



**Moreland**  
City Council

## **COUNCIL AGENDA**

### **PLANNING AND RELATED MATTERS**

**WEDNESDAY 16 DECEMBER 2020**

**COMMENCING 6.30 PM**

**THE COUNCIL MEETING WILL BE LIVESTREAMED**

#### **Language Link**

This is the Agenda for the Council meeting.  
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## **Acknowledgement of the traditional custodians of the City of Moreland**

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

- 1. WELCOME**
- 2. APOLOGIES**
- 3. DISCLOSURES OF CONFLICTS OF INTEREST**
- 4. MINUTE CONFIRMATION**

The minutes of the Planning and Related Matters Council Meeting held on 21 October 2020 be confirmed.

## **5. COUNCIL REPORTS**

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## **6. URGENT BUSINESS**

## 5.1 145 GLENLYON ROAD AND 6 PITT STREET, BRUNSWICK - PLANNING APPLICATION MPS/2020/260

Director City Futures

City Development

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### Executive Summary



<b>Property:</b>	145 Glenlyon Road and 6 Pitt Street, Brunswick
<b>Proposal:</b>	Use of the land for trade supplies and restricted retail premises, buildings and works including the construction of a two-storey building with mezzanine, display of business identification signs, reduction in the bicycle requirements and creation of an easement
<b>Zoning and Overlay/s:</b>	<ul style="list-style-type: none"><li>• Industrial 3 Zone (IN3Z) – 145 Glenlyon Road only</li><li>• Mixed Use Zone (MUZ) – 6 Pitt Street only</li><li>• Environmental Audit Overlay (EAO) – 6 Pitt Street only</li><li>• Design and Development Overlay, Schedule 19 (DDO19)</li><li>• Parking Overlay (PO1)</li><li>• Development Contributions Plan Overlay (DCPO1)</li></ul>
<b>Objections:</b>	<ul style="list-style-type: none"><li>• 538 objections<ul style="list-style-type: none"><li>– 414 objections received prior to VCAT appeal being lodged.</li><li>– 124 objections lodged after the VCAT appeal was lodged.</li></ul></li><li>• Key issues:<ul style="list-style-type: none"><li>– Traffic Impacts</li><li>– Safety</li><li>– Noise Impacts</li><li>– Residential Interfaces</li></ul></li></ul>
<b>Planning Information and Discussion (PID) Meeting:</b>	<ul style="list-style-type: none"><li>• Date held: 26 November 2020</li><li>• Attendees: Approximately 65 objectors, the permit applicant, a meeting facilitator, 4 Council officers, and Deputy Mayor Cr Mark Riley, Cr James Conlan, Cr Helen Pavlidis-Mihalakos, and Cr Sue Bolton.</li><li>• The PID allowed for an airing of concerns for the applicants consideration before the VCAT compulsory conference.</li><li>• Three separate meetings were also organised by Council officers with the immediately adjoining objectors to the north (Pitt Street), east (Lygon Street and Glenlyon Road) and west (Loyola Avenue) with the applicant and two Council officers.</li></ul>

<b>Key reasons for refusal</b>	<ul style="list-style-type: none"> <li>• The proposal will adversely impact the traffic levels of the surrounding road network.</li> <li>• The design of the development and the amount of signage proposed fails to respond to the character of the area.</li> </ul>
<b>Recommendation:</b>	It is recommended that Council's submission to VCAT be that no planning permit should be issued for the proposal, based on the grounds outlined in the recommendation.

## Officer Recommendation

That Council's submission to Victorian Civil and Administrative Tribunal be one that no planning permit should be issued for application MPS/2020/260 which seeks permission for the use of the land for trade supplies and restricted retail premises, buildings and works including the construction of a two-storey building with mezzanine, display of business identification signs, reduction in the bicycle requirements and creation of an easement at 145 Glenlyon Road and 6 Pitt Street, Brunswick, based on the following grounds:

1. The proposal will adversely affect the amenity of the neighbourhood through the delivery of goods and the effect of traffic to be generated on roads which is contrary to:
  - a) Clause 18.01-1S (Land use and transport planning) which requires that the traffic forecast demand will demonstrate a minimal adverse impact on existing transport networks and the amenity of surrounding areas.
  - b) Clause 21.02-3 (MSS Strategic Directions) which encourages an integrated transport and land use planning that will support residents and visitors to reduce their travel by ensuring access to local services, education and employment.
  - c) Clause 22.03 (Car and Bike Parking and Vehicle Access) which requires street frontages be prioritised for pedestrian movement and safety.
  - d) Clause 33.03-2 (Use of land) of the Industrial 3 Zone which directs consideration on the effect of traffic to be generated on roads.
  - e) Clause 65.01 (Approval of An Application or Plan) which requires consideration of the adequacy of loading and unloading facilities and any associated amenity, traffic flow and road safety impacts.
2. The use of part of 6 Pitt Street for a loading bay exit associated with a use at this scale and intensity is contrary to:
  - a) Clause 21.03-2 (Land for Industry and Economic Regeneration) which supports change to facilitate quality residential development and contribute to housing supply.
  - b) Clause 32.04 of the Mixed Use Zone which requires that uses complement the mixed-use function of the locality.
3. The oversupply of car parking on site will result in unreasonable traffic generation, contrary to Clause 22.03-3 (Car and Bike Parking and Vehicle Access), which seeks to support reduced car parking rates in favour of alternative transport options 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.
4. The proposal provides inadequate bicycle facilities, including the provision of bicycle parking in inconvenient locations at ground floor and is contrary to Clause 52.34 (Bicycle facilities), which seek to encourage cycling as a mode of transport.
5. The appearance of the development fails to contribute to the fine grain character of the area and does not positively contribute to the preferred character of the area, which is contrary to Clause 21.03-4 (Urban Design, Built Form and Landscape Design).
6. The number and scale of signs are excessive and fails to respect the character of the street, which is contrary to:
  - a) Clause 22.04 (Advertising Signs), which seeks to ensure signs are sensitive to the style, scale and character of the host buildings, nearby buildings, and streetscapes.
  - b) Clause 52.05 (Signs), which seeks to ensure signs are proportionate to the scale and form of the streetscape and host building.

## **1. Background**

### **Subject Site**

The site consists of two lots located at 145 Glenlyon Road and 6 Pitt Street, Brunswick. The site is approximately 60 metres west of Lygon Street and 170 metres south of Albert Street.

145 Glenlyon Road, Brunswick has a frontage of 60.3 metres to Glenlyon Road, a frontage of 3.66 metres to Pitt Street, a maximum depth of 120.8 metres and a total area of approximately 5,395 square metres. The site contains double storey commercial buildings with vehicle access from Glenlyon Road and Pitt Street.

6 Pitt Street has a frontage of 14.17 metres to Pitt Street, a depth of 33.5 metres and a total area of approximately 474 square metres. The site contains a car park associated with the take away food premises at 8 Pitt Street, Brunswick.

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

### **Surrounds**

The surrounding area is characterised by a mix of residential, commercial and industrial premises that range from one to six storeys in height. In addition, the area forms part of the Brunswick Activity Centre and is therefore undergoing substantial change, with mixed use apartment developments emerging along Lygon Street.

The immediate context includes:

- A petrol station and apartment buildings (up to four storeys) to the immediate east of the site (within the Commercial 1 Zone and fronting Lygon Street).
- Single and double storey dwellings on the south side of Glenlyon Road (within the General Residential Zone).
- Three storey apartment buildings and townhouses to the immediate west of the site (within the Neighbourhood Residential Zone and on the north side of Glenlyon Road).
- A take away food premises and single and double storey dwellings fronting Pitt Street to the north (within the Mixed Use Zone).

A location plan forms **Attachment 1**.

### **The Proposal**

The proposal is summarised as follows:

- Use of the land for trade supplies and a restricted retail premises (Bunnings) contained within a two-storey building with a mezzanine office. The floor area of each use is 5395 square metres (Trade Supplies) and 2174 square metres (Restricted Retail Premises)
- The proposed hours of operation are 6:00am to 10:00pm Monday to Sunday
- A total of 250 car parking spaces are provided in two levels of basement to be accessed via to Glenlyon Road.
- A loading bay area is located on the eastern side of the site with trucks to enter via Glenlyon Road and exit via Pitt Street.
- A reduction in the standard bicycle parking requirements from 45 to 14 bicycle parking spaces (31 spaces).
- The display of business identification signs on the northern, western and southern sides of the building.

- The creation of a 2.84-metre-wide carriageway easement along the eastern boundary of 6 Pitt Street, Brunswick to provide access for trucks to exit via Pitt Street.

The development plans form **Attachment 2**.

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

<b>Control</b>	<b>Permit Requirement</b>
Industrial 3 Zone (145 Glenlyon Road)	Clause 33.03-1: A permit is required to use of the land for trade supplies and restricted retail premises*. Clause 33.03-4: A permit is required to construct a building or construct or carry out works.
Mixed Use Zone (6 Pitt Street)	Clause 32.04-2: A permit is required to use of the land for trade supplies and restricted retail premises* Clause 34.02-9: A permit is required to construct a building or construct or carry out works (i.e. accessway) for a Section 2 Use
Design and Development Overlay	Clause 43.02-2: A permit is required to construct a building or construct or carry out works.
Signs	Clause 52.05: A permit is required to display business identification signs in Section 2 of Category 2 of this Clause.
Bicycle Parking	Clause 52.34: A permit is required to reduce the bicycle parking requirements
Easement	Clause 52.02: A permit is required to create an easement

**\*Note:** The use is consistent with the definition of trade supplies and restricted retail premises, with 71 per cent of the commercial floor area dedicated to trade supplies and the remaining commercial floor area to be used as a restricted retail premises.

Clause 73.03 defines trades supplies (as relevant to this proposal) as:

*'Land used to sell by both retail and wholesale, or to hire, materials, tools, equipment, machinery or other goods for use in:*

- a) *building;*
- b) *industry; and*
- c) *landscape gardening'*

Clause 73.03 defines restricted retail premises (as relevant to this proposal) as:

*'Land used to sell or hire:*

- a) *camping, outdoor and recreation goods*
- b) *electric light fittings;*
- c) *animal supplies including equestrian and pet goods;*
- d) *floor and window coverings;*
- e) *furniture, bedding, furnishings, fabric and manchester and homewares;*
- f) *swimming pools;*
- g) *baby and children's goods, children's play equipment and accessories;*
- h) *goods and accessories which:*

*Require a large area for handling, display and storage of goods; or*



*Require direct vehicle access to the building by customers for the purpose of loading or unloading goods into or from their vehicles after purchase or hire.'*

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 will be imposed on any permit that might issue to require the payment of the applicable development contribution levy.
- Clause 53.18: Stormwater Management in Urban Development
- Clause 65.01: Approval of an Application or Plan

## **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 339 notices to the owners and occupiers of adjoining and nearby land.
- By placing signs on the Glenlyon Road and Pitt Street frontages of the site.

Due to COVID-19, the advertising period was extended by one week (total 21 days). Council received 414 objections prior to the VCAT review being lodged. To date, 124 objections have been received after the VCAT review was lodged on 28 September 2020. This amounts to a total of 538 objections that have been received to date.

Two maps identifying the location of objectors forms **Attachment 1**.

The most frequently raised issues in the objections are:

- Traffic Impacts
- Safety
- Noise Impacts
- Residential Interfaces

**Attachment 3** includes a full list of the issues raised in the objections and the frequency that the concerns were raised.

### **VCAT Review and Consultation Meetings**

The *Planning and Environment Act, 1987* (Act) provides an additional option for a permit applicant to apply for a review to VCAT in the circumstances when a Council has not made a decision on an application within 60 statutory days. Throughout Victoria only approximately 60 per cent of planning decisions are determined within 60 statutory days. The antiquated 60 statutory days provisions are not reflective of the complexity of planning decisions now required to be made, as well as Council's commitment to consultation on planning matters, beyond the strict notification and receipt of written objection required by the Act.

It is not uncommon for applicants facing significant objections and therefore a high likelihood of a future VCAT hearing, to take up the option of lodging a review with VCAT once the 60 days has been reached. In lodging a review once 60 days are reached, an applicant will gain the time savings associated with an earlier VCAT hearing date, in what is a lengthy overall VCAT timeframe.

In the knowledge of the number of objections lodged and the absence of a Planning and Related Matters Council meeting in November, due to the elections timeframes, the applicant lodged an application for review with VCAT as a decision had not been made within 60 statutory days.

While this application will now be determined through a VCAT process which includes an opportunity for a VCAT Compulsory Conference (or mediation), Council officers remained committed to processes that would allow for a discussion of objector concerns in order to assist Council's consideration of the application and to better inform Council's position at the VCAT hearing. Following the election caretaker period and the swearing in of Council, a Planning Information and Discussion meeting was held on 26 November 2020. The PID was attended by Deputy Mayor Cr Mark Riley, Cr James Conlan, Cr Helen Pavlidis-Mihalakos, Cr Lambros Tapinos and Cr Sue Bolton, the meeting facilitator, four Council Planning Officers, the applicant representatives and approximately 65 objectors. The meeting provided an opportunity to better explain the application, for the objectors to elaborate on their concerns and for the applicant to respond.

Three separate consultation meetings were also arranged with the immediately adjoining objectors to the north (Pitt Street), east (Lygon Street and Glenlyon Road) and west (Loyola Avenue) with the applicant and two Council officers. These meetings focused on the immediately affected objectors to discuss potential resolution of their concerns in relation to building height, setbacks and amenity impacts. These meetings allowed for an airing of concerns for the applicants consideration, before any VCAT compulsory conference. No agreements to possible changes were reached, however, the applicant indicated that issues raised about the number and frequency of trucks, the swept paths to Pitt Street and Lygon Street and the existing noise sources identified in the Acoustic Reports, would be taken on notice and may form part of revised documents lodged through the VCAT process. It was evident through the consultation meetings from the clear expression of objectors that traffic, safety and noise were the major concerns with the proposal.

## Referrals

Internal Branch/Peer Review	Comments
Urban Design Unit	Concerns were raised with the proposal which are addressed in detail in Section 4 of this report.
Sustainable Built Environment Unit (Development Advice Engineer)	Concerns were raised with the proposal which are addressed in detail in Section 4 of this report. Council sought a peer review of the Traffic Report provided by the Applicant which was undertaken by Ratio Consultants. The findings of the peer review are discussed later in this report. The peer review report is included at <b>Attachment 4</b> .
Sustainable Built Environment Unit (ESD Team)	No objections were offered to the proposal subject to modification, which could be addressed by conditions, were a permit to issue.
Open Space Design and Development Unit	No objections were offered to the proposal, which will be discussed in more detail later in this report.
Strategic Planning Unit	No objections were offered to the proposal, which will be discussed in more detail later in this report.
Economic Development Unit	No objections were offered to the proposal, which will be discussed in more detail later in this report.

## 3. Policy Implications

### Planning Policy Framework (PPF)

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

- Clause 11: Settlement including:
  - Metropolitan Melbourne (Clause 11.01-1R1)

- Water Conservation (Clause 14.02-3S)
- 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 17.01: Employment
- Clause 18.01: Integrated 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 21.03-4 Urban Design, Built Form and Landscape Design
- Clause 21.03-5 Environmentally Sustainable Design (Water, Waste and Energy)

Local Planning Policies:

- Clause 22.03 Car and Bike Parking and Vehicle Access
- Clause 22.04 Advertising Signs
- Clause 22.08 Environmentally Sustainable Design

The land at 145 Glenlyon Road is located within an Employment Area in the Moreland Industrial Land use Strategy. This is a location in which Council through its MSS, supports the transition to a broader range of employment generating uses, including a mix of industry and office-based uses and other compatible employment uses. The land at 6 Pitt Street is located in a Transition Residential Area, which supports the transition towards residential development. This will be discussed in more detail later in this report.

### **Planning Scheme Amendments**

#### ***Amendment C193***

Amendment C193 seeks to rezone 145 Glenlyon Road, Brunswick to a Commercial 3 Zone. If the site was rezoned to a Commercial 3 Zone, the use of the land for a restricted retail premises and trade supplies would be prohibited.

The amendment was submitted to the Minister for Planning on 22 October 2019 with a request to formally prepare and exhibit the amendment. This represents the first stage in the planning scheme amendment process. DELWP have placed the Amendment on further review and have recently advised Council officers that it will remain on further review until further strategic work that confirms the commercial floor area required across the municipality is completed and its impact on the proposed amendment can be considered.

As the amendment is at an early stage that has not been through the notification process or been reviewed by an independent planning panel, it is considered that the amendment should be afforded limited weight in the consideration of this application. It is not appropriate that anyone is prevented from lodging a planning application for land affected by an amendment at this early stage of the process.

## Human Rights Consideration

This application has been processed in accordance with the requirements of the *Planning and Environment Act 1987* (including the Moreland Planning Scheme) reviewed by the State Government and which complies with the *Victorian Charter of Human Rights and Responsibilities Act 2006, including Sections 15 (Freedom of expression) and Section 18 (Taking part in public life)*. In addition, the assessment of the application has had particular regard to:

- Section 12: Freedom of movement
- Section 13: Privacy and Reputation
- Section 20: Property rights

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

## 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.

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

That part of the site at 145 Glenlyon Road is located within the Industrial 3 Zone, which seeks to provide a buffer between Industrial 1 and 2 zones and local communities, to allow limited retail opportunities and ensure that uses do not affect the safety and amenity of more sensitive land uses.

That part of the site at 6 Pitt Street is located within the Mixed Use Zone, which seeks to provide for a range of uses that complement the mixed-use function of the locality and to encourage development to respect the character of the area.

145 Glenlyon Road is located within an Employment Area as defined by Clause 21.03-2 (Land for Industry and Economic Regeneration).

The relevant objective of this policy is:

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

The relevant strategies of this policy include to accommodate a broader range of employment generating uses, provide flexible floor plates, minimise the adverse amenity and environmental impacts and provide development of a high quality to contribute to an overall improvement in the amenity of the area.

6 Pitt Street is located within a Transition Residential Area, which seeks *to support change in Transition Residential Areas (Category 3) to facilitate quality residential development and contribute to housing supply*. The relevant strategies of this policy include to discourage new or expanding industry and businesses within these areas and by encouraging redevelopment to be of a high quality to contribute to an overall improvement in the amenity of the area.

For the land at 145 Glenlyon Road, the use is supported by the Category 2 Employment area in which it is located. The application outlines that the use will generate 90 additional jobs. While the purpose of the zone is to allow limited retail opportunities, the intent of this purpose would be to ensure that industrial areas are not eroded by the operation of large or numerous retail uses. Given that this is a stand-alone Industrial 3 Zone in an Activity Centre, it is not considered that the use is at odds with the zone.

In addition:

- The use of the land for a Bunnings would serve the weekly shopping and service needs of the local and broader community.
- An Industrial 3 Zone is a suitable location for a Bunnings, as evidenced by the Bunnings at 64-74 Gaffney Street, Coburg being located within the same zone.
- The ground floor has a floor to ceiling height of 6.5 metres which can facilitate a variety of commercial uses over time.
- While Council's MSS at Clause 21.03-2 seeks to support restricted retailing on main roads within Core Industry and Employment Areas, the proposed uses still meet the objectives of Employment Areas in that it provides employment generating uses on a major Council road.

6 Pitt Street is in a Mixed Use Zone and in a Transition Residential Area. The loading bay exit proposed on the land associated with a use at the scale and intensity of that proposed, where large trucks will be regularly exiting into Pitt Street, is considered to be at odds with the purpose of the zone and the Transition Residential Area purpose.

### **Noise**

An acoustic report prepared by Octave Acoustics was submitted with the application as well as a peer review of the acoustic report that was prepared by Cogent Acoustics. The reports identified key noise sources that could have an adverse amenity impact on the nearby residential properties as noise from the loading bay, waste collection, cutting shop and mechanical services equipment. Subject to conditions, were a permit to issue, the residential properties would be satisfactorily protected from unreasonable levels of noise from the site. The operator will be required to meet relevant State Environmental Protection Policies regarding noise emanating from the site to ensure noise impacts are mitigated. The Acoustic Report, supported by the peer review, recommended the following conditions to ensure ongoing compliance with SEPP N-1 noise limits:

- A maximum of three deliveries per any half hour;
- Waste collection restricted to a maximum of one collection per any half hour;
- The use of the loading bay be restricted to 7am-6pm Monday to Friday and 7am-1pm Saturday;
- The use of the cutting shop to operate from 7am to 10pm Monday to Sunday;
- Noise from the operation of the roller door from the loading bay to within 'Trade Sales' should not exceed 65dB LAmax (the maximum noise level) at 2m from the door; and
- An Acoustic Report be provided that determines how the mechanical plant equipment would achieve compliance with SEPP N-1.

Subject to these conditions, were a permit to issue, the noise from the site could be satisfactorily controlled to ensure ongoing compliance with SEPP N-1 noise limits and effectively mitigate the noise impacts on nearby dwellings.

### **Hours of Operation**

The proposed hours of operation are 6 am to 10 pm Monday to Sunday.

Subject to the sites ongoing compliance with SEPP N-1 and the restrictions on the hours of the loading bay and cutting shop, and in recognition of the former industrial use and zoning, it is reasonable in this location to allow the proposed hours of operation. The hours of operation are deemed appropriate within an Activity Centre where a variety of businesses operating across the day are expressly encouraged to be located by Council's strategic policy framework. Subject to conditions, were a permit to issue, the proposed hours of operation would not have unreasonable impacts on the nearby residential properties and are deemed acceptable.

For these reasons, the proposed uses could be accommodated on the site. However, the scale and intensity of the use for a Mixed Use Zone, the appearance of the development and the traffic impacts associated with the use, result in the proposal not being supported.

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

Both sites are affected by DDO19, which identifies a preferred overall building height of 14 metres, requires setbacks from the residential land to the west of the subject site and seeks commercial activation to Glenlyon Road.

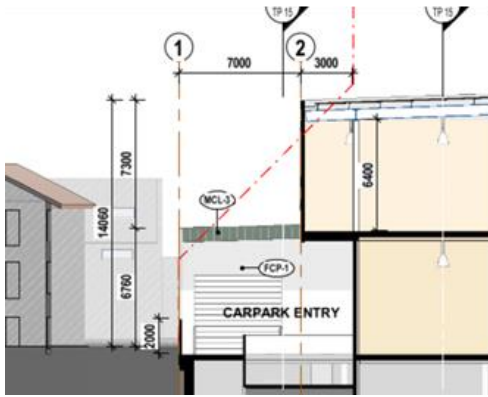
#### ***Built Form***

DDO19 has a preferred maximum building height of 14 metres for the site. The building has a street wall height of 14.2 metres to Glenlyon Road, with a maximum height of 15.4 metres behind the street wall, which is a variation of 1.4 metres. Despite the development exceeding the preferred maximum height, the height of the building would not be dissimilar to the height of a four-storey building, which would contribute to the preferred mid-rise built form character of the area. While a minor increase in the height of the building would be acceptable, in combination with the other built form issues, the proposed development cannot be supported.

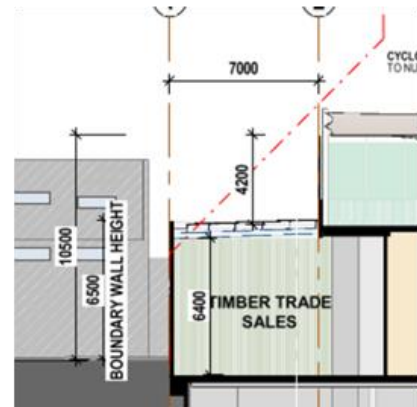
Clause 21.02-4 seeks to ensure that '*development responds and contributes to its context.*' While the appearance of the building is driven by the Bunnings brand identity, the design of the building does not respond to the character of the area. Council's Urban Design Unit do not support the appearance of the building due to the excessive use of metal cladding panels that result in the development appearing dominant within the streetscape. The development presents to Glenlyon Road as a homogenous building through the repetitive use of cladding and the overuse of green on the building. This does not contribute to the fine grain streetscape character of the area and fails to provide articulation and visual interest through the lack of brickwork or similar fine grain materials, which would respond to the context of the site. This is exacerbated by the excessive amount of signage proposed, which will be discussed in more detail later in the report.

