
**1.3 170-174 Highbury Road, Mount Waverley
AMENDMENT TO PLANNING PERMIT FOR AN ADDITIONAL THREE RESIDENTIAL
APARTMENTS AND THREE CAR SPACES WITHIN THE BASEMENT
(TPA/40955/D)**

EXECUTIVE SUMMARY:

Planning Permit TPA/40955/C was issued on 20 January 2020 allowing the development of a three storey building with basement car parking and use for a medical centre (up to 17 Practitioners), child care centre (up to 144 children), café and dwellings (11 Apartments) and alteration of access to a Road Zone, Category 1. A number of amendments have occurred since the original Permit was issued on 11 October 2013.

The proposed amendment application seeks the introduction of three (3) additional apartments at the second floor (total of 14), variations to setbacks and windows of this level to reflect the varied layout, and the provision of an additional three car spaces within the basement car park.

The current permit requires that works on the site be completed by 11 October 2022 unless the permit is further extended. The approved development commenced excavation works in mid-2015, however works to excavate the basement were stopped when the site experienced subsidence issues necessitating immediate site stabilisation measures. Works on the site have since recommenced with excavation and basement foundations being prepared.

Key issues for this application relate to internal amenity for the proposed and existing apartments whose layouts are varied, potential external amenity impacts from varied setbacks and window / balcony locations, and potential traffic impacts from the additional car spaces proposed within the basement.

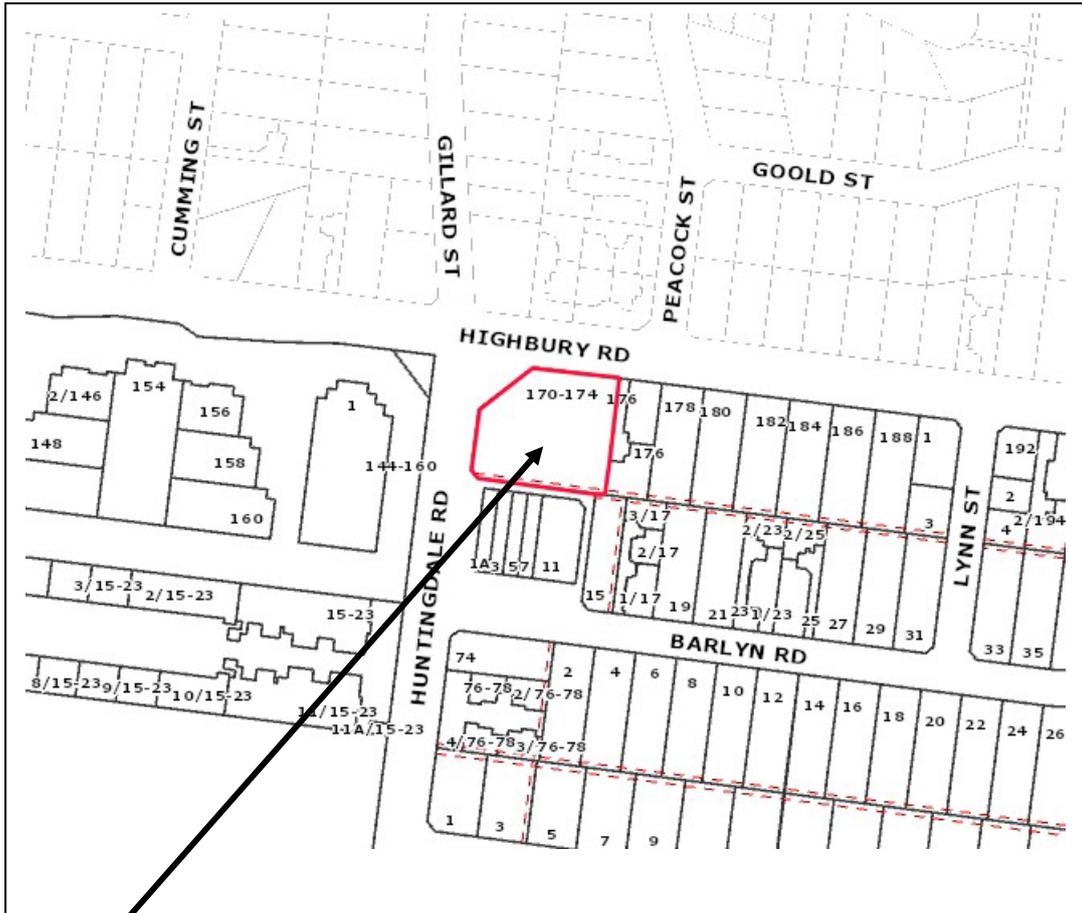
This report assesses the proposal against the provisions of the Monash Planning Scheme including the relevant state and local planning policy framework, Clause 55 and issues raised by objectors.

