

Planning Report – Section 72 Amendment

Application Details:

Application is for:	Amendment under Section 72 to allow for amended plans for permit issued for: Use and Development of existing building for accommodation Permit issued 27/3/2017
Applicant's/Owner's Name:	Owners Corporation No. 546882
Date Received:	04 April 2022
Statutory Days:	Greater than 60 Days
Application Number:	P2016-109 -2
Planner: Name, title & department	Braydon Aitken Manager Planning and Investment Department
Land/Address:	Lots 15 & 16 on PS 546882Q 317 High Street, Nagambie VIC 3608
Zoning:	Commercial 1 Zone (C1Z) Abuts a Principal Road Network (TRZ2)
Overlays:	Part Land Subject to Inundation Overlay (LSIO)
Is a CHMP required?	No not in an area of Aboriginal Cultural Heritage Sensitivity
Is it within an Open Potable Catchment Area?	No
Under what clause(s) is a permit required? (include description)	N/A – amended planning permit application is for amended plans only.
Restrictive covenants on the title?	No
Current use and development:	Serviced Apartments, Motel Units and Shops with a common parking area.
Adjacent to the Principal Road Network	Yes – no work is proposed that will impact the road network.
Status of Road on Road Register	N/A
Adjacent to Public Land	Yes – Nagambie Lake – no buildings and works are proposed.

Application Checklist:

Application form <input checked="" type="checkbox"/>	Title enclosed <input type="checkbox"/>	Fee paid <input checked="" type="checkbox"/>
Site Plan <input checked="" type="checkbox"/>	Plans of Proposal <input checked="" type="checkbox"/>	Planning Report <input type="checkbox"/>
Supporting Information <input type="checkbox"/>	Effluent Disposal <input type="checkbox"/>	Other <input type="checkbox"/>

Disclosure of Conflicts of Interest in relation to advice provided in this report

After reading the definitions of a general or material conflict of interest as defined by the *Local Government Act 2020*, do you have a conflict of interest?

Yes ☐

(if YES, please complete a Conflict of Interest and Declaration Making Declaration form)

No ☒

Recommendation

That Council

- having caused notice of Planning Application No. P2016-109 -2 to be given under Section 52 of the *Planning and Environment Act 1987* and or the planning scheme;
- and having considered all the matters required under Section 60 of the *Planning and Environment Act 1987* officers recommend that **a Notice of Decision to Grant and Amended Planning Permit** under the provisions of the Strathbogie Planning Scheme in respect of the land known as, **317 High Street, Nagambie Victoria 3608 – Lots 15 & 16 on PS546882Q**, for the **Use & Development of an existing building for accommodation**, is issued, including the endorsement of the submitted amended plans, subject to the existing conditions forming part of the permit shown below:

Conditions:

Endorsed Plans

1. The development must be sited and constructed in accordance with the endorsed plans. These endorsed plans can only be altered or modified with the prior written approval of the Responsible Authority, or to comply with statutory requirements

Engineering Conditions:

2. All stormwater and surface water discharging from the site, buildings and works must be conveyed to the legal point of discharge drains to the satisfaction of the Responsible Authority/Goulburn Murray Water. No effluent or polluted water of any type may be allowed to enter the stormwater drainage system.
3. Appropriate steps must be taken to retain all silt and sediment on site during the construction phase to the satisfaction of the Responsible Authority, in accordance with the sediment control principles outlined in Construction Techniques for Sediment Pollution Control (EPA, 1991) and to the satisfaction of the Responsible Authority.
4. Any damage to the Responsible Authority's assets (i.e. sealed roads, kerb & channel, trees, nature strip etc), and boundary fences, must be repaired at the cost of the applicant all to the satisfaction of Responsible Authority.

General Conditions:

5. External lighting must be designed, baffled and located so as to prevent any adverse effect on adjoining land, to the satisfaction of the Responsible Authority.
6. Plant, equipment, services or architectural features, other than those shown on the endorsed plans, must not be located above the roof level of the building(s) without the written consent of the Responsible Authority.

7. All buildings and works must be maintained in good order and appearance to the satisfaction of the responsible authority.
8. The amenity of the area must not be detrimentally affected by the use, through the:
 - (a) Appearance of any building, works or materials;
 - (b) Transport of materials, goods or commodities to or from the land;
 - (c) Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, wastewater, waste products, grit or oil;
 - (d) Presence of vermin, and;
 - (e) Others as appropriate.

Permit Expiry:

9. This permit will expire if one of the following circumstances applies:
 - (a) The development is not started within two years of the date of this permit; or
 - (b) The development is not completed within four years of the date of this permit.

The Responsible Authority may extend the periods referred to if a request is made in writing:

- before the permit expires; or
- within six months afterwards if the use or development has not yet started; or
- within 12 months after the permit expiry date, where the development allowed by the permit has lawfully started before the permit expires.

Issued: 27 March 2017

Signature for the Responsible Authority:

Amended Permit Issued:

Signature for the Responsible Authority: _____

Date of Amendment	Brief Description of Amendment	Name of Responsible Authority that approved the Amendment
		Strathbogie Shire
tbc	No changes to conditions required. Approval of amended plan only showing revised notation in relation to car parking.	

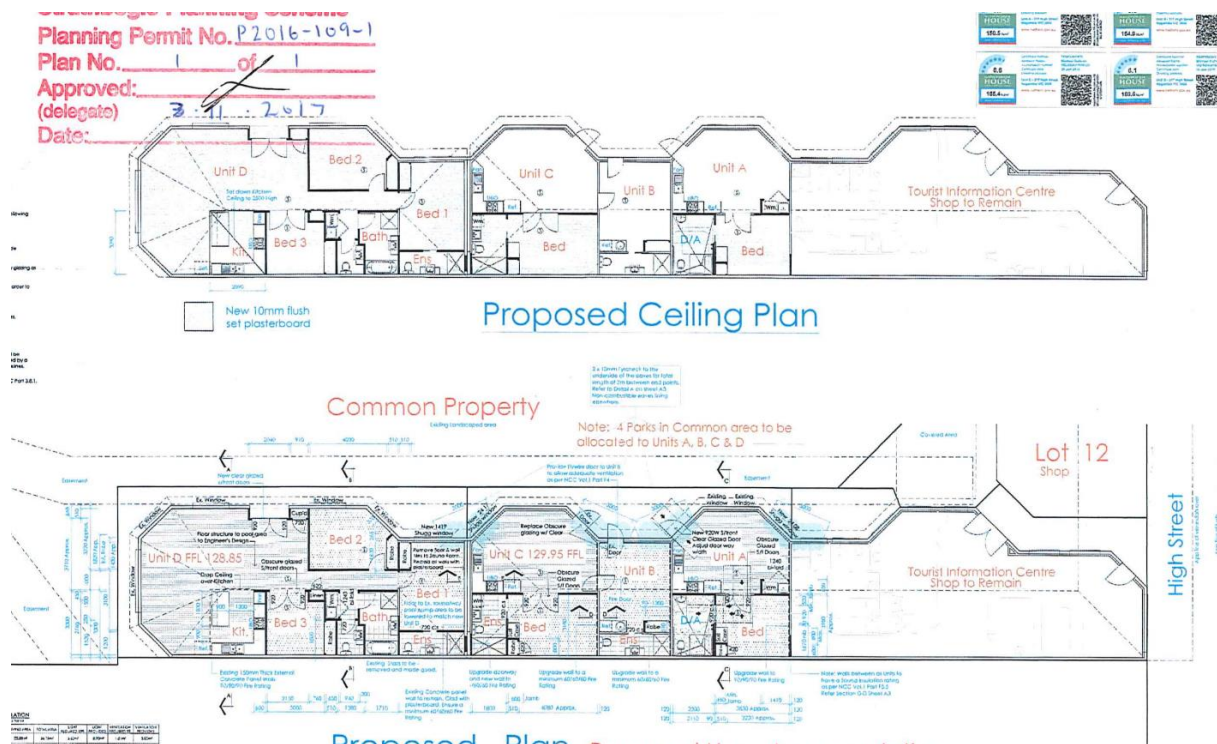
	Change to pre-amble of permit to reflect the correct lot numbers.	
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Proposal

The amended planning permit application is to seek approval for an amended plan to include an updated notation in relation to car parking.

