

**City of Kingston  
Special Council Meeting**

**Minutes**

**5 November 2009**

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A Special Meeting of the Kingston City Council was held 4.00pm at 1230 Nepean Highway Cheltenham on Thursday 5 November 2009.

*Business will be as follows:*

- 1. Apologies**
- 2. Declaration by Councillors or Officers of any conflict of interest**
- 3. Reports by Officers**

**L 185 Planning Application KP151/09: 76-78 Balcombe Road, Mentone  
(Le Gym)**

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- 4. Urgent Business**
- 5. Confidential Items in Camera**

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Minutes of the Special Meeting of the Kingston City Council held at 1230 Nepean Highway Cheltenham, on Thursday 5 November 2009 at 4.07pm.

**Present:** Cr Arthur Athanasopoulos (Mayor)  
Cr Ron Brownlees  
Cr Paul Peulich  
Cr John Ronke  
Cr Steve Staikos  
Cr Lewis Dundas  
Cr Rosemary West OAM

**In Attendance:** John Nevins – Chief Executive Officer  
Tony Rijs – General Manager Environmental Sustainability  
Ian Nice – Manager Planning  
Michael Fry – Team Leader Council Business

*Business was as follows:*

**1. Apologies**

Apologies were received from Councillors Donna Bauer and Trevor Shewan.

**Crs Brownlees/West**

That the apologies be accepted.

**Carried**

**2. Declaration by Councillors or Officers of any conflict of interest.**

Nil.

**3. Reports by Officers**

**L 185 Planning Application KP151/09: 76-78 Balcombe Road, Mentone (Le Gym)- Substitutions of Amended Plans:**

**Author:** Sebastian Lorenzo – Town Planner

**Approved By:** Tony Rijs – General Manager Environmental Sustainability

**SUMMARY:**

This report provides a summary of the changes proposed to be made by the applicant through the submission of amended plans for the VCAT Hearing to be held on 7<sup>th</sup> – 9<sup>th</sup> December, 2009. The proposed amendments are considered to be three-fold which include amendments to the proposed uses, amendments to the built form of the development and rewording / removal / addition of recommended conditions. These matters are discussed separately below.

**Please Note:** This report specifically deals with the proposed amendments to the development and does not provide a response against State and Local Planning Policy. For a comprehensive analysis of State and Local Planning Policy on the merits of such a proposal within the Mentone Major Activity Centre, please refer to the Council Report KP151/09 prepared for the July 2009, Ordinary Council Meeting. A copy of this report is available from the City of Kingston website.

**1. OVERVIEW: CURRENT PROPOSAL vs. PLANS CONSIDERED BY THE RESPONSIBLE AUTHORITY ON 27 JULY 2009**

The table below provides a brief breakdown of the amendments proposed as part of the current four (4) storey proposal against the previously considered five (5) storey proposal.

<b>USES ASSOCIATED WITH THE DEVELOPMENT</b>	<b>PREVIOUS PROPOSAL</b>	<b>CURRENT PROPOSAL</b>
Two levels of basement car park	Yes (240 car spaces)	Yes (247 car spaces) over two (2) basement car parking levels – <b>increase of seven (7) car spaces.</b>
Gymnasium and associated café	Yes (1802m <sup>2</sup> )	Yes (1815m <sup>2</sup> ) – <b>increase of 13m<sup>2</sup></b>
Commercial office tenancy	Yes (323m <sup>2</sup> )	Yes (498m <sup>2</sup> ) – <b>an increase in 175m<sup>2</sup></b>
Retail Premises	Yes (5 shops – total of 397m <sup>2</sup> of retail floor area)	Yes (6 shops – total of 617m <sup>2</sup> ) – <b>an increase in 1 shop and a total of 220m<sup>2</sup>.</b>
Restaurant & Bar	Yes (associated with residential)	Yes (stand alone - 240m <sup>2</sup> ) – <b>removal of association with</b>

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	hotel - 162m <sup>2</sup> )	<b>the hotel use and an increase in restaurant area by 78m<sup>2</sup></b>
Residential Hotel & Associated Conferencing	Yes	No – <b>Hotel use completely removed from development</b>
Residential Dwellings	Yes – fifty-nine (59) dwellings	Yes – seventy-eight (78) dwellings – <b>Increase of nineteen (19) dwellings.</b>
Total number of storeys	Five (5) storeys	Four (4) storeys – <b>Reduction of one (1) storey</b>
Overall height	42.10 AHD (parapet) – maximum height of 18.6 metres from Natural Ground Level	<b>35.50 AHD (parapet) – maximum height of 15.6 metres from Natural Ground Level</b>

The main changes proposed to the uses of the development can be summarised as follows;

- Increase in the number of car parking spaces provided within two (2) basement car parking levels;
- Complete removal of the proposed residential hotel use (including the removal of the function facility at first floor level);
- Increase in the number of retail premises from five (5) shops to six (6) shops;
- Increase in the floor area of the proposed gymnasium;
- Increase in the floor area of the proposed commercial office tenancy;
- Increase in the floor area of the proposed restaurant / bar;
- Increase in the number of proposed dwellings;
- Complete removal of the fifth storey;
- Reduction in the overall height;

It is considered that the proposed changes to the uses (i.e. removal of the hotel and function facility component of the development) should not adversely impact on the mixed use nature of the proposal. It is considered that the proposal continues to provide an active retail / commercial component at ground floor level with the retention of the gymnasium, an office / commercial tenancy, an increase in the number of retail premises proposed and an increase in the restaurant / bar area proposed.

The following comments can be made in response to the removal of the hotel and function facility component from the proposed development;

- A reduction in anticipated demand for the use of the loading bay facilities as a result of this use being removed;
- No requirement for the provision of a pick-up / drop-off and internal turning area for hotel guests;

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- A reduction in the anticipated traffic generated both on-site and in the immediate road network;
- A reduction in the number of vehicles entering and exiting the subject site from the site's Swanston Street property frontage;
- A reduction in the anticipated demand for car parking within the upper and lower basement car park levels with greater sharing of car parking spaces between the other uses within the development; and
- A reduction in any perceived "loss of amenity" as a result of the removal of the function facility and hotel uses.

Overall, it is considered that the removal of the hotel should provide for a reduction in the anticipated traffic and car parking issues associated with the proposed development as there is no longer a need and / or requirements for additional loading bay facilities, pick-up / drop-off guest area and internal vehicle turning area. Furthermore, a reduction in the number of vehicle crossings along Swanston Street, a reduction in the number of vehicles entering and exiting the subject site and a reduction in the demand for car parking associated with these uses are all considered positive elements in respect to the removal of the hotel and function facility components from the proposed development.

