**Council AGENDA**

**Planning and Related Matters**

Wednesday 22 March 2023

Commencing 6.30 pm

Council Chamber, Merri-bek Civic Centre,

90 Bell Street, Coburg



**Acknowledgement of the traditional custodians of the City of Merri-bek**

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

**1. WELCOME**

**2. APOLOGIES**

**3. DISCLOSURES OF CONFLICTS OF INTEREST**

**4. MINUTE CONFIRMATION**

The minutes of the Planning and Related Matters Meeting held on 22 February 2023 be confirmed.

**5. Council Reports**

5.1 20 Dods Street, Brunswick - Planning Application MPS/2022/228 4

5.2 179 Albion Street, BRUNSWICK - Planning Permit Application MPS/2021/704 25

5.3 336 Sydney Road, Coburg - MPS/2021/322 44

5.4 8 Florence Street, Brunswick - Planning Application MPS/2015/175/B 63

**6. URGENT BUSINESS**

**5. Council Reports**

**5.1 20 Dods Street, Brunswick - Planning Application MPS/2022/228**

**Group Manager City Development, Phillip Priest**

**City Development**

**Executive Summary**

|  |  |
| --- | --- |
| **Property:** | 1. 20 Dods Street, Brunswick |
| **Proposal:** | 1. Development of a seven (7) storey apartment building and reduction to the statutory car parking requirement |
| **Zoning and Overlay/s:** |  Mixed Use Zone Schedule 1   Design and Development Overlay Schedule 18   Parking Overlay Schedule 1   Development Contributions Plan Overlay |
| **Strategic setting:** |  |
| **Objections:** |  36   Key issues:   Height of proposal   Impacts on on-street car parking   Off-site amenity impacts |
| **Planning Information and Discussion (PID) Meeting:** |  Date held: 30 January 2023   Attendees: 9 objectors, the applicant, 2 Council officers, and Councillors Harte and Bolton.   No changes were agreed to, however the meeting provided an opportunity for the objectors concerns to be discussed and helped inform the preparation of this report. |
| **ESD:** |  Minimum average NatHERS rating conditioned to be 7 stars.   Gas free development   13kW Solar Photovoltaic System |
| **Accessibility:** |  Adaptable apartments conditioned to comprise 81.8 per cent of the proposal. |
| **Key reasons for support** |  The built form meets the objectives of the DDO18, noting the habitable portion of the upper level is recessed with limited visibility from the street.   The additional height above the preferred maximum height will not substantially increase off-site amenity impacts beyond those already anticipated by the scheme.   The site is well located with access to multiple public transport options and services of the Brunswick Activity Centre to support the reduction of one car space. |
| **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/2022/228 be issued for the development of a seven (7) storey apartment building and reduction to the statutory car parking requirement at 20 Dods Street, Brunswick, 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 30 November 2022 but modified to show:

a) The deletion of Bedroom 2 of Apartment 7, replaced with either an extension of Bedroom 1, a small study area with a maximum width of 2 metres or the like.

b) Amended furniture and bathroom layouts in order to achieve accessibility across at least 50 per cent of apartments, in accordance with the requirements of Standard D17 of Clause 58.05-1 (Accessibility).

c) Screening to the eastern side of the Apartment 2 deck to a minimum height of 1.7 metres above the finished floor level to limit overlooking into the secluded private open space of the adjoining property. The screening must be shown on the floor and elevation plans with details shown in a screen diagram as per condition 1(d) if a privacy screen is proposed.

d) A screen diagram drawn at a scale of 1:50 which details the screen associated with south-facing windows and the east screen associated with Apartment 2. This diagram must include:

i) All dimensions, including the width of slats and the gap between slats.

ii) The material and finish of the screens.

iii) Louvred fixed screening with a maximum of 25 per cent openings, angled to limit direct views to nearby secluded open space and habitable room windows.

e) The height of the balustrade to the rooftop terrace increased to a height of 1.5 metres, as per the Wind Assessment in accordance with condition 22 of this permit.

f) The materials and finishes schedule to include complete details of all materials on all elevations.

g) Deletion of the waste chutes from each level.

h) The annotation for the number of bike racks to correspond with the number of racks depicted on the plan.

i) Bicycle parking dimensioned to be at least 0.5 metres wide and 1.8 metres long for horizontal spaces and 1.2 metres long for vertical spaces in accordance with the Australian Standard for Bicycle Parking (AS2890.3).

j) The vehicle crossing with 1 metre splays across the full width of the footpath.

k) Any changes to the plans arising from the:

i) Landscape Plan in accordance with Condition 3 of this permit.

ii) Sustainability Management Plan in accordance with Condition 6 of this permit.

iii) Acoustic Report in accordance with Condition 10 of this permit.

iv) Waste Management Plan in accordance with Condition 12 of this permit.

v) Accessibility report in accordance with Condition 23 of this permit.

vi) Public Works Plan in accordance with Condition 20 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 Plume dated 27 June 2022 but amended to show:

a) Any changes required to align with the plans for endorsement.

b) Any landscaping to the eastern side of the accessway.

c) The location of the rainwater tanks in accordance with the location on the development plans.

d) Details of all planter boxes, above basement planting areas, green walls, rooftop gardens and similar, including:

i) Soil volume sufficient for the proposed vegetation

ii) Soil mix

iii) Drainage design

iv) Details of an automatic irrigation system, including maintenance program and responsibility for maintenance.

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.

**Environmentally Sustainable Design (ESD)**

6) Prior to the endorsement of plans, an amended Sustainability Management Plan (SMP) and plans must be submitted to the satisfaction by the Responsible Authority. The SMP must demonstrate a best practice standard of environmentally sustainable design and be generally in accordance with the SMP prepared by Ark Resources dated 28 October 2022, but modified to include the following changes:

a) Provide preliminary NatHERS ratings assessments for all dwellings (or all to be thermally represented) which achieves an average NatHERS rating of at least 7.0 Stars for all dwellings and cooling loads of a maximum 22MJ/sqm, with the BESS Report updated accordingly.

b) An alternate shading measure to the north-facing glazing of Levels 4 and 5 which protects the glazing and residents from future excessive solar heat gain. This must include modelling specific to this apartment and specific discussion of the affected rooms (i.e. the cooling loads for the affected spaces within the overall apartment).

c) Show the following ESD initiatives on the development plans:

i) An ESD table on the plans for items that cannot be drawn e.g. NatHERS, tap and cooling/heating ratings, etc.

ii) The Solar Absorptance / Solar Reflective Index of materials ‘F01’, ‘F03’ and ‘F06’ specified on the materials schedule, to be a maximum of 0.6 for the Solar Absorptance or higher than 40 for the Solar Reflective Index.

iii) The alternate shading measure to Levels 4 and 5 in accordance with Condition 6b).

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 amended Sustainability Management Plan 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.

7) Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, the development must be constructed in accordance with the Sustainable Design Assessment (including any BESS and STORM reports and NatHERS Ratings) to the satisfaction of the Responsible Authority.

8) Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, a report from the author of the Sustainability Management Plan (SMP) approved pursuant to this permit, or similarly qualified person or company, must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm (with documented evidence) that all measures specified in the SMP have been implemented in accordance with the approved plan.

9) All stormwater treatment devices (e.g., raingardens, rainwater tanks etc.) must be maintained to the satisfaction of the Responsible Authority to ensure water quality discharged from the site complies with the performance standard in the endorsed Sustainability Management Plan.

**Acoustic Attenuation**

10) The building must be constructed and thereafter maintained in accordance with the recommendations contained within the Acoustic Report submitted with the application (report prepared by SLR, dated 20 July 2022). The acoustic report will be endorsed to form part of this permit. No alterations to the Acoustic Report 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, a report from the author of the Acoustic Report approved pursuant to this permit or similarly qualified person or company must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm that all measures specified in the Acoustic Report have been implemented in accordance with the approved Acoustic Report.

**Waste Management**

12) Prior to the endorsement of plans, an amended Waste Management Plan (WMP) must be submitted to the satisfaction of the Responsible Authority. The plan must be generally in accordance with the report prepared by Leigh Design and dated 8 November 2021 but modified to:

a) Delete mention of garbage chutes.

b) Specify that collection must not occur on the same day as Council waste collection.

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.

13) 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.

**Environmental Audit Condition**

14) Before the construction or carrying out of buildings and works, or where no buildings and works are proposed, prior to the commencement of the permitted use or the issue of a statement of compliance under the Subdivision Act 1988 (whichever is earlier), 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 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; 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

15) 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.

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).

16) 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.

17) 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 14, 15 and 16 are satisfied.

18) 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.

19) Where a preliminary risk screen assessment has satisfied Condition 14 (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 risk screen assessment to the satisfaction of the Responsible Authority.

**Public Works Plan**

20) Prior to the commencement of the development, a Public Works Plan and associated construction drawing specifications detailing the works to the land directly in front of the site must be submitted to the satisfaction of the Responsible Authority. The Plan must include:

a) The provision of landscaping, inclusive of new street tree planting in an in-road cut-out between the proposed crossover and the crossover of 18 Dods Street in appropriate locations in front of the site (where practicable), with the number of trees maximised based on the space available, in consultation with the Responsible Authority (Open Space Unit).

b) All construction details included in the Public Works Plan in accordance with the *Moreland City Council Technical Notes July 2019* (or any updated version);

c) Longitudinal plans of the road verge commencing 10 metres beyond the site boundary, together with cross-sections between the kerb and the building line at 5 metre intervals, with levels showing the slope of the public footpath and highlighting how the level difference between footpath and floor levels will be made up within the site

d) The upgrade of the footpath adjacent to the site. Public footpaths are to be reinstated to the previous levels with a maximum cross fall slope of 1 in 40 (2.5 per cent).

e) Any Council or service authority pole or pit within 1 metre of the proposed vehicle crossing, including the 1 metre splays on the crossings, relocated or modified.

f) Any necessary drainage works inclusive of any rain gardens and other water sensitive urban design.

g) The provision of other works and street furniture including seating (where practicable), which is to be provided with graffiti-resistant surfaces.

h) Any other works to the public land adjacent to the development.

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

21) Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, all public works shown on the endorsed public works plan must be implemented to the satisfaction of the Responsible Authority at the expense of the owner of the land, unless otherwise agreed with prior written consent of the Responsible Authority.

**Wind Impact Report**

22) The building must be constructed and thereafter maintained in accordance with the recommendations contained within the Wind Assessment Report submitted with the application (report prepared by SLR, dated 20 July 2022). The Wind Assessment Report will be endorsed to form part of this permit. No alterations to the report may occur without the written consent of the Responsible Authority.

**Accessibility**

23) Prior to the endorsement of plans, an Accessibility Report prepared by a suitably qualified person must be submitted to the satisfaction of the Responsible Authority. The report must:

a) Align with the plans for endorsement

b) Detail how the development will incorporate design features in accordance with Standard D17 (Accessibility) of Clause 58 of the Merri-bek Planning Scheme, including the detailed design of the adaptable bathrooms (e.g. confirmation of hobless showers and removable hinges to doors).

When submitted and approved to the satisfaction of the Responsible Authority, the Accessibility Report will be endorsed to form part of this permit. No alterations to the plan may occur without the written consent of the Responsible Authority. The recommendations of the report must be implemented to the satisfaction of the Responsible Authority prior to the occupation of the development.

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

**3D model**

25) Prior to the commencement of the development, a 3D digital model of the approved development which is compatible for use on Council’s Virtual Merri-bek tools and software for Council and community must be submitted to the satisfaction of the Responsible Authority. The model should be prepared in accordance with Merri-bek City Council’s 3D model submission guidelines. A copy of the 3D model submission guidelines and further information on the Virtual Merri-bek Project can be found at <https://www.merri-bek.vic.gov.au/building-and-business/planning-and-building/planning/virtual-merri-bek/#autoAnchor1>. In the event that substantial modifications to the building envelope are approved under an amendment to this planning permit, a revised 3D digital model must be submitted to, and be to the satisfaction of the Responsible Authority.

**Development Contributions**

26) Prior to the issue of a Building Permit in relation to the development approved by this permit, a Development Infrastructure Levy must be paid to Merri-bek City Council in accordance with the approved Development Contributions Plan. The Development Infrastructure Levy is charged per dwelling.

If an application for subdivision of the land in accordance with the development approved by this permit is submitted to Council, payment of the Development Infrastructure Levy can be delayed to a date being whichever is the sooner of the following:

a) a maximum of 12 months from the date of issue of the Building Permit; or

b) prior to the issue of a Statement of Compliance for the subdivision;

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

**Engineering Matters**

27) 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).

28) Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, access to the site, any vehicle crossover and any ancillary road and road drainage works must be constructed in accordance with any requirement of the Responsible Authority (Merri-bek City Council, City Infrastructure Department).

29) 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.

30) Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, the bicycle storage room must have self-closing and self-locking doors or gates that are only accessible using keys, codes or swipe cards in accordance with the Australian Standard for Bicycle Parking (AS2890.3).

31) Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, bicycle signage that directs the cyclists to the bicycle facilities must be provided to the satisfaction of the Responsible Authority. Bicycle signage should be at least 0.3 metres wide and 0.45 metres high; display a white bicycle on a blue background on the top half of the sign and display information about the direction of facilities on the bottom half of the sign.

32) The power pole is to be relocated to a point in front of the development over 1 metre from the proposed vehicle crossing, including the 1 metre splays on the crossing.

**Stormwater**

33) 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).

34) The surface of all balconies are to be sloped to collect the stormwater run-off into stormwater drainage pipes that connect into the underground drainage system of the development to the satisfaction of the Responsible Authority.

**General**

35) Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, all boundary walls must be constructed, cleaned and finished to the satisfaction of the Responsible Authority.

36) 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.

37) Lighting on each balcony must be designed to not emit light direct onto adjoining property to the satisfaction of the Responsible Authority.

38) 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.

**Permit Expiry**

39) This permit will expire if one of the following circumstances applies:

a) the development is not commenced within three (3) years from the date of issue of this permit;

b) the development is not completed within five (5) 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 contains a condition requiring payment of Development Contributions. The applicable development contribution levies are indexed annually. To calculate the approximate once off levy amount, please visit http://www.moreland.vic.gov.au/planning-building/ and click on ‘Moreland Development Contributions Plan (DCP)’. Alternatively, please contact Merri-bek City Council on 9240 1111 and ask to speak to the DCP Officer.

**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.moreland.vic.gov.au/living-in-moreland/parking-and-roads/parking-permits-and-fines/residential-parking-permits/

**Note 3:** 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 4:** 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).

**REPORT**

**1. Background**

**Subject site**

The site is located on the southern side of Dods Street, approximately 62 metres west of Charles Street and 142 metres east of Sydney Road. It has a mostly rectangular shape with a frontage of 10.97 metres, a maximum depth of 31.91 metres and an overall site area of 349 square metres. It is located within the Brunswick Activity Centre – Sydney Road and Upfield Corridor.

The site is occupied by a free-standing single storey weatherboard dwelling with a hipped and gabled roof form. There is currently no vehicular access to the site.

There are no restrictive covenants indicated on the Certificate of Title.

**Surrounds**

The area has a mix of uses and built forms with zoning along Dods Street comprised of Mixed Use and Commercial 1 Zones. Surrounding residential buildings vary from traditional detached single storey housing stock, such as those either side of the site, to three to five storey apartment buildings to the west, north-west and east of the site, along Dods Street. There are some one and half storey commercial buildings to the west of the site with car parking provided within the front setback. There are also two open air car parks along Dods Street, one directly opposite the site on the northern side of the street, and one to the west on the southern side of the street. Single and double storey buildings in the Industrial 3 Zone abut the site to the south with uses to the south including manufacturing and vehicle repairs.

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

**The proposal**

The proposal is for a seven-storey building, including:

 A maximum building height of 24.6 metres including services and lift overrun.

 One basement level containing 13 car spaces within 3 car stackers, storage areas, services room and bin room.

 A new crossover, pedestrian entry, co-work space for residents, garden and bicycle parking for residents and visitors at the ground floor.

 11 apartments across Levels 1 – 6 comprising of:

- 3 three-bedroom dwellings

- 6 two-bedroom dwellings

- 2 two-bedroom dwellings across two levels

 A communal rooftop terrace.

 Materials consisting of predominantly grey concrete look stone, with black transparent mesh and black steel balustrading.

The development plans form **Attachment 2**.

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

| 1. **Control** | 1. **Permit Requirement** |
| --- | --- |
| 1. Mixed Use Zone | 1. A permit is required to construct more than one dwelling on a lot. Pursuant to Clause 32.04-6 (MUZ) no permit is required to use land as a dwelling. |
| 1. Design and Development Overlay Schedule 18 | 1. Clause 43.02-2 - A permit is required to construct a building or construct or carry out works. |
| 1. Car Parking | 1. Clause 52.06-3 - A permit is required to reduce the car parking requirement from 14 spaces to 13 spaces. |

The following Particular Provisions of the Merri-bek Planning Scheme are also relevant to the consideration of the proposal:

 Clause 45.06: Development Contributions Plan Overlay. A condition is included in the recommendation requiring the payment of the DCP levy prior to the issue of a Building Permit for the development

 Clause 45.09: Parking Overlay. This means that the Column B rates in Clause 52.06 (car parking) apply.

 Clause 52.34: Bicycle Parking

 Clause 58: Apartment Developments

**2. Internal/External Consultation**

**Public notification**

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

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

 Placing a sign on the Dods Street frontage of the site

Council has received 36 objections to date. A map identifying the location of objectors forms **Attachment 3**.

The key issues raised in objections are:

 Height exceeding the policy control and at odds with the existing character

 Traffic, congestion and impacts on on-street car parking

 Off-site amenity impacts including overlooking, overshadowing private open space and solar panels, and noise

 Removal and lack of replacement vegetation

A Planning Information and Discussion meeting was held on 30 January 2023 and attended by Councillors Harte and Bolton, two Council Planning Officers, the applicant and approximately 9 objectors. The meeting provided an opportunity to explain the application, for the objectors to elaborate on their concerns, and for the applicant to respond. No changes were agreed upon at the meeting. The applicant did offer to meet with the adjoining property owners to discuss their concerns about overlooking and overshadowing with no changes agreed upon at the time of writing this report.

**Internal/external referrals**

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

| 1. **Internal Branch/Business Unit** | 1. **Comments** |
| --- | --- |
| 1. Urban Design Unit | 1. Supports the proposal, including the overall height and upper storey setbacks, subject to demonstration of no unreasonable increased amenity impact (overshadowing) to the adjacent properties. This is considered further in Section 4 of this report. |
| 1. Transport - Development Engineering | 1. Supports the proposal, including the waiver of one car parking space. Recommended changes are addressed by conditions of the recommendation and are considered further in Section 4 of this report. |
| 1. Sustainable Built Environment - ESD Team | 1. Supports the proposal, subject to conditions requiring an improved ESD outcome. Recommended changes are addressed by conditions of the recommendation and are considered further in Section 4 of this report. |

**3. Policy Implications**

**Planning Policy Framework (PPF):**

The following policies are of most relevance to this application:

 Municipal Planning Strategy (Clause 2), including:

 Vision (Clause 2.02)

 Settlement (Clause 2.03-1)

 Environmental and Landscape Values (Clause 2.03-2)

 Environmental Risks and Amenity (Clause 2.03-3)

 Built Environment and Heritage (Clause 2.03-4)

 Housing (Clause 2.03-5)

 Transport (Clause 2.03-7)

 Infrastructure (Clause 2.03-8)

 Settlement (Clause 11)

 Built Environment (Clause 15.01), including:

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

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

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

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

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

 Neighbourhood Character (Clause 15.01-5S)

 Environmentally Sustainable Development (Clause 15.01-2L-05-1L)

 Energy efficiency in Moreland (Clause 15.01-2L-04

 Residential Development (Clause 16.01), including:

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

 Homes in Moreland (Clause 16.01-2L)

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

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

 Transport (Clause 18), including:

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

 Movement networks (18.02)

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

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

 Infrastructure (Clause 19.02), including:

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

 Development infrastructure (Clause 19.03)

**Human Rights Consideration**

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

 Section 12: Freedom of movement

 Section 13: Privacy and Reputation

 Section 20: Property rights

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

**4. Issues**

In considering this application, regard has been given to the Planning Policy Framework (PPF), the provisions of the Merri-bek Planning Scheme, objections received and the merits of the application.