If approved the planning permit pre-amble will also need to be amended to refer to the correct lot numbers (Lots 15 & 16 on PS546882Q).

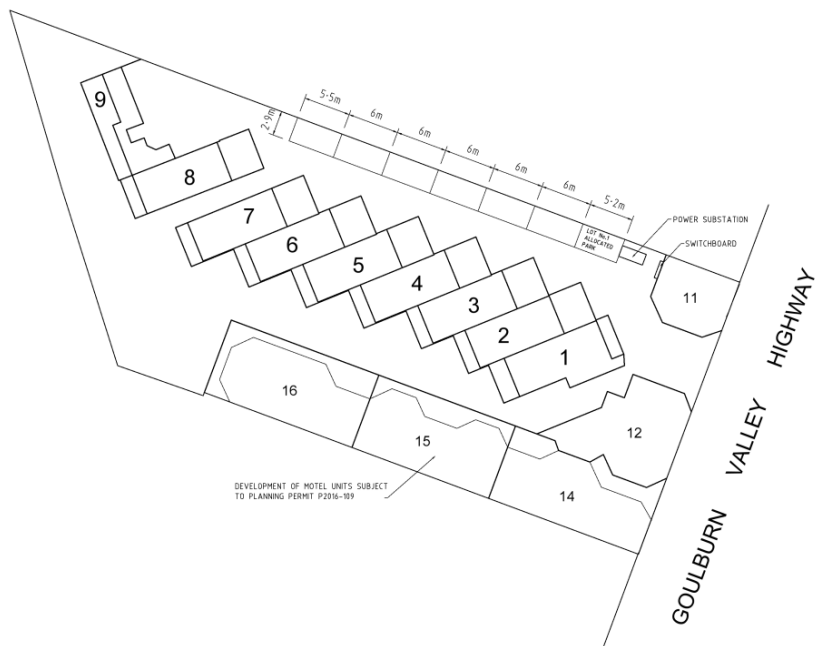
Planning Permit P2016-109 allowed the use and development of an existing building for accommodation. This permit approved a partial change in the land use approved under P2005/124 to remove the day spa component and replace it with motel units as show on the approved plan shown below:



The endorsed plan also included the notation below:

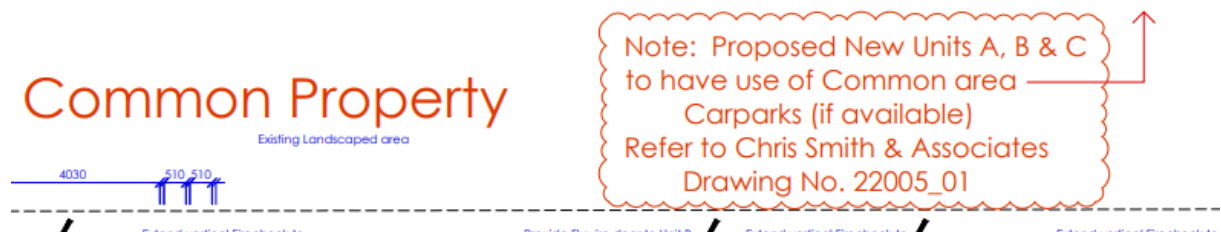


The common area is shown on the plan below and was approved as part of P2005/124:



The applicant has informed officers that the way the site currently works in practice is that the car parking in the common area is shared between the apartments and the motel units (each of the apartments has its own undercover parking space on title). Basically, if a shared space is available then someone staying in one of the motel units can park there.

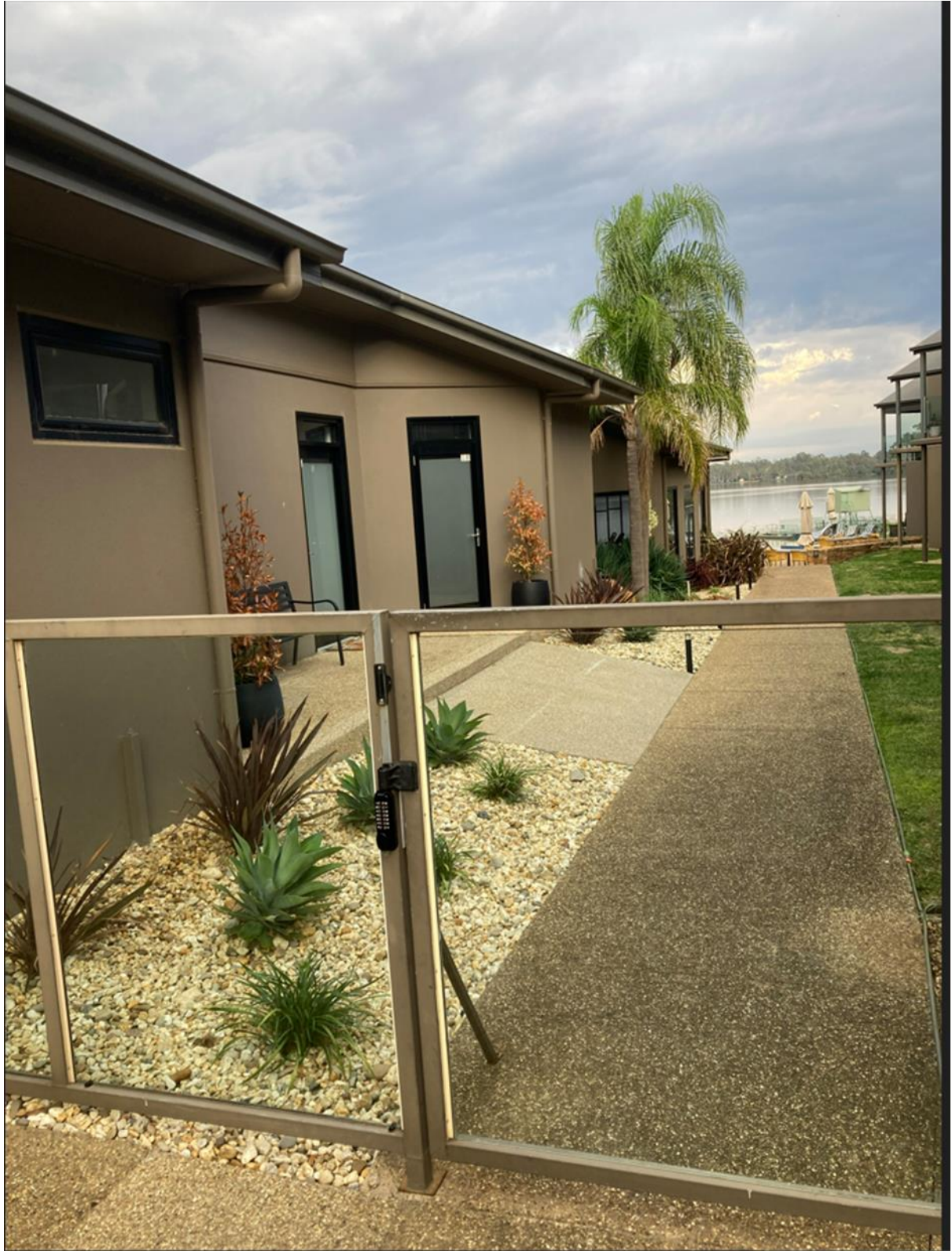
The amendment plan seeks to reflect the above with a revised notation on the amended plan has been changed to read:







Above photos show view of common property area and car parks. Some spaces are clearly line marked others not creating the potential for confusion about on-site parking arrangements. The photo also shows the provision of parking under each apartment.



