



**Moreland**  
City Council

## **COUNCIL AGENDA**

### **PLANNING AND RELATED MATTERS**

**WEDNESDAY 21 OCTOBER 2020**

**COMMENCING 6.30 PM**

**THE COUNCIL MEETING WILL BE LIVESTREAMED**

#### **Language Link**

This is the Agenda for the Council meeting.  
For assistance with any of the agenda items,  
please telephone 9240 1111.

這是市政會會議的議程。您若在理解議程中有需要協助的地方，請打電話給“語言連接 (Language Link)”翻譯服務，號碼9280 1910。

Questo è l'ordine del giorno per la Riunione del consiglio Comunale. Se hai bisogno di aiuto sugli argomenti in discussione, sei pregato di telefonare al Language Link al numero 9280 1911.

Αυτή είναι η Ημερήσια Διάταξη για τη Συνεδρίαση του Συμβουλίου (Council Meeting). Για βοήθεια με οποιοδήποτε από τα θέματα της ημερήσιας διάταξης, παρακαλείστε να τηλεφωνήσετε στο Γλωσσικό Σύμβουλο (Language Link), στο 9280 1912.

هذا هو جدول أعمال اجتماع المجلس البلدي. للمساعدة بأي بند من بنود جدول الأعمال الرجاء الاتصال بخط Language Link على الرقم 9280 1913.

Belediye Meclisi Toplantısının gündem maddeleri burada verilmiştir. Bu gündem maddeleri ile ilgili yardıma ihtiyacınız olursa, 9280 1914 numaralı telefondan Language Link tercüme hattını arayınız.

Đây là Nghị Trình cuộc họp của Ủy Ban Quy Hoạch Đô Thị. Nếu muốn biết thêm chi tiết về đề tài thảo luận, xin gọi điện thoại cho Language Link qua số 9280 1915.

यह काँसिल की बैठक का कार्यक्रम है। कार्यक्रम के किसी भी विषय के बारे में सहायता के लिए कृपया 9280 1918 पर फोन कीजिए।

这是市政府例会的议题安排，如果需要协助了解任何议题内容，请拨打9280 0750。

ਇਹ ਕੌਂਸਲ ਦੀ ਮੀਟਿੰਗ ਦਾ ਏਜੰਡਾ ਹੈ।  
ਏਜੰਡੇ ਦੀ ਕਿਸੇ ਆਈਟਮ ਬਾਰੇ ਮਦਦ ਲਈ,  
ਕ੍ਰਿਪਾ ਕਰਕੇ 9280 0751 ਤੇ ਟੈਲੀਫੋਨ ਕਰੋ।



1. **WELCOME**
2. **APOLOGIES**
3. **DECLARATION OF INTERESTS AND/OR CONFLICTS OF INTERESTS**
4. **MINUTE CONFIRMATION**

The minutes of the Planning and Related Matters Meeting held on 23 September 2020 be confirmed.

5. **COUNCIL REPORTS**

**CITY FUTURES**

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6. **URGENT BUSINESS**

# DCF49/20 9-21 WILSON AVENUE, BRUNSWICK - PLANNING PERMIT APPLICATION MPS/2020/213

Director City Futures

City Development

## Caretaker Statement

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

## Executive Summary



<b>Property:</b>	9-13 & 15-21 Wilson Avenue, Brunswick			
<b>Proposal:</b>	Buildings and works in association with the staged construction (two stages) of an eight-storey development plus roof terrace and basement car park, use of the land for the purpose of dwellings, reduction in the car parking requirement and removal of easements			
<b>Zoning and Overlays:</b>	<ul style="list-style-type: none"> <li>Commercial 1 Zone</li> <li>Development Contributions Plan Overlay (DCPO)</li> <li>Parking Overlay (PO1)</li> <li>Design and Development Overlay (DDO18)</li> <li>Environmental Audit Overlay</li> </ul>			
<b>Strategic setting:</b>	Minimal housing growth	Incremental housing growth	Increased housing densities encouraged	Significant housing growth
<b>Objections:</b>	<ul style="list-style-type: none"> <li>15 objections</li> <li>Key issues: <ul style="list-style-type: none"> <li>Neighbourhood Character and height</li> <li>Amenity impacts to neighbouring dwellings</li> <li>Impact on traffic flow in laneway</li> </ul> </li> </ul>			
<b>Planning Information and Discussion Meeting:</b>	<ul style="list-style-type: none"> <li>Date: 1 October 2020</li> <li>Attendees: Council officers, applicant and three objectors</li> <li>No changes were agreed, however the meeting provided an opportunity for the objectors concerns to be discussed and helped inform the preparation of this report.</li> </ul>			
<b>ESD:</b>	<ul style="list-style-type: none"> <li>Commitment to average NatHERS rating of 7.5 stars</li> </ul>			
<b>Accessibility:</b>	<ul style="list-style-type: none"> <li>83% meet the Silver Level Liveable Housing Design Guidelines</li> <li>55% will achieve compliance with Standard D17 (Accessibility)</li> </ul>			
<b>Key reasons for support:</b>	<ul style="list-style-type: none"> <li>Appropriate building envelope which subject to conditions achieves the objectives of DDO18</li> <li>Good level of compliance with Clause 58</li> <li>Delivery of new employment floorspace</li> <li>Delivery of at least one affordable apartment</li> </ul>			
<b>Recommendation:</b>	It is recommended that a Notice of Decision to Grant a Planning Permit be issued for the proposal.			

## Officer Recommendation

That a Notice of Decision to Grant a Planning Permit No. MPS/2020/213 be issued for the buildings and works in association with the staged construction (two stages) of a multi-storey apartment development, use of the land for the purpose of dwellings, reduction in the car parking requirement and removal of easements at 9-13 and 15-21 Wilson Avenue, Brunswick, 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 20 August 2020 but modified to show:
  - a) Modifications to Level 6 and 7 of the building in accordance with the discussion plans received by Council on 1 October 2020, but further modified to:
    - i. Delete the roof projection over the level 7 balconies facing Wilson Avenue.
    - ii. Include a window on the east facing wall of Apartment 702.
  - b) A south facing window to the eastern bedroom of Apartments 310, 409, 507, 607 and 706. The east facing bedroom window of each dwelling may be retained if it is fixed shut and obscure glazed, or the east facing wall must show alternative detailing that suitably breaks down the mass of this wall.
  - c) Canvas awnings between the columns facing Wilson Avenue, that project at least 1.5 metres beyond the title boundary, or another suitable awning or verandah projection to provide weather protection for pedestrians on Wilson Avenue. Any awning or verandah must be setback not less than 750mm from the kerb and at a height of not less than 3 metres above the level of the footpath.
  - d) Textured or patterned pre-cast concrete to the east and west elevations of the northern building.
  - e) Wire trellis to the east elevation of the northern building, to support climbing plants. Details of the wire pattern and fixing points should be shown.
  - f) An amended schedule of all proposed exterior decorations, materials, finishes and colours, including colour sample images. The schedule must include:
    - i. Any sustainable materials committed to in the endorsed Sustainable Management Plan, which could be present in the external building envelope; and
    - ii. Details of the concrete finish required by Condition 1d.
  - g) Each material labelled on the elevations, clearly showing the material selection for all parts of the building.
  - h) The privacy shelves depicted on "Screen Detail Plan" noted on the relevant floor plans.
  - i) The three 'live/work units' at ground floor converted to 'office' or 'retail'.
  - j) The balconies to dwelling types A, B, E and M modified to comply with Standard D19 of Clause 58.05-3 of Moreland Planning Scheme, with all measurements taken from the internal edge of the balcony balustrade.
  - k) Type B dwellings modified to provide access to the balcony directly from the living room, rather than via the bedroom.
  - l) Type F dwellings amended to comply with Standard D24 'Functional Layout' of Clause 58.07-1 of Moreland Planning Scheme.
  - m) Type B, D and L dwellings modified to provide additional storage, to comply with Standard D20 of Clause 58.05-4 of Moreland Planning Scheme.

- n) A plan showing the removal of party wall easements (the land marked B and C on Lot 3 and marked C on Lot 2 on Plan of Subdivision 125486).
- o) Modifications as follows to comply with Standard D17 'Accessibility' of Clause 58.05-1 of the Moreland Planning Scheme:
  - i. Type A dwellings modified to show an 850mm wide bathroom door that either opens outwards or is sliding; and a clear circulation area in front of the shower that is 1.2 by 1.2 metres.
  - ii. Type F dwellings modified to show the toilet located closest to the bathroom door and a bathroom door that opens outwards or is sliding.
  - iii. Type L dwellings modified to show bathroom doors with readily removable hinges; a clear circulation area in front of the shower that is 1.2 by 1.2 metres; and a 1.2 metre wide clear path of travel to the main bedroom (i.e. the larger bedroom).
  - iv. The bathroom of Type N dwellings modified to show the shower located opposite the door and the toilet closest to the door, or other suitable modification to comply with 'Table D4: Bathroom Design' of Standard D17.
- p) Bicycle Parking arrangements amended as follows:
  - i. Each bicycle parking device in the basements dimensioned, with all spaces 500mm wide and the horizontal and vertical bicycle spaces 1800mm and 1200mm long respectively, with every space accessed from a 1500mm wide access aisle as required by the Australian Standard for Parking Facilities – Bicycle Parking (AS2890.3).
  - ii. The double tier bicycle parking racks dimensioned to provide bicycle parking spaces 1800mm long, 500mm wide and 1200mm high on both levels as required by the Australian Standard for Bicycle Parking (AS2890.3).
  - iii. A notation that the bicycle storage room on the ground floor is to 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).
  - iv. Demonstration that the lifts can accommodate two cyclists with standard sized bicycles.
  - v. Ensure the number bicycle spaces shown on the development plans matches the development schedule and Sustainability Management Plan.
- q) Any modifications required to align with the landscape plan required by Condition 9 of this permit.
- r) The Environmentally Sustainable Design initiatives as contained within the Sustainable Design Assessment required by Condition 17 of this permit, which should include:
  - i. Size and location of the rainwater tank/s as per the amended stormwater management response; and
  - ii. Any other ESD initiatives as per Condition 17.
- s) Acoustic attenuation measures as recommended in the acoustic report required by Condition 24 of this permit.

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

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

## Engineering

3. Prior to the commencement of the development, a Public Works Plan and associated construction drawing specifications detailing the works to the land must be submitted and be to the satisfaction of the Responsible Authority. The Plan must be in accordance the Moreland City Council Technical Notes July 2019 or any updated version and detail works in front of the approved building and include:
  - a) The construction of the top cover (pavers and bedding) of the footpath directly in front of the property boundary up to the new kerb location (to a maximum area of 225 square metres suitable for pedestrian traffic only) in materials which include bluestone and granite, in accordance with the future 'Wilson Avenue Stage 2 Streetscape Improvements' construction drawings by Moreland City Council, unless otherwise agreed to by Moreland City Council. The construction will exclude kerb and channel, any alterations to existing utility services' access hatches, and base layers which will be constructed and paid for by Moreland City Council as part of the Wilson Avenue Stage 2 Streetscape Improvements. Any damage to these works resulting from construction must be repaired at the cost of the developer. If the 'Wilson Avenue Stage 2 Streetscape Improvements' are no longer pursued by Council, then the footpath treatment must match existing.
  - b) A detailed level and feature survey of the footpaths and roads, immediately in front of the site.
  - c) The existing crossovers at the site removed and the kerb and channel and footpath reinstated.
  - d) The public footpath is to be reinstated with the standard crossfall slope of 1 in 40 from the top of roadside kerb to the property boundary, with any level difference made up within the site.
  - e) If the 'Wilson Avenue Stage 2 Streetscape Improvements' are no longer pursued by Council, the provision of street tree planting and street furniture.

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

4. All stormwater from the land, where it is not collected in rainwater tanks for re-use, must be collected by an underground pipe drain approved by and to the satisfaction of the Responsible Authority (Note: Please contact Moreland City Council, City Infrastructure Department).
5. Stormwater from the land must not be directed to the surface of the laneway to the satisfaction of the Responsible Authority.
6. Prior to the commencement of the development, a legal point of discharge is to be obtained, and where required, a stormwater drainage plan showing how the site will be drained from the property boundary to the stated point of discharge, must be submitted to and approved by the Responsible Authority.
7. Prior to the issuing of a Statement of Compliance or Certificate of Occupancy for each stage of the development, whichever occurs 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.
8. Prior to the issuing of a Statement of Compliance or Certificate of Occupancy for each stage of the development, whichever occurs first, all car parking spaces must be marked with the associated apartment or shop number to facilitate management of the car park to the satisfaction of the Responsible Authority.

## **Landscape plan**

9. 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 MUD Office Landscape Design and dated 12 June 2020, but amended to show:
- a) The addition of two open-form evergreen trees within the central courtyard;
  - b) Landscaping to the eastern terrace of Apartment 210 (level 2), including climbers that run up the eastern wall of the building;
  - c) Details of how the climbers required by Condition 9b will be supported, including details of wires affixed to the eastern wall, automated irrigation and soil depths;
  - d) Details of any landscaping to the eastern terrace of Apartment 602, as shown in the discussion plans dated 1 October 2020;
  - e) Sectional diagrams of all planters, ensuring a minimum 700mm soil depth is achieved to any areas with canopy trees;
  - f) The landscape maintenance period extended from 2 weeks to 13 weeks, including a defects liability period to ensure the plants successfully establish, with any dead plants to be replaced;
  - g) Details of a maintenance program of the landscaping and irrigation, including responsibility for maintenance; and
  - h) Any stormwater management details on the STORM report (which forms part of the endorsed Sustainable Management Plan) including rainwater harvesting tank size and location.

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.

10. Prior to the issuing of a Statement of Compliance or occupation of each stage of the development, whichever occurs first, all landscaping works for that stage must be completed in accordance with the approved and endorsed landscape drawing to the satisfaction of the Responsible Authority.
11. All landscaping and associated infrastructure shown on plans endorsed under this permit must be maintained to the satisfaction of the Responsible Authority in accordance with the endorsed landscape plans. Any dead, diseased or damaged vegetation must be replaced to the satisfaction of the Responsible Authority.

## **Affordable Housing Contribution**

12. Prior to the issuing of a Statement of Compliance or Certificate of Occupancy for the Stage 1 of the development, whichever occurs first, an agreement under Section 173 of the *Planning and Environment Act 1987* must be entered into between the Owners of the land and the Responsible Authority in a form satisfactory to the Responsible Authority requiring:
- a) An affordable housing contribution of \$415,000, which is to be put towards the purchase of at least one dwelling within the approved development by a registered affordable housing provider, within the timeframe specified in Condition 12(c);
  - b) The affordable housing contribution of \$415,000 shall be indexed on 1 July each year in accordance with CPI;
  - c) Within 12 months of the issuing of a Statement of Compliance or Certificate of Occupancy for the development of Stage 1, the affordable housing dwelling(s) must be transferred to a registered housing agency as defined in the *Housing Act (1983)* unless with the prior written consent of the Responsible Authority;

- d) The affordable housing dwellings must be used for the purpose of providing affordable housing for a period of at least 10 years;
- e) If an affordable housing provider cannot be obtained, an alternative affordable housing contribution of the same value may be made to the Moreland Housing Reserve, only following a reasonable attempt to provide the affordable housing contribution set out in Condition 1(a);
- f) A mechanism that requires the Owner to provide evidence of compliance with the Section 173 Agreement at the request of the Responsible Authority.

The Owner must 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 pay to the Responsible Authority its costs and disbursements incurred in relation to the negotiation, preparation, execution and registration of the agreement on the certificate of title to the land.

### **Development Contributions**

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

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

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

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

### **Potential Contamination**

14. Prior to the commencement of construction or carrying out works pursuant to this permit, or any works associated with a sensitive use, or where no works are proposed, prior to the commencement of the permitted use, either:
  - a) A Certificate of Environmental Audit for the land must be issued in accordance with Section 53Y of the *Environment Protection Act 1970* and provided to the Responsible Authority; or,
  - b) An Environmental Auditor appointed under Section 53S of the *Environment Protection Act 1970* must make a Statement in accordance with Section 53Z of that Act that the environmental conditions of the land are suitable for the use and development that are the subject of this permit and that statement must be provided to the Responsible Authority.

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

Where a Statement of Environmental Audit is issued for the land, prior to the commencement of the use, and prior to the issue of a Statement of Compliance under the *Subdivision Act 1988*, and prior to the issue of an Occupancy Permit under the *Building Act 1993*, a letter prepared by an Environmental Auditor appointed under



Section 53S of the *Environment Protection Act 1970* must be submitted to the Responsible Authority to verify that the directions and conditions contained within the Statement have been satisfied.

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

15. 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 a Certificate or Statement of Environmental Audit.
16. No works to construct the development hereby approved shall be carried out on the land and no building contract to construct the development hereby approved may be entered into, other than in accordance with a building contract that stipulates that works must not be commenced until such time as Conditions 14 and 15 are satisfied.

### **Environmentally Sustainable Design**

17. Prior to the endorsement of plans, a Sustainability Management Plan (SMP) 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 Urban Digester dated 08/04/2020, but modified to include the following changes:
  - a) No longer claim Management credit 1.1 'Pre-application meeting'.
  - b) Provide completed preliminary energy rating for all thermally unique dwellings including complete preview energy rating certificates that demonstrate that a 7.5-star average energy rating will be achieved across the development. The preliminary energy ratings must demonstrate that the maximum cooling load as specified in Table D1 of Clause 58.03 (30MJ/sqm) has not been exceeded.
  - c) Provide evidence to support the Energy Deemed-to-satisfy Method in the form of either:
    - i. A copy of the NCC glazing calculator showing glazing performance characteristics (U-value, SHGC) of the commercial space that achieve 10 per cent improvement above NCC; or
    - ii. If the JV3 method is chosen as the compliance pathway; then a modelling report demonstrating that the proposed building fabric as modelled with the reference building services achieves a 10 per cent improvement above the reference buildings heating and cooling energy consumption. The 10 per cent improvement cannot be offset by solar PV.
  - d) Demonstration of best practice stormwater management as per clause 22.08 by amending the on-site stormwater management response that maintains a minimum STORM score of 100 per cent but is modified so that:
    - i. Stormwater collection from balconies is excluded, or (should balconies need to be collected from) provide more details on the potential water contaminants resulting from the expected use of the areas of collection, the relevant water treatment measures proposed upstream and downstream

the tanks, and their effectiveness in achieving the required water quality suitable for the end use. If stormwater from balconies is collected, a maintenance plan, stating periodic actions, requirements and responsibilities must be provided.

- ii. Planter boxes are categorised as an impervious area in STORM and are not listed as 'buffer strip' treatment or categorized as permeable area if supporting evidence is provided in the landscape plans demonstrating that planter boxes consist of deep soil/substrate planting (e.g. Soil depth greater than 500mm).
- iii. The 'tank water supply reliability' for the rainwater tank treatment type to be 100 per cent, which may require a larger rainwater tank.
- e) Provide marked up natural ventilation pathways for all dwellings (bedrooms and living areas) to demonstrate how the 100 per cent was achieved or amend the percentage of dwellings that are effectively naturally ventilated in accordance with BESS definitions.
- f) No longer claim innovation points for Biophilic design of public space and operations waste to landfill reduction.

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

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

- 18. 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 Sustainability 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.
- 19. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, for each stage of the development, 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 (and include appropriate evidence such as photos and receipts) that all measures specified in the SMP have been implemented in accordance with the approved plan.

### **Accessibility**

- 20. Prior to the endorsement of plans, an Accessibility Report prepared by a suitably qualified person must be submitted to and approved to the satisfaction of the Responsible Authority. The report must be generally in accordance with the report prepared by Access Consultants dated 3 July 2020 (Project Number 11182) but updated to refer to the plans required by Condition 1 of this permit. The recommendations of the report must be implemented to the satisfaction of the Responsible Authority prior to the occupation of the development. No alterations to the plan may occur without the written consent of the Responsible Authority.
- 21. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, for each stage of the development, a report from the author of the Access Plan, 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 Access Plan have been implemented in accordance with the approved Plan.

## **Waste Management**

22. Prior to the endorsement of plans, a Waste Management Plan (WMP) generally in accordance with the WMP prepared by Ratio dated 9 April 2020, must be submitted to the satisfaction of the Responsible Authority. When submitted and approved to the satisfaction of the Responsible Authority, the WMP will be endorsed to form part of this permit. No alterations to the WMP may occur without the written consent of the Responsible Authority.
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.

## **Acoustic Report**

24. Prior to the endorsement of plans, an Acoustic Report prepared by a qualified Acoustic Engineer generally in accordance with the Acoustic Report prepared by Acoustic Logic 8 April 2020 must be submitted to and approved by 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 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, for each stage of the development, a report from the author of the Acoustic Report approved pursuant to this permit or a 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.

## **Removal of easements**

27. Prior to the commencement of the development, the permit holder must make application to Council under the *Subdivision Act 1988* to remove the party wall easements (the land marked B and C on Lot 3 and marked C on Lot 2 on Plan of Subdivision 125486).
28. Prior to the issue of a Statement of Compliance for the removal of easement, the boundary wall at 1-7 Wilson Avenue must be demolished, to the satisfaction of the Responsible Authority.

## **Boundary walls**

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

## **3D model**

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

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

31. Prior to the issuing of Statement of Compliance or occupation of each stage 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.

### **Baffled Lighting**

32. All lighting of external areas must be designed not to emit direct light onto adjoining property or properties on the south side of the Right of Way to the satisfaction of the Responsible Authority.

### **Retention of Architect**

33. MAA or an equivalent Architect must be retained to complete and provide architectural oversight during construction of the detailed design as shown on the endorsed plans, to the satisfaction of the responsible authority.

### **Time**

34. This permit will expire if one of the following circumstances applies:
- a) The development of Stage 1 is not commenced within three (3) years from the date of issue of this permit;
  - b) The development Stage 1 is not completed within five (5) years from the date of issue of this permit.
  - c) The development of Stage 2 is not commenced within five (5) years from the date of issue of this permit;
  - d) The development Stage 2 is not completed within seven (7) years from the date of issue of this permit.
  - e) The use is not commenced within five (5) years from the date of issue of this permit.
  - f) The plan of removal of easement is not commenced within two (2) years of the date of issue of this permit as evidenced by a plan of removal of easement being certified by the Council within that time.
  - g) The Certified plan of removal of easement is not registered within five years from the date of the Certification of the Plan.

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**

- No polluted and / or sediment laden runoff is to be discharged directly or indirectly into Melbourne Water's drains or watercourses.
- Should Council impose car parking restrictions in this street, the owners and/or occupiers of the land would not be eligible for any Council parking permits to allow for on street parking.
- The City of Moreland is committed to creating an environmentally sustainable city. A critical component in achieving this commitment is to encourage new development to meet appropriate environmental standards. Applicants are encouraged to include

environmentally sustainable design principles within new developments via the online BESS tool.

- The BESS tool is a sustainability assessment tool designed for planning assessments of all development types and sizes. Using the BESS tool involves entering data about the proposed design into the BESS assessment tool found at <http://www.bess.net.au>. BESS will produce a report for submission to Council and is free for applicants to use. This allows applicants to design more environmentally sustainable developments. For more information or help on ESD or BESS please contact Council's Sustainable Development Department on 9240 1188.
- This permit contains a condition requiring payment of Development Contributions. The applicable development contribution levies are indexed annually. To calculate the approximate once off levy amount, please visit <http://www.moreland.vic.gov.au/planning-building/> and click on 'Moreland Development Contributions Plan (DCP)'. Alternatively, please contact Moreland City Council on 9240 1111 and ask to speak to the DCP Officer.

#### **Notes about environmental audits**

- A copy of the Certificate or Statement of Environmental Audit, including the complete Environmental Audit Report must be submitted to the Responsible Authority within 7 days of issue, in accordance with Section 53ZB of the *Environment Protection Act 1970*.
- Where a Statement of Environmental Audit is issued for the land a copy of that Statement must be provided to any person who proposes to become an occupier of the land, pursuant to Section 53ZE of the *Environment Protection Act 1970*.
- 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 Certificate or Statement of Environmental Audit including a copy of any cover letter.
- Where a Statement of Environmental Audit issued for the land contains conditions that the Responsible Authority considers to be unreasonable in the circumstances, the Responsible Authority may seek cancellation or amendment of the planning permit in accordance with Section 87 of the *Planning and Environment Act 1987*.

## **1. Background**

### **Subject site**

The site is located on the southern side of Wilson Avenue between the Upfield Railway Reserve and Black Street in Brunswick. The combined lots are rectangular in shape with a frontage to Wilson Ave of 42.55 metres and a depth of 39.2 metres. The site area is approximately 1700 square metres.

The site is currently occupied by two attached single storey brick warehouses, constructed to the east and south boundaries with a one metre setback from the west boundary. Car parking areas are located within the front setback, accessed via two crossings from Wilson Avenue. There is limited vegetation within the front setback.

### **Surrounds**

The site is located within the Brunswick Activity Centre, to the west of Sydney Road. Wilson Avenue has a width of approximately 18.2 metres, including the footpaths, and is a key pedestrian connection from Sydney Road to Jewell Railway Station. Wilson Avenue comprises of large lot sizes with wide street frontages, reflective of the former industrial land uses. On the opposite side of Wilson Avenue are medium density dwellings and commercial buildings which range in height from one to three storeys. Approval has been granted for an eight storey building at 6-8 Wilson Avenue.

East of the subject site is 1-7 Wilson Avenue, which is currently occupied by a warehouse building. Planning Permit MPS/2017/314 was issued at the direction of VCAT allowing the development of an eight storey building over a basement accessed from Black Street.

South of the site is an unnamed right of way (ROW), which runs east-west and has a width of 4.3 metres to 4.8 metres. South of the ROW at 311-315 Barkley Street is a double storey warehouse building used for motor vehicle repairs. Either side of 311-315 Barkly Street is a row of single and double storey terrace dwellings which front Barkly Street. These dwellings have their private open space adjoining the rear laneway and use the laneway for vehicle access.

West of the subject site is 25 Wilson Avenue, which is occupied by a single storey warehouse building used for indoor recreation. It is constructed to the boundary and contains windows on the boundary wall facing the subject site. Further west at 27 Wilson Avenue is an eight storey building which forms part of the Jewell Station development.

A location plan forms **Attachment 1**.

### **The proposal**

This application proposes:

- Construction of an eight-storey building of 26.57 metres (excluding lift-overrun and rooftop facilities) with a street-wall height of 18.62 metres and upper level setback to Wilson Avenue of 5 metres.
- The building is arranged in two eight storey blocks either side of a 9 metre wide open plaza running east-west, connected by an elevated walkway from two lift cores.
- Two levels of basement car parking contain 73 car parking spaces, 78 storage cages, 100 bicycle spaces and a 25,000 litre water-tank.
- Ground floor contains five shop tenancies and a food and drink premise (334m<sup>2</sup>), three offices (167m<sup>2</sup>), three live/work tenancies (234sqm) facing the

rear laneway, a 5.5 metre pedestrian access from Wilson Avenue, a bicycle storage room containing 64 spaces and vehicle access via the ROW.

- Level 1 contains 14 live-work tenancies and an office of 56m<sup>2</sup>.
- Levels 2-7 contain a total of 59 dwellings (2 one bedroom, 48 two bedroom and 9 three bedroom).
- A common terrace (88m<sup>2</sup>) and screened communal drying area (14sqm) will be provided at roof level.
- The material schedule includes red tinted and natural concrete, clear and obscure glazing and natural anodized and red powder coated metal framing.

The development plans form **Attachment 2**.

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

<b>Control</b>	<b>Permit Requirement</b>
Commercial 1 Zone	A permit is required for the use of the land for 'Dwelling' because the frontage at ground level exceeds two metres (5.5 metres). A permit is required to construct a building or construct or carry out works.
Design and Development Overlay	Clause 43-02-2: A permit is required to construct a building or construct or carry out works.
Particular Provisions Clause 52.06	A permit is required for a reduction in the standard car parking requirement from 102 to 73 spaces.

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

- Clause 45.03: Environment Audit Overlay. A condition of the recommendation requires an Environmental Audit to be undertaken before the development commences, to ensure that the site is remediated to an appropriate standard.
- Clause 45.06: Development Contributions Plan Overlay
- Clause 45.09: Parking Overlay
- Clause 53.18: Stormwater management

## **2. Internal/External Consultation**

### **Public notification**

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

- Sending notices to the owners and occupiers of adjoining and nearby land and the current occupier of the subject site; and
- Placing signs on the Wilson Avenue frontage of the site and rear laneway.

Council has received 15 objections to date. A map identifying the location of objectors forms **Attachment 1**.

The key issues raised in objections are:

- Height.
- Amenity impacts, including:
  - Overshadowing of residential properties fronting Barkly Street.
  - Overlooking.

- Traffic and parking.
- Lack of commercial floorspace.
- Traffic impacts during construction.
- Overdevelopment of site.

A Planning Information and Discussion meeting was held on 1 October 2020 and attended by Council Planning Officers, the applicant and three objectors. No agreement on changes to plans was reached and plans have not been amended following the meeting. The meeting provided an opportunity for the objectors concerns to be discussed and helped inform the preparation of this report.

### Internal referrals

The proposal was referred to the following internal business units:

Internal Business Unit	Comments
Urban Design Unit	Supportive of the overall height and street wall height. Concerns were raised with the massing of the upper levels and the demarcation of the street wall. These issues are addressed by permit conditions in the recommendation. While it was recommended that internal layouts could be improved, these are largely considered acceptable, as detailed in Section 4 of this report.
Sustainable Built Environment - Development Engineering Team	No objections were offered to the traffic and car parking arrangements subject to minor modifications, which are addressed by conditions detailed in the recommendation.
Sustainable Built Environment - ESD Team	Outlined that the ESD initiatives are generally satisfactory but need to be more robustly demonstrated to ensure best practice design is achieved in accordance with Clause 22.08. These are addressed in the conditions detailed in the recommendation and assessed further in Section 4.
Open Space Design and Development Unit	Supportive of the overall design but required modifications to the landscape plan, which is addressed by conditions of the recommendation.

