

# URBAN PLANNING DELEGATED COMMITTEE



## MINUTES

(Open to the public)

**Monday 15 April 2024**

Council Chamber, 8 Inglesby Road, Camberwell.

**Commencement** 6:33pm

**Attendance**

Councillor Wes Gault (Chairperson)  
Councillor Jim Parke  
Councillor Cynthia Watson  
Councillor Lisa Hollingsworth (Mayor)  
Councillor Jane Addis  
Councillor Nick Stavrou  
Councillor Susan Biggar  
Councillor Garry Thompson  
Councillor Victor Franco (arrived at 6:35pm)

**Apologies**

Councillor Felicity Sinfield  
Councillor Di Gillies

**Officers**

Phillip Storer	Chief Executive Officer
Scott Walker	Director Urban Living
Daniel Freer	Director Places and Spaces
Kirstin Ritchie	Acting Manager Governance and Legal
Joel Elbourne	Manager Urban Planning
Jon Harper	Coordinator Urban Planning
Daniela Splitgerber	Senior Urban Planner
Damien Bu	Senior Urban Planner
Liam Merrifield	Senior Governance Officer

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*Councillor Franco entered to the chamber at 6.35pm and took his seat.*

## **1. Adoption and confirmation of the minutes**

### **MOTION**

**Moved Councillor Addis**

**Seconded Councillor Stavrou**

**That the minutes of the Urban Planning Delegated Committee meeting held on 4 March 2024 be adopted and confirmed.**

### **CARRIED**

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

Refer to Item 3.1 - Councillor Garry Thompson

## **3. Presentation of officer reports**

*Councillor Garry Thompson declared a conflict of interest in accordance with section 127 of the Local Government Act as he holds two Board Director positions with various McDonald's Licensees including the CEO of McDonalds Australia.*

*Councillor Garry Thompson left the meeting at 6:39pm prior to the consideration and vote on this item.*

### **3.1 261-267 High Street, Kew - Proposed amendment to planning permit conditions to enable 24 hour opening seven days a week for an existing convenience restaurant - PP/94/00095.01**

The current planning permit (issued 13 December 1994 and amended 1 February 2007) allows the use and development of a cafe, take away food premises with ancillary drive-through facility, playground, carpark and landscaping. The permit places restrictions on current trading hours.

The existing convenience restaurant now seeks to operate 24 hours/7 days a week (24/7). This would require the permit to be amended by deleting the following conditions which:

- Restrict trading between 1.00 am and 6.00am and carpark lighting after 1.15am (Condition 1 and 15)
- Close the vehicle access points to the site between 2 am and 5 am (condition 22)

Since the initial granting of the planning permit, the subject site zoning changed in 2017, and the site is now in a Commercial 1 Zone (C1Z). If a new convenience restaurant sought to commence operation on the site, no planning permission would be required for the use of the land and there would be no ability to restrict operating hours. However, it is also the case that the premises takes benefit of and operates

under a planning permit which includes conditions that set out requirements for the operation on the site. There are longstanding expectations of residential neighbours located next to the site with respect to the operational parameters set out in the permit conditions.

Following community consultation, the applicant has made a number of modifications to the requested amendment including:

- Withdrawal of the request to delete requirements that currently restricts the availability of some car parking spaces after 10pm. The outcome of this is that the applicant is accepting that these spaces will continue to be restricted from patron use between 10pm and 5am despite the request for 24/7 operation of the convenience restaurant.
- Submission of a site management plan setting out management practices including, but not limited to, surveillance and security measures, site management, restaurant management, complaints management, litter patrol and removal and delivery service.
- Submission of an acoustic report which indicates that night time noise associated with the use of the subject site is appropriate having regard to the sleep disturbance criterion in relation to nearby residences.
- Agreement to implement recommendations of the acoustic report to improve existing acoustic fencing and provide acoustic screening to a rooftop refrigeration unit.

It is considered that the request for 24/7 operation of the restaurant should be accepted having regard to the:

- Objectives of the Commercial 1 Zone.
- Maintenance of car parking restrictions after 10 pm.
- Findings and recommendations of the acoustic report.
- Applicant's offer to include a site management plan in the conditions of the permit.

