

**1.1 170-174 Highbury Road, Mount Waverley  
AMENDMENT TO PLANNING PERMIT FOR ONE ADDITIONAL DWELLING,  
ROOFTOP PLAY AREA ASSOCIATED WITH THE CHILDCARE CENTRE AND INTERNAL  
ALTERATIONS  
(TPA/40955/C)**

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**EXECUTIVE SUMMARY:**

Planning Permit TPA/40955/A was issued on 21 October 2014 allowing the development of a three storey building with basement car parking and use for a medical centre (up to 17 practitioners), child care centre (up to 130 children), occasional child care (up to 45 children), café and 9 apartments.

Planning Permit application TPA/40955/B was refused by Council for an additional level of apartments to create a four storey building comprising a total of 20 apartments (in addition to the medical centre and childcare centre), variations to the built form, childcare centre use and car parking. VCAT determined to approve the proposal, however required the deletion of the fourth level of apartments. The current permit requires that works on the site be completed by 11 October 2020 unless the permit is further extended.

The approved development commenced excavation works in mid-2015, however works to excavate the basement were stopped when the site experienced subsidence issues necessitating immediate site stabilisation measures.

The proposed amendment application has been lodged via Section 87A of the Planning and Environment Act 1987, directly to VCAT. Whilst the Council is not the decision maker in this instance, Council must form a position on the proposed application.

The proposed amendment seeks the addition of a one bedroom apartment to the second floor (reducing setbacks to the northern and eastern boundaries of the site), addition of one car space within the basement for the dwelling and the addition of a rooftop play space associated with the childcare centre.

This application was advertised by the applicant at the direction of the Tribunal. No submissions have been received to date with submissions to be received by 16 August 2019.

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

**The reason for presenting this report to Council is the overall proposed development cost of \$5.5 Million.**

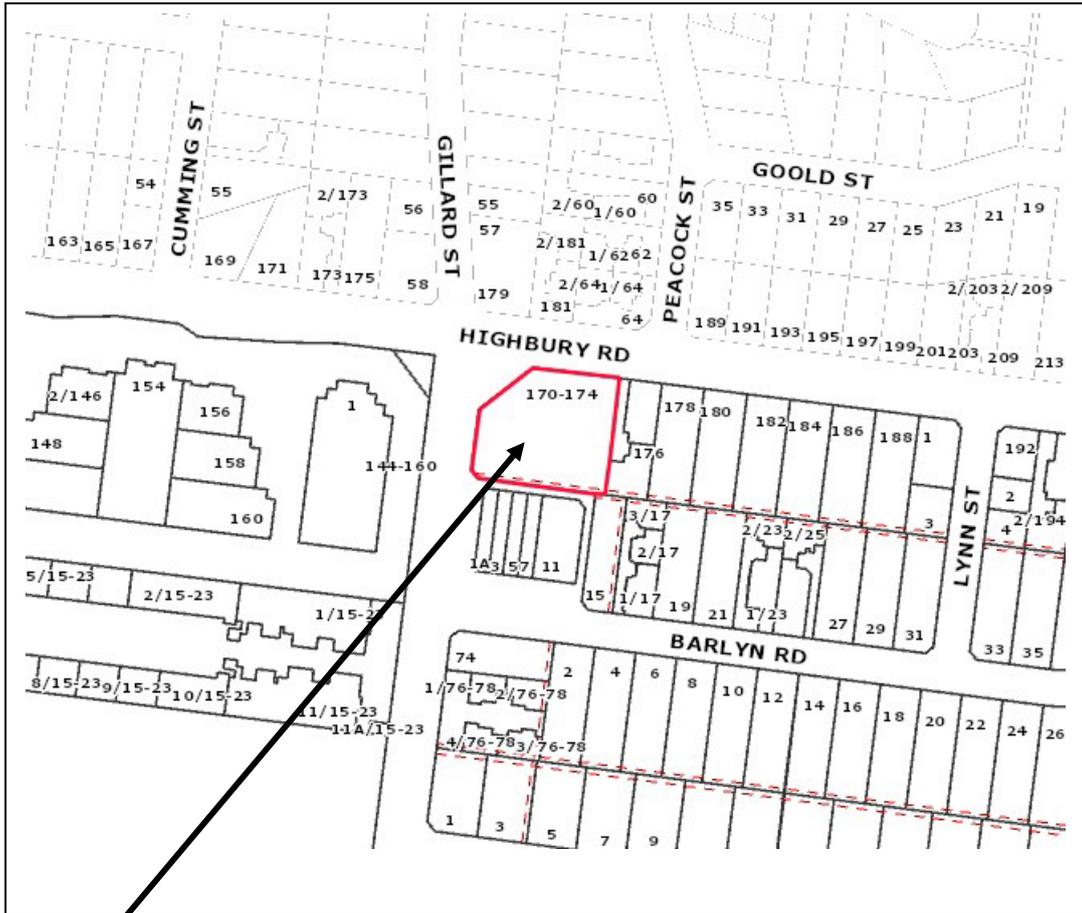
The proposed development is considered appropriate having regard to the relevant provisions of the Monash Planning Scheme. It is recommended that Council resolve to support the application.

