



Moreland
City Council

COUNCIL AGENDA

PLANNING AND RELATED MATTERS

WEDNESDAY 26 AUGUST 2020

COMMENCING 6.30 PM

**THE COUNCIL MEETING WILL BE HELD VIA VIDEO
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Language Link

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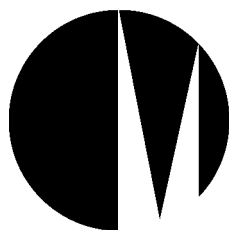
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1. WELCOME

2. APOLOGIES

3. DECLARATION OF INTERESTS AND/OR CONFLICTS OF INTERESTS

4. MINUTE CONFIRMATION

The minutes of the Planning and Related Matters Meeting held on 26 February 2020 be confirmed.

5. COUNCIL REPORTS

CITY FUTURES

DCF39/20	127-129 JUKES ROAD FAWKNER - PLANNING PERMIT APPLICATION MPS/2019/396	3
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DCF40/20	82 DAWSON STREET, BRUNSWICK - HERITAGE VICTORIA APPLICATION P31711	25
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6. URGENT BUSINESS

**DCF39/20 127-129 JUKES ROAD FAWKNER - PLANNING PERMIT
APPLICATION MPS/2019/396**

Director City Futures

City Development

Executive Summary



Property:	127-129 Jukes Road FAWKNER
Proposal:	Use of the land for a place of worship and reduction of the car parking requirements
Zoning and Overlay/s:	<ul style="list-style-type: none">• Commercial 1 Zone• Design and Development Overlay 24• Parking Overlay 1• Development Contributions Plan Overlay
Strategic setting:	Bonwick Street, Fawkner Neighbourhood Centre provides for a mix of uses to meet daily and weekly needs of the local community
Objections:	<ul style="list-style-type: none">• 59 (including two petitions)• Key issues include:<ul style="list-style-type: none">- Car parking- Traffic increase- Hours of operation- Number of patrons- Anti-social behaviour/loitering- Noise emissions- Existing mosques in Fawkner
Planning Information and Discussion (PID) Meeting:	<ul style="list-style-type: none">• Date: 29 July 2020• Attendees: 5 objectors, the applicant, 3 Council officers, Cr Mark Riley, Cr Sue Bolton and Cr Ali Irfanli• There was no consensus reached at the PID meeting which did assist officers consideration of proposed conditions of approval
Key reasons for support	<ul style="list-style-type: none">• The place of worship has strategic support in Municipal Strategic Statement (MSS) and Local Planning Policies of the Moreland Planning scheme• The use of land for a place of worship is consistent with the purpose of the Commercial 1 Zone• The proposed reduction of car parking is appropriate for the site given its location within a Neighbourhood Activity Centre
Recommendation:	It is recommended 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/2019/396 be issued for the use of the land for a place of worship and reduction of the car parking requirements at 127-129 Jukes Road, FAWKNER, subject to the following conditions:

Amended plans

1. Within 3 months of the permit issue date, 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 dated October 2019 but modified to show:
 - a) Annotation noting clear glazing provided along the window frontage with any internal screening mechanism located no closer than 0.5 metres from the window frontage.
 - b) Annotation 'Loading Bay' deleted from car space.
 - c) Any modifications required by the approved Waste Management Plan (refer to Condition 8 of this permit).
2. The use 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.

Use conditions

3. The use allowed by this permit (including the arrival and departure of vehicles and people on-site) must operate only between the following hours:
 - a) Monday to Sunday 5:00am to 11:00pm
4. Except for the Friday prayer the maximum number of patrons permitted on the premises must not exceed 25.
5. The Friday prayer must have no more than 50 patrons and only occur between 12noon and 2pm on Friday.
6. No amplified music or speech may be played external to the building.
7. The land must not be used without the consent from the Responsible Authority for Carnival, Cinema, Cinema based entertainment facility, Circus, Exhibition centre and Nightclub.

Waste management

8. Prior to the endorsement of plans, a Waste Management Plan must be submitted and approved to the satisfaction of the Responsible Authority. The Plan must include, but not limited to the following:
 - a) Confirmation that educational material will be displayed in the waste bin storage area explaining what material can be recycled;
 - b) Calculations showing the amount of garbage and recycling expected to be generated;
 - c) A statement of whether the garbage, hard waste and recycling will be collected by Council or a private collection, stating the size of bins, frequency of collection and hours of collection;
 - d) Include a plan showing the location of the bin storage area on the site and details of screening from public view;
 - e) Include a dimensioned plan showing the storage area is sufficient to store the required number of bins in a manner that allows easy access to every bin;

- f) State where and when the bins will be placed for waste collection, noting Council's standard collection times;
 - g) Confirm that the bins will be removed from the street promptly after collection; and
 - h) Include a plan showing where the waste trucks will stop to service the waste bins and state whether 'No Parking' restrictions will be required for the waste trucks to access that space (e.g. 6am-midday, Wed).
9. When submitted and approved to the satisfaction of the Responsible Authority, the Waste Management Plan and associated notated plans will form part of this permit.
- Permit expiry**
10. This permit will expire if the use is not commenced within two years from the date of issue of this permit.

1. Background

Subject site

The subject site is located on the southern side of Jukes Road amongst a small strip of shops, approximately 60 metres west of Bonwick Street.

The site is rectangular in shape with an area of 371 square metres and occupied by a single storey commercial building 327 square metres in gross floor area which is oriented to Jukes Road. One car space is located on-site at the rear of the building. The site has secondary access from the rear which abuts an unnamed laneway that connects to Co-Op Lane and McDougall Street. Public car parks are located at the front of the site comprising 14 car spaces and at the rear with 36 car spaces.

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

Surrounds

The site is located in the Bonwick Street, Fawkner Neighbourhood Activity Centre which comprises a variety of shops and services fronting Bonwick Street and Jukes Road. The Neighbourhood Activity Centre is zoned Commercial 1 Zone, whilst the surrounding land is either Residential Growth Zone or General Residential Zone.