## 3. Policy Implications

### Planning Policy Framework (PPF)

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

- Clause 11 Settlement
- Clause 15 Built Environment and Heritage including:
  - Built Environment (Clause 15.01)
  - Healthy neighbourhoods (Clause 15.01-4S and 15.01-4R)
  - Sustainable Development (Clause 15.02)
- Clause 16 Housing including:
  - Housing Supply (Clause 16.01-1S and 16.01-1R)
  - Housing Affordability (Clause 16.01-2S)
- Clause 17: Economic Development



- Clause 18: Transport

### **Local Planning Policy Framework (LPPF)**

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

Municipal Strategic Statement:

- Clause 21.01 Municipal Profile
- Clause 21.02 Vision
- Clause 21.03-1 Activity Centres
- Clause 21.03-3 Housing
- Clause 21.03-4 Urban Design, Built Form and Landscape Design
- Clause 21.03-5 Environmentally Sustainable Design (Water, Waste and Energy)

Local Planning Policies:

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

Council through its MSS, seeks increased residential densities in the Brunswick Activity Centre to take advantage of the excellent access to public transport and other services within this location. The proposal meets the objectives and strategies of the LPPF by incorporating a range of uses including increased housing and active spaces at ground level to create and reinforce an active and pedestrian friendly street environment. The proximity of the site to a variety of public transport options and the provision of bicycle facilities on the site encourages less reliance on cars as a means of travel. Council's Neighbourhood Character Policy supports substantial change and creation of a new character of increased scale associated with increased density in this designated major activity centre. The proposal enjoys strong strategic support at both state and local level.

### **Human Rights Consideration**

This application has been assessed in accordance with the requirements of the *Planning and Environment Act 1987* (including the Moreland Planning Scheme) reviewed by the State Government and which complies with the Victorian Charter of *Human Rights and Responsibilities Act 2006*. In particular, regard was given to:

- Section 12: Freedom of movement
- Section 13: Privacy and Reputation
- Section 15: Freedom of expression
- Section 18: Taking part in public life

This application is not considered to limit human rights.

## **4. Issues**

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

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

Within the Brunswick Activity Centre, Council's Neighbourhood Character Policy seeks to:

*support substantial change and create a new character of increased density and scale of built form, as defined in the relevant zone or overlay, Structure Plan and/or Place Framework.*

The development, subject to conditions, responds appropriately to the preferred character of the area as defined in Schedule 18 to the Design and Development Overlay. The response of the development to the preferred height, street wall height and upper level setbacks of DDO18 is outlined in the table below:

	<b>Preferred/Mandatory</b>	<b>Proposed</b>
<b>Overall height</b>	25 metres (preferred)	26.57 metres*
<b>Street wall height – Wilson Ave</b>	15-18 metres (preferred)	18.62 metres
<b>Upper level setback – Wilson Ave</b>	Minimum 5 metres (preferred)	5 metres minimum
*Overall height excludes the lift overruns		

### **Overall Building Height**

The proposed height of 26.57 metres (excluding lift core and roof top structures) only marginally exceeds the DDO18 preferred height of 25 metres and this additional height is unlikely to be readily perceivable when viewed from the public realm or adjoining properties. The proposed height matches the approved development at 1-7 Wilson Avenue, which also exceeds the DDO18 preferred height by 1.57 metres.

The lift overruns have a height of 4.3 metres and therefore do not meet the 3.6 metre height specified in the DDO18 to exempt them from inclusion in the overall building height calculation. However, given the lift cores are centrally located on the site and have a relatively small footprint, they are unlikely to be readily perceivable when viewed from the public realm or adjoining properties. On balance, this is acceptable.

### **Upper Level Setbacks**

Apart from meeting the minimum setback of 5 metres, DDO18 outlines the following further requirements for upper levels:

- *From ground level not exceed the horizontal distance from the opposite street boundary [Figure 2 in DDO18].*
- *Adopt the same street setback for at least 75 per cent of the height of the upper levels to avoid 'wedding cake' built form outcomes.*

While the proposed design avoids a wedding cake outcome, it does not satisfy the '1:1' ratio shown in Figure 2 to DDO18; which requires the setback of both the façade line and balcony line of the upper level to be increased by 3 metres.

In considering whether to exercise discretion and allow an encroachment into the 1:1 ratio, the following objective of DDO18 is of relevance:

*To establish a new cohesive built form character in off-corridor locations to the east and west of Sydney Road to achieve an appropriate balance between a sense of enclosure and openness*

The proposed variation to the 1:1 ratio is similar to that approved at 1-7 Wilson Avenue and at the Jewell Station development and therefore achieves the objective of achieving a 'cohesive built form character'. However, as an 'infill' site this building does not benefit from the corner positioning and sense of openness that its neighbours benefit from.

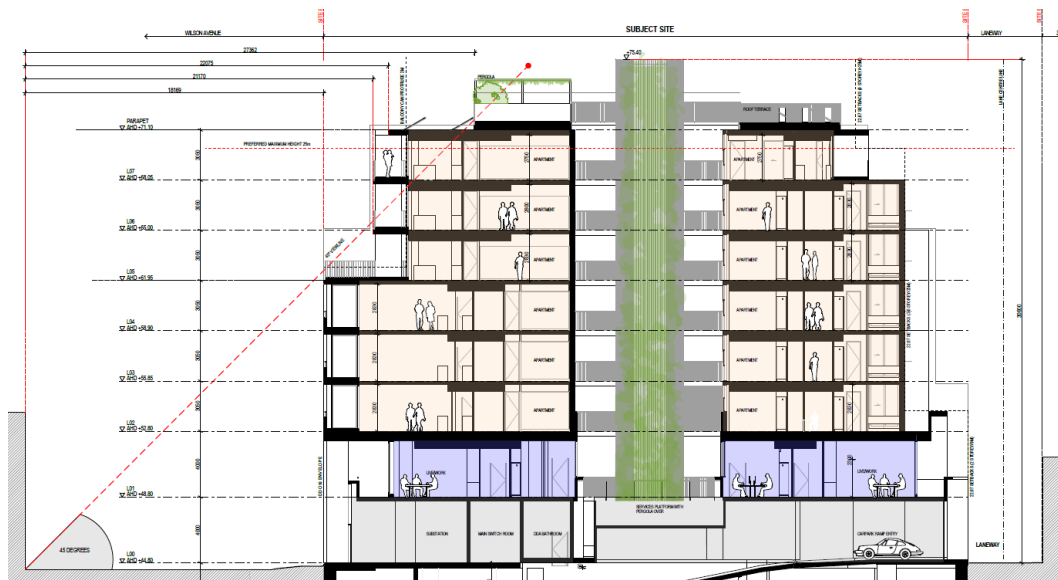


Figure 1: Excerpt from advertised plans showing extent of encroachment into 1:1 ratio

Council's Urban Designer noted that the building's silhouette will frame a large extent of Wilson Avenue and will be highly visible from oblique views and from the station forecourt. Council's Urban Designer raised concern that the relatively long building frontage to Wilson Avenue provides little visual relief at the upper levels.

Following discussions with the applicant, 'without prejudice' discussion plans were submitted on 1 October to respond to the concerns raised. The plans depict a 3 metre break in the upper two levels of the northern tower and a reduction in the size of balconies and canopies used at the upper level to reduce their dominance. The discussion plans acceptably break the long length of upper level massing and achieve sky views from the street level, while retaining cohesive built form setbacks with adjoining built form. Permit conditions included in the recommendation require the upper level changes depicted in discussion plans.

The discussion plans form **Attachment 3**.

### ***Street Wall***

The proposed street wall height to Wilson Avenue of 18.62 metres marginally exceeds the DDO18 preferred height of 18 metres. The 620mm variation is unlikely to be readily perceivable when viewed from the public realm and is acceptable. The increased street wall height is also a result of the increased floor to ceiling height of the commercial and live/work spaces which further justifies a variation to the building height.

### ***Public realm and detailed design***

The proposal responds the relevant public realm policy aspirations outlined under 'Building layout and detailed design' of DDO18 by:

- Providing active land uses (café and retail uses) on ground level and windows and balconies on the upper levels fronting Wilson Avenue, to allow for activation and passive surveillance.
- Incorporating ground and first floor ceiling heights of 4 metres therefore allowing for a range of commercial uses in the future.
- Proposing vehicle access to the rear of the site.
- Integrating the substation into the facade design. While locating the substation at the rear of the site is preferable, CitiPower have raised issues with this, including that there are already other inground assets within the laneway that will not permit the substation conduits to be installed at the required alignment. On

balance, having regard to the overall facade presentation to Wilson Avenue, the substation location is acceptable.

Council's Urban Designer supported the material quality and detailing of lower levels of the building, which appropriately contribute to achieving a finer grain rhythm, as well as visual links through to the landscaped internal plaza. However, permit conditions are recommended to incorporate additional textures on the solid east and west elevations to soften their presence in the broader public realm. Furthermore, to ensure the integrity of design is realised, a condition of the recommendation requires the architect to provide oversight during construction.

The DDO18 seeks to incorporate awnings over the footpath for the full width of the building frontage along Wilson Avenue. This has not been provided. A standard verandah across the frontage would disrupt the overall building aesthetic. Instead, the applicant has agreed to provide canvas awnings to each shop frontage, which will extend over the public footpath. While this may not provide continuous weather coverage, on balance it is acceptable and forms a condition of the recommendation.

Council will be undertaking streetscape improvement works within Wilson Avenue in the 2021/2022 financial year, including widening the footpath on the southern side of the street. If the proposed development occurs after these public works have been completed, the construction works would destroy the footpath treatment. As such, a condition of the recommendation requires public works to upgrade of the footpath directly adjacent to the site, in a material matching Council's improvement works.

#### **Are the land uses proposed appropriate?**

A mix of land uses is generally supported by the relevant planning controls. However, the Moreland Industrial Land Strategy (MILS) classifies the subject site as a Category 2 (Employment) Area, which seeks to prioritise employment uses. This is sought to be achieved through flexible floor plates, increased floor to ceiling heights and by providing employment floor space that is equivalent to ground and first floor building floorspace.

The development proposes 557 square metres of commercial floor space (office and retail) and 17 live/work units (1084sqm) which can be used as either residential or commercial.

The live/work units support a changing style of work and go some way in supporting the creation of an employment cluster within the Activity Centre. To enable flexibility in the way the live/work units can be used, the floor to floor height is 4 metres and the floor plates are open to allow for flexibility in the layout. However, ultimately, these spaces could be purchased and used solely for residential purposes.

With only 557 square metres of floor space specifically dedicated to employment generating uses, the development makes a limited contribution towards achieving the MSS objectives for strengthening the local economy.

The permit applicant has cited difficulties in leasing or selling first floor commercial space as a reason why they have not achieved the intent of the MSS. However, following discussions, the permit applicant has agreed to:

- Convert three live/work units at ground floor to office space: adding a further 234 square metres of employment floorspace, resulting in a total provision of 791 square metres; and
- Making a contribution towards at least one affordable housing dwelling within the development, in lieu of additional commercial floor space, to an affordable housing provider.

While the total employment floor space remains less than what is anticipated under the MSS, on balance, this outcome will provide an important community benefit and is consistent with the with *Moreland Affordable Housing Strategy 2014* and *Affordable Housing Action Plan 2019-2020*. This outcome is therefore acceptable.

Permit conditions included in the recommendation require the affordable housing outcome to be secured by a Section 173 Agreement.

### **Does the proposal result in sufficient building separation?**

Clause 22.07 sets out building separation standards for developments of five or more storeys. The objectives of the Clause includes:

*to allow 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 largely achieves compliance with the numeric standards for building separation at Table 1-3 of Clause 22.07, noting that:

- The dwellings are largely orientated to either Wilson Avenue or the laneway and achieve the required 6 metre setback from the centre point of the laneway (above two storeys) to balconies.
- The 9 metre central void complies with Table 3 to Clause 22.07. There are four dwellings which have a main living room and balcony which derive a principal orientation internally to the site. Where this occurs, the lift core obscures outlook between the balconies and bedroom windows. Therefore, the 9 metre separation of 'main balcony outlook to no outlook' identified in Table 3 applies and is met.

Seven bedrooms have a sole outlook to the eastern side boundary (facing 1-7 Wilson Avenue) that have setbacks ranging between 2.1 metres and 2.5 metres. This would not meet the required side boundary setback of 3 metres at level three and 4.5 metres for levels above, and results in separation of less than 9 metres between bedrooms and balconies of the adjoining development, raising issues of overlooking.

Requiring a further setback would have considerable impact on the layout of the apartments. Alternately, if windows were re-oriented to face the internal void, there would be a separation of 9 metres between the bedroom and balcony outlooks within the site. While this would still result in a non-compliance with 22.07 (which requires a 13.5 metre separation for outlooks of this type), this is an acceptable outcome as apartments 312, 411 and 509 are all corner apartments that will have dual aspect and oblique views into the landscape zone of 1-7 Wilson Avenue. Therefore, these apartments will not result in unacceptable daylight or outlook as a result of the reduced setback and 9 metres is sufficient separation without needing screening to limit views. It is recommended that the east facing bedroom windows of apartments 210 and 608 be retained in their current location, because they do not result in overlooking impacts due to screening and separation distance, respectively.

### **Does the proposal provide an appropriate level of amenity for future occupants?**

The proposal achieves an acceptable level of onsite amenity. Notable features include:

- High proportion of cross-ventilated dwellings (87% compared to 40% required).
- Windows are offset from each other to limit views without screening.
- A clearly identifiable residential entry from Wilson Avenue.
- A landscaped communal rooftop with BBQ facilities and vegetable gardens.
- An acoustic report has been provided, detailing measures to attenuate noise from key sources including the adjoining motor repairs. The measures of this report should be included on the endorsed plans.

Variations to key Clause 58 internal amenity standards are assessed below.

### ***Private Open Space***

Clause 58.05-3 seeks to provide adequate private open space for the reasonable recreation and service needs of residents. A total of 22 of 59 apartments do not comply with Standard D19, as detailed below.

Apartment	Standard D19	Proposed size
Type A (6 apartments)	2m wide, 8sqm	1.8m wide, 7.5sqm
Type B (6 apartments)	2m wide, 8sqm	1.8m wide, 6.6sqm
Type E (2 apartments)	2.4m wide, 12sqm	1.5 – 2.8m wide, 9.3sqm
Type J (6 apartments)	2.4m wide	2m
Type M (2 apartments)	8sqm	7.4sqm

It is recommended that Types A, B, E and M be modified to comply with the standard, with all measurements taken from the internal edge of the balcony balustrade. It is also recommended that Type B be modified to provide access to the balcony directly from the living room, rather than via the bedroom.

Type J apartments are three bedroom dwellings, which should have a balcony depth of 2.4 metres. The balcony depth of 2 metres minimises intrusion into the preferred upper level setbacks required by DDO18, which is supported. Rooftop communal space is also available to meet the needs of future residents.

### **Storage**

Clause 58.05-4 seeks to provide adequate storage facilities for each dwelling. A total of 33 of the 59 dwellings have adequate internal and external storage. Nine live/work units and 17 dwellings (Types B, D, and L), fall short of achieving compliance with the numeric requirements, by between 0.2 and 1.8 cubic metres. A condition of the recommendation will require that all dwellings, except the live/work units, are provided with storage in accordance with the Clause. Given the flexible nature of the live/work units it is considered a variation to the standard is acceptable for these.

### **Functional Layout**

Clause 58.07-1 seeks to ensure dwellings provide functional areas that meet the needs of residents. Living areas (excluding dining and kitchen areas) should meet the minimum internal room dimensions specified in Table D8.

**Table D8 Living area dimensions**

Dwelling type	Minimum width	Minimum area
Studio and 1 bedroom dwelling	3.3 metres	10 sqm
2 or more bedroom dwelling	3.6 metres	12 sqm

VCAT has previously determined that the 'minimum width' of a living area is the smaller of the two dimensions of that area. For example, where a living area is depicted on plans as a rectangle envelope of 3.6 x 3.2 metres, then the minimum width is 3.2 metres, irrespective of the way in which the living area is oriented within an open plan room.

Using this method, 40 of the 59 dwellings fall short of the minimum width for living rooms. However, for all except Apartment Type F, the minimum width is within the open plan living and dining area, not confined by walls. Therefore, the size of furniture impacts whether compliance is achieved. For the most part, the dimension in the other direction (i.e. between walls) is greater than what is required. On balance, it is considered that the objective of a functional layout has been demonstrated through the placement of furniture. However, it is recommended that Type F apartments be modified to achieve at least 3.6 metres between walls.

## Windows

Clause 58.07-3 seeks to allow adequate daylight into new habitable room windows. The standard states that habitable rooms should have a window in an external wall of the building. The majority of habitable rooms are anticipated to have good access to daylight, because windows face either the street, the ROW or the internal void, which meets building separation standards.

There are 17 bedrooms which have windows facing a breezeway, 12 of which are designed with a study desk and sliding 'acoustic screen' facing the breezeway, shown in Figure 2 below. The distance between the main area of the bedroom and the outer edge of the breezeway is almost 3 metres and the width of the opening is 1.5 metres. It is likely that these bedrooms will receive a lower level of daylight as a result. However, on balance, this is an acceptable outcome for these two or three bedroom dwellings, given that the other bedrooms have good access to daylight.



Figure 2: Excerpt of endorsed floor plans

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

The amenity of the dwellings to the south (facing Barkly Street) are considered within the policy context of being located within the Commercial 1 Zone and the Brunswick Activity Centre. When considering the neighbouring development at 1-7 Wilson Avenue, the Tribunal stated:

*In the absence of any guidance in the Planning Scheme, it is arguably difficult to assess the acceptability or otherwise of the overshadowing. There is no measure or bench mark against which the assessment can objectively occur. I acknowledge the significance of the shadow impact, and the respondents' concerns regarding the consequences for the enjoyment of their property. However, the location of the residential properties within the C1Z within an activity centre earmarked for substantial change, including an increased presence of taller development of up to eight storeys means that some significant shadow impact should reasonably be anticipated.*

It is acknowledged that the dwellings facing Barkly Street are impacted by the proposal in terms of overshadowing. Between 9 am and 3 pm at the equinox, the proposal increases shadowing to 299, 301, 307 and 309 Barkly for one hour of the day; to 303, 305 and 321 Barkly for two hours of the day; to 319 and 321 Barkly for three hours of the day and to 317 Barkly four hours of the day (the morning).

When combined with overshadowing from other nearby developments, the extent of overshadowing would not be supported in a residential setting where greater expectations for protection of residential amenity can be anticipated. However, on balance, the extent of overshadowing is considered acceptable in this location given the zoning and policy context, together with the fact that the proposal meets the required setbacks under Clause 22.07 (building separation) and is only 1.3 metres over the preferred height sought by DDO18 at this interface.

#### **Overlooking - East interface (1-7 Wilson Avenue)**

Views have generally been appropriately managed through a balance of screening to and offsetting of windows. At Level 3 and 4 there are two west facing balconies at 1-7 Wilson Avenue where a small section of the balconies are within a 9 metre overlooking arc. However, the usable areas of the balcony achieve the 9 metre separation and this is considered reasonable in this context.

#### **Overlooking - Southern interface (Barkly Street Dwellings)**

Section diagrams (Screen Detail Plan TP500) accompanying the application confirm that the horizontal privacy shelf provided to the balconies facing south and existing fencing would prevent downward views to the backyard of No. 317 and 319 Barkly Street within 9 metres. While views beyond this distance are possible, 9 metres is the relevant yard stick within Victoria by which to consider whether views are appropriately limited. Conditions of the recommendation require the shelf at level 1 and 2 to be clearly annotated on the floor plan, as per upper levels.

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

Clause 52.06 (Car Parking) would require 102 car spaces to be provided, based on the proposed uses. As 73 car parking spaces are proposed on site, a reduction of 29 spaces is sought.

Clause 22.03-3 states that it is policy to:

*Support reduced car parking rates in developments within and in close proximity to activity centres, with excellent access to a range of public transport options and with increased provision of bicycle parking above the rates specified in clause 52.34.*

The site is within proximity to:

- Tram stops for route 19 (north-south travel);
- Bus routes 504 (Moonee Ponds to Clifton Hill), 506 (Moonee Ponds to Westgarth) and 509 (Brunswick West to Barkly Square);
- Jewell Station and the Upfield Railway Line (50 metres from the site);
- The Upfield Shared path bicycle route (50 metres from the site) and 164 bicycle spaces are provided on site.

Council's Development Engineer also supports the parking reduction. On this basis, it is reasonable to reduce the car parking requirements.

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

Council's Development Engineers have assessed the proposal and concur with the applicant's traffic impact assessment, which concludes the development will generate residential traffic of 248 vehicle trips per day and a total traffic generation of 31 vehicle trips per hour during both the morning and evening peak periods.



Council's Development Engineers have noted with respect to the operation of laneway and Black Street 'that the design of the development ensures that a departing vehicle will be able to allow another vehicle approaching in the laneway, to pass, before proceeding. Similarly, any vehicle in Black Street about to enter the laneway will be able to wait in Black Street for another vehicle to depart the laneway. In this way, the traffic from this site, together with the traffic from the other developments abutting this laneway, will be able to manage traffic flow along the laneway with the occasional, minimal delay.'

While objections have raised concerns with the use of the laneway for vehicle access and the associated traffic impacts, Council policy expressly encourages the use of laneways for vehicle access, and the traffic impacts will not be unreasonable.

#### **Is adequate landscaping and communal open space provided?**

Clause 58 includes standards requiring communal open space and landscaping across a site. The proposal provides more than the required amount of communal open space, split between ground floor and the roof terrace, with the roof top receiving excellent solar access. While deep soil planting is not provided, the landscaping in the central plaza includes 12 small trees (Japanese Maple) and other shrubs, ground cover and climbers at levels two, five and the rooftop. The applicant has also agreed to provide climbing planting on a wire trellis on the eastern wall, to soften the visual dominance of this wall in the streetscape. On balance, the overall landscape provision is acceptable, subject to conditions of the recommendation.

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

The proposal includes a Sustainable Design Response that includes:

- A commitment to a 7.5 star NatHERS energy rating
- Water efficient fixtures
- Cooling loads that will not exceed 30MJ/sqm
- Renewal energy through solar panels of 23kW
- Roof terrace green infrastructure
- Good cross ventilation

Whilst the proposal can achieve best practice ESD in accordance with Clause 22.08, Council's ESD officers require further information to support and verify the ESD commitments, which is generally dealt with by conditions of the recommendation.

#### **Is the easement removal appropriate?**

The application seeks to remove a party wall easement in favour of 1-7 Wilson Avenue. While Council has issued a s29A consent for demolition of the building at 1-7 Wilson Avenue, the building has not yet been demolished. Therefore, a condition of the recommendation requires that certification of removal of the party wall easement not be granted until that building has been removed, to ensure that there is no need for the easement.

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

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

- Inadequate provision of car parking.
- Increased traffic generation and traffic flow in the rear laneway.
- Excessive height and neighbourhood character.
- Overshadowing.
- Overlooking.

- Lack of commercial floorspace.

Other issues raised by objectors are addressed below.

### **Overdevelopment**

Planning Policy envisage an increase in housing density in well serviced areas such as this. Clause 16.01 of the Moreland Planning Scheme encourages *higher density housing development on sites that are well located in relation to activity centres, employment corridors and public transport*. The increase in population and density at this site is considered an appropriate response given its location in an Activity Centre and the proximity to public transport, shops and other 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 when considered against the requirements of the planning scheme and therefore the proposal is not considered to be an overdevelopment of the site.

### **Construction issues**

Traffic, noise and amenity impacts during the construction process are not generally a planning matter. The *Environmental Protection Act* (s.48A(3)), provides noise control guidelines for commercial construction sites which set working hours and noise management expectations. Council's General Local Law 2018 also includes provisions regarding control of noise associated with commercial and industrial building work.

A range of other approvals are required from Council's City Infrastructure Department related to construction impact on public space. Consideration of such matters as traffic impacts and road closure or road occupation permits are required to be undertaken through these processes.

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

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

## **7. Financial and Resources Implications**

There are no financial or resource implications.

## **8. Conclusion**

The proposal, subject to conditions, responds appropriately to the preferred character of the area by meeting the objectives of Schedule 18 to the Design and Development Overlay. In particular the proposal provides an appropriate building envelope which responds to the emerging development in the area.

The high level of compliance with Clause 58 demonstrates that the development will provide an acceptable level of amenity for future residents. External amenity impacts, are appropriately managed.

On the balance of policies and controls within the Moreland Planning Scheme and objections received, it is considered that Notice of Decision to Grant a Planning Permit No MPS/2020/213 should be issued under delegated authority of Council for buildings and works in association with the staged construction (two stages) of a multi-storey apartment development, use of the land for the purpose of dwellings, reduction in the car parking requirement and removal of easements subject to the conditions included in the recommendation of this report.

### **Attachment/s**

<a href="#">1</a>	9-21 Wilson Avenue Brunswick - Location Plan	D20/413804
<a href="#">2</a>	9-21 Wilson Avenue Brunswick - Development plans	D20/424843
<a href="#">3</a>	9-21 Wilson Avenue Brunswick - Discussion plans	D20/424856

# DCF50/20 278-282 BARKLY STREET BRUNSWICK - PLANNING PERMIT APPLICATION - MPS/2020/73

City Development  
Director City Futures

## Caretaker Statement

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

## Executive Summary



<b>Property:</b>	278 – 282 Barkly Street, Brunswick
<b>Proposal:</b>	The construction of a multi-level building (8-storeys), containing a ground level commercial space and 39 dwellings and a reduction of the standard car parking requirement.
<b>Zoning and Overlay/s:</b>	<ul style="list-style-type: none"> <li>Commercial 1 Zone</li> <li>Development Contributions Plan Overlay</li> <li>Parking Overlay Schedule 1</li> <li>Environmental Audit Overlay</li> <li>Design and Development Overlay Schedule 18</li> </ul>
<b>Strategic setting:</b>	<div>Minimal housing growth</div> <div>Incremental housing growth</div> <div>Increased housing densities encouraged</div> <div>Significant housing growth</div>
<b>Objections:</b>	<ul style="list-style-type: none"> <li>Eleven objections</li> </ul> <p>Key issues:</p> <ol style="list-style-type: none"> <li>Building height</li> <li>Overshadowing impacts</li> <li>Overdevelopment of area</li> </ol>
<b>Planning Information and Discussion Meeting:</b>	<ul style="list-style-type: none"> <li>PID held: 22 September 2020</li> <li>Attendees: Council officers, applicant and five objectors</li> <li>Some modifications were agreed, resulting in the withdrawal of three objections. These changes form part of the recommendation.</li> </ul>
<b>ESD:</b>	Average NatHERS rating of 7.8 stars.
<b>Accessibility:</b>	85% of apartments comply with requirements of Standard D17 (Accessibility) exceeding the minimum 50% of Clause 58.05.
<b>Key reasons for support:</b>	<ul style="list-style-type: none"> <li>Exceeds accessibility requirements</li> <li>Complies with preferred height and street wall of the DDO18</li> <li>Good quality architectural response</li> <li>Subject to conditions, provides acceptable amenity for future occupants and no unreasonable off-site amenity impacts.</li> </ul>
<b>Recommendation:</b>	A Planning Permit be issued with conditions.

## Officer Recommendation

That a Planning Permit No. MPS/2020/73 be issued for the development of a mixed-use building, and a reduction of the standard car parking requirement at 278-282 Barkly Street Brunswick, 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 three copies must be provided. The plans must generally accord with the decision plans (23/7/2020) prepared by Plus Architecture (Rev 2) but modified to show:
  - a) Changes depicted in the plans titled 'Without Prejudice' dated 30 September 2020 (TP100-TP101, TP102 and TP202) which show:
    - i. Opaque glass for the skylight above the commercial space on the eastern elevation.
    - ii. All the windows along the eastern elevation altered to vertical windows to be the same size and dimensions as shown on the plan dated 20/1/2020 TP02 with fixed opaque glass to 1.7 metres above finished floor level.
    - iii. The ground floor eastern boundary wall height (apart from the first 4.5 metres from the northern boundary associated with the commercial tenancy) reduced to a maximum height of 3.6 metres.
    - iv. The nib wall to the front of the building on Levels 1 and 2 shortened in length by minimum of 100 millimetres
    - v. Basement 01 set back an additional 200 millimetres from the eastern boundary for the first 16.6 metres from the northern boundary.
    - vi. The ground floor set back an additional 200 millimetres from the eastern boundary for the first 20.5 metres from the northern boundary.
    - vii. No mechanical services, including heating, air conditioning units/motors, extractors or vents located along the entire length of the eastern boundary, including the boundary wall, skylight (roof of the commercial space) and apartment walls to the roof level 8.
    - viii. A notation on the first floor plan referring to the space to the east of the water meter that notes 'space can be used for heating/cooling condenser connection from ground floor commercial space to Level 8 rooftop'.
  - b) The smaller second bedroom for Apartments 103, 203, 303, 403, 503, 603 and 703 setback a minimum of 2.5 metres from the eastern boundary, making these bedrooms a 'study nook'.
  - c) The rear setback of south-facing apartments on Levels 2-8 as measured from balcony edges or windows with primary outlook, increased to a minimum of 4.5 metres to the centre of the lane without reducing any other setbacks.
  - d) All proposed Level 1 apartments clearly identified as live/work spaces on the 'Without Prejudice' plans dated 30 September 2020 (TP101) and designed with flexible wall layouts to maximise opportunities/flexibility for the provision of either live/work spaces or office space.
  - e) An amended parking layout and development schedule, updated to indicate that at least one car space is allocated to the commercial use.
  - f) The parking area annotated to indicate that at least 25 per cent of all car parking spaces on-site are able to accommodate a vehicle clearance height of at least 1.8 metres.
  - g) The deletion of louvres or screens for bedroom windows that face the internal

lightwell.

