



Moreland City Council

# **COUNCIL AGENDA**

## **PLANNING AND RELATED MATTERS**

**WEDNESDAY 19 DECEMBER 2018**

**COMMENCING 6.30 PM**

**COUNCIL CHAMBER, MORELAND CIVIC CENTRE,  
90 BELL STREET, COBURG**

### **Language Link**

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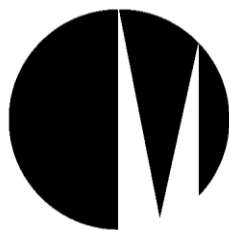
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ਕ੍ਰਿਪਾ ਕਰਕੇ 9280 0751 ਤੇ ਟੈਲੀਫੋਨ ਕਰੋ।



**1. WELCOME**

**2. APOLOGIES**

Leave of absence has been granted to Cr Tapinos - 15 December 2018 to 20 December 2018.

**3. DECLARATION OF INTERESTS AND/OR CONFLICTS OF INTERESTS**

**4. CONFIRMATION OF MINUTES**

The minutes of the Council Meeting - Planning and Related Matters held on 28 November 2018 be confirmed.

**5. COMMITTEE REPORTS**

**DEPARTMENT CITY FUTURES**

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**6. URGENT BUSINESS REPORTS**

# **DCF76/18 466-474 SYDNEY ROAD, BRUNSWICK - PLANNING PERMIT MPS/2017/836 (D18/393085)**

## **Director City Futures**

### **City Development**

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#### **Executive Summary**

The application seeks approval for partial demolition of the existing building and construction of an 8-storey building above 2 basement levels, use of the land for dwellings and reduction in statutory car parking. The application was advertised and 12 objections were received. The main issues raised in objections are height and scale of development being out of character with the locality and the reduction in car parking resulting in adverse traffic congestion impacts.

A Planning Information and Discussion meeting was held on 18 October 2018. No changes were made to the application following the meeting.

The report details the assessment of the application against the policies and provisions of the Moreland Planning Scheme.

The key planning considerations are:

- Whether the total height and upper level setbacks of the building is acceptable;
- Whether the extent of shadowing to Victoria Street is acceptable; and
- Whether an appropriate heritage outcome is achieved.

The overall height of the building is 27 metres (excluding the roof top level), exceeding the preferred height noted in the Design and Development Overlay (DDO) by 8 metres. This is considered to be unacceptable as it will not ensure the heritage street wall remains the dominant element in the street.

The upper level setbacks to Victoria Street will not achieve an appropriate sense of openness to the street, and the extent of overshadowing to Victoria Street is not acceptable. A condition is included in the recommendation reducing the height of the building by one level to ensure the streetwall remains the dominant element in Sydney Road and that an appropriate balance between a sense of enclosure and openness is achieved in Victoria Street.

An appropriate heritage outcome will be achieved with the restoration of the parapet and roof features subject to ensuring the colours and materials of the restoration and reconstruction work is consistent with the heritage character of the Sydney Road precinct. Conditions recommended will ensure the Environmental Sustainable Development performance of the building meets best practice.

It is recommended that a Notice of Decision to Grant a Planning Permit be issued for the proposal subject to conditions.

#### **Officer Recommendation**

That a Notice of Decision to Grant a Planning Permit No. MPS/2017/836 be issued for partial demolition of the existing building and construction of a 7-storey building above 2 basement levels, use of the land for dwellings and reduction in statutory car parking at 466-474 Sydney Road, Brunswick, subject to the following conditions:

1. Before the use and development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions. The plans must be generally in accordance with the plans described as TP003, TP098-TP108, TP200-TP204, TP250-TP251, TP403-TP405, TP500, TP600-TP609 Revision 1 dated 3 August 2018 prepared by Fender Katsalidis but modified to show:

- a) Deletion of level 7. The internal layout of level 6 may be reconfigured to provide for additional apartments at this level.
- b) A 1.5 by 1.5 metre triangular splay on the south-western corner of the building at ground zero.
- c) The level 2 floorplan to show a setback of the reinstated parapets from the Sydney Road boundary of the site.
- d) One car parking space designed as an accessible space for persons with disabilities.
- e) A small roof structure over the existing window within the balcony for apartment 106 sufficient to minimise views from street level, through the window, to the sky above.
- f) An amended materials and colours schedule to
  - i. Specify a greater variety of materials or art work to provide for visual interest at the ground level at the eastern end of the Victoria Street frontage, east of the residential entry.
  - ii. Specify a product to correspond with the material described as 'Travertine Stone colour'.
- g) External screening devices applied to the balconies of level 4 and above where necessary to limit downward views into the balconies associated with apartments 204, 302, 303 and 304 in accordance with Standard D15 (Internal views) of Clause 58.04-2 of the Moreland Planning Scheme
- h) The vertical and horizontal bicycle parking spaces 1.2 and 1.8 metres long respectively, spaced at least 0.5 metres apart, with each parking space accessed from a 1.5 metre wide accessway as required by the Australian Standard for Parking Facilities – Bicycle Parking (AS2890.3) 2015.
- i) The lift sufficiently dimensioned to carry at least two cyclists and their bikes at one time.
- j) Car parking spaces within the development allocated as follows:
  - i. Each retail tenancy allocated 1 car space; and
  - ii. The remaining car spaces allocated to the apartments with a deficiency attributed to single bedroom apartments.
- k) The roof terrace to apartment 204 to end no closer than 1.5 metres from the rear of the reconstructed parapet.
- l) Windows to bedrooms in the 2BR Type C, D and G apartments that receive daylight from a smaller secondary area to have glass of at least 1.2 metres wide (excluding frames) in accordance with Standard D26 (Windows) of Clause 58.07-3 of the Moreland Planning Scheme.
- m) The Photovoltaic system to have an increased capacity (greater than 4kW)
- n) Specification for internal solar control blinds for west-facing habitable rooms
- o) Treatment/filtration plant for rainwater collected from balconies prior to storage
- p) Any practical changes to plans required by the amended SMP as per condition 8.
- q) The recommendations contained in the Heritage Conservation report required by condition 17 including detail of:
  - i. The proposed parapet reconstruction work.
  - ii. Balustrading between the proposed reconstructed gables to match the appearance and height of the existing balustrading at no. 478 Sydney Road.

- iii. Shopfront windows designed with proportions of late victorian shopfronts.
- iv. Shop fronts with recessed entries, a stall riser and a transom.
- v. Appropriate colours, materials and finishes of the heritage façade and reconstructed parapet features.
- r) Any changes required by the updated Accessibility Report in accordance with condition 11.
- s) Any changes required by the updated Acoustic report required by condition 13.

#### **Development not to be altered**

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

#### **Landscaping**

- 3. Prior to the endorsement of plans, amended landscape plans must be submitted to and approved by the Responsible Authority. The amended landscape plans must be generally in accordance with the landscape plans prepared by Site Image dated 19 June 2018 but modified to show:
  - a) A schedule of all proposed trees, shrubs and ground covers (including numbers, size at planting, size at maturity and botanical names), as well as sealed and paved surfaces. The flora selection and landscape design should be drought tolerant, able to withstand wind sheer and based on species selection recommended in the Moreland Landscape Guidelines 2009.
  - b) Sections of all proposed planters showing sufficient soil depth and volume for the proposed planting, drainage design and soil type/mix.
  - c) Anchoring of landscaping subject to strong wind.
  - d) A maintenance program for a minimum 2 year period.
  - e) Details of an automatic irrigation system(s) for all planters, including the rooftop productive garden, including:
    - i. An analysis of the different irrigation demands for the different planters within the site.
    - ii. Details of the irrigation source(s), supply and connections points.
    - iii. Details of a maintenance program for the irrigation system(s) including flushing, checking systems integrity, monitoring sensors and calibration settings.
    - iv. Details of who is to be responsible for the ongoing maintenance of the irrigation system(s).
  - f) Any changes to the layout of the development required by condition 1 of this Permit.
  - g) Any changes required by the amended Sustainability Management Plan required by condition 8.
- 4. Prior to the issue of Statement of Compliance or Certificate of Occupancy, whichever occurs first, all landscaping works must be completed and maintained in accordance with the approved and endorsed landscape drawing to the satisfaction of the Responsible Authority, unless otherwise agreed with prior written consent of the Responsible Authority.

5. All planting in planters as shown on the endorsed landscape plans must be maintained and any dead, diseased or damaged trees replaced to the satisfaction of the Responsible Authority.

#### **Development Contributions Plan**

6. 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:

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

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

#### **Sustainability Management Plan**

7. Prior to the endorsement of plans, the Sustainability Management Plan (SMP) prepared by GIW Environmental Solutions, Revision E dated 18 June 2018, must be amended by a suitably qualified environmental engineer or equivalent to the satisfaction of the Responsible Authority to address the following:
  - a) Provide an improved building fabric to reduce cooling loads to apartments under 30 W/ square metres consistent with Standard D6 of Clause 58.0-1 of the Moreland Planning Scheme. Improve glazing specification for awning windows to a product with a lower U-value to improve energy performance for South facing apartments. Updated NatHERS modelling will be required to demonstrate the improvements
  - b) Specification of improved Hot Water system efficiency of minimum 90%.
  - c) Provide Daylight Factor calculations to support claimed DF of 2-3% for the retail portion of the development.
  - d) The stormwater management response amended to include treatment/filtration for rainwater collected from balconies prior to storage.
  - e) An amended BESS report which:
    - i. Includes the changes to the overall SMP within this condition.
    - ii. Reflects the accurate size of the commercial area.
    - iii. Claims only Innovation credits in accordance with the BESS 'Tool Notes' Innovation guidelines.
8. All works must be undertaken in accordance with the endorsed Sustainability Management Plan (SMP). No alterations to the SMP may occur without the prior written consent of the Responsible Authority.

9. Prior to the occupation of either the dwellings or commercial premises which forms part of the development approved under this permit, a report from the author of the Sustainability Management Plan (SMP), approved pursuant to this permit, or similarly qualified person or company, must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm that all measures specified in the SMP have been implemented in accordance with the approved Plan. Specific details confirming the Environmentally Sustainable Development ESD measures have been implemented must be included.

### **Waste Management Plan**

10. 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.

### **Accessibility report**

11. Prior to the endorsement of plans, an Accessibility Report prepared by a suitably qualified person must be submitted and approved to the satisfaction of the Responsible Authority. The report must be generally in accordance with the report prepared by Morris Goding Accessibility Consulting dated 4 October 2017 but updated to reflect the plans dated 3 August 2018 and detail how the development will incorporate design features in accordance with Standard D17 (Accessibility) of Clause 58 of the Moreland Planning Scheme, including the detailed design of the adaptable bathrooms (e.g. confirmation of hobless showers and removable hinges to doors). 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. When submitted and approved, the Accessibility Report will form part of this permit.
12. Prior to the issuing of a Statement of Compliance or occupation of any dwelling approved under this permit, 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**

13. Prior to the endorsement of plans, an Acoustic Report prepared by a qualified Acoustic Engineer must be submitted and approved to the satisfaction of the Responsible Authority. The Report must be generally in accordance with the Acoustic Report prepared by Cogent Acoustics dated 17 October 2017 but updated to reflect the plans dated 3 August 2018. When submitted and approved, the Acoustic Report will be endorsed and will form part of this permit.
14. The building must be constructed and maintained in accordance with the recommendations contained within the approved Acoustic Report to the satisfaction of the Responsible Authority. The Acoustic Report endorsed under this permit must be implemented and complied with at all times to the satisfaction of the Responsible Authority unless with the further written approval of the Responsible Authority.
15. Prior to the issuing of a Statement of Compliance or occupation of any dwelling approved under this permit, 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.

## **Public works plan**

16. Prior to the commencement of development, a Public Works Plan and associated construction drawing specifications detailing the works to the land must be submitted and approved to the satisfaction of the Responsible Authority. The plan must detail works in front of the approved building along Sydney Road, Victoria Street and the adjoining laneways, and include:
- a) A detailed level and feature survey of the footpaths and roads.
  - b) The proposed vehicle crossing to a standard satisfactory to the Responsible Authority (Moreland City Council, City Infrastructure Department).
  - c) 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.
  - d) For any vehicle crossing not being used, the kerb, channel and footpath reinstated. Public footpaths are to be reinstated to the previous levels with a maximum cross fall slope of 1 in 40 (2.5%).
  - e) Any necessary drainage works.
  - f) The relocation or replacement of existing and installation of new street furniture and infrastructure, such as parking and traffic signs, public seating, bicycle parking and similar.
  - g) The provision of new street tree planting or landscaping along Sydney Road and Victoria Street in appropriate locations in consultation with Council's Open Space area.
  - h) Any other works to the public land adjacent to the development

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

## **Heritage Conservation Report**

17. A report prepared by a suitably qualified conservation heritage architect to the satisfaction of the Responsible authority which details as a minimum:
- a) The proposed parapet reconstruction work.
  - b) Balustrading between the proposed reconstructed gables to match the appearance and height of the existing balustrading at number 478 Sydney Road
  - c) Shopfront windows designed with proportions of Late Victorian shopfronts.
  - d) Shop fronts with recessed entries, a stall riser and a transom.
  - e) Appropriate colours, materials and finishes of the heritage façade and reconstructed parapet features.

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

## **Shopfront windows retained for display**

18. All shopfront windows may only be used for promotion and display of goods and must not be painted or blocked out in any way to the satisfaction of the Responsible Authority.



## **General**

19. 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).
20. Prior to the occupation of the development, all boundary walls must be constructed, cleaned and finished to the satisfaction of the Responsible Authority.
21. 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.
22. 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.
23. 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 (Moreland City Council, City Infrastructure Department).
24. All parking spaces are to be marked with the associated dwelling or commercial tenancy number to facilitate management of the car park to the satisfaction of the Responsible Authority.
25. Prior to the issue of Statement of Compliance or Certificate of Occupancy, whichever occurs first, garage doors must be automatic and remote controlled.
26. Prior to the occupation of the development all bicycle parking racks must be provided in a manner that accords with the Australian Standard for Bicycle Parking Facilities (AS2890.3) to the satisfaction of the Responsible Authority.
27. The verandah must not project beyond the street alignment unless it is setback not less than 750mm from the kerb and at a height less than 3m above the level of the footpath in accordance with Clause 507 of the Building Regulations 2006 to the satisfaction of the Responsible Authority.
28. The public footpath is to be reinstated with the standard crossfall slope of 1 in 40 from the top of roadside kerb to the property boundary, with any level difference made up within the site.
29. Stormwater from the land must not be directed to the surface of the laneway to the satisfaction of the Responsible Authority.

## **Privacy screens to be installed and maintained**

30. 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.

## **Permit expiry**

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

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

- Within 6 months after the permit expires to extend the commencement date.
- Within 12 months after 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 the conditions of this permit.**

**Note 1:**     Unless no permit is required under the Moreland Planning Scheme, no sign must be constructed or displayed on the land without a further planning permit.

**Note 2:**     Further approvals are required from Council's City Infrastructure Department who can be contacted on 9240 1143 for any works beyond the boundaries of the property. Planting and other vegetative works proposed on road reserves can be discussed with Council's Open Space Unit on 8311 4300.

**Note 3:**     Should Council impose car parking restrictions in this street, the owners and/or occupiers of the land would not be eligible for any Council parking permits to allow for on street parking.

## **1. Background**

### **Subject site**

The subject site is located at 466-474 Sydney Road Brunswick. It contains a 2-storey building used as a furniture shop at ground level. It is located on the north east corner at the intersection of Sydney Road and Victoria Street. Car parking is located to the rear with vehicle access from a laneway off Victoria Street.

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

### **Surrounds**

The site is within the Sydney Road commercial strip, surrounded by retail and commercial uses along the Sydney Road corridor. To the east is a small public car park and a brick building used as the Toscano Social Club. To the east of this is another larger carpark.

The scale of development varies within the locality including a 7-storey building recently completed at 300 Victoria Street.

A location plan forms **Attachment 1**.

### **The proposal**

The proposal is summarised as follows:

- Partial demolition of the existing building and retention of the original two storey streetwall to Sydney Road and Victoria Street.
- Construction of an 8-storey building (plus roof terrace) above two basement levels, two shops at ground level, 32 dwellings above and a communal roof terrace. The height of the building is 27 metres (excluding the roof top level).
- The roof terrace comprises a centralised lift core, stair well and pergola. The roof terrace provides communal outdoor facilities and plant and equipment including solar panels.
- The dwellings are comprised of 10x1 bedroom dwellings, 15x2 bedroom dwellings and 7x3 bedroom dwellings.
- 32 car parking spaces and 45 bicycle parking spaces are provided.
- The original parapets and part of the roof behind are proposed to be reconstructed along Sydney Road and Victoria Street.
- The residential entry and lobby is located on Victoria Street and vehicle entry from the lane to the east.
- Landscaping is proposed throughout including planters attached to the façade of the building.
- Above streetwall, the building will be constructed to the boundary on the north, 5 metres setback to the south, 1.5 metres setback to the east and an 8 metres setback to the west.

The existing heritage façade will be restored to a rendered finish in a light colour. The proposed new built form at ground and first floors will be clad with a stone appearance. Upper levels will be constructed using a mix of textured concrete, glazing and timber coloured cladding. Operable shutters will be included to balconies. These will also have a timber appearance.

The development plans form **Attachment 2**.

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

Control	Permit Requirement
Commercial 1 Zone	Retail premises is a Section 1 uses in the zone, meaning that a permit is not required for their use. A permit is required to use the land for dwellings as the frontage exceeds 2 metres at ground level. A permit is required to construct a building or construct or carry out works.
Heritage Overlay Design and Development Overlay	Clause 43-01-1 (Heritage) - A permit is required to demolish or remove a building, construct a building or construct or carry out works. Clause 43.02 (Design and Development Overlay Schedule 18). A permit is required for buildings and works.
Particular Provisions	Clause 52.06 (Car Parking) A permit is required to reduce the number of car parking spaces from 49 to 32.

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

- Clause 45.06: Development Contributions Plan Overlay;
- Clause 52.34: Bicycle Facilities; and
- Clause 58: Apartment developments.

## 2. Internal/External Consultation

### Public Notification

An application to construct a building or construct or carry out works under the DDO18 is exempt from public notice unless the proposal seeks to (amongst other things) exceed the preferred overall height as outlined in the DDO18. As the proposal seeks to exceed the preferred height of 19 metres, the application is not exempt from public notice.

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.
- By placing 1 sign each on the Sydney Road, Victoria Street and laneway frontages of the site.

Council received 12 objections. A map identifying the location of objectors forms **Attachment 1.**

The key issues raised in objections are:

- Lack of car parking;
- Height of the building;
- Loss of views;
- The proposal will set a bad precedent;
- Overshadowing of the public realm;
- Overdevelopment/too many apartments in Brunswick; and
- Added strain on public transport.

A Planning Information and Discussion meeting was held on 18 October and attended by 2 Council Planning Officers, the applicant and 2 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 made to the proposal as a result of the meeting.

### Internal/external referrals

The proposal was referred to the following internal branches

Internal Branch/Business Unit	Comments
Urban Design Unit	No objections were offered to the proposal subject to modifications, which are addressed in the conditions detailed in the recommendation. The following positive elements were noted: <ul style="list-style-type: none"><li>• The reinstatement of the gable ends to Sydney Road and Victoria street supports the DDO18 objective of creating a visually dominant street wall.</li><li>• The tower is well setback from the streetwall ensuring it remains recessive and visually distinct, complimenting the heritage character of Sydney Road.</li><li>• Quality materials and architectural form.</li></ul>
Development Advice Engineer	No objection to reduction in residential and visitor car parking. One car parking space should be provided on site for each commercial tenant. A corner splay should be provided at the intersection with Sydney Road and Victoria Street to improve space for pedestrians.
ESD Unit	No objections were offered to the proposal subject to modifications, which are addressed in the conditions detailed in the recommendation.
Heritage Advisor	No objections were offered to the proposal subject to modifications, which are addressed in the conditions detailed in the recommendation.
Open Space	No objections were offered to the proposal subject to conditions detailed in the recommendation to ensure the ongoing success of the landscaping.

### 3. Policy Implications

#### Planning Policy Framework (PPF)

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

- Clause 11 Settlement
- Clause 11.03-1R Activity Centres
- Clause 13.05 Noise
- Clause 13.06 Air Quality
- Clause 15.01 Built Environment
- Clause 15.01-1R Urban Design
- Clause 15.02 Sustainable Development
- Clause 15.03 Heritage
- Clause 16.01 Residential development
- Clause 17.02 Commercial
- Clause 18.02 Movement Networks
- Clause 18.02-1R Sustainable Personal 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 21.03-1 Activity Centres
- 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)
- Clause 21.03-6 Open Space Network

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 Development of Five or More Storeys
- Clause 22.08 Environmentally Sustainable Design

Council through its MSS, seeks increased residential densities in the Brunswick Activity Centre to take advantage of the excellent access to public transport and other services within this location. The proposal meets the objectives and strategies of the LPPF by incorporating commercial uses to create active frontages to Sydney Road and Victoria Street as well as retaining the heritage streetwall to Sydney Road and Victoria Street. The proximity of the site to a variety of public transport options and the provision of bicycle facilities and a reduction of statutory car parking on the site encourages modal shift away from private car ownership to alternative modes of transport.

## **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*.

## **4. Issues**

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

### **Does the proposal respond to the preferred character of the area?**

The proposal results in an appropriate response to the preferred character for this locality being situated within the Brunswick Activity Centre where change to a midrise centre is encouraged. The design response acknowledges the important heritage character of the Sydney Road corridor.