Nearby amenities include the CB Smith Council Reserve, located 300 metres to the east, and John Fawkner College located beyond that, 500 metres from the site.

Bonwick Street connects to Sydney Road to the west with Gowrie Train Station located 530 metres from the site.

A land zoning map forms **Attachment 1**.

The proposal

The proposal is summarised as follows:

- The use of the land for a place of worship and ancillary services.
- A maximum of 50 patrons would be located on site at any one time, occurring between 12noon to 2pm on a Friday. All other times would have a maximum of 25 patrons.
- Hours of operation as follows:
 - Monday to Sunday: 5:00am to 11:00pm
- A reduction of car parking of 14 car spaces.

No buildings and works are proposed

The application plans form **Attachment 2**.

The applicant's proposal description forms **Attachment 3**.

Planning Permit and site history

Planning permits issued for the site include the following:

- MPS/2009/297 – Permit issued for the use and development of land for veterinary clinic, reduction of standard car parking and loading bay requirements and the display of advertising signage
- MPS/2012/486 – Permit issued for the reduction of car parking in association with a restaurant and the sale and consumption of liquor (café and restaurant liquor licence).

A Council inspection of the site on 24 July 2020 confirmed that the building is currently not operating. This is most likely due to the COVID-19 restrictions put in place by the State Government.

Council's Planning Enforcement officers had initiated an investigation into the premises on 8 May 2019, resulting in the lodgement of the subject planning permit application on 11 July 2019 for retrospective approval. In this instance the premises was not directed to cease operation while the permit application was underway. This was in consideration of the small scale and community nature of the use and the fact that the use would not require a planning permit if it was not for its floor area of 371 square metres exceeding the 250 square metres trigger for consideration of a planning permit in this location.

Statutory Controls – why is a planning permit required?

Control	Permit Requirement
Commercial 1 Zone	A permit is required for the purpose of a place of worship as the gross floor area of all buildings exceeds 250 square metres. Therefore, the use is a section 2 permit required use.
Particular Provisions Clause 52.06	A permit is required to reduce the car parking requirement from 15 spaces to 1 space.

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

- Clause 43.02: Design and Development Overlay 24 (DDO24). As no works are proposed, a permit is not required under DDO24.
- Clause 45.09: Parking Overlay 1. The Parking Overlay specifies that the 'Column B' rate in Table 1 to Clause 52.06 applies. In this case, the applicable parking rate is 0.3 spaces per patron.
- Clause 45.06: Development Contributions Plan Overlay. As the leasable floor area of the building is not increasing, there is no requirement for a contribution.
- Clause 52.34: Bicycle Facilities. Due to the small floor area of the building the bicycle provision does not apply.

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 and nearby land. Including all the shops within this strip (between Co-Op Lane and McDougall Street); and
- By placing a sign on the front and rear of the site.

Council has received 59 objections including two petitions to date. A map identifying the location of objector's map forms **Attachment 4**.

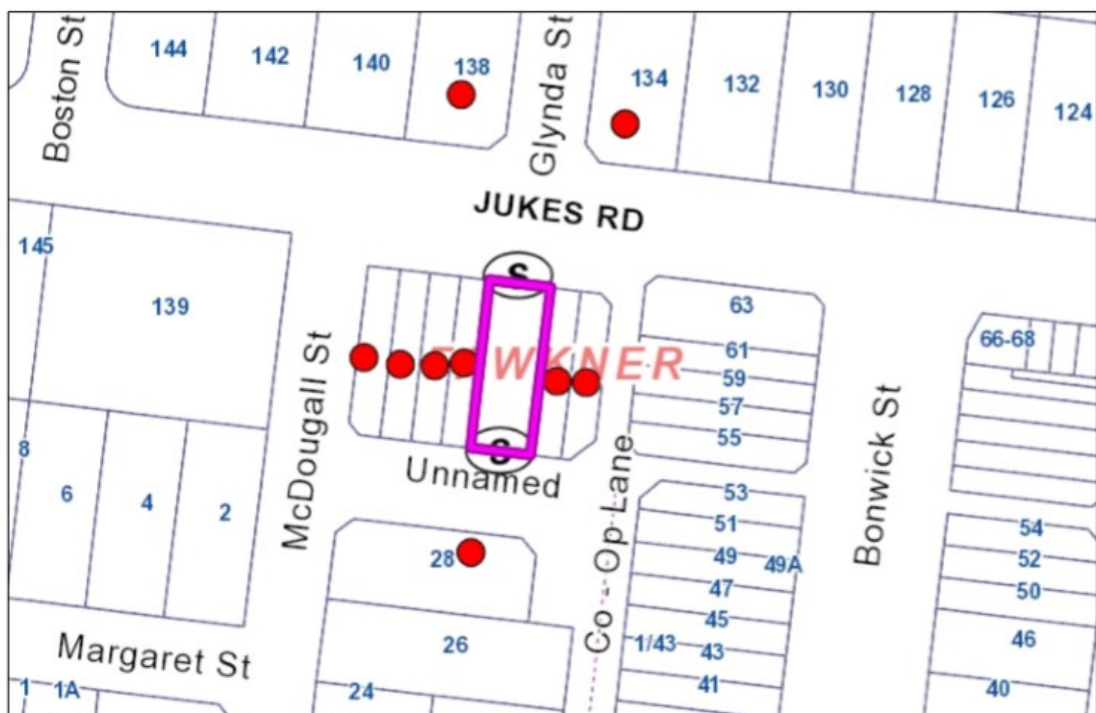
The key issues raised in the objections are:

- Car parking, including:
 - illegal parking of vehicles
 - On-street car parking demand
 - Parking in nearby residential streets
 - Impact on nearby businesses within the Neighbourhood Activity Centre

- Traffic increase
- Hours of operation
- Number of patrons
- Anti-social behaviour/Loitering
- Noise emissions
- Existing mosques in Fawkner.

