boxes with at least 0.5m room for soil and vegetated areas have been shown on the terraces on the top two levels.
- 10.7 If a permit were to issue, an urban art contribution would be required through a condition (refer to recommended condition 12).
- 10.8 A stormwater storage area has not been shown but would be addressed through standard conditions if a permit were to issue (refer to recommended condition 8).
- 10.9 It is not considered necessary to require the provision of a communal rooftop area given the scale of the development.



### Transport Safety Engineer

10.10 Council's Transport Safety Engineer assessed the original and the amended plans. He provided the following advice (summarised) in relation to the amended plans:

- *The accessway is generally acceptable, but landscaping in the pedestrian sight triangles must be below 0.9 m.*
- *The layout of the car parking spaces is generally acceptable, apart from:*
  - *At least 25% of stackers require a clearance height of 1.8 m.*
  - *It has not been demonstrated that suitable clearance has been provided into the end parking spaces. The platform width of each mechanical car space must also be provided.*
  - *An action plan is required for when scheduled maintenance occurs or the car stackers are temporarily unavailable.*
  - *It is not clear if suitable height clearance has been provided along the access ramp and within the basement car park.*
  - *The applicant needs to provide an assessment of grade changes to ensure scraping/bottoming does not occur on the ramp.*
- *Bicycle parking provision exceeds the requirements of Clause 52.34.*
- *Overall the expected traffic generation of the proposed development is expected to have a negligible impact on surrounding local streets and intersections.*
- *It is proposed to utilise the existing crossover, with no impact expected to the level of on-street parking.*
- *All redundant crossovers must be reinstated and all proposed crossovers must be installed, to Council satisfaction.*

#### Planner comment:

10.11 The issues identified can generally be addressed through conditions. Refer to recommended conditions 1e)-h), 19 and 20.

### Sustainable Design

10.12 Council's ESD Advisor stated that:

*Further information is needed before the project proposal could be considered to meet Council's standards for best practice. Comments on areas where improvement could be made are itemised...*



Planner comment:

- 10.13 Conditions are recommended to ensure that these matters are addressed through amended documentation (refer to recommended conditions 5-11).

**Arborist**

- 10.14 Council's Arborist assessed the trees proposed to be removed and made a number of recommendations, including:
- *Trees 2, 5, 6, 7 and 8 can be removed without the need for a Significant Tree Permit.*
  - *Trees 1, 4 and 11 can be considered for removal; a Significant Tree Permit must be obtained for their removal.*
  - *Tree 3 (Canary Island Date Palm) must be retained on site, however can be relocated to a new location within the property.*
  - *Tree 9 (Box Elder) should be retained and protected.*
  - *The applicant must submit a Tree Management Plan for all retained trees (including those within the southern neighbour's property).*

Planner comment:

- 10.15 The amended plans have shown Tree 3 (Canary Island Date Palm) being relocated to the front of the site. This is a positive outcome.
- 10.16 It is not possible to retain Tree 9 without redesigning the layout, as it is located where the accessway is proposed to be sited. This tree is a Box Elder which is not native and not considered to be significant under Council's Local law. On balance, it is not feasible to redesign the development to retain this tree, which is not significant and where the planting of mature canopy trees can off-set this loss. There is opportunity to plant mature trees where the basement is setback from the site boundaries: in the frontage and in the north east corner of the site.
- 10.17 Conditions are recommended to require the submission of a Tree Management Plan and Landscape Plan. Refer to recommended conditions 13-17.

**Waste Management**

- 10.18 Council's Waste Officer identified various matters that needed to be resolved prior to any planning permit being issued.

Planner comment:

- 10.19 Conditions are recommended to ensure that these matters are all addressed through an amended Waste management plan (refer to recommended condition 18).

**External referrals**



Referral Authority	Response	Conditions
Melbourne Water	No objection subject to conditions.	The plans under assessment appear to comply with Melbourne Water's requirements. Refer conditions 24-26.

