



Moreland City Council

COUNCIL AGENDA

PLANNING AND RELATED MATTERS

WEDNESDAY 26 JUNE 2019

COMMENCING 6.30 PM

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

Language Link

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

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

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

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

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

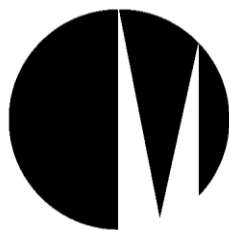
Belediye Meclisi Toplantısının gündem maddeleri burada verilmiştir. Bu gündem maddeleri ile ilgili yardıma ihtiyacınız olursa, 9280 1914 numaralı telefondan Language Link tercüme hattını arayınız.

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

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

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

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



1. WELCOME

2. APOLOGIES

Leave of absence has been granted to:

- Cr Carli Hannan - 11 April 2019 to 12 August 2019
- Cr Davidson - 19 June 2019 to 31 July 2019
- Cr Tapinos - 17 June 2019 to 30 July 2019

3. DECLARATION OF INTERESTS AND/OR CONFLICTS OF INTERESTS

4. CONFIRMATION OF MINUTES

The minutes of the Council meeting for Planning and Related Matters held on 22 May 2019 be confirmed.

5. COMMITTEE REPORTS

CITY FUTURES

DCF49/19	92-104 LOWSON STREET, FAWKNER - PLANNING PERMIT MPS/2018/838 (D19/107401)	3
DCF50/19	116 JUKES ROAD, FAWKNER - PLANNING PERMIT MPS/2018/645 (D19/188526)	17
DCF51/19	21-25 NORTHUMBERLAND ROAD, PASCOE VALE - PLANNING PERMIT MPS/2018/471 (D19/193889)	44
DCF52/19	2 ELM GROVE, BRUNSWICK EAST - PLANNING PERMIT MPS/2017/245 (D19/193951)	101

6. URGENT BUSINESS REPORTS

DCF49/19 92-104 LOWSON STREET, FAWKNER - PLANNING PERMIT MPS/2018/838 (D19/107401)

Director City Futures

City Development

Executive Summary

The application seeks retrospective approval for the use of the land for a place of worship (mosque). The application was advertised and 25 objections were received. The main issues raised in objections are traffic congestion, parking availability, pedestrian safety, the suitability of the site for the use and noise.

A Planning Information and Discussion meeting was held on Tuesday 2 April 2019. Whilst no changes were made to the proposal following the meeting, the applicant agreed to a condition that requires all prayer activity to take place within the building.

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

The key planning considerations are:

- The appropriateness of the place of worship in the Neighbourhood Residential Zone.
- The impact on car parking in the area.
- The impact on traffic.

The place of worship is considered an acceptable use within the Neighbourhood Residential Zone. The proposal complies with the requirements of the Moreland Planning Scheme in relation to the number of car parking spaces provided. In addition, the existing road network can support the traffic generated by the use. Subject to conditions of the recommendation, it is considered that the proposal will not result in unreasonable off-site amenity impacts.

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

Officer Recommendation

That a Notice of Decision to Grant a Planning Permit No. MPS/2018/838 be issued for the use of the land for a Place of Worship at 92-104 Lawson Street, Fawkner subject to the following conditions:

1. 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 62.01, 62.02-1 and 62.02-2 of the Moreland Planning Scheme unless specifically noted as a permit condition.
2. The maximum number of patrons permitted on the premises must not exceed 160 at any one time.
3. The use allowed by this permit (including the arrival and departure of vehicles and people on-site) must operate only between the following hours, unless with the written consent of the Responsible Authority:

Tuesday	5 pm to 9 pm
Thursday	5 pm to 9 pm
Friday	11.30 am to 5 pm
Saturday	5 pm to 9 pm
4. No amplified music or speech may be played external to the building.

5. An attendant or attendants must be present on Fridays and during any other opening time where more than 100 patrons are on site at any one time to:
 - a) Direct and manage traffic and car parking, including preventing any unauthorised or inappropriate parking.
 - b) Monitor patron numbers to ensure the number limits contained in condition 2 are not exceeded.
 - c) Open and close gates to ensure the hours of operation in condition 3 are not exceeded.
 - d) Maintain a visual presence by patrolling the areas immediately outside the site.
6. Prayers must take place only within the building.
7. 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 properly formed to such levels that it can be used according to the endorsed plan within 90 days of the date of this permit and maintained thereafter.
 - b) Have the boundaries of all vehicle parking spaces clearly marked on the ground to accord with the endorsed plan within 90 days the date of this permit and maintained thereafter.
 - c) Not be used for any other purpose other than the parking of vehicles.
 - d) Be drained and surfaced.
8. Within 90 days of the issue of this permit, lighting no higher than 1.2 metres above ground level is to be installed and maintained on the land to automatically illuminate pedestrian access from the building to the car parking spaces on-site between dusk and dawn with no direct light emitted onto adjoining property to the satisfaction of the Responsible Authority.
9. This permit will expire if the use is not commenced within 2 years from the date of issue of this permit.

The Responsible Authority may extend the period referred to if a request is made in writing before the permit expires or within 6 months afterwards.

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

1. Background

Subject site

The subject site is located at 92-104 Lawson Street, Fawkner and is currently being used as a place of worship.

The site has a southern frontage to Lawson Street of 105.5 metres, a side boundary of 54.74 metres, and an overall site area of approximately 5766 square metres.

Occupying the site are 2 single storey buildings. The westernmost building being the larger of the 2 is setback approximately 11 metres from Lawson Street. This building is currently boarded up after a fire damaged the building in 2016. Prior to this, the building was used as a prayer hall.

The easternmost building is the subject of the use application. It was previously used as school classrooms. The building is setback approximately 35 metres from Lawson Street. The land between the building and the street frontage contains car parking and landscape areas.

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

Surrounds

The area is predominantly residential with single storey detached dwellings being the predominate type of development. The immediate context also includes Moomba Park Primary School which shares an abuttal with the subject site's east boundary and St Matthews Primary School.

Dwelling rear yards interface with the subject site's north and west boundary.

A location plan forms **Attachment 1**.

The proposal

The proposal is summarised as follows:

- The use of the land for a place of worship.
- 160 patrons maximum on site at any one time.
- 51 car parking spaces provided onsite.
- Hours proposed are as follows:
 - Tuesday: 5 pm – 9 pm
 - Thursday: 5 pm – 9 pm
 - Friday: 1130 am – 5 pm
 - Saturday: 5 pm – 9 pm

No buildings and works are proposed.

The development plans form **Attachment 2**.

Planning Permit and site history

Planning permits issued for the site include the following:

- MPS/1995/473 – Permit issued 26 March 1996 for: Community centre, Place of Worship and Place of Assembly.

This permit restricted the maximum number of persons onsite to 120 and required amended plans, a Section 173 Agreement be lodged on title and the preparation of a Traffic Management Study.

A Council inspection of the site in February 2016 found that the layout of the built conditions on site did not match the originally contemplated drawings for this permit. Additionally, it was found that amended plans had never been submitted nor endorsed, and that the conditions of the permit had not been met, including requirements for a Traffic Management Study and a Landscape Plan. This permit contained a condition that the permit 'has no effect' until a landscape plan is endorsed by the Responsible Authority. As a landscape plan was never submitted or endorsed, this permit was never acted upon and has lapsed.

- MPS/2003/874 – Permit issued 18 February 2005 for: Buildings and works associated with the use of the land as an Education Centre (Primary School) in conjunction with the existing Place of Worship the display of a business identification sign and a reduction in the standard car parking requirement.

This permit related to the use of both buildings on the site. Notably, this permit allowed 250 patrons to the Place of Worship use, based on an existing credit of 205 car parking spaces. The permit also allowed an additional 160 students to the Education Centre Use.

This planning permit was never acted on and has therefore lapsed.

Regardless of the above two lapsed permits, the site is currently in use as a place of worship (Mosque). This application would therefore formalise the use and ensure that conditions and plans as part of the permit are able to be enforced.

Statutory Controls – why is a planning permit required?

Control	Permit Requirement
Neighbourhood Residential Zone	Place of Worship is a Section 2 use in the zone, meaning that a permit is required for the use.

