

# URBAN PLANNING DELEGATED COMMITTEE

## MINUTES

(Open to the public)

**Monday 6 December 2021**

Council Chamber, 8 Inglesby Road, Camberwell.

**Commencement** 6.37pm

**Attendance**

Councillor Garry Thompson (Chairperson)  
Councillor Jane Addis (Mayor)  
Councillor Felicity Sinfield  
Councillor Victor Franco  
Councillor Wes Gault  
Councillor Di Gillies  
Councillor Lisa Hollingsworth  
Councillor Jim Parke  
Councillor Cynthia Watson  
Councillor Susan Biggar  
Councillor Nick Stavrou

**Apologies** Nil

<b><u>Officers</u></b>	Phillip Storer Scott Walker Daniel Freer Mans Bassi  David Cowan  David Thompson Kirstin Ritchie Cassandra Rea Daniela Splitgerber Chiara Lorini Helen Pavlidis	Chief Executive Officer Director Urban Living Director Places & Spaces Acting Director Customer & Transformation Acting Manager Statutory & Strategic Planning Manager Governance & Legal Coordinator Governance Coordinator Statutory Planning Statutory Planner Statutory Planner Senior Governance Officer
------------------------	---	---

## Table of contents

<b>1.</b>	<b>Adoption and confirmation of the minutes</b>	<b>3</b>
<b>2.</b>	<b>Declaration of conflict of interest of any councillor or council officer</b>	<b>3</b>
<b>3.</b>	<b>Presentation of officer reports</b>	
3.1	PP16/01442.01 - 1052-1058 Toorak Road Camberwell (s72 amendment to the permit and endorsed plans)	3
3.2	PP21/0072 - Partial demolition and construction of alterations and additions associated with a dwelling in a Heritage Overlay - 14 Chrystobel Crescent Hawthorn	6
<b>4.</b>	<b>General business</b>	
4.1	Recent Judgment of the Victorian Supreme Court - Application of the Principle of Transformation Under the Planning and Environment Act	10
4.2	Construction and Traffic Management Plans	11
4.3	Opportunity to Review the Heritage Policy	11
<b>5.</b>	<b>Urgent business</b>	<b>11</b>
<b>6.</b>	<b>Confidential business</b>	<b>11</b>

**1. Adoption and confirmation of the minutes****MOTION****Moved Councillor Hollingsworth****Seconded Councillor Sinfield**

**That the minutes of the Urban Planning Delegated Committee meeting held on 8 November 2021 be adopted and confirmed.**

**CARRIED****2. Declaration of conflict of interest of any councillor or council officer**

Nil

**3. Presentation of officer reports****3.1 PP16/01442.01 - 1052-1058 Toorak Road Camberwell  
(s72 amendment to the permit and endorsed plans)**

An application has been made to Council for a Section 72 amendment to the existing permit and endorsed plans. The approved planning permit, comprising a 4 storey building above basement carpark comprising 37 dwellings, was issued at the direction of VCAT on 9 October 2018.

The current amendment proposal maintains the scope of the previously approved development, being a 4 storey building. Broadly, it is proposed to increase the number of apartments from 37 to 44, largely within the existing approved building footprint. There will be some alterations to boundary setbacks in selected locations, minor alteration to site coverage, changes to external materials and architectural expression.

Basement Level 3 is also proposed to be removed, resulting in a reduction of the number of on-site car spaces from 119 to 74, including reduction in the number of visitor parking spaces from 9 to 2. The car parking requirements of Clause 52.06 continue to be met and no reduction of the car parking rate is sought.

At the time the original permit was issued, the application benefited from the transitional provisions of the planning scheme inserted by Amendments VC110 and VC136 in relation to the mandatory height and garden area requirements and Clause 58. The amendment continues to benefit from these transitional provisions and therefore the mandatory height and garden area requirements are not applicable.

As a result of the changes sought, the proposal subsequently seeks to alter the permit preamble to reflect the change to the number of dwellings and removal of some permit conditions that would become redundant.

## Issues

The following are key issues in respect of this application, which have been addressed in further detail in the Statutory Planning Officers Report (Attachment 1):

- Whether the proposed amendment to the planning permit results in unreasonable amenity impacts.
- If the amendment sought is consistent with the previous approval.
- The issues raised within the objections received.

## Officer's response

The amendment application was made pursuant to Section 72 of the *Planning and Environment Act 1987*.

For any amendment application, only the proposed changes can be assessed and determined. It is not open to Council to reassess the development in its entirety, given it has already been approved.