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

The proposal has been assessed against the purpose of the zone, along with the relevant objectives of the planning policy framework and is deemed to have strategic policy support. In particular:

 The site is located within the Brunswick Activity Centre. This is an area where strategic direction at Clause 2.03-1 seeks to accommodate substantial growth and create a new character of increased density and scale of built form.

 The design is responsive to the policy directions contained within Building Design (Clause 15.01-2S & 15.01-2L) and Urban Design (Clause 15.01-1S & 15.01-1R).

 The reduction in car-parking is consistent with Sustainable Transport in Merri-bek (Clause 18.02-2L) and Car parking in Merri-bek (18.02-4L).

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

The below table sets out the preferred building envelope and proposed outcomes with a discussion of the exceedances below:

|  |  |  |
| --- | --- | --- |
| **Design Element** | **Preferred Control** | **Proposed** |
| Building Height | 20 metres | 24.6 metres\* |
| Street Wall Height | 12-15 metres | 15.3 metres |
| Upper Level Setback | 5 metres | 5 metres |

\* Maximum height includes lift overrun and services, which extend higher than 3.6 metres above the preferred maximum height and therefore must be included in the height calculation under the DDO18.

**Building Height**

The building as is presented to the street will read as six storeys, with a 20 metre height to the parapet of the fifth storey compliant with the preferred height control. Level 6 consists of only one dwelling, resulting in an additional height increase to 23.5 metres to the top of its parapet. The maximum height of 24.6 metres is made up by the inclusion of the rooftop services. The height exceedance above 20 metres is therefore only associated with one dwelling and the rooftop services that are to the rear of the building, setback 13.5 metres from the front boundary.

The additional height above 20 metres will not be visible from the northern side of the street when standing directly opposite the site. Whilst the height control is technically exceeded by 4.6 metres, the built form is nevertheless consistent with the objectives and decision guidelines of the DDO18, maintaining a reasonable level of amenity for nearby residential properties, as discussed further below. Furthermore, because the upper level will have such limited visibility, it means the building will not disrupt the future streetscape pattern that can be reasonably anticipated to occur along Dods Street under the 20 metre height control. The more immediate impact of the building height above the preferred maximum is discussed further below, under off-site amenity impacts.

**Street Wall**

The 15.3 metre high street wall exceeds the maximum preferred height by 0.3 metres. This exceedance is confined to the central concrete protrusion at the fourth level. This is acceptable given it is only a minor exceedance across a small section of the building and enables an acceptable architectural response.

**Upper Level Setbacks**

In addition to the 5 metre setback requirement the DDO18 also seeks at least 75 per cent of the upper levels to adopt the same street setback so as to avoid a ‘wedding cake’ building form and for any part of the building above the street wall to be setback beyond a 45 degree view line taken from the opposite side of Dods Street. The only non-compliance is a small section of the services enclosure at Level 6 which protrudes 0.3 metres above the view line. This is a minor exceedance and is limited to a small section in the north-eastern corner of the site and is therefore acceptable.

The Wind Assessment submitted with the application requires the rooftop balustrade be increased in height from 1 metre to 1.5 metres. The applicant has prepared sight lines for discussion purposes showing that it will not encroach into the 45 degree view line, even with the additional 0.5 metres (as shown below).

|  |
| --- |
| 1.5 metre high rooftop terrace balustrade, Source: Discussion plans dated 16.02.23 |

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

To the south of the site, properties are industrial in nature, built to the rear boundary. This means that the only properties of consideration with regards to any off-site amenity impacts are those to the east and west of the site. One of the objectives of the DDO18 is to maintain reasonable amenity for residential properties, however this must be considered within the context of the Activity Centre setting and balanced against the other design objectives of the DDO and the overall strategic policy which is to increase dwelling density and increase the scale of built form. Amenity impacts are discussed in turn below:

*Overshadowing*

The overshadowing impacts caused by the proposal to adjoining properties are, largely inevitable under the policy of the DDO18 which encourages 20 metre high built form outcomes in this location including the adjoining properties along Dods Street. The key consideration in this matter, therefore, is to what extent the additional height above 20 metres exacerbates these impacts.

The applicant has prepared shadow diagrams for the Equinox depicting the current and proposed shadow impacts, as well as impacts that the current proposal reduced to a 20 metre height would produce. At the equinox, there will be no discernible difference in shadows cast by the proposed building or one at the preferred height at 9:00 am, midday, or 3:00 pm. The maximum amount of additional overshadowing to secluded private open space is 3.8 square metres to 16 Dods Street at 10:00 am. Noting that most of the height exceedance is confined to the rear portion of the building, the associated additional overshadowing also strikes the rear of adjoining secluded private open space.

Regarding solar panels, the proposal will result in overshadowing to the solar panels at 22 Dods Street which is included in the Activity Centre. This will occur from 1pm onwards, at the Equinox.

The Mixed Use Zone includes a decision guideline that nominates overshadowing of solar panels as a relevant consideration. This needs to be balanced against the zones purposes which includes *to provide for housing at higher densities*. To address this, Council has developed an advisory note on this subject.[[1]](#footnote-1)

The advisory note, recognises that activity centres seek to achieve a more sustainable urban form by accommodating increased population with convenient access to jobs and services, including public transport. Accordingly, Council considers that in activity centres, residents and businesses in low-scale buildings:

 Have no reasonable expectation that their solar panels will be protected; and

 Should very carefully consider whether it is viable to install solar panels if any adjoining sites are likely to be developed in accordance with the activity centre guidelines.

This principal was established by VCAT in *Babaniaris v Greater Geelong CC* [2015] VCAT 1793. In *Babaniaris,* the Tribunal stated:

*In my view the question of whether or not overshadowing of solar panels is unreasonable is to be determined by a consideration of the scale of buildings, and therefore the degree of overshadowing, that might reasonably be expected having regard to the planning policies and controls relevant to the locality and the existing and preferred character of development within the neighbourhood. It should not be the case that one property owner can unreasonably compromise what would otherwise be entirely reasonable development on a neighbour’s land on the basis that, the development might overshadow solar panels installed by the property owner.*

In Bagnato, the Tribunal stated:

*“The impact on Ms Sandy’s solar panels is acceptable in this case because Ms Eastoe advised they were erected in 2014 at a time when the Council’s expectations for growth in Brunswick were known. Ms Heggen described the decision to install these panels in their existing position as “a high risk initiative.”*

*“To be clear, if Ms Sandy’s property was located in a residential zone in an established residential neighbourhood, residential amenity concerns about overshadowing of open space and solar panels would be a relevant consideration.”*

On balance, the extent of shadowing over the solar panels at 22 Dods Street is acceptable, particularly as the diagrams depict no discernible difference between the proposal and a 20 metre high building. Notably, Apartment 11 at Level 6 which is responsible for most of the height exceedance above 20 metres has no impact on the solar panels at all.

The subject site is located within an activity centre. The solar panels were installed in 2020, and therefore with the understanding that the preferred height for the area would result in a form that would inevitably overshadow the solar panels. It is noted that the protection of solar panels on lower scale buildings is difficult to achieve while seeking developments of greater height in Activity Centres.

**Overlooking**

The first floor deck of Apartment 2 abuts the eastern boundary. No balustrading is depicted or noted on the floor or elevation plans. It appears to have views into the rear yard of 22 Dods Street and therefore a condition of the officer recommendation will require the provision of screening to 1.7 metres above the finished floor level to address overlooking.

There are several unscreened bedroom windows facing east toward 22 Dods Street, as well as the open stairwell, which is enclosed only by architectural mesh. There is no overlooking of adjoining secluded private open space within 9 metres of these windows or the stairwell, as views either fall across the roof of the adjoining building (from the stairwell) or the roof of the outbuildings that are built along the common boundary (from the bedrooms). In relation to views across Dods Street the site is opposite a car park, with the apartment to the north of the car park well in excess of 9 metres from the subject site. No additional screening measures are necessary.

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

**Clause 58.05-1 Accessibility Objective (Standard D17)**

In the current design, none of the apartments achieve full compliance with the requirements of Standard D17. However, compliance for 9 of the 11 apartments can be achieved through relatively minor alterations. This can be required via a permit condition, which would result in 81.8 per cent of apartments being accessible, satisfying the 50 per cent minimum requirement of the Standard.

**Clause 58.07-3 Windows Objective (Standard D27)**

Bed 2 of Apartment 7 in the current design does not have a window in an external wall of the building, rather it has glass blocks in the wall shared with the circulation area of the fifth floor. Whilst this area only directly leads to one other apartment, it is nevertheless non-compliant with the requirements of the Standard, with Council’s ESD officer also having concerns about the accuracy of the daylight modelling to this room. Not only is the window non-compliant, it is also considered an unacceptable outcome for the resident in terms of privacy and outlook. A permit condition will therefore require Bedroom 2 to be replaced with either an extension of Bedroom 1 or a small study nook or the like.

**Clause 58.07-4 Natural Ventilation Objective (Standard D28)**

Standard D28 requires at least 40 per cent of apartments to provide effective cross ventilation. Only 4 of the apartments in the current design are shown to meet this requirement, which equates to only 36.4 per cent. The remaining dwellings contain appropriate ventilation openings although due to their layout cannot provide breeze paths that comply with the minimum and maximum lengths of the standard, and on different orientations of the dwelling. A slight variation of the standard is considered acceptable in balancing the other positive aspects of this proposal

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

A total of 14 spaces are required for the proposal. The development provides 13 on-site spaces. Clause 18.02-4L (Car parking in Merri-bek) supports reduced car parking rates in developments:

 within and close to activity centres

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

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

The proposal is located within the Brunswick Activity Centre – Sydney Road and Upfield Corridor and has excellent access to public transport including Brunswick Train Station, a tram stop and multiple bus routes all within a 580 metre walk from the site. The proposal also depicts 17 resident and 6 visitor bicycle parking spaces which is above the 2 (resident) and 1 (visitor) spaces required, respectively, in Clause 52.34.

Furthermore, Council’s Development Engineer is satisfied that the car parking provision is acceptable for this application.

It is expected that the level of parking provided will cater for car ownership levels of the occupiers. Objectors have raised concerns that the proposed reduction of car parking will impact the availability of parking in surrounding streets. Whilst two on-street car spaces at the front of the site would be removed to accommodate the proposed crossover, this is considered acceptable given vehicle access is necessary to accommodate on-site car parking. It also provides the opportunity for the provision of a street tree within an in-road cut-out between the existing crossover of 18 Dods Street and the proposed crossover which will be too small for a vehicle to park, but will allow for additional greening of the street while not encroaching the footpath. This will be required via a condition for a public works plan in the recommendation. Furthermore, occupiers of the development will only be able to park in the street in accordance with parking regulations and will not be eligible for any Council parking permits to allow for on street parking. This restriction regarding ineligibility of parking permits is included as a note on the planning permit in the recommendation.

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

Clause 65.01 requires consideration of the adequacy of loading and unloading facilities. Given that the proposal is only for 11 dwellings it is not anticipated to generate a high demand for loading facilities and that the demand can be accommodated on the street.

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

In relation to traffic impacts, Council’s Development Engineers have assessed the proposal and consider that the development will result in 50 additional vehicle movements per day on Dods Street. This remains within the street’s design capacity and is not expected to cause traffic problems.

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

Positive ESD features of the proposal include the provision of a 13 kW rooftop solar photovoltaic system, a 10,000 litre rainwater tank and commitment to a gas free development. In order to achieve a satisfactory overall ESD outcome, Council’s ESD officer has outlined further modifications required that have been included in the officer’s recommendation. This includes achieving an average NatHERS rating of at least 7.0 Stars with maximum cooling loads off 22MJ/sq.

**Is the site potentially contaminated?**

The site is potentially contaminated given its proximity to the Industrial Zone. A Preliminary Site Investigation (PSI) was submitted with this application identifying that there is potential for contamination, both from on site and off site sources and that a preliminary risk screen assessment statement (PRSA) is required to determine if an environmental audit is necessary. Conditions are included in the recommendation requiring compliance with the requirements of the *Environment Protection Act 2017.*

**5. Response to Objector Concerns**

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

 At odds with existing neighbourhood character

 Increase in traffic, congestion and on-street car parking issues

 ESD

**Overdevelopment given the dimensions of the property**

Planning Policy envisages an increase in housing density in well serviced areas such as this. The scheme does not specify differing height requirements based on the dimensions or area of a site. The height and setbacks are consistent with the DDO18 and the emerging character of the site with the additional building height at the rear considered acceptable as part of the officer assessment. The off-site amenity impacts are also not unreasonable and therefore the assessment of the proposal has not led to conclusion of overdevelopment concern.

**Daylight impacts**

This is an area where 20 metre high boundary walls is anticipated by the Planning Scheme and is considered to be appropriate, save where setbacks are required to ensure light and outlook to proposed habitable room windows. These development controls would also apply to abutting properties were they to be developed. Whilst daylight is a relevant consideration it needs to be balanced against the strategic directions for the site and not be applied in a manner that would impose a significant constraint on the ability of a development to achieve such outcomes.

The proposed layout orientates the majority of rooms with their main outlook facing north, although there are several east-facing bedroom windows. Both the building setbacks to the east boundary and the size of this light well comply with the boundary setback and light wells policy of Clause 15.01-2L (Apartment Developments in Merri-bek).

**Noise associated with dwellings**

Concerns have been raised regarding the potential noise generated from the dwellings after occupancy. The consideration of this planning application is confined only to the construction of the dwellings. The residential use of the dwellings does not require a planning permit. Residential noise associated with a dwelling is considered normal and reasonable in an urban setting. Any future issues of noise disturbance, if they arise, should be pursued as a civil matter.

**Wind tunnel impacts**

A Wind Assessment has been submitted with the application outlining the building will not create an unreasonable condition either on site or in the street. Conditions of the officer recommendation will require the Wind Assessment to be endorsed and recommendations adopted in any endorsed plans.

**Vegetation removal and lack of new plantings**

The trees removed from the site were removed approximately two years ago and did not require planning approval for their removal. Had they not already been removed, their removal would largely be required in order to facilitate the increased housing density as envisioned by the strategic policy for the site and surrounds.

The proposal provides for an area of deep soil planting and tree planting internally within the site, consistent with the requirements of Clause 58 of the Planning Scheme. The ground floor has been setback 2.4 metres from the front boundary, despite the policy typically calling for a zero setback, allowing for some low level plantings to enhance the pedestrian experience.

**Impacts of waste collection**

A Waste Management Plan has been submitted with the application outlining waste will be collected from the street via a private collection company. A permit condition will require collection to occur on a day other than the day Council collection occurs.

**Materials unclear**

The materials schedule is incomplete on Plan A2.01 but is complete and satisfactory on Plan A2.00. A permit condition will require the former to be updated to be complete.

**Removal of original housing stock**

The Heritage Overlay does not apply to the existing house on the site and therefore no permit is required for the demolition of the existing house. any house along Dods Street. Demolition of the existing single storey dwelling and replacement with a higher density built form outcome is consistent with the strategic policy for the area.

**No affordable housing**

There is no requirement that mandates the provision of affordable housing in this location.

**Precedent**

Future planning permit applications on this site or neighbouring and nearby land will be assessed against relevant planning policy and site conditions, based on their own merits at the time of assessment. The possibility of setting an undesirable precedent cannot be substantiated and is not a relevant planning consideration.

**Loss of views**

While the Victorian Civil and Administrative Tribunal has recognised that views can be a relevant amenity consideration, it has also held that there is no right to a view and that the weight to be given to the amenity impact of loss of views is diminished where no planning control applies encouraging retention or sharing of views. There is no specific policy or provision regarding views within the Merri-bek Planning Scheme. In this context, it is not considered that the extent of loss of view in this case does not warrant a variation to, or refusal of the proposal.

**Property values**

The Victorian Civil and Administrative Tribunal and its predecessors have generally found claims that a proposal will reduce property values are difficult, if not impossible, to gauge and of no assistance to the determination of a planning permit application. It is considered the impacts of a proposal are best assessed through an assessment of the amenity implications rather than any impact upon property values. This report provides a detailed assessment of the amenity impact of this proposal.

**Damage to adjoining property**

Concern has been raised in relation to damage of the adjoining buildings during construction. Protection of adjoining properties during construction is not a matter that can be addressed through the planning permit process, however the owners of the land proposing to build have obligations under the *Building Act 1993* to protect adjoining property from potential damage. It is the responsibility of the relevant Building Surveyor to require protection work as appropriate.

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

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

**7. Financial and Resources Implications**

There are no financial or resource implications.

**8. Conclusion**

The proposal is a high-quality apartment development that responds appropriately to the site and policy context and will provide increased housing in an area identified for significant growth. Subject to conditions in the recommendation, the proposal will provide a good standard of internal amenity for future occupants.

On the balance of policies and controls within the Merri-bek Planning Scheme and objections received, it is considered that a Notice of Decision to Grant a Planning Permit No MPS/2022/228 should be issued subject to the conditions included in the recommendation of this report.

