

**Boroondara Planning Scheme
Referral No 14: Call-in of VCAT proceeding P1792/2020**

at 11 Malmsbury Street, Kew

Priority Projects Standing Advisory Committee Report

Planning and Environment Act 1987

12 July 2021

Planning and Environment Act 1987

Priority Projects Standing Advisory Committee Report pursuant to s151 of the Act

Referral No 14: 11 Malmsbury Street, Kew

12 July 2021

Members of the Priority Projects Standing Advisory Committee who considered this referral:



Geoff Underwood
Chair



Debra Butcher
Member

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Glossary and abbreviations

the Committee	Priority Projects Standing Advisory Committee
Council	Boroondara City Council
GRZ	General Residential Zone
HO	Heritage Overlay
the Minister	Minister for Planning
MSS	Municipal Strategic Statement
VCAT	Victorian Civil and Administrative Tribunal

1 Overview

(i) Referral summary

Referral summary	
Date of referral	6 April 2021
Members	Geoff Underwood, Chair Debra Butcher, Member
Permit application	Planning Permit Application No. PP19/1085 to Boroondara City Council for the proposed use and development of the subject land for an education centre and reduction of the associated bicycle facilities requirements. Proposal includes demolition of buildings on land partially affected by the Heritage Overlay - Bet Nachman Synagogue building to be retained.
Applicant	Contour Consultants for Giant Steps Melbourne Ltd
Description of referral	Call-in of VCAT Application P1792/2020 seeking review of Council's decision to refuse the permit application
Common name	Referral No 14: 11 Malmsbury Street, Kew
Municipality	Boroondara City Council
Responsible Authority	Boroondara City Council
Subject land	11 Malmsbury Street, Kew
Site inspection	The site and surrounding area were inspected on: <ul style="list-style-type: none"> - the morning of Friday 16 April between 10:30 and 11:30 during school holidays - the afternoon of Friday 23 April at 4:00pm which was a school day - other occasions, at various hours, to make observations
Submissions	<ul style="list-style-type: none"> - Boroondara City Council as responsible authority - Giant Steps Melbourne Ltd as the permit applicant - Kew Hebrew Congregation Inc - Resident objectors Ms A Fong and Ms K Reynen
Parties	The parties, their representatives and instructors are listed in Table 1. Each of the VCAT parties participated in the hearing except for Ms Reynen who relied on written submissions
Consultation	The hearing was conducted as a roundtable discussion on 8 June 2021
Information relied upon	The Committee relied on information on the VCAT file, submissions lodged in accordance with Directions issued by the Committee, written submissions and oral presentations at the hearing plus responses to issues circulated after the hearing. See Appendix C for more detail
Date of this report	12 July 2021
Citation	Referral 14: Call-in of VCAT proceeding P1792/2020

(ii) Parties to the Hearing**Table 1** Parties to the hearing

Submitter	Represented by
Boroondara City Council	Ms Louise Hicks of Counsel instructed by Mr John Rantino and Ms Georgia de Castella of Maddocks Solicitors with Ms Seuna Byrne, Principal Planner, Boroondara City Council
Giant Steps Melbourne Ltd	Mr Barnaby Chessell of Counsel instructed by Ms Alexandra Harrison-Ichlov of Arnold Bloch Leibler, Solicitors, who called: <ul style="list-style-type: none"> - expert evidence on Heritage from Bryce Raworth of Bryce Raworth Conservation Heritage - lay evidence from Mr Barry Irvin AM for Giant Steps Melbourne Ltd
Kew Hebrew Congregation Inc	Mr Nick Sissons of HWL Ebsworth, Solicitors
Ms Alexis Fong	
Ms Katrina Reynen	

(iii) Findings

The Minister for Planning asked the Committee for advice on certain questions as set out in Chapter 2(i) of this report.

On whether the proposed development appropriately responds to the heritage significance of the site and surrounding heritage/neighbourhood character of the area, the Committee finds:

- the demolition of the buildings within the Heritage Overlay (HO) and on the subject land is supported
- the demolition of buildings on that part of the site covered by the HO has minimal impact and will not affect the significance of the heritage place, the Bet Nachman Synagogue, nor will the demolition affect the character of the area
- the proposal can be supported as proposed with its 3.87 metre setback from the synagogue and accordingly finds that it responds appropriately to the heritage significance of the site
- the proposed building will have no adverse impact on the use or enjoyment of the heritage place (the synagogue)
- the proposal is consistent with the existing and preferred character of the area.

On whether the proposal would result in unacceptable impacts on safety, amenity, noise, traffic and overlooking within the surrounding area, the Committee finds:

- the proposal will not result in unacceptable noise impacts to neighbouring properties
- the proposal will not result in unacceptable amenity impacts in relation to traffic matters
- the proposal will not result in unacceptable amenity impacts in relation to safety associated with additional traffic movements
- appropriate measures have been put in place to restrict overlooking from the proposal into the back yard or habitable room windows of 9 Malmsbury Street and therefore there will be no unacceptable impacts as a result of overlooking from the proposed development.

In response to the Minister for Planning's request for advice and recommendations on whether a planning permit should be issued and, if so, the appropriate permit conditions that should be imposed, the Committee finds:

- a permit should issue for:

Use and development (including partial demolition of buildings on land affected by the Heritage Overlay - Bet Nachman Synagogue building to be retained) of the land known as 11 Malmsbury Street, Kew for an education centre and reduction of the associated bicycle facilities requirements generally in accordance with the endorsed plans.

As to the particular application of the conditions, the Committee finds:

- the draft conditions and changes made to them by agreement and upon submissions, impose typical and appropriate conditions on the proposed use and development
- the conditions require the permit holder to conduct the activity of an education centre in compliance with standards intended to minimise off-site impacts.

The draft condition about an Historical Interpretation Plan was not agreed upon at the hearing. The Committee finds the best outcome is to

- delete proposed draft conditions 1c) and 25.

The Committee preferred version of conditions in Appendix D deletes the draft requirements as proposed by the Council.

(iv) Recommendation

The Priority Projects Standing Advisory Committee recommends:

- 1. The Minister for Planning recommend the grant of a permit subject to the conditions set out in Appendix D.**

2 Introduction

(i) Terms of Reference and letter of referral

The Priority Projects Standing Advisory Committee (the Committee) was appointed by the Minister for Planning on 14 June 2020. The purpose of the Committee is set out in its Terms of Reference (Appendix A) to:

... provide timely advice to the Minister for Planning on projects referred by the Building Victoria's Recovery Taskforce (BVRT), projects affected by Covid-19 and or where the Minister has agreed to, or is considering, intervention to determine if these projects will deliver acceptable planning outcomes.

The Committee was provided with a letter of referral from the Minister for Planning dated 6 April 2021 (Appendix B) that tasked it to:

- Provide advice and recommendations on whether the proposed development appropriately responds to the heritage significance of the site and surrounding heritage/neighbourhood character of the area
- Provide advice and recommendations on whether the proposal would result in unacceptable impacts on safety, amenity, noise and traffic within the surrounding area.

In the referral letter, the Minister advised that he had:

... decided to call in the proceeding from VCAT under Clause 58(2)(a) of the *Victorian Civil and Administrative Tribunal Act 1998* as I consider that the proceeding raises a major issue of policy and determination of the proceeding may have a substantial effect on the achievement or development of planning objectives. I have also decided to refer the matter to the Priority Projects Standing Advisory Committee for advice and recommendations on whether a planning permit should be issued and, if so, the appropriate permit conditions that should be imposed.

This is Referral No. 14 to the Priority Projects Standing Advisory Committee.

(ii) Membership

Due to the issues to be resolved, the members of the Committee dealing with Referral No. 14 are:

- Geoff Underwood, Chair
- Debra Butcher, Member.

The Committee was assisted by Ms Georgia Thomas, Project Officer of the office of Planning Panels Victoria.

At the commencement of the hearing, the Committee made the following declarations:

- At the time of appointment, Ms Butcher advised that SJB Planning, with whom she has a business relationship, historically provided some planning advice in relation to this site. However, the company has not done so for a number of years.
- Ms Butcher declared that she, as a consultant, has a matter where Ratio Consultants, traffic engineers for Giant Steps Melbourne Ltd (the applicant), are engaged. No discussion has occurred about Referral 14.
- Mr Underwood declared that he, as a consultant, has a matter where HWL Ebsworth, solicitors for the Kew Hebrew Congregation, are engaged. Mr Sissons, representing the party, is not a contact on the matter.

No party expressed any concern with the declarations when invited to do so.

(iii) Background to the proposal

In December 2019, the applicant made an application for a planning permit to facilitate the demolition of buildings on the land at 11 Malmsbury Street, Kew and their replacement with new premises to allow for the expansion of the school which currently operates on-site. After seeking and considering further information from the applicant to elaborate on the details of the proposal, the Council refused the application on heritage grounds, in September 2020.

The applicant sought a review of the refusal before VCAT. That is the matter the Minister has called in. The parties to this proceeding are the parties who sought to participate at VCAT.

2.2 Process

(i) Preliminaries to the hearing

After receiving the letter of referral from the Minister, the Committee gave notice of the referral and issued a set of Directions about the hearing process on 19 April 2021. In that letter,¹ the Committee issued directions for a hearing scheduled for 11 May 2021 and invited parties to comment on and add to preliminary issues it had identified as relevant.

In the administrative process that followed, the objector Ms Alexis Fong sought a variation of the issues to make clear that overlooking was an issue to be considered separate from a catch-all topic of amenity, and the applicant sought an adjournment of the hearing.

After seeking and receiving comment on the applicant's adjournment request, with Council supporting the adjournment and no party objecting, the Committee adjourned the hearing. On 11 May 2021, the Committee issued revised directions² to advance a hearing rescheduled for 8 June 2021 and included amendment of the issues to identify overlooking, as Ms Fong had requested.

(ii) Preliminary issues at the hearing

Permit preamble

In opening comments, the Committee asked the parties to consider the desirable description of 'what the permit allows'. The Committee pointed out there were three variations to the description: one expressed on the permit application form,³ a second variation in the Council Part A submission,⁴ and a third as the preamble to the draft proposed permit conditions circulated by the Council.⁵

The question was put and left open for resolution through the hearing as there was likely to be discussion about use and development matters that might require permission and hence changes to the preamble. Those matters included a question raised by the Committee about why a use permit was required when the site had previously been approved and used as a school (see Chapter 3.2(iii)) and whether bicycle trip-end facilities were required within the premises (see Chapter 3.2 (iv)).

¹ Document 4

² Document 23

³ Contained in Document 4

⁴ Document 28, paragraph 4

⁵ Document 30

These matters were canvassed through the hearing. At the conclusion, parties were invited to comment on the Council preferred position that the preamble should be as expressed on the draft permit conditions. After subsequent circulation of comments,⁶ the parties agreed to that wording. The Committee adopts that description which is used in this report and appears on the Committee version of draft conditions at Appendix D. The wording is:

Use and development (including partial demolition of buildings on land affected by the Heritage Overlay - Bet Nachman Synagogue building to be retained) of the land known as 11 Malmsbury Street, Kew for an education centre and reduction of the associated bicycle facilities requirements generally in accordance with the endorsed plans.

Identification of the subject site

The Committee was concerned to establish what land constituted the subject site. As identified in the preamble, the land is 11 Malmsbury Street Kew. That sounds straight forward but where the synagogue is sited, the address is 53 Walpole Street. As some buildings proposed for demolition sit on that land, the Committee wanted to ensure the terms 'subject site' and 'subject land' were understood and unambiguous. Chapter 3 in this report relies on information in the application material⁷ to identify the subject land and subject site and adopts the address of 11 Malmsbury Street Kew. This is the address of the subject land as identified by Council in the preamble to the permit.

2.3 Consultation

The hearing was held by video link on 8 June 2021. Because of the nature of the matter, directions were issued on the papers without a directions hearing. All correspondence was conducted through the Project Officer, Ms Thomas.

The Committee records its appreciation for the cooperation of the parties.

⁶ Documents 53 and 56

⁷ Document 4, page 71

3 Site and planning context

3.1 The subject land and surrounds

The subject site is located on the northern side of Malmsbury Street, and is bound by Brougham Street to the west and Walpole Street to the east.