The reason for presenting this report to Council is the overall proposed development cost of \$5.6 Million.

The proposal is considered inconsistent with the relevant provisions of the Monash Planning Scheme and it is recommended that the application be refused.

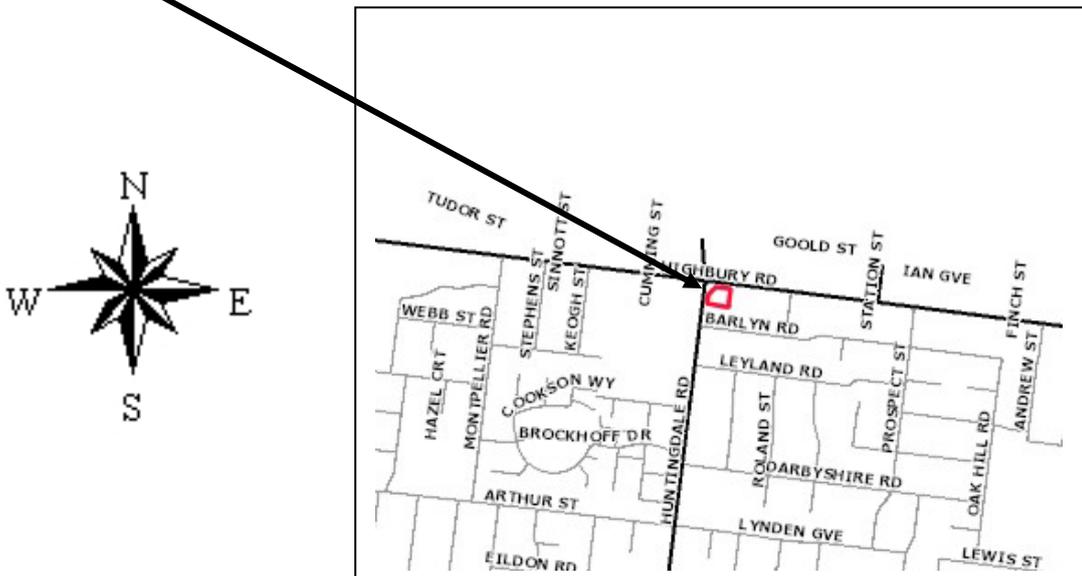
RESPONSIBLE DIRECTOR:	Peter Panagakos
RESPONSIBLE MANAGER:	Natasha Swan
RESPONSIBLE PLANNER:	Alexandra Wade
WARD:	Mount Waverley
PROPERTY ADDRESS:	170-174 Highbury Road, Mount Waverley
EXISTING LAND USE:	Vacant of buildings– Development of basement under construction
PRE-APPLICATION MEETING:	Yes
NUMBER OF OBJECTIONS:	Two (2)
ZONING:	General Residential Zone – Schedule 3
OVERLAY:	Vegetation Protection Overlay – Schedule 1
RELEVANT CLAUSES: <u>State Planning Policy Framework</u> Clause 11.02-1S - Supply of Urban Land Clause 15.01-1S & R - Urban Design Clause 15.01-2S - Building Design Clause 15.01-4S & R - Healthy Neighbourhoods Clause 15.01-5S - Neighbourhood Character Clause 16.01-1S & R - Integrated Housing Clause 16.01-2S - Location of Residential Development Clause 16.01-3S & R - Housing Diversity Clause 18.02-4S - Car Parking	<u>Local Planning Policy Framework</u> Clause 21.01 - Introduction Clause 21.04 - Residential Development Clause 21.08 - Transport and Traffic Clause 21.04 - Residential Development Clause 21.13 - Sustainability and Environment Clause 22.01 - Residential Development and Character Policy Clause 22.04 - Stormwater Management Policy Clause 22.13 - Environmentally Sustainable Development Policy <u>General & Particular Provisions</u> Clause 52.06 - Car parking Clause 52.29 - Land adjacent to a Road Zone Clause 55 - Two or more dwellings on a lot and Residential Buildings Clause 65 - Decision Guidelines
STATUTORY PROCESSING DATE:	28 September 2020
DEVELOPMENT COST:	\$5.6 Million

