

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1462/2019
PERMIT APPLICATION NO. MPS/2018/202

CATCHWORDS

Section 77 *Planning and Environment Act 1987*; Moreland Planning Scheme; Commercial 1 Zone; Heritage Overlay; Design and Development Overlay; Demolition; Access; Design composition.

APPLICANT	P & S Mirabella Pty Ltd
RESPONSIBLE AUTHORITY	Moreland City Council
REFERRAL AUTHORITY	The Head, Transport for Victoria
RESPONDENTS	Finlay Bird & Others, Lachlan Fysh, David Grist, Dorry Bercham, Geliana Dankha, Lyda Dankha, Michel Odicho, Patricia Rustad, Penelope Shaw, Paul Westcott and Vivian & Noel Muller.
SUBJECT LAND	141-153 Lygon Street, BRUNSWICK EAST VIC 3057
WHERE HELD	Melbourne
HEARING TYPE	Hearing
DATE OF HEARING	28 February, 1 & 2 March 2022
DATE OF ORDER	12 April 2022
CITATION	Mirabella Pty Ltd v Moreland CC [2022] VCAT 406

ORDER

Amend permit application

1 Pursuant to clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998*, the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:

- Plans prepared by: Jackson Clement Burrows
- Drawing numbers: TP0-000, TP0-201 to TP0-203, TP1-100 to TP1-110, TP2-101, TP2-102, TP3-101 to TP3-105, TP3-101 to TP3-105, TP3-201 to TP3-205, TP4-100 to TP4-109, TP4-200 to

TP4-211, TP4-310 to TP4-314, TP9-101 to TP9-118, TP9-200 and TP9-900.

- Dated: 17 December 2021.

Permit granted

- 2 In application P1462/2019 the decision of the responsible authority is set aside.
- 3 In planning permit application MPS/2018/202 a permit is granted and directed to be issued for the land at 141-153 Lygon Street, BRUNSWICK EAST VIC 3057 in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
 - Partial demolition of a building in a heritage overlay and construction of a six-storey building over basement car parking consisting of shops and use of the land for dwellings, and a reduction in the standard car parking requirement for the retail component.

Joel Templar
Member

Ann Keddie
Member

APPEARANCES¹

For P & S Mirabella Pty Ltd	<p>Mr Adrian Finanzio SC and Mr Sean McArdle of counsel instructed by Jackson Lane Legal.</p> <p>Evidence was called from the following witnesses:</p> <ul style="list-style-type: none">• Ms Charmaine Dunstan, traffic engineer of Traffic Group.• Mr Mark Sheppard, urban designer of Kinetica.• Mr Marco Negri, town planner of Contour Consultants. <p>Evidence statements were tendered from Mr John Patrick, landscape architect of John Patrick Landscapes, Mr Chris Goss of Orbit Solutions (photomontages), Mr Bryce Raworth, architect and architectural historian of Bryce Raworth and Associates, Mr Jan Talacko, sustainable design consultant of Ark Resources and Mr Tim Jackson, architect of Jackson Clement Burrows. However, these witnesses were not called to give verbal evidence or be cross examined.</p>
For Moreland City Council	<p>Mr David Vorcheimer, solicitor of HWL Ebsworth Lawyers.</p> <p>An evidence statement from Mr Nigel Lewis, architect and architectural historian of Nigel Lewis Pty Ltd was tendered but he was not called to give verbal evidence or be cross examined.</p>
For The Head, Transport for Victoria	No appearance.
For Finlay Bird & Others, David Grist, Dorry Bercham, Geliana Dankha, Lyda Dankha, Michel Odicho, Patricia Rustad, Penelope Shaw, Paul Westcott and Vivian & Noel Muller	Dr Stephen Rowley, town planner of RCI Planning.
For Lachlan Fysh	Mr Lachlan Fysh, in person.

¹ All appearances were via an online platform.

INFORMATION

Description of proposal	Partial demolition of a building in a heritage overlay, and construction of a seven -storey building over basement car parking consisting of shops and use of the land for dwellings, and a reduction in the standard car parking requirement.
Nature of proceeding	Application under section 77 of the <i>Planning and Environment Act 1987</i> – to review the refusal to grant a permit.
Planning scheme	Moreland Planning Scheme
Zone and overlays	Commercial 1 Zone (C1Z) Neighbourhood Residential Zone Schedule 1 (NRZ1) Design and Development Overlay Schedule 19 (DDO19) Heritage Overlay Schedule 505 (HO505) Heritage Overlay Schedule 251 (HO251) Parking Overlay Schedule 1 (PO1) Development Contributions Plan Overlay (DCPO)

Permit requirements

Clause 34.01-1 - to use the land for dwelling as the frontage at ground level exceeds two metres.

Clause 34.01-4 - to construct a building or construct or carry out works.

Clause 43.01-1 - to demolish or remove a building and construction of buildings and works.

Clause 43.02-2 - to construct a building in accordance with the requirements of the schedule 19.

Clause 52.06 – to reduce the standard car parking requirement associated with the shop (retail) uses.

The following Clauses of the Moreland Planning Scheme do not trigger a requirement for a planning permit but are relevant to the consideration of the proposal:

- Clause 45.06 - Development Contributions Plan Overlay (Schedule 1). A condition is included in the recommendation requiring the payment of the DCP levy prior to the issue of a Building Permit for the development.
- Clause 52.34 - Bicycle Facilities.
- Clause 58 - Apartment Development.

Land description

The review site consists of several lots located on the west side of Lygon Street within the Commercial 1 Zone and one lot on the east side of Warburton Street within the Neighbourhood Residential Zone Schedule 1. The two components are separated by a 3.77metre wide laneway known as Christopher Lane. All lots facing Lygon Street are occupied by either single or double storey buildings, with the building at 151A Lygon Street supporting an existing single storey building currently affected by a heritage overlay.



Tribunal inspection

2 March 2022 (following the conclusion of the hearing).

REASONS²

WHAT IS THIS PROCEEDING ABOUT?

- 1 P & S Mirabella Pty Ltd seek a review by the Tribunal of council's decision to refuse to grant a permit for a proposed development at 141 – 153 Lygon Street, Brunswick East.
- 2 The proposal refused by the council was for a building comprising eight levels above ground level, plus a roof terrace and two basement levels. At ground level there were two residential lobbies and four retail premises with a total of 78 dwellings above. Vehicle access was proposed via Christopher Lane at the rear and over a lot fronting Warburton Street which forms part of the review site.
- 3 As part of the planning permit application process, the original proposal was advertised and 186 objections were received. Some of those objectors are party to the proceeding. The council determined to refuse the proposal on a number of grounds including:
 - a. Height and scale being too great.
 - b. Demolition of the building at 151A Lygon Street which is affected by a heritage overlay.
 - c. Inappropriate built form response to Lygon Street.
 - d. Off-site amenity impacts, including overshadowing, noise and visual bulk.
 - e. Various non-compliances with clause 58, including energy efficiency.
 - f. Poor public realm and context response.
 - g. The use of the land fronting Warburton Street for use by the commercial components is prohibited.
- 4 The objector parties raised similar concerns as well as the impacts of providing access to the site via the Warburton Street lot.
- 5 In response to the use of the Warburton Street lot by the commercial components, the council ultimately amended its grounds of refusal and deleted this ground.
- 6 The applicant sought to substitute the plans assessed by the council with an amended set of plans (the 'amended plans'). These plans reduced the proposal to seven-storeys, with other various changes to the overall appearance, including a new exterior design the building. The proposed

² The submissions and any evidence of the parties, any supporting exhibits given at the hearing and the statements of grounds filed have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons.

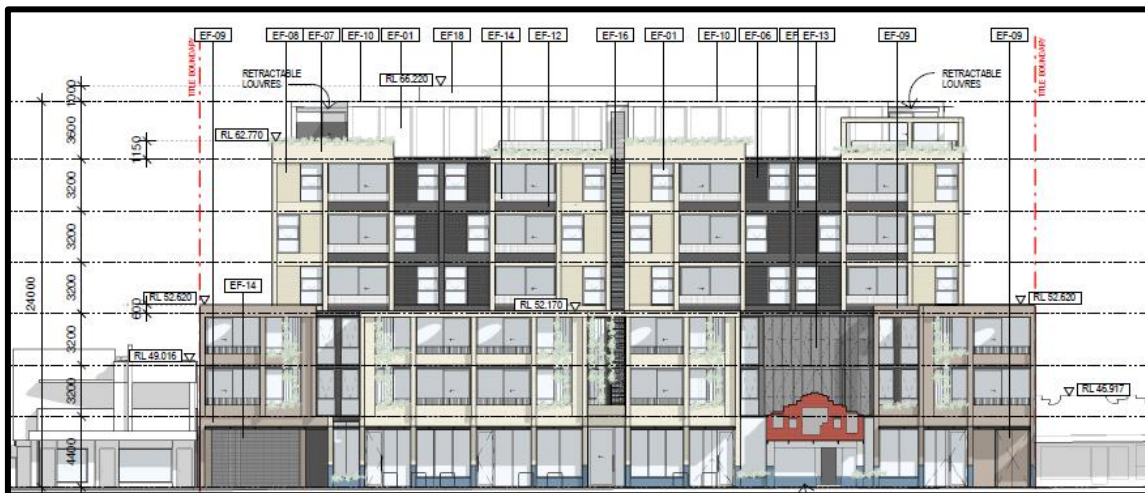
vehicle access location was relocated from Christopher Lane to Lygon Street.

