**Council AGENDA**

**Planning and Related Matters**

**Wednesday 24 August 2022**

**Commencing 6.30 pm**

**Council Chamber, Moreland Civic Centre, 90 Bell Street, Coburg**



**Acknowledgement of the traditional custodians of the City of Moreland**

Moreland City Council acknowledges the Wurundjeri Woi Wurrung people as the Traditional Custodians of the lands and waterways in the area now known as Moreland, and pays respect to their elders past, present, and emerging, as well as to all First Nations communities who significantly contribute to the life of the area.

**1. WELCOME**

**2. APOLOGIES**

**3. DISCLOSURES OF CONFLICTS OF INTEREST**

**4. MINUTE CONFIRMATION**

The minutes of the Planning and Related Matters Meeting held on 27 July 2022 be confirmed.

**5. Council Reports**

5.1 City Development Activity Report June Quarter 2022 4

5.2 251-265 Lygon Street & 1A Pitt Street, BRUNSWICK EAST - Planning Permit Application MPS/2022/4 19

5.3 53-57 Albert Street, Brunswick East - Planning Application MPS/2021/1029 109

5.4 Part CP1, 22, 24-26 and 28 Pentridge Boulevard and Part 27 Urquhart Street, Coburg Vic 3058 - Planning Permit MIN/2011/12837A 181

**6. URGENT BUSINESS**

**5. Council Reports**

5.1 City Development Activity Report June Quarter 2022

**Director Place and Environment, Joseph Tabacco**

**City Development**

## Officer Recommendation

That Council notes the City Development Activity Report – June Quarter 2022.

**REPORT**

**Executive Summary**

The City Development Urban Planning and Planning Enforcement teams are managing to produce reasonably good results in the face of increases in the numbers of incoming applications, increased compliance requests, and a high outstanding caseload. The planning application outstanding caseload, and the planning compliance caseloads are areas to continue to monitor closely.

Planning permit activity levels increased by 6 per cent in the 2021/22 financial year when compared to the previous financial year which is indicative of some sign of recovery in the development sector. The data clearly indicates that planning activity levels are once again increasing after remaining steady at reduced levels throughout the majority of the COVID 19 pandemic. The number of applications determined was up by 11 per cent from the previous year which is a pleasing result.

Timeframes to determine most planning applications were still below the metropolitan average largely due to staff turnover and staff illness. There have been small improvements particularly in Vic Smart timeframes, but this remains an area to monitor and improve.

Planning compliance had new case numbers which were more around the average expected for the quarter. The number of cases closed in the quarter also remained steady. This had a positive impact on the outstanding caseload which is reducing while still not at an ideal level.

VCAT activity, while much reduced, was slightly higher in the June 2022 quarter compared to the previous year but is still well below pre-COVID-19 levels.

**Previous Council Decisions**

**City Development Activity Report March Quarter 2021** – 25 May 2022

*That Council notes the City Development Activity Report – March Quarter 2022.*

## 1. Policy Context

The City Development Branch administers Council’s town planning, building and environmental health decision making and compliance responsibilities under the Moreland Planning Scheme, *Planning and Environment Act 1987*, *Building Act 1993*, *Building Regulations 2018*, Building Code of Australia 2006, *Food Act 1984*, and *Public Health and Wellbeing Regulations 2009*.

## 2. Background

This report shows the key operational performance and activity of the Urban Planning Unit and Planning Enforcement Unit within the City Development Branch, from VCAT decisions to how many planning applications were determined and the timeframe for decision-making. The report contains comparisons of the June 2022 quarter of planning activity compared to the June 2021 quarter.

## 3. Issues

The report at **Attachment 1** details:

 Analysis of planning applications received, determined and outstanding

 Analysis of planning application decision-making

 Analysis of streamlined services

 Planning enforcement caseload

 VCAT analysis

 Analysis of planning investment.

An analysis of the key findings of the data is discussed in this report.

**Planning permit activity**

A total of 347 planning applications were received for the June quarter. This compared with 359 for the same quarter in 2021. A total of 331 planning applications were decided in the June quarter compared to 314 for the same quarter in 2022 up slightly by 5 per cent as shown in figure 1 at **Attachment 1.** Overall, for the financial year planning applications were up 6 per cent from 1305 to 1379. With higher than normal staff turnover in 2021 now replaced, the number of planning applications determined increased by 11 per cent from 1205 to 1337.

The majority of applications lodged for the quarter were building alterations (32 per cent), followed by multi-unit development (32 per cent) and subdivisions (17 per cent) as shown in figure 2 at **Attachment 1**.

The current backlog of applications awaiting a decision stands at 551. Figure 3 at **Attachment 1** shows how the backlog has changed over time. The current backlog appears to have reached a peak but requires further work to ensure caseloads for staff return to more manageable levels for ideal service delivery.

The percentage of applications determined within statutory timeframes for all inner metropolitan Councils averaged 58 per cent in the June quarter. Moreland’s average was slightly lower at 51 per cent. This figure is much lower than usual across the sector indicating most Councils are seeing increased timeframes. This may also be indicative of increased staff leave and staff turnover which is also affecting other Councils during the pandemic. See figure 4 at **Attachment 1**.

Councils streamlined planning services include Vic Smart and Fast Track (minor permit applications that do not qualify as Vic Smart) as well as the Commercial Priority Service, which is a service to assist businesses setting up or expanding in Moreland. Figure 5 in **Attachment 1** shows the performance of the VicSmart part of streamlined services which fell to an average of 69 per cent of VicSmart applications determined within 10 days compared to the inner metropolitan average of 83 per cent. This is something the team is working on to maintain service levels during periods of staff absence or turnover.

**Heritage Victoria Permit Applications and Planning Proposals Under Consideration by the Minister for Planning**

The Victorian Planning System provides the ability for the Minister for Planning to intervene in VCAT or Council decisions in certain circumstances. In 2020 the Development Facilitation Program (DFP) was established by the Minister for Planning to assess and determine planning applications for priority projects in Victoria. New planning provisions making the Minister for Planning responsible for deciding State Projects were also introduced in March 2021. These projects are referred to Council for comments to help inform the decision by the Minister for Planning. In the second quarter of 2022 Council was consulted on two proposals:

 807 Sydney Road, Brunswick, Brunswick Tram Depot Precinct Upgrade Project

 699-701 Park Street, 182-192 Brunswick Road and 2-4 Sydney Road, Brunswick - Construction of a mixed-use, eight-storey development

Council may also been requested by DELWP to provide advice on other planning proposals for private school development or affordable housing development as part of the Big Housing Build that the Minister for Planning is now responsible for deciding, or by Heritage Victoria for input to heritage permit applications for sites on the Victorian Heritage Register.

In the June quarter of 2022 advice was provided on the following applications for a Heritage Permit referred from Heritage Victoria;

 28 Whitby Street, Brunswick - Permit Application P36446 - Whitby House (H0546)

 340-350 Sydney Road, Brunswick - Permit Application P36765 - Former Wesleyan Church and Model Sunday School (H1144)

 42 Ross Street, Coburg - Permit Application P35027 - Arundel, 42 Ross Street Coburg (H1948)

 Permit Application P36842 - HM Prison Pentridge, Champ Street and Murray Road and Urquhart Street and Pentridge Boulevard and Wardens Walk and Sentry Lane and Industry Lane and Stockade Avenue and Via Roma, Coburg (H1551)

**Planning enforcement**

Figure 7, in **Attachment 1,** shows the outstanding caseload at 171 which is now pleasingly 27 per cent lower than the peak during 2021 of 235 outstanding cases.

The number of complaints from the community in respect to compliance with either planning permits or the Moreland Planning Scheme increased slightly in the June quarter by 7 per cent in comparison to the same quarter in 2021. Figure 6, in **Attachment 1,** shows the number of cases lodged per quarter.

Of the cases closed during the June 2022 quarter, 41 per cent were investigated with a finding that no contravention of a permit or planning scheme provision had occurred. A further 39 per cent did have compliance issues and were brought into compliance through Council’s actions. A smaller number were referred to other areas of Council for action and some had a breach that was so minor that formal action was not warranted. There were three others to note, one was a fine issued and paid, one complied with an enforcement order and the third was issued a penalty by the Magistrates Court as shown in Figure 8 in **Attachment 1.**

The proactive planning enforcement program targets planning permits issued by the Planning and Related Matters (PARM) Council meeting, decisions overturned by VCAT and around 80 multi-dwelling residential developments annually. Figure 9 in **Attachment 1** shows that ESD requirement breaches continue to be high at 39 per cent. These included non-provision of rain gardens, no bike storage and installation of single rather than double glazing. Landscaping and absence of privacy screening were the other main breaches detected.

**Council’s performance at VCAT**

In the June quarter 9 applications for review of decisions were lodged at VCAT, which was two less than in the same quarter in 2021. The number of appeals was around average for the Covid-19 pandemic period over the last two years, while still well below averages of the pre-pandemic years, as shown in Figure 10 in **Attachment 1.**

Figure 11, in **Attachment 1** shows that of the 9 appeals lodged against permit application decisions, 3 were by objectors against decisions to grant a permit, 3 were applicants appealing against Council’s failure to make a decision within the 60 day statutory time period, one appeal was lodged by an applicant against a refusal decision, and one by an applicant against conditions of the permit. In addition to the appeals against decisions on permit applications there was also one appeal lodged requesting VCAT make a declaration on a procedural matter.

**Attachment 2** is a more detailed list of all appeals lodged in the June 2022 quarter.

Only 10 VCAT decisions were handed down in the June quarter 2022 as shown in Figure 12 **in Attachment 1.**

Figure 13, **Attachment 1** shows the breakdown of the VCAT decisions handed down in June 2022 quarter compared to the June 2021 quarter as they are reflected in Local Government Performance Reporting. Notably however “Decisions Set Aside” include decisions which differ from the original decision of Council and may therefore include those decisions where a mediated outcome is agreed through the VCAT process.

For the purposes of Figure 14, at **Attachment 1,** VCAT success is defined as the number of Council decisions that were upheld by VCAT (not set aside) or that were negotiated to an outcome satisfactory to Council (consented). This graph indicates a win/loss ratio for the June 2022 quarter compared to the June 2021 quarter. The results reflect that in the June quarter, Council won (or successfully mediated), 40 per cent or 4 out of 10 appeals against decisions. The majority of the decisions lost were Council delegate decisions to refuse an application that were overturned. As part of the VCAT process proposals are often amended to address some of the grounds of refusal and improve planning outcomes. In these circumstances it may appear that Council’s decision has been overturned when in fact a better outcome has been achieved through amendments to the plans.

**Attachment 3** is a more detailed list of all appeals determined in the June 2022 quarter.

### Human Rights Consideration

The implications of this report have been assessed in accordance with the requirements of the Charter of Human Rights and Responsibilities and it was found that it does not contravene any of these sections and supports the following rights

 Section 18: Taking part in Public Life

 Section 13: Privacy and Reputation

 Section 20: Property Rights.