## 11. PUBLIC NOTIFICATION/OBJECTIONS

11.1 It was determined that the original proposal may result in material detriment therefore Council gave notice of the proposal by ordinary mail to the owners and occupiers of surrounding properties and directed that the applicant give notice of the proposal by posting one notice on the site for a 14 day period, in accordance with Section 52 of the Planning and Environment Act 1987.

11.2 The original application received 17 objections. The key concerns raised are summarised below (officer comment will follow in italics where the concern will not be addressed in Section 9):

- Insufficient car parking
- Insufficient bicycle parking
- Traffic impacts
- Impacts to 82 Westbury Street, including loss of light and overshadowing of courtyards
- Overlooking to 4 Orange Grove
- Visual bulk
- Streetscape impact, character, height and bulk
- Heritage significance of dwelling
- Palm tree should be retained
- Impact of loss of vegetation on fauna
- Noise from balconies

*This is not a matter that can be considered as part of the planning assessment because dwellings are an as-of-right use in this zone.*

- Development not permitted under current GRZ height regulations

*Although the GRZ now imposes a mandatory height, this application benefits from transitional provisions because it was lodged prior to this requirement being introduced into the planning scheme. Therefore the mandatory height does not apply to this application.*

- Impact on property values

*This is not a matter that can be considered as part of the planning assessment.*

- Errors in planning submission documentation



*The accuracy of the planning submission documentation has not been taken for granted in this assessment.*

- 11.3 A consultation meeting was held on 10 October 2017. The meeting was attended by a Ward Councillor, applicants, objectors and Planning Officers. The meeting did not result in any changes to the proposal.
- 11.4 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.
- 11.5 Following the applicant serving notice of the amended plans, Council has not received any additional Statements of Grounds.

## 12. OFFICER'S ASSESSMENT

### **Have the amended plans addressed the issues that led to the previous Council position to not support the application?**

- 12.1 When Council Officer's assessed the original (advertised) proposal, a delegated decision was made that Council not support the proposal on the following grounds:
  - 1. The proposed development does not comply with the following Clause 55 standards and would cause unreasonable amenity impacts to adjoining dwellings:
    - a) Standard B17 at Clause 55.04-1 Side and rear setbacks objective
    - b) Standard B20 at Clause 55.04-4 North facing windows objective
    - c) Standard B21 at Clause 55.04-5 Overshadowing open space objective
  - 2. The proposed removal of significant vegetation, particularly the Phoenix (Canary Island) palm tree, fails to respond to the existing and preferred character of the area and is contrary to the landscaping and built form provisions of the planning scheme, including Clause 21.05-2 Built form and Clause 55.03-8 Landscaping objectives.
  - 3. The design of the fourth storey would not provide a transition in scale to adjoining development and fails to respond to the streetscape scale in accordance with the neighbourhood character and built form provisions of the planning scheme, including Clause 21.05-2 Built form.
- 12.2 Ground 1 has been addressed. The amended proposal now fully complies with the Side and rear setbacks standard and the North facing windows standard. Some additional overshadowing would still be caused to the courtyards of 82 Westbury Street to the south, however the extent of additional shadow has been significantly reduced, and the objective would be met. This has been achieved by increasing the setback of the building from the south boundary. Refer to the Clause 55 discussion below.



- 12.3 Ground 2 has been addressed. The canary island date palm tree would now be retained, being relocated to the front yard.
- 12.4 Ground 3 has been addressed. Specifically, the fourth storey has been setback additionally from the street, from 6 m (4.5 m for the balcony) to 8.65 m (8.05 m for the terrace). The original fourth storey was the same as the ground, first and second floor levels below, whereas now it has setback between 2.4 and 4.4 m beyond them. In addition, the materials used on the front façade have been altered so that now the fourth storey would be constructed in a different material to the levels below. This means that the building now presents to the street as a three storey building with a recessed fourth storey, rather than a four storey building. This is more responsive to the adjoining buildings and provides an effective transition in scale. This achieves what is sought by the policy (notably sections 7.6 and 8.2 of Clause 21.05-2 Built form).
- 12.5 Overall, the amended plans have generally addressed the issues that led to the previous Council position to not support the application. However, the proposal must still comply with the relevant planning policy and an assessment against these provisions follows.