- 7 The parties came to the hearing essentially agreeing on all but one **issue - the** location of the proposed basement access.
- 8 This position was partly based on the amended plans and partly based on some agreed conditions, including the deletion of level 4 on the amended plans, and the retention at least the front 5 metres of the building at 151A Lygon Street (the ‘heritage building’) with consequential **changes to the levels above the** heritage building. For ease of reference however, references to the proposal in this decision are to that which is shown on the substituted plans before us, excluding the agreed changes.
- 9 In the officer report on the application plans, the council noted that access from Lygon Street was discouraged by policy. It concluded that the access over the Warburton Street lot was prohibited, but that Warburton Street could accommodate the anticipated increase in traffic.
- 10 The substituted plans propose vehicle access solely from Lygon Street. The applicant also prepared an alternative proposal, whereby vehicle access **would be from Christopher Lane, traversing** the Warburton Street lot. This does not form part of the substituted plans but was, the applicant submitted, prepared to demonstrate that access could be provided from this location in the event the Tribunal was not persuaded that access from Lygon Street was acceptable.
- 11 Although the matters aside from access were essentially not in dispute, **we make** brief findings on each of the key aspects of the proposal. The issue remaining in dispute is whether access from Lygon Street is acceptable, both from an urban design as well as pedestrian and traffic safety perspective.
- 12 Whilst this was the remaining issue in dispute, the overall design and architectural treatment of the building was the focus of some attention during the hearing and we have made findings about it.
- 13 We have concluded that the proposal is acceptable, subject to conditions. We set out our reasons below.

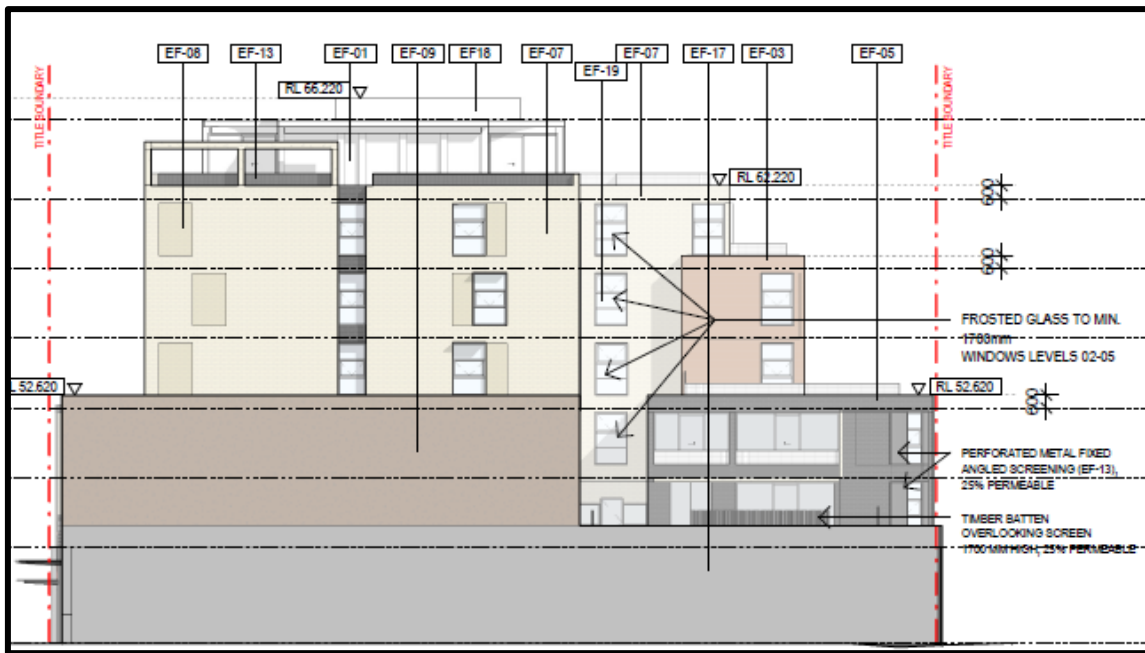
THE PROPOSAL

- 14 The proposal is to demolish part of an existing building and to construct a seven-storey building over two levels of basement car parking, use the land for dwellings and to reduce the car parking requirement.
- 15 The façade of the existing building at 151A Lygon Street is to be retained, except the canopy over the footpath and existing door to Lygon Street, which are proposed to be demolished. All other buildings and structures are proposed to be demolished.

- 16 The two levels of basement are largely for car parking as well as building services and storage for the dwellings.
- 17 The ground floor level is to be used for four retail premises totalling 990m², as well as bicycle **storage and building** services. One car parking space for the retail uses as well as a loading bay are also proposed at ground floor level.
- 18 Above ground floor level, all levels are to be used for dwellings, with a total of 58 dwellings spread across six levels.
- 19 The maximum height of the building is proposed to be 24 metres above natural ground level, with a 'podium' height of approximately 11.4 metres.
- 20 A variety of materials are proposed including:
 - a. Face brickwork of varying finishes including patterned brickwork.
 - b. Polished precast concrete.
 - c. Flat metal sheeting.
 - d. Perforated metal.
 - e. Blue tiles.
 - f. Timber **screens to limit overlooking.**

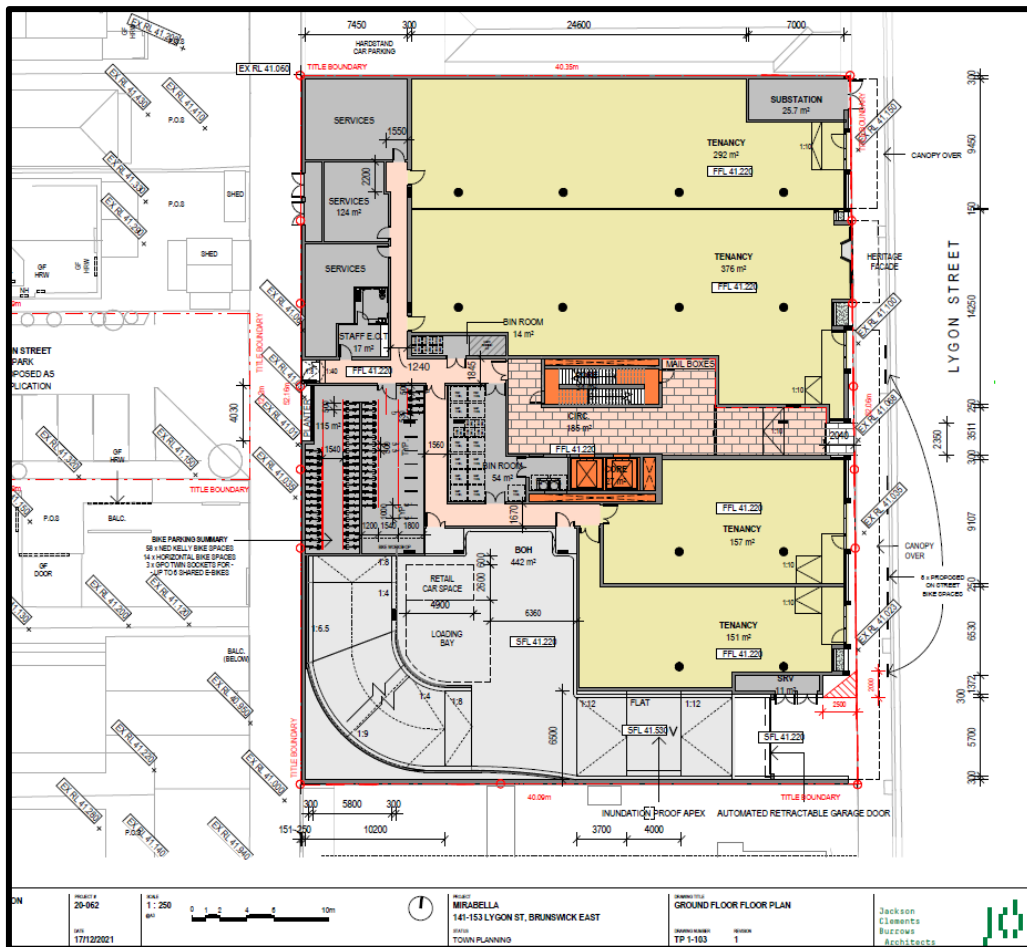


Proposed east (Lygon Street) elevation.