<b>RESPONSIBLE DIRECTOR:</b>	Natasha Swan
<b>RESPONSIBLE MANAGER:</b>	Fiona Johnstone
<b>RESPONSIBLE PLANNER:</b>	Alexandra Wade
<b>WARD:</b>	Mount Waverley
<b>PROPERTY ADDRESS:</b>	170-174 Highbury Road, Mount Waverley
<b>EXISTING LAND USE:</b>	Vacant
<b>PRE-APPLICATION MEETING:</b>	No
<b>NUMBER OF SUBMISSIONS:</b>	zero
<b>ZONING:</b>	General Residential Zone – Schedule 2
<b>OVERLAY:</b>	Vegetation Protection Overlay – Schedule 1
<b>AMENDMENT C125 (adopted)</b>	General Residential Zone, Schedule 3
<b>RELEVANT CLAUSES:</b>	
<u>State Planning Policy Framework</u>	<u>Local Planning Policy Framework</u>
Clause 11.02-1S (Supply of Urban Land)	Clause 21 (Municipal Strategic Statement)
Clause 12 (Environmental and Landscape Values)	Clause 21.04 (Residential Development)
Clause 13.05-1S (Noise Abatement)	Clause 21.08 (Transport and Traffic)
Clause 13.07-1S (Land Use Compatibility)	Clause 21.04 (Residential Development)
Clause 15.01-1S & R (Urban Design)	Clause 21.05 (Economic Development)
Clause 15.01-2S (Building Design)	Clause 21.13 (Sustainability and Environment)
Clause 15.01-4S & R (Healthy Neighbourhoods)	Clause 22.01 (Residential Development and Character Policy)
Clause 15.01-5S (Neighbourhood Character)	Clause 22.04 (Stormwater Management Policy)
Clause 16.01-1S & R (Integrated Housing)	Clause 22.09 (Non-Residential Use and Development in Residential Areas Policy)
Clause 16.01-2S (Location of Residential Development)	Clause 22.13 (Environmentally Sustainable Development Policy)
Clause 16.01-3S & R (Housing Diversity)	
Clause 17.02-1S (Business)	<u>General &amp; Particular Provisions</u>
Clause 18.02-4S (Car Parking)	Clause 52.06 (Car parking)
	52.29 (Land adjacent to a Road Zone)

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<b>Clause 19.02-2S (Education Facilities)</b>	<b>Clause 65 (Decision Guidelines)</b>
<b>STATUTORY PROCESSING DATE:</b>	<b>N/A</b>
<b>DEVELOPMENT COST:</b>	<b>\$5.5 Million</b>