The height and upper level setbacks of the development are acceptable, subject to a reduction in height by one level. This will ensure the tower is a subordinate element in comparison to the heritage streetwall which includes the reinstatement of parapet and roof features. The reduced height will also result in reduced shadow impacts within Victoria Street and a more acceptable balance between openness and enclosure.

Built form guidance for the Sydney Road and Upfield Corridor is found in the DDO Schedule 18. Below is an assessment of the proposal against the DDO.

### ***Height and upper level setbacks – Sydney Road frontage***

The key DDO objectives relevant to the assessment of height and upper level setbacks as viewed from Sydney Road are:

- To encourage a new mid-rise built form character with buildings generally ranging from 4-10 storeys.
- To complement the valued built form and heritage character along Sydney Road.
- To ensure the street wall remains the visually dominant element of all development in Sydney Road and that any height above the street wall is visually recessive, subservient and does not dominate the streetscape appearance.

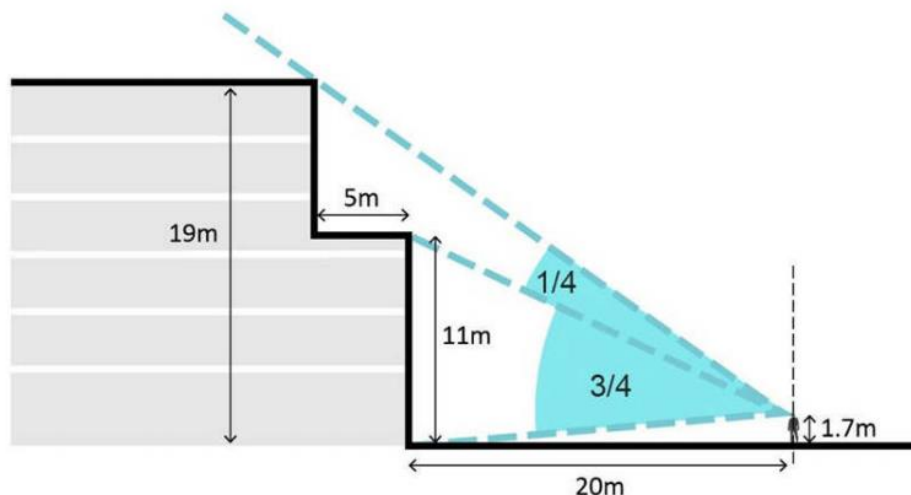
The height of the building is 27 metres (excluding the roof top level), exceeding the DDO preferred height of 19 metres by 8 metres. The height exceedance is made up of level 6 and 7 and part of level 5. When considering whether to exercise discretion in approving height in excess of the preferred height, consideration must be given to the objectives of the DDO.

The retention of the heritage streetwall and reconstruction of the heritage parapet features within Sydney Road and Victoria Street will strengthen the visual dominance of the streetwall, an outcome sought by the DDO.

To ensure the DDO requirement in relation to streetwall height is complied with a condition is included in the recommendation to nominate a minimum 200 millimetre setback of the reinstated parapets from the Sydney Road boundary.

Despite the positive outcome achieved by reinstating the heritage roof features, the proposal has failed to adequately setback the upper levels from Sydney Road and Victoria Street to ensure the streetwall remains the dominant element.

The DDO seeks upper level setbacks in Sydney Road to be designed to ensure that they occupy no more than one quarter of the vertical angle defined by the whole building in the view from an eye-level of 1.7 metres on the opposite side of the street (See Image 1). When using the top of the reconstructed parapets, as the reference point, this outcome can be achieved, at image 2 below.



*Image 1. DDO18 page 5 of 15 - Figure 1: Upper level setbacks along Sydney Road*



*Image 2. Proposed southern elevation – Victoria Street Frontage with DDO site line.*

However, when viewed from the opposite side of Sydney Road, more than a quarter of the tower will occupy the vertical angle as the top of the parapets do not represent a true reflection of the streetwall height, at image 3 below.



*Image 3. Proposed west elevation - Sydney Road frontage.*



The height and setbacks of the building will not result in an appropriate response to the site context as it is out of step with the emerging character of development in the locality. A 7-storey development at 300 Victoria Street to the west and the granting of a planning permit for a 7-storey development at 458-460 Sydney Road (MPS/2015/640) is informative.

To minimise the visual impact of the upper levels, the tower has been setback 8 metres from Sydney Road, 3 metres in excess of the minimum specified under the DDO. Despite this positive response, the height exceedance is considered to be too great and will unreasonably dominate the streetscape appearance of Sydney Road. The site's corner location also means that the upper levels are more prominent than a mid-block site.

### ***Height and upper level setbacks - Victoria Street frontage***

The key DDO objective for the assessment of height and upper level setbacks as viewed from Victoria Street is:

- To establish a new built form character in off-corridor locations to the east and west of Sydney Road to achieve an appropriate balance between a sense of enclosure and openness by applying a 1:1 ratio of building height to distance from the opposite side of the street boundary.

When considering the impact of buildings on the public realm, the following objectives are relevant:

- To maintain solar access to key pedestrian streets and existing and proposed public open space.
- To create an inviting, safe and vibrant public realm.

It is policy within the DDO that development should not overshadow the opposite footpath of Sydney Road and Key Pedestrian Streets (as defined in Sydney Road and Upfield Corridor Strategic Framework Plan) between 10.00am and 2.00pm at the equinox.

The streetwall height of 13 metres exceeds the preferred maximum of 11 metres by 2 metres. Upper level setbacks are setback at least five metres as required by the DDO but encroach within the sightline ratio of 1:1 as viewed from the opposite side of Victoria Street. In addition, Victoria Street is defined as a Key Pedestrian Street within the DDO.

When considered against the objectives of the DDO, the reduced upper level setbacks to Victoria Street are unacceptable as:

- Significant shading will be caused to the footpath on the opposite side of Victoria Street between the hours of 10 am and 2 pm at the equinox, diminishing the pedestrian environment on this Key Pedestrian Street.
- A balance between enclosure and openness will not be achieved. In addition, the site on the southern corner of Sydney Road and Victoria Street is a narrow lot where reduced upper level setbacks can be contemplated. This site cannot be relied upon to contribute to a sense of openness in Victoria Street.

In an attempt to reduce its visual dominance, the tower has been designed with a simple, rectilinear form that provides each level with a consistent setback, thereby avoiding a 'wedding cake' outcome. In addition, the external materials selected will contribute to a high quality built environment.

Despite these positive features, the height and setbacks of the upper levels will not result in an appropriate balance between a sense of enclosure and openness within Victoria Street and will result in significant overshadowing between the hours of 10 am and 2 pm at the equinox.

For these reasons, a condition is included in the recommendation to reduce the height of the building by one level. This will result in:

- A balance between streetwall height and tower that will ensure the streetwall remains the dominant element in Sydney Road.
- A more appropriate balance between a sense of openness and enclosure within Victoria Street.
- A reduction in shadow cast to the opposite side of Victoria Street between 10 am and 2 pm at the equinox.

**Does the proposal provide for appropriate ground level activation?**

The DDO includes the following policy direction for building layout and detailed design:

- Development should incorporate active edges at street level fronting all streets in accordance with Map 3 of the DDO18 - Building Edge Conditions - to invigorate street life and contribute to a safe and pedestrian friendly environment.
- For sites such as this one with a retail frontage, a display window and/or entrance, measuring 65 - 80% of the width of the street frontage of each individual premises should be provided.
- Development should incorporate windows in all upper level facades facing streets and the Upfield Shared Path.
- Services cabinets should be located at the rear of buildings wherever possible, or the side of corner buildings away from the front façade where rear access is not available. Where they can only be located in the front façade, the size of services cabinets should be minimised and they should be integrated with the overall façade design.

The proposal responds to these objectives by

- Maximising activation of the building to Sydney Road.
- Providing a second retail frontage with frontage to Sydney Road and Victoria Street with glazing wrapping around the corner.
- Providing the residential entry to the Victoria Street frontage.
- Limiting the extent of inactive frontage to the eastern end of the Victoria Street frontage, rationalising services in this location.

Council's Urban Design Unit is satisfied that the proposal sufficiently activates the ground level, however have suggested that visual interest could be improved through the use of textured materials or art work to the eastern end of the Victoria Street frontage. A condition is included in the recommendation to address this.

**Does the proposal result in an appropriate heritage outcome?**

The relevant objectives of the Heritage overlay include:

- To conserve and enhance those elements which contribute to the significance of heritage places.
- To ensure that development does not adversely affect the significance of heritage places.

It is policy within Clause 22.06 (Heritage) to:

- Encourage the restoration and/or reconstruction of missing architectural elements that formed part of the original heritage fabric, if adequate evidence about its previous or original form is available.
- Encourage external materials, colours and finishes for heritage buildings that are consistent with and complement the style and period of the heritage place.
- Ensure that, on corner sites, upper storey additions are distinct from, and read as secondary elements to the heritage place when viewed from the secondary street frontage.

The proposal has responded to these objectives by:

- Retaining the heritage façade and reconstructing the missing architectural features and part of the roof form above the parapet at first floor. The reconstruction of these elements is based on historic aerial photography and is consistent with the original architectural features of the buildings to the north at 476 and 478 Sydney Road. The reintroduction of these elements will further strengthen the heritage streetscape, ensuring it remains the dominant element.
- Ensuring that the external appearance of the tower will remain visually distinct from the heritage building.

Council's Heritage Advisor has reviewed the proposal and commented that the reconstruction of the gabled parapets and partial roof behind, together with the setback of 8 metres to the tower is acceptable. Council's heritage advisor is also satisfied that the external appearance of the tower will remain visually distinct from the heritage building below.

The extent of demolition is also accepted by Council's Heritage Advisor despite only the external walls to Sydney Road and part of Victoria Street proposed to be retained. The demolition is considered acceptable as it is largely non original and is necessary to allow for the re-construction of the parapet roof forms.

The balcony to apartment 106 is located behind the heritage façade, utilising a window in the wall for outlook to Victoria Street and proposes to have no roof above to allow daylight to this space. This is considered acceptable and will not result in the appearance of facadism as:

- The development only results in one balcony behind the heritage façade.
- The balcony is located to have its outlook to Victoria Street which is the secondary frontage to the building.
- Utilises only one of 13 windows in the heritage façade at first floor.

Council's Heritage Advisor is satisfied that this is an acceptable outcome but has recommended that a small section of roof be provided within the balcony above the window to avoid views from the street up through the window to the sky. A condition is included within the recommendation to address this. Apartment 107 is also located behind the heritage façade at level 1 but has located its balcony to gain access to daylight from the light court on the north side of the building. This results in a superior heritage outcome.

With regards to the overall height, Council's Heritage Advisor has suggested that a height of 6 storeys would further reinforce the heritage element. A condition is included in the recommendation to require the deletion of one level of the building. While this will only reduce the buildings to 7 levels, this is considered to be an acceptable outcome from a heritage perspective given the increased upper level setbacks and the simple, high-quality architecture.

Council's heritage advisor has also recommended changes to ensure that the heritage appearance of the building compliments the character of Sydney Road. They have recommended that the roof terrace to apartment 204 end no closer than 1.5 metres from the rear of the reconstructed parapet to avoid the visibility of people and objects on the roof. It is also recommended that balustrading be reconstructed between the reconstructed gables to match the appearance and height of the existing balustrading at number 478 Sydney Road and that the shop fronts be designed to compliment the appearance of Victorian era shop fronts. Conditions are included within the recommendation to require the preparation of a heritage conservation report to address these items.

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

A total of 49 car parking spaces are required to satisfy the statutory requirement for the dwellings and commercial premises. The development provides for 32 car parking spaces to be allocated to the 32 dwellings. Therefore a reduction of 17 car parking spaces is sought.

The car parking demand assessment submitted with the application identifies that, based on Australian Bureau of Statistics data, car ownership rates in Brunswick are lower than the Moreland average and that the percentage of households owning only one car is above average in Brunswick compared with the Moreland average.

Council's Strategic Transport and Compliance Branch is satisfied with the proposed residential car parking provision given the site's excellent access to transport alternatives. However, they have recommended that two on site car parking spaces be provided for the commercial tenants to accommodate staff parking.

As car ownership rates are lower in Brunswick, it is considered reasonable to reallocate two of the car parking spaces intended for 1-bedroom dwellings to be allocated to the retail premises. A condition is included in the recommendation requiring one car parking space to be allocated to each of the retail premises.

In considering applications for car parking reduction, reference is made to the objectives of the relevant Planning Policy Framework, Clause 22.03 (Car and bike parking and vehicle access) and Clause 52.06 (Car Parking).

Clause 22.03-3 states that it is policy 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.

The proposal is located within the Brunswick Activity Centre and has excellent access to public transport and provides 45 bicycle parking spaces which is well above the 10 required by Clause 52.34.

When considered against the various objectives and decision guidelines, it is considered that the proposed car parking is acceptable as:

- The site has excellent access to alternative modes of transport including:
  - Tram route 19 within 40 metres.
  - East-west Bus route within 75 metres.
  - Brunswick railway station within 340 metres.
  - Upfield bicycle path within 150 metres.
  - At least 3 car share options within a 240 metre radius of the site.

The dwellings will not be eligible for parking permits in the event that parking restrictions are imposed by Council on the street. This is included as a note on the planning permit in the recommendation.

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

In relation to traffic impacts, Council's Strategic Transport and Compliance Branch have assessed the proposal and consider that the development will result in 128 additional vehicle movements per day on Victoria Street. This remains below the maximum volumes permitted under the Moreland Integrated Transport Strategy and is not expected to cause traffic problems.

**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 laneway for vehicle access to allow street frontages to prioritise pedestrian movement and safety and to create active frontages.
- Will not result in the removal of any on-street public parking spaces.
- Provides 45 bicycle spaces.

Council's Development Advice Engineer has recommended that a corner splay be provided at the intersection with Sydney Road and Victoria Street to improve space for pedestrians. This has been included as a condition in the recommendation.

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

Positive ESD features of the development include:

- High efficiency reverse cycle air-conditioning systems;
- High water efficient fixtures and appliances (4/5 star taps, etc);
- 15,000L rainwater harvesting tank;
- Materials including low VOC, formaldehyde, AFS/FSC timber;
- Commitment to a minimum of 80% construction and demolition waste to be diverted from landfill;
- Focus on bicycle parking, including ground floor parking;
- Individual hot and cold water meters for apartments;
- Building Users Guide; and
- Provision for future Electric Vehicle charging facilities.

In addition to these positive features, Council's ESD officer has recommended a range of increased commitments via permit conditions to ensure a best practice outcome is achieved. Conditions are included in the recommendation that will ensure the development results in best practice ESD. This includes improving the energy performance of the building and the stormwater management response.

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

The proposal meets the requirements of Clause 58.05-1 (Accessibility Objective) of the Moreland Planning Scheme which seeks to ensure the design of dwellings meets the needs of people with limited mobility. Standard D17 of this Clause requires 50% of dwellings to achieve:

- A clear opening width of at least 850 millimetres at the entrance to the dwelling and main bedroom.
- A clear path with a minimum width of 1.2 metres that connects the dwelling entrance to the main bedroom, an adaptable bathroom and the living area.
- A main bedroom with access to an adaptable bathroom.
- At least one adaptable bathroom that meets all of the requirements of either Design A or Design B specified in Table D4.

17 apartments (53%) achieve these requirements.

Objective 9 of Clause 21.03-3 (Housing) is to increase the supply of housing that is visitable and adaptable to meet the needs of different sectors of the community. Strategy 9.1 of this Clause encourages all dwellings to be visitable by a person with limited mobility. Strategy 9.2 encourages the provision of liveable housing by incorporating the following features:

- An accessible path from the street and car park areas to a level entry.
- A bedroom, living area, kitchen, private open space, bathroom and toilet which can be efficiently adapted for people with limited mobility on entry level.
- Minimum width of 850 millimetres for doors and 1000 millimetres for hallways at entry level.

All dwellings have an accessible path of travel from the street, doors of 850 millimetres width and 1000 millimetres for hallways at entry and could be adapted for people with limited mobility.

#### **Does the proposal satisfy the requirements of Clause 58 (Apartment Developments)?**

The proposal results in a highly compliant development and will result in excellent internal amenity for future residents, complying with and in some cases exceeding the standards and objectives of this Clause.

The proposal responds positively to this Clause by:

- Providing in excess of 132 square metres of communal outdoor area (4 square metres per dwelling) where none is required.
- Ensuring 56% of apartments achieve effective cross-ventilation, exceeding the standard which requires 40%.
- The dimensions of living rooms and bedrooms generally comply with the standards.

Areas where additional detail is required or variations to standards are proposed are discussed below:

Clause 58.04-2 (Internal Views Objective) seeks to limit views into the private open space and habitable room windows of dwellings within a development. Apartments 204, 302 and 303 have large terraces at the podium levels. Opportunities exist for the apartments above to overlook more than 50% of these spaces. The plans should be amended to include a screening device on upper level apartments that does not allow for views down into the balconies of lower level apartments within 9 metres. A condition is included in the recommendation to require this change.

Clause 58.04-3 (Noise Impacts Objective) Bedrooms have generally been sited away from the lift with the exception of the eastern bedroom of dwelling 107. This is acceptable as it is limited to one bedroom in one apartment. The building is not located within a noise influence area, however an acoustic report has been submitted with the application due to the proximity of the site to Sydney Road. The recommendations of this report should be implemented to ensure the internal amenity of future residents is protected from noise associated with Sydney Road. A condition is included in the recommendation to require this.

Clause 58.07-1 (Functional Layout Objective) seeks to ensure dwellings provide functional areas that meet the needs of residents. Each of the bedrooms meet the minimum dimensions as specified in this Clause with the exception of the main bedroom for apartment 3BR Type C and E where the main bedroom has a width of 120mm less than the minimum. A variation is considered acceptable as only two apartments are affected and one of the secondary bedrooms to these apartments exceeds this standard.

Clause 58.07-3 (Windows Objective) seeks to allow adequate daylight into new habitable room windows. Apartments 2BR Type C, D and G include bedrooms that receive daylight from a smaller secondary area within the bedroom. While the area is 1.2 metres wide, the width of the window will be less than this due to the window frame. A condition is included within the recommendation to require the glass to be a minimum of 1.2 metres wide exclusive of any frame.

**Does the proposal comply with Clause 22.07 (Development of 5 or more storeys)?**

This policy seeks:

- To ensure building setbacks and separation achieve adequate daylight into habitable rooms.
- To ensure living rooms achieve reasonable outlook and adequate daylight.
- To ensure living rooms achieve a greater level of privacy and higher levels of daylight compared to bedrooms.
- To ensure reasonable future development opportunities and potential amenity impacts of adjoining sites is considered.

The policy aims to achieve these objectives through minimum building setback and separation requirements and minimum light well dimensions. These are assessed in turn below.

***Building separation***

The proposal has responded positively to the objectives and policy of this Clause by:

- Presenting blank walls and a light court with generous proportions (see discussion below) to the northern boundary to allow for equitable development opportunities for the site to the north.
- Providing setbacks to the laneway in accordance with table 2 to Clause 22.07 (building setbacks to a lane).

***Light courts***

One light court is proposed on the northern boundary with dimensions of 4.2 x 9 metres and an area of 39 square metres at all levels. This exceeds the minimum dimension of 2 metres and minimum area of 9 square metres up to 4 storeys as set out in this policy. From 5 to 8 stories, the policy requires a minimum dimension of 4.5 metres and minimum area of 29 square metres. For these levels, the proposal exceeds the minimum area by 10 square metres but falls short of the minimum dimension by 300 millimetres. This is considered acceptable due to:

- The generous proportions of the light court which exceeds the minimum area by 30 square metres up to four storeys and by 10 square metres from 5-8 storeys.
- The minimum dimension of 4.2 metres is only for a portion of the light court (approximately half) with the remaining portion having a dimension of 4.69 metres, exceeding the minimum dimension by 190 millimetres.

Apartment 107 at level 1 provides for a balcony that receives daylight from the lightcourt where it is policy that light courts provide daylight access to bedrooms only. While this is not the preferred outcome, it is considered acceptable as it affects only one apartment and has been proposed to achieve a superior heritage outcome as discussed above.

**Is the site potentially contaminated?**

A review of Council's historic rates cards and property file does not suggest the land has been used for a use that may have contaminated the site.

## **5. Response to Objector Concerns**

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

- Lack of car parking;
- Height of the building; and
- Overshadowing of the public realm.

Other issues raised by objectors are addressed below.

### **Overdevelopment/too many apartments in Brunswick**

The proposal satisfies the requirements of the DDO18 and Clause 58 (Apartment Developments) as discussed in detail above. The site is located in the Brunswick Activity Centre where State Government Policy, particularly Plan Melbourne, as well as Council Policy supports greater intensification of residential development.

Given the site's location within the Brunswick Activity Centre and its excellent access to public transport, the level of development proposed is appropriate and consistent with State and Local planning policy frameworks.

### **Loss of views**

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

### **Added strain on Public Transport**

The site, being within the Brunswick Activity Centre is appropriate for greater intensity of residential development due to its proximity to a variety of public transport options. Increased population density will inevitably increase patronage of public transport services and is a matter for the relevant infrastructure provider to address if services reach capacity.

### **The proposal will set a bad precedent**

Each application must be considered on its merits. The built form guidance contained within the DDO, including preferred building heights and setbacks, are not mandatory and any proposal seeking to exceed these parameters must demonstrate that the objectives of the DDO are met. The assessment of this application has concluded that subject to conditions including a reduction in height, the proposal is considered acceptable.

## **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**

Nil.



## 8. Conclusion

It is considered that the proposed development responds positively to much of the Planning Policy Framework that achieves urban consolidation in a location with excellent access to services and transport. The proposal also achieves an appropriate heritage outcome through the reconstruction of the heritage parapet and roof features. However, conditions are included in the recommendation to reduce the height of the building by 1 level to ensure the streetwall remains the dominant element and an appropriate sense of openness is achieved in Victoria Street.