Figure 1: Subject land



Source: Contour Town Planning and Urban Context Report

The site is rectangular in shape with a total site area of approximately 3,757 square metres and is currently occupied by three main buildings, two of which are used by the Giant Steps School (with a street address of 11 Malmsbury Street) and the third building located in the eastern portion of the site which known as the Bet Nachman Synagogue (with a street address of 53 Walpole Street).

The site has a frontage to Brougham Street of approximately 43 metres, to Malmsbury Street of approximately 90 metres and to Walpole Street of approximately 43 metres. To its north it abuts an unnamed one way road that serves the adjoining premises.

It is important to note that the buildings and works proposed as part of the planning permit application do not extend across the whole of the site but relate only to the land to the west of the Bet Nachman Synagogue, with the proposed new School building extending to within 3.87 metres of the western wall of the synagogue.

The extent of demolition that is proposed on the site is shown on Figure 2 on the following page. The Site Plan in Figure 3 shows the building envelope for the new buildings and works, including the setback between the new School building and the Bet Nachman Synagogue.

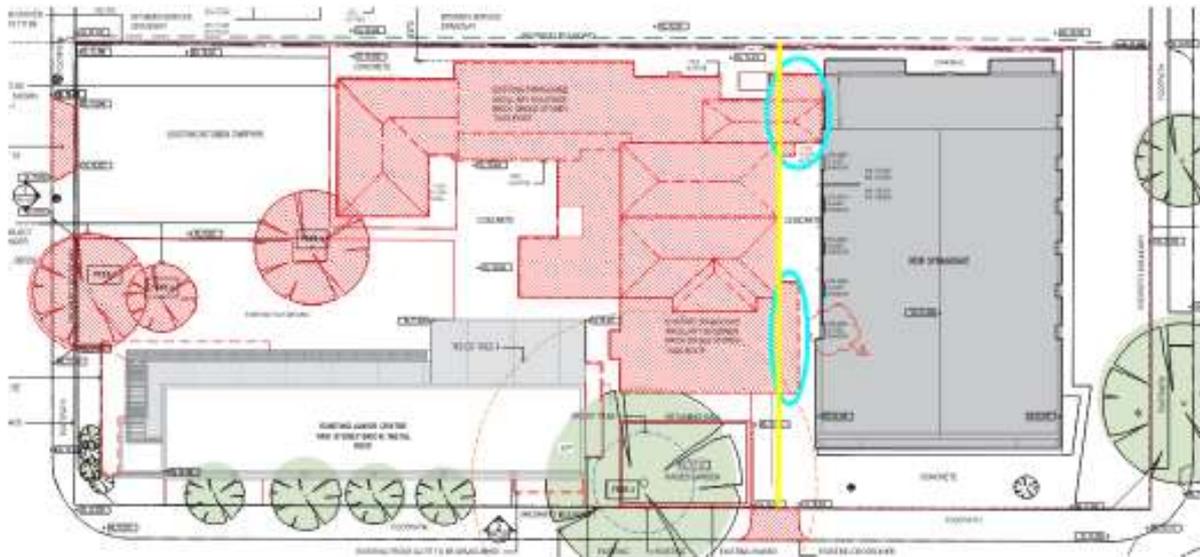
The surrounding area is described in the Council Officer's report as follows:

With the exception of the Bet Nachman Synagogue, the surrounding area is used for residential purposes. A residential aged care facility (Baptcare Karana Community) to the north at No. 55-59 Walpole Street, is the only direct abuttal with the subject land, other than the synagogue. Further afield, the Kew Junction shopping centre is approximately 400m south.

Rylands retirement village is located at 2-6 Malmsbury Street, diagonally to the south-west of the site on the opposite side of the street. The facility is located within a large, modulated 3-storey brick building.

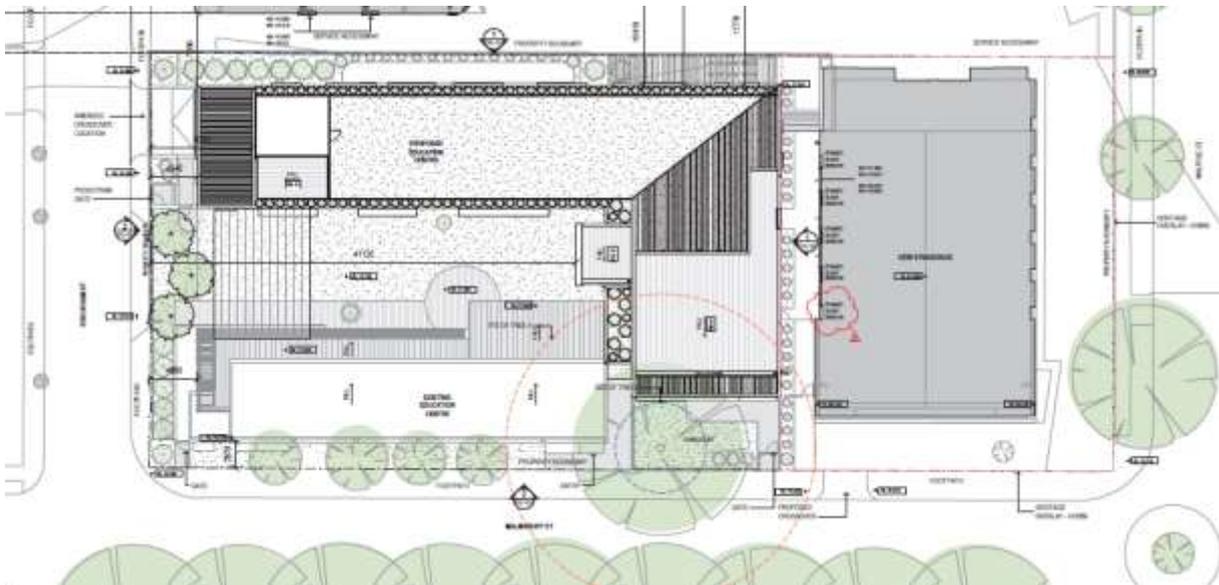
To the west, on the opposite side of Brougham Street, at No. 9 Malmsbury Street is a single storey rendered brick dwelling. The dwelling contains a number of habitable room windows with an outlook over the side street, towards the subject site. A brick garage is located at the rear of the dwelling, providing access via Brougham Street.

Figure 2: Extract from the proposed demolition plan (showing buildings to be demolished in the HO affected area circled in blue)



Source: Council Officer's Report

Figure 3: Extract from Site Plan



Source: Giant Steps Town Planning Submission Revision 2

3.2 Planning framework

(i) State policy

The Council Officer's report for the planning permit application lists the following State policies as key to the assessment of the application:⁸

- Clause 11 - Settlement
- Clause 13.05-1S - Noise abatement
- Clause 15 - Built Environment & Heritage
- Clause 18 - Transport
- Clause 19 - Infrastructure.

The Officer's report highlights that the following clauses are of particular relevance:

- Clause 11.01-1R (Settlement - Metropolitan Melbourne) which seeks to *"create mixed use neighbourhoods... [that] create jobs and opportunities for local businesses and deliver better access to services and facilities."*
- Clause 15.01-1S (Urban design) which seeks *"to create urban environments that are safe, healthy, functional and enjoyable and that contribute to a sense of place and cultural identity."*
- Clause 15.01-2S (Building design) which seeks *"to achieve building design outcomes that contribute positively to the local context and enhance the public realm."*
- Clause 15.03 (Heritage conservation) seeks to *"ensure the conservation of places of heritage significance."*
- Clause 19.02-2S (Education facilities) which seeks *"to assist the integration of education and early childhood facilities with local and regional communities."*

The Committee agrees that these are the key clauses and highlights in particular Clause 19.02-2S and some of the strategies that seek to support this clause which include:

- Consider demographic trends, existing and future demand requirements and the integration of facilities into communities in planning for the location of education and early childhood facilities.
- Locate childcare, kindergarten and primary school facilities to maximise access by public transport and safe walking and cycling routes.
- Ensure childcare, kindergarten and primary school and secondary school facilities provide safe vehicular drop-off zones.
- Facilitate the establishment and expansion of primary and secondary education facilities to meet the existing and future education needs of communities.
- Recognise that primary and secondary education facilities are different to dwellings in their purpose and function and can have different built form (including height, scale and mass).
- Locate secondary school and tertiary education facilities in designated education precincts and areas that are highly accessible to public transport.
- Ensure streets and accessways adjoining education and early childhood facilities are designed to encourage safe bicycle and pedestrian access.
- Consider the existing and future transport network and transport connectivity.

⁸ Page 27, Council Officer's Report, Document 28

The Committee considers that the proposal does respond appropriately to these various policy directions at a State level. The proposal will facilitate the expansion of an education facility that meets a demonstrated community need, in an appropriate location, and in a built form that responds appropriately to the local context and public realm. The Committee is also satisfied that appropriate consideration has been given to Clause 15.03 (Heritage conservation), discussed further in Chapter 4.

(ii) Local policy

The Council Officer's Report also highlights the key provisions of the Municipal Strategic Statement (MSS) and Local Planning Policy Framework that are of relevance to this application as being:⁹

- Clause 21.04 - Built Environment and Heritage
- Clause 21.05-3 - Discretionary uses in residential areas
- Clause 22.02 - Discretionary uses and development in residential areas policy
- Clause 22.03 - Heritage policy
- Clause 22.05 - Neighbourhood character policy.

Key objectives and strategies of these clauses are also identified as follows:

- Clause 21.04-5 (Heritage Conservation):
 - Conserve and enhance individual heritage places and precincts, and aboriginal and cultural features;
 - Require development to respect and enhance heritage buildings and precincts.
- Clause 21.05-3 (Discretionary Uses in Residential areas):
 - To ensure proper integration of appropriate discretionary uses into residential areas.
- Clause 22.02-2 (Discretionary uses and development in residential areas policy):
 - To minimise adverse amenity impacts from non-residential uses on surrounding residential properties;
 - To ensure that development associated with discretionary uses respect the established neighbourhood character and contribute to achieving the area's preferred character as outlined in the Neighbourhood Character Precinct.
- Clause 22.03 (Heritage Policy):
 - To preserve 'significant' heritage places, protecting all significant heritage fabric including elements that cannot be seen from the public realm;
 - To facilitate sympathetic new buildings which extend the life of 'significant' heritage places;
 - To ensure buildings and works to 'non-contributory' properties are sympathetic to the heritage values of the precinct and complement the precinct's heritage built fabric by being respectful of the scale, massing, rhythm and detailing.

In relation to Clause 22.05 Neighbourhood Character Policy, the Council Officer's report notes that the subject site and surrounding properties are located within Neighbourhood Character Precinct No. 9 and that Precinct is described as "*containing a range of 1 and 2 storey detached dwellings and 2 and 3 storey apartments that date from the 1880's until now. No building type or style predominates ...*".¹⁰

⁹ Page 27, Council Officer's Report, Document 28

¹⁰ Page 37, Council Officer's Report, Document 28

The Committee has considered the key directions of the MSS and Local Policies highlighted above and considers that the proposal responds appropriately to the key directions. In particular the Committee considers the proposal has a high level of consistency with the objectives and policies relating to discretionary uses in residential areas, acknowledging that whilst there is no Master Plan for the site, the current proposal effectively 'builds out' the site.

The matters identified in policy in relation to built form and heritage are discussed in greater detail in Chapter 4.

(iii) Zones and overlays

General Residential Zone

The subject site is included in the General Residential Zone Schedule 4 (Super Sized Lots) (GRZ4). The eastern portion of the site is also affected by the Heritage Overlay Schedule 559 (HO559) which primarily affects the land occupied by the Bet Nachman Synagogue, with only a small portion of the buildings and works proposed for demolition as part of this application extending into the HO559 area (refer to Figure 2 to see the applicable area).

The objectives of the GRZ include the following:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To encourage development that respects the neighbourhood character of the area.
- To encourage a diversity of housing types and housing growth particularly in locations offering good access to services and transport.
- To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.

Pursuant to Clause 32.08-2 of the GRZ, a planning permit is required to use land for an education centre (as an innominate, Section 2 use) as well as pursuant to Clause 32.08-9 for buildings and works associated with a Section 2 use. There is a range of built form requirements, including setbacks and maximum heights that are included in the GRZ but, as they relate to dwellings and residential buildings, they are not relevant to this permit application.