A Planning Information and Discussion (PID) meeting was held on 29 July 2020, attended by Cr Mark Riley, Cr Sue Bolton, Cr Ali Irfanli, Council Planning officers, the applicant and five of the objectors. The meeting provided an opportunity to explain the application, for the objectors to elaborate on their concerns, and for the applicant to respond. There were no resolutions stemming from the meeting, however the submissions have assisted the planning considerations in this report and the recommended conditions of permit.

During the PID objectors raised concern regarding the extent of properties that were notified of the application, claiming it to be insufficient. Public notice requirements of the *Planning and Environment Act, 1987* require Council to direct the mailing of notices to adjoining properties and require site notices to be erected on-site at street frontages to notify those further removed. The notification carried out as part of this application exceeded those requirements, notifying all shops within the strip between Co-Op Lane and McDougall Street, and the residential properties directly opposite and to the rear, depicted in the image below.



It is considered that Council has carried out notice correctly in accordance with section 52 of the *Planning and Environment Act 1987*.

Internal referrals

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

Internal Branch/Business Unit	Comments
Development Advice Engineer	No objections were offered to the proposal subject to modifications, which are addressed by conditions detailed in the recommendation. In particular, the car parking reduction of 14 spaces was supported.

3. Policy Implications

Planning Policy Framework (PPF)

The following Planning Policies are of most relevance to this application:

- Clause 11 Settlement
- Clause 15 Built Environment and Heritage including:
 - Healthy neighbourhoods (Clause 15.01-4S and 15.01-4R)
- Clause 18 Transport
- Clause 19.02 Community Infrastructure

Local Planning Policy Framework (LPPF)

The following Key Strategic Statements of the Municipal Strategic Statement (MSS) and the following Local Planning Policies are of most relevance to this application:

Municipal Strategic Statement:

- Clause 21.01 Municipal Profile
- Clause 21.02 Vision
- Clause 21.03-1 Activity Centres

Local Planning Policies:

- Clause 22.03 Car and Bike Parking and Vehicle Access

Human Rights Consideration

This application has been assessed 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*. In particular, regard was given to:

- Section 13: Privacy and reputation
- Section 14: Freedom of thought, conscience, religion and belief
- Section 15: Freedom of expression
- Section 16: Peaceful assembly and freedom of association
- Section 17: Protection of families and children
- Section 18: Taking part in public life
- Section 19: Cultural rights.

The application does not limit human rights, providing social freedoms to practise religion or belief in worship in privacy.

4. Issues

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

Is there strategic support for the land use?

In the Commercial 1 Zone a planning permit is required for a place of worship only when the gross floor area of all buildings exceeds 250 square metres.

The gross floor area of the subject building is 327 square metres. Therefore, had the building been 77 square metres smaller in area, a permit would not have been required for the place of worship. It is therefore understood that the primary consideration is the amenity impacts resulting from the scale of the land use and not so much the acceptability of the type of land use in this location.

Furthermore, the purpose of the Commercial 1 Zone is *to create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses*. The place of worship is considered a community use that will provide easy access for its patrons being located in a neighbourhood activity centre.

There are a number of ancillary activities that are associated with the place of worship, including religious lectures, community skills training, scripture classes and family counselling. The broader definition for a place of worship at Clause 73.03 – Land Use Terms is land used for religious activities such as a mosque. This definition encompasses the additional activities proposed as part of the predominant land use which is for prayer. This is also reflected in the spread of patron numbers throughout the hours of operation, as shown in the table in the following section.

Clause 34.01-6 and Clause 65.01 sets out the decision guidelines for Council to consider in determining if the use of the land for a place of worship is an acceptable outcome for the site.

Firstly, the application must be assessed against Moreland's Municipal Planning Strategy and the Planning Policy Framework. Of particular note, the use of the land for a place of worship has strategic policy support from the following policies:

- The site is located within the Bonwick Street, Fawkner Neighbourhood Activity Centre which encourages social and cultural infrastructure to meet the strategies and objectives of Clause 19.02-4S (Social and Cultural Infrastructure).
- The strategic direction for the Bonwick Street, Fawkner Neighbourhood Activity under Clause 21.02-3 is to provide a mix of uses within walking distance to meet daily and weekly needs of the local community, to create a sustainable neighbourhood. This includes community services amongst the more common land uses such as shops, supermarket, small service businesses and health facilities (MSS Strategic Directions).
- A number of the strategies implemented by Clause 21.03-1 encourage a mix of retail, office, commercial entertainment and community uses to be located in Activity Centres. A balanced approach is required to ensure residential uses do not undermine the viability of business operating in activity centres (Neighbourhood Centres).

Does the use have any unreasonable amenity impacts?

The site's residential interface to the north and south is a key consideration of the proposal. Given the place of worship would operate seven days a week between 5:00am to 11:00pm, particular consideration must be given to the potential amenity impacts on the adjoining residential properties. Considering the prayer times associated with the place of worship must be carried out at particular times of the day, it would be unreasonable to restrict the hours beyond what is proposed. The proposal includes the following prayer times, community program hours and associated patron numbers:

Activity	Anticipated Patron numbers	Hours of operation	Comments
Morning prayer	20	5:00am – 6:30am	15 minute prayer time per patron
Noon prayer	15	12:00pm – 2:00pm	15 minute prayer time per patron
Afternoon prayer	15	3:30pm – 5:00pm	15 minute prayer time per patron
Evening prayer	20	5:30pm – 8:50pm	15 minute prayer time per patron
Night prayer	25	7:00pm – 10:50pm	15 minute prayer time per patron
Friday only prayer	50	12:00pm – 2:00pm	1 hour per patron
Lectures	25	90 minutes	Service time and day will vary
Community skills training	5	5:00pm – 6:30pm Monday to Friday	Training to run regularly
Disability services	5	10:00am – 11:30am Saturday and Sunday	Service to run regularly
Adult scripture classes	10	5:00pm – 6:30pm Saturday and Sunday	Service to run regularly
Family counselling	2	10:00am – 12:00pm Saturday and Sunday	Service will take place on request
Child scripture classes	10	6:00pm – 7:30pm Monday to Friday	Service to run regularly
Home economics classes	5	9:00am – 10:30am Saturday and Sunday	Service to run regularly