#### ***Setbacks to Residential Land***

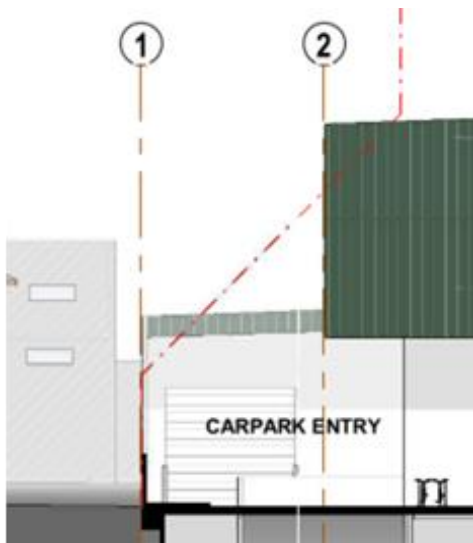
The residential properties to the west of the site are zoned Neighbourhood Residential and are outside of the Brunswick Activity Centre. While parts of the development comply with the setbacks specified in DDO19, the height of walls on the western boundary and parts of the first floor encroach into the required setbacks from residential land. The diagrams below depict the required setback in red to demonstrate where the proposed building encroaches into this setback. While the eastern side of 133 Glenlyon Road is predominately used for vehicle access, 2A and 2B Loyola Avenue have private open space areas on the eastern side of the buildings. Were a permit to issue, the parts of the development that are adjacent to secluded private open space areas of adjoining dwellings and encroach into the specified setbacks could be conditioned to comply with the DDO19.



*Section Diagram adjacent to 2A Loyola Avenue*



*Section Diagram adjacent to 2B Loyola Avenue*



*Section Diagram adjacent to 133 Glenlyon Road*

### **Public Realm Interface**

The proposal contributes to improving the public realm interface by:

- The development provides a commercial frontage to Glenlyon Road in accordance with DDO19 and includes windows on the southern side of the building at all levels to provide surveillance to Glenlyon Road.
- The entrance to the Bunnings and the café are located along the Glenlyon Road frontage, which provides activation to the site's frontage. Council's Urban Design Unit have recommended that were a permit to issue, conditions should be included to break up the uninterrupted glazing along the frontage.
- The car parking facilities do not dominate the streetscape as customer and staff parking are located within the basement. The extent of the industrial crossover to the loading bay is considered acceptable given that it only occupies approximately 10.7 per cent of the Glenlyon Road frontage and would be visually recessive to the proposed building.

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

Clause 18.01-1S and Clause 65.01 of the planning scheme note the effects of traffic to be generated on roads as a relevant consideration on the impact of the proposal on the amenity of the neighbourhood and the appropriateness of the development within the sites context. A Traffic Impact Assessment prepared by TTM Consulting (the "Traffic Report") was lodged with the application. The traffic generation calculated in the Traffic Report was based on surveys of vehicles entering and departing both car parks at the existing Bunnings Warehouse development located at 266 Darebin Road, Fairfield, which was claimed to be a Bunnings in a similar context and of a similar size. However, the proposed Bunnings is more than double the size of Bunnings Fairfield and the contextual locations are arguably different.

Council's Development Engineers have estimated that a more accurate analysis of the traffic generated by the Bunnings would result in the traffic queue extending across the Glenlyon Road frontage of the site, which will have major traffic implications for the surrounding road network. It is estimated that the amount of traffic generated by the proposal would increase travel times on bus route 506, create safety issues for drivers, cyclists and pedestrians and would increase traffic on local roads due to the difficulty drivers will have in turning towards Lygon Street from the site. The traffic impacts associated with the Bunnings are therefore considered to be excessive and fail to ensure that the traffic generated by the proposal does not adversely impact the amenity of the surrounding area. Consequently, the proposal cannot be supported based on the findings of the TTM Traffic Report and the likely traffic impacts the proposal will generate.

Ratio Consultants have also conducted a peer review of the TTM Traffic Report, at the request of Council, and affirmed Council's Development Engineers assessment that the traffic modelling was deficient and should not be relied upon by Council to determine the traffic generated by the proposal. Ratio Consultants have also raised concern that large trucks exiting via Pitt Street will result in queueing along Pitt Street, which unreasonably impacts this local street.

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

Clause 22.03-3 (Car and Bike Parking and Vehicle Access) seeks to support reduced car parking rates in developments within or close to activity centres and encourage higher rates of bicycle parking. Clause 52.06 of the Moreland Planning Scheme requires that a total of 76 car spaces be provided for the uses. It is noted that the size of the car spaces could accommodate utes, which are commonly used as trade vehicles. There are also two trailer bays in the basement. With 250 on-site spaces proposed, an oversupply of car parking results, which is contrary to Council's policy for reduced car parking rates within Activity Centres. Council's Development Engineers are not supportive of the number of car parking spaces provided due to the volume of traffic likely to be generated by the number of car parking spaces provided. The proposed number of car parking spaces is therefore not supported.

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

A reduction in the bicycle parking requirements from 45 to 14 spaces (31 spaces) is sought for the proposed use. While larger items may not be practical to be transported via bicycle, it is considered that bicycle parking spaces should be increased for the transport of smaller goods and for the staff. Were a permit to issue, a condition could require the provision of at least 45 bicycle parking spaces.



Glenlyon Road is identified by the Department of Transport as part of the principal bicycle network, which provides access to major destinations in the Melbourne metropolitan area. Council's Development Engineers have reviewed the impacts of the Glenlyon Road vehicle access on the bicycle lanes abutting the site and recommended that were a permit to issue, that the bicycle lane across the frontage of the site have the standard green coloured bicycle treatment installed, at the cost of the landowner, to highlight the presence of the bicycle lanes to drivers.

The peer review of the Traffic Report by Ratio Consultants has identified that the ground level bicycle parking requires cyclists to cross the driveway to the basement, which is unsafe for the cyclists and may affect the usability of these bicycle spaces. Were a permit to issue, the bicycle racks would need to be relocated to have separate access to Glenlyon Road that is clear of vehicles and driveways. The layout of the development therefore provides bicycle parking in inconvenient locations and fails to provide adequate bicycle facilities to encourage cycling to the retail premises, which is contrary to Clause 52.34 (Bicycle Facilities).

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

Clause 65.01 requires consideration of the adequacy of loading and unloading facilities. While supportive of the provision of a loading bay, Council's Development Engineers and the peer review found that the Traffic Report failed to demonstrate how the largest delivery vehicle will turn into Pitt Street and turn out of Pitt Street into Lygon Street. It is therefore unclear whether the movement of trucks entering the loading bay by Glenlyon Road and exiting via Pitt Street would be acceptable. The noise impacts associated with the loading bay will be discussed later in this report.

At the PID, the applicant was questioned about whether it would be possible for delivery times to occur outside of peak times for pedestrian movements associated with school drop off and pick up. The applicant has advised that they would not agree to a condition to restrict delivery times at this stage.

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

The site is in an Industrial 3 Zone with dwellings to the immediate north and west and east of the site. The key off-site amenity impacts for these dwellings associated with the proposed building would be overshadowing, overlooking, daylight to balconies and the emission of noise, odour and dust, which will be discussed in turn below.

#### ***Overshadowing***

The purpose of the Industrial 3 Zone is to '*ensure that uses do not affect the safety and amenity of adjacent, more sensitive land uses*'. DDO19 also seeks to maintain reasonable amenity for residential properties adjacent to or within the activity centre. The proposed development will not generate any additional overshadowing to the balconies to the west of the site (Loyola Avenue) but will generate additional overshadowing to the ground level secluded private open spaces (SPOS) at 133 Glenlyon Road and 149-151 Glenlyon Road, Brunswick. The proposal will not generate any additional overshadowing to the remaining ground level SPOS to the immediate east and west of the site. Although not applicable in this scenario (of shadows cast from land in an industrial zone to land in a commercial zone), an assessment of overshadowing impacts using the ResCode overshadowing standards is useful to determine whether the proposal has responded to the above zone purpose. This assessment reveals the following:

3/149-151 Glenlyon Road			4/149-151 Glenlyon Road		Ground Level SPOS at 133 Glenlyon Road*	
Time	Increase in shadowing	Amount of Unshadowed SPOS (56sqm total)	Increase in shadowing	Amount of Unshadowed SPOS (60sqm total)	Increase in shadowing	Amount of Unshadowed SPOS (31sqm total)
9:00	No Change	No Change	No Change	No Change	1sqm	17sqm
10:00	No Change	No Change	No Change	No Change	No Change	No Change
11:00	No Change	No Change	No Change	No Change	No Change	No Change
12:00	No Change	No Change	No Change	No Change	No Change	No Change
13:00	12.7sqm	18.7sqm	No Change	No Change	No Change	No Change
14:00	19.2sqm	0sqm	No Change	No Change	No Change	No Change
15:00	No Change	No Change	32sqm	6.7sqm	No Change	No Change

*\*Note: Given 133 Glenlyon Road, Brunswick is on a Strata Title, the Apartment number is unknown. The affected SPOS is the ground level SPOS nearest the subject site.*

Despite being located in or adjacent to an Activity Centre, where amenity expectations should not be the same as a purely residential context, it is considered that the design of the proposed building should respond better to the interface to reduce overshadowing. The height of the proposed building where it abuts the adjoining secluded private open spaces is between 14.4 metres and 15.4 metres. Were a permit to issue, a condition could be included to reduce the height of the wall to 14 metres to reduce the amount of shadowing to the adjoining dwellings. This would bring the height of the building in line with the DDO19 and would therefore meet the amenity expectations for dwellings within this location.

### **Overlooking**

Despite no overlooking standard applying to the development of the land within an Industrial 3 Zone, the proposed development has been designed to prevent unreasonable overlooking into the dwellings surrounding the site through the use of cyclone mesh screening to the outdoor nursery and by not providing windows to the sides and rear of the building. Were a permit to issue, a condition could require a screen diagram of the cyclone mesh screening to ensure that the screens limit overlooking into the adjoining dwellings.

### **Daylight to Balconies**

Although the Industrial 3 Zone does not include a standard to ensure an adequate level of daylight to existing balconies on adjoining properties is achieved, the development has provided a 3-metre-wide light court where the site abuts balconies constructed to the shared boundary with 191-193 Lygon Street, Brunswick. An assessment against the ResCode daylight to existing windows standard reveals that the size of the light court would exceed the requirements of that standard, which requires a 3 square metre light court. The size of the light court, being 26 square metres and 3 metres wide, is acceptable having regard to the location of the balconies on a boundary, due to the light court exceeding the width of the light court between the two balconies and due to the industrial zoning of the subject site. The light court will ensure an adequate amount of daylight is received to the existing balconies.

## **Odour and Dust Emission**

The Industrial 3 Zone requires consideration of the impact of the use on the amenity of the neighbourhood. Of relevance to this proposal, the emission of odour and dust from the site must not adversely affect the amenity of the neighbourhood. The use will not adversely impact the surrounding area in relation to odour given that goods sold are typically packaged or would not emit an odour. While an odour can typically be associated with a nursery, Bunnings soil is pre-packaged and plants are sold in pots, which minimises the odour emitted from the site and ensures it will not adversely impact the amenity of the area. Dust associated with a Bunnings is typically associated with the timber trade sales area. However, this 'cut shop' is fully enclosed and is located approximately 30 metres from the nearest entrance to the building, which would minimise the amount of dust.

### **Does the number of objections received indicate a significant social effect of the proposal?**

Given that 538 objections have been received to date, consideration must be given to whether the proposal has a significant social effect. In *Minawood Pty Ltd v Bayside City Council (Red Dot) 2009*, the social effects of a proposal include the impact on:

- the demand for or use of community facilities and services
- access to social and community facilities
- choice in housing, shopping, recreational and leisure services
- community safety and amenity
- the needs of particular groups in the community, such as the aged.

In determining whether the social effects of a proposal are significant, *Rutherford & Ors v Hume City Council (Red Dot) 2014* concluded that the following must be considered:

- the aspects of the proposed use or development that require a permit
- the purpose of the permit requirement
- the planning scheme provisions that apply to the assessment of the application
- the causal connection between the social effect the proposed use or development
- the probability of the effect occurring and its likely consequences
- whether the community or an identifiable section of the community is affected (as distinct from individuals)
- the availability of objective facts or information that provide evidence of a likely social effect.

It is acknowledged that although a large number of objections were received. This does not, by itself, establish that the proposal will have a significant social effect. As discussed above, the proposed use in a stand-alone Industrial 3 Zone in an Activity Centre is considered to be consistent with land use outcomes sought by the planning scheme. Whilst a different conclusion has been reached for the land at 6 Pitt Street, having regard to the above caselaw, it is not considered that this equates to a significant social effect. Issues have been raised in relation to the use's impact on the safety and amenity of the area and the assessment outlined in this report concludes that there would be some off-site amenity impacts and traffic impacts if the use and development was approved in its proposed form. However it is considered that these impacts are confined to the scale of the development. It is not considered that a satisfactory causal connection can be established between the social effect and the proposed uses.

In both *Rutherford & Ors v Hume City Council (Red Dot) 2014* and *Minawood Pty Ltd v Bayside City Council (Red Dot) 2009*, VCAT found that there must be substantial evidence that an application will have demonstrable social impacts on the community (as distinct from individuals) of an identifiable scale or extent, which was not established in either of these decisions.

While objector parties may choose to pursue a social impact argument at a future VCAT hearing it is not considered that there is a sufficient case for Council to include this as a ground for refusal of this particular application.

#### **Is the proposed easement creation appropriate?**

Clause 52.02 (Easements, Restrictions and Reserves) requires that the proposed creation of the easement of carriageway must consider the interests of affected people.

Planning Permit MPS/2018/1010 was issued on 25 February 2020 at the direction of VCAT for buildings and works associated with a take away food premises at 6-8 Pitt Street and 145 Glenlyon Road, Brunswick. Were a permit to issue, a condition could require that prior to any development associated with the use commencing, planning permit MPS/2012/1010 would need to be amended to accommodate the easement.

The affected property at 6 Pitt Street, Brunswick is within the same ownership as 145 Glenlyon Road, Brunswick and therefore the owner was made aware of the planning permit application and the creation of the easement. The occupier of 6 Pitt Street did not object to this application.

As previously discussed, the use of 6 Pitt Street for a loading bay exit and the requirement for this easement, is unacceptable having regard to Clause 21.03-2 and the purpose of the Mixed Use Zone.

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

Subject to conditions recommended by Council's ESD Unit, ESD features of the development are considered to be adequate and were a permit to issue could include:

- 100 000 litre water tank volume
- STORM score of 100
- 100KW solar PV system

Subject to these features being included in the development, Council's ESD Unit would be generally supportive of the proposed development, were a permit to issue.

#### **Does the proposal result in excessive loss of trees and habitat?**

Given that the land is zoned for industrial purposes and there are no specific vegetation protection overlays applicable to the site, there is limited scope to require the retention of trees. A 'Development Impact Assessment' prepared by Arbour Survey was lodged with the application and identified 8 groups of trees on the site that would require removal. The trees are not considered to be of such importance to warrant significant redesign to enable their retention. Council's Open Space Unit support the proposed removal of vegetation on the site given that the trees are of low to moderate arboricultural value.

#### **Do the signs respond to the preferred signage character of the area?**

The site is zoned Industrial 3, which is in Category 2 (low limitation) of Clause 52.05. The purpose of Category 2 is to provide for adequate identification signs and signs that are appropriate to office and industrial areas.

The extent of signs proposed are excessive and fail to respond to Clause 22.04 (Advertising Signs) of the Moreland Planning Scheme. The total of eight signs with a display area of approximately 341 square metres is not consistent with the character of the area, where signs are small and typically limited to one or two signs per premises. Council's Urban Design Unit do not support the total number and scale of the signs, as it fails to respond to the character of the area and does not respect the interfaces with residential properties. The extent of signage will be visually dominant within the streetscape and from the adjoining dwellings, which is not appropriate within the context of the site.

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

The site is potentially contaminated due to the site formally being a clay pit area and due to the previous use of 149-151 Glenlyon Road as a drycleaner. The applicant has submitted an environmental site assessment report detailing the extent of site contamination and confirming that the site would be appropriate for the intended uses subject to the completion of an Environmental Audit. Were a permit issued, a condition should require 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:

- Amenity Impacts
- Building Height
- Bunnings doesn't suit area
- Car Parking
- Contamination
- Contravenes DDO and Structure Plan
- Daylight to Apartments
- Daylight to Existing Balconies
- Design Detail
- Excessive Signage
- Hours of Operation
- Impact on Bicycle Lanes
- Inappropriate Development
- Noise Impacts
- Overlooking
- Overshadowing
- Reduction in Bike Parking
- Residential Interfaces
- Safety
- Smell
- Traffic Impacts
- Vehicle Access via Pitt Street
- Visual Bulk

Other issues raised by objectors are addressed below.

### **Already Bunnings on Sydney Road**

The proximity of the site to an existing Bunnings is not a relevant consideration on which Council can base a decision to either approve or refuse an application.

### **Impact on Existing Businesses**

The purpose of the Industrial zone encourages a range of land use activities. That there is a similar use to that proposal close to the site is not adequate justification to refuse the application. The decision guidelines of the Planning Scheme and Planning and Environment Act do not accommodate consideration of lost income arising as a result of new development and competing land uses.

### **Property values**

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

### **Construction issues**

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.

### **Increase in pollution**

A development of this nature, within an established urban setting, is unlikely to have a noticeable impact on air pollution levels. As previously discussed, the emission of odour, dust and noise from the site can be appropriately managed so that there are no unreasonable amenity impacts.

### **Overdevelopment**

The non-compliances with the setbacks to residential land requirements of DDO19, coupled with the unreasonable traffic impacts generated by the proposal, are indicative that the proposal is an overdevelopment of the site.

### **Pitt Street Streetscape Works**

Council has undertaken a design for streetscape improvements for the corner of Pitt Street and Lygon Street, Brunswick, with the aim to improve pedestrian amenity, accessibility, walkability, and presentation at this intersection. The construction of the works is set to commence in 2022. The proposed vehicle access via Pitt Street will have an impact on the design of the streetscape and were a permit to issue, it is likely that the plans for the streetscape would need to be amended to accommodate the movements of semi-trailers exiting via Pitt Street. The changes required to accommodate truck movements from the site are likely to create a poorer pedestrian experience along Pitt Street, which further emphasises the inappropriateness of the use of Pitt Street for the exiting of large trucks from the site.

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

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

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

There are no financial or resource implications.

## 8. Conclusion

It is considered that the proposed use and development will have an unreasonable impact on the traffic within the surrounding area and cannot be supported. The development also fails to respect the character of the area and does not provide setbacks from the adjoining residential land to ensure that the site provides an appropriate transition to the lower-rise residential land to the west of the site.

On the balance of policies and controls within the Moreland Planning Scheme and objections received, it is considered that Council's submission to VCAT be to not support the application No. MPS/2020/260 for the reasons detailed in the recommendation.

### Attachment/s

1	<a href="#">↓</a> Objector Location Map - 145 Glenlyon Road and 6 Pitt Street, Brunswick	D20/478300
2	<a href="#">↓</a> Advertised Plans - 145 Glenlyon Road and 6 Pitt Street, Brunswick	D20/478306
3	<a href="#">↓</a> Summary of Objections - 145 Glenlyon Road and 6 Pitt Street, Brunswick	D20/478440
4	<a href="#">↓</a> Peer Review of Traffic Report - 145 Glenlyon Road and 6 Pitt Street, Brunswick	D20/484636

## 5.2 11-15 BRUNSWICK ROAD, BRUNSWICK EAST - PLANNING APPLICATION MPS/2014/1048/C

Director City Futures

City Development

### Executive Summary



<b>Property:</b>	11-15 Brunswick Road, BRUNSWICK EAST
<b>Proposal:</b>	<p>Amend Planning Permit MPS/2014/1048/B to amalgamate the seven ground floor commercial tenancies (office/retail) into a childcare centre.</p> <p>The childcare centre would operate Monday – Friday 6:30am – 6:30pm with outdoor areas operating between 8:00am – 5:30pm and would accommodate a maximum of 50 children.</p>
<b>Zoning and Overlays:</b>	<ul style="list-style-type: none"> <li>• Commercial 1 Zone</li> <li>• Design and Development Overlay 22</li> <li>• Environmental Audit Overlay</li> <li>• Parking Overlay 1</li> <li>• Development and Contributions Plan Overlay</li> </ul>
<b>Strategic setting:</b>	<div>Minimal housing growth</div> <div>Incremental housing growth</div> <div>Increased house densities encouraged</div> <div>Significant housing growth</div>
<b>Objections:</b>	<ul style="list-style-type: none"> <li>• 15 objections</li> <li>• Key issues: <ul style="list-style-type: none"> <li>- Car parking/traffic congestion</li> <li>- Noise</li> <li>- Safety</li> </ul> </li> </ul>
<b>Planning Information and Discussion (PID) Meeting:</b>	<ul style="list-style-type: none"> <li>• Date held: 30 November 2020</li> <li>• Attendees: Two objectors, the applicant, two Council officers, and Cr Riley and Cr Conlan</li> <li>• The PID provided the opportunity for concerns to be raised and discussed. The following agreement was reached at the PID meeting: <ul style="list-style-type: none"> <li>– A maximum of 25 children to occupy the outdoor play areas at any one time, as a condition of any permit granted.</li> </ul> </li> </ul>



<b>Key reasons for support</b>	<ul style="list-style-type: none"> <li>• The childcare centre has strategic support in the Planning Policies Framework of the Moreland Planning Scheme</li> <li>• The use of the land for a childcare centre is consistent with the purpose of the Commercial 1 Zone</li> <li>• The proposal would provide adequate car parking for the change in use</li> <li>• Noise impacts can be appropriately managed</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

The changes to the conditions as part of this application are in **bold**

That a Notice of Decision to Grant an Amended Planning Permit No. MPS/2014/1048/C be issued for the construction of a 9 storey building over 3 basement levels, use of land for dwellings and childcare centre and alteration of access to a road in a Road Zone, Category in accordance with the endorsed plans at 11-15 Brunswick Road, BRUNSWICK EAST, subject to the following conditions:

- 1A. Prior to the commencement of any works approved by amendment MPS/2014/1048/C or the use commencing, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed to supersede the corresponding previously endorsed plans and will then form part of the permit. The plans must be generally in accordance with the plans prepared by Rothe Lowman Architects and the landscape plan prepared by LBA Design advertised by Council on 15 July 2020 but modified to show:**
  - a) Measures recommended by the Traffic Report prepared by Traffix Group (18 June 2020), including:**
    - i. Line marked pedestrian zone (1.5m wide) adjacent to the car spaces allocated to the child care centre. The line marking shall be provided via 600mm wide chevrons and shall provide for an informal pedestrian path between the car spaces and the pedestrian entry into the lobby;**
    - ii. Additional convex mirrors located in positions to improve the sight distances for car negotiating the carpark; and**
    - iii. Signage identifying reduced traffic speeds within the carpark and warning of pedestrian movements.**
  - b) Any changes as required by the amended Sustainability Management Plan required by Condition 4.**
1. Before the use and development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the plans prepared by Rothe Lowman Architects dated 14 September 2016 but modified to show:
  - a) Drawing TP01.11 replaced with TP01.11 Revision A dated 10 April 2017.
  - b) Amendments as shown on Rothe Lowman sketch plans and 3D renders emailed to Council of 3 March including the following:
    - i. The glass line of the entry has been brought closer to the title boundary after discussion with council with the aim is to increase the sense of entry and activation. Authorities will not approve relocation of gas metre or substation.
    - ii. The lobby entry glass line follows the profile of the terrace above to allow a neat ordered street presentation.
    - iii. Stairs and disabled access platform lift have been brought forward into the air-lock which allows shared use of the platform lift for both residential and commercial access.
    - iv. Secure visitor access to the commercial units introduced (separate from residential).