In relation to the use and development approval triggers for an education centre, there was some discussion at the hearing as to whether a permit is required for the 'Use' component of the proposal or whether the previous permit that issued to enable the establishment of Giant Steps Melbourne (PP15/00561) meant that no new use permit was required.

The Committee was advised by both Council and the applicant that a use permit is required due to the conditions of the earlier permit that imposed restrictions on the way the School operates, as well as its capacity. The Committee accepts this position.

Figure 4: Zoning Map

Source: Contour Town Planning and Urban Context Report

Heritage Overlay

The part of the site that accommodates the Bet Nachman Synagogue, plus the land extending 5 metres to the west of the synagogue building, are within Heritage Overlay HO559. The objectives of the Heritage Overlay are as follows:

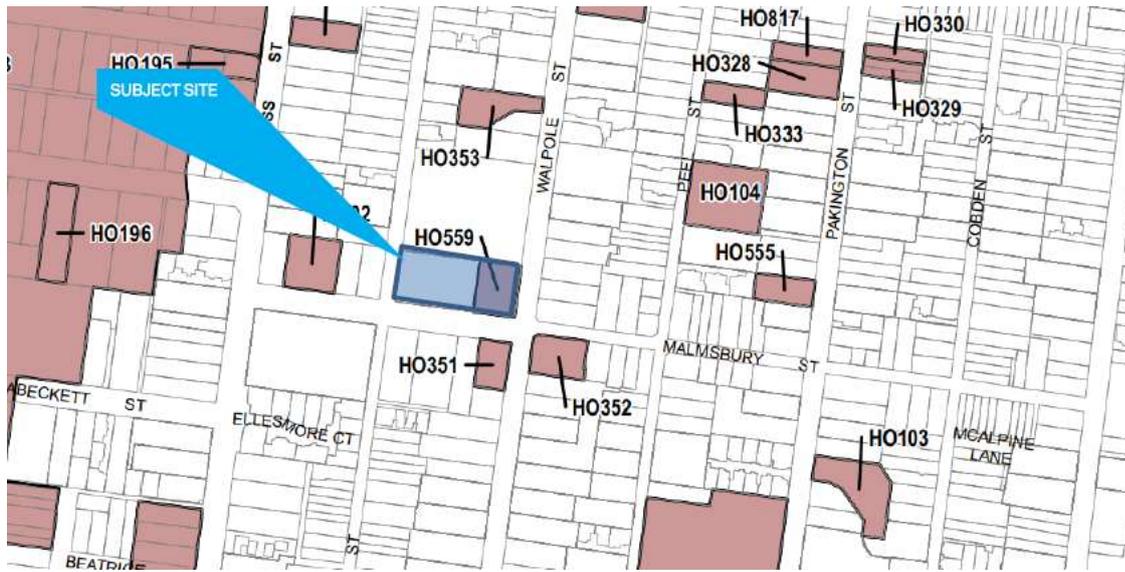
- To implement the Municipal Planning Strategy and the Planning Policy Framework
- To conserve and enhance heritage places of natural or cultural significance
- To conserve and enhance those elements which contribute to the significance of heritage places
- To ensure that development does not adversely affect the significance of heritage places
- To conserve specified heritage places by allowing a use that would otherwise be prohibited if this will demonstrably assist with the conservation of the significance of the heritage place.

Council's Part A submission identified that HO559 presently applies to that part of the land to the east of the proposed new building:¹¹

To the extent of the main double-height synagogue building, frontage to Walpole and Malmsbury Streets, and 5 metres of land west of the west elevation, to ensure that new development in this area is designed to permit the transmission of natural light to the stained glass windows to the west elevation.

Pursuant to HO559 a planning permit is required for demolition and construction of buildings and works in that section of the site that is affected by the HO.

¹¹ Paragraph 32, Page 8, Document 28

Figure 5: Heritage Overlay Map

Source: Contour Town Planning and Urban Context Report

Accordingly, pursuant to the Zone and Overlay controls, a permit is required for use of the land for an education centre, for buildings and works associated with that use and for demolition of buildings and works within the Heritage Overlay area. This translates to the agreed wording of the preamble for the permit.

(iv) Particular provisions

Provisions relevant to this permit application include:

- Clause 52.06 Car parking
- Clause 52.34 Bicycle facilities
- Clause 53.18 Stormwater Management in Urban Development.

Clause 52.06 deals with car parking requirements for the use of land for an education centre (as specified at Table 1 at Clause 52.06-5). The requirement is for a car parking rate of 0.3 car spaces per student for the maximum number of students allowed on-site at any time. Given the expanded School is expected to accommodate a maximum of 80 students on the land, this results in a requirement for 24 car spaces. A total of 25 car spaces is proposed within the basement so no dispensation is required for car parking.

Clause 52.34 requires the provision of bicycle parking for students and staff at a rate of 1 space to each 20 employees and 1 space to each 20 full time students. In the Council Officer's report and subsequently at the hearing, it was acknowledged and agreed that given the focus of the School is on educating children and young adults with autism, bicycle parking for students is not required and a dispensation from the bicycle parking requirements is appropriate. For both the staff bicycle parking and the end of trip facilities, it was considered by Council, and accepted by the applicant, that these requirements are appropriate. A condition of permit will require trip-end facilities to be included as part of the development.

Clause 53.18 seeks to ensure stormwater is managed to mitigate its impacts on the environment, property and public safety. In response to this clause a Water Sensitive Urban Design Assessment is required via a condition of the planning permit plus additional information required under

proposed Condition 1 in relation to the rain water harvesting tank proposed as part of the application.

The Committee notes that since the application was made in December 2019, Clause 53.19 has come into operation. The purpose of the Clause is “*to facilitate new non-government schools*” and “*to facilitate upgrades and extensions to existing non-government schools*”. In this instance, the transition provisions at Clause 53.19-3 exempt this application but this clause will be relevant for a future application, including for heritage issues.

(v) General and operational provisions

Clause 65.01 includes Decision Guidelines for approval of an application or a plan. Relevant matters to be considered include:

- the MSS and the Planning Policy Framework
- the purpose of the zone, overlay or other provision
- any matter required to be considered in the zone, overlay or other provision
- the orderly planning of the area
- the effect on the amenity of the area
- the adequacy of loading and unloading facilities and any associated amenity, traffic flow and road safety impacts.

Clause 66 details relevant referral authorities for permit applications. In this matter the relevant referral authority was the Department of Transport.

Clause 71.02-3 relates to Integrated Decision Making and identifies that society has various needs and expectations such as land for settlement, protection of the environment, economic wellbeing, various social needs, proper management of resources and infrastructure, and that planning aims to meet these needs and expectations.

The clause highlights the need for responsible authorities to endeavour to integrate the range of planning policies relevant to the issues to be determined and “*balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations*”.

This is a key clause in the consideration of the permit application.

4 The issues

The Committee considers the key issues to be resolved in this matter are:

- Heritage: and whether the proposed development appropriately responds to the heritage significance of the site and surrounding heritage/neighbourhood character of the area
- Amenity: whether the proposal would result in unacceptable impacts on amenity which includes overlooking, noise, traffic and safety within the surrounding area.

4.1 Heritage

The Council refused the permit application on the sole ground that:

Demolition of the building known as Norman Smorgon house will have a detrimental impact on the social and cultural heritage significance of the place.

During consideration of the application, Council, as Planning Authority, initiated planning scheme amendments to impose a Heritage Overlay on the site. Those Amendments are:

- Amendment C336boro, which proposes interim controls for the site
- Amendment C342boro, which proposes permanent controls.

Both Amendments remain to be resolved. In its Part A submission, Council advised:

- the Minister has stated he will not make a decision on Amendment C336boro until the Committee has considered this matter ¹²
- on timing ¹³
 - a Panel Hearing has been scheduled for 19 July 2021
 - Council proposes to consider the Panel Report on 4 October 2021 and to adopt it, should it choose to do so, on 25 October 2021.

The permit applicant appealed the refusal on the grounds:

- (a) First, Norman Smorgon House is not presently the subject of the Heritage Overlay, and planning permission is not otherwise required for its demolition. The Council's sole basis for refusing the permit application is accordingly misconceived.
- (b) Second, even if the cultural heritage significance of Norman Smorgon House was a relevant consideration in determining the permit application (which is denied), demolition should be permitted on the bases that:
 - (i) The cultural heritage significance of the building is relatively low; and
 - (ii) The expansion of the education centre would result in a substantial net community benefit as a consequence of its enhanced capacity to meet the societal need for specialised education facilities catering for the particular needs of children with autism.
- (c) Third, the expansion of the education centre is consistent with state and local planning policies promoting the integration of education facilities with local and regional communities, and those that recognise the need to provide facilities and services catering for people with particular needs.

¹² Council Part A submission, Document 28, paragraph 107

¹³ At paragraph 108

It was common ground among the legal advocates presenting to the Committee that should a permit issue as sought, the later approval of a Heritage Overlay pursuant to either Amendment would trigger another permit application for demolition with heritage issues the prime consideration.

The Minister asked the Committee to:

... provide advice and recommendations on whether the proposed development appropriately responds to the heritage significance of the site and surrounding heritage/neighbourhood character of the area.

The Minister's referral raises two issues:

- how the proposed development appropriately responds to the heritage significance of the site, and
- how it responds to the surrounding heritage/neighbourhood character of the area.

As reported in Chapter 3, the current planning controls in HO559 require a planning permit for demolition and construction of buildings and works in that section of the site covered by the HO but no permit is required for the demolition of buildings elsewhere on-site. The extent of building elements for which no planning permit is required for demolition is shown in Figure 2. Council refused the application on the basis of an undesirable loss of heritage buildings not within HO559 and notwithstanding there is no current heritage control on those buildings

To advise the Minister on the matters referred, the Committee has to consider the ground of refusal and form an opinion on the merits of the buildings to be demolished in light of the current planning controls and whether the proposed development appropriately responds to the heritage significance of the site and surrounds.

A third heritage issue was raised by the Kew Hebrew Congregation which supports the demolition of the buildings but opposes a proposed condition of permit that would require the preparation of an Historical Interpretation Plan to record the importance of the buildings in the event they are demolished.

(i) Submissions and evidence

The Committee appreciates the depth of submissions by the parties on the merits of the buildings proposed for demolition.

The critical part of submissions and presentations for consideration by the Committee lies in arguments about the effect of the demolition on the enjoyment of the stained glass windows in the synagogue.

The Council did not call evidence but relied on submissions there would be adverse impact on the Bet Nachman Synagogue and the enjoyment of the stained glass windows in its west wall from the proposed construction of a new building.

Figure 6: Inside Bet Nachman Synagogue looking west



Source: Kew Hebrew Congregation submission page 29 bottom photo

Council submitted that a building with a wall height similar to the height of the synagogue, constructed less than 5 metres from the synagogue, would interrupt light to the windows. Council referred to the citation for the synagogue in HO559.

The issue had been raised by Council during consideration of the application. Further information was sought from the applicant who tendered a report by its heritage consultant that was considered by Council when making its decision on the application.

That material was submitted in February 2020. Papers available to the Committee¹⁴ and presentations by Mr Raworth¹⁵ confirm his evidence statement expanded on that report.

Ms Hicks drew attention to the report of the Council's Heritage consultant when assessing the application, which stated:

The shadow diagrams most helpful were provided with drawings TP10-101 to TP10-107 inclusive. The west wall is in shadow until after 12 noon and that (sic) the new building will only permit an hour or so of no shadow during the afternoon. Stain glass windows rely on daylight coming through them to fully appreciate their 'glory'.

While I take on board Bryce Raworth comments re the stain glass windows are not the primary significance of the synagogue, they are nonetheless an important element of it, and especially being designed by a prominent stain glass artist.

The proposed design has a vertical wall to similar height as the synagogue a mere 3.87 metres away.

14 The VCAT papers, Document 4

15 Raworth evidence statement, Document 49

Mr Raworth gave evidence for the applicant about the impact of the proposal on the windows. In his February 2020 report, Mr Raworth examined shadow diagrams of the proposal and assessed current conditions and the timing of services within the synagogue. He formed an opinion that:¹⁶

... while there will be some impact arising during the afternoon of Yom Kippur from 1pm onward, the shadowed conditions will essentially be similar to the conditions experienced at most morning and evening services throughout the year, when there is also no direct sunlight.

