**Council AGENDA**

**Planning and Related Matters**

Wednesday 26 June 2024

Commencing 7 pm

Council Chamber, Merri-bek Civic Centre, 90 Bell Street, Coburg

A close-up of a newspaper

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

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

**1. WELCOME**

**2. APOLOGIES**

**3. DISCLOSURES OF CONFLICTS OF INTEREST**

**4. MINUTE CONFIRMATION**

The minutes of the Planning and Related Matters Meeting held on 22 May 2024 be confirmed.

**5. Council Reports**

5.1 81A Bell Street, Coburg - Planning Permit Application - MPS/2023/774 4

5.2 448-450 & 452-456 Lygon Street, BRUNSWICK EAST - MPS/2015/949/B 22

5.3 10 Dawson Street, Brunswick - Planning Permit Application - MPS/2023/637 43

**6. URGENT BUSINESS**

**5. Council Reports**

**5.1 81A Bell Street, Coburg - Planning Permit Application - MPS/2023/774**

**Group Manager City Development, Phillip Priest**

**City Development**

**Executive Summary**

|  |  |
| --- | --- |
| **Property:** | 81A Bell Street, Coburg |
| **Proposal:** | Development of the land for the purposes of a multi-storey mixed-use development comprising dwellings, shop tenancy and food and drink premises across multiple buildings; use of the land for a food and drink premises; a reduction to the standard car parking requirement; and alteration to access to a road in a Transport Zone 2 |
| **Zoning and Overlays:** |  Activity Centre Zone, Schedule 1 (ACZ1)   Parking Overlay (PO1)   Development Contributions Plan Overlay (DCPO1) |
| **Strategic setting:** |  |
| **Objections:** |  30 with key concerns being:  - Traffic Impacts  - Car Parking  - Building Height |
| **Planning Information and Discussion (PID) Meeting:** |  A PID meeting was not held given the Council officer recommendation for refusal and the applicant’s prompt lodgement of an appeal to the Victorian Civil and Administrative Tribunal (VCAT) following the public notice period. |
| **Accessibility:** |  Adaptable apartments comprise 58 per cent of the proposal. |
| **Key reasons for refusal:** |  Unacceptable height and visual bulk to Bridges Reserve   Inconsistency with built form requirements and design objectives of ACZ1 with the buildings exceeding the maximum height and street wall heights with inadequate upper-level setbacks.   Inadequate ESD response. |
| **Recommendation:** | It is recommended that Council’s submission to VCAT be that no planning permit should be issued for the proposal, based on the grounds outlined in the recommendation. |

**Officer Recommendation**

Council’s submission to Victorian Civil and Administrative Tribunal be that no planning permit should be issued for the development of the land for the purposes of a multi-storey mixed-use development comprising dwellings, shop tenancy and food and drink premises across multiple buildings; use of the land for a food and drink premises; a reduction to the standard car parking requirement; and alteration to access to a road in a Transport Zone 2 at 81A Bell Street, Coburg, subject to the following grounds:

1. The proposal fails to comply with the purpose and objectives of the Activity Centre Zone, Schedule 1. More specifically, the design response does not adequately respond to the preferred future character for the area, including that:

a) The reduced upper-level setback from podium level and building design has an unacceptable visual impact on Bridges Reserve.

b) The poor ESD performance, lack of public benefit and unacceptable visual impacts on surrounding streets and public spaces fail to provide sufficient justification for the additional height and reduced upper level setbacks of the Activity Centre Zone.

c) The development does not provide appropriate new canopy trees.

d) The excessive hard paving associated with pathways in the Bell Street setback compromises the desired landscaped setback and the appearance of buildings with landscaped grounds sought by the Activity Centre Zone.

2. The proposal is not consistent with the following strategies contained at Clause 15.01-1L Urban Design in Merri-bek:

a) The siting and design of the buildings is an inappropriate response to the urban context, siting and built form of the precinct and fails to deliver an appropriate balance of open space to built-form, resulting in unacceptable building scale and bulk when viewed from Bridges Reserve.

b) The proposal fails to ensure that landscaping integrates development with the surrounding environment which includes Bridges Reserve.

c) The proposal provides an inappropriate detailed design response to Rodda Street, with solid terrace balustrading/fencing at ground-floor leading to visual bulk at the pedestrian scale.

3. The design of the buildings fails to meet the strategies and guidelines of Clause 15.01-2L (Apartment Development in Merri-bek) with respect to:

a) The building separation between Buildings A1 and A2 and Buildings A2 and C does not meet the distances specified in Table 3 and does not allow adequate daylight to living rooms and bedrooms.

4. The proposal does not satisfy the following objectives and standards of Clause 58 Apartment Developments:

a) Clause 58.02-1 – Urban Context Objectives - The design fails to contribute to the preferred future development of the area and is not appropriate to the urban context and the site.

b) Clause 58.02-5 – Integration with the Street Objective - The design fails to provide an appropriate interface with Bridges Reserve, Bell Street and Rodda Street.

c) Clause 58.03-1: Energy Efficiency Objective – The proposal fails to provide maximum cooling loads and preliminary energy ratings required to assess this standard.

d) Clause 58.03-8 - Integrated Water and Stormwater Management Objectives – The proposal fails to provide the information required to assess this standard.

e) Clause 58.03-5 – Landscaping Objectives – The development fails to provide tree species that will remain viable and support the preferred urban context of the area as well as provide adequate shade to communal areas.

f) Clause 58.04-1 – Building Setback Objectives – The setbacks of the buildings do not contribute to the preferred future development of the area and fail to provide appropriate internal amenity for residents, particularly in regard to daylight and outlook.

g) Clause 58.07-4 – Natural Ventilation Objective – The proposal fails to demonstrate that the cross-ventilation requirements are met.

5. The proposal fails to demonstrate that it achieves best practice environmentally sustainable design with respect to:

a) The performance objectives at Clause 15.01-2L-05 (Environmentally Sustainable Development), in particular daylight, thermal performance, Water Sensitive Urban Design and natural ventilation.

b) The performance objectives at Clause 15.01-2L-04 (Energy efficiency in Merri-bek) which seeks to creates quality living environments with particular regard to daylight access and natural ventilation.

c) Activity Centre Zone, Schedule 1 objectives seek to ensure all buildings are designed to meet best practice standards for Environmentally Sustainable Design (ESD).

d) Stormwater Management in Urban Development objectives at Clause 53.18 as the proposal fails to provide the information required to assess this requirement.

6. The development contravenes Section 173 Agreement AF306853Y.

**REPORT**

**1. Background**

**Subject site**

The subject site is located at the western intersection of Bell and Rodda Streets and is approximately 1.1 hectares in area. The site has a frontage of 82 metres to Bell Street, a frontage of 154 metres to Rodda Street, and shares a boundary of approximately 100 metres with Bridges Reserve to the west.

The site previously contained the former Coburg High School and is currently vacant. It has a fall of approximately 2.2 metres from the north‐west to the south‐east corners and does not contain any vegetation.

The land is burdened by a Section 173 Agreement as detailed in Section 4 of this report.

**Surrounds**

Land to the south and east is zoned residential, with single and double‐storey dwellings. Land to the immediate west is public open space (Bridges Reserve and Coburg City Oval), and land to the north is the Council offices and Coburg Town Hall.

A location plan forms **Attachment 1,** and a zoning map forms **Attachment 2.**

**Planning Permit and Site History**

The site has had many prior development approvals since the school’s closure, that have not been acted upon and are now no longer valid.

Planning Permit SP/2018/285 was issued on 4 April 2019 and allowed the subdivision of a land creating 1 lot, 1 reserve, 2 roads and the removal of various easements. The Plan of Subdivision has not been certified by Council to date, and an extension of time was approved on 18 April 2023 that allowed the subdivision plan to be certified no later than 4 April 2025. The Plan of Subdivision vests a southern portion of the site and pathway along the western boundary with Council. The proposal is generally in accordance with this subdivision.

Planning application MPS/2021/685 was for buildings and works to construct multi-storey buildings containing dwellings, use of the land for a food and drink premises, a reduction to the statutory car parking rates, and alterations and creation of access to a road in a Transport Zone 2. MPS/2021/685 is referred to as the ‘*previous application*’ in this report. Council issued a notice of refusal on 13 September 2022 which included refusal grounds related to the built form, siting, internal amenity, vehicle access, landscaping and environmentally sustainable design.

An appeal was lodged with VCAT against Council’s decision (VCAT ref. P1297/2022). During the VCAT process, the application plans were amended and are included at **Attachment 4.** The hearing occurred in March 2023. VCAT handed down its decision in May 2023 which supported Council’s decision, and no permit was granted. The VCAT decision forms **Attachment 5.**

The current application is a “correcting repeat application”. That is, it makes changes that address some concerns raised by both Council and VCAT (as documented in VCAT’s decision). In such cases, Council and VCAT, in considering the application should give weight to the findings of the previous VCAT decision. There are some notable improvements to the proposal including separation between Building’s A1 and B, treatment and dimensions of the public links and activation to Bell Street. While these represent a genuine attempt to address some issues, several issues are considered to remain outstanding.

**The Proposal**

The proposal is summarised as follows:

 Construction of a mixed-use development comprising:

 Three towers ranging in height from seven storeys to eleven storeys (with a lower five storey scale at the site’s south-eastern corner).

 Two commercial tenancies at ground floor facing Bridges Reserve, with a total floor area of 345 square metres.

 A total of 444 dwellings made up of:

 223 one bedroom dwellings

 195 two bedroom dwellings

 21 three bedroom dwellings

 5 four bedroom dwellings

 Two basement levels containing 499 car parking spaces.

 Provision of 716 bicycle parking spaces.

 Communal open space areas at ground floor.

 A one metre wide pathway easement between the dwellings and Bridges Reserve.

 A pedestrian link from Rodda Street to Bridges Reserve through the middle and the south of the site.

The three building structures are referred to as Building’s A1, A2, B and C as shown in the below image (north is to the right of the image):

A blueprint of a building

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**Figure 1: Buildings Diagram plan excerpt, CHT Architects, 23/01/2024**

The development plans and 3D perspectives form **Attachment 3.**

**Process**

An appeal has been lodged with VCAT against Council’s failure to determine the application within 60 statutory days. A compulsory conference is scheduled for 5 July 2024, and a major cases hearing for 2, 3, 4, 5, 6 and 9 September 2024.

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

| **Control** | **Permit Requirement** |
| --- | --- |
| Activity Centre Zone | Clause 37.08-2  Dwelling and shop are Section 1 uses in the zone, meaning that a permit is not required for these uses.  A permit is required for the use of the land for a food and drink premises.  Clause 37.08-4  A permit is required to construct a building or construct or carry out works. |
| Particular Provisions | Clause 52.06-3  A permit is required to reduce the car parking requirement from 12 to 4 spaces for the food and drink premises.  Clause 52.27-2  A permit is required to create/alter access to a Road in a Transport Zone 2 (Bell Street). |

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

 Clause 45.06: Development Contributions Plan Overlay. This Overlay is not relevant because contributions under the Development Contribution Plan ended on 30 June 2023.

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

 Clause 53.18: Stormwater Management in Urban Development

 Clause 58: Apartment Developments

**Aboriginal Heritage**

The *Aboriginal Heritage Act 2006* and *Aboriginal Heritage Regulations 2018* provide for the protection of Aboriginal places, objects and human remains in Victoria.

Objectors have raised the possibility that the subject site may be a First Nations Burial Ground.

The site is not within an identified ‘Area of Cultural Heritage Sensitivity’, which means that a Cultural Heritage Management Plan is not required under the relevant legislation.

It is noted that a Cultural Heritage Management Plan was undertaken in 2009, which did not find any evidence of a Burial Ground.

Despite this, if development occurs at the site and any human remains or artefacts are discovered, the developer will have legal obligations that need to be followed for handling of the remains.

This information will be provided to VCAT, as the decision-maker for this application.

**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 including all properties on Rodda Street, Budds Street and Richards Street, as well as all properties with a frontage to Russell Street;

 Placing six signs on the site - two facing Bell Street, two facing Rodda Street, and two facing Bridges Reserve; and

 Placing a copy of the public notice in the Herald Sun newspaper (Thursday, 28 March 2024).

Council has received 30 objections to date. A map identifying the location of objectors forms **Attachment 6**.

The key issues raised in objections are:

 Car parking and traffic

 Building height, scale and visual bulk

 Overshadowing to Bridges Reserve and adjoining dwellings

 Vehicle access/egress to Rodda Street

 Construction impacts

 Environmentally Sustainable Developments

 Insufficient communal facilities for residents

 Noise impacts

 No affordable housing as part of the development

 Aboriginal Cultural Heritage

 Drainage

 Viability of Coburg Night Markets

A Planning Information and Discussion meeting was not held given:

 This is a repeat application of a previous proposal;

 The Council officer recommendation is for refusal; and

 The applicant lodged an application to VCAT shortly after the completion of the public notice period.

Objectors have until 13 June to join as parties to the VCAT appeal.

**Internal/external referrals**

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

|  |  |
| --- | --- |
| **External Agency** | **Objection/No objection** |
| Transport for Victoria. This application was referred due to the Transport Zone and given more than 60 dwellings are proposed. | No objection subject to conditions which will be included in the without prejudice conditions that form part of the VCAT review process. |

|  |  |
| --- | --- |
| **Internal Branch/Business Unit** | **Comments** |
| Urban Design Unit | Concerns were raised with the proposal which are addressed in detail in Section 4 of this report. |
| Transport - Development Engineering | Supports the proposal. Recommended changes could be addressed by conditions were a permit to issue. These are considered further in Section 4 of this report. |
| Sustainable Built Environment - ESD Team | Concerns were raised with the proposal which are addressed in detail in Section 4 of this report. |
| Open Space Design and Development Unit | Concerns were raised with the proposal which are addressed in detail in Section 4 of this report. Recommended changes could be addressed by conditions, were a permit to issue. |
| Property Unit | Raised no objection to the proposal. |
| Principal Advisor Social and Affordable Housing | No proposal for the provision of affordable housing. A recommendation was provided for an appropriate affordable housing offer. Discussed further in Section 4 of this report. |

**3. Policy Implications**

**Planning Policy Framework (PPF):**

The following policies are of most relevance to this application:

 Municipal Planning Strategy (Clause 2)

 Settlement (Clause 11)

 Environmental and Landscape Values (Clause 12)

 Environmental Risks and Amenity (Clause 13)

 Built Environment (Clause 15.01), including:

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

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

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

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

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

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

 Residential Development (Clause 16.01), including:

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

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

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

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

 Economic Development (Clause 17)

 Transport (Clause 18)

 Infrastructure (Clause 19.02)

**Human Rights Consideration**

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

 Section 12: Freedom of movement

 Section 13: Privacy and Reputation

 Section 20: Property rights

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

**4. Issues**

In considering this application, regard has been given to the Planning Policy Framework (PPF), the provisions of the Merri-bek Planning Scheme, objections received, the merits of the application and VCAT’s decision on the previous application (P1297/2022 / MPS/2021/685).

**Does the proposal benefit from strategic policy support?**

Both State and local planning policies support increased housing and commercial uses in locations that can take advantage of excellent access to public transport and other services within Activity Centres.

The site benefits from this policy support and a change from the existing character is expected. However, while some improvements have been made to the proposal, the design does not respond appropriately to its interfaces and those objectives of the Activity Centre Zone, set out in this report.