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

- Clause 45.06: Development Contributions Plan Overlay
- Clause 52.06: Car Parking
- Clause 52.34: Bicycle Parking

2. Internal/External Consultation

Public notification

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

- Sending notices to the owners and occupiers of adjoining and nearby land.
- By placing 2 signs on the Lowson Street frontage of the site, and one sign at the Dowding Close Reserve frontage of the site.

Council has received 25 objections to date. A map identifying the location of objectors forms **Attachment 3**.

The key issues raised in objections are:

- Traffic congestion.
- Traffic accidents and safety of students.
- Parking issues, including illegal parking.
- Emergency services access.
- Current non-compliance and compliance with patron numbers.
- Rubbish on naturestrip.
- Already other religious facilities, Fawkner.
- Noise.
- Too many facilities proximate (schools).
- Derelict site/eyesore.
- Privacy.
- Security.
- Inappropriate use in a residential zone.
- Land is too small for the use and should be used for different purpose.
- Proposed hours are inappropriate.

A Planning Information and Discussion meeting was held on Tuesday 2 April 2019 and attended by Cr Abboud and Cr Bolton, Council Planning Officers, the applicant and 11 objectors. The meeting provided an opportunity to explain the application, for the objectors to elaborate on their concerns, and for the applicant to respond.

In response to objector concerns about prayers taking place outside of the building, the applicant agreed to a permit condition that would restrict prayer activities to take place entirely within the building.

Amendment after advertising

The application was amended pursuant to Section 57 of the *Planning and Environment Act 1987* after advertising. The changes in the amendment are:

- Changing the application preamble from a 'Place of Assembly' to a 'Place of Worship'.
- Extending the hours of the use on Fridays from 12 noon to 5 pm to 11.30 am to 5 pm.

The change to the preamble narrows the scope of what is being applied for. It excludes uses such as 'nightclub', 'function centre' and 'tavern' that are permitted under the original application for a 'place of assembly'. This change is appropriate given the proposed use is only for a 'place of worship'. This amendment will reduce potential for material detriment and therefore re-notification was not required.

The extended 30 minutes on the Friday is to enable visitors to arrive prior to prayer. The change to hours on a Friday is not considered to result in additional material detriment given the additional 30 minutes is a minor change and is during the less sensitive daytime hours. Therefore re-notification was not required.

Internal/external referrals

The proposal was referred to the following internal branch/business unit:

Internal Branch/Business Unit	Comments
Development Advice Engineer	No objections were offered to the proposal subject to modifications, which are addressed by conditions detailed in the recommendation. In particular, the traffic generated by the use, including the busy Friday prayer period and special events can be catered by the existing road network.

3. Policy Implications

Planning Policy Framework (PPF)

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

- Clause 11 - Settlement
- Clause 15 Built Environment and Heritage including:
 - Built Environment (Clause 15.01)
 - Healthy neighbourhoods (Clause 15.01-4S and 15.01-4R)
 - Sustainable Development (Clause 15.02)
- Clause 18: Transport

Local Planning Policy Framework (LPPF)

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

Municipal Strategic Statement:

- Clause 21.01 Municipal Profile
- Clause 21.02 Vision

Local Planning Policies:

- Clause 22.02 Discretionary Uses in Residential Zones
- Clause 22.03 Car and Bike Parking and Vehicle Access

Human Rights Consideration

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

4. Issues

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

Is there strategic support for the uses?

In the Neighbourhood Residential Zone, a planning permit is required to use land for a place of worship. The relevant purpose of the Neighbourhood Residential Zone is:

To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations. (emphasis added)

Council's Local Policy at Clause 22.02 of the Moreland Planning Scheme 'Discretionary Uses in Residential Zones' applies to all applications for use and development for a Section 2 (discretionary) use in a residential zone. The policy provides guidance to determine the appropriateness of non-residential uses in residential zones.

Relevant objectives of this policy are:

- Location – To ensure that discretionary uses in residential areas are appropriately located.
- Amenity – To ensure that discretionary uses do not unreasonably impact residential amenity.

Further detailed policies are contained within Clause 22.02 which assist in determining if the above objectives are met. The relevant policies and a response to each is contained below:

Location

- Facilitate discretionary uses that serve the needs of the local community.
- Ensure that discretionary uses that serve catchments beyond the local level are located within the defined boundaries of Activity Centres, in accordance with clause 21.03-1 or within precincts designated for industry and economic generation, in accordance with clause 21.03-2.

With a maximum of 160 patrons and operating 4 days per week, the mosque is relatively small and would therefore be serving a relatively local, rather than regional catchment.

- Encourage discretionary uses to locate in accordance with the preferred location guidance in table 1.

Table 1 seeks that a place of assembly (which includes a 'place of worship') be preferably adjacent to a commercial area and have frontage to a Road Zone; and be provided with a pick-up and drop-off area.

- Encourage location of discretionary uses on main roads to reduce generation of extra traffic on the local street network.

Whilst the site is not within a commercial area, it is adjacent to a non-residential use (school) to its east. The site does not have a frontage to a Road Zone or have a designated pick up or drop off area. This is not considered unacceptable. Council's Development Advice engineer has noted that the traffic generated can be readily accommodated by the road network.

In addition, there is suitable area within the car parking area of the site to allow for informal pick-up and drop-off without a designated area for this purpose. For the purposes of a small place of worship, it is less likely that a designated drop-off or pick-up facility would be in high demand.

- Discourage 24-hour operations.

The proposed hours are limited and will therefore further limit impacts on the surrounding area. The opening times are four days per week, with three of these days operating no earlier than 5 pm and all days no later than 9 pm.

Amenity

- Locate discretionary uses where the use will have a minimal impact on the residential amenity of the local area.
- Ensure that residential amenity is protected from:
 - Significant changes to traffic conditions in local streets including an increase in car parking demand.
 - Noise, light, odours emitted from the site.
 - Disturbance associated with the hours of operation or site facilities.

The proposal is deemed to appropriately respond to the above policies for the following reasons:

- Noise and disturbance will be appropriately managed via conditions of the recommendation, including that prayers must take place entirely within the building and that no amplified music or speech will be permitted to be played.
- The use will be restricted to the limited hours proposed.
- The number of patrons would be restricted to a maximum of 160 at any one time.
- Traffic impacts can be catered for by the existing road network. The 51 car parking spaces provided exceeds the 48 required by the Planning Scheme (see detailed traffic and car parking assessment below).

Although the proposal does not contain any buildings or works, the layout and design of the site and the existing building is appropriate because the building is of a single storey scale and well setback from Lowson Street. The established planting onsite assists in screening the areas of carparking from Lowson Street.

Has adequate bicycle parking been provided?

Two bicycle parking spaces have been provided. This meets the requirements of Clause 52.34 – Bicycle Facilities. The size of the site also allows for ample additional informal bicycle parking without impacting on the vehicle parking areas.

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

Council's Strategic Transport and Compliance Branch assessed the proposal. This included a review of the submitted Traffic Report and also a Council Development Engineer traffic survey on Friday 10 May 2019 between 11.30 am and 12.30 pm during the busy Friday prayer time. The assessment concluded that the traffic generation remains within the street's design capacity and is not expected to cause unreasonable traffic problems. Additionally, traffic noise associated with the vehicle movements are not expected to exceed average traffic noise associated with vehicles using a local street.

Some objectors raised concern about the cumulative impact of traffic congestion and car parking with the mosque and the two schools. On Tuesday and Thursdays there will be minimal 'crossover' between the mosque and the schools as the mosque opens at 5 pm, which is beyond school pick-up times.

On Fridays the mosque would commence from 12 pm and run until 5 pm. This may lead to increased congestion and parking difficulties during school pick up times on Fridays. This is not considered fatal to the proposal. Council's Development Advice Engineers acknowledge this would be a busier time, however this is not considered unreasonable given it relates to only a short period of time.

During the Council survey, an attendant from the mosque was at the gate directing traffic to the site and advising visitors to park appropriately in the surrounding streets to ensure that residents amenities were maintained. The traffic generated from the site was being appropriately managed. It is therefore considered appropriate to include a permit condition requiring a designated attendant to be on site to direct traffic and car parking associated with the mosque during the busy Friday prayer times or other special events.

