

**5.1.10 LATE ITEM: No. 14 (Lot: 51; D/P: 1106) Harley Street, Highgate – Section 31 Reconsideration – Proposed Single House**

<b>Ward:</b>	South	<b>Date:</b>	2 December 2016
<b>Precinct:</b>	Precinct 12 – Hyde Park	<b>File Ref:</b>	5.2016.144.1
<b>Attachments:</b>	<p><a href="#">1</a> – Location and Consultation Map  <a href="#">2</a> – Previously Refused Development Application Plans  <a href="#">3</a> – Amended Development Application Plans (subject of this report)  <a href="#">4</a> – Applicant’s Justification  <a href="#">5</a> – Detailed Assessment against the draft Harley Street Character Retention Guidelines  <a href="#">6</a> – Summary of Submissions  <a href="#">7</a> – Marked up plans showing modifications imposed through proposed conditions of approval  <a href="#">8</a> – Determination Advice Notes</p>		
<b>Tabled Items:</b>	Nil		
<b>Reporting Officer:</b>	G Hajigabriel of Rowe Group, Consultant acting on behalf of Council		
<b>Responsible Officer:</b>	J Corbellini, Director Development Services		

**RECOMMENDATION:**

That Council, in accordance with Section 31 of the *State Administrative Tribunal Act 2004*, SETS ASIDE its decision of the 26 July 2016 and, in accordance with the provisions of the City of Vincent Town Planning Scheme No.1 and the Metropolitan Region Scheme, APPROVES the application for the construction of a Two Storey Single House at No. 14 (Lot: 51; D/P: 1106) Harley Street, Highgate in accordance with the plans as shown on Attachment 3, subject to the following conditions, with the associated determination advice notes in Attachment 8:

**1. Revised Plans**

Revised plans shall be submitted to and approved by the City prior to the commencement of development and shall depict the following to the satisfaction of the City:

- 1.1 a raised level within the paved driveway area located parallel to the Right of Way, to prevent potential flooding of the driveway and garage from the Right of Way;
- 1.2 the wall plate height of bedroom 1 and the study on the ground floor, together with the level of the verandah roof, increased by 3 courses (approximately 257mm) as annotated in red on the stamped approved plans;
- 1.3 the window of bedroom 1 facing Harley Street modified so that there are two windows with a vertical orientation as annotated in red on the stamped approved plans; and
- 1.4 the front fence modified so that the brick piers have a maximum width of no greater than 355mm;

**2. Boundary Wall**

The owners of the subject land shall finish and maintain the surface of the boundary (parapet) walls facing Nos. 10 and 16 Harley Street in a good and clean condition. The finish of the walls is to be fully rendered or face brickwork to the satisfaction of the City;

**3. Car Parking and Access**

The car parking and access areas shall be sealed, drained, paved and line marked in accordance with the approved plans and are to comply with the requirements of AS2890.1 prior to the occupancy or use of the development;

**4. External Fixtures**

All external fixtures and building plant, including air conditioning units, piping, ducting and water tanks, shall be located so as to minimise any visual and noise impact on surrounding landowners, and screened from view from the street, and where practicable from adjoining buildings;

**5. Verge Trees**

No verge trees shall be removed without the prior written approval of the City. The verge trees shall be retained and protected from any damage including unauthorised pruning, to the satisfaction of the City;

**6. Schedule of External Finishes**

Prior to commencement of development a detailed schedule of external finishes (including materials and colour schemes and details) shall be submitted to and approved by the City. The development shall be finished in accordance with the approved schedule prior to the use or occupation of the development;

**7. Stormwater**

Prior to occupancy or use of the development all storm water produced on the subject land shall be retained onsite, by suitable means to the satisfaction of the City; and

**8. General**

Where any of the above conditions have a time limitation for compliance, and the condition is not met in the required time frame, the obligation to comply with the requirements of the condition continues whilst the approved development exists.

**PURPOSE OF REPORT:**

To reconsider pursuant to Section 31 of the *State Administrative Tribunal Act 2004* an application for development approval for a single house at No.14 (Lot 51) Harley Street, Highgate.

