**Council AGENDA**

**Planning and Related Matters**

Wednesday 23 November 2022

Commencing 6.30 pm

Council Chamber, Merri-bek Civic Centre,

90 Bell Street, Coburg



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

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

**1. WELCOME**

**2. APOLOGIES**

Leaves of absence have been granted to:

* Cr Panopoulos - 1 October 2022 to 26 November 2022 inclusive.
* Cr Bolton - 2 November 2022 to 26 November 2022 inclusive.

**3. DISCLOSURES OF CONFLICTS OF INTEREST**

**4. MINUTE CONFIRMATION**

The minutes of the Planning and Related Matters Meeting held on 26 October 2022 be confirmed.

**5. Council Reports**

5.1 City Development activity report - September quarter 2022 4

5.2 142-144 Weston Street, BRUNSWICK - Planning Application MPS/2022/393 20

5.3 33 Saxon Street, Brunswick - Planning Application MPS/2022/194 74

**6. URGENT BUSINESS**

**5. Council Reports**

**5.1 City Development activity report - September quarter 2022**

**Group Manager City Development, Phillip Priest**

**City Development**

**Officer Recommendation**

That Council notes the City Development Activity Report – September Quarter 2022.

**REPORT**

**Executive Summary**

The City Development Urban Planning and Planning Enforcement Units are managing to produce positive results despite high outstanding caseloads, that resulted from high staff turnover in 2021. Pleasingly both the planning application caseload awaiting a decision and the planning compliance caseloads awaiting resolution have continued to reduce in the September quarter. Reducing the outstanding caseloads for improved customer service timeframes, remains a focus area for these service units.

Planning permit activity levels remains steady in the first quarter of the 2022/23 financial year when compared to the previous financial year. Pleasingly the number of decisions made in the September quarter is the highest since the 2017 March quarter, noting the team has implemented several initiatives to improve effectiveness.

Average timeframes to determine most planning applications were slightly below the metropolitan average. It is anticipated that as individual planning officer caseloads reduce, there will be an improvement to the timeliness of planning decisions. Pleasingly Vic Smart timeframes, for mostly minor matters, are now slightly above the metropolitan average being an improvement on the June 21/22 quarter.

Planning compliance new case numbers are around the average expected for the quarter. The number of cases closed in the quarter continues to have a positive impact on the outstanding caseload which is reducing towards an ideal level.

VCAT activity, remains at a lower level when compared to the pre-COVID-19 case numbers.

**Previous Council Decisions**

Nil.

**1. Policy Context**

The City Development Branch administers Council’s town planning, building and environmental health decision- making and compliance responsibilities under the Moreland Planning Scheme, *Planning and Environment Act 1987*, *Building Act 1993*, *Building Regulations 2018*, Building Code of Australia 2006, *Food Act 1984*, and *Public Health and Wellbeing Regulations 2009*. This report has a focus on the Urban Planning and planning enforcement services within the Branch.

**2. Background**

This report shows the key operational performance and activity of the Urban Planning Unit and Planning Enforcement Unit within the City Development Branch. This includes analysis of:

 planning applications received, determined and outstanding

 planning application decision-making

 streamlined planning services

 planning enforcement caseload

 VCAT performance

 planning investment activity

**3. Issues**

**Urban Planning**

***Planning Permit activity***

A total of 356 planning applications were received for the September quarter. This compared with 389 for the same quarter in 2021. A total of 403 planning applications were decided in the September quarter compared to 359 for the same quarter in 2021. Generally, the number of applications being received has been steady for the past two years. Pleasingly the number of decisions made in the September quarter is the highest since the 2017 March quarter, noting the team has implemented several initiatives to improve effectiveness. The overall caseload has reduced to 499 during the September quarter. See figures 1 and 2 at **Attachment 1**.

It remains that most applications lodged and determined for the quarter were alterations and additions to buildings (80 received and 72 determined) and multi-unit development (109 received and 130 determined). See figure 3 at **Attachment 1**.

1. The percentage of applications determined within statutory timeframes for all inner metropolitan Councils averaged 60 per cent in the September quarter. Merri-bek average was slightly lower at 55 per cent. As the outstanding caseloads reduce, there will be an improvement to the timeliness of planning decisions. See figure 4 at **Attachment 1**.
2. Councils streamlined planning services include Vic Smart and Fast Track (minor permit applications that do not qualify as Vic Smart) as well as the Commercial Priority Service, which is a service to assist businesses setting up or expanding in Merri-bek. Figure 5 in **Attachment 1** shows the improved performance of the Vic Smart application timeframes with 91 per cent determined within 10 days compared to the inner metropolitan average of 87 per cent. It is pleasing to be above the inner metropolitan average. There were 18 Fast Track and 9 Commercial Priority planning permits issued in the September quarter.

**Heritage Victoria Permit Applications and Planning Proposals Under Consideration by the Minister for Planning**

The Victorian Planning System provides the ability for the Minister for Planning to intervene in VCAT or Council decisions in certain circumstances. In 2020 the Development Facilitation Program (DFP) was established by the Minister for Planning to assess and determine planning applications for priority projects in Victoria. New planning provisions making the Minister for Planning responsible for deciding State Projects and other matters were also introduced in 2020/21. These projects are referred to Council for comments to inform the decision by the Minister for Planning. In the third quarter of 2022 Council was consulted on four proposals:

 17 Baird Street, FAWKNER (Darul Ulum College), which related to the construction of a new school building.

 1 Gronn Place, BRUNSWICK WEST, which related to amendments to a Ministerial permit that allowed the construction of three apartment buildings (Buildings A, B and C) which included social housing.

 1 Gronn Place, BRUNSWICK WEST, which sought approval to construct a three storey building (Building D) containing dwellings which contain social housing.

 93 Daley Street, GLENROY (Glenroy Private), which related to the construction of a new school building.

No Heritage permit applications were referred by Heritage Victoria to Council for comment this quarter.

1. **Retrospective Planning Permits:**
2. Retrospective planning applications seek approval for a use or development that has already taken place without the necessary planning approval. These applications are usually a result of planning enforcement action by Council’s Planning Enforcement Unit. The planning compliance practice, encouraged by VCAT and the Magistrates Court, is to pursue retrospective planning approval when this may be possible, before occupying VCAT and Magistrates Court time. This quarter Council has received one retrospective planning permit application. Also, one decision was made on a retrospective planning application with a Notice of Decision to Grant a Planning Permit issued.

**Council’s performance at VCAT**

In the September quarter, 9 applications for review of decisions were lodged at VCAT, which was four less than in the same quarter in 2021. The number of appeals was around average for the Covid-19 pandemic period over the last two years, while still well below averages of the pre-pandemic years, as shown in Figure 6 in **Attachment 1.** Of the 9 reviews lodged, 3 were against refusals, 1 against conditions imposed on a permit, 1 due to the failure to decide an application within 60 statutory days and 4 by objectors against a Notice of Decision to Grant a Planning Permit.

Table 1 in **Attachment 3** is a more detailed list of all VCAT reviews lodged in the September 2022 quarter.

Only 12 VCAT decisions were handed down in the September quarter 2022 as shown in Figure 8 in **Attachment 1.** In respect to success at VCAT, this is represented in Figures 9 and 10 in **Attachment 1**. The State Planning Permit Activity Reporting System (PPARS) indicates a VCAT success rate of 67 per cent. Importantly PPARS does not include cases resolved by consent of all parties, often following the circulation of revised plans. In contrast, if consented cases are included, Council’s VCAT success rate would be 91 per cent.

Some VCAT decisions of interest are detailed below:

 The 81A Bell Street, Coburg (former Coburg High School) VCAT decision, dismissed the VCAT review against Council’s failure to determine the application within 60 statutory days because the applicant had not completed the public notice process directed by Council and therefore the 60 statutory days had not elapsed. This application has been returned to Council to determine, once the public notice (i.e. newspaper notice) has been completed.

 52 Hope Street, Brunswick was a review that challenged a condition imposed at a Planning and Related Matters Council meeting. This matter was resolved by the consent of all parties following the circulation of alternative plans which still met the intent of the permit condition to make the upper level of the building recessive.

 108A Nicholson Street, Brunswick, was an objector review, concerned with the amenity impacts of an apartment building within an Activity Centre. In supporting Council’s decision, the VCAT noted that amenity expectations in Activity Centre locations should be tempered in comparison to the higher expectations for protection of residential amenity in a residential zone.

**Planning Enforcement**

Planning enforcement activity can be categorised as either ‘reactive enforcement’ or ‘proactive enforcement’. Reactive enforcement is investigating complaints about land use and development that may have occurred without a planning permit or may not accord with a planning permit. Proactive enforcement is proactively checking compliance with a planning permit as the building works and preparation for the new use or development is occurring.