It is noted that the place of worship would not include any transport of materials or goods from the land apart from a standard waste collection. A Waste Management Plan is required as a condition of any permit granted. The type of activities to be conducted on the land are not expected to create any light spill, glare or impact on solar access. Therefore, as per the decision guidelines at Clause 34.01-6 the primary considerations of potential amenity impacts would be the hours of operation, traffic generation and noise levels associated with the land use.

It is noted that there are several components of the proposal which would mitigate negative amenity impacts on the adjoining residential properties, including:

- Except for the Friday prayer the maximum number of patrons on-site would be 25.

- The activity of prayer in itself is a quiet form of land use.
- The prayer times are staggered, so as to not have patrons crossing over at different prayer times, ultimately reducing the traffic movements and demand for car parking at one time as well as the amount of people gathered at the premises.
- As the prayer times are in blocks of 1 to 3 hours, the maximum number of patrons would be spread out over that time meaning fewer people occupying the site at any one time.
- No amplified music or speech would occur as part of the use.
- The building has two entrances, one to the front and one to the rear of the building. This disperses the amount of foot traffic accessing the building where abutting residential properties.

Ultimately a key component of enforcing these times and patron numbers will require conditions of any permit issued to ensure that the permit holder complies with the specified hours of operation and patron numbers.

Has adequate car and bicycle parking been provided?

Clause 52.06 of the Planning Scheme requires 0.3 car spaces per patron, which equates to 15 car parking spaces for 50 patrons. As the development provides one (1) on-site car space a permit is required for the reduction of 14 car spaces.

In considering the relevant decision guidelines at Clause 52.06-7, the reduction of 14 car spaces is considered acceptable for the following reasons:

- The Traffic Impact Assessment submitted with the application indicates that the site has access to 288 public on-street and off-street car spaces within a 250 metre radius.
- The demand on car parking generated by the place of worship would vary throughout the day and week as indicated by the hours of operation and patron numbers. Therefore, the reduction of 14 spaces is only applicable to the peak operating period which would be Friday between 12:00pm - 2:00pm.
- At the place of worship's peak operating period on a Friday the car parking survey included in the Traffic Impact Assessment revealed that there was between 89 - 93 vacant car spaces of the total 288 on-street and off-street car spaces surveyed within 250 metres of the site.
- During other times the survey indicated that there was between 109 - 237 vacant spaces out of the total 288.
- The site is located in a Neighbourhood Activity Centre which has access to a bus route that runs along Jukes Road, with Gowrie Train Station located 530 metres from the site.
- The site has access to bicycle parking located on the public footpath to the front of the site.
- It is policy of Clause 22.03-3 (Car and bike parking and vehicle access) to *support reduced car parking rates in developments within and in close proximity to activity centres, with excellent access to a range of public transport options and with increased provision of bicycle parking above the rates specified in Clause 52.34.*
- Council's Development Engineers are satisfied that the car parking requirement can be reduced for this application.

Vehicles, whether related to the proposed use or other uses nearby, can only park on the street and public car parks nearby in accordance with the parking regulations. The number of vehicles that can park in these spaces and at what time will be dictated by the parking restrictions and the availability of on-street and off-street car spaces. On balance, it is considered that the existing car parking supply can accommodate the shortfall of 14 car spaces associated with the place of worship.

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 use would result in approximately 28 additional vehicle movements during peak times along Jukes Road. This remains within the road's design capacity and is not expected to cause traffic problems. The Co-Op Lane located to the east of the site is a one way service road linking Bonwick Street to Jukes Road via the public car park which is located to the rear of the site.

On inspection of the site and surrounding area it was revealed that there are several road safety signs indicating the traffic controls within the lane entry from Bonwick Street including 'one-way' and 'no entry' signs. However, no 'one way' sign is provided at the entry to Co-Op Lane from Jukes Road, resulting in a potential conflict point. This is something that Council should investigate to determine if there are unacceptable safety risks for drivers and pedestrians alike. However, this is not something that can or should be the responsibility of this permit applicant. Traffic volumes associated with the place of worship would be acceptable and is not expected to result in negative impacts on traffic flow. Council officers have raised the above concern with Council's Transport Unit for further review.

What impact does the proposal have on cycling, bike paths and pedestrian safety, amenity and access in the surrounding area?

The proposal provides an acceptable response to Council's Local Planning Policy Clause 22.03 (Car and Bike Parking and Vehicle Access) as it:

- utilises the rear laneway for vehicle and pedestrian access to allow the Jukes Road street frontage to prioritise pedestrian movement and safety and create an active frontage.
- has access to bicycle parking on the public footpath.
- provides pedestrians with direct access to the building either via the street frontage or the rear car park, allowing safe access to the building for patrons.

Does the proposal protect the active frontage to pedestrian areas?

Clause 34.04-4 states that a permit is not required for an alteration to an existing building façade provided the alteration does not include a roller door and at least 80 percent of the building façade at ground floor level is maintained as an entry or window with clear glazing. Whilst the application is not seeking approval for buildings and works, the clear glazing at the building's facade has been obscured as part of the land use. It is accepted that there are discreet elements to the proposed activities to be carried out on-site, however the obscuring of the building façade windows is not an acceptable outcome for the site in this context. Therefore, the plans and elevations must be amended to ensure clear glazing is provided along the frontage and any internal screening mechanism is located no closer than 0.5 metres from the windows.