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/2017/863 should be issued for the partial demolition of the existing building and construction of a seven storey building above two basement levels, use of the land for dwellings and reduction in statutory car parking subject to the conditions included in the recommendation of this report.

### Attachment/s

- 1 [!\[\]\(f15d3c54be60b4fd0ce1da9fb3f67256\_img.jpg\)](#) Advertised Plan D18/477639
- 2 [!\[\]\(7bf135d42c40a6430c927b2fd03d7659\_img.jpg\)](#) Locality Plan D18/477638

**Director City Futures**

**City Development**

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**Executive Summary**

This report considers an application currently before the Victorian Civil and Administrative Tribunal (VCAT) for the construction of a 6-storey mixed use development comprising dwellings and a food and drink premises, and a reduction of the car parking requirement.

The application was advertised and 58 objections were received. The main issues raised in objections were building height, overlooking, overshadowing, traffic and parking. Council under delegation have advised VCAT and all objectors that the application would have been refused had the VCAT review not been lodged. There are now 9 objector parties to the VCAT proceedings, with a number of those parties representing multiple objectors.

At a Compulsory Conference on 6 December 2018, all parties reached agreement that a permit should be granted for a development consistent with amended plans but subject to further modifications via agreed permit conditions. Settlement of the matter is now subject to the approval of Council (amongst other things).

This report details the assessment of the mediated proposal (comprising the amended plans and agreed permit conditions) against the policies and provisions of the Moreland Planning Scheme.

The mediated proposal includes the following significant changes:

- The building setback 3 metres from the northern boundary to accommodate a laneway connection between Glenlyon Road and Little Miller Street. The laneway is to be vested in Council;
- An additional 600 millimetres setback from Little Miller Street to accommodate a pedestrian footpath;
- The deep soil planting area increased from 71 square metres to 126 square metres;
- The height of the northern building lowered by 1 storey by deleting level 4;
- The height of the western half of the western building lowered by 1 storey by deleting level 4 or 5;
- A reduction in the total number of dwelling from 115 to 103;
- The roof deck on level 4 of the southern building relocated to Level 5 of the northern boundary; and
- Apartment 5.7 deleted together with the adjacent lift core and stair (except for lift overrun) and replaced with a new apartment adjacent to apartment 4.7 at level 4 of the southern building in place of the deleted roof deck.

The key planning considerations are:

- Building height and the related objectives of Schedule 23 of the Design and Development Overlay (DDO23);
- The requirement in DDO23 for a 3 metre setback from Balfe Park to allow for a vehicle connection between Glenlyon Road and Little Miller Street; and
- The building separation requirements of Clause 22.07.

The mediated proposal will present largely as a 5-storey building when viewed from the public realm and will provide an acceptable transition in height from the 6-storey buildings that are approved and/or under construction fronting Nicholson Street. The mediated proposal also includes a 3 metre setback from Balfe Park in accordance with DDO23.

The mediated proposal will have no unreasonable impacts on the amenity of adjoining residential properties and will provide a good level of amenity for future residents. Setbacks to the rear of existing, approved and under-construction apartment buildings to the east comply with those sought by Clause 22.07. A high degree of compliance with Clause 58 of the Moreland Planning Scheme is also achieved.

It is recommended that Council's submission to VCAT be that it consents to the agreement reached with the parties at the Compulsory Conference.

## **Officer Recommendation**

That Council advises the Victorian Civil and Administrative Tribunal and all parties that it consents to the issue of Planning Permit No. MPS/2017/1027 for the construction of a mixed-use development and a reduction of the car parking requirement at 10-16 Little Miller Street, Brunswick East, subject to the following conditions:

### **Amended plans required**

1. Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions. The plans must be generally in accordance with the plans A120-A127, A200-A201, A300-A305, A310-A313 and A450 all revision TP4, prepared by Kerstin Thompson Architects Pty Ltd and Breathe Architecture, all Rev TP4 and dated 30 November 2018 but modified to show:
  - a) Any changes that may be required in response to condition 3 'overshadowing peer review'.
  - b) Deletion of the notation 'L1 Terrace below' on the southern boundary of plan A123.
  - c) The inclusion of a bedroom window adjacent to the driveway ramp in respect of apartment G.7, generally in accordance with plan A121 Rev 5.
  - d) The wing wall and booster assembly modified so as not to protrude onto the footpath at the southern end of the café frontage, generally in accordance with plan A121, Rev 5.
  - e) Inclusion of a dimensioned setback to the southern boundary in relation to apartment 3.10, generally in accordance with plans A124 and A300, Rev TP5.
  - f) Insert a screen along the southern and eastern side of the walkway adjacent to apartment 3.5 on plan A124 to limit overlooking to secluded private open space within 9m of the edge of the walkway.
  - g) Variations to apartment 5.4, generally in accordance with sketch plan 1 dated 6 December 2018 prepared by Kerstin Thompson Architects.
  - h) The northern elevation updated to show the rear built form behind.
  - i) Material 'GL3: Glass Textured' noted as obscure glass.
  - j) A plan detailing the design, materials and finishes, and lighting of the new laneway along and within the northern boundary of the site.
  - k) External shading devices (or eaves where appropriate) to protect all exposed north, east and west facing glazing from peak summer sun, and which do not detract from desired winter heat loading. Where applicable, a section detail of the shading is required.
  - l) The ground floor plan modified to show the 1.5 metre wide footpath, as shown on Drawing No. A303, along the full length of the site frontage to Little Miller Street.
  - m) Landscape Plans in accordance with condition 6 of this Permit.

- n) A Tree Management Plan in accordance with condition 9 of this Permit.
- o) A Green Travel Plan in accordance with condition 11 of this Permit.
- p) A Waste Management Plan in accordance with condition 25 of this Permit.
- q) A Sustainability Management Plan in accordance with condition 27 of this Permit.
- r) An Acoustic Report in accordance with condition 30 of this Permit.
- s) An Accessibility Report in accordance with condition 33 of this Permit.
- t) Any practical changes to the plans required by the additional reports and plans required by conditions of this Permit.

#### **Development not to be altered**

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

#### **Overshadowing peer review**

- 3. Prior to the endorsement of plans, the Responsible Authority will, at the reasonable cost of the permit holder, engage Clarke Hopkins Clarke Architects or a suitably qualified architect to the satisfaction of the Responsible Authority, to verify the overshadowing plans. If the third party identifies errors in the overshadowing plans which result in additional overshadowing compared to the plans A430 and A431 dated 30 November 2018, then the development must be amended to remove the additional overshadowing.

#### **New laneway**

- 4. Before the development is occupied, the ground floor 3m wide laneway along and within the northern property boundary as shown on the endorsed plans must be vested in favour of Moreland City Council as part of the plan of subdivision at no cost to the Responsible Authority.
- 5. Prior to the issue of Statement of Compliance or Certificate of Occupancy, whichever occurs first, the ground floor 3 metre wide laneway along and within the northern property boundary and the 1.5 metre wide footpath comprising 600 millimetres of the site within the western property boundary and 900 millimetres of the adjacent road as shown on the endorsed plans must be constructed to Council's standards using construction plans approved by Council, and the works supervised by Council, to the satisfaction of the Responsible Authority and at no cost to the Responsible Authority.

#### **Landscaping**

- 6. Prior to the endorsement of plans, amended landscape plans must be submitted to and approved by the Responsible Authority. The amended landscape plans must be generally in accordance with the landscape plans prepared by Openwork dated 29 April 2018 but modified to show:
  - a) Any changes to the development required by condition 1 of this Permit.
  - b) The proposed trees within Little Miller Street deleted.
  - c) A schedule of all proposed trees, shrubs and ground covers (including numbers, size at planting, size at maturity and botanical names), as well as sealed and paved surfaces. The flora selection and landscape design should be drought tolerant and based on species selection recommended in the Moreland Landscape Guidelines 2009.
  - d) Sections of all proposed planters showing sufficient soil depth and volume for the proposed planting, drainage design and soil mix.

- e) Details of an automatic irrigation system(s) for all planters, including the rooftop productive garden, including:
    - i. An analysis of the different irrigation demands for the different planters within the site.
    - ii. Details of the irrigation source(s), supply and connections points.
    - iii. Details of a maintenance program for the irrigation system(s) including flushing, checking systems integrity, monitoring sensors and calibration settings.
    - iv. Details of who is to be responsible for the ongoing maintenance of the irrigation system(s).
  - f) Any changes required by the amended Sustainability Management Plan required by condition 27.
7. Within 30 days of the issue of the Certificate of Occupancy, all landscaping works must be completed and maintained in accordance with the approved and endorsed landscape drawing to the satisfaction of the Responsible Authority, unless otherwise agreed with prior written consent of the Responsible Authority.
8. All planting shown on the endorsed landscape plans must be maintained and any dead, diseased or damaged trees replaced to the satisfaction of the Responsible Authority.

#### **Tree Management Plan**

9. Prior to the endorsement of plans, a Tree Management Plan must be submitted by a suitably qualified Arborist in relation to the management and maintenance of the three (3) trees in Balfe Park adjacent to the northern boundary of the site only in the event that these trees have not been removed by the Council due to lane widening. The Tree Management Plan must be approved by the Responsible Authority prior to the commencement of any works, including demolition. The Tree Management Plan must make specific recommendations in accordance with the Australian Standard AS4970: 2009 - Protection of Trees on Development Sites and detail the following to the satisfaction of the Responsible Authority to ensure that the trees remain healthy and viable during construction:
- a) A tree protection plan to scale that shows:
    - i. The Tree Protection Zones and Structural Root Zones.
    - ii. The location of all tree protection fencing and areas where ground protection systems will be used.
    - iii. Any services to be located within the Tree Protection Zones and a notation to state that all services will either be located outside of the tree protection zone or bored under the tree protection zone.
  - b) Results of any exploratory trenching as deemed necessary by the project Arborist.
  - c) A supervision timetable for the project Arborist and Council's supervising Arborist. Council's supervising arborist must be notified prior to any works within the Tree Protection Zone or temporary relocation of tree protection fencing.
  - d) Details of how the root zone within the Tree Protection Zone will be managed throughout the project, including details of irrigation and ground protection systems.
  - e) Details of appropriate signage to the Tree Protection Zone.
  - f) Any necessary pruning works that are required to be performed on the trees, with reference to Australian Standards 4373:2007 - Pruning of Amenity Trees, and a detailed photographic diagram specifying what pruning will occur.

The recommendations contained in the approved Tree Management Plan must be implemented to the satisfaction of the Responsible Authority.

#### **Car parking and access**

10. Prior to the issue of Statement of Compliance or Certificate of Occupancy, whichever occurs first, the applicant must apply to Council for No Parking Anytime parking restrictions along the eastern side of Little Miller Street, unless with the further written approval of the Responsible Authority.

#### **Green Travel Plan**

11. Prior to the endorsement of plans, a Green Travel Plan prepared by a suitably qualified person must be submitted and approved to the satisfaction of the Responsible Authority. The report must be generally in accordance with the Green Travel Plan prepared by One Mile Grid dated 15 May 2018 but updated to reflect the changes required by condition 1 of this permit. When submitted and approved to the satisfaction of the Responsible Authority, the Green Travel Plan will be endorsed to form part of this permit.
12. The Green Travel Plan endorsed under this permit must be implemented and complied with at all times to the satisfaction of the Responsible Authority unless with the further written approval of the Responsible Authority.

#### **Lighting**

13. Lighting is to be installed on the building to illuminate public access to those dwellings with direct access from any of the laneways without light spill to adjacent properties to the satisfaction of the Responsible Authority. The lighting must be constructed to Council standards and at the cost of owner.
14. Lighting must be provided for the ground level communal open space courtyard and pedestrian accessways from Balfe Park and Little Miller Street to automatically illuminate these areas between dusk and dawn.
15. All external lighting must be maintained to the satisfaction of the Responsible Authority.

#### **Stormwater**

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

#### **Telecommunications and power connections**

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

#### **Environmental audit**

19. Prior to the commencement of construction or carrying out works pursuant to this permit, or any works associated with a sensitive use, or where no works are proposed, prior to the commencement of the permitted use, either:
  - a) A Certificate of Environmental Audit for the land must be issued in accordance with Section 53Y of the *Environment Protection Act 1970* and provided to the Responsible Authority; or:

- b) An Environmental Auditor appointed under Section 53S of the *Environment Protection Act 1970* must make a Statement in accordance with Section 53Z of that Act that the environmental conditions of the land are suitable for the use and development that are the subject of this permit and that statement must be provided to the Responsible Authority.
20. Where a Statement of Environmental Audit is issued for the land, the buildings and works and the use(s) of the land that are the subject of this permit must comply with all directions and conditions contained within the Statement.
  21. Where a Statement of Environmental Audit is issued for the land, prior to the commencement of the use, and prior to the issue of a Statement of Compliance under the *Subdivision Act 1988*, and prior to the issue of an Occupancy Permit under the *Building Act 1993*, a letter prepared by an Environmental Auditor appointed under Section 53S of the *Environment Protection Act 1970* must be submitted to the Responsible Authority to verify that the directions and conditions contained within the Statement have been satisfied.
  22. Where a Statement of Environmental Audit is issued for the land, and any condition of that Statement requires any maintenance or monitoring of an ongoing nature, the Owner(s) must enter into an Agreement with Council pursuant to Section 173 of the *Planning and Environment Act 1987*. Where a Section 173 Agreement is required, the Agreement must be executed prior to the commencement of the permitted use, and prior to the certification of the plan of subdivision under the *Subdivision Act 1988*. All expenses involved in the drafting, negotiating, lodging, registering and execution of the Agreement, including those incurred by the Responsible Authority, must be met by the Owner(s).
  23. Prior to works being undertaken in association with the Environmental Audit, a works plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The plan must detail all excavation works which may include bulk excavation and demolition as well as any proposed structures such as retaining walls required to facilitate the works. Only those works detailed in the approved works plan are permitted to be carried out prior to the issue of a Certificate or Statement of Environmental Audit.

### **Development Contributions Plan**

24. 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:

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

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

## **Waste Management Plan**

25. Prior to the endorsement of plans, a Waste Management Plan generally in accordance with the Waste Management Plan prepared by One Mile Grid Pty Ltd dated 15 May 2018 but updated to reflect the changes required by Condition 1 of this permit, must be submitted and approved to the satisfaction of the Responsible Authority. 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.
26. 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.

## **Sustainability Management Plan**

27. Prior to the endorsement of plans, the Sustainability Management Plan (SMP) prepared by Hip v Hype, dated April 2018, must be amended by a suitably qualified environmental engineer or equivalent to the satisfaction of the Responsible Authority to address the following:
  - a) Confirmation of the cool roof and its ability to mitigate the Urban Heat Island Effect and the heat loading of the building.
  - b) An amended 'Energy' best practice performance response to the ground floor commercial shop, including a 10% improvement for the commercial glazing, insulation, systems, etc.
  - c) A response to the 'stormwater management' requirements of Clause 22.08, through the best practice targets being adhered to via a STORM report or electronic MUSIC model. A catchment plan detailing the stormwater management response is required, which clearly shows all permeable and impermeable areas on the plans; roof areas draining to rainwater harvesting (reuse tanks), roof areas or surfaces which will drain directly to the drainage system without treatment; and other elements such as permeable paving or raingardens.
  - d) A published BESS report which has an overall score of at least 50%, and the minimum score category requirements are adhered to.
28. All works must be undertaken in accordance with the endorsed Sustainability Management Plan (SMP) to the satisfaction of the Responsible Authority. No alterations to the SMP may occur without the written consent of the Responsible Authority.
29. Prior to the issue of Statement of Compliance or Certificate of Occupancy, whichever occurs first, a report from the author of the SMP, approved pursuant to this permit, or similarly qualified person or company, must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm that all measures specified in the SMP have been implemented in accordance with the approved Plan. Specific details confirming the Environmentally Sustainable Development measures have been implemented must be included.

## **Acoustic Report**

30. Prior to the endorsement of plans, an amended Acoustic Report prepared by a qualified Acoustic Engineer generally in accordance with the Acoustic Report prepared by Marshall Day Acoustics dated 2 May 2018 must be submitted and approved to the satisfaction of the Responsible Authority.
31. The amended report must be updated to reflect the changes required by Condition 1 of this permit and include specific recommendations for acoustic attenuation measures to adequately protect residents from noise emissions from central plant, including lifts.



When submitted and approved to the satisfaction of the Responsible Authority, the Acoustic Report will be endorsed to form part of this permit.

The building must be constructed and maintained in accordance with the recommendations contained within the approved Acoustic Report to the satisfaction of the Responsible Authority. The Acoustic Report endorsed under this permit must be implemented and complied with at all times to the satisfaction of the Responsible Authority unless with the further written approval of the Responsible Authority.

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

### **Accessibility Report**

33. Prior to the endorsement of plans, an Accessibility Report, generally in accordance with the report prepared by Architecture and Access dated 15 May 2018, 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 and comply with Standard D17 (Accessibility) of Clause 58 of the Moreland Planning Scheme, including the detailed design of the adaptable bathrooms (e.g. confirmation of hobless showers and removable hinges to doors). 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.
34. Prior to the issue of Statement of Compliance or Certificate of Occupancy, whichever occurs first, a report from the author of the Accessibility Report, approved pursuant to this permit, or similarly qualified person or company, must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm that all measures specified in the Accessibility Report have been implemented in accordance with the approved report.

### **Screening to be installed**

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

### **Permit expiry**

36. This permit will expire if one of the following circumstances applies:
- a) The development is not commenced within 3 years from the date of issue of this permit; or
  - b) The development is not completed within 5 years from the date of issue of this permit.

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

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

## **1. Background**

### **Subject site**

The subject site is located at 10-16 Little Miller Street, Brunswick East.

The site is almost perfectly square, with a frontage to Little Miller Street of 58.24 metres and a total area of 3,408 square metres.

The site is currently occupied by double storey brick warehouses with setbacks to Little Miller Street of between approximately 8-10 metres.

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

### **Surrounds**

The surrounding area is undergoing significant change and contains a mix of uses and building forms.

Immediately to the west there are single storey industrial/warehouse buildings. A Planning Permit (MPS/2017/842) has been issued for the site at 5 Little Miller Street for the construction of triple storey townhouses.

Adjoining the site to the north is an area of public open space known as Balfe Park.

There are 3 trees within Balfe Park within proximity of the northern boundary of the subject site. The trees are described as follows:

- Tree 1: A Privet with a height of 7 metres and width of 12 metres;
- Tree 2: A Chinese Elm with a height of 12metres and width of 26 metres; and
- Tree 3: A Brush Box with a height of 8 metres and width of 10 metres.

All of the above trees have Tree Protection Zones (TPZ) that extend into the subject site. No part of the Structural Root Zones (SRZ) extend into the subject site. The canopy of Tree 2 encroaches over the subject site.

Also to the north, part of the site has a direct abuttal to 77-83 Nicholson Street. A Planning Permit (MPS/2016/975) has been issued for this site that allows the construction of a 6-storey mixed use building. The approved building is to be constructed to the northern boundary of the subject site and will be setback 3 metres from Balfe Park to allow for the creation of a laneway.

To the south, on the opposite side of a laneway, are dwellings within the General Residential Zone.

Immediately to the east, on the opposite side of a laneway, there are a number of properties fronting Nicholson Street at various stages of redevelopment. These are described as follows:

- 69 Nicholson Street – Existing double storey building. No approved development.
- 67 Nicholson Street – Existing 5-storey apartment building.
- 65 Nicholson Stet – Vacant site. Planning Permit MPS/2011/725 allows the construction of a 6-storey mixed use building.
- 55-63 Nicholson St – 7-storey mixed use building currently under construction (Planning Permit MPS/2016/398). The top floor is confined to a relatively small element comprising the stair/lift core, laundry and roof terrace.

A location plan forms **Attachment 1**.

## **The advertised plans**

Plans submitted with the planning permit application were advertised on 15 June 2018. The advertised plans are summarised as follows:

- The proposal will appear as a collection of buildings constructed around a central courtyard. The detailed design of the north and east buildings, and south and west buildings, has been prepared by separate architecture firms.
- The north, east and west buildings have a height of 6-storeys. The southern building is lower at only 4-storeys.
- The northern building is located on the northern boundary with no setback to Balfe Park.
- A total of 115 apartments are proposed at a range of sizes.
- A 100.4 square metres ground level food and drink premises is proposed at the north-west corner of the site.
- 135 car parking spaces and 5 motorcycle spaces are proposed within 2 basement levels.
- Vehicle access is via a ramp at the south-eastern corner of the site, which connects to a north-south section of laneway, which connects to Miller Street to the south.
- 235 bicycle parking spaces are proposed at various locations throughout the development.

The advertised plans form **Attachment 2**.

## **VCAT process**

On 20 August 2018, the permit applicant lodged a VCAT review against Council's failure to determine the application within the 60-day statutory timeframe.

On 25 October 2018, Officers advised VCAT and all parties that if a review had not been lodged, the application would have been refused on grounds relating to the following:

- Building height;
- Lack of setback from Balfe Park to accommodate a laneway connection between Glenlyon Road and Little Miller Street;
- Insufficient setback from Little Miller Street to accommodate sufficient landscaping and provide for pedestrian access;
- Insufficient building separation, both with respect to setbacks from the laneway to the east and buildings within the site;
- Best practice Environmentally Sustainable Design (ESD) not demonstrated due to insufficient information; and
- Insufficient deep soil planting.