#### **Local Policy Framework**

- 12.6 Clause 21.04-1 Housing and accommodation sets out a five tier hierarchy for residential growth in the City of Port Phillip: substantial, moderate, incremental, limited and minimal residential growth areas. The subject site is located within a limited residential growth area which has the following definition:
- Established residential areas (outside a Heritage Overlay) where future medium density infill development is not encouraged based on: limited proximity to the PPTN or any Major Activity Centre, or the areas highly consistent neighbourhood character.*
- 12.7 In limited residential growth areas, new residential development should be limited and must not compromise the neighbourhood character and amenity values of the area.
- 12.8 It is acknowledged that despite being in a limited growth area, there is potential for some form of apartment building on this site given the context of numerous apartment building development of up to four storeys in the street. The site is also located proximate to various public transport and facilities and only 210m north of the Carlisle Street Major Activity Centre. However any development on the site must still respond to the character of the area.
- 12.9 Clause 21.05 Built form sets out a range of objectives and strategies for urban structure and character at Clause 21.05-2 of relevance to this proposal.
- 12.10 Clause 21.06-1 sets out the key planning challenges, vision and strategies for the East St Kilda and Balaclava neighbourhood area including:

#### ***Vision***



*The established residential areas retain their generally mixed architectural character and diverse housing stock, while heritage building and streetscapes are conserved and enhanced. Any new residential development respects the important setback and garden characteristics of the area.*

### **Local strategies**

*In areas zoned Residential*

6.1.3 *Encourage new development to respond to the following specific character elements:*

- *The prevailing low rise (1 and 2 storey) development throughout most residential streets, with the exception of pockets of 2 and 3 storey flat development along main roads such as Alma Road, and Chapel, Hotham and Inkerman Streets.*
- *The consistent single storey scale, small setbacks, architectural style and 'fine grain' subdivision pattern of development in streets generally located between the railway line and Chapel Street, and on the north side of Inkerman Street between the railway line and Hotham Street, which represent some of the earliest areas of development.*
- *The larger setbacks and lot size and inter-war architectural style of the predominantly detached or semi-detached houses with front, rear and side setbacks that allow for landscaped larger open space areas with established trees, typical in the eastern part of the neighbourhood.*
- *The mature street trees in some areas including along Dandenong Road, Westbury Grove, Ravens Grove, and Westbury Street, south of Carlisle Street.*

12.11 A detailed assessment against the relevant character and built form themes follows. Overall, the proposal would be generally consistent with the relevant local policy. This is because it provides for additional housing on a site suitable for some form of apartment building, with a site responsive design.

### Heritage

12.12 The subject site and surrounding properties in Westbury Street are not located within a heritage overlay. The subject site is one of the original dwellings that remain in the street and as such underwent preliminary investigation as to whether it was of potential heritage significance. However, it was determined in consultation with the Place and Design team that the seeking of interim heritage controls was not warranted for this site. Accordingly, there is nothing in the policy that can require the retention of the existing dwelling.

### Height and massing

12.13 Buildings along Westbury Street are predominantly two or three storeys in height, with some remnant single storey dwellings and two four storey buildings at 84 and 109 Westbury Street.