## 4. Community consultation and engagement

No consultation was required to inform the preparation of this report.

## 5. Officer Declaration of Conflict of Interest

Council officers involved in the preparation of this report have no conflict of interest in this matter.

## 6. Financial and Resources Implications

In terms of overall development in Moreland during the June quarter developments to the value of $388 million have been approved by planning permits issued by the Urban Planning Unit, compared to a much lower $152 million during the same quarter in 2021. The results are indicative of the increased development approval activity in the second year of the pandemic.

## 7. Implementation

The performance of Urban Planning and Planning Enforcement Units within Council’s City Development Branch will continue to be monitored with the activity report for the next quarter to be presented to the November, Planning and Related Matters Council meeting.

## Attachment/s

|  |  |  |  |
| --- | --- | --- | --- |
| **1** | City Development Activity Report Graphs June quarter 2022 | D22/324084 |  |
| **2** | VCAT Appeals Lodged June 2022 | D22/324082 |  |
| **3** | VCAT Appeals Determined June 2022 | D22/324083 |  |

**5.2 251-265 Lygon Street & 1A Pitt Street, BRUNSWICK EAST - Planning Permit Application MPS/2022/4**

**Director Place and Environment, Joseph Tabacco**

**City Development**

**Executive Summary**

|  |  |
| --- | --- |
| **Property:** | 251-265 Lygon Street, BRUNSWICK EAST  1A Pitt Street, BRUNSWICK EAST |
| **Proposal:** | Construction of an eight and five storey mixed use building above two levels of basement, and a reduction in the car parking requirements |
| **Zoning and Overlay/s:** |  Commercial 1 Zone (C1Z)   Design and Development Overlay Schedule 19 (DDO19)   Parking Overlay 1 (PO1)   Development Contributions Plan Overlay (DCPO1) |
| **Strategic setting:** |  |
| **Objections:** | A total of 96 objections with key issues being:   Building Height and overshadowing   Street wall and upper level setbacks   Car parking and traffic impacts |
| **Planning Information and Discussion (PID) Meeting:** | Date: 5 July 2022  Attendees: 21 objectors, the applicant, Council officers, and Cr Riley, Cr Yildiz and Cr Bolton  No changes were agreed to, however the meeting provided an opportunity for the objectors concerns to be discussed and helped inform the preparation of this report |
| **ESD:** |  Minimum average NatHERS rating of 7 stars |
| **Accessibility:** |  Adaptable apartments comprise 55 per cent of the proposal |
| **Key reasons for refusal** |  Excessive building height and visibility of upper levels contrary to DDO19   The proposal does not maintain solar access to the Lygon Street footpath |
| **Recommendation:** | Council’s submission to VCAT be that no planning permit should be issued for the proposal, based on the grounds outlined in the recommendation. |

**Officer Recommendation**

That Council’s submission to Victorian Civil and Administrative Tribunal (VCAT) be one that no planning permit be issued for Planning Application MPS/2022/4 for the construction of an eight and five storey mixed used building above two levels of basement and a reduction in the car parking requirements at 251-265 Lygon Street and 1A Pitt Street, Brunswick East, subject to the following grounds of refusal:

1. The development fails to satisfy the following requirements and objectives of Schedule 19 to the Design and Development Overlay at Clause 43.02 of the Moreland Planning Scheme because the development fails to:

a) Create a new mid rise built form character that provides a built form transition between the Lygon Activity Corridor and adjoining low-rise residential areas such as Evan Street.

b) Ensure highly visible development is limited to identified key redevelopment sites.

c) Ensure the street wall remains the visually dominant element in Lygon Street.

d) Ensure that the levels above the street wall are visually recessive, subservient and does not dominate the streetscape appearance to Lygon Street and Evans Street.

e) Protect and enhance the amenity and maintain solar access to key pedestrian street (Lygon Street).

2. The proportions of the development would enclose the public space within the adjoining streets due to building height and minimal upper level setbacks failing to contribute to the urban design outcomes sought by the objectives at Clause 15.01-1S Urban Design, 15.01-1L Urban Design in Moreland and 15.01-2S Building design and Clause 15.01-5S – Neighbourhood Character.

3. The siting of the stair on the northern side of the five storey building would compromise the internal amenity of the dwellings and would not maximise passive energy efficiency and create a quality living environment for residents, failing to meet the strategies and objective of Clause 15.01-2L – Apartment developments in Moreland and Clause 15.01-2L-04 – Energy Efficiency in Moreland.

4. The siting of the upper levels to the north-western boundary would impact on the future development opportunities of the adjoining land due to inadequate building separation, failing to meet the building setback and separation strategies of Clause 15.01-2L – Apartment developments in Moreland.

5. The development fails to satisfy the following standards and objectives of Clause 58 (Apartment Developments) of the Moreland Planning Scheme:

a) Clause 58.02-1 – Urban Context Objectives (Standard D1) – The design fails to contribute to the preferred future development of the area or respond to the features of the site and surrounding area, including the low-rise residential (Evan Street), and is not appropriate to the urban context and the site.

**REPORT**

**1. Background**

**Subject site**

The site combines 251-265 Lygon Street and 1A Pitt Street, Brunswick. The frontage to Lygon Street is 53.15 metres and 52.20 metres to Evans Street and the total combined site area is 2,476 square metres.

251- 265 Lygon Street is currently occupied by three attached double storey buildings with frontages to Lygon Street to the east and Evans Street to the north and a car park at the rear which is accessed from Pitt Street. 1A Pitt Street is occupied by a single storey building which is also accessed from Pitt Street via the laneway.

There are no restrictive covenants indicated on the Certificate of Title. A 3.65 m wide laneway (carriageway easement) accessed from Pitt Street traverses part of the site.

A street with cars and buildings

Description automatically generated with low confidence

Image 1 – Subject site Lygon Street frontage (outlined in green)

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Image 2 – Subject site viewed from Pitt Street

**Surrounds**

The site and surrounding area forms part of a strip shopping centre that is currently undergoing substantial change, given its designation as part of the Brunswick Activity Centre. Broadly building heights range between 1 and 8 storeys along Lygon Street, whereas to the west the scale is of modest 1 and 2 storey residential properties. The immediate context includes:

 To the north of the site is a 5 storey mixed use building (267 Lygon Street) which is nearing completion.

 Abutting the site to the west is vacant land (126 Evans Street) and a single storey building used for a dance studio (3 Pitt Street).

 Directly opposite the site are two eight storey mixed used buildings.

 To the south of the site are commercial uses including live music (Noisy Ritual) and a dwelling (249 and 245 – 247 Lygon Street and 1 Pitt Street).

A location plan forms **Attachment 1.**

**The proposal**

The proposal is for an eight and five storey building, summarised as follows:

 A maximum building height of 27.9 metres at the centre of the site frontage (excluding service equipment)

 109 dwellings, comprising 25 x 1-bedrooms, 75 x 2-bedrooms, 9 x 3-bedrooms

 Six retail tenancies totalling 1453.4 square metres

 Provision of 112 car spaces within two levels of basement

 Provision of 133 bicycle parking spaces

 Vehicle and pedestrian access via Evans Street and the laneway from Pitt Street

The development plans form **Attachment 2**.

**Process of application**

On the understanding that Council officers were not supportive of the proposal, the permit applicant has lodged an application for review with the Victorian Civil and Administrative Tribunal (VCAT) under section 79 of the Act for Council failing to determine the application within 60 statutory days.

The matter will be considered by VCAT in November 2022 and a compulsory conference has been set for September 2022.

**Statutory Controls – why is a planning permit required?**

| **Control** | **Permit Requirement** |
| --- | --- |
| Commercial 1 Zone | Clause 34.01-4: Permit is required to construct a building or construct or carry out works.  Dwelling and Retail Premises are Section 1 uses in the zone provided the conditions are met, meaning that a permit is not required for the use. |
| Design and Development Overlay | Clause 43.02-2: A permit is required to construct a building or construct or carry out works  Schedule 19 outlines (preferred):   Building height (maximum)- 17m at the front and 15m at the rear   Street wall height- between 11m – 14m   Upper level setback- between 3 – 5m |
| Particular Provisions | Clause 52.06-3: A permit is required for a reduction in the standard car parking requirements from 168 spaces to 112 spaces |

The following Particular Provisions of the Moreland Planning Scheme are also relevant to the consideration of the proposal:

 Clause 45.06: Development Contributions Plan Overlay

 Clause 45.09: Parking Overlay

 Clause 52.34: Bicycle Facilities

 Clause 53.06: Live Music Entertainment Venues

 Clause 58: Apartment Developments.

**2. Internal/External Consultation**

**Public notification**

Notification of the application has been undertaken pursuant to Section 52 of the *Planning and Environment Act 1987* by:

 Sending notices to the owners and occupiers of adjoining and nearby land; and

 Placing signs on the Lygon Street and Evans Street frontages of the site.

Council has received 96 objections. A map identifying the location of objectors forms **Attachment 3**.

The key issues raised in objections are:

 Building and street wall height

 Upper level setbacks

 Loading and unloading/Waste collection

 Traffic impacts

 Car parking

 Overshadowing

 Overlooking

 Impacts on nearby businesses

 Outlook/views from abutting balconies

 Natural ventilation

 Building footprint/No deep soil planting

 Impacts on heritage values

A Planning Information and Discussion meeting was held on 5 July 2022 and attended by Councillors, Council Planning Officers, the applicant and approximately 21 objectors. The meeting provided an opportunity to explain the application, for the objectors to elaborate on their concerns, and for the applicant to respond. No resolutions arose from the meeting.