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

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

- Limits the number of vehicle crossings to one per site frontage.
- Has no removal of on-street public parking spaces or removal of street trees.
- Provides 2 designated bicycle spaces and has ample space to cater for additional informal bicycle parking.

In relation to pedestrian safety, concerns have been raised regarding traffic accidents occurring in the surrounds owing in part to the increased traffic from the use of the land for the mosque. Council's Development Advice Engineer did not raise any concerns in relation to unreasonable safety impacts related to traffic. The existing road network was considered suitable to cater for the use.

5. Response to Objector Concerns

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

- Traffic congestion.
- Noise.
- Too many facilities proximate (schools).
- Inappropriate use in a residential zone.
- Proposed hours are inappropriate.
- Traffic accidents and safety of students.

Other issues raised by objectors are addressed below.

Already other religious facilities in Fawkner

The presence of other like facilities has no bearing on whether the proposal is an acceptable response to the Moreland Planning Scheme.

Current non-compliance and compliance with patron numbers

As discussed earlier in this report, the site is currently being used as a place of worship although no planning permission exists. This application has been lodged as a result of Council's Planning Enforcement action to seek to legalise the use. In considering the merits of this application the permit applicant should not be advantaged, nor disadvantaged because of the retrospective nature of the application. If a permit is granted, Council's planning enforcement officers will be able to enforce any conditions on the permit, including patron numbers.

Derelict site/eyesore and rubbish on nature strip

The fire-damaged building is not a part of this application. The fire damaged building cannot be required to be either demolished or repaired as a part of this application. Illegally dumped rubbish can be reported to Council to ensure that pickup can occur, and that any dumping hotspots can be identified through analysis of collected data.

Illegal parking and Emergency services access

Some objections have raised that emergency services vehicles may not be able to access the area owing to parked vehicles and traffic congestion. This is not something that can be considered as part of the planning permit process. Illegally parked vehicles can be reported to Council or Victoria Police. Council's Strategic Transport and Compliance Branch have reviewed the application and have not raised this aspect as an issue.

Land is too small for the use and should be used for different purpose

Council is required to assess and determine any application for planning permit that it receives. The use has been assessed against the zone and is deemed to be an acceptable response to the Moreland Planning Scheme. The land size adequately provides for the vehicle parking required for a place of worship with 160 patrons.

Privacy/security of neighbouring residences

There is a boundary fence between the subject site and neighbouring residences which is deemed to suitably provide for privacy and security.

6. Officer Declaration of Conflict of Interest

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

7. Financial and Resources Implications

There are no financial or resource implications.

8. Conclusion

It is considered that the use is consistent with the objectives of the Neighbourhood Residential Zone, which seeks to allow religious uses to serve local community needs; and Council's Local Policy Clause 22.02 – Discretionary Uses in Residential Areas, which seek to facilitate uses that serve the needs of the local community.

On the balance of policies and controls within the Moreland Planning Scheme and objections received, it is considered that Notice of Decision to Grant a Planning Permit No MPS/2018/838 should be issued subject to the conditions included in the recommendation of this report.

Attachment/s

<u>1</u>	Location Plan - 92-104 Lowson Street, Fawkner	D19/207728
<u>2</u>	Development Plans - 92-104 Lowson Street, Fawkner	D19/207730
<u>3</u>	Objector Map - 92-104 Lowson Street, Fawkner	D19/207731

DCF50/19 116 JUKES ROAD, FAWKNER - PLANNING PERMIT MPS/2018/645 (D19/188526)

Director City Futures

City Development

Executive Summary

The application seeks approval for the development of 5 dwellings. The application was advertised and 31 objections were received. The main issues raised in objections are neighbourhood character, traffic, parking, overshadowing and overlooking.

A Planning Information and Discussion meeting was held on 28 May 2019. No changes were made to the proposal following the meeting.

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

The key planning considerations are:

- Whether the development adequately responds to the objectives of the Design and Development Overlay Schedule 24 (DDO24) and the purpose of the Residential Growth Zone Schedule 2 (RGZ2);
- Whether the design of the building is acceptable in its context;
- Whether the car parking provision is acceptable; and
- Whether the off-site amenity impacts are acceptable.

The proposal has strong strategic support given its location in the Bonwick Street, Fawkner Neighbourhood Centre. The proposal has a high level of compliance with the relevant provisions of the Moreland Planning Scheme including Clause 32.07 (Residential Growth Zone, Schedule 2), Clause 43.02 (Design and Development Overlay, Schedule 24) and Clause 55. Subject to conditions of this recommendation, including increasing the size of the study to Dwelling 1, to improve the ground floor presentation, it is considered that the proposal responds appropriately to the preferred character of the area.

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

Officer Recommendation

That a Notice of Decision to Grant a Planning Permit number MPS/2018/645 be issued for the construction of 5 dwellings at 116 Jukes Road, Fawkner, subject to the following conditions:

1. Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and must be generally in accordance with the plans advertised 20 November 2018 but modified to show:
 - a) The study for dwelling 1 must be open and increased to a minimum width of 3.0 metres. This will require the double garage to be reconfigured to a single car garage.
 - b) Reconfiguration of first floor, including deletion of bedroom 3 to dwelling 1 to comply with Clause 52.06 (car parking).
 - c) A minimum 0.5 metre landscape strip along the accessway to the west boundary.
 - d) The east and west first and second floor elevations to be clad in scyon cladding for dwellings 2 and 4.

- e) The glass balustrades to the balcony of dwelling 1 be replaced with powder coated aluminium battens.
 - f) The front fence and planter deleted, other than the most western section.
 - g) The western most section of the front fence retained and comprised of exposed brickwork.
 - h) An area for shared waste and recycling bins. The storage area is to accommodate 2x240 litre mobile waste bins and 2x240 litre recycling with space for a green waste bin, screened from view from the street and located behind the front building line.
 - i) An amended landscape plan in accordance with condition 3 of this permit.
 - j) All council trees marked on the endorsed plans as being retained must have a Tree Protection Zone (TPZ) in accordance with condition 5 of this permit.
 - k) A screen diagram drawn at a scale of 1:50 which details the screen associated with balconies 2-5. This diagram must include:
 - i. All dimensions, including the width of slats and the gap between slats.
 - ii. All side screens.
 - iii. How compliance is achieved with the standard of Clause 55.04-6 (overlooking) of the Moreland Planning Scheme.
 - l) Initiatives contained within the Sustainable Design Assessment, including:
 - i. A Water Sensitive Urban Design (WSUD) Catchment Areas Plan, to include all impervious surfaces (dimensioned, with incremental and total areas) and their treatment/non-treatment to align with the entries in the amended STORM Report.
 - ii. On-site stormwater treatments as per the STORM report (including rainwater harvesting tanks, raingardens, etc). Rainwater harvesting tanks must be confirmed to be used for reuse within the dwellings, and that they are completely independent of any detention requirements (through the Legal Point of Discharge process).
 - iii. External shading (not roller shutters) for the exposed east and west facing habitable room windows on the first and second floors which demonstrates the windows will be protected from sun during peak heat temperatures whilst not detracting from desired winter heat gain. East and west facing shading is recommended to be adjustable.
 - iv. Double glazing (or better) provided for all living room windows (including sliding door glazing), kitchens and bedrooms, indicated on each individual window on the floor plans and elevations.
 - v. A minimum of one secure, accessible bicycle parking space per dwelling.
 - vi. The colour and material schedule amended so that the glazing for kitchens, living areas and bedrooms, is specified as being double glazing (or better).
2. The development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority. This does not apply to any exemption specified in Clauses 62.02-1 and 62.02-2 of the Moreland Planning Scheme unless specifically noted as a permit condition.

