



*Planning and Environment Act 1987*

## **Panel Report**

Wellington Planning Scheme

Amendment C79

Permit Application P512/2011

'Dan Murphy's 114-122 Cunninghame Street,  
Sale'

**21 May 2013**

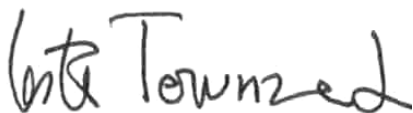
Planning and Environment Act 1987

Panel Report pursuant to Sections 153 and 155 of the Act

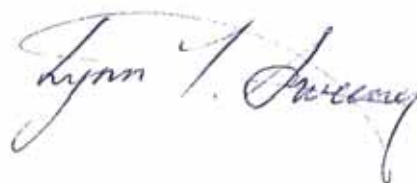
Amendment C79 to the Wellington Planning Scheme

Permit Application P512/2011

'114-122 Cunninghame Street, Sale'

A handwritten signature in black ink that reads "Lester Townsend". The signature is written in a cursive style with a large, prominent 'L'.

Lester Townsend, Chair

A handwritten signature in black ink that reads "Lynn Sweeney". The signature is written in a cursive style with a large, prominent 'L'.

Lynn Sweeney, Member



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## List of Abbreviations

DDO	Design and Development Overlay
MUZ	Mixed Use Zone
R1Z	Residential 1 Zone



## Amendment Summary

<b>The Amendment</b>	Amendment C79 to the Wellington Planning Scheme and Planning Permit Application P512/2011
<b>Purpose of Amendment</b>	To rezone 120-122 Cunninghame Street, Sale from Residential 1 to Mixed Use Zone. Concurrent planning permit application to redevelop the land at 114-122 Cunninghame Street, Sale for a Dan Murphy's Liquor Store.
<b>The Proponent</b>	R and C Property Investments
<b>Planning Authority</b>	Wellington Shire Council
<b>Exhibition</b>	26 July 2012 to 30 August 2012
<b>The Panel</b>	Lester Townsend, Chair Lynn Sweeney, Member
<b>Directions hearing</b>	4 March 2013
<b>Panel hearings</b>	3 April 2013 Gippsland Regional Sports Complex
<b>Site inspections</b>	4 March 2013
<b>Date of this report</b>	21 May 2013

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## Executive Summary

The Panel considered the issues associated with the rezoning of 120-122 Cunninghame Street, Sale to Mixed Use from Residential 1 and the concurrent Planning Application P512/2011 for the development and use of 114-122 Cunninghame Street Sale for a Dan Murphy's Liquor Store.

Based on the reasons set out in this Report, the Panel finds:

- The rezoning of 120-122 Cunninghame Street, Sale from Residential 1 Zone to Mixed Use Zone is appropriate.
- The planning permit application for a bottleshop at 114-118 Cunninghame Street satisfies the requirements of Clause 52.27-Licensed Premises.
- That competition is not, of itself, a relevant consideration in the planning application for a bottleshop at 114-122 Cunninghame Street, Sale.
- The proposal has acceptable traffic impacts.
- The proposal has acceptable loading arrangements.
- The proposal is appropriate in terms of built form impacts and site layout.
- The proposal is appropriate in terms of advertising signs.

### Recommendation

The Panel recommends:

- 1 Amendment C79 to the Wellington Planning Scheme be adopted as exhibited.**
- 2 Planning Permit P512/2011 is issued subject to:**
  - 2.1 The permit conditions being amended as presented at the Panel Hearing and reproduced in Appendix A.**
  - 2.1 Condition 31 being amended to read:**

**The two (2) car parking spaces located on York Street, adjacent to the subject site, must be removed to improve sight lines, unless the consent of VicRoads is given.**

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# 1 Background

## 1.1 The Amendment

Amendment C79 to the Wellington Planning Scheme, as exhibited, proposes to rezone 120-122 Cunninghame Street, Sale from Residential 1 to Mixed Use Zone.

A concurrent planning application 512/2011 incorporates the use and development of 114-122 Cunninghame Street, Sale as a Dan Murphy's bottleshop.

The planning authority is Wellington Shire Council and the proponent is R and C Property Investments.

## 1.2 The Panel

This Panel was appointed under delegation on the 13 February, 2013 pursuant to Sections 153 and 155 of the *Planning and Environment Act* 1987 to hear and consider submissions in respect of the Amendment.

The Panel consisted of:

- Lester Townsend (Chair), and
- Lynn Sweeney (Member).

### (i) Hearings and inspections

A Directions Hearing was held on 4 March 2013 at Wellington Shire Offices. The Panel Hearings were held on 3 April 2013 at Gippsland Regional Sports Complex.

The Panel inspected the site and surrounding areas, making unaccompanied visits to the site and surrounding areas.

### (ii) Exhibition

The Amendment was exhibited between 26 July 2012 and 30 August 2012. Notices were placed in the Wellington Times-Spectator, Yarram Standard and Government Gazette. Letters were sent to all adjoining landholders (including Ambulance Victoria and the Salvation Army) as well as VicRoads, VCLGR, EPA, Sale Police, Gippsland Water and SP Ausnet.

### (iii) Submissions

A total of 11 submissions were received. The Panel have considered all written and oral submissions and all material presented to it in connection with this matter.

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The Panel heard the parties listed in Table 1.

Submitter	Represented by
Wellington Shire Council	Ms Robyn Olsen, Strategic Planning
R and C Property Investments	Mr Jeremy Gobbo who called the following expert witnesses: <ul style="list-style-type: none"><li>- Mr Andrew Clarke, Town Planning, Matrix Planning Australia Pty Ltd;</li><li>- Mr Valentine Gnanakone, Traffic Engineering, Card no;</li><li>- Mr Glenn Weston, Social Impact Assessment, Public Place Pty; and</li><li>- Mr Erik Hopkinson, Packaged Liquor Best Practice, Hopkinson and Associates.</li></ul>
Mr Paul Feltis and Mr Jim Ryan	

**Table 1** Parties to the Panel Hearing

A list of all submitters is shown in Table 2.