**Internal/external referrals**

The proposal was referred to the following external agencies or internal branches/business units:

|  |  |
| --- | --- |
| **External Agency** | **Objection/No objection** |
| Transport for Victoria | No objection subject to conditions which will be included in the without prejudice conditions that form part of the VCAT process. |
| **Internal Branch/Business Unit** | **Comments** |
| Urban Design Unit | Does not support the proposal for the following issues:   Unacceptable, proportions of the building due to the excessive upper floor height in relation to the street wall   3m upper level setback not appropriate for an eight storey building   Poor outlook/daylight/ventilation for apartments in 5 storey building   Lack of daylight access to landscaping at podium   Safety issues and lack of activation for pedestrians using the laneway for access  Provided the following suggestions:   Reduce building height and increase upper level setback, particular given its corner location   Consider a textured or patterned concrete and or commission of a mural, instead of blank or painted flat pre-cast wall on boundary  The concerns and suggestions are detailed further in Section 4 of this report. |
| Transport - Development Engineering Team | Supports the traffic engineering aspects of proposal.  Matters to be resolved via conditions include:   Labelling of bicycle and car parking   Public works within Evans Street   Protection of existing street tree   Undergrounding of existing cables to site  Recommended changes could be addressed by conditions were a permit to issue. |
| Sustainability and Climate- ESD Team | Supports the ESD aspects of the proposal, provided the following issues are addressed:   Details of all ESD initiatives shown on plans   Highlight/clerestory window to kitchen/dining of Apt 7.03   Amended SMP increasing the NatHERS ratings for Apt 4.07, 5.07 & 6.07 to a min. of 6 stars and BESS IEQ 1.1 & 1.2 including daylight models for the retail spaces and dwellings at Level 1 & all dwellings facing the communal open space   Amended stormwater catchment plan  Recommended changes could be addressed by conditions were a permit to issue. |
| Open Space Design and Development Unit | Supports the landscape design, provided further details are provided for:   soil volume for each tree, aiming for greater than 20m3 per tree   detailed maintenance and irrigation details of all planters and planting spaces  Recommended changes could be addressed by conditions were a permit to issue. |

**3. Policy Implications**

**Planning Policy Framework (PPF):**

The following policies are of most relevance to this application:

 Municipal Planning Strategy (Clause 2)

 Settlement (Clause 11)

 Environmental Risks and Amenity (Clause 13)

 Built Environment (Clause 15.01), including:

 Urban Design (Clause 15.01-1S, 15.01-1R & 15.01-1L)

 Vehicle Access Design in Moreland (Clause 15.01-1L)

 Building Design (Clause 15.01-2S & 15.01-2L)

 Apartment developments in Moreland (Clause 15.01-2L)

 Energy efficiency (Clause 15.01-2L)

 Neighbourhood character (15.01-5S)

 Sustainable Development (Clause 15.02), including:

 Energy and resource efficiency (Clause 15.02-1S)

 Environmentally Sustainable Development (Clause 15.02-1L)

 Energy efficiency in Moreland (Clause 15.02-1L)

 Residential Development (Clause 16.01), including:

 Housing Supply (Clause 16.01-1S and 16.01-1R)

 Homes in Moreland (Clause 16.01-1L)

 Housing for People with Limited Mobility (Clause 16.01-1L)

 Housing Affordability (Clause 16.01-2S & 16.01-2L)

 Economic Development (Clause 17)

 Transport (Clause 18)

 Infrastructure (Clause 19.02)

**Building Regulations**

Flood mapping has been undertaken by Council and the land has been designated as liable to flooding pursuant to regulation 5(2) of the Building Regulations 2018. Whilst not currently identified in the Moreland Planning Scheme this flood mapping has a declaration under the Building Regulations.

**Human Rights Consideration**

This application has been processed in accordance with the requirements of the *Planning and Environment Act 1987* (including the Moreland Planning Scheme) reviewed by the State Government and which complies with the *Victorian Charter of Human Rights and Responsibilities Act 2006, including Section 18 (Taking part in public life).* In addition, the assessment of the application has had particular regard to:

 Section 12: Freedom of movement

 Section 13: Privacy and Reputation

 Section 20: Property rights

The proposed redevelopment of private land does not present any physical barrier preventing freedom of movement. The right of the landowner to develop and use their land has been considered in accordance with the Moreland Planning Scheme. The privacy of nearby residents has also been considered as part of the application process.

**4. Issues**

In considering this application, regard has been given to the Planning Policy Framework, the provisions of the Moreland Planning Scheme, objections received and the merits of the application.

**Does the proposal have strategic policy support?**

Both State and Local planning policies support increased residential densities and a mix of retail/commercial uses in locations that can take advantage of excellent access to public transport and other services within and in proximity to Activity Centres. Whilst the site provides a suitable location for midrise building heights, this proposal fails to provide an acceptable built form which responds appropriately to State and Local policy and in particular, the objectives of the Design and Development Overlay Schedule 19, as set out in this report.

Without a reduction in the building height and overall mass of the development the proposal would not have strong strategic policy support at neither State and Local level.

**Does the proposal meet the design objectives of the DDO19?**

Preferred built form outcomes for the site and surrounds are guided by Schedule 19 of the Design and Development Overlay(DDO19). Building heights, street wall heights and upper level setbacks are the key components of the DDO. This assessment considers each in detail.

Building height

The eight storey and 28.3 metre building height exceeds the 17 metre preferred maximum building height of the DDO by 11.3 metres. Whilst there are existing eight storey developments on the opposite side of Lygon Street, those developments are located within a separate building height provision under the DDO19 whereby a higher built form outcome being a 23 metre maximum building height is preferred. These developments were not supported by Council but were approved at the direction of VCAT and some predate the completion of the Brunswick Structure Plan and current planning controls.

With construction underway at 267 Lygon Street for a five storey building and multiple approvals for six storey buildings nearby, there is no reasonable justification for the proposed building to exceed the preferred height control on the site which is also not identified as a key redevelopment site. The prominence of the additional building height above the DDO19 would be further heightened by its corner location. The issue of building height is exacerbated by the limited upper level setbacks which are proposed, which is discussed later in this report.

The land abutting the site to the west has a preferred maximum height of 11 metres where it fronts Evans Street and 14 metres where it fronts Pitt Street. The residentially zoned land located approximately 30 metres to the west of the site has a maximum height limit of 9 metres. An objective of the DDO seeks to create a new midrise built form character that provides a built form transition between the Lygon Activity Corridor and adjoining low-rise residential areas by designating the site with a preferred maximum height of 17 metres. As the development would exceed the building height by 11.3 metres, the proposal would not provide a suitable transition from the site to the low-rise residential land failing to meet the objective of the DDO.

The eight storey building and 28.3 metre building height fails to meet the objectives of the DDO19 as detailed in the grounds of refusal.

The five storey and 17 metre building height to Pitt Street would exceed the 14 metre preferred maximum building height of the DDO by 3 metres. However, the impact to Lygon Street and Pitt Street is reduced by the proposed eastern building as well as any future development of 1 Pitt Street to the south and is therefore less likely to be perceived from the public realm.

Upper level setbacks

A 3 metre upper level street setback is provided to Lygon Street and Evans Street which is the minimum sought by the DDO19. The DDO seeks upper level setbacks between 3-5 metres for the site. Setbacks between 3-5 metres are considered appropriate to provide ‘recessive’ upper levels if the preferred maximum building height is not exceeded. To achieve the DDO19 design objective, heights above the preferred maximum will need substantially greater upper level setbacks to ensure that the street wall remains the visually dominant element and that any height above the street wall is visually recessive, subservient and does not dominate the streetscape. The 3 metre setback proposed provides minimal visual relief for the upper levels and do not achieve the DDO19 objective.

Street wall

The DDO outlines a preferred maximum street wall height of four storeys, between 11-14 metres for Lygon Street and Evans Street. At the Lygon Street frontage the street wall ranges between 15.3 – 15.6 metres whilst the street wall to the Evans Street frontage ranges between 14.8 – 15.3 metres. Each street wall is four storeys in height. Overall, the street walls project above the preferred street wall height by 1.6 metres to Lygon Street and 1.3 metres to Evans Street. The five storey building has no frontage to Pitt Street.

Contributing factors to the height of the street wall are the 1.1 metre high parapet at Level 4 providing balustrades for the balconies; the 3.4m high ceiling at ground floor providing for a greater variety of commercial uses; a higher street wall at Lygon Street due to the slope of the land; the raising of the ground floor finished floor level to prevent flooding impacts to the site; lower footpath level at the south-eastern corner due to the existing crossover; and the 3.4m ceiling height to Level 3. Each of these factors are justifiable with the exception of the Level 3 ceiling height. This level’s ceiling height may be reduced to 3.2m in line with the remaining residential levels to reduce the street wall height.

The existing street walls in this context provides justification for the proposed height above 14 metres. The development to the north at 267 Lygon Street has a street wall of 15.0 metres to Lygon Street and 15.1 metres to Evans Street. Subject to the reduction to the ceiling height at Level 3 which will reduce the street wall height by 200mm, the street wall can be supported as it will only be a minor exceedance and will be in keeping with the street wall heights in the surrounding context.

**Does the proposal provide for adequate activation and pedestrian amenity?**

Street interfaces

The proposal provides for active frontages to Lygon and Evans Street with retail tenancies presented to each of these streets and residential access from Evans Street. This complies with the DDO requirements.

Pedestrian access to the apartments are provided via the Evans Street frontage. The front walls at the ground floor have been setback from Evans Street between 1.6 – 4.1 metres. This has been done to increase the area of public space along Evans Street and to activate this space which is currently restricted by a narrow footpath. Further improvements can be made to the footpath on the southern side of Evans Street including undergrounding powerlines and removing crossovers and reinstating footpaths which could be included as conditions should a permit be issued.

Council’s Development Engineer also considers the use of the rear laneway which is connected to Pitt Street an acceptable route to the site for waste truck access, bicycle access and pedestrian access given this laneway is appropriately surfaced. However, user safety can be improved within the laneway through additional windows and lighting. These changes could be included as conditions should a permit be issued.

All building services requiring access are located within the façade to Evans Street ensuring the Lygon Street façade maximises active street edges and passive surveillance for pedestrian safety in accordance with the DDO guidelines. The location of the vehicle access to Evans Street is supported by the DDO which seeks to minimise the impact of vehicle access on the public realm by locating vehicle access at the rear of buildings where possible and on secondary frontages provided to the side of corner properties away from the front façade.

Awnings are provided above the footpaths to Lygon Street and Evans Street for weather protection for pedestrians, however these awnings have not been designed to Council standards and require changes. This change could be conditioned should a permit be issued.

The proposal fails to provide adequate pedestrian amenity due to excessive height and minimal setback of the upper levels within the adjoining streets. The proportions of the development would enclose the public space within Lygon Street and Evans Street, failing to provide an appropriate balance of open space to built form pursuant to Clause 15.01-1L – Urban Design in Moreland. This is evident in the 3D render images included in the architectural drawings.

Furthermore, the western footpath of Lygon Street is affected by shadow at 1pm, 2pm and 3pm whilst the eastern footpath is in shadow at 3pm. The impact of shadow on Lygon Street is contributed by the 28.3 metre height of the building, 11.3 metres above the preferred building height. In the absence of specific tests for the building to meet the relevant DDO objective for overshadowing, the consideration of building height is key. The extent of shadow created by the development within Lygon Street is beyond the expectations of the DDO for a key pedestrian street and is considered unreasonable.

**Does the proposal result in any unreasonable off-site amenity impacts?**

Overshadowing

The DDO19 design objectives and decision guidelines note overshadowing to residential properties outside of the Activity Centre as a relevant planning consideration*.* The shadow diagrams demonstrate that the building would overshadow adjoining properties to the west and south as well as Lygon Street between 9am – 3pm at the equinox, which includes land that is zoned commercial and mixed use. The shadowing impact at the equinox does not extend beyond the boundaries of the Activity Centre and is therefore considered acceptable.

For completeness an objector has informed Council that a dwelling is located above the nursery at 245 Lygon Street. Whilst not shown on the plans it appears that this dwelling would have windows facing Lygon Street, Pitt Street and to the west. The shadow diagrams demonstrate that the windows facing the street and the west facing windows would not be impacted by overshadowing.