It is important to provide comment on the proposed uses in relation to the provision of car parking provided on site. As noted above, the hotel / function facility component has been removed from the development and as a result, additional car parking spaces within the lower basement will be used for other uses. A break down in the car parking requires (using the same figures as in the attached Council Report) are provided below;

<b>USE</b>	<b>CAR PARKING REQUIREMENT</b>
78 Dwellings (5 – 1 Bedroom dwellings, 69 – 2 bedroom dwellings and 4 – 3 bedroom dwelling)	1 per 1 or 2 bedroom dwelling and 2 per 3 bedroom dwelling: 89 car parking spaces required = 13 visitor car parking spaces
Retail Premises	4 spaces per 100m <sup>2</sup> of floor area = 24.68 car parking spaces required
Office / Commercial Tenancy	3.5 spaces per 100m <sup>2</sup> of floor area = 17.43 car parking spaces required
Restaurant / Café	0.15 spaces during the day and 0.3 spaces during the evening per seat = 20 car parking spaces during the day and 27 during the evening
Gymnasium	3.75 spaces per 100m <sup>2</sup> of floor area = 68.06 car parking spaces required
<b>Total</b>	<b>Maximum of 239 car spaces required at the abovementioned rates</b>

As noted above, the same figures used in Council's assessment of the original application have been used with the current car parking assessment. A maximum of two-hundred and thirty-nine (239) car spaces are required to be provided on site as part of the proposed development. The proposed double basement car park is provided with two-hundred and

forty-seven (247) car spaces which is eight (8) car spaces in excess of the requirements detailed above.

Overall, it is considered that the proposal is provided with adequate onsite car parking for residents, staff and visitors to the site. A suitable condition requiring the applicant to allocate car spaces to residents of each dwelling in accordance with the ResCode provisions of Clause 55, staff of the retail premises, office / commercial tenancy, restaurant and gymnasium should be included on any recommended draft conditions.

## **2. AMENDMENTS TO PROPOSED DEVELOPMENT**

### **TP02E: Lower Basement Level:**

- Two (2) additional car parking spaces have been provided;
- Storage areas reconfigured to achieve the two (2) additional car parking spaces; and
- The bend adjacent car parking space No.157 (previously No.154) has been provided with a minimum four (4) metre radius curve.

### **TP03E: Upper Basement Level:**

- The bend adjacent car parking space No.39 has been provided with a minimum four (4) metre radius curve;
- Car parking access aisle located at the foot of the upper basement access ramp (from street level) has been removed and two (2) additional car parking spaces have been provided;
- The provision of sixteen (16) secure staff bicycle parking spaces has been provided adjacent car parking space No.102; and
- The provision of sixteen (16) visitor bicycle parking spaces has been provided adjacent car parking space No.97.

### **TP04E: Ground Floor Level:**

- The front wall / door of the commercial tenancy setback a minimum of 5.95 metres from the site's Balcombe Road frontage with the access hallway also widened to a minimum 3 metres in width;
- The residential entry has been widened to 3.540 metres at the site's Balcombe Road property frontage with the remainder of access hallway tapered down to a minimum width of 2 metres;
- Ground floor waste chutes reconfigured to achieve increased width in residential entry corridor;
- All areas associated with the Residential Hotel, including the drop off / pick area, has been removed from application;
- Loading area (single delivery area) reconfigured to include a single, 6.6 metre wide crossover along the site's Swanston Street property frontage. The loading area has been designed to accommodate a 9.5 metre long vehicle;
- Temporary refuse areas have been relocated to the rear of the loading area;
- The provision of a two (2) metre high screen is provided above the stair treads / landings located to the north side of the proposed gymnasium so as to prevent overlooking onto adjoining residential properties to the north of the subject site;

- The provision of an acoustic wall of 3 metres in height above AHD 19.90 to the outdoor boundary interface with the railway line and the adjoining residential properties to the north of the subject site. This acoustic fence is to be installed before the commencement of any construction works on the site. The finish to this acoustic fence is to be determined in consultation with impacted neighbours which adjoin the subject site to the north. Any increase in width to the fence will encroach only into the subject site at 76-78 Balcombe Road;
- The provision of a 2.7 metre high transparent fence to surround outdoor gymnasium area; and
- The provision of evergreen planting to be provided adjacent the north title boundary in areas allocated to landscaping.

**TP05E: First Floor Level:**

- All areas associated with the Residential Hotel, including the conference area, have been removed from the application;
- Greater articulation and modulation has been provided to north interface opposite allotments fronting Collins Street. The provision of a minimum 5 metre setback has been provided at first floor level for dwelling 15, dwelling 16, dwelling 17 and dwelling 18 from the site's north property boundary;
- The provision of a 2 metre high solid wall provided to the north edge of the balconies of dwelling 15, dwelling 16, dwelling 17 and dwelling 18 so as to prevent overlooking to adjoining residential properties to the north of the subject site;
- The east-most wing of the development provided with reduce side setbacks to No.5 Swanston Street (5 dwelling development approved under KP487/08) with this area of the proposed development to continue its 'fingers' structure.

**TP06D: Second Floor Level:**

- The west-most wing of the development provided with a minimum 12 metre setback from the site's north property boundary;
- The provision of a 2 metre high solid wall provided to north edge of the balconies to dwelling 43 and dwelling 44 so as to prevent overlooking to the residential properties to the north of the subject site
- All north facing balconies provided with a minimum 1.8 metre high privacy screens to prevent overlooking with these screens to be provided with non-reflective film finish to any glazed balustrade; and
- The east-most wing of the development provided with reduce side setbacks to No.5 Swanston Street (5 dwelling development approved under KP487/08) with this area of the proposed development to continue its 'fingers' structure.

**TP07D: Third Floor Level:**

- The west-most wing of the development provided with a minimum 15 metre setback from the site's north property boundary;
- The provision of a 2 metre high solid wall provided to north edge of the balconies to dwelling 67 so as to prevent overlooking to the residential properties to the north of the subject site

- All north facing balconies provided with a minimum 1.8 metre high privacy screens to prevent overlooking with these screens to be provided with non-reflective film finish to any glazed balustrade; and
- The east-most wing of the development provided with reduce side setbacks to No.5 Swanston Street (5 dwelling development approved under KP487/08) with this area of the proposed development to continue its 'fingers' structure.

**DISCUSSION OF AMENDMENTS TO BUILDING ENVELOPE:**

**Please Note:** It is the understanding of Council Officers that a number of the amendments that have been made to the proposal currently before Council have been made to address the concerns of adjoining and / or nearby residents and / or objectors. It is important to note that while these may have been agreed on by residents / objectors and the applicant, Council Officers will present a professional planning opinion on the amendments proposed based on current State and Local Planning Policy and best practice.

Council Officers have reviewed the proposed amendments to the building envelope including the internal re-configuration of uses, reduction in overall height and the access arrangements proposed. It is considered important to provide comment on a number of elements, particularly with regard to the northern interface between the subject site and the adjoining residential properties located along Collins Street.

