



Merri-bek
City Council

Minutes of the Planning and Related Matters Meeting

Held in Bunjil (Council Chamber), Merri-bek Civic Centre,
90 Bell Street, Coburg
on Wednesday 23 October 2024

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The Mayor opened the meeting at 6.54 pm and stated the Council meeting is being held on the traditional country of the Wurundjeri Woi Wurrung people and acknowledged them as Traditional Owners. The Mayor paid respects to their Elders, past, present and emerging, and the Elders from other communities who may be here today.

Present	Time In	Time Out
Cr Adam Pulford, Mayor	6.54 pm	9.19 pm
Cr Lambros Tapinos, Deputy Mayor	Absent	
Cr Angelica Panopoulos	6.54 pm	9.19 pm
Cr Annalivia Carli Hannan	Apology	
Cr Helen Davidson	Apology	
Cr Helen Pavlidis	Apology	
Cr Mark Riley	6.54 pm	9.19 pm
Cr Monica Harte	6.54 pm	9.19 pm
Cr Oscar Yildiz JP	6.54 pm	9.19 pm
Cr Sue Bolton	6.54 pm	9.19 pm

OFFICERS

Director Place and Environment – Pene Winslade
 Group Manager City Development – Phil Priest
 Unit Manager Urban Planning – Mark Hughes
 Planning Coordinator – Esha Rahman
 Principal Urban Planner – Jack Poulson
 Senior Urban Planner - Ariadne Hasiotis
 Senior Urban Planner – Vicki Lu
 Unit Manager Governance – Troy Delia
 Team Leader Governance – Naomi Ellis

APOLOGIES/LEAVE OF ABSENCE

Cr Carli Hannan, Cr Davidson and Cr Pavlidis were apologies to the meeting.

DISCLOSURES OF CONFLICTS OF INTEREST

Nil.

MINUTE CONFIRMATION

Resolution

Cr Panopoulos moved, Cr Riley seconded -

The minutes of the Planning and Related Matters Meeting held on 25 September 2024 be confirmed.

Carried

COUNCIL REPORTS

5.1 170 THE AVENUE, COBURG - PLANNING PERMIT APPLICATION MPS/2023/489

Caretaker Statement

The recommended decision is not a decision prohibited by the Act and is a decision that falls within the guidance of the Election Period Policy.

Executive Summary



Property:	170 The Avenue, COBURG		
Proposal:	Construction of five dwellings and removal of vegetation		
Zoning and Overlay/s:	<ul style="list-style-type: none">• Neighbourhood Residential Zone 1• Public Park and Recreation Zone (eastern portion of site only)• Special Building Overlay (SBO)• Erosion Management Overlay (EMO)• Land Subject to Inundation Overlay (LSIO)• Environmental Significance Overlay (ESO1)• Development Contributions Plan Overlay (DCPO1)		
Strategic setting:	Minimal change	Incremental change	Significant change
Objections:	<ul style="list-style-type: none">• A total of 297 objections received• Key issues:<ul style="list-style-type: none">○ Fenceline shown to block Merri Creek path○ Interface and setbacks with Merri Creek Parklands○ Transfer of embankment to Council○ Landscaping○ Loss of vegetation and habitat		
Planning Information and Discussion (PID) Meeting:	<ul style="list-style-type: none">• Held on Thursday 12th September 2024• Attendees: 12 objectors, Applicant, Council Officers, Cr Monica Harte, Cr Sue Bolton and Cr Mark Riley• No changes were agreed to however the matter regarding the fence blocking the Merri Creek path was resolved by sending a corrected plan with the PID invitation letter. The meeting provided an opportunity for the objectors concerns to be discussed and helped inform the preparation of this report.		
ESD:	<ul style="list-style-type: none">• Minimum average NatHERS rating of 7 stars.		

Key reasons for support	<ul style="list-style-type: none"> • Community benefit of the rear eastern portion on the site being transferred to Council, to improve the Merri Creek open space corridor. • No unreasonable off-site amenity impacts. • Respectful design response to the Merri Creek corridor, subject to conditions.
Recommendation:	That a Notice of Decision to Grant a Planning Permit be issued subject to conditions requiring changes to proposed design and setback with the Merri Creek corridor.

Officer Recommendation

That a Notice of Decision to Grant a Planning Permit No. MPS/2023/489 be issued for the construction of five dwellings and removal of vegetation at 170 The Avenue, COBURG, subject to the following conditions:

1. Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and must be generally in accordance with the plans advertised on insert date but modified to show:
 - a) The changes as shown on the corrected architectural plans submitted to Council on 27 August 2024 that show:
 - i. The portion of land (the 'Embankment') to be transferred to Council in accordance with Condition 14 of this permit.
 - ii. Deletion of the error indicating a fence extending across the Merri Creek path.
 - b) The development setback a minimum of twenty (20) metres from the eastern title boundary in accordance with Melbourne Water Condition 31a), without decreasing any other boundary setbacks.
 - c) The following consequential changes may be needed to comply with Condition 1b):
 - i. Deletion of two bedrooms from the eastern-most section of built form at the first floor of either dwelling 2 or 3 (this can be one bedroom from each dwelling or two bedrooms from one dwelling) with the commensurate reduction in building bulk to the Merri Creek corridor and to achieve compliance with Clause 52.06 (Car Parking).
 - ii. Internal re-arrangements which do not alter window locations orientated to the north and south.
 - d) Detailed plans showing the appearance of the land for any necessary stabilisation works in compliance with geotechnical engineering requirements.
 - e) The stabilisation works required by condition 1c) and Condition 14, notated as treated in muted tones to be respectful of the Merri Creek environs.
 - f) The street setback of Dwelling 1 increased to a minimum of 4.5 metres to provide space for canopy tree planting and to better respond to the prevailing front setbacks in The Avenue. The street setback applies to both ground and first floors and is the portion of the building that aligns with the road reserve.
 - g) A pedestrian path provided with a slope no greater than 1 in 10 for residents to bring waste bins up to the street.

- h) Increased provision of high quality, durable material with a fine grain detail (not render) to the upper-level walls that are visible from the public realm or adjoining properties.
- i) The rear boundary fencing (along the future rear boundary abutting the land to be transferred to Council in accordance with Condition 13 of this permit) to be shown on elevations plans at a scale of 1:50 and modified as follows:
 - i. be an open style of construction (50 per cent open style) for the conveyance of overland flow.
 - ii. be a maximum height of 1.6 metres.
 - iii. be a palisade or blade fence.
- j) The following habitable room windows of Dwelling 2 to demonstrate compliance with the overlooking objectives of Clause 55.04-6:
 - i. The eastern-most north facing living room window at ground level.
 - ii. The north facing sitting room window at first floor.
- k) Any changes to the plans arising from the Landscape Plan in accordance with Condition 3 of this permit.
- l) Any changes to the plans arising from the geotechnical engineering assessment in accordance with Condition 15 of this permit.
- m) Any changes to the plans arising from the Melbourne Water conditions in accordance with Conditions 31 to 53 of this permit. This may result in the loss of dwellings or floor space to facilitate the increased east boundary setback which must be achieved without decreasing other boundary setbacks.
- n) Tree protection zone(s) in accordance with Condition 8 of this permit, to Council's street tree (Tree 1).
- o) The Environmentally Sustainable Design initiatives that are required to be shown on plans, as contained within Condition 10c) of this permit.

Compliance with Endorsed Plans

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

Landscaping

- 3. Prior to the endorsement of plans, a detailed landscape plan must be submitted to the Responsible Authority. The landscape plan must be designed and applied by a specialist revegetation company to the satisfaction of the Responsible Authority and must show:
 - a) Any changes required to align with the plans for endorsement.
 - b) The following changes as shown on the corrected set of landscape plans submitted to Council on 27 August 2024:
 - i. The portion of land (the 'Embankment') to be transferred to Council and landscaped to the satisfaction of the responsible authority in accordance with condition 13 of this permit.
 - ii. Deletion of the fence shown to block and the Merri Creek path.
 - iii. Deletion of the hedges along the water's edge of the Merri Creek and path.
 - c) Revegetation and landscaped open space buffer to the sloped eastern side of the site adjacent to Merri Creek.

- d) A schedule of all proposed trees, shrubs and ground covers, including numbers, size at planting, size at maturity, botanical names and common names. The Plant Schedule is to include:
 - i. Native and/or indigenous species only.
 - ii. No ornamental varieties.
- e) Identification of any existing tree(s) and vegetation on site and adjoining land proposed to be removed and retained, including the tree protection zone(s) of trees to be retained and protected.
- f) Strategies for the retainment of vegetation (i.e., barriers and signage during the construction process) consistent with any conditions of this permit.
- g) Notes and diagrams detailing the establishment and maintenance of all proposed trees, shrubs and ground covers.
- h) At least one tree within the front setback to The Avenue.
- i) Details of the location and type of all paved and sealed areas. Porous/permeable paving, rain gardens and other water sensitive urban design features must be in accordance with the Sustainability Design Assessment.
- j) Any changes required by Melbourne Water (Condition 47) of this permit. Prior to the Landscaping Plan being endorsed by Council, Melbourne Water requires a detailed landscape plan to be submitted to and approved by Melbourne Water.

When submitted and approved to the satisfaction of the Responsible Authority, the landscape plan will be endorsed to form part of this permit. No alterations to the plan may occur without the written consent of the Responsible Authority.

- 4. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, all landscaping works, including installation of automatic irrigation, must be completed in accordance with the endorsed landscape plan to the satisfaction of the Responsible Authority.
- 5. All landscaping and irrigation systems must be maintained to the satisfaction of the Responsible Authority in accordance with the endorsed landscape plans. Any dead, diseased or damaged plants must be replaced with a suitable species to the satisfaction of the Responsible Authority.
- 6. Prior to the commencement of any buildings and/or works, a Landscape Construction Plan (Embankment works), to the satisfaction of the Responsible Authority, must be submitted to and approved by the Responsible Authority. When approved, the Plan will form part of the permit. The Plan must provide for the following:
 - a) Landscape and geotechnical construction details, including materials and methods for:
 - i. Pest plant/weed eradication.
 - ii. Preventing destabilisation of the embankment.
 - iii. Planting.
 - iv. Maintenance/establishment including pest plant/weed control, plant health and replacement, as necessary.
 - b) Staging and indicative timing including identifying any holding points for approval by Council requiring Council inspection and supervision.

7. Prior to the issuing of a Statement of Compliance or occupation of the development, whichever occurs first, all landscaping works must be completed in accordance with the approved and endorsed landscape drawing to the satisfaction of the Responsible Authority. The areas designated as landscaped areas on the endorsed landscape plan must thereafter be maintained and used for that purpose.

Tree Protection

8. Prior to development commencing (including any demolition, excavations, tree removal, delivery of building/construction materials and/or temporary buildings), Council's street tree (tree 1) and the trees marked on the endorsed plans as being retained and protected must have a Tree Protection Zone (TPZ) in accordance with AS4970 Protection of Trees on Development Sites to the satisfaction of the Responsible Authority. The TPZ must meet the following requirements:

The TPZ must meet the following requirements:

- a) Tree Protection Fencing

Tree Protection Fencing (TPF) is to be provided to the extent of the TPZ, calculated as being a radius of 12 x Diameter at Breast Height (DBH – measured at 1.4 metres above ground level as defined by the Australian Standard AS 4970.2009). The TPF may be aligned with roadways, footpaths and boundary fences where they intersect the TPZ.

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

- b) Signage

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

- c) Irrigation

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

- d) Provision of Services

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

- e) Access to TPZ

The TPF once erected, must be maintained and not altered, tampered or moved. If any works are proposed within the TPZ or require the TPF to be moved or altered, then such works must only be carried out with the prior written approval of, and under the direction of, a suitably qualified Arborist (minimum Level 5 Diploma of Arboriculture). A copy of the approval must be provided to Council upon request.

Tree Removal

9. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, the owner must pay Council the amenity value, removal, replacement and establishment costs in accordance with the Merri-bek Urban Forest Strategy 2017 for each street tree removed or damaged through the building works, to the satisfaction of the Responsible Authority.

Environmentally Sustainable Design (ESD)

10. Prior to the endorsement of plans, an amended Sustainable Design Assessment (SDA) and plans must be submitted to the satisfaction of the Responsible Authority. The SDA must demonstrate a best practice standard of environmentally sustainable design and be generally in accordance with the SDA prepared by Planning and Design, advertised 09/07/2024 but modified to include the following changes:
 - a) Amended preliminary NatHERS ratings to achieve an average of 7.0 stars along with the following changes:
 - i. At 'Window and glazed door schedule' on page 3 of the reports, specify 10 per cent opening to the first floor windows with a restricted opening, i.e., where the sill height is below 1.7m above the floor level.
 - ii. At 'External wall type' on page 4 of the reports, specify the cladding material as per the Material and Colour Schedule.
 - iii. At 'External wall type' on page 4 of the reports, specify the solar absorptance levels as per the amended Material and Colour Schedule.
 - iv. At 'Roof Window Schedule' on page 4 of the NatHERS Reports, specify skylights or roof windows as required by the design.
 - v. At 'Roof type' on page 7 of the NatHERS Reports, specify the solar absorptance value so that it is consistent with the Colour and Material Schedule.
 - b) Amend BESS Report (and any other corresponding documentation) to:
 - i. 'Water Fixtures Fittings and Connections' so that 'Non-potable water source connected to laundry (washing machines) is selected as 'Yes' to match claim in STORM.
 - c) Show the following ESD initiatives on the development plans:
 - i. An ESD table for items that cannot be drawn that is consistent with the BESS assessment e.g.: WELS ratings of the showers toilets and taps; NatHERS star ratings; that rainwater tanks are connected to laundry (washing machines); type and star rating of the heating and cooling systems; type and star rating of the hot water system; motion sensor lights; that internal lights are to have a maximum illumination density of 4W/m²; EV charging infrastructure.
 - ii. A copy of the WSUD plan included within the plan set.
 - iii. The location, capacity and dimensions of the rainwater tanks, consistent with the capacity shown in the STORM report.
 - iv. At every mention of a rainwater tank on the plans, a notation indicating that: "The rainwater collected from the roof will service all toilets and connected to the washing machines. Ensure gutter guards, first flush diverters and filters to the water tanks are installed."
 - v. Annotation 'Door catches to be installed for bedroom doors'.
 - vi. Window operation on all elevation plans (e.g., arrows for a sliding window, a V for an awning...).
 - vii. Double glazing 'DG' to all habitable room windows and glazed doors annotated on each individual glazing unit on the floor plans and elevations.
 - viii. Amended Material Schedule with
 - (1) materials specified in addition the finishes and colours and be consistent with the NatHERS reports.

- (2) material, colour and solar absorptance for the roof ensuring it has a solar absorptance of 0.60 or less.
- ix. Annotate '32A-40A electric vehicle charging infrastructure' in each garage.

Where alternative ESD initiatives are proposed to those specified in the conditions above, the Responsible Authority may vary the requirements of this condition at its discretion, subject to the development achieving equivalent (or greater) ESD outcomes in association with the development.

When submitted and approved to the satisfaction of the Responsible Authority, the Sustainable Design Assessment and associated notated plans will be endorsed to form part of this permit. No alterations to the plan may occur without the written consent of the Responsible Authority.

- 11. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, all works must be undertaken in accordance with the endorsed Sustainable Design Assessment (including any BESS and STORM reports) to the satisfaction of the Responsible Authority.
- 12. Prior to the issuing of a Certificate of Occupancy or Statement of Compliance, whichever comes first, of any dwelling approved under this permit, a report/checklist must be submitted to the Responsible Authority. The report/checklist must be to the satisfaction of the Responsible Authority and must confirm (with suitable evidence) that measures specified in the endorsed Sustainable Design Assessment have been implemented in accordance with the approved plans.
- 13. All stormwater treatment devices (e.g., raingardens, rainwater tanks etc.) must be maintained, to ensure water quality discharged from the site complies with the performance standard in the endorsed Sustainable Design Assessment.

Section 173 Agreement

- 14. Before the commencement of the development the owner of the property must, to the satisfaction of the Responsible Authority:
 - a) Lodge with Council a request to amend, pursuant to section 178 of the Planning and *Environment Act 1987* (the Act), the section 173 agreement registered on title (AN786542Q, in respect to the transfer of a revegetated area of the creek embankment within the land to Council ownership), to:
 - i. Reference the subject planning permit MPS/2023/489.
 - b) Do all things necessary to enable the Responsible Authority to register the amended agreement with the Registrar of Titles in accordance with section 181 of the Act; and
 - c) Pay to the Responsible Authority its costs and disbursements incurred in relation to the negotiation, preparation, execution and registration of the amended agreement on the certificate of title to the land.

Erosion Management

- 15. Prior to the commencement of any buildings and/or works, including the removal, destruction or lopping of any vegetation, and/or the certification of any plan of subdivision:
 - a) the impact of the final design of the buildings and/or works, removal, destruction or lopping of vegetation and/or subdivision on slope stability must be assessed and certified by a chartered geotechnical practitioner with experience in slope stability;

- b) certification by way of a completed “Geotechnical Declaration and Certification” generally in accordance with the Geotechnical Declaration and Certification Form, Merri-bek City Council, November 2012, must be lodged with the Responsible Authority; and
 - c) any changes to the final design/plan which are recommended by the chartered geotechnical practitioner must be shown on amended plans submitted to, and approved by, the Responsible Authority.
16. The buildings and/or works, including removal, destruction or lopping of vegetation, and/or subdivision must be undertaken in accordance with any requirements of a chartered geotechnical practitioner.
 17. If the certification by the chartered geotechnical practitioner includes any recommendations or requirement for ongoing maintenance of the buildings and/or works, prior to the commencement of building and/or works the owner must enter into an agreement with Council pursuant to section 173 of the *Planning and Environment Act 1987* which is to be registered on the title to the land. The agreement will set out a regime for the recommended or required maintenance and the obligation of the owner to comply with such recommendations and/or requirements. The owner is to pay all reasonable costs of Council in the preparation and execution of the agreement.

Residential reticulated gas service connection

18. Any new dwelling allowed by this permit must not be connected to a reticulated gas service (within the meaning of clause 53.03 of the relevant planning scheme). This condition continues to have force and effect after the development authorised by this permit has been completed.

Car Parking and Vehicle Access

19. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, a vehicle crossing must be constructed in every location shown on the endorsed plans to a standard satisfactory to the Responsible Authority (Merri-bek City Council, City Infrastructure Department).
20. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, any existing vehicle crossing not to be used in this use or development must be removed and the kerb and channel, footpath and nature strip reinstated to the satisfaction of the Responsible Authority (Merri-bek City Council, City Infrastructure Department).
21. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, any Council or service authority pole or pit within 1 metre of a proposed vehicle crossing must be relocated or modified at the expense of the permit holder to the satisfaction of the Responsible Authority and the relevant service authority.
22. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, the garage roller doors must be automatic and remote controlled.

Undergrounding cables

23. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, all telecommunications and power connections (where by means of a cable) and associated infrastructure to the land must be underground to the satisfaction of the Responsible Authority.

Stormwater

24. All stormwater from the land, where it is not collected in rainwater tanks for re-use, must be collected by an underground pipe drain approved by and to the satisfaction of the Responsible Authority (Note: Please contact Merri-bek City Council, City Infrastructure Department).
25. Stormwater from the land must not be directed to the surface of the right-of-way to the satisfaction of the Responsible Authority.