- h) The bicycle parking spaces and accessways dimensioned for both the resident and visitor bicycle parking areas on the ground floor.
- i) The garage door in the southern elevation to be of high-quality perforated metal.
- j) Specification of a 40 Amp 3-phase sub-circuit with wiring and conduit from a main switchboard to a dedicated location complete with circuit breaker at point of use for a future entry level fast charging station.
- k) Location of Bicycle signage at least 300 millimetres wide and 450 millimetres high showing a white bicycle on a blue background, directing cyclists to the location of the bicycle parking.
- l) The canopy extended across the full width of the Barkly Street frontage. Any canopy or verandah must be setback not less than 750 millimetres from the kerb and at a height of not less than 3 metres above the level of the footpath.
- m) A notation that access to the roof is for maintenance purposes only.
- n) Initiatives contained within the Sustainable Design Assessment along with the proposed changes, including:
  - i. Demonstration that BESS IEQ criteria is satisfied and the IEQ objectives of Clause 22.08 are satisfied, including but not limited to amending the layout of all apartments to ensure all bedroom, study and home office windows to all dwellings receive daylight in accordance with BESS criteria (i.e. all bedroom, study and home office windows to all dwellings must achieve a daylight factor greater than 0.5 per cent to 90 per cent of the floor area.)
  - ii. Hot water system on roof plan to be annotated as electric heat pump hot water system.
  - iii. A stormwater catchment plan showing the different catchment areas with dimensions and the proposed stormwater treatment (or no treatment) consistent with the STORM Report and development plans; and
  - iv. Any other changes as per the SMP.
- o) Any changes to the plans arising from the amended:
  - i. Sustainability Management Plan in accordance with Condition 3 of the permit.
  - ii. Landscape Plan in accordance with Condition 6 of this permit.
  - iii. Accessibility Report in accordance with Condition 10 of this permit.
  - iv. Acoustic Report in accordance with Condition 12 of this permit.
- p) A schedule of all proposed exterior decorations, materials, finishes and colours, including colour sample images.

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

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

### **Sustainability Management Plan**

- 3. Prior to the endorsement of plans, the Sustainability Management Plan by Efficient Energy Choices and dated 13/05/2020 must be amended by a suitably qualified environmental engineer or equivalent 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 amended report must be generally in accordance with the SMP prepared by Energy Efficient Choices dated 13/05/2020, but modified to

include the following changes:

- a) No longer claim BESS credits 'Management 1.1 Pre-application meeting and 'Transport 2.3 Motorbikes/Mopeds';
- b) An amended stormwater management plan to exclude the stormwater collection from trafficable areas or should trafficable areas need to be collected from, provide more (including) details on the potential water contaminants resulting from the expected use of the areas of collection, the relevant water treatment measures proposed upstream and downstream the tanks, and their effectiveness in achieving the required water quality suitable for the end use. Also provide a maintenance plan, stating periodic actions, requirements and responsibilities;
- c) Provide a copy of the NCC glazing calculator showing glazing performance characteristics (U-value, SHGC) of the commercial space that achieve 10 per cent improvement above NCC;
- d) To demonstrate satisfying BESS IEQ criteria and meet objectives of clause 22.08 IEQ;
  - i. No longer claim that 72 per cent of dwellings are effectively ventilated; only claim Effective Natural Ventilation for apartments where the breeze path length is less than 15 metres as outlined by the requirements of BESS.

Where alternative ESD initiatives are proposed to those specified in the above conditions, 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.

4. All works must be undertaken in accordance with the endorsed Sustainability Management Plan (SMP) to the satisfaction of the Responsible Authority. No alterations to the Sustainability Management Plan (SMP) may occur without the written consent of the Responsible Authority.
5. Prior to the issue of Statement of Compliance or an occupancy permit for any part of the building approved under this permit, whichever occurs first, a report (or reports) from the author of the Sustainability Management Plan (SMP) 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 SMP report have been implemented in accordance with the approved report.

### **Landscape Plan**

6. Prior to the commencement of any development works, an amended landscape plan must be submitted to and approved by the Responsible Authority. When to the satisfaction of the Responsible Authority, the report will be endorsed and will form part of this permit. The landscape plan must be generally in accordance with the landscape plan prepared by Greenscape and dated 28.04.20 but amended to show:
  - a) 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.
7. All vegetation in planter boxes, green walls and rooftop gardens or similar must be maintained and any dead, diseased or damaged plants replaced with a suitable species to the satisfaction of the Responsible Authority.

8. Prior to the issuing of a Statement of Compliance or occupancy permit for any part of the development, whichever occurs first, all landscaping works must be completed and maintained in accordance with the approved and endorsed landscape drawing to the satisfaction of the Responsible Authority.

#### **Waste Management Plan**

9. The Waste Management Plan prepared by Leigh Design and dated 21 April 2020 approved under this permit must be implemented and complied with at all times to the satisfaction of the Responsible Authority unless with the further written approval of the Responsible Authority.

#### **Accessibility Report**

10. The accessibility report prepared by 3D-Access and dated 8 May 2020 will be endorsed and will form part of this permit. The plan must be generally in accordance with the accessibility report but it must be amended to show the development layout updated to reflect the changes required by Condition 1 of this permit.
11. Prior to the issue of a Statement of Compliance or an occupancy permit for any part of the building approved under this permit, whichever occurs first, a report from the author of the accessibility report approved pursuant to this permit, or similarly qualified person or company, must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm that all measures specified in the accessibility report have been implemented in accordance with the approved report.

#### **Acoustic Report**

12. Prior to the endorsement of plans, an Acoustic Report prepared by a qualified Acoustic Engineer generally in accordance with the Acoustic Report prepared by Cogent Acoustics dated 5 May 2020 must be submitted to and approved by the Responsible Authority.
13. 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.
14. Prior to the issue of a Statement of Compliance or occupancy permit for any part of the building approved under this permit, whichever occurs first, a report from the author of the Acoustic Report approved pursuant to this permit or similarly qualified person or company must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm that all measures specified in the Acoustic Report have been implemented in accordance with the approved Acoustic Report.

#### **Development Contributions**

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

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

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

- Prior to the issue of a Statement of Compliance for the subdivision;

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

### Environmental Audit

16. Prior to the commencement of construction or carrying out works pursuant to this permit, or any works associated with a sensitive use, other than works for the purpose of obtaining a Certificate of Environmental Audit or Statement of Environmental Audit, or where no works are proposed, prior to the commencement of the permitted use, either:
  - a) A Certificate of Environmental Audit for the land must be issued in accordance with Section 53Y of the *Environment Protection Act* 1970 and provided to the Responsible Authority; or,
  - b) An Environmental Auditor appointed under Section 53S of the *Environment Protection Act* 1970 must make a Statement in accordance with Section 53Z of that Act that the environmental conditions of the land are suitable for the use and development that are the subject of this permit and that statement must be provided to the Responsible Authority.

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

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

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

17. Prior to any remediation works (if required) being undertaken in association with the Environmental Audit, a 'remediation works' plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The plan must detail all excavation works as well as any proposed structures such as retaining walls required to facilitate the remediation works. Only those works detailed in the approved remediation works plan are permitted to be carried out prior to the issue of a Certificate or Statement of Environmental Audit.
18. No works to construct the development hereby approved shall be carried out on the land and no building contract to construct the development hereby approved may be entered into, other than in accordance with a building contract that stipulates that works must not be commenced until such time as Conditions 16 and 17 of this permit are satisfied.



## **Public Works Plan**

1. 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 the Moreland City Council Technical Notes July 2019 or any updated version and detail works in front of the approved building along Barkly Street and including:
  - a) The upgrade of the public realm adjacent to the site including new or reconstructed footpaths, water sensitive urban design treatments, seating, bicycle hoops, nature strips and other associated street furniture/infrastructure
  - b) The footpaths are to be reinstated with the standard crossfall slope of 1 in 40 from the top of roadside kerb to the property boundary, with any level difference made up within the site.
  - c) A detailed level and feature survey of the footpaths and roads.
  - d) Any crossovers not required removed and the kerb and channel, footpath and nature strip reinstated to Council's standards using construction plans approved by Moreland City Council, City Infrastructure Department.
  - e) The location, method and number of bicycle parking to be accommodated within the road reserve.
  - f) Tree(s) and other landscaping in the street frontages adjacent to or near the development.
2. The approved Public Works Plan will form part of the endorsed plans under the permit and must be implemented to the satisfaction of the Responsible Authority at the expense of the owner of the land, prior to the issue of a Statement of Compliance or occupancy permit for any part of the development, whichever occurs first, unless otherwise agreed with prior written consent of the Responsible Authority.

## **Section 173 Agreement**

21. 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 in which provides for the following:
  - a) That there be no mechanical services, including heating, air conditioning units/motors, extractors or vents located along the entire length of the eastern boundary, including the boundary wall, skylight (roof of the commercial space) and apartment walls to the roof level 8.
  - b) Indemnification of Council for any loss suffered if the terms of the s173 agreement are breached by the landowner; and
  - c) 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
  - d) 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.

## **General**

22. Prior to the issue of an occupancy permit for any part of the building, the tilt-up carpark entry door must be automatic and remote controlled.

23. 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) Allow for at least 25 per cent of all car parking spaces on-site to be able to accommodate a vehicle clearance height of at least 1.8 metres.
  - b) Be completed prior to the issue of an occupancy permit for any part of the building
  - c) Be maintained.
  - d) Be properly formed to such levels that it can be used according to the endorsed plan.
  - e) Be drained and surfaced.
  - f) Have the boundaries of vehicle parking spaces/waiting bay and motor cycle parking spaces clearly marked on the ground to accord with the endorsed plan.
  - g) Not be used for any other purpose other than the parking of vehicles.
24. Prior to the issue of an occupancy permit for the development, all telecommunications and power connections (whereby means of a cable) and associated infrastructure to the land must be underground to the satisfaction of the Responsible Authority.
25. Prior to the commencement of the development, a legal point of discharge is to be obtained, and where required, a stormwater drainage plan showing how the site will be drained from the property boundary to the stated point of discharge, must be submitted to and approved by the Responsible Authority.
26. All stormwater from the land, where it is not collected in rainwater tanks for re-use, must be collected by an underground pipe drain approved by and to the satisfaction of the Responsible Authority (Note: Please contact Moreland City Council, City Infrastructure Department).
27. 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.
28. The surface of all balconies and terraces are to be sloped to collect the stormwater run-off into stormwater drainage pipes that connect into the underground drainage system of the development to the satisfaction of the Responsible Authority.
29. At least one car parking space must be allocated to the shop/commercial use.
30. The bicycle storage room is to have self-closing and self-locking doors or gates that are only accessible using keys, codes or swipe cards in accordance with the Australian Standard for Bicycle Parking (AS2890.3).
31. Prior to the issue of an occupancy permit for the development, any existing vehicle crossing not to be used in this use or development must be removed and the kerb and channel, footpath and nature strip reinstated to the satisfaction of the Responsible Authority (Moreland City Council, City Infrastructure Department).
32. The ramp from the car park floor to the laneway must be contained entirely within the site leaving the laneway levels unaltered.

### **Boundary walls**

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

### **3D model**

34. Prior to the commencement of the development, a 3D digital model of the approved development which is compatible for use on Council's Virtual Moreland tools and software for Council and community must be submitted to the satisfaction of the

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

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

35. Prior to the issuing of Statement of Compliance or occupation of each stage 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.

#### **Baffled Lighting**

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

#### **Time**

37. This permit will expire if one of the following circumstances applies:
- a) The development is not commenced within 3 years from the date of issue of this permit;
  - b) The development is not completed within 5 years from the date of issue of this permit; or
  - c) The use is not commenced within 5 years from the date of issue of this permit.
- The Responsible Authority may extend the period referred to if a request is made in writing before the permit expires; or
- Within 6 months after the permit expires to extend the commencement date.
  - Within 12 months after the permit expires to extend the completion date of the development if the development has lawfully commenced.

**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 dwellings would not be eligible for resident parking permits to park on the street. Occupiers are eligible for the Resident A parking permit which only permits parking in limited areas. The resident parking permits and Resident A parking permit are subject to future reviews and change. See Council's website for more information: <https://www.moreland.vic.gov.au/parking-roads/parking-permits/residential-parking-permits/>.

#### **Note 2:**

Contact needs to be made with CitiPower to determine whether CitiPower will require the power lines to be relocated away from the dwellings.

#### **Note 3:**

#### **NOTES ABOUT ENVIRONMENTAL AUDITS**

A copy of the Certificate or Statement of Environmental Audit, including the complete Environmental Audit Report must be submitted to the Responsible Authority within 7 days of

issue, in accordance with Section 53ZB of the *Environment Protection Act 1970*.

Where a Statement of Environmental Audit is issued for the land a copy of that Statement must be provided to any person who proposes to become an occupier of the land, pursuant to Section 53ZE of the *Environment Protection Act 1970*.

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 Certificate or Statement of Environmental Audit including a copy of any cover letter.

Where a Statement of Environmental Audit issued for the land contains conditions that the Responsible Authority considers to be unreasonable in the circumstances, the Responsible Authority may seek cancellation or amendment of the planning permit in accordance with Section 87 of the *Planning and Environment Act 1987*.

## 1. Background

### Subject site

The site is located 80 metres west of Sydney Road and 75 metres east of the Upfield railway line. The site is one lot west of Black Street and has a rear abuttal to a 4.9 metre wide lane (Alchemy Lane) to its south.

The site is a regular shaped lot formed from 2 Titles. It has a combined frontage of 18.2 metres and a depth of 41.7 metres, with an overall area of 763 square metres.

The land was previously used as a private car park in association with the Northern Bingo Club at 67-71 Sydney Road and is currently vacant.

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

### Surrounds

Development is primarily characterised by low rise, 1-3 storey forms. There is an emerging character of development of up to 8-storeys.

The adjoining property to the east has a zero lot line to both Barkly and Black Streets. The building presents a three-storey street wall to Barkly Street and is divided into 5 lots. Due to the former industrial zoning most of these lots have planning approvals for caretakers' dwellings, that are connected to a non-residential use. Consequently, there are some upper level roof terraces and habitable and non-habitable room windows along their western interface with the site.

To the west, is a single storey warehouse building that is setback 1.8 metres from Barkly Street and constructed along both side boundaries for all but the last 6 metres of the site.

To the south of the rear bluestone laneway is a 2-storey high brick wall associated with a tyre and service centre.

Jewell train station is 90 metres from the site and Barkly Square Shopping Centre is located 200 metres to the east.

A location plan forms **Attachment 1**.

### The Proposal

The proposal is summarised as follows:

- All vegetation removed (no planning permit required).
- Construction of an eight-storey 25 metre high building (plus roof services) above a basement (one level to the front half of the site, three levels for the car stacker pits to the rear).
- Provision of a 196 square metres commercial tenancy at ground level, 39 apartments above (11x 1-bed, 25 x 2-bed and 3 x 3-bed), rear access for 41 car parking spaces, 58 bike parking spaces and four motorcycle spaces.
- Materials include primarily pre-cast concrete walls, with some applied render, and extensive application of black/dark coloured powder-coated steel/materials.

The development plans form **Attachment 2 and 3**.

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

Control	Permit Requirement
Commercial 1 Zone	Office and Shop are Section 1 uses in the zone, meaning that a permit is not required. A permit is not required to use the land for the purpose of a Dwelling as the frontage does

Control	Permit Requirement
	not exceed two metres. A permit is required to construct a building or construct or carry out works.
Overlays	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 (Car Parking) A permit is required to reduce the car parking requirement from 48 spaces to 41 spaces. Pursuant to Clause 45.09 (Parking Overlay) Schedule 1, no visitor car spaces are required.

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

- Clause 45.03: Environment Audit Overlay
- Clause 45.06: Development Contributions Plan Overlay
- Clause 53.18: Stormwater Management in Urban Development

## 2. Internal/External Consultation

### Public notification

The Commercial 1 Zone notice exemption applies as the site is more than 30 metres from residentially zoned land. The Design and Development Overlay (DDO18) contains notice exemptions provided height and setback criteria are met. The proposal meets the criteria. The application is therefore exempt from the notification requirements of the *Planning and Environment Act 1987*.

Council originally received 14 objections. Following negotiations, three objections were withdrawn. A map identifying the location of submitters forms **Attachment 4**.

There are no VCAT rights of review open to the objectors as the application is exempt from notice and review under the exemptions contained within the Commercial 1 Zone that applies State wide. Should Council determine to support the application, a permit (rather than a Notice of Decision to Grant a Permit) would be issued. Despite the notice exemption, the objections must still be considered as part of the assessment.

The key issues raised in objections are:

- Insufficient setback from the east boundary
- Overshadowing
- Daylight impacts
- Overlooking to the east
- Impact on existing and future solar panels to the east and west
- Visual bulk
- Noise impact of rooftop terrace
- Car parking and traffic impacts
- Laneway safety
- Surface of rear lane may be damaged
- Loss of trees
- Insufficient commercial floor space
- Amenity impacts of food and drink premises including, odour, safety, possible anti-social behaviour and noise.

- No need for cafes in the area
- Excessive height
- Overdevelopment of the site and area
- Lack of contribution to the amenity of the surrounding area
- Insufficient green space provided
- Impact on equitable development of neighbouring properties
- The application was not advertised

A Planning Information and Discussion (PID) meeting was held on 22 September. The meeting was attended by the applicant and five objectors. Following the PID, further negotiations were held between some objectors and the applicant. This resulted in the withdrawal of three objections from properties at 7, 9 and 11 Black Street and the applicant agreeing to permit conditions 1a) and 21 contained in the recommendation.

#### **Internal/external referrals**

The proposal was not required to be referral externally. The proposal was referred to the following internal branches/business units.

<b>Internal Branch/Business Unit</b>	<b>Comments</b>
Urban Design Unit	The building is generally well-designed. Building height and setbacks above the street wall were supported. Design suggestions included a 450 millimetres greater setback to the rear for equal development opportunity and an alternative material to the rear garage door to improve activation. These are reflected in conditions of the recommendation.
Sustainable Built Environment (Development Engineering advice)	Supportive of the proposed car parking provision and no concern with traffic generation or use of the lane. Recommended one car space allocated to the commercial tenancy. Mechanical stacker queuing times assessed as acceptable and will not lead to significant queueing in the lane.
ESD Unit	The SMP, BESS report, STORM report and development plans should be amended to demonstrate best practice environmentally sustainable design in accordance with Clause 22.08. Amendments are likely to require floor plate changes to address issues of daylight to habitable rooms. These are reflected in conditions of the recommendation.
Open Space Design and Development Unit	No objections, subject to conditions contained in the recommendations.

### **3. Policy Implications**

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

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

- Clause 11 - Settlement
- Clause 15 Built Environment and Heritage including:
  - Built Environment (Clause 15.01)

- Healthy neighbourhoods (Clause 15.01-4S and 15.01-4R)
- Sustainable Development (Clause 15.02)
- Clause 16 Housing including:
  - Housing Supply (Clause 16.01-1S and 16.01-1R)
  - Housing Affordability (Clause 16.01-2S)
- Clause 17.0: Economic Development
- Clause 18: Transport

### **Local Planning Policy Framework (LPPF)**

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

Municipal Strategic Statement:

- Clause 21.01 Municipal Profile
- Clause 21.02 Vision
- Clause 21.03-1 Activity Centres
- Clause 21.03-2 Land for Industry and Economic Regeneration
- Clause 21.03-3 Housing
- Clause 21.03-4 Urban Design, Built Form and Landscape Design
- Clause 21.03-5 Environmentally Sustainable Design (Water, Waste and Energy)

Local Planning Policies:

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

The site is located within the Brunswick Activity Centre and is identified as an 'Employment Area' in Council's Strategic Framework. Council, through its MSS, seeks to encourage a mix of uses, with an emphasis on facilitating housing growth to take advantage of the excellent access to public transport and other services within this location. The site is in an area where substantial built form change is envisioned to achieve these aims. Clause 21.03-2 seeks to encourage employment uses over residential uses. The ground floor commercial space and first floor flexible 'home/work' apartments offer potential employment generation. The proposal enjoys strong strategic support in relation to its built form outcomes.

### **Human Rights Consideration**

This application has been assessed in accordance with the requirements of the *Planning and Environment Act 1987* (including the Moreland Planning Scheme) reviewed by the State Government and which complies with the *Victorian Charter of Human Rights and Responsibilities Act 2006*. In particular, regard was given to:

- Section 12: Freedom of movement
- Section 13: Privacy and Reputation
- Section 15: Freedom of expression
- Section 18: Taking part in public life

This application is not considered to limit human rights.



## 4. Issues

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

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

Subject to conditions of the recommendation, the proposal is an acceptable response to the preferred character of the area. The building has been designed to meet the 25-metre preferred height for the precinct and meets the preferred street wall height and upper level setbacks of DDO18.

The proposal provides a good-quality architectural response that includes robust materiality that responds to the remnant industrial character of the area.

### **1:1 ratio**

DDO18 objectives include *'to achieve an appropriate balance between a sense of enclosure and openness by applying a 1:1 ratio of building height to distance from the opposite side of the street boundary.'* The proposal complies with this objective.

### **Building layout and detailed design**

The development incorporates active edges commensurate with the frontage type for the site. The designated frontage type is Commercial and the proposal provides a minimum of 60 percent clear glazing to the frontage as sought by policy. Vehicle access is located to the rear ensuring no impact on the Barkly Street footpath and building frontage.

The DDO18 also states that *'development should include awnings over key pedestrian routes'*. Barkly Street is a designated key pedestrian street within the DDO18. The proposed canopy is provided across the majority of the frontage but not the full width of the frontage. A condition of the recommendation requires the canopy to extend across the full width of the frontage to Barkly Street.

The DDO18 provides that *'substation and service cabinets should be at the rear or side. Where they can only be at the front they should be minimised in size and incorporated into the façade.'* The substation and fire booster are proposed in the front elevation. These services are unable to be relocated due to the location of existing mains power cables and other infrastructure in the rear lane. Whilst not preferred, the location is considered acceptable given the constraints and that 60 per cent of the frontage is clear glazed.

### **Public realm**

The proposal responds appropriately to the Barkly Street key pedestrian street public realm provisions of DDO18 by incorporating an active, commercial frontage to Barkly Street. For a development of this size it is considered appropriate that public realm improvements form part of the development. A recommended planning permit condition requires submission of a 'Public Works Plan' including upgrades of the public realm.

### **Employment generation**

The site is located within an Employment Area Category 2 pursuant to Clause 21.03-2 (Land for industry and economic regeneration). This clause seeks that employment uses are prioritised over residential uses and requires employment floor space be at least equivalent to the amount of all proposed ground and first floor building space.

Further strategies include the provision of increased floor to ceiling heights and flexible floor plates at the ground and first floor levels.

The proposal includes 192 square metres commercial tenancy on the ground floor. Space dedicated solely for commercial use is not contained on the first floor. However, the applicant provided informal amended plans on 1 October 2020 that demonstrate a flexible first-floor floor plate to cater for 'work-live' home office arrangements which are required as a condition of the recommendation. Consideration has also been given to the use of the land as a car park for over 20 years. The fact that this proposal provides a substantial increase in employment generating uses relative to its past use has been a factor in the officer assessment.

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

A total of 48 car spaces are required for the development (42 for the residential use and 6 for the commercial use). The development provides 41 on-site spaces. No visitor parking spaces are required as the site is within a Car Parking Overlay.

Clause 22.03-3 (Car and Bike Parking and Vehicle Access) states that it is policy to:

*Support reduced car parking rates in developments within and in close proximity to activity centres, with excellent access to a range of public transport options and with increased provision of bicycle parking above the rates specified in clause 52.34.*

The proposal is located within the Brunswick Activity Centre and has excellent access to alternative modes of transport.

The development also provides 50 resident bicycle spaces and eight visitor bicycle spaces. This is 42 resident spaces and 4 visitor spaces above the required rate of Clause 52.34. Four motorcycle parking spaces are also provided.

There is a concern about the lack of parking for the commercial use. This is addressed through a recommended permit condition. It is reasonable for customers and staff of the commercial tenancy to use alternative modes of transport.

The reinstatement of the vehicle crossing also will increase on-street parking.

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

Given the commercial tenancy size it is unlikely to regularly receive large deliveries. It is considered acceptable for loading and unloading to take place via small vehicles either in the short-term parking on the street, or in the rear waiting bay.

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

No issues were identified in relation to manoeuvrability or access to the parking space, or with traffic generation. It is anticipated the development will generate 6 vehicle trips per hour. This is acceptable for the laneway and local street network. Council's engineers did not raise any safety concerns with the use of the laneway.

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

Key environmentally sustainable features include gas-free dwellings and commercial tenancy, 58 bicycle parking spaces and a 25kW solar panel system to power common areas and the heat pump. Three bedrooms on each residential level of the building do not meet minimal daylight requirements and natural ventilation requires improvements to satisfy best practice standard as per Clause 22.08 (Environmentally Sustainable Design). Redesign of the floor plates, such as deleting or reducing the size of bathrooms and bedrooms may be required to satisfy these requirements. This is included as a condition of the recommendation.

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

The development substantially exceeds the Clause 58 accessibility requirement with the provision of 85 per cent accessible dwellings substantially exceeding the minimum requirement of 50 per cent. This satisfies Objective 9 of Clause 23.03-3 (Housing) to increase the supply of housing that is visitable and adaptable to meet the needs of different sectors of the community.

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

Whilst many of the standards of Clause 58 are met or exceeded, there are some standards and objectives that are not met. The key concern relates to daylight access to some bedrooms. Subject to conditions to improve access to daylight to non-compliant bedroom windows, the general level of amenity provided to the apartments is acceptable.

Key issues from the Clause 58 assessment are discussed below.

#### ***Clause 58.03 – Site Layout***

Standard D10 requires that development should provide deep soil areas and canopy trees. For the subject site (area 764sqm) approximately 38 square metres of deep soil planting and one small tree would be required to meet the standard.

While some landscaping (largely ferns) are proposed within the internal courtyard, the landscaping would not meet Standard D10.

The site is within a Commercial 1 Zone, and canopy trees are not characteristic of the area. The proposal removes all vegetation from the site, but this is generally of poor quality, and is uncharacteristic in the area. The location of the trees (primarily along the eastern boundary) makes them inappropriate to retain while seeking to meet the built form and development outcomes sought within the activity centre. That said, the recommendation includes a 'Public Works Plan' condition, that compensates for the loss canopy trees from the site by requiring street trees and vegetation at street frontage.

#### ***Clause 58.04 Amenity Impacts***

Standard D14 seeks to avoid direct views into new or existing habitable rooms and open space. The properties to the east (Nos 3-11 Black Street) have a number of windows at ground and first floor level either on the common boundary, or setback 1 metre from the boundary with the subject site. Additionally, two centrally located dwellings have balconies/roof top terraces at upper levels abutting the subject site.

The proposal does not orient new windows towards the neighbour's windows or open space. East facing windows are proposed for bedrooms in seven dwellings, however these are highlight windows that will not lead to loss of privacy on neighbouring land. Some views could be possible from south facing bedroom windows oriented into the eastern lightwell however the view line is oblique and the window includes an external frame which partially restricts views. As there is no direct view, standard D14 is met.

Standard D15 seeks to limit views into windows and open space within the development. Opportunity for internal overlooking between bedrooms that face the internal lightwell is mitigated by the staggered placement of the windows.

An acoustic report prepared by Cogent Acoustics indicates that the adopted façade achieves Standard D16 noise levels. Noise from mechanical plant on the roof level (including car park exhaust) will require ductwork to be insulated. A condition is contained in the recommendation requiring the recommendations of the acoustic report to be implemented.

### **Clause 58.05 -3 Private Open Space**

Standard D19 specifies minimum areas for apartments. The first-floor street facing apartments fall 3 square metres short of the 15 square metres specified in the standard. This is largely due to the setback provisions of the DDO18 which restrict balcony projections within 3 metres of the frontage. Notwithstanding the minor non-compliance, the proposal exceeds the requirements for all remaining dwellings. Balconies range in size from 11 square metres to 25 square metres. These are accessed directly from a living room and all have a minimum depth of 2.4 metres. The proposal provides acceptable private open space, supplemented by communal space at ground floor. The proposal meets the objective of this provision.

### **Clause 58.07 Internal Amenity**

Standard D24 specifies minimum room dimensions for bedrooms and minimum room widths and areas for living rooms. All proposed bedrooms meet the standard.

All proposed living areas meet the size provision, being 10 square metres for 1-bedroom dwellings and 12 square metres for 2 (or more) bedroom dwellings. The application plans show all one or two-bedroom dwellings with minimum widths less than the standard. The informal amended plans show that internal furniture rearrangements can ensure all living areas can meet the minimum width requirement.

Standard D27 requires cross ventilation to 40 per cent of the apartments in a development. There is a good level of cross ventilation to the dual aspect apartments, which represent 70 per cent of the dwellings.

### **Does the proposal comply with Clause 22.07 (Development of Five or More Storeys)?**

Clause 22.07 sets out building setback standards for apartment. The objectives of the clause relate to daylight and outlook, future development opportunities of adjoining site and amenity impacts.

#### *Daylight and outlook*

The building is designed in a 'dumbbell' shape with all dwellings provided with an external outlook and with internal light wells providing secondary outlook, daylight and ventilation. Room depths comply with Clause 58 Standard D25.

#### *Light wells*

Two light wells of reasonable dimensions allow for outlook and daylight to bedrooms. The light well size and dimensions exceed the numerical minimum widths (2 m) and area (9sq m) for levels 1 to 5. The western light well is approximately 29 square metres in area with 4.5 metres minimum width. The eastern light well is a minimum 3.4 m width with an area of approximately 15.3 square metres. Both light wells remain the same size from first floor to the sky. The standard requires light wells increase from level 6 to 7 to 29 square metres and a minimum 4.5 metres width. This is met for the western light well. The eastern light court does not meet the standard, however is acceptable. This is because the light well substantially exceeds the size and dimension requirements for levels 1 to 5.

Three of the bedrooms on each floor contain 800 millimetres to 850 millimetres wide windows that look to a 3.8 metres narrow 800-900 millimetre gap between walls. These rooms will receive poor outlook and daylight. A recommended condition of permit is for compliance with BESS IEQ standards for daylight. This is likely to require internal re-arrangements and floor space reductions to provide larger windows for these bedrooms.