The following conditions relating to the northern interface formed part of the recommendation in the Council Report prepared as part of Planning Permit Application No. KP151/09 which was decided at the July Ordinary Council Meeting;

- *the north facing ground floor gymnasium wall set back minimum 3.6 metres from the site's north (rear) property boundary;*
- *the north facing ground floor gymnasium walls provided with improved wall treatments such as highlight windows with a minimum sill height of two (2) metres and / or varied materials such as stone, timber, aluminium or the like;*
- *the external stairs located to the north of hotel room No.33 provided with suitable screening to a height of 1.7 metres above the steps level to prevent overlooking to adjoining properties to the north of the subject site;*
- *the provision of a new two (2) metre high timber paling fence provided to the site's north (rear) property boundary except for the area along this boundary to be provided with an acoustic fence;*
- *the first floor north facing walls of hotel rooms No.32, No.33, No.36, No.37, No.48 and No.49 set back a minimum six (6) metres from the site's north (rear) property boundary;*
- *the provision of improved materiality to the northern façade with the potential incorporation of planter boxes and varied materials such as stone, feature glazing, brick, render, timber and aluminium or the like;*



The following comments provide a discussion on the abovementioned recommended condition and the amendments sought by the applicant. It is considered important that where the applicant has not met the abovementioned recommended conditions, that suitable discussion is made.

- **the north facing ground floor gymnasium wall set back minimum 3.6 metres from the site's north (rear) property boundary:** The new plans propose that the north facing wall of the gymnasium at ground floor level retain its current setbacks from the site's north (rear) property boundary of 2.7 metres for its east-most section and 3.62 metre setback for its west-most section of wall. These setbacks may only be encroached upon by the fire egress stairwells from the ground and first floor levels of the development. It was recommended that the gymnasium wall be set back a minimum 3.6 metres from the site's north (rear) property boundary so as to reduce the amenity impacts on adjoining residential properties. However, the applicant has been in discussions with the owners of these properties and has advised the owners of properties which will be directly impacted by the setback of the gymnasium wall have agreed to a setback of 2.7 metres for the north facing gymnasium wall at its east-most section. While Council Officers previously recommended that this wall be setback a minimum 3.6 metres from the site's north (rear) property boundary, this was to ensure that the amenity impacts on adjoining residential properties was reduced. However, the adjoining affected residents / owners have subsequently agreed to the setback of this wall. As a result, Council is acceptable to setback of the north facing gymnasium wall being set back 2.7 metres from the site's north (rear) property boundary at its east-most section.
- **the north facing ground floor gymnasium walls provided with improved wall treatments such as highlight windows with a minimum sill height of two (2) metres and / or varied materials such as stone, timber, aluminium or the like;** The applicant has not provided details of this and is agreeable to retain this as a recommended condition.
- **the external stairs located to the north of hotel room No.33 to be provided with suitable screening to a height of 1.7 metres above the steps level to prevent overlooking to adjoining properties to the north of the subject site;** In discussions between the applicant and the owners of adjoining residential properties it was agreed upon that a "2 metre high screen above the stair treads/ landings" will be erected so as to prevent overlooking to the adjoining residential properties to the north of the subject site. Council Officers have no objection to the provision of screening and are satisfied that such a screen will prevent overlooking to adjoining residential properties.
- **the provision of a new two (2) metre high timber paling fence provided to the site's north (rear) property boundary except for the area along this boundary to be provided with an acoustic fence;** In discussions between the applicant and the owners of adjoining residential properties it was agreed upon that "an acoustic wall to a height of 3 metres above AHD 19.90 to the outdoor boundary interface with the railway line and northerner neighbours. This fence shall be installed before any construction commences on the site. The finish to this fence is to be agreed after consultation with impacted

neighbours. Any increase required to the standard paling fence width will encroach only into the subject site at 76-78 Balcombe Road.”

It is important to note that in Paragraph 46 of the VCAT Order (P33/2008 – dated 21 November, 2008) handed down by Members Gerard Sharkey and J.A. Bennett, it was stated that

*“those revised plans would result in a significant improvement with respect to the residents to the north, particularly if they reduced the need for a 3 metre high acoustic fence along the common boundary...such a fence for the full length of the common boundary between the properties running in Collins Street and the subject site could be a concern, although we do not consider that it would be fatal to the proposal.”*

It is considered that a 3 metre high acoustic fence is not ideal, particular having regard to the abovementioned comments provided by VCAT members Gerard Sharkey and J.A. Bennett. However, as this measure has been agreed upon between the applicant and the owners of adjoining properties to the north of the subject site, Council Officers consider it appropriate in this instance and we have no objection to such a fence being erected between the subject site and the residential properties to the north.

- **the first floor north facing walls of hotel rooms No.32, No.33, No.36, No.37, No.48 and No.49 set back a minimum six (6) metres from the site’s north (rear) property boundary;** The application now proposes the removal of the hotel / function facility component from the proposed development. Level 1 will now be developed for thirty (30) dwellings. The amended plans propose a varied setback for the western wing of the development from the site’s north (rear) property boundary. Dwelling 15, dwelling 16, dwelling 17 and dwelling 18 are provided with a varied setback of between 5 metres and 7 metres. Again, these setbacks have been agreed upon in discussions between the applicant and the owners of adjoining residential properties to the north. Furthermore, Council Officers consider that the proposed minimum 5 metre setbacks are appropriate and subject to the inclusion of improved materiality to the northern façade (as per the condition below) it is considered that the proposed setbacks should be supported.
- **the provision of improved materiality to the northern façade with the potential incorporation of planter boxes and varied materials such as stone, feature glazing, brick, render, timber and aluminium or the like:** The applicant has not provided details of this and is agreeable to retain this as a recommended condition.

The above discussion is a response against the recommended conditions in the Council Report prepared as part of Planning Permit Application No. KP151/09 which was decided at the July Ordinary Council Meeting and the amendments proposed as part of the plans currently before Council. The following is a discussion of the other amendments made to the proposed development.

Overall, the amendments to the proposed development are considered generally acceptable. However, there following concerns are raised by Council Officers with regard to the amendments made:

- Northern Façade;
- Balconies; and
- Internal Amenity.

It is considered that the abovementioned concerns are inter-related and can not be discussed individually as each concern affects the other. Therefore, a collective discussion of these concerns is provided and conditions which recommend changes to the plans currently before Council are provide.

As a result of the removal of the hotel component from the development, additional apartments have been provided at first floor level within an amended building envelope. These new apartments (dwellings 17-20) are located west of the centre of the site, in a north-south orientation. It is considered that the access corridor for these dwellings should be amended so that the corridor runs through dwelling 24, with dwellings 21-24 amended accordingly. This corridor should also be provided with clerestory windows to provide natural light and ventilation to this area of the development.

Further concern is raised with regard to the 2 metre north facing solid wall enclosing the courtyard areas of dwelling 16 and dwelling 17. It is considered that this is an unacceptable urban design outcome and should be amended. It is suggested that dwelling 17 be redesigned to accommodate a small south facing courtyard and a reduced width to its north facing courtyard. This will provide an opportunity to reduce the length of the 2 metre high solid wall with the potential for a change in materials such as the use of timber or aluminium. There may also be an opportunity to provide suitable planter boxes in between the courtyards of dwelling 16 and dwelling 17. The abovementioned points are considered critical and have been provided as recommended conditions below.