- 12.14 The abutting properties are occupied by two and three storey development, and immediately opposite is two and three storey development. Therefore in order to respect the prevailing streetscape scale, avoid dominating the streetscape and provide a transition in scale, any fourth storey (third floor) on the subject site must be visually recessive.
- 12.15 As proposed, the fourth storey would be setback additionally 8.65 m from Westbury Street (8.05 m for the terrace). This is between 2.4 and 4.4 m beyond the lower floors. In addition, the materials used on the front façade have been altered so that now the fourth storey would be constructed in a different material to the levels below. This means that the building would present to the street as a three storey building with recessed fourth storey, which is appropriate.
- 12.16 Strategy 7.6 at Clause 21.05-2 requires that development respect and be consistent with the prevailing streetscape scale, and in diverse streetscapes generally be no more than 1 storey above the height of the lower adjoining buildings, with a maximum building height of 3 storeys. Because of the diversity in this streetscape and the limited scale and recessed design of the upper storey, the proposed four storey built form can be accommodated in this location, consistent with this policy.

#### Setbacks

- 12.17 The apartment buildings in the street are typically setback off all side and rear boundaries. A small amount of wall on boundary is proposed on the south and rear boundary, but this is at the rear of the site where it would not interrupt the side setback rhythm (of space) in the streetscape.
- 12.18 The front setback complies with the Front setback standard of Clause 55 and would provide for a graduation between the two adjacent buildings through the stepped back design.
- 12.19 There is opportunity for landscaping around the perimeter of the site, but deep soil planting would only be possible in certain areas due to the basement. Importantly, this includes the front setback and the north east corner which is adjacent to a sensitive rear yard to the north.
- 12.20 The building complies with the side and rear setbacks standard of Clause 55 in relation to all side and rear boundaries. Setbacks are graduated across the site and increase at the upper levels, in response to the adjoining sensitive interfaces. The extent of compliance with the North facing windows, Side and rear setbacks and Overshadowing standards is evidence of this. The fourth storey in particular has been well setback from all boundaries to reduce visibility from all aspects.

#### Integration with the street

- 12.21 The building is proposed to be oriented to Westbury Street, with both pedestrian and vehicle access off it. Several balconies and terraces and numerous habitable room windows and doors face the street, providing passive surveillance and activation of the street at the upper floor levels.



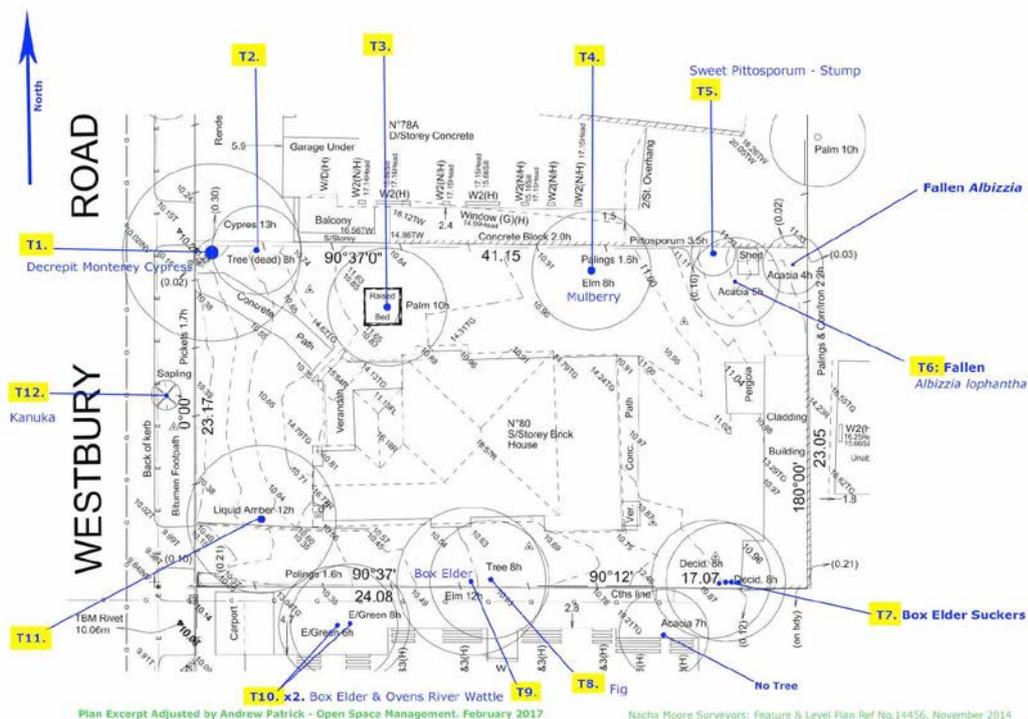
- 12.22 1.5 m high fencing is proposed along the frontage, which would provide partial privacy to the courtyards and habitable room windows of the two ground floor dwellings which face the street. This is more appropriate than having secluded space behind a 1.8 m high front fence, since it provides better integration with the street.
- 12.23 The proposed vehicle access would be via the existing single width crossover (which may need to be slightly modified to align with the driveway). This is an appropriate arrangement with regard to minimising impacts on on-street parking and street trees.
- 12.24 The basement car parking would not be visible from the street, which would be satisfactory.