No.	Submitter
1	Department of Sustainability and Environment
2	Environment Protection Authority
3	A. Gerrand
4	J. McKinlay
5	K. Jones
6	M. Drew
7	E Donevski
8	The Salvation Army
9	Wellington Liquor Accord
10	Victorian Commission for Gambling and Liquor Regulation
11	VicRoads

**Table 2** List of Submitters



## 2 Background

### 2.1 What is Proposed?

The entire site is 114-122 Cunninghame Street, Sale. The rezoning relates to the eastern portion – 120-122 Cunninghame Street, Sale.

120-122 Cunninghame Street Sale is currently occupied by a dwelling and is zoned Residential 1 Zone. 114-118 Cunninghame Street, Sale is currently zoned Mixed Use and has operated as Beaurepairs Tyres.

Amendment C79 and the associated Planning Application P512/2012 are required in order to redevelop the entire site as a Dan Murphy's Liquor outlet.

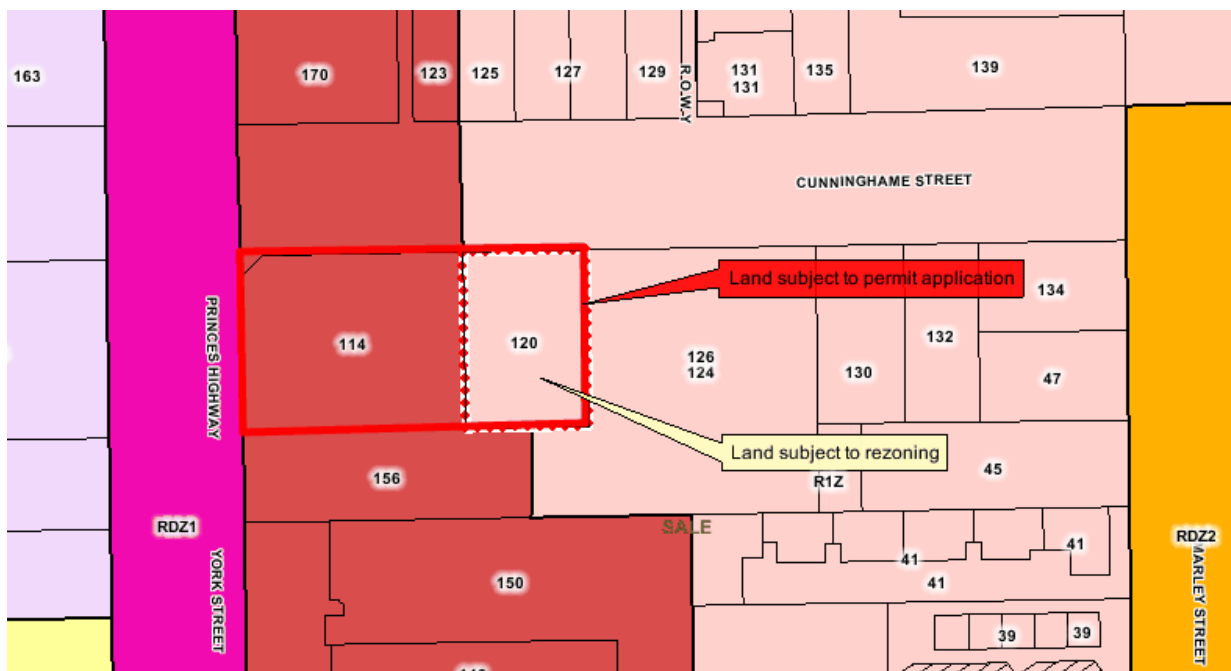


Figure 1: Subject site and application details

### 2.2 Planning scheme provisions

#### (i) Zones

The Mixed Use Zone applies to 114-118 Cunninghame Street with purposes including:

- Implementing the State and Local Planning Policy Frameworks;
- Providing for a range of residential, commercial and industrial uses to complement the mixed-use function of the locality, and
- Encouraging residential development that respects the neighbourhood character.

The Residential 1 Zone (R1Z) applies to 120-122 Cunninghame Street. The Section 1 or 'as of right uses' of both the Mixed Use and Residential 1 Zones are identical. The Mixed Use Zone allows a wider range of discretionary uses under 'Section 2' which require a permit including a bottleshop.

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## **(ii) Overlays**

Design and Development Overlay 2 applies to the western part of the site, Design and Development Overlay 6 applies to the whole site.

The Environment Audit Overlay (EAO) applies to the Mixed Use part of the site, but not the land to be rezoned. There is no obvious history of commercial use on the land to be rezoned and no reason to suppose that the Environment Audit Overlay ought to be extended. The proposal is not considered a sensitive use and therefore not applicable to this development.

## **(iii) Particular provisions**

A number of provisions are relevant to the permit:

- Clause 52.05: Advertising Signs-with the objective of ensuring that signs in high amenity areas are orderly, of good design and do not detract from the appearance of the building.
- Clause 56.06: Car Parking- with the objective of ensuring an adequate provision of car parking spaces. Clause 56.06 requires that four car spaces per 100sqm of leasable floor area are provided.
- Clause 52.07: Loading and Unloading of Vehicles-with the objective of ensuring that adequate provisions are made for loading and unloading to prevent loss of amenity and adverse effect on traffic flow and road safety.
- Clause 52.27: Licensed Premises- with the objectives of ensuring that licensed premises are situated in appropriate locations and that the amenity of the surrounding area is considered. In this case Practice Note 61 *Licensed Premises: Assessing Cumulative Impact* (March 2011), is relevant as the bottleshop would be located within an existing cluster.
- Clause 52.29: Land Adjacent to a Road Zone and
- Clause 52.34: Bicycle Facilities.

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## 3 Identification of Issues

The Panel has considered all written submissions, as well as submissions presented to it during the Hearing. In addressing the issues raised in those submissions, the Panel has been assisted by the information provided to it as well as its observations from inspections of the site and surrounds.