Above photo shows a view of the motel units approved under planning permit P2016-109.

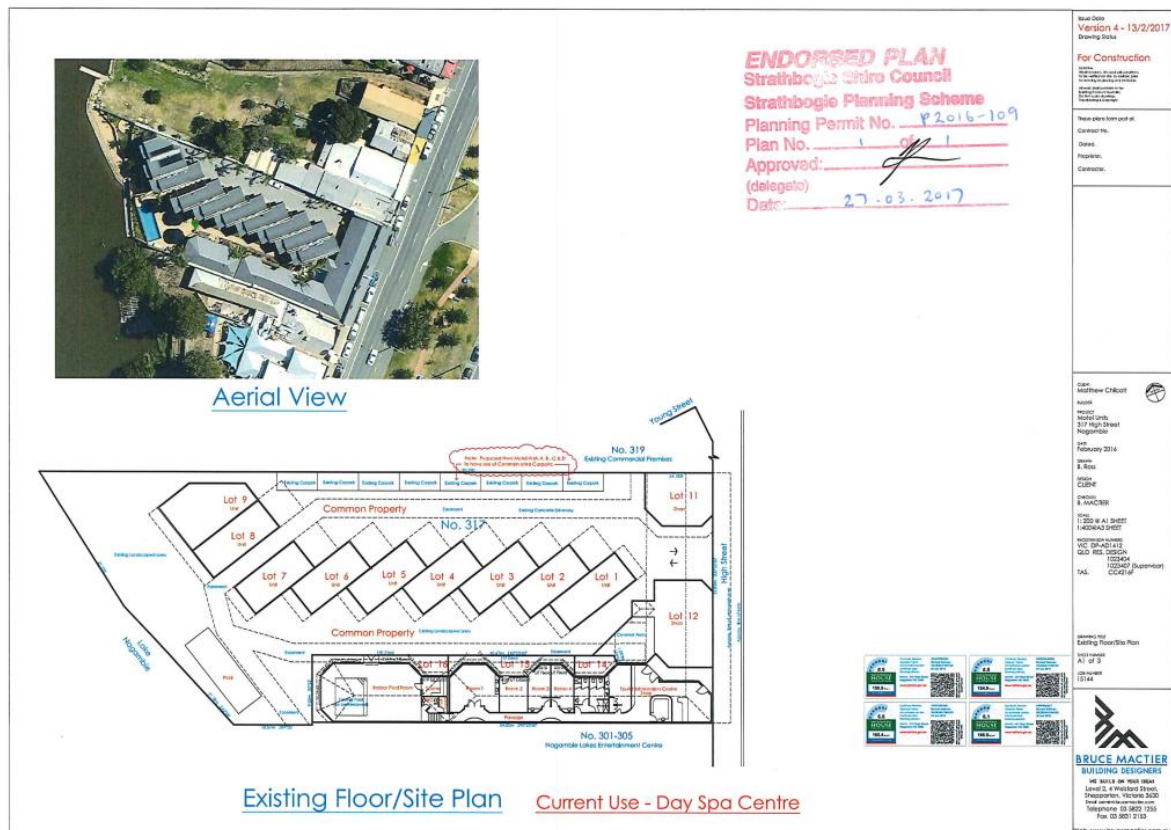


Above photo shows the entrance way to two of the existing motel units.



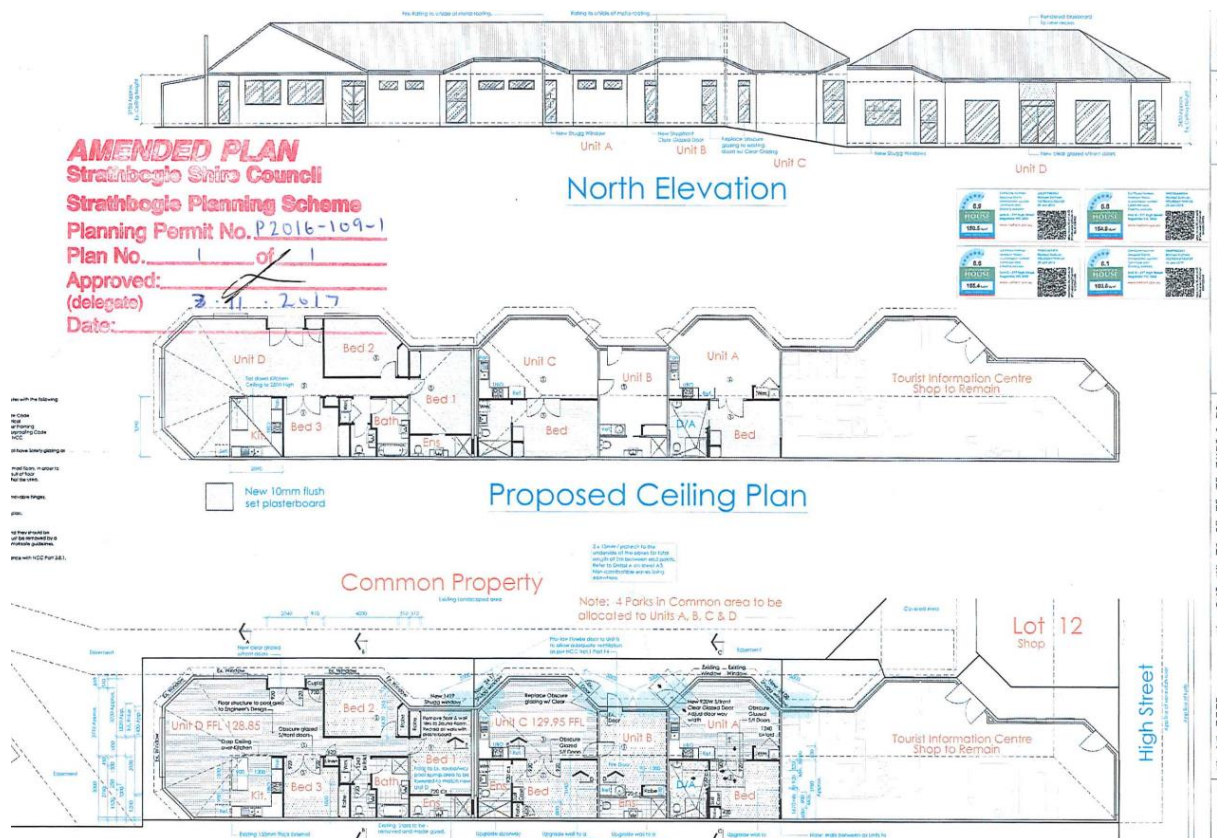
Amended plans endorsed as part of this permit shown no changes to the onsite parking arrangements shown on the above endorsed plans (7 car parking spaces along northern boundary). The main changes as a result of this amended permit was a reduction in the scale of the development, including the removal of the motel units and the removal of car parking condition (condition 3) that required a financial contribution in lieu car parking.

