

Ref: 14991

13 August 2018

Phillip Josipovic
General Manager Planning and Infrastructure
Borough of Queenscliffe
50 Learmonth Street
QUEENSCLIFFE VIC 3225

WITHOUT PREJUDICE

Dear Phillip,

**RE: REQUEST FOR FURTHER INFORMATION
PROPOSED TWO (2) LOT SUBDIVISION & CONSTRUCTION OF WORKS
34-38 KING STREET, QUEENSCLIFFE 2018/039**

I refer to the above matter and in particular, to the letter from Dinah O'Brien, Senior Planner, dated 30 July 2018 enclosing objections, and to my subsequent telephone conversation with Ms O'Brien on or about 8 August 2018.

In that conversation, to my surprise, Ms O'Brien asserted that the Council Officer support for this Application was to be withdrawn.

My response herewith, will be divided into the two issues now to hand:

- A. The Council's position; and
- B. The Objections.

Please note also, that I have separated this correspondence into this letter, which is for Council's attention only, and into separate attachments responding individually to each of the objectors. My clients are agreeable to the attachments being shared with the objectors.

A. The Council's Position

By way of history, my clients have met with Council on numerous occasions with respect to the development of this property, and have had particular discussions with respect to the land on the Western side of the building (the block), the subject of this subdivision.

In the interim, my clients have been working on extensive and meticulous restoration of the building, effectively saving it from certain ruin.

My clients more recently commenced the steps necessary for subdivision of the block as the next stage in the development. Prior to doing so, my office approached Council about a pre-application meeting. Fiona Hunter-Evans arranged an appointment at the Borough offices on 5 September 2017. In attendance at that meeting were:

- Cameron Gray – Managing Director at St Quentin's Consulting
- Peter Hawkins – Borough of Queenscliffe Acting Senior Planner
- Justin Francis – Borough of Queenscliffe Heritage Advisor
- Katalin Blond

At that meeting, neither Mr Hawkins nor Mr Francis, raised any opposition to the sub-division itself. The discussion centred around how to manage the view line of the hotel from the West and some other ancillary matters.

Whilst it was open to my clients to lodge an Application with no building envelope, in order to allay any concerns around that issue, we based the Application around securing and maintaining those view lines into the future. As such, the application includes set backs and building height restrictions which go further than those normally required by the Scheme. The Application, when approved, will then ensure that any potential purchaser observes those restrictions and an outcome desirable to the Borough is achieved.

May I say, that no one is more motivated than the owners to maintain the aesthetic of the building that they have single handedly devoted so much time and money to restoring.

It is fair to say that my clients were shocked to learn through Ms O'Brien's comments that the administrative arm of Council would, at the eleventh hour, withdraw its support and effectively back-flip on their previous position in support of this subdivision.

I emailed Ms O'Brien on 8 August 2018 at 10:00AM and again at 5:11PM to which I have received no response. I queried whether in fact she had spoken with Mr Francis regarding this Application before forming her view and urged her to do so if she hadn't.

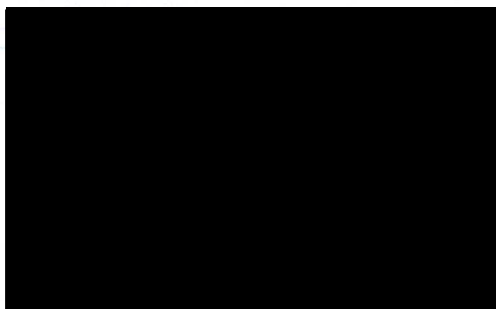
One can only assume that the purpose of a pre-application meeting is for Council to work with the Applicant's and ratepayers to identify issues in dispute, work together to resolve them, streamline the process and save both the Applicant and the Borough thousands of dollars in litigation costs. Clear representations were made to my clients upon which they were entitled to rely and in doing so, they have gone to considerable expense. In my submission, it is then important that the decision on support is one that is made with a consistent, unbiased and objective approach such that it cannot sway simply with the changing of Council officers.

I look forward to hearing from you in this regard.

B. The Objections

I confirm that objections were lodged as follows:

Objector 1:
Objector 2:
Objector 3:
Objector 4:
Objector 5:
Objector 6:
Objector 7:
Objector 8:
Objector 9:



1) Standing

Firstly, I would like to deal with the issue of standing.

Sub-Section 57(1) of the Planning and Environment Act provides that:

"Any person who may be affected by the grant of the permit may object to the grant of a permit"

Objectors 1 and 3 arguably, fail to satisfy the definition of a "person" so have no standing to lodge under this Sub-Section.

If in fact they purport to represent a group of people, then Sub-Section 57(3) provides that:

"If a number of persons make one objection, they may give the responsible authority the name and address of the person to whom the responsible authority is to give notice of the decision."

Objector 1, Queenscliffe Environment Forum Inc, in my submission has no standing to object on grounds including:

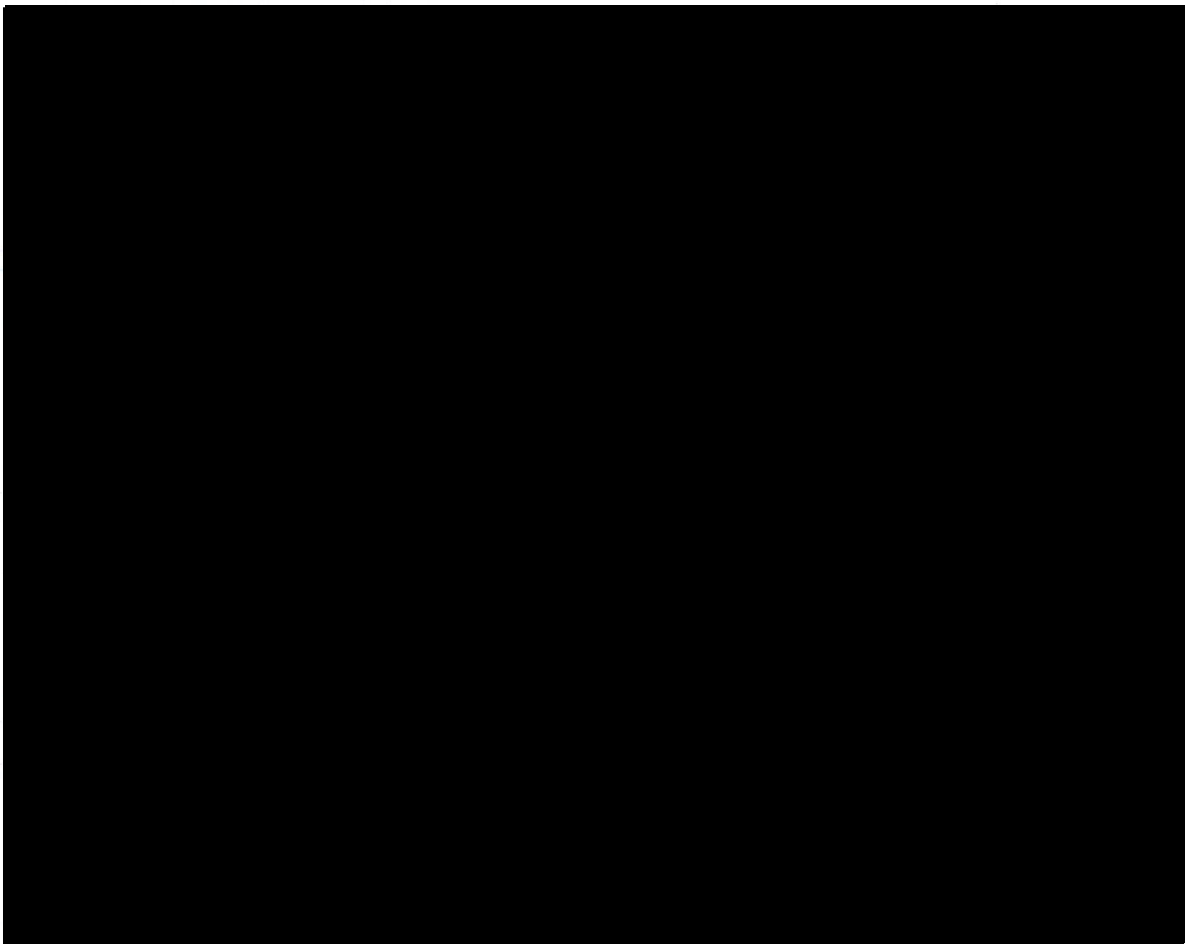
- (a) It is not a person (Section 57(1));
- (b) If it purports to represent a "number of persons" it fails to identify whom (Section 57(3)); and
- (c) In the absence of identifying who the objector represents, a view cannot be formed as to whether the objector/s "may be affected" (Section 57(1))

Objector 3, Queenscliffe Community Association Inc, in my submission has no standing to object on grounds including:

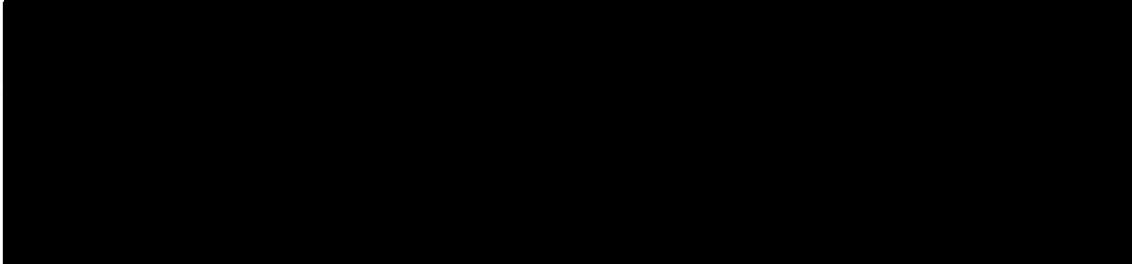
- (d) It is not a person (Section 57(1));
- (e) If it purports to represent a "number of persons" it fails to identify either the author of the objection or whom it represents (Section 57(3)); and
- (f) In the absence of identifying who the objector is or represents, a view cannot be formed as to whether the objector/s "may be affected" (Section 57(1))

2) Duplication of Objections

It appears clear that a number of the Objectors are in fact the same people lodging duplicate objections. In view of the fact that the number of objections is a consideration for Council, it is important that this issue be exposed.



A General Search reveals that the Association has 15 members but the Extract does not identify them, nor does their letter of objection.



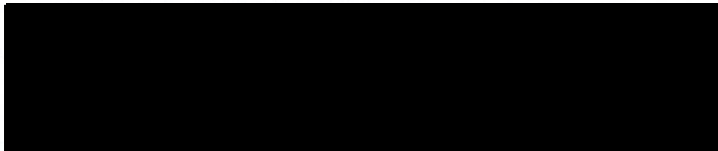
Objector 3: Queenscliffe Community Association Inc