General Amenity

26. Unless with the prior written consent of the Responsible Authority, any plumbing pipe, ducting and plant equipment must be concealed from external views. This does not include external guttering or associated rainwater down pipes.
27. All external lighting, other than balcony/porch lighting, must be no higher than 1.2 metres above ground level with automatic or sensor-controlled lighting installed and maintained on the land to illuminate pedestrian access between dusk and dawn with no direct light emitted onto adjoining property to the satisfaction of the Responsible Authority.
28. Lighting on each balcony/porch must be designed to not emit light direct onto adjoining property to the satisfaction of the Responsible Authority.
29. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, all visual screening measures shown on the endorsed plans must be installed to the satisfaction of the Responsible Authority. All visual screening and measures to prevent overlooking must be maintained to the satisfaction of the Responsible Authority. Any screening measure that is removed or unsatisfactorily maintained must be replaced to the satisfaction of the Responsible Authority.
30. A letterbox must be provided for each of the premises at the street frontage. The dimensions, placement and numbering must comply with the Australia Post – Letterbox Security and Specification as published on its website to the satisfaction of the Responsible Authority.

Melbourne Water conditions

31. Prior to the development plans being endorsed, amended plans must be submitted to Council and Melbourne Water addressing Melbourne Water's conditions. Plans must be submitted with surface and floor levels to Australian Height Datum (AHD) and must show:
 - a) The development must be shown to be setback a minimum of twenty (20) metres measured from the exact eastern title boundary location and to the satisfaction of Melbourne Water.
 - b) The layout of Dwelling 1 must incorporate a flood proof apex and associated bunding constructed a minimum of 500 mm above the existing surface levels and designed to the satisfaction of Melbourne Water.
 - c) The driveway entrance to the 'basement' must be set no lower than 43.0 metres to AHD.
32. Plans must include an annotation indicating that the decking to Dwelling 4 and 5 is designed and constructed as 'open' and 'unenclosed' underneath. Finished floor levels of Dwelling 1 must be constructed no lower than 41.10 metres to Australian Height Datum (AHD) and the dwelling must incorporate a flood proof apex and associated bunding constructed no lower than 500mm above the natural surface levels and designed and constructed around the entrance and alfresco area to protect the dwelling from flood damage.
33. The entrance to the 'basement' area must be set no lower than 43.0 metres to AHD and designed constructed to the satisfaction of Melbourne Water.

34. The design and layout of the flood proof apex and associated bunding to the driveway to the basement and dwelling 1 must be to the satisfaction of Melbourne Water.
35. Finished floor levels of Dwelling 2 must be constructed no lower than 40.21 metres to Australian Height Datum (AHD).
36. Finished floor levels of Dwelling 3 and 4 must be constructed no lower than 37.70 metres to Australian Height Datum (AHD) which is a minimum of 600 mm above the applicable flood level of 37.10 metres to AHD.
37. Finished floor levels of Dwelling 5 must be constructed no lower than 39.40 metres to Australian Height Datum (AHD) which is a minimum of 300mm above the applicable flood level of 39.10 metres to AHD.
38. Finished floor levels of the garage to Dwelling 1 must be constructed no lower than the applicable flood level of 40.52 metres to AHD.
39. Finished floor levels of the garage to Dwelling 2 must be constructed no lower than the applicable flood level of 39.95 metres to AHD.
40. Finished floor levels of the garage to Dwelling 3 and 4 must be constructed no lower than the applicable flood level of 37.10 metres to AHD.
41. Finished floor levels of the garage to Dwelling 5 must be constructed no lower than the applicable flood level of 39.0 metres to AHD.
42. The development must incorporate a minimum twenty (20) metres setback measured from the exact eastern title boundary location and to the satisfaction of Melbourne Water to ensure an adequate setback from the waterway.
43. Imported fill must be kept to a minimum on the property and must only be used for the sub floor areas of the building and driveway ramp.
44. The deck areas to Dwelling 4 and 5 is designed and constructed as 'open' and 'unenclosed' underneath to allow for the conveyance of floodwaters.
45. The open space areas within the property must be maintained at natural surface levels and no fill or retaining walls should be used in the development of this land.
46. Any new front fence and internal fencing must be 'open style', a minimum of 50 per cent of construction and any new side boundary fencing must be timber paling to allow for the conveyance of overland flow.
47. Any new landscaping and associated works located within twenty (20) metres of the waterway and within five (5) metres of the Melbourne Water asset must be to the satisfaction of Melbourne Water.
48. Prior to the endorsement of plans, a detailed landscape plan must be submitted to and approved by Melbourne Water. The plan must be prepared by a suitably qualified professional and must include:
 - a) Details of all landscaping works to be carried out;
 - b) The locations and details of any vegetation to be removed from the land;
 - c) The location and details of any vegetation and natural features to be retained on the land;
 - d) the location of works required for bank stabilization.
 - e) A detailed schedule of all proposed trees, shrubs and groundcovers, including botanical names, common names, pot sizes, sizes at maturity and quantities of each plant;
 - f) Only local indigenous plant species to be shown on the plans.
 - g) The exact location of the Melbourne Water assets affecting the land.

- h) Procedures for establishing and maintaining planted vegetation, including mulching techniques, watering and inspection schedules; to the satisfaction of Melbourne Water.
49. Melbourne Water does not take on ownership or maintenance responsibilities for any assets created as part of the development.
 50. The layout of the building including footings, eaves etc. must be set outside any drainage easement or a minimum 2.7 metres laterally clear of the outside edge of the Melbourne Water asset, whichever is greater.
 51. Prior to a building permit being issued, a separate Build Over application must be made directly to Melbourne Water's Asset Services Team for approval of works/structures over or near Melbourne Water's assets. Design plans must be submitted to include the following:
 - a) Demolition works including any tree removal
 - b) Cross over design
 - c) Driveway type, thickness etc.
 - d) Landscaping and paving
 - e) New fences to include footings locations being internal and along boundary. (No fence post to be located directly above the main drain)
 - f) Any other structures and works that are within easement or affecting the drain.
 - g) Method of works
 - h) A statement from the structural engineer is required stating the design of the building foundation has been designed to allow future excavation of the pipeline adjacent to building. (Screw piles and friction piles are not acceptable)
 52. Any new or modified stormwater connection to Melbourne Water's drainage system must obtain separate approval from Melbourne Water's Asset Services Team.
 53. Prior to commencement of construction a Site Environmental Management Plan (SEMP) must be submitted to Melbourne Water for approval, specifying relevant actions in a practical way to ensure that they are implemented effectively. The SEMP must include a site map detailing the location and design of all measures including the following:
 - a) Silt fencing
 - b) Access tracks
 - c) Spoil stockpiling
 - d) Trenching locations
 - e) Machinery/Plan Locations

Permit Expiry

54. This permit will expire if one of the following circumstances applies:
 - a) the development is not commenced within two (2) years from the date of issue of this permit;
 - b) the development is not completed within four (4) years from the date of issue of this permit.

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

- within six months after the permit expires to extend the commencement date.

- within 12 months after the permit expires to extend the completion date of the development if the development has lawfully commenced.

Notes: These notes are for information only and do not constitute part of this permit or conditions of this permit.

Note 1: Should Council impose car parking restrictions in this street, the owners and/or occupiers of the land would generally not be eligible for residential or visitor parking permits to allow for on street parking. See Council's website for more information:

<https://www.Merri-bek.vic.gov.au/living-in-Merri-bek/parking-and-roads/parking-permits-and-fines/residential-parking-permits/>

Note 2: Further approvals are required from Council's City Infrastructure Department who can be contacted on 8311 4300 for any works beyond the boundaries of the property. Planting and other vegetative works proposed on road reserves can be discussed with Council's Open Space Unit on 8311 4300.

Note 3: Merri-bek City Council is committed to increasing the amount of affordable housing in the municipality. One way to do this, is through Homes for Homes, a social enterprise founded by the Big Issue that aims to raise new funds via voluntary tax-deductible donations on property transactions and invest those funds in building and managing new social and affordable dwellings. If you would like to help build homes for those in need, visit [Homes for Homes](#) and register your commitment to donate 0.1 per cent of the sale price of your dwelling(s).

Note 4: Council allocates new street addressing to the street that the frontage/main access faces. Should a development abut a suburb boundary, the street addressing will reflect the suburb of that street. In some instances a suburb boundary realignment may be required, should the land be at the suburb boundary.

Motion

Cr Bolton moved, Cr Harte seconded –

That a Notice of Decision to Grant a Planning Permit No. MPS/2023/489 be issued for the construction of five dwellings and removal of vegetation at 170 The Avenue, COBURG, subject to the following conditions:

1. Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and must be generally in accordance with the plans advertised on insert date but modified to show:
 - a) The changes as shown on the corrected architectural plans submitted to Council on 27 August 2024 that show:
 - i. The portion of land (the 'Embankment') to be transferred to Council in accordance with Condition 14 of this permit.
 - ii. Deletion of the error indicating a fence extending across the Merri Creek path.
 - b) The **ground level of the development** setback a minimum of twenty (20) metres from the eastern title boundary in accordance with Melbourne Water Condition 31a), without decreasing any other boundary setbacks.
 - c) The following consequential changes may be needed to comply with Condition 1b):

- i. Deletion of two bedrooms from the eastern-most section of built form at the first floor of either dwelling 2 or 3 (this can be one bedroom from each dwelling or two bedrooms from one dwelling) with the commensurate reduction in building bulk to the Merri Creek corridor and to achieve compliance with Clause 52.06 (Car Parking).
 - ii. Internal re-arrangements which do not alter window locations orientated to the north and south.
- d) Detailed plans showing the appearance of the land for any necessary stabilisation works in compliance with geotechnical engineering requirements.
- e) The stabilisation works required by condition 1c) and Condition 14, notated as treated in muted tones to be respectful of the Merri Creek environs.
- f) The street setback of Dwelling 1 increased to a minimum of 4.5 metres to provide space for canopy tree planting and to better respond to the prevailing front setbacks in The Avenue. The street setback applies to both ground and first floors and is the portion of the building that aligns with the road reserve.
- g) A pedestrian path provided with a slope no greater than 1 in 10 for residents to bring waste bins up to the street.
- h) Increased provision of high quality, durable material with a fine grain detail (not render) to the upper-level walls that are visible from the public realm or adjoining properties.
- i) The rear boundary fencing (along the future rear boundary abutting the land to be transferred to Council in accordance with Condition 13 of this permit) to be shown on elevations plans at a scale of 1:50 and modified as follows:
 - i. be an open style of construction (50 per cent open style) for the conveyance of overland flow.
 - ii. be a maximum height of 1.6 metres.
 - iii. be a palisade or blade fence.
- j) The following habitable room windows of Dwelling 2 to demonstrate compliance with the overlooking objectives of Clause 55.04-6:
 - i. The eastern-most north facing living room window at ground level.
 - ii. The north facing sitting room window at first floor.
- k) Any changes to the plans arising from the Landscape Plan in accordance with Condition 3 of this permit.
- l) Any changes to the plans arising from the geotechnical engineering assessment in accordance with Condition 15 of this permit.
- m) Any changes to the plans arising from the Melbourne Water conditions in accordance with Conditions 31 to 53 of this permit. This may result in the loss of dwellings or floor space to facilitate the increased east boundary setback which must be achieved without decreasing other boundary setbacks.
- n) Tree protection zone(s) in accordance with Condition 8 of this permit, to Council's street tree (Tree 1).
- o) The Environmentally Sustainable Design initiatives that are required to be shown on plans, as contained within Condition 10c) of this permit.
- p) An increased upper level eastern setback (facing Merri Creek) of Dwellings 2 and 3 to at least 22.8 metres, measured from the eastern title boundary to further reduce visual bulk and overshadowing.**
- q) To retain trees 5 and 6 (Pinus radiata - Monterey Pine) as important mature trees with significant habitat value.**

Compliance with Endorsed Plans

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

Landscaping

3. Prior to the endorsement of plans, a detailed landscape plan must be submitted to the Responsible Authority. The landscape plan must be designed and applied by a specialist revegetation company to the satisfaction of the Responsible Authority and must show:
 - a) Any changes required to align with the plans for endorsement.
 - b) The following changes as shown on the corrected set of landscape plans submitted to Council on 27 August 2024:
 - i. The portion of land (the 'Embankment') to be transferred to Council and landscaped to the satisfaction of the responsible authority in accordance with condition 13 of this permit.
 - ii. Deletion of the fence shown to block and the Merri Creek path.
 - iii. Deletion of the hedges along the water's edge of the Merri Creek and path.
 - c) Revegetation and landscaped open space buffer to the sloped eastern side of the site adjacent to Merri Creek.
 - d) A schedule of all proposed trees, shrubs and ground covers, including numbers, size at planting, size at maturity, botanical names and common names. The Plant Schedule is to include:
 - i. Native and/or indigenous species only.
 - ii. No ornamental varieties.
 - e) Identification of any existing tree(s) and vegetation on site and adjoining land proposed to be removed and retained, including the tree protection zone(s) of trees to be retained and protected.
 - f) Strategies for the retainment of vegetation (i.e., barriers and signage during the construction process) consistent with any conditions of this permit.
 - g) Notes and diagrams detailing the establishment and maintenance of all proposed trees, shrubs and ground covers.
 - h) At least one tree within the front setback to The Avenue.
 - i) Details of the location and type of all paved and sealed areas. Porous/permeable paving, rain gardens and other water sensitive urban design features must be in accordance with the Sustainability Design Assessment.
 - j) Any changes required by Melbourne Water (Condition 47) of this permit. Prior to the Landscaping Plan being endorsed by Council, Melbourne Water requires a detailed landscape plan to be submitted to and approved by Melbourne Water.

When submitted and approved to the satisfaction of the Responsible Authority, the landscape plan will be endorsed to form part of this permit. No alterations to the plan may occur without the written consent of the Responsible Authority.

4. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, all landscaping works, including installation of automatic irrigation, must be completed in accordance with the endorsed landscape plan to the satisfaction of the Responsible Authority.
5. All landscaping and irrigation systems must be maintained to the satisfaction of the Responsible Authority in accordance with the endorsed landscape plans. Any dead, diseased or damaged plants must be replaced with a suitable species to the satisfaction of the Responsible Authority.
6. Prior to the commencement of any buildings and/or works, a Landscape Construction Plan (Embankment works), to the satisfaction of the Responsible Authority, must be submitted to and approved by the Responsible Authority. When approved, the Plan will form part of the permit. The Plan must provide for the following:
 - a) Landscape and geotechnical construction details, including materials and methods for:
 - i. Pest plant/weed eradication.
 - ii. Preventing destabilisation of the embankment.
 - iii. Planting.
 - iv. Maintenance/establishment including pest plant/weed control, plant health and replacement, as necessary.
 - b) Staging and indicative timing including identifying any holding points for approval by Council requiring Council inspection and supervision.
7. Prior to the issuing of a Statement of Compliance or occupation of the development, whichever occurs first, all landscaping works must be completed in accordance with the approved and endorsed landscape drawing to the satisfaction of the Responsible Authority. The areas designated as landscaped areas on the endorsed landscape plan must thereafter be maintained and used for that purpose.

Tree Protection

8. Prior to development commencing (including any demolition, excavations, tree removal, delivery of building/construction materials and/or temporary buildings), Council's street tree (tree 1), **trees 5 and 6** and the trees marked on the endorsed plans as being retained and protected must have a Tree Protection Zone (TPZ) in accordance with AS4970 Protection of Trees on Development Sites to the satisfaction of the Responsible Authority. The TPZ must meet the following requirements:

The TPZ must meet the following requirements:

- a) Tree Protection Fencing

Tree Protection Fencing (TPF) is to be provided to the extent of the TPZ, calculated as being a radius of 12 x Diameter at Breast Height (DBH – measured at 1.4 metres above ground level as defined by the Australian Standard AS 4970.2009). The TPF may be aligned with roadways, footpaths and boundary fences where they intersect the TPZ.

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

b) Signage

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

c) Irrigation

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

d) Provision of Services

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

e) Access to TPZ

The TPF once erected, must be maintained and not altered, tampered or moved. If any works are proposed within the TPZ or require the TPF to be moved or altered, then such works must only be carried out with the prior written approval of, and under the direction of, a suitably qualified Arborist (minimum Level 5 Diploma of Arboriculture). A copy of the approval must be provided to Council upon request.

Tree Removal

9. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, the owner must pay Council the amenity value, removal, replacement and establishment costs in accordance with the Merri-bek Urban Forest Strategy 2017 for each street tree removed or damaged through the building works, to the satisfaction of the Responsible Authority.

Environmentally Sustainable Design (ESD)

10. Prior to the endorsement of plans, an amended Sustainable Design Assessment (SDA) and plans must be submitted to the satisfaction of the Responsible Authority. The SDA must demonstrate a best practice standard of environmentally sustainable design and be generally in accordance with the SDA prepared by Planning and Design, advertised 09/07/2024 but modified to include the following changes:

- a) Amended preliminary NatHERS ratings to achieve an average of 7.0 stars along with the following changes:
- i. At 'Window and glazed door schedule' on page 3 of the reports, specify 10 per cent opening to the first floor windows with a restricted opening, i.e., where the sill height is below 1.7m above the floor level.
 - ii. At 'External wall type' on page 4 of the reports, specify the cladding material as per the Material and Colour Schedule.
 - iii. At 'External wall type' on page 4 of the reports, specify the solar absorptance levels as per the amended Material and Colour Schedule.
 - iv. At 'Roof Window Schedule' on page 4 of the NatHERS Reports, specify skylights or roof windows as required by the design.
 - v. At 'Roof type' on page 7 of the NatHERS Reports, specify the solar absorptance value so that it is consistent with the Colour and Material Schedule.
- b) Amend BESS Report (and any other corresponding documentation) to:

- i. 'Water Fixtures Fittings and Connections' so that 'Non-potable water source connected to laundry (washing machines) is selected as 'Yes' to match claim in STORM.
- c) Show the following ESD initiatives on the development plans:
 - i. An ESD table for items that cannot be drawn that is consistent with the BESS assessment e.g.: WELS ratings of the showers toilets and taps; NatHERS star ratings; that rainwater tanks are connected to laundry (washing machines); type and star rating of the heating and cooling systems; type and star rating of the hot water system; motion sensor lights; that internal lights are to have a maximum illumination density of 4W/m²; EV charging infrastructure.
 - ii. A copy of the WSUD plan included within the plan set.
 - iii. The location, capacity and dimensions of the rainwater tanks, consistent with the capacity shown in the STORM report.
 - iv. At every mention of a rainwater tank on the plans, a notation indicating that: "The rainwater collected from the roof will service all toilets and connected to the washing machines. Ensure gutter guards, first flush diverters and filters to the water tanks are installed."
 - v. Annotation 'Door catches to be installed for bedroom doors'.
 - vi. Window operation on all elevation plans (e.g., arrows for a sliding window, a V for an awning...).
 - vii. Double glazing 'DG' to all habitable room windows and glazed doors annotated on each individual glazing unit on the floor plans and elevations.
 - viii. Amended Material Schedule with
 - (1) materials specified in addition the finishes and colours and be consistent with the NatHERS reports.
 - (2) material, colour and solar absorptance for the roof ensuring it has a solar absorptance of 0.60 or less.
 - ix. Annotate '32A-40A electric vehicle charging infrastructure' in each garage.

Where alternative ESD initiatives are proposed to those specified in the conditions above, the Responsible Authority may vary the requirements of this condition at its discretion, subject to the development achieving equivalent (or greater) ESD outcomes in association with the development.

When submitted and approved to the satisfaction of the Responsible Authority, the Sustainable Design Assessment and associated notated plans will be endorsed to form part of this permit. No alterations to the plan may occur without the written consent of the Responsible Authority.

- 11. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, all works must be undertaken in accordance with the endorsed Sustainable Design Assessment (including any BESS and STORM reports) to the satisfaction of the Responsible Authority.
- 12. Prior to the issuing of a Certificate of Occupancy or Statement of Compliance, whichever comes first, of any dwelling approved under this permit, a report/checklist must be submitted to the Responsible Authority. The report/checklist must be to the satisfaction of the Responsible Authority and must confirm (with suitable evidence) that measures specified in the endorsed Sustainable Design Assessment have been implemented in accordance with the approved plans.

13. All stormwater treatment devices (e.g., raingardens, rainwater tanks etc.) must be maintained, to ensure water quality discharged from the site complies with the performance standard in the endorsed Sustainable Design Assessment.