### 3.1 Issues raised in submissions

Submissions raised issues related to:

- Encroachment on residential area;
- Saturation of liquor outlets and perception of Sale;
- Traffic concerns;
- Amenity (noise/litter etc) and social impact;
- Hours of operation; and
- Economic impacts.

### 3.2 Issues considered in this report

This Report deals with the issues under the following headings:

- Should the land be rezoned?
- Is use of the site for a bottleshop appropriate?
- Detailed permit issues
  - Traffic.
  - Car Parking.
  - Loading arrangements.
  - Design and Built Form issues.
  - Advertising Signs.
  - Permit conditions.

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## 4 Should the land be rezoned?

### 4.1 What is the issue?

A number of submissions objected to the encroachment of commercial uses into a residential area by rezoning of 120-122 Cunninghame Street from Residential 1 to Mixed Use Zone.

### 4.2 Policy context of the issue

#### (i) State Planning Policy Framework

With regard to the rezoning the relevant provisions of the State Planning Policy Framework are:

- Clauses 11.01 and 11.02 (Activity Centre Planning and Urban Growth) which aims to consolidate commercial land uses and intensify urban areas in highly accessible locations;
- Clause 15 (Built Environment and Heritage) which directs that planning should achieve high quality urban design and architecture that 'contributes positively to local urban character and sense of place';
- Clause 17 (Economic Development) which strives for a strong and innovative economy through consolidating development within existing or planned activity centres; and
- Clause 18.02-5 (Car Parking) which seeks an adequate supply of car parking that is appropriately designed and located.

#### (ii) Local Planning Policy Framework

Wellington Planning Scheme addresses key policies and controls relevant to the consideration of this proposal including:

- identifying that 'long term prosperity will rely on the diversification and strengthening of the Shire's economic base' (Key influences); and
- supporting the establishment of new businesses and expansion of existing operations in appropriate location (21.06 Economic Development).

Clause 21.04 'Settlement' implements the recommendations from the *Sale, Wurruk and Langford Structure Plan*, identifying the subject site as part of the 'CBD Extension' where commercial uses are promoted.

Objective 4 for Sale, Wurruk and Longford is:

*To maintain and enhance the primacy of the Sale CBD as a municipal and regional retail and commercial hub... with the attached strategy:*

- *Encourage intensive commercial development on York Street (between Macarthur and Macalister streets) in a manner that integrates well with the CBD and results in its extension onto York Street.*

The Wellington Shire MSS makes specific reference to the intentions for the future development and use of the site through the adoption of the *Sale, Wurruk and Longford*

Structure Plan which clearly identifies the site for the extension of the Sale CBD as outlined in Clause 21.04.

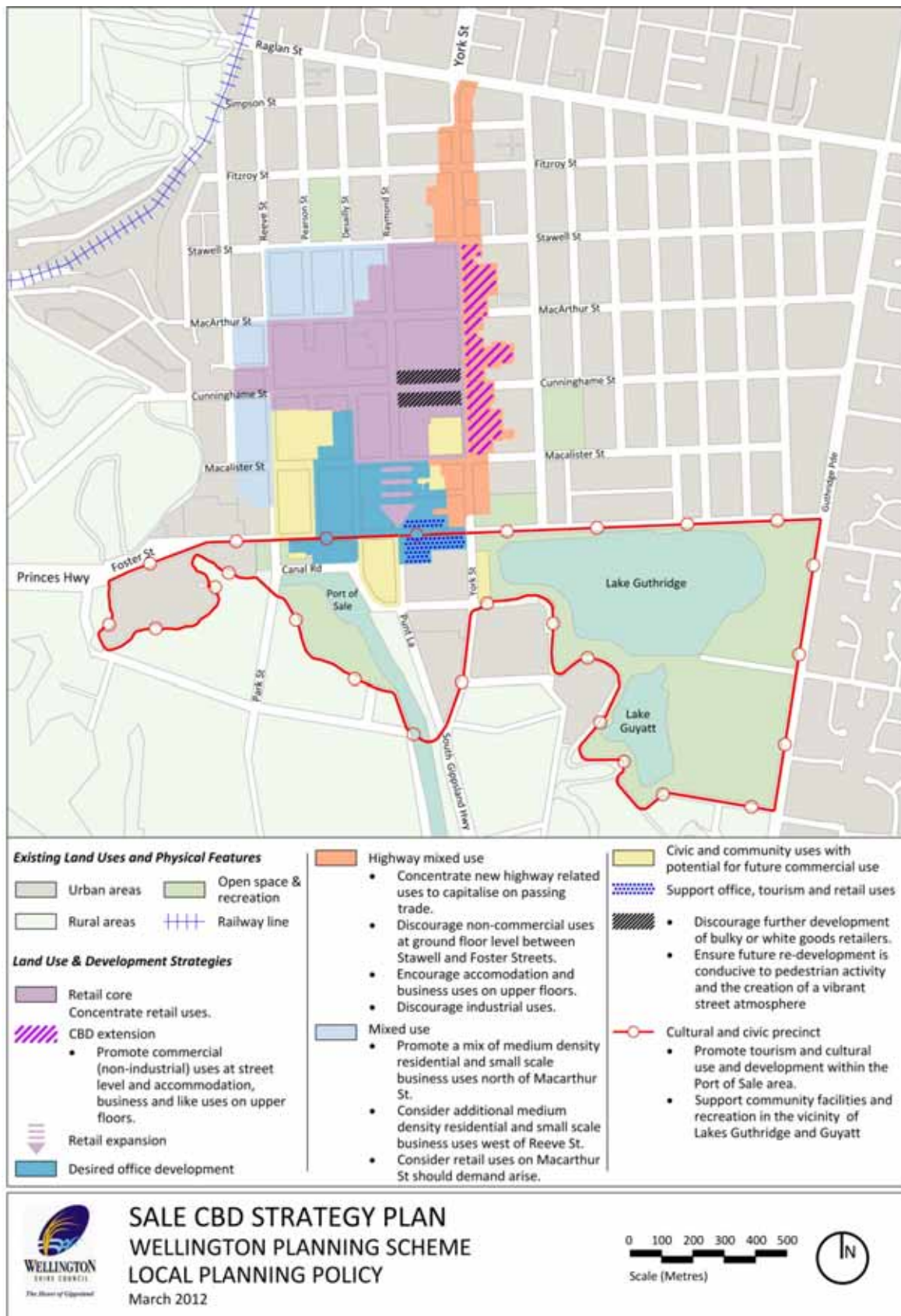


Figure 2: Sale CBD Strategy Plan from MSS Clause 21.04 Page 32

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The Sale CBD Strategy Plan Local Planning Policy identifies 120-122 Cunninghame Street within the CBD extension and Highway Mixed Use Area promoting:

*Commercial (non-industrial) uses at street level and accommodation, business and like uses on upper floors.*

The entire parcel of 114-122 Cunninghame Street is also part of the 'Highway Mixed Use' area, with the aims to:

- *Concentrate new highway related uses to capitalise on passing trade;*
- *Discourage non-commercial uses at ground floor level between Stawell and Foster Streets;*
- *Encourage accommodation and business uses on upper floors; and*
- *Discourage industrial uses.*

### **4.3 Evidence and submissions**

A number of submissions which objected to the rezoning on the basis of the further encroachment of commercial uses near the 'quiet residential households' of Cunninghame Street.

There was some discussion at the Panel Hearing as to the exact boundary lines of the CBD extension in relation to 120-122 Cunninghame Street. Mr Clarke commented that this type of diagram should be considered as a 'mudmap' of Council's intentions for the CBD rather than detailed guidance. Ms Olsen, from Council, concurred with the 'mudmap approach' but identified that the property was clearly and intentionally within the CBD extension area.

The Mixed Use Zone applies to 114-118 Cunninghame Street with purposes including:

- Implementing the State and Local Planning Policy Frameworks;
- Providing for a range of residential, commercial and industrial uses to complement the mixed-use function of the locality; and
- Encouraging residential development that respects the neighbourhood character.

Council and the proponent submitted that relevant policy strongly supports the rezoning of 120-122 to Mixed Use. The MSS, Structure Plan and supporting Precinct Plan all highlight the suitability of the site for highway commercial, mixed use tourism and retail development.

Ms Olsen submitted that the rezoning proposal is clearly encouraged by Council's comprehensive strategic planning for the future of the Sale CBD and specific landuse and development strategies for the site within the Wellington Shire MSS in Clause 21.04. The Structure Plan is supported by the more detailed analysis of the Sale Precinct Plan 2010.

Mr Clarke agreed that:

*... the proposal is ... consistent with the clearly articulated planning outcomes in the MSS and its supporting reference document for the Sale CBD generally and specifically for this section of the east side of York Street.*

Mr Clarke provided further evidence of Council's clear encouragement for the rezoning and commercial use of the site through reference to the changes made to the *Sale CBD Structure Plan* between its adoption in September 2010 and introduction to the MSS in November 2012. The Structure Plan initially contained an additional notation that the site and

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surrounding areas were a ‘*potential opportunity site for development of consolidated emergency services precinct*’. This notation was not included in the MSS which clearly delineates both 114-118 and 120-122 Cunninghame Street as within the Highway mixed use and CBD extension areas.

The Structure Plan and the Sale Precinct Plan provide detailed analysis and justification for the expansion of the Sale CBD including a strategy for commercial development:

*To encourage retail expansion southward and eastward, across York Street as a means of capturing passing trade and enhancing the quality of the built environment in this areas, as well as the experience provided to users<sup>1</sup>.*

The plans also set out principles to:

- *Maintain the primacy of the Sale CBD in the broader retail hierarchy ensuring that new higher order retail uses including a new discount department store (DDS) are accommodated within the existing CBD rather than on the periphery or outside the CBD; and*
- *Maintain and broaden the mixture of uses in the CBD to include retail, commercial, office, housing, civic and education thereby increasing its drawing power, broadening its appeal and facilitating efficient transport; and*
- *Encourage retail, commercial, tourism and civic uses to locate on the Princes Highway to create a more attractive image to passing traffic<sup>2</sup>.*

#### **4.4 Discussion**

The Panel is convinced that the planning policy context not only supports but invites this type of development in this strategic location.

The Panel acknowledges the comprehensive planning and economic development basis of Council’s decision to include 120-122 Cunninghame Street in its Sale CBD extension and agrees with the premiss that the extension is both logical and justifiable.

The unusual block configuration along York and Cunninghame Streets has resulted in 120-122 Cunninghame Street being bounded by non-residential uses on all three sides. While the loss of a dwelling, and further encroachment into Cunninghame Street is a disappointment for some local residents, the loss of residential consolidation must be balanced against the desirable outcome of commercial urban consolidation for Sale as a whole. The rezoning to Mixed Use is acceptable in the neighbourhood context given the range of commercial, emergency service, community and residential uses located within the block between York and Marley Streets.

#### **4.5 Conclusions and recommendations**

The Panel finds that:

**The rezoning of 120-122 Cunninghame Street, Sale from Residential 1 Zone to Mixed Use Zone is appropriate.**

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<sup>1</sup> Sale Wurruk and Longford Structure Plan 2010 (p18).

<sup>2</sup> Sale CBD Precinct Plan 2010 (p12).

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## 5 Is use of the site for a bottleshop appropriate?

The Panel has concluded that a rezoning is appropriate and hence some form of commercial use. The second matter for the Panel to consider is whether a Planning Permit should be issued for the use a bottleshop on the entire site.

### 5.1 What are the issues?

The planning controls provide a framework for the consideration of the issues including those raised in submissions.

A permit is required for the use under the provisions of the Mixed Use Zone and for a liquor licence under clause 52.07 'Licensed Premises'. The purpose of Clause 52.07 is to ensure that licensed premises are situated in appropriate locations and to ensure the impact on the amenity of the surrounding area is considered.