LOCALITY PLAN



SUBJECT SITE

NEIGHBOURHOOD PLAN



RECOMMENDATION:

That Council resolves to issue a **Notice of Decision to Refuse to Grant an amendment to the Planning Permit (TPA/40955)** which seeks to provide for an additional three residential apartments and three car spaces within basement associated with the development of a three storey building with basement car parking and use for a medical centre (up to 17 practitioners), child care centre (up to 144 children), cafe and dwellings and alteration of access to a Road Zone, Category 1) at 170-174 Highbury Road, Mount Waverley on the following grounds:

1. The proposal will result in poor internal amenity for future residents and fails to comply with the objectives of Clause 55.07.
2. The proposal is an overdevelopment of the site.
3. The proposal fails to provide for efficient vehicle movement within the site and fails to meet the design requirements of Clause 52.06.

BACKGROUND:**Planning Permit No. TPA/40955**

Planning Permit No. TPA/40955 was issued on 11 October 2013 allowing the development of a two storey building with basement car parking and use for a medical centre (up to 12 practitioners) and child care centre (up to 123 children) and alteration of access to a Road Zone, Category 1.

The permit was issued at the direction of the Victorian Civil and Administrative Tribunal (VCAT) following an appeal being lodged by an objector against Council's decision to issue a Notice of Decision to Grant a Permit. The VCAT determination was generally supportive of Council's decision to support the application subject to minor modifications.

Planning Permit No. TPA/40955/A

Planning Permit No. TPA/40955/A was issued by Council on 21 October 2014. The Permit facilitated the addition of a third building level for the purpose of nine (9) apartments, and increased the intensity of the medical and childcare centre uses permitting up to 17 medical practitioners and 130 children within the child care centre and occasional child care up to 45 children.

Planning Permit No. TPA/40955/B

Planning Permit application TPA/40955/B sought an additional level of apartments to create a four storey building comprising a total of 20 apartments (including the medical centre and childcare centre), variations to the built form, childcare centre use and car parking. The application was refused by Council and VCAT determined

to approve the proposal, however the decision required the deletion of the fourth level of apartments. Plans were endorsed on 20 March 2018.

Planning Permit No. TPA/40955/C

An Amendment Application was lodged directly with the Tribunal via Section 87A of the Planning and Environment Act 1987 for changes to the Permit and associated endorsed plans. This amendment application was supported by Council at its meeting on 27 August 2019. The proposal included:

- Modification of second floor layout to add an additional one bedroom dwelling (total of 11);
- Setback variations to the northern (Highbury Road) and eastern boundaries;
- Addition of one car space to the basement, to be allocated to the additional dwelling;
- Addition of a rooftop play space associated with the childcare centre including stair and lift access, store room, 2 metre high fencing and shade sails (approved play areas are retained); and
- Internal reconfiguration including the addition of a second staircase for staff and emergencies (running between the basement and level 1), resulting in changes to car parking layout and ground and first floor configurations.

The application was approved by the Tribunal and the Amended Permit was subsequently issued on 20 January 2020.

A Secondary Consent application was approved on 6 May 2020 which allowed for the relocation of the lift and stairwell with consequential internal layout variations, and minor material and landscape variations. It is noted that at this time, the architect for the development changed from BMG Architects to Petridis Architects.

Works undertaken on the land

Excavation works associated with the approved development commenced in mid-2015. These works were stopped in July 2015 when the site experienced land slip and subsidence issues impacting the adjoining properties.

Council has been made aware that works on the land have recently re-commenced involving excavation on the land and construction of the basement level.

It is noted that an Environmental Audit has been conducted for the land in accordance with the Planning Permit issued, however is yet to be published.

Expiry of Planning Permit

Given the excavation works which occurred on the site, it was determined that the Planning Permit has commenced. An extension of time was issued on 11 December 2018 which allowed for an extension of 2 years for the completion of works by 11 October 2020.

A further extension of time was issued on 23 September 2020 providing a further 2 years for the completion of works by 11 October 2022.

Attachment 1: Existing Planning Permit.

The Site and Surrounds

The subject land is located on the south-east corner of the intersection of Huntingdale Road and Highbury Road in Burwood. The site has an overall area of 2557 square metres and has a fall of approximately 3.76 metres from south-east to north-west. A 1.83 metre drainage and sewerage easement encumbers the southern boundary of the land. A 4.0 metre wide laneway runs along the southern boundary.

