

Dear Sir/Madam,

22 December 2020

The Registrar
VCAT
Level 7, 55 King Street
MELBOURNE VIC 3000

**Section 87A Application to Amend a Permit
Major Cases List
7-15 Horne Street, Elsternwick**

We act on behalf of *Auyin Property Development Pty Ltd*, the Permit Applicant in the above matter.

Our client seeks approval to amend Planning Permit No. GE/DP-32409/2018 ("the Permit") pursuant to Section 87A of the *Planning and Environment Act 1987*. This application is made under the **Major Cases List**.

In support of the application, please find enclosed the following attachments:

- Attachment A: Current approved plans, including:
 - (i) A copy of the Permit to be amended
 - (ii) The current endorsed plans
 - (iii) The endorsed Sustainability Management Plan
- Attachment B: Amended plans, including
 - (i) Amended architectural plans, prepared by CBG Architects (Rev F, dated 22 December 2020).
 - (ii) Amended Design Response, prepared by CBG Architects (dated 22 December 2020).
- Attachment C: Statement of changes, prepared by CBG Architects, dated 22 December 2020.
- Attachment D: Revised consultant reports, including the following:
 - (i) Sustainable Management Plan, prepared by Sustainable Design Consultants (SDC), dated December 2020;
 - (ii) Traffic Impact Report, prepared by Ratio Consultants Pty Ltd, dated 22 December 2020; and
 - (iii) Waste Management Plan, prepared by Ratio Consultants Pty Ltd, dated 22 December 2020.
- Attachment E: A title search of the land not more than 14 days old.

- Attachment F: A copy of the previous VCAT decision relating to the Permit (*Auyin Property Development Pty Ltd v Glen Eira CC [2019] VCAT 1614*).
- Attachment G: Preliminary Aboriginal Heritage Test (PAHT) as previously approved under the Permit.
- Attachment H – VicPlan Reports

Payment of the VCAT filing fee will be made at the time of lodgement.

1 Summary of Amendments

SUMMARY

The key aspects of the proposed amendments can be summarised as follows:

- Increase the number of storeys by one, resulting in an overall development of nine storeys rather eight storeys. Importantly, the maximum building height is not proposed to be increased, instead the maximum building height is actually proposed to be reduced by 2.45 metres (from RL 50.45 to RL 48.00).
- This is achieved due to the modified roof profile and by further compressing and rationalising the floor to floor heights at each level. As amended, the reduced ‘floor to floor’ heights remain appropriate including 5m at ground level and 3.2m at Level 1 and above (with min. 2.7m ceiling heights for residential apartments).
- Replace the former office use at Levels 1 and 2 of the podium with residential apartments.
- The following table summarises the residential yield of the currently approved development and the proposed amendment.

Table 1

Residential yield

Apartment / room types	Currently approved	Proposed amendment
Specialist Disability Apartments	0	10
1-bedroom	0	2
2-bedroom	18	26
3-bedroom	3	5
TOTAL	21	43

- Inclusion of community care accommodation in the form of 10no. Specialist Disability Accommodation (SDA) apartments that are integrated throughout the development. SDA units form part of the National Disability Insurance Scheme (NDIS) and offers housing support funded through the NDIS for participants with extreme functional impairment and very high support needs. Further details of the SDA is provided later in this submission.
- Reconfiguration of the ground floor layout and land uses, including removal of the office entry lobby (including lift and stair core), deletion of food and drink premises and office, and increase total retail space from 195sqm to 280sqm (split over two tenancies).
- Modifications to the architectural design of the building and modified roof profile. This is reflective of the different land uses in the podium but is also aimed at better responding to the form and proportions of the development as ultimately approved by Council and VCAT.
- Reduce the number of car spaces from 65 to 63. The following table summarises the change and breakdown in car parking numbers for each land use:

Table 2

Car parking breakdown

Parking	Currently approved	Proposed
Residential cars	24	55
Residential SDA	N/A	4
Residential visitors	0	0
Commercial car spaces	37	0
Retail	3	3
Retail / visitor accessible	1	1
Bikes	65	63

The description of changes provided should be read in conjunction with the enclosed architectural plans and associated statement of changes prepared by CBG Architects (refer **Attachments B and C** respectively)