***Reactive enforcement activity***

A total of 85 complaints were received and 101 cases were closed in the first quarter of 2022/23. This reduced the outstanding reactive enforcement caseload from 182 to 166. Figure 1 in **Attachment 2** shows how this caseload has been reducing over the past 12 months.

Figure 2 in **Attachment 2** shows the outcomes of those investigations. The most common outcome was that the investigation found there to be no planning breach (45 cases), followed by cases where a breach was identified and voluntary compliance was achieved (22 cases). Six (6) cases were closed after planning infringement notices were issued and paid. There were no cases closed in this quarter following escalation to VCAT or the Magistrates’ Court.

***Proactive enforcement activity***

Each year the proactive planning enforcement program aims to audit at least 80 medium density developments and 10 developments where the planning permit was issued by the Planning and Related Matters (PARM) Council meeting, or a refusal was overturned at VCAT. Figure 3 in **Attachment 2** shows that 32 audits commenced in the first quarter of 2022/23. This comprises 29 audits of medium density developments and 3 audits of planning decisions made at PARM or overturned at VCAT. While this is ahead of schedule to achieve the yearly target, a seasonal slowdown is expected over January when much of the construction industry ceases.

A total of 34 planning breaches were rectified through the proactive enforcement program in this quarter. These are breaches that would otherwise have been passed on to new owners of the developments. The different types of breaches resolved are shown in Figure 4 in **Attachment 2**. Breaches relating to Environmentally Sustainable Design (ESD) requirements were the most common. This includes requirements such as the provision of solar PV, passive ESD features like double glazing, external shading to windows, and water sensitive urban design features like rain gardens and permeable surfaces.

**Human Rights Consideration**

The implications of this report have been assessed in accordance with the requirements of the Charter of Human Rights and Responsibilities and it was found that it does not contravene any of these sections and supports the following rights

 Section 18: Taking part in Public Life

 Section 13: Privacy and Reputation

 Section 20: Property Rights.

**4. Community consultation and engagement**

No consultation was required to inform the preparation of this report.

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

Council officers involved in the preparation of this report have no conflict of interest in this matter.

**6. Financial and Resources Implications**

There are no financial and/or resource implications as a result of this report. The ongoing operation of the Urban Planning Unit and Planning Enforcement Unit can be met with existing operational resources and budget.

In terms of overall development in Merri-bek during the September quarter developments to the value of $149 million have been approved by planning permits issued by the Urban Planning Unit, compared to $113 million during the same quarter in 2021. The results are indicative of the increased development activity.

A total of $3.3 million was collected during the September quarter in Public Open Space Contributions which will help fund the provision of new or enhanced public open space.

**7. Implementation**

The performance of Urban Planning and Planning Enforcement Units within Council’s City Development Branch will continue to be monitored with the activity report for the next quarter to be presented to the February Planning and Related Matters Council meeting.

**Attachment/s**

|  |  |  |  |
| --- | --- | --- | --- |
| **1** | Urban Planning data - September quarter 2022 | D22/499804 |  |
| **2** | Planning Enforcement data - September quarter 2022 | D22/495558 |  |
| **3** | VCAT data - September quarter 2022 | D22/509536 |  |

**5.2 142-144 Weston Street, BRUNSWICK - Planning Application MPS/2022/393**

**Group Manager City Development, Phillip Priest**

**City Development**

**Executive Summary**

|  |  |
| --- | --- |
| **Property:** | 142-144 Weston Street, BRUNSWICK EAST VIC 3057 |
| **Proposal:** | Construction of a multi storey building, use of the land for office  and reduction to the statutory car parking requirements |
| **Zoning and Overlay/s:** |  Industrial 3 Zone (IN3Z)   Parking Overlay (PO1)   Development Contribution Plan Overlay (DCPO) |
| **Objections:** |  14 objections from 11 properties.   Key issues:   Building height   Amenity (overshadowing and privacy)   Traffic and car parking   Loss of views   Overshadowing of solar panels   Construction impacts |
| **Planning Information and Discussion (PID) Meeting:** |  Date: 17 October 2022   Attendees: 7 objectors, the applicant, two Council officers, and Mayor Riley and Cr Harte.   No changes were agreed to, however the meeting provided an opportunity for the objectors concerns to be discussed and helped inform the preparation of this report. |
| **ESD:** |  72 per cent BESS Score.   17 kW Solar energy   Electric vehicle infrastructure. |
| **Key reasons for support** |  Appropriate built form; proposed height is in keeping with the surrounding context.   Solely commercial use which is encouraged by the site’s location within an Employment Priority Area.   ESD exceeds the minimum requirements of the relevant policy and planning controls.   No unreasonable impacts to adjacent residents. |
| **Recommendation:** | 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/2022/393 be issued for the construction of a multi storey building, use of the land for office and reduction to the statutory car parking requirements at 142-144 Weston Street, BRUNSWICK EAST, subject to the following conditions:

**Amended Plans**

1. Before the use or 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 29 July 2022 but modified to show:

a) The precast concrete material on the eastern and western side walls of the development to be articulated/changed in either of the following ways:

i. The use of patterns;

ii. Variation in colour; or

iii. Another treatment to the satisfaction of the Responsible Authority.

b) The Environmentally Sustainable Design initiatives that are required to be shown on plans, as contained within Condition 6c of this permit.

c) Any changes as required by the Public Works Plan in accordance with Condition 9 of this permit.

**Compliance with Endorsed Plans**

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

**Landscaping**

3. The landscape design plan, prepared by Tract, dated 31 May 2022 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.

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

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

**Sustainability Management Plan**

6. Prior to the endorsement of plans, an amended Sustainability Management Plan (SMP) and plans must be submitted to the satisfaction of the Responsible Authority. The SMP must demonstrate a best practice standard of environmentally sustainable design and be generally in accordance with the SMP prepared by GIW Environmental Solutions dated 06/06/2022 but modified to include the following changes:

a) Provide a preliminary Section J façade calculator that demonstrates NCC 2019 will at minimum be met, include a commitment to minimum double glazing.

b) Include light occupancy sensors and/or timers throughout the building including zoning electric lighting near glazed areas separately (from deeper zones).

c) Show the following ESD initiatives on the Development Plans:

i. Double glazing 'DG' to all windows and glazed doors annotated on each individual glazing unit and specified on the material/colour schedule.

ii. The location of battery storage systems attributed to solar photovoltaic systems.

iii. The location, setback, size, downpipe connection, and catchment area of the rainwater tank.

iv. Notation indicating that the tank will be collecting from the allocated roof area and used to flush all toilets and provide landscape irrigation.

v. Rainwater treatment and pumping systems demonstrating suitable spatial allocation to facilitate such systems including rainwater tanks.

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

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

7. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, the development must be constructed in accordance with the endorsed Sustainability Management Plan to the satisfaction of the Responsible Authority.

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

**Public Works Plan**

9. Prior to the commencement of the development, a Public Works Plan and associated construction drawing specifications detailing the works to the land along Weston Street directly in front of the site must be submitted to the satisfaction of the Responsible Authority. The Plan must include:

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

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

c) Any Council or service authority pole or pit within 1 metre of the proposed vehicle crossing, including the splays on the crossings, relocated or modified.

d) Any necessary parking signs, in consultation with the Responsible Authority.

e) Any necessary drainage works.

f) The installation of two bike hoops with graffiti-resistant surfaces in consultation with the Responsible Authority.

g) The retained vehicle crossing on the eastern side of the frontage to be reconstructed as 3.4 metres wide, aligned centrally with the proposed internal accessway.

h) Deletion of the kerb extensions proposed on the road pavement.

i) The newly created on-street parking space is to be line-marked and either:

i. A Parking Overstay Device installed at the cost of the developer; or

ii. A car share agreement to be entered into, to the satisfaction of the Responsible Authority.

j) A note to state: “Slope to match existing footpath level” along the property frontage.

k) Other works to the public land adjacent to the development including new or reconstructed footpaths, street tree planting and other associated street furniture/infrastructure (provided with graffiti-resistant surfaces).

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

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

**Waste Management**

10. The Waste Management Plan prepared by Traffix, dated June 2022, must be endorsed under this permit and 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.

**Development Contributions**

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

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 maximum of 12 months from the date of issue of the Building Permit; 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.

**Boundary Walls**

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

**Site services**

13. 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.

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 Merri-bek City Council, City Infrastructure Department).

15. Any substation must be incorporated within the building (i.e. not free standing or pole mounted in the street) to ensure minimal impact on the visual amenity of the public realm.