- v. Artwork to address the entry whilst concealing the substation and gas rooms. This will form a backdrop to the bicycle storage hoops in front.
  - vi. Raised planters at ground level.
  - vii. Changes to the balustrade solution to provide more detail and to assist in concealing any views of condensers on balconies.
  - viii. Subtle changes to the grouping and hierarchy of the white concrete 'frames' and the rhythm of the level 1 terrace groupings.
- c) Deletion of the 'restricted parking space' on TP4.03 to provide for the turning of the waste collection vehicle.
  - d) Any changes required to the plans arising from the recommendation / implementation of the ESD Management Plan required by Condition 4 of this permit.
  - e) Any changes required to the plans arising from the recommendation / implementation of the Disability Access Plan required by Condition 10 of this permit.
  - f) Any changes required to the plans arising from the recommendation / implementation of the Acoustic Report required by Condition 12 of this permit.
  - g) Any changes required to the plans arising from the recommendation / implementation of the Environmental Audit required by Condition 16 of this permit.
  - h) Any changes required to the plans arising from the recommendation / implementation of the Waste Management Plan required by Condition 22 of this permit.
  - i) Any changes required to the plans arising from the recommendation / implementation of the Landscape Plan required by Condition 23 of this permit.
  - j) A schedule of all proposed exterior decorations, materials, finishes and colours, including colour samples (3 copies in a form that can be endorsed and filed).
2. The use and development as shown on the endorsed plan(s) must not be altered or modified unless with the further written approval of the Responsible Authority.

#### **Development Contribution Plan**

3. 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 indexed in accordance with the indexation provisions of the applicable schedule to the Development Contributions Plan Overlay.

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.

## Environmentally Sustainable Design

4. Prior to endorsement of plans **associated with amendment C to this planning permit**, a revised Environmentally Sustainable Management Plan (SMP) must be submitted and approved by the Responsible Authority. The SMP must be in accordance with the Sustainability Management Plan **prepared by WGE (1 March 2018)**, amended to **take into consideration the child care centre** and provide additional detail to demonstrate the development achieves 4 star Green Star or equivalent.
5. When submitted and approved to the satisfaction of the Responsible Authority, the amended SMP and associated notated plans will be endorsed to form part of this permit.
6. All works must be undertaken in accordance with the endorsed SMP to the satisfaction of the Responsible Authority.
7. Prior to the occupation of any dwelling approved under this permit a report from the author of the SMP, or another suitably qualified person, approved pursuant to this permit or similarly qualified person or company, must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm that all measures specified in the SMP have been implemented in accordance with the SMP.
8. Prior to the commencement of works detailed plans showing stormwater treatment initiatives and devices must be submitted and approved to the satisfaction of the Responsible Authority ('Stormwater Treatment Plan').
9. Once approved the Stormwater Treatment Plan must form part of the endorsed plans and initiatives must be incorporated into the development to the satisfaction of the Responsible Authority.

## Disability Access Plan

10. Prior to the endorsement of plans, a Disability Access Plan must be prepared by a suitably qualified access auditor to assess any plans and provide advice/recommendations on access and mobility issues to the satisfaction of the Responsible Authority. The Plan must be submitted to and approved by the Responsible Authority. The Plan must provide for, but not be limited to, the following:
  - a) Vehicular and pedestrian access into the buildings;
  - b) Access to the lifts;
  - c) The provision of tactile indicators;
  - d) The provision of Braille indicators for the lifts;
  - e) The use of contrasting paving or surface materials to assist the vision impaired;
  - f) 10 per cent of apartments to be specifically adapted to provide access for all, including bathrooms and toilets;
  - g) Emergency exits, particularly above the ground floor; and
  - h) Car parking.

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

The recommendations of the Disability Access Plan must be implemented to the satisfaction of the Responsible Authority prior to the occupation of the development. No alterations to the Disability Access Plan may occur without the written consent of the Responsible Authority.

11. Prior to the occupation of any dwelling approved under this permit, a report from the author of the Disability 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 Disability Access Plan have been implemented in accordance with the approved Plan.

### **Acoustic Report**

12. Prior to the commencement of the development approved by this permit, a report prepared by a qualified Acoustic Engineer must be submitted to the satisfaction of the Responsible Authority outlining any noise attenuation measures necessary to achieve acceptable acoustic conditions within dwellings having regard to the impact of noise from the adjacent arterial road and tram route. Construction and maintenance of the buildings must be in accordance with the recommendations contained in this report to the satisfaction of the Responsible Authority.
13. **Within 2 months of the commencement of the use of the land for a child care centre, acoustic testing is to be carried out to confirm that the use complies with the maximum noise levels prescribed by the AAAC Guidelines, in accordance with the endorsed Acoustic Report prepared by Resonate dated 8 May 2020. The testing must demonstrate compliance from the noise sensitive receivers identified in the endorsed Acoustic Report, as well as the residential apartments directly above the childcare centre. The testing is to be carried out by an independent acoustician to the satisfaction of the Responsible Authority. If the testing reveals that the use does not meet the specified maximum noise levels, the use or development must be modified to achieve compliance with those levels. After any modifications have been made acoustic re-testing, in accordance with the above requirement must be carried out to ascertain whether the use complies with the prescribed noise levels. All acoustic testing is to be carried out when the child care centre is operating at full capacity or on a day of typical maximum operation. The results of testing are to be provided to the Responsible Authority and may also be made available to the public upon request.**

### **VicRoads Conditions**

14. All disused or redundant vehicle crossings must be removed and the area reinstated to kerb and channel to the satisfaction of and at no cost to the Roads Corporation prior to the occupation of the buildings or works hereby approved.
15. The crossover and driveway are to be constructed to the satisfaction of the Roads Corporation and/or the Responsible Authority and at no cost to the Roads Corporation prior to the occupation of the works hereby approved.
16. Any security boom, barrier, gate or similar device controlling vehicular access to the premises must be located a minimum of 6 metres inside the property to allow vehicles to store clear of the Brunswick Road pavement and footpath.

### **Environmental Audit**

17. Prior to the commencement of construction or carrying out works pursuant to this permit, or any works associated with a sensitive use either:
  - a) A Certificate of Environmental Audit for the land must be issued in accordance with Section 53Y of the *Environment Protection Act 1970* and provided to the Responsible Authority; 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).

18. 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*.
19. 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*.
20. 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.

#### **Remediation Works Plan Required**

21. Prior to any remediation works being undertaken in association with the Environmental Audit, a 'remediation works' plan must be submitted to and approved by the Responsible Authority. The plan must detail all excavation works as well as any proposed structures such as retaining walls required to facilitate the remediation works. Only those works detailed in the approved remediation works plan are permitted to be carried out prior to the issue of a Certificate or Statement of Environmental Audit.
22. The owner must ensure that no mud, dirt or dust is transferred from the site onto adjoining public roads to the satisfaction of the Responsible Authority. In the event that roads are affected, the owner must upon the direction of the Responsible Authority, take the necessary remedial action, to the satisfaction of the Responsible Authority.

#### **Waste Management**

23. Prior to the endorsement of plans, a revised waste management plan must be submitted to address the reduced number of bins, the size of the waste collection vehicle, the location of the collection, and how the bins will be transferred between the waste store and the nominated point of collection.

## Landscaping

24. 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) 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 must respond appropriately to localised site conditions, in particular, areas with access to limited sunlight, high exposure to winds and sun.
  - b) Advice detailing how the landscaping will be constructed and accommodated, including areas and planter structures required for shrub and tree planting, drainage and irrigation in keeping with current horticultural practice. The drawings or advice must demonstrate that the structures can support the landscaping.
  - c) A maintenance plan.
25. Prior to the issuing of a Statement of Compliance or occupation of the development, whichever occurs first, all landscaping works must be completed in accordance with the approved and endorsed landscape drawing to the satisfaction of the Responsible Authority. The areas designated as landscaped areas on the endorsed landscape plan must thereafter be maintained and used for that purpose.

## Child care centre

26. **The maximum number of children occupying the childcare centre on-site at any one time must not exceed 50.**
27. **Operation of the childcare centre must be within the following:**
  - **Operational hours (i.e. hours when centre is open for care of children) Monday to Friday - 6:30 am - 6:30 pm;**
  - **Occupation of the outdoor play areas must only occur Monday to Friday – 8:00 am – 5:30 pm with a maximum of 25 children at any one time.**
  - **Cleaning of the centre and administrative duties can be conducted outside of the above hours;**

## General

28. Prior to the occupation of the development, all boundary walls must be constructed, cleaned and finished to the satisfaction of the Responsible Authority.
29. Any Council or service authority pole or pit within 1 metre of a proposed vehicle crossing including the 1 metre splays on the crossing, must be relocated or modified to the satisfaction of the Responsible Authority.
30. Prior to the occupation of the development, any existing vehicle crossing not to be used in this use or development must be removed and the kerb and channel, footpath and nature strip reinstated to the satisfaction of the Responsible Authority (Moreland City Council, City Infrastructure department).
31. 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.
32. 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.

33. Prior to the commencement of the use, 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.
34. Prior to the occupation of the development all telecommunications and power connections (where by means of a cable) and associated infrastructure to the land (including all existing and new buildings) must be underground to the satisfaction of the Responsible Authority.
35. A letterbox must be provided for each of the premises within the mailroom or at another appropriate location to the satisfaction of the Responsible Authority. The dimensions, placement and numbering must generally comply with the Australia Post Letterbox Security and Specification as published on its website to the satisfaction of the Responsible Authority.
36. An automatic light must be installed and maintained in the parking area so that the light operates automatically when a vehicle enters or leaves the land between dusk and dawn and no direct light is emitted onto adjoining property.
37. Unless with the prior written consent of the Responsible Authority, the commercial tenancy windows may only be used for promotion and display of goods and must not be painted or blocked out in any way to the satisfaction of the Responsible Authority.

#### **Public Transport Victoria Condition**

38. The permit holder must take all reasonable steps to ensure the disruption to bus operations along Brunswick Road is kept to a minimum during the construction of the development. Foreseen disruptions to bus operations and mitigation measures must be communicated to Public Transport Victoria (14) days prior to such disruptions occurring.

#### **Permit Expiry**

39. This permit will expire if one of the following circumstances applies:
  - a) The development is not started within three (3) years of the date of this permit.
  - b) The development is not completed within five (5) years of the date of this permit.
  - c) The use must be commenced within **six (6)** years from the date of the issue of this permit.

In accordance with Section 69 of the *Planning and Environment Act 1987*, an application may be submitted to the Responsible Authority for an extension of the periods referred to in this condition.

#### **Notes:**

Date of amendment: 10-May-2017
Amendment Number: MPS/2014/1048/A
Brief description of amendment: <ul style="list-style-type: none"> <li>• Change to the mix of dwellings, decrease in one bedroom dwellings and increase in two bedroom dwellings, provision of three bedroom dwellings;</li> <li>• Change to the number of car parking spaces;</li> <li>• Decrease in the total bike parking area;</li> <li>• Residential communal area relocated to ground floor;</li> <li>• Reduction in the commercial floor area;</li> <li>• Changes to the building envelope on all levels;</li> <li>• Provision of service cupboards on the ground floor; and</li> <li>• Change to the architectural expression of the building.</li> </ul>



Date of amendment: 21-Nov-2019
Amendment Number: MPS/2014/1048/B
<p>Brief description of amendment:</p> <ul style="list-style-type: none"> <li>• Reconfiguration of the existing three-bedroom dwelling at the 9th level;</li> <li>• Reconfiguration of the plant area on the 9th level;</li> <li>• Increased building setback from the west boundary and decreased building</li> <li>• Setback to northern boundary; and</li> <li>• Provision of a covered area to the northwest of the building.</li> </ul>

Date of amendment: XXXXX
Amendment Number: MPS/2014/1048/C
<p>Brief description of amendment:</p> <ul style="list-style-type: none"> <li>• <b>Amalgamate the seven ground floor commercial tenancies (office/retail) into a childcare centre.</b></li> <li>• <b>Childcare centre operating - 6:30 am - 6:30 pm Monday to Friday with a maximum number of 50 children.</b></li> <li>• <b>Five street trees reduced to three.</b></li> </ul>

## 1. Background

### Subject site

The subject site is located at 11-15 Brunswick Road, Brunswick East.

The subject site consists of two lots known as Lot 1 on LP213385 and Lot 1 on TP132161. There are no restrictive covenants indicated on the Certificates of Title.

The subject site is rectangular in shape with a frontage of 37 metre and a depth of 45 metre, yielding a total site area of 1742 square metres and is located along the northern side of Brunswick Road.

The site is occupied by a 9 storey building, including 3 basement levels comprising 88 dwellings, 7 ground floor commercial spaces and 116 car parking spaces. The dwellings on-site are not currently occupied.



Figure 1: Subject site – Basement and building entry and 6 storey street wall to Brunswick Road

### Surrounds

The subject site is located within a mixed-use area in Brunswick East that features predominantly multi-storey mixed-use and residential development with commercial development interspersed on the northern side of Brunswick Road. The subject building is one of five mixed-use developments within the immediate context comprising a variety of apartment sizes and amenities.

Specifically, the site adjoins a two storey commercial office building to the east and a multi-storey residential building to the west, while single storey commercial, warehouse and residential properties adjoin the site's northern boundary.

The site is located within MILS Category 2 Precinct 49 for Employment Priority Areas in the Strategic Framework Plan, Map 1B (Moreland South) of Clause 21.02 – Vision.

### Planning Permit and site history

- Planning Permit MPS/2014/1048 was issued by VCAT on 17 February 2016 for the construction of an 8 storey building with roof top terrace over 3 basement levels, use of land for dwellings and alteration of access to a road in a Road Zone, Category 1.

- The permit and plans have been amended on three previous occasions, allowing changes to the building design and layout, including an additional storey, which was approved at the direction of VCAT.
- The development is currently under construction and is nearing completion.

### **The proposal**

The proposal is summarised as follows:

- Amalgamate the seven ground floor commercial tenancies (office/retail) into a childcare centre including:
  - Three activity rooms;
  - Two outdoor spaces and two simulated outdoor spaces;
  - Staff facilities and amenities;
- Hours of operation - 6:30am - 6:30pm Monday to Friday;
- Outdoor areas, hours of operation - 8:00am - 5:30pm Monday to Friday;
- Maximum number of children is 50;
- Allocation of seven car parking spaces within the basement (current layout unchanged), two for staff and five for visitors.
- Five street trees reduced to three.

The development plans form **Attachment 1**.

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

<b>Control</b>	<b>Permit Requirement</b>
Commercial 1 Zone	Clause 34.01-1: A permit is required to use the land for a childcare centre No new buildings or works are proposed by the amendments
Particular Provisions	Clause 52.29-1: Alter access to a road in a Road Zone, Category 1

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 Statement of Environmental Audit has previously been issued for the site satisfying conditions 16-20 of permit.
- Clause 45.06: Development Contributions Plan Overlay. A Development Contributions levy has previously been paid satisfying condition 3 of permit.
- Clause 45.09: Parking Overlay. Column B car parking rate of Clause 52.06-5 applies for a childcare centre.
- Clause 52.06-3: Car parking. The application does not require a planning permit for reduction in car parking, as detailed in Section 4 of this report.
- Clause 53.18: Stormwater Management in Urban Development.

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

### **Public notification**

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

- Sending notices to the owners and occupiers of adjoining and nearby land including all dwellings within 22, 24 and 26 Barkly Street.
- By placing a sign on the Brunswick Road frontage of the site

Council has received 15 objections to date. A map identifying the location of objectors forms **Attachment 2**.

The key issues raised in objections are:

- Car parking/traffic congestion/drop-off and pick-up
- Safety
- Noise
- Shared building services
- Loss of landscaping
- Overlooking outdoor play areas
- Pram access
- Devaluing property
- Notification process
- Fence height

A Planning Information and Discussion meeting was held on 30 November 2020 and attended by Cr Riley and Cr Conlan, Council Planning Officers, the applicant and two objectors. The meeting provided an opportunity to explain the application, for the objectors to elaborate on their concerns, and for the applicant to respond.

Following the discussions at the Planning and Information Discussion meeting, it was resolved by the applicant to agree to a condition to address some of the concerns raised by objectors regarding noise impacts. The recommended wording of that condition was forwarded to the two objectors that attended the PID meeting. The following condition was agreed to by the applicant:

- Maximum of 25 children to occupy the outdoor play areas at any one time.

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

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

<b>External Agency</b>	<b>Objection/No objection</b>
Department of Transport	The Department of Transport are a section 55 Determining Referral Authority due to the alteration of access (including change of use) to a road in a Road Zone, Category 1. DoT have no objection to the application subject to the original conditions included on the permit.

<b>Internal Branch/Business Unit</b>	<b>Comments</b>
Sustainable Built Environment – Development Engineering Team	No objections were offered to the proposal and the proposed management arrangements for the car parking area are considered satisfactory.
Open Space Design and Development Unit	No objections were offered to the proposal, in particular the reduction in street trees from five to three

### 3. Policy Implications

#### Planning Policy Framework (PPF)

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

- Clause 13.05-1S Noise abatement
- 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 17 Economic Development
- Clause 18 Transport
- Clause 19.02-2S Education facilities

#### Local Planning Policy Framework (LPPF)

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

Municipal Strategic Statement:

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

Local Planning Policies:

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

#### Human Rights Consideration

This application has been processed in accordance with the requirements of the *Planning and Environment Act 1987* (including the Moreland Planning Scheme) reviewed by the State Government and which complies with the *Victorian Charter of Human Rights and Responsibilities Act 2006, including Sections 15 (Freedom of expression) and Section 18 (Taking part in public life)*. In addition, the assessment of the application has had particular regard to:

- Section 20: Property rights

The right of the landowner to develop and use their land has been considered in accordance with the Moreland Planning Scheme.

### 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 have strategic support?**

The subject site would provide an appropriate context for the childcare centre, being located in a Commercial 1 Zone with a residential zone interface. The site's location within MILS Category 2 for Employment Priority Areas in the Strategic Framework Plan, Map 1B (Moreland South) of Clause 21.02 – *Vision* seeks to support the transition from traditional industrial uses to a broader range of employment uses and prioritises employment uses over residential uses as a key objective of Clause 21.03-2 – *Strategic Framework*. It is important to note that the strategic direction for this precinct prioritises employment, and the replacement of the commercial spaces for the childcare centre is in line with that direction.

A childcare centre business has been secured, ensuring that there would be no vacancies at ground floor at the occupation of the development. Furthermore, the childcare centre would employ six educators based on the 50 children maximum.

The purpose of the Commercial 1 Zone is to create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses. In support of the change in use, the site and surrounding area is experiencing substantial growth with a number of high density mixed-use developments being constructed on the northern side of Brunswick Road within the past 10 years. Whilst the supply in housing is typically apartments, there are a number of 3 bedroom dwellings provided within these developments to provide housing diversity in support of families.

The strategies at Clause 19.02-2S – *Education Facilities* consider demographic trends, existing and future demand requirements and the integration of facilities into communities in planning for the location of education and early childhood facilities. The growth within this part of Brunswick East demonstrates a demand for community infrastructure and services including early childhood facilities.

In review of the Planning Policy Framework and the purpose of the zone it is considered that the proposal has strong strategic support.

### **Does the proposal cause unacceptable noise impacts?**

Clause 21.03-2 of Council's Strategic Framework includes the following strategy in relation to the Employment Area that the site is located in:

- *Encourage the amenity expectations for residential or other sensitive uses within or adjacent to Employment Areas to be reflective of the multi use nature of the areas and the priority given to employment uses.*

The objective of Clause 13.05-1S – *Noise Abatement* is to assist in the control of noise effects on sensitive land uses. The strategy of this policy is to ensure that development is not prejudiced and community amenity is not reduced by noise emissions, using a range of building design, urban design and land use separation techniques as appropriate to the land use functions and character of the area. The layout of the existing building adopts a standard approach to reducing noise impacts on residents by locating commercial land uses at ground floor with the more sensitive spaces located at the upper levels. The site is also within a Commercial 1 Zone, where commercial land uses and associated noise impacts, are to be expected.

The application was accompanied by an Acoustic Report, which assessed the anticipated noise impacts from the outdoor areas of the childcare centre on 16 Barkly Street (a residential property to the immediate north of the site) and the 'Ettaro' apartments (to the west of the site).

Noise testing as part of the Acoustic Report was unable to occur due to the state-wide restrictions resulting from COVID-19. The report therefore considers data collected in 2016 and available standards and guidance to inform the anticipated background noise level and appropriate noise limits.

The Association of Australasian Acoustical Consultants (AAAC) Guidelines have been adopted in the Acoustic Report in the absence of other noise policies in Victoria for the control of noise from children's voices. The proposal incorporates noise mitigation treatments recommended by the Acoustic Report to achieve compliant noise levels with the AAAC guidelines. Noise mitigation treatments include a 2.4 metre high boundary fence with specifications including a solid and imperforate surface and a minimum surface density of 20 kg/m<sup>2</sup>, with no gaps at the bottom, along the northern and western boundary of the outdoor play area. This measure, combined with the existing built form, would ensure the maximum noise emission does not exceed 55dB to the nearby residential properties. This is equivalent to the 55dB requirement of SEPP N-1 zoning noise limits imposed for noise emissions from industry, commerce and trade, which do not apply to this proposal but are a useful comparison of acceptable noise limits.

The calculation of noise levels is based on the worst case scenario of all 50 children being located in the outdoor spaces, whereas early learning centre standards expect a maximum of 25 children in the outdoor spaces at any one time. This is likely to mean that the noise impacts may be lower than expected.

The childcare centre would operate 6:30am - 6:30pm Monday to Friday, whilst the outdoor areas would operate between 8:00am - 5:30pm Monday to Friday. The hours of operation are considered acceptable as they need to provide for parents/guardians dropping off and picking up children outside of business hours. By limiting the hours that the outdoor spaces are occupied to business hours, there would be no external noise during the more sensitive hours of the day. Restrictions on the maximum number of children in the centre, and the hours of operation including the occupation of the outdoor spaces are included as conditions in the recommendation.

It should be acknowledged that the Acoustic Report does not assess impacts on dwellings located above the ground floor within the development site. The report states that noise emissions from the application site will be managed through the strata agreement for the occupants. Two objections have been received from future occupants of the building, stating that when they purchased the apartments the ground floor was proposed as offices, which would not cause the same noise impacts.

For the reasons outlined above, it is not expected that the child care centre will result in unreasonable impacts on the apartments within the development. However, to confirm that this is the case, further noise testing will be required as a condition of permit once the use commences, to ensure the childcare centre is compliant with AAAC Guidelines.

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

The table at Clause 52.06 – *Car Parking* indicates that a total of eleven (11) car spaces are required for a childcare centre of 50 children, at a rate of 0.22 spaces per child. The childcare centre would be allocated seven (7) on-site spaces within the basement, two (2) for staff and five (5) for parents/guardians. Therefore, the proposed use would result in a shortfall of the car parking requirement by four (4) car spaces.

Clause 52.06-3 states that a permit is not required to reduce the required number of car parking spaces for a new use of an existing building if the following requirements are met:

- *The building is in the Commercial 1 Zone, Commercial 2 Zone, Commercial 3 Zone or Activity Centre Zone.*
- *The gross floor area of the building is not increased.*
- *The reduction does not exceed 10 car parking spaces.*
- *The building is not in a Parking Overlay with a schedule that allows a financial contribution to be paid in lieu of the provision of the required car parking spaces for the use.*

As all of the above criteria are met in this proposed use, a permit is not required for the shortfall of car parking spaces.

Nevertheless, in considering the provision of car parking associated with the proposal, the shortfall of four (4) car spaces is acceptable for the following reasons:

- The Traffic Impact Assessment submitted with the application identifies that a total of no less than 1,339 apartments exist within a 600-700 metre walking distance to the site (representing a 7-9 minute walk) with additional dwellings proposed.
- In order to encourage parents/guardians to walk to the facility a pram storage room has been provided.
- Clause 19.02-2S – Education facilities seeks to locate childcare, kindergarten and primary school facilities to maximise access by public transport and safe walking and cycling routes.
- The site is within the Principal Public Transport Network which is an indicator that the site has good access to public transport including:
  - A 120 metre walk of the closest pair of tram stops (north-south travel);
  - A 150 metre walk of the (west-bound) bus stop of the 250 & 251 bus routes (east-west travel);
  - A 270 metre walk of both bus stops of the 504 bus route (east-west travel); and
  - Close to good bicycle routes.
- The site is located within Brunswick East where evidence indicates that bicycle usage is the highest in the municipality.
- The existing building provides 11 visitor bicycle spaces at the front of the site.
- Parents/guardians accessing the five allocated car spaces will be issued with remote controls to open the security gate to the basement.
- Clause 22.03 – Car and Bike Parking and Vehicle Access supports reduced car parking rates in developments in close proximity to Activity Centres.
- Council's Development Engineers consider the allocation of car parking acceptable.