CHANGES TO PERMIT PREAMBLE

As a consequence of the proposed amendments to the use and development, the preamble of the Permit is necessarily proposed to be amended as follows:

*“Construction of a multi storey mixed use building comprising dwellings, **community care accommodation (specialist disability accommodation), food and drinks premises, offices** and shops, use of the land for the purpose of dwellings **and community care accommodation (specialist disability accommodation)**, and reduction in car parking requirements for **food and drinks premises, offices and** shops in accordance with the endorsed plans”.*

CHANGES TO CONDITIONS OF PERMIT

As a consequence of the proposed amendments to the use and development, the conditions of the Permit are necessarily proposed to be amended as follows:

- Delete Condition 1(e)(iv) which reads:
“Not less than 2.0 car spaces to each 100sqm of net floor area for the office.”
- Modify Condition 1(g) as follows:
*The first and second floor ~~office windows~~ **habitable room windows and balconies of apartments, as well as** the third floor terrace facing the rear laneway to be screened to limit downward views to residential properties within 9 metres. The screening technique employed to the first and second floor ~~office~~ **habitable room windows and balconies** can however allow passive surveillance of the adjacent laneway.*
- Delete Condition 1(l) which reads:
“The provision of change rooms and showers for cyclists within each of the first and second floor office areas”.
- Delete Condition 10 which relates to a Green Travel Plan. The requirement for a GTP is no longer necessary as the office component has been deleted.

2 Planning Considerations

OVERVIEW

The amendments proposed to the development maintain a suitable mix of uses that are consistent with the strategic location of the site within the Urban Renewal Precinct of the Elsternwick Activity Centre, whilst also enhancing and rationalising the architectural design of the building in a manner that substantially accords with the approved envelope.

Importantly the sought amendments have duly considered, and adhere to, the previous decision of Council on the land, and the subsequent findings of VCAT in the matter of *Auyin Property Development Pty Ltd v Glen Eira CC [2019] VCAT 1614* (refer **Attachment F**).

In this regard the amendments do not seek to increase the maximum building height, and moreover, do not result in any further detriment to

the amenity of the area having regard to the current endorsed plans of the Permit.

Given the scope of this amendment as described above, we consider this application prompts consideration of the following key matters:

- Principles for assessment of a Section 87A Amendment
- Land use
- Height, Built Form and Design
- Internal Amenity
- Off-site Amenity
- Car Parking and Traffic.
- ESD
- Waste Management

Each of these matters are addressed in turn below

PRINCIPLES FOR ASSESSMENT OF A SECTION 87A AMENDMENT

Pursuant to Section 87A of the *Planning and Environment Act 1987*, a permit issued at the direction of VCAT may be amended based upon the following 'test':

"the Tribunal may cancel or amend a permit that has been issued at its direction if it considers it appropriate to do so".

Reference is made to the findings of VCAT in the matter of *The King David School v Stonnington CC & Ors (includes Summary) (Red Dot) [2011] VCAT 520*, that confirms the scope of consideration and assessment for applications lodged pursuant to Section 87A:

"The process under s 87A of the Planning and Environment Act 1987 is not, strictly speaking, a 'repeat appeal' of the review process through which the permit was granted. The Tribunal is vested with separate original jurisdiction to consider an amendment to a permit issued at its direction, and s 87A provides a wide discretion. In addition to 'clarifying' amendments, it will also often be appropriate for the Tribunal to allow more substantive amendments to a permit to facilitate a reasonable change in the development or use. Section 87A was also intended to provide this flexibility."

Importantly, the subject site benefits from an active permit allowing a mixed use multi level development.

This application is seeking to amend that permit and, accordingly, the scope of consideration under this application is limited only to the amendments sought, and not the elements of the use and development that are unchanged and which remain generally consistent with the current permit and endorsed plans.

LAND USE

The application seeks a change of use at Levels 1 and 2 from office to dwellings, and to introduce community care accommodation (including 10no. Specialist Disability Accommodation units).

Importantly, the Permit currently provides authority for (among other things) land use permission to “*use of the land for the purpose of dwellings*”, which is due to the ground level residential frontage exceeding 2 metres – specifically the residential lobby serving the upper level apartments.