The subject land has been cleared and was previously utilised as a petrol station. The site has been vacant / disused for a number of years and is notable in the area due to the issues associated with the excavation that occurred in 2015.

Surrounding land to the north and east is residential in nature comprising of a mix of single and double storey dwellings including several multi-dwelling developments. Immediately to the south separated from the subject land by the laneway is a small group of one and two storey commercial buildings which provide basic convenience services such as milk bar and take away food shop.

Land on the western side of Huntingdale Road is developed for industrial purposes including buildings of a two storey scale, building and car parking setbacks in excess of 10 metres and substantial landscaping areas within the street setback.

An aerial photograph of the subject site and surrounding land can be found attached to this report (Attachment 3).

PROPOSAL:

The proposal seeks to amend the Permit to:

- Increase the number of apartments from 11 to 14 (increase of 3). The configuration of apartments have also varied, allowing for five x 1-bedroom apartments, and nine x 2-bedroom apartments. Previously the arrangement was two x 1-bedroom apartments and nine x 2-bedroom apartments.
- Increase in the number of car parking spaces on the site from 109 to 112 (increase of 3). It is noted that the basement area has not been increased in size to achieve this.
- Variation of setbacks to allow for varied apartment layouts.
- Elevations modified due to varied apartment layouts.
- Addition of skylights over the foyer of the second floor.

The proposal does not seek variation of the preamble of the Permit or any conditions of the Permit.

Attachment 2 details plans forming part of the application.

PERMIT TRIGGERS:

Zoning

The subject site is located within a General Residential Zone – Schedule 3 (Clause 32.08) under the provisions of the Monash Planning Scheme.

Pursuant to the requirements of the zone, a permit is required for use of land for a medical centre, food and drink premises (cafe) and child care centre within the General Residential Zone.

A Planning Permit is not required for use of a dwelling within the General Residential Zone.

Pursuant to the requirements of Clause 32.08-6 a permit is required to construct a building or carry out works for a use in Section 2 of Clause 32.08-1. Pursuant to the requirements of Clause 32.08-4 a permit is required to construct two or more dwellings.

The application enjoys transitional provisions and therefore the mandatory requirements (including garden area) set out in the zone are not applicable in this case. The proposed amendment does not seek to vary the garden area provision on the site.

Overlays

The subject land is covered by a Vegetation Protection Overlay under the provisions of the Monash Planning Scheme. The proposed amendment does not seek to remove any vegetation from the site or impact the proposed landscaping on the site.

Particular Provisions

Clause 52.06 (Car Parking)

A review of car parking requirements only applies to the changes proposed.

The additional three 1-bedroom apartments proposed results in an additional 3 car spaces for residents and 0 car spaces for visitors to be provided. Three additional car spaces are proposed within the basement for the dwellings and therefore a reduction in the standard car parking rate is not sought.

Clause 52.29 (Land adjacent to a Road Zone Category 1)

A permit is required to create or alter access to a road in a Road Zone, Category 1. As three additional car spaces have been included within the basement car park, it is considered that the amendment constitutes alteration of the proposed access.

The application was referred to the Department of Transport in accordance with Clause 52.29-4 of the Monash Planning Scheme.

Attachment 3 details the zoning and overlays applicable to the subject site and surrounding land.

CONSULTATION:

Further information was requested of the Permit Applicant on 20 May 2020. In this letter, officers also raised the following preliminary concerns:

- The additional three apartments on the floor plate provides for sub-standard internal amenity for many of the apartments and are unlikely to be supported. In particular:
 - The number of solely south facing apartments have increased from 1 to 3, each of which are small and narrow in nature and will not provide for sufficient internal amenity.
 - The layout of Apartment 5 is extremely poor, with limited access to daylight for the open living area. The main terrace area is adjoined by two walls and will have limited access to sunlight due to its narrowness.
 - The layout of Apartment 7 is very poor, with the living / dining / kitchen area disjointed with the terrace areas split.
 - The depth of Apartment 8 does not meet standard B47 of Clause 55.07-13. The depth of the snorkel window associated with Bedroom 1 also does not comply with Standard B48 of Clause 55.07-14.
 - The living space associated with Apartment 10 is likely to be the space between the kitchen and terrace, and does not meet the requirements of Standard B46 of Clause 55.07-12 and provides for a poor, disjointed layout.
 - The terrace associated with Apartment 11 is not of a sufficient size to provide for adequate internal amenity. Further to this, the access to daylight to the living space is limited due to the location and arrangement of the terrace.
 - The studies associated with Apartments 1, 4 and 12 are likely to be converted into bedrooms and are not supported.
 - The living spaces associated with Apartments 12 and 13 do not meet the requirements of Standard B46 of Clause 55.07-12 (Functional Layout).
 - It appears that only 4 of the proposed 14 apartments (28.5%) will provide cross ventilation which is well below Standard B49 (40%).
- With the ongoing changes to the allocation of car spaces within the basement, the allocation has become disorderly and it is recommended that this be reviewed. For example, car space 99 is a visitor space, which is surrounded by staff spaces and car spaces 80 and 81 for childcare visitors, are surrounded by medical centre visitor spaces. Where possible, similar