Concerns were also raised about the impact of the proposal on existing businesses.

### 5.2 Clause 52.07 considerations

#### (i) Evidence and submissions

A bottleshop in this location is identified as part of a 'Cluster' as defined in Planning Practice Note 61: *Licensed Premises: Assessing Cumulative Impact*. Being identified as part of a cluster does not, in itself, mean a Licensed Premises is not appropriate for a location. It does, however, broaden the scope of the assessment to include the cumulative impact of the cluster of premises in a particular location. The Cumulative Impact refers to both the positive and negative impacts that can result from clustering particular types of uses.

Mr Feltis and Mr Ryan submitted that a cluster of Licensed Premises exists to such an extent that the market, and community, have reached a saturation point. Their analysis relates mostly to the number of outlets and competition issues that are addressed later in this chapter.

Mr Feltis and Mr Ryan provided a compelling description of the success of the *Wellington Liquor Accord* in managing the potential impacts of alcohol fuelled violence and anti-social behaviour on the Sale community.

Mr Feltis and Mr Ryan asserted that:

*They (packaged liquor outlets) accept no responsibility for the antisocial behaviour of their customers, because they are closed when the problem occurs.*

They also submitted that Woolworths is not a member of the *Wellington Liquor Accord* despite operating a number of Licensed Premises.

Mr Hopkinson provided information on 'best practice' models of packaged liquor sales and his understanding that Dan Murphy's operated under this model. He was not aware of the detail of the Wellington Liquor Accord or whether Woolworths businesses were currently part of the Accord but submitted that Dan Murphy's should sign up to be part of the Accord.



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Woolworths has subsequently provided a letter stating that it would be happy to become a member of the Accord.

Individual submitters asserted that an increased number of bottleshops would increase the negative impacts of alcohol on the community by the way of drink driving, littering and contributing to an image of Sale as a 'grog stop'.

Although they were notified of the proposal neither the Police or the Victorian Commission for Gambling and Liquor Regulation (VCGLR) provided a submission to Amendment C79.

Mr Weston provided a very thoughtful and comprehensive analysis of the current impact of Licensed Premises and the additional impact of a further bottleshop within the precinct on the local area and Sale community.

From his research, Mr Weston advised that:

- Alcohol amenity impacts are concentrated between 6pm and 3am in particular between 9pm and 3am;
- Packaged liquor is not typically consumed in the immediate vicinity of the point of sale or necessarily immediately following purchase. As a result, packaged liquor outlets do not influence the location or timing of alcohol consumption and do not generate spatially concentrated amenity impacts- with the exception of when the outlet is located within an entertainment precinct and when alcohol is inadvertently sold to minors; and
- Packaged liquor outlets contribute to the overall level of consumption and harm in the community by making alcohol available for purchase and consumption. As the number of outlets increase, convenience and price competition may also increase. However, any resulting impacts will not be spatially concentrated in the area surrounding the outlet.

Mr Weston considered the issues related to an additional packaged liquor outlet in the cluster carefully including taking account of the surrounding sensitive uses, the Sale Primary School and the Salvation Army as well as the proximity to residential properties. He noted that the proposed hours of operation are more restricted than a number of existing packaged liquor outlets:

Mr Weston concluded that:

- *there are already packaged liquor outlets located in close proximity to all existing late night venues in the Sale CBD that are open until 11pm; and*
- *the proposed Dan Murphy's outlet has only limited potential to contribute to a cumulative impact which is effectively mitigated by the proposed operating hours.*

## **(ii) Discussion**

The impact of misuse of alcohol is a significant issue for Australian society and Sale is no exception. Mr Weston's thorough examination of the current issues, explanation of the issues related to 'pre-loading' were of great assistance to the Panel in both understanding the current situation and considering the additional risk of an additional bottleshop in this location.

While the Panel sympathises with the submitters who are genuinely concerned with the impact of alcohol on their community we are satisfied that the proposed Dan Murphy's

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Bottleshop in this location will not present an unacceptable risk or further impact on the amenity of the surrounding area.

The members of the Wellington Liquor Accord are to be congratulated at the way they have co-operatively sought to address the negative impacts of improper alcohol use on the community. The Panel are disappointed to note the apparent disconnect between Mr Hopkinson's observation of the positive benefits that involvement in Accord's can bring and the advice that Woolworths is not currently a member of the Wellington Liquor Accord.

### **5.3 Competition Issues**

#### **(i) What is the Issue?**

That the introduction of a large discount Bottleshop will eventually reduce the range of liquor and entertainment establishments in Sale.

#### **(ii) Evidence and submissions**

Mr Feltis and Mr Ryan submitted that the introduction of a large 'Dan Murphy' discount liquor retailer with the ability to engage in price undercutting would mean that a lot of trade would move to Dan Murphy's:

*This is because of their 'image' relating to discount liquor, and their heavy advertising*

Further they submitted that this would eventually mean that existing businesses would suffer and may close. Concern was also raised about the retail profits leaving Sale and support for local clubs being decreased.

Mr Gobbo submitted that competition is only relevant in a planning sense where 'need' is the real issue rather than just economic competition. In Sale's case, should any one business close due to competition from a new retailer, there would still be access to a wide range of liquor and entertainment venues.

Mr Feltis and Mr Ryan submitted that the current supply of 8 licensed premises within 500metres of the proposed site warrants a freeze on further packaged liquor outlets as the local area has reached a saturation point. Mr Feltis and Mr Ryan also submitted that the introduction of Dan Murphy's would result in the profits of this business leaving the Sale community.

Mr Gobbo submitted that one of the potential benefits for the community from the introduction of Dan Murphy's was the wider range of liquor, especially wines that would be available due to the increased floorspace allocated to wine display.