Section 173 Agreement

14. Before the commencement of the development the owner of the property must, to the satisfaction of the Responsible Authority:
 - a) Lodge with Council a request to amend, pursuant to section 178 of the Planning and *Environment Act 1987* (the Act), the section 173 agreement registered on title (AN786542Q, in respect to the transfer of a revegetated area of the creek embankment within the land to Council ownership), to:
 - i. Reference the subject planning permit MPS/2023/489.
 - b) Do all things necessary to enable the Responsible Authority to register the amended agreement with the Registrar of Titles in accordance with section 181 of the Act; and
 - c) Pay to the Responsible Authority its costs and disbursements incurred in relation to the negotiation, preparation, execution and registration of the amended agreement on the certificate of title to the land.

Erosion Management

15. Prior to the commencement of any buildings and/or works, including the removal, destruction or lopping of any vegetation, and/or the certification of any plan of subdivision:
 - a) the impact of the final design of the buildings and/or works, removal, destruction or lopping of vegetation and/or subdivision on slope stability must be assessed and certified by a chartered geotechnical practitioner with experience in slope stability;
 - b) certification by way of a completed "Geotechnical Declaration and Certification" generally in accordance with the Geotechnical Declaration and Certification Form, Merri-bek City Council, November 2012, must be lodged with the Responsible Authority; and
 - c) any changes to the final design/plan which are recommended by the chartered geotechnical practitioner must be shown on amended plans submitted to, and approved by, the Responsible Authority.
16. The buildings and/or works, including removal, destruction or lopping of vegetation, and/or subdivision must be undertaken in accordance with any requirements of a chartered geotechnical practitioner.
17. If the certification by the chartered geotechnical practitioner includes any recommendations or requirement for ongoing maintenance of the buildings and/or works, prior to the commencement of building and/or works the owner must enter into an agreement with Council pursuant to section 173 of the *Planning and Environment Act 1987* which is to be registered on the title to the land. The agreement will set out a regime for the recommended or required maintenance and the obligation of the owner to comply with such recommendations and/or requirements. The owner is to pay all reasonable costs of Council in the preparation and execution of the agreement.

Residential reticulated gas service connection

18. Any new dwelling allowed by this permit must not be connected to a reticulated gas service (within the meaning of clause 53.03 of the relevant planning scheme). This condition continues to have force and effect after the development authorised by this permit has been completed.

Car Parking and Vehicle Access

19. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, a vehicle crossing must be constructed in every location shown on the endorsed plans to a standard satisfactory to the Responsible Authority (Merri-bek City Council, City Infrastructure Department).
20. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, any existing vehicle crossing not to be used in this use or development must be removed and the kerb and channel, footpath and nature strip reinstated to the satisfaction of the Responsible Authority (Merri-bek City Council, City Infrastructure Department).
21. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, any Council or service authority pole or pit within 1 metre of a proposed vehicle crossing must be relocated or modified at the expense of the permit holder to the satisfaction of the Responsible Authority and the relevant service authority.
22. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, the garage roller doors must be automatic and remote controlled.

Undergrounding cables

23. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, all telecommunications and power connections (where by means of a cable) and associated infrastructure to the land must be underground to the satisfaction of the Responsible Authority.

Stormwater

24. All stormwater from the land, where it is not collected in rainwater tanks for re-use, must be collected by an underground pipe drain approved by and to the satisfaction of the Responsible Authority (Note: Please contact Merri-bek City Council, City Infrastructure Department).
25. Stormwater from the land must not be directed to the surface of the right-of-way to the satisfaction of the Responsible Authority.

General Amenity

26. Unless with the prior written consent of the Responsible Authority, any plumbing pipe, ducting and plant equipment must be concealed from external views. This does not include external guttering or associated rainwater down pipes.
27. All external lighting, other than balcony/porch lighting, must be no higher than 1.2 metres above ground level with automatic or sensor-controlled lighting installed and maintained on the land to illuminate pedestrian access between dusk and dawn with no direct light emitted onto adjoining property to the satisfaction of the Responsible Authority.
28. Lighting on each balcony/porch must be designed to not emit light direct onto adjoining property to the satisfaction of the Responsible Authority.
29. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, all visual screening measures shown on the endorsed plans must be installed to the satisfaction of the Responsible Authority. All visual screening and measures to prevent overlooking must be maintained to the satisfaction of the Responsible Authority. Any screening measure that is removed or unsatisfactorily maintained must be replaced to the satisfaction of the Responsible Authority.

30. A letterbox must be provided for each of the premises at the street frontage. The dimensions, placement and numbering must comply with the Australia Post – Letterbox Security and Specification as published on its website to the satisfaction of the Responsible Authority.

Melbourne Water conditions

31. Prior to the development plans being endorsed, amended plans must be submitted to Council and Melbourne Water addressing Melbourne Water's conditions. Plans must be submitted with surface and floor levels to Australian Height Datum (AHD) and must show:
- a) The development must be shown to be setback a minimum of twenty (20) metres measured from the exact eastern title boundary location and to the satisfaction of Melbourne Water.
 - b) The layout of Dwelling 1 must incorporate a flood proof apex and associated bunding constructed a minimum of 500 mm above the existing surface levels and designed to the satisfaction of Melbourne Water.
 - c) The driveway entrance to the 'basement' must be set no lower than 43.0 metres to AHD.
32. Plans must include an annotation indicating that the decking to Dwelling 4 and 5 is designed and constructed as 'open' and 'unenclosed' underneath. Finished floor levels of Dwelling 1 must be constructed no lower than 41.10 metres to Australian Height Datum (AHD) and the dwelling must incorporate a flood proof apex and associated bunding constructed no lower than 500mm above the natural surface levels and designed and constructed around the entrance and alfresco area to protect the dwelling from flood damage.
33. The entrance to the 'basement' area must be set no lower than 43.0 metres to AHD and designed constructed to the satisfaction of Melbourne Water.
34. The design and layout of the flood proof apex and associated bunding to the driveway to the basement and dwelling 1 must be to the satisfaction of Melbourne Water.
35. Finished floor levels of Dwelling 2 must be constructed no lower than 40.21 metres to Australian Height Datum (AHD).
36. Finished floor levels of Dwelling 3 and 4 must be constructed no lower than 37.70 metres to Australian Height Datum (AHD) which is a minimum of 600 mm above the applicable flood level of 37.10 metres to AHD.
37. Finished floor levels of Dwelling 5 must be constructed no lower than 39.40 metres to Australian Height Datum (AHD) which is a minimum of 300mm above the applicable flood level of 39.10 metres to AHD.
38. Finished floor levels of the garage to Dwelling 1 must be constructed no lower than the applicable flood level of 40.52 metres to AHD.
39. Finished floor levels of the garage to Dwelling 2 must be constructed no lower than the applicable flood level of 39.95 metres to AHD.
40. Finished floor levels of the garage to Dwelling 3 and 4 must be constructed no lower than the applicable flood level of 37.10 metres to AHD.
41. Finished floor levels of the garage to Dwelling 5 must be constructed no lower than the applicable flood level of 39.0 metres to AHD.
42. The development must incorporate a minimum twenty (20) metres setback measured from the exact eastern title boundary location and to the satisfaction of Melbourne Water to ensure an adequate setback from the waterway.

43. Imported fill must be kept to a minimum on the property and must only be used for the sub floor areas of the building and driveway ramp.
44. The deck areas to Dwelling 4 and 5 is designed and constructed as 'open' and 'unenclosed' underneath to allow for the conveyance of floodwaters.
45. The open space areas within the property must be maintained at natural surface levels and no fill or retaining walls should be used in the development of this land.
46. Any new front fence and internal fencing must be 'open style', a minimum of 50 per cent of construction and any new side boundary fencing must be timber paling to allow for the conveyance of overland flow.
47. Any new landscaping and associated works located within twenty (20) metres of the waterway and within five (5) metres of the Melbourne Water asset must be to the satisfaction of Melbourne Water.
48. Prior to the endorsement of plans, a detailed landscape plan must be submitted to and approved by Melbourne Water. The plan must be prepared by a suitably qualified professional and must include:
 - a) Details of all landscaping works to be carried out;
 - b) The locations and details of any vegetation to be removed from the land;
 - c) The location and details of any vegetation and natural features to be retained on the land;
 - d) the location of works required for bank stabilisation
 - e) A detailed schedule of all proposed trees, shrubs and groundcovers, including botanical names, common names, pot sizes, sizes at maturity and quantities of each plant;
 - f) Only local indigenous plant species to be shown on the plans.
 - g) The exact location of the Melbourne Water assets affecting the land
 - h) Procedures for establishing and maintaining planted vegetation, including mulching techniques, watering and inspection schedules; to the satisfaction of Melbourne Water.
49. Melbourne Water does not take on ownership or maintenance responsibilities for any assets created as part of the development.
50. The layout of the building including footings, eaves etc. must be set outside any drainage easement or a minimum 2.7 metres laterally clear of the outside edge of the Melbourne Water asset, whichever is greater.
51. Prior to a building permit being issued, a separate Build Over application must be made directly to Melbourne Water's Asset Services Team for approval of works/structures over or near Melbourne Water's assets. Design plans must be submitted to include the following:
 - a) Demolition works including any tree removal
 - b) Cross over design
 - c) Driveway type, thickness etc.
 - d) Landscaping and paving
 - e) New fences to include footings locations being internal and along boundary. (No fence post to be located directly above the main drain)
 - f) Any other structures and works that are within easement or affecting the drain.
 - g) Method of works

- h) A statement from the structural engineer is required stating the design of the building foundation has been designed to allow future excavation of the pipeline adjacent to building. (Screw piles and friction piles are not acceptable)
- 52. Any new or modified stormwater connection to Melbourne Water's drainage system must obtain separate approval from Melbourne Water's Asset Services Team.
- 53. Prior to commencement of construction a Site Environmental Management Plan (SEMP) must be submitted to Melbourne Water for approval, specifying relevant actions in a practical way to ensure that they are implemented effectively. The SEMP must include a site map detailing the location and design of all measures including the following:
 - a) Silt fencing
 - b) Access tracks
 - c) Spoil stockpiling
 - d) Trenching locations
 - e) Machinery/Plan Locations

Permit Expiry

- 54. This permit will expire if one of the following circumstances applies:
 - a) the development is not commenced within two (2) years from the date of issue of this permit;
 - b) the development is not completed within four (4) years from the date of issue of this permit.

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

- within six months after the permit expires to extend the commencement date.
- within 12 months after the permit expires to extend the completion date of the development if the development has lawfully commenced.

Notes: These notes are for information only and do not constitute part of this permit or conditions of this permit.

Note 1: Should Council impose car parking restrictions in this street, the owners and/or occupiers of the land would generally not be eligible for residential or visitor parking permits to allow for on street parking. See Council's website for more information:

<https://www.Merri-bek.vic.gov.au/living-in-Merri-bek/parking-and-roads/parking-permits-and-fines/residential-parking-permits/>

Note 2: Further approvals are required from Council's City Infrastructure Department who can be contacted on 8311 4300 for any works beyond the boundaries of the property. Planting and other vegetative works proposed on road reserves can be discussed with Council's Open Space Unit on 8311 4300.

Note 3: Merri-bek City Council is committed to increasing the amount of affordable housing in the municipality. One way to do this, is through Homes for Homes, a social enterprise founded by the Big Issue that aims to raise new funds via voluntary tax-deductible donations on property transactions and invest those funds in building and managing new social and affordable dwellings. If you would like to help build homes for those in need, visit [Homes for Homes](#) and register your commitment to donate 0.1 per cent of the sale price of your dwelling(s).

Note 4: Council allocates new street addressing to the street that the frontage/main access faces. Should a development abut a suburb boundary, the street addressing will reflect the suburb of that street. In some instances a suburb boundary realignment may be required, should the land be at the suburb boundary.

Lost

Resolution

Cr Pulford moved, Cr Panopoulos seconded -

That a Notice of Decision to Grant a Planning Permit No. MPS/2023/489 be issued for the construction of five dwellings and removal of vegetation at 170 The Avenue, COBURG, subject to the following conditions:

- 1. Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and must be generally in accordance with the plans advertised on insert date but modified to show:**
 - a) The changes as shown on the corrected architectural plans submitted to Council on 27 August 2024 that show:**
 - i. The portion of land (the 'Embankment') to be transferred to Council in accordance with Condition 14 of this permit.**
 - ii. Deletion of the error indicating a fence extending across the Merri Creek path.**
 - b) The development setback a minimum of twenty (20) metres from the eastern title boundary in accordance with Melbourne Water Condition 31a), without decreasing any other boundary setbacks.**
 - c) The following consequential changes may be needed to comply with Condition 1b):**
 - i. Deletion of two bedrooms from the eastern-most section of built form at the first floor of either dwelling 2 or 3 (this can be one bedroom from each dwelling or two bedrooms from one dwelling) with the commensurate reduction in building bulk to the Merri Creek corridor and to achieve compliance with Clause 52.06 (Car Parking).**
 - ii. Internal re-arrangements which do not alter window locations orientated to the north and south.**
 - d) Detailed plans showing the appearance of the land for any necessary stabilisation works in compliance with geotechnical engineering requirements.**
 - e) The stabilisation works required by condition 1c) and Condition 14, notated as treated in muted tones to be respectful of the Merri Creek environs.**
 - f) The street setback of Dwelling 1 increased to a minimum of 4.5 metres to provide space for canopy tree planting and to better respond to the prevailing front setbacks in The Avenue. The street setback applies to both ground and first floors and is the portion of the building that aligns with the road reserve.**
 - g) A pedestrian path provided with a slope no greater than 1 in 10 for residents to bring waste bins up to the street.**

- h) Increased provision of high quality, durable material with a fine grain detail (not render) to the upper-level walls that are visible from the public realm or adjoining properties.
- i) The rear boundary fencing (along the future rear boundary abutting the land to be transferred to Council in accordance with Condition 13 of this permit) to be shown on elevations plans at a scale of 1:50 and modified as follows:
 - i. be an open style of construction (50 per cent open style) for the conveyance of overland flow.
 - ii. be a maximum height of 1.6 metres.
 - iii. be a palisade or blade fence.
- j) The following habitable room windows of Dwelling 2 to demonstrate compliance with the overlooking objectives of Clause 55.04-6:
 - i. The eastern-most north facing living room window at ground level.
 - ii. The north facing sitting room window at first floor.
- k) Any changes to the plans arising from the Landscape Plan in accordance with Condition 3 of this permit.
- l) Any changes to the plans arising from the geotechnical engineering assessment in accordance with Condition 15 of this permit.
- m) Any changes to the plans arising from the Melbourne Water conditions in accordance with Conditions 31 to 53 of this permit. This may result in the loss of dwellings or floor space to facilitate the increased east boundary setback which must be achieved without decreasing other boundary setbacks.
- n) Tree protection zone(s) in accordance with Condition 8 of this permit, to Council's street tree (Tree 1).
- o) The Environmentally Sustainable Design initiatives that are required to be shown on plans, as contained within Condition 10c) of this permit.
- p) To retain trees 5 and 6 (*Pinus radiata* - Monterey Pine) as important mature trees with significant habitat value.

Compliance with Endorsed Plans

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

Landscaping

- 3. Prior to the endorsement of plans, a detailed landscape plan must be submitted to the Responsible Authority. The landscape plan must be designed and applied by a specialist revegetation company to the satisfaction of the Responsible Authority and must show:
 - a) Any changes required to align with the plans for endorsement.
 - b) The following changes as shown on the corrected set of landscape plans submitted to Council on 27 August 2024:
 - i. The portion of land (the 'Embankment') to be transferred to Council and landscaped to the satisfaction of the responsible authority in accordance with condition 13 of this permit.
 - ii. Deletion of the fence shown to block and the Merri Creek path.

- iii. Deletion of the hedges along the water's edge of the Merri Creek and path.
- c) Revegetation and landscaped open space buffer to the sloped eastern side of the site adjacent to Merri Creek.
- d) A schedule of all proposed trees, shrubs and ground covers, including numbers, size at planting, size at maturity, botanical names and common names. The Plant Schedule is to include:
 - i. Native and/or indigenous species only.
 - ii. No ornamental varieties.
- e) Identification of any existing tree(s) and vegetation on site and adjoining land proposed to be removed and retained, including the tree protection zone(s) of trees to be retained and protected.
- f) Strategies for the retainment of vegetation (i.e., barriers and signage during the construction process) consistent with any conditions of this permit.
- g) Notes and diagrams detailing the establishment and maintenance of all proposed trees, shrubs and ground covers.
- h) At least one tree within the front setback to The Avenue.
- i) Details of the location and type of all paved and sealed areas. Porous/permeable paving, rain gardens and other water sensitive urban design features must be in accordance with the Sustainability Design Assessment.
- j) Any changes required by Melbourne Water (Condition 47) of this permit. Prior to the Landscaping Plan being endorsed by Council, Melbourne Water requires a detailed landscape plan to be submitted to and approved by Melbourne Water.

When submitted and approved to the satisfaction of the Responsible Authority, the landscape plan will be endorsed to form part of this permit. No alterations to the plan may occur without the written consent of the Responsible Authority.

4. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, all landscaping works, including installation of automatic irrigation, must be completed in accordance with the endorsed landscape plan to the satisfaction of the Responsible Authority.
5. All landscaping and irrigation systems must be maintained to the satisfaction of the Responsible Authority in accordance with the endorsed landscape plans. Any dead, diseased or damaged plants must be replaced with a suitable species to the satisfaction of the Responsible Authority.
6. Prior to the commencement of any buildings and/or works, a Landscape Construction Plan (Embankment works), to the satisfaction of the Responsible Authority, must be submitted to and approved by the Responsible Authority. When approved, the Plan will form part of the permit. The Plan must provide for the following:
 - a) Landscape and geotechnical construction details, including materials and methods for:
 - i. Pest plant/weed eradication.
 - ii. Preventing destabilisation of the embankment.
 - iii. Planting.

- iv. **Maintenance/establishment including pest plant/weed control, plant health and replacement, as necessary.**
- b) **Staging and indicative timing including identifying any holding points for approval by Council requiring Council inspection and supervision.**
- 7. **Prior to the issuing of a Statement of Compliance or occupation of the development, whichever occurs first, all landscaping works must be completed in accordance with the approved and endorsed landscape drawing to the satisfaction of the Responsible Authority. The areas designated as landscaped areas on the endorsed landscape plan must thereafter be maintained and used for that purpose.**

Tree Protection

- 8. **Prior to development commencing (including any demolition, excavations, tree removal, delivery of building/construction materials and/or temporary buildings), Council's street tree (tree 1), trees 5 and 6 and the trees marked on the endorsed plans as being retained and protected must have a Tree Protection Zone (TPZ) in accordance with AS4970 Protection of Trees on Development Sites to the satisfaction of the Responsible Authority. The TPZ must meet the following requirements:**

The TPZ must meet the following requirements:

- a) **Tree Protection Fencing**

Tree Protection Fencing (TPF) is to be provided to the extent of the TPZ, calculated as being a radius of 12 x Diameter at Breast Height (DBH – measured at 1.4 metres above ground level as defined by the Australian Standard AS 4970.2009). The TPF may be aligned with roadways, footpaths and boundary fences where they intersect the TPZ.

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

- b) **Signage**

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

- c) **Irrigation**

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

- d) **Provision of Services**

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

e) Access to TPZ

The TPF once erected, must be maintained and not altered, tampered or moved. If any works are proposed within the TPZ or require the TPF to be moved or altered, then such works must only be carried out with the prior written approval of, and under the direction of, a suitably qualified Arborist (minimum Level 5 Diploma of Arboriculture). A copy of the approval must be provided to Council upon request.

Tree Removal

9. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, the owner must pay Council the amenity value, removal, replacement and establishment costs in accordance with the Merri-bek Urban Forest Strategy 2017 for each street tree removed or damaged through the building works, to the satisfaction of the Responsible Authority.