The introduction of community care accommodation (SDA), which shares the same residential lobby as the standard apartments, technically triggers a permit under the Commercial 1 Zone.

The change of use of Levels 1 and 2 from office to dwellings does not, in isolation, result in a further permit trigger as a dwelling located above ground level falls under Section 1 of the Commercial 1 Zone.

The ground level of the building maintains a highly activated frontage to Horne Street with two retail tenancies (each 140sqm in area) and the residential lobby. An activated return and planters are provided adjacent to the NW laneway for over half the length.

The development continues to be consistent with the purpose of the Commercial 1 Zone.

With regards to the inclusion of community care accommodation, Clause 52.22 was introduced into the Planning Scheme to enable streamlined use and development of facilities for ‘community care accommodation’. The stated purposes of this provision are:

“To facilitate the establishment of community care accommodation.

To support the confidentiality of community care accommodation.”

This proposal seeks to establish community care accommodation in the form of 10 x SDA apartments within the development.

The SDA apartments fall within the land use term ‘community care accommodation’ as defined at Clause 73.03 as follows:

“Land used to provide accommodation and care services. It includes permanent, temporary and emergency accommodation. It may include supervisory staff and support services for residents and visitors.”

Under the nesting diagrams of Clause 73.04, community care accommodation is nested under ‘residential building’.

In this instance, the proposal does not meet the ‘use exemption’ per Clause 52.22-2, or the ‘buildings and works exemption’ per Clause 52.22-3.

We explain as follows.

Land Use – Community Care Accommodation

Pursuant to the Commercial 1 Zone, ‘community care accommodation’ where any frontage at ground floor exceeds 2 metres, is a Section 2 (permit required) use. The residential lobby serves both the SDA apartments and the standard apartments, and as noted previously, the current Permit authorizes land use permission for dwellings to exceed 2m at ground level.

Notwithstanding the above, we note the use is funded by the National Disability Insurance Agency (NDIA) which is a public authority established for a public purpose under a Commonwealth Act, being the *National Disability Insurance Scheme Act 2013*. It is listed on the Australian Government’s list of government departments and agencies.

The *Specialist Disability Accommodation Provider and Investor Brief April 2018* (SDAPIB) published by the NDIA establishes that the SDA and funding framework for SDA under the NDIS and administered by the NDIA. The SDAPIB explains the funding framework for SDA housing under the NDIS as follows:

“SDA refers to a new form of capital funding for NDIS participants. SDA funding is intended for participants who require a specialist dwelling that reduces their need for person-to-person supports, or improves the efficiency of the delivery of person-to-person supports. SDA funding will only be provided for participants who meet the eligibility criteria. Participants who meet the eligibility criteria will have an extreme functional impairment and/or very high support needs.

SDA funding can only be paid to a provider that is registered with the NDIA and has an enrolled and compliant dwelling. This remains the case even where a participant has engaged a registered plan manager, or is self-managing their NDIS plan. SDA is funded under the NDIS through individual participant plans. Under the NDIS, eligible participants receive funding in their plan that they can then use to approach the market to find an enrolled dwelling that meets their needs.

SDA funding is for capital only (i.e. bricks and mortar) and is not for person-to-person supports. A participant may receive additional funding for these and other supports under the NDIS.

With their SDA funding, eligible participants can make their own decisions to find and enter into agreements with a suitable NDIS registered provider. This is consistent with the emphasis on participant choice and control across the NDIS.

SDA funding will create a marketplace for SDA. NDIS funding for SDA represents a substantial injection of funds for the sector. At full scheme, SDA funding is expected to total approximately \$700 million per year. Over time, the NDIA expects SDA funding to attract investment and stimulate the development of new required dwellings.”

Having regard to the purpose of Clause 52.22, we note the following:

- The proposal will give effect to the purposes of Clause 52.22 that seek to facilitate the establishment of community care accommodation and support the confidentiality of such use.
- The accommodation is funded by the National Disability Insurance Agency (NDIA), and will provide for housing for people with severe physical disabilities or impairments. On site 24 hour health support and nursing services are offered.
- The proposal will provide much needed housing for people with diverse impairments and very high levels of dependency that, critically, is integrated within a mixed use development in a highly accessible location.