**Vehicle Crossings**

16. Prior to the issue of an Occupancy Permit 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 (Merri-bek City Council, City Infrastructure Department).

17. 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 (Merri-bek City Council, City Infrastructure Department)

18. 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.

**Retention of architect**

19. Mosquito architecture and urban design must provide architectural oversight of the delivery of the detailed design, as shown in the endorsed plans and endorsed schedule of materials and finishes, during construction unless with the prior written approval of the Responsible Authority

**Permit Expiry**

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

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

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

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

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

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

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

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

**Note 1:** 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: <https://merri-bek.vic.gov.au/building-and-business/planning-and-building/planning/development-contributions/>

Alternatively, please contact Merri-bek City Council on 9240 1111 and ask to speak to the DCP Officer.

**REPORT**

**1. Background**

**Subject site**

The subject site is located on the south side of Weston Street in Brunswick East. The site is rectangular in shape, has a width of 18.36 metres, a depth of 27.74 metres, yielding a total site area of 507 square metres. There are no restrictive covenants indicated on the Certificates of Title.

The site is occupied by a double-storey, brick warehouse covering the entirety of the site. The warehouse is currently occupied by Northcote pottery. Access to the site is provided by crossovers which extend to almost the entire width of the site.

**Surrounds**

The site is within a pocket of industrially zoned land, made up of mostly one to two storey warehouses. It is also 150 metres east of the Lygon Street commercial shopping area, and 14 metres west of an established residential area. The site is within the Principal Public Transport Network (PPTN) and is approximately 500 metres from the Route 96 Nicholson Street tram. It is also in a designated ‘Employment Priority Area’ within the Moreland Industrial Land Strategy.

To the north of the site at 170-182 Edward Street is an apartment development (the ‘Tip Top apartments’), with built form up to six storeys in height along Weston Street, with an eight storey building contained centrally within the site. Directly adjoining the site to the east, west and south are warehouses, although it is noted that the site at 140 Weston Street is occupied as an office sharing space. To the south-west of the site (9 metres away) is an apartment building at 21-31 St Phillip Street, located within the Mixed Use Zone.

A location plan forms **Attachment 1**.

**The proposal**

The proposal is for a four-storey, 20 metre high building to be used as an office, with vehicle access from Weston Street. The proposal includes:

 Ground level - 83 sqm office space, lobby, toilets, bike parking, end of trip facilities and four car spaces (including 1 disabled space).

 First, second and third levels - 335 sqm office spaces, meeting spaces and toilet facilities.

 Roof terrace with a communal garden

The development plans form **Attachment 2**.

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

| **Control** | **Permit Requirement** |
| --- | --- |
| Industrial 3 Zone | An office is a Section 2 use in the zone, meaning that a permit is required for the use.  A permit is required to construct a building or construct or carry out works. |
| Particular Provisions | A permit is required to reduce the car parking requirement from 32 spaces to 4 spaces. |

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

 Clause 45.06: Development Contributions Plan Overlay. A condition is included in the recommendation requiring the payment of the DCP levy prior to the issue of a Building Permit for the development.

 Clause 45.09: Parking Overlay. This means that the Column B rates in Clause 52.06 (car parking) apply.

**2. Internal/External Consultation**

**Public notification**

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

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

 Placing a sign on the frontage of the site.

Council has received 14 objections from 11 properties. A map identifying the location of objectors forms **Attachment 3**.

The key issues raised in objections are:

 Building height

 Traffic and parking

 Amenity impacts (overlooking and overshadowing)

 Overshadowing of solar panels

 Loss of views

 Construction impacts

A Planning Information and Discussion meeting was held on 17 October 2022 and attended by Mayor Riley, Cr Harte, two Council Planning Officers, the applicant and 7 objectors. The meeting provided an opportunity to explain the application, for the objectors to elaborate on their concerns, and for the applicant to respond.

**Internal/external referrals**

The proposal did not require any external referrals.

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

| **Internal Branch/Business Unit** | **Comments** |
| --- | --- |
| Urban Design Unit | Supports the proposal.  Recommended changes are addressed by conditions of the recommendation and discussed further in Section 4 of this report. |
| Development Engineering Team | Supports the proposal.  Recommended changes are addressed by conditions of the recommendation and are considered further in Section 4 of this report. |
| ESD Team | Supports the proposal.  Recommended changes are addressed by conditions of the recommendation and are considered further in Section 4 of this report. |

**3. Policy Implications**

**Planning Policy Framework (PPF):**

The following policies are of most relevance to this application:

 Municipal Planning Strategy (Clause 2), including:

 Vision (Clause 2.02)

 Built Environment and Heritage (Clause 2.03-4)

 Economic Development (Clause 2.03-6)

 Transport (Clause 2.03-7)

 Infrastructure (Clause 2.03-8)

 Settlement (Clause 11)

 Environmental Risks and Amenity (Clause 13):

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

 Built Environment (Clause 15.01), including:

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

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

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

 Sustainable Development (Clause 15.02), including:

 Energy and resource efficiency (Clause 15.02-1S)

 Environmentally Sustainable Development (Clause 15.02-1L)

 Energy efficiency in Moreland (Clause 15.02-1L)

 Economic Development (Clause 17), including:

 Diversified economy (Clause 17.01-1S & 17.01-1R)

 Core Industry and Employment Areas (Clause 17.01-1L)

 Employment Areas (Clause 17.01-1L)

 Business (Clause 17.02-1S)

 Transport (Clause 18), including:

 Sustainable Personal Transport (Clause 18.02-1S & 18.08-1R)

 Sustainable Transport in Moreland (Clause 18.02-1L)

 Car parking (Clause 18.02-4S & 18.02-4L)

**Brunswick Structure Plan**

The *Brunswick Structure Plan Reference Plan Document* (Moreland City Council, 2018) is a background document listed in Clause 72.08 of the Moreland Planning Scheme. The original version of the Brunswick Structure Plan (dated 2010) had height guidance for the subject site at four storeys. However, the current Brunswick Structure Plan does not. The Plan notes that the subject site and surrounding industrially zoned land, while within the structure plan boundaries, is outside of the Brunswick Activity Centre. It is for this reason that the current structure plan does not include guidance on height for this pocket of Weston Street, unlike the northern side, which is in the Activity Centre and included within a Design and Development Overlay.

The subject site is within the Moreland Industrial Land Strategy (MILS) - Category 2 (Employment) and was included in planning scheme amendment C193 for rezoning of the land to a Commercial Zone. However, amendment C193 was abandoned by Council in May 2021. As such, the site has not been rezoned or included within a Design and Development Overlay.

**Human Rights Consideration**

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

 Section 13: Privacy and Reputation

 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. The privacy of nearby residents has also been considered as part of the application process.

**4. Issues**

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

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

The subject site is located within an Employment Priority Area as defined by Clause 02.03-6 (Economic Development) and Clause 02.04 Strategic Framework Plan where industry and employment generating uses are encouraged. Additionally, the site is surrounded by medium density developments. The proposal for the four storey building to be solely used for offices within this location therefore has strategic policy support. The new purpose built office building presents a somewhat uncommon opportunity to provide for greater employment opportunities close to local residents.

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

***Height***

The proposed height of the building is 15.5 metres to the top of the front parapet (including the balustrade to the roof terrace), with a total height of 20 metres to the top of the building services, rooftop pergola and lobby providing access to the roof terrace. Due to the services and roof terrace being setback 4.3 metres from the site’s frontage, the building will present as 15.5 metres to the street frontage.

Given the absence of any height control on the site, the proposed height needs to be considered having regards to its surrounds. The ‘Tip Top’ apartment building directly to the north have a height of 17 metres and is six storeys at the street wall to Weston Street, with the central apartment building in this development having a maximum building height of 25 metres.

The site at 146 Weston, adjoining the subject site to the east, provides a buffer between this height and the beginning of the Neighbourhood Residential Zone. As such, the proposed height allows for a transition to lower heights within the NRZ, given its location, and is in line with heights on the opposite side of Weston Street.

The height to street width ratio for this proposal is also well considered: the width of Weston Street is approximately 20 metres, and the building presents as 15.5 metres in height. The proposed height and scale is compliant with the relevant provisions of the planning scheme, specifically clause 15.01-2S (Building Design) which seeks to achieve building design and siting that contributes positively to the context and enhances the public realm.

The height is atypical for a four-storey building, due to the generous floor to ceiling heights proposed. Given the site’s location within the Industrial 3 Zone and in an Employment Priority Area, these higher ceiling heights are considered to be advantageous in ensuring the building can be adapted in future for non-office uses. Higher ceiling heights allow for the installation of additional services, small scale industry, recreation and other employment generating uses; uses that are supported and encouraged in this area.