Proposed north elevation.

- 21 Vehicle access is proposed at the south-eastern corner of the ground floor level via Lygon Street. This includes a 5.7 metres wide access point which is to have an automated retractable garage door setback 5 metres from the front boundary.
- 22 There is currently no vehicle access to the review site from Lygon Street, with on-street parking occupying the area proposed for access. The new access will result in the loss of two on-street car parking spaces.
- 23 The planning scheme requires a total of 100 car parking spaces to be provided on site, resulting in a reduction of 17 spaces being sought. Based on allocation of 82 spaces being designated for the dwelling use and one space for the retail use, this would result in the 17 space reduction being associated with the retail uses.



Proposed ground floor.

PHYSICAL CONTEXT

- 24 The review site sits on the western side of Lygon Street, near the corner of Glenlyon Road in Brunswick East. It forms part of a strip shopping centre that is currently undergoing substantial change, given its designation as part of the Brunswick Activity Centre.
- 25 The site includes a lot which fronts Warburton Street, but is part of the Lygon Street addressed properties³. This lot is physically separated from the remainder of the site by Christopher Lane. This lane runs in an ‘L’ shape, with the longest leg running north-south, turning west at the northern end with the shorter leg connecting to Warburton Street. At the south it terminates at Cocoa Jackson Lane. It has no splays either at the bend to the north or at its intersection with Cocoa Jackson Lane to the south.

³ Also referred to at times during the hearing as 12 Warburton Street given the properties either side are known as 10 and 14 Warburton Street respectively.



Aerial image outlining the review site in red.⁴

- 26 The Warburton Street property is vacant of any buildings and currently contains concrete hardstand used for access and car parking. Through access is available between Christopher Lane and Warburton Street over this property, with a double width crossover at the Warburton Street frontage.
- 27 The section of the review site that fronts Lygon Street variously contains single or double storey buildings that are constructed to the frontage and side boundaries, and generally to the rear boundary.
- 28 Where Lygon Street is adjacent to the review site, it supports two lanes of traffic in each direction. However, on-street parking is located on either side adjacent to the street curb and tram tracks are located within the inner lanes in either direction. Adjacent to the review site, there are no vehicle crossings and vehicle crossings to private property are generally absent from Lygon Street in the surrounding area.
- 29 Buildings on either side of the review site are generally single or double storey in scale, with a redevelopment under construction on the southern side of Cocoa Jackson Lane.
- 30 Properties along the eastern side of Warburton Lane generally support detached dwellings, although there are some multi-dwelling developments. Most of these properties have some form of building at the rear abutting

⁴ Source: Ms Dunstan's evidence, page 11.

Christopher Lane, although some do not and have secluded private open space directly abutting the laneway frontage.

ACCESS

The Lygon Street access

31 As set out above, the proposal before us is for access to the basement levels and car parking at ground level to be via Lygon Street. The alternative access via the Warburton Street lot/Christopher Lane is not a matter we are required to consider as it does not formally form part of the proposal. We agree with the applicant that consideration of alternative options should only be contemplated if we find the proposed access from Lygon Street to be unacceptable in the physical and strategic context of the review site. There is relevant planning scheme policy that encourages access to be from the rear and we will address this further below.

32 The council did not support the proposal to provide access from Lygon Street in any form. It said that the provision of a crossover to Lygon Street will downgrade and diminish the pedestrian experience and create a precedent for other development to follow suit. It said that the intent for this part of the Brunswick Activity Centre is for commercial and retail uses at ground floor level with an accompanying increase in pedestrian traffic as a result and that this applies across the broader precinct, not just for the review site.

33 The council relied on the provisions of the DDO19 as well as relevant policy in support of its position. It also cited *Carlos Constructions*⁵:

63 *As a matter of general principle it is preferable that the access ways to basement car parks in developments such as this be located on rights of way, or onto minor side streets. The reason for this is not so much a traffic reason, but an orderly planning reason. Car park entries tend to be visually unattractive, they can create gaps in what should be active street frontages, and vehicles entering and leaving the site can disrupt pedestrian movement in busy shopping streets.*

34 The council submitted the following with respect to relevant PPF policy:

- Clause 15.01-1S Urban Design which requires development to respond to its context in terms of character whilst also ensuring that development supports public realm amenity and safe access to walking and cycling environments and public transport, as well as promoting good urban design along abutting transport corridors.
- Clause 15.01-1L Urban Design in Moreland seeks to ensure that site design, building frontages, design articulation and internal layout achieve a good interface with and surveillance of the public realm, including maximising opportunities for active frontages.

⁵ *Carlos Constructions Pty Ltd v Moreland CC* [2004] VCAT 1752

- Clause 15.01-1L Vehicle access design in Moreland that sets the objective:

- To ensure provision of vehicle access contributes to an improved urban environment for pedestrians and cyclists.

Whilst including strategies such as:

- Ensure development utilises rear laneways for vehicle access where possible to allow street frontages to prioritise pedestrian movement and safety and to create active frontages.
- Clause 15.01-2S Building Design seeks building design that contributes positively to the local context and enhance the public realm, whilst minimising detrimental impacts on neighbouring properties and ensuring that development provides safe access and egress for pedestrians.
- Clause 15.01-2L Building Design in Moreland seeks to ensure that service infrastructure is well concealed and integrated into the building design and ensuring that car parking facilities (including crossovers) do not dominate the streetscape.
- Clause 15.01-5S Neighbourhood Character seeks to recognise, support and protect neighbourhood character by ensuring that development respects the existing character and contributes to the preferred neighbourhood character.

35 The council also relied on the DDO19 as providing guidance on this aspect:

Development should minimise the impact of vehicle access and car parking on the public realm by:

- Locating vehicle access at the rear of buildings where possible;
- On secondary frontages, rear access is preferred but where vehicle access is not possible should be provided to the side of corner properties away from the front facade; and
- Locating car parking where it cannot be seen from the public realm.

36 In addition, the council relied on the purposes of clause 52.06:

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

To ensure that the design and location of car parking is of a high standard, creates a safe environment for users and enables easy and efficient use

37 It noted that the decision guidelines at clause 52.06-10 require consideration of:

- The ease and safety with which vehicles access and circulate within the parking area. The provision for pedestrian movement within and around the parking area.

- The amenity of the locality and any increased noise or disturbance to dwellings and the amenity of pedestrians.