Compulsory Conferences were subsequently held on 19 November and 6 December 2018. These were attended by Council Officers, the permit applicant and the objector parties, some of whom were represented by others.

At the Compulsory Conference on 6 December 2018, amended plans were formally substituted and all parties reached agreement that a permit should be granted for a development consistent with the amended plans and subject to agreed permit conditions (the mediated proposal).

The amended plans introduce changes that require notice to be given to the owners and occupiers of surrounding properties. Should Council confirm that it consents to the mediated proposal, notice of the amended plans will be given. If new parties arise, a further Compulsory Conference will be held to allow the new parties to participate in the VCAT process. If no new parties arise, a permit would issue.

## The mediated proposal

The amended plans and agreed conditions include the following changes:

- The northern building setback 3 metres from the northern boundary to accommodate a laneway connection between Glenlyon Road and Little Miller Street.
- Provision of a pedestrian footpath along Little Miller Street to be constructed partly on the subject site and partly within the road reserve.
- The deep soil planting area increased from 71 square metres to 126 square metres;
- The height of the northern building lowered by 1 storey by deleting level 4;
- The height of the western half of the western building lowered by 1 storey by deleting level 4 or 5;
- A reduction in the total number of dwellings from 115 to 103.
- The roof deck on level 4 of the southern building relocated to level 5 of the northern boundary.
- Apartment 5.7 deleted together with the adjacent lift core and stair (except for lift overrun) and replaced with a new apartment adjacent to apartment 4.7 at level 4 of the southern building in place of the deleted roof deck.
- Change to apartment layouts to ensure compliance with Clause 22.07 building separation requirements to the rear properties fronting Nicholson Street to the east.
- Increased setbacks from the southern boundary at the south-east corner of the development to reduce the overshadowing impact on the approved communal open space in the north-west corner of the development at 55-63 Nicholson Street.
- Basement access relocated from the south-east corner, which utilised the north-south laneway, to the south-west corner, which utilises the east-west laneway.
- The overall building height lowered by 850 millimetres.
- Basement layout re-arranged, including car parking reduced by 23 spaces.
- Apartment 5.4 modified to increase its setback from the southern boundary by approximately 3 metres,

The amended plans form **Attachment 3**. The agreed permit conditions are included in the recommendation.

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

Control	Permit Requirement
Mixed Use Zone	Clause 32.04-6: A permit is required to construct two or more dwellings on a lot.
Design and Development Overlay (Schedule 23)	Clause 43.02-2: A permit is required to construct a building or construct or carry out works.
Particular Provisions	Clause 52.06: A permit is required for a car parking reduction of 15 spaces.

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

- Clause 45.03: Environment Audit Overlay;
- Clause 45.06: Development Contribution Plan Overlay;
- Clause 45.09: Parking Overlay (Schedule 1);
- Clause 52.34: Bicycle Parking; and
- Clause 58: Apartment Developments.

## 2. Internal/External Consultation

### Public notification

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

- Sending notices to the owners and occupiers of adjoining and nearby land; and
- By placing signs on the site.

Council received 58 objections to the planning application, of which 9 have joined as parties to the VCAT review. All objector parties attended or were represented at the Compulsory Conferences.

A map identifying the location of objectors and parties to the review forms

### Attachment 4.

The key issues raised by the objector parties were:

- Height;
- Setbacks from neighbouring properties;
- Overlooking;
- Overshadowing;
- Traffic congestion in the north-south laneway; and
- Parking.

### Internal/external referrals

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

External Agency	Objection/No objection
VicRoads	No objection.
Transport for Victoria	No objection.

Internal Branch/Business Unit	Comments
Urban Design Unit	<p>Council's Urban Design Unit reviewed the advertised plans and identified the following major issues to be resolved:</p> <ul style="list-style-type: none"><li>• Respond to the edge conditions in accordance with DDO23 and facilitate a 3m shared access-way at the northern boundary of the site, integrated with landscaping elements and creating a resolved connection to the laneway at approved development 81-83 Nicholson Street.</li><li>• Demonstrate the nature of the pedestrian connection at the north east corner of the site, and the function and arrangement of landscaping within the corner of the site.</li><li>• Demonstrate the internal courtyard receives adequate solar access.</li></ul> <p>These matters are either addressed by the mediated proposal as discussed in section 4 or are addressed in the conditions detailed in the recommendation.</p>
Development Advice Engineer	<p>No objections were offered to the mediated proposal subject to modifications, which are addressed by conditions detailed in the recommendation.</p>

ESD Unit	<p>Council's ESD Unit identified many positive features of the advertised proposal but had concerns regarding:</p> <ul style="list-style-type: none"> <li>• Access to daylight for a number of bedrooms and living rooms;</li> <li>• No STORM report/MUSIC model submitted;</li> <li>• Lack of shading to windows; and</li> <li>• Lack of deep soil planting.</li> </ul> <p>These matters are either addressed by the mediated proposal as discussed in section 4 or are addressed in the conditions detailed in the recommendation.</p>
Open Space Design and Development Unit	<p>Council's Open Space Design and Development Unit reviewed the advertised plans and identified the following concerns:</p> <ul style="list-style-type: none"> <li>• The potential impact on tree 2 located in Balfe Park;</li> <li>• Insufficient deep soil provision;</li> <li>• Overshadowing of the communal open space courtyard and inappropriate species selection;</li> <li>• Poor public space interface;</li> <li>• The building should be setback from Little Miller Street; and</li> <li>• The landscape plan lacks detail regarding irrigation.</li> </ul> <p>These matters are either addressed by the mediated proposal as discussed in section 4 or are addressed in the conditions detailed in the recommendation.</p>
Property Unit	<p>Concerns were raised regarding the advertised proposal in relation to projections over Balfe Park and access through the park to apartments. These concerns are resolved by the mediated proposal.</p>

### 3. Policy Implications

#### Planning Policy Framework (PPF)

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

- Clause 11 Settlement
- Clause 13.04-1S Contaminated and potentially contaminated land
- Clause 13.05 Noise
- Clause 15.01 Built Environment
- Clause 15.02 Sustainable Development
- Clause 16.01 Residential development
- Clause 17.02 Commercial
- Clause 18.02 Movement Networks

## 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
- 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)
- Clause 21.03-6 Open Space Network

Local Planning Policies:

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

## 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*.

## 4. Issues

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

### Is the proposed height acceptable?

The mediated proposal has a maximum height of 6 storeys (19.75 metres), which is 2 storeys above the preferred height of 4 storeys (14.5 metres) set out in DDO23. However, the mediated proposal will present as a 4-storey building with a recessed fifth storey from Balfe Park and Little Miller Street, which is considered to be consistent with the Design Objectives and Decision Guidelines of DDO23.

### Visual impact

The intent of DDO23 is to provide higher built forms at the Nicholson Street edge of the precinct, with a transition to lower height towards John Street to the west. DDO23 includes the following relevant Design Objectives:

- To encourage multi-level development adjacent to Nicholson Street that provides transitional heights and design attenuation to Balfe Park and John Street.

The map at figure 1 of DDO23 displays this objective clearly, with preferred heights of 5 storeys fronting Nicholson Street, 3 and 4 storeys to the rear of those properties, where the subject site is located, and 1-2 storeys fronting John Street. This map forms **Attachment 5**.

Recent permits in the area have allowed, generally, 1 storey above the preferred heights of DDO23, with the exception of 55-63 Nicholson Street, which has been approved at 2 storeys above the preferred height, but with the top storey limited in floor area and generally not visible from surrounding streets.

The proposal would continue this trend, with a 5-storey building adjacent to Balfe Park and Little Miller Street, which is 1 storey above the preferred height.

The fifth storey of this building is also recessive in nature, to reduce its prominence when viewed from Balfe Park. The proposal will present a 4-storey wall to the park with a recessed fifth storey, on a site with a preferred height of 4-storeys.

The remaining 6-storey parts of the development belong to the eastern building and the eastern half of the western building. These 6-storey elements will not have a significant visual impact on the surrounding area.

The eastern building has a height of 6 storeys at its northern end, where it abuts the approved 6-storey building at 77-83 Nicholson Street. Continuing this alignment of 6-storey built form is compatible with the objective seeking a transition in heights. It is noted that this building steps down towards the southern boundary, with the mediated proposal introducing increased setbacks from the southern boundary to resolve objector concerns that the development will overshadow the communal open space in the north-west corner of the under-construction development at 55-63 Nicholson Street.

The sixth storey of the eastern half of the western building will have limited visibility from the public realm. Sight lines show this will only begin to be visible over the northern building from Balfe Park at a distance of approximately 51 metres from the northern property boundary and 70 metres from the western building. At the far northern end of the park, approximately 135 metres from the site, only part of the sixth storey of the western building (approximately 2 metres) will be visible behind the northern building. At these distances, the impact on the appearance and feel of the area is negligible. Some views to the sixth storey may be available from the southern end of Little Miller Street and from Miller Street over existing single storey dwellings. However, the potential future development of these site with buildings of 3 and 4 storeys, as permitted under the General Residential Zone (Schedules 1 and 2) would obscure these views.

### ***Public benefits***

In determining whether the additional height is acceptable, the decision guidelines also require the responsible authority to consider public benefits, including:

- The extent to which the development makes a positive contribution to the overall social, economic and environmental vitality of the Nicholson Street Local Area 3B and broader Brunswick Major Activity Centre.
- Whether the proposal incorporates public benefits such as affordable housing, community space, landscaping, or other physical improvements or services for the local community.

While there is no provision of affordable housing or community space, there is a positive contribution to the public realm in the form of the 3m setback from Balfe Park and the pedestrian footpath along Little Miller Street. These matters are discussed under the next heading. There is also a positive contribution to the area in terms of the excellent ESD response, provision of a commercial use at ground floor and the quality of architecture.



## **Are the interfaces with Balfe Park and Little Miller Street acceptable?**

### ***Balfe Park***

The DDO23 seeks to link Glenlyon Road and Little Miller Street via a laneway, as set out in the following design objective:

- To improve the permeability of the Precinct and the movement network for all modes, through the creation of links between Nicholson Street and Balfe Park and a multifunctional north south laneway between Glenlyon Road and Little Miller Street.

The built form policy of DDO23 requires developments to provide a 3 metre setback from Balfe Park, as follows:

- Development must incorporate a minimum 3 metre setback at ground and upper levels, as shown in figure 1, to:
  - provide for a continuous laneway connection between Glenlyon Road and Little Miller Street.
  - improve rear vehicle access to properties fronting Nicholson Street.

The advertised plans were not supported due to the lack setback from Balfe Park. The mediated proposal now includes the 3 metre setback. The recommendation includes conditions requiring details of the design of the laneway, and for the laneway to be vested in Council.

### ***Little Miller Street***

The DDO23 includes the following built form policy relating to the interface with Little Miller Street:

- *Development fronting Miller Street and Little Miller Street should provide front setbacks for gardens and landscaping.*

The advertised plans included a 1 metre ground level setback to Little Miller Street with 500 millimetre wide planters. The mediated proposal maintains the same setback but has redesigned the setback area to include the provision of a footpath.

There is currently no usable footpath on either side of Little Miller Street, with the existing footpath on the western side too narrow and blocked by power poles. The provision of a separated pedestrian footpath is considered necessary given that the proposal will introduce 103 dwellings and a food and drink premises into the area, with the main pedestrian access via Little Miller Street, which will significantly increase pedestrian traffic.

It is proposed to construct a 1.5 metre wide footpath, utilising 600 millimetre of the 1 metre setback, and 900 millimetres of the road space. This would leave a road width of 5.5 metres, which is sufficient for vehicle access to existing sites on the western side of Miller Street. The footpath is supported by Council's Development Advice Engineers.

The redesign of this setback reduces the planter width to an internal dimension of 300mm, which is not ideal, but on balance of the controls applicable, it is considered acceptable. Little Miller Street currently has an industrial appearance with effectively no landscaping, so even the smaller planters will be an improvement. Council's Open Space Design and Development Unit have advised that subject to appropriate soil mix, species selection, drainage, irrigation and management, the landscaping within the planters can be successful. The recommendation includes permit conditions requiring this detail for further approval.

### **Does the proposal provide an acceptable level of amenity for future residents?**

A detailed assessment of the proposal has been undertaken against the objectives and standards at Clause 58 as they relate to internal amenity. The proposal meets all standards related to internal amenity, with the exception of Standard D19 (Private Open Space). The mediated proposal introduces a splay into the balconies of apartments in the north-east corner of the site (Apartments 2.17, 3.16, 4.13 and 5.7). This has been requested by Council's Development Advice Engineer to facilitate vehicle movements in the proposed laneway along the northern boundary. However, the splay reduces the size of these balconies to approximately 7 square metres, which is below the 10 square metres required for a 2-bedroom dwelling. There is also a minor non-compliance with a number of 2-bedroom apartments which have balconies that scale at approximately 9 square metres rather than the required 10 square metres.

Where the standard is not met, the proposal must achieve the objective, which is:

- to provide adequate private open space for the reasonable recreation and service needs of residents.

In determining this, the decision guidelines require Council to consider, amongst other things, the availability of and access to public or communal open space. The proposal provides communal open space significantly above the requirements of Clause 58 and the site is located adjacent to a large area of public open space (Balfe Park). On this basis, it is considered that the objective is met.

Certain aspects of the proposal also substantially exceed the requirements of Clause 58, including the following:

- 437 square metres of communal open space (Standard D7 requires 250 square metres); and
- 100% of apartments to have natural cross ventilation (Standard D27 requires 40%).

The proposal is also largely compliant with the building separation requirements of Clause 22.07, with the exception of 3 apartments in the north-eastern corner of the site (apartments 2.16, 3.15 and 4.11). These apartments have a 4 metre setback from the eastern wall of the northern building, whereas Clause 22.07 requires a setback of 6 metres from the edge of the balcony up to a height of 4 storeys (apartments 2.16 and 3.15), and a setback of 9 metres between 5 and 8 storeys (apartment 4.11).

Despite the non-compliances, it is considered that the apartments will have an acceptable level of internal amenity. The length of wall that is faced is minimal, with oblique views available towards the park and the internal courtyard. Given the length of wall and relatively low height of the northern building (in terms of Clause 22.07), it is anticipated that sufficient daylight and ventilation will be available to the apartments. In terms of outlook, as noted, there are some oblique outlooks, although they are limited. Overall though, it is considered acceptable for 3 out of 103 apartments to have a compromised outlook.

The mediated proposal has resolved the previous non-compliances with Clause 22.07 related to setbacks from the eastern laneway.

There are also 3-bedroom windows facing the southern laneway on the boundary at third floor level that have a minor non-compliance with Clause 22.07, which allows windows on the laneway boundary up to 2 storeys or 9 metres. The wall height is 10.2 metres, which represents a non-compliance of 1.2 metres. The potential impact on daylight to these bedrooms as a result of future development to the south is limited given the neighbouring properties have a mandatory maximum height of the 3 storeys pursuant to the General Residential Zone (Schedule 1).

There are also a number bedroom windows that face the open walkways of the western building where Clause 22.07 is not easily applicable due to the presence of the walkways and stairs. The ground level internally facing bedroom windows of Apartments G.2, G.3, G.4 and G.5 were previously identified as having the poorest access to daylight, and the mediated proposal improves this by providing larger windows to these rooms. The deletion of a level from the western half of this building will also significantly improve daylight access into the open walkway and bedroom windows facing it, noting that half of this building will now have a maximum height of 4 storeys and that Clause 22.07 only applies to building of 5 or more storeys. All living room windows facing the open walkway are secondary outlooks, with primary outlooks available towards either Little Miller Street or the communal courtyard.

**Does the proposal have any unreasonable impacts on neighbouring properties?**

***Overshadowing***

The overshadowing standard of Clause 55 does not apply as the building is 5 or more storeys and there are no specific overshadowing planning controls in DDO23. Nevertheless, the proposal would generally comply with the overshadowing requirements of Clause 55 with the exception of the secluded private open space at 31 Miller Street. The proposal overshadows this space most significantly at 9am and 3pm, with the hours in between receiving at least 40 square metres of sunlight. It is also noted that the overshadowing is a result of the 3 and 4 storey parts of the building rather than any of the building height above the preferred height in DDO23. Given the generally good access to sunlight through the middle of the day and that it is not the parts of the building above the preferred height control, the level of overshadowing is not considered to be unreasonable. Further, the strategic setting is relevant as the properties to the south are also within DDO23 and are anticipated to be more intensely developed in the future.

The proposal is also opposite secluded private open space at 29, 33 and 35 Miller Street. There will be no additional overshadowing of the secluded private open space at 29 and 35 Miller Street. The proposed overshadowing of 33 Miller Street complies with the Clause 55 Standard.

***Overlooking***

As with overshadowing, the overlooking standard of Clause 55 does not apply to the proposal. Nevertheless, the proposal would comply with the overlooking standard if applicable. Clause 55 requires the consideration of overlooking of secluded private open space and habitable room windows within a horizontal distance of 9 metres. The recommendation includes a condition to ensure there is screening, obscure glazing or some other measure to all balconies and habitable room windows within 9m of the secluded private open spaces to the east and south.

***Noise from the rooftop communal open space***

Residential noise from the use of the rooftop communal space is not normally a planning matter and is regulated by state residential noise regulations. Despite this, the applicant has agreed to move the rooftop communal open space from the southern building to the northern building in response to concerns raised by residents of Miller Street properties to the south. This forms part of the mediated proposal.

### Does the proposal provide for appropriate landscaping?

The mediated proposal increases the deep soil planting area beneath the central courtyard from 71 square metres to 126 square metres. While this is still below the 511 square metres required by Standard D10 of Clause 58, it is considered to be acceptable given the existing context, which does not feature a heavily landscaped character.

Standard D10 anticipates that the deep soil requirement may not be met and alternatively requires that an equivalent canopy cover should be achieved by providing either:

- Canopy trees or climbers (over a pergola) with planter pits sized appropriately for the mature tree soil volume requirements; or
- Vegetated planters, green roofs or green facades.

In this respect, the proposal includes planters integrated into balconies and external walkways at all levels of the development, chains and wires for climbers to grow up the outside of the building, and a rooftop communal open space with productive garden.

The reduced height of the northern building will also improve sunlight penetration into the central courtyard and improve the amenity and planting opportunities in this space.

As noted previously, the setback from the northern boundary also minimises the impact on the existing Council trees in Balfe Park.

On balance, it is considered that the landscaping response of the mediated proposal is acceptable.

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

#### ***Car parking***

The mediated proposal includes a total of 112 car parking spaces, which is a shortfall of 15 spaces compared with the Clause 52.06 requirement of 127 spaces.

The following table sets out the car parking requirement for the mediated proposal:

Use	Number/area	Car parking measure	Spaces required
Food and drink premises (Café)	76.5 square metres	3.5 spaces to each 100 square metres of leasable floor area	2
Dwellings	81 x 1 and 2-bedroom	1 space to each 1 or 2-bedroom dwelling	81
	22 x 3 or more bedroom	2 spaces to each dwelling with 3 or more bedrooms	44
<b>Total</b>			<b>127</b>

In accordance with Clause 22.03, it is policy 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.*

The development is ideally located within proximity to the Brunswick Activity Centre with easy access to a range of public transport options and bicycle parking provision that significantly exceeds the minimum requirements of Clause 52.34. On this basis, the car parking reduction is supported.

### ***Bicycle parking***

The mediated proposal includes a total of 136 bicycle parking spaces, which exceeds the statutory requirement of 20 spaces. The proposed development satisfies the Moreland Planning Scheme with respect to the provision of bicycle parking.

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

In relation to traffic impacts, Council's Development Advice Engineer has assessed the proposal and considers that the development will result in approximately 300 additional vehicle movements per day in Little Miller Street. This remains within the street's design capacity and is not expected to cause traffic problems. Furthermore, it is noted that the relocation of the vehicle access point included in the amended plans responds to objector concerns regarding the impact on traffic in the north-south section of laneway and the impact of vehicles on backyards of dwellings fronting Miller Street.

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

The mediated 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 laneway for vehicle access to allow street frontages to prioritise pedestrian movement and safety and to create active frontages.
- Creates a new pedestrian path along Little Miller Street
- Provides a setback from the northern boundary which allows for the protection of the existing trees in Balfe Park.
- Provides active frontages to Little Miller Street, including home offices and a food and drink premises (café).
- Provides 136 bicycle spaces.

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

ESD features of the development are considered to be excellent and include:

- Minimum average NatHERS rating of 7.5 stars.
- Zero fossil fuel residential component (no gas connection and all electricity via renewable power).
- 60kW rooftop solar PV system.
- Commitment to STORM rating of 100% or greater.
- Natural cross ventilation to 100% of apartments.
- Substantial bicycle parking provision and communal bicycle repair station.
- Green travel plan.
- A minimum of 5 dedicated electric vehicle charging stations.

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

Objective 9 of Clause 23.03-3 (Housing) is to increase the supply of housing that is visitable and adaptable to meet the needs of different sectors of the community. All apartments above ground level will be visitable, but the 30 ground level apartments are raised above natural ground level and require steps. From an urban design perspective, the raised ground floor level is a positive as it creates privacy for the apartments while still retaining an active frontage and passive surveillance. Adaptable apartments comprise 52% of the proposal, which exceeds the Clause 58 requirement of 50%.

An Accessibility Report has been submitted with the application confirming that the proposed design can comply with the relevant *Disability Discrimination Act 1992* (DDA) requirements. The recommendation includes conditions requiring the submission of a detailed Accessibility Report to confirm the details of the adaptable, accessible and visitable design features and to ensure these measures are implemented.

