

AGENDA - ORDINARY MEETING OF COUNCIL – 5 JULY 2017



8.10	202-214 NORMANBY ROAD SOUTHBANK
LOCATION/ADDRESS:	202-214 NORMANBY ROAD SOUTHBANK
GENERAL MANAGER:	CLAIRE FERRES MILES, PLACE STRATEGY AND DEVELOPMENT
RESPONSIBLE MANAGER:	GEORGE BORG, MANAGER CITY DEVELOPMENT
AUTHOR:	SIMON GUTTERIDGE, PRINCIPAL PLANNER FBURA
TRIM FILE NO.:	PF17/273439
ATTACHMENTS:	NIL
WARD:	Gateway
TRIGGER FOR DETERMINATION BY COUNCIL:	Fishermans Bend application incorporating a dwelling
APPLICATION NO:	DELWP Ref: 2015/35404-1 Council Ref: MINRA 0012/2015/A
APPLICANT:	SJB Planning for Blue Earth Pty Ltd
EXISTING USE:	Motor vehicle sales
ABUTTING USES:	Child care centre, commercial
ZONING:	Capital City Zone (CCZ1) Abuts Road Zone Category 1 (RDZ1)
OVERLAYS:	Design and Development Overlay (DDO30) Development Contributions Plan Overlay (DCPO2) Parking Overlay (PO1)
STATUTORY TIME REMAINING FOR DECISION AS AT DAY OF COUNCIL	Expired (Ministerial Referral)

PROPOSAL

Amend the preamble and Condition 13 of the existing permit to allow use of part of the approved building for serviced apartments within an approved 40 level mixed use building.

I. EXECUTIVE SUMMARY

- 1.1 It is proposed to amend the preamble and condition 13 of an approved permit to allow the use of part of the approved building for serviced apartments within an approved 40 level mixed use building.
- 1.2 The application site is located in the Montague precinct of the Fishermans Bend Urban Renewal Area (FBURA).



- 1.3 The Minister for Planning is the Responsible Authority for the application pursuant to Section 2.0 of the schedule to Clause 61.01 of the Port Phillip Planning Scheme as the proposal is for development with a building height of 4 storeys or greater, and use and development of 60 or more dwellings.
- 1.4 The Minister has provided Council with the opportunity to consider and provide advice on the application, which can be used by the Minister and his department in their assessment of the proposal.
- 1.5 Council's advice is provided on an informal basis as the Capital City Zone (CCZI) exempts most applications from notice and review.
- 1.6 The subject site is in a mandatory 40 storey maximum height area pursuant to interim mandatory height limits introduced in April 2015 while a review of the urban renewal area was carried out.
- 1.7 It is not proposed to change the design of the approved building.
- 1.8 The amendment application was not required to be internally or externally referred.
- 1.9 The amendment of the permit to allow the use for serviced apartments would be minor, and would be consistent with the mixed use ambitions of the Fishermans Bend Urban Renewal Area.
- 1.10 It is recommended that Council advise the Minister it supports the amendment of the permit as proposed.

KEY ISSUES

Land use.
Amenity impacts.

2. RELEVANT BACKGROUND

- 2.1 Planning Permit 2015/35404 was issued by the Minister for Planning on 22 August 2016 pursuant to a VCAT consent order.
- 2.2 The permit allowed the demolition of the existing buildings and construction of a 40 storey building with a five storey podium comprising, one retail tenancy, two office tenancies, a community meeting room, 244 dwellings and associated car parking subject to conditions.
- 2.3 The application was originally lodged with the Department of Environment, Land, Water and Planning (DELWP) on 29 June 2015, further information was received 24 September, and the application was received by Council 4 November 2015.
- 2.4 The application was considered by Council's Statutory Planning Committee at its 17 May 2016 meeting, where it was resolved to advise the Minister for Planning that it did not support the application in its current form.
- 2.5 Concurrent with Council's consideration of the application, the applicant initiated VCAT proceedings lodging an application for review against the Minister's failure to determine the application in the statutory timeframe.