**BACKGROUND:**

<b>Landowner:</b>	GM & RK O'Brien
<b>Applicant:</b>	Antonelli Investments Pty Ltd T/As Novus Homes
<b>Date of Application:</b>	20 April 2016
<b>Zoning:</b>	MRS: Urban TPS1: Zone: Residential R-Code: R50 TPS2: Zone: Residential R-Code: R50
<b>Existing Land Use:</b>	Vacant
<b>Proposed Use Class:</b>	Single House – "P"
<b>Site Area:</b>	347m <sup>2</sup>
<b>Right of Way (ROW):</b>	At rear 2.7 metres
<b>Heritage List:</b>	No

The subject site is located on the eastern side of Harley Street, Highgate, north of Lincoln Street, as shown in **Attachment 1**. The subject site and surrounding area is zoned 'Residential' and is characterised by predominantly single dwelling development. The single dwelling developments in the immediate locality (on Harley Street) are predominantly single storey in nature though some two storey developments are also present.

The subject site is currently vacant after demolition of the previous single storey brick and tile dwelling.

At its Ordinary Council Meeting of 26 July 2016 Council refused a development application for a single house at the subject site.

The Applicant exercised its right to seek a review of the decision and lodged an Application for Review with the State Administrative Tribunal ('SAT'). In light of the officers' recommendation to support the application, Administration engaged the services of a planning consultant to represent Council in the matter before the tribunal. Rowe Group were engaged from the WALGA list of planning consultants.

The SAT referred the matter to mediation, which was held on the 18 October 2016. As a result of the Mediation Conference, the Applicant submitted revised plans (dated 24 October 2016) and the SAT, under Section 31 of the *State Administrative Tribunal Act 2004*, has invited the City of Vincent to reconsider its (26 July 2016) decision.

The revised plans, the subject of this Section 31 Reconsideration, are included as **Attachment 2** and include changes to elements of the single dwelling, summarised by the Applicant as follows:

- Reduced wall heights to walls built up to both the south-western and north-eastern boundaries;
- The ground floor setback to the study has been reduced to allow for the second storey to be setback a minimum of 2m from the ground floor facade;
- All roof pitches are now 30 degrees or more; and
- Changes to the architectural features to the front facade of the proposed dwelling.

#### DETAILS:

##### Summary Assessment

The table below summarises the planning assessment of the proposal against the provisions of the City of Vincent Town Planning Scheme No. 1, the Residential Design Codes and the City's policies. In each instance where the proposal requires the discretion of Council, the relevant planning element is discussed in the Detailed Assessment section following from this table.

Planning Element	Use Permissibility/ Deemed-to-Comply	Requires the Discretion of Council
Density/Plot Ratio	✓	
Street Setback		✓
Front Fence		✓
Building Setbacks/Boundary Wall		✓
Building Height/Storeys	✓	
Roof Form	✓	
Open Space	✓	
Privacy	✓	
Parking & Access	✓	
Bicycles	✓	
Solar Access	✓	
Site Works	✓	
Essential Facilities	✓	
Surveillance	✓	
Landscaping	✓	

**Detailed Assessment**

The deemed-to-comply assessment of the elements that require the discretion of Council is as follows

<b>Street Setback</b>	
<b>Deemed-to-Comply Standard</b>	<b>Proposal</b>
<p><b>Policy No. 7.2.1 – Residential Design Elements Clause SADC5 and SPC5 – Street Setback</b></p> <p>Ground Floor – 3.8 metres</p>	<p>2.92 – 4.63 metre</p>
<b>Street Walls and Fences</b>	
<b>Deemed-to-Comply Standard</b>	<b>Proposal</b>
<p><b>Policy No. 7.2.1 – Residential Design Elements Clause SADC13 and SPC13 – Street Walls and Fences</b></p> <p>Street walls and fences within the primary setback area, including along the side boundaries, and front walls and fences to new infill dwellings fronting a right of way or dedicated road:</p> <ul style="list-style-type: none"> <li>• Posts and piers are to have a maximum width of 355mm and a maximum diameter of 500mm.</li> </ul>	<p>Piers range in size from 400mm – 500mm</p>
<b>Building Setbacks/Boundary Wall</b>	
<b>Deemed-to-Comply Standard</b>	<b>Proposal</b>
<p><b>Residential Design Codes Clause 5.1.3 – Lot Boundary Setback</b></p> <p><u>Boundary Wall</u></p> <p>Boundary walls to one lot boundary</p>	<p>Boundary walls to two lot boundary</p>