He concluded the altered shadow condition in the afternoon of Yom Kippur will not represent a dramatic departure from the congregation's typical experience of these windows.

Mr Raworth's evidence was that a side setback of 3.87 metres for the new building would be sufficient to allow light to the windows and not affect the conduct of services and ceremonies within the synagogue.

Mr Raworth's conclusion in relation to this issue was that:¹⁷

Having regard for all the above, including the lack of Heritage Overlay to the subject site itself, the scale, design and siting of the proposed new building(s), the fact that the stained glass windows, while of some interest in themselves, are not a primary basis for the Heritage Overlay listing of the place, and the very limited impact upon light levels to the stained glass windows to the synagogue at those times in which it is in use, the proposal can be seen to be acceptable with regard to heritage considerations.

Mr Raworth considered a broader range of issues, including (relevantly) how the proposal responds to the surrounding heritage/neighbourhood character of the area. He concluded that:¹⁸

Accepting that the greater portion of the development site is not subject to a Heritage Overlay, that the fabric of Norman Smorgon House that is to be demolished is not significant, and that the scheme has been designed with appropriate regard for the neighbouring heritage built form of the Synagogue, it is my view the scheme has been prepared having reasonable and appropriate regard for heritage considerations as established within the Boroondara Planning Scheme and should be considered acceptable on this basis.

The issue of how the proposal responds to the surrounding character of the area was also addressed in the applicant's submission with the applicant highlighting the statement in the Council Officer's report, and submitting that:¹⁹

Officers have formed the view the proposed 3-storey building would sit comfortably within the Malmsbury Street streetscape as an insertion between the existing, retained institutional building and the monumental synagogue building. The continuity of the streetscape is also somewhat preserved, due to the retention of the large Peppercorn tree, which sits in the front setback of the proposed building. Particularly in the vicinity of the subject site, the streetscape is dominated by the leafy, continuous canopy of the large street trees and the Peppercorn tree on the subject site.

The Kew Hebrew Congregation supported the demolition of the buildings as proposed on the basis that the proposal does not affect the heritage of the Bet Nachman Synagogue or the conduct of services inside the synagogue. To support its submission, the Congregation drew attention to this statement by Council in the Part A submission:²⁰

16 Document 4, page 194

17 Document 49, paragraph 55

18 Document 49, paragraph 70

19 Applicant's submission, Document 41, paragraph 28

20 From 2.3 (i) page 4 of the KHC submission, document 45, referring to paragraph 129 of document 28

Council recognises that the proposal will not cause an unreasonable detrimental impact to the existing heritage significance of the synagogue that is protected under HO559.

None of the objectors made submissions about heritage issues.

(ii) Discussion and findings

The Committee has competing submissions on the issues.

Heritage merit

The competing positions on the heritage merit of the buildings to be demolished were presented by Council and the applicant, principally through Mr Raworth in his February 2020 report and his evidence. Both documents were before the Committee as was the report by Council's heritage consultant prepared for Amendments C342boro and C336boro that presented the contrary opinion though this material was not presented as evidence.

Mr Raworth's evidence was that the buildings to be demolished had little or no heritage merit. Though not presented as evidence, the Committee had the benefit of the report by Council's heritage consultant prepared for Amendments C342boro and C336boro that presented the contrary opinion citing the importance of the early use of buildings to help establish the Jewish community in Kew after World War II.

The Amendment process will determine if a Heritage Overlay is applied to the land. Much of the material presented by Council and the applicant is more appropriately considered at the Panel hearing on Amendment C342boro. It is that process which will determine if a Heritage Overlay is applied to the land.

For the purposes of this matter, under current planning controls and on the basis of presentations to it, the Committee finds:

- demolition of the buildings within the HO and on the subject land is supported.

Building setback

Council adopts the position that a 5 metre setback is desirable under the heritage citation for the synagogue and because a setback of 3.87 metres would diminish direct light to the stained glass windows. Council submitted that this negative impact on the enjoyment of the windows warrants refusal of the application. On the other hand, relying on expert evidence, the applicant submitted that while there will be impact, the congregation will not notice or experience a substantially different situation to current shade effects inside the synagogue.

The Kew Hebrew Congregation has first-hand experience of current conditions. Their submission supported the proposal which includes both demolition of existing buildings, which they submitted have no heritage merit, and the construction of a new building at a setback of 3.87 metres. The Congregation referenced ongoing services and recognition of the importance of the synagogue. While the Congregation submission does not specifically address impacts on the stained glass windows, it made no criticism of the reduced setback.

Mr Raworth considered the shadow diagrams submitted as part of the permit application. According to Mr Raworth, the limited restriction of light will not be disruptive to services in the synagogue, and will not unacceptably impact on the heritage values of the synagogue or the stained glass windows.

Without a measure to apply or a comparable standard to achieve, the Committee has to draw a conclusion based on reasonableness. Is it reasonable to reduce a preferred setback of 5 metres to 3.87 metres when will be some shade effect is conceded?

The Committee was not provided with material other than the HO citation to justify a 5 metre setback. The Congregation, which has lived experience of attending services and events in the synagogue, did not oppose the reduced 3.87 metre setback. Mr Raworth supported the reduced setback from a heritage perspective.

On that basis, the Committee finds:

- the proposal can be supported as proposed with its 3.87 metre setback from the synagogue and accordingly finds that it responds appropriately to the heritage significance of the site.

The second part of the Minister's referral requires consideration of how the proposal responds to the heritage/neighbourhood character of the area.

This issue was canvassed best in the Council Officer's report; it considered the impact of the proposed building under the Neighbourhood Character policy at Clause 22.05 of the planning scheme, and effectively endorsed the outcome in relation to Malmsbury Street:²¹

Within Brougham Street, the built form character is eclectic, although not of the same scale as that within Malmsbury Street. This streetscape also feels more intimate, due to its narrower width (12.3m), compared with Malmsbury (approx. 19.7m), the absence of nature strips on both sides of the street, much smaller street trees and buildings having comparatively smaller front setbacks.

For these reasons, it is considered appropriate that the architect has recessed the second storey from the western boundary, allowing the new building to present to the street as a 2-storey insertion.

Within the GRZ4, Council's Neighbourhood Character Policy seeks to "allow for development to occur at greater height and density than the surrounding area without detrimentally impacting on the preferred character of the precinct." In this instance, the proposal does not seek to depart from the existing character of the broader precinct (or, more particularly, the existing character of Malmsbury Street). The proposed building has an equivalent height to that of buildings adjacent and nearby and achieves a high degree of fit in both streetscapes within which it will be located.

The proposed building has an equivalent height to that of buildings adjacent and nearby and achieves a high degree of fit in both streetscapes within which it will be located.

When responding to grounds of objection that the proposal was inconsistent with neighbourhood character, the Officer's report stated:

A detailed assessment regarding neighbourhood character has been undertaken in the Neighbourhood Character Policy (Clause 22.05) section of this report on pages 37-41. The assessment finds the proposal to be consistent with the existing and preferred character of the area, as described in the Neighbourhood Character Statement for Precinct 9.

This was echoed in the Part A submission and presented at the hearing:²²

²¹ Document 28 pages 40-41

²² Document 28, paragraph 120

It is Council's position that a three storey building on the Subject Land would be in keeping with the strategic context of the Subject Land under clause 22.05 and the physical context of the Malmsbury Street streetscape.

The applicant endorsed the views expressed by Council in response to these objections in its Part A Submission.

The Committee accepts the conclusions of the Council. The Committee finds:

- the demolition of buildings on that part of the site covered by the Heritage Overlay has minimal impact and will not affect the significance of the heritage place, the Bet Nachman Synagogue, nor will the demolition affect the character of the area
- the proposed building will have no adverse impact on the use or enjoyment of the heritage place (the synagogue)
- the proposal is consistent with the existing and preferred character of the area.

The remaining issue is the proposal by Council for an Historical Interpretation Plan under draft conditions 1 c) and 25. The purpose is for an interpretive plan to explain the history and former use of the buildings proposed for demolition, their architectural style and general history of the Jewish community in Kew in the event of demolition of the buildings.

The Kew Hebrew Congregation opposed the condition.

The applicant did not refer to the issue but did state the applicant relies on the position of the Kew Hebrew Congregation for cultural matters.²³

The proposal was discussed at the hearing as part of the conversation about draft permit conditions. The Council submitted it was policy to record the 'loss' of heritage buildings while the Kew Hebrew Congregation was firm in its opposition to the proposal on cultural grounds. Despite the circulation of amended wording of the draft condition, no outcome was agreed.

Because of the sensitivity of the issue to the Kew Hebrew Congregation, the Committee invited the parties to further consider positions to assist in resolving the issue. The Congregation submitted a revised wording of the draft condition but affirmed its opposition in principle. It stated its view that:²⁴

... proposed condition 25 (and condition 1. c) should be deleted with no alternative condition imposed, as it is inappropriate in the context of the current controls and the permissions being sought in the grant of a permit, and having regard to the proposed heritage amendment still preventing the commence[ment] of any works until the heritage value has been resolved as part of the current planning scheme amendment processes.

When conveying its response, Council restated the desirability of the interpretative plan but took the position the question could be left for decision if demolition was approved. Council advised:²⁵

If the Heritage Overlay is applied to the Subject Land, the permit applicant will be required to seek further planning permission for the demolition of the buildings on the Subject Land.

It would therefore be appropriate at that point in time that any requirement for a permit condition requiring an interpretive display can be considered and applied by Council.

²³ Document 41, paragraph 21

²⁴ Document 54

²⁵ Document 55

A requirement for an Historical Interpretation Plan arises only if demolition is the outcome of this permit process and the heritage overlay amendments. Neither position is certain. The Committee, however, places weight on the views of the Kew Hebrew Congregation who, at the hearing, strongly opposed the condition and who, in the response to conditions,²⁶ submitted the content could be “offensive or disrespectful” to the Jewish people and cited a Rabbi who referred to the proposed condition as “inappropriate and insensitive”.

The Committee finds the best outcome is:

- delete proposed draft conditions 1c) and 25.

The Committee notes Council has deferred consideration of the demolition approval under Section 29A of the Building Act 1993. The Council has advised it will not consider the request until resolution of the heritage amendments. A demolition permit is necessary for the commencement of works under this application. The Council stance complicates action on this referral until a decision by the Minister on Amendments C342boro and C336boro but it does not affect or influence the Committee considerations or recommendation.

4.2 Overlooking

The key issue to be addressed is whether the proposal will result in unreasonable overlooking to neighbouring properties, in particular to the dwelling at 9 Malmsbury Street, Kew.

(i) Submissions

Council’s Part A submission addressed this issue stating:²⁷

... there is a minimum 12.3m separation distance between this property and the Subject Land. 9 Malmsbury Street is located on the opposite side of Brougham Street. Council notes that the minimum threshold distance under Recode is 9m and therefore the Permit Application is in excess of this.

The applicant submitted there would be limited opportunity for any overlooking from the new building and highlighted:

- the separation of the proposed new building to 9 Malmsbury Street
- the ResCode standard (Clause 55.04-6 Standard B22) in relation to overlooking which is exceeded (noting that ResCode only applies to residential development)
- the 2.8 metre high fence that is proposed along the western site boundary to address acoustic concerns (discussed further in the following section) but which will ensure no overlooking is possible from the ground level playground
- the presence of architectural screening to the west facing ‘break out’ space at first floor level and the further limitation this would place on any views from that space (noting that no screening is actually required due to the significant setback)
- the full height screening proposed to the roof top playground, which is setback in excess of 29 metres from 9 Malmsbury Street.

The position of the Council and the applicant that there would not be any unreasonable overlooking impacts to the dwelling at 9 Malmsbury Street was also supported by Mr Sissons on behalf of the Kew Hebrew Congregation.

²⁶ Document 54

²⁷ Document 28, paragraph 138, page 24

Ms Fong acknowledged the position put by Council and the applicant in relation to the ResCode standards for overlooking being met. However, she remained of the opinion that overlooking of her mother's property at 9 Malmsbury Street was a concern, including overlooking from an existing west facing upper floor window in the building that is to be retained on the Brougham Street part of the subject site.