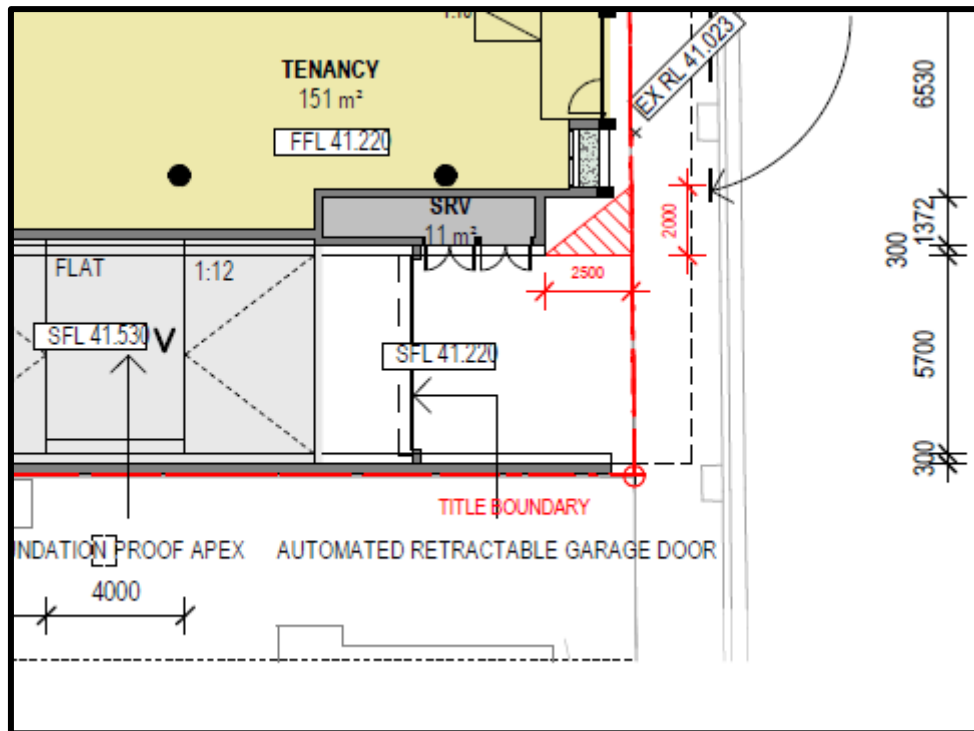
- 38 In relation to the DDO19 guidance the council relied upon, the applicant submitted that providing access to the rear is, as the DDO19 sets out, contingent on that being *possible* and that in this case, it is not possible from Christopher Lane. This is due to the physical constraints of the laneway. In particular, the absence of splays at corners of the laneway means that even a B85 vehicle cannot navigate the bend at the northern end of the laneway, or the intersection with Cocoa Jackson Lane to the south.⁶
- 39 It was Ms Dunstan's evidence that access is a fundamental issue in a proposal such as this. The absence of splays in Christopher Lane prevents utilisation of the rear laneway for access to the proposal. Vehicles currently utilise the laneway, but both access and the ability to successfully navigate the laneway are in large part reliant on vehicles traversing private property where there is currently no physical barrier on the properties used to assist in turning.
- 40 There was also dispute between the council and the applicant regarding the utilisation of the Warburton Street lot to provide access to the site.
- 41 The council says that as this allotment forms part of the subject site, it can provide access to the Lygon Street portion of the site. It submits that relevant policy and the DDO19 refer to 'rear access', and that this phrase is not limited to rear laneways and therefore the Warburton Street lot could be considered to provide rear access.
- 42 The applicant refutes this and submits that the proposal before us does not include this part of the site for any purpose. It also said there was also utility in future residential development of the lot in order to 'fill the gap' created in the Warburton Street streetscape in the 1970s when the dwelling on the lot was demolished to make way for the current use as a car park associated with the existing use on the review site.
- 43 The applicant further submits that if the council's submission that access from Lygon St is inappropriate in-principle is accepted, it means that this site cannot be developed in accordance with the Brunswick Activity Centre aspirations, given access from Christopher Lane is not possible. It says that the substantial size of the site, together with its other attributes, make it a clear candidate to fulfill the planning scheme aspirations for the Brunswick Activity Centre, other than rear access being available.
- 44 The applicant's position at the hearing was clear that the proposal seeks access via Lygon Street. The alternative access arrangement is to be considered only in the event that the Tribunal finds that the access from Lygon Street is unacceptable.
- 45 We accept Ms Dunstan's evidence that the dimensions and configuration of the laneway make access from the laneway problematic, if not impossible.

⁶ As demonstrated by the B85 vehicle swept paths in Ms Dunstan's evidence

Whilst it might be possible to undertake multiple corrective manoeuvres in order to navigate the bend of the laneway and its intersection with Cocoa Jackson Lane, we find that this would not be efficient, safe and convenient, particularly given the volume of traffic likely to utilise the laneway as a result of this proposal, in addition to its current use.

- 46 So, whilst policy and DDO19 refer to ‘where possible’, we take this to have a pragmatic aspect. If access were possible with 50, or 100 corrective manoeuvres, would this still be consistent with that policy and the DDO19 because it is technically possible? Clause 52.06 demands safe and efficient outcomes. We consider that access from Christopher Lane with its constraints would not achieve those outcomes.
- 47 We accept that there is a clear preference in the planning scheme for access to be provided at the rear of sites and Mr Sheppard and Mr Negri agreed. DDO19 and clause 15.01-1L both seek this from a pedestrian, vehicle safety and urban design perspective. For the reasons articulated by Council, it is the preferable option. Both the relevant policy and DDO19 are clear that the preference for rear access is qualified by ‘where possible’.
- 48 Whilst the Warburton Street lot is part of the subject site, it is not a part that has sought to be relied upon in the proposal before us. Nor do we find it is a part that we can compel to be utilised. The council agreed that Christopher Lane does not have the necessary physical attributes to it to be used for access and the conveyance of vehicles associated with the proposal. Therefore, for these reasons, we find that access from the rear is not possible and that even if it were, the proposal before us is acceptable.
- 49 There are a number of factors to consider as to whether this access arrangement is acceptable, including:
- Urban design considerations, including active frontages.
 - Pedestrian safety.
 - Vehicle movements, including volume, impact on the street network and manoeuvrability.
- 50 We were advised at the hearing, and insofar as we were able to ascertain during our site inspection, there is no other site within close proximity that includes a crossover from Lygon Street. Approving this proposal would introduce a foreign element to the area. We accept that this is not an ideal outcome, but it is one which must be weighed against other issues in our consideration. As Mr Sheppard notes in his evidence ‘although vehicle access from a ‘mainstreet’ is generally not preferred, it is commonly accepted where there is no alternative or the alternative has its own adverse consequences, the resulting streetscape remains well activated and it does not disrupt heritage fabric.’ He also considers the resultant ability for 12 Warburton Street to be developed as a residence has advantages in both repairing the current gap in the streetscape and substantially obscuring the proposed built form from the west side of Warburton Street.

- 51 We find that the interruption to the Lygon Street footpath caused by the crossover, an occurrence not uncommon in activity centres, is not fatal to the acceptability of the proposal as a whole.
- 52 The Department of Transport did not object to the proposal, subject to restricting entry and exit movements to left-in and left-out only, thereby not allowing south-bound traffic to turn right into the site or vehicles exiting the site to turn right into Lygon Street.
- 53 According to Ms Dunstan's evidence, the proposal will result in an additional 29 vehicle movements per hour which cannot be accommodated in the existing laneway when combined with what she described as the existing modest traffic volumes, given that the 72 metres north-south section of the laneway allows two-way traffic flow but does not provide requisite passing areas.
- 54 On the other hand, her evidence is that this level of traffic generation can comfortably be accommodated via the proposed access to Lygon Street. With a restriction of left-in and left-out egress and access, it would have negligible impact on the operation of Lygon Street and in particular would have little impact on the operation of trams.
- 55 Ms Dunstan's evidence was that with the addition of either signage or a traffic island would aid in ensuring that exiting vehicles make a left-hand turn. In her opinion line-marking and painted instructions on the crossover provide greater pedestrian safety, as raised islands can impede pedestrian traffic.
- 56 She says that the design of the access at the building line maximises a safe outcome from both a vehicle and pedestrian perspective. The design includes the sight splay on the left-hand-side of the exit lane required by clause 52.06-9, and given the width of the access at the building line, provides a sight splay on the right-hand-side greater than that required by clause 52.06-9. This will allow for two-way, simultaneous access as well as provide an area for most vehicles to prop upon entry so as to largely avoid any interruption for pedestrian movement along the Lygon Street footpath.



Extract of ground floor plan showing access point, and sight triangle shown hatched in red

- 57 We find that from a traffic engineering perspective, the proposed access to Lygon Street is acceptable. It will provide a safe and efficient outcome, with the necessary sight splays maximising pedestrian safety when exiting vehicles are utilising the crossover.
- 58 The proposed setback of the roller door to the basement will allow entering vehicles to prop without causing an impediment to pedestrians and the addition of signage and guiding line marking will assist in minimising the impact on the vehicular traffic, including trams, along Lygon Street.
- 59 For the above reasons, we find that the proposed access via Lygon Street is acceptable. We do not need to consider the alternative design option of access via the Warburton Street lot/Christopher Lane. We now briefly comment on the merits of the design of the proposal.

DESIGN MERIT

- 60 At the hearing, design merit was an issue that attracted some attention. In addition to a reduction in building height and mass, the substituted plans demonstrated a fundamentally different design approach from the initial application. All parties at the hearing agreed that the overall design of the proposal is appropriate and of a high quality. Vehicular access, the massing to Warburton Street to the west and the impact on apartment configuration of the conditions agreed between the applicant and council regarding the heritage building were all canvassed.
- 61 In relation to the vehicular access, as discussed above, we have concluded that access from Lygon Street, whilst not an optimum solution, is

acceptable in the circumstances of this proposal. From a road safety point of view, vehicles are provided with compliant sightlines and a 5 metre setback to the automatic roller shutter door in which to prop if necessary.