#### *East facing bedroom windows*

The east facing second bedroom window of Apartments 103 to 703 have a one metre outlook to the side boundary. Clause 22.07 require the bedrooms of Apartments 103 to 403 to be setback 3 metres from the boundary and Apartments 503 to 703 to be

setback 4.5 metres from the boundary. These windows do not reasonably incorporate access to daylight from its own site. Requiring compliance effectively deletes the affected bedrooms. If the building to the east was to remain, the light to these bedrooms would be considered acceptable. However, the site to the east could be developed in future. It has the same controls that apply to the subject site that encourage a more intense development up to 25 metres. If that site was to develop, the interface with the subject site could be to a 7 or 8 storey building with minimal setbacks. Pursuant to Clause 22.07, any proposed development would only have to provide a 'comparable' setback. This could result in an approximate 2 m light court opposite a building of 25 metres for the bedroom windows. This is considered a poor outcome.

A recommended condition of permit will remove these bedrooms to effectively create a small 'study nook'. The condition would require a 2.5 metre setback for the 'study nook' windows from the boundary. As these rooms would no longer be a bedroom, Clause 22.07 setbacks would be met.

#### *Reasonable future development opportunities of adjoining sites*

The site to the west is a future development site. The proposed layout generally provides for a boundary wall that can be constructed against the western interface. This will not limit the development potential of that property.

To the east, the site has been developed with the original warehouse subdivided into 5 lots, and a number of these extended and converted to residential use. This building has windows and open space proximate to the boundary. The proposed response is to set back all 8 levels of the building by 1 metre, with only one bedroom window on each residential level facing the site. Subject to the condition above to turn these bedrooms into 'study nooks' with a greater setback, the proposal will not unreasonably limit the development potential of the land to the east.

Clause 22.07 requires a setback to a laneway for Levels 3-8 to be 6-metres from the centre line of the lane for primary outlook and 3-metres for secondary outlook. The proposal has a rear setback of 4 metres falling 2 metres short of the standard. The objectives include '*to provide a reasonable outlook from living areas*', and also '*to protect the future development opportunities of adjoining sites*'.

If development occurred to the south that mirrored the setbacks provided in this proposal, an 8-metre separation would be provided between building forms. Council considers this to be inadequate given the lack of space that would potentially exist between these forms. Additionally the proximity of development is likely to result in the need for screening, which the policy seeks to avoid.

A condition of the recommendation requires the setback to a minimum of 4.5 metres from the centre of the lane. If a future development of the land to the south mirrored this proposal, a separation of 9 metres would be achieved and no screening would be required. This is considered an acceptable outcome.

#### *Amenity impacts on adjoining sites*

The property to the east, namely 9 and 11 Black Street, has setbacks of between approximately 900 millimetres and 1500 millimetres at the front part of the building containing habitable room windows. As these windows do not meet the provisions of Clause 22.07, the following policy applies:

*Where an existing residential development on an adjoining site does not meet the distances specified in Tables 1, 2 and 3, a new development should be sited to achieve a comparable adequate setback (from a minimum of one metre and a maximum of three metres). The building setback requirements apply from the first level of residential use.*

The proposal seeks a setback of 1 metre at all levels. Relevantly, impacted neighbours have negotiated outcomes with the applicant as reflected in conditions 1(a) and 21 of the recommendation and have withdrawn their objections. Given the negotiated outcome, the 1 metre setback is considered acceptable. The proposed condition for increased setback of the second bedroom for Apartments 103 to 703 will also assist daylight access.

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

The site is affected by an Environmental Audit Overlay. The applicant has submitted a Phase 1 environmental site assessment that concludes that the site would be appropriate for the intended uses subject to the completion of an Environmental Audit. A condition is contained in the recommendation requiring an Environmental Audit to be undertaken before the development commences.

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

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

- Insufficient setback from the east boundary
- Daylight impacts
- Car parking and traffic impacts
- Laneway safety
- Insufficient commercial floor space
- Excessive height
- Impact on equitable development of neighbouring properties
- Insufficient green space provided
- The application was not advertised

The remaining grounds of objection are discussed below.

#### *Visual bulk*

The planning assessment and issues in Section 4 of this report has confirmed that the building height, mass and setbacks are acceptable when considered against the requirements of the planning scheme. The proposal is considered an appropriate response for a development in the major activity centre location.

#### *Overdevelopment of the site and area*

The proposal complies with the built form controls of the DDDO18 relating to height, street wall and 1:1 ratio that aims to ensure an appropriate balance is reached between sense of enclosure and openness. In addition, planning policy envisages an increase in housing density in well serviced areas such as this. Clause 16.01 of the Moreland Planning Scheme encourages higher density housing development on sites that are well located in relation to activity centres, employment corridors and public transport. The increase in population and density at this site is considered an appropriate response given its location in an Activity Centre and the proximity to public transport, shops and other services.

#### *Loss of trees*

All vegetation proposed on the site will be removed. This includes two trees at the front of the site and some trees along the eastern boundary. The site is within a Commercial 1 Zone, and canopy trees are not characteristic of the area. Whilst it is acknowledged that the trees provide amenity to the surrounds, Council's Open Space Design and Development Unit did not object to their removal. The location of the trees makes them inappropriate to retain while seeking to meet the built form and development outcomes sought within the DDO18 and the Activity Centre designation. A permit condition

contained in the recommendation requires submission of a Public Works Plan that will require tree(s) and other landscaping in the street frontages adjacent to or near the development.

The design response includes a 44 square metres green roof, the communal garden area and planters to all balconies. These landscape elements will assist with providing a green edge to the building and is considered appropriate given the site's context. Landscaping conditions are required to ensure that suitable soil volumes, soil mix and irrigation is provided and maintained on the site.

#### *Overshadowing*

The proposal will result in additional overshadowing to the rear yards of the residential properties at 290 and 292 Barkly Street between 9 am and 10 am at the equinox. By 10 am there will be negligible additional overshadowing to any property to the west. Beyond 10 am the rear yards to the west will still receive sunlight.

From 1 pm onwards the proposal will cast significant shadows over the roof top terrace at 5 Black Street. From 2 pm onwards this space will be cast in shadow. The roof terrace will still receive sunlight from 9 am to 12 noon.

The decision guidelines of the Commercial 1 Zone provide consideration of overshadowing impacts only to land within a residential zone. The provisions temper the expectations for land to be protected from overshadowing impacts. As the land affected by overshadowing to the east and west is within the Commercial 1 Zone, it is considered an acceptable outcome. The areas affected will still receive sunlight access.

#### *Impact on existing and future solar panels to the east and west*

The submitted plans do not show solar energy systems on the context plans. Objections received refer to existing solar energy systems. From aerial photographs it appears there are existing solar energy systems above properties to the east. The decision guidelines of the Commercial 1 Zone provide consideration of existing rooftop solar energy systems overshadowing impacts only to land within a residential zone. Irrespective, these solar systems will receive solar access for most of the day.

#### *Overlooking to the east*

As negotiated with the applicant and the affected neighbours, the recommendation requires windows be altered to a 'vertical' style with obscure glass to 1.7 metres.

#### *Noise impact of rooftop terrace*

The space on the rooftop is not proposed to be open to residents. A condition in the recommendation clarifies that the roof is for maintenance purposes only, to avoid any doubt.

#### *No need for cafes in the area*

The use of the land for a food and drink premises does not require a planning permit in the zone. Lack of demand is not a valid planning reason for refusal or modification of the proposal.

#### *Surface of rear lane may be damaged*

Should the rear laneway, or any other Council asset, be damaged during construction, the owner will be required to repair the damage. This is managed through Council's asset protection permit process.

#### *Amenity impacts of food and drink premises including, odour, safety, possible anti-social behaviour and noise.*

The food and drink premises does not require a planning permit. Some objector concerns were associated with the possible service of alcohol. If this is proposed in the

future, a separate planning permit would be required and consideration of notification to adjoining properties would form part of the planning process.

*Lack of contribution to the amenity of the surrounding area*

There is strong strategic support for a development of this kind in this location, as discussed above. The amenity impacts of the proposal are considered to be acceptable.

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

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





## **7. Financial and Resources Implications**

There are no financial or resource implications.

## **8. Conclusion**

The proposal seeks a building height and form that is supported by the DDO18. Subject to conditions of the recommendation to provide flexibility for live-work units or office spaces at the first floor, the proposal will provide acceptable employment generating opportunities. Subject to the conditions, and on the balance of policies and controls within the Moreland Planning Scheme, it is considered that Notice of Decision to Grant a Planning Permit No MPS/2020/73 should be issued.

## **Attachment/s**

<b>1</b> <a href="#"></a>	Location Map	D20/422389
<b>2</b> <a href="#"></a>	Development Plans	D20/415306
<b>3</b> <a href="#"></a>	Informal Amended Plans	D20/415428
<b>4</b> <a href="#"></a>	Location of Objectors	D20/415150



# DCF51/20 285 LYGON STREET BRUNSWICK EAST - AMENDED PLANNING PERMIT APPLICATION MPS/2009/110/B

Director City Futures

City Development

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## Caretaker Statement

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

## Executive Summary



<b>Property:</b>	285 Lygon Street, Brunswick East
<b>Proposal:</b>	Amend Planning Permit MPS/2009/110/A by: <ul style="list-style-type: none"><li>• Amending Condition 2 to refer to a new acoustic report supporting karaoke beyond 10pm.</li><li>• Amending the table layout on the endorsed plan.</li></ul>
<b>Zoning and Overlays:</b>	<ul style="list-style-type: none"><li>• Commercial 1 Zone</li><li>• Design and Development Overlay 19</li><li>• Parking Overlay 1</li><li>• Development Contributions Plan Overlay</li></ul>
<b>Strategic setting:</b>	Within the Brunswick Major Activity Centre where residential amenity expectations need to be balanced against an activity centres' role as <i>the location for commercial facilities that meet the community's needs for retail, entertainment, office and other commercial services.</i>
<b>Objections:</b>	16 (including 5 pro-forma). Key issues: <ul style="list-style-type: none"><li>• Noise emissions from karaoke</li><li>• Hours of karaoke operation</li><li>• Patron behaviour / noise</li></ul>
<b>Planning Information and Discussion (PID) Meeting:</b>	Date: 1 September 2020 <ul style="list-style-type: none"><li>• Attendees: 9 objectors, the applicant, 3 Council officers, Cr Riley and Cr Abboud.</li><li>• No changes were made to the proposal following the PID, however the meeting discussions have assisted the planning considerations and preparation of this report.</li></ul>

<b>Key reasons for support</b>	<ul style="list-style-type: none"> <li>• Amendments to the permit to extend the hours of karaoke will add to the vibrancy of entertainment which is encouraged within Major Activity Centres.</li> <li>• Noise and patron behaviour issues can be mitigated through permit conditions. In particular, addition of an air-lock door and additional noise testing when the land is in operation is recommended, with further acoustic measures required if standards are not met.</li> </ul>
<b>Recommendation:</b>	A Notice of Decision to Grant an Amended Planning Permit be issued.

## **Officer Recommendation** (New or amended conditions in bold)

That a Notice of Decision to Grant an Amended Planning Permit No. MPS/2009/110/B be issued for the sale and consumption of liquor (on-premises liquor licence) associated with a **food and drink premises (bar)** and a waiver of the standard carparking and bicycle facility requirements at 285 Lygon Street, BRUNSWICK EAST, VIC 3057, subject to the following conditions:

1. **Within 2 months of the issue of the Amended Permit MPS/2009/110/B amended plans generally in accordance with the plans advertised 9 July 2020 must be submitted to the satisfaction of the Responsible Authority, and will then be endorsed, showing:**
  - a) **The acoustic canopy constructed over the rear beer garden.**
  - b) **The red line plan in accordance with the liquor license.**
  - c) **The doors to the street and courtyard, including details of the seals as required by the Acoustic Report Rev. 1 by Cogent Acoustics dated 21 December 2017.**
  - d) **An air lock door system, in accordance with Condition 3**
  - e) **The acoustic sealing of the front vents to Lygon Street.**
2. The use of land as shown on the endorsed plans (sale and consumption of liquor) must not be altered without the written consent of the Responsible Authority. This does not apply to any exemption specified in Clauses 62.01 of the Moreland Planning Scheme unless specifically noted as a permit condition.
3. **Prior to karaoke operating beyond 10 pm, an airlock system to the front door must be installed to limit noise leakage through the entering and exiting of patrons. The two doors must be spaced so a person can fit between the doors and be self-closing doors with acoustic seals. Acoustic absorption must be included in the air-lock to reduce noise breakout at times when both doors could be open.**
4. The use allowed by this permit (sale and consumption of liquor) must operate only between the following hours:

Monday to Wednesday 10:00 am to 11:00 pm

Thursday to Saturday 10.00 am to 1:00 am (the day following)

Sunday 10:00 am to 12:00 am (the day following)
5. The maximum number of patrons permitted on the premises must not exceed 114 at any one time.
6. **Within one month of the end date of patron restrictions (under the declared State of Emergency in Victoria) acoustic testing must be undertaken and an acoustic report must be submitted to the satisfaction of the Responsible Authority. The acoustic report must include updated acoustic testing to the satisfaction of the Responsible Authority to ascertain whether the noise emanating from the land complies with the maximum noise levels prescribed by the State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2 (SEPP N-2) at affected noise sensitive receivers whilst in operation after 10 pm. The acoustic report must also make specific recommendations in relation to noise impacts from patron noise.**

The testing is to be carried out by a suitably qualified acoustic expert approved by the Responsible Authority. If the testing reveals that SEPP N-2 is not met or that patron noise is unreasonable, the report must make recommendations to ensure noise meets SEPP N-2 and that patron noise is reasonable. Any recommendations of the report must be implemented within one month of receipt of the report to the Responsible Authority, or any other time approved in

writing by the Responsible Authority.

After all of the recommendations have been implemented, further acoustic testing must be carried out to ascertain whether the noise emanating from the land complies SEPP N-2. All acoustic testing must be carried out with the inside bar at least at 80 per cent capacity of patrons (pursuant to the VPMP) between 11pm and 1am Friday and Saturday and with karaoke operating at a noise level that is consistent with the intended future noise levels of the karaoke. If necessary, the endorsed plans must be amended within a reasonable timeframe specified by the Responsible Authority to accord with the recommendations contained in the Acoustic Report required by this condition. The Acoustic Report will be endorsed to form part of this permit.

7. Noise levels associated with the use approved by this permit must at all times comply with SEPP N-2.
8. Should the Responsible Authority deem it necessary at any time, the owner and/or occupier of the land must submit a new Acoustic Report to the satisfaction of the Responsible Authority within a reasonable timeframe required by the Responsible Authority to demonstrate compliance with SEPP N-2 or which outlines any measures considered necessary to achieve SEPP N-2 compliance and achieve acceptable patron noise levels to protect the amenity of nearby residents. The recommendations of the Acoustic Report must be implemented to the satisfaction of the Responsible Authority within a reasonable timeframe specified by the Responsible Authority. The endorsed plans must be amended within a reasonable timeframe specified by the Responsible Authority to accord with the recommendations contained in the Acoustic Report required by this condition. The Acoustic Report will be endorsed to form part of this permit.
9. Prior to the commencement of the amended hours of karaoke, a Venue and Patron Management Plan (VPMP) must be submitted to the satisfaction of the Responsible Authority. The VPMP must be a stand-alone document and generally in accordance with the Operational Noise Management Plan (advertised 9 July 2020) and must include the following details:
  - a) Hours of operation of all parts of the premises
  - b) Patron capacity of all parts of the premises
  - c) Patron security
  - d) Pass out process
  - e) Complaint handling processes and premises contact person for complaints during operating hours.
  - f) Staff training for patron management
  - g) Management of outdoor areas
  - h) Noise attenuation measures (including measures to address opening the Lygon Street door)
  - i) Management of outdoor smoking area.
  - j) Music provision
  - k) Rubbish storage and disposal (including hours of disposal and collection).

Once submitted to and approved by the Responsible Authority, the VPMP will be endorsed to form part of the permit. The VPMP must be implemented and complied with at all times during the operation of the use. No alterations to the VPMP may occur without the written consent of the Responsible Authority.

10. **The beer garden or any outdoor area must not be used for live music and no music other than of a type and volume appropriate to background music may be emitted from external speakers in the courtyard. Background music is defined as any music played at a level that enables patrons to conduct a conversation at a distance of 600 millimetres without having to raise their voice to a substantial degree. It is not background music if it is played at a level which requires patrons to shout or use a stage voice such as that used by an actor in the theatre, in order to carry out a conversation at such a distance.**

**Permit expiry**

11. This permit will expire if the use is not commenced within two (2) 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 three months afterwards.

## 1. Background

### Subject site

The subject site is located on the east side of Lygon Street in Brunswick East, approximately 20 metres north of the intersection with Albert Street. It is rectangular in shape with a frontage to Lygon Street of 5.77 metres, a depth of 36.6 metres and an overall site area of approximately 211 square metres. It is relatively flat and occupied by a single storey shopfront building. The building has a zero lot line to the frontage, abuts the north boundary for a length of 8.84 metres and is setback 1.1 metres from this boundary for the remainder of its length. The building abuts the south boundary for a length of 30.12 metres and is setback 6.5 metres from the rear (west) boundary.

The building contains a shopfront and a dwelling to the rear of the building. A canopy is located over the rear yard (which is used as a beer garden). The north side setback is used as a customer path from the shopfront along the north boundary to connect the rear beer garden. There is a Right of Way at the rear boundary of the site.



Photo 1: View of premises from Lygon Street. Source: Google Streetview September 2020.

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

The site currently operates as Benjy's Karaoke Bar and Beer Garden. The current planning permit allows the sale of liquor limited to the below service times:

- Monday to Wednesday 10:00 am to 11:00 pm
- Thursday to Saturday 10.00 am to 1:00 am (the day following)
- Sunday 10:00 am to 12:00 am (the day following)

114 patrons are permitted on site.

The endorsed Acoustic Report pursuant to Planning Permit MPS/2009/110/A prohibits 'music events' including karaoke after 10 pm.

### Surrounds

The surrounding area is characterised as commercial along Lygon Street to the north, south and east, comprising a mix of restaurants, shops and some services. Land to the rear (west) of the site is zoned industrial. The nearest residentially zoned land is located approximately 50 metres to the east of the site. The sites to the north and south are also occupied by single storey shop fronts, with a dwelling as part of the abutting northern shop. The land sits within the Brunswick Major Activity Centre, and high-density residential development is located across the road at 294 Lygon Street.

Other entertainment venues in proximity of the site include:

- East Brunswick Hotel at 280 Lygon Street.
- Piano Bar at 294 Lygon Street (not yet operating).
- Noisy Ritual at 249 Lygon Street
- East Elevation (function space) at 351 Lygon Street.

A location plan forms **Attachment 1**.

### **The proposal**

The proposal is summarised as follows:

- Amend Condition 2 of Planning Permit MPS/2009/110/A to delete reference to the Cogent Acoustic Report 2017, based on an updated report by Cogent Acoustics 2020. This will allow unrestricted hours for 'music events' including karaoke.
- Amend the table layout in the red line and site plan.
- There will be no change to the number of patrons or hours for the sale and consumption of liquor.

The internal and site layout plan forms **Attachment 2**.

The Cogent Acoustic Report 2020 and Operational Noise Management Plan form **Attachment 3 and Attachment 4**.

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

Planning Permit MPS/2009/110 was issued on 13 July 2009 for:

*'Change of use to a restaurant with sale and consumption of liquor (on-premises liquor licence) and a waiver of the standard carparking and bicycle facility requirements, in accordance with the endorsed plans'*. Plans were endorsed on 13 July 2009.

Amended Planning Permit MPS/2009/110/A was approved on 11 April 2018 for an extension of hours of the liquor licence, allocated patron numbers of 114 and introduced music entertainment (karaoke). The current hours approved for the sale and consumption of alcohol are:

- Monday to Wednesday 10:00am to 11:00pm
- Thursday to Saturday 10.00am to 1:00am (the day following)
- Sunday 10:00am to 12:00am (the day following)

The current permit MPS/2009/110/A forms **Attachment 5**.

The current endorsed layout Red Line plan forms **Attachment 6**

### **Statutory Controls – why was the planning permit required originally, are there new permit triggers?**

There are no new permit triggers. The scope of this amendment is limited to the impact of removing the requirement contained in the endorsed Cogent Acoustic Report 2017 for 'music events' (karaoke) to not operate beyond 10 pm.

Control	Permit Requirement
Commercial 1 Zone	The endorsed plan and patron numbers for MPS/2009/110/A show the current approval no longer meets the definition of a 'restaurant' in the Planning Scheme and suits the definition as a 'bar' because 75% of patrons do not have seats on the endorsed plan. Irrespective, both 'Bar' and 'Restaurant' are Section 1 uses in the zone, meaning that a permit is not required for the uses. The original Permit did not require a permit for use of the

Control	Permit Requirement
	land within the Zone. This results in the existing permit incorrectly referring to change of use for a restaurant. This is recommended to be corrected as part of this decision to amend the planning permit.
Particular Provisions	<p>A permit was required to use land to sell or consume liquor pursuant to Clause 52.27 of the Moreland Planning Scheme.</p> <p>A permit was also required to waive the car parking requirement, in accordance with Clause 52.06 of the Moreland Planning Scheme.</p> <p>In this case, a 'bar' has a parking rate of 0.35 spaces to each 100 square metres of leasable floor area. This is the same rate as a 'restaurant' use for which the original permit granted a waiver. Therefore no further approval is required under the parking provisions.</p> <p>A permit was required to waive the bicycle facilities requirements in the original Planning Permit. The correction from a restaurant to a bar results in a decreased requirement for bicycle parking. Therefore no further approval is required under the bicycle parking provisions.</p>

The following Overlay Provisions of the Moreland Planning Scheme are discussed below in relation to the proposal:

- Clause 43.02: Design and Development Overlay 19 (DDO19). As no works are proposed, a permit is not required under DDO19.
- Clause 45.09: Parking Overlay 1. The Parking Overlay specifies that the 'Column B' rate in Table 1 to Clause 52.06 applies. In this case, the correction from a restaurant to a bar use both have the same parking rate of 0.35 spaces to each 100 square metres of leasable floor area.
- Clause 45.06: Development Contributions Plan Overlay. As the leasable floor area of the building is not increasing, there is no requirement for a contribution.

## 2. Internal/External Consultation

### Public notification

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

- Sending notices to the owners and occupiers of adjoining and nearby land; and,
- By placing a sign on the site frontage.

Council has received 16 objections including 5 proforma objections to date. All objectors are from the apartment building at 294 Lygon Street, opposite the site. A map identifying the location of objectors forms **Attachment 7**.

The key issues raised in objections are:

- Noise emissions from karaoke, particularly when the doors are open.
- Later hours of karaoke will impact sleep.
- Patron noise/behaviour impacts.
  - Smokers utilise the footpath, or persons exiting.
  - Patrons loiter and intoxicated behaviour.
- Noise mitigation recommendations and measures



- The sound proofing is not working from the past experience of noise/music.
- The Acoustic Report was done while the site is closed (due to Covid-19) and a new report is required.
- Noise is compounded by patrons in the audience singing. Concern this was not measured in the Acoustic Report.
- Should include requirement for an airlock

All objectors were invited to a Planning Information and Discussion (PID).

The PID meeting was held on 1 September 2020 and attended by Cr Abboud and Cr Riley, Council Planning Officers, the applicant and 9 objectors. The meeting provided an opportunity to explain the application, for the objectors to elaborate on their concerns, and for the applicant to respond. No changes have been made to the proposal following the PID.

#### **Internal/external referrals**

The proposal was not referred to any external agencies or internal business units.

### **3. Policy Implications**

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

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

- Clause 13.07-3S (Live music)
- Clause 17.02-1S (Business)

#### **Local Planning Policy Framework (LPPF)**

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

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

#### **Local Planning Policies:**

- Clause 22.09 (Entertainment Venues and License Premises)

The amendment enjoys strong strategic planning support, due to the site's location within the Commercial 1 Zone (C1Z) and Brunswick Major Activity Centre. The C1Z purpose and Activity Centre policy framework expressly encourages a vibrant centre, that has a mix of community facilities, retail, entertainment, office and other commercial services. Extending the karaoke component of the use, aligns with this broad policy setting provided amenity impacts are appropriately managed.

Clause 21.03-1 (Activity Centres) of the Municipal Strategic Framework Objective 3 is 'to support activity centres as important commercial and employment clusters.'

Strategies to achieve Objective 3 include:

*Ensure residential uses do not undermine the viability of businesses operating in activity centres. Residential amenity expectations should be consistent with activity centres' role to accommodate a mix of uses with day and night-time activity.*

#### **Human Rights Consideration**

This application has been assessed in accordance with the requirements of the *Planning and Environment Act 1987* (including the Moreland Planning Scheme) reviewed by the State Government and which complies with the Victorian Charter of *Human Rights and Responsibilities Act 2006*. In particular, regard was given to:

- Section 12: Freedom of movement
- Section 13: Privacy and Reputation
- Section 15: Freedom of expression
- Section 16: Peaceful assembly and freedom of association
- Section 18: Taking part in public life.

This application does not limit human rights. The impact of the proposed amendments on the users of the premises, visitors and other associated systems have been considered.

#### **4. Issues**

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

It is clear that late night entertainment activity is supported within the Brunswick Major Activity Centre. The key issue is whether the noise impacts of late-night karaoke in conjunction with the consumption of alcohol are acceptable.

In considering what is 'acceptable', policy dictates that residents in activity centres should not expect the same amenity as residents in a purely residential area. However, similarly, businesses operating near residential properties cannot expect to operate in the same manner as a business without residential properties nearby. An appropriate balance must be reached.

##### **Music Noise**

The relevant objective of Clause 22.09 (Entertainment Venues and License Premises) is '*to manage the potential negative amenity and public safety impacts of licensed premises.*'

State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2 (SEPP N-2) is an appropriate standard to use to determine whether music noise is acceptable. Compliance under the SEPP N-2 does not mean that no music noise will be audible within habitable rooms of an apartment or dwelling. Compliance is achieved provided music noise is not more than a maximum of 8 decibels louder than background noise.

The endorsed Cogent Acoustic Report 2017 ('endorsed Acoustic Report') notes that with background music being played during the night period (after 10 pm) the proposal would satisfy SEPP N2 at the closest noise sensitive areas provided that the music levels do not exceed 65 dB(A) inside the restaurant. The endorsed Acoustic Report notes that karaoke would result in 85 dB(A) and therefore restricted karaoke to before 10 pm.

An acoustic report was provided with this application to justify karaoke beyond 10pm. The report is by Cogent Acoustics, Revision 3 dated 29 June 2020 ('2020 Acoustic Report'). Due to Covid-19 restrictions, the 2020 Acoustic Report could not undertake testing with actual karaoke music with a person singing and patrons singing along. The 2020 Acoustic Report is based on recorded singers on karaoke tracks, and also mixed wavelength noise (pink static noise) to a volume of 100 decibels. The music was recorded as 86 decibels. Acoustic testing was undertaken externally and internally. The volume at the noise sensitive area at 294 Lygon Street was calculated to meet SEPP N-2.

No recommendations were made for adjustments to the operation or building structure of the bar within the 2020 Acoustic Report.

However, the 2020 Acoustic Report is based on the doors being closed. As expressed by objectors, a key concern is intermittent increase in volume when doors are opened as patrons enter and exit. This is a valid concern that is not adequately addressed in the 2020 Acoustic Report.

A decision guideline of Clause 22.09 is the consideration of *'any previous complaints and problems with the premises and breaches of planning or liquor license permit conditions.'* Breaches of the endorsed acoustic report by operating karaoke beyond 10 pm has been established and complaints have been received (pre-Covid-19 lockdown) related to those late-night noise impacts. It is also relevant that resident complaints about noise have been received after acoustic works as recommended in the endorsed acoustic report have been completed. This places into question the adequacy of noise attenuation measures within the venue to allow karaoke with the consumption of alcohol beyond 10 pm.

There is also a concern that the testing that has been undertaken in the 2020 Acoustic Report, without patrons 'singing along', may not be an accurate reflection of the noise that will be generated.

Despite the above, it is considered that the concerns can be addressed through a suite of permit conditions contained in the recommendation to provide amenity protections for residents. These include:

- The requirement to install 'air lock' doors to the entry from Lygon Street to reduce noise breakout from the door opening to enter and exit the premises.
- A permit condition that requires submission of an additional acoustic report that includes testing whilst the operation is at near capacity post COVID restrictions.
- A requirement for compliance with SEPP N-2 at all times
- A permit condition that requires, at any time in the future, if Council have reason to believe noise levels may not meet the SEPP N-2, or acceptable patron noise levels, further testing be undertaken by the owner/occupier and further noise reduction measures be undertaken.

### **Patron Noise**

Patron noise can be a significant amenity impact for residents. In relation to the current business operating from the land, patron noise can include noise from patrons outside the premises whilst smoking or waiting for a cab.

There appears to be a 'grey area' in relation to whether patrons 'singing along' to karaoke should be defined as 'patron noise' or 'music noise'. This is important because patron noise is not covered by SEPP N-2. To ensure 'patron noise' from karaoke is adequately tested and managed, the recommended permit conditions include requirements for consideration of patron noise in addition to SEPP N-2 compliance.

Clause 22.09 of the Moreland Planning has an application requirement for a Venue and Patron Management Plan (VPMP) to be provided for an application proposing to trade after 11 pm.

Patron management information informed the approval of the extended trading hours past 11 pm. However, a VPMP was not endorsed to form part of the permit.

A decision guideline of Clause 22.09 is *'whether smoking areas are provided internal to the venue or rely on the footpath'*. A positive aspect of the site is that a smoking area is provided at the rear. If managed properly (i.e. enforcing patrons to smoke within the designated smoking area and not on the street) patron noise from smokers can be mitigated. Such management actions should be included in an endorsed VPMP.

The patron noise from patrons departing after 10 pm was raised as an issue by objectors. The closing time of 1 am for karaoke (and the sale of liquor) Thursday to Saturday will be the same as the permitted closing of the Piano Bar located at 294 Lygon Street (1 am Friday and Saturday) but will exceed the Piano Bar Thursday closing time which is 11 pm.