At second and third floor level, concern is raised with regard to the eastern wings of the development. The current configuration of balconies in between the break in built form (fingers of vegetation) is considered a poor urban design and internal amenity outcome. The balconies face each other and are required to be screened. Furthermore, the balconies provide for a reduction in sunlight to the first floor level courtyards and overall are considered poor outcomes. Council Officers can not support the balconies in their current configuration. It is recommended that two (2) dwellings be removed from the second floor level (dwelling 51 and dwelling 55) and one (1) dwelling be removed from the third floor level (dwelling 74). This will allow the reconfiguration of dwelling 50, dwelling 52, dwelling 54, dwelling 73, dwelling 75, dwelling 77 and dwelling 78. It is recommended that these dwelling be provided with a balcony and living room along the northern façade of the building, with all east and west facing balconies completely removed from these dwellings. By reconfiguring these dwelling in this manner a number of positive outcomes are provided for which include, improved natural light and ventilation to the courtyards at first floor level, reduction in the need for screening of balconies as no overlooking will occur from the relocation of balconies, improved internal amenity for each of these dwellings and an improved northern façade. The abovementioned points are considered critical and have been provided as recommended conditions below.

Concern has also been raised with regard to the setback of the outdoor seating areas of the restaurant from the kerb and channel of the intersection of Balcombe Road and

Swanston Street. It is considered that the proposed setback is appropriate and the canopy above this outdoor seating area does not pose any traffic implications. It is considered that the seating is set back a minimum 5 metres from the corner of Balcombe Road and Swanston Street which provides sufficient spaces for pedestrian movement. However, as a recommendation, it is considered appropriate that a condition be included which requires the outdoor seating area to be constructed at the same level as the footpath and that seating to the south-east side of the restaurant be setback a minimum of 5 metres to the kerb and channel of Balcombe Road and Swanston Street.

### **3. REWORDING / REMOVAL / ADDITION OF RECOMMENDED CONDITIONS**

As part of the amendments to the application the applicant proposes that a number of conditions be re-worded and or removed. The reasons for the re-wording or removal of any recommended conditions is because they may no longer be applicable due to the removal of the hotel / function facility component or where they have been addressed as part of the amended plans. It is considered that the rewording of recommended conditions so that they apply to the amended proposal is considered appropriate and the removal of conditions which have been addressed or are no longer applicable is also considered appropriate.

Furthermore, as noted previously in this report, the amended plans address a number of concerns raised by residents. However, while the residents of adjoining and nearby properties may support the amendments proposed, it is considered that some of the amendments provides for a number of poor urban design and internal amenity outcomes. It is for this reason that a Council Officers can only provide a recommendation of support to the application subject to suitable conditions being placed on any permit issued which require a number of modifications to be incorporated into the proposal currently before Council.

A list of the recommended permit conditions in response to the amended plans is detailed below.

#### **CONCLUSION:**

The proposed amendments to the development will provide for improved amenity outcomes for owners and residents of adjoining and nearby properties while continuing to adequately satisfy the requirements, objectives and policy directions of the State Planning Policy Framework, the Local Planning Policy Framework, the Zoning provisions and the Particular Provisions of the Kingston Planning Scheme.

It is considered that the proposed amendments to the development are considered appropriate and subject to the inclusion of suitable conditions warrant support.

#### **RECOMMENDATION:**

That;

- A) Council determine to give its **in-principle** support to the revised proposal received by Council on 23<sup>rd</sup> October, 2009, at four (4) storeys subject to the inclusion of the following conditions on any permit issued;

- B) Council determine to give its **in-principle** support to substitute the draft conditions set out in the Consent Order Documentation dated 23<sup>rd</sup> October, 2009, by Taylors Development Strategists, with the revised conditions contained within this report;
- C) Council resolve to agree to sign a Consent Order to VCAT hearing No.P2045/2009 if consistent with recommendation A) and B) above;
- D) Council will not endorse any plans to any permit issued for the land, unless consistent with such permit;

**DRAFT PERMIT CONDITIONS:**

That a Planning Permit for the development and use of the site for the purpose of a four (4) storey and basement mixed use development, consisting of a restaurant / bar, a gymnasium, six (6) retail premises, an office tenancy, food & drink premises, business identification signage, on premises liquor licence, seventy-eight (78) dwellings, basement car parking, altering access to a road in a Road Zone Category 1 and a reduction in car parking and bicycle parking requirements pursuant to Clause 52.06 and Clause 52.34 of the Kingston Planning Scheme, in accordance with the plans to be submitted pursuant to Condition 1, hereof;

- 1. Before the development and/or use starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by 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 substantially in accordance with the plans issue date 23<sup>rd</sup> October, 2009 (TP02-TP08 and TP10-TP11, Rev G) but modified to show:
  - a) the provision of an improved landscape plan and associated planting schedule for the site showing the proposed location, species type, mature height and width, pot sizes and number of species be planted on the site, with such plans to be prepared by a suitably qualified landscape professional;
  - b) the provision of a notation on the plans stating that any bicycle parking along Balcombe Road and / or Swanston Street must be constructed in accordance with the engineering plans submitted to and approved by the Responsible Authority;
  - c) the lower basement car parking spaces allocated to each particular use to the Satisfaction of the Responsible Authority and in accordance with the following (with any additional car parking spaces allocated as appropriate);
    - i) car parking spaces allocated to each individual dwelling in accordance with the requirements of Clause 55.03-11 – Standard B16;
    - ii) a minimum of twelve (12) car parking spaces allocated to the proposed office tenancy;
    - iii) a minimum of two (2) car parking spaces allocated to each of the proposed six (6) retail premises;
    - iv) a minimum of six (6) car parking spaces allocated to the proposed gymnasium;

- v) a minimum of six (6) car parking spaces allocated to the proposed restaurant / bar;
- d) the provision of suitable line markings and signage for pedestrian crossings within the lower and upper basement car park levels to improve pedestrian safety within the basement car park levels;
- e) dwelling 51 and dwelling 55 located at second floor level redesigned, modified or deleted;
- f) dwelling 74 located at third floor level redesigned, modified or deleted;
- g) the west facing balcony of dwelling 50 removed, with this dwelling provided with a new balcony along the northern façade with suitable access from a north facing living room, with such balcony to be provided with suitable fixed screening to a height of 1.8 metres above the finished floor level of such balcony;
- h) the east facing balcony of dwelling 52 removed, with this dwelling provided with a new balcony along the northern façade with suitable access from a north facing living room, with such balcony to be provided with suitable fixed screening to a height of 1.8 metres above the finished floor level of such balcony;
- i) the west facing balcony of dwelling 54 removed, with this dwelling provided with a new balcony along the northern façade with suitable access from a north facing living room, with such balcony to be provided with suitable fixed screening to a height of 1.8 metres above the finished floor level of such balcony;
- j) the balcony for dwelling 53 provided with a 45 degree fixed angled screen to prevent overlooking to the courtyards below;
- k) the west facing balcony of dwelling 73 removed, with this dwelling provided with a new balcony along the northern façade with suitable access from a north facing living room, with such balcony to be provided with suitable fixed screening to a height of 1.8 metres above the finished floor level of such balcony;
- l) the east facing balcony of dwelling 75 removed, with this dwelling provided with a new balcony along the northern façade with suitable access from a north facing living room, with such balcony to be provided with suitable fixed screening to a height of 1.8 metres above the finished floor level of such balcony;
- m) dwelling 78 redesigned to allow dwelling 77 to be provided with a new north facing balcony with suitable access from a north facing living room, with such balcony to be provided with suitable fixed screening to a height of 1.8 metres above the finished floor level of such balcony;
- n) the balcony for dwelling 76 provided with a 45 degree fixed angled screen to prevent overlooking to the courtyards below;
- o) the provision of a notation on the plans stating that all buildings must be constructed within the title property boundaries of the land;
- p) the access corridor for dwelling 17-20 relocated through dwelling 24 with dwelling 22-24 and the office tenancy lightwell redesigned accordingly;
- q) the access corridor for dwellings 17-20 provided with natural light for its entirety through the use of skylights and / or a clerestory windows;