#### **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 location and layout of the childcare car parking spaces are accepted. No on-street drop-off and pick-up would be permitted at the front of the site as this is a 'no standing' zone. Therefore, all vehicle drop-off and pick-up at the site would be confined to the basement. The proposal would include a line marked 'pedestrian priority path' adjacent to the parent/guardian car spaces to allow customers to feel comfortable unfolding prams, then leaving the pram whilst getting the child out of the car. This is an appropriate measure to allocate priority within the standard car park access aisle. The safety recommendations included in the Traffic Report will be required as a condition of permit.

The Department of Transport (DoT, previously VicRoads) have also reviewed the proposal considering the traffic to be generated by the childcare centre and its access to Brunswick Road determining that the site would be appropriate for the childcare centre. DoT did not object to the application and did not require any alterations to their existing conditions of permit.



Based on the advice provided by Council's Development Engineers and the DoT, it is considered that the proposal would not cause detrimental impacts on the area by means of traffic congestion.

**Does the proposal result in a loss of landscaping?**

The amended ground floor layout would alter the landscaping design on the northern and eastern boundaries at ground floor. However, the number of screening plants (Lilly Pillis) remains generally consistent. This is therefore acceptable. The landscape plan is provided at **Attachment 3**.

The application also seeks to reduce the number of street trees delivered in Brunswick Road as part of the development from five (5) to three (3). The applicant has given the following reasons as to why the change is required:

- The quantum of street trees is considered inappropriate having regard to the width that they are proposed to be planted across (approximately 25 metres).
- The quantum of street trees is inconsistent with the street tree planting requirements for other developments within the immediate vicinity of the site.
- The quantum of street trees compromises the usability and functionality of the footpath and results in a disproportionate street tree planting methodology.
- Given the street tree plantings are proposed to the south of the building, and within close proximity of each other, the street trees will be 'competing' with each other.

Council's Open Space officer and Urban Forestry officer have considered the proposed changes and support the reduction in the number of street trees based on the close spacing of the trees which are closer than Council would design for its own plantings for this tree species. Despite the reduction, officers are confident that the intended outcome of the street trees, would still be delivered. Therefore, the reduction in the number of street trees is acceptable.

**Is the use affected by the site's potential contamination?**

The site is affected by an Environmental Audit Overlay. Clause 45.03-1 states that before a sensitive use such as a childcare centre commences, a Certificate or Statement of Environmental Audit must be issued for the land. The applicant has submitted a Statement of Environmental demonstrating that the land would be suitable for high density (residential). A separate letter has been prepared by the auditor stating the land is suitable for a sensitive use including a childcare centre.

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

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

- Car parking/traffic congestion/drop-off and pick-up
- Noise
- Loss of landscaping

Other issues raised by objectors are addressed below.

### **Notification process**

Concerns have been raised regarding properties not receiving adequate notification of the proposal during the public notice stage of the application. This includes issues stemming from the restrictions imposed by the State Government during the COVID-19 pandemic and properties not receiving a letter in the mail. As a response to COVID 19 restrictions Council officers required the public notice erected on-site to be displayed for a period of 21 days rather than the standard 14 days. A total of 814 notices were sent out to adjoining owners and occupiers on 24 September 2020 which included all dwellings at 22, 24 and 26 Barkly Street. As the subject building at 11-15 Brunswick Road is not yet occupied, letters could not be sent directly to future occupiers of the subject building as the site is still in the ownership of the developer. However the process of erecting a notice on-site seeks to capture any other party that does not receive a letter.

Council received sufficient evidence from the applicant demonstrating that the notice was correctly displayed on-site for the time required. Council has recorded 6 'return to sender' letters where letters have not reached properties listed to be notified. It is considered that extent of notice carried out for the application was adequate and exceeded the requirements of section 52 of the *Planning and Environment Act 1987* and the timeframes prescribed by the *Planning and Environment Regulations 2015*.

### **Overlooking children's outdoor play areas**

Concerns have been raised regarding the potential for overlooking into the two outdoor play areas and the potential for objects dropping from the dwellings above into this space. Overlooking into play areas of schools or childcare centres is not a relevant consideration of the Planning Scheme. The proximity to residential apartments is not sufficient grounds to justify refusal of the application.

### **Safety**

Concerns have been raised regarding the safety of children accessing the building when passing the basement entries at the subject site and nearby. The subject building provides pedestrian sight splays for vehicles exiting the basement via the accessway as depicted on the ground floor plan. This ensures that the vehicle accessway walls are setback from the footpath providing adequate visibility for drivers and pedestrians, therefore satisfying the Safety and Accessway Design Standards of Clause 52.06-9 – *Car Parking*.

### **Sharing building services**

Access to the child care centre from the basement car parking would be provided via the lift and stairs which connect to the ground floor lobby. Alternatively, the building is directly accessible for pedestrians via the building entry connected to Brunswick Road. The shared use of the building facilities is considered acceptable as the car parking provided for the child care centre is located in the basement with no other alternative location. It is assumed that adults will accompany children at all times including drop off and pick up to prevent any misuse of the building services and facilities.

### **Pram access**

The building includes a variety of access for people with limited mobility, including an accessible lift at the building entry and an internal lift connecting to the basement. Whilst the approved development layout did not anticipate a childcare centre at ground floor it does provide the necessary services to accommodate the use, including access for prams.

## **Property values**

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

## **Fence height**

A concern has been raised regarding the length of the 2.4 metre high acoustic fence on the northern boundary. In this instance the height of the acoustic fence is necessary to ensure compliance with AAAC Guidelines and SEPP N-1 requirements. The length of the acoustic fence is only necessary to the confines of the northern outdoor area and therefore won't be required to be constructed along the boundaries of other ground floor outdoor areas. This is acceptable as the existing northern boundary fence height is 2 metres.

## **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 use is consistent with the purpose of the Commercial 1 Zone and would not result in negative amenity impacts.

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/2014/1048/C should be issued to allow use of the ground floor of the building to be used as a Child Care Centre, subject to the conditions included in the recommendation of this report.

## **Attachment/s**

<b>1</b> <a href="#"><u>↓</u></a>	Development Plans	D20/490089
<b>2</b> <a href="#"><u>↓</u></a>	Objectors Map	D20/478694
<b>3</b> <a href="#"><u>↓</u></a>	Landscape Plan	D20/486894

## 5.3 234-236 WATERLOO ROAD OAK PARK - PLANNING PERMIT APPLICATION MPS/2020/45

Director City Futures

City Strategy and Design

### Executive Summary



<b>Property:</b>	234-236 Waterloo Road Oak Park
<b>Proposal:</b>	Construction of a multi storey building comprising 35 dwellings
<b>Zoning and Overlay/s:</b>	<ul style="list-style-type: none"> <li>Residential Growth Zone 2</li> <li>Design and Development Overlay 24</li> <li>Parking Overlay 1</li> <li>Development and Contributions Overlay</li> </ul>
<b>Strategic setting:</b>	<div>Minimal housing growth</div> <div>Incremental housing growth</div> <div>Increased house densities encouraged</div> <div>Significant housing growth</div>
<b>Objections:</b>	<ul style="list-style-type: none"> <li>15 (including 2 proformas)</li> <li>Key issues: <ul style="list-style-type: none"> <li>Neighbourhood character</li> <li>Car parking and traffic</li> <li>Lack of landscaping</li> <li>Off-site amenity impacts</li> </ul> </li> </ul>
<b>Planning Information and Discussion (PID) Meeting:</b>	<ul style="list-style-type: none"> <li>Date held: 24 September 2020</li> <li>Attendees: 9 objectors, the applicant, 3 Council officers, and two Councillors</li> <li>No changes have resulted from the PID, however the meeting provided an opportunity for the objector concerns to be discussed which has helped inform the preparation of this report</li> </ul>
<b>ESD:</b>	<ul style="list-style-type: none"> <li>Minimum average NatHERS rating of 6.5 stars.</li> </ul>
<b>Accessibility:</b>	<ul style="list-style-type: none"> <li>All dwellings will contain the necessary internal spatial features within the apartments and to common areas to achieve compliance with the National Disability Insurance Scheme (NDIS) Specialist Disability Accommodation Design Standard.</li> </ul>
<b>Key reasons for support</b>	<ul style="list-style-type: none"> <li>Responds to the preferred character outcomes sought by the RGZ and DDO24 (with conditions included in the recommendation).</li> <li>Excellent accessibility outcome.</li> </ul>
<b>Recommendation:</b>	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/2020/45 be issued for the construction of a multi storey building comprising 35 dwellings at 234-236 Waterloo Road Oak Park, 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 (prepared by Ewert Leaf dated 31 May 2020) but modified to show:
  - a) No part of the building to be more than 4 storeys above natural ground level.
  - b) The balconies of Apartments 1.02, 1.07, 2.02, 2.03, 2.06, 2.07, 3.02, 3.03, 3.06 and 3.07 setback a minimum distance of 3.8 metres from their respective property boundary.
  - c) Landscaping along the north, south and east boundaries in accordance with the Landscape Plan dated 19 November 2020 Revision E by Peopl Landscape Architects.
  - d) A maximum 1.5 metre high front fence.
  - e) The third-floor southern wall setback 3.6 metres from the boundary to ensure compliance with daylight to existing windows Standard B19 of Clause 55.04-3.
  - f) The balconies south of the southern wall at fourth level deleted and the southern wall of the dwellings at fourth floor (Apartments 4.03 and 4.04) setback further to demonstrate compliance with the north facing windows Standard B20 of Clause 55.04-4, taken from the finished floor level of the first floor bedrooms of each of the dwellings at 232 Waterloo Road.
  - g) The planter boxes on the east facing balcony of Apartment 4.03 fitted with angled screens to a minimum height of 1.5 metres above floor level, or with an alternative method which satisfies Standard B22 of Clause 55.04-6 (Overlooking objective).
  - h) The planter boxes on the east facing balconies of Apartments 2.04 and 2.05 fitted with screens to a height of 1.7 metres above floor level in accordance with the plans dated 9 October 2020 titled 'For Discussion Purposes Only'.
  - i) The allocation of storage facilities for each dwelling.
  - j) A screen diagram drawn at a scale of 1:50 which details all the privacy screens associated with the development. 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.
    - iv. The windows shown on the third-floor east elevation also shown on the third-floor floor plan.
  - k) The proposed vehicle crossing with 1 metre straight splays on both sides commencing where the footpath meets the nature strip and finishing at the kerb.
  - l) A notation showing Council's street trees as retained.
  - m) Notations regarding the tree protection zones to the street trees in accordance with Condition 9 of this permit.

- n) Initiatives contained within the Sustainability Management Plan required by condition 6 of this permit along with the proposed changes, including:
    - i. A roof plan showing the size, location and number of panels for the 20KW solar PV system;
    - ii. The location and capacity of the fire water tank;
    - iii. The location of the 25,000L rainwater tank;
    - iv. The location of a future fast charging station at entry level; and
    - v. Any other changes as per the SMP.
  - o) Notations regarding the recommendations of the Waste Management Plan required by Condition 17.
  - p) Changes required by the Accessibility Report required by Condition 21.
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.
  3. 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.

4. Prior to the commencement of any development works, an amended landscape plan generally in accordance with the landscape plan prepared by Peopl dated 20 January 2020 must be submitted to and approved by the Responsible Authority. The landscape plan must provide the following:
  - a) Any changes required by condition 1.
  - b) The provision of at least four trees within the front setback, with the tree species selected according to the available space, in accordance with the Moreland Tree Planting Manual for Residential Zones, 2014.
  - c) 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.
  - 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, 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.
- 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.
- 6. Prior to the endorsement of plans, an amended Sustainability Management Plan (SMP) must be submitted to and approved to the satisfaction by the Responsible Authority. The amended SMP must demonstrate a best practice standard of environmentally sustainable design and be generally in accordance with the SMP prepared by Sustainable Development Consultants (SDC) dated February 2020, but modified to include the following changes:
  - a) Include a print out of the entire BESS report in Appendix 1 of the Sustainability Management Plan prepared by SDC dated February 2020
  - b) To demonstrate satisfying BESS IEQ criteria and meet objectives of clause 22.08 IEQ;
    - i. Clearly mark up the living rooms and bedrooms which meet the auto pass criteria (highlighting through mark-ups how the apartments meet all the DTS criteria in particular; for building separation, VLT and room depth); and
    - ii. For the living areas and bedrooms that do not auto pass provide a mark-up showing the horizontal and vertical angles on floor plans and elevations to corroborate the values specified in the BESS report.
    - iii. Alternatively; provide a daylight modelling report detailing assumptions used and results achieved (daylight maps, average daylight factor in assessed spaces etc.) to demonstrate how the design complies with BESS IEQ criteria.

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 an Occupancy Permit or issue of a Statement of Compliance, whichever comes 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
- 8. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, of any dwelling approved under this permit, a report from the author of the Sustainability Management Plan (SMP) approved pursuant to this permit, or similarly qualified person or company, must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm that all measures specified in the SMP have been implemented in accordance with the approved plan.
- 9. Prior to development commencing (including any demolition, excavations, tree removal, delivery of building/construction materials and/or temporary buildings), all council trees marked on the endorsed plans as being retained 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.

e) Maintenance

The TPZ must be maintained throughout construction.

10. 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.
11. 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).
12. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, any existing vehicle crossing not to be used in this use or development must be removed and the kerb and channel, footpath and nature strip reinstated to the satisfaction of the Responsible Authority (Moreland City Council, City Infrastructure Department).
13. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, any Council or service authority pole or pit within 1 metre of a proposed vehicle crossing, including the 1 metre splays on the crossing, must be relocated or modified at the expense of the permit holder to the satisfaction of the Responsible Authority and the relevant service authority.



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 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.
16. 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.
17. Prior to the endorsement of plans, an amended Waste Management Plan (WMP) must be submitted and approved to the satisfaction of the Responsible Authority. The Plan must be generally in accordance with the WMP prepared by RB Waste Consulting Service dated 6 August 2019 but include access to waste/bin area provided from the lobby.  
  
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.
18. The Waste Management Plan approved under this permit must be implemented and complied with at all times to the satisfaction of the Responsible Authority unless with the further written approval of the Responsible Authority.
19. 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.
20. Prior to the endorsement of plans an Accessibility Report must be prepared by a suitably qualified person certifying that all of the dwellings contain the necessary internal spatial features within the apartments and to common areas to achieve compliance with the National Disability Insurance Scheme (NDIS) Specialist Disability Accommodation Design Standard and all the remaining dwellings achieving a minimum Silver Standard of the Livable Housing Design Guidelines. Compliance with the report and endorsed plans must be completed 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, a report from the author of the Accessibility Report, approved pursuant to this permit, or similarly qualified person or company, must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm that all measures specified in the Accessibility Report have been implemented in accordance with the approved Plan.
22. All parking spaces are to be marked with the associated apartment number to facilitate management of the car park to the satisfaction of the Responsible Authority.
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:
  - i. Be completed prior to the occupation of the development
  - ii. Be maintained.
  - iii. Be properly formed to such levels that it can be used according to the endorsed plan.

- iv. Be drained and surfaced.
  - v. Have the boundaries of all vehicle parking spaces clearly marked on the ground to accord with the endorsed plan.
  - vi. Not be used for any other purpose.
24. The bicycle storage area 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).
25. Lighting on each balcony must be designed not to emit direct light onto adjoining property to the satisfaction of the Responsible Authority.
26. This permit will expire if one of the following circumstances applies:
- a) the development is not commenced within two (2) years from the date of issue of this permit;
  - b) the development is not completed within four (4) years from the date of issue of this permit.
- The Responsible Authority may extend the period referred to if a request is made in writing before the permit expires or;
- i. within 6 months after the permit expires to extend the commencement date.
  - ii. 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: It may be necessary to obtain a building permit prior to the commencement of any demolition, building works or occupation of the building. It is strongly recommended that you consult with a registered building surveyor to advise on any requirements under the Building Act, the Building Regulations and any other subordinate legislation. Further information can be sought from the Victorian Building Authority, Phone 1300 815 127 or [www.vba.vic.gov.au](http://www.vba.vic.gov.au). Council's building services branch can also assist you in the provision of this service and can be contacted on 9240 1111 or <http://www.moreland.vic.gov.au/planning-building/building-renovations-and-extensions/>.

Note 2: 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 3: Should Council modify 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 4: 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 5: 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.

## **1. Background**

### **Subject site**

The subject site comprises two lots at 234 and 236 Waterloo Road, Oak Park located within the Snell Grove Neighbourhood Centre. The site is rectangular in shape, and has a combined frontage of 34.1 metres and a depth of 42.7 metres. The total site area is 1457 square metres. Both sites contain a single storey dwelling. Twelve trees are spread across the two lots, with two large trees located in the front setback of 234 Waterloo Road. The site slopes from east to west by 4.4 metres. A 1.83 metre wide easement runs along the eastern boundary of both lots.

There is a restrictive covenant registered on title at 234 Waterloo Road that restricts quarrying operations. The application would not breach the restrictive covenant.

### **Surrounds**

The surrounding area comprises predominately single storey detached dwellings. There is an emergence of three storey multi-unit developments along Waterloo Road. The Snell Grove commercial shopping strip and Oak Park train station is located 230 metres south of the site.

Land directly abutting the site and opposite is described as follows:

- The land to the north, at 238 Waterloo Road is currently vacant. It has approval for the construction of five, triple storey dwellings.
- The land to the south, at 232 Waterloo Road comprises six dwellings (five triple storey and one double storey).
- To the east (rear), the site has abuttal to two properties, 19 Charlotte Street and 18 Jessie Street. The property at 19 Charlotte Street comprises three dwellings (two double storey and one single storey at the rear). The property at 18 Jessie Street has recently been developed for four double storey dwellings. Land to the east of the site is within a General Residential Zone (GRZ).
- To the west of the site, on the opposite side of Waterloo Road, is the Broadmeadows Railway Line.

A location plan forms **Attachment 1**.

### **The proposal**

The proposal is for a part four storey, part five storey building comprising:

- 35 dwellings (8 x 1 bedroom and 27 x two bedroom)
- All of the dwellings will contain the necessary internal spatial features within the apartments and to common areas to achieve compliance with the National Disability Insurance Scheme (NDIS) Specialist Disability Accommodation Design Standard.
- Basement car parking over two levels, accessed via a modified crossing to the south of the site.
- 47 car spaces and 12 bicycle spaces.
- A maximum building height of 13.5 metres.
- External finishes including brick, metal and timber cladding.

The development plans form **Attachment 2**.

## Planning Permit and site history

236 Waterloo Road: Planning permit MPS/2018/284 for the construction of six triple dwellings was approved on 24 January 2019. The permit is currently valid.

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

Control	Permit Requirement
Residential Growth Zone	Clause 32.07-5: Construction of two or more dwellings on a lot
Design and Development Overlay 24	Clause 43.02-2: A permit is required to construct a building or construct or carry out works

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 (Schedule 1).
- Clause 52.06: Car Parking
- Clause 55: Two or more dwellings and residential buildings
- 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* by:

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

Council has received 15 objections including 2 proforma objections to date. A map identifying the location of objectors forms **Attachment 1**.

The key issues raised in objections are:

- Visual bulk
- Car parking/traffic
- Overshadowing
- Loss of views
- Neighbourhood character
- Transmission of COVID 19 within the building
- Loss of property value
- Overdevelopment
- Lack of setbacks
- Lack of landscaping
- Noise due to construction

A Planning Information and Discussion (PID) meeting was held on 24 September 2020 and attended by two Councillors, Council Planning Officers, the applicant and approximately nine (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.

Whilst no consensus was reached at the PID meeting, additional screening to further restrict overlooking to the rear property at Unit 3/19 Charlotte Street has been shown on sketch plans provided to Council on 13 October 2020. The sketch plans were forwarded to the objector of 3/19 Charlotte Street. A condition of the recommendation requires the additional screening on the sketch plans to be shown on plans for endorsement.

#### Internal/external referrals

Internal Branch/Business Unit	Comments
Disability Planner	<p>Supportive of the application, based on the Specialist Disability Accommodation (SDA) being purposefully designed housing for people with very high support needs, allowing them to live in a home with comfort and dignity.</p> <p>SDA is a relatively new NDIS initiative that was created in recognition of the urgent need for more suitable housing for people with disability. It is estimated that 28,000 people in Australia will be eligible for SDA once the NDIS implementation is complete ('People with disability in Australia 2019', Institute of Health and Welfare, 2019). With this large number of people suddenly having access to SDA funding, the current demand for suitable housing will far exceed the already short supply. This new multi-dwelling proposal that has been appropriately designed to exceed minimum standards will help to meet some of this demand Moreland.</p>
Urban Design Unit	Supportive of the application, noting the architecture and material palette is well resolved.
Sustainable Built Environment Unit (Development Advice Engineer)	Supportive of the application, in particular the provision of car and bicycle parking including the layout of the basement. A recommendation to provide a self-closing and self-locking bicycle storage area is reflected as a condition of the recommendation.
Sustainable Built Environment Unit (ESD Team)	The SMP and BESS report and development plans should be amended to demonstrate best practice environmentally sustainable design in accordance with Clause 22.08. Initiatives specified in the SMP should be depicted on the plans. These requirements are reflected in conditions of the recommendation.
Open Space Design and Development Unit	Council's Supervising Arborist did not support the removal of the two mature trees located within the front setback. This is discussed in Section 4 in more detail resulting in a condition requiring additional tree planting within the front setback included as a condition 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 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 21.03-3 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 Snell Grove, Oak Park Neighbourhood Centre. In this centre a substantial change towards a new character to accommodate buildings up to and including four storeys is supported.

Objective 9 (Housing) of Clause 21.03 advocates for housing that is visitable and adaptable for people with limited mobility. This development has been specifically designed for people with limited mobility. All of the dwellings will contain the necessary internal spatial features within the apartments and to common areas to achieve compliance with the National Disability Insurance Scheme (NDIS) Specialist Disability Accommodation Design Standard. This standard is above and beyond the highest standard of the Liveable Design Guidelines contained in the Moreland Planning Scheme. All dwellings have been provided with door widths and access areas in excess of the standards of Objective 9. The provision of 35 accessible dwellings is a significantly positive community benefit to the City of Moreland.

## Human Rights Consideration

This application has been processed in accordance with the requirements of the *Planning and Environment Act 1987* (including the Moreland Planning Scheme) reviewed by the State Government and which complies with the *Victorian Charter of Human Rights and Responsibilities Act 2006, including Sections 15 (Freedom of expression) and Section 18 (Taking part in public life)*. In addition, the assessment of the application has had particular regard to:

- Section 12: Freedom of movement
- Section 13: Privacy and Reputation
- Section 20: Property rights

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

## 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.

### Is the proposed built form supported by policy?

The site is located within a Residential Growth Zone (RGZ) and Design and Development Overlay 24 (DDO24). In these areas, new proposals are assessed against a preferred future character, rather than responding to the existing character.

A purpose of the RGZ is '*to provide housing at increased densities in buildings up to and including four storey buildings*'. Clause 22.01-2 (Neighbourhood Character) 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 DDO24 notes that the site is located within a 'focus area for change'. Consistent with the RGZ, the DDO24 supports development up to four storeys.

Overall, it is considered that, subject to the conditions detailed in the recommendation, the proposal responds to the RGZ, Clause 22.01 and DDO24. The proposal's response to key aspects of the built form outcomes sought by the planning scheme is contained below.

### Building height

The proposed building has a maximum height of 13.5 metres above natural ground level which complies with the maximum building height of the RGZ.

The DDO24 specifies that any new building must not exceed a height of 13.5 metres and 4 storeys. This is a mandatory requirement, meaning that a permit cannot be granted to exceed this height. The development includes a minor 5 storey section in the middle of the site. This is because a storey that is at least partly out of the ground (i.e. above natural ground level) is included in the calculation. The proposal therefore fails to comply with the requirement of the DDO24. A condition included in the recommendation requires the part of the ground floor that sits above natural ground level at the point where the building is five storeys is to be reduced so that it is no more than 4 storeys above natural ground level. This will ensure compliance with the height provisions of the DDO24.

The assessment of the application has been accordingly made against Clause 55 (Two or more dwellings on a lot and Residential Buildings) of the Moreland Planning Scheme that applies to buildings up to 4 storeys.

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

The side and rear setbacks of the DDO24 and RGZ are discretionary and vary the setback requirements of Standard B17 of Clause 55.