#### **Is the site potentially contaminated?**

The site is affected by an Environmental Audit Overlay. The applicant has submitted an environmental site assessment report detailing the extent of site contamination and confirming that the site would be appropriate for the intended uses subject to the completion of an Environmental Audit. A condition is therefore contained in the recommendation requiring an Environmental Audit to be undertaken before the development commences. This will ensure that the site is remediated to an appropriate standard to ensure the land is safe for future residents.

### **5. Response to Objector Concerns**

Subject to Council confirming its consent and no new parties arising from notice of the amended plans, the 9 objector parties have consented to the mediated proposal. The objectors' key concerns have been responded to in section 4 of the report.

### **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 mediated proposal responds appropriately to the objectives of DDO23, provides good internal amenity and does not unreasonably impact on the amenity of surrounding properties. The proposal has been setback from Balfe Park to provide a laneway connection, and setback from Little Miller Street to provide a pedestrian footpath. Building heights at the public realm interface have been reduced to 5 storeys, which is 1 storey above the preferred height of DDO23, but consistent with the pattern of approvals and will achieve the objective seeking a transition in heights. The 6 storey parts of the building are located centrally on the site and adjacent the eastern boundary where they will have minimal visibility from the public realm. The proposal complies with Clause 22.07 where it interfaces with the rear of existing, approved and under-construction apartment buildings fronting Nicholson Street. To the south, conditions of the recommendation are proposed to restrict overlooking in accordance with Clause 55, while overshadowing is largely in accordance with Clause 55 with the exception of one property. The proposal also provides an excellent ESD response and a high quality of architecture.

On the balance of policies and controls within the Moreland Planning Scheme, it is considered that Council should inform VCAT that it consents to the issue of Planning Permit No. MPS/2017/1027 for the construction of a mixed use development and a reduction of the car parking requirement subject to the conditions included in the recommendation of this report.

#### **Attachment/s**

<a href="#"><u>1↓</u></a>	Location Plan	D18/472444
<a href="#"><u>2↓</u></a>	Advertised Plans	D18/472445
<a href="#"><u>3↓</u></a>	Mediated Plans	D18/472446
<a href="#"><u>4↓</u></a>	Objector Map	D18/472448
<a href="#"><u>5↓</u></a>	Figure 1 DDO23	D18/472447

**DCF78/18 1, 3, 5, 7, 8 ,9, 10 AND 12 DUCKETT STREET, 11 WEST STREET AND 24-26 HOPE STREET, BRUNSWICK- PLANNING PERMIT MPS/2018/362 (D18/453383)**

**Director City Futures**

**City Development**

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**Executive Summary**

The application seeks approval for the development of the land for 7 buildings, ranging from 7 to 9 storeys including 210 dwellings and 8 commercial tenancies, use of the land for dwellings and a reduction of the standard car parking requirement. The proposal also includes works within the section of Duckett Street, Brunswick that has been closed.

The application was advertised, receiving 14 objections and approximately 342 letters of support. The objections canvassed a wide range of issues, however the main issues raised related to the reduction to car parking, building height and the loss of amenity through overlooking and shadowing of neighbouring sites.

A Planning and Information and Discussion Meeting was held on 6 December 2018 and attended by the Mayor, Cr Abboud, Cr Riley, 2 Council Planning Officers, representatives of the applicant and developer and 2 objectors. The meeting provided an opportunity to explain the application, for the objectors to elaborate on their concerns and for the applicant to respond.

This report details the assessment of the application against the policies and provisions of the Moreland Planning Scheme, in particular the decision guidelines of the Design and Development Overlay Schedule 18 (DDO18) and Clause 58 Apartment Design Guidelines.

The key planning considerations are:

- Whether the height, street walls and upper level setbacks adequately respond to the objectives of the DDO18;
- Whether the proposal delivers an appropriate relationship with the public realm;
- Whether the proposal adequately enhances access to and visibility of the Upfield shared path;
- Whether the proposal adversely impacts the amenity of existing residents;
- Whether the proposal provides for adequate building separation; and
- Whether adequate and convenient access to transport facilities has been provided for as part of the design response.

Subject to the conditions contained in the recommendation, it is considered the proposal provides an adequate response to the objectives and decision guidelines of the Moreland Planning Scheme, is respectful to its context and will provide for an adequate level of amenity for future residents. It is therefore recommended that a Notice of Decision to Grant a Permit be issued subject to the conditions outlined in the Recommendation.

**Officer Recommendation**

That a Notice of Decision to Grant a Planning Permit No. MPS/2018/362 be issued for the Development of the land for 7 buildings, with a maximum height of 9 storeys, use of the land for dwellings and a reduction of the standard car parking requirement and works within Duckett Street at 1, 3, 5, 7, 8 ,9, 10 and 12 Duckett Street, 11 West Street and 24-26 Hope Street, Brunswick, subject to the following conditions:

1. Before the development commences, including the demolition of existing buildings and structures and removal of vegetation, plans must be submitted recording the trees to be retained on the site and surrounding road reserves in accordance with the Tree Protection Management Plan under condition 22.

## Amended Plans

2. Before the use and development commences (other than demolition of existing buildings and structures, removal of vegetation and site investigation works to determine the level of contamination on the land) 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 three copies must be provided. The plans must be generally in accordance with discussion plans being job number 1703, drawn by JM, Rev 01, dated 16/11/18 but modified to show:

### *Building A – 11 West Street*

- a) Sections and elevation (south) at 1:100 scale, illustrating the ground floor interface with the Mews.
- b) Demonstration of site lines from ground floor dwellings.
- c) Relocation of visitor bike hoops a minimum 1 metre from the Upfield Path.
- d) Change awning windows of apartment type D to sliding window to prevent encroachment into internal circulation space and ventilation.
- e) Clarification that the small platforms in front of bedrooms windows is accessible via bedroom or forms part of the main circulation space.
- f) Clarification that the balcony area shown between planter boxes to dwellings 1.2, 1.3, 4.1, 4.2 and 4.3 can be accessed.
- g) Details of fencing materials and level changes on the southern side of the building to ensure visual permeability at the interface between the public and private realm.

### *Building B – 12 Duckett Street*

- h) A screening device used to avoid direct overlooking into bedroom windows within the western light court on levels 1 to 6 without the use of obscured glazing.

### *Building C – 8-10 Duckett Street*

- i) Confirmation that the use of spiral staircases are sufficiently dimensioned to enable the moving of furniture to upper levels.
- j) A screening device used or windows offset to avoid direct overlooking into bedroom windows within light courts on levels 1 to 6 without the use of obscured glazing.
- k) Window sizes and locations on the south elevation plan.
- l) All balconied on the north facing apartments setback no less than 6 metres from the centre line of the lane.
- m) External screens to east facing bedrooms to prevent unreasonable overlooking of the existing habitable room windows and balconies on the site at 2-6 Duckett Street.

### *Building D – 9 Duckett Street*

- n) Rooms with planter boxes provided with suitably opening windows or doors to provide access to maintain planter boxes.
- o) Convenient bin storage location, of sufficient dimension to accommodate the required bins referenced in the Waste Management Plan.



*Building E – 5-7 Duckett Street*

- p) Circulation width around the lift and storage area in the basement of minimum 1500 millimetres for the movement of furniture.
- q) Internal and external storage quantities specified and their locations clearly marked on each floor plan.
- r) Apartment Type 2B and 2C with a minimum internal balcony depth of 2 metres and apartment Type 1D with a minimum internal balcony depth of 1.8 metres.

*Building F – 1-3 Duckett Street*

- s) Direct access from ground floor apartments to the south into the landscape mews.
- t) Apartment type E with a minimum internal balcony area of 8 square metres.

*All sites*

- u) Initiatives contained within the Sustainable Design Assessment, including:
  - i. Rainwater harvesting tanks and their capacity (in litres) consistent with the Sustainability Management Plans (SMPs), and an annotation that the harvested water is for reuse within the building.
  - ii. The Visual Light Transmittance (VLT) for window glazing to be annotated as being the VLT within the advertised version of the SMPs, and the daylight and energy modelling within (the VLT differs for the buildings and also within the windows) or alternative system to the satisfaction of the Responsible Authority.
- v) All horizontal bicycle parking space envelopes, including those stacked 2 high, meeting the 1800 millimetres length and 500 millimetres width required by the Australian Standard for Parking Facilities – Bicycle Parking.
- w) Parking for a minimum of 16 cargo bikes.
- x) Bicycle parking hoops removed from the landscaped setback next to the Upfield Shared Path.
- y) All single level apartments have a minimum 850mm wide entry doors and a 1 metre wide entry hall.
- z) A precinct waste collection point/loading area designated within Duckett Street adjacent to 1-3 Duckett Street.
- aa) Notation on the plans that any verandah does not project beyond the perimeter of the site and across the public realm unless it is setback not less than 750 millimetre from the kerb and at a height less than 3 metres above the level of the footpath in accordance with Clause 507 of the Building Regulations 2006.
- bb) The location of any substation required by the power company for this development. Any substation must be incorporated within the building (ie; not free standing or pole mounted in the street) to ensure minimal impact on the visual amenity of the public realm.
- cc) A schedule of materials, finishes and colours for all buildings including samples for all the external buildings surfaces including:
  - i. Clarification on cladding materials and colours on Building A – 11 West Street. Cladding materials must be nominated for each part of the façade to provide certainty in the built form outcome.
  - ii. Bright yellow finishes proposed on Building C – 8-10 Duckett Street to be replaced with matt finishes to reduce reflectivity.
  - iii. Perforated metal material 'MS1' on Building D – 9 Duckett Street to specify a minimum 25% transparency.

- dd) West elevations and sections of the Upfield Shared Path at a scale of 1:100 illustrating:
  - i. Public lighting within the title boundaries of the site to illuminate the Upfield Shared Path;
  - ii. Design of any handrail or features in a manner that does not cause conflict with users of the path;
  - iii. Clear pedestrian line marking and/or surface treatments to delineate pedestrian travel; and
  - iv. Treatment of boundary walls with the Upfield Shared Path to provide visual interest, discourage graffiti (other than wall art) or to be graffiti resistant.
- ee) Sections at a 1:100 scale illustrating the basement ramps designs with the following:
  - i. The ramp associated with Building G – 24-26 Hope Street contained entirely within the site with no level changes to the Hope Street footpath.
  - ii. The vehicle crossing associated with the car park entry with a slope of 1 in 40 over a lateral distance of 1 metre for pedestrians and also allow the B85 template in Figure C1 of the Australian Standard for Off-Street Parking (AS2890.1) to access the property from the road.
  - iii. The floor level of the car park designed in accordance with the Ground Clearance Template of the 85th percentile vehicle in Appendix C of the Australian Standards for Off-Street Parking (AS2890.1), to ensure vehicles do not scrape when entering or egressing the street and garage
- ff) Details of screening of any air-conditioning units and hot water services, or other plant and equipment proposed to be located on balconies and/or external walls of the dwellings or on roofs. The details shall include a 1:50 section diagram of each screening type proposed.
- gg) Any modifications required to align with the Public Realm Works Plan required by condition 4 and 5.
- hh) Any modifications required to align with the amended Environmentally Sustainable Development Management Plan report required by condition 7.
- ii) Any modifications required to align with the amended Waste Management Plan in accordance with condition 17, including the waste collection point in Duckett Street made available for general loading and unloading.
- jj) Any modifications required to align with the acoustic treatments forming the recommendations of the Acoustic Report required by condition 19.
- kk) Any modifications required to align with the Tree Management Plan required by condition 22.
- ll) Any modifications required to align with the amended Landscape Plan required by condition 23.
- mm) Any modifications required to align with the amended Accessibility Report in accordance with condition 29.
- nn) Any modifications required to align with the Car Parking Management Plan in accordance with condition 32.
- oo) Any modifications that may be required to implement the requirements of Melbourne Water and Transport for Victoria as set out in conditions of this permit.

## **Secondary consent**

3. The development and 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 62.02-1 and 62.02-2 of the Moreland Planning Scheme unless specifically noted as a permit condition.

## **Public Realm Works Plan – Duckett Street**

4. Prior to the endorsement of plans under condition 2, a Public Realm Works Plan must be submitted to and be approved by the Responsible Authority. When approved, the plan(s) will be endorsed and will then form part of the permit. The plan(s) must be drawn to scale with dimensions and three copies must be provided. The plan(s) must be generally in accordance with the concept Public Realm Works Plan, drawn by Openwork Pty Ltd, Drawing no's SK1-01, SK2-01 & SK3-01 dated 29.11.2018 but modified to show:

- a) The extent and location of the proposed public realm works, clearly delineating the boundaries of the road closure approved by Council at the February 2017 Council meeting.
- b) Public infrastructure to Council's Standards including:
  - i. Two additional trees in kerb channel to create zone with a 5 metre long swale in the channel on the southern side of the road reserve;
  - ii. Removal of the north side swale as on high side of road camber;
  - iii. Drinking fountain at the western end of the public realm works;
  - iv. Irrigation of all garden beds; and
  - v. Shared path treatment to slow cyclists.
- c) Detail the timing for implementation/delivery of the Public Realm Works to Council's satisfaction.
- d) A schedule of all proposed trees, shrubs and ground covers including numbers, location of plantings, size at planting, size at maturity and botanical names. The flora selection and landscape design should be drought tolerant and based on species selection recommended in the Moreland City Council landscape Guidelines and Technical Notes.
- e) Details of the location and type of all paved and sealed areas;.
- f) Details of planting including soil depths where in planters;.
- g) Integration of water sensitive urban design (WSUD) features (e.g. raingardens, bio-swales etc);.
- h) Swept path diagrams that identify turning movements within the area of Public Realm Works allowing access to VicTrack land and access of Council's maintenance vehicles with a wheel base of 5.5 metres and total length of 10 metres, street sweeper and emergency vehicles.
- i) A detailed level and feature survey of the footpaths and roads.
- j) The upgrade of the footpaths at Duckett Street immediately adjacent to the site and in accordance with a dilapidation report.
- k) The existing crossovers at the site removed and the kerb and channel, footpath and any nature strip reinstated to Council's standards consistent with the Civil Works condition 11 of this permit.
- l) The location, method and number of bicycle parking spaces to be accommodated within the former road reserve.

- m) The location, number and design of any furniture to be accommodated within the former road reserve with graffiti resistant surfaces.
- n) Provision of any proposed street furniture with graffiti resistant surfaces.
- o) A schedule with the selection of materials from Council's approved materials.
- p) Provision of TS fluorescent lighting to Council's standards, or alternative lighting approved to Council's satisfaction.
- q) Sectional diagram of work.
- r) Surface plan referencing the retention of bluestone kerb, where applicable.

#### **Public Realm Works Plan – Northern Mews**

5. If the permit holder seeks to undertake works in the lane to the north of 8 – 10 Duckett Street, then prior to the endorsement of plans under condition 2, (unless an alternative time for submission is agreed in writing by the Responsible Authority), a Public Realm Works Plan for the lane north of 8-10 Duckett Street must be submitted to and be approved by the Responsible Authority. When approved, the plan(s) will be endorsed and will then form part of the permit. The plan(s) must illustrate the following:

- a) The extent and location of the proposed public realm works on the laneway north of 8-10 Duckett Street including:
  - i. Retention of the existing street tree, in accordance with the recommendations of a suitably qualified arborist and to Council's satisfaction.
  - ii. A schedule of all proposed trees, shrubs and ground covers including numbers, location of plantings, size at planting, size at maturity and botanical names. The flora selection and landscape design should be drought tolerant and based on species selection recommended in the Moreland City Council landscape Guidelines and Technical Notes.
  - iii. Details of the location and type of all pervious and impervious surfaces.
  - iv. Details of planting including soil depths where in planters.
  - v. Integration of any water sensitive urban design (WSUD) features (e.g. raingardens, bio-swales etc) and irrigation of all garden beds.
  - vi. Any proposed street furniture and lighting.
  - vii. A schedule with the selection of materials from Council's approved materials.
  - viii. Sectional diagram of work.

The plan should be developed in consultation with the owner(s) of 5 and 7 West Street to ensure conflict between proposed landscape treatments and vehicle access is avoided.

- b) Detail the timing for implementation/delivery of the Public Realm Works to Council's satisfaction.

## Environmental Audit

6. 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) pursuant to this permit or any works associated with a sensitive use, either:
  - a) A Certificate of Environmental Audit for the land must be issued in accordance with Section 53Y of the *Environment Protection Act 1970* and provided to the Responsible Authority.
  - b) An Environmental Auditor appointed under Section 53S of the *Environment Protection Act 1970* must make a Statement in accordance with Section 53Z of that Act that the environmental conditions of the land are suitable for the use and development that are the subject of this permit and that Statement must be provided to the Responsible Authority.

Where a Statement of Environmental Audit is issued for the land, the buildings and works and the use(s) of the land that are the subject of this permit must comply with all directions and conditions contained within the Statement.

Where a Statement of Environmental Audit is issued for the land, prior to the commencement of the use, and prior to the issue of a Statement of Compliance under the *Subdivision Act 1988*, and prior to the issue of an Occupancy Permit under the *Building Act 1993*, a letter prepared by an Environmental Auditor appointed under Section 53S of the *Environment Protection Act 1970* must be submitted to the Responsible Authority to verify that the directions and conditions contained within the Statement have been satisfied.

Where a Statement of Environmental Audit is issued for the land, and any condition of that Statement requires any maintenance or monitoring of an ongoing nature, the Owner(s) must enter into an Agreement with Council pursuant to Section 173 of the *Planning and Environment Act 1987*. Where a Section 173 Agreement is required, the Agreement must be executed prior to the commencement of the permitted use, and prior to the certification of the plan of subdivision under the *Subdivision Act 1988*. All expenses involved in the drafting, negotiating, lodging, registering and execution of the Agreement, including those incurred by the Responsible Authority, must be met by the Owner(s).

Prior to any remediation works being undertaken in association with the Environmental Audit, a 'remediation works' plan 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 a Certificate or Statement of Environmental Audit.

## Environmentally Sustainable Development

7. Prior to the endorsement of plans under condition 2, each of the Sustainability Management Plans (SMPs) prepared by Irwin Consult for Building A (dated 3 July 2018, Revision 3), Building B (dated 13 July 2018, revision 3) and Building C (dated 3 July 2018, Revision 3), must be amended by a suitably qualified Environmental Engineer(s) (or equivalent) to the satisfaction of the Responsible Authority, to include the following:

- a) Deletion of references to Whitehorse City Council.
- b) An amended BESS report which is:
  - i. Published (ie; no longer in draft format);
  - ii. Set-up to reference the amended development, including the number and size of dwellings and the non-residential spaces and uses; and
  - iii. Be consistent with the STORM reports and overall SMPs, including the details of rainwater harvesting tanks in the 'Water' category of BESS.
- c) Provide amended 'NCC Volume One Glazing Calculators' which demonstrate a 10% Improvement on the 'base code glazing'.
- d) A catchment plan showing the inputs within the STORM report, clearly identifying which roof areas drain to rainwater harvesting reuse tanks and which drain directly to the stormwater drainage network.
- e) Any other changes as per the updated/circulated plans required by condition 2 of this permit.

Where alternative Environmentally Sustainable Design (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 Sustainability Management Plan (SMP) and associated notated plans will be endorsed to form part of this permit.

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

- 8. Prior to the endorsement of plans under condition 2, each of the Sustainability Management Plans (SMPs) prepared by Umow Lai for Building D (dated 21 June 2018, Revision C), Building E (dated 21 June 2018, Revision D) and Building F (dated 20 June 2018, Revision D), must be amended by a suitably qualified Environmental Engineer(s) (or equivalent) to the satisfaction of the Responsible Authority, to include the following:

- a) A consistent stormwater management approach throughout the SMP, including within the STORM and BESS reports.
- b) An amended BESS report which is:
  - i. Set-up to reference the amended development, including the number and size of dwellings, and the non-residential spaces and uses; and
  - ii. Consistent with the STORM reports and overall SMPs, including the details of rainwater harvesting tanks in the 'Water' category of BESS.
- b) A catchment plan showing the inputs within the STORM report, clearly identifying which roof areas drain to rainwater harvesting reuse tanks and which drain directly to the stormwater drainage network.
- c) Any other changes as per the updated/circulated plans required by condition 2 of this permit.

Where alternative environmentally sustainable development (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 SMP and associated notated plans will be endorsed to form part of this permit.

9. Prior to the endorsement of plans under condition 2, the Sustainability Management Plan (SMP) prepared by HipvHype for Building G (dated 19 June 2018, Version 3) must be amended by a suitably qualified Environmental Engineer(s) (or equivalent) to the satisfaction of the Responsible Authority to include the following:
- a) A consistent stormwater management approach throughout the SMP, including within the STORM and BESS reports.
  - b) An amended BESS report which is:
    - i. Published (no longer in draft format);
    - ii. Set-up to reference the amended development, including the number and size of dwellings, and the non-residential spaces and uses; and
    - iii. Be consistent with the STORM reports and overall SMPs, including the details of rainwater harvesting tanks in the 'Water' category of BESS.
  - c) A catchment plan showing the inputs within the STORM report, clearly identifying which roof areas drain to rainwater harvesting reuse tanks and which drain directly to the stormwater drainage network.
  - d) The rainwater tank overflow into a raingarden is further elaborated and justified, including raingarden locations, short to long-term maintenance implications, and how the raingardens will accommodate heavy rainwater storm events. Alternatively, if this is aspirational and subject to further analysis and approvals (as per the Sustainability Strategy Masterplan), this should be articulated as an aspirational aspect (and not a confirmed aspect of the SMP).
  - e) Any other changes as per the updated/circulated plans required by condition 2 of this permit.

Where alternative environmentally sustainable development (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 SMP and associated notated plans will be endorsed to form part of this permit.