Design detail

- 12.25 A contemporary design is proposed, which can be accommodated in this context which includes development from a variety of eras, including a contemporary style development to the north and multiple 1960s era 'six pack' apartments to the south and opposite.
- 12.26 A flat roof form is consistent with the prevailing pattern of apartment roofs.
- 12.27 A range of materials is proposed to be used, including brick, metal cladding, render and Alucobond cladding. Council's Urban Designer is supportive of this, advising that:  
*Choice of materials are modern, colours and texture matching the prevailing materials palette along the street.*
- 12.28 The design of the front fence is consistent with the overall palette.

Vegetation and landscaping

- 12.29 The local policy framework, including Objective 5 of Clause 21.05-2 seeks to retain significant trees where they form part of the neighbourhood character of the area. The proposal would result in the removal of a number of trees from the site.
- 12.30 Council's Arborist visited the site and reviewed the Arborist report submitted with the application and concluded that:  
*Trees 2, 5, 6, 7 and 8 can be removed without the need for a Significant Tree Permit.*  
*Trees 1, 4 and 11 can be considered for removal; a Significant Tree Permit must be obtained for their removal;*  
*Tree 3 (Canary Island Date Palm) must be retained on site, however can be relocated (transplanted) to a new location within the property...*  
*Tree 9 (Box Elder) should be retained and protected and the development*



12.31 The amended plans have shown Tree 3 (canary island date palm) being relocated to the front of the site. This is a positive outcome.

12.32 It is not possible to retain Tree 9 without redesigning the layout, as it is located where the accessway is proposed to be sited. This tree is a Box Elder which is not native and not considered to be significant under Council's Local law. On balance, it is not feasible to redesign the development to retain this tree, which is not significant and where the planting of mature canopy trees can off-set this loss. There is opportunity to plant mature trees where the basement is setback from the site boundaries: in the frontage and in the north east corner of the site.

12.33 Conditions are recommended to require the submission of a Tree Management Plan and Landscape Plan. Refer to recommended conditions 13-17.

12.34 The existing street tree would not be affected by the proposal which is a positive outcome.

#### Internal amenity

12.35 The proposal would provide for a reasonable level of amenity for future residents. Most of the dwellings have at least some northern aspect and nine of the dwellings (45%) would have POS with at least some northern aspect. Only two dwellings (G03 and 103) would have an entirely southern aspect. All would be provided with sufficient access to light and POS. Refer to the Clause 55 assessment below.