- 62 In urban design terms, the western footpath of Lygon Street is unusual in that there is no crossover between Glenlyon Road and Cocoa Jackson Lane. The crossover from the proposal will be the first in this section of Lygon Street, but we consider that the attention given to the design resolution of the vehicle access to the site will minimise its impact in urban design terms.
- 63 The location is well positioned in the street block, approximately midway between Glenlyon Road and Coco Jackson Lane. At ground level, access is housed in a module of the building differentiated by both height and materials and further defined by a recessed gap in the main retail street façade. This both reflects the existing grain and the treatment of the heritage building ‘pod’ further north. Further, the majority of street frontage remains active. A canopy links this entrance to the rest of the building as part of the podium component. Its integration into street façade means that the vehicle entrance does not draw attention to itself as a visually jarring element when viewed from the eastern footpath of Lygon Street.
- 64 The ground floor plan layout, where the necessary service cupboards are fully accessible but largely concealed from passers-by, is also a positive aspect of the design. The council proposes a condition deleting the proposed blue tiling along the street façade. We were advised that this was for heritage reasons in that it seeks to reflect the tiling of the heritage building. We consider that the tiled ‘dado’ is a positive design element in the street façade. We will amend the condition so that an alternative colour tile can be considered.
- 65 In relation to the massing of the building when viewed from Warburton Street, the applicant agrees with Council’s condition requiring the deletion of level 4. Mr Negri’s evidence is that the stepping down of the stem of the ‘T’ massing configuration of the proposed upper floors of the building, successfully moderates the scale of the building to the west and provides an appropriate transition to the residential area beyond. He says that the variation in materials and finishes reinforces the proposed stepping of the built form.
- 66 We agree with Mr Negri’s evidence on this point. However, the deletion of level 4 dilutes the visual clarity of this element of the building. We also agree with Mr Sheppard that different materials and finishes proposed in the substituted plans help reduce the visible bulk when viewed from Warburton Street. This differentiation is diminished with the deletion of level 4. We will require that the same red brick is used on the western element projecting towards Warburton Street for the third and new level 4 (Level 5 on the substituted plans).
- 67 In relation to the heritage conditions requiring retention of part of 151A Lygon Street, we note that will have an impact on the following apartments

in the amended plans; 102 (type 1C), 103 (type 2B), 202 (type IC), 203 (type 2B), 301 (type 2G), 302 (type 2F), 501 (type 2G) and 502 (type 2F). Reconfiguration will be necessary to accommodate the increased setback agreed to by the applicant. Compliance with clause 58 will remain a requirement.

ARE THERE ANY OTHER ISSUES?

68 We note that the issues below were not in dispute. However, given there was no formal consent position or confinement of these issues⁷, we address each briefly.

Dwelling use

- 69 The proposal includes dwelling entry frontage at the ground floor level to Lygon Street of 2.35 metres which triggers a permit for use of the land for dwellings in the C1Z, as it exceeds 2 metres. Otherwise, the dwelling use is generally confined to the upper levels, except for car parking, bicycle parking and services.
- 70 Clause 16.01-1L seeks to encourage increased housing density in the form of apartments in areas identified for ‘Significant Housing Growth’ at clause 02.04. The review site is identified in one such area. Clause 02.03 also identifies the site as within the Brunswick Activity Centre, whose role and function is to:
- Provide a broad mix of retail uses, commercial and cultural activity, employment options, administrative and civic centre functions, government investment and regional facilities.
 - Accommodate substantial residential/mixed-use growth and change to create a new character of increased density and scale of built form.
- 71 Given the proposal includes retail uses with active frontages at ground floor level, and apartments across six levels above, we find that the proposed use of the land for dwellings meets relevant policy aspirations for the site, does not compromise the mix of uses sought and is therefore acceptable.

Heritage Issues

- 72 The existing building at 151A Lygon Street is affected by a site-specific heritage overlay (HO505). This overlay was gazetted on an interim basis and expires on 10 November 2022, as at the date of this decision. The parties advised the Tribunal that this was also the subject of an upcoming panel hearing which proposes permanent heritage controls on the property.
- 73 The application proposed to retain just the façade of this building. The council found this unacceptable.
- 74 The Respondents made no submissions with respect to heritage.

⁷ Pursuant to section 84AB of the *Planning and Environment Act 1987*.

- 75 The applicant and the council agreed to the inclusion of a condition on any permit granted that required the retention of the façade as well as the first five metres of the existing building. Alterations to the proposal on levels immediately above the retained fabric, as described above, are also to be implemented.
- 76 The applicant emphasised at the hearing that its agreement to the inclusion of these conditions is in no way to be taken as agreement that the building has heritage value, which it strongly disputes.
- 77 The purpose of the heritage overlay includes:
- To conserve and enhance heritage places of natural or cultural significance.
 - To conserve and enhance those elements which contribute to the significance of heritage places.
 - To ensure that development does not adversely affect the significance of heritage places.
- 78 The Statement of Significance for this building notes:
- The shop, constructed by 1935, at 151A Lygon Street, Brunswick East is significant. This is a single-storey shop with a finely detailed stepped parapet featuring geometric patterning in clinker brick and render. It retains an original shopfront with metal-framed windows, blue tiled stallboard, and a recessed entry with tiled floor and a glazed timber door. The cantilevered verandah may be original but has been boxed in.
- 79 The reasons why the building is significant:
- It is significant as a representative example of an interwar shop, which is notable for the high degree of intactness. The parapet, with the distinctive stepped profile and geometric patterning, which demonstrates the influence of the Jazz Moderne or Art Deco style, and retains the original finishes is a notable feature, and is complemented by the original shopfront.
- 80 Clause 15.03-1L seeks to avoid partial demolition resulting in facadism.
- 81 We are satisfied that the retention of the façade and the front 5 metres will conserve the most significant parts of this building apparent from Lygon Street and will not result in facadism. The increased setbacks to the upper floors agreed to by the applicant will highlight the retained portion of the building. Overall, we find that an acceptable heritage outcome will be achieved.

Car parking reduction

- 82 The proposal includes the provision of 83 car parking spaces on site and the planning scheme requires a total of 100 spaces to be provided, based on the mix of uses and dwelling configurations.

83 There was no dispute amongst the parties regarding the acceptability of the reduction sought.

84 Ms Dunstan's evidence is that the Car Parking Demand Assessment⁸ indicates:

The shortfall of car parking for the commercial uses is associated with short-term parking customers only and significantly less than the existing car parking credit associated with the site. This is due to the significantly reduced size of the commercial area proposed compared to existing conditions. The existing statutory car parking shortfall for the commercial uses on the site is in excess of 45 car spaces (see Section 4.3 of the Traffic Report).⁹

85 She says the shortfall is justified for the following reasons:

- the shortfall relates to short-term parking by shop customers only,
- the site is well served by public transport and alternative transport modes and provides a high level of bicycle parking,
- the site is located within a large Activity Centre, and
- short-term parking demands can be accommodated in the nearby area, which is specifically managed for this type of parking (short-term parking restrictions are the dominate restriction).¹⁰

86 We find that the reduction in car parking sought is acceptable. The likelihood of multi-purpose trips, the availability of public transport in the immediate vicinity¹¹, as well as the range of shops and services in the surrounding area are all sound reasons to justify a reduction in the car parking requirement in this instance.

Built form

Amenity impacts on Warburton Street properties

87 The Respondents represented by Mr Rowley submitted that they had reached a settlement with the applicant regarding most of the built form issues, subject to the deletion of one level which the applicant has agreed to and which is included as a condition in Appendix A. This was also subject to maintaining the proposed access from Lygon Street which we have already found to be acceptable.

88 Mr Fysh took no active part in the hearing but his statement of grounds remains relevant. In written correspondence to the Tribunal prior to the hearing he stated that he was content with the proposal on the basis that one level was removed and that has been agreed to by the applicant.

⁸ As part of the Traffic Report submitted with the amended plans.

⁹ Page 9, Ms Dunstan's evidence statement.