**Does the built form respond to the preferred character of the area and provide an acceptable response to its interfaces?**

Schedule 1 to the Activity Centre Zone (ACZ1) outlines the preferred built form outcomes and objectives that are to be achieved on the site. Design objectives of Precinct 4 to the Schedule of the ACZ1 include:

 *‘To ensure development responds to the transitional nature of the precinct from large scale development closer to the core of the Activity Centre to the residential development adjoining the Activity Centre, particularly to the south and east.’*

***Built Form***

A summary of the built form requirements of ACZ1 is provided in the table below. These requirements are discretionary and can therefore be varied if it is considered that the objectives of the ACZ1 are met.

| 1. **Design Element** | 1. **ACZ Precinct 4 Requirement** | 1. **Proposal** |
| --- | --- | --- |
| 1. Building Height | 1. 28.8m | 1. Up to 33.9 m (11 storeys) |
| 1. Streetwall/Podium Height – Rodda Street | 1. Between 7.5m to 2. 14.5m (Corner of Bell Street and Rodda Street) | 1. Between 7.9m (pergola) and 18.6m (building wall) |
| 1. Streetwall/Podium Height – Bridges Reserve | 1. 7.5m | 1. Bldg B: 6-storeys/19.80m 2. Bldg A1: 2-storeys/8.22m |
| 1. Streetwall/Podium Height – Bell Street | 1. 14.5m | 1. Bldg B: 6-storeys/20.30m 2. Bldg C: 5-storeys/18.20m |
| 1. Upper-level setback (all interfaces) | 1. 5m\* | 1. Between 2.2m and 5.76m |

*\* There was debate in the previous VCAT decision about whether this setback applies from the boundary or from the lower levels. VCAT affirmed that the intent is to provide spatial separation between upper and lower level sections of the building. As such, this assessment measures the upper level setbacks from the podium/lower levels, not the boundary.*

The following section is divided into the site’s interfaces. It will provide commentary on what Council’s concern is, what VCAT said about the previous proposal, and conclude whether the concern has been addressed in the amended proposal.

*Bridges Reserve*

The ACZ1 seeks to ensure that development provides an appropriate interface with Bridges Reserve, including by specifying a preferred maximum building height, street wall/podium height and upper-level setbacks. Council raised concern with this element of the proposal in the previous application – specifically that the length of the buildings combined with the height, lack of visual breaks and limited setbacks of the upper levels results in unacceptable mass and bulk as viewed from the adjoining public open space at Bridges Reserve and City Oval.

The proposed street wall/podium height of ~19.5 metres for Building B exceeds the 7.5 metres sought by the ACZ1. This element was found to be acceptable at the VCAT hearing, however the position was still strongly held by Council that a more recessive upper level must be achieved. VCAT agreed that the previous upper-level setback of approximately 200mm (as nominated by VCAT in their order) is inappropriate and that a *greater degree of recession to moderate the built form* is required.

The current application retains the same street wall/podium height but now proposes an upper-level setback of 2.9 metres from lower levels (or 6.5 metres from the boundary).

VCAT found the intent of the ACZ1 was for a spatial separationbetween the lower and upper level sections of the building *in a manner which is legible and meaningful* [Paragraph 47].

They went on to state that the *levels of Building B above the street wall/podium should be set back a minimum 6.5 metres from the western boundary to achieve a built form profile reflective of that of Building A1, albeit at a taller scale* [Paragraph 52].

While the amended proposal achieves this numeric setback, the design does not adequately achieve the overarching objective of achieving a legible and meaningful separation as required by the ACZ1 and previous VCAT Order, to reduce the visual impact of Building B on the Reserve.

It is, arguably, the most visible portion of the development from multiple vistas within the public realm. It is also the building that most offends the provisions of the ACZ1 with non-compliant maximum building height, street wall height and upper-level setbacks.

The following aspects of the design contribute to concerns that meaningful separation is not achieved:

 There is a change in material from red oxide concrete to light brown tinted glass/natural concrete where the podium framing ‘disappears’ towards the south-west corner of the building. This change in material fails to ensure that the street wall clearly reads as a distinct element from the upper levels in this location, with the podium ‘bleeding into’ the levels above.

 The minimum 6.5 metre setbacks to the glazing line of the upper levels (i.e. Level 6 and above) is similar to the setback of glazing lines within west-facing balconies at the lower levels (i.e. Levels 5 and below), which are sited 6.7 metres and 6.9 metres from the western boundary. When viewed from the Reserve, this results in upper levels that appear to be sited on the same plane as the lower level recessed glazing line.

These issues are shown in the below 3D perspective.

A group of people walking in a park

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**Figure 2: Bridges Reserve view to Building A and B, CHT Architects**

It is the cumulation of both the design and the setbacks that is resulting in a building that visually overwhelms Bridges Reserve. Officers maintain that a 5 metre upper-level setback from street wall/podium level, together with other design changes, would be required to lessen this impact. This view is shared by Council’s Urban Design Unit.

With respect to street wall/podium height and upper-level setbacks of Building A1, the same issues above are noted. Specifically, upper-level glazing lines are setback consistent with those of the lower levels which fails to provide any meaningful setback to lessen the visual impact of this building.

The separation between Buildings A1 and B was also a key issue in the previous application. The amended proposal incorporates a minimum separation of 15 metres at ground floor, which staggers at upper levels to provide a maximum separation of roughly 30 metres. This is a more appropriate design response that is supported by Council’s Urban Design Unit and satisfies VCAT’s previous commentary that a 15 metre separation should be provided in this location.

*Bell Street*

Buildings B and C exceed the ACZ1 street wall height requirements for Bell Street. While this was not previously supported by Council, it was found to be acceptable by VCAT. The proposed upper-level setbacks comply with the 5 metre requirement. These design elements are therefore considered acceptable in relation to the current application.

The key issue for Council was the treatment of the front setback. The ACZ1 provisions for Precinct 4 include a ‘Landscape setback of 10 metres’ along the entire Bell Street frontage of the subject land. Council was concerned in the previous application that this area did not meet the 10-metre dimension; was treated with too much hard paving; did not provide sufficient deep soil planting; and that the semi-circular driveway, to be used as a drop-off zone, would result in dominance of vehicle structures and provide a visual barrier to the pathway beyond. Council was also concerned with the extent of blank walls to Bell Street.

While VCAT was supportive of the driveway*,* they agreed with Council on the other matters raised:

*The changes required include an increase in the setback from Bell Street to a minimum of 10 metres for the entire frontage; the deletion of the pathway within the setback which extends along (or proximate to) the building edge; and with the exception of the pathways leading from the Bell Street footpath to the lobby areas, the deletion of the other pathways in the setback. The space gained by increasing the setback and removing the paving should be landscaped.* [Paragraph 85].

The current application increases the front setback to a minimum of 9.95 metres and to a maximum of 10.25 metres. This is accepted. However, the amended proposal has not addressed all of Council’s, or VCAT’s, concerns. The pathway along the building edge and all pathways leading to Bell Street have been retained and there is no meaningful increase to landscaping. While VCAT did not require the removal of the Porte Cochere vehicle drop off to this frontage, as this the proposal is a residential apartment development and serves no civic purpose, nor is it a residential hotel, such a grand design gesture at the expense of meaningful landscaping and which unnecessarily interrupts both pedestrian and vehicle traffic along Bell Street is both inappropriate and unnecessary. This front set-back also remains unresolved as there is no direct pedestrian access point from Bell Street to the internal north/south communal pathway. This is likely to encourage pedestrians to use the driveway for access. These matters could ordinarily be addressed through permit conditions if a permit were to be issued. The previous and proposed ground floor landscape plans form **Attachment 7**.

Regarding the extent of blank walls to Bell Street, VCAT shared Council’s concern. The amended proposal now incorporates additional glazed elements facing Bell Street, including two large communal rooms, which is supported.

*Rodda Street*

Officers are now generally supportive of the proposed presentation to Rodda Street. However, one concern introduced by the current proposal is that there is a greater proportion of brick fences for ground floor terraces which are roughly 1.8m high above street level. This negatively impacts community safety considerations through opportunities for casual surveillance and visual permeability to the street and fails to meet Clause 58.02-5 – Integration with the Street Objective. This issue could be addressed via conditions if a permit were to be issued.

*Southern Elevation*

Council previously raised concern with the presentation of the ground floor to the southern link through the site and amenity of some south-facing dwellings, noting that the height of terraces would result in a bulky and inactive frontage. The current proposal has been amended to clearly show the stepped relationship between the footpath, and to planter boxes and ground floor terraces beyond. This is supported.

**Is the landscaping and central communal area acceptable?**

The East/West link and northern link to Bell Street are intended to be publicly-accessible spaces. However, the ground floor communal area between Buildings A1 and A2 is intended to be for exclusive use of the residents and their visitors. VCAT agreed with Council that improvements to this area were required, including removing the artificial grass area, introducing garden beds adjacent to ground floor dwellings as a privacy buffer, and a greater number of canopy trees.

The current proposal has fenced off the communal area, removed the artificial grass area and added planters around the edges. These changes are supported. However, there are no additional or improved canopy trees, with only the previously proposed fruit tree species retained.

Additional issues are also noted with the wider landscaping response for the site, including inappropriate tree species selection for planting area; inappropriate street tree species selection; and species count missing from the landscape plans.

Ordinarily, these issues could be addressed through permit conditions. However, as Officers are unsupportive of the proposal and as they fail to address the previous VCAT findings, they have been included as recommend grounds of refusal.

The previous application fell short of the deep soil planting requirement. This has now been addressed, with a stated 1,800m2 of deep soil planting (17 per cent of site).

**Does the proposal provide adequate building setbacks between buildings?**

Council’s Apartment Development Policy (Clause 15.01-2L) sets out building setback standards for apartment developments of five or more storeys. The objectives of the policy relate to daylight and outlook, future development opportunities of adjoining site and amenity impacts.

The proposed development continues to fail the setbacks set out in this policy, in the following locations:

|  |  |  |
| --- | --- | --- |
| **Height** | **Required** | **Proposed** |
| **Location - Building A1 to A2** | | |
| Up to 4 storeys | 12 metres (balcony to balcony) | 5 metres to 24 metres |
| 5-8 storeys | 13.5 metres (Main Balcony to Bedroom) | 11.78 metres to 24 metres |
| 18 metres (Main Balcony to Main Balcony) | 9.85 metres to 20 metres |
| **Location - Building A2 to C** | | |
| 5-8 storeys | 18 metres (balcony to balcony) | 12.1 metres to 13 metres |
|  | 13.5 metres (living room/balcony to bedroom) | 12.1 metres |

Approximately 40 dwellings are affected by these non-compliances. Daylight modelling would ordinarily be submitted to demonstrate that acceptable levels of internal amenity are achieved. Despite being recommended throughout the application process, this information has not been submitted, limiting the ability of Council officers to assess the impacts of the non-compliant separation.

It was an expectation of the previous VCAT decision that any future proposal satisfy BESS daylight requirements. Further, Council’s ESD Unit are not supportive of the proposal and confirmed that *‘Deemed to Satisfy’* daylight assumptions cannot be adopted where this local policy is sought to be varied. The proposal therefore falls well short of the exemplary design objective of the ACZ (which is a relevant consideration where buildings exceed the preferred height, as is the case here). These failing of the proposal are expected to result in unacceptable internal amenity for some dwellings located adjacent to non-compliant separation distances.

**Does the proposal provide adequate internal amenity?**

The following key standards of Clause 58 relating to onsite amenity are met:

 Communal open space comfortably exceeds the 250 square metres of communal open spaces required by Standard D7.

 58 per cent of dwellings are accessible, exceeding the 50 per cent requirement of Standard D18.

 Room sizes and depths meet the requirements of Standards D26 and D27.

*Clause 58.07-4 – Natural Ventilation Objective*

The proposal has not justified the use of skylights to achieve the claimed cross ventilation provision of 41.9 per cent (Standard D29 requirement: 40 per cent). Officers are not aware of any precedent which accepts the use of skylights to meet this standard. In addition, Council’s ESD Unit raised concern with this element noting that a natural ventilation assessment within the SMP was not provided.

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

Council’s ESD Unit are not supportive of the development and do not consider the ESD features of the development to be adequate. Specifically:

 No NatHERS modelling has been provided to demonstrate the thermal performance of the buildings.

 Limited information on the WSUD response was provided preventing a detailed assessment by Council officers.

 Daylight modelling has not been provided. The DTS (Deemed to Satisfy) method has not been correctly implemented and is not accepted.

 A natural ventilation assessment has not been provided to justify the values input to BESS.

 Other issues including EV charging, roof materials, balcony taps, shading, clotheslines and fire system water testing were identified.

The development therefore fails to deliver an adequate ESD response. Given the generous size and relatively unconstrained nature of the site, the ESD response falls well short of achieving an excellent ESD response that may have enabled support for exceeding the relevant ACZ height controls, as is proposed.

**Public Benefit**

Design objectives of Precinct 4 of ACZ1 include:

 *‘To encourage passive surveillance and increase activity and safety around Bridges Reserve and City Oval.*

 *To reinforce the existing east-west link between Bridges Reserve and Rodda Street.’*

The development responds positively to the above design objectives in the following ways:

 Locating retail uses, communal facilities and balconies adjacent to the pedestrian links as well as Bell St, allowing for surveillance and activation.

However, the following aspects of the development fail to facilitate benefits to the community as sought by the ACZ:

*Public Open Space*

The proposed development does not deliver the level of public benefit achieved in the previous permit MPS/2013/859 where a Public Infrastructure Plan (PIP) was proposed and showed that the north-west corner of the site (as well as a portion of the southern part of the site) as set aside for public space, which increased the size of Bridges Reserve. Further, it noted the applicant has sought to remove the existing S173 Agreement that includes requirements relating to public open space and heritage interpretation works. This previous permit (MPS/2013/859) sought a balanced planning decision which justified additional building height in recognition of the public benefit commitments to improved public open space and pedestrian laneway connections – with community benefit being a relevant consideration within the ACZ in the exercise of discretion for higher built form. The current proposal seeks an even greater yield through maximising a building envelope to the detriment of building interfaces and seeks to remove previous public benefit commitments. Failure to provide the ‘off-road bike path’ as sought by the ACZ along the western boundary of the site also represents a lost opportunity for an improved ground plane interface and delivery of public benefit. As such, the proposed community benefit elements do not weigh in favour of supporting the proposal.

*Activation and Pedestrian Amenity*

The ACZ1 requires a 10-metre landscaped front setback to Bell Street, characteristic of a precinct character of buildings within grounds. As discussed earlier in this report, the landscaping treatment of this setback area is insufficient.

*Social and Affordable Housing*

Council’s Principal Advisor Social and Affordable Housing identified a need for affordable housing in Coburg and noted the suitability of both the subject site and proposed housing typology. They therefore provided recommendations for an appropriate offer with a request for relevant supporting information. The requested information was not provided, and the proposal does not include a social or affordable housing offer. As above, an appropriate offer may have assisted in the exercise of discretion for higher built form.

**Has adequate car parking been provided?**

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

| Use | Total spaces required | Total spaces provided | Reduction sought |
| --- | --- | --- | --- |
| Dwellings (resident) | 470 | 470 | 0 |
| Dwellings (visitor) | 0 | 25 | 0 |
| Shop/Food and Drink Premises | 12 | 4 | 8 |
| Total | 482 | 499 | 8 |

While the total car parking provision exceeds the planning scheme requirement, it is the allocation of spaces that triggers a reduction to the standard car parking requirement. The proposal exceeds the residential requirement and falls short of the commercial requirement.

Clause 18.02-4L (Car parking in Merri-bek) supports reduced car parking rates in developments that are within and close to activity centres; that benefit from excellent access to public transport options; and that provide increased bicycle parking above the rates specified in Clause 52.34.

The proposal is located within the Coburg Activity Centre and has excellent access to public transport, including Coburg train station, a north-south tram connection on Sydney Road, and east-west bus connections. The development provides 716 bicycle parking spaces which is above the requirements specified in ACZ.

Council’s Development Engineers are satisfied that commercial car parking requirement can be reduced for this application. VCAT was also supportive of reducing car parking numbers.

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

Concerns have been raised by objectors relating to the impact on traffic volumes to Rodda Street.

The ACZ1 nominates Rodda Street as the preferred vehicle access point for the development. Further, VCAT previously found that Rodda Street could facilitate the proposed increase in traffic volume. VCAT did, however, prefer an outcome where traffic exiting the development must turn left thereby being directed to Bell Street and avoiding the narrow ‘pinch point’ at the southern end of Rodda Street. Council’s Development Engineering Unit was concerned about the practical ability to enforce this arrangement. They noted that for this arrangement to work, the development would need to be designed to physically block the right turn. This is a matter that could be resolved through conditions if a permit were to be issued.

**How does the development respond to the existing Section 173 Agreement?**

A parallel application has been lodged for the removal of the existing S173 Agreement.

The Agreement requires provision of appropriately constructed public open space to be transferred to Council; the re-use of original building materials recycled from the demolished Coburg High School building; the provision of a public art piece, sculpture or statue as interpretation measure of the former Coburg High School; and a heritage interpretation board including a photographic record. The Agreement was an agreed public benefit outcome of an earlier planning decision to demolish the heritage school building on the site, than despite change of ownership continues to burden the site.