Thus, this component of the proposal represents net community benefit to the municipality and the broader state.

Buildings and works – Community Care Accommodation

The ‘buildings and works’ exemption per Clause 52.22-3 is not met, and therefore a permit is required for buildings and works associated with community care accommodation.

This is because the funds required for the construction of the proposed building are not “funded by, or carried out by or on behalf of, a government department or public authority, including a public authority established for a public purpose under a Commonwealth Act”.

Reference is made to a recent decision of the Tribunal in *St John of God Health Care v Melton CC [2020] VCAT 1263*, which related to a declaration on a case concerning SDA dwellings having regard to the exemptions of Clause 52.22.

HEIGHT, BUILT FORM AND DESIGN

The amendments to the built form substantially conform with the envelope of the current approval, including a podium / tower form. This is despite the amended scheme comprising an increase to nine storeys, instead of eight storeys.

The three storey scale of the podium is maintained, and likewise the setbacks of upper levels are unchanged. The additional storey in the tower form is achieved by compressing and rationalising the floor to floor heights.

Importantly, the achievement of one additional storey has no adverse consequences to the character of amenity of the area (as examined

below), but provides opportunity for increased housing growth and diversity in this highly strategic Urban Renewal Precinct in the Elsternwick Activity Centre.

For ease of reference, the architect has depicted the approved building envelope on the drawings which demonstrates the amendments are substantially in accordance with the endorsed plans.

A key change to the physical form of the development relates to the modified building top, which adopts a varied, stepped roof profile (rather than a curved 'scoop'), see montage below.

Figure 1

Montage of amended design



As pictured below in **Figure 1**, the amended building top substantially sits below the height of the approved building, and results in the maximum building height being lowered by approx. 2.45m (from RL 50.45 to RL 48.00).

Figure 2

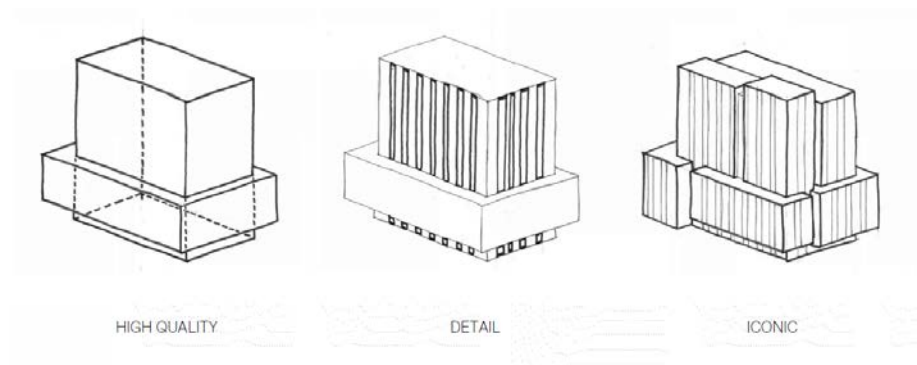
Proposed amended NE elevation facing Horne Street



Overall, the amended architectural design provides a high quality, balanced architectural solution that better relates to the final height and proportions of the building. The amended design also provides greater modulation of the building mass including vertical breaks in the podium and tower massing as viewed from Horne Street and the side / rear laneways.

Figure 3

Massing of amended development



As viewed from Horne Street, the revised roof profile which has a flat, stepped form results in a partial reduction and a partial increase in the parapet height relative to the approved building outline. This is the only element of the amended development that exceeds or 'breaks out of' the approved envelope. This is deemed a reasonable and preferential outcome because:

- This element is located on the Horne Street frontage only (the NE and SE quadrants of the tower), and thus does not have any impact on the rear interface where residential uses exist in Ross Street and beyond. The amendment will, in fact, reduce the building height and amenity impacts to existing dwellings to the rear (as examined further below).
- The building will represent a high quality addition to the built environment and will not create further undue impacts to the area.
- The amended scheme achieves a articulated roof profile which acts to screen roof plant and, moreover, represents a superior design outcome particularly when considering mid to long range views towards the development where a building top with visual interest is essential.