Landscape Conditions

3. Prior to the commencement of any development works, an amended landscape plan must be submitted to and approved by the Responsible Authority. The landscape plan must be generally in accordance with the landscape plan dated 12 September 2018 but modified to provide the following:
 - a) An amended schedule of all proposed trees shrubs and ground covers (including numbers, size at planting (including pot sizes), size at maturity and botanical names), as well as sealed and paved surfaces. The flora selection and landscape design should be drought tolerant and based on species selection recommended in the Moreland Landscape Guidelines 2009.
 - b) The provision of at least two trees within the front setback to assist in the integration of the development within the existing streetscape, with the tree species selected according to the available space, in accordance with the Moreland Tree Planting Manual for Residential Zones, 2014. The size at planting must be a minimum of 1.5 metres tall and in a pot size of not less than 30 litres.
 - c) The provision of at least five *Pryus Calleryana* 'Capital' Fastigate trees or similar to fit within a 500 millimetres wide landscaping area provided along the accessway to the west boundary.
 - d) The provision of at least three trees within the rear setback with the tree species selected according to the available space, in accordance with the Moreland Tree Planting Manual for Residential Zones, 2014. The size at planting must be a minimum of 1.5 metres tall and in a pot size of not less than 30 litres.
 - e) The entire lawn area within the front setback be planted out with groundcovers and shrubs.
4. Prior to the issuing of a Statement of Compliance or occupation of the development, whichever occurs first, all landscaping works must be completed and maintained in accordance with the approved and endorsed landscape drawing to the satisfaction of the Responsible Authority.
5. Prior to development commencing (including any demolition, excavations, tree removal, delivery of building/construction materials and/or temporary buildings), all council trees marked on the endorsed plans as being retained must have a Tree Protection Zone (TPZ) to the satisfaction of the Responsible Authority. The fencing associated with this TPZ must meet the following requirements:
 - a) Extent
The tree protection fencing (TPF) is to be provided to the extent of the TPZ, calculated as being a radius of 12 x Diameter at Breast Height (DBH – measured at 1.4 metres above ground level as defined by the Australian Standard AS 4970.2009)
 - b) Fencing
All tree protection fencing required by this permit must be erected in accordance with the approved TPZ.
 - c) Signage
Fixed signs are to be provided on all visible sides of the TPF clearly stating 'Tree Protection Zone – No Entry', to the satisfaction of the Responsible Authority.
 - d) Irrigation
The area within the TPZ and TPF must be irrigated during the summer months with 1 litre of clean water for every 1 centimetre of trunk girth measured at the soil/trunk interface on a weekly basis.

e) Provision of Services

Unless with the prior written consent of the Responsible Authority, all services (including water, electricity, gas and telephone) must be installed underground, and located outside of any TPZ, to the satisfaction of the Responsible Authority.

f) Access to TPZ

Should temporary access be necessary within the Tree Protection Zone during the period of construction, the Responsible Authority must be informed prior to relocating the fence (as it may be necessary to undertake additional root protection measures such as bridging over with timber).

Development Contributions

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

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

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

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

ESD Conditions

7. Prior to the endorsement of plans, a Sustainable Design Assessment (SDA) must be submitted to and approved to the satisfaction by the Responsible Authority. The Sustainable Design Assessment must demonstrate a best practice standard of environmentally sustainable design and be generally in accordance with the BESS report by Composite Design and Drafting (Project Number 14794) and STORM (Transaction IDs 633685) but modified to include the following changes:
- a) Submission of the preliminary NatHERS ratings (as per claimed credit Management 1.1 Thermal performance Modelling – Multi-Dwelling Residential’).
 - b) An amended ‘Energy’ category in the BESS report which:
 - i. Has an improved response to Clause 22.08 including best practice Energy Performance (i.e. accurate NatHERS ratings with an average of 6.5 stars).
 - ii. Shows accurate and complete heating loads, cooling loads and resultant star ratings, that reflect the preliminary NatHERS ratings (see condition above).
 - c) An amended STORM report that maintains a minimum score of 100% but is modified so that:
 - i. The pervious and impervious areas are consistent with the areas identified on the development plans. Specific impervious areas in the STORM report (such as a roof area) must also be consistent with the development plans.
 - ii. All pervious and impervious areas accounted for.
 - iii. Rainwater tanks and number of bedrooms being served to be consistent with the development plans and BESS report.

- iv. Details are provided of treatment of rainwater from trafficable areas prior to delivery to rainwater tanks in SMP and on plans. This must include management and maintenance plan and responsibilities. Alternatively, treatment of water from trafficable areas via other system type (e.g. raingardens) may be proposed in line with revised STORM Rating Report.
- v. All stormwater treatments can be realistically achieved and are practical, based on the roof areas and the location of rainwater tanks and other treatments such as raingardens. The use of charged rainwater harvesting systems which will run underneath buildings must be acknowledged and accepted. If raingardens are used, they must reduce impact on neighbouring properties.
- d) The 'Water' category in the BESS report amended as per the changes to the STORM report.
- e) Confirmation of selected type and star rating of all 'Water' category fixtures, fittings and appliances (including the 5-star toilet, which has an integrated basin).

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

When submitted and approved to the satisfaction of the Responsible Authority, the amended Sustainable Design Assessment and associated notated plans will be endorsed to form part of this permit.

General conditions

- 8. Prior to the issuing of Statement of Compliance or occupation of the development, whichever occurs first, all visual screening measures shown on the endorsed plans must be installed to the satisfaction of the Responsible Authority. All visual screening and measures to prevent overlooking must be maintained to the satisfaction of the Responsible Authority. Any screening measure that is removed or unsatisfactorily maintained must be replaced to the satisfaction of the Responsible Authority.
- 9. Prior to the occupation of the development, a vehicle crossing must be constructed in every location shown on the endorsed plans to a standard satisfactory to the Responsible Authority (Moreland City Council, City Infrastructure Department).
- 10. Prior to the occupation of the development, 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.
- 11. All stormwater from the land, where it is not collected in rainwater tanks for re-use, must be collected by an underground pipe drain approved by and to the satisfaction of the Responsible Authority (Note: Please contact Moreland City Council, City Infrastructure Department).
- 12. Prior to the commencement of the development, a legal point of discharge is to be obtained, and, where required, a stormwater drainage plan showing how the site will be drained from the property boundary to the stated point of discharge must be submitted to and approved by the Responsible Authority.
- 13. The stormwater run-off from the accessway must not flow out of the property over the public footpath to the satisfaction of the Responsible Authority.
- 14. Prior to the occupation of the development, all boundary walls must be constructed, cleaned and finished to the satisfaction of the Responsible Authority.

15. The surface of all balconies and terraces are to be sloped to collect the stormwater run-off into stormwater drainage pipes that connect into the underground drainage system of the development to the satisfaction of the Responsible Authority.
16. Prior to the occupation of the development all telecommunications and power connections (where by means of a cable) and associated infrastructure to the land (including all existing and new buildings) must be underground to the satisfaction of the Responsible Authority.

Time limit

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

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

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

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

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

Note 2: Council charges plan checking (2.5%) and supervision (0.75%) fees on the cost of constructing the drain.

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

Note 4: Council may not issue individual bins to new Owners Corporation developments. In the event that shared bins are provided for this development, an amendment to the plans may be required to show the location of a storage area for the shared bins on common land. Please contact Council's City Infrastructure Department on 9240 1111 for more information.

Note 5: This permit contains a condition requiring payment of Development Contributions. The applicable development contribution levies are indexed annually. To calculate the approximate once off levy amount, please visit <http://www.moreland.vic.gov.au/planning-building/> and click on 'Moreland Development Contributions Plan (DCP)'. Alternatively, please contact Moreland City Council on 9240 1111 and ask to speak to the DCP Officer.

1. Background

Subject site

The site is located on the north side of Jukes Road, approximately 600 metres east of Sydney Road in Fawkner. The site is rectangular and has a frontage of 15.85 metres and a depth of 37.18 metres. The total site area is 589.3 square metres. A 1.83 metre wide easement runs along the rear (north) boundary of the site.

The site is occupied by a single storey brick veneer dwelling with a tiled hipped roof and low front picket fence. Vehicle access to the site is via an existing crossing located at the western edge of the frontage. To the rear is a large outbuilding located on the property boundary to the west. The site is relatively flat.

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

Surrounds

The site is located approximately 65 metres east of Bonwick Street which contains a variety of shops and services. Jukes Road is characterised by predominately single storey detached dwellings. Dwellings are constructed of weatherboard or brick with hipped or gabled roofs.

There are current valid planning permits approved for similar developments at 112 and 106 Jukes Road.

To the east and west there are single storey brick dwellings with tiled roofs. To the north, the site abuts residential lots containing dwellings with a frontage to Hudson Street.