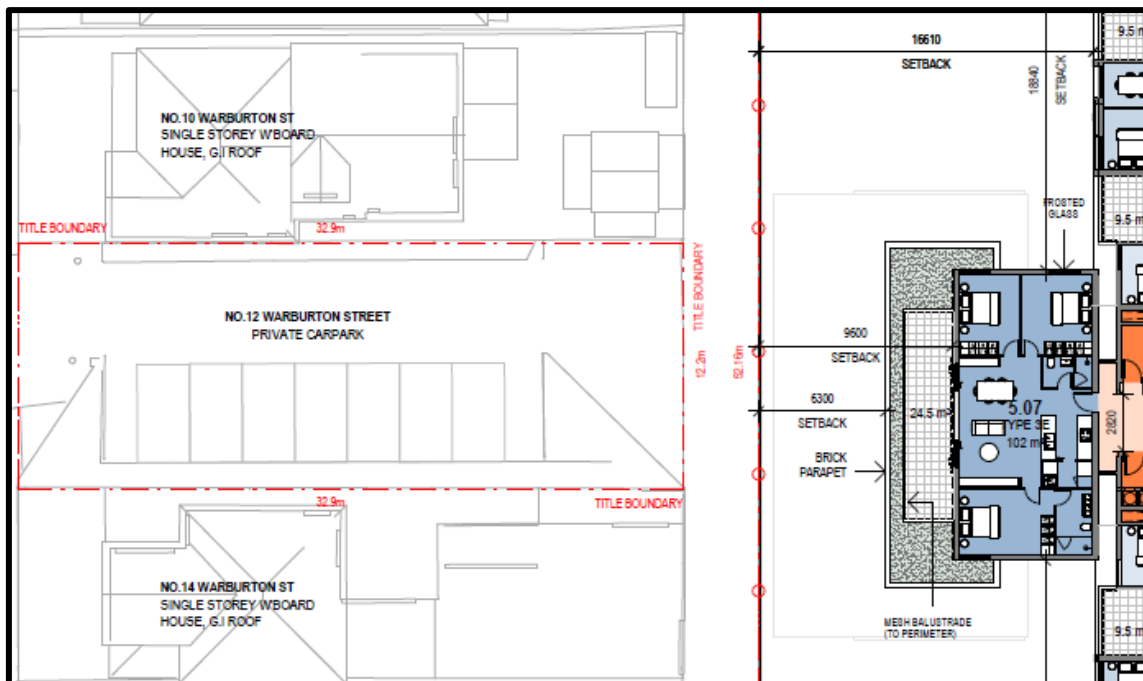
¹⁰ Ibid.

¹¹ Tram routes 1 and 6 along Lygon Street, bus routes 250, 251 and 501 along Brunswick Road to the south, tram routes 96 and 19 to the east along Nicholson Street and west along Sydney Road respectively.

- 89 The council and the applicant agreed to a set of conditions to modify the proposal relating to the heritage building as set out above, as well as the deletion of one level of the proposed building. On this basis, the council made no further submissions as to the impact the proposed building would have on the amenity of the surrounding residential properties.

Building height

- 90 The DDO19 includes preferred maximum building height of 17 metres in this location and has a preferred height and setback matrix adjacent to the laneway.
- 91 The proposed building exceeds both of these preferred outcomes. It has a proposed maximum height of over 24 metres and at the rear, the proposal does not meet the setback and height matrix. The overall height will, however, reduce by 3.2 metres with the deletion of level 4.
- 92 The upper levels of the building are well setback from the western boundary interface with the residential properties on the opposite side of Christopher Lane, located along the Lygon Street portion of the site. A small section remains closer to the rear and is located in the centre of the building when viewed from the west.



- 93 This centrally located element, which is proposed at each level above ground floor, recedes at its northern, southern and western edges as it rises. This part of the building is directly adjacent two residentially zoned lots to the west, including that part of the subject site currently used for car parking and access to Warburton Street (called 12 Warburton Street.) It is otherwise partially opposite 14 Warburton Street and obliquely to the south west corner of 10 Warburton Street as shown above.

- 94 These properties include built form at the rear, directly adjacent to the laneway.
- 95 Number 10 Warburton Street has single storey outbuildings abutting the laneway. Number 14 includes a dwelling or part of a dwelling which has an obscured window at first floor level and carport at ground level.
- 96 Given the lack of direct sensitive interface of either of these properties directly abutting the laneway and directly opposite the closest part of the proposed building, we find that the variation from the DDO19 setbacks is acceptable. The setback of the largest part of the building is substantially away from these properties and the central component will be only partially opposite these properties.

Summary of built form

- 97 For the above reasons, we find that the built form will be an acceptable outcome, subject to the inclusion of a condition regarding overall architectural appearance as discussed below.

WHAT CONDITIONS ARE APPROPRIATE?

- 98 Design composition including materials are integral to our decision, in particular in our assessment of the vehicle access arrangements. The applicant submitted that the superior quality proposed contrasts with many of the built outcomes in the surrounding area and that the materials and finishes selected are critical to the design. In order to ensure that the proposal retains its high quality through the construction phase, the applicant proposes a façade strategy condition.
- 99 Whilst we find this is an appropriate solution, we have gone further. We will require the endorsed plans to be *substantially* in accordance with the plans substituted in this proceeding, as opposed to *generally* in accordance with, as is the usual practice of the Tribunal. We have then included a façade strategy condition but applied it to the entire proposal, not just the vehicle entry as proposed by the applicant. We have then also included a condition to restrict any amendment of the façade strategy without the consent of the Tribunal. These conditions seek to ensure that the design before us is realised.
- 100 There was dispute about the proposed Development Contribution Plan (DCP) conditions. The original set of ‘without prejudice’ conditions submitted by the council required the DCP levy to be paid prior to the issuing of a building permit. The applicant sought this to be changed to being prior to Certificate of Occupancy.
- 101 Clause 45.06-1 (Development contributions plan) sets out that a permit granted must:
- Be consistent with the provisions of the relevant development contributions plan.

- Include any conditions required to give effect to any contributions or levies imposed, conditions or requirements set out in the relevant schedule to this overlay.

102 The *Moreland Development Contributions Plan, 2015* is an incorporated document at clause 1.0 of the Schedule to clause 72.04.

103 Section 7.2 of the *Moreland Development Contributions Plan, 2015* states that the Development Infrastructure Levy is to be paid prior to the commencement of any development. It also sets out the Community Infrastructure Levy is to be paid prior to the issuance of a building permit, or, where no building permit is required, prior to the commencement of building works.

104 We have therefore included a condition that the DCP payments must be made prior to the issuing of a building permit.

CONCLUSION

105 For the reasons given above, the decision of the responsible authority is set aside. A permit is granted subject to conditions.

Joel Templar
Member

Ann Keddie
Member

APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO	MPS/2018/202
LAND	141-153 Lygon Street, BRUNSWICK EAST VIC 3057

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Partial demolition of a building in a heritage overlay and construction of a six storey building over basement car parking consisting of shops and use of the land for dwellings, and a reduction in the standard car parking requirement for the retail component.

CONDITIONS

Amended plans required

- 1 Before the development commences, 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. The plans must be substantially in accordance with the plans entitled TP0-202, TP0-203, TP1-101 – TP1-110, TP2-101, TP2-102, TP3-101 – TP3-105, TP3-202, TP3-204, TP3-205, TP4-101 – TP4-108 and TP4-200 – TP4-211 dated 17 December 2021 prepared by Jackson Clements Burrow Architects but modified to show:
 - (a) The deletion of level 04 and a reduction in the overall height by a minimum of 3.2 metres.
 - (b) The retention of the heritage building at 151A Lygon Street for a minimum depth of 5 metres from the street frontage including the roof and original awning.
 - (c) The built form, including metal shutters behind the heritage building at levels 01 and 02 setback a minimum 5 metres depth from the street frontage with no change to the void spaces either side of the shopfront.
 - (d) The built form behind the heritage building at level 03 and new level 04 setback to match levels 01 and 02 and a minimum 5 metres depth from the street frontage including modification to the balconies of dwellings at level 3.01 and new level 4.01.

- (e) Any reconfiguration as a result of conditions 1(b), 1(c) and 1(d) above. Any such reconfiguration of apartments must comply with clause 58 of the Moreland Planning Scheme.
- (f) The replacement of the blue coloured tiles on the Lygon Street façade with tiles of another colour.
- (g) No alteration to the existing façade of the retained building at 151A Lygon Street.
- (h) A demolition plan illustrating retention of the heritage building at 151A Lygon Street for a minimum depth of 5 metres including the roof and original awning.
- (i) The perforated metal finish to the building façade at levels 01 and 02 behind the retained shopfront at 151A Lygon Street.
- (j) The location of the traffic island line marking required to accommodate the left turn in and left turn out vehicle movements required by condition 37.
- (k) Modify the new level 05 communal terrace landscaping area to make the voids at the lower levels clear to the sky.
- (l) The corridor windows annotated as operable for natural ventilation.
- (m) Relocation of the mailboxes from the circulation space required for the stairs.
- (n) The canopy material to be fritted or patterned glass.
- (o) Any practical changes to the plans required to achieve consistency with the additional reports and plans required by conditions of this Permit.
- (p) The red brick proposed for Level 3 (EF03) is also to be used on the new Level 4.
- (q) Introduction of windows on the north and south elevation at level 03 and new level 04, east of the corridor break.
- (r) Canopy over Lygon Street footpath to extend to 750mm from the edge of the curb.