Environmentally Sustainable Design (ESD)

10. Prior to the endorsement of plans, an amended Sustainable Design Assessment (SDA) and plans must be submitted to the satisfaction of the Responsible Authority. The SDA must demonstrate a best practice standard of environmentally sustainable design and be generally in accordance with the SDA prepared by Planning and Design, advertised 09/07/2024 but modified to include the following changes:
- a) Amended preliminary NatHERS ratings to achieve an average of 7.0 stars along with the following changes:
 - i. At 'Window and glazed door schedule' on page 3 of the reports, specify 10 per cent opening to the first floor windows with a restricted opening, i.e., where the sill height is below 1.7m above the floor level.
 - ii. At 'External wall type' on page 4 of the reports, specify the cladding material as per the Material and Colour Schedule.
 - iii. At 'External wall type' on page 4 of the reports, specify the solar absorptance levels as per the amended Material and Colour Schedule.
 - iv. At 'Roof Window Schedule' on page 4 of the NatHERS Reports, specify skylights or roof windows as required by the design.
 - v. At 'Roof type' on page 7 of the NatHERS Reports, specify the solar absorptance value so that it is consistent with the Colour and Material Schedule.
 - b) Amend BESS Report (and any other corresponding documentation) to:
 - i. 'Water Fixtures Fittings and Connections' so that 'Non-potable water source connected to laundry (washing machines) is selected as 'Yes' to match claim in STORM.
 - c) Show the following ESD initiatives on the development plans:
 - i. An ESD table for items that cannot be drawn that is consistent with the BESS assessment e.g.: WELS ratings of the showers toilets and taps; NatHERS star ratings; that rainwater tanks are connected to laundry (washing machines); type and star rating of the heating and cooling systems; type and star rating of the hot water system; motion sensor lights; that internal lights are to have a maximum illumination density of 4W/m2; EV charging infrastructure.
 - ii. A copy of the WSUD plan included within the plan set.

- iii. The location, capacity and dimensions of the rainwater tanks, consistent with the capacity shown in the STORM report.
- iv. At every mention of a rainwater tank on the plans, a notation indicating that: "The rainwater collected from the roof will service all toilets and connected to the washing machines. Ensure gutter guards, first flush diverters and filters to the water tanks are installed."
- v. Annotation 'Door catches to be installed for bedroom doors'.
- vi. Window operation on all elevation plans (e.g., arrows for a sliding window, a V for an awning...).
- vii. Double glazing 'DG' to all habitable room windows and glazed doors annotated on each individual glazing unit on the floor plans and elevations.
- viii. Amended Material Schedule with
 - (1) materials specified in addition the finishes and colours and be consistent with the NatHERS reports.
 - (2) material, colour and solar absorptance for the roof ensuring it has a solar absorptance of 0.60 or less.
- ix. Annotate '32A-40A electric vehicle charging infrastructure' in each garage.

Where alternative ESD initiatives are proposed to those specified in the conditions above, the Responsible Authority may vary the requirements of this condition at its discretion, subject to the development achieving equivalent (or greater) ESD outcomes in association with the development.

When submitted and approved to the satisfaction of the Responsible Authority, the Sustainable Design Assessment and associated notated plans will be endorsed to form part of this permit. No alterations to the plan may occur without the written consent of the Responsible Authority.

- 11. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, all works must be undertaken in accordance with the endorsed Sustainable Design Assessment (including any BESS and STORM reports) to the satisfaction of the Responsible Authority.
- 12. Prior to the issuing of a Certificate of Occupancy or Statement of Compliance, whichever comes first, of any dwelling approved under this permit, a report/checklist must be submitted to the Responsible Authority. The report/checklist must be to the satisfaction of the Responsible Authority and must confirm (with suitable evidence) that measures specified in the endorsed Sustainable Design Assessment have been implemented in accordance with the approved plans.
- 13. All stormwater treatment devices (e.g., raingardens, rainwater tanks etc.) must be maintained, to ensure water quality discharged from the site complies with the performance standard in the endorsed Sustainable Design Assessment.

Section 173 Agreement

- 14. Before the commencement of the development the owner of the property must, to the satisfaction of the Responsible Authority:
 - a) Lodge with Council a request to amend, pursuant to section 178 of the Planning and Environment Act 1987 (the Act), the section 173 agreement registered on title (AN786542Q, in respect to the transfer of a revegetated area of the creek embankment within the land to Council ownership), to:

- i. Reference the subject planning permit MPS/2023/489.
- b) Do all things necessary to enable the Responsible Authority to register the amended agreement with the Registrar of Titles in accordance with section 181 of the Act; and
- c) Pay to the Responsible Authority its costs and disbursements incurred in relation to the negotiation, preparation, execution and registration of the amended agreement on the certificate of title to the land.

Erosion Management

- 15. Prior to the commencement of any buildings and/or works, including the removal, destruction or lopping of any vegetation, and/or the certification of any plan of subdivision:
 - a) the impact of the final design of the buildings and/or works, removal, destruction or lopping of vegetation and/or subdivision on slope stability must be assessed and certified by a chartered geotechnical practitioner with experience in slope stability;
 - b) certification by way of a completed “Geotechnical Declaration and Certification” generally in accordance with the Geotechnical Declaration and Certification Form, Merri-bek City Council, November 2012, must be lodged with the Responsible Authority; and
 - c) any changes to the final design/plan which are recommended by the chartered geotechnical practitioner must be shown on amended plans submitted to, and approved by, the Responsible Authority.
- 16. The buildings and/or works, including removal, destruction or lopping of vegetation, and/or subdivision must be undertaken in accordance with any requirements of a chartered geotechnical practitioner.
- 17. If the certification by the chartered geotechnical practitioner includes any recommendations or requirement for ongoing maintenance of the buildings and/or works, prior to the commencement of building and/or works the owner must enter into an agreement with Council pursuant to section 173 of the Planning and Environment Act 1987 which is to be registered on the title to the land. The agreement will set out a regime for the recommended or required maintenance and the obligation of the owner to comply with such recommendations and/or requirements. The owner is to pay all reasonable costs of Council in the preparation and execution of the agreement.

Residential reticulated gas service connection

- 18. Any new dwelling allowed by this permit must not be connected to a reticulated gas service (within the meaning of clause 53.03 of the relevant planning scheme). This condition continues to have force and effect after the development authorised by this permit has been completed.

Car Parking and Vehicle Access

- 19. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, a vehicle crossing must be constructed in every location shown on the endorsed plans to a standard satisfactory to the Responsible Authority (Merri-bek City Council, City Infrastructure Department).
- 20. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, any existing vehicle crossing not to be used in this use or development must be removed and the kerb and channel, footpath and nature strip reinstated to the satisfaction of the Responsible Authority (Merri-bek City Council, City Infrastructure Department).

21. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, any Council or service authority pole or pit within 1 metre of a proposed vehicle crossing must be relocated or modified at the expense of the permit holder to the satisfaction of the Responsible Authority and the relevant service authority.
22. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, the garage roller doors must be automatic and remote controlled.

Undergrounding cables

23. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, all telecommunications and power connections (where by means of a cable) and associated infrastructure to the land must be underground to the satisfaction of the Responsible Authority.

Stormwater

24. All stormwater from the land, where it is not collected in rainwater tanks for re-use, must be collected by an underground pipe drain approved by and to the satisfaction of the Responsible Authority (Note: Please contact Merri-bek City Council, City Infrastructure Department).
25. Stormwater from the land must not be directed to the surface of the right-of-way to the satisfaction of the Responsible Authority.

General Amenity

26. Unless with the prior written consent of the Responsible Authority, any plumbing pipe, ducting and plant equipment must be concealed from external views. This does not include external guttering or associated rainwater down pipes.
27. All external lighting, other than balcony/porch lighting, must be no higher than 1.2 metres above ground level with automatic or sensor-controlled lighting installed and maintained on the land to illuminate pedestrian access between dusk and dawn with no direct light emitted onto adjoining property to the satisfaction of the Responsible Authority.
28. Lighting on each balcony/porch must be designed to not emit light direct onto adjoining property to the satisfaction of the Responsible Authority.
29. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, all visual screening measures shown on the endorsed plans must be installed to the satisfaction of the Responsible Authority. All visual screening and measures to prevent overlooking must be maintained to the satisfaction of the Responsible Authority. Any screening measure that is removed or unsatisfactorily maintained must be replaced to the satisfaction of the Responsible Authority.
30. A letterbox must be provided for each of the premises at the street frontage. The dimensions, placement and numbering must comply with the Australia Post – Letterbox Security and Specification as published on its website to the satisfaction of the Responsible Authority.

Melbourne Water conditions

31. Prior to the development plans being endorsed, amended plans must be submitted to Council and Melbourne Water addressing Melbourne Water's conditions. Plans must be submitted with surface and floor levels to Australian Height Datum (AHD) and must show:

- a) The development must be shown to be setback a minimum of twenty (20) metres measured from the exact eastern title boundary location and to the satisfaction of Melbourne Water.
 - b) The layout of Dwelling 1 must incorporate a flood proof apex and associated bunding constructed a minimum of 500 mm above the existing surface levels and designed to the satisfaction of Melbourne Water.
 - c) The driveway entrance to the 'basement' must be set no lower than 43.0 metres to AHD.
32. Plans must include an annotation indicating that the decking to Dwelling 4 and 5 is designed and constructed as 'open' and 'unenclosed' underneath. Finished floor levels of Dwelling 1 must be constructed no lower than 41.10 metres to Australian Height Datum (AHD) and the dwelling must incorporate a flood proof apex and associated bunding constructed no lower than 500mm above the natural surface levels and designed and constructed around the entrance and alfresco area to protect the dwelling from flood damage.
 33. The entrance to the 'basement' area must be set no lower than 43.0 metres to AHD and designed constructed to the satisfaction of Melbourne Water.
 34. The design and layout of the flood proof apex and associated bunding to the driveway to the basement and dwelling 1 must be to the satisfaction of Melbourne Water.
 35. Finished floor levels of Dwelling 2 must be constructed no lower than 40.21 metres to Australian Height Datum (AHD).
 36. Finished floor levels of Dwelling 3 and 4 must be constructed no lower than 37.70 metres to Australian Height Datum (AHD) which is a minimum of 600 mm above the applicable flood level of 37.10 metres to AHD.
 37. Finished floor levels of Dwelling 5 must be constructed no lower than 39.40 metres to Australian Height Datum (AHD) which is a minimum of 300mm above the applicable flood level of 39.10 metres to AHD.
 38. Finished floor levels of the garage to Dwelling 1 must be constructed no lower than the applicable flood level of 40.52 metres to AHD.
 39. Finished floor levels of the garage to Dwelling 2 must be constructed no lower than the applicable flood level of 39.95 metres to AHD.
 40. Finished floor levels of the garage to Dwelling 3 and 4 must be constructed no lower than the applicable flood level of 37.10 metres to AHD.
 41. Finished floor levels of the garage to Dwelling 5 must be constructed no lower than the applicable flood level of 39.0 metres to AHD.
 42. The development must incorporate a minimum twenty (20) metres setback measured from the exact eastern title boundary location and to the satisfaction of Melbourne Water to ensure an adequate setback from the waterway.
 43. Imported fill must be kept to a minimum on the property and must only be used for the sub floor areas of the building and driveway ramp.
 44. The deck areas to Dwelling 4 and 5 is designed and constructed as 'open' and 'unenclosed' underneath to allow for the conveyance of floodwaters.
 45. The open space areas within the property must be maintained at natural surface levels and no fill or retaining walls should be used in the development of this land.

46. Any new front fence and internal fencing must be 'open style', a minimum of 50 per cent of construction and any new side boundary fencing must be timber paling to allow for the conveyance of overland flow.
47. Any new landscaping and associated works located within twenty (20) metres of the waterway and within five (5) metres of the Melbourne Water asset must be to the satisfaction of Melbourne Water.
48. Prior to the endorsement of plans, a detailed landscape plan must be submitted to and approved by Melbourne Water. The plan must be prepared by a suitably qualified professional and must include:
 - a) Details of all landscaping works to be carried out;
 - b) The locations and details of any vegetation to be removed from the land;
 - c) The location and details of any vegetation and natural features to be retained on the land;
 - d) the location of works required for bank stabilisation
 - e) A detailed schedule of all proposed trees, shrubs and groundcovers, including botanical names, common names, pot sizes, sizes at maturity and quantities of each plant;
 - f) Only local indigenous plant species to be shown on the plans.
 - g) The exact location of the Melbourne Water assets affecting the land
 - h) Procedures for establishing and maintaining planted vegetation, including mulching techniques, watering and inspection schedules; to the satisfaction of Melbourne Water.
49. Melbourne Water does not take on ownership or maintenance responsibilities for any assets created as part of the development.
50. The layout of the building including footings, eaves etc. must be set outside any drainage easement or a minimum 2.7 metres laterally clear of the outside edge of the Melbourne Water asset, whichever is greater.
51. Prior to a building permit being issued, a separate Build Over application must be made directly to Melbourne Water's Asset Services Team for approval of works/structures over or near Melbourne Water's assets. Design plans must be submitted to include the following:
 - a) Demolition works including any tree removal
 - b) Cross over design
 - c) Driveway type, thickness etc.
 - d) Landscaping and paving
 - e) New fences to include footings locations being internal and along boundary. (No fence post to be located directly above the main drain)
 - f) Any other structures and works that are within easement or affecting the drain.
 - g) Method of works
 - h) A statement from the structural engineer is required stating the design of the building foundation has been designed to allow future excavation of the pipeline adjacent to building. (Screw piles and friction piles are not acceptable)
52. Any new or modified stormwater connection to Melbourne Water's drainage system must obtain separate approval from Melbourne Water's Asset Services Team.

53. Prior to commencement of construction a Site Environmental Management Plan (SEMP) must be submitted to Melbourne Water for approval, specifying relevant actions in a practical way to ensure that they are implemented effectively. The SEMP must include a site map detailing the location and design of all measures including the following:

- a) Silt fencing**
- b) Access tracks**
- c) Spoil stockpiling**
- d) Trenching locations**
- e) Machinery/Plan Locations**

Permit Expiry

54. This permit will expire if one of the following circumstances applies:

- a) the development is not commenced within two (2) years from the date of issue of this permit;**
- b) the development is not completed within four (4) years from the date of issue of this permit.**

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

- within six months after the permit expires to extend the commencement date.**
- within 12 months after the permit expires to extend the completion date of the development if the development has lawfully commenced.**

Notes: These notes are for information only and do not constitute part of this permit or conditions of this permit.

Note 1: Should Council impose car parking restrictions in this street, the owners and/or occupiers of the land would generally not be eligible for residential or visitor parking permits to allow for on street parking. See Council's website for more information:

<https://www.Merri-bek.vic.gov.au/living-in-Merri-bek/parking-and-roads/parking-permits-and-fines/residential-parking-permits/>

Note 2: Further approvals are required from Council's City Infrastructure Department who can be contacted on 8311 4300 for any works beyond the boundaries of the property. Planting and other vegetative works proposed on road reserves can be discussed with Council's Open Space Unit on 8311 4300.

Note 3: Merri-bek City Council is committed to increasing the amount of affordable housing in the municipality. One way to do this, is through Homes for Homes, a social enterprise founded by the Big Issue that aims to raise new funds via voluntary tax-deductible donations on property transactions and invest those funds in building and managing new social and affordable dwellings. If you would like to help build homes for those in need, visit [Homes for Homes](#) and register your commitment to donate 0.1 per cent of the sale price of your dwelling(s).

Note 4: Council allocates new street addressing to the street that the frontage/main access faces. Should a development abut a suburb boundary, the street addressing will reflect the suburb of that street. In some instances a suburb boundary realignment may be required, should the land be at the suburb boundary.

Carried

5.2 38 HARRISON STREET, BRUNSWICK EAST VIC 3057 - PLANNING PERMIT APPLICATION MPS/2023/777

Caretaker Statement

The recommended decision is not a decision prohibited by the Act and is a decision that falls within the guidance of the Election Period Policy.

Executive Summary



Property:	38 Harrison Street, Brunswick East		
Proposal:	Partial demolition including alterations and additions to the existing dwelling, demolition of existing outbuildings and reconstruction of one outbuilding, construction of six dwellings, reduction to the car parking requirement and removal of vegetation		
Zoning and Overlay/s:	<ul style="list-style-type: none"> • Neighbourhood Residential Zone Schedule 1 (NRZ1) • Environmental Significance Overlay Schedule 1 (ESO1) • Heritage Overlay Schedule 90 (HO90) • Design and Development Overlay Schedule 1 (DDO1) • Land Subject to Inundation Overlay (LSIO) • Development Contributions Plan Overlay (DCPO) 		
Strategic setting:	Minimal change	Incremental change	Significant change
Objections:	<ul style="list-style-type: none"> • 21 objections have been received. • Key issues: <ul style="list-style-type: none"> • Loss of vegetation and impact of development on Merri Creek environs. • Impact on heritage values of the site and demolition of outbuildings. 		
Planning Information and Discussion (PID) Meeting:	<ul style="list-style-type: none"> • Held on 2 October 2024. • Attendees: 5 objectors, the applicant, two Council officers. • 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:	<ul style="list-style-type: none"> • Minimum average NatHERS energy rating of 7 stars. • 18kW (PV) solar panel capacity. • Net zero carbon emissions and no connection to gas. • Electric vehicle chargers in each garage. 		

Key reasons for support	<ul style="list-style-type: none"> • Acceptable response to the Merri Creek corridor and retention of native and indigenous tree species on site. • Planting of a vegetative buffer to the Merri Creek interface including indigenous species. • No unreasonable off-site amenity impacts. • Retention and restoration of heritage building and outbuilding. • High levels of Environmentally Sustainable Design.
Recommendation:	That a Notice of Decision to Grant a Planning Permit be issued for the proposal.

Officer Recommendation

That a Notice of Decision to Grant a Planning Permit No. MPS/2023/777 be issued for the partial demolition including alterations and additions to the existing dwelling, demolition of existing outbuildings and reconstruction of one outbuilding, construction of six dwellings, reduction to the car parking requirement and removal of vegetation at 38 Harrison Street, Brunswick East, subject to the following conditions:

Amended Plans

1. Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and must be generally in accordance with the plans advertised on 24 July 2024 but modified to show:
 - a) The cool room outbuilding:
 - i. Setback maximised from the existing dwelling and the street;
 - ii. Detached from the dwelling's deck;
 - iii. Appropriately screened from the street with planting or by other means.
 - b) The south elevation associated with the three storey townhouses, improved through further articulation, such as introducing an alternative material(s) to break up the singular material.
 - c) Two resident bicycle parking spaces provided to each new dwelling.
 - d) The bicycle parking located outside of the 3.5 metre wide minimum garage dimension.
 - e) At least 20 per cent of the bicycle parking devices designed to provide ground level horizontal (i.e. 1800mm long) bike parking devices in accordance with the Australian Standard for Bicycle Parking (AS2890.3).
 - f) The garage dimensions of each dwelling at least 6 metres long and 3.5 metres wide in accordance with Clause 52.06-9 of the Merri-bek Planning Scheme.
 - g) The garage doors of each dwelling dimensioned at least 3 metres wide.
 - h) The paved area for the car parking space of Dwelling 6 with minimum dimensions of 5.4 metres long and 3 metres wide.
 - i) The distance from each garage to the western edge of the north-south accessway dimensioned.
 - j) The length and width of the turn-around paved area at the southern edge of the existing dwelling dimensioned.