It is understood that a former owner of the site disposed of the building materials associated with the former high school building, rendering it impossible to comply with Item 6.8 of the Agreement as it currently reads.

Notwithstanding this, the development contravenes the balance of the existing Section 173 Agreement by:

 not committing to the construction and transfer of public open space to Council;

 not providing the art piece or heritage interpretation board as part of the development.

The request to remove the s173 Agreement is unlikely to be supported. Officers have advised the Applicant that an application to amend (rather than end) the Agreement may be considered.

**5. Response to Objector Concerns**

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

 Car parking and Traffic, including Vehicle access/egress to Rodda Street

 Building height, scale and visual bulk

 Environmentally Sustainable Development

Other issues raised by objectors are addressed below.

**Overshadowing to dwellings**

The ACZ seeks to *‘to protect the amenity of properties adjoining the ACZ that are in a residential zone, including from the impact of unacceptable overshadowing and overlooking’* and utilises the Clause 55 standard relating to overshadowing to determine whether the height and setbacks are acceptable.

The submitted shadow diagrams demonstrate that no additional shadowing will be generated to the secluded private open space of the nearby dwellings between 9am and 2 pm at the September Equinox (22 September). While concerns have been raised by objectors about the shadowing impacts varying throughout the year, Clause 55 uses the September Equinox as the standard for measuring whether the overshadowing impacts are reasonable. The development complies with the overshadowing standard at Clause 55 and the development will therefore not result in unacceptable overshadowing to the nearby dwellings.

**Overshadowing to Bridges Reserve**

The ACZ1 states that no more than 1/3 of Bridges Reserve is to be in shadow at any time between 10:30am and 2:30pm (4 hours) on 21 June (Winter Solstice).

On review of the submitted diagrams for 21 June (Winter Solstice) the proposal creates the largest shadow at 10:30am, which equates to 3,086 square metres (27 per cent). This is less than 1/3 of Bridges Reserve and is compliant with the overshadowing provisions of the Activity Centre Zone.

**Construction Impacts**

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

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

**Noise associated with dwellings**

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

**No affordable housing as part of the development**

While it is acknowledged that there is strategic support for Affordable Housing at Clause 16.01-2S (Housing Affordability), there is no requirement within the Planning Scheme for the Applicant to include affordable housing as part of this application. As previously discussed, the development fails to deliver an acceptable level of public benefit. The provision of Affordable Housing would be one way to deliver public benefit and could aid in justifying the variations to height and setback in the ACZ.

**Drainage**

A concern was the impact of the dwellings on drainage infrastructure and the Rodda Street carriageway. The owner will be required to address infrastructure servicing demands as required by the relevant service authorities. While the impact of the development on drainage infrastructure is not assessed at the planning application stage, Planning Officers have sought comment from Council’s Drainage Engineer in relation to the issue. Rodda Street is not identified as a road subject to flooding at any rainfall events (other than a section at the southern end that is located away from the discharge point associated with the proposed development).

**Viability of Coburg Night Markets**

There is nothing in the submitted material to suggest that the proposal impacts the ongoing viability of the Coburg Night Markets.

**Impact on laneway from Rodda Street to Bridges Reserve**

The proposed public link along the south of the site includes both a pedestrian and vehicle connection to the existing laneway that connects Rodda Street with Bridges Reserve. This is considered to be a positive outcome that enables users of the laneway to continue to benefit from this asset.

**Insufficient communal facilities for residents**

Communal open space of 603 square metres comfortably exceeds the 250 square metres of communal open spaces required by Standard D7. In addition, the indoor communal areas and ground floor public link spaces provide additional facilities for residents.

**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**

While some of Council’s Grounds of Refusal related to the previous application have been addressed by the current application, the proposal still falls short of the Planning Scheme’s expectations for a major mixed-use development in the Activity Centre Zone. Changes required to gain officer support are not possible via planning permit conditions.

On the balance of policies and controls within the Merri-bek Planning Scheme, the previous VCAT order, and objections received, it is recommended that Council’s submission to VCAT be to not support the application MPS/2023/774 for the reasons detailed in the recommendation.

**Attachment/s**

|  |  |  |  |
| --- | --- | --- | --- |
| **1** | Location Plan | D24/239875 |  |
| **2** | Zoning Map | D24/239876 |  |
| **3** | Development Plans | D24/239877 |  |
| **4** | Previous VCAT Plans | D24/239880 |  |
| **5** | Previous VCAT Order | D24/239932 |  |
| **6** | Objector Location Map | D24/228447 |  |
| **7** | Previous and Proposed Ground Floor Landscape Plans | D24/239934 |  |

**5.2 448-450 & 452-456 Lygon Street, BRUNSWICK EAST - MPS/2015/949/B**

**Group Manager City Development, Phillip Priest**

**City Development**

**Executive Summary**

|  |  |
| --- | --- |
| **Property:** | 448-450 & 452-456 Lygon Street, BRUNSWICK EAST |
| **Permitted Development:** | Development of the land for the purposes of a five storey building comprising retail tenancies and dwellings, use of the land for dwellings and a reduction to the standard car parking requirement |
| **Proposed Amendments:** |  An extension of the approved development to include the land at 452-456 Lygon Street.   The addition of 8 new dwellings and 1 new shop.   The addition of a basement level, containing all car parking and storage areas, including the relocation of vehicle access from Bladen Street to Eddy Street.   An increase from 10 to 20 on-site car parking spaces, resulting in a reduction of 23 spaces from the standard car parking requirement.   Minor internal layout changes.   External consequential changes. |
| **Zoning and Overlays:** |  Commercial 1 Zone   Design and Development Overlay (Schedule 19)   Parking Overlay (Schedule 1)   Development Contributions Plan Overlay |
| **Strategic setting:** |  |
| **Objections:** |  Nine (9) objections received   Key issues:   The impact of the height and reduced setback of the building to the existing apartments to the north.   Vehicle access design and the impact on Street Trees.   Amenity impacts to residential properties to the east. |
| **Planning Information and Discussion (PID) Meeting:** |  30 May 2024   Attendees: 2 objectors, the applicant, 2 Council officers, Cr Bolton and Cr Riley   At the completion of the meeting the permit applicant committed to exploring options to ameliorate overshadowing and overlooking concerns. These measures are outlined in this recommendation. |
| **ESD:** |  Minimum average NatHERS rating of 7 stars.   BESS Score of 59 per cent |
| **Accessibility:** |  Adaptable apartments comprise 50 per cent of the proposal. |
| **Key reasons for support:** |  The amended development represents an appropriate response to the existing character of the surrounding area, including height of nearby buildings.   The amended development results in acceptable off-site amenity impacts.   The amended development provides additional retail opportunity and streetscape activation. |
| **Recommendation:** | Notice of Decision to Grant an Amended Planning Permit be issued for the proposal. |

**Officer Recommendation**

That a Notice of Decision to Amend Planning Permit No. MPS/2015/949/B be issued for the development of the land for the purposes of a five storey building with a basement comprising shops and dwellings, use of the land for dwellings and a reduction to the standard car parking requirement at 448-450 and 452-456 Lygon Street, Brunswick East, subject to the following conditions **(new and amended conditions are bolded)**:

1. **Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed to supersede the previously endorsed plans 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 the plans prepared by Shouman Pty Ltd being Drawing Nos. TP101 – TP108, TP201-TP203, (marked Revision E, and advertised 27 March 2024) but modified to show:**

**a) The finished floor levels (FFLs) for the development modified in the following manner:**

**i. The ‘Retail Shop 1’ FFL increased to 46.68AHD.**

**ii. The ‘Retail Shop 2’ FFL increased to 46.64AHD.**

**iii. The residential ‘Entry’ FFL increased to 46.38AHD.**

**iv. The basement entry apex height increased to 46.20AHD.**

**b) The colour palette of External Finishes 2 (concrete), 5 (staggered stack brickwork), 8 (steel balustrade), 9 (steel flat panel awning) and 10 (steel mesh cladding) modified in tone to adopt a warmer appearance.**

**c) The western elevation corrected to show the south-facing facade of the three-storey street wall built to the southern title boundary.**

**d) The four on-site visitor bike parks and the adjoining planter bed to be deleted and replaced with a shopfront window constructed on the boundary, to provide additional commercial space and street activation.**

**e) The addition of angled blades to the balconies of apartments 103, 203, 303 and 403 to assist with minimizing downwards views to the adjoining residential property to the east.**

**f) The north-eastern section of the rooftop parapet adjacent to the solar panels increased in setback from the eastern site boundary by a minimum of 1.15m.**

**g) The north-facing bedroom windows provided with obscure glazing to a height of 1700mm above the finished floor level.**

**h) Changes in the basement ramp grades to not exceed 12.5 per cent for each summit grade change or 15 per cent for each sag grade change.**

**i) Show the tap and sewer point required for washing the bins.**

**j) Any modifications arising from the Landscape Plan required by Condition 4 of this permit.**

**k) Any modifications arising from the amended Sustainable Management Plan (SMP) required by Condition 7 of this permit.**

**l) Any modifications arising from the amended Acoustic Report required by Condition 24 of this permit.**

**m) Any modifications arising from the amended Waste Management Plan (WMP) required by Condition 27 of this permit.**

**n) A Public Works Plan (PWP) as required by Condition 29 of this permit.**

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.

**Title Ownership**

3. Prior to the commencement of any development works, the owner/permit holder must demonstrate to the satisfaction of the Responsible Authority that it is the registered proprietor of the land identified as ‘A’ and ‘B’ on Plan of Survey, Reference No. 12181, prepared by Peter Richards Surveying and dated 9 February 2017.

**Landscape Plan**

4. Prior to the commencement of any development works, a landscape plan must be submitted to the satisfaction of the Responsible Authority. The landscape plan must provide the following:

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 and based on species selection recommended in the Moreland Landscape Guidelines 2009.

b) Details as to the plant selection, installation and maintenance of vegetation at rooftop level and climbing facade vegetation provided to the south-eastern corner of the development, to the satisfaction of the Responsible Authority.

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

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

**i. Soil volume sufficient for the proposed vegetation**

**ii. Soil mix**

**iii. Drainage design**

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

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

5. **Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, all landscaping works, including installation of automatic irrigation, must be completed in accordance with the endorsed landscape plan to the satisfaction of the Responsible Authority.**

6. **All landscaping and irrigation systems must be maintained to the satisfaction of the Responsible Authority in accordance with the endorsed landscape plans. Any dead, diseased or damaged plants must be replaced with a suitable species to the satisfaction of the Responsible Authority.**

**Environmentally Sustainable Design**

7. **Prior to the endorsement of plans, an amended Sustainable Management Plan (SMP) and plans must be submitted to the satisfaction by the Responsible Authority. The SMP must demonstrate a best practice standard of environmentally sustainable design and be generally in accordance with the SMP prepared by Frater Consulting, received 08/12/2023 but modified to include the following changes:**

**a) Provide preliminary NatHERS ratings assessments for all thermally unique dwellings and achieve an average of at least 7 Stars.**

**b) The Solar PV System to be a 10-kW system.**

**c) Provide additional detail on proposed building systems water use reduction, demonstrating compliance to BESS Credit 4.1 - Building Systems Water Use Reduction.**

**d) Provide a preliminary NCC Part J facade calculator, demonstrating compliance to NCC Part J and the BESS DtS Energy compliance criteria.**

**e) Provide a winter sunlight markup, clearly demonstrating that the development complies with BESS Credit IEQ 1.3 – Winter Sunlight.**

**f) Show the following ESD initiatives on the development plans:**

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

**ii. External operable shading devices to all east/west facing windows and glazed doors to habitable rooms drawn and labelled with ASD (Adjustable Shading Device) on the floor plan and elevations. Include a product diagram or section of the proposed device (must not be roller shutters for any street facing glazing). Ensure windows that have external adjustable shading can open when using the blind.**

**iii. The proposed solar PV system, including location, spatial size and system output size.**

**iv. Location of proposed EV charging infrastructure.**

**v. Proposed roof and hardscape materials and their related Solar Reflectance Index (SRI) values**

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

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

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

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

**Development Contributions**

10. 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 Levy amount for the development is $347.26 per dwelling. In accordance with the approved Development Contributions Plan, these amounts will be indexed annually on 1 July.

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;

c) 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.

**General Conditions**

11. 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.

12. Prior to the occupation of the development, a vehicle crossing must be constructed in every location shown on the endorsed plans to a standard satisfactory to the Responsible Authority **(Merri-bek City Council, City Infrastructure Department).**

13. 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 **(Merri-bek City Council, City Infrastructure Department).**

14. **At least 20 per cent of the bicycle parking devices designed to provide ground level horizontal (ie 1800mm long) bike parking devices in accordance with the Australian Standard for Bicycle Parking (AS2890.3) to the satisfaction of the Responsible Authority.**

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

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 Merri-bek City Council, City Infrastructure Department).**

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

18. **DELETED**

19. 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.

20. Prior to the occupation of the development, the garage door must be automatic and remote controlled.

21. The car parking spaces provided on the land must be solely associated with the development allowed by this permit and must not be subdivided or sold separate from the development for any reason without the written consent of the Responsible Authority.

22. No additional columns are to be placed in the car park.

23. The verandah must not project beyond the street alignment unless it is setback not less than 750mm from the kerb and at a height not less than 3m above the level of the footpath to the satisfaction of the Responsible Authority.

**Acoustic Report**

24. **Prior to the endorsement of plans, an amended Acoustic Report must be submitted to the satisfaction of the Responsible Authority. The report must be generally in accordance with the Acoustic Report prepared by DDEG Acoustic Engineering (advertised April 2024), and must:**

**a) Reflect the development hereby approved and the changes required by Condition 1 of this permit; and**

**b) Detail how construction methods and materials will mitigate noise impacts from the tram line.**

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

25. **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.**

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

**Waste Management**

27. **Prior to the endorsement of plans, an amended Waste Management Plan (WMP) must be submitted to the satisfaction of the Responsible Authority. The plan must be generally in accordance with the WMP prepared by Frater Consulting Services (advertised in April 2024) and must:**

**a) Reflect the development hereby approved and the changes required by Condition 1 of this permit.**

**b) Show the ‘Refuse’ room with the number and size of bins, colour coded.**

**c) Confirm whether ventilation is required in the refuse room.**

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

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

**Public Works Plan**

29. **Prior to the endorsement of plans, a Public Works Plan (PWP) and associated construction drawing specifications detailing public works at the northern, eastern western interfaces of the property must be submitted to the satisfaction of the Merri-bek City Council. The PWP must include:**

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

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

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

**d) The upgrade of the Lygon Street footpath adjacent to the site’s western boundary. Public asphalt footpaths are to be reinstated to the previous levels with a maximum cross fall slope of 1 in 33.**

**e) The upgrade of the Bladen Avenue and Eddy Street footpaths adjacent to the site’s southern and eastern boundaries. Public concrete footpaths are to be reinstated to the previous levels with a maximum cross fall slope of 1 in 40.**

**f) The vehicle crossing to have a slope of 1 in 40 over a 1 metre width along the public footpath.**

**g) Any necessary parking signs.**

**h) Any necessary drainage works.**

**i) The installation of bike hoops, provided with graffiti-resistant surfaces, including at least two hoops on Bladen Avenue.**

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

**k) The provision of new street tree planting in Lygon Street, Bladen Avenue and Eddy Street in appropriate locations in front of the site (where practicable), with the number of trees maximised based on the space available, to the satisfaction of Merri-bek City Council (Open Space and Environment Branch).**

**l) The undergrounding of powerlines and power poles adjacent to the site’s Lygon Street frontage (where practicable), to the satisfaction of the relevant authorities.**

**m) New street lighting supported by a Lighting Plan with LUX levels tested against CPTED principles to the satisfaction of Merri-bek City Council (City Infrastructure Department).**

**n) Public footpath areas abutting the site annotated in the following manner:**

**i. Label the Lygon Street public footpath with a prominent Note stating “Reinstate public footpath with a crossfall slope of 1 in 33 from top of roadside kerb to property boundary”; and**

**ii. Label the Bladen Avenue and Eddy Street public footpaths with a prominent Note stating “Reinstate public footpath with a crossfall slope of 1 in 40 from top of roadside kerb to property boundary”; and**

**iii. Label each pedestrian entrance with a prominent Note stating, “Floor to be ramped down to match the level of the public footpath that will be reinstated from top of roadside kerb”.**

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

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

**Use of Rooftop Terrace**

31. The communal rooftop area is to be utilised by residents (and their guests) between the hours of 8am and 9pm only, Monday to Sunday. This requirement is to be managed and enforced by the relevant Owners Corporation.