Development not to be altered

- 2 The development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority. This does not apply to any exemption specified in Clauses 62.02-1 and 62.02-2 of the Moreland Planning Scheme unless specifically noted as a permit condition.

Façade Strategy and Materials and Finishes Plan

- 3 Concurrently with the submission of plans for approval under Condition 1, a Façade Strategy and Materials and Finishes Plan which is to the satisfaction of the Responsible Authority must be submitted to and be

approved by the Responsible Authority. When approved, the Façade Strategy and Materials and Finishes Plan will be endorsed and will then form part of this permit. The Façade Strategy and Materials and Finishes Plan must detail:

- (a) elevation drawings at a scale of 1:20 illustrating typical details for façade elements including, without limitation, ground level entries from Lygon Street, the basement vehicle entry, and any utilities and services visible from the public realm;
- (b) the materials and design of the proposal which achieves a high quality public realm presentation consistent with the standard of finishes adopted for the Lygon Street frontage generally;
- (c) section drawings to demonstrate façade systems, including fixing details and joints between materials or changes in form;
- (d) materials consistent with plans submitted for approval under condition 1;
- (e) information about how the façade will be maintained;
- (f) a sample board and coloured drawings outlining colours, materials and finishes.

Amendment of condition by Tribunal

- 4 Pursuant to section 85(1A) of the *Planning and Environment Act 1987 (Vic)*, condition 3 must not be amended by the responsible authority under Part 4 Division 1A of the Act but may only be amended by the Victorian Civil and Administrative Tribunal pursuant to section 87A of the Act.

Landscaping

- 5 Prior to the endorsement of plans, amended landscape plans must be submitted to and approved by the Responsible Authority. The amended landscape plans must be generally in accordance with the landscape plans prepared by John Patrick Landscape Architects Pty Ltd, drawing numbers VCAT 01 to VCAT 06 (six sheets), all dated 16 February 2022, but modified to show:
 - (a) Any alterations required as a consequence of condition 27 (Sustainable Management Plan).
 - (b) A schedule of all proposed trees, shrubs and ground covers (including numbers, size at planting, size at maturity and botanical names), as well as sealed and paved surfaces. The flora selection and landscape design should be drought tolerant and based on species selection recommended in the Moreland Landscape Guidelines 2009.
 - (c) The location of any tree anchors.
 - (d) Details of an irrigation system(s) for all planters, including:

- i An analysis of the different irrigation demands for the different planters within the site.
 - ii Details of the irrigation source(s), supply and connections points.
 - iii Details of a maintenance program for the irrigation system(s) including flushing, checking systems integrity, monitoring sensors and calibration settings.
 - iv Details of who is to be responsible for the ongoing maintenance of the irrigation system(s).
- (e) Introduction of raised planter beds on the roof at level 3 along the south and north walls within the 4.5m setback zones, east of the corridor break, of sufficient depth and extent to achieve a climbing plant outcome generally in accordance with that shown on the plans entitled '141-153 Lygon ST, Brunswick, Artist's Impressions' prepared by JCB Architects, dated December 2021.
- 6 Within 30 days of the issue of the Certificate of Occupancy, all landscaping works must be completed and maintained in accordance with the approved and endorsed landscape drawing to the satisfaction of the Responsible Authority, unless otherwise agreed with prior written consent of the Responsible Authority.
- 7 All planting shown on the endorsed landscape plans must be maintained and any dead, diseased or damaged trees replaced to the satisfaction of the Responsible Authority.

Tree Management Plan

- 8 Except with the consent of the responsible authority, all street trees along the site frontage must be retained and protected.
- 9 Prior to development commencing (including any demolition, excavations, delivery of building/construction materials and/or temporary buildings), all council street trees to be retained must have a Tree Protection Zone (TPZ) in accordance with AS4970 Protection of Trees on Development Sites to the satisfaction of the Responsible Authority. The TPZ must meet the following requirements:
- (a) Tree Protection Fencing
 - i Tree Protection Fencing (TPF) is to be provided to the extent of the TPZ, calculated as being a radius of 12 x Diameter at Breast Height (DBH – measured at 1.4 metres above ground level as defined by the Australian Standard AS 4970.2009). The TPF may be aligned with roadways, footpaths and boundary fences where they intersect the TPZ.
 - ii If works are shown on any endorsed plan of this permit within the confines of the calculated TPZ, then the TPF must be taken

in to only the minimum amount necessary to allow the works to be completed.

- iii The TPF must be erected to form a visual and physical barrier, be a minimum height of 1.5 metres above ground level and of mesh panels, chain mesh or similar material. A top line of high visibility plastic tape must be erected around the perimeter of the fence.

(b) Signage

Fixed signs are to be provided on all visible sides of the TPF clearly stating “Tree Protection Zone – No entry. No excavation or trenching. No storage of materials or waste.”. The TPF signage must be complied with at all times.

(c) Irrigation

The area within the TPZ and TPF must be irrigated during the summer months with 1 litre of clean water for every 1cm of trunk girth measured at the soil/trunk interface on a weekly basis.

(d) Provision of Services

All services (including water, electricity, gas and telephone) must be installed underground, and located outside of any TPZ, wherever practically possible. If underground services are to be routed within an established TPZ, this must occur in accordance with Australian Standard AS4970.

Heritage Conservation Report

- 10 A report prepared by a suitably qualified conservation heritage architect to the satisfaction of the Responsible Authority which provides a schedule of conservation works to the heritage building at 151A Lygon Street including restoration of:
 - (a) The brass shopfront frames, including upper panel
 - (b) The shop front door, in a new design consistent with the shopfront
 - (c) The painted face brickwork adjoining the shopfront, including using a suitable peel-away paint stripper
 - (d) The cantilevered awning. If there is no evidence of original cladding, an intact awning on a building of a similar design should be used for guidance, or possible replication. The soffit may have had the same pattern of pressed metal that has been retained above the entry
 - (e) The retention of the unpainted render finish and brickwork pointing to the parapet

When the report is submitted it will be endorsed to form part of the permit.

- 11 Prior to the issue of Statement of Compliance or Certificate of Occupancy, whichever occurs first, the conservation works specified in the endorsed

Heritage Conservation Report must be undertaken and completed by suitably qualified restoration tradesman.

General

- 12 All parking spaces are to be marked with the associated apartment or shop number to facilitate management of the car park to the satisfaction of the Responsible Authority.
- 13 The canopy must not project beyond the street alignment unless it is setback not less than 750mm from the kerb and at a height less than 3m above the level of the footpath in accordance with Clause 507 of the Building Regulations 2006 to the satisfaction of the Responsible Authority.
- 14 All external lighting must be maintained to the satisfaction of the Responsible Authority.

Stormwater

- 15 The design the pump wet-well for the basement is to cater for 1% AEP instead of 10% as per Section (8) of AS/NZ 3500.3.2018.
- 16 All stormwater from the land, where it is not collected in rainwater tanks for re-use, must be collected by an underground pipe drain approved by and to the satisfaction of the Responsible Authority (Note: Please contact Moreland City Council, City Infrastructure Department).
- 17 Stormwater from the land must not be directed to the surface of the right-of-way to the satisfaction of the Responsible Authority.

Telecommunications and power connections

- 18 Prior to the issue of Statement of Compliance or Certificate of Occupancy, whichever occurs first, all telecommunications and power connections (where by means of a cable) and associated infrastructure to the land (including all existing and new buildings) must be underground to the satisfaction of the Responsible Authority.