- k) The east-west accessway from Harrison Street dimensioned at least 3 metres wide.
- l) The details of the permeable accessway as specified in the Arborist Report (dated 21 May 2024) shown/annotated on the plans.
- m) The extent of the driveway and parking area of the existing dwelling depicted and dimensioned on the plans.
- n) The rear boundary fencing shown on the elevations at a scale of 1:50 and modified to the following specifications:
 - i. Be an open style (minimum 50 per cent open) of construction or timber paling to allow for the conveyance of overland flow.
 - ii. Be of black palisade.
 - iii. Be a maximum height of 1.4 metres high.
- o) A notation on the plans to confirm that the proposed landscaped buffer along the eastern boundary will provide internal soil dimensions of at least 1.1 metres wide.
- p) Any changes to the layout and elevation plans, arising from the re-construction plan (cool room) in accordance with condition 10 of this permit.
- q) The location of a small permanent plaque to be incorporated into the relocated Cool Room to record the date of its reconstruction.
- r) Any changes to the plans arising from the Landscape Plan in accordance with Condition 3 of this permit.
- s) Tree Protection Zones of Tree Nos. 1, 2, 3, 4, 7 and 34 (as per the Arborist Report dated 21 May 2024) and any trees located within 3 metres of the site on adjacent properties, including the Council reserve at the rear of the site.
- t) The Environmentally Sustainable Design initiatives that are required to be shown on plans, as contained within Condition 13 of this permit.
- u) Any practical changes as required by Conditions 31 to 39 (Melbourne Water) of this permit.

Compliance with Endorsed Plans

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

Landscaping

- 3. Prior to the endorsement of plans, an amended landscape plan must be submitted to the Responsible Authority. The landscape plan must be generally in accordance with the plan prepared by John Patrick Landscape Architects, Revision B dated 25/06/2024 but amended to show:
 - a) Any changes required to align with the plans for endorsement.
 - b) The Silver Banksia (*Banksia marginata*) tree replaced with one of the other indigenous tree species listed in the Plant Schedule.
 - c) The Boston Ivy (*Parthenocissus tricuspidata*) climber replaced with a climber that does not pose environmental weed risks, e.g. Purple Coral Pea (*Hardenbergia violacea*).
 - d) The Karkalla (*Carpobrotus rossii*) groundcover replaced with a local form of the closely related Inland Pigface (*Carpobrotus modestus*).

- e) All shrub species in the landscape buffer between the townhouses and the eastern boundary to be indigenous.
- f) A notation specifying that all indigenous species to be of local provenance stock from a reputable supplier of local indigenous species.
- g) Strategies for the retainment of vegetation (i.e. barriers and signage during the construction process) consistent with any conditions of this permit.
- h) A schedule of all proposed trees, shrubs and ground covers, including numbers/quantities, location, size at planting, size at maturity, botanical names and common names.
- i) Notes and diagrams detailing the establishment and maintenance of all proposed trees, shrubs and ground covers.
- j) An irrigation plan with a notation on the landscape and irrigation maintenance schedule to ensure all plants are established and remain healthy with details of the water source and irrigation controller.
- k) Any requirement of Melbourne Water in accordance with condition 39 of this planning permit.

When submitted and approved to the satisfaction of the Responsible Authority, the landscape plan will be endorsed to form part of this permit. No alterations to the plan may occur without the written consent of the Responsible Authority.

- 4. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, all landscaping works, including installation of automatic irrigation, must be completed in accordance with the endorsed landscape plan to the satisfaction of the Responsible Authority.
- 5. All landscaping must be maintained to the satisfaction of the Responsible Authority in accordance with the endorsed landscape plans. Any dead, diseased or damaged plants must be replaced with a suitable species to the satisfaction of the Responsible Authority.

Tree Protection

- 6. Prior to the endorsement of plans, a Tree Protection Management Plan (TPMP) must be submitted to the satisfaction of the Responsible Authority. The TMP must be prepared by a suitably qualified Arborist and make specific recommendations in accordance with the Australian Standard AS4970: 2009 - Protection of Trees on Development Sites to ensure that the retained on-site trees (Tree No. 1, 2, 3, 4, 7 and 34 (as per the Arborist Report dated 21 May 2024) and the trees located within 3 metres of the site on adjacent properties, including the council reserve at the rear of the site, remain healthy and viable during construction. The TMP must include the following to the satisfaction of the Responsible Authority:
 - a) A tree protection plan to scale that shows:
 - i. All Tree Protection Zones and Structural Root Zones
 - ii. All Tree Protection Fencing
 - iii. Areas where ground protection systems will be used
 - iv. The type of footings within any Tree Protection Zone
 - v. The location of services within any Tree Protection Zone
 - b) The location and design of Tree Protection Fencing.
 - c) Details of appropriate footings within the Tree Protection Zone.
 - d) The method of installing any services through the Tree Protection Zone.

- e) Details of how the root zone within the Tree Protection Zone will be managed throughout the project.
- f) A timetable outlining works requiring supervision by the Project Arborist.
- g) The results of any exploratory trenching where there is encroachment (construction or excavation) greater than 10 per cent into the Tree Protection Zone (in accordance with Australian Standard AS4970:2009 - Protection of Trees on Development Sites) of any tree to be retained. This must include photographic evidence of any trenching/ excavation undertaken.
- h) All remedial pruning works that are required to be performed on the tree during the development of the site. The pruning comments must reference Australian Standards 4373:2007, Pruning of Amenity Trees and a detailed photographic diagram specifying what pruning will occur. All tree pruning works must:
 - i. Be undertaken by a minimum AQF Level 3 Qualified Arborist to Australian Standard AS 4373-2007 '*Pruning of amenity trees*'
 - ii. Be conducted as per the pruning works recommended and shown within the arborist report (dated 21 May 2024).

When submitted and approved to the satisfaction of the Responsible Authority, the TMP will be endorsed to form part of this permit. The recommendations of the endorsed TMP must be implemented to the satisfaction of the Responsible Authority.

Arborist report

- 7. The Arborist Report (prepared by Galbraith and Associates, dated 21 May 2024) to be endorsed as part of this permit and the recommendations and requirements and tree protection measures of the Arborist Report must be implemented and complied with to the satisfaction of the Responsible Authority.

Tree Removal

- 8. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, the owner must pay Council the amenity value, removal, replacement and establishment costs in accordance with the Merri-bek Urban Forest Strategy 2017 for each street tree removed or damaged through the building works, to the satisfaction of the Responsible Authority.

Heritage

- 9. Prior to the commencement of the development a comprehensive photographic record is to be made of the cool room. The record is to be undertaken and documented according to the Heritage Victoria technical note for Photographic Recording for Heritage Places and Objects. The submitted material is to include:
 - a) Archival quality disc/s of all images in high resolution JPG format as well as either TIFF or RAW format,
 - b) A brief descriptive catalogue of all images,
 - c) A photographic plan (such as existing conditions plans provided by the architect) showing the view points of all images,
 - d) Referenced contact sheets and referenced printed black and white images of selected viewpoints printed on proper archival quality photographic paper.

All contained in appropriately labelled archival folders or boxes and all to the satisfaction of the Responsible Authority. The record is to be lodged with the Responsible Authority and approved prior to commencement of development.

10. Prior to the endorsement of plans a detailed set of plans must be submitted to and approved by the Responsible Authority showing the reconstruction of the cool room to its original heritage specifications.
11. All reconstruction works referred to in Condition 10 must be undertaken under the supervision of an expert heritage consultant.
12. Prior to the occupation of the development hereby approved, a report from a suitably qualified heritage consultant must be submitted to the satisfaction of the Responsible Authority confirming that the reconstruction works referred to in condition 10 and the repair, conservation and interpretation works to the cool room have been satisfactorily completed to the original design, specification and standards of the original building.

Environmentally Sustainable Design (ESD)

13. Prior to the endorsement of plans, an amended Sustainable Design Assessment (SDA) and plans must be submitted to the satisfaction by the Responsible Authority. The SDA must demonstrate a best practice standard of environmentally sustainable design and be generally in accordance with the SDA prepared by Low Impact Consulting, advertised 24 July 2024 but modified to include the following changes:

- a) Show the following ESD initiatives on the development plans:
 - i. Annotate '250m2 of permeable paving' on the landscape plan.
 - ii. A floor waste to each balcony, terrace, and courtyard.

Where alternative ESD initiatives are proposed to those specified in the conditions above, the Responsible Authority may vary the requirements of this condition at its discretion, subject to the development achieving equivalent (or greater) ESD outcomes in association with the development.

When submitted and approved to the satisfaction of the Responsible Authority, the Sustainable Design Assessment and associated notated plans will be endorsed to form part of this permit. No alterations to the plan may occur without the written consent of the Responsible Authority.

14. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, all works must be undertaken in accordance with the endorsed Sustainable Design Assessment (including any BESS and STORM reports) to the satisfaction of the Responsible Authority.
15. Prior to the issuing of a Certificate of Occupancy or Statement of Compliance, whichever comes first, of any dwelling approved under this permit, a report/checklist must be submitted to the Responsible Authority. The report/checklist must be to the satisfaction of the Responsible Authority and must confirm (with suitable evidence) that measures specified in the endorsed Sustainable Design Assessment have been implemented in accordance with the approved plans.
16. All stormwater treatment devices (e.g, raingardens, rainwater tanks etc.) must be maintained, to ensure water quality discharged from the site complies with the performance standard in the endorsed Sustainable Design Assessment.

Waste Management Plan

17. The Waste Management Plan (prepared by Low Impact Development Consulting, dated 8 November 2023) to be endorsed as part of this permit.
18. The Waste Management Plan approved under this permit must be implemented and complied with at all times to the satisfaction of the Responsible Authority unless with the further written approval of the Responsible Authority.

Residential reticulated gas service connection

19. Any new dwelling allowed by this permit must not be connected to a reticulated gas service (within the meaning of clause 53.03 of the relevant planning scheme). This condition continues to have force and effect after the development authorised by this permit has been completed.

Car Parking and Vehicle Access

20. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, a vehicle crossing must be constructed in every location shown on the endorsed plans to a standard satisfactory to the Responsible Authority (Merri-bek City Council, City Infrastructure Department).
21. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, any existing vehicle crossing not to be used in this use or development must be removed and the kerb and channel, footpath and nature strip reinstated to the satisfaction of the Responsible Authority (Merri-bek City Council, City Infrastructure Department).
22. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, any Council or service authority pole or pit within 1 metre of a proposed vehicle crossing must be relocated or modified at the expense of the permit holder to the satisfaction of the Responsible Authority and the relevant service authority.
23. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, the garage roller doors must be automatic and remote controlled.

Undergrounding cables

24. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, all telecommunications and power connections (where by means of a cable) and associated infrastructure to the land must be underground to the satisfaction of the Responsible Authority.

Stormwater

25. All stormwater from the land, where it is not collected in rainwater tanks for re-use, must be collected by an underground pipe drain approved by and to the satisfaction of the Responsible Authority (Note: Please contact Merri-bek City Council, City Infrastructure Department).
26. Legal point of discharge should not be directed to the rear public open space to the satisfaction of the Responsible Authority.

General Amenity

27. Unless with the prior written consent of the Responsible Authority, any plumbing pipe, ducting and plant equipment must be concealed from external views. This does not include external guttering or associated rainwater down pipes.
28. All external lighting, other than balcony lighting, must be no higher than 1.2 metres above ground level with automatic or sensor-controlled lighting installed and maintained on the land to illuminate pedestrian access between dusk and dawn with no direct light emitted onto adjoining property to the satisfaction of the Responsible Authority.
29. Lighting on each balcony must be designed to not emit light direct onto adjoining property to the satisfaction of the Responsible Authority.
30. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, all visual screening measures shown on the endorsed plans must be installed to the satisfaction of the Responsible Authority. All visual screening and measures to prevent overlooking must be maintained to the satisfaction of the

Responsible Authority. Any screening measure that is removed or unsatisfactorily maintained must be replaced to the satisfaction of the Responsible Authority.

Melbourne Water conditions

31. Finished floor levels of the dwellings must be constructed no lower than 35.35 metres to Australian Height Datum (AHD).
32. Finished floor levels of the garages must be constructed no lower than 34.75 metres to AHD.
33. The building setbacks shown to site boundaries must not be further reduced without the further review and written approval by Melbourne Water, to ensure adequate open space areas to allow for the passage of overland flood flow.
34. Imported fill must be kept to a minimum on the property and must only be used for the sub floor areas of the dwellings, garages and driveway ramps.
35. Any new fence/gate must be open style (minimum 50 per cent open) of construction or timber paling to allow for the conveyance of overland flow.
36. The open space areas within the property including the driveway must be maintained at natural surface levels.
37. All proposed decking, alfresco and/or stairs must be constructed with unenclosed foundations, remain open underneath for the life of the structure and steps contain no vertical risers, for the passage of overland flows.
38. Prior to the commencement of the development, a Cut and Fill Balance Plan to the satisfaction of Melbourne Water and the Responsible Authority must be submitted to and approved by Melbourne Water and the Responsible Authority. The Cut and Fill Balance Plan must include volume calculations for cut and fill demonstrating that earthworks achieve a volume of cutting within the floodplain that is equivalent to or greater than the volume of filling. When approved the Cut and Fill Balance Plan will form part of the permit. All earthworks must be carried out in accordance with the Cut and All Balance Plan to the satisfaction of Melbourne Water and the Responsible Authority.
39. Prior to the commencement of the development, a detailed landscape plan and arborist report must be submitted to and approved by Melbourne Water. The landscaping must protect and enhance the natural and visual character of the waterway corridor and use locally appropriate indigenous species (EVC SS — Plains Grassy Woodland). The plan and report must be prepared by a suitably qualified professional and must include:
 - a) A survey (including botanical names) of all existing vegetation to be retained and/or removed;
 - b) Buildings and trees (including botanical names) on neighbouring properties within three metres of the boundary;
 - c) A planting schedule of all proposed trees, shrubs and ground covers, plant quantities, planting density, planting zones/locations and any landscape treatments proposed.

Permit Expiry

40. This permit will expire if one of the following circumstances applies:
 - a) the development is not commenced within two (2) years from the date of issue of this permit;
 - b) the development is not completed within four (4) years from the date of issue of this permit.

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

- within six months after the permit expires to extend the commencement date.
- within 12 months after the permit expires to extend the completion date of the development if the development has lawfully commenced.

Notes: *These notes are for information only and do not constitute part of this permit or conditions of this permit.*

Note 1: This permit does not authorise the removal of, damage to or pruning of any Council tree. Further written consent must be obtained from Council's Open Space Unit. The Open Space Unit can be contacted on 8311 4300.

Note 2: Should Council impose car parking restrictions in this street, the owners and/or occupiers of the land would generally not be eligible for residential or visitor parking permits to allow for on street parking. See Council's website for more information:

<https://www.Merri-bek.vic.gov.au/living-in-Merri-bek/parking-and-roads/parking-permits-and-fines/residential-parking-permits/>

Note 3: A Cultural Heritage Management Plan has been approved in relation to the permitted high impact activity on the land in accordance with the requirements of the *Aboriginal Heritage Act 2006*. Activity on the land must comply with the approved Cultural Heritage Management Plan. The *Aboriginal Heritage Act 2006* details offences and penalties that apply when a person knowingly does an act that harms or is likely to harm Aboriginal cultural heritage which is not in accordance with an approved cultural heritage management plan or other listed exemptions. Aboriginal cultural heritage is defined as Aboriginal places, Aboriginal objects, and Aboriginal human remains.

Note 4: Further approvals are required from Council's City Infrastructure Department who can be contacted on 8311 4300 for any works beyond the boundaries of the property. Planting and other vegetative works proposed on road reserves can be discussed with Council's Open Space Unit on 8311 4300.

Note 5: Merri-bek City Council is committed to increasing the amount of affordable housing in the municipality. One way to do this, is through Homes for Homes, a social enterprise founded by the Big Issue that aims to raise new funds via voluntary tax-deductible donations on property transactions and invest those funds in building and managing new social and affordable dwellings. If you would like to help build homes for those in need, visit [Homes for Homes](#) and register your commitment to donate 0.1 per cent of the sale price of your dwelling(s).

Note 5: Council allocates new street addressing to the street that the frontage/main access faces. Should a development abut a suburb boundary, the street addressing will reflect the suburb of that street. In some instances a suburb boundary realignment may be required, should the land be at the suburb boundary.

Resolution

Cr Bolton moved, Cr Riley seconded -

That a Notice of Decision to Grant a Planning Permit No. MPS/2023/777 be issued for the partial demolition including alterations and additions to the existing dwelling, demolition of existing outbuildings and reconstruction of one outbuilding, construction of six dwellings, reduction to the car parking requirement and removal of vegetation at 38 Harrison Street, Brunswick East, subject to the following conditions:

Amended Plans

- 1. Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and must be generally in accordance with the plans advertised on 24 July 2024 but modified to show:**
 - a) The cool room outbuilding:**
 - i. Setback maximised from the existing dwelling and the street;**
 - ii. Detached from the dwelling's deck;**
 - iii. Appropriately screened from the street with planting or by other means.**
 - b) The south elevation associated with the three storey townhouses, improved through further articulation, such as introducing an alternative material(s) to break up the singular material.**
 - c) Two resident bicycle parking spaces provided to each new dwelling.**
 - d) The bicycle parking located outside of the 3.5 metre wide minimum garage dimension.**
 - e) At least 20 per cent of the bicycle parking devices designed to provide ground level horizontal (i.e. 1800mm long) bike parking devices in accordance with the Australian Standard for Bicycle Parking (AS2890.3).**
 - f) The garage dimensions of each dwelling at least 6 metres long and 3.5 metres wide in accordance with Clause 52.06-9 of the Merri-bek Planning Scheme.**
 - g) The garage doors of each dwelling dimensioned at least 3 metres wide.**
 - h) The paved area for the car parking space of Dwelling 6 with minimum dimensions of 5.4 metres long and 3 metres wide.**
 - i) The distance from each garage to the western edge of the north-south accessway dimensioned.**
 - j) The length and width of the turn-around paved area at the southern edge of the existing dwelling dimensioned.**
 - k) The east-west accessway from Harrison Street dimensioned at least 3 metres wide.**
 - l) The details of the permeable accessway as specified in the Arborist Report (dated 21 May 2024) shown/annotated on the plans.**
 - m) The extent of the driveway and parking area of the existing dwelling depicted and dimensioned on the plans.**
 - n) The rear boundary fencing shown on the elevations at a scale of 1:50 and modified to the following specifications:**
 - i. Be an open style (minimum 50 per cent open) of construction or timber paling to allow for the conveyance of overland flow.**
 - ii. Be of black palisade.**
 - iii. Be a maximum height of 1.4 metres high.**
 - o) A notation on the plans to confirm that the proposed landscaped buffer along the eastern boundary will provide internal soil dimensions of at least 1.1 metres wide.**

- p) Any changes to the layout and elevation plans, arising from the re-construction plan (cool room) in accordance with condition 10 of this permit.
- q) The location of a small permanent plaque to be incorporated into the relocated Cool Room to record the date of its reconstruction.
- r) Any changes to the plans arising from the Landscape Plan in accordance with Condition 3 of this permit.
- s) Tree Protection Zones of Tree Nos. 1, 2, 3, 4, 7 and 34 (as per the Arborist Report dated 21 May 2024) and any trees located within 3 metres of the site on adjacent properties, including the Council reserve at the rear of the site.
- t) The Environmentally Sustainable Design initiatives that are required to be shown on plans, as contained within Condition 13 of this permit.
- u) Any practical changes as required by Conditions 31 to 39 (Melbourne Water) of this permit.
- v) The garden bed of the landscaping strip along the rear (eastern) boundary increased to a minimum width of between 1.5 to 1.8 metres to allow more landscaping to shield the building structures from Merri Creek enviros.