THE FACTS

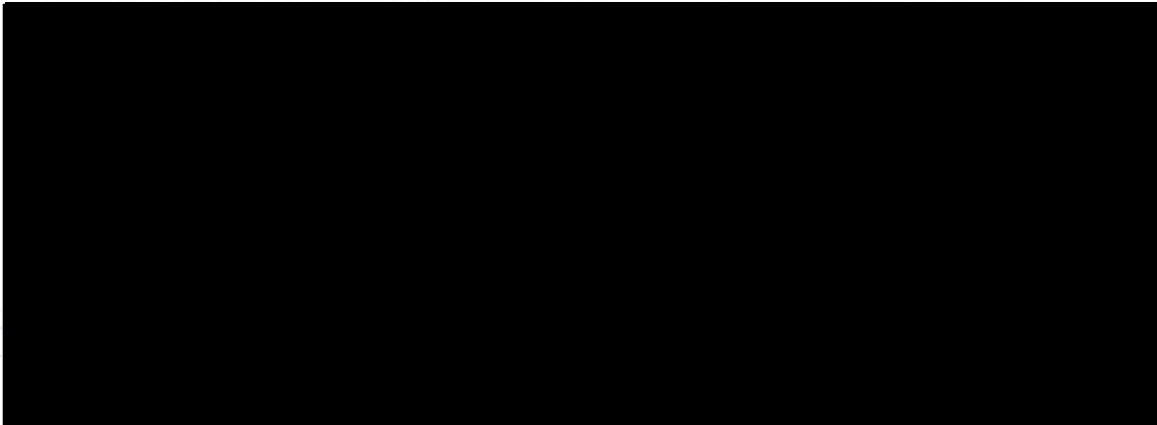
Objector 3: Queenscliffe Community Association Inc.'s objection undated, was signed off by "Queenscliff Community Association Executive". Neither the Committee nor the Association members are identified and nor do they identify "the person to whom the responsible authority is to give notice of the decision".



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A General Search reveals that the Association has 26 members but the Extract does not identify them, nor does their letter of objection.



3) Response to Objections

The objections fall into 4 categories and I will address them each separately. For the ease of Council in distributing our response to their specific objections, I have also dealt with each objection by way of individualised attachment which can be sent to the objector.

Please note, that in responding to Objectors 1, 2, 3 and 6, I do so without prejudice and without resiling from our stance on the fact that Objectors 1 and 3 have no standing and that other objections are duplicates.

The points raised by the Objectors are:

- (a) Detriment to heritage value by reason of subdivision and alteration to garden space
- (b) Clarification of building height restriction, setbacks and view line

- (c) Unknown aspect of potential building
- (d) No surveyors report

(a) Detriment to heritage value by reason of subdivision and alteration to garden space

The Victorian Heritage Database Report Statement of Significance recorded under the Queenscliff Heritage Study 2009 makes no mention of the garden space or of the West elevation of the building.

The garden area can only be seen in part from the Westerly approach.

DIAGRAM 1:



In DIAGRAM 1, All bar one of the trees seen from this Western approach to the building are in fact located on the adjoining property at 40 King Street, Queenscliff and will not be impacted by the subdivision.

There are no native species on the block and development could see the existing plants substituted with native plantings.

The objections regarding the detrimental impact to the building by reason of subdivision are subjective, opinions only and not supported by fact.

(b) Clarification of building height restriction, setbacks and view line

This is an area which has raised the most queries based primarily on a misunderstanding of the terminology used to describe heights.

The references used in the Planning Application documents are to "AHD" heights NOT metres above actual ground level.

AHD "Australian Height Datum" or MSL "Mean Sea Level" is used as a vertical control for mapping and has been adopted by the National Mapping Council.

DIAGRAM 2



DIAGRAM 3



In diagram 2 above, the second line from the top of the building ie: the one sitting below the window sill, is at 18.34AHD.

It is proposed in the planning application that:

- In the first setback of 5.5 metres walls of buildings have to be set back that distance; and
- In the second setback of between 5.5 metres plus an additional 10.5 metres (ie: 16 metres in total from the front boundary) any building height be restricted to 17.3AHD. As such, any building constructed beside the two story section of the hotel, must be below that line, as such, not interfering with the Westerly upper elevation of the hotel.

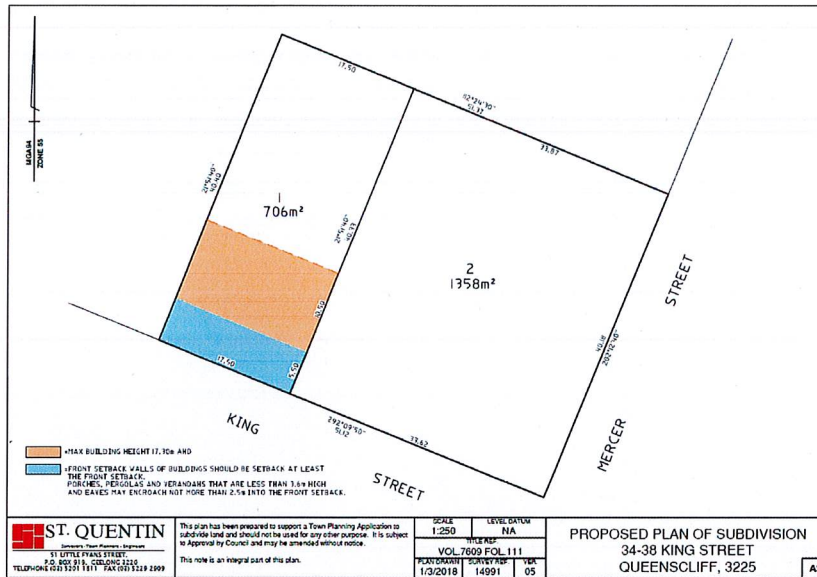
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Diagram 4, below, shows the setbacks with relevant height restrictions. Ie: the blue section has walls of buildings set back, the orange section is restricted to 5.94 metres above actual ground level and the white section is restricted to 8.5 metres above actual ground level.

DIAGRAM 4



(c) Unknown aspect of potential building

The Applicant is not required to provide development plans in relation to the subdivision.

However, the owners are passionate about retaining the aesthetic of the hotel and as such, provided Council with a proposed 3-D building envelope restricting the nature and scope of any potential build such that setbacks and height restrictions would apply, maintaining the visual appeal of the hotel in the approach from the Western side.

(d) Absence of a surveyor's report

This objection is misconceived. The requirement of the Subdivision Act 1988 (Vic) do not apply.

Overall, we suspect that the majority of objectors may amend or remove their objections if height poles were constructed showing how the height and setback restrictions will work in retaining the integrity of the building and the site line from the Westerly approach.

I reiterate that Council's planning consultant and heritage advisor gave in-principle support to the subdivision during the pre-application meeting on 5 September 2017. The application has outlined what we feel are appropriate restrictions on height and setbacks however if Council is of the view that the matter will progress with further consultation then feel free to contact us.