The table overleaf depicts the side and rear setback variations sought for the proposal within the DDO24 and RGZ.

Orientation and outlook	Requirement	Proposal	Extent of Variation
North and south (living room/balcony)	4.5 metres	2.7 - 3.0 metres	1.5-1.8 metres for ten side facing dwellings
East (Rear) third and fourth level	6 metres	5.2 metres	0.8 metres

The front setback, setbacks of bedrooms from the north and south boundaries and rear setback below the third level comply with the setback requirements of the DDO24 and RGZ.

The Moreland Neighbourhood Centres Strategy, 2017 notes that setbacks provide the following four key functions:

- Contribute to landscaping character
- Improving amenity for future occupants (outlook, daylight and ventilation),
- Ensure equitable development potential for adjoining sites
- Limit off-site amenity impacts to adjoining sites

In considering a variation, it is relevant to consider the adjacent development context.

### ***Rear setback variation***

The 800mm variations at the third and fourth floors are considered acceptable. The 800mm comprises a planter box at fourth floor and two nibs at third floor. Each variation adds to visual interest and is therefore acceptable. The majority of the length of the variation across the rear of the site is adjacent to non-sensitive areas such as a driveway and blank walls at Unit 3/19 Charlotte Street. Deletion of the planter box would result in compliance, however it would then necessitate a 1.7 metre high screen for the balconies. This would add to visual bulk impacts to the only affected property at Unit 3/19 Charlotte Street and result in a poorer amenity for future occupants.

### ***Side setback variation***

The site to the north has approval for a 3-storey development whilst the site to the south is developed by five triple storey and one double storey dwelling. The approved adjoining development to the north has side setbacks between 2.1 - 3.0 metres at the upper levels whilst to the south a 1.7 metre side setback at first floor is provided. The spaces abutting the northern and southern site boundaries comprises predominantly of bedrooms and vehicle and pedestrian entries which are less sensitive than the living spaces. These setbacks, combined with the proposed setbacks on the subject site ensure adequate daylight and ventilation would be provided. In addition, given the site to the south has been developed and the site to the north has a permit approved, the impact on equitable development potential is considered acceptable. However, the non-complaint side setbacks reduce the quality of outlook to the primary living areas of ten of the proposed dwellings. In order to ensure that the single aspect dwellings are provided with an acceptable separation and outlook, a condition contained within the recommendation requires the balconies of Apartments 102, 107, 202, 203, 206, 207, 302, 303, 306 and 307 to be setback a minimum distance of 3.8 metres, generally in



accordance with the revised plans dated 17 November 2020 Revision C. The increased setbacks will also assist in further mitigating off-site amenity impacts.

### ***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. Clause 55.03-8 (Landscaping Objective) seeks to encourage the retention of mature vegetation on the site.

It is proposed to remove all 12 trees on the site, including a Norfolk Island Pine and Monterey Cypress located within the frontage of 234 Waterloo Road.

An arborist report prepared by Treelogic (dated 3 April 2020) was submitted as part of the application and identifies the trees as having medium retention value. The health, structure and form for both these trees has been identified as 'fair'. Council's arborist states that *"...it would be worthy of retention in the interest of maintaining mature trees"* and objects to the removal of these two trees.

The existing neighbourhood character of Waterloo Road is of large allotments with modest landscaping. There is a scattering of larger trees, however these are found mainly along the railway corridor. Whilst the trees contribute to the streetscape, it is considered that the Norfolk Island Pine and Monterey Cypress do not form part of a consistent landscape character of Waterloo Road.

The applicant advises that requiring a significantly increased front setback to allow for retention of the trees may make the proposal unfeasible. In balancing the retention of trees with medium retention value against a strategic imperative for increased density on the site as well as the community benefit derived from the accessible dwellings, on balance the removal of the trees is considered acceptable.

The consolidation of the two sites provides space within the front setback to accommodate at least four canopy trees, where only two have been provided. The loss of the two established trees within the front setback should be offset by an increase in the number of trees to provide an acceptable landscape character for the development.

The width of the deep soil planting areas on the northern and southern side boundaries at 0.85 – 1.29 metres is not considered acceptable to provide for adequate landscaping. These dimensions fall short of the 3 metre wide deep soil dimensions required by Clause 55.07-4 (Deep soil areas and canopy tree objective). A revised landscape plan dated 19 November 2020 Revision E by Peopl Landscape Architects show that the planting areas can be increased in size to at least 2.8 metres in width with a depth of 1.0 metre via raised planter boxes. This would ensure adequate space is provided to establish canopy tree planting along the side boundaries which would assist in softening the appearance of the building. Clause 55.07-4 specifies 'vegetated planters' as an alternative where deep soil cannot be provided.

For a site of this size, Clause 55.07-4 requires 2 medium sized trees of 6-8 metres in height. The Revision E Landscape Plan demonstrates that a total of 24 Acoma Crepe Myrtle species could be accommodated within the 2.8 metre side and rear setbacks. Acoma Crepe Myrtle trees have a mature height of 3.5 metres and width of 3 metres. The provision of 24 smaller trees is considered a superior outcome.

A condition is included in the recommendation to require landscaping in accordance with the Revision E landscape plan. This is considered to contribute to a landscape character that would improve amenity for future occupants and contribute to the landscape character of the area.

### ***Active Frontages***

Habitable room windows facing the street and balconies above will provide passive surveillance to the street.

However, the proposed 1.94 metre height of the front fence does not contribute to an acceptable active frontage. A condition in the recommendation requires the front fence to be reduced to a maximum of 1.5 metres.

### **Building Articulation**

The external façade is well articulated. The building is setback from all boundaries and provides for recessed upper level setbacks. Council's Urban Design Unit noted that *'the materials palette is simple, complimentary to the architectural form and of a generally well resolved quality'*.

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

Pursuant to Clause 52.06 (Car Parking) a total of 35 spaces are required for the dwellings. The development provides 47 on-site spaces. The proposed development exceeds the required car parking.

A total of 12 bicycle spaces has been provided for the development which is in excess of the 10 required.

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

In relation to traffic impacts, Council's Strategic Transport and Compliance Branch have assessed the proposal and consider that the development will result in 210 additional vehicle movements per day on Waterloo Road. This remains within the road's design capacity and is not expected to cause traffic problems.

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

Subject to conditions contained in the recommendation, the proposal will include adequate ESD features. These include:

- 25,000 litre rainwater tanks
- 20kw solar PV system
- Provision for electric car charging system
- 17 bicycle parking spaces
- Minimum average NatHERS rating of 6.5 stars
- Achieves best practice with a BESS score of 52 per cent subject to conditions.

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

Objective 9 of Clause 23.03-3 (Housing) seeks to increase the supply of housing that is visitable and adaptable to meet the needs of different sectors of the community. The proposal would implement the strategies of this objective ensuring each dwelling is designed for people with limited mobility. The NDIS Specialist Disability Accommodation Design Standard is above and beyond the requirements for accessibility set out in the Liveable Housing Design Guidelines referenced in the Moreland Planning Scheme. All dwellings will be designed to be able to achieve this standard. Overall, the proposal presents a significant contribution to accessible housing supply in Moreland. It is intended that up to 15 of the dwellings will be taken up by the NDIS program, while the remaining dwellings will still be visitable and liveable for people with limited mobility.

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

The proposed development generally complies with the standards and objectives of Clause 55. Key issues are discussed below.

#### ***Clause 55.03-1 Street setback***

Both Clause 55.03-1 and the DDO24 require a front setback of 3 metres for each level from the street up to four storeys. Architectural features associated with balconies at levels 1, 2 and 3 encroach into this setback by 400mm. This is not an allowable encroachment under Clause 55.03-1, however a decision guideline of this Clause is *"Any relevant neighbourhood character objective, policy or statement set out in this scheme"*. The DDO24 allows architectural features to encroach into the 3 metre street setback, therefore the proposal complies with the DDO24 and is considered acceptable.

#### ***Clause 55.04-3 Daylight to existing windows***

The south elevation has a maximum height of 13.5 metres, with the southern wall setback 7.6 metres from the existing windows at ground floor and first floor at 232 Waterloo Road. The standard requires the fourth storey to be setback 6.75m from the existing windows. Therefore, compliance is achieved. However, the third floor would have a maximum height of 11.3 metres to the ceiling height of Dwelling 3.07 with a 5.0 metre setback from the existing ground floor and first floor windows at 232 Waterloo Road, failing to meet the 5.6 metre requirement. Daylight to existing windows is considered an important aspect of amenity and compliance which should be achieved. A condition contained in the recommendation requires an additional 600mm setback at the third level to ensure compliance with the standard.

There is an existing habitable room window located at 3/19 Charlotte Street that faces the site. The proposed building provides a setback 6.4 metres to this window, which complies with the 5.5 metre minimum setback requirement.

#### ***Clause 55.04-4 North facing habitable room windows***

There are north facing habitable room windows on the adjoining property to the south which are within 3 metres of the boundary. The south elevation of the proposed building has an overall height of 13.5 metres and is setback 5.6 metres from the south boundary excluding the balconies at the fourth floor. The standard requires a 9.6 metre setback from the south boundary and therefore does not comply.

A variation is considered acceptable at the ground floor as the north facing habitable room windows are attached to small study nooks for the five rear townhouses. These spaces are less sensitive than a bedroom or a living room and will still receive daylight access in accordance with the daylight to existing windows standard. The front dwelling has a north-facing study and living room window but both of these rooms have a second window to the street.

Dwellings 2, 3, 4 and 5 contain north facing bedroom windows at first floor. The non-compliance at the fourth floor of the proposed building would impact on the solar access to these bedroom windows. A greater setback is required to reduce the extent of amenity impacts on the neighbouring property. In applying the setback standard from floor level of the first-floor of each of the affected adjoining dwellings, the south facing balconies and approximately 2 metres of the dwellings at fourth floor would need to be removed. This forms a condition of the recommendation.

#### ***Clause 55.04-5 Overshadowing***

There will be some overshadowing of the open space of the adjoining property to the south at 6/232 Waterloo Road and 18 Jessie Street between 2 and 3 pm. At least 40 square metres of the secluded private open spaces will maintain access to sunlight for five hours between 9am and 3pm on 22 September, therefore complying with the standard.

#### ***Clause 55.04-6 Privacy/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. Habitable room windows and balconies have been treated through 1.7 metre high windows sills or planter boxes, some with angled screens to 1.5 metre, to restrict downward views to adjoining properties. It is considered that the east facing balcony of apartments 2.04 and 2.05 would have unreasonable views into the private open space and a habitable room window of 3/19 Charlotte Street. Conditions contained in the recommendation require screening measures to prevent the unreasonable overlooking and compliance with the standard.

***Clause 55.05-4 Private Open Space and Clause 55.07-9 Private open space above ground floor***

Five of the ground floor dwellings are not provided with at least 40 square metres of secluded private open space and do not comply with the standard at Clause 55.05-4. The area of these secluded private open space range between 28 square metres and 35 square metres and all have a minimum dimension of 3.1 metres. The useability of these areas are considered adequate to meet the needs of residents. When subtracting the planter area of the balcony for Apartment 102 the area provided is 7.3 square metres which is less than 8 square metres of the standard at Clause 55.07-9. However, this apartment has access to 18 square metres of private open space at ground floor which provides additional space for the recreation of residents, satisfying the objective.

***Clause 55.07-6 - Noise Impacts***

The subject site is located within 80 metres of the Broadmeadows Railway Line and is therefore within a noise influence area specified in Standard B40. An Acoustic Report prepared by Cogent Acoustic dated 27 April 2020 provides acoustic treatment recommendations to ensure residents are protected from external and internal noise sources. These are included as conditions in the recommendation.

***Clause 55.07-11- Waste and recycling***

The waste management plan prepared by RB Waste Consulting Service shows communal bins and hard waste area has been provided in the basement. Waste will be collected through a private contractor. The standard requires waste and recycling enclosures to be located and designed for convenient access by residents and made easily accessible to people with limited mobility. Council's Development Engineer identified that the access through the car park seems unnecessary when access could be provided directly from the lobby, given that this is a building designed for people with disabilities. Conditions in the recommendation address this.

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

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

- Car parking/traffic
- Overshadowing
- Neighbourhood character
- Lack of setbacks
- Lack of landscaping

Other issues raised by objectors are addressed below.

***Transmission of COVID 19 within building***

This is not a relevant planning consideration. Visual bulk

***Visual Bulk and overdevelopment***

The proposal is not considered to be an overdevelopment of the site. State Government Planning Policy, particularly Plan Melbourne, as well as Council Policy supports higher densities in areas that are within Neighbourhood Centres with good access to public transport and other services. Subject to conditions, the development

complies with the height guidance and provides an acceptable response to the setback requirements of the RGZ and DDO24. Therefore, the development does not result in excessive visual bulk to the street or adjoining properties.

### **Loss of views**

The Victorian Civil and Administrative Tribunal has consistently found that although impact upon views can be considered amongst the amenity impacts of a proposal, there cannot be considered a right to any particular view. In the absence of particular planning controls which might require the protection of, or sharing of views, loss of views is usually afforded very limited weight. This is especially the case where a view is obtained across adjoining land and the views are not afforded any special consideration in a planning control. In this case the development is not considered to intrude unreasonably upon the skyline to reduce the amenity of neighbours through their outlook or access to daylight.

Whilst it is recognised that views may form part of residential amenity, the Tribunal has consistently held that there is no legal entitlement to a view.

### **Loss of property value**

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

### **Construction issues**

Council's Local Law 66 imposes controls on noise emissions during and post construction. The local law states that a person must not emit any noise from electrical power tool or other impacting equipment associated with the construction or use of a residential premises outside of the hours of Monday to Friday, 7 am – 8 pm and weekends and public holidays, 9 am – 1 pm.

Concern has been raised in relation to potential closure of roads and footpaths during construction. Such closures are not a planning consideration. Closure or occupation of public spaces requires a Public Occupation Permit under Council's General Local Law 2018. Council's Environmental and Civic Assets Local Law 2018 requires an Asset Protection Permit to be obtained to ensure infrastructure assets within the road reserve are protected or repaired if damaged.

A range of other approvals are required from Council's City Infrastructure Department related to construction impact on public space. Consideration of such closure and notice as required is 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 proposed development will contribute to an increase in housing diversity within the limited area of Residential Growth Zone of Oak Park whilst offering a significant contribution of accessible dwellings.



The overall design of the building contributes to the preferred character envisaged for the Neighbourhood Activity Centre, Residential Growth Zone and Design and

Development Overlay 24 subject to conditions outlined in the recommendation will not cause unreasonable amenity impacts.

With the conditions of approval as proposed in the recommendation, the proposal ensures the built form outcomes are appropriate to the context and make a positive contribution to the street.

On the balance of policies and controls within the Moreland Planning Scheme and objections received, it is considered that Notice of Decision to Grant a Planning Permit No MPS/2020/185 should be issued.

### **Attachment/s**

- |   |   |            |
|---|---|------------|
| <a href="#">1</a>  | Location of objectors- 234-236 Waterloo Road Oak Park | D20/411481 |
| <a href="#">2</a>  | ADV_234-236 Waterloo Road Oak Park - Plans            | D20/260281 |

## 5.4 4/3 TURNBULL COURT, BRUNSWICK WEST - PLANNING PERMIT APPLICATION MPS/2020/207

Director City Futures

City Development

### Executive Summary



<b>Property:</b>	<ul style="list-style-type: none"> <li>4/3 Turnbull Court, Brunswick West.</li> </ul>
<b>Proposal:</b>	<ul style="list-style-type: none"> <li>Construction of five double storey dwellings.</li> </ul>
<b>Zoning and Overlay/s:</b>	<ul style="list-style-type: none"> <li>Neighbourhood Residential Zone (NRZ1)</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>12 objections</li> <li>Key issues: <ul style="list-style-type: none"> <li>Overdevelopment.</li> <li>Non-compliance with Clause 55.</li> <li>Car parking and traffic impacts.</li> <li>Drainage.</li> <li>Impact on access to and use of the Moonee Ponds Creek.</li> <li>Public notice was not completed correctly.</li> </ul> </li> </ul>
<b>Objector consultation meeting:</b>	<ul style="list-style-type: none"> <li>Date: 5 November 2020.</li> <li>Attendees: 6 objectors, 2 representatives of the permit applicant and 2 Council officers.</li> <li>An agreement was reached to make further changes to the development.</li> </ul>
<b>ESD:</b>	<ul style="list-style-type: none"> <li>2000 litre capacity rain water harvesting tank to each dwelling</li> <li>Double glazing to all new habitable room windows.</li> </ul>
<b>Key reasons for support:</b>	<ul style="list-style-type: none"> <li>The development respects the character neighbourhood.</li> <li>Off-site amenity impacts have been minimised by the proposed building siting.</li> <li>The development makes a positive contribution to the streetscape.</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/2020/207 be issued for the construction of five double storey dwellings at 4/3 Turnbull Court, Brunswick West, subject to the following conditions:

### Amended plans required

1. Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and must be generally in accordance with the amended development plans lodged with Council on 11 September 2020 and referenced as TP01 and TP02, Revision E, dated 22 June 2020, and TP03 to TP05, Revision D, dated 5 March 2020, prepared by Professional Planning Pty Ltd and the Landscape Plan advertised on 23 April 2020 and referenced as Drawing Number L-TP01, dated October 2019, prepared by John Patrick Pty Ltd, but modified to show:
  - a) The initiatives contained within the Sustainable Design Assessment along with the proposed changes:
    - i. Details of the permeable paving on plans in the form of a cross sectional drawing showing the different layers and their depth, the slotted pipes and the connection to stormwater pits.
    - ii. Double glazing to all habitable room windows on each individual glazing unit.
    - iii. Shading devices to unit 1 and 4 north facing ground floor glazing. If fixed horizontal shading, the depth of the device should be equal to 25% of the distance from sill height to the base of the device and extending horizontally by the same length to both sides.
    - iv. Any other modifications arising from the amended Sustainable Design Assessment (Condition 5).
  - b) An increase of at least 300mm to the setback of the ground floor, living room wall of Dwelling 1 from north-west side boundary.
  - c) The details of the design of the common driveway and car parking area to include treatments to break-up the extent of concrete.
  - d) The car parking spaces (including the carport parking space) with a maximum gradient of 1:20 (5%) measured parallel to the angle of parking, and maximum 1:16 (6.25%) in any other direction.
  - e) The car parking space of Dwelling 3 to be appropriately paved or concreted using the same (or similar) material used for the shared car parking.
  - f) The car parking space of Dwelling 3 to be free of physical obstructions, including landscaping.
  - g) The car park accessway width to be 4.8 metres wide in accordance with Clause 52.06 of the Planning Scheme.
  - h) The Dwelling 1 crossover with 1.0-metre splays on either side, commencing where the new footpath (required by Condition 9 a) meets the nature strip and finishing at the kerb, in accordance with Council's Standard Vehicle Crossing Design.
  - i) Modification to the crossover to the car park or the electricity power pole to be relocated, so that a 1.0-metre setback is provided between the proposed vehicle crossing, including the 1.0-metre splays, and the electricity pole.



- j) Dwellings 1, 2 and 5 dimensioned and annotated as visitable by a person with limited mobility by having:
  - i. An accessible path from the street and car park areas to a level entry
  - ii. Minimum width of 850mm for doors and 1000mm for hallways at entry level
  - iii. A clear path of travel from the accessible entry to a living area and toilet suitable for people with limited mobility.
- k) Dwelling 4 dimensioned and annotated as livable housing by a person with limited mobility by incorporating the following design features:
  - i. An accessible path from the street and car park areas to a level entry
  - ii. A bedroom, living area, kitchen, private open space, bathroom and toilet which can be efficiently adapted for people with limited mobility on entry level
  - iii. Minimum width of 850mm for doors and 1000mm for hallways at entry level.
- l) A screen diagram drawn at a scale of 1:50 which details the 'fixed louvred screen used to limit overlooking. 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.
- m) Replace the paling fence that adjoins the Moonee Ponds Creek with an open style fence, such as a metal picket fence or similar, so that the fence is at least 25 percent transparent for that section of fence measured from where the crossover intersects with the car park to where the site boundary intersects with the boundary of 5/31 Waxman Parade.
- n) The location of the electricity meter box, which must not be in a standalone location in the front setback.
- o) The location of the 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.
- p) An updated schedule of all proposed exterior decorations, materials, finishes and colors, including color samples.
- q) The type and height of the permanent fencing that will be installed after the temporary acoustic fencing referred to in condition 10 is removed.
- r) Any modifications arising from the amended Landscape Plan (Condition 3).
- s) Any modifications arising from the Waste Management Plan (Condition 7)
- t) A Public Works Plan (Condition 9).

### **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 requirements**

- 3. Prior to the commencement of any development works, an amended Landscape Plan generally in accordance with the landscape plan advertised on 23 April 2020 and prepared by John Patrick Landscape Architects Pty Ltd must be submitted to and

approved by the Responsible Authority. The landscape plan must be updated to show:

- a) The changes contained within the amended floor plans, including the conversion of the ground floor Secluded Private Open Space of Dwelling 3 to a car space.
  - b) Deletion of the landscaping around the perimeter of the car space of Dwelling 3.
  - c) Permeable paving in accordance with condition 1(a)(i) of this permit.
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

#### **Sustainable Design Assessment**

5. 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 P2 Consultants advertised on 23/04/2020, but modified to include the following changes:
- a) Provide completed preliminary energy rating for each thermally unique dwelling including a preview energy rating certificates showing that 6.5 star minimum average energy rating will be achieved.
  - b) Provide a compliant STORM report that details impervious surfaces consistent with the development plans. If treatment is required the preferable solution is permeable paving.
  - c) Amended BESS Report 2.1 Vegetation to reference the correct dimensions of vegetated area.

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 Sustainable Design Assessment and associated notated plans will be endorsed to form part of this permit.

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

7. Prior to the endorsement of plans, a Waste Management Plan must be submitted and approved to the satisfaction of the Responsible Authority. The Plan must include, but not limited to the following:
- a) A statement that all waste, including garbage and recycling, will be collected by a private waste collection company (not Council), and stating the size of bins, frequency of collection and hours of collection;
  - b) A description of ease of disposal for residents that does not disadvantage recycling;
  - c) Confirmation that educational material will be displayed in the waste bin storage area explaining what material can be recycled;
  - d) Calculations showing the amount of garbage and recycling expected to be generated;

- e) Include a plan showing the location of the bin storage area on the site and details of screening from public view;
- f) Include a dimensioned plan showing the storage area is sufficient to store the required number of bins in a manner that allows easy access to every bin;
- g) Detail the ventilation to prevent garbage odours entering the dwellings;
- h) Detail the ease of taking the fully loaded waste bins to the point of waste collection;
- i) State where and when the bins will be placed for waste collection;
- j) Confirm that the bins will be removed from the street promptly after collection; and
- k) Include a plan showing where the waste trucks will stop to service the waste bins.

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.

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

### **Public Works Plan**

9. 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 within the verge at the sites Turnbull Court frontage and include:
  - a) The construction of a 1.5-metre-wide footpath, which is to extend south-east from the site frontage to the pedestrian access gate to the Moonee Ponds Creek, to the satisfaction of Moreland City Council, City Infrastructure Department.
  - b) Street tree planting, with the number and type of street trees selected having regard to the size of the space and to the satisfaction of Moreland City Council, City Infrastructure Department.
  - c) The location and design of the new public lighting which must be consistent with Council's Public Lighting Policy (2018) and to the satisfaction of Moreland City Council.
  - d) The location of the new crossovers and existing crossovers at the site to be removed, with the kerb and channel and nature strip reinstated to Council's standards using construction plans approved by Moreland City Council, City Infrastructure Department.
  - e) Any works to the public land adjacent to the development including new or reconstructed footpaths, nature strips, tree planting, public lighting and other associated street furniture/infrastructure

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.

### **Temporary Acoustic Fence**

10. Prior to the commence of the development a temporary acoustic fence must be erected/constructed at the sites interface and in consultation with the adjoining dwelling at 5/31 Waxman Parade to minimise disturbance during the construction of the development. The temporary acoustic fence must be removed prior to the occupation of the development and replaced with the permanent boundary fencing that is noted on the endorsed plans.

## **DCP levy**

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.

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.