### LOCALITY PLAN



**SUBJECT SITE**

### NEIGHBOURHOOD PLAN



**RECOMMENDATION:**

That Council resolves that it supports the application for an amendment of a Planning Permit (**TPA/40955/C**) at 170-174 Highbury Road, Mount Waverley subject to the following:

- Condition 1 be amended to include the following additional elements:
  - d) TP02 amended to reflect the maximum number of medical practitioners / technicians being 17 in accordance with condition 5 of this Permit.
  - e) Apartment 10 correctly showing the apartment entry from the foyer area and a wall between bedroom 1 and the adjoining Apartment 1.
  - f) Further detail (pattern) of the proposed rooftop screens including colour swatches;
  - g) Material details of the proposed shade sails; and
  - h) Reallocation of the two medical visitor spaces (car spaces 47 and 48 within Basement Level 1) with two medical staff spaces. The total number of medical visitor and medical staff spaces must not be altered.
  - i) Setback of the plant screen adjacent to the eastern façade of the building to be a minimum of 2 metres from the edge of the roof form.
- The amended plans reference to be updated in Condition 1 and Condition 28.

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

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

The permit was issued at the direction of the Victorian Civil and Administrative Tribunal (VCAT) following an appeal being lodged by an objector against Council's decision to issue a Notice of Decision to Grant a Permit. Key issues addressed at the hearing related to hours of operation, noise, landscaping, safety and traffic. The VCAT determination was generally supportive of Council's decision to support the application subject to minor modifications.

**Planning Permit No. TPA/40955/A**

Planning Permit No. TPA/40955/A was issued by Council on 21 October 2014. The Permit allowed the development of a three storey building with basement car

parking and use for a medical centre (up to 17 practitioners), child care centre (up to 130 children), occasional child care (up to 45 children), café and 9 apartments.

#### Planning Permit No. TPA/40955/B

Planning Permit application TPA/40955/B sought an additional level of apartments to create a four storey building comprising a total of 20 apartments (including the medical centre and childcare centre), variations to the built form, childcare centre use and car parking. The application was refused by Council and VCAT determined to approve the proposal, however required the deletion of the fourth level of apartments. Plans were endorsed on 20 March 2018.

#### Works undertaken on the land

Excavation works associated with the approved development commenced in mid-2015. These works were stopped in July 2015 when the site experienced land slip and subsidence issues impacting the adjoining properties. The excavated parts of the site have subsequently been filled. No recent works have been undertaken on the land.

As the Responsible Authority, Council must consider the current amendment proposal on its merits having regard to the applicable requirements of the Monash Planning Scheme. Issues of structural stability and construction viability are outside the realm of planning consideration and are the responsibility of the appointed Building Surveyor to determine having regard to the Building Regulations.

#### Expiry of Planning Permit

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

Attachment 1: Existing planning permit.

#### **The Site and Surrounds**

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

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

Surrounding land to the north and east is residential in nature comprising of a mix of single and double storey dwellings including several multi-dwelling developments. Immediately to the south separated from the subject land by the

laneway is a small group of one and two storey commercial buildings which provide basic convenience services such as milk bar and take away food shop.

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

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

### **PROPOSAL:**

The proposal seeks to amend the endorsed plans associated with the Planning Permit as follows:

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

The application also seeks to update conditions to reference the new plans prepared.

	<b>Existing Approval</b>	<b>Proposed Amendments</b>
Overall Height	11.428 metres (RL77.60) measured to the top of the lift overrun.	13.728 metres (RL79.90) measured to the top of the lift overrun.
Number of Dwellings	10 dwellings (nine x 2-bedroom dwellings and one x 1-bedroom dwelling)	11 dwellings (nine x 2-bedroom dwellings and two x 1-bedroom dwellings)
Number of places in childcare centre	144 children	No change
Number of Medical Practitioners	17 medical practitioners / technicians	17 medical practitioners (noting that TP02 suggests that the number of practitioners is proposed to increase to 22). NOTE: Proposed recommendation 1(d) addresses this anomaly
Total number of car parking	108 car spaces	109 car spaces

Attachment 2 details plans forming part of the application.