Planning permit P2016-109 was issued on 27/03/17 and allowed the use and development of an existing building for accommodation in accordance with the plans below.



The permit allowed for the proposed day spa, approved under amended planning permit P2005-124 to be converted to 4 motel units. Three of the units are currently being used and the fourth is currently going through an internal fit out. The site plan approved under this permit showed 8 car parking spaces along the northern boundary in the common area. This plan also included a notation that the proposed motel units had access to the common area car parks along the northern boundary.

On 3/11/2017 an amended plan was approved to form part of planning permit P2016-109. This plan superseded the plan endorsed on 27/03/2017 and now showed only the floor layout of the proposed motel units and included a notation that 4 car parks in the common area were to be allocated for use by the motel units. The plan is shown below:



The superseding of the plan endorsed on 27/03/2017 means that the most current endorsed plan showing the provision of car parking along the northern boundary of the land is the plan endorsed under P2005/124 showing 7 car spaces.

At the time of the subdivision of each of the apartments onto their own titles in 2007, the eastern most car parking space along the northern boundary of the land was allocated to the title of apartment one. This effectively removed this car parking space from the common property. Meaning 6 car parking spaces were required in the common property and 1 car parking space as part of apartment one. Regardless, a total of 7 car parking spaces was still required along the northern boundary of the land.

The following buildings and uses are now considered to be approved for the site:

- 3 shop front/premises (all fronting High Street)
- 4 Motel Units
- 10 serviced apartments in 9 buildings.
- Driveway for car parking and access between the apartments and the carparking on the northern boundary, accessed from a driveway between Shop 1 and Shop 2.
- 1.8m pedestrian access between Shop 2 and Shop 3.
- Pedestrian access either side of the driveway between Shops 1 and 2.

Further Information

Further Information Required: What was requested?		<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
FI Requested: N/A		FI Received: N/A	

Advertising/Public Notification

- Both applications to be advertised together to avoid confusion (P2005/124 amended plan and P2016-109 amended plan.)
- Could the wording for the public notice please say: 'Amended Plans showing a revised car parking layout'.
- Please include the following documents attached to Doc ID 774054 with public notice

Is notification/advertisement required under section 52? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Exempt				
Please provide comment				
Advertised by:		<input checked="" type="checkbox"/> Council		<input type="checkbox"/> Applicant
Site plan selected:		<input checked="" type="checkbox"/> Site plan selected		Doc ID: Site plan & Public Notice Addresses are associated document in <div>787714</div> <div>787710</div> folder
		<input type="checkbox"/>		
Add Instructions on Spear		<input type="checkbox"/> Yes		<input checked="" type="checkbox"/> No
Letters: Yes	Signs: Not required	Paper: Not required	Sent:	Stat Dec Rec: Not required

Objections received?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Number: 3
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Consultation

The application was advertised, and 3 objections were received. The grounds of objection are outlined below.

Objection 1 – from a landowner on site:

- The applicant has no legal authority to make the application.
- Concerns in relation to traffic safety as a result of the proposed parking layout.
- No planning or traffic report provided.
- The proposal is contrary to the purpose of the development in its current built form.
- The proposal would adversely affect the amenity and reasonable expectations of the residents of the development.
- The proposal will prejudice the orderly and proper planning of the area.
- The proposal will provide no community benefit.

- The use of common property, or the grant of a permit in respect of the common property in the terms of the application, will mean that that part of the common property will be used in such a manner as to unreasonably interfere with or prevent its use by other members or occupants of lots, or their families or visitors.
- This sole use and occupation of only one of the tenants in common of the common property would be in violation of the rules and regulations provided for in the Owners Corporation Act in that it "would unreasonably exclude the remaining co-owners of the relevant common property from enjoyment of it.

Objection 2 – from a solicitor for landowners on site:

- The application has not provided an existing conditions plan
- The applicant has no legal authority to make the application.
- Concerns in relation to traffic safety as a result of the proposed parking layout.
- No planning or traffic report provided.
- The proposal is contrary to the purpose of the development in its current built form.
- The proposal would adversely affect the amenity and reasonable expectations of the residents of the development.
- The proposal will prejudice the orderly and proper planning of the area.
- The proposal will provide no community benefit.
- The use of common property, or the grant of a permit in respect of the common property in the terms of the application, will mean that that part of the common property will be used in such a manner as to unreasonably interfere with or prevent its use by other members or occupants of lots, or their families or visitors.
- This sole use and occupation of only one of the tenants in common of the common property would be in violation of the rules and regulations provided for in the Owners Corporation Act in that it "would unreasonably exclude the remaining co-owners of the relevant common property from enjoyment of it.

Objection 3 - from a landowner on site:

- Concerns about the size and location of the eastern most car park along the northern boundary given its proximity to a power substation.

As a result of the objections an amended plan was provided by the applicant (as part of the amended planning permit application for P2005/124) that reduced the number of car parking spaces along the northern boundary of the land from 7 to 6 and shifted the eastern most car space away from the exiting power substation on the land. Accompanying the plan was a planning report providing a response to the grounds of objection and minutes of an owner's corporation meeting detailing the decision to make the amended planning permit applications. A copy of this information was provided to the objectors. No objections have been withdrawn and all objections remain current.

A planning officer met with one of the objectors on 21 December 2022 to discuss the history of the applications in more detail and to explain why officers are of the opinion that the current parking requirements for the site along the northern boundary is 7 car parking spaces, 6 in the common property and 1 as part of the title to apartment one. Further detail on this rationale is outlined in the Permit/Site History section of this report.

An officer response to the grounds of objections is provided in the Key Assessment Considerations Section of this report.