allocation of spaces should be grouped together to allow for ease of wayfinding when entering the basement.

Officers advised the Applicant in writing that should these concerns not be addressed, that this application was unlikely to be supported and that the application would be refused.

The Permit Applicant responded to this letter on 17 July 2020 by providing the requested information. In relation to the preliminary concerns, the Applicant varied the allocation of car spaces within the basement and made minor modifications to the apartment layouts.

The Applicant has been verbally advised that this application was coming to the September Council meeting, in addition to a letter that was sent to the Applicant formally informing them of the details of the Council meeting. The Applicant has been advised that this application is recommended for refusal.

Public Notice

The application was advertised in accordance with section 52 of the *Planning and Environment Act 1987* by way of letters sent to the surrounding property owners/occupiers, and the erection of one sign per street frontage.

Two (2) objections were received for the application which raised the following concerns:

- Increase of traffic flow; and
- Lack of amenities and overdevelopment.

Attachment 5 details the location of objector properties.

Referrals

Department of Transport – Determining Referral Authority (Ref: 05421/12-6) – No objection to the amendment nor do they seek any new conditions. However, they have requested that conditions 38 and 40 be amended to reflect the new name of the governing body, being the Head, Transport for Victoria (instead of VicRoads). This is an administrative change and is not considered a necessary change if no Permit is issued as a result of this amendment.

DISCUSSION:

Consistency with State and Local Planning Policies

The amendment seeks to introduce new apartments into the development, on the same level as existing apartments. The proposed use in itself does not require a Planning Permit, and the zone seeks to encourage a diversity of housing types and housing growth, particularly in locations offering good access to public transport.

The proposal does not result in any significant variations to the way that the building will present to the street or adjoining properties, and continues to provide

for housing growth of varied housing types (with the mixture of single and two bedroom apartments) and therefore continues to be consistent with Council's local policies in this respect.

Assessment under Clause 55 (ResCode)

External Amenity Impacts

The most sensitive interface to the development is to the east, being No. 176 Highbury Road. Setbacks to this interface have not reduced for balconies or the building façade. The only variation is an increased setback for the indentation in façade for window of Apartment 8 Bedroom 1.

No windows at this second level along this interface were previously required to be screened due to the setback of the windows / balconies and the extended canopy over the level below preventing downward views. Therefore it is considered that there will be no additional amenity impacts to this interface.

The southern interface of the site abuts commercial land. Setbacks to this interface have not been reduced. Additional setbacks are proposed due to the location of the balcony of the proposed Apartment 13. It is considered that there will be no unreasonable amenity impacts to this interface.

Internal Amenity

It is noted that Clause 55.07 of the Monash Planning Scheme was introduced on 31 July 2018 as part of Amendment VC148. This policy sets out additional design guidelines relating to apartment developments. Whilst this cannot be applied to previous permits already issued, as the proposal seeks to vary the approved apartment layouts, this policy now forms part of the relevant consideration. The proposed amendment seeks to vary the layouts of all apartments proposed, and therefore an assessment has been undertaken on all apartments.

The introduction of Clause 55.07 has increased the bar with respect to internal amenity for apartment living. This policy includes new provisions surrounding bedroom and living sizes, distance to light sources, natural ventilation and accessibility.

The proposal will result in sub-standard apartment design for most of the apartments proposed. More specifically:

- The terraces areas for Apartment 7 and the dining arrangement are disjointed. The living space fails to meet the minimum width requirement of 3.6 metres.
- The layout of Apartment 8 is disjointed with poor connection to the terrace area and lack of functional space for a couch and dining table.
- The living layout for Apartment 10 is disjointed and fails to provide for an appropriate space for a couch and television given the living space is part of the main corridor of the apartment.