*Five speakers opposed to the officers' recommendation addressed the meeting.*

*One speaker in support of the officers' recommendation addressed the meeting.*

### **Procedural motion - Adjournment**

**Moved Councillor Addis**

**Seconded Councillor Stavrou**

**That the Urban Planning Delegated Committee meeting be adjourned.**

**CARRIED**

*The Urban Planning Delegated Committee meeting adjourned at 8:02pm.*

### **Procedural motion - Resumption**

**Moved Councillor Stavrou**

**Seconded Councillor Biggar**

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**That the Urban Planning Delegated Committee meeting be resumed.**

**CARRIED**

*The Urban Planning Delegated Committee meeting resumed at 8:12pm.*

**MOTION**

**Moved Councillor Stavrou**

**Seconded Councillor Addis**

**That the Urban Planning Delegated Committee resolve to defer consideration of the Item to a future Urban Planning Delegated Committee meeting.**

**CARRIED**

*Councillor Thompson returned to the chamber at 8:14pm and resumed his seat.*

### **3.2 12 Millicent Avenue, Balwyn North - Application for two dwellings (PP23/0714)**

#### Proposal

The proposal seeks approval to construct two double storey dwellings on the site in a side-by-side configuration at 12 Millicent Street, Balwyn. The dwellings will be detached and will use two existing single vehicle cross overs. The proposed development will be able to accommodate two large canopy trees and two small canopy trees.

The application was placed on public notification and a total of 24 objections were received.

#### Key Considerations

The key considerations for this application include the proposal's response to Boroondara's Neighbourhood Character Strategy and Clause 55 (ResCode) of the Boroondara Planning Scheme. It is noted that there are a number of wide properties on the south side of Millicent Avenue and it is therefore considered that a detached side-by-side development can maintain the rhythm of spacing of dwellings present in the street. The use of two single width crossings will not reduce street car parking opportunities or impact on existing street trees.

The proposal complies with the requirements of the Neighbourhood Character Strategy (Precinct 72) and Clause 55 (ResCode) of the Planning Scheme subject to conditions to achieve improvement to:

- The material and finish of the garages and reduction in the prominence of the garages in the street setback.
- The upper level so that it is appropriately recessed from the ground level in its presentation to the streetscape.

- Private open space areas and landscape opportunities.

## Summary

Overall, it is considered the proposed development is appropriate on the basis the development is well designed having regard to the character of the area and the siting complies with the requirements of the Planning Scheme. It is considered that the proposal should be supported subject to conditions.

*Two speakers opposed to the officers' recommendation addressed the meeting.*

## **MOTION**

**Moved Councillor Parke**

**Seconded Councillor Thompson**

**That the Urban Planning Special Committee resolve that a Notice of Decision to Grant Planning Permit No. PP23/0714 for the construction of two (2) dwellings on a lot generally in accordance with the Section 57a advertised plans at 12 Millicent Avenue, Balwyn North be issued under the Boroondara Planning Scheme subject to the following conditions:**

### **Stormwater Drainage Plan Prerequisite Requirements**

- 1. Prior to the submission of Amended Plans pursuant to Condition 2, Development Stormwater Drainage Plans must be submitted to and approved by Council's Asset and Capital Planning team (Drainage) the Responsible Authority. The plans must be prepared by a suitably qualified and registered Civil Engineer and must include:**
  - a. The use of an On-site Stormwater Detention (OSD) system;**
  - b. The connection to the Council nominated Legal Point of Discharge;**
  - c. The outfall drainage works necessary to connect the subject site to the Council nominated Legal Point of Discharge;**
  - d. The integration, details and connections of all Water Sensitive Urban Design (WSUD) features in accordance with the Environmentally Sustainable Design (ESD) and STORM report and include drainage details as a result of landscaping;**
  - e. A suitably prepared design with computations for the internal drainage and method of disposal of stormwater from all roofed areas and sealed areas;**
  - f. All drainage plans must show the Trees to be retained and include the Tree Number; The Structural Root Zone (SRZ) radius; and the Tree Protection Zone (TPZ) radius, as detailed in accordance with the arborist report submitted with the application.**
  - g. All drainage plans must show proposed trees to be planted in accordance with the landscape plan submitted with the application.**

### **Amended plans required**

- 2. 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 electronic copies provided (unlocked PDF). When the plans are endorsed they will then form part of the permit. The plans must be**