## **Vehicle crossing, car parking**

12. 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).
13. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, any existing vehicle crossing not to be used in this use or development must be removed and the kerb and channel, footpath and nature strip reinstated to the satisfaction of the Responsible Authority (Moreland City Council, City Infrastructure Department).
14. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, any Council or service authority pole or pit within 1 metre of a proposed vehicle crossing, including the 1 metre splays on the crossing, must be relocated or modified at the expense of the permit holder to the satisfaction of the Responsible Authority and the relevant service authority.
15. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, lighting no higher than 1.2 metres above ground level is to be installed and maintained on the land to automatically illuminate pedestrian access from the building to the car parking spaces on-site between dusk and dawn with no direct light emitted onto adjoining property to the satisfaction of the Responsible Authority.
16. There is to be no garage door installed and no additional columns added to the car port for Dwelling 1.
17. Prior to the occupation of the dwellings, all parking spaces are to be marked with the associated dwelling number to facilitate management of the car park to the satisfaction of the Responsible Authority.
18. The area set aside for the parking of vehicles and access lanes shown on the endorsed plan must be to the satisfaction of the Responsible Authority, including that it:
  - a) Be completed prior to the occupation of the development.
  - b) Be maintained.
  - c) Be properly formed to such levels that it can be used according to the endorsed plan.
  - d) Be drained and surfaced.

- e) Have the boundaries of all vehicle parking spaces clearly marked on the ground to accord with the endorsed plan.
- f) Not to be used for any other purpose other than the parking of vehicles.

### **Car parking restriction**

- 19. Prior to occupation of the dwellings, the applicant must apply to Council to install “No Stopping” parking restriction signs to apply between the two new vehicle crossings of 4/3 Turnbull Court. This is to be arranged at the applicant’s cost.

### **Drainage**

- 20. 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).
- 21. The stormwater pit in the street is to be relocated or modified to the satisfaction of the Responsible Authority
- 22. 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.

### **General**

- 23. 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.
- 24. 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.

### **Time**

- 25. 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;

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

**Note1:** 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 plan checking (2.5%) and supervision (0.75%) fees on the cost of constructing the drain.

**Note 3:** 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/>.

## 1. Background

### Subject site

The site is located at 4/3 Turnbull Court, Brunswick West.

The site has a frontage to Turnbull Court of 20.97 metres and a total site area of 681.75 square metres. The site is irregular in shape.

There are no restrictive covenants indicated on the Certificate of Title. The site is encumbered by a 1.81-metre-wide sewerage and drainage easement, which is located along the north boundary that interfaces with 27 Waxman Parade.

The site is currently vacant and contains no vegetation. The site formerly contained a single storey dwelling.

Vehicle access to the site is provided via a single width crossover to Turnbull Court.

### Surrounds

The area is characterised by residential development comprising a mix of architectural styles including post-war, neo-Georgian and contemporary infill development.

The Moonee Ponds Creek is located immediately to the south and City Link is 200 metres to the east.

All adjoining land to north, east and west is included within Neighbourhood Residential Zone and contains single and multi-dwelling development. The adjoining land to the south is a vacant parcel of crown land which is zoned both Neighbourhood Residential Zone and Urban Flood Zone.

A Location and a Zoning plan forms **Attachment 1** and **Attachment 2**, respectively.

### The proposal

The proposal is for the construction of five double storey dwellings. Three dwellings are oriented to front Turnbull Court and two dwellings are oriented to front the shared car park and are sited within the northern portion of the lot.

All dwellings, except for Dwelling 3, have a traditional layout with ground level Secluded Private Open Space (SPOS) in excess of the Clause 55 requirement. The SPOS of these dwellings is located to the north. Dwelling 3 has a first-floor balcony that has an outlook to the Moonee Ponds Creek and Turnbull Court streetscape.

A total of 6 on-site car parking spaces are provided, including one space to each dwelling and one shared, visitor car space.

The architectural style is contemporary, and the external materials include vertical metal cladding, face-brick, render and matrix panelling.

The development plans form **Attachment 3**.

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

Control	Permit Requirement
Neighbourhood Residential Zone	Clause 32.09-6: a planning permit is required to construct two or more dwellings on a lot and extend a residential building.

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 52.06: Car Parking.
- Clause 52.34: Bicycle Facilities.

### 3. 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 a sign on the frontage of the site

The permit applicant completed a statutory declaration that confirms that the advertising signage was posted and maintained on the site for at least 21 days.

Council has received a total of 12 objections. A map identifying the location of objector's forms **Attachment 4**.

The key issues raised in objections are:

- Overdevelopment.
- Non-compliance with Clause 55 requirements, including:
  - Street setback objective.
  - Side and rear setback objective.
  - Walls on boundaries objective.
  - Daylight to existing windows objective
  - Overshadowing open space objective.
- Car parking and traffic impacts.
- Drainage and infrastructure.
- Impact on access to and use of the Moonee Ponds Creek.
- Advertising not completed correctly (the sign was not on-site for the required period)

#### Amendment after public notification

In response to the issues raised by objectors, the proposal was formally amended after public notice to provide one visitor car parking space on-site. The visitor car space is located within the shared car park. To accommodate the additional car space, the ground floor SPOS of Dwelling 3 was converted to an open car space for that dwelling. The Dwelling 3 car spaces is accessed via a sliding gate at the north west corner of the car park.

Other changes were made to the proposal as part of the amendment, including:

- The provision of increased setbacks from side boundaries, which is achieved through a reduction to the building footprint. The ground floor, north-west wall of the Dwelling 1 living room is now offset from the side boundary. The north-east boundary setback of Dwelling 3 has been increased by 0.6 metres at ground floor.
- The inclusion of a gable roof form at the first floor of Dwelling 2, which replaces a flat roof form. This variation in roof form creates visual interest, reduces visual bulk and improves the development's response to the appearance of the existing dwellings.

The amended application contributes to an improved development outcome by reducing the demand for on-street car parking and making a positive contribution to the streetscape.



Given the type of changes there was no formal notification of the amended application, however the amended plans were circulated to all objectors to the application. Following the circulation of the amended drawings, a consultation meeting was arranged with objectors and the applicant.

### **Consultation**

A consultation meeting was held on 5 November 2020 and attended by Council Planning Officers, the applicant and the applicant's planning consultant and 6 objectors. All objectors to the application were invited to participate.

The meeting provided an opportunity to explain the application, for the objectors to elaborate on their concerns, and for the applicant to respond.

During the meeting, the permit applicant agreed to make changes to the development in response to the issues raised by objectors. These changes can be required by way of conditions of permit and include the following:

- Improved landscaping and public lighting.
- The construction of a pedestrian path along the Turnbull Court frontage of the site.
- Waste collection to be provided by a private waste company.
- Temporary acoustic fencing at the site boundary with the dwelling at 5/31 Waxman Parade to be erected during construction in consultation with the owner/resident of that dwelling.

While the use of a private waste collection company is an agreed outcome, it is also noted that the design and capacity of the shared bin storage area does not satisfy the requirements for Council's waste collection service. The bin storage area would need to be modified to be eligible for Council's waste collection service. On this basis, a condition is included in the recommendation for a waste management plan, including private waste collection.

### **Internal/external referrals**

The proposal was not referred to any external referral authority. The proposal was referred to the following internal Council departments.

<b>Internal Branch/Business Unit</b>	<b>Comments</b>
Sustainable Built Environment Unit - Development Engineer	No objections were offered to the proposal subject to modifications, which are addressed by conditions detailed in the recommendation.
Sustainable Built Environment Unit – Environmental Sustainable Development Engineer.	No objections were offered to the proposal subject to modifications, which are addressed by conditions detailed in the recommendation.
Open Space Unit – Urban Forestry Officer	No objections were offered to the proposal subject to modifications, which are addressed by conditions detailed in the recommendation.

## **4. Policy Implications**

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

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

- Settlement (Clause 11.01-1S)
- Metropolitan Melbourne (Clause 11.01-1R)
- 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)
- Housing (Clause 16), including:
  - Housing supply (Clause 16.01-1S and 16.01-1R)
  - Housing affordability (Clause 16.01-2S)

#### 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 21.03-4 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

#### Human Rights Consideration

This application has been processed in accordance with the requirements of the *Planning and Environment Act 1987* (including the Moreland Planning Scheme) reviewed by the State Government and which complies with the *Victorian Charter of Human Rights and Responsibilities Act 2006, including Sections 15 (Freedom of expression) and Section 18 (Taking part in public life)*. In addition, the assessment of the application has had particular regard to:

- Section 12: Freedom of movement
- Section 13: Privacy and Reputation
- Section 20: Property rights

An assessment of whether there is any potential for unreasonable overlooking has been undertaken in section 4 of this report. The proposed redevelopment of private land does not present any physical barrier preventing freedom of movement. The construction of a footpath in front of the site will improve pedestrian movement. The right of the landowner to develop and use their land has been considered in accordance with the Moreland Planning Scheme.

## 5. 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 have strategic support?

The site is located within the Neighbourhood Residential Zone. Council's MSS identifies this as being an area for 'minimal change'. The emphasis in minimal change areas is on the creation of an enhanced open and landscaped character, by providing increased private open space and landscaping.

It is considered that the proposal adequately respects the existing neighbourhood character, satisfies Clause 55 requirements and provides sufficient opportunities for landscaping. This is discussed in detail in the assessment below.

### **Does the proposal satisfy the neighbourhood character objectives?**

Neighbourhood Character outcomes are informed by the Council's Neighbourhood Character policy (Clause 22.01). The policy objectives of the Neighbourhood Residential Zone, include:

- To support minimal change to maintain a mix of single dwellings and lower density 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 a lower density, open and 'green, leafy' landscape character

Overall, it is considered that the proposal responds appropriately to its context and satisfies the expectations of development within the NRZ. The following is a detailed assessment of the proposal against the above requirements of the Neighbourhood Character policy.

### ***Appearance, siting and height***

The proposed development will present to Turnbull Court as three, attached double-storey dwellings. The siting of Dwellings 1, 2 and 3 in the side-by-side arrangement responds to the scale and rhythm of development along the southern end of Turnbull Court, which includes multi-dwelling infill and attached built form.

Due to the siting of the front three dwellings, the built form associated with Dwellings 4 and 5 will be concealed from view from within the streetscape. Dwellings 4 and 5 are located to the north-east of the site and are oriented to front the shared car parking and have an outlook towards Moonee Ponds Creek.

The style of development within the Turnbull Street streetscape is typically traditional in appearance. The contemporary design response is acceptable and responds to the existing development through the inclusion of a gable roof form (Dwelling 1 and 2), with the gable-end presenting to the street front. The gable-end will create a traditional silhouette that is consistent with the existing development, which includes hipped roofs as the primary roof form at first floor, as demonstrated by the streetscape elevation (TP03).

The visual bulk associated with the attached, double storey form is effectively minimised through:

- The combination of the flat and gable roof at the first floor that delineates each dwelling.
- The use of recesses, including the first-floor balcony, and material variation to break-up the horizontal proportions.
- The window design, which includes large sections of glazing to provide for activation and reduces blank walls at the façade. The fixed shading devices are used as an expressed element that helps create a three-dimensional façade.

There is a mix of single and double storey dwellings within the streetscape. The proposed double storey scale is consistent with the character of the area and the mandatory height controls of the NRZ.

### ***Rear yard development***

Multi-dwelling development is common within the immediate area, which includes built form that extends deep into rear yards. While the site does not form part of a neighbourhood with an open rear yard character, it does have two sensitive rear yard interfaces to the north, including the rear yards of 3/27 Waxman Parade and 29 Waxman Parade.

The proposed development provides a sensitive response to these rear yard interfaces by:

- Providing built form setbacks that exceed the requirement of Clause 55.
- Consolidating the open space of each dwelling at the interface with the adjoining rear yards, which also comprise landscaping and tree planting.

The proposed development to the rear of the site will not contribute to any unreasonable visual or other amenity impacts to adjoining rear yards.

### ***Landscaping***

An objective of Clause 22.01 is to ensure that the landscaping of new development contributes to a lower density, open and 'green, leafy' landscape character. The site does not currently contain any vegetation.

The proposal will include new landscaping, including tree planting within the front and rear setbacks and within the shared car parking at the interface with the Moonee Ponds Creek.

Clause 4.0 of the Schedule to the zone contains a variation to the requirements of Standard B13 of Clause 55.03-8 (Landscaping objective) of the Planning Scheme. The variation requires the planting of one tree within the front setback and open space of each dwelling.

In relation to the front setback, the proposal satisfies this requirement, with the planting of one tree within the front setback of Dwelling 1, 2 and 3. With the exception of dwelling 3, all rear yards contain at least one tree.

Two trees are to be planted within the car parking area. This will help soften views of the development from within the creek corridor and at the street frontage.

A condition of permit will require a minor change to the advertised landscape plan, including to incorporate the changes contained with the amended floor plans, such as converting the ground level open space of Dwelling 3 to a car space.

### ***Ground level Secluded Private Open Space (SPOS)***

There is an expectation within the Neighbourhood Residential Zone that multi-dwelling development provides ground level SPOS to each dwelling in excess of the relevant Clause 55 requirement. The intent of this requirement is to create a lower density, open and landscaped character and limit visual amenity impacts to adjoining areas of SPOS.

Except for Dwelling 3, all dwellings are provided with ground level SPOS in excess of the Clause 55 requirement. Due to the reverse living layout of Dwelling 3, no ground level SPOS is provided to that dwelling. Rather, the dwelling is provided with a first-floor balcony at the north elevation, which has an outlook towards the Moonee Ponds Creeks.

This variation is acceptable as the proposal satisfies the intent of the policy requirement through the provision of landscaping across the site. The design response and siting of built form is respectful of neighbourhood character and does not result in any visual or other amenity impacts to adjoining SPOS.

It is noted that original application provided ground level SPOS to Dwelling 3 that satisfied the Clause 55 requirement. However, in response to objections, the SPOS to Dwelling 3 was converted to a car space.

### **Active frontages and car parking facilities**

The three dwellings fronting Turnbull Court each have habitable room windows facing the street. This outcome will improve the causal surveillance and activation of the streetscape and the pedestrian entrance to the Moonee Ponds Creek.

With respect to vehicle access, the proposal seeks to modify the existing single width crossover and construct a second, single width crossover. The existing crossover will provide access to the open car park that contains five car spaces. The shared car park will be obscured from view from the streetscape by landscaping and due to its siting to the side and rear of Dwelling 3. To break up the extent of concrete, a condition is included in the recommendation to require detail of a design of the area which achieves this outcome.

The construction of a second, single width crossover to Turnbull Court will allow for vehicle access to Dwelling 1. Dwelling 1 is provided with a single car space located within a carport that is sited to the side of the dwelling and along the common boundary with 3/3 Turnbull Court. The car parking facilities will not be visual dominant.

Due to the relatively wide frontage to Turnbull Court of 20.97 metres, the construction of a second crossover is acceptable and will not have an unreasonable impact on landscaping, with three trees and low-level landscaping proposed within the street setback of the development.

While one on-street car space will be lost as a consequence of the development, the location and number of crossovers is supported by Council's Development Engineer. An on-site visitor car parking space compensates for the loss of an on-street car parking space.

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

The proposal satisfies the car parking requirements of Clause 52.06-5 of the Planning Scheme in the following way:

Land use	Parking requirement	Parking supply
5 x 2 bedroom dwellings	5	5
5 or more dwellings	1 visitor space	1 visitor space
<b>Total</b>	<b>6</b>	<b>6</b>

Council's Development Engineer has reviewed the development plans and supports the application, including the design of the car park, subject to minor modifications that form part of the recommendation.

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

Council's Development Engineer has assessed the proposal and has determined that the development will generate an additional 22 vehicle trips per day from this site than was generated previously. This increase in vehicle trips is considered acceptable for a local street.

This report will recommend that a 'No Stopping' parking restriction be applied to the space between the two crossovers at the site frontage. This will prohibit inappropriate on-street car parking that could obstruct vehicle access and movement. This approach supported by Council's Development Engineer.

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

The proposed development will increase pedestrian movement along Turnbull Court. Importantly, the southern end of Turnbull Court allows for pedestrian access to Moonee Ponds Creek. Under the existing conditions, there is no footpath located along the site frontage.

This report recommends that a 1.5-metre-wide footpath be constructed along the Turnbull Court frontage of the site and connect to the pedestrian access gate to the Moonee Ponds Creek. The footpath will be constructed at the developer's cost and must be completed to Council's standards and approved by Council. As a result, it is considered that the development will create an improved outcome for pedestrians and cyclists, with respect to both amenity and safety.

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

The proposed ESD features of the development are considered to be adequate and include:

- A BESS score of 58 per cent
- A STORM rating of 101 per cent, which includes 10,000L rain water harvesting system.
- Double glazing to all habitable room windows.

Council's Environmental Sustainable Development Engineer has reviewed the advertised Sustainable Design Assessment and confirm that the application responds well to Council's local policy at Clause 22.08.

Several conditions of permit have been recommended, which relate to the display of ESD commitments on the development plans and the provision of additional information to ensure a minimum 6.5 NaTHERS rating is achieved.

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

In accordance with the requirements of Standard B25 of the Accessibility objective (Clause 55.05-1), all dwelling entries are located at ground level and are accessible or can be easily made accessible to people with limited mobility.

Clause 21.03-3 contains an objective to increase the supply of housing that is visitable and adaptable to meet the needs of different sectors of the community. The permit applicant has agreed to modify the development so that three dwellings are visitable and one dwelling is liveable, which will be achieved through conditions in the recommendation.

**Does the proposal satisfy the mandatory requirements of the Zone?**

***Garden area***

As the lot is 919.5 square metres, 35 per cent minimum garden area is required to satisfy the mandatory garden area requirement of the Zone.

The original application exceeded this requirement, with a total of 36% garden area provided. In response to objections, the application was amended to provide one on-site visitor car space, which reduced the amount of garden area to a total of 238 square metres or 34.9 percent of the site.

As amended, the development is not compliant with the garden area requirement. Given the non-compliance is relatively minor, the requirement can be satisfied through a slight modification to the built form, which involves increasing the north-west boundary setback of Dwelling 1 by 300mm. This change increases the garden area provided to 35 percent of the site.

This modification has been agreed to by the permit applicant and is included as a condition in the recommendation.

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

A detailed assessment of the proposed development against the objectives and standards at Clause 55 has been undertaken. The proposed development complies with all objectives of Clause 55, including the objectives that relate to side/rear boundary setbacks, on boundary walls and overshadowing. There are some minor variations to the standards which are discussed below:

#### ***Street setback (Standard B6)***

The development provides for a street setback from Turnbull Court of 2.6 metres. The site adjoins only one dwelling that is oriented to front Turnbull Court, that being 3/3 Turnbull Court, which is setback 2.91 metres from the street front.

The proposed development seeks a minor variation to Standard B6 of 0.31 metres.

The proposed street setback is acceptable given the character of narrow street setbacks within the immediate context. The proposed street setback will not impact on any vegetation with retention value or contribute to any visual amenity impact to the adjoining dwelling due to location of the driveway of Dwelling 1, which creates a generous building off-set from the common boundary.

#### ***Overlooking***

The upper level windows of the proposal may potentially overlook private open space areas to the north of the site. Whilst screening is shown, a condition is included in the recommendation that ensure that it complies with the applicable Rescode standard.

#### ***Front fence***

The development involves the construction of a 1.4 metre high front fence along the Turnbull Court frontage, which comprises powder coated aluminium (in 'night sky') and brick piers. The height and design of the fence compliments both the appearance of the proposed development and character of front fencing within the streetscape.

The proposal also seeks to construct a 2.0-metre-high paling fence along the Moonee Ponds Creek interface, which commences at street front. This section of fencing represents a poor design response that fails to appropriately integrate the site with the creek interface.

A condition of permit will require the replacement of the paling fence that adjoins the Moonee Ponds Creek with an open style fence, such as a metal picket fence or similar, so that the fence is at least 25 percent transparent for that section of fence measured from where the crossover intersects with the car park to where the site boundary intersects with the boundary of 5/31 Waxman Parade.

This will improve the site's integration with the creek, provide for a visually permeable interface and better respond to the front fence character of the area.

## **6. Response to Objector Concerns**

The following issues raised by objectors are addressed in section 3 and 4 of this report:

- Inadequate street setback.
- Car parking and traffic impacts.

Other issues raised by objectors are addressed below.

### **Overdevelopment**

The proposed development complies with all objectives of Clause 55, including site coverage and private open space requirements. Additionally, the development satisfies the garden area requirement of the Neighbourhood Residential Zone via a condition of the recommendation. Therefore, the proposal is not considered to be an overdevelopment of the site.

### **Side and rear setbacks**

The proposed built form is appropriately sited to provide boundary setbacks that comply with or exceed the requirement of Standard B17 at Clause 55.04-1 of the Planning Scheme.

### **Boundary wall development**

The permit applicant amended the development and reduced the extent of boundary wall. The ground floor, north-west wall of the Dwelling 1 living room is now off-set from the side boundary. This change is formalised as a condition in the recommendation. The remaining boundary development is associated with the carport of Dwelling 1, which is constructed along the north-west boundary and is sited to abut an existing boundary wall associated with the adjoining dwelling at 3/3 Turnbull Court.

The carport complies with Standard B18 and the walls on boundary objective at Clause 55.04-2 of the Planning Scheme, with respect to both height and length of boundary development.

### **Daylight to exiting windows objective**

The proposed development is appropriately setback from all adjoining habitable room windows. The development complies with the requirements of Standard B19 at Clause 55.04-3 of the Planning Scheme.

The Standard does not consider the building setback and daylight access to existing non-habitable room windows, such as bathroom windows.

### **Overshadowing private open space**

The proposed development does not result in any additional shadowing to adjoining SPOS. The development complies with Standard B21 at Clause 55.04-6 of the Planning Scheme. The Standard requires an assessment of the proposed overshadowing at the equinox (22 September) and not at other times of the year.

### **Drainage and infrastructure capacity**

The application has been referred to Council's Development Engineer who has required that specific drainage conditions be included on any planning permit that is issued.

The site owner will be required to address infrastructure servicing demands of the additional dwellings as stipulated by the various service agencies at the time of either subdivision or connection of the development including any service authority requirements to contribute to the cost of upgrading trunk infrastructure.

### **Impact on access to and use of the Moonee Ponds Creek**

Under the existing conditions, there is gate and fence at the south-east end of Turnbull Court that provides for pedestrian access to the Moonee Ponds Creek, with a crushed rock path that extends east from Turnbull Court and continues along the Moonee Ponds Creek.

The proposed development will not change the pedestrian access gate. The proposal will involve the reconstruction and realignment of a vehicle crossover, which located between the pedestrian entry gate and Turnbull Court. The proposed location of the crossover is generally consistent with the existing conditions.



While the development modifies the location of an existing crossover near the entry gate, access and use of the Moonee Ponds Creek is not adversely impacted. The applicant has agreed to make a positive contribution to the creek interface through the construction of a pedestrian path and an open-style, transparent boundary fence. These changes will contribute to an improved outcome for pedestrian access, use and safety.

#### **Public notice was not completed correctly**

An objection raised the concern that permit applicant did not complete public notice correctly, as the advertising sign was not posted on site for the required period. Council's letter dated 27 April instructed the permit applicant to post the advertising sign on the site for a minimum of 21 days.

The permit applicant submitted a statutory declaration that states that advertising was carried out correctly and for the minimum period. The advertising sign was posted on the site on 4 May 2020 and remained on site for 21 days. The statutory declaration was signed on 27 May 2020, which coincides with 22 day of public notice and the day that the advertising sign can be removed.

### **7. 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.

### **8. Financial and Resources Implications**

There are no financial or resource implications.

### **9. Conclusion**

It is considered that the proposed development at 4/3 Turnbull Court, Brunswick West, is consistent with the purpose of the Neighbourhood Residential Zone and with Council's Strategic Framework Plan.

The proposed development will result in a built form outcome that responds appropriately to neighbourhood character, will improve the site's integration within the streetscape and the Moonee Ponds Creek interface.

On the balance of policies and controls within the Moreland Planning Scheme and objections received, it is considered that a Notice of Decision to Grant a Planning Permit No MPS/2020/207 should be issued for the construction of five double storey dwellings, subject to the conditions included in the recommendation of this report.