**Attachment/s**

|  |  |  |  |
| --- | --- | --- | --- |
| **1** | 20 Dods Street, BRUNSWICK VIC 3056 - Zoning and location map | D23/75425 |  |
| **2** | 20 Dods Street, BRUNSWICK VIC 3056 - Advertised Plans | D23/75428 |  |
| **3** | 20 Dods Street, BRUNSWICK VIC 3056 - Objector Map | D23/75433 |  |

**5.2 179 Albion Street, BRUNSWICK - Planning Permit Application MPS/2021/704**

**Group Manager City Development, Phillip Priest**

**City Development**

**Executive Summary**

|  |  |
| --- | --- |
| **Property:** | 179 Albion Street, BRUNSWICK |
| **Proposal:** | Demolition of the existing building, partial reconstruction of the building and construction of two double storey dwellings |
| **Zoning and Overlay/s:** |  Neighbourhood Residential Zone (NRZ1)   Heritage Overlay (HO66)   Development Contributions Plan Overlay (DCPO) |
| **Strategic setting:** |  |
| **Objections:** | 19 objections  Key issues raised in objections:   Impact to heritage building   Interface with public park   Overdevelopment of site |
| **Planning Information and Discussion (PID) Meeting:** |  Held on 27 February 2023   Attendees: 2 objectors, 1 supporter, the applicant, 2 Council officers, Cr Monica Harte and Cr Mark Riley  Additional architectural detail on the northern elevation was discussed to help address issues raised by an objector. This change was agreed to by the applicant and is reflected in recommended conditions. The PID meeting provided an opportunity for the remaining objector concerns to be discussed and helped inform the preparation of this report. |
| **ESD:** |  Minimum average NatHERS rating of 7 stars through permit condition. |
| **Accessibility:** |  The two dwellings proposed are not subject to apartment standards and are therefore not required to be designed to include accessible housing for people with limited mobility. |
| **Key reasons for support** |  Reconstruction of compromised heritage building   Contribution to minimal change housing supply at edge of Brunswick Activity Centre   Negligible amenity impacts on nearby dwellings   Good provision of internal amenity and secluded private open space |
| **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/2021/704 be issued for the demolition of the existing building, partial reconstruction of the building and construction of two double storey dwellings at 179 Albion Street, BRUNSWICK subject to the following conditions:

1. **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 3 November 2022, but modified to show:

a) Increased finished floor levels to mitigate flooding risk, by:

i. All habitable areas of unit 1 and unit 2 with finished floor levels of no less than 53.20 metres to Australian Height Datum (AHD).

ii. Garage entries of unit 1 and unit 2 constructed with a finished surface level of 52.90 metres to Australian Height Datum (AHD).

b) Updated elevations with schedule of materials and colours to show:

i. The roof of the reconstructed bluestone cottage clad in natural slate.

ii. Replacement of render cladding at first floor with more durable material.

iii. Reduction in overall unobstructed glazing for windows to stairwell on eastern elevation (Warr Park), including hit and miss brickwork on the ground floor.

iv. Security screening provided to the ground floor east facing bedroom window of unit 1.

v. Removal of the east facing window to bedroom 2 of unit 2.

vi. Inclusion of a north facing window to bedroom 2 of unit 2.

vii. Removal of east facing hallway windows for both dwellings.

viii. Inclusion of clear glazing to west facing entry door for both dwellings.

ix. Replacement of curved balcony elements with square elements on eastern elevation.

x. Removal of first floor glass balustrade on northern elevation.

xi. Use of a recessed detail between dwellings to provide visual separation between dwellings.

xii. Provision of more visually interesting northern elevation through additional articulation, windows and/or other design details

c) Swept paths demonstrating the garages accessible by the B85 vehicle from AS2890.1 with no more than one corrective manoeuvre

d) Gas and water meters shown on all relevant plans. Where meters would be visible from the public space, they must not be stacked or placed vertically, and must be screened from view using either landscaping or fixed screening.

e) The vehicle crossing modified to show 1 metre straight splays, commencing where the footpath meets the nature strip and finishing at the kerb in accordance with Council’s Standard Vehicle Crossing design.

f) Any changes to the plans arising from the Landscape Plan in accordance with Condition 3 of this permit.

g) Tree protection zone(s) in accordance with Condition 6 of this permit, to council trees within Warr Park.

h) The Environmentally Sustainable Design initiatives that are required to be shown on plans, as contained within Condition 7.d) of this permit.

i) Any changes to the plans arising from the Public Works Plans in accordance with Condition 16 of this permit.

1. **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 Moreland Planning Scheme unless specifically noted as a permit condition.

1. **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 Infinity Landscape Architects advertised on 3 November 2022 but amended to show:

a) Any changes required to align with the plans for endorsement.

b) The provision of one canopy tree capable of growing to a height of 5m when mature located within the front setback to Albion Street.

c) Removal of the street tree at the south-west corner of the site.

d) Increased size and variety of native flowering plants on the rooftop terraces of each dwelling.

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) A schedule of all proposed trees, shrubs and ground covers, including numbers, size at planting, size at maturity, botanical names and common names. The flora selection and landscape design should be drought tolerant and based on species selection recommended in the Moreland Landscape Guidelines 2009.

h) Notes and diagrams detailing the establishment and maintenance of all proposed trees, shrubs and ground covers.

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.

1. 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 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.

1. **Tree Protection**

6) Prior to development commencing (including any demolition, excavations, tree removal, delivery of building/construction materials and/or temporary buildings), all council trees within Warr Park must have a Tree Protection Zone (TPZ) in accordance with *AS4970 Protection of Trees on Development Sites*to the satisfaction of the Responsible Authority. The TPZ must meet the following requirements:

a) Tree Protection Fencing

1. 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.
2. If works are shown on any endorsed plan of this permit within the confines of the calculated TPZ, then the TPF must be taken in to only the minimum amount necessary to allow the works to be completed.
3. 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.
4. Signage
5. 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.

b) Irrigation

1. 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.

c) Provision of Services

1. 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.
2. **Environmentally Sustainable Design (ESD)**

7) 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 PassivEnergy*, advertised 3/11/2022* but modified to include the following changes:

a) Amended NatHERS modelling for both dwellings which achieves a minimum NatHERS rating of 7.0 stars (unless suitably reduced to 6.5 stars) and maximum cooling loads of 30MJ/sqm. The NatHERS modelling must include double glazing for all habitable room windows (not ‘equivalent’ single glazing).

b) An amended commercial façade report and accompanying discussion within the SDA that confirms the selected U-values as well as the insulation (R-value), demonstrating a 10 per cent improvement on NCC 2019.

c) An amended BESS report (and any other corresponding documentation) which includes an:

i. Amended ‘Energy’ category with inputs as per the amended NatHERS modelling.

ii. Amended ‘Water’ inputs as per the amended STORM report (regarding the rainwater tank sizes and catchments).

iii. Do not claim 100 per cent for credit ‘Indoor Environment Quality 1.4 Daylight Access – Non-Residential’ (as the daylight modelling does not demonstrate this credit is met due to a lack of Daylight Factor legend).

d) Show the following ESD initiatives on the development plans:

i. An ESD table on the plans for items that cannot be drawn e.g. NatHERS, tap and cooling/heating ratings, etc.

ii. Double glazing for all habitable room windows (including the ground and first floor east facing stairwell windows), annotated on each specific window on the elevations and floor plans.

iii. Details of the external louvre shutters and how they will effectively operate during warm weather to protect the windows from warm weather heat gain.

iv. External operable shading provided for the north, east and west facing habitable room windows and the ground and first floor stairwell.

v. Separate utility meters for the dwellings and café.

vi. The 3.0kW Solar PV system.

vii. Electric vehicle charging infrastructure in both garages

e) An amended WSUD (Water Sensitive Urban Design) catchment plan and an accompanying amended STORM report that includes:

i. The entire site with a minimum STORM score of 100 per cent

ii. All raingardens to have a minimum catchment area of 50sqm

iii. Raingardens relocated from the balconies

iv. Rainwater tanks explored as the first treatment option.

Where alternative ESD initiatives are proposed to those specified in this condition, 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.

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

8) 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.

9) 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.

10) 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.

**Heritage**

11) Prior to the endorsement of plans, a report prepared by a suitably qualified person detailing the existing building to be reconstructed must be submitted to the satisfaction of the Responsible authority. This must include:

a) A full photographic record of the existing building to be reconstructed. The photographic record must be:

i. Archival quality disc/s of all images in high resolution JPG format AS WELL AS either TIFF or RAW format,

ii. Include a brief descriptive catalogue of all images,

iii. Include a photographic plan (such as existing conditions plans provided by the architect) showing the view points of all images,

iv. Referenced contact sheets and referenced printed black and white images of selected viewpoints printed on proper archival quality photographic paper.

b) A full set of professionally prepared, accurately measured drawings of the bluestone building, including all details, openings, etc.

12) The position of the proposed reconstructed building must match the position of the existing building.

13) The existing chimney on the building proposed to be reconstructed must be preserved or reconstructed to match.

**Acoustic Attenuation**

14) Prior to the commencement of the development approved by this permit, a report prepared by a qualified Acoustic Engineer must be submitted to the satisfaction of the Responsible Authority outlining specific noise attenuation measures to minimise the noise from the nearby arterial road, entertainment venues and tram route. Construction and maintenance of the buildings must be in accordance with the recommendations contained in this report to the satisfaction of the Responsible Authority.

1. **Development Contributions**

15) Prior to the issue of a Building Permit in relation to the development approved by this permit, a Development Infrastructure Levy must be paid to Merri-bek City Council in accordance with the approved Development Contributions Plan.  The Development Infrastructure Levy is charged per dwelling.

If an application for subdivision of the land in accordance with the development approved by this permit is submitted to Council, payment of the Development Infrastructure Levy can be delayed to a date being whichever is the sooner of the following:

 a maximum of 12 months from the date of issue of the Building Permit; or

 prior to the issue of a Statement of Compliance for the subdivision;

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

If a Community Infrastructure Levy is payable under the approved Development Contributions Plan and under section 46O of the *Planning and Environment Act 1987*, the Community Infrastructure Levy in respect of each dwelling must be paid to Merri-bek City Council prior to the issue of a building permit.

**Public Works Plan**

16) Prior to the endorsement of plans, a public works plan must be submitted to the satisfaction by the Responsible Authority, including the following details:

a) The unconstructed portion of the verge between the carriageway of Wraith Street and site boundary:

i. constructed and drained for pedestrian use for the full width to Council standards using construction plans approved by Council with works to be supervised by Council; and/or

ii. landscaped including the provision of new street tree planting in appropriate locations, with the number of trees maximised based on the space available, in consultation with the Responsible Authority.

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

17) Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, all public works shown on the endorsed public works plan must be implemented to the satisfaction of the Responsible Authority at the expense of the owner of the land, unless otherwise agreed with prior written consent of the Responsible Authority.

1. **Car Parking and Vehicle Access**

18) 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 (Moreland City Council, City Infrastructure Department).

19) 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 (Moreland 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 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.

21) 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.

1. **Undergrounding cables**

22) 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.

1. **Stormwater**

23) All stormwater from the land, where it is not collected in rainwater tanks for re-use, must be collected by an underground pipe drain approved by and to the satisfaction of the Responsible Authority (Note: Please contact Moreland City Council, City Infrastructure Department).

1. **General Amenity**

24) 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.

25) Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, all boundary walls must be constructed, cleaned and finished to the satisfaction of the Responsible Authority.

1. **Permit Expiry**

26) 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.

1. 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.

1. **Notes:** These notes are for information only and do not constitute part of this notice of decision or conditions of this notice of decision.
2. **Note 1:**This permit contains a condition requiring payment of Development Contributions. The applicable development contribution levies are indexed annually. To calculate the approximate once off levy amount, please visit <http://www.moreland.vic.gov.au/planning-building/> and click on ‘[Moreland Development Contributions Plan (DCP)](http://www.moreland.vic.gov.au/planning-building/moreland-development-contributions-plan-dcp/)’. Alternatively, please contact Merri-bek City Council on 9240 1111 and ask to speak to the DCP Officer.

**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.moreland.vic.gov.au/living-in-moreland/parking-and-roads/parking-permits-and-fines/residential-parking-permits/](https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.moreland.vic.gov.au%2Fliving-in-moreland%2Fparking-and-roads%2Fparking-permits-and-fines%2Fresidential-parking-permits%2F&data=05%7C01%7Cgvandonkelaar%40moreland.vic.gov.au%7Ca55e963b17e345d16df308da7e803c8b%7Cfd1e478759744ae8ac8693ab2fd52107%7C0%7C0%7C637961386480921465%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=q4Q%2FYprc03ci1YOLI6NbGa9tNh2PwmkFrejQR0kxc68%3D&reserved=0)

1. **Note 3:**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.
2. **Note 4:**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](https://homesforhomes.org.au/) and register your commitment to donate 0.1 per cent of the sale price of your dwelling(s).
3. **Note 5:** The estimated flood level for this property is 52.90 metres to Australian Height Datum (AHD), based upon a 1 per cent Annual Exceedance Probability (AEP) rainfall event. This is a storm that has a 1 per cent statistical chance of occurring in any one year.

**REPORT**

**1. Background**

**Subject site**

The subject site is located at 179 Albion Street, Brunswick and has an area of 253square metres.

The site is occupied by a contributory building with heritage significance. The building is a bluestone cottage with a bluestone and timber slat fence fronting Albion Street. There have been non-contributory extensions constructed of bluestone and red brick to the rear of the heritage building. A continuous red corrugated steel hip roof occupies the bluestone section of the building with a flat roof occupying the red brick section. The subject site has been in use as a restaurant.

There are no restrictive covenants indicated on the Certificate of Title.

**Surrounds**

The surrounding area is characterised by commercial development within the Brunswick Activity Centre along Sydney Road with predominantly low rise residential development located to the east of the activity centre boundary (rear of Sydney Road oriented buildings).

Residential development located outside of the activity centre primarily consists of traditional, single storey, detached dwellings. There are also examples of two storey newer townhouses and older unit developments nearby. There are a number of older apartment buildings to the north of the site fronting De Carle Lane that are three to four storeys in height.

Nearby development within the Brunswick Activity Centre is predominantly commercial buildings and includes buildings of heritage significance fronting Sydney Road. There are also examples of larger residential developments nearby within the Activity Centre including 756 Sydney Road and 64 Albert Street.

Immediately adjoining the subject site is Warr Park on the eastern side, Albion Street on the southern side and Wraith Street on the western and northern sides. Directly opposite the site across Wraith Street is a Council car park, with heritage cottages located on the opposite side of Wraith Street to the north.

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

**The proposal**

The proposal is summarised as follows:

 Demolition of all buildings, covering a floor area of 212 square metres

 Re-construction of the 60.9 square metre heritage bluestone cottage to its current specifications.

 Construction of two dwellings to the rear of the reconstructed bluestone cottage. The dwellings will consist of;

- Two bedrooms, bathroom and single garage on ground floor

- Open plan lounge, dinning and kitchen with toilet and balcony on first floor

- Rooftop deck and grassed area with stairs and covered landing

- Shared double crossover to Wraith Street

The development plans form **Attachment 2**.

**Planning Permit and site history**

Planning Permit No. P27/9028 was issued for a restaurant 28 June 1990.

A Planning Permit No. 0141/93 was issued 7 October 1993 for extended operating hours of the restaurant.

A Planning Permit MPS/2007/274 was issued on 12 March 2008 at the direction of VCAT for use of the land for a restaurant and the sale and consumption of liquor (on premises licence).

Planning Permit No. MPS/2007/274 was subsequently amended. A VCAT order was issued via consent on 18 November 2010. The amendment was to allow extended operating hours, patron seating in the rear courtyard and included partial demolitions and buildings and works to the rear courtyard.

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

| **Control** | **Permit Requirement** |
| --- | --- |
| Neighbourhood Residential Zone (NRZ1) | Pursuant to Clause 32.09-6 (NRZ), a permit is required to construct more than one dwelling on a lot.  No permit is required to use land as a dwelling.  The proposal does not include a use aspect in regard to the reconstructed café/restaurant area.  The use of the site for a restaurant has existing use rights under Clause 63.01. The applicant has been informed that existing use rights may be extinguished by the demolition of the existing building under Clause 63.10. When demolition and re-construction is complete an application to use the building may be submitted for Council’s consideration. |
| Heritage Overlay (HO66) | Clause 43-01-1 (Heritage) - A permit is required to demolish or remove a building, construct a building or construct or carry out works |

The following Particular Provisions of the Merri-bek Planning Scheme are also relevant to the consideration of the proposal:

 Clause 45.06: Development Contributions Plan Overlay. A condition is included in the recommendation requiring the payment of the DCP levy prior to the issue of a Building Permit for the development.

 Clause 45.09: Parking Overlay. The parking overlay means that the ‘Column B’ rates in the table to Clause 52.06 apply

 Clause 53.18: Stormwater Management in Urban Development

 Clause 55: Two or More Dwellings on a Lot

**2. Internal/External Consultation**

**Public notification**

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

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

 Placing signs on the southern, western and northern frontages of the site

Council has received 19 objections to date. A map identifying the location of objectors forms **Attachment 3**.

The key issues raised in objections are:

 Heritage impact of demolition

 Impact on Warr Park; visual impact, overshadowing

 Proposed dwellings out of character

 Over development in area

 Height of proposal

 Lack of parking

 Vehicle access and manoeuvrability

 Interface of dwellings to Wraith Street

A Planning Information and Discussion meeting was held on 27 February 2023 and attended by Cr Mark Riley, Cr Monica Harte, two Council Planning Officers, the applicant, one supporter and two objectors. The meeting provided an opportunity to explain the application, for the objectors to elaborate on their concerns, and for the applicant to respond.

Based on discussions at the Planning and Information Discussion meeting, an amended plan condition has been recommended to improve the details on the northern elevation. This is to address the concerns of one objector regarding the interface with Wraith Street. The applicant has agreed to the inclusion of this condition.

**Internal/external referrals**

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

| **Internal Branch/Business Unit** | **Comments** |
| --- | --- |
| Development Engineering Team | Supports the proposal. Key recommendations are regarding flood levels for the proposed dwellings, manoeuvrability of vehicles and waste storage. Due to the location in proximity to Sydney Road acoustic attenuation requirements have also been recommended.  Recommended changes are addressed by conditions of the recommendation. |
| ESD Team | Supports the proposal. Key recommendations include improvement to energy performance, alteration to water sensitive urban design response and provision of solar energy system.  Recommended changes are addressed by conditions of the recommendation. |
| Heritage Advisor | Supports the proposal. The proposed demolition and reconstruction of the original bluestone cottage is supported on the basis of recommendations relating to matching the existing position in reconstruction of the chimney and reconstruction of the roof in natural slate.  Recommended changes are addressed by conditions of the recommendation and are considered further in Section 4 of this report. |
| Open Space Design and Development Unit | Supports the proposed impacts on council trees. Key recommendations are regarding the requirement to remove existing street tree and replace with canopy tree on site, provide tree protection fencing and improve rooftop landscaping.  Recommended changes are addressed by conditions of the recommendation or are considered further in Section 4 of this report. |
| Urban Design Unit | Urban design concerns have been partially addressed by conditions however the Urban Design Unit does not fully support the proposal.  The key issues raised include the connection between the cottage and dwellings, the massing, separation and identity between the dwellings and the internal amenity of bedrooms.  There are also recommendations provided regarding the interface of the dwellings with the heritage building and park as well as their façade design and materiality.  These recommendations regarding the interface between the dwelling and the heritage cottage are addressed through conditions requiring higher quality materials for the dwelling. However, separation between the heritage building and dwellings, as well as the introduction of a peaked roof, has not been adopted.  Recommended changes to be adopted are addressed by conditions of the recommendation. Further urban design considerations are included in Section 4 of this report. |

**3. Policy Implications**

**Planning Policy Framework (PPF):**

The following policies are of most relevance to this application:

 Municipal Planning Strategy (Clause 2), including:

 Vision (Clause 2.02)

 Settlement (Clause 2.03-1)

 Environmental and Landscape Values (Clause 2.03-2)

 Environmental Risks and Amenity (Clause 2.03-3)

 Built Environment and Heritage (Clause 2.03-4)

 Housing (Clause 2.03-5)

 Economic Development (Clause 2.03-6)

 Transport (Clause 2.03-7)

 Infrastructure (Clause 2.03-8)

 Settlement (Clause 11)

 Environmental and Landscape Values (Clause 12), including:

 Biodiversity in Merri-bek (12.01-1L)

 Environmental Risks and Amenity (Clause 13):

 Noise Abatement (Clause 13.05-1S and 13.05-1L)

 Built Environment (Clause 15.01), including:

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

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

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

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

 Neighbourhood Character (Clause 15.01-5S)

 Minimal and Incremental Change Areas (Clause 15.01-5L)

 Sustainable Development (Clause 15.02), including:

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

 Environmentally Sustainable Development (Clause 15.02-1L)

 Energy efficiency in Merri-bek (Clause 15.02-1L)

 Heritage (Clause 15.03), including:

 Heritage conservation (Clause 15.03-1S)

 Heritage in Merri-bek (Clause 15.03-1L)

 Residential Development (Clause 16.01), including:

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

 Homes in Merri-bek (Clause 16.01-2L)

 Transport (Clause 18), including:

 Sustainable Personal Transport (Clause 18.02-1S & 18.08-1R)

 Sustainable Transport in Merri-bek (Clause 18.02-1L)

 Car parking (Clause 18.02-4S & 18.02-4L)

**Human Rights Consideration**

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

 Section 12: Freedom of movement

 Section 13: Privacy and Reputation

 Section 20: Property rights

An assessment of whether there is any potential for unreasonable overlooking has been undertaken in section 4 of this report. The proposed redevelopment of private land does not present any physical barrier preventing freedom of movement. The right of the landowner to develop and use their land has been considered in accordance with the Merri-bek Planning Scheme.