The above elements of the proposal do not meet the specified deemed-to-comply standards are discussed in the Comment section below.

The applicant’s justification for the proposal is included in **Attachment 3**.

**CONSULTATION/ADVERTISING:**

Consultation was undertaken as part of the original proposal, which occurred for a period of 14 days in accordance with the *Planning and Development (Local Planning Scheme) Regulations 2015*, from 5 May 2016 to 18 May 2016. A total of 19 letters were sent to owners and occupiers within close proximity of the subject site, as shown in **Attachment 1**, in accordance with the City’s Policy No. 4.1.5 – Community Consultation.

At the conclusion of consultation, 11 submissions including ten objections and one neither support nor objecting were received. The concerns raised in the submissions related to design of the development in the context of the existing streetscape. A detailed summary of the submission and Administration’s response to each matter raised is included in **Attachment 5**.

There is no statutory requirement as part of the Section 31 Reconsideration process to readvertise the amended proposal to owners and occupiers of adjoining properties or those who made submissions based on the original proposal. Notwithstanding the above, the City has written to all those who were initially consulted advising that amended plans have been provided and are available for viewing on the City's website; that the SAT has invited the Council to reconsider its decision based on amended plans received; and advising that the matter has been included on the December Council Agenda.

**Design Advisory Committee (DAC):**

Referred to Design Advisory Committee: No

**LEGAL/POLICY:**

- *Planning and Development Act 2005;*
- *Planning and Development (Local Planning Scheme) Regulations 2015;*
- *State Administrative Tribunal Act 2004;*
- City of Vincent Town Planning Scheme No. 1;
- Residential Design Codes;
- Policy No. 4.1.5 – Community Consultation;
- Policy No. 7.1.12 – Hyde Park Precinct;
- Policy No. 7.2.1 – Residential Design Elements; and
- Policy No. 7.5.15 - Character Retention Areas (Draft Harley Street Guidelines).

This report is for the reconsideration of an application for a single house and in considering the proposal, the Council has the option to:

- Affirm its decision;
- Vary its decision; or
- Set aside the decision and substitute a new decision.

As the State Administrative Tribunal (SAT) has invited Council to reconsider its original refusal under Section 31 of the *State Administrative Tribunal Act 2004*, the applicant has already exercised the right to have Council's decision reviewed in accordance with Part 14 of the *Planning and Development Act 2005*. Should Council refuse this Section 31 Reconsideration the applicant may request the matter be determined by the SAT at a Full Hearing.

*Amendment to Local Planning Policy No. 7.5.15 - Character Retention Areas*

Since the lodgement of this application, Council at its meeting of 18 October 2016 adopted for the purpose of advertising an amendment to Policy No. 7.5.15 seeking to include a new appendix for the Harley Street Character Retention Guidelines. Clause 67(b) of Schedule 2 (deemed provisions) of the *Planning and Development (Local Planning Schemes) Regulations 2015* requires the City to have due regard to a proposed planning instrument that the local government is considering adopting or approving. As such, the application requires consideration against the amendment to Policy No. 7.5.15 which seeks to include the Harley Street Character Retention Guidelines.

The major differences when assessing the proposed development under the draft Harley Street Character Retention Guidelines relate to upper floor setbacks, plate height, street surveillance, roof pitch and building design provisions. A detailed assessment is provided for in **Attachment 4** and is discussed in the Comment section below.