The East Brunswick Hotel is permitted to close at 1am, and patrons from other close by venues such as Noisy Ritual at 249 Lygon Street (licensed to 11 pm), may have patrons using the tram stop directly in front of the Benji's. It is acknowledged that cumulatively, patron noise and behaviour from numerous venues can have a detrimental amenity impact.

The existing permit allows the sale and consumption of liquor beyond 10 pm and, as the use does not require a permit, patrons can depart after 10 pm. Whilst this is not changing as part of the amendment, a larger number of patrons departing at later hours could be anticipated as a result of the amendment. This is because there is a likelihood that many patrons will depart when karaoke ceases. It is therefore considered appropriate that a VPMP be endorsed to mitigate patron noise and behaviour.

A document titled 'Operational Noise Management Plan' was submitted with the amendment application. Whilst this document includes measures the operators must undertake to reduce impacts, the document is more of a written description of the operation than a VPMP with clear and enforceable requirements. Endorsement of a 'stand-alone' VPMP forms part of the recommended permit condition. This will include a point of contact for any complaints and a clear process to facilitate resolutions of minor issues.

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

The issues raised in the objections and outlined at the PID are valid concerns. The objector issues have been discussed in this report. A suite of permit conditions is considered necessary to ensure the proposal complies with acoustic standards.

## **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 operation of karaoke combined with the sale and consumption of liquor after 10pm has the potential to generate unreasonable noise impacts. These impacts can be mitigated by permit conditions that require an air-lock door to be installed as well as additional acoustic testing.

On the balance of policies and controls within the Moreland Planning Scheme and objections received, it is considered that Notice of Decision to Grant an Amended Planning Permit No MPS/2009/110/B should be issued.

## **Attachment/s**

<a href="#">1</a>	<a href="#">285 Lygon Street Locality and Zoning Map</a>	D20/371163
<a href="#">2</a>	<a href="#">285 Lygon Street - Existing and proposed Karaoke Bar and beer garden plan MPS/2009/110/B</a>	D20/268819
<a href="#">3</a>	<a href="#">Acoustic Report for 285 Lygon Street, Brunswick MPS/2009/110/B</a>	D20/267988
<a href="#">4</a>	<a href="#">Benjys Karaoke Bar and Beer Garden Operational Noise Management Plan MPS/2009/110/B</a>	D20/267156

<a href="#">5</a>	285 Lygon Street, BRUNSWICK EAST VIC 3057 - Change of Plan - Amended Planning Permit SIGNED	D18/129046
<a href="#">6</a>	285 Lygon Street BRUNSWICK EAST - Red Line Plan ENDORSED	D18/129952
<a href="#">7</a>	285 Lygon Street, Objector Locality Map	D20/371162

# DCF52/20 167 REYNARD STREET, COBURG - PLANNING APPLICATION MPS/2019/810

Director City Futures

City Development

## Caretaker Statement

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

## Executive Summary



<b>Property:</b>	167 Reynard Street, Coburg
<b>Proposal:</b>	Construction of a three-storey building, the use of the land for dwellings and a reduction in car parking
<b>Zoning and Overlays:</b>	<ul style="list-style-type: none"><li>Commercial 1 Zone (C1Z)</li><li>Parking Overlay (PO1)</li><li>Development Contributions Plan Overlay (DCPO1)</li></ul>
<b>Strategic setting:</b>	<div><div>Minimal housing growth</div><div>Incremental housing growth</div><div>Increased house densities encouraged</div><div>Significant housing growth</div></div>
<b>Objections:</b>	<ul style="list-style-type: none"><li>15 Objections</li><li>Key issues:<ul style="list-style-type: none"><li>Building Height</li><li>Neighbourhood Character</li><li>Car Parking Reduction</li></ul></li></ul>
<b>Planning Information and Discussion (PID) Meeting:</b>	<ul style="list-style-type: none"><li>Date: 15 September 2020</li><li>Attendees: 7 objectors, the applicant and 2 Council officers</li><li>No changes have arisen from the PID meeting, however the discussions assisted the understanding of the parties and have helped to inform this report.</li></ul>
<b>ESD:</b>	<ul style="list-style-type: none"><li>Minimum average NatHERS rating of 6.5 stars;</li><li>8000 litre total water tank volume;</li><li>Exceeds best practice stormwater management; and</li><li>Provision of 5 bicycle spaces.</li></ul>

<b>Key reasons for support</b>	<ul style="list-style-type: none"> <li>• The design and height of the building is acceptable within this Commercial 1 zoning and the immediate context and will not unreasonably impact the amenity of the adjoining residential properties</li> <li>• The car parking reduction is acceptable having regard to the amount of bicycle parking spaces provided on-site and the good access to public transport.</li> <li>• The development replaces a mechanical repairs business with a mixed-use development that better respects the character of the area.</li> <li>• The development will resolve the contamination issues on the subject site.</li> <li>• The development restores the public realm through the construction of footpaths on Reynard Street and Donne Street, the planting of street trees on Donne Street and by creating on-street parking.</li> <li>• The development provides a use to serve the local community.</li> </ul>
<b>Recommendation:</b>	<p>It is recommended that a Notice of Decision to Grant a Planning Permit be issued for the proposal.</p>

## Officer Recommendation

That a Notice of Decision to Grant a Planning Permit No. MPS/2019/810 be issued for the construction of a three-storey building, the use of the land for dwellings and a reduction in car parking at 167 Reynard Street, Coburg, subject to the following:

### Amended Plans

1. Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and must be generally in accordance with the plans advertised 10 July 2020 but modified to show:
  - a) Screening or obscure glazing in accordance with Standard B22 (Overlooking) of Clause 55.04-6 to the first-floor kitchen/dining area window on the southern side of Dwelling 5.
  - b) Screening in accordance with Standard B22 (Overlooking) of Clause 55.04-6 to the eastern and southern sides of the roof terraces of Dwellings 2 to 5.
  - c) A screen diagram drawn at a scale of 1:50 which details the screen for all screening devices. This diagram must include:
    - i. All dimensions, including the width of slats and the gap between slats.
    - ii. All side screens
    - iii. How compliance is achieved with the standard of Clause 55.04-6 (overlooking) of the Moreland Planning Scheme.
  - d) A flat roof to the second floor of Dwellings 1 to 5, rather than a gabled roof.
  - e) A full-length living room window on the northern side of Dwelling 1.
  - f) A window on the southern side of the ground floor bedroom of Dwelling 5.
  - g) The levels of the porches and ground floor of Dwellings 2 to 5 reduced (or ramped) to match the levels of the pedestrian path to achieve an accessible path from the street to the ground floor of the dwellings.
  - h) The sill height of the ground floor window on the southern side of Dwelling 1 increased to a minimum height of 1.4 metres above the accessway, in accordance with Standard B15 (Parking Location) of Clause 55.03-10.
  - i) A storage space which may be underneath the stairs provided for Dwelling 1 dimensioned in accordance with Standard B30 (Storage) of Clause 55.05-6.
  - j) The storage spaces for Dwellings 2 to 5 dimensioned in accordance with Standard B30 (Storage) of Clause 55.05-6.
  - k) An amended landscape plan in accordance with Condition 3 of this permit.
  - l) Gas and water meters shown on all relevant plans. Where meters would be visible from the public realm, they must not be in a stacked or placed vertically and must be screened from view using either landscaping or fixed screening.
  - m) The 'Materials Legend' amended to identify materials 'VC1' and 'VC2' as 'Scyon Axon Cladding' and 'TC' as 'Perma Timber - CX castellated cladding'
  - n) No portion of the building, except for the Reynard Street verandah, can project beyond the title boundaries by more than 300mm.
  - o) The verandah over the Reynard Street footpath setback not less than 750mm from the kerb and at a height not less than 3 metres above the level of the footpath.
  - p) Two (2) additional resident bicycle parking spaces in bicycle lockers or a bicycle



rail, in accordance with Clause 52.34-6 of the Moreland Planning Scheme.

- q) 2 bicycle parking spaces for the Food and Drink Premises, consisting of 1 employee space in a bicycle locker or at a bicycle rail in a lockable compound and 1 on-street visitor space, in accordance with Clause 52.34-6 of the Moreland Planning Scheme.
- r) An area within the site for an accessible boundary trap.
- s) Any changes required by the Waste Management Plan in accordance with Condition 9 of this permit.
- t) Initiatives contained within the amended Sustainable Design Assessment required by Condition 6 of this permit, including:
  - i. A rainwater tank to Dwelling 1
  - ii. A notation on the plans that water will be collected from the roof area and connected to the rainwater tank to service all toilets.
  - iii. The location of the outdoor private clothesline for each dwelling.
  - iv. An amended stormwater management plan to provide detail on the potential water contaminants resulting from the expected use of the areas of collection, the relevant water treatment measures proposed, and their effectiveness in achieving the required water quality suitable for the end use.
  - v. External operable sun shading devices including a product diagram of the proposed device (excluding roller shutters on street facing glazing) to west facing glazing of all bedrooms and living rooms to block peak summer afternoon sun.

### **Secondary Consent**

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

### **Landscaping**

- 3. Prior to the endorsement of plans, an amended landscape plan must be submitted to and approved by the Responsible Authority. The landscape plan must be generally in accordance with the landscape plan advertised 10 July 2020 but modified to show:
  - a) The provision of planter boxes on the roof terraces of:
    - i. Dwellings 2 to 5 along the eastern side.
    - ii. Dwellings 2 and 4 along the northern side.
    - iii. Dwellings 3 and 5 along the southern side.
    - iv. Dwelling 1 along the northern, eastern and southern sides.
  - b) The provision of at least 4 street trees along Donne Street.
  - c) The provision of climbing plants along the eastern side of the driveway.
  - d) Notes and diagrams detailing the establishment and maintenance of all proposed trees, shrubs and ground covers.
  - e) Details of the location and type of all paved and sealed areas. Extensive hard surfaces are not supported. Porous/permeable paving, rain gardens and other water sensitive urban design features must be in accordance with any endorsed Sustainability Design Assessment or Sustainability Management Plan.
  - f) Details of all planter boxes on the roof terraces 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.
4. All planting must be maintained in accordance with the endorsed landscape plan with any dead, diseased or damaged plants replaced with a suitable species to the satisfaction of the Responsible Authority.
  5. Following completion of the development, any stormwater treatment must be maintained to ensure water quality discharged from the site complies with the performance standard in the endorsed Sustainability Design Assessment.

### **Environmentally Sustainable Development**

6. Prior to the endorsement of plans, an amended Sustainable Design Assessment (SDA) generally in accordance with the SDA prepared by Your Design Group Pty Ltd dated on 09/06/2020, must be submitted to and approved to the satisfaction by the Responsible Authority. The SDA must demonstrate a best practice standard of environmentally sustainable design and be generally in accordance with the prepared by Your Design Group Pty Ltd dated on 09/06/2020, but modified to include the following changes:
  - a) 'Publish' the BESS report (so it is no longer in 'draft' format).
  - b) A STORM report and stormwater management response that maintains a minimum STORM score of 100 per cent but is modified so that the Dwelling 1 roof area is treated by way of rainwater tank for reuse within dwelling 1.
  - c) Provide preliminary NatHERS ratings assessments for all thermally unique dwellings. Enter the preliminary NatHERS data in the Dwelling Energy Profiles. To achieve a minimum of 6.5 NatHERS stars per dwelling, or average across the 5 dwellings.
  - d) No longer claim the credit IEQ 3.3 Thermal Comfort – Orientation.

Where alternative ESD initiatives are proposed to those specified in 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.

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

### **Development Contributions**

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

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

- For a maximum of 12 months from the date of issue of the Building Permit for the

development hereby approved; or

- Prior to the issue of a Statement of Compliance for the subdivision;

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

### **Waste Management Plan**

9. Prior to the endorsement of plans, an amended Waste Management Plan must be submitted and approved to the satisfaction of the Responsible Authority. The Plan must be generally in accordance with the Waste Management Plan prepared by Frater Consulting dated 4 June 2020 but modified to include:

- a) Either:
- i. A shared waste storage area for the dwellings, rather than individual bins; or
  - ii. Details of private waste collection arrangements for the residential bins.
- b) Any changes required to reflect the changes to the plans required by Condition 1 of this permit.

When submitted and approved to the satisfaction of the Responsible Authority, the Waste Management Plan and associated notated plans will form part of this permit.

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

### **Environmental Audit**

11. Prior to the commencement of construction or carrying out of works pursuant to this permit, or any works associated with the proposed use, an environmental audit is required and either:
- a) A Certificate of Environmental Audit for the land must be issued in accordance with Section 53Y of the *Environment Protection Act 1970* and provided to the Responsible Authority; or
- b) An Environmental Auditor appointed under Section 53S of the *Environment Protection Act 1970* must make a Statement in accordance with Section 53Z of that Act that the environmental conditions of the land are suitable for the use and development that are the subject of this permit and that statement must be provided to the Responsible Authority.

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

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

Where a Statement of Environmental Audit is issued for the land, and any condition of that Statement requires any maintenance or monitoring of an ongoing nature, the Owner(s) must enter into an Agreement with Council pursuant to Section 173 of the *Planning and Environment Act 1987*. Where a Section 173 Agreement is required, the Agreement must be executed prior to the commencement of the permitted use, and

prior to the certification of the plan of subdivision under the *Subdivision Act 1988*. All expenses involved in the drafting, negotiating, lodging, registering and execution of the Agreement, including those incurred by the Responsible Authority, must be met by the Owner(s).

### **Public Works**

12. Prior to the commencement of development, a Public Works Plan and associated construction drawing specifications detailing the works to the land must be submitted and approved to the satisfaction of the Responsible Authority. The Plan must detail works in front of the approved building along Donne Street and Reynard Street and include:
  - a) A detailed level and feature survey of the footpaths and roads.
  - b) The existing crossovers at the site (which extend the full length of both street frontages) removed and a kerb, channel and footpath constructed to Council's standards using construction plans approved by Moreland City Council, City Infrastructure Department.
  - c) The other works to the public land adjacent to the development including the provision of at least 4 street trees along Donne Street.

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

### **General Conditions**

13. 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.
14. Any ramp constructed to access the garage floor from the laneway must be contained entirely within the site to ensure that the level of the laneway remains as constructed by the Responsible Road Authority.
15. No support columns or structures are to be beneath the upper floors, within the common accessway.
16. Prior to the issuing of Statement of Compliance or occupation of the development, whichever occurs first, bollard lighting no higher than 1.2 metres above ground level is to be installed and maintained on the land to automatically illuminate the vehicle accessway between dusk and dawn with no direct light emitted onto adjoining property to the satisfaction of the Responsible Authority.
17. Lighting on each balcony must be designed not to emit direct light onto adjoining property to the satisfaction of the Responsible Authority.
18. Prior to the issuing of Statement of Compliance or occupation of the development, whichever occurs 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.
19. All stormwater from the land, where it is not collected in rainwater tanks for re-use, must be collected by an underground pipe drain approved by and to the satisfaction of the Responsible Authority (Note: Please contact Moreland City Council, City Infrastructure Department).
20. Stormwater from the land must not be directed to the surface of the laneway to the satisfaction of the Responsible Authority

21. The surface of all balconies and terraces are to be sloped to collect the stormwater run-off into stormwater drainage pipes that connect into the underground drainage system of the development to the satisfaction of the Responsible Authority.
22. Prior to the issuing of Statement of Compliance or occupation of the development, whichever occurs first, the garage roller door to Dwelling 5 and swing gate to the shared accessway must be automatic and remote controlled.
23. Prior to the issuing of Statement of Compliance or occupation of the development, whichever occurs first, all boundary walls must be constructed, cleaned and finished to the satisfaction of the Responsible Authority.

#### **Time Limit**

24. 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 notice of decision or conditions of this notice of decision.**

- Note 1:** Further approvals are required from Council's City Infrastructure Department who can be contacted on 8311 4300 for any works beyond the boundaries of the property. Planting and other vegetative works proposed on road reserves can be discussed with Council's Open Space Unit on 8311 4300.
- Note 2:** Council charges supervision (2.50%) and plan checking (0.75%) fees on the cost of constructing the public roads as permitted by Sections 5 and 6 of the Subdivision (Permit and Certification Fees) Regulations 2000.
- Note 3:** This permit contains a condition requiring payment of Development Contributions. The applicable development contribution levies are indexed annually. To calculate the approximate once off levy amount, please visit <http://www.moreland.vic.gov.au/planning-building/> and click on '[Moreland Development Contributions Plan \(DCP\)](#)'. Alternatively, please contact Moreland City Council on 9240 1111 and ask to speak to *the DCP Officer*.
- Note 4:** Should Council impose car parking restrictions in this street, the owners and/or occupiers of the land would not be eligible for any Council parking permits to allow for on street parking.
- Note 5:** At the time of subdivision, the 1.5 metre by 1.5 metre triangular splay required by Condition 1(r) is to be converted to a Road.
- Note 6:** Jemena should be contacted to determine whether Jemena will require the power lines to be relocated away from the dwellings.
- Note 7:** Notes about environmental audits:
- i. A copy of the Certificate or Statement of Environmental Audit, including the complete Environmental Audit Report must be submitted to the Responsible Authority within 7 days of issue, in accordance with Section 53ZB of the *Environment Protection Act 1970*.
  - ii. Where a Statement of Environmental Audit is issued for the land a copy of that Statement must be provided to any person who proposes to become

an occupier of the land, pursuant to Section 53ZE of the *Environment Protection Act 1970*.

- iii. The land owner and all its successors in title or transferees must, upon release for private sale of any part of the land, include in the Vendor's Statement pursuant to Section 32 of the Sale of *Land Act 1962*, a copy of the Certificate or Statement of Environmental Audit including a copy of any cover letter.
- iv. Where a Statement of Environmental Audit issued for the land contains conditions that the Responsible Authority considers to be unreasonable in the circumstances, the Responsible Authority may seek cancellation or amendment of the planning permit in accordance with Section 87 of the *Planning and Environment Act 1987*.

## **1. Background**

### **Subject site**

The subject site is located on the southern side of Reynard Street, Coburg, approximately 470 metres east of Melville Road. The site is located on a corner lot, with a frontage of 16.76 metres to Reynard Street, a frontage of 31.18 metres to Donne Street and a total area of approximately 524 square metres. A right of way abuts the southern side of the subject site providing access between Donne and Queen Streets.

The subject site is currently developed with a single storey weatherboard dwelling and a single storey rendered building that was used for motor repairs.

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

### **Surrounds**

The surrounding area is characterised by a mix of residential and non-residential uses that range from one to two storeys in height.

The site is located within the Reynard Street Local Centre with the Melville Road/Reynard Street commercial shopping strip located approximately 470 metres west of the site.

The southern side of this part of Reynard Street (within the Commercial 1 Zone) contains double storey buildings that are used for residential purposes, with ground level approvals for offices fronting Reynard Street at 161 to 165 Reynard Street, Coburg. Sites along the northern side of Reynard Street and to the immediate south and west of the subject site (within the Neighbourhood Residential Zone) contains a mix of single and double storey dwellings as well as contemporary, double storey multi-unit developments.

Non-residential uses within the surrounding area include a food and drink premises at 230 Reynard Street, Coburg, the Progress Theatre at 234A Reynard Street, Coburg and St Albans Anglican Church at 250 Reynard Street, Coburg.

To the immediate north of the subject site at 240 Reynard Street, Coburg is a double storey brick and render dwelling.

Land to the immediate west of the subject site at 169 Reynard Street, Coburg contains four double storey brick and render dwellings.

South of the subject site is an unnamed laneway, beyond which is 78 Donne Street, Coburg, which contains a single storey weatherboard dwelling.

To the immediate east of the subject site at 165 Reynard Street, Coburg is a double storey rendered dwelling with secluded private open space and vehicle access at the rear of the dwelling. Planning Permit MPS/2003/852 approved these dwelling with ground level offices.

A location plan forms **Attachment 1**.

### **The Proposal**

The proposal is summarised as follows:

- Use of the land for dwellings.
- The construction of a three-storey building. Details of the development are as follows:
  - 60 square metre food and drink premises at ground floor fronting Reynard and Donne Streets.

- Each dwelling has an entrance at ground floor, with pedestrian access via a footpath from Reynard Street or Donne Street.
- Dwellings 2 to 5 will have 3 bedrooms and Dwelling 1 will have 1 bedroom.
- Dwelling 1 contains a sitting area at ground floor and a bedroom and open kitchen/living/dining area at first floor. The dwelling is provided with stair access to a roof deck above the first floor.
- Dwellings 2 to 5 contain bedrooms at ground and second floor and an open kitchen/living/dining area and balcony at first floor. The dwellings are provided with stair access to a roof deck above the second floor.
- Car parking facilities for Dwellings 2 to 5 are provided in the form of a double car garage to be accessed via the rear laneway.
- A reduction in the standard car parking requirements from 11 to 8 car spaces (3 spaces) is sought.
- A maximum building height of 12.38 metres.
- External finishes include brick, 'scyon axon' cladding, 'perma timber' cladding and render.

The development plans form **Attachment 2**.

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

Control	Permit Requirement
Commercial 1 Zone	A food and drink premises is a Section 1 use in the zone, meaning that a permit is not required for the use. A permit is required for the use of the land for a dwelling as the frontage at ground level exceeds 2 metres. A permit is required to construct a building or construct or carry out works.
Car Parking	A permit is required to reduce the car parking requirement from 11 spaces to 8 spaces.

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

- Clause 45.06: Development Contributions Plan Overlay
- Clause 45.09: Parking Overlay
- Clause 53.18: Stormwater Management in Urban Development
- Clause 55: Two or more dwellings and residential buildings

## **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
- By placing signs on the Reynard Street and Donne Street frontages of the site

Council has received 15 objections, including a petition and 4 proforma objections to date. A map identifying the location of objectors forms **Attachment 1**.

The key issues raised in objections are:

- Building Height
- Neighbourhood Character



- Traffic Impacts
- Car Parking Reduction
- Inadequate Landscaping
- Non-compliances with Clause 55 including:
  - Overshadowing
  - Overlooking
  - Daylight to Existing Windows
  - Accessibility
  - Site Coverage and Permeability
  - Side and Rear Setbacks
- Design Detail
- Noise Impacts
- Overdevelopment of the site
- No Visitor Parking
- Not in accordance with Commercial 1 Zone
- Contamination of the site

A Planning Information and Discussion meeting was held on 15 September 2020 and attended by two Council Planning Officers, the applicant and 7 objectors. The meeting provided an opportunity to explain the application, for the objectors to elaborate on their concerns, and for the applicant to respond. There was no consensus reached at the PID meeting. However, the Applicant agreed to the screening of windows to limit overlooking to the existing habitable room window at 78 Donne Street.

#### **Internal referrals**

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

<b>Internal Branch/Business Unit</b>	<b>Comments</b>
Urban Design Unit	No objections were offered to the proposal subject to modifications, which are addressed by conditions detailed in the recommendation.
Development Advice Engineer	No objections were offered to the proposal subject to modifications, which are addressed by conditions detailed in the recommendation.
Sustainable Built Environment Unit	No objections were offered to the proposal subject to modification, which are addressed in the conditions detailed in the recommendation.

### **3. Policy Implications**

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

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

- Clause 11 - Settlement
- Clause 15 Built Environment and Heritage including:
  - Built Environment (Clause 15.01)
  - Healthy neighbourhoods (Clause 15.01-4S and 15.01-4R)

- Sustainable Development (Clause 15.02)
- Clause 16 Housing including:
  - Housing Supply (Clause 16.01-1S and 16.01-1R)
  - Housing Affordability (Clause 16.01-2S)
- Clause 18: Transport

### **Local Planning Policy Framework (LPPF)**

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

Municipal Strategic Statement:

- Clause 21.01 Municipal Profile
- Clause 21.02 Vision
- Clause 21.03-1 Activity Centres
- Clause 21.03-2 Land for Industry and Economic Regeneration
- Clause 21.03-3 Housing
- Clause 21.03-4 Urban Design, Built Form and Landscape Design
- Clause 21.03-5 Environmentally Sustainable Design (Water, Waste and Energy)
- Clause 21.03-6 Open Space Network

Local Planning Policies:

- Clause 22.01 Neighbourhood Character
- Clause 22.03 Car and Bike Parking and Vehicle Access
- Clause 22.08 Environmentally Sustainable Design

While not located within an Activity Centre, the subject land is zoned Commercial 1, in a Local Centre and within an established urban area with good access to a range of infrastructure and services. In these areas, the MSS envisages incremental change to accommodate a mix of single dwellings and infill multi-dwelling developments. In areas outside of Activity Centres, it is Council's policy objective that any proposal respects the existing character of the area. The proposal is an acceptable response to the existing character of the Commercial 1 zoned area, as detailed in section 4 of this report.

### **Human Rights Consideration**

This application has been assessed in accordance with the requirements of the *Planning and Environment Act 1987* (including the Moreland Planning Scheme) reviewed by the State Government and which complies with the Victorian Charter of *Human Rights and Responsibilities Act 2006*. In particular, regard was given to:

- Section 12: Freedom of movement
- Section 13: Privacy and Reputation
- Section 15: Freedom of expression
- Section 16: Peaceful assembly and freedom of association
- Section 18: Taking part in public life.

This application does not limit human rights.

## 4. Issues

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

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

The proposal is an acceptable response to Clause 21.03-4, Clause 22.01 (Neighbourhood Character) and Clause 55.02 (Neighbourhood Character and Infrastructure) of the Moreland Planning Scheme.

Clause 21.03-4 seeks to ensure that *'development responds and contributes to its context.'*

Clause 22.01-2 includes the following objectives for development within Commercial Zone areas:

*'To support incremental change to accommodate a mix of single dwellings and infill multi dwelling developments.'*

*To ensure that the scale and siting of new development respects existing neighbourhood character.'*

*To ensure that the design and landscaping of new development contributes to an enhanced 'green, leafy' landscape character.'*

Subject to the conditions detailed in the recommendation, the proposal would respond to the C1Z, Clause 21.03, Clause 22.01 and the context of the site in the following ways:

### **Building Height and Setbacks**

The overall height of the building and setbacks are deemed appropriate for the following reasons:

- While it is acknowledged that a three-storey building will be the highest building within the immediate context, the height of the building is consistent with Clause 22.01, which states that buildings within the Commercial 1 Zone, should not exceed three storeys.
- The access stairs to the roof decks are centrally located to ensure the height of the building is not accentuated by the roof decks.
- The development has been designed to generally respond to the existing character of the area by providing a double storey dwelling fronting Reynard Street. This respects the prevailing scale of the area and reduces the dominance of the third storey when viewed from Reynard Street.
- A setback of 2.1 metres from Donne Street has been provided to the second floor of Dwellings 2 to 5. To further reduce the dominance of the third storey from Donne Street, a condition will require the gabled roof to be replaced with a flat roof. Council's Urban Design Unit recommend the facade of the second floor is simplified so that it recedes, leaving the portal frames of the first floor and the commercial tenancy as the dominant features of the overall built form. This will improve the perceived scale of the building in relation to the neighbouring buildings.

### **Public Realm Interface**

The proposal contributes to improving the public realm interface by way of the following:

- The development provides entrances to the dwellings and retail premises fronting both Reynard Street and Donne Street. This provides surveillance of the public realm and activation of the sites frontages.

- The development contains a ground level window on the southern side of Dwelling 1, to provide activation and surveillance of the accessway.
- A condition will require the provision of a ground floor bedroom window on the southern side of Dwelling 5 to provide activation and surveillance to the laneway.
- The car parking facilities do not dominate the streetscapes as vehicle access is via the laneway on the southern side of the subject site. This allows the development to maximise surveillance opportunities to the public realm and the activation of the street frontages.
- A condition will require a Public Works Plan, which seeks to replace the extensive Donnie Street vehicle crossing (amongst other things) with new kerb, channel, nature strip and footpath. This represents an improvement to the public realm.

### ***Appearance***

The design represents good contemporary architecture that is anticipated in the area and makes a positive contribution to the character of the area, while referencing the buildings currently surrounding the site through the building's form and materials. Subject to conditions included in the recommendation, the development will adopt all the changes recommended by Council's Urban Design Unit, including a flat roof to the third storey, a full-length living room window for Dwelling 1 and additional landscaping on the roof decks and along the driveway. It is acknowledged that the gable form is a reference to the existing character of roof forms in the area, however the addition of this geometry results in an architectural language on the second floor that differs greatly from that of the lower levels. The overall articulation of the proposed building is busy, and it will benefit from a simplified roofline.

### ***Landscaping***

The proposed development provides landscaping along the southern and eastern boundaries and on the roof terraces of Dwellings 2 to 5. A condition will require landscaping be provided on the roof terrace of Dwelling 1 and increased landscaping on the roof terraces of Dwellings 2 to 5. A condition will also require the provision of at least 4 street trees along Donne Street in nature strip proposed by the Public Works Plan condition. Subject to these conditions, the development will provide sufficient space for landscaping to enhance the landscape character of the area.

### **Does the proposal satisfy the requirements of Clause 55?**

In a residential zone, a development must meet all the objectives of Clause 55. As the subject site is in a Commercial 1 zone it is not a requirement that the objectives of Clause 55 be met, however Clause 55 is a relevant decision guideline, accepting that building forms are typically very different between residential and commercial areas.

A detailed assessment of the proposal against Clause 55 has been undertaken. The proposed development complies with the objectives of Clause 55. Key issues from the Clause 55 assessment are discussed under the headings below.

### ***Street Setback***

The table below depicts the non-compliances with Standard B6 (Street Setback):

<b>Setback</b>	<b>Requirement</b>	<b>Proposal</b>	<b>Extent of Variation</b>
Front Street	0.5m	0m	0.5m
Side Wall	2m	0m	2m
Side Street	3m	0.5-1m	2.5m

The above variations are acceptable for the following reasons:

- The variations are acceptable within the context of the site, where nearby buildings within the Commercial 1 Zone contain a variety of setbacks, ranging from 0 to 3.4 metres.
- The variation to the front street setback is minor and will generally respect the pattern of front setbacks in this commercially zoned part of Reynard Street.
- The side wall of the proposed food and drink premises is acceptable along the western boundary, given that commercial premises are typically built to street boundaries.