**4. Issues**

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

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

The subject site is located within the Neighbourhood Residential Zone. The purposes of this zone include recognising areas of single and double storey residential development and ensuring that development respects the identified neighbourhood character.

Clause 16.01-1R allows for a range of minimal, incremental and high change residential areas that balance the need to protect valued areas with the need to ensure choice and growth in housing. Council’s Housing Framework Plan at Clause 2.04 designates this location for minimal housing growth. In these areas, Clause 16.01-2L encourages a mix of single dwellings and lower density multi-dwelling developments that contribute to a low density, open and landscaped character.

The proposal for two dwellings represents a minimal level of change that respects the heritage significance of the site while allowing for a reasonable increase in residential density. The site is in close proximity to services and the provision of additional housing in the location, that protects and complements heritage and neighbourhood character is supported.

**Does the amended proposal adversely affect the building’s heritage significance?**

The subject site is occupied by a bluestone cottage that is a contributory building to the De Carle Street/Bishop Street heritage precinct. Clause 15.03-1L – *Heritage in Merri-bek* outlines a series of strategies when assessing planning applications in heritage areas. Demolition is supported where “*The fabric proposed to be removed does not contribute to the heritage significance of the place”*. The rear sections of the building that are proposed to be permanently demolished are not part of the original structure, and as such do not contribute to its heritage significance.

Clause 15.03-1L discourages the total demolition of contributory heritage buildings unless “*The building is structurally unsound, and that the contributory or significant heritage fabric has deteriorated beyond reasonable repair and would require reconstruction of the whole as shown through the submission of a structural engineering report prepared by a suitably qualified person*”. The Structural Engineering Report supporting the application confirms that the heritage building has deteriorated beyond the reasonable ability to be repaired. The Structural Engineering Report was reviewed by an independent Heritage Consultant confirming that the total demolition and reconstruction of the building to its current specifications was the preferred outcome. The level of deterioration includes cracks in the bluestone walls that are classified as severe. While some walls could be repaired with extensive and continuous underpinning, the southern façade and east and west walls on either side of the façade would need to be removed with no possibility of repair. Furthermore, the building until recently has been actively used as a restaurant, suggesting that this is not a situation of purposeful neglect by the land owner.

Clause 15.03-1L discourages the “*total reconstruction of a heritage place as an alternative to retention*”. However, as retention is not a reasonable alternative, the proposal to reconstruct the heritage building will allow for the retention and protection of the heritage significance of the place as much as is practical given the severe deterioration of the building. Council’s Heritage Advisor has suggested that given the history of structural problems and the ability to accurately reconstruct the existing building using original building fabric whilst rectifying structural issues, it is considered on this occasion that total demolition of the existing bluestone cottage is acceptable.

In order to ensure that the heritage significance of the bluestone cottage is preserved, contributory elements of the building will be required to be recreated. Conditions are recommended on the basis of recommendations from Council’s Heritage Advisor to require the reconstructed building to be in the same siting on the lot, to reconstruct the significant chimney and to re-instate a natural slate roof, as was the original roofing material on the site.

The proposal also includes the development of two dwellings to the north of the bluestone cottage. Clause 15.03-1L encourages new buildings that:

 *Respect the existing scale, massing, form and siting of contributory or significant elements and do not dominate the heritage place or precinct.*

 *Adopt innovative and contemporary design that makes a positive contribution to the heritage place.*

 *Do not imitate historic styles and detailing.*

The proposed dwellings are at a scale and massing that is greater than that of the existing heritage cottage. However, the addition of a second storey is common for heritage properties and does not represent a scale that contrasts to the point where it is considered dominant of the heritage structure. The proposed dwellings are also sited similarly to the replaced non-heritage elements that exist on the site. The proposed dwellings are to be constructed with a contemporary design that does not imitate heritage styles or detailing.

Subject to conditions, the proposal will not unreasonably affect the heritage significance of the historic building on the site.

**Does the proposal respond to neighbourhood character, positively contribute to the local context and enhance the public realm?**

The proposal presents as an acceptable development which is broadly consistent with the preferred neighbourhood character.

The proposed dwellings include a tiered form featuring parapet walls which differs from the heritage building on the site and in the area. The use of parapet walls and flat roof forms is reflective of nearby development such as 185 Sydney Road as well as the multi-dwelling developments to the north, including 45-47 De Carle Street, which also interfaces directly with Warr Park. Flat roofs rather than peaked roofs also reduce the overall height of the proposal. This is considered to be appropriately responsive to the context in alignment with Clause 15.01-1S.

The proposed materials include brick at ground floor, which is a robust traditional building material reflective of many buildings in the area while providing appropriate contrast with the bluestone cottage. In order to ensure a fine grain architectural expression as required by Clause 15.01-1L, conditions have been recommended on the basis of advice from Council’s Urban Design Officer. Conditions recommend; removal of render at first floor and replacement with a more robust material, use of a recessed feature between dwellings to provide the appearance of separation between buildings, reduction in unobscured glazing to stairwells and curved elements of the first-floor balconies replaced with square forms.

Building height

The proposal is located in the Neighbourhood Residential Zone. Under Clause 32.09-10 of the zone residential development must have a maximum height of 9 metres and maximum of two storeys. The proposal has a maximum height of 9 metres and two storeys with the inclusion of a roof terrace. The proposed roof terrace is uncovered other than a stairwell and small landing.

The development complies with the maximum number of storeys requirement of the zone as the ceiling over the staircase and access to the roof terrace does not constitute a storey as defined by Clause 73.01. This is supported by the findings in *Woodward v Kingston CC* and *Robertson Development Group v Mornington Peninsular SC* where the Tribunal addressed this matter confirming *that the stair bulkhead does not constitute an attic or mezzanine as it cannot be said to have a "floor" in the commonly understood sense. Rather it is a conduit between levels namely between the first floor below and the deck above.*

Street Setback

The proposal includes a 0m setback to Wraith Street on the western and northern sides. Clause 55.03-1 seeks a 3 metre front wall setback to a side street where there are no buildings fronting that street on abutting allotments. The proposed setbacks to Wraith Street are appropriate in the context of existing walls to boundaries on the subject site and development opposite on Wraith Street and De Carle Lane both providing 0m front setbacks.

A condition has been recommended to require a public works plan that would improve the interface between the site and the public realm at the car park interface. The inclusion of vegetation within an area that is currently an unmade verge would soften the impact of the development directly bordering the street. The neighbourhood character of the area will not be unreasonably affected by the proposed lack of setback to the side street. A variation to Clause 55.03-1 is appropriate in this instance as the objective is met.

Site Coverage and Permeability

The proposal results in site coverage of 85.7 per cent, with the remaining 14.3 per cent of the site being permeable. Clause 55.03-3 seeks to have a maximum of 60 per cent site coverage and Clause 55.03-4 seeks to have a minimum of 20 per cent of the total site area as permeable. This variation is acceptable in this instance as the site coverage is equal to the existing conditions on the site and the permeability has been improved. The existing site is 100 per cent impervious to water absorption. The provision of permeable paving in the front setback to Albion Street is a considerable improvement of the development.

Landscaping

The proposal does not include the provision of any canopy trees on site. Clause 55.03-8 is modified by Schedule 1 of the Neighbourhood Residential Zone to require canopy trees to be provided within the front setbacks and secluded private open space (SPOS) of dwellings in the zone.

The proposal does not include the removal of vegetation on the site. The proposal does not include any dwelling front setback and the layout does not provide ground floor SPOS that allow for the planting of canopy trees. The design layouts in this instance are appropriate however in order to take advantage of the outlook to Warr Park. A condition is recommended to improve the rooftop plantings to provide natives flowering plants of an increased size. The planting on site and existing trees within Warr Park “*provide suitable shading and cooling of the urban environment to reduce heat absorption and re-radiation of hard surfaces*” as considered in the decision guidelines for the schedule to the zone.

The provision of canopy trees in association with a dwelling in the Neighbourhood Residential Zone is typically achievable within the minimum garden area required under Clause 32.09-4. The subject site at 253 square metres is below the 400 square metre threshold that requires 25 per cent minimum garden area. Within the limited area, the provision of rooftop planting, as well as planting in association with the restaurant, provides for improved outcomes in respect to onsite vegetation and is considered sufficient to meet the objective of the Clause 55.03-8 requirements.

Advice from Council’s Open Space Officer indicates that the Council street tree to the south west of the site is in poor health and will be required to be removed during development. A condition is recommended for a replacement tree to be planted within the site in the front setback. Advice from Council’s Open Space Officer suggests that a tree will be successful in this location due to the proposed permeable paving. A condition for a public works plan has also been included to allow for replacement street tree planting within the road reserve if space permits.

Park Interface and Visual Impact

The proposed dwellings interface directly with Warr Park on the eastern side of the site. Clause 15.01-1L – Urban design in Merri-bek has several strategies regarding the impact of development on public open space. In accordance with policy, the proposal provides a clear separation between public and private land by use of boundary walls. The provision of first floor balconies, ground floor bedrooms and windows to the central stairwells ensures the development provides “*a sense of safety by maximising interaction, passive surveillance and incidental lighting of open spaces.*”

While the central stairwell window provides interaction, it is also overscaled and does not provide sufficient internal privacy for residents. A condition is recommended on advice of Council’s Urban Design Officers to reduce the overall level of glazing through a technique such as providing offset windows or hit and miss brickwork sections. The walls on boundary combined with the ability for passive surveillance from windows that are not oversized results in an acceptable visual impact on Warr Park.

Clause 15.01-1L also includes policy that requires that development does “*not unreasonably overshadow public open space*”. There are some overshadowing impacts as a result of the proposed new walls on the shared boundary with Warr Park. The height of the walls on boundary are 8.85m at the stair and landing and 6.63m for the first floor parapet. These walls are beyond the maximum and average height boundary wall requirements outlined in Clause 55.04-2.

The shadowing of the public open space is however considered reasonable. There is no overshadowing as a result of the proposal up until 12pm. The quantum of additional shadowing from 1pm – 3pm on the equinox is as follows;

|  |  |  |  |
| --- | --- | --- | --- |
| Time | Existing shadow from site (approx.) | Total shadow from proposal (approx.) | Additional shadow from proposal (approx.) |
| 1 pm | 22.5m2 | 41.9m2 | 19.4m2 |
| 2 pm | 55.3m2 | 103.6m2 | 48.3m2 |
| 3 pm | 94.5m2 | 183.2m2 | 88.7m2 |

This level of overshadowing is reasonable in the context of the approximately 5,800square metre park. The east to west width of Warr Park, particularly of the primary section to the north, is such that areas of the public area will be free from shadow in the afternoon hours where the proposal causes some impact.

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

The proposal is well located not adjoining any dwellings on other sites. As such there are little to no amenity impacts to other dwellings. The nearest dwellings are located to the north on Wraith Street and are therefore not subject to overshadowing of their windows or private open space as a result of the proposed dwellings. Similarly, the impact of overlooking is negligible. The northern edge of the balcony of unit 2 faces the front private open space of 5 Wraith Street, an area that is not secluded from the street. The rooftop terrace includes landscaping around the edge, as a result these areas are not within 9m of the nearest area of secluded private open space at 1 Wraith Street, in accordance with Clause 55.04-6.

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

The proposal provides good on-site amenity and facilities. The proposal includes two areas of secluded private open space, with balconies at first floor and a rooftop terrace. This results in a total area of secluded private open space of approximately 42.9m2 for each dwelling, well in excess of the 25square metres required by Clause 55.05-4 and in compliance with the requirement for private open space. The rooftop terrace in particular has high levels of solar access, while the balconies provide sheltered open space.

The proposed dwellings are not directly adjoining any buildings on a neighbouring site. Clause 55.05-3 seeks to provide new windows with sufficient light by ensuring they face an outdoor space of a minimum 3 square metres. To protect against future development, this is to be provided on the subject site. While not provided on the site, the north, east and west windows of the dwellings are adjoining the street or Warr Park and are therefore provided with good access to daylight. Discussions with Council’s Property Unit confirm that windows on the boundary are acceptable in this location but should be minimised and properly screened for privacy and security. A condition is required that will provide hit and miss brickwork or security screening to the ground floor windows and will remove ground floor windows where alternative daylight access to rooms can be provided.

The dwellings are not built to be fully accessible to people with limited mobility. However, the provision of a bathroom at ground floor allows for visitors with limited mobility.

**Has adequate car parking been provided?**

The development provides two on-site car spaces satisfying the car parking requirements of the Merri-bek Planning Scheme.

The existing restaurant/café on site does not currently provide car parking. No further car parking is sought as a result of the development on the site.

Council’s Development Engineer has recommended conditions to ensure vehicle manoeuvrability when exiting and entering the site is appropriate. These conditions have been included in the recommendation.

**5. Response to Objector Concerns**

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

 Heritage impact of demolition

 Impact on Warr Park; visual impact, overshadowing

 Proposed dwellings out of character

 Height of proposal

 Lack of parking

 Vehicle access and manoeuvrability

 Interface of dwellings to Wraith Street

Other issues raised by objectors are addressed below.

**Overdevelopment**

The Victorian State Government has provided a clear policy imperative of urban consolidation as a way of providing housing for Melbourne’s growing population. Medium density housing development is key to this. Density of the development is determined from a quantitative assessment of a development’s compliance with a series of criteria set out in the Merri-bek Planning Scheme. This includes an assessment of the design’s ability to provide for the amenity of future residents, protect the amenity of existing residents and respond to the attributes and constraints of the site. The number of dwellings and associated pedestrian and vehicle movements account for the site’s accessibility and location.

The proposal satisfies the requirements of Clause 55 in respect to building height, off-site impacts, car parking, and open space provision. While the proposal seeks variations in regard to site coverage, permeability and provision of canopy trees this is acceptable in the context of the existing conditions and constraints of a small lot. The proposal is therefore not considered to be an overdevelopment of the site.

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

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

**7. Financial and Resources Implications**

There are no financial or resource implications.

**8. Conclusion**

It is considered that the proposed demolition of the existing building, partial reconstruction of the building and construction of two double storey dwellings is acceptable. The heritage value of the site is sufficiently maintained in a context of severe structural damage. The proposed dwellings are well located, have acceptable internal amenity, with no unreasonable impacts on nearby dwellings and on Warr Park. On the balance of policies and controls within the Merri-bek Planning Scheme and objections received, it is considered that Notice of Decision to Grant a Planning Permit No MPS/2021/704 should be issued subject to the conditions included in the recommendation of this report.

**Attachment/s**

|  |  |  |  |
| --- | --- | --- | --- |
| **1** | Location and Zoning map | D23/90405 |  |
| **2** | Development Plans | D23/90406 |  |
| **3** | Objector Map | D23/90407 |  |

**5.3 336 Sydney Road, Coburg - MPS/2021/322**

**Group Manager City Development, Phillip Priest**

**City Development**

**Executive Summary**

|  |  |
| --- | --- |
| **Property:** | 336 Sydney Road, Coburg |
| **Proposal:** | Construction of a five-storey mixed-use development (including mezzanine level) comprising a commercial tenancy and dwellings, and a reduction to the standard car parking requirement |
| **Zoning and Overlay/s:** |  Activity Centre Zone 1   Environmental Audit Overlay   Parking Overlay 1   Development Contribution Plan Overlay – Schedule 1 |
| **Strategic setting:** |  |
| **Objections:** | 17 objections from 14 properties  Key issues:   Access and safety impacts   Amenity impacts (privacy, noise, shadow and bulk)   Visual appearance and character |
| **Planning Information and Discussion (PID) Meeting:** |  Date: 31 January 2023   Attendees: 7 objectors, the applicant, 2 Council officers, and Cr Bolton.   No changes were agreed to however the meeting provided an opportunity for the objectors concerns to be discussed and helped inform the preparation of this report. |
| **ESD:** |  58 per cent BESS Score.   NatHERS rating of 7 stars.   STORM Rating of 100 per cent. |
| **Accessibility:** |  Adaptable apartments comprise 50 per cent of the proposal. |
| **Key reasons for support** |  Appropriate built form; building height and setbacks do not seek to vary from the planning controls for the site.   Scale of development is reasonable in the context being in the Activity Centre.   ESD exceeds the minimum requirements of the relevant policy and planning controls.   No unreasonable impacts to adjacent residents.   Good level of amenity for future occupants. |
| **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/2021/322 be issued for the construction of a five-storey mixed-use development (including mezzanine level) comprising a commercial tenancy and dwellings, and a reduction to the standard car parking requirement at 336 Sydney Road, Coburg 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 8/12/22 but modified to show:

a) The commercial tenancy increased to 40 square metres, including;

i. Relocation of 4 bike spaces from the ground floor to internal to the apartments.

ii. Removal of the landscaping area and associated setback from the building’s frontage to create a consistent street wall.

iii. Any other internal changes as required.

b) The colours and materials schedule amended:

i. Showing balconies front Sydney Road to contain open metal battens or similar.

c) The stepped verandah projecting over the footpath altered to be all at one height and aligned with verandah heights along Sydney Road.

d) The verandah must be setback not less than 750mm from the face of the kerb and at a height no less than 3m above the level of the footpath in accordance with Clause 507 of the Building Regulations 2006 to the satisfaction of the Responsible Authority.

e) The northern and southern concrete panel side walls of the development to be further articulated in either of the following ways:

i. The use of patterns;

ii. Variation in colour; or

iii. Another treatment

f) Improved daylight to the rear, east facing balcony of Apartment 1.02 as follows:

i. Amend the overlooking screening to be louvred fixed screening with a maximum of 25 per cent openings, which are angled to prevent direct views to nearby habitable room windows; and

ii. Reduce the depth of the east-facing balconies including the planter boxes of Apartments 2.01 and 3.01 by a minimum of 1.0 metre.

g) Any changes to the plans arising from the:

i. Landscape Plan in accordance with Condition 3 of this permit.

ii. Environmentally Sustainable Design initiatives in accordance with Condition 6 of this permit.

iii. Acoustic Report in accordance with Condition 10 of this permit.

Public works plan in accordance with Condition 12 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 Moreland Planning Scheme unless specifically noted as a permit condition.

**Landscaping**

3. Prior to the endorsement of plans, a landscape plan must be submitted to the Responsible Authority. The landscape plan must show:

a) Increased greening throughout the development as a whole, utilising balconies, green walls and planter boxes, to achieve coverage equivalent to 12 square metres.

b) Any changes required to align with the plans for endorsement.

c) Details of all planter boxes, above basement planting areas, green walls, rooftop gardens and similar, including:

i. Soil volume sufficient for the proposed vegetation

ii. Soil mix

iii. Drainage design

iv. Details of an automatic irrigation system, including maintenance program and responsibility for maintenance.