**Does the proposal provide adequate internal amenity and equitable development opportunities?**

The requirements of Clause 15.01-2L (Apartment Developments in Moreland) are only applicable to the west facing apartments as all other apartments face internally to the site or to the street. The 4.5 metre west side setback at Levels 5-7 comply with the boundary setbacks sought by Clause 15.01-2L for bedrooms, but fall short of the 9 metre requirement sought for living areas and main balcony outlooks. It is acknowledged that the impacted apartments have a dual aspect ensuring amenity for these apartments is acceptable. Despite this, it is considered that equitable development opportunities of the land to west would be impacted as a result of the reduced upper level side setbacks. DDO19 outlines a maximum building height of 11 metres for the adjoining property to the west fronting Evans Street which is 6 metres less than the 17 metres stipulated for the site. Therefore, any development on this adjoining land would be constrained in its outlook and amenity as a result of inadequate building separation. This does not respond to the strategies at Clause 15.01-2L which seeks to ensure that new developments allow for equitable development opportunities of adjoining sites.

The siting of the stair on the northern side of the five storey building creates a number of impacts for the development. The internal amenity of these dwellings is compromised as result, impacting on the northern outlook, daylight and ventilation. The setbacks included in Clause 15.01-2L seek appropriate building separation to achieve the internal amenity strategies included in this policy. The stair would essentially provide no separation for this building, failing to satisfy the strategies of the policy. Furthermore, the building would not maximise passive energy efficiency and create a quality living environment for residents, failing to meet the strategies and objective of Clause 15.01-2L-04 – Energy Efficiency in Moreland

**Does the proposal provide an appropriate site layout and onsite amenity and facilities?**

The following standards of Clause 58 relating to site layout and onsite amenity are met, noting that:

 Communal open space of approximately 875 square metres, which exceeds the 250 square metres of communal open spaces required by Standard D7.

 The development includes 60 adaptable dwellings equal to 55 per cent of the total number of dwellings exceeding the 50 per cent requirement of Standard D18.

 All 1-bedroom and 2-bedroom apartments have balconies of at least 8.4 square metres and 3-bedroom apartments have balconies exceeding 11.6 square metres.

Landscaping – Clause 58.03-5 Standard D10

The species of canopy trees do not meet the requirements of Standard D10 for landscaping however, the quantity of trees would provide canopy cover exceeding the requirements of the standard. Solar access to the landscaping at podium level would be compromised as a result of the highest built form being located to the north, as demonstrated by the shadow diagrams. This would impact on the viability of the landscaping which questions the suitability of the proposed landscaping in communal outdoor open space. Given this space would also serve as communal open space the height and massing of the building should be reconsidered to increase solar access to this communal space.

Noise impacts – Clause 58.04-3 Standard D16

The Acoustic Assessment considers the noise impacts emitting from the nearby venue at 249 Lygon Street (Noisy Ritual) and the noise associated with Lygon Street. The acoustic report also considers the noise impacts generated by building services within the proposed development. The noise modelling determines that noise impacts to the residential dwellings would not be unreasonable, provided that windows are appropriately sealed and satisfy the glazing requirements included in the report. These measures could be ensured as a condition of any permit issued.

**Has adequate car and bicycle parking been provided?**

The table below outlines the car parking requirements for the development based on the provisions of Clause 52.06-5 of the Moreland Planning Scheme.

|  |  |  |  |
| --- | --- | --- | --- |
| **Use** | **Total spaces required** | **Total spaces provided** | **Reduction sought** |
| Dwellings (25 x 1-bed, 75 x 2-bed 9 x 3-bed) | 118 | 106 | 12 |
| Retail (1,453sqm) | 50 | 6 | 44 |
| **Total** | **168** | **112** | **56** |

In considering the matters at Clause 52.06-7, the reduction of 56 car spaces is considered acceptable for the following reasons:

 The site is located in the Brunswick Activity Centre with excellent access to a range of public transport options.

 The reduction of car parking is predominantly associated with the retail tenancies, while the residential component is limited to 12 of the 1-bedroom dwellings not being provided with a car space.

 The development provides 133 bicycle spaces, exceeding the 41 spaces required by Clause 52.34-5.

**What impact does the proposal have on car congestion and traffic in the local area?**

Council’s Development Engineer considers the additional traffic generated from this development would be less than 40 vehicle movements into and out of the basement during each peak hour. These vehicles will move along Evans Street (a local access street). Based on this data the additional vehicles are not expected to cause unacceptable congestion at the nearby intersections. The Development Engineer has accepted the analysis of the Traffic Impact Assessment in respect to traffic generation, road network capacity and vehicle movements inclusive of private waste trucks.

**Are adequate loading/unloading facilities provided?**

Clause 65.01 requires consideration of the adequacy of loading and unloading. There is opportunities for loading via the business owner’s car space and nearby (Pitt Street) on street loading zone. Parking is also available in front of the site across all three frontages.

**Does the proposal incorporate adequate Environmental Sustainable Design (ESD) features?**

ESD features of the development include:

 Minimum average NatHERS rating of 7 stars

 BESS score of 66 per cent

 Net-zero carbon strategies including an all electrical building with no connection to gas

Should a planning permit be issued, conditions are recommended to ensure that the development would meet best practice in environmentally sustainable development.

**Is the land potentially contaminated?**

The applicant has identified the previous uses of the land as retail, warehouse and manufacturing. In the absence of an Environmental Audit Overlay for the land, the practice note for potentially contaminated land recommends where a sensitive use is proposed (residential) a preliminary risk screen assessment is required to determine the need for an audit. This could be included as a condition should a permit be issued.

**5. Response to Objector Concerns**

The following issues raised by objectors are addressed in section 4 of this report:

 Building height

 Street wall height

 Upper level setbacks

 Loading and unloading/Waste collection

 Basement access

 Car parking

 Traffic increase

 Overshadowing

Other issues raised by objectors are addressed below.

**Overlooking**

The north-western apartments at Levels 4 – 7 of the eight storey building have windows and balconies with a western orientation facing the residential properties along Evans Street. Standard D14 of Clause 58.04-1 provides the assessment criteria for overlooking and requires *the impact of overlooking on the amenity of existing and proposed dwellings* to be considered.

The balconies of these apartments with a western outlook have 1.0 – 1.5 metre wide planter boxes along the edge to limit views from the balcony into existing dwellings private open space and habitable room windows. The west facing windows of these apartments are also setback between 2.7 – 4.9 metres from the balcony edge to also obscure views into the adjoining properties.

The balconies with a dual aspect at Level 1-3 of the north-western apartments facing Evans Street are not considered to contribute to overlooking given they would not have direct views into adjoining private open space and habitable room windows. The west facing corridor windows are not habitable rooms and therefore need not be screened. The remaining west facing windows within the development are located at least 22 metres from the west boundary and would not have direct views into neighbouring properties.

**Loss of views**

While the Victorian Civil and Administrative Tribunal has recognised that views can be a relevant amenity consideration, it has also held that there is no right to a view and that the weight to be given to the amenity impact of loss of views is diminished where no planning control applies encouraging retention or sharing of views. There is no specific policy or provision regarding views within the Moreland Planning Scheme. In this activity centre context, where significant change is expected, any loss of views from private residences is not considered to warrant the amendment or refusal of the application.

Nevertheless, the amenity impacts associated with the proposed building height and siting of the upper levels are considered unreasonable and is not supported.

**Natural ventilation**

Standard D29 of Clause 58.07-4 provides the assessment criteria for the consideration of natural ventilation and requires at least 40 per cent of dwellings to provide efficient cross ventilation that has:

 A maximum breeze path through the dwelling of 18 metres.

 A minimum breeze path through the dwelling of 5 metres.

 Ventilation openings with approximately the same area.

The breeze path is measured between the ventilation openings on different orientations of the dwelling.

Of the various apartment types 51.4 per cent have effective cross ventilation, satisfying the requirements of Standard 29 and subsequently meeting the objectives of Clause 58.07-4.

**Impacts on nearby businesses**

There are a number of businesses operating nearby, including the plant nursery, wine bar, tattoo studio, health and well being studio and a dance studio. Consideration has been given to the impacts of overshadowing to the neighbouring businesses and the impacts of car parking demand in section 4 of this report. The impacts created by the development in each matter are deemed to be acceptable based on the information accompanying the application.

Shadows created by the development would extend into the nearby properties with the key consideration being the impact on the plant nursery at 245-247 Pitt Street, which has a glazed roof. The extent of shadow within the glazed area wouldn’t exceed 33 per cent during daylight hours at the equinox. These are considered to be acceptable impacts on a site that is located within an activity centre which is identified for significant change.

**Car parking survey data**

Car parking surveys informing the Traffic Impact Assessment were carried out on Thursday 18th November between 9am – 7pm and Saturday 13th November 2021 between 10am – 3pm. Objectors are concerned that the parking survey does not accurately reflect car parking demand given at the time the surveys were undertaken the impacts and flow on effects of covid-19 restrictions were still in play. It is somewhat unknown what level of impact the restrictions had on the survey data, however it does still provide useful information to inform the assessment. The consideration of the car parking reduction does factor in the survey data but also relies on a number of other factors in determining whether it is appropriate or not. With the support for the reduction of car parking provided by Council’s Development Engineer and the policy at Clause 18.02-4L, the consideration of car parking impacts has been adequately assessed as acceptable in this instance. Concerns with the timing of the surveys can be raised through submissions as part of the VCAT review process.

**Impacts on heritage values**

An objector is concerned with the impacts the development will have on the heritage values of 3 Pitt Street and 236 and 238 Lygon Street in regards to overshadowing and overlooking. Firstly, these properties are not identified in a Heritage Overlay. The assessment in Section 4 also considers the impacts of overshadowing on the neighbouring properties and that overshadowing within Lygon Street is unacceptable. Impacts of overlooking are also considered above, resolving there will be no unreasonable overlooking into 3 Pitt Street.

**Building footprint/No deep soil planting**

Standard D10 of Clause 58.03-5 provides requires 247sqm of deep soil and 345sqm of canopy cover (including two Type B trees or one Type C tree) for the development. Deep soil planting does not need to be provided at ground level as this would be difficult for most apartment developments. The proposed landscaping would satisfy the canopy cover and deep soil requirements, however it would not meet the minimum dimensions required for the tree species. When considering the number of trees provided for the development is 34, the development would provide appropriate canopy cover ensuring the objectives of Clause 58.03-5 are met.

**Waste collection**

Two separate waste rooms are provided for the development, one is located in the basement for the residential component and one is located at the rear of the retail tenancies accessed via the rear laneway. A Waste Management Plan (WMP) has been provided specifying waste volumes, method of collection, bin washing facilities and details of ventilation. Council’s Development Engineer is satisfied with the WMP.

Swept paths included in the Traffic Report confirm private waste vehicles can enter and exit the site/basement in a forwards direction. Waste vehicles utilising the laneway are not able to exit the site in a forward direction, however this is not considered unreasonable for a laneway with no through road. Three other buildings have access to the laneway and are not expected to be impacted by the collection of waste which would occur once a week.

**6. Officer Declaration of Conflict of Interest**

Council Officers involved in the preparation of this report do not have a conflict of interest in this matter.