(ii) Discussion and findings

The Committee understands the position put by Ms Fong in relation to her concerns about overlooking to her mother's property. However, the setback between the two properties of 12.3 metres, which extends a further 4.26 metres to the first floor break out space, in addition to the setback to the roof top playground of more than 29 metres to 9 Malmsbury Street, is clearly well in excess of the ResCode standard where management of overlooking is recommended when buildings are separated by up to 9 metres. The Committee considers these setbacks, combined with the screening to both the break out space and the roof top playground, will ensure that the potential for overlooking will be limited.

The Committee also observes that there will no opportunity for overlooking from the ground level playground space due to the 2.8 metre high wall that is proposed along this boundary. This matter is discussed in the following Chapter in relation to noise issues.

The Committee notes the concerns raised in relation to potential overlooking from an existing west facing window. Whilst this is not a matter before the Committee for consideration, the Committee encourages further dialogue between the School and Ms Fong to see if an appropriate outcome can be negotiated.

The Committee finds:

- appropriate measures have been put in place to restrict overlooking from the proposal into the back yard or habitable room windows of 9 Malmsbury Street and therefore there will be no unacceptable impacts as a result of overlooking from the proposed development.

4.3 Noise

(i) Submissions

Council's Part A submission noted that concerns had been raised in relation to both noise from children playing, as well as noise from construction. Council's response to these concerns was that proposed acoustic fencing (discussed in further detail below) would address concerns about noise from children playing and that noise from construction was inevitable but could be managed by conditions.

The applicant supported the submissions of Council in relation to noise issues, relying on the recommendations of the Resonate acoustic report which was submitted to Council as part of the application material to offer proposed mitigation measures to minimise noise impacts.²⁸ These mitigation measures include:

²⁸ Included as part of the Document 4 package of information received from VCAT.

- a 2.1 metre high fence²⁹ constructed for a distance of 17 metres along the western boundary³⁰
- a 3 metre high solid (non-perforated) poly carbonate screen located around the north, south and west perimeter of the rooftop play area
- management of the volume of background music that is sometimes played in the outdoor spaces by:
 - restricting volumes to a level that will allow for children to comfortably hold a conversation without significant effort to raise their voice
 - ensuring speakers are not be located at a height greater than the top of the relevant fences/screens.

The applicant in submissions highlighted that by putting these measures in place, not only would it ensure the applicable noise standards would be met but also the current situation in terms of noise levels would be improved.

Ms Fong submitted that current noise levels generated by the School are unbearable for her mother. She submitted that loud music and announcements are often heard ‘blasting’ from the premises, that noise from the children playing outside was also highly disruptive and that she did not believe the mitigation measures proposed would actually minimise noise levels. Ms Fong also noted her concerns about noise from children and staff accessing the new pedestrian entry adjacent to the car park ramp along Brougham Street and construction noise and the hours during which construction will be allowed to occur as specified in Condition 30 of the draft planning permit.

(ii) Discussion and findings

The Committee acknowledges the reservations of Ms Fong in relation to the ability for the various mitigation measures identified in the Resonate acoustic report to actually do their ‘job’ and to limit noise from the additional students and staff that will attend the site if the proposal is approved.

Clearly the introduction of a roof top-level playground and the use of amplified music does have the potential to cause disturbance and amenity impacts. However, the Committee can see no overriding reasons to reject the conclusions and recommendations of the report from the expert consultant in relation to noise impacts or the noise attenuation works that are proposed.

Indeed, the Committee notes that with the implementation of the various noise mitigation measures, not only will noise from the outdoor play spaces be better managed than it is at the moment but so too will the use of background music which has not been the subject of any form of ‘control’ to date.

In relation to further noise as a result of the new pedestrian entry, the Committee notes that the applicant confirmed this would be a secondary entry, with the main entry remaining on Malmsbury Street, and that it isn’t expected to be heavily used. Taking these submissions into account, the Committee considers that any additional noise from this new entry will be restricted

²⁹ The Committee notes the alternate use of the terms ‘wall’ and ‘fence’ to describe the proposed structure to be built on the Brougham Street boundary. The Resonate acoustic report uses both terms; the submission by the applicant refers to ‘fence’. The draft conditions refer to ‘wall’. The Committee treats the terms as interchangeable.

³⁰ The Resonate report recommends a 2.1 metres high wall. However, the applicant has requested a height of 2.8 metres to prevent climbing (para 34(a) of the applicant’s submission).

to limited times during the day (mostly drop-off and pick-up) and will not be unreasonable given the main entry remains on Malmsbury Street.

In relation to construction noise, the Committee agrees with Council that some disruption is inevitable, unfortunately, during the construction period and notes that hours for construction work will be managed by conditions on the planning permit and the required Construction Management Plan.

The Committee finds:

- the proposal will not result in unacceptable noise impacts to neighbouring properties.

4.4 Traffic impacts

(i) Submissions

In relation to traffic impacts, Council in its Part A submission advised as follows:³¹

142. In relation to the issue of increased traffic congestion and on-street parking, Council's internal Traffic and Transport Department has assessed the Permit Application and raised no concerns regarding the proposal on the surrounding traffic network. Council is satisfied that the proposal meets the requirements under the Scheme and provides appropriate onsite car parking relative to the proposed number of students.
143. In relation to the issue of inadequate pick-up or drop-off facilities Council is satisfied that arrangements can be run efficiently and safely, subject to the preparation and implementation of a Car Parking Management Plan consistent with the Car Parking Management Plan dated July 2020. This is addressed in the 'without prejudice' draft conditions circulated by Council.

The applicant supported this view, noting that the Car Park Management Plan provides specific details on the managed drop-off for students arriving at the School. The management plan is specifically tailored for students with autism and includes staggering drop-off times for student groups as well as arrangements for individual students so as to control and spread the activity.

Ms Fong's concerns in relation to traffic can be summarised as:

- danger from the location of the entrance to the new basement car park and the impacts the new car park will have on her mother's ability to reverse from her garage opposite
- potential changes to no parking zones located in Brougham Street adjacent to existing driveways for the School and her mother's property that currently preclude cars parking close to the private driveway
- danger from increases in traffic that will result from the increased number of students and staff using Brougham Street
- the likelihood of staff parking in the surrounding streets due to the car park only accommodating 25 car spaces when up to 72 staff are proposed at the site.

Ms Reynen's written submission to the hearing expressed similar concerns about the additional traffic that will use Brougham Street to access the new car park, as well as the significant congestion she fears will occur at drop-off and pick-up times as a result of the additional students at the School.

³¹ Document 28, page 25

(ii) Discussion and findings

The Committee notes at the outset of this discussion of traffic issues that, whilst no evidence was called, the Committee was able to inform itself in relation to traffic matters from review of the traffic assessment provided by Council's internal traffic engineers,³² the Ratio Traffic Impact Assessment and the Ratio Car Parking Management Plan dated July 2020.³³

The Committee acknowledges the concerns of Ms Fong, Ms Reynen and other local residents as recited in the Council Part A submission and the Council Officer's report about the anticipated impacts on traffic volumes in the streets surrounding the School. The Committee notes these types of concerns are common in relation to schools throughout Melbourne.

The material before the Committee from both Council and the applicant's traffic engineers advises that the current street network in and around the School site is able to accommodate the anticipated increase in traffic volumes. Council's traffic engineers advised as follows:³⁴

The subject site is currently occupied by the existing school, with a current capacity of 35 students. It is proposed to expand the school via these redevelopment works to a total of 80 students. Given this, it is reasonable that the existing peak hour traffic generation (35 vehicle movements) will likely increase to 80 vehicle movements, an increase of 45 vehicle movements during each of the morning and afternoon peak hour periods.

Based on the existing peak hour traffic volume survey data submitted by the traffic consultant, it is demonstrated that there is adequate spare capacity in both Malmsbury Street and Brougham Street to accommodate the anticipated site-generated traffic volumes during these periods and the proposed traffic generation may be accommodated within the surrounding road network.

Outside of these peak periods, it is anticipated that site-generated traffic will largely be minimal and restricted to staff movements and/or bus movements, should buses be stored on-site as is currently occurring on the at-grade car park.

The Committee understands that in the case of the current application, there are additional measures required to manage drop-off and pick-up arrangements due to the individual needs of the students, including:

- the availability of five car spaces in the basement car park for the peak drop-off/pick-up period
- the use of four time-restricted spaces on the north side of Malmsbury Street
- the staggering of times when particular classes can be picked up and dropped off as offered in the Car Park Management Plan.

The Committee is satisfied these steps will ensure that additional traffic as a result of the additional students is appropriately managed.

The Committee notes that the applicant's Traffic Impact Assessment proposed an extension of the existing time-restricted spaces on Malmsbury Street – up from the existing four spaces to a total of nine spaces across the frontage of the School. Council's traffic engineers advised that this was not supported at the time of the application. In response to questions from the Committee about this issue, Council advised that 'normal protocol' for Council in relation to matters such as this is to wait until the use is operating under its proposed new conditions and to then undertake traffic and

³² Document 34

³³ Both documents provided to Council as part of the permit application package

³⁴ Document 28, page 24

parking surveys to ascertain whether changes, such as additional time-restricted spaces for School drop-off and pick-up, are warranted.

Given the recommendations of the traffic consultants for the applicant on this issue, in addition to the concerns of neighbours, the Committee encourages the applicant to ask the Council to act on this review as soon as it is appropriate.

In relation to the adequacy of the car parking numbers on-site for staff, the Committee notes that the proposal meets the statutory requirements of Clause 52.06 of the Planning Scheme. Accordingly, it accepts the findings of both Council's traffic engineers and the traffic consultants for the applicant that adequate parking will be provided on the site. The Committee also acknowledges the Car Park Management Plan seeks to encourage sustainable transport alternatives.

Ms Fong raised specific concerns about the closeness of her mother's driveway to the proposed driveway entry/exit to the basement car park on Brougham Street.

In assessing the permit application, Council's traffic engineers were required to consider access arrangements to the site as well as any impacts access arrangements might have on surrounding properties. No concerns were raised by the officers about the ramp access with respect to it causing a traffic safety issue for 9 Malmsbury Street or the Reynen property at number 11.

The Committee notes the references by the Council to increased traffic in Brougham Street from traffic using the basement and the concession by the applicant to increased vehicular and pedestrian traffic. During peak drop-off and pick-up times, there will be additional traffic movements in Brougham Street near the objectors' properties and opposite the driveway at number 9 Malmsbury. The increased traffic calls for greater awareness from all drivers when reversing from number 9 and exiting the basement car park, albeit in a forward direction. This also applies outside peak times to traffic movements by staff who typically remain on-site all day but who are entering and leaving the site at hours different to the students.

The Committee notes that the new entry/exit to the basement is located slightly further north than the driveway to the existing at-grade car park. There may be a familiarisation period with the new locations and a consequent need to monitor the effect of the current no parking zones in proximity to the property at number 9 Malmsbury Street. The Committee encourages Ms Fong to liaise with Council in relation to the no parking areas to check whether any changes are required once the expanded use commences.

The Committee finds:

- the proposal will not result in unacceptable amenity impacts in relation to traffic matters.

4.5 Safety

(i) Submissions

The issue of safety was addressed broadly by Council and the applicant in the context of anticipated traffic volumes as a result of the proposal. Both Council's traffic engineers and the applicant concluded that post development traffic volumes will not have a detrimental impact on the function or safety of the road network.

The issue of safety was raised by both Ms Fong and Ms Reynen. In Ms Fong's submission, her concerns related firstly to safety for her mother reversing from her driveway (addressed in the previous section) and secondly, at a more general level, to the elderly residents in the area as a result of increased traffic.

Ms Reynen expressed similar concerns in relation to increased dangers to pedestrians including children walking to Kew Primary School and elderly residents in the area.

(ii) Discussion and findings

The Committee acknowledges the concerns raised about the safety of pedestrians as a result of increased traffic. However, the Committee notes that the speed limit along Malmsbury Street is 40 kilometres per hour during school times, 50 kilometres per hour outside school times and 50 kilometres per hour in Brougham and Walpole streets. The School site is therefore located in a low speed environment, particularly during school pick-up and drop-off times, with fewer vehicle movements happening outside these times. The Committee considers that the reduced speed in Malmsbury Street during school hours will assist in minimising safety impacts to pedestrians in the area. The Committee does not believe that the anticipated increase in traffic movements will result in a significant increase in safety concerns.