5. Response to Objector Concerns

The following issues raised by objectors relate to the retrospective approval sought for the place of worship. Many grounds of objections related to the current operation of the premises as well as the future operation. The following objections are addressed in Section 4 of this report:

- Car parking
- Traffic increase
- Hours of operation
- Number of patrons
- Noise emissions

The following issues are also responded to below:

- Illegal parking of vehicles
- Anti-social behaviour/loitering
- Existing mosques in Fawkner.

Car parking

Illegal parking of vehicles

Concerns have been raised regarding the extent of illegal parking within public and private spaces. On Council's inspection of the site and surrounding area, several 'no standing' signs were observed. The signs are located along potential conflict points within the rear parking area and Co-Op Lane to prevent any illegal parking. Council relies on its Parking and Road Safety Unit to ensure any illegal parking associated with the proposed use or existing uses is prevented by enforcement of these signs. This is not a matter that can be addressed through this planning permit application.

On-street car parking demand

Concerns have been raised regarding on-street car parking demand. There is no question that car parking demand is high in this context given the location of the site within the Bonwick Street, Fawkner Neighbourhood Activity Centre. However, in order to determine if the demand is acceptable, this assessment relies upon empirical evidence submitted in the Traffic Impact Assessment. There is sufficient evidence within the Traffic Impact Assessment to determine that the shortfall of car parking associated with the place of worship (14 spaces) can be accommodated within the existing supply.

Parking in nearby residential streets

Concerns have been raised regarding parking in nearby residential streets. The Traffic Impact Assessment Report utilises on-street car parking supply within 250 metres of the site as part of the survey data collected, which includes nearby residential streets. It is understood that this can make on-street car parking difficult for residents, however the nearby residential properties benefit from having the Neighbourhood Activity Centre within proximity which provides benefits to both residents and the land uses within the centre. It is for this reason that it is an acceptable outcome for the car parking supply in residential streets to contribute to the provisions for the proposed place of worship.

Moreover, the car parking survey identifies 288 car spaces within 250 metres of the site. At the place of worship's peak car parking demand, the land use would occupy 14 of the possible 288 car spaces. Therefore, it is more likely that the spaces closer to the site within the centre are utilized in preference to the parking in nearby residential streets.

Impact on nearby businesses within the Neighbourhood Activity Centre

The location of the site within the Bonwick Street, Fawkner Neighbourhood Activity Centre requires consideration of the potential impacts of the proposed place of worship on the existing shops and businesses within the commercial centre. Like the proposal, many of these businesses support the daily and weekly needs of the local community. The Traffic Impact Assessment submitted with the application states the busiest time of the week recorded in the car parking survey was on a Friday at 1:15pm. Whilst this correlates with the busiest time of the place of worship, the car parking survey revealed that in excess of 85 car spaces were vacant of the 288 surveyed on-street and off-street car spaces within 250 metres of the site. Also, the Traffic Impact Assessment indicates that patrons accessing the place of worship would be undertaking multipurpose trips to the other businesses within the centre, thus supporting the strategic direction for this area.

Anti-social behaviour/loitering

Concerns have been raised regarding loitering outside of the subject site and anti-social behaviour within the car park at the rear of the building. Council has CCTV in place within the Bonwick Street, Fawkner Neighbourhood Activity Centre. If any patron of the proposed place of worship is contributing to anti-social behaviour then it is not only the responsibility of Council to mitigate this through good design and place making, but residents and business owners to report such issues to Victoria Police. If a permit is granted, Council's planning enforcement officers will be able to enforce any conditions on the permit, including operational matters.

Existing mosques in Fawkner

The presence of other like facilities has no bearing on whether the proposal is an acceptable response to the Moreland Planning Scheme.

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 arising from this report.

8. Conclusion

It is considered that the proposed use is consistent with the purpose of the Commercial 1 Zone and would not result in negative amenity impacts as this can be mitigated through planning permit conditions.

On the balance of policies and controls within the Moreland Planning Scheme and objections received, it is considered that Notice of Decision to Grant a Planning Permit No MPS/2019/396 should be issued for use of the land for a place of assembly (place of worship) and reduction of the car parking requirements, subject to the conditions included in the recommendation.

Attachment/s

1	Land Zoning Map	D20/331965
2	127-129 Jukes Road, FAWKNER VIC 3060 - Application Plans	D20/26275
3	127-129 Jukes Road, FAWKNER VIC 3060 - Applicant's Description of Proposal	D20/26274
4	Location of Objectors Map	D20/330111

**DCF40/20 82 DAWSON STREET, BRUNSWICK - HERITAGE VICTORIA
APPLICATION P31711**

Director City Futures

City Development

Executive Summary

Property:	82 Dawson Street, Brunswick
Proposal:	Heritage Victoria Application P31711 for demolition of the Brick Pressing Shed (Buildings 5 and 6) and construction of a new building including an interpretation space.
Zoning and Overlay/s:	<ul style="list-style-type: none">• Mixed Use Zone• Heritage Overlay Schedule 63• Development Plan Overlay Schedule 3• Parking Overlay Schedule 1• Environmental Audit Overlay• Development Contributions Plan Overlay
Recommendation:	That Council notes the objection to the Heritage Victoria application.