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.

**Environmentally Sustainable Design (ESD)**

6. 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 Sustainable Design Assessment must demonstrate a best practice standard of environmentally sustainable design and be generally in accordance with the SDA dated 1 September 2022 but modified to include the following changes:

a) Amend the solar PV system to be a minimum capacity of 2kW for each dwelling (8kW total).

b) Provide future electric charging capacity in the car stackers.

c) The roof area connected and draining to the 4,000L rainwater harvesting and reuse tank (4,000L minimum).

d) Delete the internal vertical fins screening for Dwelling 101’s east-facing bedroom 2/study window; and Dwelling 201’s and 301’s east-facing kitchen window.

When submitted and approved to the satisfaction of the Responsible Authority, the amended SDA and associated notated plans will be endorsed to form part of this permit.

7. Prior to the issue of a Statement of Compliance or Certificate(s) of Occupancy whichever occurs first, all works must be undertaken in accordance with the endorsed Sustainable Design Assessment report to the satisfaction of the Responsible Authority. No alterations to these plans may occur without the written consent of the Responsible Authority

8. 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.

**Accessibility**

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

**Acoustic Report**

10. Prior to the commencement of the development approved by this permit, a report prepared by a qualified Acoustic Engineer must be submitted to the satisfaction of the Responsible Authority outlining:

a) Specific noise attenuation measures to minimise the noise from the adjacent arterial road and tram route.

b) Recommendations of acoustic attenuation measures to ensure that noise generated from the use of car stackers will not unreasonably impact the immediate adjoining residential properties and will operate in accordance with the *Environment Protection Act 2017*.

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.

Construction and maintenance of the buildings must be in accordance with the recommendations contained in this report to the satisfaction of the Responsible Authority. In the event that it is considered that the Act and Regulations would be breached, the acoustic report must recommend further noise attenuation measures to ensure compliance with the Act and these additional measures must be implemented at the owner’s cost and to Council’s satisfaction prior to the occupation of the development

**Waste Management**

11. 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.

**Public Works Plan**

12. Prior to the commencement of the development, a Public Works Plan and associated construction drawing specifications detailing the works to the land in front and to the rear of the site must be submitted to the satisfaction of the Responsible Authority. The Plan must include:

a) All construction details in accordance with the Moreland City Council Technical Notes July 2019 (or any updated version).

b) A detailed level and feature survey of the footpaths and roads.

c) Longitudinal plans of the road verge commencing 10 metres beyond the site boundary, together with cross-sections between the kerb and the building line at 5 metre intervals, with levels showing the slope of the public footpath and highlighting how the level difference between footpath and floor levels will be made up within the site to the satisfaction of the Responsible Authority.

d) The upgrade of the footpath adjacent to the site. Public footpaths are to be reinstated to the previous levels with a maximum cross fall slope of 1 in 40 (2.5 per cent).

e) Any necessary drainage works.

f) The installation of new street furniture and infrastructure, such as parking and traffic signs, public seating, bicycle parking and similar (where practicable), which is to be provided with graffiti-resistant surfaces.

g) Any other works to the public land adjacent to the development.

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

13. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, all public works shown on the endorsed public works plan must be implemented to the satisfaction of the Responsible Authority at the expense of the owner of the land, unless otherwise agreed with prior written consent of the Responsible Authority.

**Environmental Audit Condition**

14. Before the construction or carrying out of buildings and works, 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

15. 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.

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).

16. 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.

17. 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 14, 15 and 16 are satisfied.

18. 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.

19. Where a preliminary risk screen assessment has satisfied Condition 14 (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 risk screen assessment to the satisfaction of the Responsible Authority.

**3D model**

20. Prior to the commencement of the development, a 3D digital model of the approved development which is compatible for use on Council’s Virtual Moreland tools and software for Council and community must be submitted to the satisfaction of the Responsible Authority. The model should be prepared in accordance with Moreland City Council’s 3D model submission guidelines. A copy of the 3D model submission guidelines and further information on the Virtual Moreland Project can be found at https://www.moreland.vic.gov.au/planning-building/3D-Guidelines/. In the event that substantial modifications to the building envelope are approved under an amendment to this planning permit, a revised 3D digital model must be submitted to, and be to the satisfaction of the Responsible Authority.

**Development Contributions**

21. Prior to the issue of a Building Permit in relation to the development approved by this permit, a Development Infrastructure Levy must be paid to Merri-bek City Council in accordance with the approved Development Contributions Plan. The Development Infrastructure Levy is charged per 100 square metres of leasable floor space.

If an application for subdivision of the land in accordance with the development approved by this permit is submitted to Council, payment of the Development Infrastructure Levy can be delayed to a date being whichever is the sooner of the following:

a) a maximum of 12 months from the date of issue of the Building Permit; or

b) prior to the issue of a Statement of Compliance for the subdivision;

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

**Engineering Matters**

22. 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).

23. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, access to the site, any vehicle crossover and any ancillary road and road drainage works must be constructed in accordance with any requirement of the Responsible Authority (Merri-bek City Council, City Infrastructure Department).

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.

25. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, the car park entry gate and/or garage roller doors must be automatic and remote controlled.

26. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, the bicycle storage room must have self-closing and self-locking doors or gates that are only accessible using keys, codes or swipe cards in accordance with the Australian Standard for Bicycle Parking (AS2890.3).

27. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, bicycle signage that directs the cyclists to the bicycle facilities must be provided to the satisfaction of the Responsible Authority. Bicycle signage should be at least 0.3 metres wide and 0.45 metres high; display a white bicycle on a blue background on the top half of the sign and display information about the direction of facilities on the bottom half of the sign.

**Stormwater**

28. 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).

29. The surface of all balconies are to be sloped to collect the stormwater run-off into stormwater drainage pipes that connect into the underground drainage system of the development to the satisfaction of the Responsible Authority.

30. Stormwater from the land must not be directed to the surface of the right-of-way to the satisfaction of the Responsible Authority.

**Car Parking**

31. The area set aside for the parking of vehicles and access lanes shown on the endorsed plan must, to the satisfaction of the Responsible Authority:

a) Be completed prior to issue of an Occupancy Permit or issue of a Statement of Compliance, whichever occurs first.

b) Be maintained.

c) Be properly formed to such levels that it can be used according to the endorsed plan.

d) Have the boundaries of all vehicle parking spaces clearly marked on the ground to accord with the endorsed plan.

e) Not be used for any other purpose other than the parking of vehicles, unless with the prior written consent of the Responsible Authority.

f) Be numbered to facilitate management of the car park.

**General**

32. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, all boundary walls must be constructed, cleaned and finished to the satisfaction of the Responsible Authority.

33. 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.

34. The shopfront window must not be painted or blocked out in any way to the satisfaction of the Responsible Authority.

35. All lighting of external areas must be designed not to emit direct light onto nearby dwellings to the satisfaction of the Responsible Authority.

**Privacy screens to be installed and maintained**

36. 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.

**Permit Expiry**

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

a) the development is not commenced within three (3) years from the date of issue of this permit;

b) the development is not completed within five (5) 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;

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

d) 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 notice of decision/permit or conditions of this notice of decision/permit.**

**Note 1:** This permit contains a condition requiring payment of Development Contributions. The applicable development contribution levies are indexed annually. To calculate the approximate once off levy amount, please visit http://www.moreland.vic.gov.au/planning-building/ and click on ‘Merri-bek Development Contributions Plan (DCP)’. Alternatively, please contact Merri-bek City Council on 9240 1111 and ask to speak to the DCP Officer.

**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.moreland.vic.gov.au/living-in-moreland/parking-and-roads/parking-permits-and-fines/residential-parking-permits/

**Note 3:** Environmental Audit Notes

A copy of the 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 s 210 of the Environment Protection Act 2017.

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.

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 the Environmental Statement including a copy of any cover letter.

**Note 4:** 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:** Contact needs to be made with CitiPower to determine whether CitiPower will require the power lines to be relocated away from the dwellings

**REPORT**

**1. Background**

**Subject site**

The subject site is located on the eastern side of Sydney Road, in Coburg. The site is rectangular in shape, with a depth of 36.94 metres, a width of 6.4 metres and a total site area of 234 square metres. There are no restrictive covenants indicated on the Certificate of Title.

The site is occupied by a single storey, brick commercial building. This site is currently used as a restaurant. Vehicle access to the site is at the rear, via an unnamed laneway.

**Surrounds**

The surrounding area is within the Coburg Activity Centre and has a mixed character. As such, the nearby land is largely used for commercial purposes, such as restaurants/cafes and recreation facilities. Further east the land is mostly low scale residential housing. The building forms range from 1 to 2 storeys.

A tram runs along Sydney Road. The Upfield Train Line and Upfield shared path are located 260 metres to the west of the site.

The adjoining properties are described as follows:

 338-340 Sydney Road (North): Double storey shop

 334 Sydney Road (South): Single storey shop

 333-327 Sydney Road (West): Double storey gymnasium.

 23 and 25 Inca Way (East across the rear lane): Three storey townhouse development.

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

**The proposal**

The proposal is for a five storey apartment building (including mezzanine level). Details of the proposal are as follows:

 Maximum height is 17.8 metres (exclusive of lift/stair overrun), with a streetwall height of 11 metres.

 A commercial tenancy is proposed at ground floor level, with a leasable floor area of 24 square metres.

 A total of four apartments are proposed on the upper levels.

 A total of six car spaces are proposed in a car stacker system accessed from the rear laneway.

The Development Plans form **Attachment 2**.

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

| **Control** | **Permit Requirement** |
| --- | --- |
| Activity Centre Zone | A planning permit is not required to use the land for dwellings, where the frontage at ground floor level is less than two metres.  A permit is required to construct a building or construct or carry out works. |
| Particular Provisions | A permit is required to reduce the car parking requirement from 8 to 6 spaces |

The following Particular Provisions of the Merri-bek Planning Scheme are also relevant to the consideration of the proposal:

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

 Clause 45.06: Development Contributions Plan Overlay. A condition is included in the recommendation requiring the payment of the DCP levy prior to the issue of a Building Permit for the development.

 Clause 45.09: Parking Overlay. This means that the Column B rates in Clause 52.06 (car parking) apply.

 Clause 53.18: Stormwater Management in Urban Development

 Clause 58: Apartment developments

**2. Internal/External Consultation**

**Public notification**

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

 Sending notices to the owners and occupiers of adjoining land.

 Placing two signs on site.

Council has received 17 objections from 14 properties to date. A map identifying the location of objectors forms **Attachment 3.**

The key issues raised in objections are:

 Laneway access and safety impacts

 Car parking and car stackers

 Amenity impacts (privacy, noise, shadow and bulk)

 Visual appearance and character

 Property prices

 Impact of construction

 Drainage and flooding

A Planning Information and Discussion meeting was held on 31 January 2023 and attended by Cr Bolton, two Council Planning Officers, the applicant and approximately seven objectors. The meeting provided an opportunity to explain the application, for the objectors to elaborate on their concerns, and for the applicant to respond.

It is noted that the notice and review exemption of the Activity Centre Zone, does not apply as the site is within 30 metres of a residential zone and residential land use.

**Internal/external referrals**

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

| **Internal Branch/Business Unit** | **Comments** |
| --- | --- |
| Urban Design Unit | Supports the proposal. Recommended conditions to increase the usability of the commercial tenancy and increase the amount of planting. |
| Development Engineering Team | Supports the proposal, including the reduction in car parking for the commercial tenancy and the access arrangement.  Standard conditions pertaining to drainage, verandah heights and lighting were provided and form part of the recommendation. |
| ESD Team | Supports the proposal. Recommended that unnecessary overlooking measures be deleted to improve daylight, increasing the amount of solar PV provided and providing electric vehicle charging. |

**3. Policy Implications**

**Planning Policy Framework (PPF):**

The following policies are of most relevance to this application:

 Municipal Planning Strategy (Clause 2), including:

 Vision (Clause 2.02)

 Settlement (Clause 2.03-1)

 Built Environment and Heritage (Clause 2.03-4)

 Housing (Clause 2.03-5)

 Transport (Clause 2.03-7)

 Settlement (Clause 11)

 Built Environment (Clause 15.01), including:

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

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

 Apartment developments in Merri-bek (Clause 15.01-2L)

 Building Design in Neighbourhood and Local Centres (Clause 15.01-2L)

 Neighbourhood Character (Clause 15.01-5S)

 Environmentally Sustainable Development (Clause 15.01-2L-05-1L)

 Energy efficiency in Merri-bek (Clause 15.01-2L-04

 Residential Development (Clause 16.01), including:

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

 Homes in Merri-bek (Clause 16.01-2L)

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

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

 Transport (Clause 18), including:

 Sustainable Personal Transport (Clause 18.02-1S & 18.08-1R)

 Sustainable Transport in Merri-bek (Clause 18.02-1L)

 Car parking (Clause 18.02-4S & 18.02-4L)

 Infrastructure (Clause 19.02), including:

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

 Development infrastructure (Clause 19.03)

**Human Rights Consideration**

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

 Section 12: Freedom of movement

 Section 13: Privacy and Reputation

 Section 20: Property rights

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

**4. Issues**

In considering this application, regard has been given to the Planning Policy Framework (PPF), the provisions of the Merri-bek Planning Scheme, objections received and the merits of the application.

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

The site is located within the Coburg Activity Centre. This is an area where strategic direction at Clause 2.03-1 seeks to accommodate substantial growth and create a new character of increased density and scale of built form. Therefore, the proposal for a five storey building containing 4 dwellings and a commercial tenancy has strong strategic policy support.

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

***Height***

The site is located within Precinct 6 of the Activity Centre Zone (ACZ), in the ‘Sydney Road Southern Commercial Gateway’.

As outlined below, the proposal meets the relevant building height and setback requirements:

| **Table: Precinct height guidance** | | |
| --- | --- | --- |
|  | Preferred height: | Proposed height: |
| Building height: | 18 metres | 17.8 metres |
| Streetwall height: | 11 metres | 11 metres |
| Upper-level setback: | 7 metres | 7 metres |

The proposal is in keeping with the preferred character, as evidenced by its compliance with the precinct height and setback guidance. This is an appropriate proposal within the Activity Centre, where increased residential density is encouraged, and it balances the constraints of being a relatively small site (236 square metres in area). The proposed height, siting and building form is responsive to the surrounding context and will not have unreasonable amenity impacts on adjoining residents.

The upper-level setbacks are compliant, noting that the balconies encroach 2 metres into the setback. This is an allowable encroachment under the zone. The proposed balconies make a positive contribution to the façade, providing visual interest and passive surveillance.

***Building design, materials and finishes***

The design is responsive to the policy directions contained within Building Design (Clause 15.01-2S & 15.01-2L), Urban Design (Clause 15.01-1S & 15.01-1R).

The materials and finishes schedule provided details textured materials including perforated mesh, timber and metal cladding and is supported by Council’s Urban Design Unit. A condition of the permit will require that the balconies are amended to open metal louvred battens rather than glazing. This will ensure the façade adds interest and contributes positively to its surrounds.

***Active frontages and streetscape improvements***

The proposal includes clear glazing and an active frontage at ground floor level. The services are not located on the frontage therefore, allowing for maximum glazing to the streetscape. Additionally, providing balconies to the front will allow for passive surveillance to this area.

A condition of the permit will require the removal of the landscaping and the associated setback to Sydney Road. This will ensure that the retail presence to the shopping strip is maximised and proposal maintains the consistent street wall along Sydney Road. A condition of the recommendation requires a landscape plan, with additional planting requirements at the upper levels. This will assist with breaking down the massing and bulk of the building while providing visual interest and enhancing the public realm.

Conditions of the recommendation will also seek to improve the appearance from the street. Firstly, in regard to the stepped verandah design. To improve weather protection and consistency with the streetscape, the verandah will be required to be altered so rather than stepping down from left to right, it is of a consistent height. Secondly, a condition will require variation provided to the side walls which is otherwise blank and will assist with mitigating visual bulk and adding greater visual interest until such time that the adjoining lots are developed.

***Ground floor commercial space***

The ground floor commercial space being limited in its size and shape has not been designed to allow for its adaptation for a variety of uses. The site is located in a core employment area within the Activity Centre Zone, and therefore, the space must cater for employment generating uses. The removal of the landscaping area at the frontage will allow for an increase to the size of the commercial space. Additionally, the bike parking for the larger apartments on levels 3 and 4 can be relocated into the private open space of the dwellings. Given the layout with the lift, this does not impact on the accessibility of these bike spaces. A condition of the recommendation requires a public works plan which includes the provision of bicycle parking on the footpath. These layout changes will ensure that the commercial space on ground level is increased to at least 40 square metres. These changes are included as conditions in the recommendation.

The commercial tenancy has high floor to ceiling heights, which is positive and helps with the usability of this space. It also has storage at mezzanine level, which frees up space to be used at ground floor level.

***Overshadowing to solar panels***

The proposal will result in overshadowing to the solar panels at 25 Inca Way which is included in the Activity Centre Zone. This will occur from 2pm onwards, at the Spring Equinox. Unlike in residential zones, there is no policies, decision guidelines or numerical standards to protect solar panels within the Activity Centre Zone. To address this, Council has developed an advisory note on this subject.[[2]](#footnote-2)

As per advisory note, activity centres seek to achieve a more sustainable urban form by accommodating increased population with convenient access to jobs and services, including public transport. Accordingly, Council considers that in activity centres, residents and businesses in low-scale buildings:

 Have no reasonable expectation that their solar panels will be protected; and

 Should very carefully consider whether it is viable to install solar panels if any adjoining sites are likely to be developed in accordance with the activity centre guidelines.

This principal was established by VCAT in *Babaniaris v Greater Geelong CC* [2015] VCAT 1793.. In *Babaniaris,* the Tribunal stated:

*In my view the question of whether or not overshadowing of solar panels is unreasonable is to be determined by a consideration of the scale of buildings, and therefore the degree of overshadowing, that might reasonably be expected having regard to the planning policies and controls relevant to the locality and the existing and preferred character of development within the neighbourhood. It should not be the case that one property owner can unreasonably compromise what would otherwise be entirely reasonable development on a neighbour’s land on the basis that, the development might overshadow solar panels installed by the property owner.*

In Bagnato, the Tribunal stated:

*“The impact on Ms Sandy’s solar panels is acceptable in this case because Ms Eastoe advised they were erected in 2014 at a time when the Council’s expectations for growth in Brunswick were known. Ms Heggen described the decision to install these panels in their existing position as “a high risk initiative.”*

*“To be clear, if Ms Sandy’s property was located in a residential zone in an established residential neighbourhood, residential amenity concerns about overshadowing of open space and solar panels would be a relevant consideration.”*

On balance, the extent of shadowing into the solar panels at 25 Inca Way is acceptable. The subject site is located within an activity centre, with a preferred maximum building height of 18 metres. The solar panels were installed in 2021, and therefore with the understanding that the preferred height for the area would result in a form that would overshadow the solar panels. It is noted that the protection of solar panels on lower scale buildings is difficult to achieve while seeking developments of greater height in Activity Centres.

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

The standards and objectives of Clause 58 (Apartment Standards) cover on-site amenities and facilities, including functional layout, breeze paths and internal views. This proposal will have a good level of amenity for future residents. All standards contained within Clause 58 are met, with the following point of exception:

Clause 58.03-5 Landscaping objectives - Standard D10

 The proposal does not comply with the deep soil planting requirements, or the area requirements of the standard. A condition of the permit will require increased landscaping and the provision of a detailed landscape plan, however, will not require the extent of landscaping prescribed by Standard D10. This is appropriate given the context along a main commercial strip, where minimal setbacks and a consistent street wall is an essential part of the character, rather than landscaping at ground level. As such, a variation to ensure the proposal meets the square metres requirement of the standard, but not the deep soil and canopy tree planting, is considered appropriate in this instance.