The Committee finds:

- the proposal will not result in unacceptable amenity impacts in relation to safety associated with additional traffic movements.

4.6 Permit conditions

(i) Submissions

In accordance with Directions from the Committee, the Council circulated draft proposed conditions that might apply to a permit.³⁵

The applicant responded and circulated comments with amendments to some conditions.³⁶ Mostly, the amendments proposed were minor word changes; for example, to the wording of the landscape condition 18, and about clarification of requirements that will restrict the manner of operation of the School according to standards.

The Kew Hebrew Congregation³⁷ opposed draft conditions 1c) and 25 about the Historical Interpretation Plan as well as the wording of conditions similar to those raised by the applicant.

Before the hearing, Ms Fong sought clarification of a process that, in her opinion, discussed conditions in a permit before the merits had been canvassed. She thought the process indicated a pre-determined outcome. The Committee advised Ms Fong that circulating draft permit conditions on a without prejudice basis is usual practise that allows the parties to provide input on suitable controls through permit conditions in the event of a decision to grant a permit.³⁸ The Committee restated these positions at the commencement of the hearing.

³⁵ Document 30

³⁶ Document 36

³⁷ Document 45

³⁸ Document 25

Ms Fong's written response³⁹ continued opposition to the grant of a permit and provided detailed comments on amendments to conditions that can be classified as focussing on improving amenity outcomes for her mother's property. For example, Ms Fong sought tightening of controls over noise and parking, which were primary grounds of objection, as well as reductions in the days and hours when construction is permitted, including no construction during any COVID-19 related lockdown.

(ii) Discussion and findings

During the hearing, parties spoke to matters of interest as the Committee went through each of the draft conditions. Importantly for Ms Fong, the discussion was prefaced by recognition of the continuing opposition to the application so her contributions were heard in that light. Contributions from other parties were about the nature of the controls and the workability of conditions.

Chapter 4.1 records that draft condition 25 (requiring a Historical Interpretation Plan) was a matter of importance during the roundtable discussion on heritage impacts. The rewording to the draft circulated by Council and responded to by the Kew Hebrew Congregation did not lead to resolution. Rather, the outcome as reported results from a common position that the issue can be dealt with upon resolution of one or both of the planning scheme amendments.

The discussion did find agreement on other conditions according to propositions put by the applicant and the Kew Hebrew Congregation (for example, the changes to fence and barricade height and the limits on noise as proposed by the applicant's expert consultants).

No changes are made following Ms Fong's submissions. Mostly, this is because the draft conditions are framed in a way that protects the neighbourhood and properties near to the subject site by imposing requirements to constrain behaviours and to cause the School to conduct itself as a good neighbour meeting necessary standards necessary under the permit and regulations.

The presentation by Mr Barry Irvin AM, the founder of the Giant Steps school concept, confirmed the School has a good neighbour policy and a community consultation protocol to create an open connection with neighbours. The Committee supports the managerial approach explained by Mr Irvin about communication with the community and the management of any incidents from operations or the comings and goings of staff and students. Open engagement with neighbours will help with acceptance of the change ahead. Properly implemented, the protocol should avoid or minimise impacts from unfortunate incidents of the type involving Ms Fong's mother that followed an upset student event outside the School.

Further, some of Ms Fong's requests for changes to conditions do not relate to planning and cannot be included in conditions. For example, while it is within power to include a requirement in a Construction Management Plan that no damage to neighbouring property shall result from construction works, it is not for planning conditions to prescribe a pre-construction condition assessment of the structural condition of nearby residences for reference during and post construction of the new building. In Chapter 4.2, the Committee encourages further dialogue between Ms Fong and the School to seek an appropriate outcome on overlooking. The

³⁹ Document 40

Committee makes the same suggestion on the matter of a pre-construction building assessment for all nearby buildings.

The Committee finds:

- The draft conditions and changes made to them by agreement and upon submissions, impose typical and appropriate conditions on the use and development.
- The conditions require the permit holder to conduct the School in compliance with standards intended to minimise off-site impacts.

Appendix D is the Committee's recommended version of permit conditions. It deletes the conditions on the Historical Interpretation Plan and adopts the amendments put by the respective parties save for the changes Ms Fong proposed.

5 Reasons and recommendation

5.1 Reasons

After considering all the written material submitted as part of the permit application, the papers lodged with VCAT, written submissions by the parties and the presentations at the hearing, the Committee concludes:

- the proposed development does appropriately respond to the heritage significance of the site and surrounding heritage/neighbourhood character of the area.

The Committee considers:

- the demolition of buildings on that part of the site covered by the Heritage Overlay has minimal impact and will not affect the significance of the heritage place (the Bet Nachman Synagogue), nor will the demolition affect the character of the area
- the proposed building will have no adverse impact on the use or enjoyment of the heritage place.

The Committee concludes the proposal will not result in unacceptable impacts on safety, amenity (including overlooking), noise and traffic within the surrounding area.

The Committee accepts concerns of the resident objectors that the proposal will change existing conditions by replacing the existing car park with a three storey building, over a basement car park. This will increase traffic in Brougham Street. However, the outcome will not be so detrimental as to warrant refusal of the permit.

The Committee accepts concerns that the introduction of a top-level playground and the use of amplified music has the potential to cause disturbance and amenity impacts. However, there are no overriding reasons to reject the conclusions and recommendations of the expert consultants about the manner of the use, including noise attenuation works, car park management and behavioural management.

5.2 Recommendation

For these reasons, and on the basis of all issues put and considered at the hearing, the Committee recommends that the Minister for Planning should recommend the grant of a permit generally as sought and subject to the conditions set out by the Committee.

Appendix A Terms of Reference

Terms of Reference

Priority Projects Standing Advisory Committee

Standing Advisory Committee appointed pursuant to Part 7, section 151 of the *Planning and Environment Act 1987* to advise the Minister for Planning on referred priority planning proposals.

Name

1. The Standing Advisory Committee is to be known as the 'Priority Projects Priority Projects Standing Advisory Committee' (the Committee).
2. The Committee is to have members with the following skills:
 - a. statutory and strategic land use planning
 - b. land development and property economics
 - c. urban design and architecture
 - d. heritage
 - e. civil engineering and transport planning
 - f. social impacts
 - g. environmental planning
 - h. planning law.
3. The Committee will include a lead Chair, Chairs, Deputy Chairs and not less than ten other appropriately qualified members.

Purpose

4. The purpose of the Committee is to provide timely advice to the Minister for Planning on projects referred by the Building Victoria's Recovery Taskforce (BVRT), projects affected by Covid-19 and or where the Minister has agreed to, or is considering, intervention to determine if these projects will deliver acceptable planning outcomes.

Background

5. The Victorian Government has identified Victoria's building and construction sector as a key mechanism to revitalise Victoria's economy during the coronavirus (COVID-19) pandemic.
6. The Government has committed to a fast-track assessment process for priority projects of state and regional significance that are shovel-ready and that will provide immediate benefits to Victoria's economy, keeping Victorians in work and priority infrastructure on track for completion.
7. The BVRT was formally announced on 26 April 2020. The Taskforce was established by the Minister for Planning and Treasurer to help keep Victoria's building and development industry running during the coronavirus crisis. The Taskforce will investigate planning and investment opportunities to boost Victoria's building and development industry over the short, medium and long term.

Method

8. The Minister for Planning or delegate will refer projects by letter to the Committee for advice on whether the project achieves acceptable planning outcomes.
9. The referral letter must specify:
 - a. the specific issues the Minister for Planning seeks advice about
 - b. the mechanism of intervention being considered
 - c. whether, or which previously collected, submissions are to be considered by the Committee
 - d. how the costs of the Committee will be met.

10. The letter of referral will be a public document.
11. In making a referral, the Minister for Planning or delegate must, either:
 - a. be satisfied that any proposed planning controls for the land make proper use of the Victoria Planning Provisions and are prepared and presented in accordance with the Ministerial Direction on The Form and Content of Planning Schemes, or
 - b. seek advice from the Committee on the drafting of the planning controls or permit conditions.
12. The Committee may inform itself in anyway it sees fit, but must consider:
 - a. The referral letter from the Minister for Planning,
 - b. referred submissions,
 - c. the comments of any referral authority,
 - d. the views of the project proponent,
 - e. the views of the relevant Council,
 - f. The relevant planning scheme.
13. The Committee is not expected to carry out additional public notification or referral but may seek the views of any relevant referral authority, responsible authority or government agency.
14. The Department of Environment, Land, Water and Planning (DELWP) will be responsible for any further notification required. New submissions will be collected by DELWP.
15. The Committee may seek advice from other experts, including legal counsel where it considers this is necessary.
16. The Committee is not expected to carry out a public hearing but may do so if it is deemed necessary and meets its quorum.
17. The Committee may:
 - a. assess any matter 'on the papers'.
 - b. conduct discussions, forums, or video conferences when there is a quorum of:
 - i. a Chair or Deputy Chair, and
 - ii. at least one other member.
18. The Committee may apply to vary these Terms of Reference in any way it sees fit.

Submissions are public documents

19. The Committee must retain a library of any written submissions or other supporting documentation provided to it directly to it in respect of a referred project until a decision has been made on its report or five years has passed from the time of the referral.
20. Any written submissions or other supporting documentation provided to the Committee must be available for public inspection until the submission of its report, unless the Committee specifically directs that the material is to remain confidential. A document may be made available for public inspection electronically.

Outcomes

21. The Committee must produce a concise written report to the Minister for Planning providing the following:
 - a. A short description of the project.
 - b. A short summary and assessment of issues raised in submissions.
 - c. A draft planning permit including relevant conditions from Section 55 referral authorities, or draft planning scheme control depending on the nature of the referral.
 - d. Any other relevant matters raised in the course of the Committee process.
 - e. Its recommendations and reasons for its recommendations.
 - f. A list of persons or authorities/agencies who made submissions considered by the Committee.
 - g. A list of persons consulted or heard, including via video conference.

22. Following the completion of a report, the Committee may deliver an oral briefing to the Minister for Planning and/or DELWP. The briefing may be by video conference or telephone.

Timing

23. The Committee is required to submit its reports in writing as soon as practicable, depending upon the complexity of the referred project between 10 and 20 business days from either:
 - a. the date of receipt of referral, if no further submissions or information are to be sought, or
 - b. receipt of the final submission of material or final day of any public process in respect of a referral.

Fee

24. The fee for the Committee will be set at the current rate for a Panel appointed under Part 8 of the *Planning and Environment Act 1987*.

The costs of the Advisory Committee will be met by each relevant proponent.



Richard Wynne MP
Minister for Planning

Date: 14 / 06 / 2020

Appendix B Letter of Referral



Hon Richard Wynne MP

Minister for Planning
Minister for Housing

8 Nicholson Street
East Melbourne, Victoria 3002

Ms Kathy Mitchell
Chair (Lead), Priority Projects Standing Advisory Committee
Planning Panels Victoria
planning_panels@delwp.vic.gov.au

Ref: MBR044238



Dear Ms Mitchell

DEVELOPMENT FACILITATION PROGRAM INTERVENTION RECOMMENDATION – 11 MALMSBURY STREET, KEW

I refer to VCAT proceeding no. P1792/2020, which relates to the proposed use and development of land at 11 Malmsbury Street, Kew, for the demolition of existing buildings and to extend an existing education centre for autistic children and young adults to increase the number of students from 35 to 80 and staff from 28 to 72, along with a reduction in the bicycle facilities requirement. The project was referred to me by the Development Facilitation Program (DFP).

I advise that I have decided to call in the proceeding from VCAT under Clause 58(2)(a) of the *Victorian Civil and Administrative Tribunal Act 1998* as I consider that the proceeding raises a major issue of policy and the determination of the proceeding may have a substantial effect on the achievement or development of planning objectives. I have also decided to refer the matter to the Priority Projects Standing Advisory Committee for advice and recommendations on whether a planning permit should be issued and, if so, the appropriate permit conditions that should be imposed.

On 9 December 2020, the permit applicant lodged an appeal under section 77 of the *Planning and Environment Act 1987* after the Boroondara City Council determined to refuse to grant a permit for planning permit application P19/1085.

A two-day hearing is scheduled for 22 July 2021.