Officer Recommendation

That Council notes the objection dated 20 July 2020, at Attachment 3 to this report, submitted to Heritage Victoria application P31711 for demolition of the Brick Pressing Shed (Buildings 5 and 6) and construction of a new building including an interpretation space with the objection having been made on the following grounds:

1. The application, if approved, would detrimentally affect the cultural heritage significance of the registered place on the basis that it:
 - Demolishes buildings which are of primary significance to the heritage place;
 - Erodes the ability to spatially interpret the historical heritage significance of the site; and
 - Fails to retain a meaningful proportion of the brick pressing equipment which contributes to the scientific significance of the heritage place and enable ongoing heritage interpretation.
2. The application conflicts with the Development Plan Overlay and approved Development Plan which has been endorsed to comply with Clause 43.04-3 of the Moreland Planning Scheme, which shows the retention of Buildings 5 and 6 as the most significant heritage fabric. Buildings 5 and 6 are now the last remaining intact buildings of primary heritage significance following the decisions which allowed the demolition of the Gatehouse Building and the demolition and subsequent reconstruction of the first floor levels of the two remaining kilns.
3. The application for demolition is predicated upon the level of contamination of the land and the inability to remediate the land whilst safely retaining the buildings, however inadequate information has been provided to justify this claim nor has this been tested through a peer review of the relevant reports by suitably qualified professionals.
4. The application will result in a non-compliance with the legally binding covenant in the form of a Section 173 Agreement registered on Title between Council and the land owner which gives effect to previous undertaking in respect to the restoration of this important heritage fabric. Section 1.1.5 of the Agreement states that the owner must “manage and maintain the heritage assets on the Subject Land in accordance with the Heritage Audit Management Plan”.
5. The proposed development does not respond to the low-scale character of the surrounding area and would be visually dominant of nearby heritage fabric.

1. Background

Subject site

The subject land is located on the northern side of Dawson Street between Pottery Court and Brickworks Drive, Brunswick.

The land is irregular in shape, has a frontage to Dawson Street of 197.5 metres, a depth of between 128.9 and 196.4 metres, and a total area of approximately 3 hectares.

The land comprises the most significant portion of the 'historic core' of the former Hoffman Brickworks and contains a number of historic buildings associated with the previous use, including:

- Building 5 – brick press shed (constructed in 1884), located to the west of kiln 3, and contains nine brick presses at ground floor level and a system of conveyor belts and hoppers associated with the former brick making process at the upper level; and
- Building 6 – steam engine house (constructed between 1904 and 1909) located on the corner of Brickworks Drive and Dawson Street.

The land is located within a few hundred metres of the No 55 tram along Grantham Street, approximately 400 metres to Union Square shopping centre, 1 kilometre from Sydney Road, 700 metres from Brunswick Train Station and close to the western edge of the Brunswick Major Activity Centre which contains education, community, retail, service and other facilities.

Surrounds

Surrounding land is used and developed for a mixture of residential, commercial, industrial and educational purposes. More specifically:

- Land on the south side of Dawson Street is primarily residential although an extensive area of commercial/industrial uses is located further away to the east and west of the review site on the north side of Dawson Street.
- Land to the south, across Dawson Street is developed with single storey dwellings of varying periods and styles, used for residential purposes;
- Land to the north is developed with a mixture of apartments and townhouses, recently constructed on the balance of the Hoffman Brickworks land, beyond which is Gilpin Park;
- Land immediately to the east and west also contains recent 2 and 3 storey residential development constructed on the balance of the Hoffman Brickworks land.

A location plan forms **Attachment 1**.

2. The proposal

Hoffman Brickworks Pty Ltd has lodged a permit application with Heritage Victoria for the following:

Demolition of Buildings 5 (brick pressing shed) and 6 (former steam engine house) and development of an eight storey apartment building incorporating a ground level café, heritage interpretation centre and 59 apartments.

Key aspects of the proposal are summarised as follows:

- Two levels of basement providing 65 car parking spaces, one loading area, storage cages and 68 bicycle parking spaces.

- At ground floor level, three apartments facing Brickworks Drive, a café/restaurant and workshop area adjacent to a heritage interpretation space incorporating four retained and relocated brick pressing machines. A community/creative workshop space located at the south-west corner of the site and a smaller co-work/community space located at the northern end of the site.
- Two additional brick pressing machines relocated outside the building: one within the Dawson Street frontage and one at the rear of the building within the northern setback.
- The edge runner mill relocated north-east of the proposed building.
- Shared entry to the ground floor uses from Dawson Street and a public forecourt on the eastern side of the building, incorporating outdoor seating for the café/restaurant.
- At first floor level, seven apartments and a co-work/community space overlooking a void to the heritage interpretation centre below.
- At second floor level, nine apartments and a further co-work/community space overlooking a void to the heritage interpretation centre below.
- A further 40 apartments on the four levels above.
- At roof top level, an enclosed communal space, a communal terrace and productive garden area.
- Built form constructed to the west boundary and part of the south boundary, incorporating recycled bricks and gabled roof forms as a contemporary interpretation of the existing Building 5.



Applicant's depiction of the proposed development from Dawson Street (looking north-west).

The plans submitted to Heritage Victoria for consideration are included at **Attachment 2**.

Site History

Hoffman Brickworks established operations at its Dawson Street site in 1884 and through its industrialisation of the brick making process contributed significantly to Melbourne's building boom in the 1880's. Large clay pits were located to the north of the kilns and other buildings on the site. From 1888 the eastern section of the site developed as a pottery which manufactured pipes, sanitary fittings and terracotta roofing products. After the second world war, Hoffmans fell behind other companies in incorporating new technologies. Nubrik purchased the site in 1986 and ceased brick making operations in 1993.

In 1997 the owner made application to demolish two of the 3 kilns on site. Council negotiated and committed to a financial contribution (\$400,000) in order to retain Kiln 2 (now redeveloped). Council also allowed use of part of Gilpin Park for a road to facilitate development proposed by the owner.

In 1999 the land was re-zoned from industrial to Mixed Use to facilitate development.

In 1999, A Conservation Management Plan was approved. Building 5 in particular was noted of primary heritage significance, with both Buildings 5 and 6 to be conserved.

In 2002 a Development Plan was approved. This plan showed Building 5 and 6 to be retained.

In 2003, an agreement was entered into between Council and the land owner as part of the process that allowed the subdivision of the brickworks precinct.

In summary, the 2003 agreement and subsequent agreements and approvals over the following 10 years require the owner to develop the land in staged manner that, if followed, would ensure the heritage buildings are retained and conserved. In addition they require the owner to manage, monitor, maintain restore and repair heritage buildings.