### ***Building Height***

The proposed development has a maximum height of 12.38 metres, which exceeds the 9-metre height specified in Standard B7 (Building Height). This is acceptable given the Commercial 1 zoning and as the height does not exceed the three storeys specified in Council's Local Neighbourhood Character Policy.

### ***Site Coverage***

The development proposes a site coverage of 85.68 per cent, which amounts to a 25.68 per cent variation from Standard B7 (Site Coverage). This is an acceptable variation as the site coverage is consistent with the surrounding properties within the Commercial 1 Zone and of nearby commercial premises.

### ***Permeability***

The proposal provides a permeable site area of 3 per cent, amounting to a variation of 17 per cent from Standard B9 (Permeability). A reduction in the permeable area of the site can be supported in this instance, given the development exceeds best practice stormwater management and provides 2000 litre rainwater tanks for Dwellings 2 to 5. The site currently has no permeable surfaces. Therefore, the development will reduce the impact of increased stormwater run-off on the drainage system by the above initiatives and the variation can be supported.

### ***Side and Rear Setbacks***

The table below depicts the non-compliances with Standard B17 (Side and Rear Setbacks):

<b>Dwelling</b>	<b>Orientation</b>	<b>Wall Height</b>	<b>Requirement</b>	<b>Proposal</b>	<b>Extent of Variation</b>
Dwellings 2 to 5	East – Second Floor	9.4m	4.49m	4.4m	0.09m
Dwelling 5	South – First Floor	6.7m	1.93m	1.6m	0.33m
Dwelling 5	South – Second Floor	9.5m	4.59m	2-2.8m	2.09m

The above variations are acceptable for the following reasons:

- The proposed variations will not result in unreasonable overshadowing on the adjoining properties, which will be discussed in more detail later in this report.
- The proposed variation to the second floor of Dwellings 2 to 5 is a negligible variation that will not result in any unreasonable off-site amenity or visual impacts on the adjoining dwelling.
- The southern side of Dwelling 5 abuts a right of way, resulting in ample separation between the development and 78 Donne Street, Coburg.

- The reduced setbacks will not adversely affect the neighbourhood character given the somewhat eclectic mix of buildings within the surrounding area that contain varying setbacks from side and rear boundaries.
- An objector has clarified that a window on the northern side of 78 Donne Street, Coburg is a bedroom window. Despite the non-compliance with Standard B17, the bedroom will still have an adequate outlook across the laneway and will receive adequate daylight in accordance with Standard B19 (Daylight to Existing Windows).

### **Walls on Boundaries**

The proposed development abuts the northern boundary for a length of 15.5 metres. However, Standard B18 (Walls on Boundaries) requires a length of no more than 11.69 metres along the northern boundary. While the length of the boundary wall does not comply with the Standard, the variation is acceptable as the boundary wall will not have any unreasonable amenity impacts on adjoining properties. The boundary wall along Reynard Street also respects the character of the area, as boundary walls are a common feature in this part of Reynard Street.

### **Overshadowing**

The level of sunlight to the secluded private open space (SPOS) of 165 Reynard Street, Coburg does not currently meet the requirements of Standard B21. This proposal will generate additional shadowing to the secluded private open space. The amount of additional shadowing is detailed in the table below:

<b>Time</b>	<b>Increase in shadowing caused by the proposal</b>	<b>Amount of Unshadowed SPOS (33sqm total)</b>
9:00	No Change	No Change
12:00	No Change	No Change
13:00	No Change	No Change
14:00	0.1sqm	13.1sqm
15:00	11.8sqm	0sqm

The secluded private open space of 165 Reynard Street, Coburg is currently overshadowed by the boundary fence and the existing buildings on the subject site and at 165 Reynard Street. The decision guidelines of Standard B21 (Overshadowing Open Space) give consideration to *'the time of day that sunlight is available to the secluded private open space of the existing dwelling'*. A reasonable level of sunlight will be maintained to the secluded private open space of 165 Reynard Street, given that no additional shadowing is generated to the secluded private open space prior to 2 pm. This ensures that the usability of the private open space is not unreasonably affected. The variation is also acceptable given the impacted property within a Commercial 1 Zone within the Local Centre, and not within a residential zone, whereby greater residential amenity could be reasonably anticipated.

### **Privacy/Overlooking**

Clause 55.04-6 (Overlooking) of the Moreland Planning Scheme does not aim to eliminate all overlooking, but rather seeks to prevent unreasonable overlooking. Up to 9 metres is the standard accepted by state-wide provisions as being a reasonable distance where screening is required to minimise overlooking.

An assessment of the proposed development against Standard B22 (Overlooking) has revealed the following:

- An objector has clarified that a window on the northern side of 78 Donne Street, Coburg is a habitable bedroom window. Therefore, the first-floor kitchen/dining area window on the southern side of Dwelling 5 has views into the existing habitable room window. While this window is to a public laneway, the Applicant

agreed to a condition at the PID meeting that will require the kitchen/dining room window to be screened or have obscure glazing in accordance with the Standard.

- While the plans indicate an angled screen to the second-floor bedroom windows on the eastern side of Dwellings 2 to 5, it is unclear whether the windows have been screened in accordance with the requirements of Standard B22. A condition will require a screen diagram to detail the screening associated with the bedroom windows.
- The roof terraces of Dwellings 2 to 5 have views into the secluded private open spaces and habitable room windows of adjoining dwellings. A condition will require the roof terraces to be screened in accordance with Standard B22.

Subject to these conditions, the development will comply with the requirements of Standard B22.

### **Storage**

Clause 55.05-6 (Storage) of the Moreland Planning Scheme aims to provide adequate storage facilities. Conditions are included in the recommendation to ensure all dwellings have sufficient storage space.

### **Are the proposed uses appropriate for the location?**

The site is located within the Commercial 1 Zone, which has the following relevant purposes:

*'To create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses.*

*To provide for residential uses at densities complementary to the role and scale of the commercial centre.'*

The subject site is located within a Local Centre as defined by Clause 21.03-1 (Activity Centres) of the Moreland Planning Scheme.

The relevant objective of this policy is:

*'To support a network of activity centres across Moreland to provide residents with walkable access to their daily and weekly shopping and service needs.'*

The relevant strategies of this policy are to:

*Encourage Local Centres to serve the daily convenience needs of the local community, in accordance with the Moreland Neighbourhood Centres Strategy 2017.*

*Facilitate housing growth and change in activity centres in accordance with the objectives and strategies under Clause 21.03-3 Housing and Clause 22.01 Neighbourhood Character*

The proposed use of the land for dwellings and food and drink premises responds to the above objectives in the following ways:

- The food and drink premises will serve the daily convenience needs of the local community by improving choice and convenient access to commercial uses within the area.
- The proposed development provides a mixed-use development that adequately balances the commercial and residential elements of the building by having ground floor commercial activation to Reynard and Donne Streets while providing residential entrances for the rest of the street frontages.
- The number of dwellings proposed is complementary to the scale and context of the Reynard Street Local Centre, which predominately consists of dwellings.

For these reasons, the proposed uses are consistent with the key strategic policy framework.

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

Council's Local Planning Policy at Clause 22.03-3 (Car and Bike Parking and Vehicle Access) states that it is policy to:

*Support reduced car parking rates in developments within and in close proximity to activity centres, with excellent access to a range of public transport options and with increased provision of bicycle parking above the rates specified in clause 52.34.*

A reduction in the car parking requirements from 11 spaces to 8 spaces (3 space reduction) is required for the proposal development. The car parking reduction is associated with 1 space for Dwelling 1 and 2 spaces for the food and drink premises. The proposal is located within the Reynard Street Local Centre and has good access to public transport including a north-south tram connection and east/west bus connection and provides 5 bicycle parking spaces.

Council's Development Advice Engineer is satisfied that car parking requirement can be reduced for this application, subject to a condition requiring an additional 2 residential bicycle parking spaces and 2 bicycle parking spaces for the food and drink premises.

The development will create approximately 3 additional on-street car parking spaces by removing the crossovers on Reynard Street and Donne Street. The proposal also replaces a larger commercial use that would have required at least 13 car parking spaces to be provided on-site.

It is expected that the level of parking provided will cater for car ownership levels of the occupiers.

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

In relation to traffic impacts, Council's Development Advice Engineer have assessed the proposal and consider that the development will result in 32 additional vehicle movements per day from the site. This remains within the street's design capacity and is not expected to cause traffic problems.

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

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

- Utilises the rear laneway for vehicle access to allow street frontages to prioritise pedestrian movement and safety and to create active frontages.
- Increases on-street public parking spaces.
- Requires the construction of a footpath along Reynard Street and Donne Street through a condition requiring a Public Works Plan.
- Provides at least 4 street trees along Donne Street.
- Subject to conditions, provides 9 bicycle spaces.

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

Objective 9 of Clause 23.03-3 (Housing) is to increase the supply of housing that is visitable and adaptable to meet the needs of different sectors of the community.



A townhouse type development is not ideal for providing visitable and adaptable dwellings, given that living areas and bedrooms are often spread over several levels. Subject to a condition relating to a reduction in the level of the ground floor and porches to match the levels of the pedestrian path, Dwellings 2 to 5 will provide a level entry to the dwellings to improve the visibility of the dwellings. The proposal has also sought to provide a clear path for pedestrian access to the entrance of each dwelling from Reynard and Donne Streets. This is considered to be an acceptable outcome for a development of only 5 dwellings.

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

The site is considered to be potentially contaminated due to its former use as a motor repairs. The applicant has submitted an environmental site assessment report detailing a high potential for site contamination. A condition is therefore contained in the recommendation requiring an Environmental Audit to be undertaken before the development commences. This will ensure that the site is remediated to an appropriate standard to ensure the land is safe for future residents.

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

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

- Building Height
- Neighbourhood Character
- Traffic Impacts
- Car Parking Reduction
- Inadequate Landscaping
- Non-compliances with Clause 55 including:
  - Overshadowing
  - Overlooking
  - Accessibility
  - Site Coverage and Permeability
  - Side and Rear Setbacks
- Design Detail
- Not in accordance with Commercial 1 Zone
- Contamination of the site

Other issues raised by objectors are addressed below.

#### **Daylight to Existing Windows**

The development is setback from the existing habitable room windows on the adjoining dwellings in accordance with the numerical requirements of Standard B19 (Daylight to Existing Windows). This ensures that adequate daylight is maintained to existing habitable room windows.

## **Noise Impacts**

Concerns have been raised regarding the potential noise generated from the dwellings after occupancy. 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. Given the commercial zoning of the site, noise generated from the site could be more significant were the proposal for a larger retail premises, a place of assembly or warehouse, which can be permitted in the Commercial 1 Zone. The proposal also removes a mechanical repair use, which would have generated noise impacts to the adjoining dwellings, that were likely louder than the proposed café and dwellings.

## **Overdevelopment**

The height of the building is consistent with Clause 22.01, which states that buildings within the Commercial 1 Zone, should not exceed three storeys. The overall built form outcome is also consistent with the form anticipated within a Commercial 1 Zone. Therefore, the proposal is not considered to be an over development of the site. State Government Policy, particularly Plan Melbourne, as well as Council Policy supports incremental growth in areas that are within Local Centres, or within areas with good access to public transport and other services.

Given the sites location in a Local Centre and its proximity to public transport, the level of development proposed is appropriate and consistent with the Planning Policy frameworks.

## **No Visitor Parking**

The subject site is affected by the Parking Overlay, Schedule 1. The parking overlay means that the 'Column B' rates in the table to Clause 52.06 apply. As a result, no visitor car parking is required for the development.

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

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

## **7. Financial and Resources Implications**

There are no financial or resource implications.

## **8. Conclusion**

It is considered that, subject to the conditions of approval, the development strikes an acceptable balance between providing a commercial element of a reasonable size and an increase in residential density, while limiting off-site amenity impacts. The proposal also improves the existing site conditions by replacing the mechanical repairs business with uses more suitable for the area and by resolving the contamination issues on the subject site. The proposal will enhance the area through the public realm works required by this permit and by providing a use to serve the local convenience needs of the local community and reinstating footpath enabling increased on street parking.

On the balance of policies and controls within the Moreland Planning Scheme and objections received, it is considered that Notice of Decision to Grant a Planning Permit No MPS/2019/810 should be issued for the construction of a three-storey building, the use of the land for dwellings and a reduction in car parking subject to the conditions included in the recommendation of this report.

## **Attachment/s**

- |                   |  |            |
|-------------------|--|------------|
| <a href="#">1</a> | Objector Location Map - 167 Reynard Street, Coburg | D20/398325 |
| <a href="#">2</a> | Advertised Plans - 167 Reynard Street, Coburg      | D20/398339 |

# DCF53/20 467-469 VICTORIA STREET, BRUNSWICK WEST - PLANNING PERMIT APPLICATION MPS/2019/729

Director City Futures

City Development

## Caretaker Statement

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

## Executive Summary



Property:	467 - 469 Victoria Street BRUNSWICK WEST VIC 3055			
Proposal:	Construction of a three storey building containing six dwellings and roof terraces and a reduction in the associated car parking requirement			
Zoning and Overlays:	Mixed Use Zone (MUZ) Parking Overlay (PO1) Design and Development Overlay Schedule 24 (DDO24) Development Contributions Plan Overlay (DCPO1)			
Strategic setting:	Minimal housing growth	Incremental housing growth	Increased house densities encouraged	Significant housing growth
Objections:	Ten (10) objections received Key issues: <ul style="list-style-type: none"><li>Neighbourhood character</li><li>Compliance with the setback requirements of the DDO24</li><li>Height, scale and bulk</li></ul>			
Planning Information and Discussion (PID) Meeting:	PID Held: 27 August 2020 Attendees: Five objectors, the permit applicant, two Council Officers and Cr Dorney. No further changes to the plans were made as a result of the PID, however conditions to address concerns of overlooking and pedestrian safety in the laneway were agreed upon by the permit applicant.			
ESD:	Minimum average NatHERS rating of 6.5 stars			

<b>Key reasons for support:</b>	<ul style="list-style-type: none"> <li>• The proposed development has a three storey height, which is lower than the preferred maximum of four storeys permitted in this section of the Neighbourhood Activity Centre</li> <li>• The application provides an appropriate interface with the residential properties outside the Neighbourhood Activity Centre</li> <li>• The internal amenity for future residents is acceptable</li> </ul>
<b>Recommendation:</b>	<p>It is recommended that a Notice of Decision to Grant a Planning Permit be issued for the proposal, subject to the recommended conditions.</p>

## Officer Recommendation

That a Notice of Decision to Grant a Planning Permit No. MPS/2019/729 be issued for the construction of a three storey building containing six dwellings and roof terraces and a reduction in the associated car parking requirement at 467 - 469 Victoria Street, Brunswick West, 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 prepared by Ridolfi Architecture and advertised on 23 April 2020, but modified to show:
  - a) The second-floor western wall of Bedroom 2 of Dwelling 3 set back 1.0 metres from the western property boundary in line with the existing lightwell setback. Subsequent internal changes to Dwelling 3 including the deletion of Bedroom 2 and internal reconfiguration. This may include the remaining floor area previously occupied by Bedroom 2 being converted into a study. Any additional glazing added to the western elevation as a result of this change must be treated in compliance with the standard at Clause 55.04-6 (Overlooking) of the Moreland Planning Scheme.
  - b) A Juliette balcony added to the first-floor eastern elevation of Dwelling 1, replacing the window in this location.
  - c) All first-floor Juliette balconies, window shrouds and architectural features on the northern and eastern elevations modified so that they do not protrude over the title boundary.
  - d) Mailboxes to each dwelling at the Victoria Street frontage.
  - e) The garage doors to be a minimum of 3.2 metres wide.
  - f) The dimensions of the splay in the north eastern corner of the site (approximately 2.1 metres x 2.1 metres) and an annotation stating that it will be constructed with concrete road pavement.
  - g) All initiatives contained within the Sustainable Design Assessment (SDA) required by Condition 6 of this permit, including:
    - i. The size of rainwater tanks in accordance with the SDA, including a clear annotation stating that tanks will be collecting rainwater from all roofed areas and will be servicing the toilets within each dwelling.
    - ii. The solar hot water collectors shown on the roof plan (or do not claim these in the SDA).
    - iii. A stormwater catchment plan showing the different catchment areas with dimensions and the proposed stormwater treatment (or no treatment) measures consistent with the amended STORM Report.
    - iv. The location of an outdoor private clothesline for each dwelling (or do not claim this in the SDA).
    - v. Double glazing to all habitable room glazing shown on each individual glazing unit.
    - vi. External adjustable shading devices to all east windows of habitable rooms or do not claim BESS IEQ credit for shading.
    - vii. External shading devices to all north facing windows/glazed doors. Where horizontal shading devices are specified the depth of the device should be equal to 25 per cent of the distance from sill height to the base of the device and extending horizontally by the same length to both sides.

- viii. An irrigation tap and floor waste on the balcony or roof terrace of every dwelling (or do not claim this in the SDA).
- ix. The area dedicated to food production (or do not claim this in the SDA).
- h) Privacy screening along the eastern edge of the Dwelling 5 roof terrace in accordance with Standard B22 at Clause 55.04-6 (Overlooking) of the Moreland Planning Scheme.
- i) A sectional diagram and details of any privacy measures required to demonstrate that the Dwelling 6 north-facing kitchen window and first-floor balcony do not have direct views into the secluded private open space of 43 Whitby Street in accordance with Standard B22 at Clause 55.04-6 (Overlooking) of the Moreland Planning Scheme.
- j) A sectional diagram demonstrating that the roof terraces of Dwellings 3, 4 and 5 do not have direct views into the secluded private open space of 471 Victoria Street in accordance with the standard at Clause 55.04-6 (Overlooking) of the Moreland Planning Scheme. Alternatively, provide privacy screening to 1.7 metres above finished floor level in accordance with the standard.
- k) Screening to 1.7 metres above finished floor level between the roof terraces.
- l) A section detail or product diagram of the 1.7 metres high vertical angled aluminium slat privacy screen of the Dwelling 6 roof terrace demonstrating compliance with the standard at Clause 55.04-6 (Overlooking) of the Moreland Planning Scheme, or substitution with another privacy initiative which demonstrates compliance with the standard.
- m) A section detail or product diagram of the first-floor north-facing window privacy screens of Dwelling 6 demonstrating compliance with the standard at Clause 55.04-6 (Overlooking) of the Moreland Planning Scheme.
- n) An amended landscape plan in accordance with Condition 3 of this permit.
- o) The lightwell bedroom windows of Dwellings 2 – 5 to be openable to allow for cross ventilation.
- p) A verandah/awning extending over the footpath. The verandah must be set back at least 750 millimetres from the kerb and have a clearance of at least 3 metres from the footpath in accordance with Building Regulation 103.
- q) A warning light activated system (or similar) to warn pedestrians when cars are exiting the garages.

### **Compliance with Endorsed Plans**

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

### **Landscaping**

- 3. Prior to the endorsement of plans, an amended landscape plan must be submitted to the Responsible Authority. When approved, the landscape plan will be endorsed and will then form part of the permit. The landscape plan must be generally in accordance with the landscape plan prepared by Outward Design and advertised 23 April 2020, but modified to show:
  - a) A schedule of all proposed trees, shrubs and ground covers (including numbers, size at planting, size at maturity and botanical names), as well as sealed and paved surfaces. The flora selection and landscape design should be drought tolerant and based on species selection recommended in the Moreland Landscape Guidelines 2009.

- b) Details of all planter boxes, 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.
- 4. Prior to the issuing of a Statement of Compliance or Certificate of Occupancy, whichever occurs first, all landscaping works must be completed in accordance with the endorsed landscape plan to the satisfaction of the Responsible Authority
- 5. All planting must be maintained in accordance with the endorsed landscape plan with any dead, diseased or damaged plants replaced with a suitable species to the satisfaction of the Responsible Authority.

### **Sustainable Design Assessment**

- 6. Prior to the endorsement of plans, an amended Sustainable Design Assessment (SDA) must be submitted to and approved to the satisfaction by the Responsible Authority. The SDA must demonstrate a best practice standard of environmentally sustainable design and be generally in accordance with the SDA prepared by Frater and advertised 23 April 2020, but modified to include the following changes:

The STORM report amended to include the Dwelling 6 roof area treated by a rainwater tank and connected to the toilet.

Details on the potential water contaminants resulting from collecting stormwater from trafficable areas, the relevant water treatment measures proposed upstream and downstream the tanks, and their effectiveness in achieving the required water quality suitable for the end use.

Where alternative ESD initiatives are proposed to those specified in Conditions 1 and 6 above, the Responsible Authority may vary the requirements of these conditions at its discretion, subject to the development achieving equivalent (or greater) ESD outcomes in association with the development.

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

### **Waste Management Plan**

- 8. Prior to the endorsement of plans, an amended waste management plan (WMP) must be submitted to and approved to the satisfaction by the Responsible Authority. The WMP must be generally in accordance with the WMP prepared by Frater and advertised 23 April 2020, but modified to show;
  - a) That the dwellings will not pay a separate waste fee to Council and they will not be eligible for a Council Hard Waste collection service.
- 9. 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
- 10. All bins must be stored inside the dwelling storage areas as specified in the endorsed Waste Management Plan.

### **Development Contributions**

- 11. Prior to the issue of a Building Permit in relation to the development approved by this permit, a Development Infrastructure Levy and Community Infrastructure Levy must be paid to Moreland City Council in accordance with the approved Development

Contributions Plan. The Development Infrastructure Levy is charged per 100 square metres of leasable floor space and the Development and Community Infrastructure Levy is charged per dwelling.

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

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

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

### **Street Trees**

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

- a) Tree Protection Fencing

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

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

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

- b) Signage

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

- c) Irrigation

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

- d) Provision of Services

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

### **Visual Screening**

- 13. 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.

### **Engineering Matters**

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

### **Vehicle Access and Garage Doors**

17. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, the garage doors must be automatic and remote controlled.
18. Any ramp constructed to access the garage floor from the laneway must be contained entirely within the site to ensure that the level of the laneway remains as constructed by Responsible Road Authority.

### **Lighting**

19. Prior to the occupation of the development, lighting is to be installed and maintained on the land to automatically illuminate pedestrian access to the dwelling entrances between dusk and dawn with no direct light emitted onto adjoining property to the satisfaction of the Responsible Authority.
20. Any lighting on the roof terraces and balconies must be designed not to emit direct light onto adjoining property to the satisfaction of the Responsible Authority.

### **Boundary Walls**

21. 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.

### **Expiry**

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

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

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

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

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

**Note 1:** This permit contains a condition requiring payment of Development Contributions. The applicable development contribution levies are indexed annually. To calculate the approximate once off levy amount, please visit <http://www.moreland.vic.gov.au/planning->

building/ and click on 'Moreland Development Contributions Plan (DCP)'. Alternatively, please contact Moreland City Council on 9240 1111 and ask to speak to the DCP Officer.

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

<https://www.moreland.vic.gov.au/parking-roads/parking-permits/residential-parking-permits/>.

**Note 3:** At the time of subdivision, Council will require the triangular splay on the north-eastern corner of the site to be converted to Road in favour of Moreland City Council, so that the Road Authority becomes responsible for all pavement issues.

**Note 4:** Under Council's *General Local Law 2018*, the developer must obtain an Asset Protection Permit from Council. The permit fee will cover Council's costs in inspecting the site during the construction and at the completion of the works. At the completion of the project, the Asset Protection Officer will require the builder to reinstate the edges of the laneway.

## **1. Background**

### **Subject site**

The subject site is located at 467-469 Victoria Street, Brunswick West.

The site is on the northern side of Victoria Street and is currently vacant. The site has a frontage of 9.6 metres to Victoria Street, a depth of 34.14 metres, a rear boundary width of 9.02 metres and a total area of approximately 328 square metres. The site is relatively flat and is devoid of any vegetation.

The site is in the Melville Road/Albion Street/Victoria Street Neighbourhood Activity Centre and is in the Mixed Use Zone (MUZ).

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

### **Surrounds**

The surrounding area is characterised by a range of different land uses including shops, cafes, offices, gymnasiums, motor repairs and dwellings. Buildings are generally built to the front property boundary on Victoria Street and to the rear property boundary facing the laneway. Building heights range from one to three storeys and site coverage is generally high.

To the north of the rear laneway on Whitby Street, land is in the Neighbourhood Residential Zone (NRZ1) and is affected by the Heritage Overlay (HO196, HO197 and HO198). Whitby Street contains a mixture of 19th and early 20th century dwellings including Victorian villas and terraces and Edwardian and inter-war bungalows

Directly north of the laneway at 43 Whitby Street is 'Harcourt', a single-storey inter-war bungalow located in the HO198. This dwelling has large areas of private open space in the front and rear yards and has high screen tree planting running along the eastern and southern property boundaries.

On the southern side of Victoria Street land is in the NRZ1. Land uses on this side of Victoria Street are primarily residential except for the childcare centre at 484-486 Victoria Street and the Maternal and Child Health Care Centre at 482 Victoria Street.

To the immediate west at 471 Victoria Street is a three-storey building comprising a commercial frontage at ground floor and a dwelling that comprises the rear of the ground floor and the first and second floors. The dwelling has private open space at ground floor and at balcony level and car parking accessed from the rear laneway.

To the immediate east at 465 Victoria Street is a single storey brick building with a commercial frontage that is currently vacant. This building is separated from the subject site by a 4 metre laneway.

A location plan forms **Attachment 1**.

### **The proposal**

The proposal is for the construction of six dwellings and a reduction of the associated car parking requirement, as follows:

#### ***Dwelling 1***

Three storey dwelling plus a roof terrace:

- Ground floor: 30 square metres of commercial/office space, storage and garage
- First floor: Kitchen/meals/living room and powder room
- Second floor: Three bedrooms (one with WIR and ensuite) and a bathroom

### ***Dwellings 2-5***

Three storey dwelling plus a roof terrace:

- Ground floor: Garage, storage, powder room and laundry
- First floor: Kitchen/meals/living room
- Second floor: Two bedrooms and a bathroom

### ***Dwelling 6***

Two storey dwelling plus a roof terrace:

- Ground floor: Two bedrooms, bathroom, scooter parking and storage
- First floor: Kitchen/meals/living room and balcony

The development plans form **Attachment 2**.

### **Planning Permit and Site History**

Planning Permit MPS/2009/568 was issued on 11 November 2010 for a more intensive development of the site. This permit allowed the use and development of the land for a four storey building comprising a restaurant and the sale and consumption of liquor (restaurant and café license) and 11 dwellings and a reduction in the standard car parking requirements. This permit was not acted upon and has expired.

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

<b>Control</b>	<b>Permit Requirement</b>
Mixed Use Zone	Clause 32.04-6: A permit is required to construct two or more dwellings on a lot. A permit is not required for the use of the land for dwellings. A permit is not required for the use of the land for a shop as the leasable floor area does not exceed 150 square metres. A permit is not required for the use of the land for an office as the leasable floor area does not exceed 250 square metres.
Design and Development Overlay (Schedule 24)	Clause 43.02-2: A permit is required to construct a building or carry out works.
Particular Provisions	Clause 52.06-3: A permit is required to reduce the number of car parking spaces required under Clause 52.06-5 from 7 to 5 spaces.

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

- Clause 45.06: Development Contributions Plan Overlay. A condition is included in the recommendation requiring the payment of the DCP levy prior to the issue of a Building Permit for the development.
- Clause 45.09: Parking Overlay. The number of car parking spaces required is calculated using the rate in Column B of Table 1 at Clause 52.06-5.
- Clause 55: Two or more dwellings and residential buildings.
- Clause 65: Decision Guidelines

## 2. Internal/External Consultation

### Public notification

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

- Sending notices to the owners and occupiers of adjoining and nearby land; and,
- By placing three signs on the north, east and south frontages of the site.

Council has received 10 objections to date. A map identifying the location of objectors forms **Attachment 3**.

The issues raised in the objections are:

- Neighbourhood character
- Compliance with the siting requirements of Clause 55 and the DDO24
- Height, scale and bulk
- Landscaping
- Car parking and traffic
- Suitability to purpose of the Mixed Use Zone
- Overdevelopment
- Setting a precedent
- Urban design
- Pedestrian safety in laneway
- Environmentally sustainable development
- Heritage
- Waste disposal
- Timing with the COVID19 pandemic
- Preservation of the bluestone laneway
- Reduced viability for nearby buildings to have solar PV

A Planning Information and Discussion meeting was held on 27 August 2020 and attended by Cr Dorney, two Council Planning Officers, the permit applicant and five objector parties. The meeting provided an opportunity to explain the application, for the objectors to elaborate on their concerns, and for the applicant to respond. No further changes to the plans were made as a result of the PID, however conditions to address concerns of overlooking and pedestrian safety in the laneway were agreed upon by the permit applicant.

## Internal referrals

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

Internal Branch/Business Unit	Comments
Urban Design Unit	<p>Council's Urban Designer gave general support to most aspects of the development, noting the high quality of materials and that the architectural expression is well balanced and well considered.</p> <p>The Urban Designer was initially concerned about the proposed variation from the rear setback requirement of the DDO24 and the associated loss of landscaping opportunities to the rear. However, upon review of the latest plans (the advertised plans), support was given to the rear setback and laneway interface as:</p> <ul style="list-style-type: none"><li>• The design response adds activation to the laneway, which most of the existing properties do not; and,</li><li>• It provides a good interface with the intersection of the two laneways due to the high quality materials, framing of windows and orientation of the Dwelling 6 first floor corner balcony.</li></ul> <p>It was also recommended that:</p> <ul style="list-style-type: none"><li>• Mailboxes be incorporated into the design; and,</li><li>• A Juliette balcony be added to Dwelling 1, in line with those of Dwellings 2-5.</li></ul> <p>Conditions to this effect have been included in the recommendation.</p>
Sustainable Built Environment Unit (Development Engineering Advice Team)	No objections were offered to the proposal subject to modifications, which are addressed by conditions detailed in the recommendation.
Sustainable Built Environment Unit (ESD Team)	No objections were offered to the proposal subject to modifications, which are addressed in the conditions detailed in the recommendation.