***Massing and amenity***

The building envelope is appropriate and does not result in unreasonable amenity impacts to surrounding residents, being predominantly surrounded by industrial/commercial buildings. Although the requirements and standards of Clauses 55 and 58 does not apply, as the proposal is not for dwelling or apartments in a residential zone, it is noted that the proposed built form does not overshadow the balconies of the residents to the south- west (21-31 St Phillip Street), and there are no direct views to secluded private open space or habitable room windows within nine metres. The building is well articulated at the frontage through planting and landscaping, and the vertical fins and windows on the rear (south) elevation break up the façade detail. The side walls of the building are sheer, noting that as the surrounding area develops, these will be boundary walls and therefore setbacks are not an appropriate outcome for this proposal in this Industrial Zone.

***Overshadowing of solar facility***

The development will result in the overshadowing to the solar panels at 140 Weston Street, which is a co-working office space to the west of the site. There is no protection from shadowing impacts on solar panels in the Industrial Zone, nor is this context contained in Council’s advisory note on solar panels.[[1]](#footnote-1) The reason for this is that in the Industrial Zone, building heights vary significantly due to the absence of height controls, and industrial buildings are typically built to the boundary. This policy context means that the protection of existing solar panels on lower-scale buildings is difficult to achieve, in contrast to a residential context with setback and height requirements prescribed by Clause 55 or Design and Development Overlays, where protection of solar energy facilities is more tenable. Any development to this lot would result in overshadowing to the panels at 140 Weston Street, given the vulnerability of their siting to overshadowing impacts from future development.

***Interface with the public realm***

The proposal is highly compliant with Clause 15.01-1S (Urban Design) of the planning scheme. The ground floor frontage makes a positive contribution to the street and is a significant improvement upon existing conditions. The site is currently predominantly crossover at ground level. This development proposes to reduce this to one, single-width crossover. It is also proposed to reinstate the footpath in front of the site, plant street trees, provide landscaping, and install bike hoops for public use. The ground floor façade of the building is set back from the title boundary, to allow for additional planting and a small canopy providing a sense of entrance to the site. A condition of the recommendation will require a public works plan to be submitted and endorsed prior to the commencement.

***Materials and finishes***

In general, a good selection of materials and finishes has been proposed. The selected materials at ground floor level are well presented, with perforated metal providing texture, the terracotta providing a natural element and an appropriate amount of glazing to ensure an active frontage. However, the side walls of the building require additional variation in materials and colours to break up the massing and provide visual interest, until screened by future development. This forms a condition of the recommendation.

**Is the use of the land appropriate?**

As outlined above, the proposed use has strong strategic policy support being located in an Employment Priority Area. The use of the site as an office reconciles the need for a more ‘active’ and employment generating use, while having regard to the amenity of the surrounding area. The office use will not have unacceptable impact on the surrounding area regarding loading, deliveries, noise, emissions, lighting and hours of operation.

**Is the proposal acceptable with respect to parking provision and traffic impacts?**

The proposal provides 4 car spaces. This is a reduction from the statutory rate, as demonstrated within **Table 4**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Table 4: Statutory Car Parking Rate** | | | | |
| Use | Rate | Spaces required | Spaces provided | Reduction/ Surplus |
| Office | 3 per 100 square metres | 32 spaces | 4 spaces | -28 spaces |

The proposal also provides 25 bicycle spaces, which is a surplus of 19 spaces when compared to the statutory rate in Clause 52.34 of the planning scheme, as demonstrated within **Table 5.**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Table 5: Statutory Bicycle Parking Rate** | | | | |
| Use | Rate | Spaces required | Spaces provided | Reduction/ Surplus |
| Office – Employee rate | 1 to each 300sqm | 4 spaces | 18 spaces | +14 spaces |
| Office – Visitor rate | 1 to each 1000sqm | 1 spaces | 6 spaces | +5 spaces |
| Total |  | 5 spaces | 24 spaces | + 19 spaces |

Council’s Development Engineers are satisfied that the car parking requirement can be reduced for this application. The site is located within the PPTN area and there are many other transport options to the site. The site also has good access to cycle routes. The provision of bicycle spaces in excess of the planning scheme requirements also support the reduction. The development also exceeds the schemes requirements in regards to end of trip facilities, providing additional lockers, showers and a change room. The removal of a length of vehicle crossover to the site frontage will also deliver greater on-street parking opportunities. The reduction of the on site parking requirement is supported for all of these reasons.

***Traffic impacts***

Clause 65 of the Moreland Planning Scheme requires consideration of the adequacy of loading and unloading facilities and any associated amenity, traffic flow and road safety impacts.

The applicant’s Traffic Engineering Assessment calculates that an additional two vehicle movements per peak hour will be generated from this site when compared to the current use of the site. This has been reviewed by Council’s Development Engineering Unit and the additional vehicles are not expected to cause unacceptable congestion at the nearby intersections.

The proposal does not have a dedicated loading bay, which is acceptable in this instance considering the anticipated demands [https://morelandcc-my.sharepoint.com/personal/fnolan\_merri-bek\_vic\_gov\_au/Documents/SMT Office new ways/new ways of working.pptx?web=1](https://morelandcc-my.sharepoint.com/personal/fnolan_merri-bek_vic_gov_au/Documents/SMT%20Office%20new%20ways/new%20ways%20of%20working.pptx?web=1)for large deliveries. It is considered that the site can accommodate loading demands for smaller delivery vehicles within the basement carpark. The waste management plan provides swept paths that demonstrate access for waste trucks to enter and exit in a forwards direction, and carry out waste collection on-site.

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

ESD features of the development are excellent, and exceed the requirements of Clause 15.02-1L (Environmental Sustainable Design).

The following ESD features have been proposed:

 72 per cent BESS Score.

 Solar energy (17kW) provided in solar PV on the rooftop pergola.

 Electric vehicle infrastructure.

 STORM Rating of 162 per cent.

 Communal food production area.

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

The site was previously used for manufacturing of pottery, and hence a Preliminary Site Investigation was provided in line with *Planning Practice Note 30 – Potentially Contaminated Land*. The report states that an Environmental Audit is not required, based on the previous and proposed use of the land, and given there is no basement proposed.

**5. Response to Objector Concerns**

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

 Building height

 Amenity impacts (overshadowing and privacy)

 Overshadowing of solar panels

 Traffic and car parking

Other issues raised by objectors are addressed below.

**Loss of views**

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

**Construction issues**

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

A range of other approvals are required from Council’s transport, engineering and asset protection teams related to construction impacts on public space.

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

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

**7. Financial and Resources Implications**

There are no financial or resource implications.

**8. Conclusion**

It is considered that, subject to the recommended permit conditions, the development is responsive to the site and surrounds and provides for an appropriate use while limiting off-site amenity impacts and providing a positive contribution to the preferred built form character of the area. It is recommended that a Notice of Decision to Grant a Planning Permit should be issued.

**Attachment/s**

|  |  |  |  |
| --- | --- | --- | --- |
| **1** | 142-144 Weston Street, Brunswick East - Location and Zoning Map | D22/488170 |  |
| **2** | 142 - 144 Weston Street, Brunswick East - Advertised Plans | D22/488171 |  |
| **3** | 142-144 Weston Street Brunswick East - Objector Location Map | D22/488172 |  |

**5.3 33 Saxon Street, Brunswick - Planning Application MPS/2022/194**

**Group Manager City Development, Phillip Priest**

**City Development**

**Executive Summary**

|  |  |
| --- | --- |
| **Property:** | 33 Saxon Street, BRUNSWICK VIC 3056 |
| **Proposal:** | The development and use of land including:   partial demolition, buildings and works in a Heritage Overlay;   construction of a five storey building   use of the land for the purpose of a place of assembly (excluding a nightclub).   sale and consumption of liquor; and   reduction to the car parking requirement. |
| **Zoning and Overlay/s:** |  Commercial 1 Zone (C1Z)   Heritage Overlay Schedule 142 (HO142)   Design and Development Overlay Schedule 18 (DDO18)   Environmental Audit Overlay (EAO)   Development Contributions Plan Overlay (DCPO1)   Parking Overlay Schedule 1 (PO1) |
| **Objections:** |  Eight   Key issues:   Demolition   Building height   Access via private portion of Saxon Street |
| **ESD:** |  78kW solar PV system   40,000 litre total water tank volume;   Exceeds best practice stormwater management; and   Provision of 73 bicycle spaces and staff end-of-trip facilities |
| **Key reasons for support** |  Supports creative industries & community groups as a net community benefit   Design & building height acceptable in context.   Car parking reduction is acceptable having regard to the bicycle parking spaces provided and excellent access to multiple modes of public transport; and   Will not unreasonably impact amenity of adjoining properties |
| **Recommendation:** | 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/2022/194 be issued for the development and use of land for the purpose of a place of assembly (excluding a nightclub) and sale and consumption of liquor and reduction to the car parking requirement at 33 Saxon Street, Brunswick, subject to the following conditions:

**Amended Plans**

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 must be generally in accordance with the plans advertised 4 July 2022 but modified to show:

a) The crossover on the south-east corner facing Saxon Street modified to match the location and width of the internal vehicle accessway.

b) An internal vehicle accessway leading to a loading bay in the south-east corner of the site suitable for use for waste collection services.

c) The existing crossover to the private part of Saxon Street removed and the footpath, kerb and channel reinstated.

d) A fence designed to clearly designate the eastern boundary along the privately owned portion of Saxon Street.

e) Details of the proposed public artwork, including its content and appearance.

f) Any proposed works within the discontinued portion of Saxon Street annotated with “subject to the permission of land-owner.”

g) The location of any substation required by the power company for this development. Any substation must be incorporated within the building (i.e. not free standing or pole mounted in the street) to ensure minimal impact on the visual amenity of the public realm and communal open space.

h) The proposed screening to the deconstructed school building frame to be unadorned by signs, vegetation or decorations, to improve views and access to the ‘Sherwood’ building from Phoenix Street

i) The Environmentally Sustainable Design initiatives that are required to be shown on plans, as contained within Condition 7 of this permit.

j) Any changes to the plans arising from the:

i. Landscape Plan in accordance with Condition 3 of this permit.

ii. Waste Management Plan in accordance with Condition 11 of this permit.

iii. Venue and Patron Management Plan in accordance with Condition 13 of this permit.

iv. Acoustic Report in accordance with Condition 15 of this permit.

**Compliance with Endorsed Plans**

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

**Landscaping**

3. Prior to the endorsement of plans, an amended landscape plan must be submitted to the Responsible Authority. The landscape plan must be generally in accordance with the plan prepared by Openwork dated 10 June 2022 but amended to show:

a) Updated details of the raingardens and other treatments to achieve best practice water sensitive urban design as nominated in the updated SMP required under Condition 7 of this permit.

b) Details (including sections) of all planter boxes, above basement planting areas, green walls, rooftop gardens and similar, including:

i. Soil depth and volumes sufficient for the proposed vegetation

ii. Soil mix

iii. Drainage design

iv. Details of an automatic irrigation system, including location of water source and controller together with maintenance program and responsibility for maintenance.

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

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

6. All landscaping and vegetation to be covered by a minimum 12-month defects liability period to ensure the establishment of all landscapes

**Environmentally Sustainable Design (ESD)**

7. Prior to the endorsement of plans, an amended Sustainability Management Plan (SMP) and plans must be submitted to the satisfaction by the Responsible Authority. The SMP must demonstrate a best practice standard of environmentally sustainable design and be generally in accordance with the SMP advertised 4 July 2022, but modified to include the following changes:

a) Amend the BESS report (and any other corresponding documentation) to:

i. Update all reports and the SMP to list the 78kW solar PV system.

ii. The following innovation credits removed:

a) On site organics

b) Solar PV

c) Heat pump

iii. The following innovation credits altered:

a) Embodied energy – More information is required to demonstrate how this will be achieved. Information on doing a Life Cycle Assessment or similar for Saxon Street.

b) Add that an air tightness test will be undertaken to demonstrate the building is airtight. This is to be provided as a part of the post construction report condition.

c) Add an innovation credit for a Life Cycle Assessment (LCA) for embodied carbon.

b) Plans of the daylight models to confirm the percentage and area of the floor that meets the requirements including:

i. Overlay daylight maps on to floor plans such that it is easy to ascertain that the modelling accurately depicts the dimensions and design of the space.

ii. Clear scale to accompany daylight maps

iii. Produce a summary table showing the daylight value for each space with their floor area and the compliant area as both a percentage and as a sqm area

iv. An image of the development as modelled in the software which demonstrates that all external architectural features, overhangs, lightwells, screening, adjacent buildings and structures and other daylight obstructions have been accurately modelled and incorporated.

v. All surrounding future equitable (including proposed) development modelled where relevant.

vi. Glazing properties -VLT of all windows ensuring that the VLT and glazing specifications match the glazing specifications used in the JV3/energy/facade modelling.

vii. Internal reflectance of walls, floors and ceilings

viii. Description of the software used to produce the model (depending on the modelling software used a copy of the file may be requested by council).

c) A MUSIC report and stormwater management response that provides:

i. A copy of the MUSICX file (.mfs), demonstrating that reduction in TSS, TP and TN are achieved independent of the SPEL systems.

d) An amended stormwater catchment plan that is consistent with the MUSIC report, clearly showing:

i. Clearly dimension, draw and label all the raingardens, water tanks, downpipes, type of water collection (i.e. curb, channel, pipe) and direction of flow on the ground floor plan and WSUD building. No charged pipes are allowed under buildings. Details all works to ensure toilet flushing is connected to stormwater. Proprietary WSUD products are not acceptable.

ii. Provide details on the 2m raingarden for the backstage area including:

a) the location, size, area draining to the raingarden,

b) sections of the raingarden

c) maintenance details.

d) Confirmation the raingarden is a minimum of 2 per cent of the area to be filtered.

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

i. Install operable windows to the male and female toilets.

ii. Operable, east facing windows to office 01, 03 and studio 03.

iii. Operable windows to studio 04, unless the room requires no daylight.

iv. The EV charging points including the locations, if they are public or private, kilowatts, if the EV charging points are a full EV system or the cabling for future installation.

v. The grey water system including size, location, what it is connected to and what the grey water system will irrigate.

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

When submitted and approved to the satisfaction of the Responsible Authority, the amended Sustainability Management Plan and associated notated plans will be endorsed to form part of this permit. No alterations to the plan 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, the development must be constructed in accordance with the Sustainable Design Assessment (including any BESS and STORM reports) to the satisfaction of the Responsible Authority.

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

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

**Waste Management**

11. Before the plans required by Condition 1 of this permit are endorsed, a Waste Management Plan generally in accordance with the Waste Management Plan prepared by One Mile Grid dated 6 June 2022 must be submitted to, and approved in writing by, the Responsible Authority.

12. 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.

**Venue and Patron Management Plan**

13. Prior to the endorsement of plans, a Venue and Patron Management Plan prepared to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit. The plan must address the following:

a) Circumstances when security may be required

b) How the venue will manage patrons entering and leaving the venue, including security and queuing from within site.

c) Complaint handling processes, including a contact number available to nearby residents and a process for immediate issue rectification.

d) Staff training for patron management

e) Management of outdoor areas

f) Outdoor smoking areas

g) Lighting outside the premises

14. The venue must operate in accordance with the approved Venue and Patron Management Plan and any activities or ongoing obligations contained in the approved plan must be carried out in accordance with the approved plan, to the satisfaction of the Responsible Authority.

**Noise Levels**

15. Prior to the endorsement of plans, an Acoustic Report prepared by a qualified Acoustic Engineer must be submitted and approved to the satisfaction of the Responsible Authority. The report must include, but not be limited to the following:

a) Measures to ensure the development is designed, constructed and managed to minimise noise emissions from the premises and provide acoustic attenuation measures that would protect noise sensitive residential uses within 50 metres of the venue.

b) Recommendations of acoustic measures to be incorporated into the proposed development to comply with the Environment Protection Regulations under the Environment Protection Act 2017 and the incorporated Noise Protocol (Publication 1826.2, Noise Limit and Assessment Protocol for the Control of Noise from Commercial, Industrial and Trade Premises and Entertainment Venues, Environmental Protection authority, March 2021).

16. Noise levels associated with the use must at all times comply with the Environment Protection Regulations under the Environment Protection Act 2017 and the incorporated Noise Protocol (Publication 1826.2, Noise Limit and Assessment Protocol for the Control of Noise from Commercial, Industrial and Trade Premises and Entertainment Venues, Environmental Protection authority, March 2021), or any other superseding regulation.

Should the Responsible Authority deem it necessary, the owner and/or occupier of the land must submit an Acoustic Report to the satisfaction of the Responsible Authority which demonstrates compliance, or which outlines any measures considered necessary to achieve compliance.