Referrals

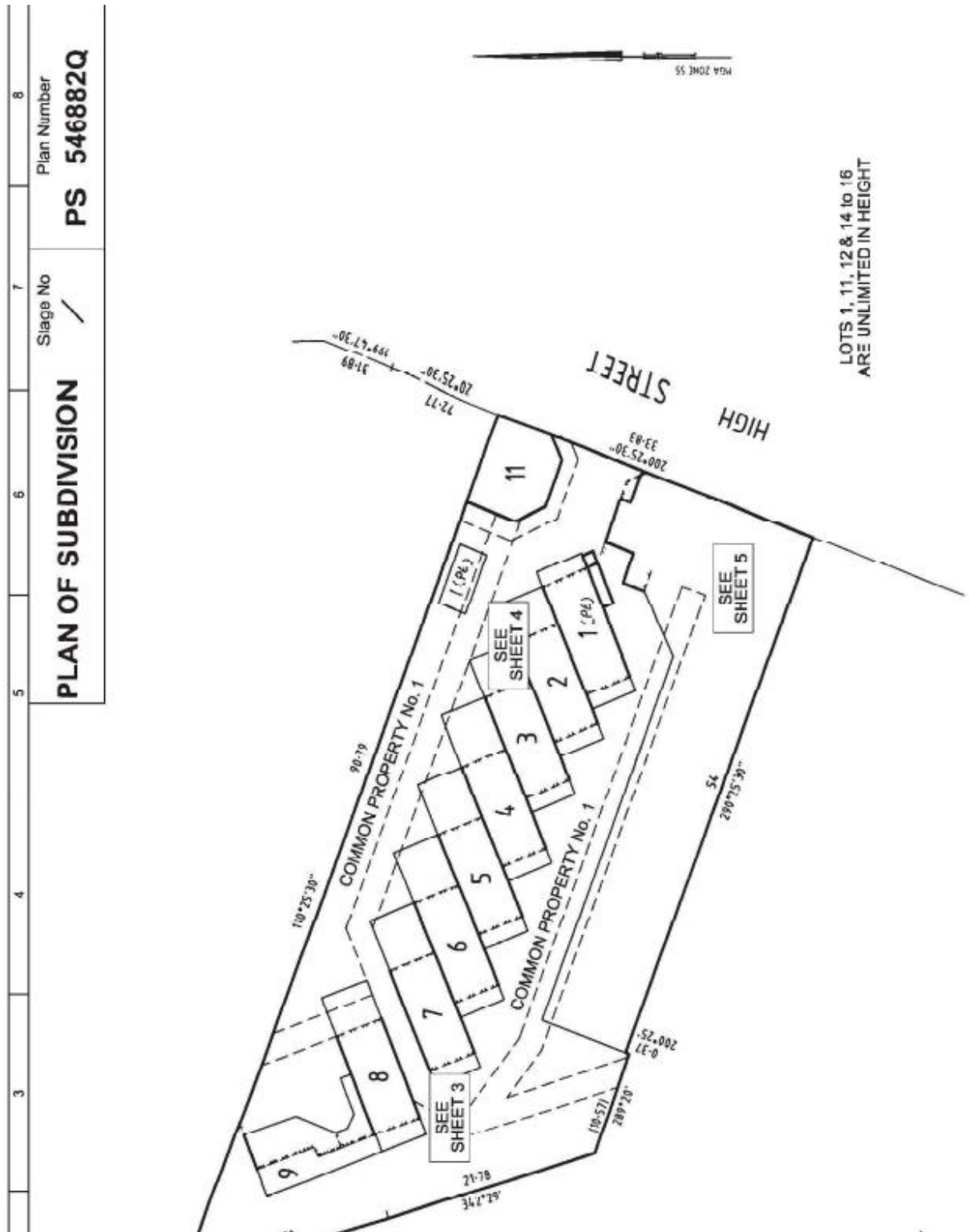
External Referrals/Notices required by the Planning Scheme:

No referrals required by the Planning Scheme

Key Assessment Considerations**Background/History**

A review of files associated with planning permits P2005/124 & P2016-109 reveals a number of complex matters. These include the provision of parking along the northern boundary of the land and details of disputes between members of the owner's corporation associated with the parking allowance for the motel units within the common parking area. Despite this, the scope of the officer's assessment is limited to the amended plans that have been submitted with the amended planning permit applications.

Officers do need to be satisfied that the amended planning permit applications have been made by a legal entity. The application was made by Owners Corporation 546882. The receipt for payment for the application fee was made out to Owners Corp PS546882Q. The owner's corporation number matches the plan of subdivision that created the common property on the site (see below):



The face sheet of the title (from a title search on 7/6/22) to the land that created this common property shows the registered proprietor as:

REGISTERED PROPRIETOR

Estate Fee Simple

Sole Proprietor

OWNERS CORPORATION 1 PLAN NO. PS546882Q of MBCM STRATA SPECIALISTS SEYMOUR,
98A WYNDHAM STREET SHEPPARTON VIC 3630
PS546882Q 25/03/2008

Correspondence from one of the objectors also references the existence of this owner's corporation. Based on the available information officers are satisfied that Owners Corporation PS546882Q is a legal entity and entitled to make the amended planning permit application.

The zoning of the land and any relevant overlay provisions

Commercial 1 Zone

Purpose:

- *To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- *To create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses.*
- *To provide for residential uses at densities complementary to the role and scale of the commercial centre.*

The site is part of the commercial centre of Nagambie which generally extends along High Street between Vale Street and Glencairn Lane with Lake Nagambie being at the centre of this area. The site is located towards the southern edge of this precinct. The commercial area of the town is focused on High Street with residential and other land uses facing away from the street.

The amended proposal is considered to remain consistent with the purpose and decision guidelines of the Commercial 1 Zone. No buildings and works are proposed just a change to a notation on a plan.

The land also abuts the Transport Road Zone 2 (TRZ2) – Principal Road Network (High Street). There are no proposed changes to the existing vehicle access to the land from High Street. No planning permit approval is triggered under the TRZ2 by the amended application.

Land Subject to Inundation Overlay

Part of the land is located within the Land Subject to Inundation Overlay (LSIO) as shown below:



No planning permit requirements are triggered by the LSIO as no buildings and works are proposed by the amended planning permit application.

Municipal Planning Strategy (MPS) and Planning Policy Framework (PPF)

The original assessment of the application remains valid, and the permissions granted do not require re-assessment as part of the amended planning permit application. This proposal does not introduce new planning permit triggers and does not impact on the current permit conditions. The scope of the officer assessment is limited to the approval sought as part of the amended planning permit application.

The amended planning permit application seeks approval for a revised car parking notation on the site plan. Given this, the primary consideration in the assessment of the application is the suitability of this proposed notation and any associated car parking arrangements.

Given the above there are no relevant MPS or PPF considerations.

Relevant Particular Provisions

Clause 52.06 – Car Parking

Car Parking Assessment

Clause 52.06 – Car Parking

Purpose

- *To ensure that car parking is provided in accordance with the State Planning Policy Framework and Local Planning Policy Framework.*
- *To ensure the provision of an appropriate number of car parking spaces having regard to the demand likely to be generated, the activities on the land and the nature of the locality.*
- *To support sustainable transport alternatives to the motor car.*
- *To promote the efficient use of car parking spaces through the consolidation of car parking facilities.*
- *To ensure that car parking does not adversely affect the amenity of the locality.*
- *To ensure that the design and location of car parking is of a high standard, creates a safe environment for users and enables easy and efficient use.*

To understand what should be occurring on site, an analysis of both the uses being conducted on site and the associated car parking requirements and demand has been undertaken, as follows:

Planning Permit P2005-124

The plans submitted with the original development application provided the following car parking details:

- One dedicated car park provided within each of the serviced apartments.
- 7 on site car spaces, located on the northern boundary of the property in the common property area.
- One of the car spaces in this common area was ultimately titles to services apartment 1 as its dedicated car space. All other services apartments had a dedicated car space underneath each apartment.

Initial Officer assessment was for the following amount of car spaces to be provide:

- Apartments – 10 car spaces
- Motel – 7 car spaces
- Shops – 16.24 car spaces
- Day Spa – 13.2 car spaces
- TOTAL – 46.44
- Proposed was 17, leaving a shortfall of 29.4 car spaces

The officer report associated with the permit made the following statement:

“The proposed development cannot supply the required number of car spaces thus have applied for a reduction in the required number of car parking spaces as per guidelines within Clause 52.06. After discussions with Asset Services it was decided to reduce the car spaces required by the Strathbogie Planning Scheme to 32

resulting in a deficit of 16 spaces which cannot be provided on site and a monetary contribution will need to be provided in lieu of each car park.