Offsite amenity

- 12.36 The proposed development would not cause any unreasonable off-site amenity impacts. In particular, the Rescode standards relating to Daylight to existing windows, North facing windows and Side and rear setbacks. The overlooking standard would be met subject to recommended conditions 1a)-c).
- 12.37 The only off-site amenity impact standard that would not be met is at Overshadowing open space objective. However, only a small amount of additional shadow would be caused to the very small courtyards to the south at 82 Westbury Street. The amount of additional shadow that would be caused has been notably reduced through the amended plans through the increased setbacks from the south boundary. This is a significantly improved outcome. It is considered that the objective would be met, due to the limited amount of additional shadow that would be caused. Refer to the Overlooking discussion in the Clause 55 assessment below.
- 12.38 Overall, subject to conditions, the proposal would not cause any unreasonable off-site amenity impacts.

**Clause 55 Two or More Dwellings on a Lot and Residential Buildings (Rescode)**

- 12.39 The proposed development would satisfy many of the standards and all of the objectives of Clause 55 subject to conditions.
- 12.40 Variations have been sought and could be granted in relation to the following standards.

Building Height Objective

- 12.41 The building would have a maximum height of 13.22 m to the top of the level 4 parapet and 14.12 m to the top of the lift shaft, in excess of the 9m of Standard B7. However, the four storey design can be accommodated in this context which includes built form of one to four storeys in height on Westbury Street.

Parking Location Objectives

- 12.42 The shared accessway would be located within 1.5 m of habitable room windows. A condition would require that these windows be treated (i.e. with double glazing or similar) to limit unreasonable vehicle noise. Refer recommended condition 1d).

Overshadowing Open Space Objective

- 12.43 The shadow diagrams submitted with the application show that additional shadow would be caused to four courtyards located to the immediate south at 82 Westbury Street. These courtyards have areas (and approximate minimum dimensions) of 9sqm (2.2 m), 13 sqm (2.8 m), 19sqm (2.2 m) and 43 sqm (4 m) each. Because of the limited sizes of these spaces and the extent of existing shadow, any additional shadow would not comply with the standard.



- 12.44 The original plans were considered to cause unreasonable overshadowing impacts. In particular, POS2 and POS3 would have had 0 and 2 sqm not in shadow at any time, which would be excessive and unreasonable.
- 12.45 The amended plans now show that additional shadow would occur as follows:
- POS2 (13 sqm) would receive additional shadow of: 0.1 sqm at 10 am, 0.1 sqm at 11 am and 0.3 sqm at 12 noon.
  - POS3 (19 sqm) would receive additional shadow of: 0.3 sqm at 9 am, 2.5 sqm at 10 am, 0.7 sqm at 11 am, 0.6 sqm at 12 noon and 1.5 sqm at 1 pm.
  - POS4 (9 sqm) would receive additional shadow of 0.4 sqm at 9 am and 1 sqm at 11 am.
  - POS5 (43 sqm) would not receive any additional shadow.
- 12.46 This is a relatively limited amount of additional overshadowing, and a notable improvement compared to the previous plans. POS3 would receive some sunlight throughout the day. POS2 would receive some sunlight from 10 am onwards.
- 12.47 Three of these courtyards have limited size and width and are already overshadowed by the existing boundary fence. It would therefore be very difficult to comply with the overshadowing standard, and very difficult to develop the subject site without causing some additional overshadowing to these courtyards.
- 12.48 Further, these courtyards currently borrow some of their sunlight amenity from the subject site which contains the original dwelling which is both single storey and setback from the south boundary.
- 12.49 On balance, it is considered that the proposed additional overshadowing would not be excessive or unreasonable and would meet the objective of this clause.

#### Overlooking Objective

- 12.50 There would be no unreasonable overlooking from the ground floor rooms and yards due to boundary fencing. However a condition will require that the height of boundary fences be a minimum of 1.7 m above floor level of the dwellings.
- 12.51 South, east and north facing habitable room windows at the first, second and third floors would either be fixed and have obscured glazing to 1.7 m above finished floor level or have a sill height of 1.7 m.
- 12.52 Screening of balconies would be through a combination of obscured glass and aluminium slat privacy screen (maximum 25 % openings) to 1.7 m above finished floor level. If a permit were to issue, standard conditions would require that cross sections of the screens be submitted to demonstrate how they would prevent views.
- 12.53 The fourth level habitable room windows and terraces are not proposed to be screened. However it would be possible to obtain some oblique views to adjacent



POS and windows and so these will be required to be addressed through a condition.