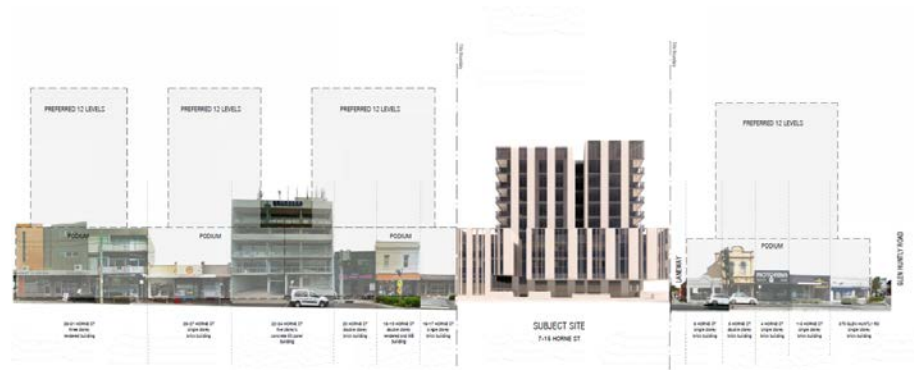
The three storey podium height remains unchanged.

Also, the siting and setbacks of the upper level tower (Level 3 and above) from side and rear boundaries remains unchanged.

In the context of the existing and future context of the streetscape of Horne Street, which is zoned Commercial 1 and sits within the Urban Renewal Precinct where a preferred maximum building height of 12 storeys applies under the DDO10, the proposed development will site very comfortably (as pictured below in).

Figure 4

Streetscape elevation showing amended proposal relative to existing and future built form context as prescribed by DDO10



Whilst there are amendments to the external appearance and materials of the building, the 'language' of the architectural design is not dissimilar to that of the current approval. The changes to the externals are largely

derived from the ultimately approved height and proportions of the development, as well as the internal alterations and change of use to the development.

The project architect has explained the final design philosophy as follows:

“CBG Architects has continued to developed a refined and concise response to the sites of 7-15 Horne Street, that also sits within the Glen Huntly Road precinct to create an iconic and high quality proposal that expresses the historical connections of the area in both the visual and physical expression.

The renewed and considered response to the site, further develops on articulated verticality, with the aim of providing a deliberate language of slender vertically read elements to assimilate closely to the historical proportions of the context and the continued movement through and around the site.”

INTERNAL AMENITY

The proposal will facilitate excellent internal amenity for future residents. In particular, we note the following:

- The development provides a mix of one, two and three bedroom apartments, with varying orientations and sizes.
- The development includes Specialist Disability Accommodation (SDA), which is a specialist housing solution for people with high functional impairments and extreme needs in support services.
- The development achieves a high standard of ESD, achieving a (weighted) 6 star average energy rating and a good standard of indoor environment quality, as assessed in the SMP prepared by SD Consultants Pty Ltd.
- Appropriate car parking provision for residents is provided.

The proposal continues to achieve full compliance with the following Clause 58 standards which are key tests for examining the on-site amenity of the development:

- D8: Solar access to communal outdoor open space
- D15: Internal views
- D16: Noise impacts
- D17: Accessibility
- D19: Private Open Space
- D20: Storage
- D24: Functional layout
- D25: Room depth
- D26: Windows
- D27: Natural ventilation

Given the high level of compliance as evidenced above, it is clear that that a superior level of internal amenity is achieved.

In terms of communal open space, the proposal seeks a variation to standard D7 which prescribes a requirement for an outdoor communal open space that yields 107.5sqm in area. The proposal includes an outdoor communal open space located on the podium (Level 3) that is 90sqm in size, and also includes a further 'indoor' communal area on the podium adjacent to the outdoor terrace that is 96.5sqm in size. Collectively, the communal open space is generous (186.5sqm) for a development of this size (43no dwellings) and will service the needs of future residents. The podium terrace also meets the 'qualitative' objectives of Clause 58 in terms of its sunlight access as well as its accessibility, practicality and attractiveness. Further, all dwellings are provided with private open space that meets or exceeds the prescribed areas under Standard D19 of Clause 58.

OFF-SITE AMENITY

Contextually, the site is located with a commercially zoned precinct of the Elsternwick Major Activity Centre. To the rear the site is adjacent to a residential interface, including dwellings located opposite a laneway in Ross Street which are affected by a Residential Growth Zone.