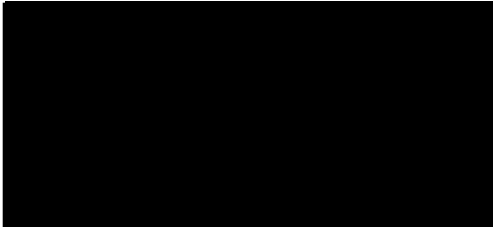
Please find attached, individual responses.

Yours faithfully,

BRENDAN O'LOAN
 Senior Town Planner, MPIA

Ref: 14991

13 August 2018



**RE: RESPONSE TO OBJECTION
PROPOSED TWO (2) LOT SUBDIVISION & CONSTRUCTION OF WORKS
34-38 KING STREET, QUEENSLIFFE 2018/039**

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I note that primarily, your objection relates to the following issue:

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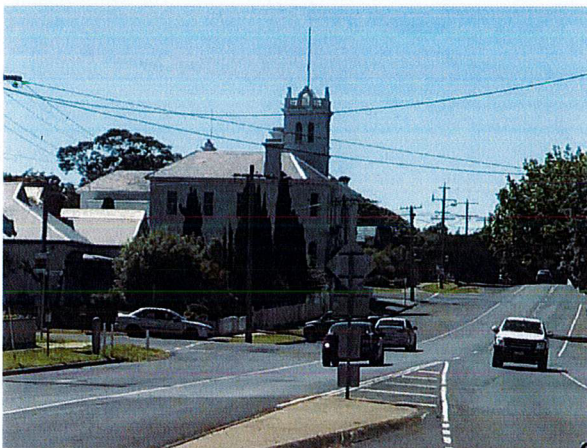
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Further, to suggest that the rhythm, appearance and tourist appeal is an assumption. Bearing in mind the setbacks and height restrictions, the intention is for the sub-division to have minimal impact.

DIAGRAM 1:



In DIAGRAM 1, All bar one of the trees seen from this Western approach to the building are in fact located on the adjoining property at 40 King Street, Queenscliff and will not be impacted by the subdivision.

There are no native species on the block and development could see the existing plants substituted with native plantings.

In the event that the above explanations allay your concerns, please notify Council of your withdrawal of the objection. If you have further queries or concerns, please advise of same in order that they be addressed.

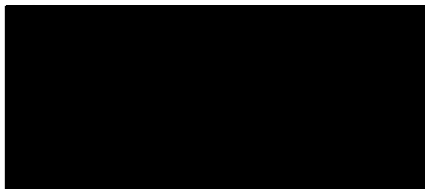
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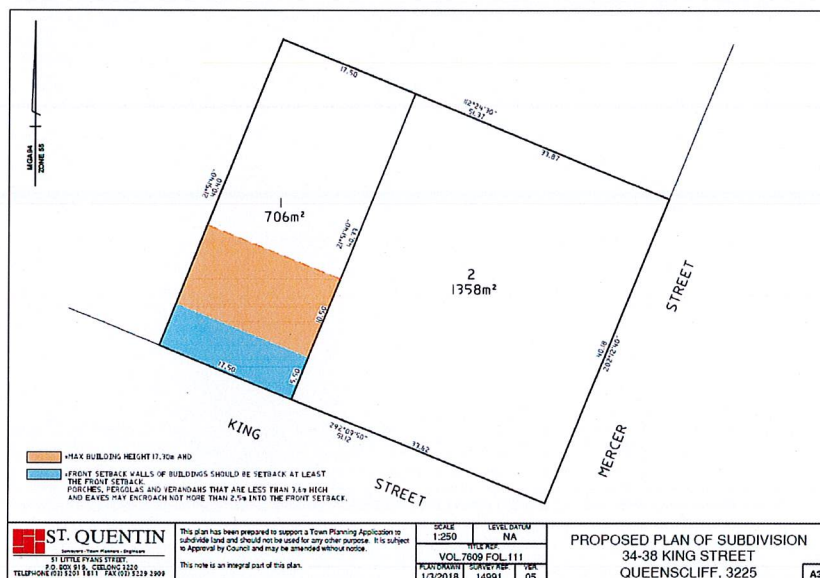
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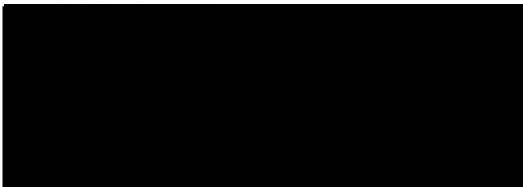
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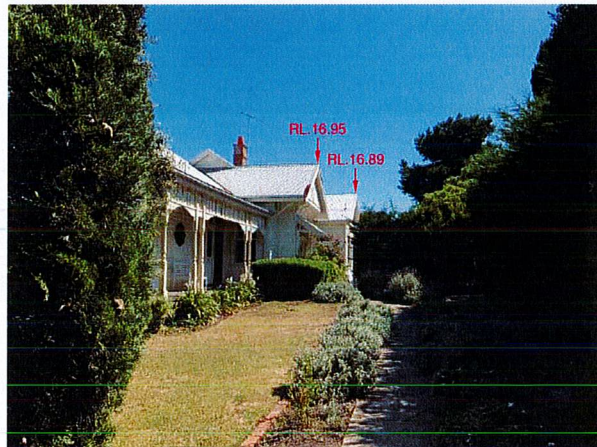
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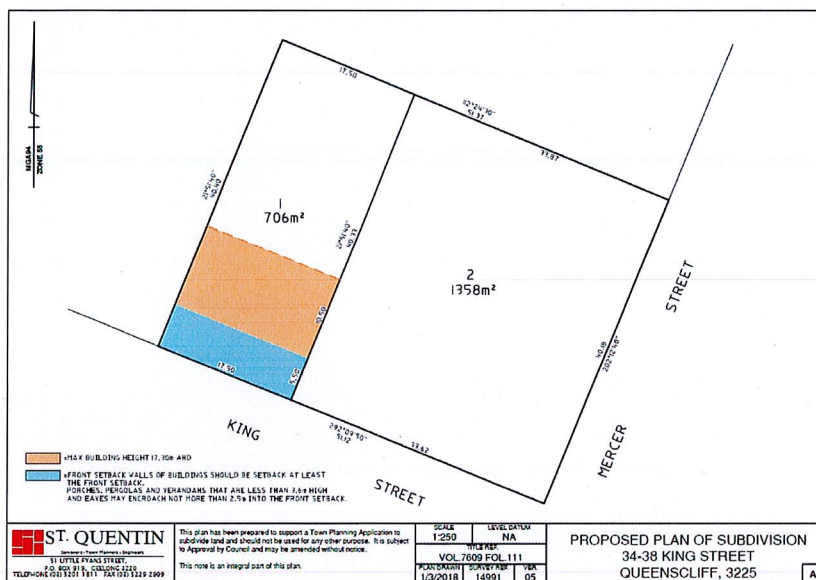
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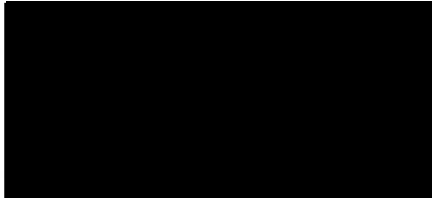
Yours faithfully,