Notwithstanding the compliance with the numerical standards of Clause 58, the daylight access to the rear east-facing balcony of Apartment 1.02 is a concern, and therefore a condition is required to ensure an appropriate level of amenity. This balcony, due to the overlooking screening and the cantilevered balcony on the floor above, is lacking in space clear to the sky and functions more as an enclosed space. Conditions of the recommendation will require altering the screening type and the balconies of the apartments at the upper levels to be recessed and the screening type to be altered. Apartment 2.01 and 3.01 will continue to have a compliant amount of open space (12 square metres), given the large balcony to Sydney Road, even with this change.

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

The proposed apartment building has been designed to ensure that off-site amenity impacts are limited.

As the adjoining property to the rear is not residentially zoned (it is also within the Activity Centre Zone) the numerical standard of Clause 55 (Standard B17 - side and rear setbacks) is not applicable to this development. The zone requires that the new developments are ‘sympathetic to the scale of adjoining development and should not have an adverse impact on the amenity of adjoining development and public space’.

The key adjoining site for consideration is the townhouses at the rear: 23 – 25 Inca Way, which were constructed in 2015. Given that these were constructed relatively recently, it is not expected that this site will be redeveloped in the near future. These dwellings have garages facing the subject site at ground level, and habitable windows at first and second floor level. There is no private open space impacted by the proposal, as the balconies to these townhouses are all on the eastern side of the building. Using Standard B19 - Daylight to existing windows as a guide, this development would need a setback of 50 per cent of the height, which is approximately 5 metres. The proposal is setback 5.5 metres from the habitable windows at the rear, allowing daylight access into this site.

The proposed balconies facing east are designed to prevent overlooking across the laneway. The applicant has provided view lines diagrams showing that there will be no views into the habitable windows of the townhouses.

As such, the proposal is designed to prevent unreasonable amenity impacts to the surrounding sites.

**Is the proposal acceptable in terms of traffic engineering requirements?**

***Car Parking***

Clause 52.06-5 (Car Parking) of the Merri-bek Planning Scheme requires provision of the following:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Table 4: Statutory Car Parking Rate** | | | | |
| Use | Rate | Spaces required | Spaces provided | Reduction/ Surplus |
| Commercial tenancy | 2 to each premises | 2 | 0 | -2 |
| Dwellings  (4) | 1 per 2 bed dwelling  2 per 3 bed dwelling | 6 | 6 | 0 |

A reduction of two car spaces is required associated with the commercial tenancy. All parking requirements for the residential dwellings are met.

The site is located within the Coburg Activity has excellent access to public transport including the route 19 tram along Sydney Road, and the Upfield Train line. Council’s Development Engineers are satisfied with the car parking reduction.

***Loading***

Clause 65.01 requires consideration of the adequacy of loading and unloading facilities. The proposal does not have a dedicated loading bay, which is acceptable in this instance considering the anticipated demands of four dwellings and one commercial tenancy development. Loading and unloading for the commercial tenancy can be accommodated utilising existing on-street car parking spaces.

***Traffic Impacts and Access***

The traffic impact assessment submitted by the applicant estimates that an additional 16 vehicles per day will use the right of way as a result of this development. Council’s Development Engineers have reviewed this report and are satisfied with the assessment. These additional vehicles can be accommodated in the rear lane.

The proposed access is acceptable as follows:

 The 2.2 metre setback to the right-of-way allows all vehicles to both enter and egress, travelling in a forward direction with a maximum of one corrective manoeuvre, and vehicle movement diagrams confirming this, have been provided.

 Paths for the private waste truck (Mini Loader) shows it is clear of the fence and wall of the property at 25 Inca Way at the 90-degree bend in the laneway.

 The accessway (public laneway) is at least 3m wide as required by Clause 52.06-8 of the Merri-bek Planning Scheme.

The vehicle movement diagrams do not show any impacts on private property and confirm that all movements can be carried out within the laneway. Additionally given that there are only four dwellings in the development there wouldn’t be a high volume of cars entering and exiting noting that the rear lane is already used for vehicle access by neighbouring properties.

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

The proposal achieves a BESS score of 58 per cent, a NatHERS rating of 7 stars, a STORM Rating of 100 per cent and includes solar energy on the rooftop. Council’s ESD Unit confirmed that, subject to conditions included in the recommendation, the proposal will achieve best practice in accordance with the requirements of Clause 15.01-2L-05.

**5. Response to Objector Concerns**

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

 Access and safety impacts

 Car parking

 Amenity impacts (privacy, shadowing and bulk)

 Visual appearance and character

Other issues raised by objectors are addressed below.

**Car Stacker**

A condition of the permit will require that an acoustic report is submitted that assesses the noise from the proposed car stackers and confirms that they will operating in accordance with the Environmental Protection Act 2017. This condition will also allow for Council to enforce any unacceptable noise from the stackers on an ongoing basis.

**Drainage, flooding and inundation concerns**

The application has been referred to Council’s development engineers, and requested conditions are included in the recommendation. These address the discharge of water into the laneway, and drainage. This site is not in a flood prone area under the Building Regulations or within the Merri-bek Planning Scheme.

**Property values**

Property values are not a planning consideration. This is supported by cases from the Victorian Civil and Administrative Tribunal. The impacts of a proposal are best assessed through an assessment of the amenity implications rather than any impact upon property values. This report provides a detailed assessment of the amenity impact of this proposal.

**Construction issues**

The Environment Protection Authority (EPA) provide guidelines and regulations that specify times for construction, to limit noise impacts. Noise and amenity impacts during the construction process are also regulated through Council’s General Local Law, 2018.

Concern has been raised in relation to the rear laneway being impeded during construction, with construction vehicles blocking access.

Closure or occupation of public spaces requires a Public Occupation Permit under Council’s General Local Law 2018. Council’s Environmental and Civic Assets Local Law 2018 requires an Asset Protection Permit to be obtained to ensure infrastructure assets within the road reserve are protected or repaired if damaged.

A range of other approvals are required from Council’s transport, engineering and asset protection teams related to construction impacts on public space. Consideration of such closure and public notice, as required, is undertaken through these processes.

Moreover, should access be illegally blocked without approval during construction, this can be managed under Councils local laws and traffic/parking management powers.

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

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

**7. Financial and Resources Implications**

There are no financial or resource implications.

**8. Conclusion**

The proposal is a compliant response to the numerical standards of both the Activity Centre Zone and Clause 58 (Apartment Standards) of the Merri-bek Planning Scheme. The conditions of the recommendation seek to improve qualitative outcomes, such as the functional layout of the commercial space and the aesthetics of the design and landscaping. Overall, this ensures that the proposed mixed-use building will be a good response to the policies and controls of the Merri-bek Planning Scheme.

It is considered that a Notice of Decision to Grant a Planning Permit, No. MPS/2021/322, should be issued subject to the conditions included in the recommendation of this report.

**Attachment/s**

|  |  |  |  |
| --- | --- | --- | --- |
| **1** | Zoning and location map - 336 Sydney Road, Coburg | D23/76688 |  |
| **2** | Advertised Plans - 336 Sydney Road, Coburg | D23/82683 |  |
| **3** | Objector Map - 336 Sydney Road, Coburg | D23/77029 |  |

**5.4 8 Florence Street, Brunswick - Planning Application MPS/2015/175/B**

**Group Manager City Development, Phillip Priest**

**City Development**

**Executive Summary**

|  |  |
| --- | --- |
| **Property:** | 8 Florence Street, Brunswick |
| **Proposal:** | Amend planning permit MPS/2015/175 to allow the construction of a revised mixed-use development. |
| **Zoning and Overlay/s:** |  Commercial 1 Zone   Design & Development Overlay (Schedule 18)   Parking Overlay (Schedule 1)   Environmental Audit Overlay   Development Contributions Plan Overlay |
| **Strategic setting:** |  |
| **Objections:** | Four (4)  Key issues raised in objections:   Car parking   Building materials   Impact of building height on pollution and ESD outcomes |
| **Planning Information and Discussion (PID) Meeting:** | No PID held. Direct engagement with each objector has taken place. |
| **ESD:** |  Minimum average NatHERS rating of 7.6 stars   77 percent BESS score |
| **Accessibility:** |  Nine (9) adaptable apartments compared to two (2) associated with the existing approval. |
| **Key reasons for** |  High quality building design.   Excellence in ESD and improvements to accessibility.   Provision of affordable housing.   Suitably mitigated off-site amenity and public realm impacts through sensitive siting. |
| **Recommendation:** | Notice of Decision to Grant an Amended Planning Permit. |

**Officer Recommendation**

That a Notice of Decision to Grant an Amended Planning Permit for Planning Permit No. MPS/2015/175/B be issued for the construction of a building and reduction to the standard car parking requirement at 8 Florence Street, Brunswick, subject to the following conditions *(new or changes to existing conditions bolded):*

**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 prepared by Six Degrees (TP100-TP500), dated 25 October 2022 and advertised on 5 December 2022, but modified to show:**

**a) Changes as depicted in the Discussion Plans received on 21 February 2023, including:**

**i. A reduction to the parapet height of the western ‘bookend’ portion of the development on the south-western corner by 700mm to match the parapet height of the eastern part of the development**

**ii. Removal of the internalised study spaces associated with Units 301 and 401 and replaced with external balcony areas; and**

**iii. Additional facade openings to the balcony areas of Units 301 and 401.**

**b) The southern interface of Levels 3 and 4 of the western ‘bookend’ balcony element provided with greater openness as viewed from Florence Street. This could be achieved through the provision of a larger single or multiple opening at each level, or an alternative lightweight vertical balcony framing design.**

**c) The projecting Juliette balcony rails associated with the southern elevation (western ‘balcony bookend’ portion) reduced in depth to protrude no more than 100mm from the building facade.**

**d) Detailed facade elevations (with dimensions) at a scale of 1:20 for the south-facing lower levels fronting Florence Street and west-facing lower-level interface with the Upfield Shared Path. These elevations are to include detail relating to openings, services and external finishes & treatments. Any services on the facade must be highly concealed and treated to integrate with the building architecture.**

**e) Creeping vegetation applied to the western and southern facades of the western ‘bookend’ portion of the development, to be supported by the necessary landscaping services at either ground or rooftop level.**

**f) A Landscape Plan in accordance with Condition 3 of this permit, including any modifications required to align with this plan.**

**g) A Waste Management Plan in accordance with Condition 10 of this permit, including any modifications required to align with this plan.**

**h) The Environmentally Sustainable Design initiatives that are required to be shown on plans, as contained within the amended Sustainability Management Plan required by Condition 5 of this permit.**

**i) A Public Works Plan in accordance with Condition 49 of this permit, including any modifications required to align with this plan.**

**j) An Accessibility Report in accordance with Condition 8 of this permit, including any modifications required to align with this plan.**

**k) An Acoustic Report in accordance with Condition 11 of this permit, including any modifications required to align with this plan.**

**l) An Amended Affordable Housing Report in accordance with Condition 51 of this permit.**

**2. The use and 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 62.01, 62.02-1 and 62.02-2 of the Moreland Planning Scheme unless specifically noted as a permit condition.**

**Landscape Plan**

**3. Prior to the endorsement of plans, a Landscape Plan must be submitted to and approved by the Responsible Authority. The landscape plan must provide for the following:**

**a) Details of landscaping on the rooftop, within the planter boxes and on the western and southern facades of the ‘bookend’ part of the development**

**b) A schedule of all proposed planting (including numbers, size at planting, size at maturity and botanical names).**

**c) Advice detailing how the landscaping will be constructed, accommodated and maintained, including areas required for planting, drainage and irrigation.**

**When submitted and approved to the satisfaction of the Responsible Authority, the Landscape Plan will be endorsed to form part of this permit.**

**All works must be undertaken in accordance with the endorsed Landscape Plan to the satisfaction of the Responsible Authority. No alterations to the Landscape Plan may occur without written consent of the Responsible Authority.**

**4. 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.**

**Environmentally Sustainable Development (ESD)**

**5. Prior to the endorsement of plans, an amended Sustainable Management Plan (SMP) and plans must be submitted to the satisfaction by the Responsible Authority. The SMP must demonstrate a best practice standard of environmentally sustainable design and be generally in accordance with the SMP prepared by Arup dated 27 January 2023 but modified to include the following changes:**

**a) Preliminary NatHERS ratings and modelling for all dwellings (or all to be thermally represented) as per the NatHERS discussion within the SMP, which achieves an average NatHERS rating of at least 7.6 Stars for all dwellings. The modelling is to be performed by an accredited NatHERS assessor and contain complete cooling loads, heating loads, star ratings and proposed building fabric.**

**b) Additional information about the commercial properties demonstrating the NCC 2019 Section & 10 per cent improvement achieved by building fabric.**

**c) The latest BESS report (dated 31 January 2023) included as a complete report.**

**d) The architectural plans amended to include:**

**i. An ESD table on the plans for items that cannot be drawn e.g. NatHERS, tap and cooling/heating ratings, etc.**

**ii. The stormwater catchment plan as per the SMP and stormwater management response.**

**iii. The material and colour schedule to refer to the materials within the SMP (such as reclaimed timber floorboards, ultra-low VOC paints, etc).**

**e) The stormwater management response to include the following:**

**i. An electronic copy of the MUSIC model which meets the requirements of Clause 53.18 and best practice stormwater management requirements (the best practice environmental guidelines for urban stormwater, BPEMG). The model is to include the rainwater tank reuse rates as per the development proposal. The detention tank within the model must not include any pollutant reductions (such as reduction of total suspended solids, phosphorus, nitrogen or gross pollutants).**

**Where alternative ESD initiatives are proposed to those specified in this condition, 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 amended SMP and associated notated plans will be endorsed to form part of this permit. No alterations to the SMP may occur without the written consent of the Responsible Authority.**

**6. Prior to the issue of a Statement of Compliance or Certificate(s) of Occupancy whichever occurs first, all works must be undertaken in accordance with the endorsed Sustainable Management Plan report to the satisfaction of the Responsible Authority. No alterations to these plans may occur without the written consent of the Responsible Authority.**

**7. Prior to the issue of Certificate of Occupancy or Statement of Compliance, whichever comes first, of any dwelling approved under this permit, a report from the author of the Sustainable Management Plan (SMP) approved pursuant to this permit, or similarly qualified person or company, must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm (and include evidence) that all measures specified in the SMP have been implemented in accordance with the approved plan. It must also confirm the site achieved the required 5 star Green Star rating.**

**Accessibility Report**

**8. Prior to the endorsement of plans an Accessibility Report must be prepared by a suitably qualified person detailing how the development will incorporate adaptable, accessible and visitable design features in accordance with the Silver Performance Level of the *Liveable Housing Design Guidelines 2012.* A minimum of nine adaptable dwellings pursuant to the requirements of Clause 58 Standard D17 must be provided, with the Accessibility Report confirming compliance. The recommendations of the report must be implemented to the satisfaction of the Responsible Authority prior to the occupation of the development. No alterations to the plan may occur without the written consent of the responsible authority.**

9. Prior to the occupation of any dwelling approved under this permit, a report from the author of the Accessibility Report, approved pursuant to this permit, or similar qualified person or company, must be submitted to the Responsible Authority. This report must be to the satisfaction of the Responsible Authority and must confirm that all measures specified in the endorsed accessibility report have been implemented.

**Waste Management**

**10. Prior to the endorsement of plans a Waste Management Plan (WMP) must be submitted to the satisfaction of the Responsible Authority. 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.**

**Noise Attenuation**

**11. Prior to the endorsement of plans, an amended Acoustic Report prepared by a qualified Acoustic Engineer must be submitted to the satisfaction of the Responsible Authority, and must detail how construction methods and materials will limit noise from the railway line, including potential noise from the elevated rail project. When submitted and approved to the satisfaction of the Responsible Authority, the Acoustic Report will be endorsed to form part of this permit. No alterations to the Acoustic Report may occur without the written consent of the Responsible Authority.**

12. The building must be constructed and thereafter maintained in accordance with the recommendations contained within the approved Acoustic Report to the satisfaction of the Responsible Authority, unless with the further written approval of the Responsible Authority

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

**Environmental Audit**

**14. Before the construction or carrying out of buildings and works, 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 2017* must be issued 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.**

**15. 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.**

**16. 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).**

**17. 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.**

**18. 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 14, 15 and 16 of this permit are satisfied.**

**19. 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.**

**20. Where a preliminary risk screen assessment has satisfied Condition 14 (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 risk screen assessment to the satisfaction of the Responsible Authority.**

**Civil Engineering and General Amenity**

21. Prior to the commencement of the development, a legal point of discharge is to be obtained, and where required, a stormwater drainage plan showing how the site will be drained from the property boundary to the stated point of discharge, must be submitted to and approved by the Responsible Authority.

22. 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 (Moreland City Council, City Infrastructure Department).

23. Prior to the occupation of the development, all boundary walls must be constructed, cleaned and finished to the satisfaction of the Responsible Authority.

24. Prior to the occupation of the development all telecommunications and power connections (where by means of a cable) and associated infrastructure to the land (including all existing and new buildings) must be underground to the satisfaction of the Responsible Authority.

25. Prior to the occupation of the development, 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 (Note: Please contact Moreland City Council, City Infrastructure Department).

26. Prior to the issuing of Statement of Compliance or occupation of the development, whichever occurs 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.

27. 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.

28. An automatic light must be installed and maintained in the parking area so that a light operates automatically when a vehicle enters or leaves the land between dusk and dawn and no direct light is emitted onto adjoining property.

29. The surface of all balconies and terraces are to be sloped to collect the stormwater run-off into stormwater drainage pipes that connect into the underground drainage system of the development to the satisfaction of the Responsible Authority.

30. 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 (Moreland City Council, City Infrastructure Department).

31. Stormwater from the land must not be directed to the surface of the right-of-way to the satisfaction of the Responsible Authority.

32. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, the bicycle storage room must have self-closing and self-locking doors or gates that are only accessible using keys, codes or swipe cards in accordance with the Australian Standard for Bicycle Parking (AS2890.3).

**Melbourne Water Condition**

33. Pollution and sediment laden runoff shall not be discharged directly or indirectly into Melbourne Water's drains or waterways.

**VicTrack Conditions**

34. Prior to the development commences, the owner of the land must enter into an Agreement with the Responsible Authority and VicTrack pursuant to Section 173 of the Planning and Environment Act 1987. The cost of the preparation, lodgement and registration of the Agreement shall be borne totally by the owner on the land. The Agreement must be registered on the certificate of title for the common property on the land and shall require that the common property ground floor openings to the Upfield Bike Corridor be closed if required for the future development of this corridor.

35. All railway infrastructure (including overhead power and supporting infrastructure for trains) must not be interfered with or damaged during the construction period. Any damage to railway infrastructure as a consequence of the construction period must be rectified to the satisfaction of VicTrack, PTV and the Accredited Rail Operator at the full cost of the permit holder.

36. All reasonable steps must be taken to ensure that there is no disruption to train services. Any foreseen disruption to the rail operation during the construction period requires the approval of the Accredited Rail Operator.