The 16-car space deficit was calculated in the following manner:

- The northern site currently contains 4 retail outlets of which 3 will be rebuilt. The proposed development of the 3 retail shops will not see an increase in car parking requirements as they are not adding to the townships retail floor space thus the requirement for car parking for the retail component is not considered necessary. The replacement of 4 shops with 3 leaves a deficit of 8 car parks in the applicant's favour.*
- The minimum car parking requirements for the motel/apartment complex are short 1 car park in total.*
- The development will mean an overall loss of 1 existing car park along the main street frontage.*
- The day spa, as per the planning scheme and as per the car parking balance sheet provided by the applicant's consultant, requires 27 spaces.*
- Thus, subtracting the 8 spaces belonging to shop 4 (see dot point 1) plus a 25% discount for customer from the motel/apartment complex utilising the day spa facilities results in a deficit of 14 spaces.*
- Therefore the 14 spaces plus the additional 2 (see dot point 2 & 3) mentioned above leave a total of 16 extra spaces required. We understand that these cannot be supplied on site thus a monetary contribution has to be paid for the provision of car parking at another location.*

In simple terms a reduction in car parking was required as there was a shortfall in parking provided to cater for the motel and day spa uses.

The following conditions were applied to the permit:

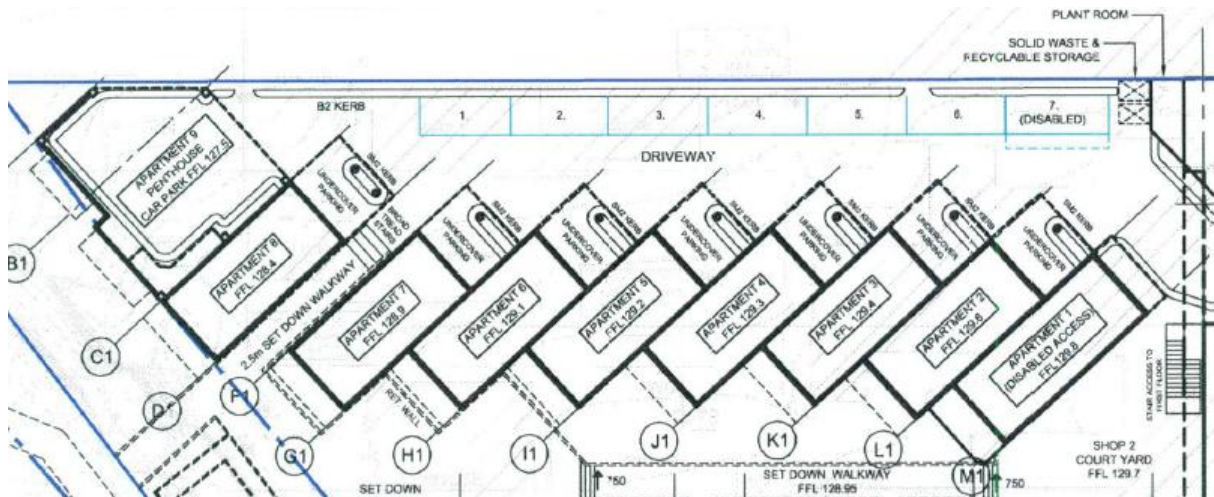
3. Prior to the use commencing, the owner of the land must enter into an agreement with the Strathbogie Shire Council, made pursuant to Section 173 of the Planning and Environment Act 1987 to provide for the following:
 - A contribution of \$72,000 for the construction of a car park (\$4,500 x 16 car spaces). The car park will be provided at a location chosen by the Responsible Authority. The payment must be provided upon the commencement of the use of the proposed development. The car spaces must e construction to the satisfaction of the Director Asset Services.

This agreement will be prepared at the applicant's cost and to the satisfaction of the Responsible Authority and shall be registered on the title in accordance with Section 181 of the Planning and Environment Act 1987.

4. Prior to the use commencing, the area set aside for the parking of vehicles as shown on the endorsed plan must comply to the satisfaction of the Responsible Authority.

6. The development must be in accordance with the endorsed plan. This endorsed plan can only be altered or modified with the prior written approval of the Responsible Authority, or to comply with statutory requirements.

The endorsed plans show the following car spaces (in the common area and as part of the serviced apartments):



The subdivision plans for the development show that the car space marked “7” is part of the title for apartment 1, leaving 6 car spaces that would be available for common use.

Amendment to Planning Permit P2005-124

In the amendment to the permit to reduce the size of the development (removal of second storey section of day spa and second storey motel units) and to remove the condition requirement for car parking payment, the Delegate report made the following statement:

“The proposed amendment will see a significant reduction in the development of the site but in principle retains the ‘use’ and footprint of the original development allowed under Planning Permit P2005-124. Although the loss of the motel will allow for the development behind the shops to be seen from the street, it is considered that this will not be detrimental as the apartments are set back enough so as not to encroach on the streetscape.

The previous permit had a condition that required the applicant to pay \$72,000 for 16 car parking spaces in lieu of what could be supplied on site. The reduction of the development especially the loss of the motel and scaling down of the day spa has

resulted in extra spaces no longer being required. The number of car parks as shown on the endorsed plan is not to change.”

This resulted in the permit being amended to delete the original condition 3 and renumber the remaining conditions accordingly. The amended planning permit still retained permission for a reduction in car parking requirements for the use and development.

Planning Permit P2016-109

On 11 August 2016, an application was received to change the day spa approved by amended planning permit P2005-124 to motel units. The following was stated in the documents:

“There are 6 car parks on the northern side of the development that are part of the body corporate that the property is involved in. Does that suffice as I believe there would be less need for parking as would have been previously apportioned for the day spa that the building was previously used for.”

In the delegate report supporting the permit, the following was stated:

“Table 1 of Clause 52.06-5 of the Strathbogie Planning Scheme specifies the number of car parking spaces required for specific land uses. The number of car parking spaces required for the proposed tourist accommodation is 4. Eight car parking spaces are existing within the development in addition to the car parking provided to each of the dwellings within their own titles. Car parking to be provided to the development is appropriate and has consent of the owner’s corporation.”

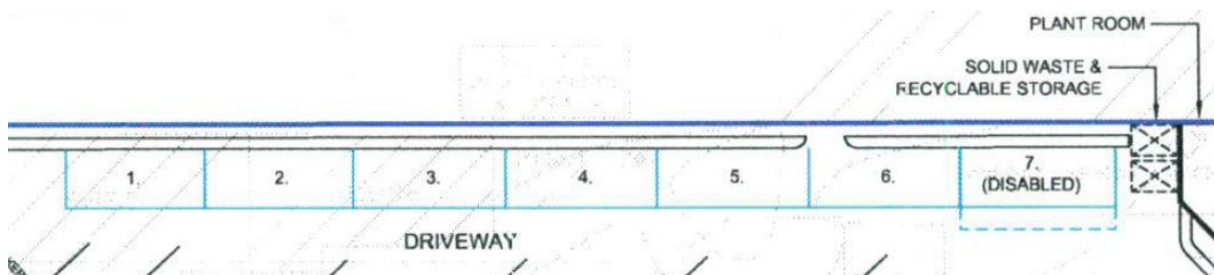
As such, no additional car parking was required to change the day spa to the motel units. For this permit, officers confirmed that the change from a day spa, with requirements for car parking higher than that for a motel unit, that it would be unreasonable to require the provision of additional car parking.