C.B Smith Reserve is located approximately 130 metres south-east of the site. Fawkner Leisure Centre, Fawkner Library, John Fawkner College and Darul Ulum College are also located further east along Jukes Road.

The proposal

The proposal is summarised as follows:

- Construction of a 3-storey building with a maximum height of 9.5 metres.
- Five dwellings comprising a mix of 2 and 3-bedrooms.
- Dwellings 1 and 5 will have a double car garage and dwellings 2-4 will each have a single garage, all accessed via the existing crossing located at the western edge of the frontage.
- Balconies with a minimum area of 9.4 square metres and a width of 2.0 metres are provided to each dwelling.
- A mix of materials including brickwork and render and scyon cladding is proposed.

The development plans form **Attachment 2**.



3D of proposed development

Statutory Controls – why is a planning permit required?

Control	Permit Requirement
Residential Growth Zone 2	32.07-5: A permit is required to construct more than one dwelling on a lot.
Design and Development Overlay 24	43.02-2: A permit is required to construct a building or construct or carry out works.

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

- Clause 45.06: Development Contributions Plan Overlay.
- Clause 45.09: Parking Overlay. The parking overlay means that the 'Column B' rates in the table to Clause 52.06 apply. As a result, no visitor car parking is required for the development.
- Clause 55: Two or more dwellings on a lot and residential buildings.

2. Internal/External Consultation

Public notification

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

- Sending notices to the owners and occupiers of adjoining and nearby land
- Placing a sign on the Jukes Road frontage of the site.

Council has received 31 objections to date. A map identifying the location of objector's forms **Attachment 1**.

The key issues raised in objections are:

- Neighbourhood character
- Traffic/parking
- Overdevelopment
- Overlooking
- Visual bulk
- Inadequate open space
- Property values
- No demand for medium density in the area

A Planning Information and Discussion meeting was held on 28 May 2019 and attended by Cr Natalie Abboud and Cr Sue Bolton, 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. No changes were made to the proposal following the meeting.

Internal referrals

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

Internal Branch/Business Unit	Comments
Urban Design Unit	Extend the scyon cladding depicted on the upper levels of dwellings 2 and 4, down to the first level to the west elevation to replace the rendered treatment. This will help to better distinguish the dwellings apart from one another.
Development Advice Engineer	No objections were offered to the proposal subject to modifications, which are addressed by conditions detailed in the recommendation.
ESD Unit	No objections were offered to the proposal subject to modification, which are addressed in the conditions detailed in the recommendation.

3. Policy Implications

Planning Policy Framework (PPF)

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

- Clause 11 Settlement
- Clause 15 Built Environment and Heritage, including:
 - Built Environment (Clause 15.01)
 - Healthy Neighbourhoods (Clause 15.01-4S and 15.01-4R)
 - Sustainable Development (Clause 15.02)
- Clause 16.02 Housing, including:
 - Integrated Housing (Clause 16.01-1S and 16.01-1R)
 - Location of Residential Development (Clause 16.01-2S)
 - Housing Opportunity Areas (Clause 16.01-2R)
- Clause 18 Transport

Local Planning Policy Framework (LPPF)

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

Municipal Strategic Statement:

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

Local Planning Policies:

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

Council through its MSS, seeks increased residential densities within its Activity Centres to take advantage of access to public transport and other services within these locations. The subject site is located within the Bonwick Street Neighbourhood Centre. In this centre a change towards a new character to accommodate buildings up to and including four storeys is supported. The proposal enjoys strong strategic policy support.

Human Rights Consideration

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

4. Issues

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

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

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

The site is located within the Residential Growth Zone, Schedule 2 (RGZ2), which seeks to provide housing at increased densities in buildings up to and including four storeys. The RGZ2 contains local variations to Clause 55 standards including site coverage, landscaping, side and rear setbacks and private open space.

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

To facilitate an increase in density and scale of built form at a lesser intensity and scale to the larger centres of Coburg, Brunswick and Glenroy.

To support change towards a new character as defined in Schedule 24 to the Design and Development Overlay (DDO24).

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

To ensure built form outcomes are appropriate to the context of Moreland's Neighbourhood Centres.

To improve the quality of higher density and mixed use developments by providing appropriate built form guidance.

To improve amenity outcomes for residents in higher density and mixed use developments and for residents in adjacent buildings.

To ensure that new development makes a positive contribution to the public realm.

DDO24 contains requirements for overall building height; front, side and rear setbacks; the building frontage; building articulation and landscaping.

Overall, it is considered that, subject to the conditions detailed in the recommendation, the proposal would respond to the RGZ2, Clause 22.01 and DDO24 in the following ways:

Site coverage

The site coverage of the development is 53%, which does not exceed the prescribed 60% site coverage in the RGZ2.

Building height

The proposal has a maximum height of 3 storeys (9.5 metres), which sits within the 13.5 metre building height specified in DDO24 and the RGZ2.

Setbacks

The side and rear setbacks of the DDO24 and RGZ2 are discretionary and varies the usual setback requirements of Standard B17 from Clause 55. It seeks to integrate core planning concepts related to design quality, amenity, landscaping, built form character and liveability. The proposal complies with the prescribed setbacks of DDO24 at first and second floor. The proposal achieves the 4.5 metre setback from primary outlooks and a 2 metre setback from secondary outlooks at these levels.

The setback provisions in DDO24 state that the side setbacks should be planted with trees. It is recommended that increased landscaping be provided, as detailed in the Landscaping section of this report.

Public Realm Interface

Subject to conditions of the recommendation, the proposal can provide an appropriate response to the building articulation, design and site service requirements of DDO24 specifically:

- A condition included in the recommendation will require extending the scyon cladding depicted on the upper levels of dwellings 2 and 4, down to the first level to replace the rendered treatment. This will result in the same effect that exists on the eastern side of the building. It will help to better distinguish the dwellings apart from one another and reduce the amount of rendered cladding visible from the street. Overall, the proposal is not considered to cause excessive visual bulk in an area where a 4-storey built form is anticipated.
- Dwelling 1 has a frontage to Jukes Road. This dwelling contains habitable room windows and balconies facing the street, which provides opportunities for landscaping, casual surveillance of the public realm, and activation of the site's frontage. However, the habitable room at ground floor is considered inadequate in size. The garage will be required to be reduced from a double garage to a single garage to achieve this. As a result, a bedroom will need to be deleted. This is addressed through conditions in the recommendation.
- The proposed car parking facilities do not dominate the streetscape given that a single crossover is proposed to Jukes Road, and garages are located to the rear.
- A waste storage area has not been shown. This will be included as a condition with this recommendation to be provided and screened from view.

Landscaping

The overarching landscaping objective of DDO24 is to ensure setbacks in residential areas provide sufficient space for tree planting to enhance the landscape character of the area. A landscape plan submitted with the application shows a tree within the front setback. A condition in the recommendation will require an additional canopy tree within the front setback.

The accessway on the western side of the development limits the opportunities for tree planting within this setback. A condition included in the recommendation will require at least 0.5 metres of landscaping along the length of the accessway and planted with tall and narrow trees that are suitable to be planted in the available space.

A minimum of 3 trees will also be required to be planted within the rear setback. The tree species must be selected according to the available space, in accordance with the Moreland Tree Planting Manual for Residential Zones, 2014.

There are no trees planted along the pedestrian accessway along the eastern boundary, as the area available is not viable for trees to grow. However, there are garden beds provided which will be planted with shrubs and groundcover. On balance it is considered the proposal will meet the landscaping objectives of DDO24.

A planter bed has been provided in front of the front brick fence. This area is 300 millimetres wide and therefore too narrow to viably allow plants to thrive. It is recommended the west most section wall with letterboxes is retained and be given an exposed brick finish rather than being rendered while the other two sections are removed entirely. It is also recommended that the entire lawn area be planted out with groundcovers, shrubs and an additional canopy tree. This will greatly improve the street appearance through a denser, layered greening of the front setback. This is included as a condition in the recommendation.

Has adequate car parking been provided?