Compliance with Endorsed Plans

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

Landscaping

3. Prior to the endorsement of plans, an amended landscape plan must be submitted to the Responsible Authority. The landscape plan must be generally in accordance with the plan prepared by John Patrick Landscape Architects, Revision B dated 25/06/2024 but amended to show:
 - a) Any changes required to align with the plans for endorsement.
 - b) The Silver Banksia (*Banksia marginata*) tree replaced with one of the other indigenous tree species listed in the Plant Schedule.
 - c) The Boston Ivy (*Parthenocissus tricuspidata*) climber replaced with a climber that does not pose environmental weed risks, e.g. Purple Coral Pea (*Hardenbergia violacea*).
 - d) The Karkalla (*Carpobrotus rossii*) groundcover replaced with a local form of the closely related Inland Pigface (*Carpobrotus modestus*).
 - e) All shrub species in the landscape buffer between the townhouses and the eastern boundary to be indigenous.
 - f) A notation specifying that all indigenous species to be of local provenance stock from a reputable supplier of local indigenous species.
 - g) Strategies for the retainment of vegetation (i.e. barriers and signage during the construction process) consistent with any conditions of this permit.
 - h) A schedule of all proposed trees, shrubs and ground covers, including numbers/quantities, location, size at planting, size at maturity, botanical names and common names.

- i) Notes and diagrams detailing the establishment and maintenance of all proposed trees, shrubs and ground covers.
- j) An irrigation plan with a notation on the landscape and irrigation maintenance schedule to ensure all plants are established and remain healthy with details of the water source and irrigation controller.
- k) Any requirement of Melbourne Water in accordance with condition 39 of this planning permit.

When submitted and approved to the satisfaction of the Responsible Authority, the landscape plan will be endorsed to form part of this permit. No alterations to the plan may occur without the written consent of the Responsible Authority.

- 4. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, all landscaping works, including installation of automatic irrigation, must be completed in accordance with the endorsed landscape plan to the satisfaction of the Responsible Authority.
- 5. All landscaping must be maintained to the satisfaction of the Responsible Authority in accordance with the endorsed landscape plans. Any dead, diseased or damaged plants must be replaced with a suitable species to the satisfaction of the Responsible Authority.

Tree Protection

- 6. Prior to the endorsement of plans, a Tree Protection Management Plan (TPMP) must be submitted to the satisfaction of the Responsible Authority. The TMP must be prepared by a suitably qualified Arborist and make specific recommendations in accordance with the Australian Standard AS4970: 2009 - Protection of Trees on Development Sites to ensure that the retained on-site trees (Tree No. 1, 2, 3, 4, 7 and 34 (as per the Arborist Report dated 21 May 2024) and the trees located within 3 metres of the site on adjacent properties, including the council reserve at the rear of the site, remain healthy and viable during construction. The TMP must include the following to the satisfaction of the Responsible Authority:
 - a) A tree protection plan to scale that shows:
 - i. All Tree Protection Zones and Structural Root Zones
 - ii. All Tree Protection Fencing
 - iii. Areas where ground protection systems will be used
 - iv. The type of footings within any Tree Protection Zone
 - v. The location of services within any Tree Protection Zone
 - b) The location and design of Tree Protection Fencing.
 - c) Details of appropriate footings within the Tree Protection Zone.
 - d) The method of installing any services through the Tree Protection Zone.
 - e) Details of how the root zone within the Tree Protection Zone will be managed throughout the project.
 - f) A timetable outlining works requiring supervision by the Project Arborist.

- g) The results of any exploratory trenching where there is encroachment (construction or excavation) greater than 10 per cent into the Tree Protection Zone (in accordance with Australian Standard AS4970:2009 - Protection of Trees on Development Sites) of any tree to be retained. This must include photographic evidence of any trenching/ excavation undertaken.
 - h) All remedial pruning works that are required to be performed on the tree during the development of the site. The pruning comments must reference Australian Standards 4373:2007, Pruning of Amenity Trees and a detailed photographic diagram specifying what pruning will occur. All tree pruning works must:
 - i. Be undertaken by a minimum AQF Level 3 Qualified Arborist to Australian Standard AS 4373-2007 'Pruning of amenity trees'
 - ii. Be conducted as per the pruning works recommended and shown within the arborist report (dated 21 May 2024).
 - i) The installation of surface treatments and procedures for works within the Tree Protection Zone of Tree 4 (Moreton Bay Fig) which must be overseen by a Consulting Arborist.
- When submitted and approved to the satisfaction of the Responsible Authority, the TMP will be endorsed to form part of this permit. The recommendations of the endorsed TMP must be implemented to the satisfaction of the Responsible Authority.

Arborist report

- 7. The Arborist Report (prepared by Galbraith and Associates, dated 21 May 2024) to be endorsed as part of this permit and the recommendations and requirements and tree protection measures of the Arborist Report must be implemented and complied with to the satisfaction of the Responsible Authority.

Tree Removal

- 8. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, the owner must pay Council the amenity value, removal, replacement and establishment costs in accordance with the Merri-bek Urban Forest Strategy 2017 for each street tree removed or damaged through the building works, to the satisfaction of the Responsible Authority.

Heritage

- 9. Prior to the commencement of the development a comprehensive photographic record is to be made of the cool room. The record is to be undertaken and documented according to the Heritage Victoria technical note for Photographic Recording for Heritage Places and Objects. The submitted material is to include:
 - a) Archival quality disc/s of all images in high resolution JPG format as well as either TIFF or RAW format,
 - b) A brief descriptive catalogue of all images,
 - c) A photographic plan (such as existing conditions plans provided by the architect) showing the view points of all images,
 - d) Referenced contact sheets and referenced printed black and white images of selected viewpoints printed on proper archival quality photographic paper.

All contained in appropriately labelled archival folders or boxes and all to the satisfaction of the Responsible Authority. The record is to be lodged with the Responsible Authority and approved prior to commencement of development.

10. Prior to the endorsement of plans a detailed set of plans must be submitted to and approved by the Responsible Authority showing the reconstruction of the cool room to its original heritage specifications.
11. All reconstruction works referred to in Condition 10 must be undertaken under the supervision of an expert heritage consultant.
12. Prior to the occupation of the development hereby approved, a report from a suitably qualified heritage consultant must be submitted to the satisfaction of the Responsible Authority confirming that the reconstruction works referred to in condition 10 and the repair, conservation and interpretation works to the cool room have been satisfactorily completed to the original design, specification and standards of the original building.

Environmentally Sustainable Design (ESD)

13. Prior to the endorsement of plans, an amended Sustainable Design Assessment (SDA) and plans must be submitted to the satisfaction by the Responsible Authority. The SDA must demonstrate a best practice standard of environmentally sustainable design and be generally in accordance with the SDA prepared by Low Impact Consulting, advertised 24 July 2024 but modified to include the following changes:

- a) Show the following ESD initiatives on the development plans:
 - i. Annotate '250m2 of permeable paving' on the landscape plan.
 - ii. A floor waste to each balcony, terrace, and courtyard.

Where alternative ESD initiatives are proposed to those specified in the conditions above, the Responsible Authority may vary the requirements of this condition at its discretion, subject to the development achieving equivalent (or greater) ESD outcomes in association with the development.

When submitted and approved to the satisfaction of the Responsible Authority, the Sustainable Design Assessment and associated notated plans will be endorsed to form part of this permit. No alterations to the plan may occur without the written consent of the Responsible Authority.

14. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, all works must be undertaken in accordance with the endorsed Sustainable Design Assessment (including any BESS and STORM reports) to the satisfaction of the Responsible Authority.
15. Prior to the issuing of a Certificate of Occupancy or Statement of Compliance, whichever comes first, of any dwelling approved under this permit, a report/checklist must be submitted to the Responsible Authority. The report/checklist must be to the satisfaction of the Responsible Authority and must confirm (with suitable evidence) that measures specified in the endorsed Sustainable Design Assessment have been implemented in accordance with the approved plans.
16. All stormwater treatment devices (e.g, raingardens, rainwater tanks etc.) must be maintained, to ensure water quality discharged from the site complies with the performance standard in the endorsed Sustainable Design Assessment.

Waste Management Plan

17. The Waste Management Plan (prepared by Low Impact Development Consulting, dated 8 November 2023) to be endorsed as part of this permit.

18. The Waste Management Plan approved under this permit must be implemented and complied with at all times to the satisfaction of the Responsible Authority unless with the further written approval of the Responsible Authority.

Residential reticulated gas service connection

19. Any new dwelling allowed by this permit must not be connected to a reticulated gas service (within the meaning of clause 53.03 of the relevant planning scheme). This condition continues to have force and effect after the development authorised by this permit has been completed.

Car Parking and Vehicle Access

20. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, a vehicle crossing must be constructed in every location shown on the endorsed plans to a standard satisfactory to the Responsible Authority (Merri-bek City Council, City Infrastructure Department).
21. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, any existing vehicle crossing not to be used in this use or development must be removed and the kerb and channel, footpath and nature strip reinstated to the satisfaction of the Responsible Authority (Merri-bek City Council, City Infrastructure Department).
22. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, any Council or service authority pole or pit within 1 metre of a proposed vehicle crossing must be relocated or modified at the expense of the permit holder to the satisfaction of the Responsible Authority and the relevant service authority.
23. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, the garage roller doors must be automatic and remote controlled.

Undergrounding cables

24. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, all telecommunications and power connections (where by means of a cable) and associated infrastructure to the land must be underground to the satisfaction of the Responsible Authority.

Stormwater

25. All stormwater from the land, where it is not collected in rainwater tanks for re-use, must be collected by an underground pipe drain approved by and to the satisfaction of the Responsible Authority (Note: Please contact Merri-bek City Council, City Infrastructure Department).
26. Legal point of discharge should not be directed to the rear public open space to the satisfaction of the Responsible Authority.

General Amenity

27. Unless with the prior written consent of the Responsible Authority, any plumbing pipe, ducting and plant equipment must be concealed from external views. This does not include external guttering or associated rainwater down pipes.
28. All external lighting, other than balcony lighting, must be no higher than 1.2 metres above ground level with automatic or sensor-controlled lighting installed and maintained on the land to illuminate pedestrian access between dusk and dawn with no direct light emitted onto adjoining property to the satisfaction of the Responsible Authority.

29. Lighting on each balcony must be designed to not emit light direct onto adjoining property to the satisfaction of the Responsible Authority.
30. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, all visual screening measures shown on the endorsed plans must be installed to the satisfaction of the Responsible Authority. All visual screening and measures to prevent overlooking must be maintained to the satisfaction of the Responsible Authority. Any screening measure that is removed or unsatisfactorily maintained must be replaced to the satisfaction of the Responsible Authority.

Melbourne Water conditions

31. Finished floor levels of the dwellings must be constructed no lower than 35.35 metres to Australian Height Datum (AHD).
32. Finished floor levels of the garages must be constructed no lower than 34.75 metres to AHD.
33. The building setbacks shown to site boundaries must not be further reduced without the further review and written approval by Melbourne Water, to ensure adequate open space areas to allow for the passage of overland flood flow.
34. Imported fill must be kept to a minimum on the property and must only be used for the sub floor areas of the dwellings, garages and driveway ramps.
35. Any new fence/gate must be open style (minimum 50 per cent open) of construction or timber paling to allow for the conveyance of overland flow.
36. The open space areas within the property including the driveway must be maintained at natural surface levels.
37. All proposed decking, alfresco and/or stairs must be constructed with unenclosed foundations, remain open underneath for the life of the structure and steps contain no vertical risers, for the passage of overland flows.
38. Prior to the commencement of the development, a Cut and Fill Balance Plan to the satisfaction of Melbourne Water and the Responsible Authority must be submitted to and approved by Melbourne Water and the Responsible Authority. The Cut and Fill Balance Plan must include volume calculations for cut and fill demonstrating that earthworks achieve a volume of cutting within the floodplain that is equivalent to or greater than the volume of filling. When approved the Cut and Fill Balance Plan will form part of the permit. All earthworks must be carried out in accordance with the Cut and All Balance Plan to the satisfaction of Melbourne Water and the Responsible Authority.
39. Prior to the commencement of the development, a detailed landscape plan and arborist report must be submitted to and approved by Melbourne Water. The landscaping must protect and enhance the natural and visual character of the waterway corridor and use locally appropriate indigenous species (EVC SS — Plains Grassy Woodland). The plan and report must be prepared by a suitably qualified professional and must include:
 - a) A survey (including botanical names) of all existing vegetation to be retained and/or removed;
 - b) Buildings and trees (including botanical names) on neighbouring properties within three metres of the boundary;
 - c) A planting schedule of all proposed trees, shrubs and ground covers, plant quantities, planting density, planting zones/locations and any landscape treatments proposed.

Permit Expiry

40. This permit will expire if one of the following circumstances applies:

- a) the development is not commenced within two (2) years from the date of issue of this permit;**
- b) the development is not completed within four (4) years from the date of issue of this permit.**

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

- within six months after the permit expires to extend the commencement date.**
- within 12 months after the permit expires to extend the completion date of the development if the development has lawfully commenced.**

Notes: These notes are for information only and do not constitute part of this permit or conditions of this permit.

Note 1: This permit does not authorise the removal of, damage to or pruning of any Council tree. Further written consent must be obtained from Council's Open Space Unit. The Open Space Unit can be contacted on 8311 4300.

Note 2: Should Council impose car parking restrictions in this street, the owners and/or occupiers of the land would generally not be eligible for residential or visitor parking permits to allow for on street parking. See Council's website for more information:

<https://www.Merri-bek.vic.gov.au/living-in-Merri-bek/parking-and-roads/parking-permits-and-fines/residential-parking-permits/>

Note 3: A Cultural Heritage Management Plan has been approved in relation to the permitted high impact activity on the land in accordance with the requirements of the Aboriginal Heritage Act 2006. Activity on the land must comply with the approved Cultural Heritage Management Plan. The Aboriginal Heritage Act 2006 details offences and penalties that apply when a person knowingly does an act that harms or is likely to harm Aboriginal cultural heritage which is not in accordance with an approved cultural heritage management plan or other listed exemptions. Aboriginal cultural heritage is defined as Aboriginal places, Aboriginal objects, and Aboriginal human remains.

Note 4: Further approvals are required from Council's City Infrastructure Department who can be contacted on 8311 4300 for any works beyond the boundaries of the property. Planting and other vegetative works proposed on road reserves can be discussed with Council's Open Space Unit on 8311 4300.

Note 5: Merri-bek City Council is committed to increasing the amount of affordable housing in the municipality. One way to do this, is through Homes for Homes, a social enterprise founded by the Big Issue that aims to raise new funds via voluntary tax-deductible donations on property transactions and invest those funds in building and managing new social and affordable dwellings. If you would like to help build homes for those in need, visit [Homes for Homes](#) and register your commitment to donate 0.1 per cent of the sale price of your dwelling(s).

Note 5: Council allocates new street addressing to the street that the frontage/main access faces. Should a development abut a suburb boundary, the street addressing will reflect the suburb of that street. In some instances a suburb boundary realignment may be required, should the land be at the suburb boundary.

Carried unanimously

5.3 101 EVANS STREET, BRUNSWICK - PLANNING APPLICATION MPS/2023/262

Caretaker Statement

The recommended decision is not a decision prohibited by the Act and is a decision that falls within the guidance of the Election Period Policy.

Executive Summary



Property:	101 Evans Street, BRUNSWICK		
Proposal:	Use of land for indoor recreation and a place of assembly, and a reduction to car parking requirement		
Zoning and Overlay/s:	<ul style="list-style-type: none"> Mixed Use Zone – Schedule 1 Parking Overlay Environmental Audit Overlay Design and Development Overlay – Schedule 19 Development Contributions Plan Overlay 		
Strategic setting:	Transition-Residential Area	Emploment Area	Core Industry Employment Area
Objections:	<ul style="list-style-type: none"> Key issues: <ul style="list-style-type: none"> Noise impacts Car parking and traffic 		
Planning Information and Discussion (PID) Meeting:	<ul style="list-style-type: none"> Held on 10 September 2024 Attendees: 2 objectors, the applicant, 2 Council officers and Cr Harte No changes were agreed, however the meeting provided an opportunity for the objectors' concerns to be discussed and helped inform the preparation of this report. 		
Key reasons for support	<ul style="list-style-type: none"> Site well is located with good access to public transport Noise impacts to be mitigated through conditions of the permit Appropriate re-use of an existing commercial building in an Activity Centre 		
Recommendation:	Notice of Decision to Grant a Planning Permit be issued for the proposal.		

Officer Recommendation

That a Notice of Decision to Grant a Planning Permit No. MPS/2023/262 be issued for the use of the land for indoor recreation and a place of assembly (excluding an amusement parlour, carnival, circus, nightclub, restricted place of assembly or function centre), and a reduction to car parking requirement at 101 Evans Street, Brunswick, subject to the following conditions:

Amended Plans

1. By no later than six months from the date of issue of this permit (unless otherwise agreed in writing by the Responsible Authority), amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and must be generally in accordance with the plans advertised 2 November 2023 but modified to show:
 - a) Notation confirming the speaker system in each studio room will be fitted with a decibel level meter, located in accordance with the requirements of the endorsed Acoustic Report required by Condition 8 of this permit, and to operate in accordance Conditions 15 and 16 of this permit.
 - b) The two car parking spaces provided on-site dimensioned in accordance with Clause 52.06-9 of the Merri-bek Planning Scheme.
 - c) A minimum of eight of the total bicycle parking racks spaced 1 metre apart commencing 1 metre from the building, with each space 700mm wide and 1800mm long and accessed from a 1500mm wide access aisle as required by the Australian Standard for Parking Facilities – Bicycle Parking (AS2890.3).
 - d) Any changes or annotations to ensure compliance with the:
 - i. Acoustic Report required by Condition 8 of this permit.
 - ii. Venue and Patron Management Plan required by Condition 17 of this permit.
 - iii. Waste Management Plan required by Condition 20 of this permit.

Compliance with Endorsed Plans

2. The use of land as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority. This does not apply to any exemption specified in Clauses 62.01 of the Merri-bek Planning Scheme unless specifically noted as a permit condition.
3. Within 60 days of the endorsement of plans and documents, the use must operate in accordance with all conditions and all required buildings and works, must be completed, unless otherwise agreed in writing by the Responsible Authority.
4. This permit will operate from the issued date of this permit.

Use

5. The land must not, at any time, be used for any purpose other than that described in the endorsed Venue Patron Management Plan.

Hours of Operation

6. The use allowed by this permit must operate only between the following hours;
 - a) Monday to Thursday and Sundays 7:00 a.m. to 8:00 p.m.
 - b) Friday and Saturday 7:00 a.m. to 10:00 p.m.

Maximum Number of Patrons

7. The maximum number of patrons permitted on the premises must not exceed 40.

Noise

8. Prior to the endorsement of plans, the Acoustic Report prepared by Scientific Services and dated 29 March 2023 must be submitted to the satisfaction of the Responsible Authority. When submitted and approved to the satisfaction of the Responsible Authority, the Acoustic Report will be endorsed to form part of this permit. Once approved, the Acoustic Report must not be altered unless with the prior written consent of the Responsible Authority.

9. At all times, the use must operate in accordance with the provisions, recommendations and requirements of the endorsed Acoustic Report.
10. All doors and windows must remain closed while recorded music is played at the premises, except for the access and egress of patrons and staff.
11. Subwoofer speakers must not be used in conjunction with the uses hereby approved.
12. By no later than three months from the date of issue of this permit, and to the satisfaction of the Responsible Authority, a sound level meter must be installed and subsequently maintained at all times, in each studio room to ensure operators manage sound emissions.
13. Except with the prior written consent of the Responsible Authority, the maximum sound pressure level at which music is to be played in each of the ground-floor and first-floor studios is:
 - a) Ground-floor studio (Agora Room): 83dB(A)_{L_{eq}}
 - a) First-floor studio (Amazon Room): 79dB(A)_{L_{eq}}

Any time that both rooms are to operating simultaneously, the maximum sound pressure level in the ground-floor studio (Agora Room) must not exceed 81dB(A)_{L_{eq}}.
14. By no later than three months from the date of the issue of this permit, a Post Commencement Acoustic Report is to be submitted to the Responsible Authority. The report must detail the following matters to the satisfaction of the Responsible Authority:
 - a) Confirmation that all of the recommendations of the endorsed Acoustic Report have been implemented;
 - b) Further testing that has occurred to ascertain whether the use complies with:
 - i. The maximum noise levels prescribed by the Environment Protection Regulations under the *Environment Protection Act 2017* and the incorporated Noise Protocol (Publication 1826.2, Noise Limit and Assessment Protocol for the Control of Noise from Commercial, Industrial and Trade Premises and Entertainment Venues, Environmental Protection authority, March 2021) or any other superseding regulation; and
 - ii. Any patron noise levels as specified in the endorsed acoustic report;
 - c) If non-compliance is measured, recommendations for additional acoustic measures to ensure compliance with the endorsed Acoustic Report.
 - d) Confirmation that all acoustic testing has been carried out during a busy period (e.g. a class with music) by a suitably qualified acoustic engineer.