**3D Model**

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

**Expiry**

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

a) the development is not commenced within two (2) years from the date of issue of this permit;

b) the development is not completed within four (4) years from the date of issue of this permit.

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

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

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

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

**This permit has been issued in accordance with the Victorian Civil and Administrative Tribunal’s Order P2373/2016, dated 18 July 2017**

**CAN THE RESPONSIBLE AUTHORITY AMEND THIS PERMIT?**

The Responsible Authority may amend this permit under Division 1A of Part 4 of the Planning and Environment Act 1987.

|  |
| --- |
| Date of amendment: 01-Aug-2022 |
| Amendment Number: MPS/2015/949/A |
| Brief description of amendment:   Amended permit preamble;   Amended plans including:  o Dwellings reduced from 13 to 8.  o Construction of communal open space and associated structures at rooftop level;  o Internal rearrangements;  o External alterations;   New Condition 1A;   Amended Condition 4;   Amended Condition 21;   New Condition 23.  All remaining conditions renumbered accordingly. |

|  |
| --- |
| Amendment Number: MPS/2015/949/B |
| Brief description of amendment:   Amended permit preamble.   Inclusion of 452-456 Lygon Street as part of the subject site.   Amended plans including:  o Dwellings increased from 8 to 16.  o Shops increased from 1 to 2.  o The addition of a basement level.  o An increase from 10 to 20 on-site car parking spaces, resulting in a reduction of 23 spaces from the standard car parking requirement.  o Minor internal layout changes.  o External consequential changes.   New Conditions 5, 6, 14, 15, 17, 25, 26, 29, 30, 32   Deletion of Condition 18   Amended Conditions 1, 4, 7, 24, 27;  All remaining conditions renumbered accordingly. |

**REPORT**

**1. Background**

**Subject site**

The subject site is located at 448-450 and 452-456 Lygon Street, Brunswick East. An approved permit is in place for 448-450 Lygon Street, and the amendment seeks to include 452-456 into the approval. The site is located on the eastern side of Lygon Street and is bordered to the south and east by Bladen Avenue and Eddy Street respectively.

The site has a frontage of 20.37 metres to Lygon Street, 29.23 metres to Bladen Avenue and 21.34 metres to Eddy Street. The site has an overall area of approximately 620.4 square metres.

The site is currently occupied by two single-storey shops. Car parking for 448-450 Lygon is provided along Bladen Avenue, in a single garage. 452-456 Lygon has open-air parking for two cars, off Eddy Street.

There are no restrictive covenants indicated on the Certificate of Title. A party wall easement is located between the two sites. The easement is of no consequence for the proposal.

**Surrounds**

The surrounding area is characterised by the changing urban environment of Lygon Street and the Brunswick Activity Centre. A mix of new apartment buildings of four and five-storeys in height and established single and double-storey shops creates varying building heights along Lygon Street. Street wall heights are also varied, with examples of double and triple storey street walls nearby.

Street parking is available along Lygon Street, as well as access to the No. 1 and No. 6 tram routes. Additional street parking is available on Bladen Avenue and Eddy Street. Parking on Eddy Street is restricted, as is the southern side of Bladen Avenue. The northern side of Bladen is unrestricted, except for parking abutting the site, which is a 2-minute drop-off area.

Land to the east across Eddy Street sits outside of the Activity Centre and is an established residential area. The land is an area of incremental change within the Neighbourhood Residential Zone and is populated with single and double-storey dwellings. The streets are lined with mature street trees and infill development is limited, although beginning to occur.

A location plan forms **Attachment 1**.

A zoning map forms **Attachment 2**.

**Planning Permit and site history**

| **Planning Permit Ref #** | **Summary of Application** |
| --- | --- |
| MPS/2015/949 | The original permit was issued at the direction of the Victorian Civil and Administrative Tribunal (VCAT). Council refused the original proposal because the height of the development and street wall exceeded the preferred outcomes of the DDO19.  A total of 48 objections were lodged in response to the original planning application, with several objectors joining as parties to the VCAT hearing.  VCAT found the proposed 5 storey height and 3 storey street wall to be acceptable in the context of the site.  The approved development comprised 1 shop, 13 dwellings and 10 car spaces. |
| MPS/2015/949/A | The first amendment to the permit was issued under delegation, on 1 August 2022.  The amendment received 6 objections, in relation to building height, noise, external materiality and parking.  The amended development comprised 1 shop, 8 dwellings and 10 car spaces. Plans have not been endorsed as part of this amendment. |

The Planning Permit has been extended and is currently due to expire on 21 July 2025 if works are not commenced in accordance with the permit.

**A drawing of a building

Description automatically generated**

*Figure 1: Lygon Street and Bladen Avenue elevations of the currently approved development (Source: Decision Plans of MPS/2015/949/A)*

**The proposal**

The proposal seeks to amend existing Planning Permit MPS/2015/949/A in the following manner:

 An extension of the approved development to include the land at 452-456 Lygon Street.

 An increase from 12 dwellings and one shop to 16 dwellings and two shops.

 Reconfiguration of dwelling layouts to include additional 3 bedroom apartments.

 Relocation of vehicle access from Bladen Avenue to Eddy Street.

 The addition of a basement level, containing all car parking and storage areas.

 An increase from 10 to 20 on-site car parking spaces, resulting in a reduction of 23 spaces from the standard car parking requirement.

 Minor internal layout changes.

 External consequential changes.

The amendment does not seek to alter the approved maximum height of the building, nor the approved height of the street wall. As a result of the new basement area and relocation of vehicle access to the rear boundary, the development achieves additional shopfront windows along Bladen Avenue and increases the amount of commercial floor space provided.

A white building with windows

Description automatically generated

*Figure 2: Perspective image of the proposal, taken from the corner of Lygon and Bladen (Source: Decision Plans for MPS/2015/949/B)*

The development plans form **Attachments 3, 4 and 5 including** the floor plans, elevations, sections and shadow diagrams.

The existing approval plans form **Attachment 6**.

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

| **Control** | **Permit Requirement** |
| --- | --- |
| Commercial 1 Zone | Clause 34.01-1: a permit is required to use land for the purposes of accommodation (including dwellings), because the frontage at ground floor level exceeds 2 metres.  Clause 34.01-4: a permit is required to construct a building or construct or carry out works. |
| Design & Development Overlay Schedule DO19 | Clause 43.02-2: a permit is required to construct a building or construct or carry out works. |
| Particular Provisions | Clause 52.06-3: a permit is required to reduce the number of car spaces required. |

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

 Clause 45.06: Development Contributions Plan Overlay. The DCP condition was part of the original planning permit and continues to apply to an amendment approved after the end of the Development Contributions Plan.

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

 Clause 53.18: Stormwater Management in Urban Development.

**2. Internal/External Consultation**

**Public notification**

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

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

 Placing a total of five (5) signs along the frontages of 448-450 Lygon and 452-465 Lygon Street.

Council has received nine (9) objections to date. A map identifying the location of objectors forms **Attachment 7**.

The key issues raised in objections are:

 Offsite amenity impacts

 Overdevelopment

 Construction impacts, such as dust and noise.

 The impact to on-street car parking as a result of the proposed car parking reduction.

 The flow of traffic around the site, and the one-way flow along Eddy Street.

 The potential negative impact to existing property values.

A Planning Information and Discussion meeting was held on 30 May 2024 and attended by Cr Bolton and Cr Riley, two Council Planning Officers, the applicant and two objectors. The meeting provided an opportunity to explain the application, for the objectors to elaborate on their concerns, and for the applicant to respond.

Following the discussions at the Planning and Information Discussion meeting, the following changes have been suggested by the permit applicant as a means of addressing objector concerns:

 Increased setbacks for sections of the rooftop parapet along the eastern site boundary to assist with reducing shadowing impacts to 93 Clarence Street.

 The inclusion of angled blades to the eastern facing balconies of the apartments within the 452-456 Lygon Street portion of the site to minimise downward views into 93 Clarence Street from the proposed development.

 Obscure glazing for north-facing bedroom windows within the development, as a means of mitigating concerns from existing apartments to the north.

**Internal referrals**

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

| **Internal Branch/Business Unit** | **Comments** |
| --- | --- |
| Urban Design Unit | Urban Design is not supportive of the three storey street wall, as the DDO19 has a preferred height of two storeys.  Other recommended changes include:   simplification of the south-eastern corner of the building by re-connecting the street walls between the Lygon Street and Bladen Avenue facades;   the use of warmer colours in the external appearance of the building; and   the bike parking and landscape area along Bladen Avenue be removed and returned to commercial space, with on-street bike hoops provided for bike storage.  These matters are addressed by conditions of the recommendation or are discussed in Section 4 of this recommendation. |
| Transport - Development Engineering Unit | Supports the proposal, including the car parking reduction. Recommended changes are addressed by conditions of the recommendation. |
| Sustainable Built Environment - ESD Team | Supports the proposal.  Recommended changes are addressed by conditions of the recommendation. |
| Open Space – Planning Arborist | Supports the proposal and confirms that the vehicle access arrangements of the amendment do not compromise any of the street tree plantings along Eddy Street. The existing approval is noted to impact on some recently planted Street Trees. |
| Drainage Engineering | Supports the proposal subject to minor adjustments to the finished floor levels of the development. Adjustments result in floor level increases of up to 340mm. |

**3. Policy Implications**

**Planning Policy Framework (PPF):**

The following policies are of most relevance to this application:

 Municipal Planning Strategy (Clause 2)

 Settlement (Clause 11)

 Environmental Risks and Amenity (Clause 13):

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

 Built Environment (Clause 15.01), including:

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

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

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

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

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

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

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

 Residential Development (Clause 16.01), including:

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

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

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

 Economic Development (Clause 17), including:

 Business (Clause 17.02-1S)

 Transport (Clause 18), including:

 Sustainable and Safe Transport (Clause 18.01-3S)

 Walking in Merri-bek (Clause 18.02-1S & Clause 18.02-1L)

 Car parking in Merri-bek (Clause 18.02-4L)

**Planning Scheme Amendments**

The Commercial 1 Zone sets out that an application for an amendment of a permit under Section 72 of the *Planning and Environment Act 1987* is exempt from the requirements of Clause 58, provided the original permit application was lodged before the approval date of Amendment VC136 (13 April 2017). The objectives, standards and decision guidelines of Clause 55 of this scheme, as in force immediately before the approval date of Amendment VC136, continue to apply to an application for an amendment of a permit under section 72 of the Act, if the original permit application was lodged before that date.

The original application was lodged in December 2015. As such, neither Clause 55.07 nor Clause 58 of the Merri-bek Planning Scheme apply to the current application.

VCAT also confirmed that Clause 58 was not applicable to the assessment of the original application.

**Human Rights Consideration**

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

 Section 12: Freedom of movement

 Section 13: Privacy and Reputation

 Section 20: Property rights

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

**4. Issues**

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

The existing approval associated with the site represents an accrued development right available to the landowner. The areas where the current proposal departs from that approval forms the basis of Council’s assessment.

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

The subject site is located within the Commercial 1 Zone and Brunswick Activity Centre, where the strategic direction at Clause 2.03-1 seeks to accommodate substantial residential/mixed-use growth and change to create a new character, with increased building heights. As such, the proposal benefits from strong strategic policy support.

**Does the proposal satisfy the requirements of the Design & Development Overlay (Schedule 19)?**

Using a similar layout and design to the original approval, the proposal satisfies the objectives of Schedule 19 to the Design & Development Overlay (DDO19).

Notwithstanding the above, both the existing approval and the proposed amended development exceed certain discretionary controls set out in DDO19, as described in the table below:

| **Design Element** | **DDO19 Preferred Control** | **Existing approval** | **Proposed** |
| --- | --- | --- | --- |
| Building height | 14 metres | 17.15 metres | 17.15 metres |
| Street wall height | 2-storey | 3-storey (10.7 metres) | 3-storey (10.7 metres) |
| Upper-level setback | 3-5 metres | 1.9 - 4.7 metres (accounting for storage units located within Level 3 balconies) | 4.7 metres |

***Building and Street Wall Height***

The existing approval exceeds the preferred street wall height and maximum building height. However, the amended development does not seek to exceed the existing heights approved for these design elements. The amended proposal instead seeks to extend across two properties, where the existing approval was located just at 448-450 Lygon Street.

Above the street wall, the upper-level setbacks of Levels 3, 4 and 5 effectively remain as approved by MPS/2015/949/A and comply with DDO19, though it is noted the proposed removal of storage units located within the Level 3 balconies will result in a modest reduction in visibility above podium level.

The five-storey height and three storey street wall are acceptable given:

 The proposed amendment is consistent in height with the existing approval as well as nearby apartment buildings in the streetscape and contributes to the emerging character. Existing five and six-storey developments in proximity to the site are found at 466-470, 455 and 457-459 Lygon Street;

 The design provides for an appropriate three-storey street wall height reflective of the existing character of the area, with a similar three-storey street wall found at 457-459 Lygon Street; and

 The reasonable amenity expectations of nearby residential properties are maintained, as discussed later in this report.

The proposed development includes a rooftop terrace area, comprising solar panels, lift overrun and building services. The rooftop services are not included in considering the maximum building height as they do not exceed 50 per cent of the roof area, do not result in additional shadowing and do not exceed 3.6m in height. The equipment cannot be seen from the street and is integrated into the building design.

***Building Layout and Detailed Design***

The location of car parking facilities within a new basement area allows the inclusion of a second retail space. The retail space is shown to have entryways on Lygon and Bladen, with the additional commercial activation to Bladen Avenue an improvement to the previously approved vehicle entrance. The addition of a basement also allows for re-location of car stackers below ground, and avoids potential amenity impacts or any need to manage noise impacts associated with the stackers, protecting the amenity of apartments above (and dwellings to the east).

The proposed amendment seeks to maintain the previously endorsed materials and colours scheme. Noting the increased size of the proposal, the impact of these materials should be re-examined, as a larger building may change the impact of the materials. To reduce the visual impact of the stark colour palette (which includes white brick at lower levels and white steel mesh at upper levels), recommended permit conditions require the use of warmer materials.

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

The amended plans provide enhanced internal amenity compared to the existing approval.

The requirements of Clause 58 (Apartment Developments) do not apply to the proposed amendment application, however many of the objectives and standards of these provisions have been satisfied regardless.

A light well with an area of 6.33 metres x 2.93 metres, totalling 18.55 square metres, provides daylight to bedrooms on the north side of the building. This is larger than both the existing approval and the requirements of Council’s Apartment Design Policy. The proposed amendment therefore provides improved internal amenity for residents of the northern apartments and represents an appropriate response for the future equitable development of 458-460 Lygon Street.

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

The amendment results in some additional overshadowing to 93 Clarence Street. No other residential properties experience additional shadowing.

Shadow diagrams show that at 3pm at the September Equinox, there is an additional 23 square meters of shadow that falls onto 93 Clarence Street. 276 square meters remains unshaded, and the additional shadowing falls over an open-air car space in the south-western corner of the site. The open space of 93 Clarence is provided with adequate sunlight between 9am and 2pm, and overall compliance with Standard B21 (Overshadowing) is achieved. Notwithstanding this, the applicant has agreed to setback part of the rooftop, which will result in some reduction to shadow.

Concerns have been raised by neighbours about the eastern facing habitable room windows and balconies, and potential overlooking. Several windows and balconies are part of the original approval; however, the amendment and the extended building creates new habitable spaces that face eastward.

The windows and balconies in question are shown to be setback a minimum of 12m from 93 Clarence Street, separated by Eddy Street. The habitable spaces exceed the 9m setback requirement of the planning scheme, to protect against unreasonable overlooking. No further screening is required to comply with the Planning Scheme.

Notwithstanding the above, the applicant has indicated a willingness to provide additional screening, in the form of angled blades, to the new west facing balconies to reduce overlooking to 93 Clarence Street.