**7. Financial and Resources Implications**

There are no financial or resource implications.

**8. Conclusion**

On the balance of policies and controls within the Moreland Planning Scheme and objections received, it is considered that Council’s submission to VCAT be to not support the application for the reasons detailed in the recommendation.

**Attachment/s**

|  |  |  |  |
| --- | --- | --- | --- |
| **1** | Location Plan | D22/323344 |  |
| **2** | Development Plans | D22/323124 |  |
| **3** | Location of Objectors | D22/323551 |  |

**5.3 53-57 Albert Street, Brunswick East - Planning Application MPS/2021/1029**

**Director Place and Environment, Joseph Tabacco**

**City Development**

**Executive Summary**

|  |  |
| --- | --- |
| **Property:** | 53-57 Albert Street, BRUNSWICK EAST |
| **Proposal:** | Construction of a six storey apartment building and a reduction in the car parking requirement |
| **Zoning and Overlay/s:** | Mixed Use Zone (MUZ)  Design and Development Overlay Schedule 19 (DDO19)  Environmental Audit Overlay (EAO)  Parking Overlay 1 (PO1)  Development Contributions Plan Overlay (DCPO) |
| **Strategic setting:** |  |
| **Objections:** | 6 objections received with the key issues:   Building height   Overshadowing impacts   Car parking reduction |
| **Planning Information and Discussion (PID) Meeting:** | Date:19 July 2022  Attendees: 0 objectors, the applicant, 2 Council officers, and Councillor Harte and Mayor Riley |
| **ESD:** | Minimum average NatHERS rating of 8 stars. |
| **Accessibility:** | Adaptable apartments comprise 73 per cent of the proposal. |
| **Key reasons for refusal** |  The overall building height exceeds that of the DDO19 and does not provide for a transition in built form   The proposal does not maintain solar access to the Albert Street footpath and overshadows Fleming Park   The design provides compromised internal amenity including daylight to habitable rooms and private open space areas. |
| **Recommendation:** | Council’s submission to VCAT be that no planning permit should be issued for the proposal, based on the grounds outlined in the recommendation. |

**Officer Recommendation**

That Council’s submission to the Victorian Civil and Administrative Tribunal (VCAT) be that no planning permit should be issued for the construction of a six storey apartment building and a reduction in the car parking requirement at 53-57 Albert Street, Brunswick East, subject to the following grounds:

1. The development fails to satisfy the following requirements and objectives of Schedule 19 to the Design and Development Overlay at Clause 43.02 of the Moreland Planning Scheme by:

a) Not providing a built form transition between the Lygon Street Corridor and adjoining low-rise residential areas and Fleming Park;

b) Proposing a highly visible development that exceeds the preferred building height on a site not identified as a key redevelopment site;

c) Not protecting or enhancing the amenity nor maintaining solar access to Albert Street, an identified key pedestrian street;

d) Not maintaining solar access to Fleming Park; and

e) Not maintaining reasonable amenity for residential properties near the site.

2. The proposal results in overshadowing of the Albert Street footpath and Fleming Park, contrary to and 15.01-1L (Urban Design in Moreland).

3. The proposal does not satisfy the following objectives and standards of Clause 58 (Apartment Developments) of the Moreland Planning Scheme:

a) Clause 58.02-1 – Urban Context Objectives (Standard D1) – The design fails to contribute to the preferred future development of the area or respond to the features of the site and surrounding area, particularly the heritage context, and is not an appropriate design response to the urban context and the site;

b) Clause 58.02-5 – Integration with the Street (Standard D5) – The design utilises high solid front fencing (walls) to the street that limits the activation at the ground level;

c) Clause 58.05-3 – Private Open Space (Standard B20) – The design includes insufficient dimensioned ground floor secluded private open space areas that do not allow for the reasonable recreation and service needs to residents; and

d) Clause 58.07-3 – Windows (Standard D28) – The design includes habitable rooms with poorly located windows that have poor access to daylight and result in compromised internal amenity.

**REPORT**

**1. Background**

**Subject site**

The subject site is a corner lot, bounded by Albert Street to the south, Cross Street to the east and Sedgman Street to the west. With Lygon Street located approximately 160 metres to the west, the site is located on the edge of the Brunswick Activity Centre – Lygon Street Local Area. The site is regular in shape and has an overall area of 1,779 square metres.

A single storey commercial (warehouse) building that is built nearly across the entire land parcel currently occupies the land. Two crossovers on Cross Street and one on Sedgman Street provide vehicular access.

There are no restrictive covenants or other encumbrances indicated on the Certificate of Title, formally referred to as Lot 2 on Plan of Subdivision 057536.

**Surrounds**

The surrounding area is highly mixed in character incorporating a mix of commercial, industrial, residential and recreational uses, with built form ranging up to six storeys in height. The immediate context includes:

 A single storey brick commercial building to the north (wholesaler/warehouse).

 To the west, single storey terraces along Sedgman Street and double storey terraces along Albert Street, being part of the Albert Street Heritage Precinct.

 A double storey office building, single storey commercial building and six storey apartment development to the south, on the opposite side of Albert Street.

 Fleming Park to the east, home to various facilities including the single storey senior citizens centre in the south-western corner of the park, opposite the subject site.

A location and zoning map forms **Attachment 1**.

**The proposal**

The proposal is for a six-storey building, including

 One basement level containing 50 car spaces, storage areas and bin room;

 A communal garden (195.8sqm), communal amenities room and secure storage space for 152 bikes and associated workshop at ground level;

 71 dwellings across all six levels comprising of:

- 17 one-bedroom dwellings

- 38 two-bedroom dwellings

- 16 three-bedroom dwellings;

 A maximum building height of 21.315 metres; and

 A mix of materials including brick, textured concrete, textured cement sheets, exposed aggregate and metal cladding.

The advertised development plans form **Attachment 2**.

**Process of application**

An application has been lodged with the Victorian Civil and Administrative Tribunal (VCAT) under section 79 of the Act for Council failing to determine the application within the prescribed time.

The matter will be considered by VCAT in December 2022 and a compulsory conference has been set for October 2022.

**Statutory Controls – why is a planning permit required?**

| **Control** | **Permit Requirement** |
| --- | --- |
| Mixed Use Zone | Dwelling is a Section 1 use in the zone, therefore a permit is not required for the use of the land.  Clause 32.04-6 - A permit is required to construct two or more dwellings on a lot. |
| Design and Development Overlay Schedule 19 | Clause 43.02-2 - A permit is required to construct a building or construct or carry out works. DDO19 establishes a preferred overall building height of 14 metres with no preferred street wall heights or upper level setbacks specified. |
| Clause 52.06 | A permit is required to reduce the car parking requirement from 87 spaces to 50 spaces. |

The following Particular Provisions of the Moreland Planning Scheme are also relevant to the consideration of the proposal:

 Clause 45.03: Environment Audit Overlay. A condition of any permit granted will require an Environmental Audit to be undertaken before the development commences, to ensure that the site is remediated to EPA required standard.

 Clause 45.06: Development Contributions Plan Overlay

 Clause 45.09: Parking Overlay

 Clause 52.34: Bicycle Parking.

 Clause 58: Apartment Developments

**2. Internal/External Consultation**

**Public notification**

Notification of the application has been undertaken pursuant to Section 52 of the *Planning and Environment Act 1987* by:

 Sending notices to the owners and occupiers of adjoining and nearby land; and

 Placing a sign on each of the three frontages of the site (3 signs total).

Council has received 6 objections to date.

A map identifying the location of objectors forms **Attachment 3**.

The key issues raised in objections are:

 The building height exceeding the preferred height of the DDO19

 Overshadowing of the park

 Car parking reduction and impact on on-street parking.

A Planning Information and Discussion meeting was held on 19 July 2022 and attended by Cr Harte and Mayor Riley, two Council Planning Officers, and the applicants. No objectors elected to attend.

**Internal referrals**

The proposal was referred to the following internal branches/business units:

|  |  |
| --- | --- |
| **Internal Branch/Business Unit** | **Comments** |
| Urban Design Unit | Largely supportive of the proposal except for the poor amenity outcome for the bedroom windows to the communal corridors. |
| Transport - Development Engineering Team | Supports the proposal including the reduction in the statutory car parking requirement subject to recommended changes to end of aisle parking bays and reduction in the width of the vehicle crossover off Cross Street.  The site is identified as being subject to flooding. Satisfactory finished floor levels are provided. |
| Sustainability and Climate - ESD Team | Supports the proposal subject to the provision of additional shading. |
| City Development - Heritage Advisor | Does not support the proposal due to the impact the development will have on the values and significance of adjoining heritage places. |
| Open Space Design and Development Unit | Supports the landscape design. |

**3. Policy Implications**

**Planning Policy Framework (PPF):**

The following policies are of most relevance to this application:

Municipal Planning Strategy (Clause 2), including:

 Vision (Clause 2.02)

 Settlement (Clause 2.03-1)

 Environmental and Landscape Values (Clause 2.03-2)

 Environmental Risks and Amenity (Clause 2.03-3)

 Built Environment and Heritage (Clause 2.03-4)

 Housing (Clause 2.03-5)

 Transport (Clause 2.03-7)

 Infrastructure (Clause 2.03-8)

Settlement (Clause 11)

Environmental Risks and Amenity (Clause 13):

 Floodplain management (Clause 13.03-1S)

 Contaminated and Potentially Contaminated Land (Clause 13.04-1S)

Built Environment (Clause 15.01), including:

 Urban Design (Clause 15.01-1S, 15.01-1R & 15.01-1L)

 Vehicle Access Design in Moreland (Clause 15.01-1L)

 Building Design (Clause 15.01-2S & 15.01-2L)

 Apartment developments in Moreland (Clause 15.01-2L)

 Healthy Neighbourhoods (Clause 15.01-4S and 15.01-4R)

 Neighbourhood Character (Clause 15.01-5S)

 Environmentally Sustainable Development (Clause 15.02-1L)

 Energy efficiency in Moreland (Clause 15.02-1L)

Heritage (Clause 15.03), including:

 Heritage conservation (Clause 15.03-1S)

 Heritage in Moreland (Clause 15.03-1L)

Residential Development (Clause 16.01), including:

 Housing Supply (Clause 16.01-1S and 16.01-1R)

 Homes in Moreland (Clause 16.01-2L)

 Housing for People with Limited Mobility (Clause 16.01-1L)

 Housing Affordability (Clause 16.01-2S & 16.01-2L)

Transport (Clause 18), including:

 Sustainable and safe transport (Clause 18.01-3S & 18.01-3R)

 Movement networks (18.02)

 Sustainable Transport in Moreland (Clause 18.02-2L)

 Car parking in Moreland (Clause 18.02-4L)

Infrastructure (Clause 19.02), including:

 Energy supply (Clause 19.01-1S & 19.01-1L)

 Development infrastructure (Clause 19.03)

**Building Regulations**

Flood mapping has been undertaken by Council and the land has been designated as liable to flooding pursuant to regulation 5(2) of the Building Regulations 2018. Whilst not currently identified in the Moreland Planning Scheme this flood mapping has been declared under the Building Regulations.