### **Attachment/s**

<a href="#"><u>1</u></a>	4/3 Turnbull Court, Brunswick West - Location Plan	D20/478566
<a href="#"><u>2</u></a>	4/3 Turnbull Court, Brunswick West - Zone and Overlay Plan	D20/478574
<a href="#"><u>3</u></a>	4/3 Turnbull Court, Brunswick West - Development Plans	D20/478588
<a href="#"><u>4</u></a>	4/3 Turnbull Court, Brunswick West - Objector Location Plan	D20/478598

## 5.5 DEVELOPMENT PLAN - 1 GRONN PLACE, BRUNSWICK WEST

Director City Futures

City Development

### Executive Summary



<b>Property:</b>	1 Gronn Place, Brunswick West
<b>Proposal:</b>	Development Plan approval pursuant to Section 3.0 of the Development Plan Overlay Schedule 12 (DPO12) of the Moreland Planning Scheme.
<b>Zoning and Overlay/s:</b>	<ul style="list-style-type: none"> <li>• Mixed Use Zone (Schedule 2) (MUZ2)</li> <li>• Development Plan Overlay Schedule 12 (DPO12)</li> <li>• Development Contributions Plan Overlay (DCPO)</li> <li>• Parking Overlay Schedule 2 (PO2)</li> </ul>
<b>Strategic setting:</b>	<div>Minimal housing growth</div> <div>Incremental housing growth</div> <div>Increased house densities encouraged</div> <div>Significant housing growth</div>
<b>Responsible Authority:</b>	The Department of Environment, Land, Water and Planning (DELWP) is responsible for administering and enforcing the planning scheme for the subject site. The Development Plan must be prepared to the satisfaction of the Responsible Authority in consultation with Moreland City Council.
<b>Community Consultation:</b>	Community consultation was undertaken by the applicant and Department of Health and Human Services (DHHS) with the existing tenants, local community and members of Council to inform the final design response. In addition, a Communication and Engagement plan dated January 2020 has been submitted as part of the application.
<b>ESD:</b>	5 Star Green Star Minimum average NatHERS rating of 7 stars for each apartment buildings. Minimum 6.0 star NatHERS rating for each townhouse.
<b>Accessibility:</b>	Proposed 1 and 2 bedroom apartments associated with the social housing will comply with the Liveable Housing Design Guidelines gold level. Silver level will be achieved for the Women's Housing, private housing and townhouses. In addition, apartments layouts are intended to meet accessibility requirements as per Standard D17 of Clause 58.05-1.

<b>Key reasons for support</b>	The Development Plan with some modifications is in accordance with the requirements of the Development Plan Overlay Schedule 12 (DPO12) and provides high quality social housing for Moreland.
<b>Recommendation:</b>	That Council advises DELWP that they support the Development Plan subject to a number of recommended changes to comply with DPO12 and improve ESD, design, landscaping, architectural quality and pedestrian amenity.

## Officer Recommendation

That Council writes to the Minister for Planning advising that Council supports the Development Plan subject to the following changes:

1. Reduce the width of the eastern vehicle crossing in Peacock Street to 3.5 metres wide and amend the basement ramp to be 3.5 metres wide for at least the first 10 metres, gradually increasing to 6.1 metres over an appropriate distance, if required.
2. The at-grade parking allocated to Building D and the western vehicle crossing and accessway in Peacock Street to be shifted further east as a result of the reduced basement access width, to enable increased landscaping and provision of additional canopy trees as improvements to the pedestrian corridor and Peacock Street frontage.
3. Use of high quality surface materials such as bluestone or coloured natural stone aggregate concrete for the at grade car parking allocated to Building D.
4. The northern interface of Building D improved by incorporating balconies and/or habitable room windows at each level facing Peacock Street.
5. Entry to Basement B and C designed with an apex height along the access ramp equivalent to 24.89 AHD and 24.05 AHD respectively to prevent stormwater entering the basement from the adjacent road reserve.
6. The east facing balcony balustrades on level 6 of Buildings B and C setback to comply with the setback requirements for Interface Treatment A in the Development Plan Overlay Schedule 12.
7. Further vertical articulation on the upper levels of the apartment buildings to minimise the monotonous appearance and visual bulk.
8. The northern elevation of Building A redesigned to avoid the 'wedding cake' appearance using planter beds or other landscaping treatment.
9. All plans updated to show the Building A street wall height as being 3 storeys.
10. Reconfiguration of the townhouses so that for every three townhouses, has at least two ground floor habitable rooms (e.g. a study) with windows fronting the street, to reduce the dominance of front garages and vehicle crossings within the streetscape.
11. Individual entrances to each ground floor dwelling fronting the open space corridor.
12. A clear commitment to the provision of way finding signage and appropriate lighting within the internal roads and pedestrian corridors.
13. Provision of BBQ facilities in appropriate locations along the open space corridor.
14. Provision of additional visitor bicycle spaces along the open space corridor and at the Albion Street and Peacock Street frontages.
15. Provision of a raised pedestrian threshold treatment in the Peacock Street Road reserve to enhance the pedestrian connection from the site through to Dunstan Reserve.
16. Updates to the Landscape Master Plan showing further detailed specifications and sections that provide for sufficient deep soil volumes and container dimensions to ensure successful and viable canopy tree planting above the basement. To achieve adequate soil volumes and depth without unreasonably impacting on the levels above ground/pedestrian corridor, the basement car park may need to be lowered or alternatively containerized planters below ground level will be required with irrigation (including source and controllers), quality soil media, maintenance specifications and schedules and suitable species selection to ensure landscaping is healthy and viable.
17. Retention of the existing *Pinus Pinea* tree (identified as number 30 in the submitted Arboricultural Assessment Report and Tree Management Plan) in Kitchener Street, and associated changes to townhouse layouts to ensure that vehicle crossings are located outside of the Tree Protection Zone.

18. Removal of any vehicle crossings from within the tree protection zone of mature *Eucalyptus Melliodora* tree (identified as number 34 in the submitted Arboricultural Assessment Report and Tree Management Plan) in Kitchener Street.
19. Planting of a large canopy tree within every fourth or fifth parking bay in the visitor parking area in Kitchener Street.
20. An amended Sustainability Management Plan, together with any changes to the indicative dwelling layouts, to achieve the indoor environment quality objectives of Clause 22.08 of the Moreland Planning Scheme and more specifically achieve the following percentage of daylight:
  - a) 80 per cent of the total number of living areas (including kitchen areas) to achieve a Daylight Factor (DF) greater than 1.0 per cent to 90 per cent of the floor area; and
  - b) 80 per cent of the total number of bedrooms to achieve a Daylight Factor (DF) greater than 0.5 per cent to 90 per cent of the floor area.
21. An amended Sustainability Management Plan and Stormwater Masterplan Report which adopts a traditional and widely accepted stormwater management system that does not include proprietary systems (e.g. Ocean Guard Litter Baskets and Ocean Protect Storm Filters) to the satisfaction of the drainage authority.
22. Updates to the Social Infrastructure Assessment prepared by ASR research dated September 20, 2017 to reflect any changes in population growth, existing services and infrastructure and policies between the period 2017 to 2020. The updated assessment must detail any changes to the 2017 recommendation particularly in relation to the provision of community facilities. The recommendations of the report must be incorporated into the Development Plan.
23. Updates to the Communications and Engagement Plan to clearly demonstrate and show the following:
  - a) The consultation that had been undertaken to inform the preparation of the Development Plan.
  - b) Replace the term 'neighbouring residents' with 'neighbouring owners and occupiers' to be consistent with the requirements of the Development Plan Overlay Schedule 12.
  - c) A map showing the extent of the neighbouring residents who have been consulted.

## **1. Background**

### **Subject site**

The Gronn Place Public Housing Estate comprises of a large parcel of land, totalling 15,112 square metres (approximately) in area. The site is accessed from Peacock Street to the north, Albion Street to the south and Kitchener Street to the west. It is bordered by residential dwellings to the north, east and south.

The land is currently vacant. The site was formerly occupied with six, three and four storey public housing flats, and a number of single storey duplexes fronting Kitchener Street.

### **Surrounds**

Single and double storey detached dwellings surround the subject site to the north, east and south. These properties are in the General Residential Zone (GRZ1). Directly opposite the subject site to the north is Dunstan Reserve, a large public open space. To the south across Albion Street are apartments buildings ranging in height between 4 to 8 storeys with retail uses on ground level fronting Albion Street. To the west is Kitchener Street and adjacent is the CityLink Toll Road. A noise attenuation barrier located to the west side of Kitchener Street separates this street from CityLink.

A location plan forms **Attachment 1**.

### **Site history**

The Gronn Place Public Housing Estate was constructed in the 1960s and remained under the ownership and operation of the Director of Housing (DoH) to be used for social housing. Notice of Amendment C170 occurred in August 2017, which included direct notices to 3,869 surrounding owners and occupiers and four known stakeholder and community groups. The amendment was also considered by a Standing Advisory Committee, appointed by the Minister for Planning.

In July 2017 the Minister for Housing provided a legally binding undertaking that:

- all tenants who wish to return to their former estate have the right to do so
- the rent will be calculated in accordance with the standard rent calculation policies of the Director of Housing, and
- security of tenure will not change.

When the new developed estate is nearing completion, Department staff will contact all relocated tenants to offer them the opportunity to return.

C170 was approved in March 2018, rezoning the land from General Residential to Mixed Use and introducing Schedule 12 to the Development Plan Overlay (DPO12) at Clause 43.04 of the Moreland Planning Scheme.

In October 2018, the Brunswick West Consultative Committee (BWCC) was established, to allow Department of Health and Human Services (DHHS) to have further consultation with key stakeholders. The BWCC meetings provided a communication forum between the community, DHHS, AV Jennings (as the appointed developer) and Council.

In June 2019 the commitment to public housing on the site was increased from 40 percent to 60 percent. While this public housing will be owned by the Director of Housing it will be managed by a community housing provider. In August 2019 Women's Housing Ltd was announced as the community housing provider.

## Statutory Controls

The Development Plan Overlay (DPO) is a tool of the Victoria Planning Provisions that requires the form and conditions of future use and development of an area to be shown on a 'Development Plan' before a permit can be granted to use or develop the land. In this way, it serves as a type of master plan for an area.

Schedule 12 of the DPO (DPO12) provides a framework to guide the future development of the Gronn Place site. The 'Concept Plan' at Section 3.0 of DPO12 sets out the built form controls and requirements that a development plan for this site, that a future Development Plan must respond to

Pursuant to Clause 72.01 of the Moreland Planning Scheme, the Minister for Planning is the Responsible Authority for administering and enforcing the planning scheme for the site. Section 3 of DPO12 states that a Development Plan must be prepared to the satisfaction of the Responsible Authority in consultation with Moreland City Council. On 11 August 2020, the Department of Environment, Land, Water and Planning (DELWP) referred the Development Plan for Gronn Place Public Housing Estate to Council for comments.

Subsequent planning permit applications for the site would be assessed against the approved Development Plan, as well as other applicable sections of the Moreland Planning Scheme.

## The proposal

The proposed Development Plan seeks to integrate privately owned housing with social housing. The design comprises of the following:

- Three, six storey apartments buildings, two of which will be publicly owned.
- One three storey apartment building that will be gifted to the Women's Housing Limited.
- 29, two to three storey townhouses

The development will provide the following:

- 111 social housing apartments
- 8 community housing apartments (Women's Housing)
- 50 private apartments
- 29 private townhouse dwellings.

Other key aspects of the Development Plan includes the following:

- Provision of a north-south link between Peacock Street and Albion Street and an east-west link from Kitchener Street.
- Provision of public and communal open spaces.
- Provision of basement car parking. Car parking for the townhouses will be provided within private garages.

An excerpt of the key pages of the Development Plan has been provided at **Attachment 2**. You can view the full version of the Development Plan and all associated documents on Moreland's [website](#).



**Figure 1: Proposed built form and location.**



**Figure 2: Proposed social housing and private dwelling mix.**

### **Planning Permit Application for the Basement**

The staging plan submitted with the Development Plan outlines that the first stage of the works will comprise of the development of the basement levels which will contain car parking. To adhere to construction timelines outlined in the staging plan, a planning permit application has been lodged with DELWP concurrently with the application for the Development Plan, seeking approval for the construction of the basement levels in advance of the approval of the development plan. This was referred to Council under Section 52(1) of the *Planning and Environment Act 1987* on 5 October 2020.

On 28 October 2020, Council responded with an objection outlining that approval of the proposed basement in advance of the Development Plan will be contrary to the requirements of DPO12 as it has the potential to prejudice the development of the site in accordance with the Development Plan for the following reasons:

- Dominance of the proposed basement ramp on the Peacock Street frontage.



- Implications on the viability of planting above basement which is crucial to achieving a high-quality pedestrian corridor.

These are detailed in the assessment below.

## 2. Internal/External Consultation

### Public notification

In accordance with Section 3.0 of DPO12, a Community Engagement Report dated January 2020 was submitted as part of the Development Plan, which outlines the community consultation undertaken by AV Jennings, DHHS and Women's Housing Limited with existing tenants, local community and relevant key stakeholders including Council to inform the final design response.

Concerns are raised with the extent of details provided in this report which does not clearly explain in detail the consultation undertaken to inform the preparation of the Development Plan nor does it clearly state/show the extent of the neighbouring residents who have been consulted. DPO12 specifically requires the Community Engagement Report to outline the consultation that has occurred to inform the preparation of the Development Plan. This matter should be addressed prior to the approval of the Development Plan.

### Internal/external referrals

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

Internal Branch/Business Unit	Comments
Urban Design Unit	No objections subject to further design refinements.
Development Engineer	No objections subject to modifications to the vehicle access from Peacock Street.
Engineering Services	Council has recently undertaken a flood mapping study. The site has been mapped as being at risk of a high intensity storm that has only a 1% statistical probability of being exceeded in any one year and may overload the underground urban drainage system. Engineering Services recommended modifications to the height of basement B and C carparks of to prevent stormwater entering. Required changes are included as a condition in the recommendation to this report
Environment Sustainable Design Unit	Generally supportive subject to modifications to demonstrate best practice ESD design in accordance with Clause 22.08.
Open Space Design and Development Unit	Generally supportive subject to adequate soil volumes and containers being provided for successful landscaping, adequate retention of existing street trees and additional tree planting on Kitchener Street.
Social and Affordable Housing	No objections subject to the Social Impact Assessment Report being updated and justification provided for not providing community facilities.

## 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

- Clause 16 Housing, including:
  - 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 21.03-3 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 22.07 Apartment Development of Five or More Storeys
- Clause 22.08 Environmentally Sustainable Design

### **Human Rights Consideration**

This application has been assessed in accordance with the requirements of the *Planning and Environment Act 1987* (including the Moreland Planning Scheme) reviewed by the State Government and which complies with the Victorian Charter of *Human Rights and Responsibilities Act 2006*. 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. The introduction of the DPO12 on the land occurred through a Planning Scheme Amendment, which included public exhibition and an independent panel review. This proposal seeks to give effect to the DPO12 and supports the provision of increased social housing.

## **4. Issues**

### **Does the proposal respond appropriately to the requirements of the Development Plan Overlay Schedule 12 (DPO12)?**

The DPO12 provides a list of requirements that a Development Plan is required to achieve and demonstrate. The submitted Development Plan, including the associated reports, have been assessed and largely meet the requirements of DPO12. However, there are some key issues, which should be addressed prior to approval of the Development Plan. As Council is not the Responsible Authority, these form recommendations to the Department of Land Water and Planning (DELWP).

Key considerations are detailed below:

### **Social housing and dwelling diversity**

The proposal results in an increase in the number of social housing on-site from 82 to 119 dwellings. These are predominantly 77 one bedroom dwellings and 37 two bedroom dwellings. Only five, three bedroom social housing dwellings are proposed. This does not achieve dwelling diversity as sought by DPO12. However, the Dwelling Diversity Report submitted justifies the demand for smaller dwellings in social housing. In addition, 8 pairs of one and two bedroom dwellings can be readily combined to create larger three and four bedroom dwellings, if required to cater to demand. This is therefore acceptable. The Development Plan also proposes an appropriate mix of private dwellings, including 24 three bedroom dwellings.

### **Land use**

Only residential use is proposed, which is consistent with the objectives of Schedule 2 to the Mixed Use Zone.

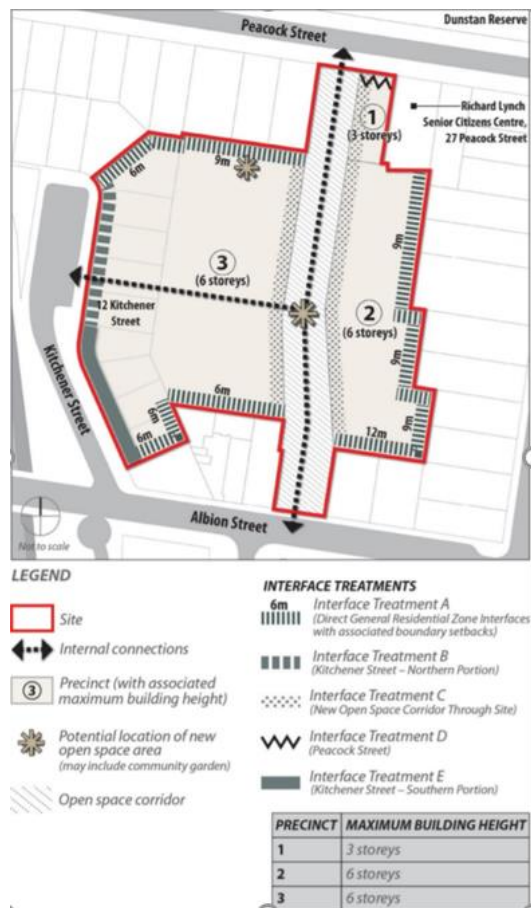
DPO12 states that the Development Plan could show or make provision for community facilities in appropriate locations. The proposed Development Plan does not provide any such facilities because the submitted Social Infrastructure Assessment undertaken in 2017 recommends that there is no immediate need for additional community facilities in this area. While the provision of a community facility is not mandatory, the Social Infrastructure Assessment should be updated to reflect any changes in the last three years. Should the assessment recommend that a community facility is required within the development then this should be provided. This will form part of Council's recommendation to DELWP.

### **Built form and design**

#### **Building Heights and Setbacks**

The DPO12 includes the following mandatory requirements of a Development Plan:

- *Building heights that do not exceed the maximum buildings heights specified in the table to the Concept Plan.*
- *Boundary setbacks as outlined in each relevant Interface Treatment or an increased setback in locations where necessary to protect existing trees to be retained or accommodate replacement canopy trees.*



**Figure 3: DPO12 Concept plan**

The Development Plan meets the DPO12 height requirements. The proposed buildings will be spread out throughout the site with the lower built form (three storey townhouses) constructed at the residential interfaces to the north, south and west thus, minimising offsite amenity impacts. The variations in the heights assist in reducing the visual bulk and dominance of the buildings as perceived from the public realm.

The development plan shows the following encroachments into boundary setbacks:

- Building B: Level 6 balcony balustrade and parapet encroach into east setback. Refer to Figure 2 below.
- Building C: Level 6 balcony balustrade encroach into east setback and parapet encroach into south setback.

DPO12 allows buildings and works such as architectural features, sunshades and artworks to encroach within setback areas provided they demonstrate a positive contribution to the overall façade composition. Building parapets are architectural features and therefore the minor encroachment to the east and southern boundary setbacks are acceptable.



**Figure 4: Upper levels of Building B demonstrating setback encroachment.**

Concern is raised with the level 6 balcony balustrade encroachment which is not an architectural feature. The balcony balustrades must be setback to comply with the mandatory boundary setback requirements. This can be easily accommodated by reducing the size of the balconies which currently have a total area ranging from 19 sqm to 24 square metres and are associated with one and two bedroom apartments. Clause 58 requires one and two bedroom apartment balconies to be a minimum of 8 square meters in total area with a minimum dimension of 1.8 and 2 metres.

The development plan shows the following variation to the DPO12 Interface Treatment C (street wall height and setback requirements from the new open space corridor proposed through the site):

- Building C: One metre upper level setback above street wall to the northern half of the building instead of two metres.

In this instance, the variation is supported noting that this street wall height and upper level setback requirements are not mandatory as it is not a boundary setback. The one metre setback is only proposed to the northern half of the building which is directly opposite the east-west link that is not occupied by any development thus, maintaining a sense of openness. The centre of the building has a visual break which provides visual relief and then the remainder of the upper levels will be setback two metres complying with DPO12.

### **Design and materiality**

As per the DPO requirements, the architectural styles and materials palette of the buildings will be similar, to achieve successful integration between private and social housing. The buildings are also articulated to reduce visual bulk. Council's Urban Designer has recommended further vertical articulation on the upper levels to minimise visual bulk and to avoid any 'wedding cake' appearance using planter beds or landscaping treatments., these form conditions of the recommendation.

### **Active frontages**

DPO12 requires active frontages to all streets, internal connections and open space areas.

The Development Plan activates Albion Street by enhancing the entry through provision of community gardens, raised planter beds and high quality surface treatments. Passive surveillance is also achieved via balconies to Building C.

The Development Plan proposes townhouses each with a driveway and garage fronting Kitchener Street, which is a short local residential street adjacent to the Freeway. Townhouses fronting internal streets are similarly designed. A requirement of DPO12 is to avoid large expanses of blank wall, car parking and co-located or continuous garage doors along ground floor frontages. Construction of continuous garages with multiple crossovers will result in lack of activation and loss of existing landscaping, contributing to poor street amenity. It is recommended that for every three townhouses, at least two ground floor habitable rooms (e.g. a study) with windows fronting the street be provided. This will increase the width of townhouses and reduce the dominance of car parking.

On Peacock Street, a significant portion of this site's frontage will be occupied by a double width vehicle crossing and at-grade car parking. In addition, the building is setback further than adjoining buildings and will present as a side wall rather than addressing the street. Concern is raised with the proposed interface. Justification provided by the applicant indicates that it is difficult to relocate the at-grade car parking due to security and safety issues. To improve this interface and reduce the dominance of car parking, it is recommended that:

- The vehicle crossing and accessway to the basement be reduced to a single width (which is supported by Council's engineers);

- The at-grade parking and vehicle access be shifted further east as a result of the reduced basement access width;
- The entry to the pedestrian corridor be improved by increasing landscaping including provision of additional canopy trees.
- The northern interface of Building D be improved by incorporating balconies and/or habitable room windows at each level facing Peacock Street; and
- Provision of high quality surface materials such as bluestone or coloured natural stone aggregate concrete for the at-grade car parking spaces.

The Development Plan proposes apartments and townhouses with an outlook to the pedestrian corridor. The provision of landscaping adjacent to this corridor is supported. Details of fencing will be required at the planning permit application stage to ensure that a balance between privacy and activation is maintained. A requirement of DPO12 is to provide for individual entry doors to ground floor dwellings that have frontages to the internal links. It is therefore recommended that the Development Plan shows this.

### **Safety and legibility**

In accordance with DPO12, an 18 metre wide pedestrian corridor is proposed connecting Peacock and Albion Streets which has a clear line of sight, is accessible to people of all abilities and has been designed to be safe by achieving passive surveillance from habitable room windows and open spaces. Provision of direct entries to the dwellings, as recommended, will further enhance the feelings of safety and encourage greater pedestrian use of the link.

The Development Plan currently does not provide details in relation to provision of lighting along the internal pedestrian paths and way finding signage. Details of these, particularly along narrow paths e.g. the link proposed between Block 3 and Building A, are important to improve safety, legibility and ensure that the development adopts Crime Prevention Through Environmental Design (CPTED) principles. At this stage, the Development Plan must at least show a commitment to the provision of appropriate lighting and way finding signage within the development.