**substantially in accordance with the *Section 57a advertised plans* but modified to show:**

- a) Dwellings ground floor 1 & 2 front entry porches lowered to a maximum height of 3.6 metres.
- b) Dwelling 1 & 2 garages to be setback minimum 10 metres from the street with no change to any other setback;
- c) Dwelling 1 garage material finish to be of a different material finish from Dwelling 2's garage; and
- d) Dwelling 1 and 2 garage parapets lowered by 300mm.
- e) Dwelling 1 first floor Bedroom 2 to be setback minimum 10.41 metres from the street with no change to any other setback;
- f) Dwelling 2 first floor Bedroom 5 to be setback minimum 10.41 metres from the street with no change to any other setback;
- g) Dwelling 2 eastern interfacing area of secluded private open space to be minimum 8.35 in width between the garage and living room;
- h) Deletion of the pergola roofing above decking within Dwelling 2's eastern interfacing area of secluded private open space.
- i) Elevation plans amended to show all ground floor side and rear (including internal) rendered finishes amended to a brick finish.
- j) Notation to be added on all floor and elevation plans specifying all screening to be used shall have a maximum transparency of 25% and fixed in accordance with ResCode Standard B22 (Overlooking).
- k) Deletion of the decking to Dwelling 1 within the front setback;
- l) Dwelling 1 street facing lounge room sliding door to be amended to a standard fixed window;
- m) Deletion of the pedestrian paths adjacent to the driveways to both Dwellings 1 & 2;
- n) Removal of Tree 8;
- o) The Tree Protection Zone and Structural Root Zone of Tree Nos. 1, 2, and 6 (as identified in the Arborist Report submitted with the application prepared by Treespace Solutions (dated 15/09/2023) drawn on all site and floor plans;
- p) Notation on all site and floor plans that Tree Nos. 1, 2, and 6 are to be retained and protected in accordance with the endorsed Tree Management Plan required by this Permit;
- q) Any modifications to the location or layout of buildings and/or works recommended in the endorsed Tree Management Plan required by this Permit;
- r) The siting of any necessary stormwater detention pit, underground services and pits, and/or rainwater harvesting tank to be located outside any area set aside for deep-soil planting and outside the Tree Protection Zone of any trees to be retained/protected.
- s) Permanent fencing within the Tree Protection Zone of Trees 1 and 2 constructed on pier foundations with any required plinths constructed above existing grade.
- t) Deletion of all hard surfaces in the south-eastern corners of each secluded private open space area to enable medium canopy tree planting in accordance with the landscape conditions of the permit.
- u) Relocate shed for Dwelling 1 away from south-eastern corner to enable medium canopy tree planting in accordance with the landscape conditions of the permit.
- v) Notation on all site and floor plans that all surface constructions in the rear of Dwelling 1 shall be laid above the existing soil grade with permeable materials.

- w) Provision of a Landscape Plan in accordance with Condition 4 of this Permit;**
- x) Provision of a Tree Management Plan in accordance with Condition 7 of this Permit; and**
- y) Provision of WSUD Report in accordance with Condition 11 of this Permit.**

**Layout not to be altered**

- 3. 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.**

**Landscape plan**

- 4. A landscape plan to the satisfaction of the responsible authority must be submitted to and approved by the Responsible Authority. The plan must be drawn to scale with dimensions and electronic copies provided (unlocked PDF). When endorsed, the plan will form part of the permit.**
- a) A survey (including botanical names) of all existing trees to be retained and of those to be removed. The intended status of the trees shown on the landscape plan must be consistent with that depicted on the development layout plan;**
  - b) All hard surfaces proposed within the Tree Protection Zone of Tree Nos. 1, 2, and 6 (as identified in the Arborist Report submitted with the application prepared by Treespace Solutions (dated 15/09/2023) must be constructed of permeable materials; be constructed above current grade; and be constructed on foundations that maintain appropriate permeability for each tree, to the satisfaction of the Responsible Authority;**
  - c) Detailed construction specifications for all permeable surfaces that include cross-section diagrams;**
  - d) One (1) canopy tree (minimum 2 metres tall when planted and must achieve a minimum mature height of 13 metres and canopy spread of 7 metres) in the front setback of the property of both dwellings;**
  - e) One (1) small tree (minimum 2 metres tall when planted and must achieve a minimum mature height of 7 metres and canopy spread of 5 metres) in the secluded private open space of Dwelling 1;**
  - f) One (1) small tree (minimum 2 metres tall when planted and must achieve a minimum mature height of 7 metres and canopy spread of 5 metres) in the secluded private open space of Dwelling 2;**
  - g) Trees within the rear planter box of Dwelling 2 to be replaced with hedge planting;**
  - h) All trees must comply with Australian Standard AS2303:2015 - Tree Stock for Landscape Use;**
  - i) All trees must be planted by an AQF Level 3 Qualified Arborist, Landscape Gardener or Horticulturist;**
  - j) All medium trees must be planted more than 2 metres away from any structures, paving, decking, property boundaries, easements, existing trees or shrubs;**
  - k) All small trees must be planted more than 1 metre away from any structures, paving, decking, property boundaries, easements, existing trees or shrubs;**

**Completion of landscaping works**

- 5. Landscaping as shown on the endorsed landscape plan/s must be carried out and completed to the satisfaction of the Responsible Authority prior to the occupation of the development.**





**Landscaping maintenance**

6. All landscaping works shown on the endorsed landscape plan/s must be maintained and any dead, diseased or damaged plants replaced, all to the satisfaction of the Responsible Authority.