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- r) the courtyard of dwelling 17 reduced in width to provide a break in the solid 2 metre high wall which screens the courtyards of dwelling 16 and dwelling 17 as viewed from adjoining residential properties to the north, with this break in the wall to be filled with a suitable 2 metre high fixed screening device constructed in a different building material such as timber / aluminium or the like;
- s) the courtyard of dwelling 21 reduced in size to allow condition 1 r) to occur;
- t) the north facing ground floor gymnasium walls provided with improved wall treatments / varied materials such as stone, timber, aluminium or the like;
- u) the provision of a notation on the plans stating that the loading bay area is provided with a minimum height clearance of four (4) metres;
- v) the location of external fans, air-conditioning apparatus and the like must be to Council approval and installed to prevent loss of amenity to the area by its appearance, noise, emission or otherwise.
- w) the provision of vertical articulation to break up the continuous glazed element of the third floor level to the site's Balcombe Road and Swanston Street building façade;
- x) the provision of suitable solar shading treatments such as an awning to the northern facade to provide for solar protection and improved articulation;
- y) the provision of suitable solar screening treatments to the west facing glazed areas of the third floor level, with such treatments to be integrated into vertical articulation where appropriate;
- z) the provision of improved materiality to the northern façade with the potential incorporation of planter boxes and varied materials such as stone, feature glazing, brick, render, timber and aluminium or the like;
- aa) a notation on the plans stating that the "Permissible Noise Levels" for the gymnasium (including the outdoor workout area), as established in accordance with the State Environment Protection Policy No. N-1 must not be exceeded;
- bb) the outdoor seating area for the restaurant located at ground floor level provided with a finished surface level which is the same as the existing footpath level along Balcombe Road and Swanston Street;
- cc) the ground floor building line, at the south-east corner of the site, to be the same as the setback of the existing building at this point;
- dd) the stairwell located adjacent the gymnasium and office tenancy nominated as providing pedestrian access from the upper basement car park level to the ground floor level, for staff and visitors of the gymnasium, office tenancy, retail premises and restaurant / bar;
- ee) the conditions required by VicRoads provided on the plans, pursuant to Condition 2 of this Permit;
- ff) the conditions required by United Energy provided on the plans, pursuant to Condition 3 of this Permit;
- gg) the conditions required by VicTrack provided on the plans, pursuant to Condition 4 of this Permit;

- hh) the provision of a full colour and building materials schedule for all external surfaces (including samples).
2. **Conditions Required by VicRoads:**
- i. No kerbside parking or intended parking along Swanston Street in front of the subject site must be provided;
  - ii. The development must allow for free flow of vehicular traffic into the development especially the left turning traffic into the site so that any queue along Swanston Street will not extend onto Balcombe Road to the satisfaction of VicRoads;
  - iii. Any redundant existing vehicle crossovers serving the subject site along Balcombe Road must be removed and the footpath, nature strip and kerbing reinstated to the satisfaction of the Responsible Authority
3. **Conditions Required by United Energy:**
- i. The applicant shall enter into an agreement with United Energy Limited for extension, upgrading or re-arrangement of the electricity supply to lots on the plan as required. (A payment to cover the cost of such work will be required and easements internal and external to the subdivision and provision of sites for substations may also be required).
4. **Conditions Required by VicTrack:**
- i. All drainage or effluent from the development must be collected and directed to legal discharge points and must not enter VicTrack land without its prior approval and on conditions set by it.
  - ii. No excavation, filling or construction must take place on or near the railway boundary without prior approval from the rail operator. Entry onto the railway reserve is at the discretion of the rail operator and subject to any conditions imposed by it.
  - iii. No waste, soil or other materials resulting from the works are to be stored or deposited on VicTrack land;
  - iv. The proposed development must include a fence or other physical barrier between the railway reserve and the applicant's land. The design of the fence or physical barrier must be approved by VicTrack and the rail operator.
  - v. The design of the proposed development must meet all clearance requirements from the adjacent railway tracks as per Victorian Rail Industry Operators Group Standards (VRIOGS 001-2005).
  - vi. The design of the proposed development must comply with the Derailment Loadings as set out in Australian Standards AS 5100 clause 10.4.3
  - vii. Prior to the commencement of works the applicant must enter into all necessary agreements with VicTrack, the Department of Transport and the Rail Operator for construction, maintenance and disturbance of land abutting the railway reserve.
  - viii. The fire escape management plan of the proposed development must not rely on the railway reserve for emergency egress.



- ix. Lighting from the proposed development must not interfere or affect train driver signal sighting. The design of all exterior lighting near the railway reserve must be submitted to and approved by the rail operator.
  - x. No works are to undermine the railway tracks or interfere with railway infrastructure. Prior to the commencing of works, the applicant must submit to VicTrack and the Rail Operator, all detailed engineering design drawings, specifications and safe working methodology of the proposed works for review and approval by VicTrack and the Rail Operator.
  - xi. All costs incurred by VicTrack and the Rail Operator in reviewing the proposed designs and works of the development must be paid by the applicant.
5. **Conditions Required by the Department of Transport:**
- i. The permit holder must take all reasonable steps to ensure that disruption to train operation within the railway corridor is kept to a minimum during the construction of the development. Foreseen disruption to rail operation during construction and mitigation measures must be communicated to Connex and the Director of Public Transport fourteen (14) days prior.
  - ii. The permit holder must ensure that all track, overhead power and supporting infrastructure is not damaged or that works do not cause unplanned disruption to rail operations. Any damage to public transport infrastructure must be rectified to the satisfaction of the Director of Public transport at the full cost of the permit holder.
6. The development as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.
7. The developer / owner is responsible for all costs associated with the construction and maintenance (for a period of no less than 12 months) of all footpath and associated landscape works along Swanston Street and Balcombe Road adjacent to the subject site in accordance with Council requirements, and to the satisfaction of the Responsible Authority.
8. The developer / owner is responsible for all costs associated the relocation, removal or replacement of any existing assets that are deemed necessary by the relevant authority, to the satisfaction of the Responsible Authority.
9. Prior to the commencement of the use or development authorised by this permit, the applicant must submit a Soil Management Plan to the Responsible Authority. The SMP must be generally in accordance with the plan prepared by JD Environmental Services titled Underground Fuel Storage Tank Removal and Soil Validation Program 76-78 Balcombe Road, Mentone, Victoria 16 February, 2009. When approved, the SMP will form part of the permit under this permit and the actions required by the SMP must be implemented to the satisfaction of the Responsible Authority.
10. Before construction of the development starts, a Traffic and Car Parking Management Plan to the satisfaction of the responsible authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit. Three copies of the plan must be submitted. The plan must include but is not limited to:

- a) the location of all areas to be used for staff / long term parking for the retail premises, offices and gymnasium within the lower and upper basement car parking levels of the building;
- b) the provision of a notation stating that a minimum of two-hour free parking be provided for the visitors to the premises;
- c) details of any arrangements for fee payment, including details of fees to be charged and the means by which such payment is to be collected;
- d) the provision of suitable signs and pavement markings to direct and control the flow of traffic into, within and exiting the site including for the basement and loading bay areas, with this to include suitable warning signs/signals for drivers and pedestrians;
- e) the provision of all lighting and security arrangements for the basement;
- f) full details of access arrangements to and from the site including full details of any proposed security arrangements for resident and long term parking in the lower basement level (i.e. boom gates restricting access, swipe cards to be used etc);
- g) details of any traffic management measure to improve vehicles entry and exit to and from the site (i.e. keep clear line markings on Swanston Street etc).