Pursuant to Clause 52.06-5, the following car parking provision is required given the subject site is covered by a Parking Overlay:

Land Use	Parking requirement	Parking supply
2 x 3 bedroom dwellings	4	4
3 x 2 bedroom dwellings	3	3
Total	7	7

Seven spaces are required for the dwellings. The development provides 7 on-site spaces. No visitor space is required as the site is located within a Parking Overlay. It is noted that a condition included in the recommendation will reduce Dwelling 1 from three to two bedrooms and parking provisions. Importantly these conditions ensure compliance remains with Clause 52.06.

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

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

In relation to traffic impacts, Council's Development Advice Engineer has assessed the proposal and considers that the development will result in 24 additional vehicle movements per day on Jukes Road. This is not a significant increase to traffic volumes on this collector road.

Jukes Road is classified as a collector road in the Moreland Integrated Transport Strategy 2010-2019 with a preferred maximum of 7,000 vehicles per day. Collector roads are important local roads whose function is to provide links between arterial and local roads. They provide access within a local precinct and serving abutting properties and often form key links for local, bus, pedestrian and bicycle networks.

The recorded data outside of property 157 and 177 Jukes Road reveal vehicle volumes exceeding Council's preferred maximum, which is expected, as the location of the survey was undertaken at the western end of Jukes Road which connects with Sydney Road (arterial road). Higher vehicle volumes can be expected where Jukes Road first intersects with Sydney Road, as vehicles accessing the local road network will be funnelled into Jukes Road prior to being distributed into the surrounding local road network. This is supported by surveys taken further east on Jukes Street which reveal a significant drop in vehicle volumes which can be attributed to traffic being distributed into local roads such as Bonwick Street and William Street.

Whilst this exceedance in part of Jukes Road is an indicator of high traffic volumes, Council's Development Advice Engineer is satisfied that the operation of Jukes Road will not be adversely affected by the additional 24 vehicles generated from the proposal.

Bonwick Street is undergoing a shopping strip renewal program undertaken by Council's Urban Design Unit. The renewal program will see improved pedestrian access and encourage more sustainable modes of transport to reduce congestion.

Existing parking problems and traffic congestion in the area cannot be addressed through the current application, nor should the burden of relieving these existing problems be imposed on the developer of the subject land.

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

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

- Utilises the existing single width crossover.
- Limits the removal of on-street public parking spaces, removal of street trees, and encroachment into landscaped front setbacks.
- A condition of the recommendation requires provision of one bicycle parking space to each dwelling.

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

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

- A BESS score of 60%.
- A 100% STORM score, which includes 8,500 litre rainwater harvesting tanks.
- Double glazing.

Council's ESD Unit has advised that the proposal responds well to Council policies, and have suggested further improvement through minor changes, most notably increased shading to east and west facing windows. This shading could be provided by retractable awnings or relatively unobtrusive roller blinds fitted close to the glazing externally for living room windows. Shading to some bedroom windows is partially provided by the proposed window shrouds, however as they are east and west facing they will require external shading and will be supplemented with double glazing. These modifications are required by conditions in the recommendation.

Is the proposal accessible to people with limited mobility?

Objective 9 of Clause 21.03-3 (Housing) is to increase the supply of housing that is visitable and adaptable to meet the needs of different sectors of the community. Due to the typology of the dwellings being townhouse, the living areas are located at first floor and therefore will not be accessible to people with limited mobility.

Does the proposal satisfy the requirements of Clause 55?

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

Overshadowing

The site has a north-south orientation and results in minimal shadow impact to the adjoining properties, with shadow cast to the secluded private open space to the adjoining properties during either the morning or afternoon at the equinox. Therefore the adjoining properties will receive a minimum of five hours of sunlight to their secluded private open spaces between 9 am and 3 pm.

Overlooking

The proposal has been designed to restrict overlooking of the adjoining dwellings, as sought by Clause 55.04-6, with horizontal slats provided to restrict views over 118 Jukes Road from the first floor balconies. Habitable room windows also have fixed screening to 1.7 metres above finished floor level. As a result, the proposal maintains appropriate levels of privacy to adjoining properties. Overlooking of front yards or to properties further afield meets the objectives and standards of the Clause.

The consequence of the high screening is a compromised outlook for future residents. It is noted that the decision guidelines of this clause includes consideration of *'the internal daylight to and amenity of the proposed dwelling'*. The internal amenity of these dwellings is acceptable as there will be adequate ventilation and daylight, as the dwellings are dual aspect.

On-site amenity and facilities

The proposal meets the requirements of the scheme in relation to on-site amenity and facilities, including the provision of balconies which meet Clause 55 requirements.

5. Response to Objector Concerns

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

- Neighbourhood character
- Traffic/parking
- Landscaping

Other issues raised by objectors are addressed below.

Visual bulk

The external façade is generally well articulated to reflect the predominant and emerging scale and grain of the area. Materials are considered appropriate to the context, the face brickwork referencing old and new housing in the area while scyon cladding and deep window frames provide visual contrast and interest.

Noise associated with dwellings

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

Overdevelopment

The proposal satisfies the requirements of Design and Development Overlay 24 and Clause 55 in respect to site coverage, setbacks, permeability, car parking, and open space provision and therefore the proposal is not considered to be an over development of the site. State Government Policy, particularly Plan Melbourne, as well as Council Policy supports higher densities in areas that are within Activity Centres, or within areas with good access to public transport and other services.

Given the sites location in an Activity Centre and its proximity to public transport the level of development proposed is appropriate and consistent with planning policy frameworks.

No demand for medium density in the area

The Victorian Planning System does not enable Council to determine a planning permit application based on an assessment of demand. Whether or not a demand exists is not a relevant consideration on which Council can base a decision to either approve or refuse an application.

Property values

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

6. Officer Declaration of Conflict of Interest

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

7. Financial and Resources Implications



There are no financial or resource implications.

8. Conclusion

It is considered that the proposed development is an appropriate response to the provisions of the Moreland Planning Scheme, including policies which seek to increase residential density in this location.

On the balance of policies and controls within the Moreland Planning Scheme and objections received, it is considered that Notice of Decision to Grant Planning Permit No MPS/2018/645 should be issued for development of 5 dwellings subject to the conditions included in the recommendation of this report.

Attachment/s

- | | | |
|--|---|------------|
| <u>1</u>  | Objector Map - 116 Jukes Road, Fawkner | D19/198073 |
| <u>2</u>  | Development Plans - 116 Jukes Road, Fawkner | D18/444472 |

DCF51/19 21-25 NORTHUMBERLAND ROAD, PASCOE VALE - PLANNING PERMIT MPS/2018/471 (D19/193889)

Director City Futures

City Development

Executive Summary

This report considers an application for a 4-storey building above two basement levels including 63 apartments. Following an appeal against Council's failure to grant the permit within the prescribed time and two compulsory conferences, the applicant has circulated without prejudice plans (the plans) on 20 May 2019. The plans show development of a 4-storey apartment building above 2 basement levels. These plans have not been advertised although the Victorian Civil and Administrative Tribunal (VCAT) have ordered that if Council agrees to the plans and terms of settlement as discussed in this report, public notice of the amended plans will be conducted to all objectors and persons originally notified of the application.

At a third compulsory conference held on 30 May 2019, the applicant and objector parties agreed on terms of settlement that would require further changes to the plans including:

- Reducing the height to no more than 13.5 metres and four storeys above natural ground level.
- An improved ESD outcome.
- Further detail to confirm compliance with Clause 55.07 (Apartment Developments) including at least 50% of apartments to meet the Accessibility requirements and all apartments to include internal storage areas.

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

The key planning considerations are:

- Do the plans respond appropriately to the built form guidance in the Moreland planning Scheme?
- Will the plans result in an acceptable amenity impact to surrounding properties?
- Will the plans result in an acceptable internal amenity outcome for future residents?

The plans respond appropriately to the Planning Policy Framework, in particular the built form guidance as outlined in the Design and Development Overlay Schedule 24 (DDO24) and will result in an acceptable impact to surrounding properties and internal amenity for future residents.

The plans also represent a significant improvement from the application plans which were advertised and were the basis of Council's refusal. Some of the key improvements include:

- Compliance with the DDO24 height and setback requirements (with the exception of some small variations to setback requirements).
- Improved architectural quality.
- Improved internal amenity for future residents.
- Removal of the car lift and the provision of a ramp to access the basement levels.