Further, through the previous amended application process, the applicant accepted inclusion of a permit condition restricting the hours of use for the rooftop terrace in an effort to mitigate amenity impacts to nearby properties. This condition is not proposed to be amended or deleted as part of the current application process, and reads:

*The communal rooftop area is to be utilised by residents (and their guests) between the hours of 8am and 9pm only, Monday to Sunday. This requirement is to be managed and enforced by the relevant Owners Corporation.*

A permit is required to use the land for the purposes of accommodation (dwellings), and as such, this condition remains relevant to the current application.

**Proposed Reduction of Car Parking**

The increase in building size and dwelling numbers alters the rate of car parking. The table below summarises the proposed car parking provision for the development:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Type** | **Number** | **Rate** | **Parking Required** | **Parking Allocated** |
| 2-bedroom apt | 4 | 1 space/dwelling | 4 spaces |  |
| 3-bedroom apt | 12 | 2 space/dwelling | 24 spaces |
| Total residential | 16 |  | 28 spaces |
|  | | | |
| Shop | 432m2 | 3.5 spaces/100m2 | 15 spaces |
|  | | | |
| **Totals** |  | | **43 spaces** | **18 residential & 2 commercial** |

The approved development provided 10 car spaces, a reduction of seven spaces from the standard rate.

The proposed amendment provides 20 car spaces (two commercial spaces and 18 spaces for the 16 dwellings). This results in a total reduction of 23 car spaces which is a further reduction of 16 spaces from the approved reduction of seven.

The reduction is an acceptable outcome for the site given the context. The subject site abuts Lygon Street and has access to multiple tram routes. Bus routes are available on Blyth Street and Albion Street, approximately 100m and 200m south and north of the subject site respectively.

Clause 18.02-4L (Car parking in Merri-bek) supports reduced car parking rates in developments:

 within and close to activity centres

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

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

The proposal is located within the Brunswick Activity Centre and has excellent access to public transport as outlined above. The proposal also provides 26 bicycle parking spaces, comprising 22 internal spaces and 4 external spaces. This comfortably exceeds the 7 required spaces required by Clause 52.34. The existing approval provided 13 bike parking spaces, and the amendment is an improvement in this regard – doubling the provision of bike parking.

Council’s Development Engineers are satisfied that car parking requirement can be reduced for this application. Provision of adequate bike parking is also supported.

**Does the proposal adequately manage impacts from Stormwater?**

Since the issue of the most recent approval under MPS/2015/949/A, updated stormwater mapping for the site has identified that portions of the land and surrounding street network are subject to a 1:100 Annual Exceedance Probability (AEP). The impacted areas are generally contained to the Lygon street frontage of the site. The introduction of a basement also requires consideration of overland flows to ensure that stormwater does not enter the basement area.

Conditions can be applied to an amended planning permit to ensure that the finished levels are adjusted accordingly. If changes to finished floor heights cannot be absorbed into the proposed building envelope, an increase in overall building height of 340mm would not cause additional material detriment and can be accepted as generally in accordance with the advertised proposal. Such a change would be generally unnoticeable and would not impact the character of the area or amenity of neighbouring properties. The permit applicant has agreed to the inclusion of these conditions.

**Does the proposal include adequate Environmentally Sustainable Design measures?**

The proposal is designed to meet an average NatHERS rating of 7.0 stars. As of May 2024, apartment developments are expected to meet an exemplary standard of 7.5 stars. Despite the amendment application being lodged prior to this change in State Planning Policy, requiring the development to increase the NatHERS rating was explored with the applicant. Although adopting a 7.5-star rating was not volunteered due to a substantial increase in construction costs, the applicant has voluntarily offered to improve the capacity of the Solar Panel system from 5kw to 10kw.

**5. Response to Objector Concerns**

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

 Overshadowing and overlooking

 Car parking

Other issues raised by objectors are addressed below.

***Overdevelopment***

Planning Policy seeks increased density in well serviced areas. Clause 16.01 of the Merri-bek Planning Scheme encourages *higher density housing development on sites that are well located in relation to activity centres, employment corridors and public transport*. The increased density at this site is an appropriate response given its location in an Activity Centre and the proximity to public transport and services.

The planning assessment and issues in Section 4 of this report has confirmed that the building height, setbacks and the provision of car parking are acceptable and therefore the proposal is not considered to be an overdevelopment of the site.

***Loss of views***

While the Victorian Civil and Administrative Tribunal has recognised that views can be a relevant amenity consideration, it has also held that there is no right to a view and that the weight to be given to the amenity impact of loss of views is diminished where no planning control applies encouraging retention or sharing of views. There is no specific policy or provision regarding views within the Merri-bek Planning Scheme. In this context, impacts to views from an adjoining apartment building across the subject site, do not warrant refusal of the proposal.

***Property values***

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

***Construction issues***

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

***Impacts to Street Tree Plantings***

Council’s Planning Arborist has confirmed that the location of the crossover abutting the northern boundary of 452-456 Lygon Street does not impact the planting of Street Trees along Eddy Street. It is noted that the current approval that exists does require removal of a rain garden near the intersection of Bladen Avenue and Eddy Street. In this regard, the proposed amendments are a net benefit with respect to the street plantings.

***Impacts to Daylight Access of 466-470 Lygon Street***

The proposed amendment has a minimum setback of 13.15m from 466-470 Lygon street, with 458-460 Lygon Street providing a physical separation between sites. Additionally, both the proposed development and the existing apartments include light wells in similar locations, providing additional separation and daylight protection. The proposed development will not cast shadow to the affected property to the north.

***Traffic flow of vehicles on Eddy Street as a one-way Street***

Council’s Engineering team did not raise any concern with the movement of vehicles around the site or the resulting traffic volumes. Vehicles have access to Clarence and Glenmorgan Streets to the north of the site, which provide additional opportunities for vehicle movement to the east. Existing apartments at 464-470 Lygon Street are expected to observe similar movement patterns, with vehicle access similarly provided along Eddy Street.

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

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

**7. Financial and Resources Implications**

There are no financial or resource implications.

**8. Conclusion**

The proposed amendment to Planning Permit MPS/2015/949/A is consistent with the maximum building height and street wall height of the current approval and provides an improved streetscape response along Bladen Avenue with additional commercial floor spaces. While variations to some discretionary controls of DDO19 are sought, a review of the proposed amendments reveals an improved proposal. Despite not requiring an assessment against the provisions of Clause 58 the amended plans demonstrate a high level of internal amenity and accessibility, and adequately respond to the amenity expectations of low-rise residential dwellings to the east.

On the balance of policies and controls within the Merri-bek Planning Scheme and objections received, it is considered that Notice of Decision to Grant an Amended Planning Permit No MPS/2015/949/B should be issued subject to the conditions included in the recommendation of this report.

**Attachment/s**

|  |  |  |  |
| --- | --- | --- | --- |
| **1** | Location Plan | D24/255352 |  |
| **2** | Zoning Map | D24/255353 |  |
| **3** | Proposed Floor Plans | D24/255354 |  |
| **4** | Proposed Elevations | D24/255355 |  |
| **5** | Proposed Sections, Shadow Diagrams, 3D Renders, Landscape Plan | D24/255356 |  |
| **6** | Existing Planning Permit and Development Plans | D24/255357 |  |
| **7** | Objector Location Map | D24/255359 |  |

**5.3 10 Dawson Street, Brunswick - Planning Permit Application - MPS/2023/637**

**Group Manager City Development, Phillip Priest**

**City Development**

**Executive Summary**

|  |  |
| --- | --- |
| **Property:** | 10 Dawson Street, Brunswick |
| **Proposal:** | Demolition of existing buildings and construction of a multi storey mixed-use building, use of the land for dwellings, to vary an easement and a reduction of the standard car parking requirement |
| **Zoning and Overlays:** |  Commercial 1 Zone   Heritage Overlay Schedule 61 & Schedule 600   Design and Development Overlay Schedule 18   Specific Controls Overlay – Schedule 5   Development Contributions Plan Overlay   Parking Overlay Schedule 1   Environmental Audit Overlay |
| **Strategic setting:** |  |
| **Objections:** |  Five   Key issues:  - Building height  - Overshadowing  - Impacts to nearby civic buildings and residences  - Car parking reduction |
| **Planning Information and Discussion (PID) Meeting:** | No PID held, as the applicant has lodged an appeal to the Victorian Civil and Administrative Tribunal (VCAT). |
| **ESD:** |  Minimum average NatHERS rating of 7.5 stars   BESS Score of 70 per cent |
| **Accessibility:** |  Adaptable apartments comprise 60 per cent of the proposal |
| **Key reasons for support** |  The building height and setbacks are acceptable, subject to conditions, including deletion of a level.   Complies with the objectives of Clause 58 (Apartment developments).   Exceeds accessibility / ESD requirements.   High quality architectural response that provides a good standard of amenity for future residents.   Community benefits of varied carriageway easement providing access to Council land to the north (33 Saxon Street); footpath improvements; and retention of street tree in Saxon Street. |
| **Recommendation:** | That Council advises the Victorian and Civil and Administrative Tribunal and all parties that the proposed development is supported, subject to the conditions outlined below. |

**Officer Recommendation**

That Council writes to the Victorian Civil and Administrative Tribunal (VCAT) and all parties to the VCAT review advising that Council supports planning application MPS/2023/637 at 10 Dawson Street, Brunswick for the demolition of existing buildings and construction of a multi storey mixed-use building, use of the land for dwellings, to vary an easement and a reduction of the standard car parking requirement, subject to the following conditions:

1. Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and must be generally in accordance with the plans advertised 9 February 2024 but modified to show:

a) Deletion of one of levels 3, 4, 5 or 6 with the commensurate reduction in building height.

b) An additional 1 metre setback from the eastern title boundary to Levels 5 and 6.

c) Additional employment generating and/or creative industries floor area of approximately 700sqm to be provided at first floor level, along the Dawson Street and Saxon Street frontages. This may result in the deletion of apartments, 1.05 to 1.10.

d) The upper level front (southern) setbacks to Dawson Street to be dimensioned to the front wall instead of the dashed lines beyond the front wall.

e) The Main Switch Room fronting Dawson Street, set back an additional 1 metre from the Dawson Street (southern) boundary (excluding the column), with low planting and improved bike access provided.

f) At least 20 per cent of the bicycle parking devices designed to provide ground level horizontal (i.e. 1800mm long) bike parking devices in accordance with the Australian Standard for Bicycle Parking (AS2890.3).

g) Dimension the accessway grades of the car basement ramps to comply with Clause 52.06-9 of the Merri-bek Planning Scheme with:

i. Slopes no greater than 1 in 4;

ii. Slopes within 5 metres of the street boundary to be no greater than 1 in 10;

iii. Changes of grade of more than 1 in 8 for a summit grade change or more than 1 in 6.7 for a sag grade change, to be provided with a transition of at least 2 metres to prevent vehicles scraping or bottoming.

h) The access aisle in blind (dead-end) aisles in the car park extended 1 metre past the last parking space to improve access and egress to and from end spaces in accordance with Clause 2.4.2 of the Australian Standard for Off-Street Parking (AS2890.1).

i) Dimensions of the tandem car parking spaces.

j) Each pedestrian entrance with a ramp shown and labelled with the statement “Slope floor to match existing footpath level”.

k) A sign erected on the building facing either or both of Dawson Street and Saxon Street identifying the building as the ‘John Curtin building’.

l) Any changes to the plans arising from the:

i. Landscape Plan in accordance with Condition 6 of this permit.

ii. Tree Protection Plan in accordance with Condition 9 of this permit.

iii. Heritage Interpretation Strategy in accordance with Condition 12 of this permit.

iv. Sustainability Management Plan in accordance with Condition 13 of this permit.

v. Accessibility Report in accordance with Condition 17 of this permit.

vi. Acoustic Report in accordance with Condition 19 of this permit.

vii. Waste Management Plan in accordance with Condition 22 of this permit.

viii. Wind impact assessment in accordance with Condition 24 of this permit.

**Compliance with Endorsed Plans**

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

**Carriageway Easement**

3. Within 6 months of the permit being issued, the permit holder must provide evidence to the Responsible Authority that a carriageway easement (Easement E-2) has been registered on the title of 10 Dawson Street, Brunswick in favour of 33 Saxon Street /15 Phoenix Street, generally in accordance with the advertised Plan of Creation and Removal of Easement. All costs associated with the preparation and registration of the easement must be shared equally between the permit holder and the landowner of 33 Saxon Street, Brunswick.

4. Prior to the issue of Statement of Compliance or an occupancy permit for any part of the development, whichever occurs first, the proposed Easement E-2 must be fully constructed to the satisfaction of the Responsible Authority at the cost of the permit holder.

**Construction Over Easement**

5. Prior to the issue of a Statement of Compliance or an occupancy permit for any part of the development, whichever occurs first, the owner of the land must enter into an agreement with the Responsible Authority pursuant to section 173 of the Planning and Environment Act 1987 (the Act) in a form satisfactory to the Responsible Authority which provides for the following:

a) Maintenance of access to carriageway easement;

b) Appropriate insurance be maintained to the satisfaction of the Responsible Authority;

c) Indemnification of Council for any loss suffered if the terms of the s173 agreement are breached by the landowner;

d) Releases Council from any claims the landowner may have against Council associated with the parts of the building within the easement;

e) Do all things necessary to enable the Responsible Authority to register the agreement with the Registrar of Titles in accordance with section 181 of the Act; and

f) Pay to the Responsible Authority, or its legal representative, all costs and disbursements incurred in relation to the negotiation, preparation, execution and registration of the agreement on the certificate of title to the land.

**Landscaping**

6. Prior to the endorsement of plans, an amended landscape plan must be submitted to the Responsible Authority. The landscape plan must be generally in accordance with the plan prepared by Oculus dated 01 December 2023 but amended to show:

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

b) The tree species proposed for the ground level rain garden annotated.

c) The mature size of proposed trees (e.g. *Waterhousea/Syzygium floribunda*) updated.

d) Use of 50cm or smaller stock for rooftop trees.

e) Placement of ferns and other shade-loving plants reviewed (e.g. sufficient shading from creepers and nearby structures).

f) Confirmation of lawn species and demonstrate consideration of suitable solar exposure between different lawn areas.

g) Details of planter box design including:

i. Media product name

ii. Construction/section diagrams

iii. Irrigation (e.g. location of controllers, irrigation volumes/frequency, connection points)

iv. Drainage design (including discharge points)

v. Consideration of water collection, water recycling and water tanks

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

7. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, all landscaping works, including installation of automatic irrigation, must be completed in accordance with the endorsed landscape plan to the satisfaction of the Responsible Authority.

8. All landscaping and irrigation systems must be maintained to the satisfaction of the Responsible Authority in accordance with the endorsed landscape plans. Any dead, diseased or damaged plants must be replaced with a suitable species to the satisfaction of the Responsible Authority.

**Tree Protection Plan**

9. Prior to the endorsement of plans, an updated Tree Protection and Management Plan (TPMP) must be submitted to the satisfaction of the Responsible Authority. The TMP must be compliant with section 5 of AS4970-2009 Protection of Trees on Development Sites, to ensure that the street tree on the Dawson Street and Saxon Street corner (Tree 1) remains healthy and viable during construction. The TPMP must be prepared by a suitably qualified and experienced arborist (AQF Level 5+ plus a minimum 5 year demonstrated industry experience). The TPMP must be generally in accordance with the Tree Management Report and Protection Plan prepared by Arbor Survey Revision 3 dated 19/01/2024 and include the following updates to the satisfaction of the Responsible Authority:

a) Name, qualifications and experience of the author to be included.

b) A Tree Protection Plan to scale that shows:

i. All Tree Protection Zones and Structural Root Zones

ii. All Tree Protection Fencing

iii. Areas where ground protection systems will be used

iv. The type of footings within any Tree Protection Zone

v. The location of services within any Tree Protection Zone

c) The location and design of Tree Protection Fencing.

d) Details of appropriate footings within the Tree Protection Zone.

e) The method of installing any services through the Tree Protection Zone.

f) Details of how the root zone within the Tree Protection Zone will be managed throughout the project.

g) A timetable outlining works requiring supervision by the Project Arborist.

h) The results of any exploratory trenching where there is encroachment (construction or excavation) greater than 10 per cent into the Tree Protection Zone (in accordance with Australian Standard AS4970:2009 - Protection of Trees on Development Sites) of any tree to be retained. This must include photographic evidence of any trenching/ excavation undertaken.

i) All remedial pruning works that are required to be performed on the tree during the development of the site. The pruning comments must reference Australian Standards 4373:2007, Pruning of Amenity Trees and a detailed photographic diagram specifying what pruning will occur.

j) Results of non-destructive root investigation (NDRI) (e.g. hydro excavation) where the TPZ of Tree 1 is encroached by the proposed basement (e.g. on subject side of fence where the TPZ extends, to a depth of 1000mm+. Project arborist (AQF Level 5+) to supervise and document works and provide the applicant with advice regarding impacts of proposed basement works. Advice must be made to assure the long-term viability (including structural integrity) of Tree 1 is not compromised by development works.