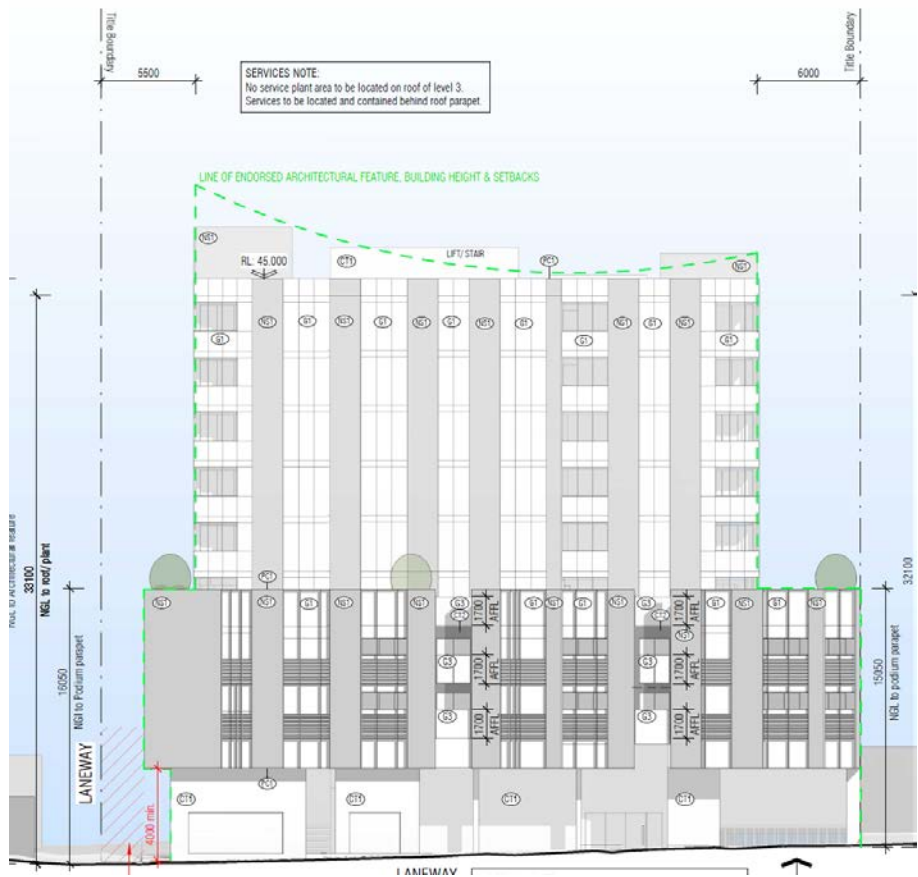
Importantly, the amendment seeks to lower the approved building height as viewed from the residential zoned land to the rear in Ross Street. Therefore, the amendment will, in fact, reduce building bulk and shadow impacts to this key interface.

Specifically, as viewed from Ross Street properties the following changes are proposed (as pictured below – refer **Figure 3**):

- the height of the podium at the rear interface is 3 storeys (or 15.55m) in accordance with the endorsed plans;
- the form and massing of the podium at the rear is further articulated into three distinct elements which provides greater visual relief and interest (owing to balconies and window rebates of the apartments at Levels 1 and 2);
- the upper levels (Levels 3 and above) are setback 5m in accordance with the endorsed plans; and
- the maximum building height is reduced by as much as 5.45m (from RL 50.45 to RL 45.00, or from 39.55m to 34.1m above NGL) due to the modified roof profile.

Figure 5

Southwest elevation as viewed from Ross Street, showing amendment is generally below the maximum height of the approved development

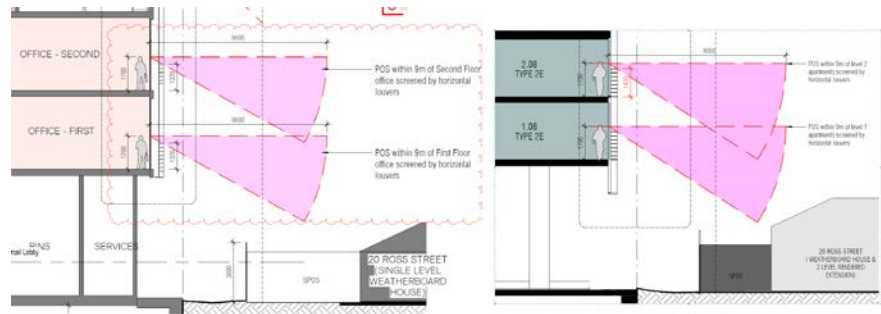


There is a reduction of overshadowing of existing dwellings in the surrounds, including Ross Street to the rear, resultant from the proposed amendment which lowers the parapet height of the tower element on the SW elevation.