37. No entry onto railway land is permitted without the written consent of the Accredited Rail Operator and the common boundary with VicTrack land must be fenced at the owner’s expense to prohibit access to the rail corridor.

38. No drainage or effluent must enter VicTrack land and must be connected to the legal point of discharge.

39. The legal point of access is to be facing Florence Street, and not considered by virtue of any implied or actual access consent, to be the VicTrack land.

40. Any wall / fence to be built on the railway reserve boundary must be cleaned and finished using a graffiti proof finish to prevent or reduce the potential for graffiti. The body corporate or owner to ensure that any graffiti which appears on the wall must be cleaned or removed as soon as practicable to the satisfaction of the Responsible Authority. The cost of any clean-up or removal of the graffiti from the wall must be paid for by the developer and/or future owners of the land.

41. No excavation, filling or construction must take place on the common boundary between the subject land and VicTrack land without the prior approval of VicTrack and the Accredited Rail Operator.

42. No waste, soil or other materials from the works are to be stored or deposited on VicTrack land.

43. All works, including hoardings, must be undertaken within the subject land and must not encroach onto VicTrack land.

44. No lighting is to be erected (permanent or temporary) that spills light onto the railway tracks or which interferes with the visibility of signals and rail lines by train drivers to the satisfaction of the Accredited Rail Operator

45. Building materials (including glass/window treatments) along the rail corridor must be non-reflective and avoid red and green colour schemes that may interfere with driver operations to the satisfaction of the Accredited Rail Operator.

46. Plant and tree species must be of the type that will not cause any future overhang onto VicTrack land or disturbance of public transport operations.

47. No permanent or temporary ground anchors are permitted within VicTrack land.

48. All reasonable steps (including appropriate screening to balconies) must be taken to ensure that objects cannot be projected into the VicTrack land to the satisfaction of the Responsible Authority.

**Public Works Plan**

**49. Prior to the commencement of the development, a Public Works Plan (PWP) and associated construction drawing specifications detailing the works to the land at the front of the site in Sydney Road and to the east of the site in Irrelach Lane must be submitted to the satisfaction of the Responsible Authority. The PWP must include:**

**a) All construction details in accordance with the *Moreland City Council Technical Notes July 2019* (or any updated version).**

**b) A detailed level and feature survey of the footpaths and roads.**

**c) Longitudinal plans of the road verge commencing 10 metres beyond the site boundary, together with cross-sections between the kerb and the building line at 5 metre intervals, with levels showing the slope of the public footpath and highlighting how the level difference between footpath and floor levels will be made up within the site to the satisfaction of the Responsible Authority.**

**d) The upgrade of the footpath adjacent to the site. Public footpaths are to be reinstated to the previous levels with a maximum cross fall slope of 1 in 40 (2.5 per cent).**

**e) Any necessary parking signs.**

**f) Any necessary drainage works.**

**g) The installation of bike hoops provided with graffiti-resident surfaces.**

**h) The construction of a pram crossing adjacent to the south-west corner of the site.**

**i) The provision of other works and street furniture including seating (where practicable), which is to be provided with graffiti-resistant surfaces.**

**j) The provision of new street tree planting in Florence Street in appropriate locations in front of the site (where practicable), with the number of trees maximised based on the space available, in consultation with the Responsible Authority (Open Space Unit).**

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

**50. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, all public works shown on the endorsed public works plan must be implemented to the satisfaction of the Responsible Authority at the expense of the owner of the land, unless otherwise agreed with prior written consent of the Responsible Authority.**

**Affordable Housing**

**51. Prior to the endorsement of plans, an amended Affordable Housing Report must be submitted to and approved by the Responsible Authority. The report must be generally in accordance with the Affordable Housing Report prepared by Urbanxchange and dated January 2023, but modified to:**

**a) Reference the updated development as approved by this permit;**

**b) Reference the amended Affordable Housing Offer of a minimum of three (3) dwellings or 10 per cent of the total number of dwellings (rounded up) to the nearest whole number transferred to a Registered Housing Agency as ‘Affordable Dwellings’, or as otherwise agreed by the Responsible Authority. Each dwelling is to be sold at no more than 90 per cent of the ‘Market Price’ as applicable to the balance of dwellings within the development;**

**c) Define ‘Market Price’ as the ‘at cost’ purchase price of dwellings as per the developer’s not-for-profit model – i.e. the price at which the dwellings will be sold so as to cover what it costs to procure, design, manage and construct the dwellings;**

**d) Set out a minimum tenure for the ‘Affordable Dwellings’ of 20 years from first occupation, unless otherwise agreed with the Responsible Authority.**

**e) The ‘Affordable Dwellings’ will provide social housing in accordance with requirements of the Housing Act ,1983, or Affordable Housing (as defined by the Planning & Environment Act 1987) unless otherwise agreed with the Responsible Authority.**

**52. Prior to the commencement of construction or carrying out of works (other than demolition of existing buildings and structures, removal of vegetation and site investigation works to determine the level of contamination on the land, and remediation works), an agreement under Section 173 of the *Planning and Environment Act 1987* must be entered into between the owner(s) of the land and the Responsible Authority in a form satisfactory to the Responsible Authority providing for the following:**

**a) The owner covenants, acknowledges and agrees with Council to:**

**i. Provide ownership of no less than three (3) dwellings or 10 per cent of the total number of dwellings (rounded up to the nearest whole number) approved on the site to be transferred as ‘Affordable Dwellings’ to a Registered Housing Agency, or as otherwise agreed by the Responsible Authority. Each dwelling is to be sold at no more than 90 per cent of the ‘Market Price’ as relevant to the balance of dwellings within the development, and as defined in the endorsed Affordable Housing Report required by Condition 51 of the Permit.**

**ii. Each affordable dwelling is to be subject to a condition on title that it is to be used to deliver either social housing (as defined by the Housing Act 1983) or Affordable Housing (as defined by the Planning & Environment Act 1987) or Affordable Housing (as defined by the Planning & Environment Act 1987) for a minimum period of 20 years after first occupation, unless otherwise agreed with the Responsible Authority.**

**iii. All dwellings on site must be delivered, managed, leased and sold in accordance with the endorsed Affordable Housing Report required by Condition 51 of the permit;**

**iv. Construct the Affordable Housing on the subject land in a continuous, proper and workmanlike manner, strictly in accordance with:**

**• The Plans and Specifications;**

**• All applicable laws;**

**• The terms of applicable permits and approvals; and**

**• Using all due care and skill.**

**v. Complete delivery of its Affordable Housing commitments under this Agreement by:**

**• Providing good titles to the Registered Housing Agency including all necessary title documents in registerable form pursuant to Clause a); or**

**• Fully performing its contractual commitments under Clause a) iii.**

**b) The owner must comply with Clause (a)(i) and (a)(ii) within six months of the last to occur of:**

**i. Registration of the plan of subdivision which creates the Affordable Housing Lots; and**

**ii. Completion of construction of the Affordable Housing, as signified by the issuing of an occupancy permit by a licensed building surveyor for each of the lots comprising the Affordable Housing.**

**The agreement must be registered on title. The owner(s) must pay the costs of the Responsible Authority in relation to the preparation, execution and registration of the agreement on title.**

**Section 173 Agreement – Public asset/pedestrian access/indemnify AND Off-site car parking**

**53. Prior to the occupation of any part of the development hereby permitted, an agreement under Section 173 of the *Planning and Environment Act 1987* must be entered into between the Owners of the land and the Responsible Authority in a form satisfactory to the Responsible Authority providing for:**

**Public asset/pedestrian access/indemnify**

**a) Unrestricted public pedestrian access through the ground-level setback and circulation area marked ‘pedestrian access’ on TP100 (immediately adjacent to the Upfield Shared Path) for 24 hours a day (365 days a year) unless otherwise agreed to by the Responsible Authority.**

**b) The owners of the land to indemnify the Merri-bek City Council against any claims associated with the use of the circulation area and responsibility for the on-going maintenance of the areas.**

**Off-site car parking**

**c) Confirmation of three off-street car parking spaces located on another site, conveniently located for the regular use of occupants or tenants of the development hereby permitted, unless otherwise agreed to by the Responsible Authority;**

**d) Within three months of the occupation of the building, evidence of the off-site, off-street car parking spaces must be provided to the satisfaction of the Responsible Authority;**

**e) The Owners Corporation must keep records of the off-site car parking spaces and make these records available to the Responsible Authority upon request;**

**f) Should the location of the off-site, off-street car parking spaces need to change, the new location shall be to the satisfaction of the Responsible Authority.**

**The agreement must be registered on title. The owner(s) must pay the costs of the Responsible Authority in relation to the preparation, execution and registration of the agreement on title.**

**Green Travel Plan**

**54. Prior to the endorsement of plans, a Green Travel Plan prepared by a suitably qualified professional must be submitted to the satisfaction of the Responsible. The Green Travel Plan must identify methods to promote travel to the site by means other than private vehicle, to the satisfaction of the Responsible Authority. Among other initiatives, the Green Travel Plan must:**

**a) Impose a levy on residential occupants who own motor vehicles and cannot provide evidence of secure off-street parking (ie. those residents who own vehicles and park on-street).**

**b) Provide for the annual reporting to the Owners Corporation of off-site private car parking spaces leased pursuant to the requirements of Condition 55. This reporting must be made available to the Responsible Authority upon request.**

**When approved to the satisfaction of the Responsible Authority, the Green Travel Plan will be endorsed to form part of this permit. No alterations to the Green Travel Plan may occur without the written consent of the Responsible Authority.**

**3D Model**

**55. Prior to the commencement of the development, a 3D digital model of the approved development which is compatible for use on Council’s Virtual Moreland tools and software for Council and community must be submitted to the satisfaction of the Responsible Authority. The model should be prepared in accordance with Moreland City Council’s 3D model submission guidelines. A copy of the 3D model submission guidelines and further information on the Virtual Moreland Project can be found at** [**https://www.moreland.vic.gov.au/planning-building/3D-Guidelines/**](https://www.moreland.vic.gov.au/planning-building/3D-Guidelines/)**. In the event that substantial modifications to the building envelope are approved under an amendment to this planning permit, a revised 3D digital model must be submitted to, and be to the satisfaction of the Responsible Authority.**

**Retention of Architect**

**56. Six Degrees Architects must provide architectural oversight of the delivery of the detailed design (as shown in the endorsed plans and endorsed schedule of materials and finishes) during construction, unless with the prior written approval of the Responsible Authority.**

**Development Contributions**

**57. Prior to the issue of a Building Permit in relation to the development approved by this permit, a Development Infrastructure Levy and Community Infrastructure Levy must be paid to Moreland City Council in accordance with the approved Development Contributions Plan. The Development Infrastructure Levy is charged per 100 square metres of leasable floor space and the Development and Community Infrastructure Levy is charged per dwelling.**

**If an application for subdivision of the land in accordance with the development approved by this permit is submitted to Council, payment of the Development Infrastructure Levy can be delayed to a date being whichever is the sooner of the following:**

 **For a maximum of 12 months from the date of issue of the Building Permit for the development hereby approved; or**

 **Prior to the issue of a Statement of Compliance for the subdivision;**

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

**Permit Expiry**

**58.** 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.

c) the use is not commenced 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 has been corrected pursuant to Section 71 of the *Planning and Environment Act 1987* on 21/7/2020 to correctly state condition 1(e) of the planning permit as no amendment was made to this condition in MPS/2015/175/A.

**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.moreland.vic.gov.au/living-in-moreland/parking-and-roads/changes-to-parking-in-your-area/>

**Note 3:**

This permit contains a condition requiring payment of Development Contributions. The applicable development contribution levies are indexed annually. To calculate the approximate once off levy amount, please visit http://www.moreland.vic.gov.au/planning-building/ and click on ‘Moreland Development Contributions Plan (DCP)’. Alternatively, please contact Merri-bek City Council on 9240 1111 and ask to speak to the DCP Officer.

**Note 4:**

A copy of the 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 s 210 of the Environment Protection Act 2017.

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

**REPORT**

**1. Background**

**Subject site**

Formally identified as Lot 1 on Title Plan 377626M, the subject site (the Site) is located on the northern side of Florence Street, immediately adjacent to Anstey Railway Station and the Upfield Shared Path. The subject land is sited approximately 180m west of Sydney Road.

The Site is currently vacant, having been cleared circa 2019. The land was previously used for commercial and warehousing purposes.

The subject land is of a regular rectangle shape and is 515 square metres in area.

The Site is not encumbered by any easements or restrictive covenants.

**Surrounds**

The Site is located within the Commercial 1 Zone and Brunswick Activity Centre.

The western end of Florence Street is characterised by a mix of recent infill development and older commercial building stock rising up to six-storeys in height.

It is noted that the western end of Florence Street is occupied by a parklet. Vehicle access to the area immediately adjacent to the Site is currently restricted to deliveries and waste collection.

Immediately east of the Site at 6 Florence Street is a five-storey apartment building with a commercial tenancy at ground floor level. This building exhibits a one storey street wall with four additional levels of winter garden balconies setback approximately 1.8m from the street.

Directly opposite the Site at 9 Florence Street is a five-storey mixed-use development.

To the east and south-east at 4 Florence Street and 47 Breese Street are developments of attached three-storey townhouses.

To the north and north east of the Site are two eight-storey mixed-use developments at 216 and 212-214 Albion Street.

Elsewhere, single-storey dwellings and commercial buildings up to two-storeys in height are evident.

Brickwork is the predominant building material evident at street level, while upper levels are expressed through a mix of concrete, timber cladding, steel and glazing.

**Permit and site history**

Planning Permit MPS/2015/175 was issued on 8 March 2016. The approval allowed the *construction of a five-storey residential apartment building*.

Approval was achieved by consent of a parties at the Victorian Civil and Administrative Tribunal VCAT review lodged by the former permit applicants.

Works associated with the approval have not commenced, though the site has been cleared.

**Proposal**

The proposal seeks to amend the existing permit to allow the construction of a revised mixed-use development. Notably, the proposal seeks to increase the building height and number of dwellings, remove the basement level garage and on-site car parking, and include a minimum 10 per cent social and affordable housing offer intended to be delivered through a registered provider.

Furthermore, the proposal seeks to break down the front elevation into two components – south-facing winter garden balconies constructed of metal cladding and glazing at the eastern portion, and a concrete ‘bookend’ design element in the south-west corner setback 1.4m from the front property boundary. Refer to figure 1.

The advertised plans form **Attachment 4**.

The proposal is summarised below:

|  |  |  |
| --- | --- | --- |
|  | **Proposal** | **Existing approval** |
| **No. of dwellings** | 28 (4 x studios, 11 x one-beds, 13 x two-beds) | 23 (15 x one-beds, 7 x two-beds and one three-bed) |
| **Building height** | Seven-storeys/24.1m to Level 6 parapet | Six-storeys/20.5m (including rooftop structures) |
| **Street wall height** | One-storey/5.44m (Refer to Figure 1) | Three-storeys/10.7m |
| **Upper-level setbacks to Florence Street** | Levels 1 – 4: 1.4m to 3.2m  Levels 5 – 6: 15.8m | Levels 3 – 4: 2m to 4m |
| **No. of on-site car parking spaces** | Zero (0). Three off-site car spaces have been offered and can be secured through permit conditions. | 13 (stacker system in basement) |
| **No. of bicycle spaces** | 44 | 29 |
| **Ground-floor uses** | Two retail tenancies totalling 133 square metres | Two retail tenancies totalling 160 square metres |
| **Communal space** | 156m2 rooftop terrace; 45m2 for laundry, clothes hanging area and bath house | 330m2 rooftop terrace (approx.) |

|  |  |
| --- | --- |
| *Figure 1 (left) – Proposed south/front elevation*  *to Florence Street (Source: TP210)* | *Figure 2 (right) – Existing endorsed south/front*  *elevation to Florence Street (Source: TP\_12)* |

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

| **Control** | **Permit Requirement** |
| --- | --- |
| Clause 34.01: Commercial 1 Zone | A permit is required to construct a building or construct or carry out works. |
| Clause 43.02:  Design & Development Overlay, Schedule 18 | A permit is required to construct a building or construct or carry out works. |
| Clause 52.06:  Car Parking | A permit is required to reduce (including to zero) the standard car parking requirement. |

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

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

 Clause 45.06: Development Contributions Plan Overlay. A condition is included in the recommendation requiring the payment of the DCP levy prior to the issue of a Building Permit for the development.

 Clause 45.09: Parking Overlay. The parking overlay means that the ‘Column B’ rates in the table to Clause 52.06 apply.

 Clause 53.18: Stormwater Management in Urban Development.

**2. Internal/External Consultation**

**Public notification**

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

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

 Placing signs on the southern, western and northern site frontages.

Council has received four objections and one letter of support to date. A map identifying the location of objectors forms **Attachment 1**.

The key issues raised in objections include:

 The impact of building height on pollution and ESD outcomes

 Car parking

 Materiality

Updates were provided by email to each objector, though no return correspondence has been received at the time of writing this report.

An objector location map forms **Attachment 3.**

**Discussion Plans**

Subsequent to the notification period, Revised Plans were submitted in response to concerns raised by objectors and Council Officers to inform agreed conditions of any permit that is issued. Received on 21 February 2023, these plans demonstrate changes to the western ‘bookend’ design element by:

 Reducing the parapet height by 700mm to ensure consistency with the eastern portion of the development to reduce overshadowing to Florence Street; and

 Removal of internal study spaces for Units 301 and 401, allowing an extension of the south-facing balconies at Levels 3 and 4 and the provision of additional openings in the building facade.

These changes are considered further in Section 4. Discussion Plans received 21 February form **Attachment 5**.

The Permit Applicant has advised that vegetation can be added to the building facade in the form of creepers, satisfying one of the four objections received. Furthermore, there is agreement to provide three off-street car parking spaces for future residents proximate to the site. These can be ensured through recommended permit conditions requiring a Section 173 agreement for the provision of the 3 offsite and off street parking spaces.

**Internal referrals**

|  |  |
| --- | --- |
| **Internal Branch/Business Unit** | **Comments** |
| Urban Design Unit | Council’s Urban Design Unit are supportive of the proposed scale and siting, stating the design provides for sufficient openness and responds positively to the context and amenity of Florence Street.  Recommended changes are addressed by conditions of the recommendation and are considered further in Section 4 of this report. |
| Development Engineering | Supports the proposal, including the provision of zero on-site car parking spaces. Recommended changes are addressed by conditions of the recommendation. |
| Sustainable Built Environment - ESD Team | Supports the proposal, subject to conditions to ensure the proposal will achieve best practice ESD outcomes. |

**External referrals**

No external referrals were required.

As the Site is no longer located with a Special Building Overlay, the application was not required to be externally referred to Melbourne Water.

**3. Policy Implications**

**Planning Policy Framework (PPF):**

The following policies are of most relevance to this application:

 Municipal Planning Strategy (Clause 2)

 Settlement (Clause 11)

 Environmental and Landscape Values (Clause 12)

 Environmental Risks and Amenity (Clause 13):

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

 Noise Abatement (Clause 13.05-1S and 13.05-1L)

 Built Environment (Clause 15.01), including:

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

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

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

 Apartment Developments in Merri-bek (Clause 15.01-2L)

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

 Neighbourhood Character (Clause 15.01-5S)

 Energy efficiency in Merri-bek (Clause 15.01-2L-04)

 Environmentally Sustainable Development (Clause 15.01-2L-05)

 Residential Development (Clause 16.01), including:

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

 Homes in Merri-bek (Clause 16.01-2L)

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

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

 Economic Development (Clause 17), including:

 Transport (Clause 18), including:

 Sustainable Personal Transport (Clause 18.02-1S & 18.08-1R)

 Sustainable Transport in Merri-bek (Clause 18.02-1L)

 Car parking (Clause 18.02-4S & 18.02-4L)

 Infrastructure (Clause 19.02):

**Planning Scheme Amendments**

The Commercial 1 Zone at Clause 34.01-4 of the Merri-bek Planning Scheme sets out that an application for an amendment of a permit under Section 72 of *the Act* is exempt from the requirements of Clause 58 provided the original permit application was lodged before the approval date of Amendment VC136 (13 April 2017). The original application (MPS/2015/175) was lodged in March 2015.