Since the late 1990s, the owner and all parties have been part of a process that acknowledged that restoration of the heritage buildings would be an expensive exercise. In recognition of this, concessions and flexibility have been granted in relation to the development of the precinct. The expectation being that profits generated would fund the restoration of important heritage buildings such as Buildings 5 and 6.

In 2010, a planning permit (MPS/2008/313) was issued which allowed the for the redevelopment of the heritage core. The approval included the two kilns, the demolition of the former gatehouse building, replaced by an apartment building and the restoration/reuse of Buildings 5 and 6. The two kilns and the gatehouse site were developed in accordance with the permit. Building 5 and 6 have not been. This permit expired in January 2019.

A number of Heritage Victoria permits have been issued for the Hoffman Brickworks land, these include:

- Permit no. 3883 issued on 30 July 1998 for the demolition Kiln 1. This permit replaced Permit no. 2899 issued on 24 September 1997;
- Permit no. P6262 issued on 19 August 2002 for the demolition Kiln 1. This permit replaced Permit no. 3883.
- Permit no. P10131 issued on 24 January 2008 for the reuse of Kilns 2 and 3 for commercial purposes, demolition of the gatehouse building, construction of new buildings E (the former gate house building) and 6A and refurbishment of building 6. This permit included various requirements for the internal fit out of the Kilns.

- Permit no. P14416 issued on 20 November 2009 for use of Kilns 2 and 3 for residential purposes, consisting of 19 apartments in Kiln 2 and 14 apartments in Kiln 3; extension of car parking between Kiln 2 and Building A; general increases in residential density and alterations; reduction in retail / commercial area to Building 5; and area under Kiln 2 and 3 to be used as interpretation centre subject to tenancy demands.

In 2017, the owner applied to Heritage Victoria for demolition of Building 5 and 6. Council objected to this application. The application was withdrawn.

Building 5, the Brick Pressing shed was damaged by fire in March 2018 following ongoing issues of failure to adequately prevent access to the site. Enforcement action by Heritage Victoria resulted in the issue of Permit no.P30622 on 8 November 2019 for repair work to the roof framing of the Brick Press Building. This permit was not complied with and an application to further extend the timeframe for these repair works was refused by Heritage Victoria.

Following two decades of neglect, Building 6 was damaged by a roof collapse on 12 June 2020. Emergency make safe works have now been completed. The site is currently the subject of Building Emergency Orders relating to the investigation of the structural integrity and necessary structural repair of the Brick Pressing shed and Kiln 1 free-standing chimney.

A planning enforcement investigation related to a number of planning compliance issues including the Section 173 Agreement which duplicates the Heritage Victoria obligations of the owner to maintain, repair and restore the heritage buildings.

A further Notice to Comply in respect to the unsightly premises provisions of Council's General Local Law 2018 was also recently issued.



Former steam engine house (Building 6) following the roof collapse, July 2020.

In light of the lack of action to commence the redevelopment of Buildings 5 and 6. the EPA issued a clean up notice for the site on 3 February 2020 which requires, among other things, the submission of a Clean-up Plan for the site by 20 December 2020. The applicant asserts that the demolition of Buildings 5 and 6 is necessary to fulfil the requirements of the clean-up notice. This issue is explored further in Section 3 of this report.

Policy Implications

The application has been made to Heritage Victoria under the *Heritage Act* 2017. Whilst this is not a planning application to Council under the *Planning and Environment Act* 1987, the following sections of the Planning Scheme are relevant considerations that formed part of officer's considerations in compiling the submission to Heritage Victoria.

Planning Policy Framework (PPF)

- Clause 11 - Settlement
- Clause 15 Built Environment and Heritage including:
 - Built Environment (Clause 15.01)
 - Healthy neighbourhoods (Clause 15.01-4S and 15.01-4R)
 - Sustainable Development (Clause 15.02)
- Clause 16.02 Housing including:
 - Integrated Housing (Clause 16.01-1S and 16.01-1R)
 - Location of Residential Development (Clause 16.01-2S)
 - Housing Opportunity Areas (Clause 16.01-2R)
- Clause 17.0: Economic Development
- Clause 18: Transport

Local Planning Policy Framework (LPPF)

The following Key Strategic Statements of the Municipal Strategic Statement (MSS) and the following Local Planning Policies are of most relevance to this application:

Municipal Strategic Statement:

- Clause 21.01 Municipal Profile
- Clause 21.02 Vision
- Clause 21.03-2 Land for Industry and Economic Regeneration
- Clause 21.03-3 Housing
- Clause 21.03-4 Urban Design, Built Form and Landscape Design
- Clause 21.03-5 Environmentally Sustainable Design (Water, Waste and Energy)

Local Planning Policies:

- Clause 22.01 Neighbourhood Character
- Clause 22.03 Car and Bike Parking and Vehicle Access
- Clause 22.06 Heritage
- Clause 22.07 Apartment Development of Five or More Storeys
- Clause 22.08 Environmentally Sustainable Design

Clause 15 of the Planning Policy Framework of the Moreland Planning Scheme incorporates objectives for heritage conservation and urban design. These objectives include the protection of heritage places through conservation, protection, management and adaptive reuse of buildings, and development which responds to and contributes to its context. Clause 16 incorporates objectives for housing. These objectives include encouraging higher density housing development on sites that are close to jobs, services and public transport.

Similarly, the Local Planning Policy Framework at Clause 21 of the Moreland Planning Scheme sets out objectives for housing and urban design. In relation to Housing, Clause 21.03-3 identifies the need for housing diversity that meets community needs, is environmentally sustainable, affordable and accessible. In relation to Urban Design, Clause 21.03-4 seeks to provide for development that responds and contributes to its context and any relevant heritage significance.