*Draft Local Planning Policy – Built Form No. 7.1.1*

Since the lodgement of this application, Council at its meeting on 20 September 2016 adopted for the purpose of advertising its draft Local Planning Policy – Built Form No. 7.1.1. Clause 67(b) of Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015* states that the local government is to have due regard to any proposed planning instrument that the local authority is seriously considering adopting or approving. In this context due regard is given to the draft Local Planning Policy No. 7.1.1: Built Form for this development. It is noted that this draft policy outlines that where there is a specific policy or guideline which applies to a site or area (i.e. Character Retention Guidelines discussed above), that the provision of that policy or guideline is to prevail. The assessment of the proposal against the draft Local Planning Policy No. 7.1.1: Built Form is discussed in the Comment section below.

**RISK MANAGEMENT IMPLICATIONS:**

It is Administration's view that there are minimal risks to Council and the City's business function when Council exercises its discretionary power to determine a planning application.

**STRATEGIC IMPLICATIONS:**

The City's Strategic Plan 2013-2023 states:

*"Natural and Built Environment*

1.1 *Improve and maintain the natural and built environment and infrastructure;*

1.1.1 *Develop and implement a Town Planning Scheme and associated policies, guidelines and initiatives that deliver the community vision."*

**SUSTAINABILITY IMPLICATIONS:**

Nil.

**FINANCIAL/BUDGET IMPLICATIONS:**

As Administration has engaged the services of a planning consultant to represent Council, costs associated with the appointment (already expended and committed) to date are approximately \$11,000.

Should Council refuse this Section 31 Reconsideration the applicant may request the matter be determined by the SAT at a Full Hearing. If the matter was to proceed to a full hearing, the City will need to continue to engage the services of a planning consultant which has been estimated at cost of \$18,000 on top of existing consultancy costs for this application.

**COMMENTS:**

Street Setback

The amended proposal has a staggered ground floor setback, which varies between 2.92 metres and 4.63 metres, giving an average setback of 3.77 metres. The average of the five properties on either side of the application site equates to approximately 3.8 metres. The proposal is broadly in line with the established setback line of the street, with the additional setback of the 4.63 metre section offsetting the closer portion of building. The articulation of the ground floor has been increased through the extension of the verandah along the front façade; altering the proportions of the part of the dwelling forward of the verandah to better align with the adjoining dwellings; increase in the roof pitch; and use of different material in the front façade, including brick work in the front fence. These changes assist to create a more aesthetically pleasing building and reduces the impact of having the whole building closer to the street.

The proposed design of the front elevation provides for varying setbacks to add interest to the elevation, and provides some features that reflect the older properties in the area such as the front ground floor gable feature and colorbond roof. The proposed variations to the front setback are considered minor and acceptable in this instance.

#### Street Walls and Fences

It is considered that a reduction in the width of the piers (to a maximum of 355mm) would assist in maintaining consistency in the fencing along this portion of Harley Street and, therefore, be in-keeping with the desired streetscape of the locality. It is recommended that a condition be imposed which requires the applicant to modify the width of the fencing piers to a maximum of 355mm, therefore according with the current deemed-to-comply provisions of LPP No. 7.2.1.

#### Boundary Walls

The amended proposal has reduced the height of these boundary walls to comply with the deemed-to-comply standards of the R-Codes, however, the application still proposes three individual portions of boundary wall split across two boundaries proposed, with a combined length of 18.47 metres. The R-Codes allows for a boundary wall up to two thirds the length of the boundary behind the front setback area, which in this instance would equate to approximately 20 metres in length. It must be noted that any one of these could be deemed to be the 'as of right' boundary wall permitted by the R-Codes for this density coding. In addition, the advertised version of the draft Built Form policy allows boundary walls to be provided to two boundaries as-of-right.

All the walls have been reduced in height to single storey, and their distribution over more than one boundary assists to reduce bulk and impact to adjoining properties. It is not expected that the walls on the boundary have a negative impact on the neighbouring properties for the following reasons:

##### *South-western wall:*

The wall on the south western boundary is in relation to the proposed garage and partially replaces a wall on the boundary from the previous garage. The impact from this wall is on a rear garden of the adjoining property. As this wall is not visible from the street it does not impact on the streetscape of Harley Street. Furthermore, the residents and owners of the property adjacent to the south-western wall have given their written consent to the garage being built up to the south-western boundary.