A handwritten signature in blue ink, appearing to read "BLOAN", with a long horizontal flourish extending to the right.

BRENDAN O'LOAN
Senior Town Planner, MPIA

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13 August 2018



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PROPOSED TWO (2) LOT SUBDIVISION & CONSTRUCTION OF WORKS
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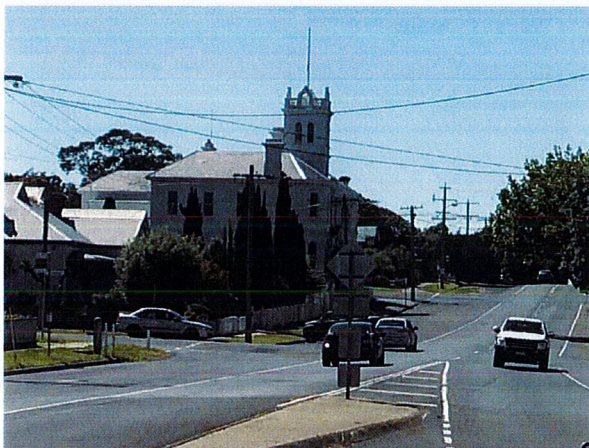
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DIAGRAM 2

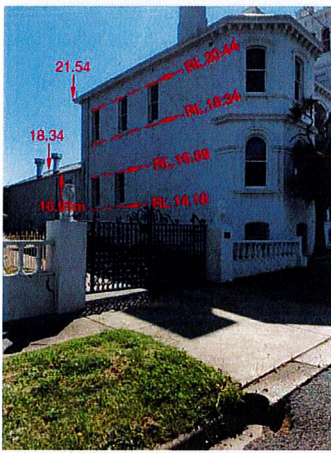
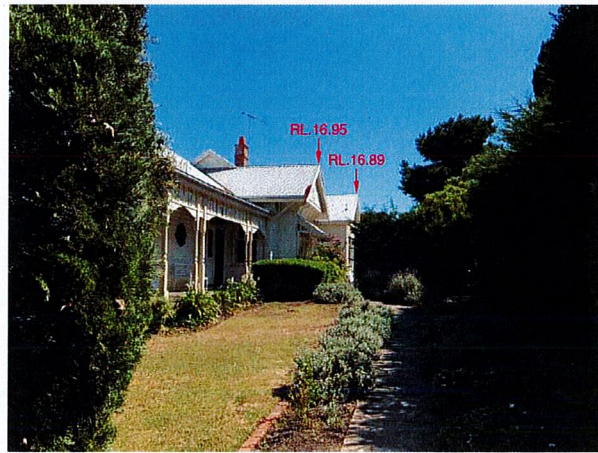


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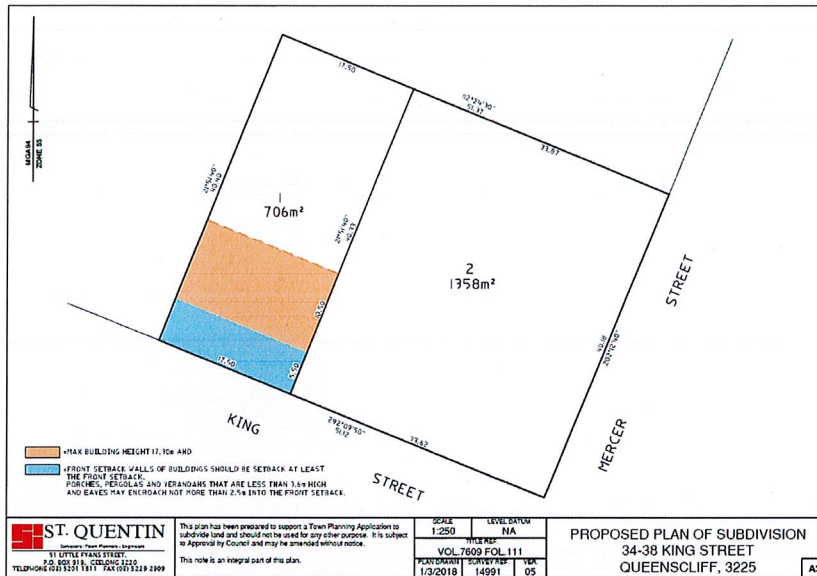
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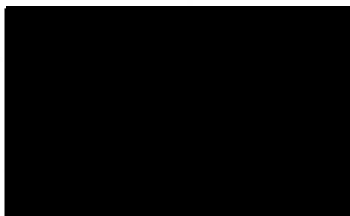
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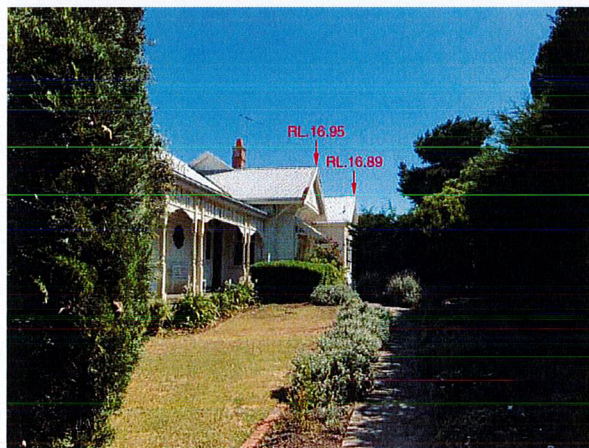
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It is proposed in the planning application that:

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- In the second setback of between 5.5 metres plus an additional 10.5 metres (ie: 16 metres in total from the front boundary) any building height be restricted to 17.3AHD. As such, any building constructed beside the two story section of the hotel, must be below that line, as such, not interfering with the Westerly upper elevation of the hotel.

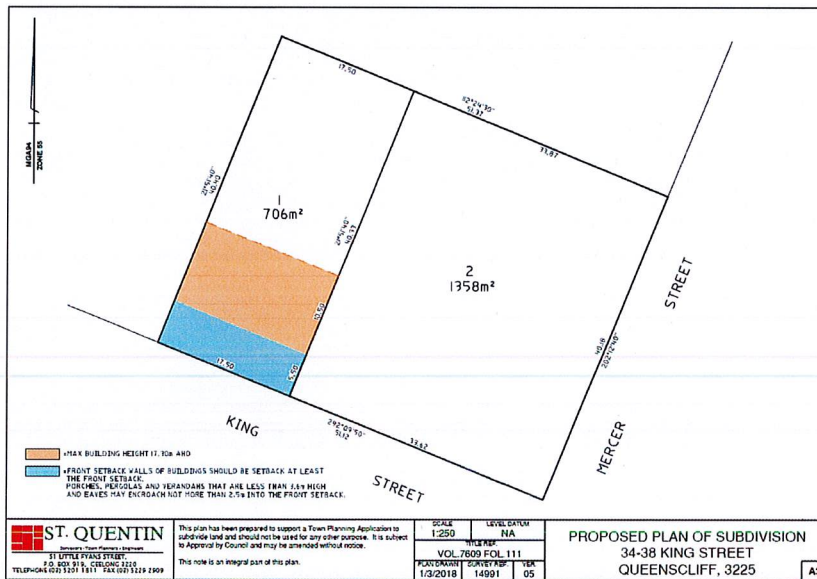
By way of comparison, in DIAGRAM 3, you will see that the property at 40 King Street measures 16.95AHD at the peak of the front facing gable.

To translate this into metres from actual ground level it means the following

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Diagram 4, below, shows the setbacks with relevant height restrictions. Ie: the blue section has walls of buildings set back, the orange section is restricted to 5.94 metres above actual ground level and the white section is restricted to 8.5 metres above actual ground level.

DIAGRAM 4



In the event that the above explanations allay your concerns, please notify Council of your withdrawal of the objection. If you have further queries or concerns, please advise of same in order that they be addressed.

Yours faithfully,

A handwritten signature in blue ink, appearing to read "BLOAN", with a long horizontal flourish extending to the right.

BRENDAN O'LOAN
Senior Town Planner, MPIA

Ref: 14991

13 August 2018



**RE: RESPONSE TO OBJECTION
PROPOSED TWO (2) LOT SUBDIVISION & CONSTRUCTION OF WORKS
34-38 KING STREET, QUEENSCLIFFE 2018/039**

I refer to the above matter and your objection dated 26 July 2018.

I note that primarily, your objection relates to the following issue:

- (a) Detriment to heritage value by reason of subdivision and alteration to garden space

I will address this below:

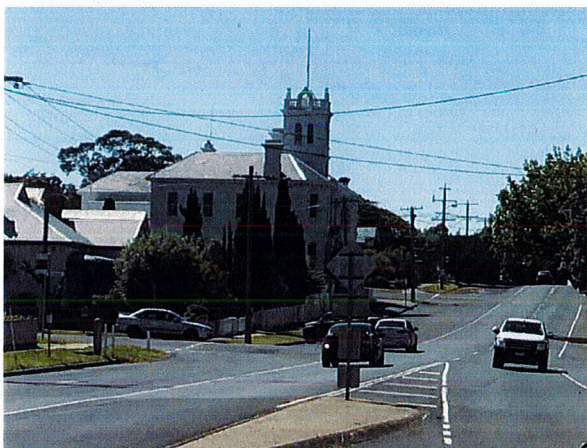
(a) Detriment to heritage value by reason of subdivision and alteration to garden space

The Victorian Heritage Database Report Statement of Significance recorded under the Queenscliff Heritage Study 2009 makes no mention of the garden space or of the West elevation of the building.

The garden area can only be seen in part from the Westerly approach.

Bearing in mind the setbacks and height restrictions, the intention is for the sub-division to have minimal impact.

DIAGRAM 1:



In DIAGRAM 1, All bar one of the trees seen from this Western approach to the building are in fact located on the adjoining property at 40 King Street, Queenscliff and will not be impacted by the subdivision.

There are no native species on the block and development could see the existing plants substituted with native plantings.

In the event that the above explanations allay your concerns, please notify Council of your withdrawal of the objection. If you have further queries or concerns, please advise of same in order that they be addressed.