10. Prior to the endorsement of plans under condition 2, the Sustainability Strategy Masterplan prepared by HipvHype (dated 15 June 2018, Version 5) must be amended by a suitably qualified Environmental Engineer(s) (or equivalent) to the satisfaction of the Responsible Authority to be consistent with the changes to the circulated plans and the other 7 SMP's for the Nightingale Village precinct (being the individual SMP's for Buildings A – G).

Where alternative environmentally sustainable development (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 Nightingale Village precinct.

11. All works must be undertaken in accordance with the endorsed Sustainability Management Plans and the Sustainability Strategy Masterplan to the satisfaction of the Responsible Authority. No alterations to the Sustainability Management Plans or the Sustainability Strategy Masterplan may occur without the written consent of the Responsible Authority.

12. Prior to the occupation of any dwelling/building approved under this permit, a report (or reports) from one of the authors of the Sustainability Management Plans (SMP), approved pursuant to this permit, or similarly qualified person or company, must be submitted to the Responsible Authority. The report(s) must be to the satisfaction of the Responsible Authority and must confirm that all measures specified in the approved SMPs and the SMP Masterplan have been implemented in accordance with the approved plans. Specific details confirming the ESD and WSUD measures have been implemented must be included, such as:
- a) Evidence that the non-residential and residential components were built to the energy standards as proposed (i.e. the NatHERS ratings).
  - b) Evidence that the improved glazing has been implemented throughout the site.
  - c) Lighting controls have been implemented, including sensor lighting within buildings and outside the buildings.
  - d) Water efficient fixtures, fitting and appliances have been installed, and rainwater harvesting tanks have been installed and connected to internal water uses.
  - e) Construction and waste management targets (including for construction and demolition waste and reuse of materials on site) occurred.
  - f) Materials with improved sustainability were used (including targets for improved concrete, timber, steel, and internal uses of reduced toxic elements within used paints, adhesives, sealants and flooring).
  - g) Any other ESD initiatives committed to or referenced in the SMP occurred and were installed or constructed.

#### **Civil works**

13. 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) detailed engineering design plans for all civil works outside of the site are to be submitted to and be approved by the Responsible Authority. The Plans must show:
- a) All Public Realm works in Duckett Street, as per the Public Works Plan required by condition 3 of this permit;
  - b) Abutting road reserves including Hope, Duckett and West Street site frontages and the laneway abuttal north of Building C, showing the replacement of all redundant vehicle crossings by a footpath (footpath crossfall at 1 in 40) and Council's standard kerb and channel of other acceptable treatment.
  - c) Any new vehicle and pedestrian crossings.
  - d) Installation of appropriate on-street signage eg; time restricted parking in consultation with Council officers.
  - e) Nomination of a loading bay for waste collection, of dimensions to the satisfaction of a suitably qualified traffic engineer/as per recommendations outlined in the Waste Management Plan.
  - f) Any other works in the road reserve proposed as part of this permit.
  - g) Existing and proposed levels of the road pavement, crossover/footpath and site/building at the property boundary.

Once approved, the Plans will form part of this Permit. Prior to the commencement of occupation, or Statement of Compliance, whichever comes first, the works in the approved detailed engineering design plans must be completed at the cost of the permit holder to Council's standards and under the supervision of Council.



## **Bicycle parking**

### **14. Prior to the occupation of the first dwelling:**

- a) The vertically hung bicycles must be off-set 300 millimetres vertically from each adjacent bicycle as required by the Australian Standard for Parking Facilities – Bicycle Parking (AS2890.3) 2015;
- b) Warning devices recommended in the applicant's Traffic Impact Assessment Report (TIAR) must be installed at locations where cyclists directly enter the Upfield Shared footway from the development site;
- c) The routes that cyclists will use from each internal bicycle parking area to the abutting street and/or Upfield Shared footway must be fitted with doorways that are 1200mm in width that can be automatically operated to provide ease of movement for bicycles through the space.
- d) The bicycle parking racks must be installed in a manner that accords with the specifications in Australian Standard for Bicycle Parking AS2890.3 to the satisfaction of the Responsible Authority; and,
- e) Bicycle signage in accordance with the relevant Australian Standards and to the satisfaction of the Responsible Authority must be erected directing cyclists to the location of the bicycle parking as required by Clause 52.34-5 of the Moreland Planning Scheme.

## **Removal of easement**

15. Prior to the occupation of the first dwelling, or Statement of Compliance, whichever comes first, the permit holder must make application to Council to remove the easement affecting described as A-1 on Lot 1 TP23057D.

## **Section 173 Agreement**

16. 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:

### *General Obligations*

That the owner(s) acknowledge and agree:

- a) Prior to the occupation of the first dwelling, or issue of Statement of Compliance, whichever comes first, works in the Public Realm must be completed or bonded in accordance with the Public Realm Works Plan/s and Civil Works Plan to the satisfaction of the Council.
- b) To accept any and all costs associated with the design, consultation, construction and delivery of the Public Realm Works in Duckett Street, Hope Street, West Street and the lane to the north of 8-10 Duckett Street in accordance with the endorsed Public Realm Works Plans through to handover to the Council.
- c) To maintain as reasonable, the landscape areas to Council's satisfaction, including all infrastructure and landscaping in accordance with the Public Realm Works Plans for Duckett Street and north of 8-10 Duckett Street for a period of 12 months, commencing from the date of completion and handover of the of the public realm works to Council.

- d) To accept all reasonable liability and responsibility for the on-going maintenance of the land forming in part the Upfield Shared Path for the duration of the construction period and that prior to the commencement of Occupation of the first dwelling or issue of Statement of Compliance, whichever comes first:
  - i. Any damage to the path arising from the construction, up to 30 metres either side of the development site and including the abuttal to the site, be repaired and rectified; and,
  - ii. That the pathway, up to 30 metres either side of the development site, and including the abuttal to the site, be inspected by, and be constructed or repaired to the satisfaction of Council prior to Occupation of the first dwelling, unless otherwise agreed in writing by the Council.
- e) To indemnify Council against any claims associated with any loss or damages associated with flooding, where proven that the loss or damages associated with flooding are a consequence of negligence arising through the design, construction or ongoing maintenance of the site or buildings.
- f) That infrastructure on public land provided as part of the Public Realm Works Plan may be removed by Council at any time, whether to provide vehicular access or as otherwise required. Where infrastructure is removed, no compensation under any circumstance, will be paid to any person for any loss, financial, amenity or other incurred as a result of the removal of the infrastructure.
- g) That unrestricted public pedestrian and bicycle access, aside from any provision and allowance for temporary gantries and scaffold which allow the continued and ongoing use of the Upfield Shared path, will be provided through the portion of the land abutting and forming in part the Upfield Shared Path throughout the construction phase and post construction, 24-hours a day. Where access is restricted at any time, that a suitable and safe pedestrian and bicycle thoroughfare is provided to the approval of the Responsible Authority.
- h) That access to the shared car parking spaces located on Site E and F will be provided to residents of all lots within the development site at all times.

*Housing affordability*

- i) The owner covenants, acknowledges and agrees with Council to:
  - i. Provide unencumbered ownership of no less than 14 dwellings (or 7% of the total number of dwellings approved on the site) to be transferred to a Registered Housing Agency; or
  - ii. Management of no less than 14 dwellings (or 7% of the total number of dwellings approved on the site) to be assumed by a Registered Housing Agency for leasing as Affordable Housing in the Registered Housing Agency's absolute discretion.
  - iii. 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.

- iv. 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 i) i. or
  - Vesting management rights pursuant to Clause i) ii; and
  - Fully performing its contractual commitments under Clause iii.
- j) The Owner must comply with Clause (i) i. & ii. within three 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.

*Cessation of obligations*

- k) The obligations under Clauses (a) and (b) inclusive shall end 30 days after Occupation of the final dwelling.
- l) The obligations under Clauses (c) to (h) inclusive shall have no end date and run with the land indefinitely.
- m) The obligations under Clauses (i) and (j) inclusive apply to the parent title and provide an obligation on the parent land owner. These Clauses shall end at the registration of the plan of subdivision which creates the Affordable Housing Lots and transferred to a Registered Housing Agency. The Agreement need not be carried over and registered on the child titles of those lots being transferred to the Registered Housing Agency.

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.

**Waste Management**

- 17. Prior to the endorsement of plans under condition 2, the Waste Management Plan (WMP) prepared by Leigh Design dated 2 May 2018 must be amended in response to the plans to be endorsed under condition 2, including revised waste generation volumes; waste collection points; adequate bin storage areas; garbage collection transfer from the bin rooms to the waste collection points. The amended WMP must be endorsed to form part of the permit and the WMP must not be modified unless with the further written approval of the Responsible Authority.
- 18. The Waste Management Plan approved under this permit must be implemented and complied with at all times to the satisfaction of the Responsible Authority unless with the further written approval of the Responsible Authority.

**Noise attenuation**

- 19. Prior to the endorsement of plans under condition 2, the acoustic assessments prepared by Arup for Sites B, C, D, E, F & G dated 27 April 2018 and for Site A dated 30 April 2018 must be amended in response to the plans to be endorsed under condition 2 of this permit. The amended acoustic report must be endorsed to form part of the permit and the report must not be modified unless with the further written approval of the Responsible Authority.

20. The recommendations of the Acoustic Report must be incorporated into the design and layout of the development and must be implemented to the satisfaction of the Responsible Authority prior to the occupation of the development. When submitted and approved to the satisfaction of the Responsible Authority, the Acoustic Report and associated notated plans will form part of this permit.
21. Prior to the occupation of any dwelling approved under this permit, or 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 Accessibility Report have been implemented in accordance with the approved Plan.

### **Tree Protection Management Plan**

22. Prior to the endorsement of plans under condition 1, demolition of existing buildings and structures, removal of vegetation and site investigation works to determine the level of contamination on the land, a Tree Protection Management Plan (TPMP) must be prepared in accordance with AS-4970 to protect the tree located within the lane north of 8-10 Duckett Street. The TPMP must be to the satisfaction of the Responsible Authority and must include:
  - a) Root sensitive techniques to be employed during substrate preparation and all paving within the Tree Protection Zone (TPZ).
  - b) TPZ fencing in accordance with AS 4970-2009 erected and signed off by the Project Arborist before any works (including demolition) are undertaken.
  - c) Any required canopy pruning to allow for construction of the upper levels of the development. Pruning must conform to AS 4373-2007.
  - d) Details of prohibited works and activities within the TPZ and a requirement that services and materials are to be delivered outside the TPZ of relevant trees.
  - e) Details of how the health of the protected trees will be maintained throughout the redevelopment works (i.e. including irrigation and mulching).
  - f) Any works within the TPZ of relevant trees are to be supervised by a suitably qualified arborist to the satisfaction of the Responsible Authority.
  - g) Consultation points between the developer, construction team and Project Arborist on site, which must include:
    - i. Prior to demolition.
    - ii. Prior to excavation and substrate preparation works within the TPZ for permeable paving areas.
    - iii. Prior to the erection of any scaffolding within the TPZ for construction of the upper levels.
    - iv. Periodically during summer to ensure the trees are being adequately irrigated.

Once submitted to and approved by the Responsible Authority, the TPMP will be endorsed to form part of the permit. The TPMP must not be modified unless with the further written approval of the Responsible Authority.

At all times during the development of the land, including demolition of existing buildings and structures, removal of vegetation and site investigation works to determine the level of contamination on the land, the trees identified for retention on the endorsed plans of condition 1 of this permit must be managed and protected in accordance with the endorsed TPMP.

The TPMP will not be required where an Arboricultural Assessment is provided to the satisfaction and approval of Council that all trees within the northern mews have no retention value. All costs associated with the removal and reinstatement/replacement value of trees removed must be paid to Council prior to the removal of the tree(s)

### **Landscaping**

23. Prior to the endorsement of plans under condition 2, a scaled or dimensioned Landscape Plan(s) prepared by a suitably qualified Landscape Architect or equivalent must be submitted to and approved by the Responsible Authority. The Landscape Plan(s) must provide the following:

#### *General requirements*

- a) Measures to protect the street tree at West Street during construction.
- b) Details of any proposed green façade.
- c) Identification of all garden areas including roof tops with a schedule of all proposed trees, shrubs and ground covers (including location of planting, numbers, size at planting, size at maturity and botanical names). The flora selection and landscape design should be drought tolerant and based on species selection recommended in the Moreland City Council Landscape Guidelines and Technical Notes.
- d) Identification of any existing tree(s) and vegetation proposed to be removed and retained, consistent with the Tree Protection Management Plan.
- e) Provision of deep soil planting zones along the northern and southern Mews.
- f) Details of the location and type of all paved and sealed areas.
- g) Details of irrigation to all garden areas including the method of capturing stormwater and delivering to landscaped areas.
- h) Details of the functionality of the rain gardens.
- i) Cross sections of landscape works.
- j) Details of the location, dimensions and materials of any built form shade devices eg; shade sails.
- k) Identification of all Tree Protection Zones (TPZs) as shown on the Tree Protection Zone plan.

#### *Site A*

- l) Incorporation of street trees along the northern interface with West Street if the arrangement of inground services permit.

#### *Site B*

- m) Incorporation of canopy trees within the northern mews at the western interface to the Upfield Shared path.

#### *Site F*

- n) Deep soil zones for larger canopy trees along the southern side of the building.
- o) Façade greening along the eastern side of the site adjoining Council land.

#### *Site G*

- p) Incorporation of street trees along the southern interface with Hope Street if the arrangement of inground services permit.

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

24. Prior to the issuing of a Statement of Compliance or occupation of the development, whichever occurs first, all landscaping works must be completed in accordance with the approved and endorsed landscape drawing to the satisfaction of the Responsible Authority. Should any Council tree be damaged, removed or destroyed, then the Responsible Authority must be immediately informed and the Applicant must pay all associated costs with the amenity, removal, replacement and establishment (where appropriate).
25. Prior to the endorsement of plans under condition 2, a landscape maintenance and management plan must be submitted to and approved by the Responsible Authority. The plan must include:
- a) Arrangements which ensure that the landscaped areas shown in the endorsed landscape plans, to the extent of the title boundaries only, are maintained by the Owners Corporation or such other arrangement approved by the Responsible Authority in a proper, tidy and healthy condition to the satisfaction of the Responsible Authority. Should any tree or shrub be removed or destroyed, it must be replaced by a tree or shrub of the same variety and of a similar size as shown on the endorsed landscaped plan, within 3 months.
  - b) A requirement for the provision of an appropriate irrigation system which must be used and maintained to the satisfaction of the Responsible Authority.
  - c) A requirement that the soil mix to be used for planting in accordance with the endorsed landscape plans to be reviewed and confirmed by a suitably qualified soil specialist to the satisfaction of the Responsible Authority.
  - d) The provision of at least 1 metre of soil depth for planting in accordance with the approved landscape plan, as required, using existing soil conditions or the addition of new soil to provide the required soil depth unless otherwise agreed with and to the satisfaction of the Responsible Authority.
  - e) Maintenance of the landscape areas in accordance with the approved landscape maintenance and management plan to the satisfaction of the Responsible Authority.
26. Following completion of the development, any stormwater treatment devices (eg. rain gardens) must be maintained to ensure water quality discharged from the site complies with the performance standard in the endorsed Environmental Management Plan to the satisfaction of the Responsible Authority.
27. The removal of any trees on Council land necessitated by this development must be undertaken and conducted solely by the Council with replacement trees provided with all expenses borne by the permit holder.
28. Following completion of the development the areas designated as garden areas on the endorsed landscape plan must be maintained and used as garden areas to the satisfaction of the Responsible Authority in accordance with the Landscape Maintenance and Management Plan.

### **Accessibility**

29. Prior to the endorsement of plans under condition 2, a suitably qualified Accessibility Consultant or equivalent must prepare an amended Accessibility Report to the satisfaction of the Responsible Authority. The plan must be in accordance with the report prepared by Access Studio for 11 West Street, dated 24 April 2018; 12 Duckett Street dated 27 April 2018; 8 Duckett Street dated 24 April 2018; 7-9 Duckett Street dated 27 April 2018; 5-7 Duckett Street dated 25 April 2018; 1-3 Duckett Street dated 24 April 2018; and, 24-26 Hope Street dated 24 April 2018, but modified to provide:

- a) A statement that the development will construct a minimum of 10% of dwellings to be adaptable to Australian Standard AS2499-1995; and
  - b) Plans illustrating the layout of adaptable dwellings.
30. The recommendations of the Accessibility Report must be incorporated into the design and layout of the development and must be implemented to the satisfaction of the Responsible Authority prior to the occupation of the development. When submitted and approved to the satisfaction of the Responsible Authority, the Accessibility Report and associated notated plans will form part of this permit.
31. Prior to the occupation of any dwelling approved under this permit, or 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 Plan.

### **Car Parking Management Plan**

32. Prior to the endorsement of plans, a car parking management plan must be submitted to and approved by the Responsible Authority. The plan must detail:
- a) How the 14 car parking spaces dedicated to the car share arrangement will be managed to ensure convenient access at all times for residents including how vehicles will enter and exit the building.
  - b) How the remaining 6 spaces will be managed for individual resident use and preventing traffic movements into and out of the site when the car park is fully occupied.

When approved the car parking management plan will be endorsed and will form part of the planning permit. No changes may be made to the car parking management plan without the written consent of the responsible authority.

### **Ongoing involvement of architect**

33. The owner of the land must retain Breathe Architecture to 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**

34. 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**

35. 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.

### **Site survey**

36. Prior to the completion of the basement floor construction, written confirmation by a Licensed Land Surveyor must be provided to the Responsible Authority verifying that the basement floor has been constructed in accordance with the endorsed plans (prior to construction of the levels above being commenced) to the satisfaction of the Responsible Authority.

### **Vehicle access and parking**

37. Prior to the occupation of the development, a vehicle crossing must be constructed to Hope Street as shown on the endorsed plans to a standard satisfactory to the Responsible Authority (Moreland City Council, City Infrastructure Department).
38. Prior to the occupation of the development, any existing redundant 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).
39. Prior to the occupation of the development, 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.

### **Infrastructure and utilities**

40. 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.
41. Stormwater from the land must not be directed to the surface of the laneway to the satisfaction of the Responsible Authority.
42. Any plumbing pipe, ducting and plant equipment must be concealed from external views to the satisfaction of the Responsible Authority. This does not include external guttering or associated rainwater down pipes.
43. 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.
44. Prior to the occupation of the development, all new service connections to the site from the street to be below ground.
45. All pedestrian paths and access lanes shown on the endorsed plans must be constructed and maintained to the satisfaction of the Responsible Authority.
46. Air-conditioning and other plant equipment must be screened from view of adjoining properties and the street to the satisfaction of the Responsible Authority.
47. Lighting to illuminate the Upfield Shared Path must be an automatic system of external light operating between dusk and dawn and must be installed and maintained on the land to the satisfaction of the Responsible Authority.
48. All publicly accessible areas, internal to the site are to be illuminated at night to the appropriate Australian Standard to the satisfaction of the Responsible Authority.

### **General**

49. Prior to the occupation of the development, all boundary walls must be constructed, cleaned and finished to the satisfaction of the Responsible Authority.
50. Once the development has commenced, it must be completed in its entirety, unless with the written consent of the Responsible Authority.



## **Permit expiry**

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

- a) The development is not commenced within 3 years from the date of issue of this permit;
- b) The development is not completed within 5 years from the date of issue of this permit;
- c) The use is not commenced within 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 6 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.

**Note 1:** Should Council impose car parking restrictions in this street, the owners and/or occupiers of the land would not be eligible for any Council parking permits to allow for on-street parking.

**Note 2:** Contact needs to be made with CitiPower to determine whether CitiPower will require the powerlines to be relocated away from the dwellings.

**Note 3:** The Upfield Bike Path is railway land currently licensed to Moreland City Council for use by the public as a shared bicycle path and footway. The continued use of this land for that purpose is not guaranteed.

**Note 4:** Shared Path landscape and public realm works in the northern mews to the north of 8-10 Duckett Street may be removed at any time in the future by Council to provide access to 5 and 7 West Street.

## **1. Background**

### **Subject site**

The subject site is made up of multiple land parcels comprising a total of 10 lots known as 1, 3, 5, 7, 8, 9, 10 and 12 Duckett Street, 11 West Street and 24-26 Hope Street, Brunswick. There are no restrictive covenants indicated on the Certificate of Titles. There is a drainage and sewerage easement on the land at 5 Duckett Street in favour of 7 Duckett Street.

### **Duckett Street**

Lots that front Duckett Street contain warehouses setback from the street between 4 to 5 metres providing car parking in front of the buildings. The combined site frontage to the north side of Duckett Street is approximately 33 metres. The combined frontage of the development site on the southern side of Duckett Street is approximately 81 metres.

The length of road closed through an earlier decision totals approximately 300 square metres and extends 25 metres east of the Upfield shared path. To the rear of 8-10 Duckett Street the proposed public realm works extend for a length of 18 metres along the unnamed laneway.

### **West Street**

The West Street frontage is approximately 13 metres wide. This lot contains a warehouse setback approximately 17 metres from West Street.

### **Hope Street**

The Hope Street frontage is approximately 19 metres wide. The site is currently occupied by a warehouse setback approximately 9 metres from Hope Street.

The development site is serviced by a right of way providing access to Hope Street that runs parallel to the eastern boundary of 1 Duckett Street. There is also an east-west laneway that abuts the rear of 8 and 10 Duckett Street.

### **Surrounds**

The surrounding area has undergone significant redevelopment over recent years however continues to present an eclectic mix of built forms and land use activities with a variety of commercial, industrial and residential developments. The immediate and nearby interfaces are summarised as follows:

#### **North**

North of the site comprise recent mixed use developments of up to eight storeys in height within the West Street and Florence Street precincts. This includes *The Commons* and *Nightingale 1* buildings.