##### *North-eastern walls:*

The two walls on the north eastern boundary are to the south of No. 16 Harley Street, and therefore do not have any overshadowing implications. The walls face a blank wall of Bedroom 1, and two smaller secondary windows to the dining area of No. 16 Harley Street. The space between the two proposed boundary wall portions aligns with the location of the two dining windows of No. 16 Harley Street, resulting in minimal impact in relation to bulk, light and ventilation to the this dwelling.

It should be noted that recommended condition 1.2 relates to an increase in plate height, the study boundary wall to the north eastern boundary will increase in height by 3 brick courses (approximately 257mm). This will result in an overall maximum wall height of 3.257 metres to the study boundary wall. The affected wall is located to the south of the adjoining property hence it will have a negligible impact on amenity in terms of overshadowing. It is also noted that the locality is characterised by boundary walls that are higher than 3m.

Only the wall located closest to Harley Street can be seen from the street. Given there are other examples of boundary walls in excess of 3.0m within the locality (noting the study boundary wall will be a maximum of 3.257 metres in height given the requirements of condition 1.2) it is considered that there will be negligible impact on the streetscape as a result of the boundary wall.

### Landscaping

There are no current landscaping requirements set out in the R-Codes or the City's policies for a single house. The application has been assessed against the provisions of the draft Built Form LPP No 7.1.1, which sets a deemed-to-comply standard of 30% of the site area as tree canopy cover within five years and 15% of the site area as deep soil zone.

The application was originally submitted prior the release of the draft Built Form LPP and does not specifically meet the above requirements. The application does not propose any mature tree planting that will contribute to canopy coverage, however the site is capable of being able to accommodate deep soil zone landscaping areas which equate to 14% of the total site area. This is considered to provide an adequate opportunity for the development to provide the appropriate level of canopy coverage to achieve the intent of the City's draft Policy.

### Draft Harley Street Guidelines

It is noted that the majority of objections received during the advertising period relate to the historical character of the street, and that the process to have the Harley Street character protected through the City's Character Retention Area process has been initiated. At its 18 October 2016 Ordinary Council Meeting, Council resolved to adopt an amendment to Policy No. 7.5.15 to include the Harley Street Guidelines in the City's Character Retention Policy, for the purposes of advertising. The advertising of the amendment to the policy commenced on the 12 November 2016 and is due to conclude on 12 December 2016. It should be noted that the Harley Street Guidelines are still in a draft form and as such they are subject to change.

The revised proposal has been assessed against the provisions of the Harley Street Guidelines in accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015* and, subject to the modifications required through the proposed conditions of approval, is consistent with the intent of the draft guidelines.

As outlined above, the revised plans the subject of this Section 31 Reconsideration include changes to elements of the single dwelling, summarised by the Applicant as follows:

- Reduced wall heights to walls built up to both the south-western and north-eastern boundaries;
- The ground floor setback to the study has been reduced to allow for the second storey to be setback a minimum of 2m from the ground floor facade;
- All roof pitches are now 30 degrees or more; and
- Changes to the architectural features to the front facade.

The revised proposal has been assessed against the draft guidelines, and this assessment is included in **Attachment 5**. The areas where the revised proposal does not meet the deemed-to-comply standards of the draft guidelines are discussed below:

#### *Building Height (Plate Height)*

The revised plans submitted by the Applicant still propose a lower plate height than the adjoining properties. On this basis it is recommended that a condition be applied (condition 7.1 (b)) requiring the plate height to be increased by three courses to better match the adjoining properties. This condition will result in a built form that will be in-keeping with the scale and proportions of the original street pattern. It is considered that subject to the adoption of the proposed conditions the development will meet the relevant local housing objective of the draft guidelines.

### *Street Setback Upper Floor*

The development has been amended to bring it into compliance with the Residential Design Elements policy, with the upper floor setback between 2 metres and 3.7 metres behind the ground floor. The draft guidelines require the upper floor to be setback 10 metres back from the street, with the application proposing a 6.62 metre setback.