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- (b) Clarification of building height restriction, setbacks and view line

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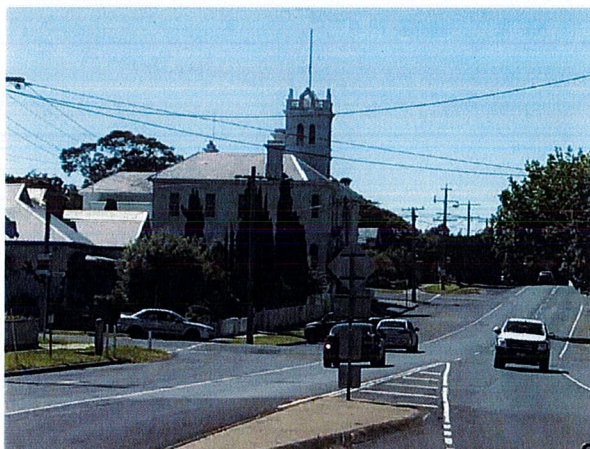
(a) Detriment to heritage value by reason of subdivision and alteration to garden space

The Victorian Heritage Database Report Statement of Significance recorded under the Queenscliff Heritage Study 2009 makes no mention of the garden space or of the West elevation of the building.

The garden area can only be seen in part from the Westerly approach.

Further, to suggest that the rhythm, appearance and tourist appeal is an assumption. Bearing in mind the setbacks and height restrictions, the intention is for the sub-division to have minimal impact.

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In DIAGRAM 1, All bar one of the trees seen from this Western approach to the building are in fact located on the adjoining property at 40 King Street, Queenscliff and will not be impacted by the subdivision.

There are no native species on the block and development could see the existing plants substituted with native plantings.

The objections regarding the detrimental impact to the building by reason of subdivision are subjective, opinions and not supported by fact.

(b) Clarification of building height restriction, setbacks and view line

This is an area which has raised the most queries based primarily on a misunderstanding of the terminology used to describe heights.

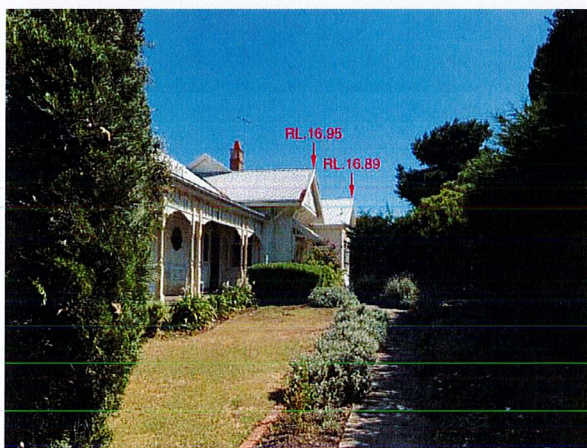
The references used in the Planning Application documents are to "AHD" heights NOT metres above actual ground level.

AHD "Australian Height Datum" or MSL "Mean Sea Level" is used as a vertical control for mapping and has been adopted by the National Mapping Council.

DIAGRAM 2



DIAGRAM 3



In diagram 2 above, the second line from the top of the building ie: the one sitting below the window sill, is at 18.34AHD.

It is proposed in the planning application that:

- In the first setback of 5.5 metres walls of buildings have to be set back that distance; and
- In the second setback of between 5.5 metres plus an additional 10.5 metres (ie: 16 metres in total from the front boundary) any building height be restricted to 17.3AHD.

As such, any building constructed beside the two story section of the hotel, must be below that line, as such, not interfering with the Westerly upper elevation of the hotel.

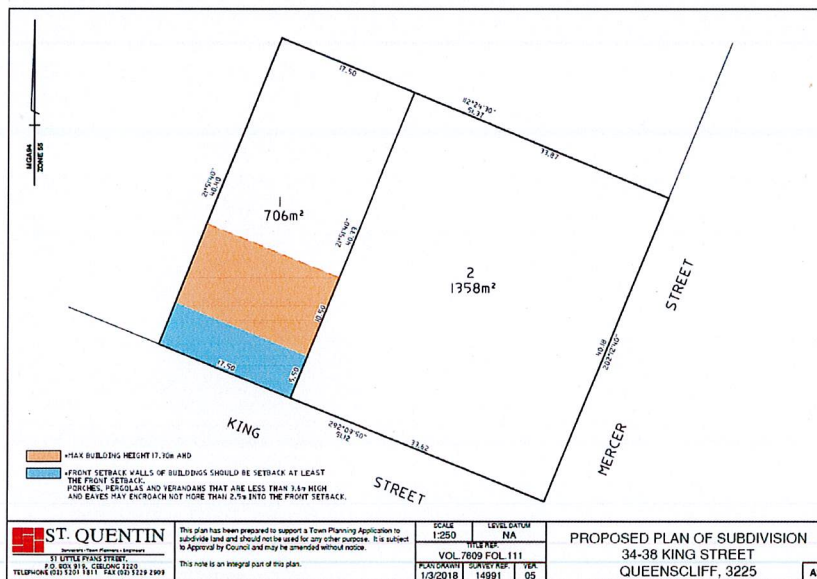
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DIAGRAM 4



In the event that the above explanations allay your concerns, please notify Council of your withdrawal of the objection. If you have further queries or concerns, please advise of same in order that they be addressed.

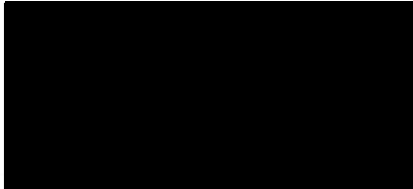
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BLOAN

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Ref: 14991

13 August 2018



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PROPOSED TWO (2) LOT SUBDIVISION & CONSTRUCTION OF WORKS
34-38 KING STREET, QUEENSCLIFFE 2018/039**

I refer to the above matter and your objection dated 26 July 2018.

As neighbours of the property I note that primarily, your objection relates to the following issue:

- (a) Clarification of building height restriction and setbacks

I trust that we can allay your concerns as it relates to a misunderstanding pertaining to building heights. I will address this below:

(a) Clarification of building height restriction, setbacks and view line

This is an area which has raised the most queries based primarily on a misunderstanding of the terminology used to describe heights.