Compliance with permit requirements:




Planning permit conditions for the use and development of land are considered to be “live” and enforceable in an ongoing way. The conditions on Planning Permit P2005-124 that are still considered relevant to the site are as follows:




3. Prior to the use commencing, the area set aside for the parking of vehicles as shown on the endorsed plan must comply to the satisfaction of the Responsible Authority.
5. The development must be in accordance with the endorsed plan. This endorsed plan can only be altered or modified with the prior written approval of the Responsible Authority, or to comply with statutory requirements.

These two conditions apply in perpetuity and mean that the car parking on site must continue to be in accordance with the endorsed plans. Unless a revised plan is approved by the responsible authority. These plans show the following parking spaces to be provided in the common property:



In order to determine compliance with these conditions, an assessment of the aerial photography of the site was previously undertaken. The following is noted:

Date	Imagery	Comments
Sep '09		<p>8 car spaces line marked and visible on site.</p> <p>Permit requirement for 7 per the endorsed plan is met.</p>
Oct '11		<p>Slightly harder to see, but lines appear to have been moved to reduce to 7 car spaces.</p> <p>Considered to comply with permit conditions.</p>
Nov '13		<p>Last parking bay appears to be blacked out, with only 6 car spaces provided on the site.</p> <p>Not considered to comply with the permit conditions.</p>

Nov '15		<p>No change since 2013.</p> <p>Still not considered to be compliant.</p>
Oct '17		<p>No change since 2013.</p> <p>Still not considered to be compliant.</p>
Oct '19		<p>A further 4 car spaces appear to be blacked out. Only 2 spaces remaining in situ.</p> <p>Not considered compliant with the conditions on the planning permit.</p>

To address the above the owner's corporation submitted the amended planning permit and amended car parking plan as part of the amended planning permit application for P2005/124.

The original amended plan submitted showed 7 car parking spaces slightly adjusted to provide clearance from an onsite power substation.

This amended plan received objections and, in an attempt, to resolve some of the objectors concerns the amended plan was revised to show 6 car spaces along the northern boundary as shown below:



This is the most current plan to be assessed as part of this application. The scope of the assessment of the application is limited to the amended plans and is not a re-assessment of the merits of the original application. In practical terms the assessment becomes about ensuring the revised parking layout provides a satisfactory parking outcome for the land.

Parking considerations and assessment.

In assessing the above amended plan the relevant purposes of Clause 52.06 provide as useful guide:

- *To ensure the provision of an appropriate number of car parking spaces having regard to the demand likely to be generated, the activities on the land and the nature of the locality.*
- *To ensure that car parking does not adversely affect the amenity of the locality.*

To ensure the provision of an appropriate number of car parking spaces having regard to the demand likely to be generated, the activities on the land and the nature of the locality.

As the use of the land for the shops, apartments and motel units has commenced it is possible to measure the parking demand on site by observing how the land and its associated uses currently operate.

Officers have spoken to a number of members of the owner's corporation about how car parking operates on the land, in particular the common parking area along the northern boundary. The general consensus is that the common area parking functions in a way that people staying in the apartments have first use of this area. People staying in the motel units park in this area when there are spaces available. If there are no space available, then people staying in the motel units will utilise public car parking in High Street as shown below:



Officers have visited the site on a number of occasions and have not witnessed a time when the common parking area along the northern boundary of the land has been fully occupied. Photos below show on-site parking over the weekend of 21 to 23 April 2023.



Above photo taken Friday evening 21 April at 5.30pm shows car parking spaces available in common parking area.



Above photo taken Friday evening 21 April at 5.30pm shows car parking spaces available in public parking area in High Street adjacent to the land.



Above photo taken Saturday morning 22 April at 11.30am shows car parking spaces available in common parking area.



Above photo taken Saturday morning 22 April at 11.30am shows car parking spaces available in public parking area in High Street adjacent to the land.



Above photo taken Sunday morning 23 April at 10.00am shows car parking spaces available in common parking area.

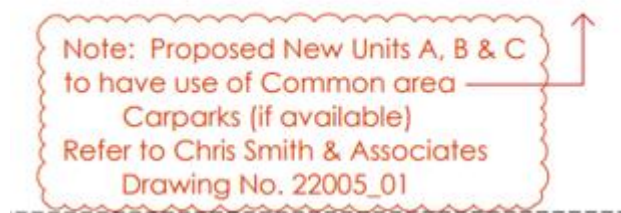


Above photo taken Sunday morning 23 April at 10.00am a high level of occupancy of the car spaces in the public parking area in High Street adjacent to the land.

At all the above times there was car parking spaces available in the common parking area, and the majority of times there was also parking available in the public parking area.

This is not to say that there are not times when the common parking area is not fully utilised however officers are yet to witness this. Given the above it is reasonable to conclude that there is adequate car parking available for the activities undertaken on the land. Even with the proposed reduction of one car space in the common parking area, there will still be an adequate supply of parking to cater for the current uses being conducted on the land.

Given the above, officers are satisfied that the proposed amended plan including the notation that:



is suitable for approval as part of an amended site plan.

Parking requirements for the shops, apartments, and motel units

Based on previous car parking assessments from officers no additional car parking was required from the shop tenancies on the land. This assessment was based on the fact the proposed shops did not generate any additional retail floor space from the previous use of the land. Therefore, it was determined that a car parking credit existed for this component of the use.

There are ten apartments constructed on the land as part of P2005/124. Eight are two-bedroom and two are three-bedroom apartments. Under current car parking requirements 1 car space is required for each two-bedroom apartment and 2 car spaces are required for each three-bedroom apartment. In addition to this, 2 visitor car parking spaces (1 visitor space per every 5 dwellings) are required. This means a total of 14 car spaces are required for the apartments.

The four motel units allowed under planning permit P2016-109 each require 1 car parking space, meaning a total of 4 car parking spaces are required.

Given the two approved planning permits effectively operate together a wholistic parking assessment is required. A total of 18 car spaces are required for both the apartments and the motel units. With the reduction of 1 car space as proposed by the amended car parking layout plan there will be 16 on site car spaces provided, leaving a shortfall of 2 car spaces. The reduction in parking allowed under P2005/124 can cater for this parking shortfall. Despite this shortfall, officers are satisfied that there is an adequate provision of car parking for the uses being conducted on the land based on observations of how parking associated with these uses currently operates.

To ensure that car parking does not adversely affect the amenity of the locality.

As outlined above officers are satisfied that there is an adequate provision of car parking both on the land and within nearby public parking to cater for the use being conducted on the land.

While officers are aware of disputes between the owner's corporation regarding the use of existing car parking on the land, officers are not aware of any complaints from surrounding landowners or the general public about parking issues associated with the land.

In conclusion:

Based on the above assessment, it is considered that the site is currently non-compliant with the relevant parking conditions of Amended Planning Permit P2005/124. Obtaining compliance will require the reinstatement of the line marking in accordance with endorsed plans forming part of this permit.

The amended planning permit application proposes an updated car parking notation on the site plan to reflect how people staying in the motel units currently utilise the common parking spaces along the northern boundary of the land. Approval of the plan will formalise this arrangement. Based on a car parking assessment undertaken in accordance with the relevant requirements of Clause 52.06 officers are satisfied that approval of the plan will result in an acceptable planning outcome.