**Human Rights Consideration**

This application has been processed in accordance with the requirements of the *Planning and Environment Act 1987* (including the Moreland Planning Scheme) reviewed by the State Government and which complies with the *Victorian Charter of Human Rights and Responsibilities Act 2006, including Section 18 (Taking part in public life).* In addition, the assessment of the application has had particular regard to:

Section 12: Freedom of movement

Section 13: Privacy and Reputation

Section 20: Property rights

The proposed redevelopment of private land does not present any physical barrier preventing freedom of movement. The right of the landowner to develop and use their land has been considered in accordance with the Moreland Planning Scheme. The privacy of nearby residents has also been considered as part of the application process.

**4. Issues**

In considering this application, regard has been given to the State and Local Planning Policy frameworks, the relevant provisions of the Moreland Planning Scheme, objections received and the merits of the application.

**Does the proposal have strategic policy support?**

Both State and Local planning policies support increased residential densities in Activity Centres, to take advantage of the excellent access to public transport and other services within these locations.

The proposal has policy support to accommodate increased residential densities and a change from the existing character. However, the built form design response does not respond appropriately to its interfaces and the objectives of the DDO19, as set out in this report.

**Does the built form respond to the preferred character of the area?**

The DDO19 which affects the site outlines the preferred built form outcomes and design objectives that are to be achieved on the site. The site has a preferred maximum building height of 14 metres. No preferred street wall heights or setback requirements are outlined for this site.

*Building Height*

The DDO19 includes the following design objective:

 *To create a new mid rise built form character that provides a built form transition between the Lygon Activity Corridor and adjoining low-rise residential areas.*

In order to achieve this transition, built form controls are nominated throughout the DDO19. The nominated height for the site sits at the lower end of the height range throughout activity centre, namely because it is located at the edge of the activity centre. Additionally, unlike the properties at the edge of the activity centre on the southern side of Albert Street, the site abuts the more sensitive and highly valued public open space of Fleming Park. It is also separated from the higher built forms encouraged along Lygon Street by the low scale, fine grain heritage dwellings that front Albert Street and Sedgman Street. Notwithstanding that these properties have an 11 metre preferred height under the DDO19, future development of these properties is limited due to their heritage status and small lot sizing, significantly constraining development potential.

These unique locational attributes were recognised in the Panel Report for the Planning Scheme Amendment C164 (relating to the implementation of DDO19), which contemplated a 17 metre preferred height for the site. The Panel made the following comments:

*The Panel does have a concern that a height of 17 metres does not provide for the stepping down of built form to its periphery nor give sufficient consideration to Fleming Park to the east and the residential area in a HO to the west of Sedgman Street.… a performance based approach to development in Cross Street may indicate that a height of 17 metres can only be achieved in the middle of the site (if at all) with lower form at the edges*. *The Panel is conscious that 17 metre height is the same as the BSP Addendum.*

*…In light of the need for lower forms in the off-corridor areas, the proximity of Fleming Park and residential terraces in Sedgman Street, the Panel considers a height of 14 metres would be more suitable in this context.*

The proposed development has a maximum height of 21.315 metres, exceeding the preferred 14 metre height control by 7.315 metres. Unlike the greater building heights specified in the DDO for the Lygon Street Corridor the lower overall preferred building height for this site does not provide for preferred street wall height and upper level setbacks. The proposed street wall heights and upper level setbacks of this application, across the three street interfaces are tabled below.

|  | **Sedgman Street** | **Albert Street** | **Cross Street** |
| --- | --- | --- | --- |
| **Street wall height** | 3 storeys (11.6m max) | 4 storeys (15m max) | 5 storeys (18.5m max) |
| **Upper level setback** | 3 metres | 3 metres | 10.47m |

With the exception of the generous setback to Cross Street at the fifth level, the development employs limited upper level setbacks to the street. Consequently, the built form above the 14 metre height control is highly visible and dominating. The DDO19 seeks to limit highly visible development to identified key redevelopment sites, of which the site is not. The Panel Report did consider that development over 14 metres could be achievable on the site but argued that if it were to be achievable at all it would be in the middle of the site. By virtue of the “U-shaped” layout of the building only a limited amount of upper level recession is possible. Consequently, rather than a centralised upper built form the design provides only 3 metre setbacks to the south and the west above the podium level.

In order to achieve the objective of the DDO19 – to provide a built form transition down from Lygon Street, the Panel considered that a 14 metre height for the site would be more appropriate. This is within the context of the preferred heights nominated elsewhere within the activity centre, including the preferred height along the eastern side of Lygon Street between Albert Street and Victoria Street which is only 23 metres and 20 metres on the north and south corner lots. This development, by contrast, proposes an overall height that is more suitable to the outcomes sought along Lygon Street itself. It exceeds the height of the six-storey building on the corner of Lygon and Albert Streets (280-294 Lygon Street - 20.085 metres) as well as that of the six-storey building opposite at 92-96 Albert Street (18.4 metres).

These two developments are particularly relevant because they also face Albert Street and form part of the same streetscape. They form part of the view up and down Albert Street where the scaling down of built form from Lygon Street to the edge of the activity centre is more readable than it would be through mid-block sites.

In exceeding the preferred height for the site and the heights of the aforementioned nearby developments, the highly visible nature of the upper levels of the proposal will result in a built form outcome that disrupts the streetscape and fails to achieve the built form transition sought.

Whilst the proposal is a high quality design in terms of its architectural detailing, accessibility and sustainability outcomes, its gross exceedance above the preferred height and in particular the visibility of this extra height cannot be ignored. As observed in the Panel Report, *“The height of development should not always be bargained away to achieve a good design outcome for land.”*

*Overshadowing of footpath and Fleming Park*

Another relevant design objective of DDO19 is

 *To protect and enhance the amenity and maintain solar access to existing and proposed public open spaces and key pedestrian streets and maintain reasonable amenity for residential properties adjacent to or within the activity centre.*

The Brunswick Structure Plan identifies Albert Street as a “high amenity east-west pedestrian link”. The objective refers to “maintaining” solar access, indicating that any development should preserve existing or close to existing levels of solar access to both Albert Street, as a key pedestrian street, and Fleming Park, as an existing public open space.

Overshadowing of the footpath on the northern side of Albert Street is inevitable from any development on the site, and indeed is overshadowed by the existing building. However, it is feasible and realistic that the site could be developed in a manner that does not unreasonably cast shadow across the footpath on the southern side of the Albert Street road reserve.

The submitted shadow diagrams indicate that the southern footpath will be at least partially overshadowed at the equinox until 2:00 PM. The building will cast a shadow across the south-western corner of Fleming Park at 3:00 PM. A single storey brick building (Clarrie Wohlers Senior Citizens Centre) is currently located within this corner, however under the Fleming Park Masterplan this building will be removed and a new entrance into the park will be constructed in the corner. This new entrance will be overshadowed by the proposal. Furthermore, the shadow impacts will be even more severe at other times of the year, such as during the winter months.

This shadowing is, at least in part, due to the exceedance of the building above the preferred 14 metre height control and the limited upper level setbacks. The building has not been designed with appropriate regard for the impact it will have on the solar access of the footpath and the future park entry. Consequently, it does not maintain solar access to these spaces and does not meet the design objective.

In addition to limiting the shadow impacts to public spaces this objective also seeks to maintain a reasonable level of amenity for nearby residential properties. Levels of amenity currently experienced by nearby dwellings to the west will be reduced by the visual bulk impacts of the proposal. Given the strategic setting the redevelopment of the site with a larger built form is reasonable and to be expected. However, the design execution, whereby the building exceeds the preferred height with only minimal upper level setbacks to the Sedgman Street frontage is not reasonable. The 3 metre setback of Levels 3, 4 and 5 do little to minimise the appearance, and associated bulk, of the exceedance above the preferred 14 metre height. As a result, the building towers above the existing dwellings on Sedgman Street and has a dominant presence in the street that is detrimental to the outlook and amenity enjoyed by these dwellings.

**Does the proposal provide appropriate onsite amenity and facilities?**

An assessment against the requirements of Clause 58 has been undertaken with the proposal found to be generally compliant, with the exception of the following areas:

*Clause 58.02-1 Urban Context (Standard D1)*

As detailed earlier in the report, the strategic context encourages a higher density built form outcome for the site and surrounding area. However, the outcome proposed exceeds that envisioned for this specific site. In doing so, it fails to contribute to the preferred future development of the area, and to adequately respond to the specific locational attributes which necessitate a lower built form outcome (as reflected by the DDO19 controls).

This includes the poor design response to the heritage context of Albert and Sedgman Streets. The overall scale far exceeds the single and double storey height of the heritage dwellings and the limited 3 metre setback of levels 3, 4 and 5 from Sedgman Street does little to mitigate the visibility or impact of the excessive height on the heritage streetscape.

*Clause 58.02-5 Integration with the Street (Standard D5)*

The proposal contains nine ground floor apartments that have their secluded private open space facing the street. The associated fencing is a combination of solid brick and metal posts. Heights vary but include a maximum height of 1.8 metres above the footpath. Along Cross Street in particular, fencing consists of a solid 1.5 metre high brick wall with 0.3 metres metal posts atop. This high solid fencing is not reflective of the surrounding character and limits the activation of the building at pedestrian level resulting in a poor outcome as viewed from the street.

*Clause 58.05-3 Private Open Space (Standard B20)*

Apartments G02 and G03 are 2 bedroom apartments, requiring a balcony with a minimum dimension of 2 metres and area of 8 square metres. The courtyards of these dwellings are 8.5 square metres, however this includes the gate and pathway from the street. Omitting these, there is only 5.3 square metres of useable space with only a 1.835 metre width. This does not reasonably provide for the recreation and service needs of future residents and needs to be addressed.

*Clause 58.07-3 Windows (Standard D28)*

18 apartments include bedrooms that have windows that open and look onto the central communal corridor. “Tilt & turn” privacy windows are proposed which afford some daylight and visual privacy. However, they do not accommodate a reasonable outlook and level of privacy as an external facing window does, and they do not provide the same degree of noise protection that an internal wall would provide. The internal amenity and privacy of these bedrooms is therefore compromised. This poor internal amenity outcome for over 25 per cent of the apartments is not supportable.

**Has adequate car and bicycle parking been provided?**

A total of 87 car spaces are required for the dwellings. The development provides 50 on-site spaces. Clause 18.02-4L (Car parking in Moreland) supports reduced car parking rates in developments:

 within and close to activity centres

 with excellent access based on frequency and location to a range of public transport options

 with increased provision of bicycle parking above the rates specified in Clause 52.34.

The proposal is located within the Lygon Street Activity Centre and is within 560 metres of three tram routes, two bus routes and seven car share vehicles. Furthermore, the development provides bicycle parking for 152 bikes, which is more than one for every bedroom.