- 2.6 Council successfully sought to be joined as a party to the appeal. Council participated in a compulsory conference (mediation) on 15 June 2016. Council and Department representatives outlined their key issues with the proposed development.
- 2.7 The applicant considered these key concerns and opted to provide amended plans to all parties, demonstrating how these concerns could be alleviated.
- 2.8 The parties reached agreement regarding the amended plans and permit conditions, and the Tribunal consequently issued an order to grant a permit.
- 2.9 The land and permit have been sold. The new owners wish to amend the permit to allow the use of part of the building for serviced apartments. No change to the internal or external design of the building is proposed.

3. PROPOSAL

- 3.1 It is proposed to:
 - 3.1.1 Amend the permit preamble to replace the word 'dwellings' with 'accommodation' to allow the use of part of the building for serviced apartments.
 - 3.1.2 Amend Condition 13 to delete the word 'apartment'.

4. SUBJECT SITE AND SURROUNDS

- 4.1 The subject site is located on the north side of Normanby Road between Montague Street and the freeway.
- 4.2 The site is rectangular and has a frontage to Normanby Road of 30.17m, a rear abuttal to Munro Street also of 30.17m, a maximum depth of 49.5 metres and an overall site area of approximately 1,518m².
- 4.3 The land is currently developed with a two storey commercial building used for motor vehicle sales.
- 4.4 There is a vehicle crossing to the front south-west corner of the land off Normanby Road and another crossing in the rear north-east corner of the site off Munro Street.
- 4.5 Surrounding land is developed as follows:

North-east (side) (along Normanby Road)

A two storey rendered building. Vehicle access is via Munro Street to the north. The Melbourne Exhibition and Conference Centre.

South-west (side) (along Normanby Road)

A two storey glass fronted building used for a child care centre. Vehicle access is via Munro Street to the north. Further to the west at 228-238 Normanby Road, a planning permit has been issued (Planning Permit No. MPA/0007) for two towers of 39 and 49 storeys comprising 518 dwellings.

South-east (opposite, across Normanby Road)

South of the subject site, on the opposite side of Normanby Road a planning permit has been issued for the development of the land at No. 199-201 Normanby Road for a mixed use tower of 40 storeys comprising approximately 262 dwellings. Land at No. 187 Normanby Road comprises a single storey warehouse.



North-west (rear, across Munro Street)

A large at-grade car park, the Montague Street/Lorimer Street/Freeway junction, and the elevated West Gate Freeway beyond.

- 4.6 The subject site is well serviced by both public transport and the road network. Located within proximity of the site are bus services, tram routes (within 200m-300m) and a bicycle path connecting Port Melbourne with the CBD. Vehicle access to the Westgate Freeway is located approximately 500m from the site via Montague Street.
- 4.7 The South Melbourne Activity Centre is located approximately 350m to the southeast of the site, providing a wide range of employment, shopping opportunities and community services.

5. REFERRALS

5.1 Internal referrals

The application was not required to be internally referred.

5.2 External referrals

Council is not required to externally refer Department applications.

6. PUBLIC NOTIFICATION/OBJECTIONS

- 6.1 The application is exempt from notice requirements.

7. OFFICER'S ASSESSMENT

Amendment of preamble

- 7.1 The existing preamble reads as follows:

Demolition of existing buildings, and development of the land for the construction of a multi-storey building, and use of land as dwellings, and alteration of access to a Road Zone Category 1 in accordance with the endorsed plans.

- 7.2 The application seeks to replace the word 'dwellings' with 'accommodation' to allow the use of part of the building for serviced apartments so the preamble would read as follows (Officer underline emphasis added):

Demolition of existing buildings, and development of the land for the construction of a multi-storey building, and use of land as accommodation, and alteration of access to a Road Zone Category 1 in accordance with the endorsed plans.

- 7.3 **Accommodation** is the parent or umbrella term for all residential uses and includes **Camping and caravan park, Corrective institution, Dependent person's unit, Dwelling** including Bed and Breakfast and Caretaker's dwelling, **Group accommodation, Host farm, Residential building** including Backpackers' lodge, Boarding house, Hostel, Nurses' home, **Residential aged care facility** including Nursing home, Residential college, **Residential hotel** including Motel, **Residential village, and Retirement village.**
- 7.4 **Serviced apartment** is not defined in the Planning Scheme, and so is an innominate use, although multiple Tribunal decisions accept that it falls within the broad ambit of **Accommodation.**