Office Response to Grounds of Objection

Grounds of Objection	Response by Assessing Officer
The applicant has no legal authority to make the application.	As outlined in this report officers are satisfied that the application has been made by a legal entity being Owners Corporation 1 Plan No. 546882Q. The legalities of any dispute about the operations of the Owners Corporation are outside the scope of the assessment for this application.
Potential traffic safety issues as a result of the revised parking layout/no planning or traffic report provided.	The planning scheme does not require the submission of a traffic report as part of the amended planning permit application. No evidence has been submitted to show that the revised parking layout will cause any safety issues. Council's Engineers have reviewed the revised car parking layout submitted as part of the amended planning permit application for P2005/124 and are satisfied that it will achieve a safe outcome. Parking along the northern boundary of the land has operated in a similar fashion for a

	number of years without major incident. No physical buildings and works are proposed. Only some re-line marking for the proposed parking layout.
The applicant has not provided an existing conditions plan	The existing conditions are visible upon visiting the site as detailed in the photographs forming part of this report. Details of the current lot boundaries and common property arrangements have been provided as part of the application.
The proposal is contrary to the purpose of the development in its current built form.	No evidence has been provided by objectors to substantiate this claim. The proposal will result in the formalisation of current parking arrangements.
The proposal would adversely affect the amenity and reasonable expectations of the residents of the development.	No evidence has been provided by objectors to substantiate this claim. Each apartment building will still retain a dedicated car parking space and the apartments and motel units will have use of the car parking spaces in the common property along the northern boundary of the land.
The proposal will prejudice the orderly and proper planning of the area.	No evidence has been provided by objectors to substantiate this claim. Each apartment building will still retain a dedicated car parking space and the apartments and motel units will have use of the car parking spaces in the common property along the northern boundary of the land. The amended car parking layout has been designed to improve the safety and operation of the car parking spaces along the northern boundary of the land.
The proposal will provide no community benefit	The proposed revised car parking layout is on private land and is unlikely to have any measurable impact on the community.
The use of common property, or the grant of a permit in respect of the common property in the terms of the application, will mean that that part of the common property will be used in such a manner as to unreasonably	No evidence has been provided by objectors to substantiate this claim. The proposal will not alter the use of the land for car parking purposes. Officers have undertaken a car parking assessment and

interfere with or prevent its use by other members or occupants of lots, or their families or visitors.	are satisfied that there is an adequate provision of on-site car parking.
This sole use and occupation of only one of the tenants in common of the common property would be in violation of the rules and regulations provided for in the Owners Corporation Act in that it "would unreasonably exclude the remaining co-owners of the relevant common property from enjoyment of it.	The requirements of the Owners Corporation Act are outside of the scope of the assessment of this application.
Concerns about the size and location of the eastern most car park along the northern boundary given its proximity to a power substation.	The car parking layout plan has been amended to provide a larger car parking space for the eastern most car parking space that provides for adequate clearance from the power substation located on the land.

Officers Concluding Comments

The objections raise a number of relevant considerations in regard to the provision of car parking on site, as identified in the table above a number of these can be addressed by implementation of the amended car parking layout. While the history of planning permits P2005/124 and P2016-109 are complex, the scope of the assessment of the amended planning permit applications is limited and relatively straightforward, being will the revised parking layout provide for an adequate parking outcome. A parking assessment undertaken by officers has determined that the provision of 6 parking spaces along the northern boundary will provide for an acceptable planning outcome and approval of the applications and amended parking layout is recommended.

Matters of dispute between members of the owner's corporation are beyond the scope of the relevant assessment considerations of the amended planning permit application. Officers need only be satisfied that the application have been made by a legal entity. As outlined in the Background/History section of this report officers are satisfied that the owners corporation exists and is therefore capable of making the amended planning permit applications.

The decision guidelines of Clause 65

As part of the car parking assessment undertaken in this planning report, officers have determined that the proposed updated parking layout will not impact on the amenity of the area and will provide for a more orderly and functional car parking layout on site.

As the land is already developed and no physical buildings and works are proposed, the proposal will not result in the removal of any native vegetation or impact on any abutting public land.

Other relevant adopted State policies/strategies – (e.g. Melbourne 2030.)

There are no relevant adopted State policies.

Relevant incorporated, reference or adopted documents

There are no relevant incorporated, reference or adopted documents.

Relevant Planning Scheme amendments

There are no relevant planning scheme amendments.

Risk Management

The author of this report considers that there are no significant Risk Management factors relating to the report and recommendation.

Strategic Links – policy implications and relevance to Council Plan

The author of this report considers that the report is consistent with Council Policies, key strategic documents and the Council Plan. **The decision guidelines of Clause 65**

Other relevant adopted State policies/strategies – (e.g. Melbourne 2030.)

There are no relevant adopted State policies.

Relevant incorporated, reference or adopted documents

There are no relevant incorporated, reference or adopted documents.

Relevant Planning Scheme amendments

There are no relevant planning scheme amendments.

Risk Management

The author of this report considers that there are no significant Risk Management factors relating to the report and recommendation.

Strategic Links – policy implications and relevance to Council Plan

The author of this report considers that the report is consistent with Council Policies, key strategic documents and the Council Plan.

Summary

Officer Response:

Planning Permit P2016-109 has a complex history that needs to be understood to assist with the assessment of the current amended planning permit application.

The scope of the assessment of the amended planning permit application is limited to assessing the suitability of the revised parking notation on the submitted amended plan.

While it is important to understand that onsite parking arrangements is also a matter of dispute between various members of the exiting owner's corporation, the resolution of these disputes is outside the scope of the assessment required as part of this application.

Officers are satisfied that the current amended planning permit application has been made by a legal entity, being the existing owners corporation for the common property located on site.

Officers have an obligation to assess the application on its merits and ensure the officer recommendation would result in an acceptable planning outcome.

Officers have undertaken a parking assessment and are satisfied that the amended plan and notation will provide for an acceptable planning outcome. Changes proposed to the car parking layout under the amended planning permit application for P2005/124 can suitably address a number of the objectors concerns.

Conclusion

After due assessment of all the relevant factors, it is considered appropriate to grant an amended planning permit approving a revised car parking layout, with no changes to conditions.

Decision:

Delegate Report	Yes	Committee Report	<input type="checkbox"/>
Determination:	Delegate Amended Permit	Determination Date:	

Endorsed Plans:

Date:	Plan Numbers:

Declaration:

In making this decision as a delegated Officer, I declare that I have had regard to the decision-making requirements of the Strathbogie Shire Council's Governance Rules 2020 outlined by Rule 6 and have:

- Made a fair, balanced, ethical and impartial decision - Sub Rule 6(c)(i) ☒
- Made a decision based on merits, free from favouritism or self-interest and without regard to irrelevant or unauthorised considerations- Sub Rule 6 (c)(ii) ☒
- Applied the principles of natural justice to my decision, ensuring any person whose rights will be directly affected by the decision has been entitled to communicate their views and have their interests considered - Sub Rule 6(d) N/A
- Identified the person or persons whose rights will be directly affected Sub Rule 6(e)(i) ☒
- Given notice of the decision Council must make under Sub Rule G(e)(i) N/A
- Ensured that such person(s) have had an opportunity to communicate their views and have their interests considered before I made the decision - Sub Rule 6(e)(i) N/A
- Included information about how I've met these Sub Rules in my delegate report-

Attachments

Plans for endorsement

Assessing
Officer:

Reviewing Officer:

Signature:

Signature:

Date:

Date:

Copy of permit to:

Nil

Date sent:..... Initials:.....