Vehicles, whether related to this or other developments in the street, can only park on the street in accordance with any parking regulations. The number of vehicles that can park on the street and at what time will be dictated by the parking restrictions and the availability of on-street car spaces.

**Are adequate loading/unloading facilities provided?**

Clause 65.01 requires consideration of the adequacy of loading and unloading. There is an existing loading zone on the southern side of Albert Street opposite the site. Parking is also available in front of the site across all three frontages. Given that the proposal is only residential in nature it is not anticipated to generate a high demand for loading facilities and that the demand can be accommodated within the existing options available.

**What impact does the proposal have on car congestion and traffic in the local area?**

In relation to traffic impacts, Council’s Development Engineers have assessed the proposal and consider that the development will result in 20 additional vehicle movements each peak hour. In this location vehicles can enter Lygon Street or Nicholson Street at two different locations each, or they can enter Blyth Street or Glenlyon Road. The likely dispersal of the traffic means that the additional vehicles are not expected to cause unacceptable congestion at any intersection.

**Does the proposal incorporate adequate Environmental Sustainable Design (ESD) features?**

ESD features of the development include:

 Minimum average NatHERS rating of 8 stars

 No fossil fuels including natural gas. 100 per cent all-electric building supplied with renewable energy through an embedded network.

 BESS score of 73 per cent

The proposal has been assessed by Council’s expert ESD engineers and is supported.

**5. Response to Objector Concerns**

The following issues raised by objectors are addressed in section 4 of this report:

 Building height exceeding the preferred height of the DDO19

 Overshadowing of the park

 Car parking reduction

Other issues raised by objectors are addressed below.

*Access for emergency services*

The additional vehicles associated with the proposed development are not anticipated to result in unreasonable congestion levels in the surrounding area that would impede emergency services.

*Existing building should be retained and used for a community purpose*

The site is within the Mixed Use Zone and the Lygon Street Activity Centre, both of which seek to provide higher density residential development. The demolition of the building and replacement with a multi-storey apartment building is consistent with the vision for the area.

**6. Officer Declaration of Conflict of Interest**

Council Officers involved in the preparation of this report do not have a conflict of interest in this matter.

**7. Financial and Resources Implications**

There are no financial or resource implications.

**8. Conclusion**

On the balance of policies and controls within the Moreland Planning Scheme and objections received, it is considered that Council’s submission to VCAT be to not support the application No. MPS/2021/1029 for the reasons detailed in the recommendation.

**Attachment/s**

|  |  |  |  |
| --- | --- | --- | --- |
| **1** | 53-57 Albert Street, Brunswick East - Location and Zoning Map | D22/331433 |  |
| **2** | 53-57 Albert Street, Brunswick East - Advertised Plans | D22/331443 |  |
| **3** | 53-57 Albert Street, Brunswick East - Objector Map | D22/331463 |  |

**5.4 Part CP1, 22, 24-26 and 28 Pentridge Boulevard and Part 27 Urquhart Street, Coburg Vic 3058 - Planning Permit MIN/2011/12837A**

**Director Place and Environment, Joseph Tabacco**

**City Development**

**Executive Summary**

|  |  |
| --- | --- |
| **Property:** | Part CP1, 22, 24-26 and 28 Pentridge Boulevard and Part 27 Urquhart Street, COBURG VIC 3058 |
| **Proposal:** | Extend the expiry date of Planning Permit MIN/2011/12837A by two years (both commencement and completion dates).  The Group Manager is referring the request to Council in light of previous Council decision-making on this site. |
| **Zoning and Overlay/s:** |  Activity Centre Zone (ACZ1)   Parking Overlay (PO1)   Environmental Audit Overlay (EAO)   Development Contributions Plan Overlay (DCPO1)   Heritage Overlay (HO47) – that part of 22 and 24-26 Pentridge Boulevard within 3 metres of the bluestone walls on the adjoining properties to the west. |
| **Strategic setting:** |  |
| **Key reasons for support** |  There has been no significant change in planning policy since the most recent extension of time approval.   Since the previous extension of time, factors mitigating against a timely commencement include the submission of significant amendment proposals, complex site history and a change in ownership and the Covid19 pandemic.   It is likely that a planning permit would be issued if a fresh application were lodged today. |
| **Recommendation:** | It is recommended that a two year extension of time be granted to Planning Permit MIN/2011/12837A so that the development must commence by 30 June 2024and be completed by 30 June 2028. |

**Officer Recommendation**

That an extension is granted to Planning Permit MIN/2011/12837A at part CP1, 22, 24-26, 28 Pentridge Boulevard and part 27 Urquhart Street, Coburg (more specifically known as part CP1, lots S32, S33, S34 and part S38 on PS543333) so that the development must commence by 30 June 2024 and be completed by 30 June 2028.

**REPORT**

**1. Background**

**Subject site**

The subject site comprises several parcels primarily located on Pentridge Boulevard, between Stockade Avenue to the north and Urquhart Street to the south.

Located within the Activity Centre Zone (ACZ), the approved development is sited across three sub-precincts to Precinct 10 of the ACZ (sub-precincts 10, 12 and 14).

The Site exhibits a significant fall-of-land of between 4m and 5m from the west to the east.

All of the land is currently vacant, save for a portion of 22 Pentridge Boulevard which is currently used and developed as a site office and display home suite for an approved development at No. 9S Wardens Walk.

**Surrounds**

To the west of the Site are the historic D & F Division and Laundry buildings of the former Pentridge Prison and a more recently constructed multi-storey, mixed-use development at 41-43 Stockade Avenue. This land is located within the Heritage Overlay (HO47) and listed on the Victorian Heritage Register (Ref No. 1551).

To the north, east and south, the site’s immediate context is characterised by a mix of vacant land, townhouse developments and mixed-use apartment developments up to 16-storeys in height. A number of the vacant parcels benefit from existing planning permits, including approval for a 16-storey residential tower to the south-east. Additionally, construction has commenced on a mixed-use development immediately north-west of the site. This development is made up of two towers, one at 13-storeys in height, the other at 15-storeys.

To the south of the site are vacant properties fronting Urquhart Street owned by Council and earmarked for a future health hub that will service the Moreland community.

Further south on the opposite side of Urquhart Street is the Coburg Town Hall, Municipal Offices and associated open car parking area.

A location plan forms **Attachment 1.**

**Site ownership, heritage context and associated works**

The subject land forms part of the former Pentridge Prison and sits adjacent to other sites of heritage significance, including the D & F Division and Laundry buildings. Due to a recent change in ownership, the new owners of the site also own the F Division and until very recently the laundry buildings to the west.

The Heritage Overlay and extent of Heritage Victoria’s registration extends 3 metres into Nos. 22 and 24-26 Pentridge Boulevard from the bluestone walls on the adjoining properties. It is noted that the new buildings approved by Planning Permit MIN/2011/12837A do not encroach on the registered areas, and that none of the sites making up the land subject to the current request are affected by the Heritage Victoria Heritage Covenant.

Heritage Victoria has issued two Notices to Show Cause that require the various site owners and Owners Corporation to complete maintenance and repair works set out in the 2017 and 2020 Heritage Infrastructure Audit Reports (HIAR) prepared by Lovell Chen.

Officers understand that the new owners of the subject site together with the Owners Corporation have acted to address this intervention from Heritage Victoria, with works scheduled for practical completion in September 2022.

Further, the new site owner has engaged the same heritage conservation architect to work in partnership with Artcare to commence restoration and conservation works on the Ronald Bull Mural in F Division. It is understood these works sit outside those required by the Notices to Show Cause.

It is noted the works related to D & F Division buildings that are included on the Victorian Heritage Register are not located within the land that is the subject of this application for an extension of time to a planning permit .

**The proposal**

A request has been made by Contour Pty Ltd on behalf of Salvo Property Group (owners of the Site) on 30 June 2022 to extend both the commencement and completion expiry dates set out in Condition 34 of the aforementioned Planning Permit by two years.

The request has been made within the allowable timeframe.

**Current permit details**

The existing approval permits the construction of a mixed-use development of four buildings ranging in height from six to 10 storeys (including a mezzanine to Level 1; not including one basement level). 352 dwellings are located across the four buildings, while 2279m2 of retail area is approved to front Pentridge Boulevard and the central piazalle. The retail space is to be located within Buildings B, C and D. The most recent plans considered by VCAT (approved subject to conditions) form **Attachment 2.**

**Planning Permit and site history**

The following Planning Permit and site history is relevant to this proposal:

| Date | Event | Description |
| --- | --- | --- |
| 30 January 2012 | Planning Permit No. MIN/2011/12837 issued by the Minister for Planning | The permit allowed a mixed-use development comprising 8 buildings ranging in height from 6 to 16-storeys across the sites now known as numbers 27, 29 and 31 Urquhart Street and 22, 24-26, 28 and 30 Pentridge Boulevard. |
| 5 March 2013 | Amendment to Planning Permit No. MIN/2011/12837/A issued by the Minister for Planning | The amendment reworded condition 1 and introduced conditions 1A – 1H which allowed the submission of amended plans for each building separately in order to facilitate development in stages. |
| 15 October 2015 | Planning Scheme Amendment C123 gazettal. | Amendment C123 consolidated the planning controls that applied to the Coburg Activity Centre. The amendment implemented the land use and built form directions from the Central Coburg 2020 Structure Plan (2006), Colours of Coburg Place Framework and Strategies (2010), the community framework of The Coburg Initiative (TCI), and Pentridge Precinct master plans.  Importantly, this amendment also saw the Minister for Planning return Responsible Authority status back to Council for the former Pentridge Prison Precinct. |
| 27 April 2016 | Extension of time request considered by the Urban Planning Committee | An extension of time request determined by VCAT.  Council’s Urban Planning Committee resolved that its position at VCAT be that the extension to the permit should not be granted. Council’s grounds related to:   The validity of the request to extend the permit;   Changes in ownership to the subject land;   Building design issues in relation to Moreland Apartment Design Code (MADC) and streetscape activation. |
| 26 April 2017 | Urban Planning Committee meeting to consider the following:  An application made to VCAT to amend the permit pursuant to section 87 of the *Planning and Environment Act 1987 (the Act)*; and  Council’s position on the extension of time request in light of the proposed amendment. |  An application was made to VCAT to amend the permit. The amendments can be summarised as follows:   Removal of several lots no longer forming part of the permit, including those that had been purchased by Moreland City Council. The four buildings to be deleted as a result ranged in height from 9 to 16-storeys.   Modifications to proposed car parking and increased retail space fronting Pentridge Boulevard.   Council resolved that its revised position at VCAT should be that the extension of time should not be granted, but that if the extension was granted, then the amendment to the permit should be supported (subject to conditions).   The revised grounds for not supporting the extension of time related to the following:   That there had been a change in planning policy;   That the landowner was seeking to ‘warehouse’ the permit;   That there were no intervening circumstances; and   That there was a low probability that a permit would issue should a fresh application be made. |
| 11 May 2017 | VCAT hearing considering both the extension of time request and section 87 amendment. | In its order dated 19 June 2017, VCAT approved both the extension of time of one year and the amendment to the permit. This Order forms **Attachment 3.** |
| 28 March 2018 | The Urban Planning Committee resolved to grant a second extension of time to the permit. | In a letter dated 4 April 2018, the development was allowed to commence by 30 June 2020 and be completed by 30 June 2024 (a further two year extension) |
| 16 December 2020 | Through the Planning and Related Matters Council meeting, Council resolved to grant a third extension of time to the permit. | In a letter dated 18 December 2020, the development was allowed to commence by 30 June 2022 and be completed by 30 June 2026 (a further 2 year extension). This approval forms **Attachment 4.** |
| 13 July 2021 | An application to amend the permit and endorsed plans via Section 72 of *the* *Act* lodged by the (now) former owner of the site. The proposal also sought to amend the land parcels to which the permit applies. Application number: MPS/2011/12837/B. | In its Further Information letter dated 7 August 2021, Council raised significant concerns with the proposed amended development and requested further information be provided to enable a full and proper assessment. |
| 8 February 2022 | A request to extend the Lapse Date referred to in the above Further Information letter is received from the Permit Applicant of the above application. It’s noted two previous requests had been approved in October and December 2021. | In its letter dated 1 March 2022, Council refused to extend the time in which the further information could be provided. |
| 5 April 2022 | Permit applicant lodges a Section 81(2) review with the Tribunal, challenging Council’s refusal to grant an extension to the time in which further information can be provided. | A VCAT Merits Hearing is set down for 22 September 2022 to hear and determine this review. |