It is recommended that Council endorse the terms of settlement and authorise officers to notify VCAT by 28 June 2019 that it consents to the plans and the terms of settlement (included in the recommendation) agreed to by the applicant and objector parties at the compulsory conference on 30 May 2019 as well as the additional changes set out in Part B of the recommendation.

Officer Recommendation

Part A

That Council consent to the granting of a Planning Permit in accordance with the terms of settlement reached at the Compulsory Conference on 30 May 2019 which include the following conditions:

1. Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and must be generally in accordance with the without prejudice plans prepared by Jackson Clements Burrows architects described as TP-000, TP0-001, TP0-101, TP1-101 to TP1-108, TP2-101 to TP2-104, TP3-103, TP4-101 to TP4-106, TP5-101 to TP5-107 and TP9-101 Revision E and dated 20.05.2019 but modified to show:
 - a) The building to be no more than 13.5 metres above natural ground level at any point with the exception of exemptions provided for in Schedule 24 of the Design and Development Overlay.
 - b) No basement level to protrude above natural ground level at any point.
 - c) Modifications to the basement and car parking layout in accordance with the updated car parking assessment required by condition 11.
 - d) The location and volume of internal storage for each apartment type, to comply with Standard B44 (storage).
 - e) Dimensions to clearly demonstrate that no less than 50% of apartments comply with Standard B41 (Accessibility) and 70% comply with the silver level standard of the livable housing design guidelines.
 - f) A notation confirming the brick material on the north and south walls facing the main pedestrian entry to the building.
 - g) No less than 20% of the bicycle parking devices designed to park bicycles horizontally (i.e. 1.8 metres long) in accordance with the Australian Standard for Bicycle Parking (AS2890.3).
 - h) Car parking space number 1 modified to allow entry and egress in a forward direction. Swept path diagrams should be provided to demonstrate how this will be achieved.
 - i) A convex mirror and warning system shown at the exit of the car park advising exiting vehicles of entering vehicles.
 - j) Gas and water meters shown on all relevant plans. Where meters would be visible from the public realm, they must not be in a stacked or placed vertically, and must be screened from view using either landscaping or fixed screening, unless otherwise agreed to in writing by the Responsible Authority.
 - k) All existing tree(s) and vegetation on site and adjoining land, including the tree protection zone(s).
 - l) A schedule of all proposed exterior decorations, materials, finishes and colours, including colour samples.
 - m) A screen diagram drawn at a scale of 1:50 which details the screen associated with all north facing dwellings. This diagram must include:
 - i. All dimensions, including the width of slats and the gap between slats.
 - ii. All side screens.
 - iii. How compliance is achieved with the standard of Clause 55.04-6 (overlooking) of the Moreland Planning Scheme.

- n) A landscape plan in accordance with condition 3 of this permit.
 - o) An amended Sustainable Management Plan in accordance with condition 6.
 - p) An amended waste management plan in accordance with condition 9.
 - q) An accessibility report in accordance with condition 13.
 - r) All parking spaces are to be marked with the associated apartment or use to facilitate management of the car park.
 - s) Clarify where steps from street level are required to apartments and clearly show on both the elevation and floor plans.
2. The development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority. This does not apply to any exemption specified in Clauses 62.02-1 and 62.02-2 of the Moreland Planning Scheme unless specifically noted as a permit condition.
3. Prior to the commencement of any development works, a landscape plan must be submitted to and approved by the Responsible Authority. The landscape plan must provide the following:
- a) Identification of any existing tree(s) and vegetation on site and adjoining land proposed to be removed and retained, including the tree protection zone(s). Vegetation retainment must include strategies for the retainment (i.e. barriers and signage during the construction process).
 - b) A schedule of all proposed trees, shrubs and ground covers (including numbers, size at planting (including pot sizes,) size at maturity and botanical names), as well as sealed and paved surfaces. The flora selection and landscape design should be drought tolerant and based on species selection recommended in the Moreland Landscape Guidelines 2009.
 - c) The provision of at least three trees within the front setback to assist in the integration of the development within the existing streetscape and six trees within the rear (western) setback. The tree species should be selected according to the available space, in accordance with the Moreland Tree Planting Manual for Residential Zones, 2014. The size at planting must be a minimum of 1.5 metres tall and in a pot size of not less than 30 litres.
 - d) Landscaping of the rooftop terrace.
 - e) Details of the location and type of all paved and sealed areas. Extensive hard surfaces are not supported. The adoption of porous/permeable paving, rain gardens and other water sensitive urban design features is encouraged.
4. Prior to the issue of a Building Permit in relation to the development approved by this permit, a Development Infrastructure Levy and Community Infrastructure Levy must be paid to Moreland City Council in accordance with the approved Development Contributions Plan.

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

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

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

5. Prior to the issuing of a Statement of Compliance or occupation of the development, whichever occurs first, all landscaping works must be completed and maintained in accordance with the approved and endorsed landscape drawing to the satisfaction of the Responsible Authority.
6. Prior to the endorsement of plans, an amended Sustainable Management Plan (SMP) must be submitted to and approved to the satisfaction by the Responsible Authority. The Sustainable Management Plan must demonstrate a best practice standard of environmentally sustainable design and be generally in accordance with the SMP prepared by Ark Resources and dated 22/05/2019, but modified to include the following changes:
 - a) The dwellings entered in the BESS report must account for all dwellings and must be grouped such that they share similar thermal properties; highlight on plans which dwellings have been grouped based on their thermal similarities and use the same notations in the BESS report.
 - b) Include NatHERS ratings in addition for Apartment G10 and either G7 or 6 and G5 or G9 and provide NatHERS certificates including the NatHERS diagnostic reports for all ratings undertaken.
 - c) The NatHERS ratings and their corresponding heating/cooling loads specified in the SMP and NatHERS certificates must be consistently in the BESS report.
 - d) Provide the location and tank capacity of any fire water tank and provide a brief description of the fire test water system and its Water Savings Options.
 - e) Include the recommendations of the new Sustainability Victoria Guidelines (Sustainability Victoria 'Better Practice Guide for the Waste Management and Recycling in Multi-Unit Developments' released in November 2018) for the inclusion of on-site organics capacity.
 - f) No longer claim innovation credits.
 - g) An improved response to the 'IEQ response' objectives of Clause 22.08, including:
 - i. Provide marked up ventilation pathways for the dwelling to demonstrate how 62% of dwellings are effectively ventilated.
 - ii. Provide daylight modelling report/analysis which demonstrates that at least 80% of the total number of living rooms achieve a daylight factor greater than 1% for 90% of the floor area by providing:
 - Daylight modelling for all non-typical floors.
 - Complaint area calculations.
 - iii. The glazing specified for energy rating and daylight modelling to reference the same VLT characteristics.
 - iv. Where room profile questions have been used in BESS, provide a mark-up showing the horizontal and vertical angles on floor plans and elevations to demonstrate the values specified in the BESS report for living areas and bedrooms.

- h) Demonstration of best practice stormwater management as per clause 22.08 by amending the on-site stormwater management response that maintains a minimum STORM score of 100% but is modified so that:
 - i. The pervious and impervious areas are consistent with the areas identified on the development plans. Specific impervious areas in the STORM report from which rainwater is harvested (such as impervious paving/courtyards) must also be consistent with the development plans.
 - ii. All pervious and impervious areas accounted for.
 - iii. All stormwater treatments can be realistically achieved and are practical, based on the roof areas and the location of rainwater tank/s.
 - iv. Update the water balance calculations and STORM report based on the actual number of bedrooms/occupants proposed for the development and justify the choice and adequacy of the 35,000L tank capacity to meet the flushing demands of the site and ensure long term water security and reliability or increase the tank size based on the amended water balance calculations.

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 SMP and associated notated plans will be endorsed to form part of this permit.