#### **(iii) Discussion**

In all likelihood there will be a redistribution of trade between the existing and new liquor outlets if the proposal proceeds. There may be benefits for the community in the form of a wider range of choice of liquor available. There is likely to be some decline in revenue for existing businesses and this may even result in a long-term trader losing a substantial part of their business, but neither of these issues is relevant to the planning decision before the Panel. The broader community of Sale will still have access to liquor stores.

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The issue of taking retail profits 'out of Sale' is also of questionable relevance. While the end profit of the business may be part of a national chain the outlet would provide local jobs and thus contribute to the local economy.

The number of the liquor sales outlets in Sale, and particularly in this location, is the result of the market identifying that the highway frontage is likely to capture passing trade for this type of business and not, of itself, a reason to stifle new competition.

#### **5.4 Conclusions and recommendations**

The Panel finds that:

**The planning permit application for a bottleshop at 114-118 Cunninghame Street satisfies the requirements of Clause 52.27-Licensed Premises.**

**That competition is not, of itself, a relevant consideration in the planning application for a bottleshop at 114-122 Cunninghame Street, Sale.**

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## 6 Detailed permit issues

This Chapter examines the detailed traffic and development issues associated with the proposal.

### 6.1 Traffic

#### (i) What is the Issue?

Concerns were raised about the increase in traffic associated with the proposal.

#### (ii) Evidence and submissions

Mr Gnanakone provided a comprehensive traffic analysis of the impact of the introduction of a Dan Murphy's on the subject site. Modelling was used to predict the impact on the intersection and Cunninghame Street with the conclusion that the change in traffic conditions will be negligible and result in a maximum increase in traffic queuing in these streets of 10 seconds (or 2 cars).

The results show that the intersection will operate under 'excellent conditions, with negligible increases in average delays and queue lengths as a result of the development from base conditions'.

Mr Feltis and Mr Ryan submitted that peak demand periods at the fast food outlets at the York and Cunninghame Street intersection cause queuing near the intersection. They further asserted that additional traffic from a Dan Murphy's would add to the hazardous conditions at the intersection.

Mr Gnanakone's view was that the peak period for Dan Murphy's did not coincide with the peak for the York and Cunninghame Street intersection (3.15 – 4.15pm). He also considered that it is not appropriate to use a holiday peak as a basis for traffic modelling as it would result in an overprovision of infrastructure.

Written submissions also commented on the potential for traffic congestion in Cunninghame Street and the potential to reduce ambulance efficiency. Ambulance Victoria was notified of the Amendment C79 and did not make a submission.

#### (iii) Discussion

The Panel is accepts the evidence that the introduction of proposed Dan Murphy Bottleshop would not have a significant impact on the performance of the York and Cunninghame Street intersection.

An improved intersection configuration proposed by the Council was presented as part of Mr Gnanakone's evidence and, should the Council consider the works are warranted at some future stage for the improved road safety, this could be constructed but it would not be required for this proposal.

Ambulance Victoria did not make a submission. Detailed traffic modelling presented by Mr Gnanakone shows that the additional traffic would make only negligible, if any, impact on the York Street intersection would not affect the operations of the Ambulance Station.

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Council presented correspondence from VicRoads requesting that two spaces on York Street should be deleted to improve sight lines. Mr Gnanakone gave evidence that the 2 car parking spaces on York Street could be relocated further south to achieve the improved sight lines requested by VicRoads.

The Panel notes the amendment and agrees that they are appropriate conditions for the development with the addition of an addition to condition 31, providing the opportunity for further discussions with VicRoads regarding the 2 on street parking spaces.

#### **(iv) Conclusions and recommendations**

The Panel finds that:

**The proposal has acceptable traffic impacts.**

The Panel recommends that:

**Permit P512/2011 issue with the following amendment to condition 31:**

**31. The two (2) car parking spaces located on York Street, adjacent to the subject site, must be removed to improve sight lines, *unless the consent of VicRoads is given.***

## **6.2 Car Parking**

Mr Gnanakone presented a detailed analysis of the car parking requirements for the development including an analysis of three existing Dan Murphy's stores. His evidence was that parking demand would be 40 spaces.

The local car parking policy at Clause 22.04 states:

*The General Provisions of the scheme relating to car parking at Clause 52.06 set out a number of car space rates for particular uses. Many of the specified rates are significantly higher than has historically been applied in the Wellington Shire, where there is an adequate provision of car spaces.*

The policy requires 3 car spaces per 100 sqm of leasable floor area, giving a requirement of 40 spaces.

Council submitted that the proposed 47 on site spaces would be adequate. An additional five on street spaces are proposed as part of the revised access arrangements.

The Panel is satisfied that the 47 on site parking spaces proposed for the development complies and that Council will be guided by VicRoads on whether the additional on street spaces on York Street are appropriate.

The Panel finds that:

**The proposal has acceptable parking arrangements.**

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### 6.3 Loading arrangements

Ms Olsen submitted that Council was satisfied with the loading arrangements for the proposal and has included permit conditions to enforce satisfactory performance.

While there have been no specific objections to the loading bay arrangements of the development the Panel questioned the desirability of an open and unscreened loading bay facing Cunninghame Street.

Responding to questions from the Panel, Mr Gnanakone submitted that the lack of screening and location of the loading bays was necessary to achieve all turning movements of delivery vehicles within the site to improve on street safety. The Panel accepts that there is little that can be done to screen the loading bay and that the current proposal, while not ideal, is acceptable.

The Panel finds that:

**The proposal has acceptable loading arrangements.**

### 6.4 Design and Built Form issues

The development is conventional in its layout and design. Mr Clarke's description included:

*The planning permit application seeks to alter and extend the existing building on the subject site and its use as a Dan Murphy's packaged liquor retail outlet (bottle shop).*

*The extended building will have a floor area of 1,316 m<sup>2</sup>. The principal entry will be from the Cunninghame Street frontage where a new glazed shopfront will be provided. A glazed shopfront is also proposed in the western elevation. The building will comprise a checkout area, display area, administration office, cool room, staff amenities, plant room and a loading/storage area.*

*Peripheral landscaping will be provided along all site boundaries not occupied by buildings or vehicle crossovers.*

*Pedestrian walkways will be provided in the vicinity of the entry from both Cunninghame Street and York Street.*

*Proposed building finishes include new precast panels with a paint finish, painted express jointed fibro cement sheet panels, composite aluminium sheet cladding, aluminium louvre screens, glazing and a zincalume finish roof deck.*

The subject site is removed from existing dwellings, their secluded private open spaces and habitable room windows by other non-residential land uses. We agree with Mr Clarke that there is no potential for adverse built form amenity impacts such as excessive building bulk adjacent to secluded open spaces or habitable room windows, overshadowing, overlooking, loss of daylight and the like.