**2. Internal/External Consultation**

**Public notification**

*The Act* does not include public notice provisions for a request for an extension of time to a planning permit.

**Internal/external referrals**

*The Act* does not require any statutory referrals for a request for an extension of time to a planning permit.

The request was not referred to any internal departments for comment as the extension of time request does not provide an opportunity to review the merits of the application or to modify the nature of the proposal through new or modified permit conditions.

**3. Policy Implications**

**Planning Policy Framework (PPF)**

The following policies are of most relevance to the assessment of this application:

 Municipal Planning Strategy (Clause 2), including:

 Settlement (Clause 11)

 Environmental Risks and Amenity (Clause 13):

 Built Environment (Clause 15.01), including:

 Sustainable Development (Clause 15.02), including:

 Residential Development (Clause 16.01), including:

 Transport (Clause 18), including:

 Infrastructure (Clause 19.02), including:

**Human Rights Consideration**

This application has been assessed in accordance with the requirements of *the Act* (including the Moreland Planning Scheme) reviewed by the State Government and which complies with the Victorian Charter of *Human Rights and Responsibilities Act 2006.* Of relevance to this application is section 20: Property rights. In considering whether to grant an extension to the permit, relevant planning case law has been taken into account.

**4. Issues**

The ‘tests’ set out by the Supreme Court in *Kantor v Murrindindi Shire Council,* 18 AATR 285 guide the consideration of whether an extension of time to a planning permit should be granted. The Court held that a Responsible Authority should consider the following matters when exercising its discretion to extend a permit:

 The applicant is obliged to advance some reason or material in support of the grant of an extension;

 Whether there has been a change of planning policy;

 Whether the landowner is seeking to “warehouse” the permit;

 Intervening circumstances as bearing upon grant or refusal;

 The total elapse of time;

 Whether the limit originally imposed was adequate;

 The economic burden imposed on the landowner by the permit; and

 The probability of a permit issuing should a fresh application be made.

A request was made by Contour Pty Ltd c/o Salvo Property Group on 30 June 2022 to extend the commencement and completion time of the Planning Permit for a further two years. The request has been made within the timeframe allowed.

**Applicant Submission in support of the grant of an extension**

The Permit Applicant has set out the following reasons in support of their request:

 The chief factors mitigating against a timely commencement to construction include the complex constraints and history of the site, the scale of the approved development, and changes in site ownership (including as recently as late last year).

 The significant time that has elapsed since the issue of original permit *‘is a function of the complexity of the site, the complex planning history, and the scale of the approved development’*.

 The new site owner is *‘committed to the future redevelopment of the site and realisation of a broader vision for this part of Pentridge Village’*.

 The new site owner *‘has also provided undertakings to invest in a variety of interim maintenance, repair and upgrade works to facilitate a range of outcomes on site and some of this work has already commenced, including engagement of Lovell Chen to work with Artcare on the protection of the Ronald Bull memorial, heritage protection works and site clean-up works’*.

 The extension requested would enable the owner of the property to properly consider potential future design options for the site.

**Whether there has been a change of Planning Policy**

The VCAT decision in relation to the first extension of time request in 2017 considered several planning policy changes, including:

 The change in zoning from Comprehensive Development Zone to the Activity Centre Zone (Schedule 1).

 The introduction of Clause 22.08– Environmentally Sustainable Development

 The introduction of the Development Contributions Plan Overlay

 The Moreland Apartment Design Code (MADC), which was a proposed Planning Scheme Amendment with the Minister for Planning (Amendment C142) at the time.

 Changes to car parking rates in Clause 52.06.

 The introduction of the Better Apartment Design Standards at Clause 58 of the Moreland Planning Scheme.

In its deliberations, the Tribunal made the following finding:

*the approval would not offend or be inconsistent with current controls or policies of the scheme’.*

When the second extension of time request was considered in 2018, the only significant and relevant change to planning policy was the introduction of building separation and light well requirements at Clause 22.07. Officers concluded that these requirements are derived from MADC and therefore have, in effect, been considered previously by VCAT and found not to warrant refusal of the extension of time request. Since the third and most recent extension of time request was approved in 2020, there have been no significant changes in planning policy of relevance to this site. It is noted that Planning Scheme Amendment C200 was gazetted on 14 January 2021. The amendment was a policy-neutral translation of the Local Planning Policy Framework (LPPF) to the new Planning Policy Framework (PPF) format at Clauses 11-19 of the Scheme. Being a broadly policy-neutral amendment, the amendment does not affect the approved development’s response to relevant policies and controls.

**Whether the landowner is seeking to ‘warehouse’ the permit**

This is the fourth request to extend the expiry dates of the Planning Permit.

Since the most recent extension approved in December 2020, the former owner of the site lodged an application to amend the permit and endorsed plans via Section 72 of *the Act*. Notwithstanding concerns held by Council Officers regarding the nature of this proposal, the submission indicated an intent to progress the development and obtain amended approvals prior to the commencement of works.

Since that application was lodged, Officers have been made aware of a change in ownership of the site. The new owners acquired the site in late 2021 and have proactively engaged Council Officers to discuss further prospective applications and amendments.

Given the above, it is considered both the former and current owners of the site have demonstrated intent to progress the development in some form since the previous extension. There is no evidence to suggest the current owner seeks to ‘warehouse’ the permit.

**Intervening circumstances as bearing upon grant or refusal**

Since the previous extension, the site has changed ownership, with the current owners acquiring the property in late 2021. The new owner has not had sufficient time to commence the development, and is currently in the process of reviewing the site’s extensive and complex planning history. Officers have been advised the new owner is working towards a reimagining of the amended proposal. Several site visits and phone discussions held in recent months support this.

The applicant states factors mitigating against a timely commencement to construction include the submission of significant amendment proposals, complex site history and a change in ownership. Officers consider these to be sufficient intervening circumstances in favour of an extension.

**The total elapse of time**

The total elapse of time since the original permit was issued is approximately ten years and six months. While this is arguably a significant and sufficient length of time, support for a further extension is not considered unreasonable given the size and constraints of the site, the scale of the approved development and the detailed design work that is required by conditions of the Planning Permit.

**Whether the time limit originally imposed was adequate**

It is considered that the original time limit of 4 years was adequate to allow the landowner or developer to discharge all permit obligations to allow the development to commence. However, it is not uncommon for Council to receive multiple requests for permit extensions associated with developments of this significant scale.

**The economic burden imposed on the landowner by the permit**

The approved buildings comprise a major mixed-use development requiring significant site remediation, as well as extensive marketing and presale campaigns to secure the viability of the project through financing. These factors result in a recognisable economic burden placed on the landowner, which favours the grant of an extension.

**The probability of a permit issuing should a fresh application be made**

The extension of time process is not an opportunity for Council to undertake a new assessment of the application against the same planning provisions. The assessment required of Council is whether the planning provisions have in any way changed such that when considered against any changes in planning policy or controls, there is a probability that the permit would not be issued should a fresh application be submitted.

In this instance, the factors which weigh in favour of a permit being issued if a fresh application were made include:

 Council, through its Municipal Planning Strategy and Planning Policy Framework, seeks to encourage higher density housing in Activity Centres to take advantage of the excellent access to public transport and other services within these locations. This site is located in the Coburg Activity Centre.

 The proposal was originally considered by the Minister for Planning as being consistent with the Pentridge Village Design Guidelines and Masterplan (August 2009). This Masterplan continues to apply to the site, with an excerpt comprising the requirements of Precinct 10 of the Coburg Activity Centre Zone.

 Although the approved building heights vary from those depicted in the Masterplan and Activity Centre Zone Schedule, the relevant height controls are not mandatory and the original assessment of the application determined that the heights were appropriate given the strategic and physical context of the site. Furthermore, the approved amendment to the Planning Permit removed the tallest buildings from the proposal, leaving buildings that range in height from six to 10 storeys, which more closely aligns with the building heights depicted in the Masterplan and Activity Centre Zone Schedule (see Figure 1).

**6. Officer Declaration of Conflict of Interest**

Council Officers involved in the preparation of this report do not have a conflict of interest in this matter.

**7. Financial and Resources Implications**

There are no financial or resource implications.

**8. Conclusion**

Balancing all of the ‘tests’ set out by the Supreme Court in *Kantor v Murrindindi Shire Council,* 18 AATR 285, it is considered that they generally favour the grant of an extension of time. Considering the scale of the development and extensive detailed design work required by conditions of the permit, a 2 year extension to the Planning Permit is considered to be reasonable to enable the new site owner to progress to commencement of the development. Furthermore, it is noted that there has been no significant change in planning policy since the previous extension of time requests were considered and approved by VCAT which provides strong reasons to support a further extension of a reasonable timeframe. The total elapse time since the original permit was issued, however, is noted and is considered lengthy. Granting a further two year extension would bring the total elapse of time to twelve years and 6 months, should works not commence in a timely manner. This would weigh heavily against any future application for a further extension of time submitted two years from now.

It is therefore recommended that Council resolve to issue an extension to Planning Permit No. 2011/012837 so that the development must commence by 30 June 2024 and be completed by 30 June 2028.

**Attachment/s**

|  |  |  |  |
| --- | --- | --- | --- |
| **1** | Location and Zoning Map | D22/358682 |  |
| **2** | Most recent plans considered by VCAT | D22/358681 |  |
| **3** | June 2017 VCAT Order approving previous Extension of Time request and amendment to permit | D22/358679 |  |
| **4** | Council approval of most recent previous Extension of Time request | D22/358653 |  |