**PERMIT TRIGGERS:****Section 87A of the Planning & Environment Act 1987**

Section 87A of the Planning and Environment Act 1987 allows for the Tribunal to amend a Permit that has been issued at its direction if it considers appropriate to do so at the request of the owner / occupier of the land or any person who is entitled to use or develop the land.

**Zoning**

The subject site is located within a General Residential Zone – Schedule 2 (Clause 32.08) under the provisions of the Monash Planning Scheme.

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

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

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

Clause 32.08-15 states that the minimum garden area requirements of Clause 32.08-4 and the maximum building height and number of storeys requirements of Clause 32.08-9 introduced by Amendment VC110 do not apply to:

*“A Planning Permit application for the construction or extension of a dwelling or residential building lodged before the approval date of Amendment VC110”.*

It is considered that the lodgement of an 87A application is not defined as “a Planning Permit Application”, and therefore this application enjoys transitional provisions and the mandatory requirements are not applicable in this case. This is further detailed in *W Property Group Pty Ltd v Boroondara CC [2017] VCAT 740* which states:

*“An application to amend a permit pursuant to Section 87A of the Act is not an application for a permit (or amendment of a permit) within the meaning of the planning scheme or section 47. When we refer to ‘an application to amend a permit pursuant to section 87A of the Planning and Environment Act 1987’, this is a short hand way of referring to an application made pursuant to the Victorian Civil and Administrative Tribunal Act 1998 in its original jurisdiction to consider a request to cancel or amend a permit pursuant to section 87 or 87A of the Act.*

*Division 3 of Part 4 of the Act, which deals with cancellation and amendment of permits by Tribunal, does not use the word application in any of its provisions. Rather, it refers throughout to a request that may be made to the Tribunal to cancel or amend a permit”.*

### Overlays

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

### Particular Provisions

#### **Clause 52.06 (Car Parking)**

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

The car parking generation calculation for a childcare centre is assessed by children numbers, and therefore there is no additional car parking required.

The additional one-bedroom dwelling proposed results in an additional 1 car space for residents and 0 car spaces for visitors. One additional car space is proposed within the basement for the dwelling.

It is noted that there is a contradiction on the plans in terms of the number of practitioners. The plan states an overall number of 17 practitioners yet the tally of each suite would total 22 practitioners. An increase of practitioners does not form part of this application and a correction to the plan will be required.

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

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

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

Attachment 4 details the zoning and overlays applicable to the subject site and surrounding land.

### **CONSULTATION:**

#### **Public Notice**

The application was advertised at the direction of the Tribunal to nominated surrounding properties which was carried out by the Permit applicant. The Tribunal determined that no signs were required to be placed on the site during this process given the extent of notices posted.

**Referrals**

**VicRoads** – The application was referred to VicRoads who had no objection to the proposal subject to the retention of existing VicRoads conditions on the Planning Permit.

**Traffic Engineering** - The application was referred to Council's Traffic Engineers who had no objection to the proposal, however requested that the medical centre visitor car spaces on Basement Level 1 (car spaces 47 and 48) be reallocated for Medical Centre Staff and two existing medical centre staff car spaces be reallocated to visitors given the tighter manoeuvres required for these car spaces. The layout of the car spaces resulted from internal changes for the provision of a second staircase.

**DISCUSSION:****Planning Policy Framework**

The amendment seeks to continue the approved uses of the land including a childcare centre, residential dwellings and a medical centre. The proposal is consistent with State Planning Policy which seeks to provide new housing in designated locations that offer good access to jobs, services and transport (Clause 16.01-2S), and to provide for a range of housing types to meet diverse needs (Clause 16.01-3S). The Planning Policy Framework also seeks to ensure the provision of early childhood facilities which respond to demand requirements and integration of these facilities into existing communities with access to public transport, safe walking and cycling routes (Clause 19.02-2S).