**Human Rights Consideration**

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

 Section 12: Freedom of movement

 Section 13: Privacy and Reputation

 Section 20: Property rights

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

**4. Issues**

In considering this application, regard has been given to the Planning Policy Framework, relevant provisions of the Merri-bek Planning Scheme, objections received, and the merits of the proposal.

It is important to note that the existing approval associated with the Site represents an accrued development right available to the landowner, and that the manner in which the current proposal departs from that approval forms the basis of Council’s assessment.

**Does the proposed development have strategic policy support?**

The subject site is located within the Commercial 1 Zone and Brunswick Activity Centre, where the strategic direction at Clause 2.03-1 seeks to accommodate substantial residential/mixed-use growth and change to create a new character of increased density and scale of built form a strategy that is supported by State planning policy.

**Does the proposed development satisfy the requirements of the Commercial 1 Zone?**

The proposed development is considered to represent an appropriate response to the objectives of the Commercial 1 Zone, which seeks to create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses; and to provide for residential uses at densities complementary to the role and scale of the commercial centre. The mixed-use proposal is considered to deliver upon these objectives, while satisfying the relevant guidelines set out at Clause 34.01-8 (Commercial 1 Zone).

**Does the proposal satisfy the requirements of the Design & Development Overlay (Schedule 18)?**

Subject to changes contemplated by Discussion Plans received 21 February 2023 (discussed below), the proposal is considered to satisfy the objectives and guidelines of Schedule 18 to the Design & Development Overlay (DDO18). Broadly, the proposal achieves an appropriate balance between a sense of openness and enclosure, and is expected to make a cohesive contribution to the prevailing architectural scale and fine grain character of the Site’s off-corridor context.

The proposal seeks variations to several of the discretionary requirements set out in DDO18. These variations differ from those approved under the original permit application.

Summarised below, the proposed variations relate to overall building height, upper-level setbacks and the overshadowing of a Key Pedestrian Street.

|  |  |  |
| --- | --- | --- |
| Design Element | DDO18 Preferred Control | Proposed |
| Building height | 17 metres (~5-storeys) | 24.1m (7-storeys) |
| Street wall height | Street width, or approximately 10.6 metres (~3 storeys) | 5.44m |
| Upper level setback | Minimum of 5m; then  a dimension not encroaching the horizontal distance from the opposite street boundary | Levels 1 to 4: between 1.4 to 3.2m  Levels 5 and 6: 15.8m |

Building Height

The original permit approved a building at a height of 20.5 metres or six-storeys (including the rooftop terrace). This exceeded the DDO18 discretionary height limit of 17 metres. The proposal now seeks an overall building height of 24.1m or seven-storeys therefore, exceeding the approved height by an additional storey.

The additional height is considered acceptable given:

 Levels 5 and 6 are setback a much greater distance of 15.8m from the site frontage, exceeding the nominal 1:1 upper level setback requirement of DDO18;

 Levels 5 and 6 are sited in a manner that they will not be readily visible from Florence Street, nor will they contribute to overshadowing of the southern footpath;

 Where visible from the west, the additional form is suitably articulated and well resolved, and responds appropriately to the adjoining context of an eight-storey building at 216 Albion Street immediately to the north. Longer range views towards the proposed development are therefore not expected to be unreasonably impacted by the additional height;

 The overall scale responds to the context of the area.

Street Wall

The proposed single-storey street wall at the south-east corner of the Site, while inconsistent with the preferred built form of a higher street wall sought by DDO18 is considered appropriate as it matches the scale of properties at 6 and 9 Florence Street, suitably responding to the emerging new built form character of this end of Florence Street. The modest 5.44m street wall complies with DDO18 requirement. Together with an activated frontage and staggered setbacks at ground-floor level, the proposed design ensures a sense of openness is achieved at the ground plane. The proposed response is considered an improvement from the previous approval and will enhance the amenity of the streetscape in this location.



*Figure 3: View towards the Site (left) from the south-east, with No. 6 Florence Street in the foreground (brick facade). Source: Advertised documents.*

Upper Level Setbacks

DDO18 requires a 5m upper-level setback above a three-storey street wall. Balconies may be allowed to encroach into this setback by 2m. The existing approved development provides upper-level setbacks of 4 metres, varying the DDO18 requirements, with chamfered balconies encroaching within this setback by a further 2m.

Above the single-storey street wall, the current proposal seeks varied upper level setbacks of between 1.4 metres to 3.2 metres. While this is a greater variation than approved, in this instance, it is considered appropriate given the reduced setbacks respond to the prevailing context of the immediate surrounds and generally the upper-level setbacks of the development to the east at 6 Florence Street (3m). While it’s noted plans initially lodged with the application did not satisfy the relevant guidelines of DDO18, amendments achieved through negotiations between Officers and the Permit Applicant have led to improvements throughout the application process. Among other changes, an increased setback to the western ‘bookend’ element of the proposal ensures a sense of openness in accordance with the objectives of DDO18 is achieved, together with the lower street wall height, the setbacks of Levels 5 and 6, the differing external finishes and the articulation of the upper levels (Refer to Figure 3).

Further, Discussion Plans received on 21 February 2023 seek to provide additional openings and lower the height of the ‘bookend’ portion of the development to match the height of the eastern portion of the building. This would assist with achieving an appropriate balance of enclosure and openness while retaining a high-quality and contextual design treatment. Notwithstanding this, recommended permit conditions require a greater sense of openness to be provided to the south-facing concrete wall associated with the western ‘balcony bookend’ element. It is considered such a change would further assist with reducing the solidity of the upper levels and creating an enhanced sense of openness.

Overshadowing

DDO18 seeks to avoid additional overshadowing to the opposite footpath of an identified Key Pedestrian Street between the hours of 10am and 2pm at the equinox.

The proposal when compared to the approved development, will increase overshadowing which is not an ideal planning outcome. The additional shadow cast to the southern footpath ranges from 3.5m2 at midday to 12.9m2 at 2pm.

This variation needs to be balanced against the other aspects of the amended proposal, which broadly results in an improved planning outcomes including a commitment to affordable housing and improved ESD. Furthermore, in this specific location, pedestrian traffic is not just limited to the footpath given the dead end nature of the western end of Florence Street and absence of vehicle crossovers that result in pedestrian being more comfortable walking within the road carriageway.

The proposed development would result in a reduction to shadows cast to the carriageway of Florence Street. The diagrams show that direct solar access to the carriageway is enhance by 2.5m2 at 1pm, 6.6m2 at 2pm, 10.6m2 at 2pm, and 19.7m2 at 4pm when compared to the existing approval. When the area of the carriageway is considered in addition to the southern footpath itself, the proposed development would result in a net reduction to direct solar access of approximately 6m2 between the hours of midday and 4pm.

Given the context of the western end of Florence Street, the manner in which this public space is used by pedestrians and visitors, the extent of additional shadow cast to the affected footpath and the increase in the solar access to the carriageway when compared to the existing approval, the proposed shadow impacts are considered acceptable. While an ideal scenario would see no further shadow cast to the opposite side of the footpath than what was previously approved through the existing permit, the amended arrangement responds to the unique context of the subject site through reducing the extent of shadow cast to the carriageway of Florence Street. The soon-to-commence Level Crossing Removal Project will see the elevation of the rail corridor in this location, enhancing the pedestrian permeability of the area and providing additional opportunities for public realm upgrades. This is likely to reduce reliance on the southern footpath and enhance the pedestrian use of the carriageway. Further, it is noted that the proposal is not expected to cast additional shadow than the existing development immediately to the east at 6 Florence Street given the consistent scale and siting arrangements sought.

Given the above, the proposal is considered an acceptable outcome in response to the guidelines and objectives of DDO18 in relation to public amenity.

**Does the development satisfy Council’s policies relating to urban design?**

At ground-floor level, the proposal represents a high quality response to the relevant design-related objectives and guidelines of Clause 15.01-1 and DDO18, and improves upon the existing approval in relation to activation, design treatment and setback to the Upfield Shared Path. Services have been thoughtfully integrated to the southern elevation, while suitable activation to the commercial tenancy has been achieved. An integrated bench seat at the property frontage is a well-considered addition to the Site’s interface with Florence Street, while an increased 2.7m setback to the Upfield Shared Path creates a safer and more separated pedestrian environment while also contributing to a sense of openness. Further, this arrangement improves upon the 1.6m setback provided in the existing approval. A sense of activation is also provided to the building’s ground-level western interface, with the commercial tenancies and residential lobby fronting the pedestrian path.

**Does the proposal provide appropriate on-site amenity and facilities?**

The current proposal is generally considered to provide enhanced internal amenity compared to the existing approval.

While it’s noted the requirements of Clause 58 (Apartment Developments) do not apply to the proposed amendment application, many of the objectives and standards of this provision have been satisfied in any case. Adopting the key objectives and guidelines of Clause 58 as a guide, it is noted:

 All dwellings except for the four studio apartments are provided with sufficiently dimensioned living areas and bedrooms in accordance with Clause 58 Standard D26 (Functional Layout), while 62 per cent of dwellings have compliant breeze paths to meet the Standard D29 relating to natural ventilation (Standard D29 requires 40 per cent).

 All habitable rooms are provided with windows to external walls fronting either the public realm or light wells, in accordance with Standard D28 (Windows).

 All dwellings are provided with convenient access to 154m2 of communal space at rooftop level, satisfying the 100m2 required by Standard D7 (Communal Open Space). A communal laundry, bath house and clothes hanging area are provided in addition to this landscaped rooftop terrace.

 All dwellings except for the studios and three duplex style apartments are provided with private open space areas (balconies) that would comply with the nominal requirements of Standard D20 (Private Open Space). The studios are provided with modest balconies 5.2m2 in area (usual Clause 58 requirement; 8m2), while three of the duplex dwellings aren’t provided with any balcony space. The proposed arrangement is considered acceptable given the excellent communal open space options provided at rooftop level (in close proximity to the duplex dwellings) and the Site’s locational advantages proximate to public open space at Bulleke-bek Park. The inclusion of these dwelling types within the development ensures a varied and adequate dwelling mix is achieved.

 The apartments are provided with adequate in-dwelling storage.

The proposed development is provided with two internal light wells servicing windows associated with bedrooms and front entries of nine dwellings. Both light wells service four storeys of dwellings, and exhibit an area of 9m2 with a minimum width of 2m. This complies with the nominal requirements of Clause 15.01-2L (Apartment Developments in Merri-bek) relating the number of storeys served by a light well.

**Is the proposal accessible to people with limited mobility?**

Clause 16.01-1L (Housing for People with Limited Mobility) seeksto encourage the provision of housing that is visitable and adaptable to meet the needs of different sectors of the community. While Clause 58 requirements do not apply to the application, the requirements of Standard D17 (Accessibility) of Clause 58 (including the provision of including clear paths of travel and adaptable bathrooms) can be employed as a guide to ensure suitable levels of accessibility are achieved.

Subject to minor changes and clarifications to be confirmed by a recommended permit condition, nine of the 28 dwellings proposed are adaptable when considered against the relevant Clause 58 requirements. The existing approval comprised only two adaptable dwellings.

The proposal is therefore considered to satisfy the requirements of Clause 16.01-1L.

**Social & Affordable Housing**

The proposal seeks to provide a minimum 10 per cent of dwellings as Affordable Dwellings, intended to be delivered as social housing and sold to a Registered Housing Agency at a reduced price no more than 90 per cent of the developer’s ‘at cost’ ‘Market Price’. It’s noted the existing approval did not comprise any affordable housing offer.

This voluntary offer was negotiated through the planning application process and can be secured through a Section 173 Agreement registered on title.

**Is the car and bicycle parking and vehicle access appropriate?**

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

|  |  |  |  |
| --- | --- | --- | --- |
| **Use** | **Total spaces required** | **Total spaces provided** | **Reduction sought** |
| Dwellings | 28 | 0 | 28 |
| Retail | 5 | 0 | 5 |
| **Total** | **33** | **0** | **33** |

As the proposal seeks to provide zero on-site car parking spaces, pursuant to the car parking requirements at Clause 52.06-3, a permit is required for the reduction (including to zero).

It’s noted the existing approval associated with the Site included a reduction to the standard car parking requirement. 13 residential spaces were proposed to be provided at basement level, while the statutory residential requirement was 24. The proposal was also supported by Council and approved through a VCAT Consent Order without on-site loading facilities.

While Council’s Development Engineer is supportive of the total waiver of on-site car parking spaces, this assessment must have regard to the purpose of the car parking provision. While a reduction of a portion of the car spaces is acceptable as discussed below, the proposal is not considered to provide an appropriate number of car spaces when having regard to ABS data on car ownership rates in Brunswick which suggests some car parking demand is likely to be generated by the activities on the land. This view differs from the applicant’s Traffic Assessment which is advocating for the provision of zero on-site spaces. As such, the provision of three off-site, off-street car parking spaces has been offered by the Permit Applicant and can be secured through recommended permit conditions.

In considering the matters at Clause 52.06-7, the proposed car parking reduction is considered acceptable for the following reasons:

 The Site is located in the Brunswick Activity Centre with excellent access to a range of public transport options, including train (20m), tram (160m) and bus (170m) in a range of directions.

 The development provides 44 on-site bicycle spaces, comfortably exceeding the requirements of Clause 52.34 (nine residential spaces, including three guest spaces). Further, the Site is located with immediate access to the Upfield Shared Path and convenient access to other bicycle routes.

 Eight publicly-accessible car-share spaces provided by the same operator are located within an 800m walk of the Site, including two located on Florence Street.

 It is policy to support reduced car parking rates in developments within activity centres pursuant to Clause 18.02-4L as it encourages people to walk, cycle and use public transport. The site context and proposed development meets the expectations of that policy.

 The existing approval comprised zero on-site car spaces for the commercial/retail uses, as visitors making multi-purpose trips to the Brunswick Activity Centre are expected to find on-street parking elsewhere or arrive by alternative modes of transport. This kind of reduction is commonplace within the Brunswick Activity Centre.

 Three off-site car parking spaces located proximate to the subject land can be provided for the use of occupants and tenants of the development. This can be secured through an agreed recommended permit condition, and would be consistent with the three parking spaces provided at 6 Florence Street immediately to the east.

The unique set of circumstances relating to the locational advantages of the Site (including convenient access to nearby car-share facilities), the high number of bicycle spaces provided, the site-specific disadvantages of providing car parking on the subject land, and the nature of prospective occupants of the proposed development contribute to a recommendation that supports a significant reduction to on-site car parking.

**Does the proposal provide an appropriate response in relation to environmentally sustainable design?**

The proposed development represents an acceptable response to Council’s ESD related policy objectives. Importantly, the proposed amendments improve upon the ESD response afforded by the existing approval as the proposal provides:

 A BESS score of 77 percent (existing approval was assessed via an uncertified GreenStar process);

 An average preliminary NatHERS of 7.6 stars (existing approval: 6.6 stars);

 Gas-free power; and

 A rooftop level comprising a communal landscaped area and 15kw p array solar energy facilities (existing approval: 5kw p array).

Concern has been raised by one objector that the additional building height sought would result in inferior ESD outcomes. This is not considered to be the case, as additional building height does not necessarily equate to additional environmental impacts. The proposal is considered to achieve a better ESD outcome than the original approval. Subject to recommended permit conditions, the proposal complies with the requirements of Clause 15.01-2L-05 (Environmentally Sustainable Development) and can achieve best practice ESD outcomes.

Daylight to bedrooms

Notwithstanding the above, it’s noted that 78 per cent of bedrooms comply with the relevant BESS requirements for daylight access (BESS policy aim: 80 per cent). Daylight modelling demonstrates that 9 of the 41 bedrooms proposed do not achieve a compliant daylight factor of 0.5 per cent to 90 per cent of the relevant floor area. Six of the nine non-compliant bedrooms are located in dwellings that are provided with an additional bedroom that does achieve compliance (in all these cases, high levels of compliance are achieved in the primary bedroom). This arrangement is considered acceptable given the modest extent of non-compliance, the fact that primary bedrooms achieve compliance, the generous communal facilities proposed on-site, and the general improvements made to the internal amenity of dwellings compared to the existing approval.

Daylight to living rooms

96 per cent of living areas are provided with compliant levels of daylight access, exceeding the policy aim of 80 per cent.

**5. Response to Objector Concerns**

The following issues raised by objectors are discussed in greater detail in Section 4 of this report, with the following brief responses provided:

 ESD concerns

 Car parking

Other maters raised by objectors are discussed below:

Materiality

One objector raised concern with the concrete materiality of the western ‘bookend’ portion of the development as relevant to the Florence Street streetscape. This submission is supported and recommended permit conditions require the provision of climbing vegetation (and associated support/maintenance) to soften the appearance of the lower level south-west interface to the street. The Permit Applicant has agreed to such a condition. Discussion Plans submitted following negotiations with Council officers have replaced floor space to the ‘bookend’ element with balconies in response to the requirement of DDO18 and further conditions in the recommendation also seek to increase the sense of openness to the upper levels of this currently more solid concrete bookend design element.

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

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

**7. Financial and Resources Implications**

There are no financial or resource implications.

**8. Conclusion**

The proposed development is expected to make a positive contribution to the public realm, respecting the emerging character and scale of Florence Street and offering a high-quality design response that subject to further conditions in the recommendation achieves a suitable sense of openness, visual interest and activation. The amended proposal achieves a best practice ESD response and provides for a suitable voluntary offer of affordable housing. When compared to the existing approval associated with the subject site, the proposal offers improved accessibility, architectural design, street-level activation and articulation to the Upfield Shared Path and rail corridor. While variations to some discretionary controls of DDO18 are sought, a holistic review of the proposed amendments finds in favour of an improved proposal.

On the balance of policies and controls within the Merri-bek Planning Scheme and objections received, it is considered that an Amended Notice of Decision to Grant a Planning Permit for MPS/2015/175/B should be issued subject to the conditions included in the recommendation of this report.

**Attachment/s**

|  |  |  |  |
| --- | --- | --- | --- |
| **1** | 8 Florence Street, BRUNSWICK VIC 3056 - Location Map | D23/105074 |  |
| **2** | 8 Florence Street, BRUNSWICK VIC 3056 - Zoning Map | D23/105072 |  |
| **3** | 8 Florence Street, BRUNSWICK VIC 3056 - Objector Map | D23/105071 |  |
| **4** | 8 Florence Street, BRUNSWICK VIC 3056 - Advertised Plans | D23/105070 |  |
| **5** | 8 Florence Street, BRUNSWICK VIC 3056 - Discussion Plans | D23/105069 |  |

1. *Moreland City Council*, ‘Solar Panels Advisory Note’ (13 July 2016). [↑](#footnote-ref-1)
2. *Moreland City Council*, ‘Solar Panels Advisory Note’ (13 July 2016). [↑](#footnote-ref-2)