**Tree management plan**

7. Concurrent with the submission of amended plans required by Condition 1 of this Permit and prior to any demolition or site works, a Tree Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The Tree Management Plan must be prepared by a minimum AQF Level 5 qualified and experienced Arborist in relation to the management and maintenance of Tree Nos. 1, 2, and 6 (as identified in the Arborist Report submitted with the application prepared by Treespace Solutions (dated 15/09/2023)). The Tree Management Plan must make specific recommendations in accordance with the Australian Standard AS4970: 2009 - Protection of Trees on Development Sites and detail the following to ensure that all retained trees remain healthy and viable during construction:
  1. A Tree Protection Plan drawn to scale that shows:
    - a. Tree Protection Zones and Structural Root Zones of all trees to be retained;
    - b. All tree protection fenced off areas and areas where ground protection systems will be used;
    - c. Any services to be located within the Tree Protection Zone and a notation to state that all services will either be located outside of the Tree Protection Zone, bored under the tree protection zone, or installed using hydro excavation under the supervision of the project arborist; and
    - d. A notation to refer to the Tree Management Plan for specific detail on what actions are required within the Tree Protection Zone.
  2. Details of how the root system of any tree to be retained will be managed. This must detail any initial non-destructive trenching and pruning of any roots required to be undertaken by the project arborist; and details of how any permeable surfaces within the Tree Protection Zone of retained trees will be constructed;
  3. Supervision timetable and certification of tree management activities required by the Project Arborist to the satisfaction of the Responsible Authority;
  4. All remedial pruning works that are required to be performed on trees during demolition and development of the site. The pruning comments must reference Australian Standards 4373:2007 Pruning of Amenity Trees and provide a detailed photographic diagram specifying what pruning will occur. *Note: Only Council or Authorised Council Contractors can prune Trees Nos. 1 and 2. Any request for the pruning of trees on public land must be made through Council's Environmental Sustainability and Open Spaces Department.*
  5. The recommendations contained in the approved Tree Management Plan must be implemented to the satisfaction of the Responsible Authority and any changes to the endorsed Tree Management Plan will require written authorisation from the Responsible Authority.

**Contractors to be advised of trees to be retained and protected**

8. The owner and occupier of the site must ensure that, prior to the commencement of buildings and works, all contractors and tradespersons operating on the site are advised of the status of trees to be retained and

protected as detailed in the endorsed Tree Management Plan and are advised of any obligations in relation to the protection of those trees. A written record must be maintained on site of all contractors inducted regarding this condition. At the request of an authorized officer of Council this written record must be provided to council.

#### **Regulation of activities in Tree Protection Area**

9. No vehicular or pedestrian access, trenching or soil excavation is to occur within the Tree Protection Area as detailed in the endorsed Tree Management Plan without the prior written consent of the Responsible Authority. No storage or dumping of tools, equipment or waste is to occur within the Tree Protection Zone.

#### **Documentation and Certification by Project Arborist**

10. Prior to the commencement of any site works, including demolition and excavation, the Responsible Authority must be provided with evidence that a project arborist has been engaged as part of the ongoing consultant team to oversee the design and construction, and to ensure the development does not have a detrimental impact on the ongoing health and stability of the trees to be retained. The project arborist must hold suitable qualifications and experience to the satisfaction of the Responsible Authority. Evidence of the appointment of the project arborist must be submitted to the satisfaction of the Responsible Authority (quoting the Planning Permit number and site address, emailed to [Boroondara@boroondara.vic.gov.au](mailto:Boroondara@boroondara.vic.gov.au)) not less than seven (7) days before the commencement of works on site.

#### **Water Sensitive Urban Design**

11. Prior to the endorsement of plans, a stormwater management plan that addresses planning policy 53.18 must be submitted and approved to the satisfaction of the responsible authority. The plan must demonstrate compliance with current best practice performance objectives for stormwater quality as contained in the Urban Stormwater - Best Practice Environmental Management Guidelines (Victorian Stormwater Committee, 1999). This should be demonstrated through:
- a. A catchment plan showing the location of proposed stormwater treatment measures and the location and area (square metres) of impermeable surfaces that drain to each treatment measure.
  - b. A written statement outlining how the application achieves current best practice performance objectives for stormwater quality as contained in the Urban Stormwater - Best Practice Environmental Management Guidelines (1999). Please note that for the modelling requirement you can use the following free program to demonstrate best practice, which is equivalent to a score of 100% or more: <http://storm.melbournewater.com.au>. Alternatively, a MUSIC modelling achieving best practice performance objectives and completed in accordance with Melbourne Water Guidelines 2018.
  - c. If any water tank is proposed, the plans must indicate the tank's capacity in litres and what the tank is connected to (e.g., toilets, laundry).
  - d. Stormwater treatment measures such as permeable paving or raingardens must be shown on plans including a cross-sectional diagram.

**Drainage**

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

**Permit to expire:**

**13. 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.**

**CARRIED**

**4. General business**

Nil.

**5. Urgent business**

Nil.

**6. Confidential business**

Nil

**The meeting concluded at 8:38pm**

**Confirmed**

**Chairperson**

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**Date**

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