**Local Planning Policy Framework****Neighbourhood Character**

The design response should be appropriate to the neighbourhood and the site, respect the existing or preferred neighbourhood character and respond to the opportunities and constraints of the site. The height and setback of buildings must also respect the existing or preferred neighbourhood character and the impact on the amenity of existing dwellings must be minimised.

Notwithstanding that the mandatory provisions of garden area / building height & storeys set out in the zone are not applicable in this instance, it is noted that a purpose of the General Residential Zone is *"to encourage development that respects the neighbourhood character of the area."*

The proposed amendments will have limited impact to the character of the surrounding area. Whilst the setback of the second floor have been reduced to Highbury Road, the setback proposed is 10.416 metres which is greater than the setback of the first floor, meeting the front setback requirements as outlined in the schedule to the General Residential Zone, Schedule 2 and maintaining sufficient articulation to the built form. Balconies will continue to face Highbury Road at this level to allow for natural surveillance and variation in the built form presenting to the street.

The proposed rooftop terrace will be set back approximately 18.5 metres from Highbury Road and 12 metres from Huntingdale Road. The proposed stairwell and lift shafts are set back further, with a 1.2m high metal screen surrounding these features and the plant equipment area. The 1.2m high fenced area has increased, with setbacks reduced to the east and south (11m and 8m respectively), however has remained similar to the street interfaces (18.2m).

The 2.0 metre high perforated metal fencing surrounding the outdoor play area will be visible from some angles on the Highbury Road interface given the varied setbacks of the level below including cut-outs associated with the balcony areas. Only one sectional diagram has been provided for this fencing from Highbury Road, which is taken from the point with a 4.9 metre setback from the level below (not from the point where the screen sits in the same plane as the level below) and therefore does not adequately show the true visibility of this screen. Notwithstanding this, it is considered that the visibility of this screen will be limited from the streetscape and will not result in unreasonable bulk or character concerns.

Further details of the perforated metal screen is recommended as a condition of the Permit if issued, to ensure that the material is of a high quality given it will be visible from the streetscape.

The proposed stairwell, lift structures and shade sails are considered to be set back a sufficient distance from both street interfaces to limit direct views and bulk impacts.

No landscaping at the ground floor is proposed to be altered as a result of this amendment and therefore an amended landscape plan is not required.

### **Built Form and Scale**

The second floor building footprint has been increased, reducing the setback of Apartment 4 from the eastern boundary from 11 metres to 8 metres. The proposed works are located adjacent to a common driveway which provides vehicle access to two dwellings located at No. 176 Highbury Road. Habitable room windows are located adjacent to this accessway associated with Apartment 1, located approximately 4 metres from the common boundary.

The 8 metre setback exceeds the ResCode side and rear setback and daylight to existing windows requirements. The proposed works will also not result in any additional overshadowing to adjoining areas of secluded private open space.

The proposal will not create unreasonable overlooking, given there are no habitable room windows or secluded private open space area within 9 metres of the neighbouring property to the east.

With respect to the rooftop area, the 1.2 metre high fencing to the plant area has extended closer to the eastern boundary of the site, being set back approximately 11 metres. The screen is partly in line with the edge of the second floor footprint. The materials schedule suggests that the screen is to be perforated metal with a rust metal finish. It is considered that the screen should be set back a minimum of 2 metres from the second floor envelope adjacent to the eastern boundary of the site to reduce its visibility and impact to these adjoining dwellings. The screened plant area is considerable in size and is anticipated that with this adjustment will still allow for sufficient plant space.

The proposed shade sails are located approximately 21.1 metres from the eastern boundary of the site (therefore being approximately 25 metres from the adjoining habitable room windows). The shade sails are lightweight in structure, being limited to 6 supporting poles across the two sails with a height of 4 metres. It is therefore considered to have limited amenity impacts to these adjoining dwellings.