The references used in the Planning Application documents are to "AHD" heights NOT metres above actual ground level.

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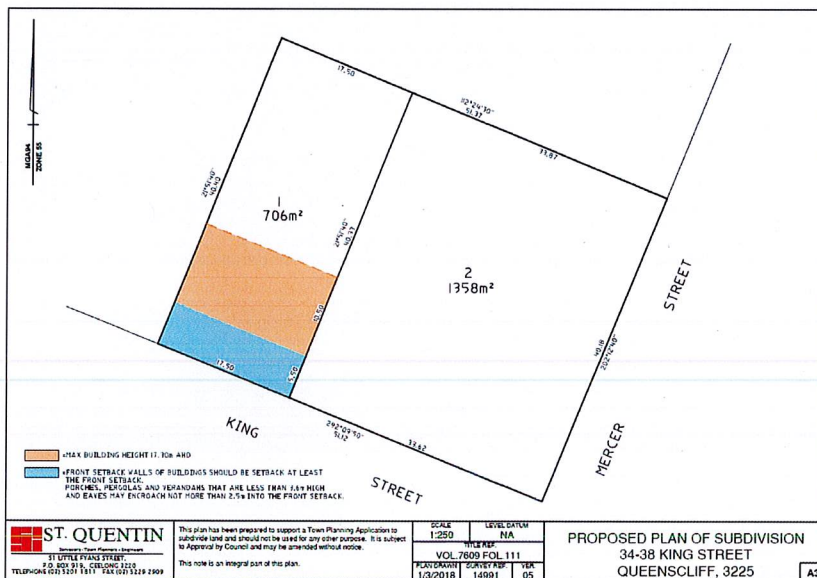
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I note that primarily, your objection relates to the following issues:

- (a) Detriment to heritage value by reason of subdivision and alteration to garden space
- (b) Clarification of building height restriction, setbacks and view line
- (c) Unknown aspect of potential building
- (d) No surveyors report

I will address them individually below:

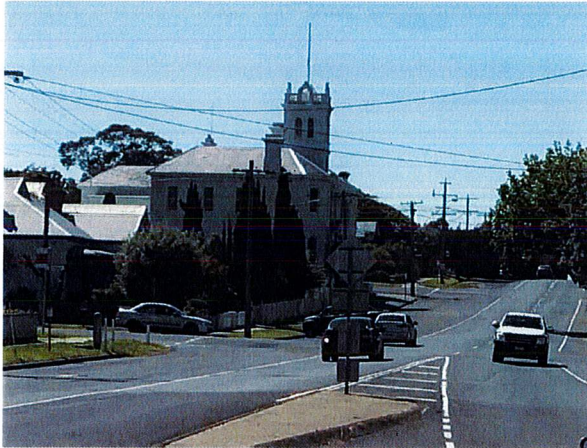
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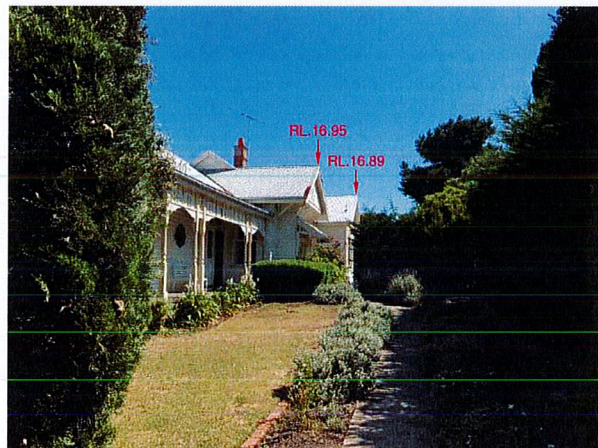
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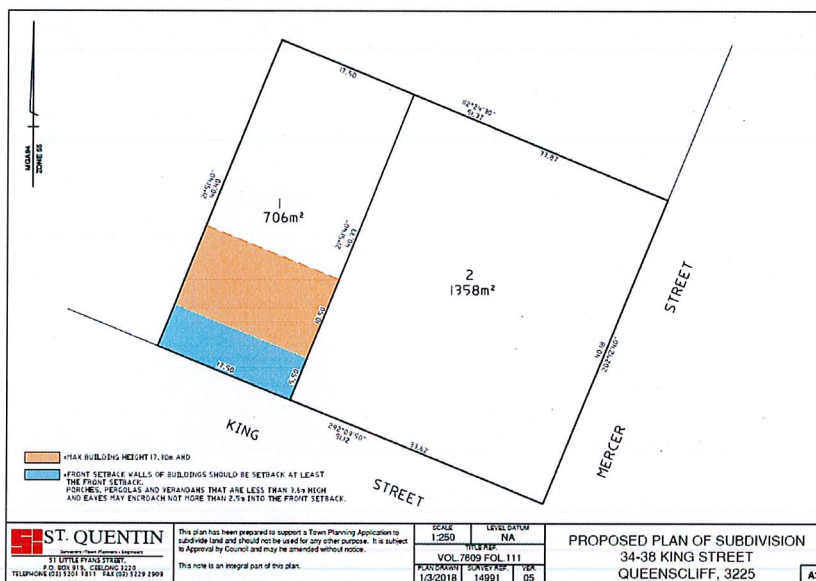
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DIAGRAM 4



(c) Unknown aspect of potential building

The Applicant is not required to provide development plans in relation to the subdivision.

However, the owners are passionate about retaining the aesthetic of the hotel and as such, provided Council with a proposed 3-D building envelope restricting the nature and scope of any potential build such that setbacks and height restrictions would apply, maintaining the visual appeal of the hotel in the approach from the Western side.

(d) Absence of a surveyor's report

This objection is misconceived. The requirement of the Subdivision Act 1988 (Vic) do not apply.

In the event that the above explanations allay your concerns, please notify Council of your withdrawal of the objection. If you have further queries or concerns, please advise of same in order that they be addressed.

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