### **East**

East of the site at 1-9 Breese Street is a public car park, a predominantly residential apartment building of 6 storeys at 2-6 Duckett Street and a 5-storey building at 15 Breese Street. At 11 Breese Street (south west corner of Duckett and Breese Streets) a single storey dwelling occupies the land with a current application to redevelop the site to accommodate a 5-storey residential apartment building and reduction of car parking (MPS/2018/729).

East of the site at 5-7 West street is a single dwelling and double storey warehouse. A Planning permit (MPS/2013/464) was approved on this site by Council's Urban Planning Committee on 22 January 2014 for Construction of a 6-storey building above one basement level containing 26 dwellings and one office, use of the land for dwellings and a reduction in the standard car parking requirement. The permit timeframes have been extended and the development must now commence by 22 January 2020.

Beyond Breese Street is the Sydney Road commercial precinct, approximately 150 metres east of the site.

### **South**

Hope Street comprises warehousing and retail tenancies. Hope Street provides an east-west arterial between Sydney Road to the east and Melville Road, to the west.

### **West**

Upfield rail corridor consisting of the Upfield Shared Path. The site is approximately 200 metres south of the Anstey Railway Station.

A location plan forms **Attachment 1**.

### **The proposal**

The proposal seeks to develop the land for seven buildings, with a maximum height of 9 storeys including a total of 210 dwellings and 8 commercial tenancies, use of the land for dwellings and a reduction of the standard car parking requirement. The design is intended to be read and essentially function as seven separate buildings.

Following extensive discussions with the applicant, 'without prejudice' discussion plans were submitted on 16 November in an attempt to respond to concerns raised by Council officers in relation to streetwall height, upper level setbacks and building separation. The number of dwellings reduces from 210 to 208 as a consequence of these changes.

The discussion plans form the basis of the assessment in this report and conditions in the Recommendation. The seven buildings, referred to as Site's A-G throughout the report, are described as follows:

Site/ Address	Overall height*	Commercial floor space	Studio	1- bed	2- bed	3- bed	4- bed	Communal open space <sup>1</sup>	Bike parking visitor	Parking
A 11 West Street	7 storeys 24 metres	119 square metres	-	6	18	1	-	162 square metres	40	0
B 12 Duckett Street	8 storeys 23.6 metres	96 square metres	-	12	7	5	-	331 square metres	52/4	0
C 8-10 Duckett Street	8 storeys 24 metres	81+115 square metres	-	14	12	10	-	199 square metres	62/28	0
D 9 Duckett Street	8 storeys 25.8 metres	86 square metres	2	8	12	2	-	117 square metres	68/4	0
E 5-7 Duckett Street	9 storeys 27.6 metres	101 square metres	-	10	24	1	-	210 square metres	78	8
F 1-3 Duckett Street	8 storeys 24.4 metres	184 square metres	7	11	21	1	-	331 square metres	84/11	12
G 24-26 Hope Street	8 storeys 26.2 metres	136 square metres	-	6	15	6	2	500 square metres	0	0
<b>Total</b>		<b>918m<sup>2</sup></b>	<b>9</b>	<b>67</b>	<b>109</b>	<b>26</b>	<b>2</b>	<b>1850</b>	<b>384/63</b>	<b>20</b>

<sup>1</sup> Excludes Duckett Street public realm and east-west corridor behind buildings

\* Overall height includes roof top terraces.

In addition to the above, each site comprises waste receptacle and general storage facilities. Other characteristics of the development include the following:

- Site G: 150 square metres communal kitchen/dining room for residents;  
Two guest rooms for guests of residents of the building. Guest rooms do not include ensembles; and  
Access to the basement garage beneath sites E, F and G.
- Site E and F: Some services are provided on site E and F with a precinct wide function. Site E contains an area at ground level in the north east corner and Site F contains a substation on the south east corner with access from the lane;
- Basement: 20 car parking spaces;  
Waste Storage for Sites D, E, F and G;  
Storage lockers for all 208 dwellings; and  
260 square metres music room/workshop area for the use of all residents.

Combined, the development includes:

- 208 dwellings;
- Eight commercial tenancies with a total floor area of 918 square metres;
- 20 car parking spaces, 14 of which are dedicated car share spaces and the 6 remaining to be allocated to individual apartments where required;
- 447 bicycle parking spaces, inclusive of visitors;
- Public realm works within the closed portion of Duckett Street including low level landscaping, lawn, tree planting and seating.
- Communal open space areas both at rooftop and ground level between Site A and B (north Mews) and to the south of Site D, E and F (south Mews). The north and south Mews are intended to afford both resident and general public access. The communal open space between site's A and B is proposed to extend east behind 8-10 Duckett Street as a shared pedestrian/vehicle zone.

the advertised plans form **Attachment 2 and 3** and the discussion plans, referenced above, form **Attachment 4.**

### **Planning Permit and site history**

Planning application MPS/2014/7 sought approval for the development of a mixed use development comprising the construction of 4 buildings – 2x5 storey and 2x8 storey buildings with 181 dwellings and 8 retail tenancies, a reduction in the standard rate of car parking and loading bay requirements. The application also sought approval for public realm works in Duckett Street. The application received 31 objections however was approved by the Urban Planning Committee subject to conditions which reduced the overall height of the building to a maximum 6 storeys.

This application included land at 11A Breese Street to the east end of Duckett Street in addition to the land subject to the current application.

Following an appeal to the Tribunal, the Tribunal struck out conditions which restricted the overall building height to 6-storeys and allowed the development at 8-storeys, as proposed.

Council officers are currently considering a request to extend the expiry date of this permit.

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

<b>Control</b>	<b>Permit Requirement</b>
Commercial 1 Zone	Clause 34.01-1: A permit is required for the use of the land for dwellings because the ground level frontage exceeds 2 metres in width. No permit is required for retail or office uses. Clause 34.01-1: A permit is required to construct a building or construct or carry out work.
Design and Development Overlay (DDO18)	Clause 43.02 – A permit is required to construct a building or carry out works.
Special Building Overlay (SBO)	Clause 44.05 – A permit is required to construct a building or carry out works. This includes the proposed works within the Duckett Street road reservation.
Particular Provisions	Clause 52.06 – A permit is required to reduce the car parking requirements from 332 spaces to 6 spaces, a reduction of 326 spaces.

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

- Clause 45.03: Environmental Audit Overlay;
- Clause 45.06: Development Contributions Plan Overlay;
- Clause 45.09: Parking Overlay;
- Clause 52.34: Bicycle Facilities; and
- 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 properties and land generally between 80 metres–100 metres distance from the site; and
- By placing signs on each street frontage and at the rail line frontage.

Council has received 14 objections to date. A map identifying the location of objectors forms **Attachment 1**.

The key issues raised in objections are:

- Reduction in car parking;
- Building Height – in excess of DDO18 preferred height limits;
- Loss of amenity including:
  - Overlooking; (in particular 24-26 Hope);
  - Shadowing; (over 11 Breese);
  - Loss of natural light; and
  - Loss of breeze paths
- Overdevelopment;
- Closure of Duckett Street;
- Additional traffic leading to concerns of safety for pedestrians and cyclists;
- Safety of roof top communal area (wall height) of 24-26 Hope Street;
- Stormwater management; and
- Alignment of light courts with 2-6 Duckett Street

A Planning Information and Discussion meeting was held on 6 December with objectors, Councillors and planning officers. The meeting provided an opportunity for the applicant to further explain aspects of the proposal and to hear from objectors. This also included explaining changes which arose from the without prejudice discussion plans. Additional privacy screening was agreed to be provided on the eastern side of the building on Site G.

### Internal/external referrals

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

External agency	Referral Requirement	Objection/No objection
Melbourne Water	Clause 44.05-6 Special Building Overlay	No response at the time the report was completed
Director of Public Transport	Clause 66.02-11 Integrated Public Transport Planning	No response at the time the report was completed

Internal department	Comments
Urban Design Unit	<p>Council's Urban Design Unit raised concerns regarding upper level setbacks and built form massing in the application plans. The discussion plans address issues of upper level setbacks. Other issues include:</p> <ul style="list-style-type: none"><li>• Detail regarding the interface of building with the Mews including dwelling access, lighting and pedestrian movement; and</li><li>• Space to store cargo bikes and trailers.</li></ul> <p>These items are addressed through conditions of the recommendation.</p>
Development Advice Unit	No objections were offered to the proposal subject to modifications, which are addressed through conditions of the recommendation.
Environmentally Sustainable Design (ESD) Unit	No objections were offered to the proposal subject to modifications, which are addressed through conditions in the recommendation.
Open Space Design and Development Unit	No objections were offered to the Duckett Street public realm works between 8 Duckett street and the Upfield rail corridor subject to the submission of detailed design plans contained in the recommendation. The recommendation also conditions further detail on landscape corridors between buildings and green walls.

### **3. Policy Implications**

#### **Planning Policy Framework (PPF)**

- Clause 11 Settlement
- Clause 13.04-1S Contaminated and potentially contaminated land
- Clause 13.05 Noise
- Clause 15.01 Built Environment
- Clause 15.02 Sustainable Development
- Clause 16.01 Residential development
- Clause 17.02 Commercial
- Clause 18.02 Movement Networks

#### **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
- 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)
- Clause 21.03-6 Open Space Network

Local Planning Policies:

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

Council through its MSS, seeks increased residential densities in the Brunswick Activity Centre to take advantage of the excellent access to public transport and other services within this location. The proposal meets the objectives and strategies of the LPPF by introducing increased residential densities proximate to public transport. In particular, the design response incorporates ground level commercial uses activating each respective street frontage whilst providing central communal recreation points through the east west open space corridors between buildings and to Duckett Street. The proximity of the site to a variety of public transport options and the provision of bicycle facilities well in excess of the requirements of the Scheme in lieu of on-site car parking encourages a modal shift away from private car ownership to alternative modes of transport.

Council's Neighbourhood Character Policy supports substantial change and creation of a new character of increased scale associated with increased density in this designated Activity Centre. The proposal enjoys strong strategic support at both the State and Local level.



## Planning Scheme Amendments

Amendment C164 to the Moreland Planning Scheme proposes to implement the land use directions of the Moreland Industrial Land Strategy 2015-2030 (MILS) within the Brunswick Structure Plan Area (BSPA) as follows:

- Rezone Category 2 Employment Areas and Category 3 Transition-residential Areas within the BSPA;
- Make changes to Design and Development Overlay Schedules 18, 19 and 20 to include objectives relevant to Employment Priority Areas including:
  - To encourage development to provide residential accommodation only where it is located above ground floor and first floor employment spaces.
  - To encourage commercial design built forms at ground and first floor of development.
  - To encourage commercial activation at the ground level of development.
- Apply the Parking Overlay and Environmental Audit Overlay (EAO) to address car parking and potential contamination issues.

The land at 24 – 26 Hope Street is included within Category 2 (Employment Priority Areas) of the MILS. Of relevance to the consideration of this application are amendments to the DDO18 to introduce additional objectives relevant to Employment Priority areas. This is assessed in detail below.

## 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*.

## 4. Issues

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

### **Do the height, street walls and upper level setbacks adequately respond to the objectives of the DDO18?**

The proposal, as shown in the recently submitted discussion plans, is an acceptable response to the preferred character for this locality being situated within the Brunswick Activity Centre where a mid-rise built form outcome is sought. Each of the seven buildings has been designed to respond to its context including the rail corridor, existing built form and the particular street it sits within.

The Design and Development Overlay (DDO18) that affects the subject site contains guidance for overall building height, street wall height and upper level setbacks. The relevant built form provisions for the subject site are outlined in the table below:

Site	Overall height	Streetwall height	Upper level setbacks
A-G	17 metres	9-12 metres	At least 5 metres. Balconies and other architectural features may protrude into the setback by a maximum of 2 metres. Apply a 1:1 ratio of building height to distance from the opposite side of the street boundary. Adopt the same street setback for at least 75% of the height of the upper levels to avoid 'wedding cake' built form outcomes.

Below is an assessment of the proposal against the DDO as it relates to the key issues of the proposal.

### ***Height and upper level setbacks***

The discussion plans provided 19 November 2018 show the development with the following maximum building heights, street wall heights and upper level setbacks:

<b>Site / Address</b>	<b>Height (m)</b>	<b>Variation (m)</b>	<b>Street wall Height (m)</b>	<b>Maximum Variation (m)</b>
A 11 West Street	24	7	15	3
B 12 Duckett Street	23.6	6.6	12.4	0.4
C 8-10 Duckett Street	24	7	12.7	0.7
D 9 Duckett Street	25.8	8.8	13.6	1.6
E 5-7 Duckett Street	27.6	10.6	12.6	0.6
F 1-3 Duckett Street	24.4	7.4	12.8	0.8
G 24-26 Hope Street	26.2	9.2	14.8	2.8

The table above highlights that development across the site will exceed the preferred height by between 6.6 and 10.6 metres and exceed the preferred streetwall height by up to 3 metres.

Upper level setbacks meet the minimum 5 metres (with the exception of site F which falls short by 100 millimetres) however, upper levels do not result in strict adherence to the 1:1 ratio of building height to distance from the opposite side of the street boundary. In addition, upper levels do not adopt the same setback for at least 75% of those levels.

In determining whether or not to exercise discretion and allow built form that does not meet the preferred heights and setbacks, the following objectives of the DDO18 are relevant:

- To encourage a new mid-rise built form character with buildings generally ranging from 4-10 storeys with lower built form at the interfaces with the adjoining low rise residential areas.
- To establish a new built form character in off-corridor locations to the east and west of Sydney Road to achieve an appropriate balance between a sense of enclosure and openness by applying a 1:1 ratio of building height to distance from the opposite side of the street boundary.
- To ensure new street walls reinforce the existing character of street walls in nominated off-corridor streets.
- To maintain solar access to key pedestrian streets and existing and proposed public open space.

The proposal has responded to these objectives in the following ways:

- The buildings, at 7-9 storeys, will sit within the mid-rise built form outcome envisaged for the Brunswick Activity Centre. Although the land is on the edge of the Activity Centre, the rail corridor separates it from the low rise residential development further to the west, providing an opportunity to offer a more robust built form outcome.
- Sufficient solar access will be maintained to the footpaths on the southern sides of West Street, Duckett Street and Hope Street. Hope Street is identified as a Key Pedestrian Street within the DDO which states that development should not overshadow the opposite footpath between 10 am and 2 pm at the equinox. Council officers estimate that a width of at least 1 metre of the footpath on the opposite side of Hope Street will received daylight between 10 am and 2 pm.
- An appropriate sense of openness will be achieved for the following reasons:

#### ***Duckett Street***

- The range of streetwall heights are commensurate with the streetwall height set by the development at 2-6 Duckett Street (12.6 metres).
- The 5 metre upper level setbacks proposed exceed the 3-metre setback approved at 2-6 Duckett Street.
- A greater sense of enclosure can be accommodated in Duckett Street as it is a short, no through road terminating at the rail corridor.
- The development will complete the infill of Duckett Street, defining its own unique character.

#### ***West Street***

- The streetwall height is within the range of street wall heights within the locality including opposite the site at 2 and 4 West Street (14.6 metres).
- The site is at the termination of the Street abutting the rail corridor where a more robust built form can be accommodated.
- The development is on the Southern side of West Street where it will not result in overshadowing to the public realm.

#### ***Hope Street***

- The streetwall height is consistent with the development on the corner of Breese Street and Hope Street to the east and will have an acceptable impact on the public realm.
- The upper level setbacks achieve a 1:1 ratio of building height to distance from opposite side of the street.

#### **Does the proposal result in an appropriate impact on the public realm?**

The objectives of DDO18 include to create an inviting, safe and vibrant public realm. Two key considerations for this proposal are:

- Impact on the Upfield shared path; and
- Streetscape impacts.

These two aspects are considered below.

### ***Upfield shared path***

The relevant built form provisions of the Clause include:

- Development that abuts the Upfield Shared Path should be designed to avoid large areas of blank wall. Where unavoidable, large areas of blank walls should be treated with materials, artwork or in other ways that provide an attractive and visually interesting environment.
- Development should incorporate windows in all upper level facades facing streets and the Upfield Shared Path.
- Development should maximise permeability through the Activity Centre and accessibility to the Upfield Shared Path.
- Development adjacent to Jewell, Brunswick and Anstey Railway Stations should maintain or enhance the visibility of and access to railway station buildings.
- The ground floor of development abutting the Upfield Shared Path should be setback a minimum of 1 metre.

Site A, B and D have an interface with the Upfield shared path. The proposal has responded to these objectives by:

- Site A provides a retail tenancy at ground level to West Street, wrapping around to abut the shared path to the west. Two bedrooms are located at ground level with windows oriented to the shared path and dwellings above all incorporate windows to face the Shared Path. A one metre setback is provided to the path which is landscaped. Additional bicycle parking hoops are proposed within this setback however, Council's Urban Design branch have recommended these be removed which will ensure they do not obstruct the flow of cyclists on the path. This is included as a condition in the recommendation.
- Site B provides a separate pedestrian and bike entry from the Shared Path at ground level and variation in materials and architectural interest at upper levels including windows. A minimum 1 metre setback is provided to the shared path to be landscaped.
- Site D provides a retail tenancy at ground level to Duckett Street, with glazing to the west toward the Shared Path. The bicycle parking is located at ground level with convenient access from the Shared Path. A 1 metre setback is achieved across the majority of the interface with the Upfield shared path apart from a 2 metre length in the north west corner where a supporting column is required. Given the majority of the frontage provides a 1 metre setback to the shared path, the variation is considered acceptable.

Council's Sustainable Transport Officer does not object to the proposed interface with the Upfield shared path, commenting that, while it is preferable to reduce the number of access points to the Upfield Shared Path, there is sufficient transition space between the edge of the path and the entry points into the buildings. Furthermore, there is opportunity for cyclists to use the end of Duckett Street as a more generous transition space onto the path.

An appropriate response to Anstey Railway station has also been achieved as the development will not obstruct sight lines to the station from the end of Duckett Street and West Street or sight lines of people using the Upfield shared path.

### ***Streetscape impacts***

Of relevance, the DDO includes:

- Buildings within the commercial zone and mixed-use zone should be constructed to the street frontage.
- Development should incorporate active edges at street level fronting all streets (except rear access lanes) and the Upfield Shared Path .... to invigorate street life and contribute to a safe and pedestrian friendly environment.
- Locate vehicle access to the rear of buildings where possible.
- The size of services cabinets should be minimised and they should be integrated with the overall façade design.

A residential frontage is designated for the site where the DDO encourages:

- Individual entry doors to ground floor dwellings.
- Privacy is to be provided by elevating the ground floor approximately 0.5 to 1 metre above the street level and/or provide a landscaped front setback.

Each site provides an appropriate response that activates the public realm and responds positively to the DDO including:

- Limiting vehicle access to a single point in Hope Street, prioritising pedestrian safety and amenity.
- Providing active edges to the street on all buildings and incorporating a mix of commercial uses at ground level.
- Services rationalised to provide a precinct wide function.
- Where services have a direct street interface, they remain discreet and integrated into the façade design.
- Windows and balconies at upper levels provide additional activation through passive surveillance of the street.
- The rear of buildings provides activation of the north and south Mews through terraces and direct dwelling entries at ground level and balconies above. Site G provides a shared kitchen and dining area oriented to the south Mews within a landscaped setback.
- The use of durable materials such as brick, concrete, metal and terracotta blocks and a high quality design contributes to a fine grain appearance.
- Enhancing pedestrian permeability and accessibility to the Upfield Shared Path by providing communal open space corridors at the rear of buildings and public realm works at the western termination to Duckett Street, assisting residents to move from the development to the Upfield corridor in breaks through the built form.

Further detail is required to ensure the interface between the public and private realm is treated appropriately at ground level between Site A and B. A condition is included in the recommendation to show details of fencing materials and a requirement that fencing remain visually permeable to avoid a harsh distinction between the public and private realm.

The proposed works to the closed portion of Duckett Street will result in improved amenity for future residents within the site and will enhance the public realm for all residents in the locality. Pedestrian and cyclist access will still be possible through to the Upfield shared path and the prevention of vehicles entering this space will result in enhanced pedestrian safety. A condition is included in the recommendation requiring the works to be undertaken by the permit holder.

The plans also show landscaping works within the section of laneway north of 8-10 Duckett Street. The applicant has not confirmed that they intend to do these works and the laneway may be required to provide vehicle access to any development that occurs at 5–7 West Street. For these reasons there is a condition included in the recommendation which requires a public works plan if the permit owner seeks to undertake works in this laneway at a later date.

**Does the proposal result in sufficient building separation and light courts in accordance with Clause 22.07 (Apartment developments of five or more storeys)?**

Clause 22.07 seeks:

- To ensure building setbacks and separation achieve adequate daylight into habitable rooms.
- To ensure living rooms achieve reasonable outlook and adequate daylight.
- To ensure living rooms achieve a greater level of privacy and higher levels of daylight compared to bedrooms.
- To ensure reasonable future development opportunities and potential amenity impacts of adjoining sites is considered.

The policy aims to achieve these objectives through minimum building setback and separation requirements and minimum light well dimensions. These are assessed in turn below.

***Setback and separation***

Table 1, 2 and 3 of Clause 22.07 provides setback dimensions to side and rear boundaries and setback dimensions to a lane. Building separation is not required where there is no outlook from a living room to a side or rear boundary, provided it does not affect the reasonable future development opportunities of the adjoining site.