The proposed development responds appropriately to adjoining properties. Subject to recommended permit conditions to ensure all habitable room windows and balconies are screened in accordance with Standard B22 (Overlooking), the proposal will comply with the amenity requirements of ResCode, including Standard B21 (Overshadowing). It is considered the proposed amendment will not unreasonably impact on the amenity of nearby dwellings.

The proposed changes are largely within the existing approved building footprint that maintains the 4 storey form and maximum height of 14.9 metres. The proposed amendment is considered to appropriately respond to the existing and preferred character of the area in accordance with the endorsed plans. The proposal is supported by Council's Urban Designer, subject to the recommended conditions.

The proposal complies with the relevant parking rate in the Planning Scheme. No reduction in car parking is being sought.

The changes to the permit preamble aligns with the proposed increase in the number of apartments.

Details of the proposal, discussion of all objections and assessment against relevant controls and policies are contained in the following attachments to this report:

1. Officer Recommendation and Conditions
2. Statutory Planning Officers Report
2. Appendix A - Amended Plans
3. Appendix B - Zoning Map
4. Appendix C - Planning Permit
5. Appendix D – Endorsed Development Plans
6. Appendix E – Objectors Location Map

*11 speakers opposed to the officers' recommendation addressed the meeting.  
2 speakers in support of the officers' recommendation addressed the meeting.  
4 submitters opposed to the officers' recommendation chose not to address the meeting.*

**MOTION****Moved Councillor Franco****Seconded Councillor Hollingsworth**

**That Urban Planning Delegated Committee resolve that a Notice of Refusal to Grant an Amendment to Planning Permit No. PP16/01442 for Construction of a four-storey building above a basement car park comprising not more than 44 dwellings and alteration of access to a road in a Road Zone Category at 1052-1058 Toorak Road Camberwell be issued under the Boroondara Planning Scheme on the following grounds:**

- 1. The proposal represents an overdevelopment of the site resulting in excessive visual bulk that is inconsistent with the neighbourhood character and will have unreasonable off-site amenity impacts to adjoining residential properties.**
- 2. Poor internal amenity for Apartments 2.32 and Apartment 2.33 due to poor outlook, overlooking and noise impacts from the corridor.**
- 3. Poor amenity of south facing apartment 1.26 and 1.27.**

**CARRIED****Procedural motion - Adjournment****MOTION****Moved Councillor Biggar****Seconded Councillor Watson****That the Urban Planning Delegated Committee be adjourned.****CARRIED**

*The Urban Planning Delegated Committee was adjourned at 8.54pm*

**Procedural motion - Resumption****MOTION****Moved Councillor Stavrou****Seconded Councillor Hollingsworth****That the Urban Planning Delegated Committee be resumed.****CARRIED**

*The Urban Planning Delegated Committee resumed at 9.02pm with all councillors present except Councillor Sinfield.*

*Councillor Sinfield entered the Council Chamber at 9.03pm and resumed her seat.*

### **3.2 PP21/0072 - Partial demolition and construction of alterations and additions associated with a dwelling in a Heritage Overlay - 14 Chrystobel Crescent Hawthorn**

The proposal seeks a part demolition to the rear of a contributory graded dwelling (and associated outbuildings) and the construction of a two-storey rear addition (with basement) within a Heritage Overlay.

The proposed rear addition involves a contemporary design, utilising modern forms with brick and slate materiality.

#### Issues

The following key issues are addressed in the Statutory Planning Officers Report (Attachment 1):

- Heritage Policy (pages 19-27)
- Objections received (pages 9-10 and 28-32)

#### Officer's response

After assessing the application against the Boroondara Planning Scheme officers have concluded the following:

- The proposal is acceptable from a heritage perspective and is supported by Council's Heritage Advisor;
- The proposal is consistent with the objectives as outlined in Clause 22.03 (Heritage Policy).
- The proposed works will have limited visibility to the streetscape.

It is considered that the dwelling extension incorporates sufficient setbacks and building heights as well as appropriate building materials which seek to ensure the development does not significantly impact on the Grace Park Precinct in which it is located. The proposal satisfactorily responds to the requirements of the Heritage Policy and will not dominate the existing dwelling on the site or detract from the Heritage character of the streetscape. In particular, the provision of a link between the host building and the new section of the building addresses the Heritage Policy to distinguish between old and new forms. The proposed flat roof form in addition to the site slope further limits the visibility of the proposal from the streetscape. Sightlines, 3D/photo renders and oblique view diagrams demonstrate that the new built form will not significantly impact upon the appreciation of the host dwelling. Many of the policy directives of Council's Heritage Policy requires consideration of the impact of new built form in particular locations from the street. It is considered that the proposal complies with the policy in this regard.