The Traffic and Car Parking Management Plan must be implemented to the satisfaction the Responsible Authority. The Traffic and Car Parking Management Plan must not be modified unless with the further written consent of the Responsible Authority.

11. All loading and unloading for the gymnasium / retail premises must occur within the specifically designated loading bay which is accessed via Swanston Street;
12. The loading bay must be closed off and screened from view except as required for the entry and exit of vehicles to the satisfaction of the Responsible Authority;
13. No deliveries must be undertaken by vehicles greater than ten (10) metres in length at any time, unless with the prior written consent of the Responsible Authority.
14. Unless with the written consent of the responsible authority, deliveries to and from the site (including waste collection) must only take place between the following hours:
  - 5am to 10pm Monday to Saturday; and
  - 7am to 8pm Sundays and Public Holidays.
15. Council's Waste Management Department must be consulted regarding the location of rubbish bins and the options for collecting waste from the site.
16. Before the use starts, a Waste Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of the Planning Permit. Three (3) copies of the plan must be submitted. The plan must include but is not limited to:
  - a) Waste collection in accordance with the loading and collection conditions included on this permit.
  - b) Provision on the land for the storage and collection of garbage and other solid waste. This area must be graded and drained and screened from public view to the satisfaction of the Responsible Authority.

- c) All waste material not required for further on-site processing must be regularly removed from the site. All vehicles removing waste must have fully secured and contained loads so that no wastes are spilled or dust or odour is created to the satisfaction of the Responsible Authority.
  - d) In accordance with Environmental Protection Authority (EPA) requirements, arrangements for the storage, segregation and disposal of any infectious waste, potentially infectious waste (as defined by the EPA), and any prescribed waste.  
The waste management plan must be implemented to the satisfaction the responsible authority. The waste management plan must not be modified unless with the consent of the responsible authority.
17. The liquor license is to be restricted to the following times:
- Restaurant / Bar;
    - 10.00am to 11.00pm                      Monday to Thursday;
    - 10.00am to 1.00am                      Friday to Sunday; and
- Or otherwise as approved by the Responsible Authority.
18. Before the use starts, areas set aside for parked vehicles, access lanes and associated access ramps as shown on the endorsed plans must be:
- a) Constructed to the satisfaction of the Responsible Authority;
  - b) Properly formed to such levels that they can be used in accordance with the plans;
  - c) Surfaced with an all-weather sealcoat to the satisfaction of the Responsible Authority;
  - d) Drained, maintained and not used for any other purpose to the satisfaction of the Responsible Authority;
  - e) Line-marked to indicate each car space and all access lanes to the satisfaction of the Responsible Authority;
  - f) Generally in accordance with the relevant Australian Standard for car parking facilities;
  - g) Directional signage indicating car parking areas to be erected as required by the Responsible Authority and to the satisfaction of the Responsible Authority; and
  - h) Parking areas and access lanes must be kept available for these purposes at all times.
19. The dwellings hereby permitted must not be occupied until all buildings and works and the conditions of this permit have been complied with, unless with the prior written consent of the Responsible Authority.
20. Before the commencement of any building or works on the land a Construction Management Plan (CMP) to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority and when approved shall thereafter be complied with. The CMP must deal with the parking of vehicles during construction, delivery of materials, containment of waste on site and suppression of dust, construction over the public domain etc.

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21. The development of the site must be provided with stormwater works which incorporates the use of water sensitive urban design principles to improve stormwater runoff quality and which also retains on site any increase in runoff as a result of the approved development. The system must be maintained to the satisfaction of the Responsible Authority. Council's Development Engineer can advise on satisfactory options to achieve these desired outcomes which may include the use of an infiltration or bioretention system, rainwater tanks connected for reuse and a detention system.
22. Before the development commences, a Stormwater Management Plan showing the stormwater works to the nominated point of discharge must be prepared to the satisfaction of the Responsible Authority. The Stormwater Management Plan must be prepared by a qualified person and show all details of the proposed stormwater works including all existing and proposed features that may have impact (e.g. trees to be retained, crossings, services, fences, abutting buildings, existing boundary surface levels, etc.).
23. Stormwater works must be provided on the site so as to prevent overflows onto adjacent properties.
24. Construction on the site must be restricted to the following times:
  - a) Monday to Friday 7:00am to 7:00pm;
  - b) Saturday 9:00am to 6:00pm; and
  - c) No construction on Sundays or Public Holidays;Or otherwise as approved by the Responsible Authority in writing.
25. Exterior lights must be installed in such positions to effectively illuminate all pathways, car parks and other public areas to the satisfaction of the Responsible Authority and designed, baffled and located to the satisfaction of the Responsible Authority to prevent any adverse effect on neighbouring land.
26. The maintenance of the buildings, service areas and the surrounds within the site shall be the responsibility of the Body Corporate, owner or agent and must be serviced at such frequency as will render the service areas and the surrounds to be neat, tidy and clean at all times to the satisfaction of the Responsible Authority.
27. All works on or facing the boundaries of adjoining properties must be finished and surface cleaned to a standard that is well presented to neighbouring properties in a manner to the satisfaction of the responsible authority.
28. All piping and ducting (other than stormwater downpipes) above the ground floor storey of the development must be concealed to the satisfaction of the responsible authority.
29. No external equipment (including, but not limited to: ducting and piping, air-conditioning units, heating units, satellite dishes etc), services and architectural features, other than those shown on the endorsed plan, shall be permitted unless with the prior written consent of the Responsible Authority
30. All external surfaces of the building elevations must be finished in accordance with the schedule on the endorsed plans and maintained in good condition to the satisfaction of the responsible authority.

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31. The location of external fans, air-conditioning apparatus and the like must be to the satisfaction of the Responsible Authority and installed to prevent loss of amenity to the area by its appearance, noise, emission or otherwise.
32. Any plant and equipment proposed on the roof of the building must be screened in a manner to complement the appearance of the building to the satisfaction of the Responsible Authority.
33. The location and details of the signs as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority
34. The signs must not be animated or contain any flashing or intermittent light.
35. The signs as shown on the endorsed plans must be constructed to the satisfaction of the Responsible Authority and must be maintained to the satisfaction of the Responsible Authority.
36. The signs illumination must be designed, baffled and located to the satisfaction of the Responsible Authority to prevent any adverse effect on neighbouring land.
37. Finished floor levels shown on the endorsed plans must not be altered or modified without the prior written consent of the responsible authority.
38. Once the development has started it must be continued and completed to the satisfaction of the responsible authority.
39. 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 and use are not started before two (2) years of the date of the permit issued.
  - The development is not completed before five (5) years of the date of the permit issued.