## 3. Policy Implications

### Planning Policy Framework (PPF)

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

- Clause 11 - Settlement
- Clause 15 Built Environment and Heritage including:
  - Built Environment (Clause 15.01)
  - Healthy neighbourhoods (Clause 15.01-4S and 15.01-4R)
  - Sustainable Development (Clause 15.02)
- Clause 16 Housing including:
  - Housing Supply (Clause 16.01-1S and 16.01-1R)
  - Housing Affordability (Clause 16.01-2S)

- Clause 18: Transport

### **Local Planning Policy Framework (LPPF)**

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

Municipal Strategic Statement:

- Clause 21.01 Municipal Profile
- Clause 21.02 Vision
- Clause 21.03-1 Activity Centres
- Clause 21.03-2 Land for Industry and Economic Regeneration
- Clause 21.03-3 Housing
- Clause 21.03-4 Urban Design, Built Form and Landscape Design
- Clause 21.03-5 Environmentally Sustainable Design (Water, Waste and Energy)

Local Planning Policies:

- Clause 22.01 Neighbourhood Character
- Clause 22.03 Car and Bike Parking and Vehicle Access
- Clause 22.08 Environmentally Sustainable Design

The proposal enjoys strong strategic policy support. Council through its MSS, seeks increased residential densities into its Activity Centres to take advantage of access to public transport and other services within these locations. The subject site is located within the Melville Road/Albion Street/Victoria Street Neighbourhood Centre. This centre is a focus area for change and can accommodate buildings up to and including four storeys in height.

### **Human Rights Consideration**

This application has been assessed in accordance with the requirements of the *Planning and Environment Act 1987* (including the Moreland Planning Scheme) reviewed by the State Government and which complies with the *Charter of Human Rights and Responsibilities Act 2006*. In particular, regard was given to:

- Section 12: Freedom of Movement
- Section 13: Privacy and Reputation
- Section 15: Freedom of Expression
- Section 18: Taking part in public life

This application does not limit human rights. The application provides more opportunities for fair employment in the area, supports freedom of movement, privacy and engagement in safe public life within the public realm through passive surveillance and active frontages.

## **4. Issues**

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

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

The proposal is an acceptable response to Clause 22.01 (Neighbourhood Character) and Clause 55.02 (Neighbourhood Character and Infrastructure) of the Moreland Planning Scheme.

The site is located within the MUZ which seeks:

- *To provide for a range of residential, commercial, industrial and other uses which complement the mixed-use function of the locality.*
- *To provide for housing at higher densities.*
- *To encourage development that responds to the existing or preferred neighbourhood character of the area.*

Clause 22.01-2 includes the following objectives for development within Neighbourhood Centres:

- *To facilitate an increase in density and scale of built form at a lesser intensity and scale to the larger centres of Coburg, Brunswick and Glenroy.*
- *To support change towards a new character as defined in Schedule 24 to the Design and Development Overlay (DDO24).*

The Design and Development Overlay (DDO24) includes the following design objectives:

- *To implement the Moreland Neighbourhood Centres Strategy, 2017.*
- *To ensure built form outcomes are appropriate to the context of Moreland's Neighbourhood Centres.*
- *To improve the quality of higher density and mixed use developments by providing appropriate built form guidance.*
- *To improve amenity outcomes for residents in higher density and mixed use developments and for residents in adjacent buildings.*
- *To ensure that new development makes a positive contribution to the public realm.*

DDO24 contains tools and guidelines relating to building height, setbacks, building frontage, building articulation, car parking, site services and landscaping. Subject to the conditions detailed in the recommendation, the development responds to the MUZ, Clause 22.01 and DDO24 in the following ways:

### ***Building height***

The preferred maximum building height in the DDO24 is 13.5m and four storeys. The development has a maximum height of 12.97m and is three storeys in height, meeting the preferred height in the DDO24. The building height is suitable to its location in a neighbourhood centre and adjoining an existing three storey building.

### ***Setbacks***

The development seeks a variation to the preferred side and rear setbacks of the DDO24 as follows:

- Side setback (living rooms): 0m in lieu of preferred 4.5 metres
- Side setback (bedrooms): 0m in lieu of preferred 2.0 metres
- Rear setback: 0 metres – 5.8 metres in lieu of preferred 3 metres – 8.6 metres setback

The Moreland Neighbourhood Centres Strategy, 2017, provides objectives for the preferred side boundary setbacks included in DDO24. These objectives include:

- *To create streetscape character with consistent scale, proportion and rhythm.*
- *To ensure side setbacks in commercial areas create a continuous ground floor retail/commercial frontage to the street.*



- *To ensure setbacks in residential areas provide sufficient room for planting buffers to enhance the landscape character and contribute to privacy.*
- *To improve the quality of higher density mixed use and residential development by providing:*
  - *Adequate daylight to habitable rooms (living rooms and bedrooms).*
  - *A quality outlook for residents.*
  - *Effective natural ventilation of dwellings.*

The proposed setbacks are considered appropriate in this context as:

- Being in a historically commercial area, buildings are commonly built to the side and rear boundaries as this is a key neighbourhood character feature.
- Landscaped side and rear setbacks are not a characteristic of the area.
- The site is separated by laneways on its northern and eastern property boundaries that are 3 metres and 4 metres in width respectively. These laneways will provide for separation between the site and neighbouring properties.
- The 0 metres side setback to the east and west is consistent with the setback of the previous double storey Victorian era buildings present on the land which had walls built to both side boundaries (refer to Figure 1).
- The walls on boundary of the previous Victorian era buildings ranged from 6.5-7.0 metres in height. The proposed two and three storey western wall on boundary ranges in height from 5.8 metres – 9.8 metres. As demonstrated on the streetscape elevation in Figure 2, the difference between the Victorian buildings and the modern construction of the proposal results in a proposed building that is less than a storey higher.
- The length of the boundary walls as they extend into the site is in keeping with the other properties on the northern side of Victoria Street which most commonly extend along the full length of the side boundaries.
- The provision of acceptable outlooks from dwellings and the effect of the proposed setbacks on the internal amenity of the dwellings is discussed later in this report.
- The double storey height of Dwelling 6 as it presents to the rear laneway provides a step-down in height where the MUZ and neighbourhood centre interfaces with the NRZ1 properties on Whitby Street. This is in keeping with the buildings at 461 and 459 Victoria Street which also have double storey built form presenting to the rear laneway.
- The proposed building height of 12.97 metres (which is lower than the maximum 13.5m) ensures that any visual bulk impacts from the NRZ1 to the north are tempered.
- There are no overshadowing impacts on the properties in the NRZ1.
- Due to the laneway separation, if measured from the rear boundary of 43 Whitby Street (refer to Figure 3), the rear setback exceeds what would be the minimum setback requirements between residential properties outside of the neighbourhood centre, in accordance with Clause 55.04-1 (Side and Rear Setbacks). It is noted that the DDO24 makes no distinction between sites that do/do not have rear laneways separating them from the NRZ1.



Figure 1: Subject site showing previous buildings (Source: Google Maps, November 2009)

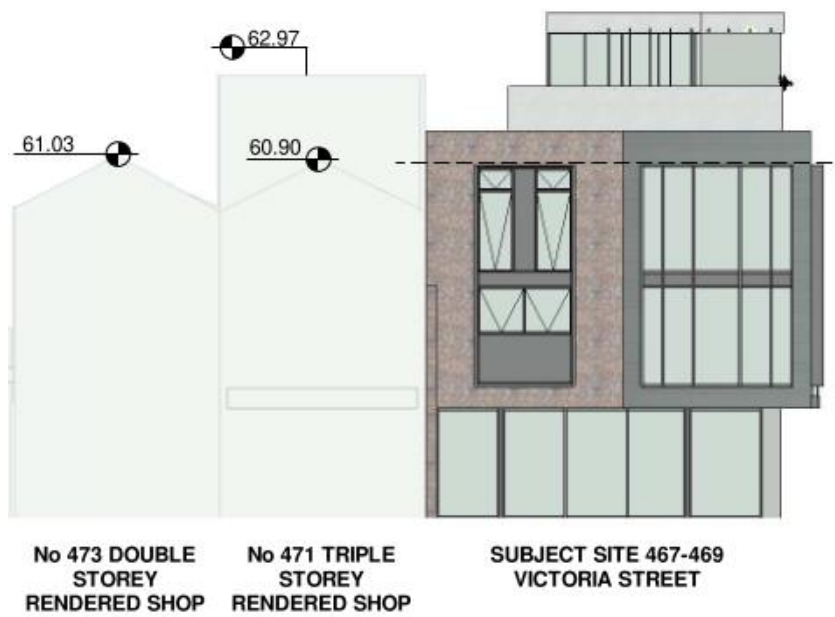


Figure 2: Streetscape elevation

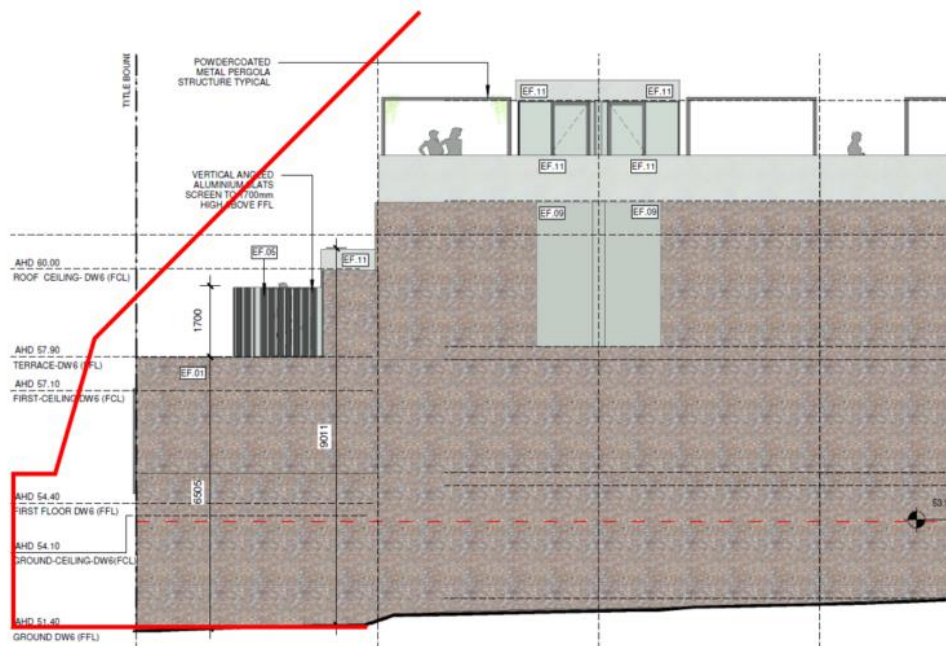


Figure 3: Section detail showing the Clause 55.04-1 setback (in red) measured from the rear boundary of 43 Whitby Street

On balance, the building envelope of the development is considered appropriate and meets the objectives of the DDO24.

### **Building Frontage and Articulation**

The development incorporates an active frontage to Victoria Street with a commercial space and display window. A condition has been included in the recommendation requiring an awning/verandah over the pedestrian footpath to provide adequate weather protection as sought by DDO24. The contemporary architectural form is encouraged by Clause 22.01 and delineates the development from the heritage precinct on Whitby Street.

### **Internal Amenity**

The development has a good level of internal amenity:

- The dwellings will receive adequate daylight with floor to ceiling heights of 2.7 metres and a living room depth of 9 metres.
- A condition has been included in the recommendation requiring the Dwelling 1 first-floor east-facing kitchen window to be replaced with a Juliette balcony to offer consistency with the other dwellings and improve ventilation and internal amenity to this dwelling.
- Subject to a condition requiring the bedroom windows to be openable, adequate cross ventilation can be achieved.
- The 4 metres outlook from the living spaces across the laneway is acceptable in this instance. The preferred side boundary setbacks in the DDO24 are intended, in part, to ensure adequate outlook for dwellings. The preferred 4.5 metres setback, when replicated on adjoining sites, would result in a combined 9 metres outlook. That degree of outlook is unlikely to be achieved here. If the property at 465 Victoria Street (across the laneway to the east) is developed, it will likely also be constructed with zero setbacks to the laneway appropriate to the commercial character of the area. While the degree of outlook is less than the preferred, it is recognised that in a commercial context, lower level dwellings with outlook directly onto a laneway are common. Outlook is also only one element contributing to internal amenity. Overall, the dwellings will have an acceptable level of internal amenity, which includes the significant rooftop private open space areas that provide excellent outlook.

Furthermore, the variation to the preferred side setback will not unreasonably impact on the development potential of the property to the east on the opposite side of the laneway. The 4 metres laneway is sufficient to provide daylight to dwellings on both sides of the laneway for buildings of this scale, and there are design solutions to ensure adequate privacy between both buildings.

### **Landscaping**

The landscaping response is appropriate to the area given its high site coverage and more robust built form expectations. A condition is included in the recommendation requiring an amended landscape plan to confirm planter box details, to ensure the viability of the proposed planting.

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

The statutory car parking requirement for the development is seven spaces. As the site is located within the PO1, there is no requirement for a visitor parking space. The development provides five on-site spaces and seeks a reduction of two spaces.

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

*Support reduced car parking rates in developments within and in close proximity to activity centres, with excellent access to a range of public transport options and with increased provision of bicycle parking above the rates specified in Clause 52.34.*

The proposal is located within the Melville Road/Albion Street/Victoria Street Neighbourhood Centre and has excellent access to public transport being within:

- A 20 metres walk to the Route 508 bus stops (east-west travel)
- A 320 metres walk to Route 58 tram stops (north-south travel)
- A 300 metres, 450 metres, 560 metres, or 680 metres walk to the four closest car share vehicles of the same company
- Close distance to bicycle routes and the dwellings have space for bicycle parking in their garages and storage areas

The dwellings will not be eligible for on-street parking permits. This is included as a note on the recommendation.

Council's Development Engineer is satisfied that car parking requirement can be reduced for this application and outlined that the additional vehicle movements generated from the site will not exceed the maximum volumes permitted under the Moreland Integrated Transport Strategy.

The proposal further responds to Clause 22.03 (Car and Bike Parking and Vehicle Access) by utilising the side laneway for vehicle access and prioritising pedestrian movement and active street frontages.

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

Subject to the recommended permit conditions, the ESD features of the development will achieve best practice in accordance with Clause 22.08 and include:

- Double glazing
- External shading to all north facing windows
- Solar hot water
- Rainwater collection for toilet flushing

The application does not propose any solar PV on the roof due to the lack of available space. However, the development will have an average NatHERS rating of 6.5 stars, achieved through other ESD initiatives (e.g. insulation, orientation etc).

### **Does the proposal satisfy the requirements of Clause 55?**

A detailed assessment of the proposal against the objectives and standards at Clause 55 has been undertaken. The proposed development complies with the objectives of Clause 55. Key issues from the Clause 55 assessment are discussed under the headings below.

#### ***Privacy/overlooking***

Clause 55.04-6 (Overlooking) of the Moreland Planning Scheme does not aim to eliminate all overlooking, but rather seeks to prevent unreasonable overlooking. Up to 9 metres is the standard accepted by state-wide provisions as being a reasonable distance where screening is required to minimise overlooking. Subject to conditions in the recommendation, all windows, balconies and roof terraces will be sited or screened in accordance with the standard.

#### ***Private open space***

Each dwelling is afforded with private open space in the form of roof terraces between 20 square metres and 40 square metres in size. Dwelling 6 also has a first-floor balcony of 5.5 square metres. The private open spaces have excellent solar access and have convenient access from the second floor. A condition has been included in the recommendation requiring privacy screening to 1.7 metres above finished floor level between the roof terraces to ensure that they maintain adequate levels of privacy.

#### ***Overshadowing***

The objective of Clause 55.04-5 (Overshadowing) seeks:

- *To ensure buildings do not significantly overshadow existing secluded private open space.*

The standard of Clause 55.04-5 states that 75 per cent of the secluded private open space (SPOS) should receive a minimum of five hours of sunlight between 9am and 3pm on 22 September.

Through the assessment of the application, Council Officers identified that the shadow diagrams forming part of the advertised plans were incorrect by 1 hour due to a discrepancy between daylight savings time and non-daylight savings time. As such a corrected set of shadow diagrams forms **Attachment 4**.

Between 9 am and midday, the development overshadows the ground floor SPOS of the western neighbouring property at 471 Victoria Street. Whilst not compliant with the standard, it is considered that the development meets the objective of Clause 55.04-5, as:

- The ground level SPOS is north-facing and will still receive excellent sunlight in the afternoon.
- The dwelling has a large north-facing balcony at first floor, accessed from a living area which would also receive excellent solar access from 12 noon onward.
- The dwelling at 471 Victoria Street would have the following areas of unshadowed SPOS in the late morning and afternoon:
  - 11 am: 8.5 square metres at ground floor and 8.0 square metres at balcony level
  - Midday: 22 square metres at ground floor and 10 square metres at balcony level
  - 1 pm: 20.6 square metres at ground floor and 10 square metres at balcony level

- 2 pm: 15 square metres at ground floor and 10 square metres at balcony level
- 3 pm: 7.5 square metres at ground floor and 9.5 square metres at balcony level
- The dwelling also has a south-facing balcony facing Victoria Street for additional private open space.
- The dwelling has a mature tree within its POS area that currently significantly overshadows the area.
- Given the location of this property in the neighbourhood centre identified in the MSS as an area for increased housing densities, the design response and resulting amount of overshadowing is considered acceptable.

### ***Daylight to existing windows***

There are two ground floor windows that service the kitchen and dining room of the western neighbouring dwelling at 471 Victoria Street that will be impacted by the development (see Figure 4). These windows will not receive daylight in accordance with Standard B19 of Clause 55.04-3 (Daylight to Existing Windows).

The objective of Clause 55.04-3 is to allow adequate daylight into existing habitable room windows. In deciding whether this objective is met, Council must consider the following decision guidelines:

- *The design response.*
- *The extent to which the existing dwelling has provided for reasonable daylight access to its habitable rooms through the siting and orientation of its habitable room windows.*
- *The impact on the amenity of existing dwellings.*

It is considered that subject to condition 1 a) in the recommendation the proposal meets the objective of Clause 55.04-3 (Daylight to Existing Windows) of the Moreland Planning Scheme as:

- Historic aerial imagery shows that the subject site was previously developed with double storey built form abutting the western property boundary. The previous buildings on site reduced the amount of daylight available to the affected windows outside of the what would be compliant with the standard.
- The affected dwelling contains north-facing living room windows and a balcony at first floor and bedroom windows at second floor, that will not have their access to daylight significantly reduced by the proposed development. The overall impact on the amenity of this dwelling is therefore not considered to be unreasonable.
- The demolition of the previous buildings on site in 2015 has resulted in improved daylight access to the affected windows. While this has been a good temporary outcome for the internal amenity of 471 Victoria Street, it cannot be expected that a site in the MUZ and identified for four storey development will be able to maintain these conditions permanently.
- The third level of the building will however have impacts on the ground floor habitable room windows of the 471 Victoria Street which should be addressed through a more site responsive design. Condition 1a) has been included in the recommendation requiring the second-floor western boundary wall of Bedroom 2 of Dwelling 3 to be set back 1.0 metres from the western property boundary. While traditionally ground and first floor walls have impacted the amenity of these windows a setback in combination with the lightcourt already provided at this new second floor level will ensure an improved response to the daylight access to the affected kitchen and living room windows of the adjoining dwelling. Refer to Figure 5 below.





Figure 4: View towards 471 Victoria Street and impacted windows



Figure 5: Proposed reduction to Bedroom 2 of Dwelling 3 shown in red

## 5. Response to Objector Concerns

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

- Neighbourhood character
- Compliance with the siting requirements of Clause 55 and the DDO24
- Height, scale and bulk
- Landscaping
- Car parking and traffic
- Suitability to purpose of the Mixed Use Zone
- Urban design
- Environmentally sustainable development

Other issues raised by objectors are addressed below:

### Timing of the application with the COVID 19 pandemic

Direction from the State Government has outlined that statutory planning applications will continue to be processed throughout the pandemic. The application was publicly advertised for an extended period to account for the associated postage delays. Residents have been able to view the advertised plans online and when required, Council has offered to post out hard copy plans to those residents without online access.

### **Reduced viability for nearby buildings to have solar PV**

Whether or not someone may install solar PV on their roof in the future is not a relevant consideration of the development against the policies in Clause 55 of the Moreland Planning Scheme. However, it is noted that the property to the west at 471 Victoria Street would still have the opportunity to install solar PV on the roof of the third storey which maintains excellent solar access.

### **Waste Disposal**

The Waste Management Plan (WMP) included in the public notification material outlines that the development will use a private waste collection service. The WMP was referred to Council's Development Engineer who gave support to the proposal subject to the conditions outlined above.

### **Preservation of Bluestone Laneway**

The application does not seek to remove the bluestone paving; however, it is recognised that previous demolition works on site has left the edges of the bluestone laneway in poor condition.

Under Council's *General Local Law 2018*, the developer must obtain an Asset Protection Permit from Council which will require the builder to reinstate the edges of the laneway to Council's satisfaction. A condition has been included in the recommendation outlining that the level of the existing laneway must be unaltered.

### **Pedestrian safety and passive surveillance of the laneway**

Concerns were raised regarding pedestrian safety and surveillance of the laneway and dwelling entrances. Windows and Juliette balconies have been provided at first floor to provide passive surveillance to the laneway. All dwelling entrances will have lighting for safety after dusk. At night time when lights are turned on in the garages, the polycarbonate material of the garage doors will provide filtered light to the laneway for additional activation. To respond to the concerns raised in the PID, the applicant and their traffic engineer have advised that a warning light activation system can be installed for when cars exit the garages to warn pedestrians of oncoming cars in the laneway. A condition to this effect has been included in the recommendation.

### **Setting a precedent**

Future planning permit applications on this site or neighbouring and nearby land will be assessed against relevant planning policy and site conditions, based on their own merits at the time of assessment. The planning assessment has determined that the proposed height and building form are an acceptable outcome in the context of this neighbourhood centre and therefore will not set an undesirable precedent.

### **Overdevelopment**

Overdevelopment is a commonly used expression to dismiss development proposals which seek to introduce significant new built form into particular neighbourhoods. The assessment in this report against the relevant planning provisions demonstrates that the proposal is not an overdevelopment despite being more intensive than what existed before.

The design responds to the opportunities and constraints of the site and its context as detailed throughout this recommendation.

### **Heritage**

The site is not in a Heritage Overlay, though there are properties in Heritage Overlays to the rear on Whitby Street. The proposed contemporary architectural form is encouraged by Clause 22.01 (Neighbourhood Character) and delineates the development from the heritage precinct on Whitby Street.



## Design suggestions raised at the PID

A concept plan of an alternative design response, including photographs of example developments in the surrounding area, was tabled by an objector at the PID meeting. These drawings were then provided to Council Officers and are shown below. While the time put into this response is appreciated, it is considered that there can be more than one acceptable design response for any given site. Subject to the recommended conditions, the proposed design response is considered acceptable for the reasons detailed throughout this report.

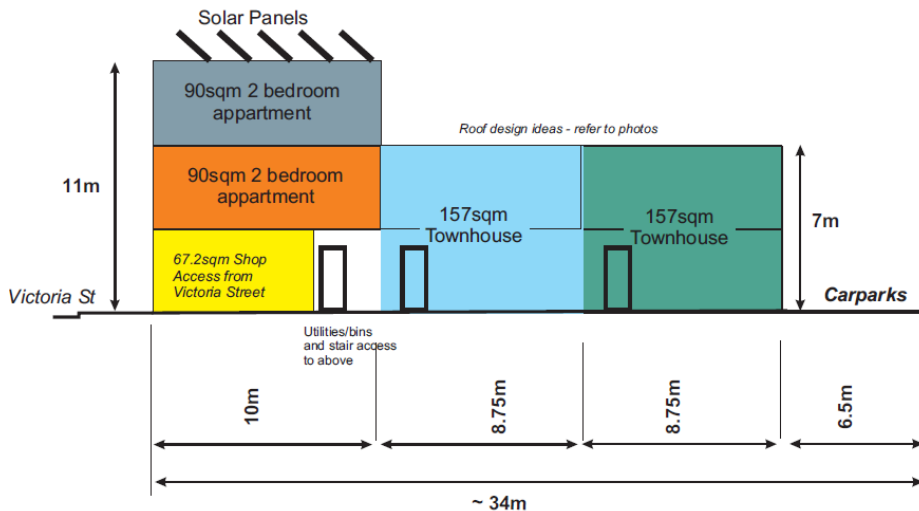


Figure 6: Elevation of objector's alternative design

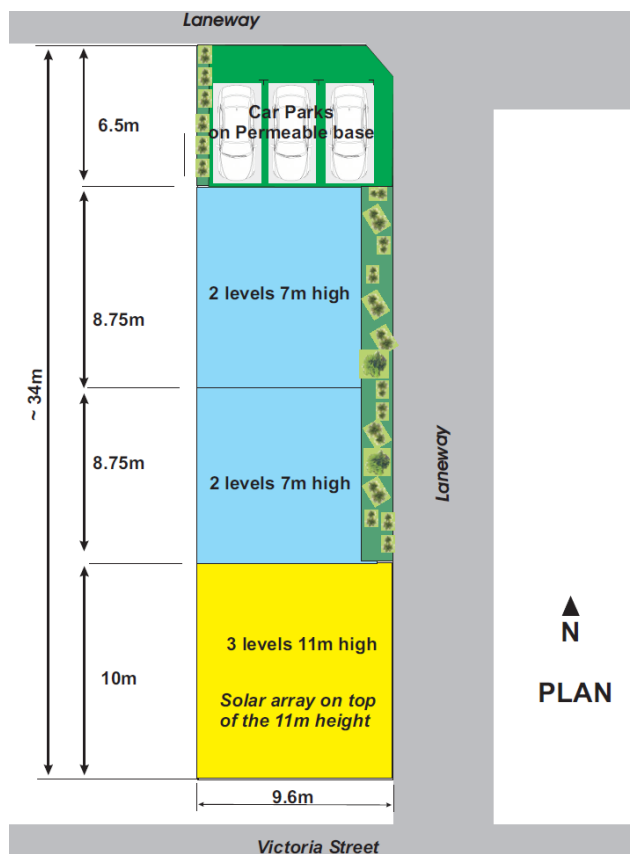


Figure 7: Plan of objector's alternative design

## 6. Officer Declaration of Conflict of Interest

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

## **7. Financial and Resources Implications**





There are no financial or resource implications.

## **8. Conclusion**

It is considered that the proposed development has strong strategic policy support, provides for a good quality contemporary design, has good internal amenity and does not unreasonably impact the amenity of adjoining properties.

On the balance of policies and controls within the Moreland Planning Scheme and objections received, it is considered that Notice of Decision to Grant a Planning Permit No MPS/2019/729 should be issued for 467 - 469 Victoria Street Brunswick West, subject to the conditions included in the recommendation of this report.

## **Attachment/s**

<b>1</b> 	Location Map	D20/372054
<b>2</b> 	Advertised Plans	D20/372056
<b>3</b> 	Objector Map	D20/372058
<b>4</b> 	Corrected Shadow Diagrams	D20/416687

# DCF54/20 54 RAILWAY PARADE, PASCOE VALE - PLANNING APPLICATION MPS/2020/185

Director City Futures

City Development

## Caretaker Statement

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

## Executive Summary



<b>Property:</b>	54 Railway Parade, Pascoe Vale			
<b>Proposal:</b>	Construction of a four-storey building and a reduction of the standard car parking requirements			
<b>Zoning and Overlay/s:</b>	<ul style="list-style-type: none"> <li>Residential Growth Zone (RGZ2)</li> <li>Design and Development Overlay (DDO24)</li> <li>Erosion Management Overlay (EMO)</li> <li>Parking Overlay (PO1)</li> <li>Development Contributions Plan Overlay (DCPO1)</li> </ul>			
<b>Strategic setting:</b>	Minimal housing growth	Incremental housing growth	Increased house densities encouraged	Significant housing growth
<b>Objections:</b>	<ul style="list-style-type: none"> <li>10 Objections</li> <li>Key issues:               <ul style="list-style-type: none"> <li>Building Height</li> <li>Car Parking</li> <li>Overlooking</li> <li>Overshadowing</li> </ul> </li> </ul>			
<b>ESD:</b>	<ul style="list-style-type: none"> <li>Minimum average NatHERS rating of 6.5 stars;</li> <li>10,000 litre water tank volume;</li> <li>Exceeds best practice stormwater management; and</li> <li>Provision of 11 bicycle parking spaces</li> </ul>			
<b>Accessibility:</b>	<ul style="list-style-type: none"> <li>Adaptable apartments comprise of 50% of the proposal.</li> </ul>			

<b>Key reasons for support</b>	<ul style="list-style-type: none"> <li>• The design and height of the building is acceptable within its context that includes the Gaffney Street/Pascoe Vale Station Neighbourhood Centre and a mix of single, double and triple storey dwellings</li> <li>• The car parking reduction is acceptable having regard to the amount of bicycle parking spaces provided on-site and the good access to public transport</li> <li>• The development will not unreasonably impact the amenity of the adjoining residential properties.</li> </ul>
<b>Recommendation:</b>	A Notice of Decision to Grant a Planning Permit be issued.