The development site is subject to a council request to apply interim heritage controls through Amendment C336boro, which informed the council's ground of refusal. It is also understood the VCAT matter has two third-party objectors who have joined as parties to the proceeding. Therefore, specific advice and recommendations are sought on:

- whether the proposed development appropriately responds to the heritage significance of the site and surrounding heritage/neighbourhood character of the area
- whether the proposal would result in unacceptable impacts on safety, amenity, noise and traffic within the surrounding area.

The cost of the advisory committee will be met by the applicant, Giant Steps Melbourne Ltd.

If you would like more information, please contact Dr Jane Homewood, Executive Director of Statutory Planning Services, Department of Environment, Land, Water and Planning, on (03) 8683 0975 or email jane.homewood@delwp.vic.gov.au.

Yours sincerely



HON RICHARD WYNNE MP
Minister for Planning

6.4.21

Appendix C Document list

Priority Projects Standing Advisory Committee

Referral 14 at 11 Malmsbury Street, Kew

Version 1: 25 June 2021

No.	Date	Description	Presented by
1	14/06/20	Terms of Reference	Minister for Planning
2	06/04/21	Letter of Referral	"
3	20/03/21	Electronic VCAT file	Victorian Civil and Administrative Tribunal
4	19/04/21	Notification letter, directions and timetable (version one)	Committee Chair
5	20/04/21	Email in regard to overlooking issue	Mr Fong
6	22/04/21	Email in regard to position and participation of Kew Hebrew Congregation	Mr Mahemoff for the Kew Hebrew Congregation
7	"	Response to notification letter	Ms Harrison-Ichlov, Arnold Bloch Leibler for the Applicant
8	"	Response to notification letter filing documentation	Ms Byrne for the City of Boroondara
9	"	Email of proposed timeline for consideration and adoption of Amendment C342boro	"
10	"	Submission 01 to Amendment C342boro – Mary Jones	"
11	"	Submission 02 to Amendment C342boro – Asher Wanders	"
12	"	Submission 03 to Amendment C342boro – Jeffrey Mahemoff for Norman Smorgon House Trust	"
13	"	Submission 04 to Amendment C342boro – Jessica Stimson for Giant Steps	"
14	"	Submission 05 to Amendment C342boro – Asher Wanders petition	"
15	25/04/21	Planning permit application	Ms Harrison-Ichlov
16	"	Plans	"
17	27/04/21	Email advising of participation in roundtable discussion	Mr Mahemoff
18	29/07/21	Request to postpone the roundtable discussion	Ms Harrison-Ichlov
19	30/04/21	Email to all parties seeking comment on the	Committee Chair

No.	Date	Description	Presented by
		postponement request	
20	03/05/21	Email in support of postponement	Mr Mahemoff
21	"	Letter advising representation of Council and support of postponement	Ms de Castella of Maddocks for City of Boroondara
22	"	Letter advising parties of postponement of the roundtable discussion	Committee Chair
23	11/05/21	Further directions and timetable (version 2)	"
24	18/05/21	Email in regard to the representation of the Kew Hebrew Congregation	Mr Sissons of HWL Ebsworth, Lawyers for the Kew Hebrew Congregation
25	26/05/21	Correspondence regarding the circulation of the draft permit conditions	Committee Chair
26	"	Summary of responses to objections	Ms Harrison-Ichlov
27	"	Statement of evidence of Mr Raworth	"
28	"	Part A Submission with attachment	Ms de Castella
29	27/05/21	Email advising that Council will not be calling evidence	"
30	28/05/21	Without prejudice draft permit conditions	"
31	31/05/21	Email in regard to submissions with Committee response	Ms Reynen
32	"	Response to Document 31	Ms Byrne
33	02/06/21	Email advising parties of delay to the provision of comments on the draft PSA for the Applicant	Committee Chair
34	"	Traffic Engineering referral comments dated 8 April 2020	Ms de Castella
35	04/06/21	Email in regard to draft permit conditions with attachments	Ms Harrison-Ichlov
36	"	Comments on draft permit conditions	"
37	"	Revised Statement of Evidence of Bryce Raworth due to typographical error	"
38	"	Response to Document 35	Committee Chair
39		Response to Document 38	Ms Harrison-Ichlov
40	07/06/21	Submission and comments on the draft permit conditions	Ms Fong
41	"	Submission	Ms Harrison-Ichlov
42	"	Letter from Barry Irvin AM, Chairman of Giant Steps Melbourne Limited dated 2 June 2021	"
43	"	Objections report prepared by Context Pty Ltd 7 June 2021	"

No.	Date	Description	Presented by
44	"	Without Prejudice Draft Conditions (amendments tracked)	"
45	"	Submission	Mr Sissons
46	"	Email filing Urban Planning Delegated Committee Meeting Agenda dated 7 June 2021	Ms de Castella
47	"	Amendment C342 - Urban Planning Delegated Committee Meeting Agenda dated 17 May 2021	"
48	"	Appendix B to submissions	Mr Sissons
49	08/06/21	Submission to permit application	Ms Reynen
50	"	Email from Ms Reynen about non-participation in the round table	"
51	"	Log of historical photos provided in submission	Mr Sissons
52	"	Revised wording for Condition 25	Ms Hicks
53	09/06/21	Email thread in regard to permit preamble wording	Mr Sissons and Ms De Castella
54	10/06/21	Letter regarding Condition 25	Mr Sissons
55	"	Email letter regarding Condition 25	Ms De Castella
56	11/06/21	Letter regarding permit preamble and Condition 25	Ms Harrison-Ichlov

Appendix D Committee preferred version of Permit Conditions

[Tracked Added](#)

~~Tracked Deleted~~

THE PERMIT ALLOWS:

Use and development (including partial demolition of buildings on land affected by the Heritage Overlay - Bet Nachman Synagogue building to be retained) of the land known as 11 Malmsbury Street, Kew for an education centre and reduction of the associated bicycle facilities requirements generally in accordance with the endorsed plans.

THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:

Amended Plans Required

1. Before the development starts, amended plans must be submitted to the satisfaction of the Responsible Authority. When the plans are to the satisfaction of the Responsible Authority they will be endorsed and will then form part of the Permit. The plans must be drawn to scale, with dimensions, and an electronic copy provided (unlocked PDF), in accordance with the advertised plans (Project No.: 19-051, Drawings TP1-102, TP3-101, TP9-103 and TP9-104, all undated, TP2-101, TP2-102, TP9-101 and TP9-102, all Revision 1, dated 14 February 2020, TP0-101, TP0-201, TP1-101, TP1-103, TP1-104, TP1-105 and TP1-106, all Revision 2, dated 11 March 2020, TP10-108, dated 25 October 2019 and TP10-109, dated 14 February 2020, all prepared by Jackson Clements Burrows Pty Ltd Architects) but modified to show:

General:

- a) A ~~2.1m~~ [2.8m](#) high, 17.0m long, solid noise wall constructed on the western title boundary in a location consistent with Figure 4 in the Acoustic Report prepared by Resonate (Ref.: M190650RP1, Revision A, dated 29 June 2020);
- b) A notation to the effect all proposed external glazing is to consist of minimum 6mm single glazing, or better;
- ~~c) A historical interpretation scheme, in accordance with the design set out in the approved Historical Interpretation Plan required by this Permit, displayed in a communal or publicly accessible location within the buildings;~~

Landscape and Tree Protection:

- d) A dimensioned Tree Protection Zone and Structural Root Zone of Tree No. 4 (as identified in the Arborist report submitted with the application, prepared by Tree Logic, dated 16 June 2020) drawn on all site and floor plans;
- e) Notation on all site and floor plans that Tree No. 4 (as identified in the Arborist report submitted with the application, prepared by Tree Logic, dated 16 June

2020) is to be retained and protected in accordance with the endorsed Tree Management Plan required by this permit;

- f) Any further modifications to the layout of buildings or works recommended by the Tree Management Plan required by this permit;

Water Sensitive Urban Design:

- g) The capacity of the rain-water harvesting tank shown and a notation the tank is to be plumbed, with harvested water re-used for toilet flushing and landscape irrigation in accordance with the Water Sensitive Urban Design Report required by this permit;

Materials and finishes:

- h) A notation the balustrades located on the north, south and west perimeter of the rooftop play area are to be 3.0m high (above finished surface level) and solid (non-perforated);
- i) An annotated, full-colour schedule of external materials showing the proposed palette of materials and finishes (including a sample board of all external materials and finishes) selected for all sides of the buildings. The samples must demonstrate the development consists of high quality, durable materials that enhance the streetscape;

Car parking and accessways:

- j) A detailed vehicle crossing plan for the Brougham Street accessway, generally in accordance with the plan prepared by Jackson Clements Burrows Architects, dated June 2020, showing a 6.4m wide accessway and crossing and removal of the street tree located on the northern edge of the crossing;
- k) Provision of trip-end bicycle facilities (one shower and change room) for employees;
- l) A notation to the effect that, in the event of the education centre ceasing to exclusively educate children and young adults with autism, bicycle parking facilities are to be provided for students in accordance with the rate set out in Table 1 of Clause 52.34;
- m) The disabled car space and associate shared area, line-marked to be 5.4m long;
- n) A notation to the effect that any landscaping or other obstructions within the pedestrian sight triangles are to be no higher than 900mm in height, or made to be not less than 50% permeable;
- o) A notation to the effect the on-site car park is to be used in accordance with the approved Car Park Management Plan required by this permit;
- p) A notation bicycle facilities directional signage is to be displayed in accordance with Clause 52.34-7.

Layout of Buildings and Uses not to be altered

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

Confirmation of architect team

3. Before the development starts, the Responsible Authority must be provided with evidence to its satisfaction that Jackson Clements Burrows Pty Ltd Architects, or an alternative architectural firm which is acknowledged to have comparable skill and

experience to the satisfaction of the Responsible Authority, has been engaged as part of the ongoing consultant team to oversee the design and construction to ensure that the design quality and appearance of the approved development is realised.

Maintenance of Buildings and Works

4. All buildings and works must be maintained in good order and appearance to the satisfaction of the Responsible Authority.

Maintenance of WSUD plant and equipment

5. All plant and equipment associated with rainwater harvesting and re-use for toilet flushing and landscape irrigation must be maintained in good order and regularly checked and serviced in accordance with the recommendations contained in the approved WSUD Report required by this Permit, to the satisfaction of the Responsible Authority.

Number of car parking spaces

6. A minimum of 25 car parking spaces must be provided on the land to the satisfaction of the Responsible Authority.

Number of staff

7. The number of staff, proprietors, and persons related to the proprietors working on the land or any other person working on the land, whether paid or unpaid, must not exceed 72 at any one time.

Number of students

8. Not more than 80 students may be present on the land without the prior written consent of the Responsible Authority.

Bicycle facilities

9. In the event of the education centre ceasing to exclusively educate children and young adults with autism, bicycle parking facilities are to be installed for use by students in a location to the satisfaction of the Responsible Authority, in satisfaction of the rate set out in Table 1 of Clause 52.34.

Student pick-up and drop-off arrangements

10. All vehicle movements associated with student pick-up and drop-off are to be undertaken in accordance with the requirements set out in the approved Car Park Management Plan required by this Permit, to the satisfaction of the Responsible Authority.

Car Park Management Plan

11. Concurrent with the submission of amended plans required by Condition 1 of this Permit, a Car Park Management Plan generally in accordance with the Car Park Management Plan dated July 2020, prepared by Ratio Consultants, must be submitted to the Responsible Authority for approval, to the satisfaction of the Responsible Authority. When approved, the Plan will form part of the permit and must be implemented and complied with at all times to the satisfaction of the Responsible Authority.

Driveways and car parking areas to be constructed

12. Before the use starts or any building is occupied, areas set aside for car parking, access lanes and driveways shown on the endorsed plans must be:

- a) Constructed;
- b) Formed to such levels and properly drained so that they can be used in accordance with the endorsed plans;
- c) Surfaced with an all-weather seal coat;
- d) Line-marked to indicate each car space;
- e) Clearly marked to show the direction of traffic along the access lanes and driveways; and
- f) Drained;

to the satisfaction of the Responsible Authority.

13. All signs, mirrors, line marking and traffic control equipment must be installed prior to the occupation of the building and maintained to the satisfaction of the Responsible Authority.