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 before the permit expires, or within three months afterwards.

- 
- Note:** Prior to the commencement of the development you are required to obtain the necessary Building Permit.
- Note:** The applicant/owner must provide a copy of this planning permit to any appointed Building Surveyor. It is the responsibility of the applicant/owner and Building Surveyor to ensure that all building development works approved by any building permit is consistent with the planning permit.
- Note:** Before removing/pruning any vegetation from the site, the applicant or any contractor engaged to remove vegetation, should consult Council's Vegetation Management Officer to verify if a Local Law Permit is required for the removal of such vegetation.
- Note:** Council may, at its choosing, introduce a Parking Policy Scheme in the immediate area. If Council chooses to introduce such a scheme, it is advised that residents and/or visitors of the development may be ineligible to receive such parking permits.
- Note:** Prior to the commencement of the use as a licensed premises, a liquor license must be obtained from Liquor Licensing Victoria.

The Chief Executive Officer, following advice from the General Manager Environmental Sustainability, stated that as a result of legal advice just received that the officer recommendation was being slightly revised in order to comply with Council's statutory responsibilities.

**Adjournment:**

**Crs Brownlees/Ronke**

That the meeting be adjourned for 10 minutes.

**Carried**

The meeting was adjourned at 4.09pm for 10 minutes.

**Resumption:**

**Crs Brownlees/Staikos**

That the meeting be resumed.

**Carried**

The meeting resumed at 4.29pm.

The General Manager Environmental Sustainability advised that the circulated revised motion, in two parts, complied with Council's statutory responsibilities

**Motion:**

**Crs Brownlees / Staikos**

That Council adopt the recommendation contained in the circulated revised motion, as follows.

*"That:*

- A) *Council resolve to give its **in-principle** support to the revised proposal received by Council on 23<sup>rd</sup> October, 2009, at four (4) storeys subject to the draft conditions attached to the Consent Order Documentation dated 23<sup>rd</sup> October, 2009, by Taylors Development Strategists;*
- B) *Council resolve that, following the issuing of a Planning Permit in accordance with recommendation A) above, but prior to the endorsement of any plans, the following changes must be made to the plans, together with any further changes agreed to by all parties;*

- *dwelling 51 and dwelling 55 located at second floor level redesigned, modified or deleted;*
- *dwelling 74 located at third floor level redesigned, modified or deleted;*
- *the west facing balcony of dwelling 50 removed, with this dwelling provided with a new balcony along the northern façade with suitable access from a north facing living room, with such balcony to be provided with suitable fixed screening to a height of 1.8 metres above the finished floor level of such balcony;*
- *the east facing balcony of dwelling 52 removed, with this dwelling provided with a new balcony along the northern façade with suitable access from a north facing living room, with such balcony to be provided with suitable fixed screening to a height of 1.8 metres above the finished floor level of such balcony;*
- *the west facing balcony of dwelling 54 removed, with this dwelling provided with a new balcony along the northern façade with suitable access from a north facing living room, with such balcony to be provided with suitable fixed screening to a height of 1.8 metres above the finished floor level of such balcony;*
- *the balcony for dwelling 53 provided with a 45 degree fixed angled screen to prevent overlooking to the courtyards below;*
- *the west facing balcony of dwelling 73 removed, with this dwelling provided with a new balcony along the northern façade with suitable access from a north facing living room, with such balcony to be provided with suitable fixed screening to a height of 1.8 metres above the finished floor level of such balcony;*
- *the east facing balcony of dwelling 75 removed, with this dwelling provided with a new balcony along the northern façade with suitable access from a north facing living room, with such balcony to be provided with suitable fixed screening to a height of 1.8 metres above the finished floor level of such balcony;*
- *dwelling 78 redesigned to allow dwelling 77 to be provided with a new north facing balcony with suitable access from a north facing living room, with such balcony to be provided with suitable fixed screening to a height of 1.8 metres above the finished floor level of such balcony;*
- *the balcony for dwelling 76 provided with a 45 degree fixed angled screen to prevent overlooking to the courtyards below;*
- *the provision of a notation on the plans stating that all buildings must be constructed within the title property boundaries of the land;*
- *the access corridor for dwelling 17-20 relocated through dwelling 24 with dwelling 22-24 and the office tenancy lightwell redesigned accordingly;*
- *the access corridor for dwellings 17-20 provided with natural light for its entirety through the use of skylights and / or a clerestory windows;*
- *the courtyard of dwelling 17 reduced in width to provide a break in the solid 2 metre high wall which screens the courtyards of dwelling 16 and dwelling 17 as viewed from adjoining residential properties to the north, with this break in the wall to be filled with a suitable 2 metre high fixed screening device constructed in a different building material such as timber / aluminium or the like;*

- *the courtyard of dwelling 21 reduced in size to allow condition 1 n) to occur;*
- *the provision of suitable solar shading treatments such as an awning to the northern facade to provide for solar protection and improved articulation;*
- *the outdoor seating area for the restaurant located at ground floor level provided with a finished surface level which is the same as the existing footpath level along Balcombe Road and Swanston Street;*
- *the ground floor building line, at the south-east corner of the site, to be the same as the setback of the existing building at this point;*
- *the stairwell located adjacent the gymnasium and office tenancy nominated as providing pedestrian access from the upper basement car park level to the ground floor level, for staff and visitors of the gymnasium, office tenancy, retail premises and restaurant / bar.”*

**Amendment:**

Cr Dundas moved the following amendment:

That the second last dot point (formerly identified as condition 1 (cc) in the officer’s report) of part B of the motion be replaced by the following;

- *“The building at ground floor level is to be set back as follows;*
  - A) *a minimum 1.5 metres along the site’s south (Balcombe Road) property frontage extending from the Railway Easement to Swanston Street, with the exception that any structural support columns to be setback a minimum 1 metre from this title boundary;*
  - B) *a minimum 1.5 metres along the site’s east (Swanston Street) property frontage extending from the site’s northern boundary to Balcombe Road, with the exception that any structural support columns to be setback a minimum 1 metre from this title boundary;*
  - C) *a minimum 1.5 metres from the existing building line (indicative splay of 7.7 metres to Balcombe Road / Swanston Street) at the south-east corner of the site;”*

The mover and seconder of the motion agreed to incorporate this amendment into their motion.

**Amendment:**

Cr West moved the following amendment:

That an additional dot point be added to part B of the motion as follows:

- *“balconies to units 50, 54, 73 &77 to have the Western side returns constructed of a solid wall at 2m in height.”*

The mover and seconder of the motion agreed to incorporate this amendment into their motion.