Building height	Living room/main balcony outlook to boundary	Bedroom outlook to boundary
Up to 4-storeys or 12 metres	6 metres	3 metres
5-8 storeys or up to 25 metres	9 metres	4.5 metres
9 or more storeys or over 25 metres	12 metres	6 metres

*Table 1 - Building setbacks to the side or rear boundary – Clause 22.07*

Building height	Living room/main balcony outlook	Bedroom outlook
2 storeys or 9 metres	0 metres (from boundary)	0 metres (from boundary)
3-8 storeys or up to 25 metres	6 metres (from lane centreline)	3 metres (from lane centreline)
9-storeys or more or over 25 metres	9 metres (from lane centreline)	6 metres (from lane centreline)

*Table 2 - Building setbacks to a lane – Clause 22.07*

By considering each interface, the following is noted:

#### *11 West Street (Site A)*

- A light court is provided that satisfies the dimensions of this Clause (see discussion under light courts below).
- The approved development at 5-7 West Street is yet to commence. While this development incorporates light courts on the boundary that the proposal does not align with, Clause 22.07 only requires a comparable setback where a building is existing.

#### *8-10 Duckett Street (Site C)*

- A light court is located on the east boundary that meets the dimensions specified in this Clause (see discussion under light courts below). It is positioned in the centre of (although not as long as) the lightcourt on the site to the east. This will ensure sufficient daylight, outlook and privacy are maintained to these dwellings. However, a condition is included in the recommendation to require the east facing bedrooms of apartments to have external screens to windows to prevent unreasonable overlooking of the existing habitable room windows and balconies on the site to the east. This is discussed further in the Clause 58 assessment.
- Site C has a rear abuttal to a lane however, setbacks to the lane are insufficient to satisfy Table 2 of Clause 22.07. With increased setbacks of 1.5 metres to balconies, the proposal would achieve 3 metres to the centreline of the lane, achieving compliance with 22.07 and resulting in equitable development opportunities to the site on the northern side of the laneway. A condition is included in the recommendation to address this.

#### *9 Duckett Street (Site D)*

- Land to the south at 28 Hope Street contains a double storey industrial building. Clause 22.07 requires the living rooms in the development to be setback 6 metres to the boundary up to 4-storeys and 9 metres between 5 and 8 storeys. The walls of living rooms achieve these requirements but the balconies do not. Despite this, sufficient daylight and outlook will be achieved for this site and the future development of the site to the south due to the location of the rail corridor to the west which will remain open to allow daylight and outlook.

#### *1-3 Duckett Street (Site F)*

- Land adjoining the site at 9 Breese Street is a Council owned carpark on the corner of Breese and Hope Streets.
- Land at 11A Breese Street has a current planning permit application (MPS/2018/729). The proposed development on this site matches the walls on boundary proposed on the east side of the development on Site F and matches the communal open space at level 6.
- Land at 11 Breese Street is occupied by a single storey detached dwelling with its secluded private open space to the rear and a large outbuilding on the boundary shared with Site F. The building on Site F has located its eastern light court to align with the rear of 11 Breese Street and no unreasonable overlooking will occur due to the location of bedroom windows facing internally to the site. Notwithstanding this, the land at 11 Breese Street can be expected to be redeveloped and the location of light court and walls on boundary provides for an equitable development opportunity for this site.

- Land at 20-22 Hope Street contains a double storey building known as Middle Eastern Bakeries. Clause 22.07 requires the development to be setback 6 metres to the boundary up to 4-storeys and 9 metres between 5 and 8 storeys. The walls of the proposed building on Site F meet the minimum setbacks in Clause 22.07 with only balconies intruding. Future development of the site at 20-22 Hope Street could match these setbacks, providing an equitable development opportunity. This would also ensure a reasonable outlook for future residents. While the balcony intrusions will reduce daylight to lower levels, on balance this is acceptable, particularly as greater spaces are provided between balconies at upper levels, allowing more light to lower levels.

#### *24-26 Hope Street (Site G)*

- Walls are proposed to be constructed to the east and west boundaries of Site G with the exception of light courts of 4.5 metres wide. This provides an equitable development opportunity for both abutting sites and will result in acceptable privacy and outlook for occupants.

Consideration must also be given to building separation within the development site. This is relevant between Sites A and B and Sites E and G. All bedrooms exceed the preferred setbacks at all levels and all living room/balconies fall short of the preferred setbacks. Up to 4-storeys the variation is between 1.2-2.83 metres and from 5 and 8 storeys the variation is between 3–7.5 metres.

Despite these variations, the proposal is considered acceptable for the following reasons:

- With the creation of the north Mews, the building setbacks to a lane (Table 2 of Clause 22.07 above) become more appropriate due to the creation of a lane like environment between Sites A and B and between Sites E and G. Clause 22.07 has the following requirements.

<b>Building height</b>	<b>Living room / main balcony outlook to living room or main balcony outlook</b>	<b>Bedroom outlook to bedroom outlook</b>	<b>Living room / main balcony outlook to bedroom outlook</b>	<b>Living room / main balcony outlook to no outlook</b>	<b>Bedroom outlook to no outlook</b>
Up to 4-storeys and 12 metres	12 metres	6 metres	9 metres	6 metres	3 metres
5-8 storeys and up to 25 metres	18 metres	9 metres	13.5 metres	9 metres	4.5 metres
9 or more storeys and over 25 metres	24 metres	12 metres	9 metres	12 metres	6 metres

*Table 3 – Building separation from another building within a site – Clause 22.07*



Setbacks to a lane include:

- A zero metre setback from the centre of a lane up to the second storey for bedrooms and living rooms.
- A 3-metre setback to a bedroom and 6 metre setback to a living room/balcony outlook up to the eighth storey.

With these setbacks applied, the proposal is compliant up to the first floor on the south of Site A and north of Site B. Between 3-8 storeys, all bedrooms would be compliant and variations to living room/balcony outlooks would be reduced to 1.6 metres. This is considered acceptable. Between Sites E and G, the proposal would be compliant at all levels.

#### *Light wells*

Clause 22.07 specifies minimum light well dimensions as described in table 3 below:

	Minimum width	Minimum area
Up to 4-storeys or 12 metres	2 metres	9 square metres
5-8 storeys or up to 25 metres	4.5 metres	29 square metres

*Table 3 Light well dimensions*

Up to 4-storeys each of the proposed light courts exceeds the minimum width and area as specified in table 4. Between 5-8 storeys, all light courts achieve the minimum width but do not all achieve the minimum area. These include:

- Site B: west side = 15.3 square metres, east side = 22.5 square metres.
- Site C: west side = 25.2 square metres.
- Site D: west side = 20 square metres.

These variations are acceptable as the west side light courts to Site B and D are open to the Upfield shared path to the west and the east side light court to Site B aligns with the west side light court to site C, providing a total of 47 square metres.

Other minor variations include the east side light court to Site C which has a section that is 3 metres wide, less than the preferred minimum of 4.5 metres. However, the total light court size is 40 square metres and the majority of the light court achieves the minimum width of 4.5 metres. In addition, the east side light court to Site F has a section that is 2 metres wide, 2.5 metres less than the preferred minimum width. However, this is for an area of only 5 square metres.

#### **Does the proposal result in an acceptable response to Clause 22.08 (Environmentally Sustainable Design)?**

Clause 22.08 of the Moreland Planning Scheme is applicable to the assessment of this application which seeks best practice in environmentally sustainable development from design to construction and operation.

Positive ESD features of the development include:

- Water sub-metering;
- Rainwater harvesting and reuse for each building, for reuse in toilets and irrigation;
- Fire test water to be recycled;
- Minimum average 7.5 star NatHERS average;
- High solar PV target based on the number of bedrooms in each building;
- Collective purchasing agreement for residents, with certified green power;
- Target of 90% of construction and demolition waste to be diverted from landfill; and
- 14 car share spaces in the shared basement with 1 EV space being investigated

Council's ESD officers have reviewed the proposal and determined that overall the proposal results in an excellent ESD outcome. Concerns were raised about internal daylight access to some bedrooms however, on balance, the proposal is considered to be acceptable.

**Does the proposal respond appropriately to Clause 21.03-2 (Land for industry and Economic Regeneration)?**

Of the seven sites, 24-26 Hope Street (Site G) is located within Category 1 (Employment Priority Areas) as defined by the Moreland Industrial Land Strategy. The purpose of this designation is to prioritise employment generating uses and only allow residential uses where employment outcomes are prioritised.

Strategic direction 2 of Clause 21.02-3 notes:

*These areas are predominantly located within or adjacent to activity centres and their transition will support and reinforce the economic and employment objectives of activity centres. Residential uses in these precincts will only be supported if priorities for employment have been addressed and guaranteed.*

Objective 5 (Employment areas) of Clause 21.03 seeks:

- To support the transition from traditional industrial uses to a broader range of employment uses and prioritise employment uses over residential uses within Employment Areas (Category 2).

Relevant strategies of this objective include to:

- (5.2) Facilitate the transition of Employment Areas to accommodate a broader range of employment generating uses, including a mix of industry and office based uses and other compatible employment uses.
- (5.3) Ensure employment uses are prioritised over residential uses in Employment Areas. Where multi-use development including a residential component is proposed, the amount of employment floorspace should be at least equivalent to the amount of all proposed ground and first floor building floorspace (inclusive of car parking, other services and circulation space).
- (5.4) Encourage flexible floor plate layouts and increased floor to ceiling heights at ground and first floor to facilitate a variety of employment uses over time.

136 square metres of commercial floor space is proposed at ground level of Site G, less than the amount sought by this Clause. However, when considered as a whole, the Nightingale Village responds positively to this policy and will make a valuable contribution to the provision of employment generating floor space within the Brunswick Activity Centre. This is demonstrated in the provision of a combined 918 square metres of office and retail space at ground floor throughout the development site.

### Have adequate car and bicycle parking and loading facilities been provided?

The basement level of Site E and F provides for 20 car parking spaces, 14 for car share use and 6 for individual residential use. No spaces are allocated to commercial tenants.

Table 4 and 5 below outlines the car and bicycle parking requirements and reduction proposed.

Tenancy type	Number / square metre	Statutory requirement	Provided <sup>1</sup>	Variation
Studio	10	300	6	294
1-bedroom	52			
2-bedroom	118			
3-bedroom	27			
4-bedroom	1			
Office/retail <sup>2</sup>	918 square metres	32	0	32
<b>Total</b>		<b>332</b>	<b>6</b>	<b>326</b>

*Table 4 Car Parking Requirements*

<sup>1</sup> Does not include 14 car share spaces

<sup>2</sup> Applies the higher retail ratio of 3.5/100 square metres

Tenancy type	Number / square metre	Statutory requirement	Provided	Variation
Residential dwelling	208	42	384	(176)
Residential visitor	208	20	63	(43)
Office/retail <sup>1</sup>	918 square metres	3	0	3
Office/retail <sup>2</sup>	918 square metres	1	0	1
<b>Total</b>		<b>66</b>	<b>447</b>	<b>(215)</b>

*Table 5 Bicycle parking requirements*

<sup>1</sup> Applies the higher retail ratio of 1:300 square metres

<sup>2</sup> Applies the higher retail ratio of 1:500 square metres

The above table does not account for 'flexi spaces' that could potentially be adapted to home office. For the purposes of this assessment, the 'flexi spaces' have not been included in the car parking calculation as any adaptation into a home office use will occur ancillary to the use of the land for a dwelling. They are not located where they could be readily tenanted separate from a dwelling.

Based on Council's Local Planning Policy at Clause 22.03-3 (Car and Bike Parking and Vehicle Access) it is considered reasonable to reduce the car parking requirements. Clause 22.03-3 states that it is policy 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.

The proposed car parking reduction is appropriate when considered against the relevant policy objectives noting:

- The site is within the Brunswick Activity Centre with excellent access to public transport including:
  - Anstey station within 200 metres to the north.
  - Route 503 Bus services on Albion Street within 400 metres to the north.
  - Route 19 Tram service on Sydney Road 450 metres to the east.
- 14 car share spaces are provided on-site.
- 447 bicycle parking spaces are provided, well above the 66 spaces required by Clause 52.34.
- A Green Travel Plan has been prepared, to facilitate resident use of nearby public transport, car share and cycling facilities. The Green Travel Plan includes a 'sustainable transport fund', payable by residents which will subsidise public transport costs, car share membership and pay for bicycle servicing equipment.
- Reduced motor vehicle use and mode shift to sustainable transport is supported by planning policy, specifically:
  - Clause 15.02-1S: 'Support low energy forms of transport such as walking and cycling.'
  - Clause 16.01-2S: 'Facilitate residential development that ... encourages public transport use.'
  - Clause 18.02-1S: 'Ensure development provides opportunities to create more sustainable transport options such as walking, cycling and public transport.'
  - Clause 21.02-3: 'Walking and cycling are the preferred modes of transport'
  - Clause 22.03-3: 'Support reduced car parking rates in developments within...activity centres...and with increased provision of bicycle parking'

With excellent access to alternative transport modes, it is considered unnecessary to provide parking for the commercial tenants. However, to support this reduction, commercial tenants should have access to secure bicycle parking. A condition is included in the recommendation to show a minimum of 15 secured bicycle parking spaces for commercial tenants and staff. The car parking reduction is supported by Council's Development Advice Unit, subject to recommended conditions regarding the allocation of spaces and modifications to bicycle parking.

In addition, they note that the draft Moreland Integrated Transport Strategy proposes to introduce 2 hour limited parking restrictions in the locality, effective until 11 pm each day. In addition, future residents of the development will not be eligible for parking permits and would need to park 350-500 metres from the site to avoid restrictions. These strategies will effectively discourage residents from owning a car and parking in the locality and will encourage the use of alternative modes of transport.

With the shared parking located within Site E and F, convenient access must be secured for residents living in other buildings within the Village. A condition is included within the recommendation to ensure this.

## **Loading and unloading**

Clause 65.01 of the Moreland Planning Scheme requires consideration of the adequacy of loading and unloading facilities and any associated amenity, traffic flow and road safety impacts. Council's Development Advice Unit have not raised concerns with the non-provision of a loading area, subject to each shop being provided with a car space, to allow for small-scale loading and unloading. However, as discussed above, it is considered unnecessary to provide individual car spaces for the commercial tenants.

The waste collection point in Duckett Street can be used to provide for appropriate loading and provides convenient access to buildings fronting Duckett Street. With only small tenancies in the buildings fronting Hope Street and West Streets it is expected that deliveries from small vans would occur and existing on-street car parking could be used. This will enable deliveries for commercial tenants, a precinct waste collection point and a convenient location for removalists to load/unload. A condition is included within the recommendation to address this.

## **Does the proposal result in any unreasonable traffic impacts?**

Council's development advice engineer has reviewed the proposal and is satisfied that the volume of traffic generated by the 14 on-site car share spaces and six resident spaces will not impact on the traffic flow through the area. Council's Development Advice Engineer also anticipates that up to 31 cars will be parked by residents in surrounding streets and these vehicles will result in approximately 30 additional movements during peak times. The volume of traffic generated by the proposal will not exceed the maximum volumes permitted under the Moreland Integrated Transport Strategy.

## **Does the proposal address the design objectives of Clause 58?**

The particular provisions relating to apartment development at Clause 58 are of relevance to this application. The proposal achieves a high level of compliance with the Objectives and Standards of this Clause with the key considerations discussed below.

### **Clause 58.04-1 Building Setbacks objective – Standard D14**

The purpose of this Clause is:

- To ensure the setback of a building from a boundary appropriately responds to the existing urban context or contributes to the preferred future development of the area.
- To allow adequate daylight into new dwellings.
- To limit views into habitable room windows and private open space of new and existing dwellings.
- To provide a reasonable outlook from new dwellings.
- To ensure the building setbacks provide appropriate internal amenity to meet the needs of residents.

East facing bedrooms within the building on Site C will overlook windows and balconies of existing apartments in 2-6 Duckett Street. A condition is included in the recommendation to require the east facing bedrooms of apartments to have external screens to windows to prevent unreasonable overlooking of the existing habitable room windows and balconies on the site to the east.

The assessment of the application against Clause 22.07 addresses the other objectives of this Clause.

### **Clause 58.05-3 Private open space objective - Standard D19**

The objectives of this Clause are to provide adequate private open space for the reasonable recreation and service needs of residents.

The proposal provides a high level of compliance with this Clause with the following items requiring changes:

- Site C - Apartment Type 10 (1 x 1 bedroom) should be amended to show a minimum balcony depth (internally) of 1.8m, an increase of 100mm. A condition is included in the recommendation to address this.
- Site E - Type 2B and 2C illustrates a 2m depth of balcony to outside edge, not inside. Type 1D shows a balcony depth of 1.75 metres to the outside edge of the balcony. A condition of the recommendation requires this to be 1.8 metres.

### **Clause 58.07-1 Functional layout objective - Standard D24**

The purpose of this Clause is to ensure dwellings provide functional areas that meet the needs of residents.

The proposal achieves a high level of compliance with the following items requiring assessment:

- The main bedroom for apartment type I on Site A has dimensions of 3 x 2.8 metres. This is less than the standard however, this is considered acceptable as it affects only 3 apartments and the remaining standards have been met.
- Site F, Type E (Studio) has only 9 square metres of living area with a depth of 3.2 x 2.8 metres, shared with the bed. This is acceptable as it is a studio apartment type where it is expected that some spaces have a multi-functional purpose. Although the living area dimensions are less than the standard, it is acceptable as it provides for dwelling diversity and a more affordable product.
- Site G - All apartments achieve the minimum dimensions with the exception of:
  - Apartment Type C which includes some of the dining area in the Living space. However, this is acceptable as it only applies to one apartment.
  - Apartment Type J includes the whole dining area in the living room and the living room abutting the kitchen area. This is well below the standard of internal amenity sought by Standard D24. However, this arrangement applies to only one of the 208 dwellings and on this basis can be supported.

### **Clause 58.07-2 Room depth objective - Standard D25**

The purpose of this Clause is to allow adequate daylight into single aspect habitable rooms.

Bedroom width for Type E and I (Studios) are less than 3 metres (2.7 metres). This is considered acceptable as a studio apartment by definition shares space, usually with a living area.

### **Is the site potentially contaminated?**

The site is affected by an Environmental Audit Overlay. The applicant submitted an environmental site assessment report as part of their application, detailing the extent of site contamination and confirming that the site would be appropriate for the intended uses subject to the completion of an Environmental Audit. An Environmental Audit would need to be undertaken before any development commenced on the land and should form a condition of any permit that may be issued. This will ensure that the site is remediated to an appropriate standard to ensure the land is safe for future residents.

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

Objective 9 of Clause 21.03-3 (Housing) seeks to increase the supply of housing that is visitable and adaptable to meet the needs of different sectors of the community. Clause 58 advances this objective by seeking to ensure the design of dwellings meets the needs of people with limited mobility, with Standard D17 requiring that at least 50% of dwellings provide design features that facilitate accessibility.

70% of apartments have been designed to be adaptable in accordance with Standard D17 of Clause 58, a 20% improvement above the 50% required by this standard.

A condition is included in the recommendation to confirm that all single level apartments have a minimum 850mm wide entry door and a 1 metre wide entry hall.

### **Does the development deliver affordable housing?**

7% of the apartments are proposed to be used for affordable housing. This represents 14 of the 208 apartments which will be owned and managed by not for profit affordable housing providers including Housing Choices Australia and Womens' Property Initiatives. The location of apartments to be owned and managed for affordable housing is not yet known. A condition is included in the recommendation requiring an apartment schedule, outlining the apartments that will be used for affordable housing. To provide ongoing security for the use of these apartments for affordable housing, a condition is included in the recommendation requiring the owner to enter an agreement with a Registered Housing Agency. This is one of the requirements within the request for a Section 173 Agreement, also included as a condition within the recommendation.

## **5. Response to Objector Concerns**

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

- Reduction in car parking;
- Building Height – in excess of DDO18 preferred height limits;
- Loss of amenity including:
  - overlooking; (in particular 24-26 Hope);
  - shadowing; (shadowing over 11 Breese);
  - loss of natural light; and
  - loss of breeze paths.
- Alignment of light courts with 2-6 Duckett Street.
- Stormwater Management.

Other issues raised by objectors are addressed below.

### **Overdevelopment**

State and Local policies expressly encourage an increase in residential density in this location, in order to meet population growth in an area that is well serviced by transport and services. Section 4 of this report provides a detailed assessment of the proposal and how it responds to relevant planning policy objectives, including building height and separation.

### **Closure of Duckett Street**

The closure of Duckett Street was resolved through a decision of Council at the January 2017 Meeting of Council following the 2014 planning permit application. The closure commences west of 2-6 Duckett Street and will continue 25 metres to the Upfield shared path to provide for public pedestrian movements. The proposed public realm works in Duckett Street will not inhibit existing vehicle movements or circulation along Duckett Street.

### **Safety of roof top communal area (wall height) of 24-26 Hope Street**

The development will be required to meet building regulations, providing minimum balustrade heights for the safe use of the rooftop space.

## **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 development will result in an acceptable outcome having struck a balance between achieving urban consolidation while responding to site's context and the objectives of the planning policy framework. The proposal enhances the built form character of the precinct providing an acceptable balance between internal and external amenity and generous areas of communal open space areas. The site's excellent access to services and alternative transport modes makes the site appropriate for a reduction of car parking.

On the balance of policies and controls within the Moreland Planning Scheme and objections received, it is considered that a Notice of Decision to Grant a Planning Permit No MPS/2018/362 should be issued subject to the conditions included in the recommendation of this report.

### **Attachment/s**

<a href="#"><u>1↓</u></a>	Locality Plan	D18/478045
<a href="#"><u>2↓</u></a>	Advertise Plan - Part 1	D18/478050
<a href="#"><u>3↓</u></a>	Advertised Plan - Part 2	D18/478052
<a href="#"><u>4↓</u></a>	Discussion Plans	D18/478055