When submitted and approved to the satisfaction of the Responsible Authority, the TMP will be endorsed to form part of this permit and must not be altered without the prior written consent of the Responsible Authority. The recommendations of the endorsed TMP must be implemented to the satisfaction of the Responsible Authority.

**Tree Removal**

10. In the event that public tree(s) are proposed for removal at any stage of the development, or Merri-bek City Council determine that impacts from the development will result in any of the public street trees to be no longer viable, the applicant must, prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, pay Council the amenity value, removal, replacement and establishment costs in accordance with the Merri-bek Urban Forest Strategy 2017 for each street tree removed or damaged through the building works, to the satisfaction of the Responsible Authority.

**Heritage Record and Interpretation Strategy**

11. Prior to the commencement of any demolition, a professionally prepared archival record of the substation on the land must be carried out and submitted to the satisfaction of the Responsible Authority. This record must be carried out in accordance with Heritage Victoria’s technical note ‘Specification for the submission of Archival’ undated.

12. Prior to the commencement of any demolition, an interpretation strategy, prepared by appropriately qualified consultant, must be developed that explores the historical significance of Brunswick’s electrical supply and distribution network, which 'played a critical role in the residential, commercial and industrial expansion of the municipality during the interwar period' (Statement of Significance), to the satisfaction of the Responsible Authority.

**Environmentally Sustainable Design (ESD)**

13. Prior to the endorsement of plans, an amended Sustainability Management Plan (SMP) and plans must be submitted to the satisfaction by the Responsible Authority. The SMP must demonstrate a best practice standard of environmentally sustainable design and be generally in accordance with the SMP prepared by GIW Environmental Solutions Dated 23 January 2024 but modified to include the following changes:

a) A summary of re-use options for the >80 per cent of fire test water proposed to be collected and re-used on site.

b) Solar Reflectance Index (SRI) values of all hard surfaces clearly annotated on the development plans, aligned with endorsed SMP commitments.

c) Provide a preliminary NCC Part J facade calculator, demonstrating compliance to NCC Part J and the BESS DtS Energy compliance criteria.

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

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

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

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

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

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

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

**Accessibility**

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

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

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

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

**Acoustic Attenuation**

19. Prior to the endorsement of plans, an amended Acoustic Report prepared by a qualified Acoustic Engineer must be submitted to the satisfaction of the Responsible Authority. The Report must be generally in accordance with the Acoustic Report prepared by Acoustic Logic advertised on 9/02/2024 but modified to:

a) Reflect the changes required by Condition 1 of this permit.

b) Include measures to ensure the design of dwellings comply with Standard D16 of Clause 58.04-3 (Noise impacts objective) of the Merri-bek Planning Scheme.

c) Include measures to ensure the design and construction of the dwellings within 50 metres of the function centre use at 33 Saxon Street, Brunswick comply with Clause 53.06-3 (Live Music and Entertainment Noise) of the Merri-bek Planning Scheme. The dwellings must be designed and constructed to include acoustic attenuation measures that will reduce noise levels from the:

i. Indoor live music entertainment venue to below the noise limits specified in the Environment Protection Regulations under the *Environment Protection Act 2017* and the incorporated Noise Protocol (Publication 1826, Environment Protection Authority, November 2020)

ii. Outdoor live music entertainment venue to below 45dB(A), assessed as an Leq over 15 minutes.

For the purpose of assessing whether the above noise standards are met, the noise measurement point may be located inside a habitable room of a noise sensitive residential use with windows and doors closed (consistent with EPA Publication 1826).

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

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

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

1. **Waste Management**

22. Prior to the endorsement of plans, a Waste Management Plan (WMP) generally in accordance with the Waste Management Plan prepared by Leigh Design dated 19 October 2023 must be submitted to, and approved by, the Responsible Authority.

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

23. 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.

**Wind impact assessment**

24. Prior to the endorsement of plans, an amended wind impact assessment must be submitted and approved to the satisfaction of the Responsible Authority. When to the satisfaction of the Responsible Authority, the report will be endorsed and will form part of this permit. The plan must be generally in accordance with the advertised environmental wind assessment prepared by MEL Consultants advertised 9/02/2024 but it must be amended as required, to show the development layout updated to reflect the changes required by Condition 1 of this permit.

25. The wind impact assessment 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.

1. **Public Works Plan**

26. 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 be in accordance with the Merri-bek City Council Technical Notes July 2019, or any updated version and detail works in front of the approved building along Dawson Street and Saxon Street including:

a) Provision of a kerb outstand to Saxon Street to continue the width of the footpath at the southern end of Saxon Street for the length of the Saxon Street frontage or unless otherwise agreed with the Responsible Authority.

b) A new street tree provided to the Saxon Street kerb outstand extension, on the edge of the footpath.

c) Underground powerlines in Saxon Street.

d) Relocation of the side entry pit on Saxon Street to where the kerb extension finishes, and the underground drain to be extended along with the kerb extension, to the relocated pit.

e) A detailed feature survey of the footpaths and roads.

f) The upgrade of the footpath adjacent to the site. Public footpaths are to be reinstated to the previous levels with a maximum cross fall slope of 1 in 40 (2.5 per cent) from the top of the roadside kerb to the property boundary, with any level difference made up within the site.

g) For any vehicle crossing not being used, the kerb, channel and footpath reinstated.

h) The relocation or replacement of existing and installation of new street furniture and infrastructure (in a graffiti-proof finish), such as parking and traffic signs, public seating, bicycle parking and similar.

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

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

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

1. **Environmental Audit**

28. Before the construction or carrying out of buildings and works, or where no buildings and works are proposed, prior to the commencement of the permitted use or the issue of a statement of compliance under the Subdivision Act 1988 (whichever is earlier), the owner(s) must provide:

a) A preliminary risk screen assessment statement in accordance with the Environment Protection Act 2017 stating that an environmental audit is not required for the use or, if this permit authorises the construction or carrying out of buildings or works, is not required for the use for which the buildings or works are constructed or carried out; or,

b) An environmental audit statement under Part 8.3 of the Environment Protection Act stating that the land is suitable for the use or, if this permit authorises the construction or carrying out of buildings or works, is suitable for the use for which the buildings or works are constructed or carried out; or.

c) An environmental audit statement under Part 8.3 of the Environment Protection Act 2017 stating that the land is suitable for the use or, if this permit authorises the construction or carrying out of buildings or works, is suitable for the use for which the buildings or works are constructed or carried out, if the recommendations made in the statement are complied with.

29. Where an environmental audit statement is issued for the land, and any recommendation of that environmental audit statement requires any maintenance and/or monitoring of an ongoing nature, the Responsible Authority may require the Owner(s) to enter into an Agreement with the Responsible Authority pursuant to Section 173 of the Planning and Environment Act 1987 that provides for the undertaking of the ongoing maintenance and/or monitoring as required by the environmental audit statement.

Where a Section 173 Agreement is required, the Agreement must be executed prior to the commencement of the permitted use, the issue of an Occupancy Permit under the Building Act 1993 or the issue of a Statement of Compliance under the Subdivision Act 1988 (whichever occurs first). All expenses involved in the drafting, negotiating, lodging, registering and execution of the Agreement, including those incurred by the Responsible Authority, must be met by the Owner(s).

30. Prior to any remediation works (if required) being undertaken in association with the environmental audit, a ‘remediation works’ plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The plan must detail all excavation works as well as any proposed structures such as retaining walls required to facilitate the remediation works. Only those works detailed in the approved remediation works plan are permitted to be carried out prior to the issue of an environmental audit statement.

31. No works to construct the development hereby approved shall be carried out on the land and no building contract to construct the development hereby approved may be entered into, other than in accordance with a building contract that stipulates that works must not be commenced until such time as Conditions 28, 29, and 30 are satisfied.

32. Prior to commencement of the use, the issue of an Occupancy Permit under the Building Act 1993 or the issue of a Statement of Compliance under the Subdivision Act 1988 (whichever occurs first), written confirmation of compliance with all the recommendations of the environmental audit statement must be provided by an environmental auditor appointed under the Environment Protection Act 2017, including confirming that any requirements in the environmental audit statement recommendations regarding verification of works have been complied with. All the recommendations of the environmental audit statement must be complied with to the satisfaction of the Responsible Authority.

33. Where a preliminary risk screen assessment has satisfied Condition 28(that an environmental audit is not required), the development and use must not deviate from the assumptions or limitations contained in the preliminary risk screen assessment, including but not limited to the layout and design of the development and use of the land without the written consent of the Responsible Authority. The development and use must accord with any requirements and recommendations of the preliminary risk screen assessment to the satisfaction of the Responsible Authority.

**Naming of Building as ‘John Curtin Building’**

34. To ensure the development does not breach clause 3) a of Section 173 agreement titled ‘The John Curtin Building 10 Dawson Street, Brunswick’ dated 24 February 2000 (W660930P), prior to the commencement of development the applicant must obtain written consent from Council for the removal of any existing signage identifying the building as the John Curtin Building.

35. Prior to the issue of a Statement of Compliance or occupancy permit for any part of the building, whichever occurs first, a sign identifying the building as the ‘John Curtin Building’ must be erected on the building on either or both of Dawson Street or Saxon Street to the satisfaction of the Responsible Authority.

1. **3D model**

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

1. **Engineering Matters**

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

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

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

**Stormwater**

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 (Note: Please contact Merri-bek City Council, City Infrastructure Department).

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

42. The stormwater run-off from the accessway must not flow out of the property over the public footpath to the satisfaction of the Responsible Authority.

**Car Parking**

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

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

b) Be maintained.

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

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

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

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

44. All parking spaces are to be marked with the associated apartment or shop (commercial business) number to facilitate management of the car park to the satisfaction of the Responsible Authority, with at least one car parking space provided on site for each commercial business.

45. The vehicular traffic on the basement ramp is to be controlled by traffic signals to avoid cars meeting at the bend on the ramp.

46. No additional columns are to be placed in the car park.

**General**

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

48. 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.

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

50. Bicycle signage at least 300mm wide and 450mm high showing a white bicycle on a blue background, directing cyclists to the location of the bicycle parking.

51. The lifts must be large enough to easily accommodate two cyclists with bikes plus other passengers to avoid congestion generating opposition to cyclists using the lifts.

52. All lighting of external areas must be designed not to emit direct light onto adjoining property to the satisfaction of the Responsible Authority.

53. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, all visual screening measures shown on the endorsed plans must be installed to the satisfaction of the Responsible Authority. All visual screening and measures to prevent overlooking must be maintained to the satisfaction of the Responsible Authority. Any screening measure that is removed or unsatisfactorily maintained must be replaced to the satisfaction of the Responsible Authority.

**Permit Expiry**

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

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

b) the development is not completed within five (5) years from the date of issue of this permit.

c) the use is not commenced within five (5) years from the date of issue of this permit.

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

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

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

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

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

**Note 2: Environmental Audit Notes**

A copy of the Environmental Audit Statement, including the Environmental Audit Report, must be submitted to the responsible authority within 5 business days of issue, as set out in s 210 of the *Environment Protection Act 2017*.

The person in management or control of the site must also provide a copy of any statement to any person who proposes to become the person in management or control of the site, such as a potential occupier or potential purchaser.

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

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

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

**REPORT**

**1. Background**

**Subject site**

The subject site (the ‘site’) is located at 10 Dawson Street, Brunswick, approximately 68 metres west of Sydney Road and 53 metres east of the Upfield railway line. The site has a frontage to Dawson Street and to Saxon Street.

The land is currently developed with a double storey brick building accommodating Jesuit Social Services’ Brosnan Centre. Vehicle access is provided from Dawson Street and Saxon Street. A telecommunications facility is located toward the rear.

There are no restrictive covenants indicated on the Certificate of Title, however a carriageway easement in favour of Council runs through the site and connects to the west (Brunswick Baths), as the beneficiary of the easement. A section 173 agreement on title requires that the building remain as ‘the John Curtin Building’. This matter is discussed in the report.

An electrical substation located on the site is the subject of a caveat on title in favour of Citipower. The substation is proposed to be demolished as part of the development. This matter is outside the scope of the relevant planning controls and must be resolved between the land owner and Citipower.

**Surrounds**

The site is located within the Brunswick Activity Centre and the surrounding area is of mixed building character and presents a mix of land uses. To the north is 33 Saxon Street, a Council owned site which is currently under construction for a five storey

building, use of the land for the purpose of a place of assembly and sale and consumption of liquor (approved under planning permit MPS/2022/194).

The site is bordered by the St Ambrose Catholic Church, the St Ambrose Hall and former school buildings, Brunswick Baths with the main building addressing Dawson Street identified as a significant building within the Heritage Overlay. The Brunswick Library and Brunswick Town Hall are located on the opposite (southern) side of Dawson Street, with the Town Hall fronting Sydney Road.

A location plan forms **Attachment 1,** and a zoning map forms **Attachment 2.**

**Planning Permit and Site History**

1. A previous planning application (MPS/2019/130), for a nine storey mixed use development, was supported by Council in 2020, subject to the deletion of two levels.

Council’s conditions were appealed at VCAT by the permit applicant. However, these VCAT proceedings were withdrawn as the Minister for Planning, through the Priority Project Process, approved a Special Controls Overlay (SCO5) facilitating a site-specific development outcome. This occurred following a Standing Advisory Committee Roundtable with all affected parties. As specified in the incorporated document approved under the SCO5, the development was subject to the following key changes/conditions:

 Deletion of one storey (to eight storeys)

 An affordable housing contribution of 20 per cent of the dwellings in the development which was the key consideration for Ministerial Intervention and in the development gaining Ministerial approval at greater overall building height.

 Clearance height over the newly modified carriageway easement providing connection from Dawson Street to 33 Saxon Street to be no more than 4.1 metres

The development provided 2306sqm of commercial floorspace comprising 57sqm shop and 773sqm office space at ground level, and 1476sqm office space at first floor. Jesuit Social Services, which currently occupies the site, was proposed to be retained and to occupy the office space at ground and first floor levels.

The approved development has not been acted upon, although it remains valid. The current approval will expire if the development is not commenced by 23 July 2024.

**The proposal**

The proposal is summarised as follows:

 Demolition of existing buildings on-site.

 Construction of a nine storey building above two levels of basement, with a roof terrace.

 A 423 square metre office tenancy, a 61 square metre food and drink premises (cafe) at ground level.

 91 car parking spaces and 153 bicycle parking spaces at basement and ground levels.

 80 apartments on the upper levels and communal open space at roof level.

 Vehicle access via an existing crossover from Dawson Street.

 The building has:

- A street wall height of 11.65 – 11.9 metres to Dawson Street

- An upper level street wall setback of 4.86 – 5 metres to Dawson Street (with balconies setback 2.5 metres)

- A street wall height of 24.3 metres to Saxon Street (7 storey sheer wall) with a title boundary setback of 3 – 3.56 metres from ground floor to Level 6 and upper level setback of 8.9 – 9.5 metres at Levels 7 and 8.

- A maximum building height of 34.5 metres including the roof top services and 30.45 metres to the parapet of Level 8 (see Figure 1).

 The proposal seeks to alter the alignment of the existing carriageway easement, providing access to Council owned land (33 Saxon Street to the north of the site).

The development plans form **Attachment 3**.

A building with a lot of windows

Description automatically generated

1. *Figure 1: 3D depiction of the development (Jackson Clements Burrows Architects, 13 October 2023)*

**Process**

An application has been lodged to VCAT under section 79 of the *Planning and Environment Act 1987* relating to Council’s failure to make a decision on this application within 60 statutory days.