Details of the proposal, discussion of all objections and assessment against relevant controls and policies are contained in the following attachments to this report:

1. Statutory Planning Officers Report
2. Appendix A - Development Plans
3. Appendix B - Locality Map
4. Appendix C - Zoning Plan

*4 speakers opposed to the officers' recommendation addressed the meeting.  
1 speakers in support of the officers' recommendation addressed the meeting.*

## MOTION

Moved Councillor Gault

Seconded Councillor Sinfield

That the Urban Planning Delegated Committee resolve that a Notice of Refusal to Grant a Planning Permit No. PP21/0072 for 'Partial demolition and construction of alterations and additions associated with a dwelling in a Heritage Overlay' at 14 Chrystobel Crescent, Hawthorn be issued under the Boroondara Planning Scheme on the following grounds:

1. The proposed design does not comply with Clause 22.03 (Heritage Policy) of the Boroondara Planning Scheme and will adversely impact the heritage place and precinct.
2. The proposed materials, window style and overall architectural form will not result in an addition that is complementary or sympathetic to the host building, or the wider precinct.
3. The height of the proposed addition will dominate the host building and reduce its contribution to the heritage streetscape.
4. The proposed fence beneath the front verandah diminishes the contribution of the existing dwelling to the streetscape

LOST

## MOTION

Moved Councillor Parke

Seconded Councillor Stavrou

**That the Urban Planning Delegated Committee resolve that Notice of Decision to Grant a Planning Permit No. PP21/0072 for 'Partial demolition and construction of alterations and additions associated with a dwelling in a Heritage Overlay' at 14 Chrystobel Crescent, Hawthorn be issued under the Boroondara Planning Scheme subject to the following conditions:**

### **Amended plans required**

- 1. Before the development starts, amended plans to the satisfaction of the responsible authority must be submitted to and approved by the Responsible Authority. The plans must be drawn to scale with dimensions and three (3) copies provided. When the plans are endorsed they will then form part of the permit. The plans must be substantially in accordance with the formally substituted plans received by Council on 8 September 2021 but modified to show:**

- a. The proposed fence element located within the front western verandah return to be removed;
- b. The proposed double vehicle gates to the western side of the dwelling (as shown to the north elevation) to be noted as timber pickets;
- c. The proposed double vehicle gates to the western side of the dwelling to be a minimum 25% visually permeable;
- d. A coloured schedule of construction materials, external finishes and colours (including swatch samples);

**Layout not to be altered**

2. The layout of the site and the size, levels, design and location of buildings and works shown on the endorsed plans must not be modified for any reason without the prior written consent of the Responsible Authority.

**Drainage**

3. The site must be drained to the satisfaction of the Responsible Authority.

**Vehicle crossovers**

4. Any new vehicle crossover or modification to an existing vehicle crossover must be constructed to the satisfaction of the Responsible Authority.
5. Rear vehicle access must not result in removal or damage to the bluestone paving of the laneway.

**Boundary walls**

6. The external faces of walls on or facing boundaries must be cleaned and finished to an acceptable standard to the satisfaction of the Responsible Authority.

**Permit to expire:**

7. This permit will expire if:

- a) The development does not start within two (2) years of the issue date of this permit; or
- b) The development is not completed within four (4) years of the issue date of this permit.

The Responsible Authority may extend the times referred to if a request is made in writing before the permit expires or:

- (i) within six (6) months afterwards if the development has not commenced; or
- (ii) within twelve (12) months afterwards if the development has not been completed.

Council and the Victorian Civil and Administrative Tribunal are unable to approve requests outside of the relevant time frame.