- 12.54 Subject to recommended conditions 1a)-c) the proposal would comply with the Overlooking standard of Clause 55 and would not cause any unreasonable loss of privacy to any adjoining property.

Private open space objective

- 12.55 The ground level dwellings would have courtyards of between 20 and 73 sqm in area. Standard B28 would not be met because they would have less than 40 sqm of Private open space. The yard of dwelling GO1 would also not be secluded because the front fence would be 1.5 m high.
- 12.56 On balance, it is considered that the objective would be met for these dwellings, because all of the courtyards have a functional layout and are associated with one or two bedroom dwellings. They would provide for the reasonable needs of residents. In addition, Hewison Reserve is located 60 m to the east of the site.

Solar access to open space objective

- 12.57 Of the 20 dwellings, 9 would have a north facing courtyard, terrace or balcony, 3 would have an east facing balcony or terrace, 5 would have a west facing balcony or terrace and 3 would have a south facing courtyard or balcony. Thus only 15% would have a south facing courtyard or balcony.
- 12.58 The southern boundary setback standard for SPOS is not met in relation to the south facing courtyard of unit G03 or the north facing courtyards of G01 and G07. While not ideal, the variation is considered acceptable due to the constraints of the orientation of the land and location of buildings on adjoining lots which would make it very difficult to fully comply.

Other matters

- 12.59 Conditions have also been recommended in order to address aspects of the following Clause 55 provisions:
- Landscaping objectives (refer recommended conditions 13-17)
  - Deep soil areas and canopy trees objective (refer recommended condition 15i))
  - Integrated water and stormwater management objectives (refer recommended conditions 8-11)
  - Noise impacts objectives (refer recommended condition 1d))
  - Accessibility objective (refer recommended condition 1i)), and
  - Storage objective (refer recommended condition 1j)).



### **Special Building Overlay**

- 12.60 The SBO1 affects a small portion of the site in the south west corner. Melbourne Water supports the proposal subject to conditions which must be included in any permit issued. Overall, subject to Melbourne Water's conditions at 24-26, the proposal would not cause any flood hazard or obstruct overland flows and would be consistent with the provisions of the SBO.

### **Car parking**

- 12.61 A permit is required to reduce the number of car parking spaces required by Table 1 at Clause 52.06-5. Specifically, 24 car spaces are proposed. The car parking rate is one space to each one or two-bedroom dwelling and 1 space for visitors to every five dwellings. This equates to a requirement of 21 resident car spaces and 4 visitor car spaces: 25 in total. Therefore a reduction of one visitor car parking space is sought.
- 12.62 The original proposal sought a reduction for two visitor car parking spaces.
- 12.63 The applicant submitted a Traffic and parking impact assessment with car parking certification prepared by Auswide Consulting dated November 2016. This submits the following in support of the car parking reduction:
- A parking demand survey was undertaken over a Thursday, Friday and Saturday in the morning and evening. It assessed all parking spaces within a 250m radius of the site, to conclude that occupancy rates were 51-65%.
  - The number of vacant spaces could accommodate the cars not provided for on the site.
  - The site has good access to public transport, being 450m from the Balaclava train station, 400m from the 3/3a and 16 trams, 500m from the 78 tram, 900m from the 5 and 64 trams and 450m from the 216 and 219 buses.
  - The site has 'an excellent walkability score (4), which indicates that 'daily errands do not require a car'.' (page 14)
- 12.64 This is generally agreed with. Additionally, three car spaces are marked out the front of the site, which would not be affected by the proposal. Also, as discussed below, parking has been provided for 16 bicycles on the site, which exceeds the minimum Clause 52.34 requirement to provide six bicycle parking spaces
- 12.65 Further, it is noted that (particularly short-term) visitors often prefer to park on street rather than venture into on-site (particularly basement or above ground) car parking spaces.
- 12.66 Overall, in consideration of these factors, it is recommended that the reduction of parking for one visitor car space be supported.