Design and Development Overlay 6 – RAAF Building Height Above 15 metres - applies to the site but is not relevant to this proposal as the proposed development is not above 15 metres.

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Design and Development Overlay 2 (DDO 2) – Business/Industry Display Area applies to the western portion of the site. Design and Development Overlay aims to ensure that land is developed in an orderly manner having regard to vehicle, movement, carparking and the appearance of buildings and works.

Council submitted that the relevance of the controls is limited given the adoption of the *Sale CBD Precinct Plan*. Council advised the Panel that their intention is to revise or replace Design and Development Overlay 2 to guide new development to better reflect the intentions of the Sale CBD Precinct Plan and the boundary anomaly. However, until the controls are replaced they need to be considered.

Mr Clarke presented an assessment of the proposal under Design and Development Overlay 2 and showed that the proposal complies with all of the relevant criteria. He concluded:

*I am therefore satisfied that the proposal either complies with the relevant criteria and techniques of DDO2 or that they are not relevant.*

The Panel concurs with this conclusion.

The Panel finds:

**The proposal is appropriate in terms of built form impacts and site layout.**

## **6.5 Advertising Signs**

Mr Feltis submitted that the signage proposed for the site was excessive and not appropriate opposite fast food outlets that are attractive to children.

Council submitted that the advertising signs proposed for the development meet the provisions of Clause 52.05 and would be appropriate considering the location of the site within the Sale CBD and major road frontage. Planning permit conditions have been included to adequately control these matters.

The Panel agrees with Council's assessment.

The Panel finds:

**The proposal is appropriate in terms of advertising signs.**

## **6.6 Permit conditions**

Ms Olsen for Council presented a revised planning permit with amended conditions for the Panel's consideration. These were accepted by the proponent, and are presented in Appendix A

The Panel recommends:

**The permit conditions be amended as presented at the Panel Hearing and reproduced in Appendix A.**

# **Appendix A Amended Planning Permit P512/2011 as presented at Hearing**



# WELLINGTON SHIRE COUNCIL

Planning and Environment Regulations 2005 Form 9

## PROPOSED PLANNING PERMIT

TO BE GRANTED UNDER  
DIVISION 5 OF PART 4 OF THE  
PLANNING AND ENVIRONMENT  
ACT 1987

**Permit No.:** P512/2011

**Planning Scheme:** Wellington Planning Scheme

**Responsible Authority:** Wellington Shire Council

**ADDRESS OF THE LAND:**

114-122 Cunninghame Street, Sale

**THE PERMIT ALLOWS:**

Use and development of the land for the purpose of a bottle shop and associated signage and a reduction in required car parking spaces.

THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:

### *General*

1. Prior to the commencement of buildings and works, revised plans must be submitted and approved to the satisfaction of the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the advertised plans submitted with the application but modified to provide:
  - a. The removal of two car parking spaces on York Street, adjacent to the subject site.
  - b. Detailed design for the proposed extension of the carpark area including modifications to the existing drainage.
  - c. Detailed design of proposed works adjacent to the adjoining Ambulance Station.
  - d. Detailed landscaping plan. As a minimum requirement the landscape plan should incorporate location/removal of existing vegetation, location and number of proposed vegetation (species), reticulation system and details of planting theme.
2. The development shown on the endorsed plans must not be altered without the written consent of the responsible authority.
3. Prior to the occupancy permit being issued for the proposed development Lot 1, LP135709 and Lot 1, TP536161 must be consolidated to form a single title.

4. Unless otherwise agreed in writing by the Responsible Authority the proposed development must not be occupied until the development has been completed to the satisfaction of the Responsible Authority in accordance with the permit and endorsed plans (including, but not limited to built form and layout, parking, landscaping, drainage, street numbering).

### **Landscaping**

5. Before the use of the development starts or by such later date as is approved by the responsible authority in writing, the landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of the responsible authority.
6. The landscaping areas shown on the endorsed plan and schedule shall be maintained in a proper, tidy and healthy condition to the satisfaction of the Responsible Authority. Should any tree or shrub be removed or destroyed it may be required to be replaced by a tree or shrub of similar size and variety.

### **Advertising Signs**

7. The siting, nature and design of the signs must be in accordance with the endorsed plan and must not be altered or modified without amendment to this Permit.
8. The signs permitted must be static, and must not contain any flashing light or alteration of the message, to the satisfaction of the Responsible Authority.
9. The advertising signs and panels shall be constructed and maintained to the satisfaction of the Responsible Authority. Any sign in a state of disrepair shall, at the direction of the Responsible Authority, be removed from the site.

### **Hours of Operation**

10. The hours of operation for the sale of packaged liquor to be consumed offsite are restricted to between 9am to 8pm Monday to Wednesday, 9am to 9pm Thursday to Friday, 9am to 8pm Saturday, and 10am to 6pm Sunday.

### **Amenity**

11. The use or development permitted by this permit must not, in the opinion of the Responsible Authority, adversely affect the amenity of the locality.
12. All new security alarm devices are to be 'silent monitored' systems to address potential impacts on surrounding residential amenity to the satisfaction of ~~Council~~ the Responsible Authority.
13. Provisions must be made for the storage and disposal of garbage to the satisfaction of the Responsible Authority. All garbage storage must be screened from public view.