Once submitted to and approved by the Responsible Authority, the report will be endorsed to form part of the permit. The report must not be altered without the prior written consent of the Responsible Authority.
15. The provisions, recommendations and requirements of the endorsed Post Commencement Acoustic Report must be implemented and complied with to the satisfaction of the Responsible Authority within three (3) months of endorsement of that report, or as otherwise agreed in writing by the Responsible Authority. During the time any additional acoustic measures are being implemented, no operations which would cause non-compliance with the noise levels in the endorsed Acoustic Report are to take place.

16. Noise levels associated with the use must at all times comply with the Environment Protection Regulations under the *Environment Protection Act 2017* and the incorporated Noise Protocol (Publication 1826.2, Noise Limit and Assessment Protocol for the Control of Noise from Commercial, Industrial and Trade Premises and Entertainment Venues, Environmental Protection authority, March 2021), or any other superseding regulation.

Should the Responsible Authority deem it necessary (with just cause), the owner and/or occupier of the land must submit an Updated Acoustic Report to the satisfaction of the Responsible Authority which demonstrates compliance, or which outlines any measures considered necessary to achieve compliance.

The recommendations of the Updated Acoustic Report must be implemented no later than three (3) months after the date that the Responsible Authority advises in writing that it is satisfied with the report, or as otherwise agreed in writing by the Responsible Authority. If the Updated Acoustic Report recommends changes that need to be reflected on the endorsed plans, an application to amend the endorsed plans must be submitted to Council's satisfaction no later than three (3) months after the date that the Responsible Authority advises in writing that it is satisfied with the report, or as otherwise agreed in writing by the Responsible Authority. The endorsed plans must also be amended within three (3) months, or as otherwise agreed in writing by the Responsible Authority, to accord with the recommendations contained in the Acoustic Report to the satisfaction of the Responsible Authority.

Venue and Patron Management

17. Prior to the endorsement of plans, a Venue and Patron Management Plan must be submitted to the Responsible Authority. The plan must include, but not necessarily be limited to, the following:
- a) Confirmation the site will be used only for the purposes listed in the Moss Studios May 2024 Written Submission (advertised 9 July 2024), including:
 - i. An indoor recreation facility comprising a dance studio and classes relating to yoga, meditation and movement therapy.
 - ii. A place of assembly comprising support groups, art and crafts workshops, art therapy and reading classes.
 - b) Confirmation the site will not be used for the purposes of an amusement parlour, carnival, circus, nightclub, restricted place of assembly or function centre.
 - c) Details of how the venue will provide a space for patrons to wait between classes.
 - d) How the venue will manage patrons entering and leaving the venue before and after classes.
 - e) How the venue will manage patrons loitering in the surrounding streets after hours of operation.
 - f) Confirmation all classes are to be staggered with a 15 minute break between each class.
 - g) Confirmation of a sound level meter to be installed and maintained in each studio room and subsequent signage to inform patrons of sound decibel limits that must be adhered to.
 - h) Complaint handling processes and contact point for Council and surrounding residents.
 - i) Staff training for patron management.
 - j) Management of outdoor areas.

- k) Outdoor smoking areas.
- l) Lighting outside the premises.

Once submitted to and approved by the Responsible Authority, the Venue and Patron Management Plan will be endorsed to form part of the permit.

- 18. The Venue and Patron Management Plan endorsed under this permit must be implemented and complied with at all times, to the satisfaction of the Responsible Authority.
- 19. Unless with prior written consent of the endorsed Responsible Authority, the content of the Venue and Patron Management Plan must not be altered.

Waste Management

- 20. Prior to the endorsement of plans, a Waste Management Plan must be submitted to the satisfaction of the Responsible Authority. The plan must show:
 - a) Alignment with the plans for endorsement.
 - b) Calculations of the four main waste streams (recycled glass, general recycling; organics and garbage), size and number of bins and frequency of collection;
 - c) The bins stored out of sight and not in an enclosed room;
 - d) Whether a Council or private contractor collection service will be provided.

When submitted and approved to the satisfaction of the Responsible Authority, the WMP will be endorsed to form part of this permit. No alterations to the WMP may occur without the written consent of the Responsible Authority.

- 21. The Waste Management Plan approved under this permit must be implemented and complied with at all times to the satisfaction of the Responsible Authority unless with the further written approval of the Responsible Authority.

Site Assessment/Audit

- 22. Within six months of the issue date of this permit, a Preliminary Site Investigation must be submitted to the satisfaction of the Responsible Authority. The Responsible Authority may require the applicant to pay the cost of an independent review of the Preliminary Site Investigation by another suitably qualified environmental professional. The Preliminary Site Investigation is to be conducted by a competent professional practitioner with relevant experience in the field. The owner must comply with the findings of the site assessment to the satisfaction of the Responsible Authority. The Preliminary Site Investigation must:
 - a) Specify the name and qualifications of the person who has conducted the Report;
 - b) Provide comment on the potential for offsite contamination to have migrated to the subject land from neighbouring land. Soil sampling and analysis of the subject site may be required where access to definitive information regarding neighbouring land is not obtainable or is inconclusive;
 - c) Specify the industrial process or activity, waste or substance in respect of which the Report was conducted;
 - d) Specify the segment of the environment in respect of which the Report was conducted;
 - e) Include an evaluation of the environmental quality of the relevant segment of the environment;
 - f) Include an assessment of any clean up that is necessary, including recommendations relating to the carrying out of the clean up, and any compliance requirements to enable the land owner to ensure that the land is suitable for the proposal;

- g) Include a further recommendation to the Responsible Authority as to whether the condition of the land is such that an environmental audit statement should be conducted taking into consideration the proposed use.
23. Should the Preliminary Site Investigation required by Condition 22 of this permit recommend a Preliminary Risk Screen Assessment or an Environmental Audit Statement be conducted, the use of the site as an indoor recreation facility and place of assembly (excluding an amusement parlour, carnival, circus, nightclub, restricted place of assembly or function centre) must cease immediately, to the satisfaction of the Responsible Authority.
 24. In accordance with condition 22 of this permit, prior to the recommencement of the permitted use, the owner(s) must provide:
 - a) A preliminary risk screen assessment statement in accordance with the *Environment Protection Act 2017* stating that an environmental audit is not required for the use or, if this permit authorises the construction or carrying out of buildings or works, is not required for the use for which the buildings or works are constructed or carried out; or,
 - b) An environmental audit statement under Part 8.3 of the *Environment Protection Act* stating that the land is suitable for the use or, if this permit authorises the construction or carrying out of buildings or works, is suitable for the use for which the buildings or works are constructed or carried out; or,
 - c) An environmental audit statement under Part 8.3 of the *Environment Protection Act 2017* stating that the land is suitable for the use or, if this permit authorises the construction or carrying out of buildings or works, is suitable for the use for which the buildings or works are constructed or carried out, if the recommendations made in the statement are complied with
 25. Where an environmental audit statement is issued for the land, and any recommendation of that environmental audit statement requires any maintenance and/or monitoring of an ongoing nature, the Responsible Authority may require the Owner(s) to enter into an Agreement with the Responsible Authority pursuant to Section 173 of the *Planning and Environment Act 1987* that provides for the undertaking of the ongoing maintenance and/or monitoring as required by the environmental audit statement.
 26. Where a Section 173 Agreement is required, the Agreement must be executed prior to the commencement of the permitted use, the issue of an Occupancy Permit under the *Building Act 1993* or the issue of a Statement of Compliance under the *Subdivision Act 1988* (whichever occurs first). All expenses involved in the drafting, negotiating, lodging, registering and execution of the Agreement, including those incurred by the Responsible Authority, must be met by the Owner(s).
 27. Prior to any remediation works (if required) being undertaken in association with the environmental audit, a 'remediation works' plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The plan must detail all excavation works as well as any proposed structures such as retaining walls required to facilitate the remediation works. Only those works detailed in the approved remediation works plan are permitted to be carried out prior to the issue of an environmental audit statement.
 28. No works to construct the development hereby approved shall be carried out on the land and no building contract to construct the development hereby approved may be entered into, other than in accordance with a building contract that stipulates that works must not be commenced until such time as Conditions 24, 26, 27 and 29 are satisfied.

29. Prior to commencement of the use, the issue of an Occupancy Permit under the *Building Act 1993* or the issue of a Statement of Compliance under the *Subdivision Act 1988* (whichever occurs first), written confirmation of compliance with all the recommendations of the environmental audit statement must be provided by an environmental auditor appointed under the *Environment Protection Act 2017*, including confirming that any requirements in the environmental audit statement recommendations regarding verification of works have been complied with. All the recommendations of the environmental audit statement must be complied with to the satisfaction of the Responsible Authority.
30. Where a Preliminary Site Investigation or preliminary risk screen assessment has satisfied Condition 22 or 24 (that an environmental audit is not required), the development and use must not deviate from the assumptions or limitations contained in the preliminary risk screen assessment, including but not limited to the layout and design of the development and use of the land without the written consent of the Responsible Authority. The development and use must accord with any requirements and recommendations of the Preliminary Site Investigation or preliminary risk screen assessment to the satisfaction of the Responsible Authority.

Permit Expiry

31. This permit will expire if the use is not commenced within two years from the date of issue of this permit.

The Responsible Authority may extend the period referred to if a request is made in writing before the permit expires or within six months afterwards.

Notes: These notes are for information only and do not constitute part of this permit or conditions of this permit.

- Note 1:** It may be necessary to obtain a building permit prior to the commencement of any demolition, building works or occupation of the building. It is strongly recommended that you consult with a registered building surveyor to advise on any requirements under the Building Act, the Building Regulations and any other subordinate legislation. Further information can be sought from the Victorian Building Authority, Phone 1300 815 127 or www.vba.vic.gov.au. Council's building services branch can also assist you in the provision of this service and can be contacted on 9240 1111 or <http://www.Merri-bek.vic.gov.au/planning-building/building-renovations-and-extensions/>.
- Note 2:** This permit is for the use of the land and/or buildings and does not constitute any authority to conduct a business requiring Health Act/Food Act registration without prior approval in writing from the Responsible Authority.
- Note 3:** Further approvals are required from Council's City Infrastructure Department who can be contacted on 9240 1143 for any works beyond the boundaries of the property. Planting and other vegetative works proposed on road reserves can be discussed with Council's Open Space Unit on 8311 4300.
- Note 4:** Unless no permit is required under the Merri-bek Planning Scheme, no sign must be constructed or displayed on the land without a further planning permit.
- Note 5:** Proposals for kerbside seating are subject to a separate permit for footpath trading from Council's Amenity and Compliance Branch under Council's General Local Law.
- Note 6: Environmental Audit Notes**
- i. A copy of any Environmental Audit Statement, including the Environmental Audit Report, must be submitted to the Responsible Authority within 5 business days of issue, as set out in S210 of the *Environment Protection Act 2017*.

- ii. The person in management or control of the site must also provide a copy of any statement to any person who proposes to become the person in management or control of the site, such as a potential occupier or potential purchaser.
- iii. The land owner and all its successors in title or transferees must, upon release for private sale of any part of the land, include in the Vendor's Statement pursuant to Section 32 of the *Sale of Land Act 1962*, a copy of any Environmental Statement including a copy of any cover letter.

Resolution

Cr Riley moved, Cr Panopoulos seconded -

That a Notice of Decision to Grant a Planning Permit No. MPS/2023/262 be issued for the use of the land for indoor recreation and a place of assembly (excluding an amusement parlour, carnival, circus, nightclub, restricted place of assembly or function centre), and a reduction to car parking requirement at 101 Evans Street, Brunswick, subject to the following conditions:

Amended Plans

1. **By no later than six months from the date of issue of this permit (unless otherwise agreed in writing by the Responsible Authority), amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and must be generally in accordance with the plans advertised 2 November 2023 but modified to show:**
 - a) **Notation confirming the speaker system in each studio room will be fitted with a decibel level meter, located in accordance with the requirements of the endorsed Acoustic Report required by Condition 8 of this permit, and to operate in accordance Conditions 15 and 16 of this permit.**
 - b) **The two car parking spaces provided on-site dimensioned in accordance with Clause 52.06-9 of the Merri-bek Planning Scheme.**
 - c) **A minimum of eight of the total bicycle parking racks spaced 1 metre apart commencing 1 metre from the building, with each space 700mm wide and 1800mm long and accessed from a 1500mm wide access aisle as required by the Australian Standard for Parking Facilities – Bicycle Parking (AS2890.3).**
 - d) **Any changes or annotations to ensure compliance with the:**
 - i. **Acoustic Report required by Condition 8 of this permit.**
 - ii. **Venue and Patron Management Plan required by Condition 17 of this permit.**
 - iii. **Waste Management Plan required by Condition 20 of this permit.**

Compliance with Endorsed Plans

2. **The use of land as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority. This does not apply to any exemption specified in Clause 62.01 of the Merri-bek Planning Scheme unless specifically noted as a permit condition.**
3. **Within 60 days of the endorsement of plans and documents, the use must operate in accordance with all conditions and all required buildings and works, must be completed, unless otherwise agreed in writing by the Responsible Authority.**

4. This permit will operate from the issued date of this permit.

Use

5. The land must not, at any time, be used for any purpose other than that described in the endorsed Venue Patron Management Plan.

Hours of Operation

6. The use allowed by this permit must operate only between the following hours;
 - a) Monday to Thursday and Sundays 7:00 a.m. to 8:30 p.m.
 - b) Friday and Saturday 7:00 a.m. to 10:00 p.m.

Maximum Number of Patrons

7. The maximum number of patrons permitted on the premises must not exceed 40.

Noise

8. Prior to the endorsement of plans, the Acoustic Report prepared by Scientific Services and dated 29 March 2023 must be submitted to the satisfaction of the Responsible Authority. When submitted and approved to the satisfaction of the Responsible Authority, the Acoustic Report will be endorsed to form part of this permit. Once approved, the Acoustic Report must not be altered unless with the prior written consent of the Responsible Authority.
9. At all times, the use must operate in accordance with the provisions, recommendations and requirements of the endorsed Acoustic Report.
10. All doors and windows must remain closed while recorded music is played at the premises, except for the access and egress of patrons and staff.
11. Subwoofer speakers must not be used in conjunction with the uses hereby approved.
12. By no later than three months from the date of issue of this permit, and to the satisfaction of the Responsible Authority, a sound level meter must be installed and subsequently maintained at all times, in each studio room to ensure operators manage sound emissions.
13. Except with the prior written consent of the Responsible Authority, the maximum sound pressure level at which music is to be played in each of the ground-floor and first-floor studios is:
 - a) Ground-floor studio (Agora Room): 83dB(A)Leq
 - a) First-floor studio (Amazon Room): 79dB(A)LeqAny time that both rooms are to operating simultaneously, the maximum sound pressure level in the ground-floor studio (Agora Room) must not exceed 81dB(A)Leq.
14. By no later than three months from the date of the issue of this permit, a Post Commencement Acoustic Report is to be submitted to the Responsible Authority. The report must detail the following matters to the satisfaction of the Responsible Authority:
 - a) Confirmation that all of the recommendations of the endorsed Acoustic Report have been implemented;
 - b) Further testing that has occurred to ascertain whether the use complies with:

- i. The maximum noise levels prescribed by the Environment Protection Regulations under the Environment Protection Act 2017 and the incorporated Noise Protocol (Publication 1826.2, Noise Limit and Assessment Protocol for the Control of Noise from Commercial, Industrial and Trade Premises and Entertainment Venues, Environmental Protection authority, March 2021) or any other superseding regulation; and
- ii. Any patron noise levels as specified in the endorsed acoustic report;
- c) If non-compliance is measured, recommendations for additional acoustic measures to ensure compliance with the endorsed Acoustic Report.
- d) Confirmation that all acoustic testing has been carried out during a busy period (e.g. a class with music) by a suitably qualified acoustic engineer.

Once submitted to and approved by the Responsible Authority, the report will be endorsed to form part of the permit. The report must not be altered without the prior written consent of the Responsible Authority.

15. The provisions, recommendations and requirements of the endorsed Post Commencement Acoustic Report must be implemented and complied with to the satisfaction of the Responsible Authority within three (3) months of endorsement of that report, or as otherwise agreed in writing by the Responsible Authority. During the time any additional acoustic measures are being implemented, no operations which would cause non-compliance with the noise levels in the endorsed Acoustic Report are to take place.
16. Noise levels associated with the use must at all times comply with the Environment Protection Regulations under the Environment Protection Act 2017 and the incorporated Noise Protocol (Publication 1826.2, Noise Limit and Assessment Protocol for the Control of Noise from Commercial, Industrial and Trade Premises and Entertainment Venues, Environmental Protection authority, March 2021), or any other superseding regulation.

Should the Responsible Authority deem it necessary (with just cause), the owner and/or occupier of the land must submit an Updated Acoustic Report to the satisfaction of the Responsible Authority which demonstrates compliance, or which outlines any measures considered necessary to achieve compliance.

The recommendations of the Updated Acoustic Report must be implemented no later than three (3) months after the date that the Responsible Authority advises in writing that it is satisfied with the report, or as otherwise agreed in writing by the Responsible Authority. If the Updated Acoustic Report recommends changes that need to be reflected on the endorsed plans, an application to amend the endorsed plans must be submitted to Council's satisfaction no later than three (3) months after the date that the Responsible Authority advises in writing that it is satisfied with the report, or as otherwise agreed in writing by the Responsible Authority. The endorsed plans must also be amended within three (3) months, or as otherwise agreed in writing by the Responsible Authority, to accord with the recommendations contained in the Acoustic Report to the satisfaction of the Responsible Authority.

Venue and Patron Management

17. Prior to the endorsement of plans, a Venue and Patron Management Plan must be submitted to the Responsible Authority. The plan must include, but not necessarily be limited to, the following:
 - a) Confirmation the site will be used only for the purposes listed in the Moss Studios May 2024 Written Submission (advertised 9 July 2024), including:

- i. An indoor recreation facility comprising a dance studio and classes relating to yoga, meditation and movement therapy.
 - ii. A place of assembly comprising support groups, art and crafts workshops, art therapy and reading classes.
- b) Confirmation the site will not be used for the purposes of an amusement parlour, carnival, circus, nightclub, restricted place of assembly or function centre.
- c) Details of how the venue will provide a space for patrons to wait between classes.
- d) How the venue will manage patrons entering and leaving the venue before and after classes.
- e) How the venue will manage patrons loitering in the surrounding streets after hours of operation.
- f) Confirmation all classes are to be staggered with a 15 minute break between each class.
- g) Confirmation of a sound level meter to be installed and maintained in each studio room and subsequent signage to inform patrons of sound decibel limits that must be adhered to.
- h) Complaint handling processes and contact point for Council and surrounding residents.
- i) Staff training for patron management.
- j) Management of outdoor areas.
- k) Outdoor smoking areas.
- l) Lighting outside the premises.

Once submitted to and approved by the Responsible Authority, the Venue and Patron Management Plan will be endorsed to form part of the permit.