## Notes

- Headings are for ease of reference only and do not affect the interpretation of permit conditions.
- This is not a Building Permit. A Building Permit may be required prior to the commencement of any works associated with the proposed development.
- Prior to the commencement of any works on the site, the owner/developer must submit drainage plans for assessment and approval by the Responsible Authority (Asset Management).
- Stormwater drains are to be connected to a legal point of discharge approved by Council. Drainage Connections within a road reserve, right-of-way, parkland, within an easement or to a Health Act drain must be to Council's standards. A Council Supervision Permit is required for this work. All fees and charges associated with the connection are to be borne by the applicant.
- Prior to the commencement of any works on the site, the owner / developer must submit any new vehicular crossover or modification or alteration to an existing crossover proposal for assessment and approval by the Responsible Authority (Asset Management).
- Plant, equipment or services (other than those shown on the endorsed plans) that are visible from a street or a public park may require further planning permission. This includes air-conditioners, solar panels, water tank and the like.
- The Tree Protection Local Law requires that a Local Law Tree Permit be sought from Council for the removal and/or lopping of a 'Significant Tree' and/or excavation within the critical root zone of a Significant Tree. A list of Significant Trees is available at <http://www.boroondara.vic.gov.au/our-city/trees/significant-trees>. A Local Law Tree Permit is also required to remove, damage kill or destroy any identified 'Canopy Tree' which may include any excavation within the tree protection zone of a 'canopy tree'. The Tree Protection Local Law identifies a 'Canopy tree' as any tree with a single trunk circumference of 110cm or a combined circumference of a multi stemmed tree of 110cm or greater measured at 1.5m above ground level. A Planning Permit does not constitute a Local Law Tree Permit or permission to remove, damage kill or destroy a significant or canopy tree. The Tree Protection Local Law is available to download at <http://www.boroondara.vic.gov.au/our-city/trees/tree-works-permits> alternatively please contact Council's Arborist – Statutory Planning (telephone 9278 4888) should a Local Law Tree Permit be required.
- An Asset Protection Permit is required prior to the commencement of site works in accordance with Council's Protection of Council Assets and Control of Building Sites Local Law 2011.
- Prior consent from Council and any and all public authorities is required to be obtained for alteration or reinstatement of assets or services affected as a result of the development.

- **The full cost of reinstatement of any Council assets damaged as a result of demolition, building or construction works, must be met by the permit applicant or any other person responsible for such damage, to the satisfaction of the Responsible Authority.**
- **The permit application was not assessed against the provisions of Clause 54 – One Dwelling on a Lot (ResCode) of the Boroondara Planning Scheme. It is the responsibility of the applicant/owner to appoint a Registered Building Surveyor to determine compliance pursuant to the Building Regulations. Non-compliance with ResCode provisions will require dispensation from Council's Building Services Department.**

### **Division**

**Councillor Sinfield called for a division**

#### **Affirmative**

**Councillor Jim Parke  
Councillor Cynthia Watson  
Councillor Nick Stavrou  
Councillor Jane Addis  
Councillor Victor Franco  
Councillor Garry Thompson**

#### **Negative**

**Councillor Wes Gault  
Councillor Felicity Sinfield  
Councillor Lisa Hollingsworth  
Councillor Susan Biggar  
Councillor Di Gillies**

**The Chairperson declared the Motion CARRIED**

## **4. General business**

### **4.1 Recent Judgment of the Victorian Supreme Court - Application of the Principle of Transformation Under the Planning and Environment Act**

**Councillor Sinfield** referred to a recent judgment of the Victorian Supreme Court impacting on the way Council is to apply the principle of 'transformation' to section 72 applications under the *Planning and Environment Act 1987* (the Act).

Councillor Sinfield encouraged Council officers to give further consideration to the implications of the judgment on Council.

Councillor Sinfield suggested Council should write to the Minister Planning seeking clarification on how Council is to assess the merits of an amendment application where the amendment leaves little if anything of the original permit. Especially as Council is told by the Act and VCAT that its consideration of the application and its ability to impose permit conditions is confined to the differences between that which has already been approved by the original permit and that sought to be approved by the amendment of the permit.

Councillor Sinfield then proposed a briefing and discussion take place with councillors in due course regarding this matter.

## 4.2 Construction and Traffic Management Plans

**Councillor Hollingsworth** informed the Committee about concerns residents had raised with her regarding the nonadherence by 'developers' to conditions within Construction and Traffic Management Plans.

Councillor Hollingsworth highlighted the cumulative impact development was causing within the community.

Councillor Hollingsworth then proposed a briefing and discussion take place with councillors in due course regarding this matter.

## 4.3 Opportunity to Review the Heritage Policy

**Councillor Sinfield** suggested it was timely to review the Council Heritage Policy which came into effect in 2018.

Councillor Sinfield then proposed a briefing and discussion take place with councillors in due course regarding this matter.

**Councillor Thompson** enquired as to whether the policy review could also include a provision for assessment of heritage from the private realm as well as the public realm.

## 5. Urgent business

Nil

## 6. Confidential business

Nil

**The meeting concluded at 10.20pm**

**Confirmed**

**Chairperson**

---

**Date**

---