In terms of overlooking, the dwellings at the podium levels that are to replace the office space generally adopt the same screening treatment as the endorsed plans (save for louver heights increasing from 1320mm to 1420mm above the FFL), as demonstrated below. There are no additional overlooking opportunities as a result of the amendment.

Figure 6

Overlooking – approved vs amendment



CAR PARKING AND TRAFFIC

The amendment maintains a suitable number of car spaces to meet the needs of the various land uses, and the access arrangement and traffic impacts remain appropriate.

Reference is made to the Traffic Impact report prepared by Ratio Consultants, which identifies:

- The proposed car parking provision is adequate.
- The proposed supply of car parking for the standard apartments meets the requirements of Clause 52.06. There is no statutory requirement to provide residential visitor parking.
- Sufficient car parking is provided to meet the anticipated staff parking demands of the retail tenancies. Multi-purpose trips will reduce the demand for car parking associated with customers and surveys demonstrate that there is sufficient on-street parking surrounding the site
- Sufficient car parking has been provided on-site to accommodate the anticipated car parking demands of residents/carers of the SDA apartments. Any carers without access to an on-site car parking space will need to park off site or utilise the site's excellent access to alternate transport modes.
- The site has excellent access to the metropolitan public transport network and the surrounding bicycle network.
- The generous provision of bicycle parking will encourage cycling to the site as a mode of transport and will reduce the reliance of private vehicle use.
- The proposed vehicular access arrangements have been designed in accordance with the dimensional requirements of the Glen Eira Planning Scheme and/or AS/NZS 2890.1:2004.
- The car parking areas have been designed in accordance with the dimensional requirements of the Glen Eira Planning Scheme and/or AS/NZS 2890.1:2004.

- The volume of peak hour traffic generated by the development can be accommodated by the ROW and surrounding road network.

WASTE COLLECTION

We defer to the Waste Management Plan prepared by Ratio Consultants, which demonstrates a suitable waste collection arrangement. Waste is proposed to be collected on-site via the ROW at the rear using a private contractor, which is consistent with the endorsed WMP.

ESD

We defer to the Sustainability Management Plan prepared by Sustainable Development Consultants. We note the following:

- Overall development weighted average energy rating of 6.0 Stars minimum and no apartment with cooling load over 30MJ/m²;
- Energy efficient HVAC within one star of best available or COP \geq 3.5;
- A central solar pre-heated gas hot water system;
- Water efficient fixtures, fitting, and appliances within one star of best available;
- 15,000L rainwater tank connected to all toilets in ground to level 2 dwellings and commercial spaces;
- Dwellings designed to provide effective cross-ventilation and adequate daylight;
- A communal residence lounge and outdoor terrace to create resident amenity;
- Use of materials that are responsibly sourced, durable, non-toxic and have low or no VOC / formaldehyde content; and
- Bicycle parking spaces exceeding the minimum planning requirements.

CONCLUSION

Overall, the amended proposal will offer an appropriate planning outcome that will deliver a high quality mixed use development that adheres to the strategic vision for the Elsternwick Activity Centre.

The one additional storey proposed has no negative consequences to the character and amenity of the area, as the amended built form, architectural design and car parking rates are substantially consistent with the endorsed plans.

We look forward to the Tribunal's consideration and we look forward to receiving the initiating order at the earliest opportunity.

Should you have any queries relating to this application please contact the undersigned or Claire Helfer on 9429 3111 or by email at robbiem@ratio.com.au or claireh@ratio.com.au respectively.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Robbie', enclosed within a hand-drawn oval shape.

Robbie McKenzie
Director: Planning
Ratio Consultants Pty Ltd