Planning Scheme Controls

The site is included in the Mixed Use Zone and is affected by a Heritage Overlay (HO63), a Development Plan Overlay (DPO3) an Environmental Audit Overlay (EAO), Parking Overlay (PO1) and Development Contributions Plan Overlay (DCPO).

Pursuant to Clause 43.01-3 of the Moreland Planning Scheme, no planning permit is required to develop a heritage place which is included in the Victorian Heritage Register. This means the proposed development is not subject to the requirements of the Heritage Overlay of the planning scheme.

A planning permit for the uses and development proposed is required pursuant to the Mixed Use Zone, however the heritage implications cannot be considered. A planning permit application has not yet been lodged with Council.

The specific requirements for the Development Plan are incorporated in Schedule 3 of Clause 43.04 of the Moreland Planning Scheme. Clause 43.04-2 requires that any planning permit granted must be generally in accordance with the Development Plan.

The Schedule to the Development Plan Overlay identifies the following matters which need to be considered in responding to Heritage Victoria.

Conservation Management Plan

The Conservation Management Plan was approved by Council on 24 May 1999 pursuant to the requirements of Clause 2.0 of Schedule 3 to the Development Plan Overlay. The Conservation Management Plan sets out conservation policies for all buildings and spaces of significance. Clause 1.0 of Schedule 3 to the Development Plan Overlay requires that the Development Plan must be consistent with the approved Conservation Management Plan.

Development Concept Plans

The Development Concept Plans referred to in Schedule 3 of the Development Plan Overlay is the *Concept Plan Hoffmans Brickworks Redevelopment* (dated 6/5/02, Revised 25/9/06 and prepared by Glenwill). The Development Plan Overlay requires that the Development Plan be generally in accordance with the Development Concept Plans.

Urban Design Guidelines

The Moreland City Council's Hoffman Brickworks Urban Design Guidelines also accompanied Amendment L52 and pursuant to Schedule 3 of the Development Plan Overlay must also be considered by Council when assessing an application for a planning permit.

Letters of Agreement

This letter, dated 8 April 1998, outlines agreements reached between Council, interested parties who made a submission to Amendment L52 and Sungrove Corporation and pursuant to Schedule 3 of the Development Plan Overlay must also be considered by Council when assessing an application for a planning permit.

The proposal conflicts with several requirements of the Development Plan Overlay:

- The endorsed Development Plan states that Buildings 5 and 6 will be retained at their current height.

- The Development Concept Plan provides that Buildings 5 and 6 be retained.
- The decision guidelines at Point 5 of DPO3 list a number of documents which must be considered in deciding on a planning permit application, including the relevant Conservation Management Plan (*Conservation Management Plan* prepared by Helen Lardner Conservation and Design and dated April 1999) which requires the retention of Buildings 5 and 6.

S173 agreement

In December 2012 Moreland City Council and Sun Grove Corporation Pty Ltd (owner) entered into Section 173 Agreement AK092274J (the Agreement). Owner obligations form part of the Agreement. The agreement replicates Heritage Victoria obligations for the land owner(s) to manage and maintain the heritage assets on the Subject Land in accordance with the Heritage Audit Management Plan. The Heritage Audit Management Plan shows Buildings 5 and 6 as retained. Demolition of the buildings would therefore result in a breach of the S173 agreement.

3. Issues

Submission to Heritage Victoria

The response to Heritage Victoria is included at **Attachment 3**. In summary, the response:

- Outlines the long and complex history of the development of the Hoffman Brickworks precinct. This includes clear planning scheme direction for the retention of Building 5 and 6 and numerous concessions and flexibility offered to the owners to ensure this would occur.
- Opposes the demolition of Building 5 and 6 as being contrary to the Moreland Planning Scheme and S173 Agreement that affects the land.
- Objects to the lack of maintenance, caused by the owners neglect, for being a reason for demolition.
- Identifies the lack of information supplied to justify the demolition on contamination or structural integrity grounds.
- Requests a peer review be undertaken by Council and Heritage Victoria upon receipt of expert contamination and engineering reports from the applicant.
- States that notwithstanding the objection to the demolition, the proposed height, scale and mass of the proposed replacement building is inappropriate to heritage place and surrounding area.

4. Next steps

Following receipt of Council's submission, Heritage Victoria has requested further information from the permit applicant. The information requested is consistent with Council's submission requesting further information related to contamination and the structural integrity of the buildings.

Once submitted, the application will be placed on formal public notice for submissions from members of the community and Council will have the opportunity to provide further comments. This will hopefully provide an opportunity for expert peer review of the information submitted.

The owner may make an application to the Victorian Heritage Council (VHC) to review a decision by Heritage Victoria to refusal or include conditions on a Heritage Permit. As an objection has been lodged by Council, it may make submissions at any hearing of the VHC. The Minister also has the power to refer the review to VCAT or to the Minister for determination.

Should a Heritage Permit be issued a planning permit would also be required from Council before any works could commence. As noted in Council's submission, it is Council officer's view that a permit application could not be issued as the Planning Scheme and Section 173 Agreement that affects the land require retention of Building 5 and 6. Therefore Council would need to firstly agree to amend the S173 agreement and progress a planning scheme amendment that must ultimately be approved by the Minister for Planning before any planning permit for the redevelopment of the land could be issued.

5. 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.

6. Financial and Resources Implications

There are no financial or resource implications.

7. Conclusion

The objection was lodged with Heritage Victoria under delegated authority on 20 July 2020 to Heritage Permit Application P31711 for demolition of the Brick Pressing Shed (Buildings 5 and 6) and construction of a new building including an interpretation space.

Attachment/s

- | | | |
|---|---|------------|
| 1 | 82 Dawson Street Brunswick - Location Map | D20/336890 |
| 2 | 2 - Architectural Drawings (reduced) | D20/289027 |
| 3 | 82 Dawson Street BRUNSWICK VIC 3056 - PPE Default | D20/315313 |