### **Car parking and access layout**

- 12.67 The proposed car parking and access layout has been assessed by Council's Traffic Engineer against the Design standards set out at Clause 52.06-9. There are some areas of potential concern which would not be resolved on any endorsed plans. These have been addressed in recommended conditions. Refer to recommended conditions 1e)-g).

### **Traffic impacts**

- 12.68 The Traffic and parking impact assessment with car parking certification submitted adopts a traffic generation rate of 12 peak hour trips. It asserts that there would be a negligible/ minimal impact on the existing traffic operations of surrounding intersections.

- 12.69 Council's Traffic engineer assessed the traffic impacts and advised:

*Traffic generation rates adopted by the applicant have been checked and are considered appropriate for the proposed land use.*

*Overall the expected traffic generation of the proposed development is expected to have a negligible impact on surrounding local streets and intersections.*

- 12.70 It is considered that the development would not cause any unreasonable traffic impacts.

### **Bicycle Parking**

- 12.71 Clause 52.34 Bicycle facilities sets out a bicycle parking rate for developments of four or more storeys of one space to each five dwellings for residents and one space to each ten dwellings for visitors. Therefore there is a requirement to provide four resident spaces and two visitor spaces: six in total.

- 12.72 Twelve bicycle parking racks are proposed for residents within the basement. An additional two bicycle racks are proposed in front of the entry, accessible to visitors. The requirements of Clause 52.34 have therefore been exceeded, with parking for 16 bicycles provided.

### **Sustainable Design and Water Sensitive Urban Design**

- 12.73 The applicant submitted a Water Sensitive Urban Design (WSUD) report and Sustainable management plan as part of the original application material. This was assessed by Council's ESD Advisor, who raised various issues. It is recommended that these be addressed through conditions, to ensure that the proposal satisfied the requirements of Council's local policies at Clause 22.12 and 22.13. Refer to recommended conditions 5-11.



**13. COVENANTS**

- 13.1 The applicant has completed a restrictive covenant declaration form declaring that there is no restrictive covenant on the titles for the subject site known as Lot 1 on Title Plan 580301J (Parent Title Volume 01983 Folio 409).

**14. OFFICER DIRECT OR INDIRECT INTEREST**

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

**15. OPTIONS**

- 15.1 Approve as recommended.
- 15.2 Approve with changed or additional conditions.
- 15.3 Refuse.

**16. CONCLUSION**

- 16.1 The proposed development as shown on the amended plans circulated on 18 April 2018, subject to the recommended conditions, complies with the relevant State and Local planning provisions because it would:
- Be an appropriate response to the character of the area, which includes a number of apartment buildings and dwellings from a range of eras. In particular, the setbacks are site response, the fourth level has been designed so as to be visually recessive, the canary island date palm would be retained, and a contemporary style building can be accommodated in this context.
  - Comply with all of the Clause 55 objectives and most of the standards (subject to conditions).
  - Not cause any unreasonable off-site amenity impacts, with only a small amount of additional overshadowing being caused to the adjoining courtyards to the south.
  - Provide for a good level of internal amenity for future residents.
  - Provide an acceptable number of car spaces.
- 16.2 It is recommended that Council informs the Tribunal (VCAT) and all parties to the appeal that it supports the application subject to conditions, as per Recommendation "Part A".

**TRIM FILE NO:** PF16/710797

**ATTACHMENTS**

1. Original advertised plans
2. Objector Map
3. Amended plans circulated prior to hearing