- Bedroom 2 of Apartment 11 fails to meet the required 3 metres x 3 metres dimension and provides a poor connectivity from the living space to the terrace.
- The arrangement of the terrace for Apartment 11 is poor, particularly with the southerly orientation.
- The living space for apartment 12 fails to meet the minimum requirements in accordance with Standard B46 (Functional Layout) which seeks to ensure that dwellings are provided with functional areas that meet the needs of residents.
- The study spaces adjacent to the front door of apartment 1, 4 and 12 with the use of glass bricks relying on light from the skylights within the internal corridor are an indication of overdevelopment. It is likely that future owners may convert these spaces into additional bedrooms.
- The proposal seeks the provision of three purely southerly facing apartments out of a total of 14 apartments.
- The internal corridors to the dwellings do not provide for ventilation and do not provide for safe, functional and efficient movement.
- The roof plan is unclear as to whether or not the terraces are covered.

Since the original Permit (TPA/40955/A), the addition of 5 apartments within the single level (Level 2) is an indication that the applicant is trying to fit too much onto this level, and in turn is failing to provide a good quality development on the land. The amenity outcomes as a result of this amended proposal cannot be resolved without significant reduction in the number of apartments.

An amended Sustainable Management Plan and WSUD response was supplied with the application, which suggests that the apartments receive a 54% BESS score which indicates 'best practice'. However, it is evident that the report has been based on a previous set of plans as it suggests that 11 apartments are proposed and that the floorplates have been designed so that internal spaces have a north, east, or west facing view to receive direct solar access. This is incorrect.

The basement layout plan shows storage cages for 20 apartments. It is unclear why this is the case, and appears that some of the storage areas would be less than the 6 cubic metres required. It is also noted that some of the storage cages are located within Basement Level 1 (whilst all residential car spaces are located on Basement level 2). This is not ideal, nor functional.

If a Permit were to be granted, a condition would be required to ensure that each apartment is provided with 6 cubic metres of secure externally accessible storage space.

Car Parking, traffic and access

The requisite number of car parking spaces as required under Clause 52.06 have been provided on the site. The addition of three single bedroom apartments generates a requirement for three additional car spaces. These spaces have been located at Basement Level 2 (previously provided for services / storage).

The allocation of car spaces within the basement have been varied so that the resident car spaces are located on the southern side of Basement Level 2, with café and child care staff spaces allocated for the additional spaces on the northern side of the basement. This provides for a more efficient car parking layout than allocating the newly proposed spaces to residents.

It is noted that the access aisle dimensions for the basement car park have varied since the endorsed plans issued on 21 January 2020, reducing the access aisle adjacent to the car spaces from 5.813 to 5.716 metres. It appears that this variation was introduced within the secondary consent plans endorsed on 6 May 2020, however this change did not form part of the application. It also appears that other dimensions have reduced including the access aisle along the southern portion of the basement from 6.4 to 6.055 metres. These changes also appear to have been made on Basement Level 1. It is not clear from the plans how this has been reduced or why, given the size of the basement has not varied.

The proposed car spaces therefore fail to meet the design requirements of Clause 52.06 and the car spaces would not be able to effectively manoeuvre in and out of the car spaces efficiently. Should a permit issue, modification to access aisles would be required.

The Department of Transport and Council's Traffic Engineers have no concerns with traffic generation as a result of this amendment. The addition of three additional car spaces will not cause unreasonable traffic generation to and from the site.

Waste Collection

The Waste Management Plan was amended to reflect the additional apartments. The increase in three single bedroom apartments does not require a change to the number of bins or waste store area and will continue to be collected in the same manner.

CONCLUSION:

Whilst the proposal seeks minimal changes from the exterior, the proposed addition of three single bedroom apartments will compromise the internal amenity of the existing apartments, and fails to provide a high level of internal amenity for new dwellings. It is evident that the applicant is trying to fit too much into this development and therefore providing for a compromised outcome.

It is therefore recommended that Council issue a notice of decision to refuse the amendment application.

LIST OF ATTACHMENTS:

Attachment 1 – Copy of Planning Permit

Attachment 2 – Proposed Development Plans.

Attachment 3 – Aerial Photograph (January 2019).

Attachment 4 – Zoning and Overlays Map.

Attachment 5 – Objector Properties Location Map.