~~Refuse areas are not to operate before 7am or after 9pm and are to be screened from public view.~~

14. No service delivery vehicles are permitted to visit the site outside of the hours of 7am to 7pm Monday to Saturday, and 10am and 5pm Sunday.

15. Construction works on the land must be carried out in a manner that does not result in damage to existing Council assets and does not cause detriment to adjoining owners and occupiers.
16. External lighting must be hooded and oriented so that the light source is not directly visible to the travelling public or abutting residences in accordance with AS4282 Control of Obtrusive Effects of Outdoor Lighting.
17. External lighting is to be designed, installed and maintained:
  - a. With respect to all pedestrian paths, crossings within the site, in accordance with AS1158 Lighting for Roads and Public Spaces;
  - b. With respect to car parking areas within the site, and the exterior entrances to all buildings

### ***Car Parking***

18. A minimum of 47 on-site car bays are to be provided. The dimensions of all car parking bays, aisle widths and circulation areas complying with Australian Standard AS2890.1 or the Wellington Planning Scheme.
19. Areas set aside for the parking of vehicles together with aisles and access lanes must be properly formed to such levels that they can be utilised in accordance with the endorsed plans and must be drained and provided with an all weather seal coat. The areas must be constructed, drained, line-marked and maintained in a continuously useable condition to the satisfaction of the Responsible Authority.
20. Areas set aside for the parking and movement of vehicles as shown on the endorsed plan(s) must be made available for such use and must not be used for any other purpose.
21. Vehicular access or egress to the subject land from any roadway or service lane must be by way of a vehicle crossing constructed in accordance with Council's Vehicle Crossing Specifications to suit the proposed driveway(s) and the vehicles that will use the crossing(s). The location, design and construction of the vehicle crossing(s) must be approved by the Responsible Authority. Any existing unused crossing(s) must be removed and replaced with concrete kerb, channel and naturestrip to the satisfaction of the Council prior to occupation of the building. All vehicle crossing works are to be carried out with Council Supervision under a Memorandum of Consent for Works which must be obtained prior to commencement of works.

### ***Loading and unloading of vehicles within the property boundary***

22. The loading and unloading of vehicles and the delivery of goods must at all times be undertaken within the boundaries of the subject land unless with the written consent of the Responsible Authority.
23. Parking areas, loading bays and access lanes must be kept available for these purposes at all times, to the satisfaction of the Responsible Authority.

### ***Vehicular Crossover***

24. All vehicle crossovers are to be constructed as industrial crossings to Council standards. Crossings to be designed to cater for vehicles expected to use the access point.
  - Width of crossing at property line 4.0 metres (min)

- Width of crossing at kerbs 5.0 metres (min)
- Thickness 150 mm
- Reinforcement F 72 mesh
- Concrete strength 30 Mpa.

### **Drainage**

25. Prior to any works commencing a drainage discharge plan must be submitted to and approved by the Responsible Authority. The plan is to include on site detention structures to ensure that the post development discharge rate from the site does not exceed the predevelopment discharge rate. When approved, this plan will form part of the permit.
26. The owner must provide reticulated stormwater drainage to drain the development, generally in accordance with Councils Infrastructure Design Manual.
27. All stormwater from the development must be conveyed to satisfactory points or areas of discharge approved by the Responsible Authority so that it will have no detrimental affect on the environment adjoining properties. The approved discharge points for this application are the existing drainage points in York Street and Cunninghame Street.

### **Works on Public Land**

28. Prior to commencement of works the following must occur to the satisfaction of the responsible authority and in accordance with the requirements set out in Council's document "Infrastructure Design Manual" available on Council's website:
- Approval of engineering plan.
  - Submission of and approval of Traffic Management Plan.
  - Submission of a Project Management Plan for the project.
  - Notification of Project Manager.
  - Notification of commencement date of work.
  - Submission of documentation showing details of Public Liability Insurances
  - Submission of documentation indicating the contractors relevant Workcover details
29. Prior to the Issue of a Statement of Practical Completion the following must occur to the satisfaction of the responsible authority:
- The Council's Coordinator of Infrastructure Development and the Owner's representative shall jointly inspect and confirm that the works are complete.
  - The Developer's nominated representative shall lodge a Construction Certification List.
  - The final digital 'as built' version of the Engineering Plans is to be lodged with the Shire.

### **Time Limits**

30. This permit will expire if the development is not completed within four (4) years of the date of this permit. In accordance with section 69 of the *Planning and Environment Act*

1987, the Responsible Authority may extend the period referred to if a request is made in writing before the permit expires or within three months of the date of expiry.

In accordance with section 68 of the *Planning and Environment Act 1987*, this permit will expire if one of the following circumstances applies:

- The development is not commenced within two years of the date of this permit;
- or
- The development is not completed within four years of the date of this permit.

In accordance with section 69 of the *Planning and Environment Act 1987*, the Responsible Authority may extend the periods referred to if a request is made in writing along with payment of relevant fee before the permit expires, or within three months afterwards.

### **VicRoads Conditions**

31. The two (2) car parking spaces located on York Street, adjacent to the subject site, must be removed to improve sight lines.

32. The proposed access must be designed and constructed to the satisfaction of the Roads Corporation and the Responsible Authority.

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**Date Issued:**

▪ **Signature for the Responsible Authority:**

Note: Under Part 4, Division 1A of the Planning and Environment Act 1987, a permit may be amended. Please check with the responsible authority that this permit is the current permit and can be acted upon.

### **Advice Notes from Council**

#### **Certification of Works Expiry of Permit**

- In the event that this permit expires or the subject land is proposed to be used or developed for purposes different from those for which this permit is granted, there is no guarantee that a new permit will be granted. If a permit is granted then the permit conditions may vary from those included on this permit having regard to changes that might occur to circumstances, planning scheme provisions or policy.

#### **Building Permit Required**

- A Building Permit must be obtained prior to the commencement of any works associated with the proposed development.

#### **Building over Easements**

- No structure shall be built over any easement on the subject land except with the consent of the relevant Responsible Authority.