## Officer Recommendation

That a Notice of Decision to Grant a Planning Permit No. MPS/2020/185 be issued for the construction of a four-storey building and a reduction of the standard car parking requirements at 54 Railway Parade, Pascoe Vale, subject to the following conditions:

### Amended Plans

1. Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and must be generally in accordance with the plans (advertised 14 April 2020) but modified to show:
  - a) Screening in accordance with Standard B22 (Overlooking) for:
    - i. The balcony of Dwelling 3; and
    - ii. The master bedroom windows on the northern side of Dwellings 8 and 10.
  - b) The annotation 'OG' annotated as 'fixed obscure glass (not film)'.
  - c) The main bedrooms of Dwelling 1 and 6 increased in depth to 3.4 metres to comply with Standard B46 (Functional Layout).
  - d) The glass balcony balustrades on the southern side of Dwellings 4, 7 and 9 replaced with a vertical metal or powder-coated balustrade or similar.
  - e) The deletion of at least one wall from the study of Dwelling 6.
  - f) A landscape plan in accordance with Condition 3 of this permit.
  - g) Any changes required by the Geotechnical Report in accordance with Condition 9 of this permit.
  - h) Any changes required by the Acoustic Report in accordance with Condition 12 of this permit.
  - i) Any changes required by the Waste Management Plan in accordance with Condition 14 of this permit.
  - j) At least 20 per cent of the bicycle parking devices designed to park bicycles horizontally (ie 1.8m long) in accordance with the Australian Standard for Bicycle Parking (AS2890.3).
  - k) The existing vehicle crossing annotated as being reconstructed.
  - l) Initiatives contained within the Sustainable Design Assessment, including:
    - i. The location and size of the rainwater tank on the plans, including a notation on plans indicating that the rainwater tank will be collecting from all roofed area and servicing all toilets.
    - ii. The solar photovoltaic system size as per condition 6(b).
    - iii. The location of clotheslines for each dwelling.
    - iv. The basement plan annotated to state that carbon monoxide sensors will be installed to control variable speed fan drives.

### Secondary Consent

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

### Landscaping

3. Prior to the commencement of any development works, a landscape plan must be submitted to and approved by the Responsible Authority. The landscape plan must

provide the following:

- a) Provision of screening vegetation that is suitable to be planted in the available space on the eastern and western boundaries. Non-invasive species that can be planted over the easement must be provided on the western boundary.
  - b) Identification of any existing trees and vegetation on adjoining land including the trees along the boundary with 4 Austin Crescent, Pascoe Vale, that require tree protection zones.
  - c) Strategies for the retainment of vegetation (i.e. barriers and signage during the construction process) consistent with any conditions of this permit.
  - d) A schedule of all proposed trees, shrubs and ground covers, including numbers, size at planting, size at maturity, botanical names and common names. The flora selection and landscape design should be drought tolerant and based on species selection recommended in the Moreland Landscape Guidelines 2009.
  - e) Notes and diagrams detailing the establishment and maintenance of all proposed trees, shrubs and ground covers.
  - f) The provision of at least one tree within the front setback to assist in the integration of the development within the existing streetscape, with the tree species selected according to the available space, in accordance with the Moreland Tree Planting Manual for Residential Zones, 2014.
  - g) Details of the location and type of all paved and sealed areas. Extensive hard surfaces are not supported. Porous/permeable paving, rain gardens and other water sensitive urban design features must be in accordance with any endorsed Sustainability Design Assessment or Sustainability Management Plan.
  - h) 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.
4. Prior to development commencing (including any demolition, excavations, tree removal, delivery of building/construction materials and/or temporary buildings), all council trees and the trees along the boundary with 4 Austin Crescent, Pascoe Vale must have a Tree Protection Zone (TPZ) in accordance with *AS4970 Protection of Trees on Development Sites* to the satisfaction of the Responsible Authority. The TPZ must meet the following requirements:
- a) Tree Protection Fencing

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

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

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

b) Signage

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

c) Irrigation

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

d) Provision of Services

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

5. All planting must be maintained in accordance with the endorsed landscape plan with any dead, diseased or damaged plants replaced with a suitable species to the satisfaction of the Responsible Authority.

### **Environmentally Sustainable Development**

6. Prior to the endorsement of plans, a Sustainable Design Assessment (SDA) must be submitted to and approved to the satisfaction by the Responsible Authority. The SDA must demonstrate a best practice standard of environmentally sustainable design and be generally in accordance with the SDA prepared by Keystone Alliance advertised on 14/04/2020, but modified to include the following changes:
- a) Remove reference to the greywater from the SDA or clearly detail the type of system, the location of the system (not only the tanks), the level of treatment, the proposed reuse and indicate on the plans.
  - b) Amend the BESS Energy Profile to include the Solar PV system details.
  - c) Preliminary energy ratings for Dwellings 3 and 4 demonstrating that the maximum cooling load as specified in Table B4 of Clause 55.07 / Table D1 of Clause 58.03 has not been exceeded.
  - d) Do not claim the green roof or green wall/façade credit in the BESS tool or provide details of this green infrastructure including but not limited to plant species, substrate materials, drainage, irrigation, structural support and detail on the Landscape Plan.

Where alternative ESD initiatives are proposed to those specified in 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.

7. Prior to the issue of a Statement of Compliance or Certificate(s) of Occupancy whichever occurs first, all works must be undertaken in accordance with the endorsed Sustainable Sustainability 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.

### **Development Contributions**

8. 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.

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

following:

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

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

### **Erosion Management**

9. Prior to the commencement of any buildings and/or works, including the removal, destruction or lopping of any vegetation, and/or the certification of any plan of subdivision:
  - a) the impact of the final design of the buildings and/or works, removal, destruction or lopping of vegetation, including the tree that was removed from 56 Railway Parade, Pascoe Vale and/or subdivision on slope stability must be assessed and certified by a chartered geotechnical practitioner with experience in slope stability;
  - b) certification by way of a completed "Geotechnical Declaration and Certification" form generally in accordance with the Geotechnical Declaration and Certification Form, Moreland City Council, November 2012, must be lodged with the responsible authority; and
  - c) any changes to the final design/plan which are recommended by the chartered geotechnical practitioner must be shown on amended plans submitted to, and approved by, the responsible authority.
10. The buildings and/or works, including removal, destruction or lopping of vegetation, and/or subdivision must be undertaken in accordance with any requirements of a chartered geotechnical practitioner.
11. If the certification by the chartered geotechnical practitioner includes any recommendations or requirement for ongoing maintenance of the buildings and/or works, prior to the commencement of building and/or works the owner must enter into an agreement with Council pursuant to section 173 of the *Planning and Environment Act 1987* which is to be registered on the title to the land. The agreement will set out a regime for the recommended or required maintenance and the obligation of the owner to comply with such recommendations and/or requirements. The owner is to pay all reasonable costs of Council in the preparation and execution of the agreement.

### **Acoustic Attenuation**

12. Prior to the endorsement of plans, an Acoustic Report prepared by a qualified Acoustic Engineer must be submitted and approved to the satisfaction of the Responsible Authority. The report must include, but not be limited to the following:
  - a) Recommendations of acoustic attenuation measures to be incorporated into the proposed development to ensure the development is designed and constructed to achieve the following noise levels specified in Standard B40 (Noise Impacts):
    - i. Not greater than 35dB(A) for bedrooms, assessed as an LAeq,8h from 10 pm to 6 am.
    - ii. Not greater than 40dB(A) for living areas, assessed LAeq,16h from 6 am to 10 pm.
  - b) Recommendations of acoustic attenuation measures to ensure that noise generated from the use of car stackers will not unreasonably impact the immediate adjoining residential properties.



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

13. 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.

#### **Waste Management Plan**

14. Before the plans required by Condition 1 of this permit are endorsed, a Waste Management Plan generally in accordance with the Waste Management Plan prepared by Apex Engineers dated July 2019 must be submitted to, and approved in writing by, the Responsible Authority.
15. The recommendations of the approved Waste Management Plan must be implemented to the satisfaction of the Responsible Authority before the development is occupied. No alterations to the approved Waste Management Plan may occur without the written consent of the Responsible Authority.

#### **General Conditions**

16. Prior to the occupation of the development, the garage doors must be automatic and remote controlled.
17. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, a vehicle crossing must be constructed in every location shown on the endorsed plans to a standard satisfactory to the Responsible Authority (Moreland City Council, City Infrastructure Department).
18. All stormwater from the land, where it is not collected in rainwater tanks for re-use, must be collected by an underground pipe drain approved by and to the satisfaction of the Responsible Authority (Note: Please contact Moreland City Council, City Infrastructure Department).
19. The surface of all balconies and terraces are to be sloped to collect the stormwater run-off into stormwater drainage pipes that connect into the underground drainage system of the development to the satisfaction of the Responsible Authority.
20. 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.
21. 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.
22. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, all telecommunications and power connections (where by means of a cable) and associated infrastructure to the land (including all existing and new buildings) must be underground to the satisfaction of the Responsible Authority.

#### **Time Limit**

23. 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.

**Note: These notes are for information only and do not constitute part of this notice of decision or conditions of this notice of decision.**

**Note 1:** Further approvals are required from Council's City Infrastructure Department who can be contacted on 8311 4300 for any works beyond the boundaries of the property. Planting and other vegetative works proposed on road reserves can be discussed with Council's Open Space Unit on 8311 4300.

**Note 2:** Should Council impose car parking restrictions in this street, the owners and/or occupiers of the dwellings would not be eligible for resident parking permits to park on the street. Occupiers are eligible for the resident A parking permit which only permits parking in limited areas. The resident parking permits and Resident A parking permit are subject to future reviews and change. See Council's website for more information: <https://www.moreland.vic.gov.au/parking-roads/parking-permits/residential-parking-permits/>.

**Note 3:** Council may not issue individual bins to new Owners Corporation developments. In the event that shared bins are provided for this development, an amendment to the plans may be required to show the location of a storage area for the shared bins on common land. Please contact Council's City Infrastructure Department on 9240 1111 for more information.

**Note 4:** This permit contains a condition requiring payment of Development Contributions. The applicable development contribution levies are indexed annually. To calculate the approximate once off levy amount, please visit <http://www.moreland.vic.gov.au/planning-building/> and click on 'Moreland Development Contributions Plan (DCP)'. Alternatively, please contact Moreland City Council on 9240 1111 and ask to speak to the DCP Officer.

**Note 5:** This planning permit for the development of the land includes a structure over a drainage easement. This permit does not provide consent from Council or service authorities or other persons for building over the drainage easement. It is the responsibility of the owner to obtain consent from those with rights over the easement. Under Section 12(5) of the *Subdivision Act 1988*, those with rights over the easement are not required to repair damage to buildings or works constructed on the easement if reasonable care was taken in gaining access to and using the easement. An application can be lodged with Council's Building Services Unit for Council's consent to construct over the drainage easement.

## **1. Background**

### **Subject site**

The subject site is located on the eastern side of Railway Parade, Pascoe Vale, approximately 300 metres north of Gaffney Street. The subject site has a frontage of 16.76 metres to Railway Parade, a maximum depth of 37.36 metres and a total area of approximately 576 square metres. The site has a fall of approximately 5.65 metres from the north east (rear) corner to the south west (front) corner of the site.

The land is currently developed with a single storey weatherboard dwelling with a hipped, tiled roof and secluded private open space at the rear of the dwelling. Vehicle access is provided via a crossover to Railway Parade on the south-west corner of the site.

The title contains Restrictive Covenant 0707693, which prohibits any quarrying or excavation and prohibits the removal of soil except for building or gardening purposes. The proposal would not breach the Restrictive Covenant.

### **Surrounds**

The subject site is located within the Gaffney Street/Pascoe Vale Station Neighbourhood Centre. The Gaffney Street commercial shopping strip is located 300 metres south of the subject site, with Pascoe Vale Station located 360 metres to the south of the site.

Sites along Railway Parade (within the Residential Growth Zone) comprise mainly of multi-unit developments that range from one to three storeys in height. There are some examples of single dwellings remaining on Railway Parade.

North of the subject site at 56 Railway Parade, there is a single storey brick dwelling with a large area of secluded private open space at the rear.

Land to the immediate east of the subject site at 4 Austin Crescent contains a single storey weatherboard dwelling with secluded private open space at the rear of the dwelling.

Land to the immediate south of the site at 1-8/52 Railway Parade contains eight triple storey dwellings with secluded private open space located at either ground level or on balconies.

To the west of the site, on the opposite side of Railway Parade, is the Craigieburn Railway Line.

A location plan forms **Attachment 1**.

### **The proposal**

The proposal is summarised as follows:

- Construction of a four-storey building. Details of the building are as follows:
  - 10 dwellings comprising of:
    - 5 one-bedroom dwellings
    - 5 two-bedroom dwellings
  - The dwellings have private open space areas ranging in size from 9.3 square metres to 65 square metres and a communal open space area on the roof.
- Provision of basement car parking to be accessed via a modified crossover to Railway Parade, in the form of 2 basement car spaces and 6 spaces within a car stacker.

- 11 bicycle spaces are provided in the basement.
- A maximum building height of 14.06 metres.
- The materials comprise of a mix of render, cream terracotta tile and cladding.

The development plans form **Attachment 2**.

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

<b>Control</b>	<b>Permit Requirement</b>
Residential Growth Zone	A permit is required to construct more than one dwelling on a lot. Pursuant to Clause 32.07-2 (RGZ) no permit is required to use land as a dwelling.
Erosion Management Overlay	Clause 44.01-2: A permit is required to construct a building or construct or carry out works.
Design and Development Overlay	Clause 43.02-2: A permit is required to construct a building or construct or carry out works.
Car Parking	Clause 52.06: A reduction in the standard car parking requirement from 10 to 8 spaces

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

- Clause 45.06: Development Contributions Plan Overlay (Schedule 1). A condition is included in the recommendation requiring the payment of the DCP levy prior to the issue of a Building Permit for the development.
- Clause 55: Two or more dwellings and residential buildings
- Clause 45.09: Parking Overlay (Schedule 1). The schedule to the overlay triggers the car parking rates as contained within Column B of Table 1 of Clause 52.06-5. This means that there is no requirement for the provision of visitor car parking.

## **2. Internal/External Consultation**

### **Public notification**

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

- Sending notices to the owners and occupiers of adjoining and nearby land; and
- By placing a sign on the Railway Parade frontage of the site.

Council has received 10 objections to date. A map identifying the location of objectors forms **Attachment 1**.

The key issues raised in objections are:

- Height
- Precedent
- Traffic impacts
- Neighbourhood character
- Inadequate landscaping
- Removal of tree at 56 Railway Parade
- Overlooking
- Overshadowing
- Overdevelopment

- Noise impacts
- Car parking
- Impacts during construction
- Impact on existing trees
- Car stackers
- Visual bulk

A Planning Information and Discussion meeting was not held for this application due to the late submission of the tenth objection and the election caretaker period. As an alternative however, objectors from adjacent lots have been contacted to discuss their concerns. These discussions have resulted in a condition requiring tree protection zones for the trees along the boundary of 4 Austin Crescent, to ensure the trees are protected during construction.

#### Internal referrals

Internal Branch/Business Unit	Comments
Urban Design Unit	No objections were offered to the proposal subject to modifications, which are addressed by conditions of the recommendation or as otherwise detailed in Section 11 of this report.
Sustainable Built Environment Unit (Development Engineering Team)	No objections were offered to the proposal subject to modifications, which are addressed by conditions detailed in the recommendation.
Sustainable Built Environment Unit (ESD Team)	No objections were offered to the proposal subject to modification, which are addressed in the conditions detailed in the recommendation.

### 3. Policy Implications

#### Planning Policy Framework (PPF)

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

- Settlement (Clause 11.01S)
- Metropolitan Melbourne (Clause 11.01-1R1)
- Noise (Clause 13.05)
- Water Conservation (Clause 14.02-3S)
- Built Environment and Heritage (Clause 15), including:
  - Built Environment (Clause 15.01)
  - Healthy neighbourhoods (Clause 15.01-4S and 15.01-4R)
  - Sustainable Development (Clause 15.02)
- Clause 16 Housing including:
  - Housing Supply (Clause 16.01-1S and 16.01-1R)
  - Housing Affordability (Clause 16.01-2S)
- Principal Public Transport Network (Clause 18.02-2R)

## **Local Planning Policy Framework (LPPF)**

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

Municipal Strategic Statement:

- Clause 21.01 Municipal Profile
- Clause 21.02 Vision
- Clause 21.03-1 Activity Centres
- Clause 21.03-3 Housing
- Clause 21.03-4 Urban Design, Built Form and Landscape Design
- Clause 21.03-5 Environmentally Sustainable Design (Water, Waste and Energy)

Local Planning Policies:

- Clause 22.01 Neighbourhood Character
- Clause 22.03 Car and Bike Parking and Vehicle Access
- Clause 22.08 Environmentally Sustainable Design

Council through its MSS, seeks increased residential densities into its Activity Centres to take advantage of access to public transport and other services within these locations. The subject site is located within the Gaffney Street/Pascoe Vale Station Neighbourhood Centre. In this centre a substantial change towards a new character to accommodate buildings up to and including four storeys is supported. The proposal enjoys strong strategic policy support.

### **Human Rights Consideration**

This application has been assessed in accordance with the requirements of the *Planning and Environment Act 1987* (including the Moreland Planning Scheme) reviewed by the State Government and which complies with the Victorian Charter of *Human Rights and Responsibilities Act 2006*. In particular, regard was given to:

- Section 12: Freedom of movement
- Section 13: Privacy and Reputation
- Section 15: Freedom of expression
- Section 16: Peaceful assembly and freedom of association
- Section 18: Taking part in public life.

This application does not limit human rights.

## **4. Issues**

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

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

The proposal is an acceptable response to Clause 22.01 (Neighbourhood Character) and Clause 55.02 (Neighbourhood Character and Infrastructure) of the Moreland Planning Scheme.

The site is located within the Residential Growth Zone, Schedule 2 (RGZ2), which seeks to provide housing at increased densities in buildings up to and including four storeys. The RGZ2 contains local variations to Clause 55 standards including site coverage, landscaping, side and rear setbacks and private open space.

Clause 22.01-2 includes the following objectives for development within Neighbourhood Centres:

*'To facilitate an increase in density and scale of built form at a lesser intensity and scale to the larger centres of Coburg, Brunswick and Glenroy.*

*To support change towards a new character as defined in Schedule 24 to the Design and Development Overlay (DDO24).'*

The Design and Development Overlay (DDO24) includes the following objectives:

*To ensure built form outcomes are appropriate to the context of 'Moreland's Neighbourhood Centres.*

*To improve the quality of higher density and mixed use developments by providing appropriate built form guidance.*

*To improve amenity outcomes for residents in higher density and mixed use developments and for residents in adjacent buildings.*

*To ensure that new development makes a positive contribution to the public realm.'*

DDO24 contains requirements for overall building height; front, side and rear setbacks; the building frontage; building articulation and landscaping.

Overall, it is considered that, subject to the conditions detailed in the recommendation, the proposal would respond to the RGZ2, Clause 22.01 and DDO24 in the following ways:

### **Building Height**

The proposal does not exceed the 13.5 metre building height specified in DDO24 and RGZ2. While the roof top terrace and service equipment extend above 13.5 metres, the building height exemptions specified in DDO24 are met, as the roof top terrace occupies less than 50 per cent of the roof area, is less than 1.2 metres above the maximum building height (total height of 14.06 metres) and does not unreasonably overshadow the adjoining properties.

### **Setbacks**

Side and rear setbacks of the DDO24 and RGZ2 are discretionary and seek to integrate core planning concepts related to design quality, amenity, landscaping, built form character and liveability. It is acknowledged that much of the development is within the desired setbacks except for the following non-compliances in the table below:

Dwelling	Orientation and outlook	Requirement	Proposal	Extent of Variation	Justification for Variation
Dwelling 3	South (Primary outlook) first floor	4.5m	1.29m	3.21m	Dwelling 3 living room also has an outlook to the street, ensuring outlook for future occupants will be acceptable. No impact on development potential of 52 Railway Parade as this site is developed.

Dwelling 6	South (Secondary outlook) first floor	2m	1.93m	0.07m	Negligible variation.
Dwelling 8 & 10	East (Primary outlook) second and third floor	6m	5.95-6.4m	0.05m	Negligible variation.

Note: Secondary outlooks = bedrooms; Primary outlooks = living areas.

### ***Public Realm Interface***

The proposal provides an appropriate response to the building articulation, design and site service requirements of DDO24 in the following ways:

- At each level, apartments front Railway Parade and contain habitable room windows and balconies facing the street, which provides opportunities for landscaping, casual surveillance of the public realm, and activation of the site's frontage.
- The design represents good contemporary architecture, that makes an acceptable contribution to the preferred character of the area, while referencing the dwellings surrounding the site through the buildings materials.
- The proposed car parking facilities do not dominate the streetscape given that a single crossover is proposed to Railway Parade and the car parking spaces are within the basement.
- A waste storage area is provided within the basement and cannot be viewed from the street.

### ***Landscaping***

The overarching landscaping objective of DDO24 is to ensure setbacks in residential areas provide sufficient space for tree planting to enhance the landscape character of the area and contribute to privacy. This can be achieved by providing landscaping within the side and rear setbacks sought under DDO24.

While a landscape plan was not provided with this application, indicative landscaping on the plans shows that deep soil planting can be facilitated across the site, with canopy trees proposed to be planted within the front setback, along the northern boundary and within the ground level secluded private open spaces of Dwellings 5 and 6. A condition will require the provision of screening vegetation that is suitable to be planted in the available space, on the eastern and western sides of the development. This would contribute to the privacy of residents and ensure that the development would sufficiently enhance the landscape character of the area. A condition will also require the landscape plan to detail non-invasive species that can be planted over the easement on the western side of the development, to ensure that the species proposed are feasible. The requirement for a landscape plan forms a condition in the recommendation.

### ***Does the proposal satisfy the requirements of Clause 55?***

A detailed assessment of the proposal against the objectives at Clause 55 has been undertaken. The proposed development complies with the objectives of Clause 55. Key issues from the Clause 55 assessment are discussed under the headings below.

### ***Overlooking***

Clause 55.04-6 (Overlooking) does not aim to eliminate all overlooking, but rather seeks to prevent unreasonable overlooking. Up to 9 metres is the standard accepted by state-wide provisions as being a reasonable distance where screening is required to minimise overlooking.



An assessment of the proposed development against Standard B22 (Overlooking) has revealed the following:

- The first-floor balcony of Dwelling 3 has direct views into the balcony of 1/52 Railway Parade, Pascoe Vale. A condition of the recommendation requires the balcony to be screened in accordance with Standard B22.
- The habitable room windows with views into the existing habitable room windows or secluded private open spaces of the adjoining properties have been annotated as being 'OG' below 1.7 metres. However, the annotation 'OG' has not been defined on the plans. A condition of the recommendation will ensure the windows are screened with obscured glass rather than an applied obscured film to reduced the potential need for planning enforcement action should the film be removed at a later time.
- The obscure glazing has not been annotated as fixed. A condition of the recommendation requires the obscure glazing to be fixed.
- Part of the master bedroom windows on the northern side of Dwelling 8 and 10 have not been screened below 1.7 metres, as shown in the image below. A condition will require the entire window to be screened in accordance with Standard B22.



Figure 1. North facing master bedroom windows only partly obscured.  
Subject to these conditions, the development will comply with the requirements of Standard B22.

### ***Private Open Space***

Dwelling 1 has 23.48 square metres of secluded private open space and Dwelling 2 has 14.75 square metres of secluded private open space. This does not comply with Standard B28, as Dwellings 1 and 2 have less than the 40 square metres of private open space, including 25 square metres of secluded private open space, that is required by the Standard.

The variation to Standard B28 is acceptable in this instance given that the secluded private open spaces receive adequate solar access, they are useable spaces and each dwelling has access to additional private open space on the communal roof deck. The proposal is considered to meet the objective of providing adequate private open space for the reasonable recreation and service needs of residents, in a location where increased residential density is sought.

### ***Energy Efficiency***

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

- Average NatHERS rating of 6.5 stars;
- 10000 litre water tank volume;

- Double glazing to all habitable room windows;
- Exceeds best practice stormwater management; and
- Provision of 11 bicycle spaces, being 8 more than the state wide planning scheme requirement.

Conditions are included in the recommendation requiring additional details to ensure a satisfactory response to the requirements of Council's Environmentally Sustainable Development Local Policy at Clause 22.08.

The BESS report indicates that Dwellings 3 and 4 are exceeding 30 MJ/M<sup>2</sup> per annum, which is the maximum cooling load acceptable in Climate zone 21 (Melbourne) as per Table B4 of Clause 55.07-1. A condition will require preliminary energy ratings for Apartment 103 and 104 to be provided to demonstrate that the maximum cooling load as specified in Table B4 have not been exceeded.

### **Noise Impacts**

The subject site is located within 80 metres of the Craigieburn Railway Line and is therefore within a noise influence area specified in Standard B40. A condition of the recommendation requires an acoustic report to be provided, to ensure that the building is designed and constructed to achieve the noise levels specified in the Standard.

### **Functional Layout**

The main bedroom of Dwelling 1 and 6 are less than the minimum depth of 3.4 metres specified in Standard B46. Dwelling 1's main bedroom has a depth of 3.09 metres and Dwelling 6's main bedroom has a depth of 3.1 metres, which amounts to a maximum variation of 0.31 metres from the Standard. A condition of the recommendation requires the depth of the main bedrooms be increased to meet the standard.

### **Is the proposed car parking and vehicle access appropriate?**

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

*'Support reduced car parking rates in developments within and in close proximity to activity centres, with excellent access to a range of public transport options and with increased provision of bicycle parking above the rates specified in clause 52.34.'*

A reduction in the car parking requirements from 10 spaces to 8 spaces (2 space reduction) is required for the proposal development. The proposal is located within the Gaffney Street/Pascoe Vale Station Neighbourhood Centre and has good access to public transport and bicycle routes. In addition, the proposal provides 11 bicycle parking spaces.

Council's Development Engineers are satisfied that car parking requirement can be reduced for this application.

Vehicles, whether related to this or other developments in the street, can only park on the street in accordance with any parking regulations. The number of vehicles that can park on the street and at what time will be dictated by the parking restrictions and the availability of on-street car spaces. It is expected that the level of parking provided will cater for car ownership levels of the occupiers.

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

In relation to traffic impacts, Council's Development Engineers have assessed the proposal and consider that the development will result in 41 additional vehicle movements per day on Railway Parade. This remains within the road's design capacity and is not expected to cause traffic problems.

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

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

- limits the number of vehicle crossings to one per site frontage
- limits the removal of on-street public parking spaces, removal of street trees, and encroachment into landscaped front setbacks
- provides 11 bicycle spaces

**Does the development adequately respond to the Erosion Management Overlay?**

The purpose of the Erosion Management Overlay is to '*protect areas prone to erosion, landslip or other land degradation processes, by minimising land disturbance and inappropriate development.*' To ensure that the landslip risk of this development is minimised, conditions are contained in the recommendation as required by the schedule of the Erosion Management Overlay.

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

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

- Height
- Traffic Impacts
- Neighbourhood Character
- Inadequate Landscaping
- Overlooking
- Car Parking

Other issues raised by objectors are addressed below.

### **Precedent**

The application is not considered to set a precedent for future planning applications being a proposal that is within the building height and development intensity sought by the planning policy and controls for this Neighbourhood Centre. Future planning permit applications on this site or within the Neighbourhood Centre can be expected to be developed at a similar scale and intensity consistent with their Residential Growth Zoning whereas sites outside of the Neighbourhood Centre can be expected to have a reduced scale and intensity consistent with their General Residential Zoning. Future application will be assessed against relevant planning policy and site conditions, based on their own merits at the time of assessment.

### **Removal of Tree at 56 Railway Parade, Pascoe Vale**

A tree at 56 Railway Parade, Pascoe Vale was removed on 16 March 2020 without the necessary permits, after the lodgement of this application. An enforcement investigation by Council's Planning Enforcement officers has recently been instigated for this matter. The enforcement action has not been concluded at this time. It should be noted that the land is zoned for residential purposes and the Erosion Management Overlay, which has tree removal controls, only considers whether the removal of the tree will impact on potential for landslip. A condition will require the geotechnical report to consider the impact of the removal of the tree on landslip risk.

### **Overshadowing**

Objectors have raised concerns about the extent of overshadowing on the adjoining properties. Based on the shadow diagrams submitted, the development will generate additional shadowing to 52 Railway Parade. However, the secluded private open spaces at 1-4/52 Railway Parade are balconies, therefore Standard B21

(Overshadowing) does not apply. It is acknowledged that the balconies will receive reduced sunlight as a result of this development. The balconies location and orientation mean it would be impossible to develop the subject site in accordance with the purpose of the Residential Growth Zone without having an impact on shadowing. The affected balconies will still receive adequate daylight access. The proposal will comply with Standard B21 in relation to the ground level secluded private open spaces of 5-8/52 Railway Parade.

### **Overdevelopment**

The proposal satisfies the requirements of the Residential Growth Zone, Clause 55, provides an adequate response to DDO24 and therefore the proposal is not considered to be an over development of the site. State Government Policy, particularly Plan Melbourne, as well as Council Policy supports higher densities in areas that are within Activity Centres, or within areas with good access to public transport and other services.

Given the sites location in a Neighbourhood Activity Centre and its proximity to public transport the level of development proposed is appropriate and consistent with State and Local planning policy frameworks.

### **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.

### **Damage to adjoining properties**

Concern has been raised in relation to damage of the adjoining dwellings during construction.

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

### **Impact on existing trees**

A condition of the recommendation requires submission of a landscape plan that requires tree protection zones to be shown on all existing trees near the subject site. This will ensure that the health of nearby trees along the boundary with 4 Austin Crescent is adequately protected.

### **Car Stackers**

The application includes the use of a car stacker in the basement level. In order to ensure the car stacker does not unreasonably impact on the adjoining dwellings, the acoustic report will require an assessment of the noise generated from the use of car stackers.

### **Visual Bulk**

The development complies with the height guidance and provides an acceptable response to the setback requirements of the RGZ2 and DDO24. Therefore, the design and layout of the development is reflective of the policy guidance for increased density on the site, while ensuring that the development does not result in excessive visual bulk to the street or adjoining properties.

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

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

## **7. Financial and Resources Implications**

There are no financial or resource implications.

## **8. Conclusion**

It is considered that, subject to the conditions contained within the recommendation, the development strikes an acceptable balance between providing an increase in residential density while limiting off-site amenity impacts and providing an acceptable level of internal amenity for future residents.

On the balance of policies and controls within the Moreland Planning Scheme and objections received, it is considered that Notice of Decision to Grant a Planning Permit No MPS/2020/185 should be issued.

## **Attachment/s**

- |                          |  |            |
|--------------------------|--|------------|
| <a href="#"><u>1</u></a> | Objector Location Map - 54 Railway Parade, Pascoe Vale | D20/403162 |
| <a href="#"><u>2</u></a> | Advertised Plans - 54 Railway Parade, Pascoe Vale      | D20/403169 |