**Public Works Plan**

17. Prior to the commencement of the development, a Public Works Plan and associated construction drawing specifications detailing the works to the land directly in front of the site facing the publicly accessible part of Saxon Street and Phoenix Street must be submitted to the satisfaction of the Responsible Authority. The Plan must include:

a) All construction details in accordance with the *Moreland City Council Technical Notes July 2019* (or any updated version);

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

c) The upgrade of the Council managed public footpath adjacent to the site. Public footpaths are to be reinstated to the previous levels with a maximum cross fall slope of 1 in 40 (2.5 per cent).

d) Any Council or service authority pole or pit within 1 metre of the proposed vehicle crossing, including the 1 metre splays on the crossings, relocated or modified.

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

f) Any necessary drainage works.

g) The crossover on the south-east corner facing Saxon Street modified to match the location and width of an internal vehicle accessway leading to a parking space or loading bay.

h) The crossover to the private part of Saxon Street removed and the footpath, kerb and channel, reinstated

i) An eastern boundary fence for the length of the privately owned portion of Saxon Street.

j) The provision of 8 new street tree plantings and landscaping along Phoenix Street (5 trees) and within the Council managed sections of Saxon Street (3 trees) in appropriate locations in consultation with the Responsible Authority (Open Space Branch).

k) Details (including sections) of all footpath, kerb and channel, street furniture, planter boxes, in-road street tree planting, raingardens and similar, including:

i. Detailed specifications

ii. Soil depth and volumes sufficient for the proposed vegetation

iii. Soil mix

iv. Drainage design

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

m) The installation of bike hoops along Phoenix Street provided with graffiti-resistant surfaces.

n) Any other works and street furniture including seating (provided with graffiti-resistant surfaces).

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

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

**Hours of Operation**

16. The use of the land for the sale and consumption of liquor allowed by this permit must operate only between Monday to Sunday: 7am to 10:30pm

17. The use of the land for a place of assembly allowed by this permit must operate only between Monday to Sunday: 6am to 10:30pm

**Patron Numbers**

18. A maximum of 500 patrons on site at any one time and each individual use must not exceed:

a) Art gallery – 50 patrons

b) Place of assembly – 350 patrons

c) Education Centre – 350 patrons

d) Office – 100 patrons

e) Food and drink premises – 46 patrons

**Environmental Audit**

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

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

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

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

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

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

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

22. No works to construct the development hereby approved shall be carried out on the land and no building contract to construct the development hereby approved may be entered into, other than in accordance with a building contract that stipulates that works must not be commenced until such time as Conditions 19, 20, and 21 are satisfied.

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

24. Where a preliminary risk screen assessment has satisfied Condition 19 (that an environmental audit is not required), the development and use must not deviate from the assumptions or limitations contained in the preliminary risk screen assessment, including but not limited to the layout and design of the development and use of the land without the written consent of the Responsible Authority. The development and use must accord with any requirements and recommendations of the preliminary risk screen assessment to the satisfaction of the Responsible Authority.

**Carriageway Easement**

25. Prior to the commencement of the development hereby permitted, evidence that a carriageway easement has been registered over 10 Dawson Street, Brunswick in favour of the site must be submitted to the satisfaction of the Responsible Authority.

**3D model**

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

**Heritage**

27. Prior to the commencement of the development, a full schedule of the proposed conservation works to the ‘Sherwood’ heritage building must be submitted and approved to the satisfaction of the Responsible Authority.

28. Prior to the commencement of the development, an archival record of the existing heritage building must be prepared by a suitably qualified heritage expert and then submitted and approved to the satisfaction of the Responsible Authority.

**Development Contributions**

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

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) a maximum of 12 months from the date of issue of the Building Permit; 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.

**Engineering Matters**

30. 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 (Merri-bek City Council, City Infrastructure Department).

31. 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 (Merri-bek City Council, City Infrastructure Department).

32. Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, access to the site, any vehicle crossover and any ancillary road and road drainage works must be constructed in accordance with any requirement of the Responsible Authority (Merri-bek City Council, City Infrastructure Department).

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

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

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

**Stormwater**

36. All stormwater from the land, where it is not collected in rainwater tanks for re-use, must be collected by an underground pipe drain approved by and to the satisfaction of the Responsible Authority (Note: Please contact Merri-bek City Council, City Infrastructure Department).

**Car Parking**

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

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

b) Be maintained.

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

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

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

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

**General**

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

39. Unless with the prior written consent of the Responsible Authority, any plumbing pipe, ducting and plant equipment must be concealed from external views. This does not include external guttering or associated rainwater down pipes.

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

**Permit Expiry**

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

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

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

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

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

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

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

**Notes:**

**Note 1:** This permit contains a condition requiring payment of Development Contributions. The applicable development contribution levies are indexed annually. To calculate the approximate once off levy amount, please visit <http://www.moreland.vic.gov.au/planning-building/> and click on ‘[Moreland Development Contributions Plan (DCP)](http://www.moreland.vic.gov.au/planning-building/moreland-development-contributions-plan-dcp/)’. Alternatively, please contact Merri-bek City Council on 9240 1111 and ask to speak to the DCP Officer.

**Note 2:** **Environmental Audit Notes**

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

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

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

**Note 3:** Unless no permit is required under the Moreland Planning Scheme, no sign must be constructed or displayed on the land without a further planning permit

**REPORT**

**1. Background**

**Subject site**

The subject site is located on the north-eastern corner of Saxon Street and Phoenix Street, approximately 70 metres west of Sydney Road in Brunswick. Irregular in shape, the site has a total area of approximately 4,450 square metres and is owned by Merri-bek City Council.

The site currently operates as ‘Siteworks’ and comprises local community uses and public spaces, including a contemporary Indigenous-run art gallery ‘Blak Dot Gallery’, and a two storey Victorian era villa. Spanning along the northern boundary of the site is a two-storey former school building.

The site is included within the Heritage Overlay Schedule 142, which recognises the local historical and architectural significance of ‘Sherwood’, a polychrome Italianate mansion, and the last remaining building of the pottery and brick making enterprises of Alfred Cornwell, an important Brunswick property proprietor in 1882. It is noted that the significance of the house has been greatly reduced by various alterations, in particular the connecting walkway between the balcony and the adjoining school building. The impact of the house on the streetscape has been completely lost by the surrounding school buildings, which date from the 1960s onwards.

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

**Surrounds**

The site is located within the Brunswick Activity Centre, approximately 70 metres west from the Sydney Road commercial spine. The broader area comprises a mix of commercial, community and residential uses.

The immediate context includes:

 To the north is Phoenix Street, a no-through road that terminates at the Upfield railway line and shared path and connects to Sydney Road to the east. Beyond Phoenix Street is land located within the Commercial 1 Zone including a supermarket and car park.

 To the east is Saxon Street, a narrow two-way street with on-street carparking. A portion of the street adjoining the subject site is privately owned by the St. Ambrose Catholic Parish (located on the eastern side of Saxon Street) meaning this street is effectively a ‘no-through road’ to the general public. To the east of Saxon Street is the St Ambrose Catholic Parish church and grounds and a four storey apartment building to its north.

 To the immediate south of the subject site is 10 Dawson Street which hosts a double storey red brick commercial building currently used as The Brosnan Centre. This site has planning approval via the Minister for Planning for the construction of an eight-storey apartment building.

 To the immediate west of the subject site is the Brunswick Baths. The Brunswick Baths is a two storey Art Deco building which contains three buildings and an outdoor recreation area and pool.

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

**The proposal**

The proposal is summarised as follows:

 Demolition of the existing one and two storey buildings at the south end (Blak Dot Gallery) and north-eastern corner of site (former school buildings). The demolition allows for the creation new landscaping areas on the site.

 Partial demolition and buildings and works to the existing heritage building.

 Buildings and works to the former school buildings.

 Construction of a five-storey building to the south of the existing heritage building. This building will be occupied predominantly by community and office uses including co-working spaces and creative industries. Specifically, the building will include:

 Community rooms (place of assembly- excluding a nightclub)

 Offices

 Maternal and child health services (medical centre)

 Art gallery (exhibition centre)

 Café (food and drink premises)

 Sale and consumption of liquor

The development plans form **Attachment 3** and **Attachment 4**.

**Planning Permit History**

Several planning permits have been issued on the site. In particular, Planning Permit MPS/2015/1017/A allows an education centre, place of assembly, café and art gallery.

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

| **Control** | **Permit Requirement** |
| --- | --- |
| Commercial 1 Zone | A permit is required to use the land for a place of assembly.  A permit is required to construct a building or construct or carry out works.  Offices, a medical centre, exhibition centre and food and drink premises are Section 1 uses in the zone, meaning that a permit is not required for these proposed uses. |
| Heritage Overlay | A permit is required to demolish or remove a building, construct a building or construct or carry out works |
| Design and Development Overlay (Schedule 18): | A permit is required to construct a building or construct or carry out works. |
| Car Parking | A permit is required to reduce the car parking requirement from 164 spaces to 8 spaces. |
| Licensed Premises | A permit is required to use land to sell or consume liquor. |

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

 Clause 45.03: Environment Audit Overlay. A condition is included in the recommendation.