VCAT have listed this matter for:

 A Compulsory Conference on 27 June 2024; and

 A Major Cases Merits Hearing on 16, 17, 18, 19 and 20 September 2024.

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

| **Control** | **Permit Requirement** |
| --- | --- |
| Commercial 1 Zone | Clause 34.01-1 – A permit is required to use the land for dwellings.  Office and Food and drink premises are Section 1 uses in the zone, meaning that a permit is not required for the uses.  Clause 34.01-4 - A permit is required to construct a building or construct or carry out works. |
| Overlays | 1. Clause 43.01-1 (Heritage Overlay) - A permit is required to demolish or remove a building, construct a building or construct or carry out works.   Clause 43.02-2 (Design and Development Overlay) – A permit is required to construct a building or construct or carry out works. |
| Particular Provisions | Clause 52.06-3: A permit is required for a reduction in the standard car parking requirement from 106 to 91 spaces.  Clause 52.02: A permit is required to vary an easement. |

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

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

 Clause 45.06: Development Contributions Plan Overlay. The Development Contributions Plan has expired and therefore not relevant to this application.

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

 Clause 45.12: Specific Controls Overlay (SCO5). Does not apply to this application. The purpose of the SCO is to facilitate a specific development outcome. It does not prevent other proposals from being considered.

 Clause 53.18: Stormwater Management in Urban Development.

 Clause 58: Apartment Developments.

**2. Internal/External Consultation**

**Public notification**

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

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

 Placing signs on the Dawson and Saxon Street frontages of the site.

Council has received 5 objections to date.

A map identifying the location of objectors forms **Attachment 4**.

The key issues raised in objections are:

 Building height

 Non-compliance with 1:1 ratio requirement of Design and Development Overlay (DDO18)

 Internal amenity of apartments

 Reduction in car parking requirements

 Increase in local residents, traffic movements and resulting impact on accessibility (car parking, walking and bike paths)

 Overshadowing of Brunswick Baths, Brunswick Library and residential rooftop garden and solar panels

 Overlooking of Brunswick Baths pool from dwellings

 Inappropriate development within a sensitive heritage precinct

 Impacts of proposal to nearby civic buildings

The officer contacted all objectors with an offer for further discussion by phone or email to explain the application or for objectors to elaborate on their concerns. The only response received was from one objector following VCAT’s notice of the developer’s application for review of Council’s failure to make a decision on this application within 60 statutory days.

None of the objectors have joined as a party to the appeal.

**Internal/external referrals**

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

|  |  |
| --- | --- |
| **External Agency** | **Objection/No objection** |
| Transport for Victoria | No objection. |
| Electricity transmission Authority (Ausnet) | No response received within the prescribed timeframe. |

| **Internal Branch/Business Unit** | **Comments** |
| --- | --- |
| Urban Design Unit | Generally supports the proposal and notes the scheme provides a high-quality overall architectural approach. However, Urban Design is not supportive of the height and overshadowing of the Dawson Street footpath at 10am and the sheer 7-storey profile to Saxon Street.  Recommended changes are addressed by conditions of the recommendation and are considered further in Section 4 of this report. |
| Transport - Development Engineering | Supportive of the proposed car parking and did not consider the proposal would result in any adverse traffic impacts. Raised the importance of ensuring the height of the carriageway easement through 10 Dawson Street to 33 Saxon Street meets Council’s need for a mobile crane access. No objections were offered to the proposal subject to modifications, which are addressed by conditions detailed in the recommendation. |
| Sustainable Built Environment - ESD Team | Supports the proposal, subject to recommended permit conditions. The proposal provides a good standard of ESD features. |
| City Development - Heritage Advisor | Supports the proposal subject to suggested conditions, including a recommendation to reduce the overall height by at least two levels. This matter is discussed below in Section 4 of this report.  Recommended an archival record be made of the substation on site before demolition and a heritage interpretation strategy be developed. These are addressed in the conditions of the recommendation. |
| Urban Forest Unit | No objections were offered to the proposal. Requires updated Tree Protection and Management Plan to ensure the protection of the street tree on the corner of Dawson Street and Saxon Street.  Recommended changes are addressed by conditions of the recommendation. |
| Property Unit | No objections were offered to the proposal. |
| Place Revitalization Unit | No objections were offered to the proposal. Expressed importance of having the carriageway easement on the 10 Dawson Street title in favour of 33 Saxon Street which is crucial to the development at 33 Saxon Street. |
| Aquatic and Leisure Unit | No objections were offered to the proposal. |

**3. Policy Implications**

**Planning Policy Framework (PPF):**

The following policies are of most relevance to this application:

 Municipal Planning Strategy (Clause 2)

 Settlement (Clause 11)

 Environmental Risks and Amenity (Clause 13):

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

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

 Built Environment (Clause 15.01):

 Heritage (Clause 15.03):

 Residential Development (Clause 16.01):

 Economic Development (Clause 17), including:

 Employment Areas (Clause 17.01-1L)

 Business (Clause 17.02-1S)

 Transport (Clause 18)

 Infrastructure (Clause 19.02)

The site is identified as a Brunswick Design District Key Site in the District Core amongst a Core Industry and Employment Area, which is a hub for creative and design professions located primarily in the heart of Brunswick.

**Human Rights Consideration**

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

 Section 12: Freedom of movement

 Section 13: Privacy and Reputation

 Section 15: Freedom of expression

 Section 18: Taking part in public life

 Section 20: Property rights

The proposed redevelopment of private land does not present any physical barrier preventing freedom of movement. The right of the landowner to develop and use their land has been considered in accordance with the Merri-bek Planning Scheme. This application is not considered to limit human rights.

**4. Issues**

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

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

The site is located within the Commercial 1 Zone and Brunswick Activity Centre, where the strategic direction at Clause 2.03-1 supports a significant change from the existing character, to provide for taller buildings. Both State and local planning policies support increased housing in Activity Centres, to take advantage of the excellent access to public transport and other services within these locations.

The proposed development of this site for a multi-storey mixed use building comprising 80 apartments is supported by this policy. The proposal is also consistent with the purpose of the Commercial 1 Zone, which seeks to create vibrant mixed use commercial centres and to provide for residential uses at densities complementary to the role and scale of the commercial centre.

With respect to economic development and employment opportunities for the proposed development, strategic direction at Clause 2.03-6 seeks to create a sustainable economy and diversity of employment opportunities by supporting the economic viability and growth of activity centres and the Brunswick Design District. The proposed mixed use development provides an office and food and drink premises at the ground level only, whilst local policy seeks to prioritise employment uses over residential uses through the provision of employment floor space at ground floor and first floor. It is considered that the provision of commercial floorspace does not adequately fulfil the strategic direction for economic development opportunity for the site within an activity centre and the Brunswick Design District, as such a condition of the recommendation will require additional employment generating floor area at first floor.

Subject to a condition for the provision of additional commercial floorspace, the proposal will deliver the strategic outcome sought for activity centres and the Brunswick Design District.

**Does the proposal respond to the preferred future built form of the area?**

The proposal as submitted does not positively respond to the preferred built form character of the precinct, however, subject to changes included as conditions of the recommendation and discussed below, the proposal will provide an acceptable response to the Design and Development Overlay Schedule 18 (DDO18), Clause 15.01-1L (Urban design in Merri-bek) and Clause 15.01-2L (Building design in Merri-bek) of the Merri-bek Planning Scheme.

The proposal provides a good quality contemporary architectural response which responds to existing buildings nearby, including by providing a street wall to Dawson Street that generally reflects the height of the adjoining buildings including the Brunswick Baths heritage building. The facade is broken up to reflect the architecture of nearby heritage buildings and uses high quality materials and finishes.

The response of the development to the preferred height, street wall height and upper level setbacks of DDO18 is outlined in the table below.

|  |  |  |
| --- | --- | --- |
| ***Design Element*** | ***Preferred DDO18 control*** | ***Proposed*** |
| Overall height | 25 metres | 34.5 metres (30.45 metres when excluding roof top services, which are permitted above the preferred height) |
| Street wall height – Dawson Street | 8-11 metres | 11.65 – 11.9 metres |
| Street wall height – Saxon Street | 7-10 metres | 24.3 metres |
| Upper level setback – Dawson Street | 5 metres | 4.86 – 5 metres (2.5 metres to balconies) |
| Upper level setback – Saxon Street | 5 metres | 3 – 3.56 metres between levels 1-6 and 8.9 – 9.5 metres at levels 7 & 8 |

***Building Height***

The proposed building height of 30.45 metres (nine storeys), amounts to a variation of 5.45 metres above the preferred height of 25 metres (seven storeys).

The following design objectives of DDO18 are relevant to the assessment of the building height:

 *to encourage a new mid-rise built form character with buildings generally ranging from 4 to 10 storeys with lower built form at the interfaces with the adjoining low rise residential areas.*

 *To … respect the form, design and context of buildings of individual heritage significance in the precinct.*

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

The additional height would have impacts on the amenity of the streetscape including additional overshadowing to Dawson Street at 10.00am at the equinox. This is contrary to the DDO18, which states that development should not overshadow the opposite footpath of Key Pedestrian Streets (including Dawson Street) between 10.00am and 2.00pm at the equinox. Solar access to public space and streets is considered critical to the pedestrian experience of streets and urban spaces within this important civic precinct. Council has also invested heavily in public realm enhancement in this precinct to enhance the amenity and pedestrian experience and it is of equal importance that adjoining buildings make a positive rather than negative impact on the street and public realm.

A reduction of the building height would reduce overshadowing to the southern footpath of Dawson Street to comply with the DDO18. Using 3D modelling analysis, officers found that removing one of the top levels (7 or 8) does not eliminate the shadows to the southern footpath. As such, to achieve compliance with the overshadowing requirements to this key pedestrian route, one of the levels between 3 to 6 must be deleted, which is included as a condition of this recommendation. Overshadowing 3D Modelling Analysis images form **Attachment 5.**

Further, the proposed building height will compete for visual dominance with the form, design and context of the nearby civic buildings of individual heritage significance, contrary to the DDO18 built form objectives. A heritage assessment is contained below in this report. The condition requiring the deletion of one storey will reduce the dominance of the proposed building in the context of the buildings with individual heritage significance and the civic precinct overall. Subject to this condition, the resulting building height will then only exceed the preferred height in the DDO18 by approximately 2.35 metres (excluding the rooftop services). This variation to the building height is acceptable when combined with the community benefits of the carriageway easement realignment and the improved public realm benefits through the footpath improvements and retention of the significant street tree.

**Street wall heights and upper level setbacks**

The proposed street wall height to Dawson Street (up to 11.9 metres) is acceptable as it is only marginally above the DDO18 recommendation of 8-11 metres and facilitates the ground floor clearance space for the carriageway easement. Although it will be higher than the street wall of the Brunswick Baths to the west, it is similar to the Baths’ overall height and will not be out of context in its surrounds. Upper levels to Dawson Street are generally setback in accordance with DDO18 requirements.

The preferred maximum street wall height to Saxon Street is 10 metres. A 7 storey wall height of 24.3 metres is proposed, with a 3 – 3.56 metre title boundary setback to Saxon Street. In assessing whether the additional height above the preferred street wall is acceptable, the relevant Design Objectives of DDO18 must be considered. It is considered that a street wall height consistent with the DDO expectations which wraps around the corner from Dawson Street to Saxon Street would make a more positive contribution to the pedestrian scale and experience of the public realm, than the sheer 7 storey built form proposed. A sheer 7 storey building form is foreign to the existing scale, character and built form of the civic precinct, particularly as experienced from Dawson Street.

In order to establish a new consistent built form character to the east and west of Sydney Road, built form must achieve an appropriate balance between a sense of enclosure at the street edge and openness to the sky above.

This objective is achieved by applying a 1:1 ratio of building height to distance from the opposite side of the street boundary. The east facing street wall to Saxon Street encroaches substantially into the 45 degree sightline created by the 1:1 ratio principle of the DDO. A section diagram showing the encroachment of built form into the DDO sightline to Saxon Street forms **Attachment 6.** However, it is acknowledged that given the narrowness of Saxon Street it would be difficult for a development to achieve full compliance with the 1:1 ratio. Saxon street is also an increasingly important pedestrian connection within this civic precinct from Council’s Saxon Street Community and Arts hub to Dawson Street and Sydney Road.

The proposed seven storey sheer profile to Saxon Street encloses this street corner and does not achieve the appropriate balance of enclosure and openness sought by the DDO18 design objective. It also does not provide a street wall that is of a human scale. Whilst the additional width to the public provided by the 3-3.56 metre ground floor setback to Saxon Street is positive, it is recommended an additional 1 metre setback to be provided to Levels 5 and 6, to align with the upper levels to Dawson Street.

A reduction in height to eight storeys together with the provision of an additional 1 metre setback to Levels 5 and 6, will achieve a more appropriate balance between a sense of enclosure and openness to Saxon Street. This would still result in an encroachment into the 1:1 ratio, however given Saxon Street is the secondary frontage to this corner site it is considered acceptable. Furthermore, the significant street tree on the Dawson and Saxon Street corner softens the visual impacts of the street wall when viewed from Dawson Street, and when viewed from the northern end of Saxon Street, the five-storey building associated with 33 Saxon Street (under construction) will lessen the visual impact of the proposed development. These considerations when also combined with the improved pedestrian amenity which could be delivered by the recommended increased kerb outstand, in this instance, provide justification for this reduced extent of non-compliance.

**Does the proposal respond appropriately to heritage buildings?**

The site is affected by Heritage Overlay, Schedule 600 (HO600 – Part of Serial Listing, Brunswick Electricity Supply Substations) and Schedule 61 (HO61 - 10 Dawson Street, Brunswick – Brunswick Baths). The HO61 Statement of Significance identifies the Dawson Street facade of the Brunswick Baths as the significant architectural element.

The statement of significance of the HO61 does not mention any of the buildings on the site, while HO600 mentions the substation. The proposed demolition is supported subject to Council’s Heritage Advisor’s recommended conditions that an archival recording of the substation be prepared prior to its demolition and that an interpretation strategy be developed that explores the historical significance of Brunswick’s electrical supply and distribution network.

The proposed building height of 30.45 metres is substantially taller than the surrounding heritage buildings. Respecting the form and design of heritage places is sought by planning policy at Clause 15.03-1S, Clause 15.03-1L, and DDO18. Council’s Heritage Policy also specifically seeks to ensure new buildings do not dominate heritage places. In some locations within the Brunswick Activity Centre, including along sections of the Sydney Road spine, increases in height of the extent proposed may sought to be justified on the basis of an emerging urban context or the likelihood of buildings of increased height on adjoining sites which, over time, would mask views to the addition height being sought. Such arguments do not apply in this instance, when recognising the existence and scale of the heritage buildings and other built form character of this civic precinct. The immediate context of this civic precinct will not realise the changes in future built form character that might occur elsewhere.

The street wall is appropriate as it generally reinforces the scale of the adjacent buildings to the east and west and sits within the established height ranges of the south side of Dawson Street. The proposal also provides a sensitive design response for the western part of the facade abutting the Brunswick Baths building by incorporating a setback at the south-west corner of the building. This will ensure that this significant heritage building remains readily visible from Dawson Street.

However, the overall height of the building is not supported in this heritage context as it will result in a dramatic change in height, which will compete for visual dominance with the form, design and context of the nearby buildings of individual heritage significance.

Council’s Heritage Policy at Clause 15.03-1L seeks to ensure that new buildings do not adversely affect views and vistas toward, from and within heritage landscapes. Council’s Heritage Advisor considers that the height of the development will impact the vista of the Brunswick Town Hall landmark when looking down Dawson Street from Sydney Road, because the Town Hall would no longer become the most dominant building on the skyline.

Council’s Heritage Advisor recommends a reduction in height of two levels to reduce the building’s dominance and mitigate impacts on this vista. However, while the overall height of the development will be taller than nearby heritage properties, this must be balanced against the strategic direction to provide a significantly increased density and new character in the Brunswick Activity Centre. The condition in the recommendation to require the height of the development to be reduced by one level (rather than two) will achieve a balanced outcome, that acceptably reduces the building’s prominence and visual impact on heritage buildings.

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

A total of 106 car spaces are required for the development. The development provides 91 on-site spaces. In considering the relevant decision guidelines, the proposed reduction is acceptable for the reasons outlined below.