### **Better Apartment Design Standards**

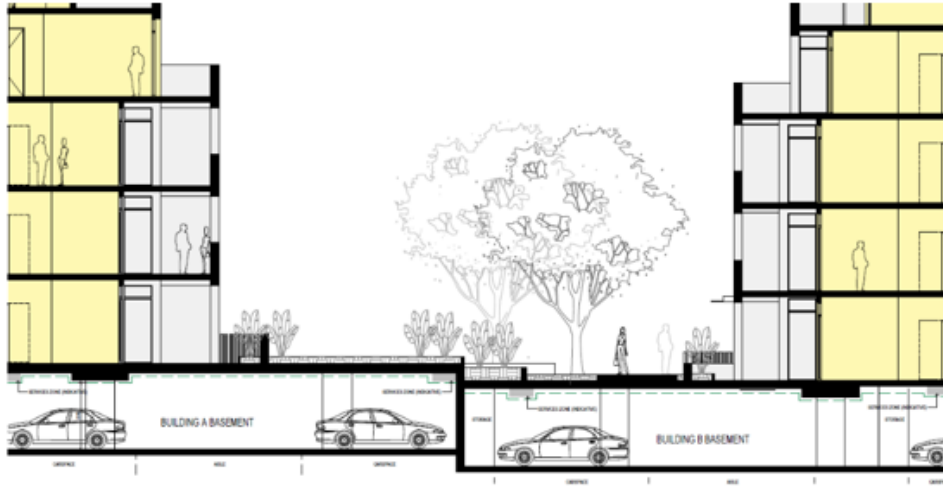
The proposed apartments and dwellings generally comply with the requirements of the Better Apartment Design Standards (BADS) at Clause 58. All dwellings will have an outlook towards the newly created links thus contributing to good levels of internal amenity. The proposed 1 and 2 bedroom apartments associated with the social housing will comply with the Liveable Housing Design Guidelines gold level. Silver level will be achieved for community housing (Women Housing) and townhouses. Further details showing compliance with Clauses 58 and 55 will be required to be provided at the planning permit application stage.

### **Landscaping and open space**

In accordance with DPO12, the Development Plan proposes open spaces, community gardens and informal outdoor recreational facilities located within and adjacent to the open space pedestrian corridor. These spaces are well connected, visible and easily accessible. Instead of locating an open space along the northern boundary of the site as stipulated by DPO12, both areas of open space are consolidated in the centre of the proposed pedestrian link. This is supported as this allows for a bigger space resulting in more activation and natural surveillance.

To increase the variety of proposed informal outdoor recreation facilities, it is recommended that BBQ facilities be provided in appropriate locations which will further encourage activation and social interaction within the development.

Council's Urban Forestry officer has raised concerns with the viability of the landscaping within the open spaces, which are proposed above a basement car park, and has recommended provision of adequate soil volumes and containers for successful landscaping. This forms a condition of the recommendation. This may require the basement to be lowered, in order to provide sufficient soil volumes. Large at-grade planter-boxes should not be supported, as these would impact both the useability of and clear sightlines through the pedestrian corridor.



**Figure 5: Cross section showing proposed landscaping above basement. The plan fails to provide information relating to soil volumes and depth and shows limited space for soil above the basement.**

An Arboricultural Assessment has been prepared, assessing the impact of the development on existing trees. A total of 10 trees of low value, 14 trees of moderate value and 1 tree of high value will be removed. A total of 9 trees of moderate to low values will be retained. It is acknowledged that many of the existing trees are located in places where retention is not practical in order to realise the development of the subject site.

The submitted Landscape Master Plan shows the trees to be retained and an indicative layout of those that are proposed. The DPO12 states that the Development Plan should show any high or medium value tree being removed to be replaced on a two for one ratio. The Landscape Master Plan indicates a total of approximately 80 trees comprising of large canopy and smaller trees of various species, exceeding the requirements of the DPO12. This is appropriate, provided the tree planting is viable, as detailed above.

On Kitchener Street, Council's Open Space officer has raised concern with removal of the *Pinus Pinea* tree (identified as number 30 in the submitted Arboricultural Assessment Report and Tree Management Plan) and does not support the construction of vehicle crossings within the tree protection zone of mature *Eucalyptus Melliodora* tree (identified as number 34 in the report). The officer has also recommended planting of large canopy trees within every fourth parking bay in Kitchener Street, to reduce the Urban Heat Island Effect. This further justifies the recommendation to reconfigure the townhouses to minimise multiple vehicle crossovers resulting in improved landscaping, better design and amenity.

### **Overshadowing**

In accordance with DPO12, the Development Plan will provide for a minimum of 2 hours of sunlight to at least 50% of the open space areas between 12 pm to 2 pm at the equinox. The submitted shadow diagrams highlight that overshadowing to the residential properties to the east occurs from 3pm at the equinox thus complying with DPO12, and ensuring that the amenity of these existing residents is not compromised.

## **Circulation**

The Development Plan provides internal links that seek to prioritise bicycle and pedestrian connections. The links are of sufficient width to accommodate shared pedestrian and bicycle movements and are well connected.

To enhance pedestrian connection from the site through to Dunstan Reserve located opposite on Peacock Street, it is recommended that a raised pedestrian threshold treatment be provided in the road reserve. This will further improve connectivity and accessibility.

### *Car Parking*

The site is affected by Schedule 2 of the Parking Overlay (PO2) which requires minimum 148 car spaces be provided for the development. The proposal seeks to provide a total of 165 spaces thus complying with Clause 52.06 (car parking). These spaces will be provided in the basement for apartment buildings and in garages for the townhouses. Access to the car parking will be provided from Peacock, Albion and Kitchener Streets. For the reasons outlined previously, concerns are raised with the width of the vehicle crossover proposed on Peacock Street. Council's Development Engineer is otherwise generally satisfied with the proposed car park layout and traffic generation, noting that final numbers may vary at planning permit stage.

### *Bicycle Parking*

Although numbers are still to be finalised, the development makes a commitment to provide on-site bicycle parking for both residents and visitors which meets or exceeds the minimum requirements set out in DPO12.

These spaces will be located in a secured location in the basement level of each apartment buildings or in the garages of the townhouses. Bike racks for visitors are also provided at building entrances. The submitted Integrated Transport and Traffic Management Plan report states that visitor bicycle spaces will also be located along the main pedestrian links through the site which is not shown on the Development Plan. The Plan should show the indicative location of these spaces. The dimensions and further details of these spaces can be provided at the planning permit application stage to ensure compliance with the relevance policies.

## **Environmentally Sustainable Design**

A requirement of DPO12 is to provide high quality environmentally sustainable development that achieves best practice and incorporates innovative initiatives. DPO12 specifically requires the Development Plan to meet the requirements of Clause 22.08 and to achieve a minimum of 5 star rating against the Green Building Council of Australia's Green star rating system.

The development generally strives to achieve the 5 star rating and incorporates initiatives such as a photovoltaic renewable energy target of 64kw, rainwater collection, and using recycled materials. However, Council's ESD officer has raised concerns with the design's response to Clause 22.08 with respect to the Indoor Environment Quality objectives, particularly, dwellings having poor daylight into habitable areas. Whilst it is acknowledged that the proposal demonstrates meeting a 5 star Green Star assessment (noting that Credit 12 relating to visual comfort and daylight is a discretionary credit), Council maintains that a minimum level of natural daylight must be achieved to meet Clause 22.08 objectives. A condition therefore recommends that the Sustainability Management Plan provide a clear commitment to a certain level of daylight to each apartment.



Concern is also raised with regards to the use of proprietary systems for stormwater management, because these systems require regular maintenance and have not been widely tested. It has been recommended that the traditional and widely accepted WSUD measures, such as rain water tanks, permeable paving and raingardens, be adopted. This is achievable on a wholly residential site such as this without the need for a very large water retention basin.

### **Staging**

The development is proposed to be constructed over four stages. The submitted Staging Plan ensures that adequate infrastructure and services are available during each stage and that construction will be appropriately managed.

## **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 submitted Development Plan is generally in accordance with the requirements of DPO12. Council should advise DELWP that it support the Development Plan subject to a number of recommended changes to improve ESD, design, landscaping, architectural quality and pedestrian amenity.

### **Attachment/s**

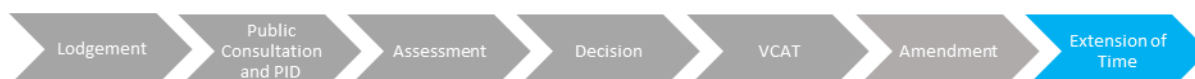
- |          |  |            |
|----------|--|------------|
| <b>1</b> | <a href="#"></a> Location map - 1 Gronn Place, Brunswick West                   | D20/485163 |
| <b>2</b> | <a href="#"></a> Excerpt of the Development Plans 1 Gronn Place, Brunswick West | D20/482945 |

**5.6 PART CP1, 22, 24-26, 28 PENTRIDGE BOULEVARD AND  
PART 27 URQUHART STREET, COBURG - REQUEST FOR AN  
EXTENSION OF TIME TO PLANNING PERMIT  
MIN/2011/012837**

**Director City Futures**

**City Development**

**Executive Summary**



<b>Property:</b>	Part CP1, 22, 24-26 and 28 Pentridge Boulevard and Part 27 Urquhart Street, COBURG VIC 3058			
<b>Proposal:</b>	Extend the expiry date of Planning Permit MIN/2011/012837A The request is being reported to Council at the request of Councillors			
<b>Zoning and Overlay/s:</b>	<ul style="list-style-type: none"> <li>• Activity Centre Zone (ACZ1)</li> <li>• Parking Overlay (PO1)</li> <li>• Environmental Audit Overlay (EAO)</li> <li>• Development Contributions Plan Overlay (DCPO1)</li> <li>• Heritage Overlay (HO47) – that part of 22 and 24-26 Pentridge Boulevard within 3 metres of the bluestone walls on the adjoining properties to the west</li> </ul>			
<b>Strategic Setting</b>	Minimal housing growth	Incremental housing growth	Increased house densities encouraged	Significant housing growth
<b>Key Reasons for Support</b>	<ul style="list-style-type: none"> <li>• There has been no change in planning policy</li> <li>• Covid-19, and the resulting uncertainty of the property market and financing has prevented the development commencing in 2020.</li> <li>• It is likely that a planning permit would be issued if a fresh application were made.</li> </ul>			
<b>Recommendation:</b>	It is recommended that a three-year extension of time be granted to Planning Permit MIN/2011/012837A so that the development must commence by 30 June 2023 and be completed by 30 June 2027.			

## **Officer Recommendation**

That an extension is granted to Planning Permit MIN/2011/012837A at part CP1, 22, 24-26, 28 Pentridge Boulevard and part 27 Urquhart Street, Coburg (more specifically known as part CP1, lots S32, S33, S34 and part S38 on PS543333) so that the development must commence by 30 June 2023 and be completed by 30 June 2027.

## **1. Background**

### **Subject site**

The subject site is located between Pentridge Boulevard to its east, Stockade Avenue to its north and the D and F Division prison buildings to its west.

The subject site previously had a frontage to Urquhart Street, however the Planning Permit was amended to remove those properties (Nos. 29 and 31 Urquhart Street, the majority of 27 Urquhart Street and 30 Pentridge Boulevard). The Planning Permit and site history is discussed in detail later in this report.

All of the land is currently vacant.

The Heritage Overlay and extent of land included on the Victorian Heritage Register (VHR) extend 3 metres into 22 and 24-26 Pentridge Boulevard from the bluestone walls on the adjoining properties. It is noted that the new buildings approved by MIN/2011/012837A do not encroach on the State Heritage registered areas.

None of the lots which make up the subject site are affected by the Heritage Victoria Heritage Covenant.

### **Surrounds**

To the west of the subject site is the historic D and F Division buildings of Pentridge Prison. The 'D' Division building has previously been subdivided for use as wine storage. A more recently constructed multi-storey mixed use building at number 41-43 Stockade Avenue is also located to the west of the subject sites. As described above, part of an original bluestone wall remains along the eastern edge of this new building and has an abuttal with the subject site.

A heritage covenant has been applied as requirement of Heritage Victoria to all lots with buildings or structures on the VHR, to require maintenance of heritage buildings and structures. In the case of 'D' division, which is now in separate ownership, the Heritage Covenant also requires the provision of a heritage interpretation area within the building. Heritage Victoria have oversight and compliance responsibilities in respect to the maintenance of heritage fabric of buildings on the VHR, including the Ronald Bull Mural within the adjoining 'F' division Prison building and the requirements for heritage interpretation within 'D' Division.

To the north/north-east of the subject site, on the opposite side of Pentridge Boulevard, there are three double storey dwellings at numbers 1 and 2 Governors Road and 33 Stockade Avenue. Also to the north-east of the subject site is the vacant property at number 25 Pentridge Boulevard, which has a current Planning Permit for the construction of a three storey residential aged care facility.

To the south of the subject site are the properties at Nos. 27, 29 and 31 Urquhart Street and 30 Pentridge Boulevard. The properties at Nos. 29 and 31 Urquhart Street are owned by Moreland City Council. Further south, on the opposite side of Urquhart Street, are the Moreland City Council Offices.

A location plan forms **Attachment 1**.

### **The proposal**

A request has been made to extend planning permit MIN/2011/012837A by 3 years so that the development can commence no later than 30 June 2023 and be completed no later than 30 June 2027.

The request has been made within the prescribed time.

## Planning Permit and Site History

The following Planning Permit and site history is relevant to this proposal:

Date	Event	Description
30 January 2012	Planning Permit No. 2011/012837 issued by the Minister for Planning	The permit allowed a mixed use development comprising 8 buildings ranging in height from 6 to 16 storeys across the sites now known as numbers 27, 29 and 31 Urquhart Street and 22, 24-26, 28 and 30 Pentridge Boulevard. The only plan endorsed under the original permit was a 'Preliminary Site Plan', with the submission of detailed plans required by permit conditions.
5 March 2013	Amendment to Planning Permit No. 2011/012837 issued by the Minister for Planning	The amendment reworded condition 1 and introduced conditions 1A – 1H which allowed the submission of amended plans for each building separately in order to facilitate development in stages.
27 April 2016	Extension of time request considered by the Urban Planning Committee	An extension of time request was received and appealed to VCAT on the basis that Council did not make a decision within the statutory timeframe. Council resolved that its position at VCAT should be that the extension to the permit should not be granted. Council's grounds related to: <ul style="list-style-type: none"> <li>• Whether the request was validly made as the requestor was not the owner/occupier of all of the land, with Council the owner of 29 and 31 Urquhart Street and who does not consent to the request for an extension;</li> <li>• That part of the land (numbers 29 and 31 Urquhart Street) forming the permit is now owned by Council who has no intention to develop these lots pursuant to Planning Permit No. 2011/012837A and reconsideration of a new application is warranted; and</li> <li>• The design of some buildings results in: <ul style="list-style-type: none"> <li>– Building separation distances, layouts, sizes and daylight access that do not comply with the Moreland Apartment Design Code (MADC); and</li> <li>– A 2 storey car park to Urquhart Street that fails to provide an active street frontage.</li> </ul> </li> </ul>
24 August 2016	Proposal to consent to the extension of time considered by the Urban Planning Committee	Subsequent to the Urban Planning Committee's resolution not to support the request for an extension to the permit, the land owner sought to settle the VCAT matter by offering to enter into an agreement to remove the Council owned land from the permit and set the buildings back from Council owned land in accordance with the building separation requirements of the Moreland Apartment Design Code.

Date	Event	Description
		The Urban Planning Committee resolved not to settle the matter in this way.
26 April 2017	Urban Planning Committee meeting to consider the following: An application made to VCAT to amend the permit pursuant to section 87 of the <i>Planning and Environment Act 1987</i> ; and Council's position on the extension of time request in light of the proposed amendment.	<p>Subsequent to the Urban Planning Committee's resolution at its meeting in August 2016, an application was made to VCAT to amend the permit. The amendments can be summarised as follows:</p> <ul style="list-style-type: none"> <li>• Removal of the two corner lots that had been purchased by Moreland City Council from the permit, in addition to the two adjacent lots owned by the applicant (numbers 29 and 31 Urquhart Street, the majority of the site at 27 Urquhart Street and 30 Pentridge Boulevard). The four buildings to be deleted as a result ranged in height from 9 to 16 storeys.</li> <li>• Modifications to proposed car parking.</li> <li>• Increased retail space fronting Pentridge Boulevard.</li> <li>• Council resolved that its revised position at VCAT should be that the extension of time should not be granted, but that if the extension was granted, then the amendment to the permit should be supported (subject to conditions).</li> </ul> <p>The revised grounds for not supporting the extension of time related to the following:</p> <ul style="list-style-type: none"> <li>• That there had been a change in planning policy;</li> <li>• That the landowner was seeking to 'warehouse' the permit;</li> <li>• That there were intervening circumstances; and</li> <li>• That there was a low probability that a permit would issue should a fresh application be made.</li> </ul>
11 May 2017	VCAT hearing considering both the extension of time request and section 87 amendment.	<p>In its order dated 19 June 2017, VCAT approved both the extension of time and the amendment to the permit.</p> <p>The plans referenced by the amended permit form <b>Attachment 2</b>.</p>
28 March 2018	The Urban Planning Committee resolved to grant an extension of time to the permit.	In a letter dated 4 April 2018, the development was allowed to commence by 30 June 2020 and be completed by 30 June 2024.

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

When considering an application to extend a planning permit, regard is given to Section 69 of the *Planning and Environment Act 1987*, which reads:

1. *Before the permit expires or within 6 months afterwards, the owner or the occupier of the land to which it applies may ask the responsible authority for an extension of time.*
  - 1.A *The owner or occupier of land to which a permit for a development applies may ask the responsible authority for an extension of time to complete the development or a stage of the development if-*
    - a. *the request for an extension of time is made within 12 months after the permit expires; and*
    - b. *the development or stage started lawfully before the permit expired.*
2. *The responsible authority may extend the time within which the use or development or any stage of it is to be started or the development or any stage of it is to be completed or within which a plan under the Subdivision Act 1988 is to be certified.*
3. *If the time is extended after the permit has expired the extension operates from the day the permit expired.*

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

### **Public notification**

The *Planning and Environment Act 1987* does not include public notice provisions for a request for an extension of time to a planning permit.

### **Internal/external referrals**

The *Planning and Environment Act 1987* does not require any statutory referrals for a request for an extension of time to a planning permit.

The request was not referred to any internal departments for comment as the extension of time request does not provide an opportunity to review the merits of the application or to modify the nature of the proposal through new or modified permit conditions.

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

Local Planning Policies:

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

## **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*. Of relevance to this application is section 20: Property rights. In considering whether to grant an extension to the permit, relevant case law has been taken into account.

## **4. Issues**

The ‘tests’ set out by the Supreme Court in *Kantor v Murrindindi Shire Council*, 18 AATR 285 guide the consideration of whether an extension of time to a planning permit should be granted. The Court held that a Responsible Authority should consider the following matters when exercising its discretion to extend a permit:

- The applicant is obliged to advance some reason or material in support of the grant of an extension;
- Whether there has been a change of planning policy;
- Whether the landowner is seeking to “warehouse” the permit;
- Intervening circumstances as bearing upon grant or refusal;
- The total elapse of time;
- Whether the limit originally imposed was adequate;
- The economic burden imposed on the landowner by the permit; and
- The probability of a permit issuing should a fresh application be made.

A request was made by Future Estate on 6 August 2020 to extend the commencement and completion time of the Planning Permit for a further 3 years. The request has been made within six months of the permit expiry date.

## **Reasons in support of the grant of an extension**

The permit applicant has cited the following reasons in support of this request:



- An amendment is being prepared and will be submitted for approval in the near future. The amendment will seek to make improvements to the development, including increasing the level of internal amenity within the dwellings.
- Given that the scale of the development is substantial, the project requires a development partner to be secured to assist in funding the project.
- The financial impacts of COVID-19 has caused uncertainty in the property market and has impacted the ability of the developer to secure funding for the proposal.

### **Whether there has been a change of Planning Policy**

The VCAT decision in relation to the first extension of time request considered a number of planning policy changes, including:

- The change in zoning from Comprehensive Development Zone to the Activity Centre Zone (Schedule 1).
- The introduction of Clause 22.08 – Environmentally Sustainable Development
- The introduction of the Development Contributions Plan Overlay
- The Moreland Apartment Design Code (MADC), which was a proposed Planning Scheme Amendment with the Minister for Planning (Amendment C142) at the time.
- Changes to car parking rates in Clause 52.06.
- The introduction of the Better Apartment Design Standards at Clause 58 of the Moreland Planning Scheme.

These changes to planning policy were considered by VCAT where the member made the finding that:

*the approval would not offend or be inconsistent with current controls or policies of the scheme’.*

When the second extension of time request was considered, the only significant and relevant change to planning policy was the introduction of building separation and light well requirements at Clause 22.07. Officers concluded that these requirements are derived from MADC and therefore have, in effect, been considered previously by VCAT and found not to warrant refusal of the extension of time request.

Since the previous extension of times were issued, there have been no changes in planning policy of relevance to this site.

### **Whether the landowner is seeking to ‘warehouse’ the permit**

This is the third request to extend the planning permit. For a development of this scale, it is not uncommon for there to be additional requests for an extension of time. Relevant factors which weigh against the argument that the landowner is warehousing the permit are:

- Covid-19, and the resulting uncertainty of the property market and financing has prevented the development commencing in 2020.
- The property is not currently for sale.

### **Intervening circumstances as bearing upon grant or refusal**

It was previously considered by VCAT whether the change in Responsible Authority from the Minister for Planning to Moreland City Council was relevant to the consideration of the extension of time request. The VCAT member determined that it was not a significant issue, noting the following:

*Ultimately, I do not regard this as consequential in determining whether it is appropriate to extend the permit on its merits. It is the permit that is to be scrutinised against the current planning context, not the decision maker's stance per se.*

Council Officers are not aware of any other significant intervening circumstances that would have a bearing upon the grant or refusal of the extension. Plans for endorsement have not been received to date, however the complexity and detail required to satisfy the permit conditions should be taken into consideration for reasons why the plans have not been endorsed to date. The landowner has also indicated that they intend on amending the permit.

#### **The total elapse of time**

The total elapse of time since the planning permit was issued is approximately eight years and ten months. This is not considered to be unreasonable given the size of the site, scale of the development and the detailed design work that is required by conditions of the Planning Permit.

#### **Whether the limit originally imposed was adequate**

It is considered that the original time limit of 4 years was adequate to allow the landowner or developer to discharge all permit obligations to allow the development to commence. However, it is not uncommon for several requests for an extension of time for larger scale developments.

#### **The economic burden imposed on the landowner by the permit**

These buildings comprise a major mixed use proposal requiring detailed site remediation and extensive marketing and presales to secure financing and the viability of the project. These result in a significant economic burden placed on the landowner, which favours the grant of an extension of time.

#### **The probability of a permit issuing should a fresh application be made**

The extension of time process is not an opportunity for Council to undertake a new assessment of the application against the same planning provisions. The assessment required of Council is whether the planning provisions have in any way changed such that when considered against any changes in planning policy or controls, there is a probability that the permit would not be issued should a fresh application be submitted.

In this instance, the factors which weigh in favour of a permit being issued if a fresh application were made include:

- Council, through its MSS, seeks to channel higher density housing into Activity Centres to take advantage of the excellent access to public transport and other services within these locations. This site is located in the Coburg Activity Centre.
- The proposal was originally considered by the Minister for Planning as being consistent with the *Pentridge Village Design Guidelines and Masterplan* (August 2009). This Masterplan continues to apply to the site.
- Although the building heights vary from those depicted in the Masterplan and Activity Centre Zone Schedule, the heights are not mandatory and the original assessment of the application determined that the heights were appropriate in both the strategic and physical context. Furthermore, the amendment to the Planning Permit removed the tallest buildings from the proposal, leaving buildings that range in height from six to 10 storeys, which more closely aligns with the building heights depicted in the Masterplan and Activity Centre Zone Schedule.

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

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

## 6. Financial and Resources Implications

There are no financial or resource implications.

## 7. Conclusion

Balancing all of the 'tests' set out by the Supreme Court in *Kantor v Murrindindi Shire Council*, 18 AATR 285, it is considered that they generally favour the grant of an extension of time. Considering the scale of the development and extensive detailed design work required by conditions of the permit, a 3 year extension to the Planning Permit is considered to be reasonable. Furthermore, it is noted that there has been no significant change in planning policy since the previous extension of time requests were considered and approved by VCAT.

It is therefore recommended that Council resolve to issue an extension to Planning Permit No. 2011/012837A so that the development must commence by 30 June 2023 and be completed by 30 June 2027.

## Attachment/s

- 1 [↓](#) Location Map - Part CP1, 22, 24-26 and 28 Pentridge Boulevard and Part 27 Urquhart Street, COBURG VIC 3058 D20/481537
- 2 [↓](#) Amended Plans - Part CP1, 22, 24-26 and 28 Pentridge Boulevard and Part 27 Urquhart Street, Coburg D20/504625