 Clause 45.06: Development Contributions Plan Overlay

 Clause 45.09: Parking Overlay

 Clause 53.18: Stormwater Management in Urban Development

**2. Internal/External Consultation**

**Public notification**

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

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

 Placing three signs, including two signs to the publicly owned portions of the site frontage to Saxon Street and one sign facing Phoenix Street.

Council has received 8 objections including one petition with 65 signatures to date. A map identifying the location of objectors forms **Attachment 5**.

The key issues raised in objections are:

 Demolition of heritage buildings

 Building height

 Access via private portion of Saxon Street

 Bicycle parking

 Access for waste services

 Artwork proposed

 Obscuring of Brunswick Baths building

 Conflict of interest

 Security

 Noise

 Pedestrian/vehicle interface on Saxon Street

 Overshadowing

 Car parking reduction

 Use of the land as a place of assembly – increase in visitation to the site

 Increase in bicycle movements within Saxon Street

 Incomplete application

 Loss of delineation between the site and the privately owned portion of Saxon Street

A petition was received containing 65 signatures from the St Ambrose Parish located at 287 Sydney Road, Brunswick. These will be treated as a joint submission for the purposes of considering the planning permit in accordance with *Planning and Environment Act 1987*. The petition raised concern with the ownership status of the private portion of Saxon Street.

A meeting was held on 9 September 2022, with the St Ambrose Parish, to seek to resolve concerns with the ownership status of Saxon Street. As a result of these discussions conditions are included in the recommendation, requiring fencing to more clearly delineate the eastern boundary . Additionally, all objectors were contacted via email to discuss their concerns with the proposal. This provided an opportunity for Council officers to explain the application and gave the opportunity for the objectors to elaborate on their concerns. Council officers did not receive further correspondence from these objectors.

**Internal referrals**

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

| **Internal Branch/Business Unit** | **Comments** |
| --- | --- |
| Urban Design Unit | Supports the proposal. Recommended that public works be considered in Phoenix and Saxon Streets to improve the pedestrian interface. |
| Development Engineering Team | Supports the proposal, however raised concern with the status of the carriageway easement at 10 Dawson Street and loading bay arrangement. |
| ESD Team | Supports the proposal subject to conditions ensuring the best practice environmentally sustainable design is delivered. |
| Heritage Advisor | Supports the proposal subject to conditions to improve view lines and more details on conservation works. |
| Open Space Unit | Supports the proposal subject to conditions to provide planter box details and the provision of 8 street trees. |

Recommended changes from each of these units are addressed by conditions of the recommendation and or are considered further in Section 4 of this report.

**3. Policy Implications**

**Planning Policy Framework (PPF):**

The following policies are of most relevance to this application:

 Municipal Planning Strategy (Clause 2)

 Settlement (Clause 11)

 Environmental and Landscape Values (Clause 12)

 Environmental Risks and Amenity (Clause 13):

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

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

 Entertainment Venues and Licensed Premises (Clause 13.07-1L)

 Built Environment (Clause 15.01), including:

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

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

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

 Energy efficiency in Moreland (Clause 15.01-2L-04)

 Healthy neighbourhoods (15.01-4S)

 Heritage (Clause 15.03), including:

 Heritage conservation (Clause 15.03-1S)

 Heritage in Moreland (Clause 15.03-1L)

 Economic Development (Clause 17), including:

 Diversified economy (Clause 17.01-1S & 17.01-1R)

 Employment areas (Clause 17.01-1L-02)

 Transport (Clause 18), including:

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

 Movement networks (18.02)

 Community Infrastructure (Clause 19.02)

**Human Rights Consideration**

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

 Section 12: Freedom of movement

 Section 13: Privacy and Reputation

 Section 20: Property rights

An assessment of whether there is any potential for unreasonable overlooking has been undertaken in section 4 of this report. The proposed redevelopment of 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.

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

The site is affected by DDO18, Brunswick Activity Centre – Sydney Road and Upfield Corridor, which identifies the site as having the following requirements relating to the design and building of new development:

 *A preferred building height of 17 metres; and*

 *A preferred street wall height of between 9 and 12 metres to Phoenix Street and between 7 and 10 metres to Saxon Street.*

*Building Height*

The development has a maximum height of 23.45 metres, amounting in a variation of 6.45 metres above the preferred building height.

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

 *To encourage a new mid-rise built form character with lower built form at the interfaces with the adjoining low rise residential areas.*

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

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

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

An assessment against the above policy is summarised as follows:

 The preferred building height of 17 metres generally aligns with developments of up to five storeys. The proposed south building is five storeys in height, however the raised ceiling heights are necessary to allow for the variety of uses intended.

 Despite the development exceeding the preferred maximum height, the proposal will contribute to the preferred mid-rise built form character of the area and is well below the height of the approved development immediately to the south. The design response provides a logical and respectful transition between the approved eight-storey development at 10 Dawson Street and the heritage place ‘Sherwood’.

 Only the south building exceeds the preferred height, the remaining buildings on site sit well below the maximum height at two storeys. This ensures that the development provides an appropriate transition in height across the site.

 The south building is well setback from the heritage building on the site. This assists in reducing the visual dominance of the south building and ensures adequate visual separation between the buildings.

 The development will not overshadow the adjoining residential properties to the east of the site and the setback of the south building from Saxon Street will lessen the visual and amenity impacts of the development.

 In terms of the 1:1 ratio of street width to street wall height, the overall building height of the development would sit within the required envelope to Phoenix Street.

 While the additional height proposed will be visible from Saxon Street, this is acceptable because the relevant objectives of DDO18 do not require that upper levels in off-corridor streets be visually recessive but requires that buildings achieve an appropriate balance between a sense of enclosure and openness. The proposal provides adequate separation between the building and private portion of Saxon Street given that the siting of the buildings coupled with the landscaping provided across the site, will soften the visual impact of the five-storey building.

 The shadow diagrams provided with the application demonstrate that the proposed development will not generate any additional overshadowing to the Brunswick Baths between 10am and 2pm at the September equinox, as required by DDO18.



***Figure 1: View of Saxon Street Streetscape (Source: Kennedy Nolan)***

**Street Wall Height**

The development provides setbacks from Phoenix and Saxon Streets rather than providing street walls as preferred by the DDO18. Given the size of the site and its corner location, the development can establish a new cohesive built form character, without the use of street walls, that will not compromise the establishment of a street wall character on adjoining sites. The development balances a sense of openness and enclosure through the provision of landscaping along the street frontages including new open space and the separation of buildings across the site. The absence of street walls is therefore supported given the built form and purpose of the site as a community and creative hub. Furthermore, view lines to ‘Sherwood’ are being created, re-establishing some of the original open setting associated with this significant heritage place.

**Does the proposal impact the significance of the heritage place?**

The site is affected by Heritage Overlay, Schedule 142. Based on the statement of significance for HO142, the only building of heritage interest is the ‘Sherwood’ building towards the middle of the site.

**Demolition**

The extent of demolition proposed is supported given that it will not adversely impact the significance of the heritage place. The demolition to the ‘Sherwood’ building is limited to later additions to the building that do not contribute to its heritage significance. Council’s Heritage Advisor supports the extent of demolition to ‘Sherwood’ given that it will facilitate the return of the building to its original appearance. The demolition of other parts of the site including the Blak Dot gallery and parts of the former school building are supported given these buildings are not of heritage significance.

**Buildings and Works**

The extent of external additions to the ‘Sherwood’ building is limited to the external lift core on the western side of the building, which is considered acceptable given that it will not be visible from the street and only adds a small intrusion to the western side of the building. The demolition of the school building located on the north-east corner of the site will improve views and access to the ‘Sherwood’ building from the surrounding streets, which is an improved outcome over existing conditions. To further enhance the view of the ‘Sherwood’ building from Phoenix Street, Council’s Heritage Advisor has recommended a condition that the screening to the school building frame be free of signage, vegetation or similar structures. Council’s Heritage Advisor has raised no concerns with the proposed five storey building to the south of the ‘Sherwood’ building and considers the height and setback of the new building sufficient to ensure it does not dominate the heritage place.

**Is the proposed use appropriate for the location?**

The site is located within the Commercial 1 Zone, which seeks to ‘*create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses’.*

The site is also located within an Employment Area as identified in Clause 2.04 of the Moreland Planning Scheme.