The intent of the upper floor setback is to reduce the visual dominance of upper storeys and hence maintain a predominantly single storey streetscape scale. The extended verandah now projects forward of the building line, which gives the upper floor the appearance of a greater setback. In addition, the recommended condition 7.1(b) discussed above, requiring the increase in the floor plate level, will have the effect of raising the wall height of the front portion of the lower storey and the lower level roof line, which will increase the screening of the upper storey and will have the effect of removing the upper floor highlight windows. With the design changes required through the proposed conditions of approval it is considered that the upper floor will be adequately integrated into the development and meet the relevant local housing objective of the draft guidelines.

### *Street Surveillance (Front Verandah)*

The verandah has been increased to occupy a minimum of 49 per cent of the front façade of the development, in lieu of 50 per cent set as a deemed-to-comply standard under the guidelines. The development proposes two habitable rooms with primary street surveillance and it is considered that the verandah provides adequate space to promote interaction with the street. On this basis it is considered the development meets the relevant local housing objectives of the draft guidelines.

### *Street Walls and Fences (Visual Permeability)*

The development proposes the front fence to be 77.6 per cent visually permeable in lieu of the 80 per cent set as a deemed-to-comply standard. This level of visual permeability still allows view from the street to the dwelling and front garden. However, the piers of the front fence exceed the width of piers incorporated into fencing along this portion of Harley Street. It is considered that a reduction in the width of the piers (to a maximum of 355mm) would assist in maintaining consistency and would be in-keeping with the desired streetscape of the locality. It is recommended that a condition be imposed which requires the applicant to modify the width of the fencing piers to a maximum of 355mm. This modification will also have the effect of increasing the visual permeability of the proposed fencing which will result in compliance with the draft guidelines.

### *Roof Pitch (Pitch to Gable)*

The amended application proposed a 34 degree pitch to the roof gables in lieu of the 35 degree pitch set as a deemed-to-comply standard in the draft guidelines. The proposed gable pitch is considered to align with the design of adjoining dwellings and subject to the changes required through proposed conditions 7.1(b) 7.1(c) and 7.1(d), it is considered that the dwelling will be in-keeping with the scale and proportions of the original street pattern and meet the relevant local housing objective of the draft guidelines.

### *Building Design*

Whilst the revised plans represent an improvement in relation to the streetscape integration when compared to the plans previously considered by Council, there remains a concern that the dwelling will not integrate in terms of scale when compared to the existing dwellings either side of it. In particular the eaves of the lower level at the street front will be significantly lower than those of the adjoining dwellings. The intent of proposed condition 7.1(b) is to raise the wall height of the front part of the lower portion of the proposed dwelling so that the gutter line of the lower roof and the roof of the verandah are more closely aligned with those of the adjoining dwellings. Additionally by raising the level of the lower storey roof but not adjusting the level of the upper storey, the screening of the upper storey will be improved.

It is acknowledged that the internal floor level is lower than the floor level of the adjoining dwellings however if the internal floor level of the proposed dwelling was to be raised, then the entire building including the upper storey would also increase in height. The lower floor level will not significantly impact upon the streetscape given the proposed front fence will create a visual barrier.

The windows proposed for bedroom 1 do not have a clear vertical emphasis and are not in keeping with the general proportions of windows in the locality. Proposed Condition No. 7.1(c) requires that the ratio of glazing to wall be reduced and the large single window is replaced with two vertical windows. This is considered to more appropriately respect the existing streetscape and is necessary for the development to meet the relevant local housing objective of the draft guidelines.

#### Conclusion

The site is currently vacant after demolition of the existing dwelling. The proposal seeks the exercise of discretion relating to the front fencing, front setback and buildings on boundary. The extent of discretion required in each instance is minor and acceptable provided a number of minor changes are required to the design through conditions of approval. With these changes it is considered that the proposal will comply with the new draft Harley Street Guidelines and will not have a negative impact on the amenity of the area. The amended application is recommended for approval subject to conditions.