**Amendment:**

Cr West moved the following amendment:

That a Part C be added to the recommendation to read as follows:

That in the light of agreements which have been reached between representatives of some resident objectors and Councillors for the development of 76-78 Balcombe Rd Mentone (KP 151/09) as the basis for which Council and some objectors have agreed to withdraw their objections to this four storey compromise development, I move that:

*“That the three Central Ward Councillors be notified of any subsequent applications to amend plans approved as part of planning application KP151/09.”*

The mover and seconder of the motion agreed to incorporate this amendment into their motion subject to the amendment being amended to change the reference from “*three Central Ward Councillors*” to “*all Councillors*”.

Cr West agreed to this revised wording to her proposed amendment.

**Amendment:**

Cr Dundas moved the following amendment:

That Part B of the motion be amended by the addition of the following dot points:

- *“The building above ground floor level (first floor level, second floor level and third floor level) at the site’s south-east corner (above the restaurant) is to be set back in line with the existing building setback at ground floor level;*
- *The maximum projection of the ground floor canopy over the footpath along Balcombe Road and Swanston Street is to be as follows;*
  - *2 metres along Swanston Street; and*
  - *2 metres along Balcombe Road.*
- *The canopy over the footpath located in the south-east corner of the site is to be setback a minimum 1.6 metres from the face of the kerb.”*

The mover and seconder of the motion agreed to incorporate this amendment into their motion.

The mover and seconder of the motion agreed to incorporate the second and third dot points of the proposed amendment into their motion.

Cr Staikos seconded the first dot point of the amendment proposed by Cr Dundas, as follows:

- *“The building above ground floor level (first floor level, second floor level and third floor level) at the site’s south-east corner (above the restaurant) is to be set back in line with the existing building setback at ground floor level;”*

The amendment was **put and lost**.

A division was called.

**Division**

**For**

Cr Dundas  
Cr Ronke  
Cr Staikos  
Cr West

**Against**

Mayor Cr Athanasopoulos  
Cr Brownlees  
Cr Peulich

The Chairperson declared that the amendment was **carried**.

The substantive motion was **put and carried**.

The Council resolution, in its entirety reads as follows:

*“That:*

- A) *Council resolve to give its **in-principle** support to the revised proposal received by Council on 23<sup>rd</sup> October, 2009, at four (4) storeys subject to the draft conditions attached to the Consent Order Documentation dated 23<sup>rd</sup> October, 2009, by Taylors Development Strategists;*
- B) *Council resolve that, following the issuing of a Planning Permit in accordance with recommendation A) above, but prior to the endorsement of any plans, the following changes must be made to the plans, together with any further changes agreed to by all parties;*
- *dwelling 51 and dwelling 55 located at second floor level redesigned, modified or deleted;*
  - *dwelling 74 located at third floor level redesigned, modified or deleted;*
  - *the west facing balcony of dwelling 50 removed, with this dwelling provided with a new balcony along the northern façade with suitable access from a north facing living room, with such balcony to be provided with suitable fixed screening to a height of 1.8 metres above the finished floor level of such balcony;*
  - *the east facing balcony of dwelling 52 removed, with this dwelling provided with a new balcony along the northern façade with suitable access from a north facing living room, with such balcony to be provided with suitable fixed screening to a height of 1.8 metres above the finished floor level of such balcony;*
  - *the west facing balcony of dwelling 54 removed, with this dwelling provided with a new balcony along the northern façade with suitable access from a north facing living room, with such balcony to be provided with suitable fixed screening to a height of 1.8 metres above the finished floor level of such balcony;*
  - *the balcony for dwelling 53 provided with a 45 degree fixed angled screen to prevent overlooking to the courtyards below;*

- *the west facing balcony of dwelling 73 removed, with this dwelling provided with a new balcony along the northern façade with suitable access from a north facing living room, with such balcony to be provided with suitable fixed screening to a height of 1.8 metres above the finished floor level of such balcony;*
- *the east facing balcony of dwelling 75 removed, with this dwelling provided with a new balcony along the northern façade with suitable access from a north facing living room, with such balcony to be provided with suitable fixed screening to a height of 1.8 metres above the finished floor level of such balcony;*
- *dwelling 78 redesigned to allow dwelling 77 to be provided with a new north facing balcony with suitable access from a north facing living room, with such balcony to be provided with suitable fixed screening to a height of 1.8 metres above the finished floor level of such balcony;*
- *the balcony for dwelling 76 provided with a 45 degree fixed angled screen to prevent overlooking to the courtyards below;*
- *the provision of a notation on the plans stating that all buildings must be constructed within the title property boundaries of the land;*
- *the access corridor for dwelling 17-20 relocated through dwelling 24 with dwelling 22-24 and the office tenancy lightwell redesigned accordingly;*
- *the access corridor for dwellings 17-20 provided with natural light for its entirety through the use of skylights and / or a clerestory windows;*
- *the courtyard of dwelling 17 reduced in width to provide a break in the solid 2 metre high wall which screens the courtyards of dwelling 16 and dwelling 17 as viewed from adjoining residential properties to the north, with this break in the wall to be filled with a suitable 2 metre high fixed screening device constructed in a different building material such as timber / aluminium or the like;*
- *the courtyard of dwelling 21 reduced in size to allow condition 1 n) to occur;*
- *the provision of suitable solar shading treatments such as an awning to the northern facade to provide for solar protection and improved articulation;*
- *the outdoor seating area for the restaurant located at ground floor level provided with a finished surface level which is the same as the existing footpath level along Balcombe Road and Swanston Street;*
- *The building at ground floor level is to be set back as follows;*
  - *a minimum 1.5 metres along the site's south (Balcombe Road) property frontage extending from the Railway Easement to Swanston Street, with the exception that any structural support columns to be setback a minimum 1 metre from this title boundary;*
  - *a minimum 1.5 metres along the site's east (Swanston Street) property frontage extending from the site's northern boundary to Balcombe Road, with the exception that any structural support columns to be setback a minimum 1 metre from this title boundary;*
  - *a minimum 1.5 metres from the existing building line (indicative splay of 7.7 metres to Balcombe Road / Swanston Street) at the south-east corner of the site;*

- *the stairwell located adjacent the gymnasium and office tenancy nominated as providing pedestrian access from the upper basement car park level to the ground floor level, for staff and visitors of the gymnasium, office tenancy, retail premises and restaurant / bar.”*
  - *balconies to units 50, 54, 73 &77 to have the Western side returns constructed of a solid wall at 2m in height.*
  - *The building above ground floor level (first floor level, second floor level and third floor level) at the site’s south-east corner (above the restaurant) is to be set back in line with the existing building setback at ground floor level;*
  - *The maximum projection of the ground floor canopy over the footpath along Balcombe Road and Swanston Street is to be as follows;*
    - *2 metres along Swanston Street; and*
    - *2 metres along Balcombe Road.*
  - *The canopy over the footpath located in the south-east corner of the site is to be setback a minimum 1.6 metres from the face of the kerb.*
- C) *That all Councillors be notified of any subsequent applications to amend plans approved as part of planning application KP151/09.*

**4. Urgent Business**

There were no items of urgent business.

**5. Confidential Items in Camera**

There were no items in camera.

The meeting closed at 5.18pm.

**Confirmed.....His Worship The Mayor 23 November 2009.**