The relevant objective of this policy is:

*Supporting creative industries, entrepreneurs and associated activities, including education and training, live music venues, performance, studios and coworking spaces, in Activity Centres, the Brunswick Design District and Core Industrial and Employment Areas as shown on the Strategic Framework Plans Economic Development and Activity Centres at Clause 2.04.*

This application seeks to provide community rooms (place of assembly) that can be hired short-term for activities such as community classes, community gatherings and workshops. This use will respond to the above objectives in the following ways:

 The provision of multi-purpose community rooms will serve a function in providing more spaces for both community groups and creative industries to congregate.

 The co-location of services operated by Council on the one site will allow for multi-purpose trips to the building.

 The development continues the theme of supporting creative industries on the site.

 The site is located within the Brunswick Activity Centre, which is the preferred location for civic centre functions.

 The design and layout of the building will contribute to a sense of place and provide opportunities for social connections by having a variety of uses on the site that serve various sectors of the community.

For these reasons, the proposed use is consistent with the key strategic policy framework, subject to an assessment of the off-site amenity impacts. Key amenity considerations, relating to noise, hours and patron numbers are assessed in turn below.

**Noise**

Live and background music may be played at the venue. To ensure that nearby residential properties and businesses will be satisfactorily protected from unreasonable levels of noise from the venue, an Acoustic Report will be required. The operator will be required to meet the relevant noise limits in the Environment Protection Regulations regarding noise emanating from the site to ensure noise impacts are mitigated.

**Patron Numbers**

The proposed maximum patron capacity of the venue is 500, which is the same number of patrons allowed under the current operations via planning permit MPS/2015/1017/A. It is considered that the size of the venue, its location within an Activity Centre, its access to multiple modes of transport and the mitigation of noise and amenity impacts by conditions result in the proposed patron numbers being acceptable.

**Licensed Premises**

This application seeks approval for the sale and consumption of liquor associated with the ground floor community room, kitchen and café of the south building. The proposed hours of operation for the sale and consumption of liquor are Monday to Sunday 7am to 10:30pm.

Clause 13.07-1L (Entertainment Venues and Licensed Premises) expressly encourages the location of licensed venues within Activity Centres and seeks to ‘*ensure that licensed premises and late-night entertainment venues make a positive contribution to the mix of activities available in activity centres.*’ Given the sites location within an Activity Centre and its good access to public transport modes, it is reasonable to allow the sale and consumption of liquor until 10:30pm each night. The sites purpose as a community and creative hub will contribute to the mix of activities available within the Brunswick Activity Centre. Overall, the proposal is likely to result in a positive impact, enhance the vitality of the area and increase consumer choice.

**Has adequate car parking been provided?**

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

| **Use** | **Total spaces required** | **Total spaces provided** |
| --- | --- | --- |
| Art Gallery | 15 |  |
| Place of Assembly | 105 |  |
| Medical Centre | 6 |  |
| Food and Drink Premises | 2 |  |
| Office | 36 |  |
| **Total** | **164** | **8** |

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

 within and close to activity centres

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

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

The proposal is located within the Brunswick Activity Centre and has excellent access to public transport including the Upfield railway line, Route 19 tram stop as well as east-west bus connections. The proposal also provides 73 bicycle parking spaces which is well above the 12 bicycle spaces required by Clause 52.34, in addition to end of trip facilities.

The site has a mixed use history including the former school use. The proposal also seeks to maintain the maximum patron numbers that have been permitted on the site in more recent times without any adverse impacts upon the surrounds.

Council’s Development Engineers are satisfied that the car parking requirement can be reduced for this proposal.

Vehicles, whether related to this or other developments in the street, can only park on the street in accordance with any parking regulations. The number of vehicles that can park on the street and at what time will be dictated by the parking restrictions and the availability of on-street spaces.

**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 there will be no material change in traffic generation to the site.

Objectors have raised concern about the ownership status of the private portion of Saxon Street. This application does not rely on the private part of Saxon Street for vehicle access, rather it utilises the public part of Saxon Street. The development will therefore not rely on the private road for access. In response to the objector’s concerns, the Applicant has agreed to install a fence along the private portion of Saxon Street to further delineate the site from the private road. This is included as a condition in the recommendation. The existing crossover to the private part of Saxon Street will also be removed as a condition of this recommendation.

The site will gain vehicle access to the car parking area via 10 Dawson Street, Brunswick. To ensure the site has a legal entitlement to access the car park, a condition will require evidence of a carriageway easement be provided prior to the commencement of the development.

**Is the proposed artwork acceptable?**

Polka dots have been used on the plans to indicate that a wall will be designated for future public art. The content and appearance of this artwork is yet to be decided upon. A condition will require details of the artwork to be provided on the plans.

**5. Response to Objector Concerns**

The following issues raised by objectors are addressed in section 4 and section 6 of this report:

 Demolition of heritage buildings

 Building height

 Access via private portion of Saxon Street

 Bicycle parking

 Pedestrian/vehicle interface on Saxon Street

 Conflict of interest

 Noise

 Overshadowing

 Car parking reduction

 Use of the land as a place of assembly – increase in visitation to the site

 Loss of delineation between the site and the privately owned portion of Saxon Street

 Artwork proposed

Other issues raised by objectors are addressed below.

**Access for waste services**

A Waste Management Plan prepared by One Mile Grid dated 6 June 2022 was provided with the application and details that the waste truck will enter and exit the site via the public part of Saxon Street. Council’s Development Engineers have reviewed the Waste Management Plan and are satisfied with this arrangement. A condition of this recommendation will require the loading bay area for the waste truck to be clearly shown on the plans.

**Obscuring of Brunswick Baths building**

Given that the height anticipated on the site by DDO18 and due to the approved eight storey development at 10 Dawson Street, it is not considered that the development would unreasonably obscure view lines to the Brunswick Baths. Furthermore, the view lines to the Dawson Street heritage façade of the Brunswick Baths will not be impacted through this proposal.

**Security**

Given the purpose of the site as a community hub, it is not considered necessary to require security for the development. The Venue and Patron Management Plan included as a condition will clarify if there are any instances when security may be required, which may relate to events.

**Increase in bicycle movements within Saxon Street**

Concerns have been raised about the increased bicycle movements in the private portion of Saxon Street. A portion of Saxon St was sold by Brunswick City Council to the Roman Catholic Trust Corporation for the Diocese of Melbourne (RCTC) in 1986 following an incident with a vehicle and a school pupil. Since then there has been a gate at the northern end of Saxon Street that restricts through vehicles traffic and signage on this proportion of the road states “Private Road – No Parking”. Since that time, public access by pedestrians and bicycles has continued. A deed between Council and RCTC of 2016 formalises the arrangement whereby Council maintains the road (as a public road) and RCTC guarantees ongoing public access. This application has no direct effect on this arrangement and it can be reasonably assumed that public access along this portion of Saxon Street will be ongoing. The subject site was previously used as a school and would have attracted high levels of pedestrian and bicycle movements during its operation. These movements can reasonably be expected to have fallen once the school operation ceased. The potential increase in pedestrian and bicycle movements associated with the proposed use and development within this Activity Centre location are considered acceptable.

**Incomplete application**

Sufficient information to enable an informed assessment of the application has been made available for viewing as part of the notification process, which has been carried out in accordance with the *Planning and Environment Act 1987*.

**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.

The Planning Officer’s involvement with the project has been limited to the assessment of the planning application.

The *Planning and Environment Act 1987* and the planning scheme provide that Council as Responsible Authority under the planning scheme may consider applications for the use and development of Council land which follow a transparent public notification process. This enables a write of review to VCAT for persons concerned with Council’s decision.

**7. Financial and Resources Implications**

There are no financial or resource implications associated with the planning permit application assessment which is the subject of this report.

**8. Conclusion**

It is considered that, subject to the conditions outlined in the recommendation, the proposed use and development of the land responds to the heritage values and design objectives for the site within the Brunswick Activity Centre, will act to revitalise the site without creating unreasonable off-site amenity impacts and will result in a net community benefit for the area.

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 MPS/2022/194 should be issued subject to the conditions included in the recommendation of this report.

**Attachment/s**

|  |  |  |  |
| --- | --- | --- | --- |
| **1** | 33 Saxon Street, Brunswick - Location Map | D22/472119 |  |
| **2** | 33 Saxon Street, Brunswick - Zoning Map | D22/472178 |  |
| **3** | 33 Saxon Street, Brunswick - Advertised Plans - Part 1 | D22/472187 |  |
| **4** | 33 Saxon Street, Brunswick - Advertised Plans - Part 2 | D22/472193 |  |
| **5** | 33 Saxon Street, Brunswick - Objector Map | D22/472230 |  |

1. *Moreland City Council*, ‘Solar Panels Advisory Note’ (13 July 2016). [↑](#footnote-ref-1)