- 7.5 It is noted that **Accommodation** is a Section 1 - Permit not required use in Schedule 1 to the Capital City Zone, provided it meets the threshold distance from industrial and/or warehouse uses referred to in the table to Clause 52.10.
- 7.6 Accordingly, the planning issue to be determined is not whether the use for a particular type of accommodation is appropriate in the zone, but rather whether use for a particular type of accommodation in proximity to existing industrial and/or warehouse uses is appropriate.
- 7.7 The existing industrial and warehouses uses in proximity to the site are low impact and/or relatively small businesses repairing vehicles, recycling waste materials, or storing goods. These uses do not exert overt adverse off-site amenity impacts of noise or odour or potential hazard which is why Council and the Department raised no objection to use of the land for dwellings within the threshold distance.
- 7.8 The same assessment applies to the use of the land for accommodation in general including serviced apartments.
- 7.9 Accordingly, officers support the proposed amendment to the preamble.

Amendment of Condition 13

- 7.10 The existing Condition 13 reads as follows:

Noise Attenuation

13. Before the building allowed by this permit is occupied, the applicant/owner must ensure that external noise intrusion into apartment bedroom and living areas (upon completion; with furnishing within the spaces and with windows and doors closed) and measured in accordance with AS/NZS2107/2000 Acoustics - Recommended Design Sound levels and Reverberation Times for Building Interior shall comply with the following:

- (a) Between 10pm and 7am in bedrooms areas must not exceed LAeq (9 hour) 40dB(A).*
- (b) Between 7am and 10pm in living rooms must not exceed LAeq (15 hour) 45dB(A).*

- 7.11 The application seeks to delete the word 'accommodation' so the condition would read as follows (Officer strikeout emphasis added):

Before the building allowed by this permit is occupied, the applicant/owner must ensure that external noise intrusion into ~~apartment~~ bedroom and living areas (upon completion; with furnishing within the spaces and with windows and doors closed) and measured in accordance with AS/NZS2107/2000 Acoustics - Recommended Design Sound levels and Reverberation Times for Building Interior shall comply with the following:

- (a) Between 10pm and 7am in bedrooms areas must not exceed LAeq (9 hour) 40dB(A).*
- (b) Between 7am and 10pm in living rooms must not exceed LAeq (15 hour) 45dB(A).*

- 7.12 The Planning Scheme defines **Apartment** as 'A dwelling located above the ceiling level or below the floor level of another dwelling and is part of a building containing two or more dwellings.'

- 7.13 Whilst a serviced apartment in the building would meet part of this definition, it would conflict with that part of the definition referring to **dwelling** which is defined as 'A



building used as a self contained residence which must include: a) a kitchen sink; b) food preparation facilities; c) a bath or shower; and d) a closet pan and wash basin. It includes out-buildings and works normal to a dwelling.'

- 7.14 It is considered that the resulting generic reference to bedroom and living areas would satisfactory cover such rooms in any form of accommodation, including dwellings and serviced apartments.
- 7.15 It is noted that the change of use from dwelling to serviced apartment would result in a recalculation of the development contribution for the development, with the no. of dwellings chargeable at \$15,900 each reducing, but the extent of gross commercial floor area (i.e. commercially rented/leased serviced apartments) at \$18,000 per 100m² gross floor area increasing.

8. COVENANTS

- 8.1 The applicant has completed a declaration that the subject land, being all that land contained within Land in Volume 10308 Folio 389, being Plan of Consolidation 101849, is not encumbered by a restrictive covenant or Section 173 Agreement or other obligation such as an easement or building envelope.

9. OFFICER DIRECT OR INDIRECT INTEREST

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

10. OPTIONS

- 10.1 Provide comments to the Department of Environment, Land Water and Planning as recommended.
- 10.2 Provide changed or additional comments to the Department to those recommended.
- 10.3 Refuse to provide comments to the Department.

11. CONCLUSION

- 11.1 The requested amendments to the preamble and Condition 13 would be minor, would not change the design of the building, would not materially change the use of the building, would not result in an increase in adverse amenity impacts for short-term or long-term residents, and would be consistent with the mixed use ambitions for the Montague Precinct of the Fishermans Bend Urban Renewal Area.

12. RECOMMENDATION

That Council:

- 12.1 Advises the Minister for Planning that it supports the amendment of the preamble and Condition 13.