Use of car parking spaces, loading bay and driveways

14. Car parking spaces, access lanes, driveways and the loading bay shown on the endorsed plans must not be used for any other purpose, to the satisfaction of the Responsible Authority.

Lighting of car parks and accessways

15. Low intensity lighting must be provided to ensure car park areas and pedestrian accessways are adequately illuminated without any unreasonable loss of amenity to the surrounding area, to the satisfaction of the Responsible Authority.

Vehicle crossovers

16. Any new vehicle crossover or modification to an existing vehicle crossover must be constructed to the satisfaction of the Responsible Authority.

Removal of redundant vehicle crossovers

17. All disused or redundant vehicle crossovers must be removed and the area reinstated with footpath, nature strip, kerb and channel to the satisfaction of the Responsible Authority.

Landscape Plan

18. Concurrent with the endorsement of the plans referred to in Condition 1 of this permit, 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 an electronic copy (unlocked PDF) provided. When endorsed, the plan will form part of the permit.

The landscape plan must show:

- a) All hard surfaces proposed within the tree protection zone (TPZ) of Tree No. 4 (as identified in the Arborist report submitted with the application, prepared by Tree Logic, dated 16 June 2020) are to be constructed:
 - i. Of permeable materials in accordance with industry best practices;
 - ii. Above current grade;
 - iii. On foundations suitable for the soil type so as to maintain appropriate permeability for each tree; and
 - iv. Note that all works within the TPZ must be supervised and documented by a qualified project arborist;

- b) Detailed construction specifications for all permeable surfaces, including detailed cross-section diagrams;
- c) Three Australian native canopy trees (minimum 2.0m tall when planted and capable of achieving a minimum mature height of 12.0m and canopy spread of 10.0m) positioned within the open space in the property. [The trees are to be located generally in accordance with the plans endorsed under Condition 1 of this permit;](#)
- ~~d) The three canopy trees positioned at least 2.5m from boundaries, services and built structures;~~
- ~~e)d) All trees to comply with Australian Standard AS2303:2015 - Tree Stock for Landscape Use;~~
- ~~e) All trees planted more than 2.0m from any structures, property boundaries, easements, existing trees or shrubs;~~
- ~~f)e) Irrigation of all landscaped areas using rainwater harvested on-site, with mains back-up.~~

Completion of landscaping works

19. Landscaping as shown on the endorsed landscape plans must be carried out and completed to the satisfaction of the Responsible Authority prior to the occupation of the development.

Landscaping maintenance

20. 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

21. Concurrent with the endorsement of the plans referred to in Condition 1 of this permit, a Tree Management Plan must be submitted by a suitably qualified and experienced Arborist in relation to the management and maintenance of Tree No. 4 (as identified in the Arborist report submitted with the application, prepared by Tree Logic, dated 16 June 2020). The Tree Management Plan must be approved by the Responsible Authority prior to the commencement of any works including demolition and levelling of the site. 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 the satisfaction of the responsible authority ensuring that the tree remains healthy and viable during construction, and provide the following:
- a) A Tree Protection Plan to scale that is to show:
 - i. Tree protection zones and structural root zones of all trees to be retained;
 - ii. All tree protection fenced off areas and areas where ground protection systems will be used;
 - iii. The type of foundations to be used within the tree protection zone;
 - iv. 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;

- v. A notation to refer to the tree management plan for specific detail on what actions are required within the tree protection zone;
- b) 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;
- c) Supervision timetable and certification of tree management activities required by the Project Arborist to the satisfaction of the responsible authority;
- d) All remedial pruning works that are required to be performed on the tree development of the site. The pruning comments must reference Australian Standards 4373:2007, Pruning of Amenity Trees and a detailed photographic diagram specifying what pruning will occur.

The recommendations contained in the approved Tree Management Plan must be implemented to the satisfaction of the Responsible Authority.

Contractors to be advised of trees to be retained

- 22. 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 as detailed in the endorsed Tree Management Plan and are advised of any obligations in relation to the protection of those trees.

Regulation of activities in Tree Protection Area

- 23. 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

- 24. a) 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) not less than seven (7) days before the commencement of works on site.
- b) Prior to the commencement of any site works, including demolition and excavation, a timetable for the supervision and certification of tree management activities which is to the satisfaction of the Responsible Authority must be prepared by the project arborist and submitted to the Responsible Authority for approval. A signed and dated copy of each stage of the supervision timetable certified by the project arborist (quoting the Planning Permit number and site address, emailed to Boroondara@boroondara.vic.gov.au) must be submitted to the Responsible Authority not more than seven (7) days following the completion of each stage.

Historical Interpretation Plan

~~25~~ Concurrent with the submission of amended plans required by Condition 1 of this Permit, a Historical Interpretation Plan which is to the satisfaction of the Responsible Authority must be prepared by a suitably qualified Heritage Conservation expert and submitted to the Responsible Authority (unlocked PDF) for approval. The Plan must provide design the content of a sympathetic and informative interpretation scheme to explain the history and former use of 11 Malmsbury Street, Kew, its architectural style and general history of the Jewish community in Kew. Once approved, the requirements and recommendations set out in the Plan must be implemented to the satisfaction of the Responsible Authority.

Water Sensitive Urban Design Report

~~26~~25 Concurrent with the submission of amended plans required by Condition 1 of this Permit, a Water Sensitive Urban Design (WSUD) Report which is to the satisfaction of the Responsible Authority must be prepared by a suitably qualified expert and submitted to the Responsible Authority for approval. The report must include:

- a) A water harvesting and re-use regime that achieves a STORM Rating of not less than 100%;
- b) Harvested rainwater to be reused for toilet flushing and landscape irrigation;
- c) A maintenance regime for all WSUD plant and equipment.

When approved, the report will form part of the permit and must be implemented prior to the occupation of the building to the satisfaction of the Responsible Authority.

Waste Management Plan

~~27~~26 Concurrent with the submission of amended plans required by Condition 1 of this Permit, a Waste Management Plan generally in accordance with the Waste Management Plan submitted with the application (dated 30 October 2019, prepared by Leigh Design) must be submitted to the Responsible Authority for approval but amended to include waste collection scheduled to take place outside of the AM and PM commuter peak and the AM and PM school pick-up/drop off periods, to the satisfaction of the Responsible Authority. When approved, the Plan will form part of the permit and must be implemented and complied with at all times to the satisfaction of the Responsible Authority.

Hours for waste collection

~~28~~27 Collection of waste must be conducted so as not to cause any unreasonable disturbance to nearby residential properties and may only take place during the following times (and excluding the AM and PM commuter peaks and the AM and PM school pick-up/drop-off periods):

Monday to Friday:	7:00am to 6:00pm
Saturday & Public Holidays:	9:00am to 6:00pm
Sunday:	No collection allowed

to the satisfaction of the Responsible Authority.

Construction Management Plan

2928 Prior to the commencement of any site works, including demolition and excavation, a Construction Management Plan must be submitted to and endorsed by the Responsible Authority. No works are permitted to occur until the Plan has been endorsed by the Responsible Authority. Once endorsed, the Construction Management Plan will form part of the permit and must be implemented to the satisfaction of the Responsible Authority. The plan must be prepared in accordance with Council's "*Construction Management Plan Template*" and provide details of the following:

- a) Hours for construction activity in accordance with any other condition of this permit;
- b) Measures to control noise, dust, water and sediment laden runoff;
- c) Measures to ensure the avoidance of any damage to street trees as a consequence of the movement of large vehicles and machinery (including cranes and excavators) to from the land or as a consequence of the operation of these vehicles and machines in association with the construction of the proposed building, including excavation of the land;
- d) Measures relating to removal of hazardous or dangerous material from the site, where applicable;
- e) A plan showing the location of parking areas for construction and sub-contractors' vehicles on and surrounding the site, to ensure that vehicles associated with construction activity cause minimum disruption to surrounding premises. Any basement car park on the land must be made available for use by sub-constructors/tradespersons upon completion of such areas, without delay;
- f) A Traffic Management Plan showing truck routes to and from the site;
- g) Swept path analysis demonstrating the ability for trucks to enter and exit the site in a safe manner for the largest anticipated truck associated with the construction;
- h) A plan showing the location and design of a vehicle wash-down bay for construction vehicles on the site;
- i) Measures to ensure construction staff, including sub-contractors/tradespersons, operating on the site are aware of the contents of the approved Construction Management Plan and Tree Management Plan;
- j) Contact details of key construction site staff;
- k) A site plan showing the location of any site sheds, on-site amenities, building waste storage and the like, noting that Council does not support site sheds on Council road reserves;
- l) Any other relevant matters.

Hours for Construction Work

~~30~~29 All buildings and works activity associated with the approved development (including demolition and earthworks) is to be limited to the following hours, unless with the prior written consent of the Responsible Authority:

Monday to Thursday:	7:00am to 6:30pm
Friday:	7:00am to 5:00pm
Saturday:	9:00am to 5:00pm
Sunday & Public Holidays:	No construction.

Noise from public premises

~~31~~30 Noise levels emanating from the premises must not exceed the relevant levels prescribed under State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2, to the satisfaction of the Responsible Authority.

Music broadcasts

~~32~~31 Any music played or broadcast in the outdoor play areas must be played as background music, at a volume that will allow for children to comfortably hold a conversation without significant effort to raise their voice, to the satisfaction of the Responsible Authority.

Outdoor speakers

~~33~~32 Any speakers used for outdoor broadcasts must not be located at a height greater than the top of the boundary fences or rooftop play area balustrades.

Drainage

~~34~~33 The land must be drained to the satisfaction of the relevant building surveyor.

~~35~~34 No polluted and/or sediment laden runoff is to be discharged directly or indirectly into Council's drains or watercourses during and after development, to the satisfaction of the Responsible Authority.

~~36~~35 The owner must make an arrangement with Council for the provision of drainage and the acceptance of surface and stormwater from the subject land directly or indirectly into Council's drainage system and a final inspection shall be carried out to determine the completion of drainage in accordance with the approved plans, to the satisfaction of the Responsible Authority.

Amenity of Area

~~37~~36 The amenity of the area must not be adversely affected by the use or development as a result of:

- a) transport of materials, goods or commodities to or from the land;
- b) appearance of any building, works, stored goods or materials;
- c) emission of noise, artificial light, vibration, smell, fumes, smoke, steam, soot, ash, dust, waste water, waste products or oil; or
- d) the presence of vermin;

to the satisfaction of the Responsible Authority.

Plant/equipment or features on roof

~~3837~~ No plant, equipment, services or architectural features other than those shown on the endorsed plan/s are permitted on the roof of the building without the prior written consent of the Responsible Authority.

External Lighting

~~3938~~ All outdoor lighting of publicly accessible areas must be designed, baffled and located to prevent light from the site causing any detriment to the locality, to the satisfaction of the Responsible Authority.

Concealment of Pipes

~~4039~~ All pipes (except down-pipes), fixtures, fittings and vents servicing any building on the site must be concealed in service ducts or otherwise hidden from external view to the satisfaction of the Responsible Authority.

Permit to Expire

~~4140~~ 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:

- a) Within six (6) months afterwards if the use or the development has not commenced; or
- b) Within 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.

Permit 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.*

Notes in relation to drainage:

- *A minimum 300mm outfall drain will be required to connect to the pit in front of No. 101 Brougham Street, Kew.*
- *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 drainage plans must include the location of any existing or proposed trees within the vicinity of drainage works and document how any potential conflicts between trees and drains will be addressed during and after construction.*
- *Stormwater drainage runoff shall be collected in a complete and effective system of drains and connected to the Approved Point of Stormwater Discharge.*

- *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.*
- *No groundwater or anything other than Stormwater is to be discharged into an open discharge system. (Kerb & channel, made surface of a right of way or similar surface drainage system).*
- *A Control pit is to be located in an appropriate location and a suitable path is to be designed for stormwater which surcharges from the pit once the design storm has been exceeded.*
- *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.*
- *Discharge to the approved point of discharge will be allowed subject to the flow being limited to a rate equivalent to 0.35 coefficient of runoff for 1 in 5 year rainfall event. Any additional discharge is to be temporary detained on site with a minimum storage volume for 1 in 10 year rainfall event, via an approved stormwater detention system designed to Council's specifications.*
- *An outfall drain is to be constructed to the nominated Council pit in accordance with the approved point of discharge.*