Environmental audit

- 19 Prior to the commencement of construction or carrying out works pursuant to this permit, a Preliminary Risk Screen Assessment (PRSA) must be submitted to and be to the satisfaction of the Responsible Authority. The owner must comply with the findings of the PRSA to the satisfaction of the Responsible Authority. The PRSA must specify:
 - (a) If there is a need for an environmental audit; and
 - (b) If an environmental audit is required, the proposed scope for the environmental audit.
- 20 As a consequence of condition [insert number] of this permit, prior to the commencement of construction or carrying out works pursuant to this

permit, or any works associated with a sensitive use, or where no works are proposed, prior to the commencement of the permitted use, either:

- (a) A preliminary risk screen assessment statement in accordance with the Environment Protection Act 2017 must be issued stating that an environmental audit is not required for the use or the proposed use; or
 - (b) An environmental audit statement under Part 8.3 of the *Environment Protection Act 2017* must be issued stating that the land is suitable for the use or proposed use.
- 21 Where a Statement of Environmental Audit is issued for the land, the buildings and works and the use(s) of the land that are the subject of this permit must comply with all directions and conditions contained within the Statement.
- 22 Where a Statement of Environmental Audit is issued for the land, prior to the commencement of the use, and prior to the issue of a Statement of Compliance under the Subdivision Act 1988, and prior to the issue of an Occupancy Permit under the Building Act 1993, a letter prepared by an Environmental Auditor appointed under Section 53S of the Environment Protection Act 1970 must be submitted to the Responsible Authority to verify that the directions and conditions contained within the Statement have been satisfied.
- 23 Where a Statement of Environmental Audit is issued for the land, and any condition of that Statement requires any maintenance or monitoring of an ongoing nature, the Owner(s) must enter into an Agreement with Council pursuant to Section 173 of the Planning and Environment Act 1987. Where a Section 173 Agreement is required, the Agreement must be executed prior to the commencement of the permitted use, and prior to the certification of the plan of subdivision under the Subdivision Act 1988. All expenses involved in the drafting, negotiating, lodging, registering and execution of the Agreement, including those incurred by the Responsible Authority, must be met by the Owner(s).
- 24 Prior to works being undertaken in association with the Environmental Audit, a works plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The plan must detail all excavation works which may include bulk excavation and demolition as well as any proposed structures such as retaining walls required to facilitate the works. Only those works detailed in the approved works plan are permitted to be carried out prior to the issue of a Certificate or Statement of Environmental Audit.

Development Contributions Plan

- 25 Prior to the issue of a building permit in relation to the development approved by this permit, a Development Infrastructure Levy and Community Infrastructure Levy must be paid to Moreland City Council in accordance with the Moreland Development Contributions Plan - January

2015, incorporated in the Moreland Planning Scheme in the schedule to clause 72.04 of the Moreland Planning Scheme.

If an application for subdivision of the land which is consistent with the development approved by this permit (e.g., subdivision to create separately disposable dwellings and/or commercial tenancies) is submitted to Council, payment of the Development Infrastructure Levy can be delayed to a date being whichever is the sooner of the following:

- (a) For a maximum of 12 months from the date of issue of the Building Permit for the development hereby approved; or
- (b) Prior to the issue of a Statement of Compliance for the subdivision.

When a staged subdivision is sought, the Development Infrastructure Levy must be paid prior to the issue of a Statement of Compliance for each stage of subdivision in accordance with a Schedule of Development Contributions approved as part of the subdivision.

Waste Management Plan

- 26 The Waste Management Plan prepared by Leigh Design dated 22 December 2021 will be endorsed to form part of this permit. The endorsed Waste Management Plan must be implemented and complied with at all times to the satisfaction of the Responsible Authority unless with the further written approval of the Responsible Authority.

Sustainability Management Plan

- 27 Prior to the endorsement of plans, an amended Sustainability Management Plan (SMP) and plans must be submitted to the satisfaction by the Responsible Authority. The SMP must demonstrate a best practice standard of environmentally sustainable design and be generally in accordance with the SMP prepared by Ark Resources dated as 22 December 2021. The following ESD initiatives committed to as part of the report:
- (a) Confirmation that the solar pv is 30kW
 - (b) All dwelling types modelled to confirm the 7.0 star NatHERS development rating including a sample of the software used for the results
 - (c) Identify energy use measures for the commercial premises
 - (d) A Stormwater Management plan that achieves pollution reduction targets in accordance with clause 53.18 of the Planning Scheme to the satisfaction of the Responsible Authority.
- 28 Prior to the issue of a Statement of Compliance or Certificate(s) of Occupancy, whichever occurs first, all works must be undertaken in accordance with the endorsed Sustainability Management Plan report to the satisfaction of the Responsible Authority. No alterations to these plans may occur without the written consent of the Responsible Authority.

- 29 Prior to the issue of Statement of Compliance or Certificate of Occupancy, whichever occurs first, a report from the author of the Sustainability Management Plan (SMP), approved pursuant to this permit, or similarly qualified person or company, must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm that all measures specified in the SMP have been implemented in accordance with the approved Plan. Specific details confirming the Environmentally Sustainable Development measures have been implemented must be included.

Public Works Plan

- 30 Prior to the commencement of development, a Public Works Plan and associated construction drawing specifications detailing the works to the land must be submitted and approved to the satisfaction of the Responsible Authority. The Plan must detail works adjoining the western boundary in front of the approved building and include:
- (a) The public footpath is to be reinstated with the standard cross-fall slope of 1 in 40 from the top of roadside kerb to the property boundary, with any level difference made up within the site;
 - (b) Make good of the footpaths adjacent to the site to the satisfaction of the responsible authority; and
 - (c) A detailed level and feature survey of the footpaths and roads.

The approved Public Works Plan will form part of the endorsed plans under the permit and must be implemented to the satisfaction of the Responsible Authority at the expense of the owner of the land, prior to the occupation of the development unless otherwise agreed with prior written consent of the Responsible Authority.

Acoustic Report

- 31 Prior to the endorsement of plans, an amended Acoustic Report prepared by a qualified Acoustic Engineer generally in accordance with the report prepared by Acoustic Logic dated 17 December 2021 must be submitted and approved to the satisfaction of the Responsible Authority. The amended report must be updated to reflect any relevant changes required by Condition 1 of this permit. When submitted and approved to the satisfaction of the Responsible Authority, the Acoustic Report will be endorsed to form part of this permit.
- 32 The building must be constructed and maintained in accordance with the recommendations contained within the approved Acoustic Report to the satisfaction of the Responsible Authority. The Acoustic Report endorsed under this permit must be implemented and complied with at all times to the satisfaction of the Responsible Authority unless with the further written approval of the Responsible Authority.

- 33 Prior to the issue of Statement of Compliance or Certificate of Occupancy, whichever occurs first, a report from the author of the Acoustic Report approved pursuant to this permit or similarly qualified person or company must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm that all measures specified in the Acoustic Report have been implemented in accordance with the approved Acoustic Report.

Accessibility Report

- 34 Prior to the endorsement of plans, the accessibility report prepared by Before Compliance dated 21 December 2021 must be amended by a suitably qualified person to the satisfaction of the Responsible Authority to reflect any relevant changes required by Condition 1 of this permit and include a statement that all showers are to be hobless in accordance with Clause 58.05-1 - Accessibility objective – Standard D17. When submitted and approved to the satisfaction of the Responsible Authority, the amended Access Report will be endorsed to form part of this permit.
- 35 Prior to the issue of Statement of Compliance or Certificate of Occupancy, whichever occurs first, a report from the author of the Accessibility Report, approved pursuant to this permit, or similarly qualified person or company, must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm that all measures specified in the Accessibility Report have been implemented in accordance with the approved report.

Screening to be installed

- 36 Prior to the issue of Statement of Compliance or Certificate of Occupancy, whichever occurs first, all screening devices shown on the endorsed plans must be installed to the satisfaction of the Responsible Authority. All screening and measures to prevent overlooking must be maintained to the satisfaction of the Responsible Authority. Any screening measure that is removed or unsatisfactorily maintained must be replaced to the satisfaction of the Responsible Authority.

Public Transport Victoria

- 37 Before the development commences (excluding demolition), or other time agreed to in writing with Head, Transport for Victoria, amended plans to the satisfaction of the Head, transport for Victoria (TfV) 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 a digital copy provided. The amended plans must be modified to show:
- (a) the installation of signs, line marking or associated road works permitting only “left turn in” and “left turn out” vehicular access from Lygon Street.

- 38 Prior to the occupation of the development, all works outlined on the endorsed plans for the left in left out only access from Lygon Street must be completed with associated signs, to the satisfaction of TfV at the full cost to the permit holder.
- 39 The permit holder must take all reasonable steps to ensure that disruption to tram operation along Lygon Street is kept to a minimum during the construction of the development. Foreseen disruptions to tram operations during construction and mitigation measures must be communicated to Yarra Trams and Public Transport Victoria thirty-five days (35) prior.
- 40 The permit holder must ensure that all track, tram and overhead infrastructure is not damaged. Any damage to public transport infrastructure must be rectified to the satisfaction of Public Transport Victoria at the full cost of the permit holder.

Permit Expiry

- 41 This permit will expire if one of the following circumstances applies:
- (a) The development is not commenced within 3 years from the date of issue of this permit; or
 - (b) The development is not completed within 5 years from the date of issue of this permit.
 - (c) If the use is not commenced within 1 year from the date of completion of the development.

The Responsible Authority may extend the period referred to a request is made in writing before the permit expires or:

- i Within 6 months after the permit expires to extend the commencement date.
- ii Within 12 months after permit expires to extend the completion date of the development if the development has lawfully commenced.

– End of conditions –