The site's interface to the south is non-sensitive as it abuts a laneway and rear of commercial buildings.

### **Internal Amenity**

The layouts of Apartments 3 and 4 have been reconfigured to allow for the addition of Apartment 11, being a single bedroom apartment. The revised layout has resulted in the balcony areas being 'split', creating two smaller balconies for each of these dwellings. However, they are still provided with a balcony greater than 8sqm with minimum dimension of 2.4 metres which satisfies the requirements of ResCode.

The proposed apartment 11 is a single bedroom apartment with a balcony of 11.5sqm which is located directly off the living space with an easterly orientation. The habitable room windows are provided with direct access to daylight and the roof form is cut back above the balcony to ensure sufficient access to sunlight to this space.

It is noted that whilst no changes appear to have been made to Apartments 1 and 10, a wall has been deleted between Bedroom 1 of Apartment 1 and the living room of Apartment 10 which appears to clearly be a drafting error. The entry to Apartment 10 also has an error, as should be accessed via the foyer area where the laundry is currently proposed.

### **Noise**

The childcare centre is permitted to operate between the hours of 7:00am and 7:00pm. Condition 11 of the current Planning Permit reads:

*"The use of the site approved by this Permit shall not cause nuisance or be detrimental to the amenity of the neighbourhood by the emission of noise associated with the use. In this regard the emission of noise shall comply with*

*the provisions of the Environment Protection Act 1970 (as amended) and the policies of the Environment Protection Authority.”*

A condition is also existing on the planning permit which requires no form of public address system audible from the outside of the building.

It is therefore considered that the noise generation from the rooftop play area will be monitored in the same manner as the first floor play area, with 2 metre high acoustic fencing and provision of the above planning permit conditions.

Whilst the arrangement of apartments located between two levels of childcare centre use is unconventional, the lift will allow for easy access between the multiple childcare levels.

### **Car Parking, traffic and access**

The proposal increases the play area of the childcare centre and one additional single bedroom dwelling on the second floor of the development. The basement layout has been revised to include one additional car parking space for the dwelling residents. No additional car parking is required for the childcare centre.

The additional single dwelling results in one additional car space for residents. One additional car space is proposed within the basement.

It is noted that there is a contradiction on the plans in terms of number of practitioners. The plan states an overall number of 17 practitioners, yet the tally of each suite would equate to 22 practitioners. An increase of practitioners does not form part of the application and correction to a total of 17 practitioners will be required.

Council's Traffic team have reviewed the revised basement layout and are satisfied with the proposal subject to the reallocation of medical centre visitor spaces with medical centre staff spaces adjacent to the proposed stairwell.

### **CONCLUSION:**

In summary, it is considered that the proposed amendments pose limited impact to the streetscape and broader neighbourhood character and to adjoining sensitive interfaces.

Should the Tribunal determine that the proposed development is acceptable, it is considered that the following conditions should be included on the Planning Permit:

- Condition 1 be amended to include the following additional elements:
  - d) TP02 amended to reflect the maximum number of medical practitioners / technicians being 17 in accordance with condition 5 of this Permit.

- e) Apartment 10 correctly showing the apartment entry from the foyer area and a wall between bedroom 1 and the adjoining Apartment 1.
  - f) Further detail (pattern) of the proposed rooftop screens including colour swatches;
  - g) Material details of the proposed shade sails; and
  - h) Reallocation of the two medical visitor spaces (car spaces 47 and 48 within Basement Level 1) with two medical staff spaces. The total number of medical visitor and medical staff spaces must not be altered.
  - i) Setback of the plant screen adjacent to the eastern façade of the building to be a minimum of 2 metres from the edge of the roof form.
- The amended plans reference to be updated in Condition 1 and Condition 28.

**LIST OF ATTACHMENTS:**

Attachment 1 – Existing Planning Permit

Attachment 2 – Proposed Development Plans.

Attachment 3 – Aerial Photograph (January 2019).

Attachment 4 – Zoning and Overlays Map.