Clause 18.02-4L (Car parking in Merri-bek) supports reduced car parking rates in developments within and close to activity centres, with excellent access based on frequency and location to a range of public transport options and with increased provision of bicycle parking above the rates specified in Clause 52.34.

The proposal has excellent access to alternate modes of transport, including:

 Route 19 Tram providing north-south travel along Sydney Road (75 metres)

 Upfield Shared Path bicycle route (65 metres)

 Jewell Railway Station (500 metres) and Brunswick Railway Station (500 metres)

 Route 506 buses (100 metres).

Further, the proposal provides 153 bicycle parking spaces which is above the 24 spaces required by the Planning Scheme.

The Traffic Engineering Assessment found that the Clause 52.06 parking rates for dwellings are higher than the car ownership statistics for apartment housing in Brunswick. In central Brunswick, 43 per cent of residents living in one-bedroom apartments do not own a vehicle, and 52 per cent of residents own one vehicle or less. The assessment concludes that the 60 per cent of one-bedroom apartments provided with one car space is consistent with the car ownership rates of apartment households in Brunswick. The assessment also considered the site’s excellent access to alternative modes of transport would further suppress parking demand for the development as a whole.

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

Council’s Development Engineering Unit concluded that the parking spaces allocated to the commercial tenancies effectively provide for loading and unloading. Given the food and drink premises tenancy is of a small size and an office tenancy is unlikely to regularly receive large deliveries, it is acceptable for loading and unloading to take place via standard sized vehicles parked in standard car parking spaces.

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

The Traffic Engineering Assessment found that the development would result in approximately 275 additional vehicle movements per day (14 commercial and 261 residential) which will travel along Dawson Street (a local major road) given there is no vehicle access connected to Saxon Street. Council’s Development Engineering Unit concluded the additional traffic is not expected to cause any unacceptable congestion at the nearby intersections.

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

The development meets local policy for achieving best practice ESD and also achieves the following ESD requirements of Merri-bek’s Design Excellence Scorecard:

 Achieves a BESS score of 70 per cent

 A rooftop with a mix of communal open space (200m2 of communal space provided at roof terrace), landscaping and solar PV (20.8kW Solar PV system)

 Gas-free dwellings

 7.5 star average NatHERS Energy Rating result

The proposal provides excellence in ESD as part of this development.

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

Standard D18 seeks for 50 per cent of dwellings to meet the relevant design requirements set out in Apartment Development standards. A total of 48 out of 80 dwellings (60 per cent) are assessed to meet the design guidelines of the relevant Standard. While short of achieving design excellence (which requires 75 per cent), this provision of accessible housing is above average.

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

***Overshadowing***

Objectors raised concerns of overshadowing of Brunswick Baths, the Brunswick Library entrance and rooftop private open space areas and solar panels of dwellings to the east.

The DDO18 design objectives and decision guidelines note overshadowing to residential properties within and outside of the Activity Centre, as well as overshadowing of public space, as relevant planning considerations*.* The shadow diagrams demonstrate that the building would overshadow the adjacent residential property to the east, which is within the activity centre and zoned commercial, at 3pm only. This is not considered an unreasonable amenity outcome. The shadow diagrams also demonstrate that the building would overshadow Brunswick Baths during the morning hours at the equinox, however the shadows cast are to the building roof only and the outdoor open space and pool area is not overshadowed by the proposed development at any time at the equinox.

Beyond the visual bulk and shadows to the southern footpath on Dawson Street previously discussed, the proposal, subject to removal of one storey, would not result in any unreasonable off-site amenity impacts to the residences or to nearby civic buildings and public spaces.

**Does the proposal satisfy the requirements of Clause 58?**

A detailed assessment of the proposal against the objectives and standards at Clause 58 has been undertaken. Key issues are discussed below.

***Landscaping objectives – Standard D10***

The submitted landscape plans includes a 17.75 square metre deep soil planting area at ground level, planting and climbers along the Saxon Street frontage, planter boxes within level 1 roof non-trafficable “landscape zones” and landscaping on the communal rooftop. The landscape plan offers a generally well-considered mix of species but changes to some plant species will form a condition of the recommendation.

Further, the Main Switch Room fronting Dawson Street should be setback an additional 1 metre from the Dawson Street boundary to allow low planting to soften part of the wide stretch of blank wall and will provide for further landscaping along the street frontage in accordance with the standard. This is included as a condition of the recommendation. The landscape outcome for the site is otherwise considered appropriate and meets the relevant objectives.

*Retention of street tree*

The Landscaping Objective and Standard of Clause 58 seeks retention of existing trees. At the corner of Dawson and Saxon Streets there is a large, mature, native canopy street tree (Red Ironbank) of significance to the streetscape, which the proposal seeks to retain.

However, Council’s Open Space Unit require further detailed investigation to ensure the long-term viability (including structural integrity) of the tree is not compromised by development works. This is included as a condition of the recommendation.

A street with buildings and trees

Description automatically generated

1. *Figure 2: Street tree viewed from Dawson Street (source: Google Street view, September 2022).*

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

Council’s Apartment Development policy sets out building setback standards for apartment developments of five or more storeys. The objectives of this policy seek to provide adequate daylight to living rooms and bedrooms, to ensure the reasonable future development opportunities of adjoining sites, and to ensure amenity impacts on adjoining sites are considered.

The proposal varies the side setback of this policy at the northern and western interfaces as follows:

| **Building** | **Required setback** | **Proposed setback** |
| --- | --- | --- |
| Northern (rear) Level 1-2 | 6m - main outlook  3m - secondary outlook | 1st floor: 2.1m – 4.8m  2nd floor: 2.3m – 4.8m  4.8m |
| Northern (rear) Level 3-6 | 9m - main outlook  4.5m - secondary outlook | 2.3m (balcony) – 4.8m (wall)  4.8m |
| Northern (rear) Level 7 & 8 | 12m - main outlook  6m - secondary outlook | 2.3m (balcony) – 4.8m (wall)  4.8m |
| Western (side) Level 1-2 | 6m - main outlook  3m - secondary outlook | 0.9m – 8.6m  1m-4.7m |
| Western (side) - Level 3-6 | 9m - main outlook  4.5m - secondary outlook | 0.9m – 3.6m  1m – 4.7m |
| Western (side) - Level 7 & 8 | 12m - main outlook  6m - secondary outlook | 0.9m – 3.6m  1.3m – 4m |

The variations adjacent to 33 Saxon Street to the north and 16 Dawson Street to the west are acceptable as:

 The proposed units are orientated mainly to the streets and rear;

 To the west is Brunswick Baths. Lower level (i.e. levels one and two) balconies and bedrooms are provided with adequate light courts given that, in addition to the western setbacks provided. From Level 3, all west-facing dwellings have an outlook over the roof. The neighbouring Brunswick Baths building is setback 1.3 - 3.8 metres from the common boundary and is of individual heritage significance, so the ability to redevelop the site is limited;

 To the north, the site faces a development under construction that will be for commercial uses. Given the confirmed uses (non-residential) of the site and that there are no issues of future development potential, the proposed building separation is acceptable; and

 Daylight modelling has been provided which factors in the Brunswick Baths to the west and the under-construction 6 storey development at 33 Saxon Street to the north and confirms 88 per cent of living areas and 90 per cent of bedrooms will achieve the daylight factors as prescribed under BESS, which is acceptable.

**Does the proposal provide sufficient employment generating floor space?**

The site is within the Brunswick Activity Centre and located within the Brunswick Design District Core area. The strategic direction for economic development in Merri-bek seeks to create a sustainable economy and diversity of employment opportunities by supporting the economic viability and growth of activity centres and the Brunswick Design District. Further, local policy considering designated Employment Areas seeks to prioritise employment uses over residential uses by *ensuring the amount of employment floor space in a mixed-use development is at least equivalent to the amount of all proposed ground and first floor building areas (inclusive of car parking, other services and circulation space)*.

The Moreland Industrial Land Strategy (MILS) classifies the subject site as a Category 2 (Employment) Area. The current approval for the site complies with the requirements of Clause 21.03-2 by providing employment floor space for the entirety of the ground and first floor levels, namely a shop and office at ground level (along with car parking, services and circulation space) and an office at first floor level which in total provided 2,306 square metres of employment generating floor space at ground and first floor level. This was deemed to meet the requirements of the relevant strategic direction and local policy for employment floor space. Further, the current approval includes increased floor to ceiling heights and flexible floor plates at ground and first floor level, and an active ground floor commercial space with extensive transparent glazing, as encouraged by DDO18*.* In justifying the existing approval for the site, the Minister for Planning pointed to the creation of 100 short term and 30 long term jobs. The existing approval therefore provides a far superior response to planning policy in maintaining a social services and employment generating floorspace within the heart of the activity centre which, on balance, is also seen as mitigating in favour of exercising greater discretion in respect to building height.

Employment floorspace rates are also contemplated under Amendment C230 for the new Activity Centre Zone which while in its early stages of approval seeks 70 per cent of the site area to be provided as employment floor space (i.e. approximately 1200 square metres for this site).

The proposal provides only 484 square metres of employment generating floor space at ground floor level, namely an office and cafe. It is considered that the proposal fails to adequately deliver on the strategic outcomes sought for the activity centre and Brunswick Design District Core areas which includes creative industries and employment generating land uses and fails it meet the future Activity Centre Zone ambitions proposed under Amendment C230.

As such, a condition of this recommendation will require additional employment generating floor area to be provided at first floor level, along the Dawson and Saxon Street frontages. Subject to this condition, it is considered that the proposal will provide an acceptable amount of employment generating floor space in alignment with the strategic direction for economic development and local policy.

Separately, the proposal aligns with the DDO18 and Commercial 1 Zone objectives by providing an active ground floor commercial space with extensive transparent glazing. The proposal also incorporates high floor to ceiling heights and flexible floor plates at ground level, that allows for the flexible reuse of the building at ground level, facilitating a variety of employment generating uses over time.

**Varying of carriageway easement**

The proposal seeks to alter the alignment of the existing carriageway easement, with an agreed height limited of 4.1 metres above ground.

This change will facilitate a desire for on-site parking for the proposal adjacent to the western boundary. This was an agreement reached as part of the previous approved scheme for this site to enable improved connections between to Dawson Street and the Saxon Street Community and Arts Hub, while continuing to serve the ongoing needs of the Brunswick Baths.

The proposed building would be constructed over the carriageway easement, however the clearance height is sufficient to allow maintenance vehicles (including a crane) to use the accessway to then serve the needs of the Brunswick Baths from the 33 Saxon Street site. The provision of a new link to the 33 Saxon Street, was considered an additional community benefit which weighed positively in Council’s support of the current approval, in delivering greater connection and permeability.

The easement realignment is acceptable. Council’s Place Revitalization Unit has advised that the easement is now crucial to the development at 33 Saxon Street, which is currently under construction and relies on this access.

Equally, the proposed development relies on the new easement alignment, as car parking is proposed over part of the location of the current easement.

Due to these factors, a condition of the recommendation seeks to ensure delivery of these previously agreed outcomes and associated community benefit by requiring the applicant to provide evidence that the varied carriageway easement has been registered on title prior to the endorsement of plans.

**Naming of the building as the ‘John Curtin Building’**

A Council resolution as part of the sale of the building in 1999 (Council Report DES62) was for the name of the building to be maintained as the ‘John Curtin Building’. The resolution also required that a Section 173 agreement be entered into to ensure the name of the building is maintained.

The section 173 agreement (‘agreement’) requires:

*‘the building is and shall remain as the John Curtin Building and that:*

*a) Any signage which on the date of this agreement exists on the exterior of the building identifying it as The John Curtin Building must not be removed without the prior written consent of the Council;*

*b) In relation to any new signage erected at any at after the date of this Agreement on the exterior of the Building for the purposes of identifying or promoting the Building, that signage must include reference to ‘The John Curtin Building’.*

Conditions are included in the recommendation to ensure the development does not breach the agreement or the 1999 Council resolution.

The agreement does not contain a proactive obligation for any new building to be called ‘The John Curtin Building’. However, to ensure the intent of the agreement is met, and with agreement by the applicant, a condition of the recommendation is for the new building to contain a sign identifying it as ‘The John Curtin Building’.

Separate to this planning decision, the land owner may seek to end the Section 173 agreement through application or agreement with Council.

**5. Response to Objector Concerns**

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

 Building height

 Non-compliance with 1:1 ratio requirement of Design and Development Overlay Schedule 18 (DDO18)

 Reduction in car parking requirements

 Overshadowing of Brunswick Baths, Brunswick Library and residential rooftop garden and solar panels

 Inappropriate development within a sensitive heritage precinct

 Impacts of proposal to nearby civic buildings

The remaining concerns raised by objectors are addressed below.

***Increase in local residents, traffic movements and resulting impact on accessibility (car parking, walking and bike paths)***

State and Local Planning Policy envisage an increase in housing in well serviced areas such as this. The increase in population density at this site is an appropriate response to the underutilised state of the site and proximity to public transport, shops and other services.

The proposal is not considered to unreasonably impact on car congestion, traffic, cycling, bike paths, pedestrian safety, amenity or access in the surrounding area and provides an acceptable response to Council’s Policy at Clause 15.01-1L (Vehicle access design in Merri-bek) for the following reasons:

 The proposal utilises the existing vehicle crossing from Dawson Street, limiting the number of vehicle crossings to one.

 Provides 153 bicycle spaces which far exceeds the 24 required under Clause 52.34-5 (Bicycle spaces) of the Merri-bek Planning Scheme.

 Avoids the removal of on-street public parking spaces and street trees.

 Makes public realm improvements to the Saxon Street footpath, effectively widening the footpath with the eastern boundary setbacks.

 Council’s Development Engineering Unit reviewed the proposed crossover and vehicle access and did not raise any safety concerns.

***Internal amenity of apartments***

The proposed development complies with the objectives of Clause 58 and in general, meets or exceeds the associated standards. Notably:

 100 per cent of living rooms and bedrooms comply with the requirements of Standard D26 (Functional Layout).

 All balconies meet the D20 Standard for minimum dimension and area.

 80 per cent (64 out of 80) of the apartments are naturally cross-ventilated.

***Overlooking of Brunswick Baths pool from dwellings***

The swimming pool is located more than 28 metres from the western boundary of the site, limiting direct views. Further, the pool is a public place where expectations of privacy are not held to the same expectation as in a private residential setting. This is not considered an unreasonable amenity outcome.

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

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

**7. Financial and Resources Implications**

There are no financial or resource implications.

**8. Conclusion**

The proposed built form will be overly dominant within the context of the heritage place and civic precinct of Brunswick Activity Centre, which is characterised by lower scale heritage buildings. The additional building height will result in overshadowing of Dawson Street public realm, which is identified as a key pedestrian street in the Merri-bek Planning Scheme and results in other non-compliance with the 1:1 building height to setback ratio which equally seeks to ensure an appropriate building scale and amenity of public streets and spaces. To reduce impacts to an acceptable level, it is recommended that one level be removed. An additional upper level setback from Saxon Street for Levels 5 and 6 is also required to limit built form impacts.

The proposal does not provide sufficient employment generating floor area sought for the Brunswick Activity Centre and the Brunswick Design District under the strategic direction and local policy of the Merri-bek Planning Scheme, and to address this it is recommended that additional employment generating floor area is provided at first floor.

Subject to the above changes, the development is capable of responding to the site context, balance the need to respond to nearby heritage buildings, protect the amenity of the streets and nearby residences, and provide increased housing at a scale envisaged by strategic policy. The development exceeds many internal amenity requirements, including accessibility and will provide a good standard of amenity for future residents. The proposal also provides design excellence in ESD features.

On the balance of policies and controls within the Merri-bek Planning Scheme and objections received, it is recommended that Council writes to the Victorian Civil and Administrative Tribunal (VCAT) and all parties advising that Council supports the proposed development subject to the conditions outlined in the recommendation.

**Attachment/s**

|  |  |  |  |
| --- | --- | --- | --- |
| **1** | Location Map | D24/258973 |  |
| **2** | Zoning Map | D24/258976 |  |
| **3** | Development Plans | D24/258972 |  |
| **4** | Location of Objectors Map | D24/258978 |  |
| **5** | Overshadowing 3D Modelling Analysis images | D24/259006 |  |
| **6** | Section diagram of DDO 1:1 ratio sightline to Saxon Street | D24/259020 |  |