- 18. The Venue and Patron Management Plan endorsed under this permit must be implemented and complied with at all times, to the satisfaction of the Responsible Authority.
- 19. Unless with prior written consent of the endorsed Responsible Authority, the content of the Venue and Patron Management Plan must not be altered.

Waste Management

- 20. Prior to the endorsement of plans, a Waste Management Plan must be submitted to the satisfaction of the Responsible Authority. The plan must show:
 - a) Alignment with the plans for endorsement.
 - b) Calculations of the four main waste streams (recycled glass, general recycling; organics and garbage), size and number of bins and frequency of collection;
 - c) The bins stored out of sight and not in an enclosed room;
 - d) Whether a Council or private contractor collection service will be provided.

When submitted and approved to the satisfaction of the Responsible Authority, the WMP will be endorsed to form part of this permit. No alterations to the WMP may occur without the written consent of the Responsible Authority.

21. The Waste Management Plan approved under this permit must be implemented and complied with at all times to the satisfaction of the Responsible Authority unless with the further written approval of the Responsible Authority.

Site Assessment/Audit

22. Within six months of the issue date of this permit, a Preliminary Site Investigation must be submitted to the satisfaction of the Responsible Authority. The Responsible Authority may require the applicant to pay the cost of an independent review of the Preliminary Site Investigation by another suitably qualified environmental professional. The Preliminary Site Investigation is to be conducted by a competent professional practitioner with relevant experience in the field. The owner must comply with the findings of the site assessment to the satisfaction of the Responsible Authority. The Preliminary Site Investigation must:
- a) Specify the name and qualifications of the person who has conducted the Report;
 - b) Provide comment on the potential for offsite contamination to have migrated to the subject land from neighbouring land. Soil sampling and analysis of the subject site may be required where access to definitive information regarding neighbouring land is not obtainable or is inconclusive;
 - c) Specify the industrial process or activity, waste or substance in respect of which the Report was conducted;
 - d) Specify the segment of the environment in respect of which the Report was conducted;
 - e) Include an evaluation of the environmental quality of the relevant segment of the environment;
 - f) Include an assessment of any clean up that is necessary, including recommendations relating to the carrying out of the clean up, and any compliance requirements to enable the land owner to ensure that the land is suitable for the proposal;
 - g) Include a further recommendation to the Responsible Authority as to whether the condition of the land is such that an environmental audit statement should be conducted taking into consideration the proposed use.
23. Should the Preliminary Site Investigation required by Condition 22 of this permit recommend a Preliminary Risk Screen Assessment or an Environmental Audit Statement be conducted, the use of the site as an indoor recreation facility and place of assembly (excluding an amusement parlour, carnival, circus, nightclub, restricted place of assembly or function centre) must cease immediately, to the satisfaction of the Responsible Authority.
24. In accordance with condition 22 of this permit, prior to the recommencement of the permitted use, the owner(s) must provide:
- a) A preliminary risk screen assessment statement in accordance with the Environment Protection Act 2017 stating that an environmental audit is not required for the use or, if this permit authorises the construction or carrying out of buildings or works, is not required for the use for which the buildings or works are constructed or carried out; or,

- b) **An environmental audit statement under Part 8.3 of the Environment Protection Act stating that the land is suitable for the use or, if this permit authorises the construction or carrying out of buildings or works, is suitable for the use for which the buildings or works are constructed or carried out; or.**
 - c) **An environmental audit statement under Part 8.3 of the Environment Protection Act 2017 stating that the land is suitable for the use or, if this permit authorises the construction or carrying out of buildings or works, is suitable for the use for which the buildings or works are constructed or carried out, if the recommendations made in the statement are complied with**
25. **Where an environmental audit statement is issued for the land, and any recommendation of that environmental audit statement requires any maintenance and/or monitoring of an ongoing nature, the Responsible Authority may require the Owner(s) to enter into an Agreement with the Responsible Authority pursuant to Section 173 of the Planning and Environment Act 1987 that provides for the undertaking of the ongoing maintenance and/or monitoring as required by the environmental audit statement.**
 26. **Where a Section 173 Agreement is required, the Agreement must be executed prior to the commencement of the permitted use, the issue of an Occupancy Permit under the Building Act 1993 or the issue of a Statement of Compliance under the Subdivision Act 1988 (whichever occurs first). All expenses involved in the drafting, negotiating, lodging, registering and execution of the Agreement, including those incurred by the Responsible Authority, must be met by the Owner(s).**
 27. **Prior to any remediation works (if required) being undertaken in association with the environmental audit, a 'remediation works' plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The plan must detail all excavation works as well as any proposed structures such as retaining walls required to facilitate the remediation works. Only those works detailed in the approved remediation works plan are permitted to be carried out prior to the issue of an environmental audit statement.**
 28. **No works to construct the development hereby approved shall be carried out on the land and no building contract to construct the development hereby approved may be entered into, other than in accordance with a building contract that stipulates that works must not be commenced until such time as Conditions 24, 26, 27 and 29 are satisfied.**
 29. **Prior to commencement of the use, the issue of an Occupancy Permit under the Building Act 1993 or the issue of a Statement of Compliance under the Subdivision Act 1988 (whichever occurs first), written confirmation of compliance with all the recommendations of the environmental audit statement must be provided by an environmental auditor appointed under the Environment Protection Act 2017, including confirming that any requirements in the environmental audit statement recommendations regarding verification of works have been complied with. All the recommendations of the environmental audit statement must be complied with to the satisfaction of the Responsible Authority.**

30. Where a Preliminary Site Investigation or preliminary risk screen assessment has satisfied Condition 22 or 24 (that an environmental audit is not required), the development and use must not deviate from the assumptions or limitations contained in the preliminary risk screen assessment, including but not limited to the layout and design of the development and use of the land without the written consent of the Responsible Authority. The development and use must accord with any requirements and recommendations of the Preliminary Site Investigation or preliminary risk screen assessment to the satisfaction of the Responsible Authority.

Permit Expiry

31. This permit will expire if the use is not commenced within two years from the date of issue of this permit.

The Responsible Authority may extend the period referred to if a request is made in writing before the permit expires or within six months afterwards.

Notes: These notes are for information only and do not constitute part of this permit or conditions of this permit.

- Note 1:** It may be necessary to obtain a building permit prior to the commencement of any demolition, building works or occupation of the building. It is strongly recommended that you consult with a registered building surveyor to advise on any requirements under the Building Act, the Building Regulations and any other subordinate legislation. Further information can be sought from the Victorian Building Authority, Phone 1300 815 127 or www.vba.vic.gov.au. Council's building services branch can also assist you in the provision of this service and can be contacted on 9240 1111 or <http://www.Merri-bek.vic.gov.au/planning-building/building-renovations-and-extensions/>.
- Note 2:** This permit is for the use of the land and/or buildings and does not constitute any authority to conduct a business requiring Health Act/Food Act registration without prior approval in writing from the Responsible Authority.
- Note 3:** Further approvals are required from Council's City Infrastructure Department who can be contacted on 9240 1143 for any works beyond the boundaries of the property. Planting and other vegetative works proposed on road reserves can be discussed with Council's Open Space Unit on 8311 4300.
- Note 4:** Unless no permit is required under the Merri-bek Planning Scheme, no sign must be constructed or displayed on the land without a further planning permit.
- Note 5:** Proposals for kerbside seating are subject to a separate permit for footpath trading from Council's Amenity and Compliance Branch under Council's General Local Law.
- Note 6:** Environmental Audit Notes
- i. A copy of any Environmental Audit Statement, including the Environmental Audit Report, must be submitted to the Responsible Authority within 5 business days of issue, as set out in S210 of the Environment Protection Act 2017.
 - ii. The person in management or control of the site must also provide a copy of any statement to any person who proposes to become the person in management or control of the site, such as a potential occupier or potential purchaser.

- iii. The land owner and all its successors in title or transferees must, upon release for private sale of any part of the land, include in the Vendor's Statement pursuant to Section 32 of the Sale of Land Act 1962, a copy of any Environmental Statement including a copy of any cover letter.

8.47 pm Cr Yildiz left the meeting, during the debate.

The Mayor adjourned the meeting for 5 minutes at 8.48 pm, due to a temporary loss of quorum.

The Mayor resumed the meeting at 8.52 pm.

Carried unanimously

5.4 20 LEINSTER GROVE, BRUNSWICK EAST - PLANNING PERMIT APPLICATION - MPS/2024/5

Caretaker Statement

The recommended decision is not a decision prohibited by the Act and is a decision that falls within the guidance of the Election Period Policy.

Executive Summary



Property:	20 Leinster Grove, Brunswick East		
Proposal:	Development of the land for multi-storey buildings containing dwellings, removal of an easement; and reduction to the standard car parking requirements		
Zoning and Overlay/s:	<ul style="list-style-type: none"> Mixed Use Zone, Schedule 1 (MUZ1) Design and Development Overlay, Schedule 19 (DDO19) Parking Overlay, Schedule 1 (PO1) Environmental Audit Overlay (EAO) Development Contributions Plan Overlay (DCPO1) 		
Strategic setting:	Minimal change	Incremental change	Significant change
Objections:	There are six parties to the VCAT review.		
Planning Information and Discussion (PID) Meeting:	A PID meeting was not held as the matter is now part of a VCAT rather than a Council process.		
ESD:	<ul style="list-style-type: none"> Minimum average NatHERS rating of 6.5 stars. 		
Accessibility:	<ul style="list-style-type: none"> Adaptable apartments comprise 11 per cent of the proposal. 		

Key reasons for refusal	<ul style="list-style-type: none"> • The building height fails to transition down to the adjoining low rise residential area and parkland to the east. • Unreasonable amenity impacts including overlooking and overshadowing of nearby residential properties. • Unacceptable internal amenity for future occupants' considering ESD performance, accessibility and daylight.
Recommendation:	Council's submission 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 be that no planning permit should be issued for application No. MPS/2024/5 which seeks permission for the development of the land for a multi-level apartment building; removal of an easement; and reduction to the standard car parking requirement at 20 Leinster Grove, Brunswick East, based on the following grounds:

1. The proposal fails to comply with the design objectives, built form requirements and decision guidelines of the Design and Development Overlay (Schedule 19) of the Merri-bek Planning Scheme and will not adequately respond to the preferred future character for the area, including that:
 - a) The development does not provide an appropriate transition in building height between the Lygon Activity Corridor and the adjoining low rise residential area and parkland to the east and south of the site.
 - b) Levels 1-6 of Building B do not provide appropriate setbacks from the residential properties adjacent to the Activity Centre located to the east of the site.
 - c) The proposed building height and form fails to protect and enhance the amenity and maintain solar access to Methven Park.
 - d) The proposed building height and form fails to maintain the reasonable amenity of residential properties both within and adjacent to the to the Activity Centre.
 - e) The proposed development fails to satisfactorily respond to the constraints of the site, including its interfaces with lower scale residential properties and a sensitive parkland setting to the south.
2. The proposal results in unacceptable off-site amenity impacts and fails to meet the following requirements of Clause 55 as required by the Mixed Use Zone at Clause 32.04-11 (Buildings on lots that abut another residential zone), in the following ways:
 - a) The proposal unreasonably impacts the energy efficiency of the dwellings at 22 French Avenue, Brunswick which does not meet the objective of Clause 55.03-5 - Energy efficiency.
 - b) The proposal will impact the amenity through visual bulk of the dwellings at 22 French Avenue, Brunswick which does not meet the objective of Clause 55.04-1 – Side and rear setback.
 - c) The proposal significantly overshadows existing secluded private open spaces of the residential properties located at 22 French Avenue, which does not meet the objective of Clause 55.04-5- Overshadowing.

- d) The proposal has not provided adequate screening measures from Levels 1-3 of the development to prevent unreasonable overlooking of the secluded private open spaces of the dwellings at 22 French Avenue, Brunswick which does not meet the objective of Clause 55.04-6 – Overlooking.
3. The design of buildings fails to meet the strategies and guidelines of Clause 15.01-2L (Apartment Development in Merri-bek) with respect to:
 - a) The building separation from the northern boundary does not meet distances specified in Table 1 and does not allow for equitable development opportunities on the neighbouring sites at 104-110 Albert Street and 98 to 102 Albert Street.
 - b) The building separation from the western boundary does not meet distances specified in Table 1, resulting in poor internal amenity by not providing adequate daylight or reasonable outlook from living rooms.
 - c) The internal building separation does not meet the distances specified in Table 3, resulting in poor internal amenity by not providing adequate daylight to bedrooms.
 - d) The light wells do not meet the minimum dimensions specified in Table 4, resulting in poor internal amenity by not providing adequate daylight to bedrooms.
4. The proposal fails to meet the following standards and objectives of Clause 58 Apartment Developments:
 - a) Standard D18 which requires 50 per cent of apartments to be designed to be accessible. The proposal fails to meet the needs of people with limited mobility (Clause 58.05-1 – Accessibility) in providing only 11 per cent accessibly designed apartments.
 - b) Standard D20 which requires appropriately sized private open space areas. The proposal fails to provide adequate private open space for the reasonable recreation and service needs of residents (Clause 58.05-3 – Private Open Space), because Apartments 2.1A and 2.1F located on the western side of Building A do not have access to appropriately sized balcony having regard to the placement of heating/cooling equipment.
 - c) Standard D20 which requires appropriately sized private open space areas. The proposal fails to provide adequate private open space for the reasonable recreation and service needs of residents (Clause 58.05-3 – Private Open Space), because several of the south facing townhouses feature secluded private open space areas with a minimum dimension of less than 3m.
5. The design response does not meet Standard D1, Clause 58.02-1 - Urban Context objectives as it fails to respond to the preferred future development of the area and is not appropriate to the urban context and the site.
6. The proposal is not consistent with the following strategies contained at Clause 15.01-2S Building Design and Clause 15.01-2L Building Design in Merri-bek and results in unacceptable visual bulk as:
 - a) The design response particularly the stepped 'wedding cake' form of Building A and B results in unacceptable visual bulk impacts and does not contribute positively or enhance the public realm.
7. The proposal fails to demonstrate that it achieves best practice environmentally sustainable design in accordance with Clauses 15.01-2L-04 (Energy efficiency in Merri-bek) and 15.01-2L-05 (Environmentally Sustainable Development) in the following way:

- a) The proposal commits to an average of 6.5 NatHERS star rating across the development where a minimum of 7 stars is expected. This fails to meet the objectives of Clauses 15.01-2L-04 and 15.01-2L-05 because the development will not minimise environmental impacts.
8. This application to remove a carriageway easement, will compromise the intended connectivity from Lygon Street through to Methven Park. This is contrary to the following State, Regional and Local planning policies and controls:
- a) Improve access by walking, cycling and public transport to services and facilities (Clause 11.03-1S)
 - b) Reduce the number of private motorised trips by concentrating activities that generate high numbers of (non-freight) trips in highly accessible activity centres. (Clause 11.03-1S)
 - c) Ensure development supports public realm amenity and safe access to walking and cycling environments and public transport. (Clause 15.01-1S)
 - d) Integrate place making practices into road space management. (Clause 15.01-1R)
 - e) Ensure large sites provide a network of public streets, footpaths and lanes connecting through the site into the surrounding street and pedestrian network. (Clause 15.01-1L)
 - f) The objectives of the Brunswick Structure Plan 2018, referenced within Clause 72.08 of the Merri-bek Planning Scheme and a decision guideline within Design and Development Overlay (Schedule 19 - Brunswick Activity Centre - Lygon Street Local Area). Particularly the objectives outlined at paragraphs 4.4.8 and 4.4.46 (d).

Resolution

Cr Riley moved, Cr Bolton seconded -

That Council's submission to the Victorian Civil and Administrative Tribunal be that no planning permit should be issued for application No. MPS/2024/5 which seeks permission for the development of the land for a multi-level apartment building; removal of an easement; and reduction to the standard car parking requirement at 20 Leinster Grove, Brunswick East, based on the following grounds:

1. **The proposal fails to comply with the design objectives, built form requirements and decision guidelines of the Design and Development Overlay (Schedule 19) of the Merri-bek Planning Scheme and will not adequately respond to the preferred future character for the area, including that:**
 - a) **The development does not provide an appropriate transition in building height between the Lygon Activity Corridor and the adjoining low rise residential area and parkland to the east and south of the site.**
 - b) **Levels 1-6 of Building B do not provide appropriate setbacks from the residential properties adjacent to the Activity Centre located to the east of the site.**
 - c) **The proposed building height and form fails to protect and enhance the amenity and maintain solar access to Methven Park.**
 - d) **The proposed building height and form fails to maintain the reasonable amenity of residential properties both within and adjacent to the to the Activity Centre.**
 - e) **The proposed development fails to satisfactorily respond to the constraints of the site, including its interfaces with lower scale residential properties and a sensitive parkland setting to the south.**

2. The proposal results in unacceptable off-site amenity impacts and fails to meet the following requirements of Clause 55 as required by the Mixed Use Zone at Clause 32.04-11 (Buildings on lots that abut another residential zone), in the following ways:
 - a) The proposal unreasonably impacts the energy efficiency of the dwellings at 22 French Avenue, Brunswick which does not meet the objective of Clause 55.03-5 - Energy efficiency.
 - b) The proposal will impact the amenity through visual bulk of the dwellings at 22 French Avenue, Brunswick which does not meet the objective of Clause 55.04-1 – Side and rear setback.
 - c) The proposal significantly overshadows existing secluded private open spaces of the residential properties located at 22 French Avenue, which does not meet the objective of Clause 55.04-5- Overshadowing.
 - d) The proposal has not provided adequate screening measures from Levels 1-3 of the development to prevent unreasonable overlooking of the secluded private open spaces of the dwellings at 22 French Avenue, Brunswick which does not meet the objective of Clause 55.04-6 – Overlooking.
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 - c) Standard D20 which requires appropriately sized private open space areas. The proposal fails to provide adequate private open space for the reasonable recreation and service needs of residents (Clause 58.05-3 – Private Open Space), because several of the south facing townhouses feature secluded private open space areas with a minimum dimension of less than 3m.
5. The design response does not meet Standard D1, Clause 58.02-1 - Urban Context objectives as it fails to respond to the preferred future development of the area and is not appropriate to the urban context and the site.

6. The proposal is not consistent with the following strategies contained at Clause 15.01-2S Building Design and Clause 15.01-2L Building Design in Merri-bek and results in unacceptable visual bulk as:
 - a) The design response particularly the stepped 'wedding cake' form of Building A and B results in unacceptable visual bulk impacts and does not contribute positively or enhance the public realm.
7. The proposal fails to demonstrate that it achieves best practice environmentally sustainable design in accordance with Clauses 15.01-2L-04 (Energy efficiency in Merri-bek) and 15.01-2L-05 (Environmentally Sustainable Development) in the following way:
 - a) The proposal commits to an average of 6.5 NatHERS star rating across the development where a minimum of 7 stars is expected. This fails to meet the objectives of Clauses 15.01-2L-04 and 15.01-2L-05 because the development will not minimise environmental impacts.
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 - b) Reduce the number of private motorised trips by concentrating activities that generate high numbers of (non-freight) trips in highly accessible activity centres. (Clause 11.03-1S)
 - c) Ensure development supports public realm amenity and safe access to walking and cycling environments and public transport. (Clause 15.01-1S)
 - d) Integrate place making practices into road space management. (Clause 15.01-1R)
 - e) Ensure large sites provide a network of public streets, footpaths and lanes connecting through the site into the surrounding street and pedestrian network. (Clause 15.01-1L)
 - f) The objectives of the Brunswick Structure Plan 2018, referenced within Clause 72.08 of the Merri-bek Planning Scheme and a decision guideline within Design and Development Overlay (Schedule 19 - Brunswick Activity Centre - Lygon Street Local Area). Particularly the objectives outlined at paragraphs 4.4.8 and 4.4.46 (d).

Carried unanimously

URGENT BUSINESS REPORTS

Nil.

The Council meeting closed at 9.19 pm.

Confirmed

Cr
MAYOR