- 7. All works must be undertaken in accordance with the endorsed Sustainability Management Plan to the satisfaction of the Responsible Authority. No alterations to these plans may occur without the written consent of the Responsible Authority.
- 8. Prior to the occupation of the building approved under this permit, a report (or reports) 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(s) must be to the satisfaction of the Responsible Authority and must confirm that all measures specified in the approved SMP have been implemented in accordance with the approved plans. Specific details demonstrating and confirming the ESD measures have been implemented must be included, such as:

- a) The apartments achieved an average NatHERS rating of 6.5 and evidence that improved glazing and insulation as specified in the final endorsed NatHERS Ratings has been implemented throughout the site.
- b) External shading devices installed to west facing habitable room windows.
- c) The 30KW Solar Photovoltaic system installed.
- d) LED lighting and lighting controls installed for interior and exterior lighting.
- e) 20% reduction in NCC lighting power density requirements.
- f) Water efficient fixtures, fitting and appliances have been installed.
- g) Construction and waste management targets (including for construction and demolition waste and reuse of materials on site) occurred. A minimum 80% of construction waste generated on site was recycled or re-used.
- h) Materials with improved sustainability were used (including recycled/reused or certified timber etc).
- i) Paints, adhesives, sealants and flooring, adhered to the maximum levels of volatile organic compounds.

- j) Construction stormwater pollution reduction plan prepared and implemented.
 - k) Building users guide prepared and provided to occupants.
 - l) Rainwater harvesting tank installed and connected to toilet flushing as per the endorsed STORM report.
 - m) Submeters provided for gas hot water plant, common area light and lift, car park light and power, PV system and harvested rainwater supply.
 - n) Recycling and operational waste management facilities provided and conveniently located.
 - o) Bicycle parking provided.
 - p) Deep soil planting/vertical planting and appropriate drainage and irrigation provided.
 - q) Any other ESD initiatives committed to or referenced in the SMP occurred and were installed or constructed.
9. Prior to the endorsement of plans, an amended Waste Management Plan must be submitted and approved to the satisfaction of the Responsible Authority. The Plan must be based on the without prejudice plans dated 20 May 2019 and include the following:
- a) A description of ease of disposal for residents that does not disadvantage recycling.
 - b) That educational material will be displayed in the waste bin storage area explaining what material can be recycled.
 - c) Calculations showing the amount of garbage and recycling expected to be generated.
 - d) The size of bins, frequency of collection and hours of collection.
 - e) Details of collection of hard waste.
 - f) Include a dimensioned plan showing the storage area is sufficient to store the required number of bins in a manner that allows easy access to every bin.
 - g) Detail the ventilation to prevent garbage odours entering the car park and/or dwellings.
 - h) Detail the ease of taking the fully loaded waste bins to the point of waste collection.
 - i) State where and when the bins will be placed for waste collection.
 - j) Include a plan showing where the waste trucks will stop to service the waste bins and state whether No Parking restrictions will be required for the waste trucks to access that space (e.g. 6 am-midday, Wednesday).
 - k) All waste to be collected by a private waste collection service within the boundaries of the site.
- When submitted and approved to the satisfaction of the Responsible Authority, the Waste Management Plan and associated notated plans will form part of this permit.
10. The Waste Management Plan approved under this permit must be implemented and complied with at all times to the satisfaction of the Responsible Authority unless with the further written approval of the Responsible Authority.
11. Prior to the endorsement of plans, an amended Traffic and car parking plan must be submitted to and approved to the satisfaction of the Responsible Authority. The traffic and car parking plan must be generally in accordance with the Memorandum prepared by Traffix Group dated 24 May 2019 but amended to reflect changes as required by condition 1 of this permit.

12. Prior to the occupation of the building approved under this permit, a report (or reports) from the author of the Traffic and car parking plan, approved pursuant to this permit, or similarly qualified person or company, must be submitted to the Responsible Authority.
13. Prior to the endorsement of plans, an Accessibility Report prepared by a suitably qualified person must be submitted and approved to the satisfaction of the Responsible Authority. The report must reflect the without prejudice plans dated 20 May 2019 and detail how the development will incorporate design features to achieve 50% of dwellings to be in accordance with Standard B41 (Accessibility) of Clause 55.07-7 of the Moreland Planning Scheme, and 70% of dwellings to achieve the Silver standard of the livable housing design guidelines. This should include the detailed design of the adaptable bathrooms (e.g. confirmation of hobless showers and removable hinges to doors).

The recommendations of the report must be implemented to the satisfaction of the Responsible Authority prior to the occupation of the development. No alterations to the plan may occur without the written consent of the Responsible Authority. When submitted and approved, the Accessibility Report will form part of this permit.
14. Prior to the issuing of a Statement of Compliance or occupation of any dwelling approved under this permit, a report from the author of the Accessibility Report, approved pursuant to this permit, or similarly qualified person or company, must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm that all measures specified in the Accessibility Report have been implemented in accordance with the approved report.
15. Prior to the issuing of Statement of Compliance or occupation of the development, whichever occurs first, all visual screening measures shown on the endorsed plans must be installed to the satisfaction of the Responsible Authority. All visual screening and measures to prevent overlooking must be maintained to the satisfaction of the Responsible Authority. Any screening measure that is removed or unsatisfactorily maintained must be replaced to the satisfaction of the Responsible Authority.
16. Prior to the occupation of the development, a vehicle crossing must be constructed in every location shown on the endorsed plans to a standard satisfactory to the Responsible Authority (Moreland City Council, City Infrastructure Department).
17. Prior to the occupation of the development, any existing vehicle crossing not to be used in this use or development must be removed and the kerb and channel, footpath and nature strip reinstated to the satisfaction of the Responsible Authority (Moreland City Council, City Infrastructure Department).
18. Prior to the occupation of the development all telecommunications and power connections (where by means of a cable) and associated infrastructure to the land (including all existing and new buildings) must be underground to the satisfaction of the Responsible Authority.
19. Prior to the occupation of the development, all boundary walls must be constructed, cleaned and finished to the satisfaction of the Responsible Authority.
20. Prior to the occupation of the development, 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.
21. 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.
22. All stormwater from the land, where it is not collected in rainwater tanks for re-use, must be collected by an underground pipe drain approved by and to the satisfaction of the Responsible Authority (Note: Please contact Moreland City Council, City Infrastructure Department).

23. Prior to the commencement of the development, a legal point of discharge is to be obtained, and, where required, a stormwater drainage plan showing how the site will be drained from the property boundary to the stated point of discharge must be submitted to and approved by the Responsible Authority.
- Note:** Council charges supervision (2.50%) and plan checking (0.75%) fees on the cost of constructing the drain along the easement or street as permitted by sections 5&6 of the Subdivision (Permit and Certification Fees) Regulations 2000.
24. The car parking spaces provided on the land must be solely associated with the use and development allowed by this permit and must not be subdivided or sold separate from the development for any reason without the written consent of the Responsible Authority.
25. Prior to the occupation of the development, the garage doors must be automatic and remote controlled.
26. Prior to development commencing (including any demolition, excavations, tree removal, delivery of building/construction materials and/or temporary buildings), all council trees marked on the endorsed plans must have a Tree Protection Zone (TPZ) to the satisfaction of the Responsible Authority. The fencing associated with this TPZ must meet the following requirements:
- a) Extent

The tree protection fencing (TPF) is to be provided to the extent of the TPZ, calculated as being a radius of 12 x Diameter at Breast Height (DBH – measured at 1.4 metres above ground level as defined by the Australian Standard AS 4970.2009).

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

All tree protection fencing required by this permit must be erected in accordance with the approved TPZ. The TPF must be erected to form a visual and physical barrier and must be a minimum height of 1.5 metres and of chain mesh or similar fence with 1.8 metre support posts (e.g. treated pine or similar) every 3-4 metres, including a top line of high visibility plastic hazard tape erected around the perimeter of the fence.
 - c) Signage

Fixed signs are to be provided on all visible sides of the TPF clearly stating 'Tree Protection Zone – No Entry', to the satisfaction of the Responsible Authority.
 - d) Irrigation

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

Unless with the prior written consent of the Responsible Authority, all services (including water, electricity, gas and telephone) must be installed underground, and located outside of any TPZ, to the satisfaction of the Responsible Authority.

f) Access to TPZ

Should temporary access be necessary within the Tree Protection Zone during the period of construction, the Responsible Authority must be informed prior to relocating the fence (as it may be necessary to undertake additional root protection measures such as bridging over with timber).

27. As part of the ongoing consultant team, Jackson Clements Burrows Architects, or an architectural firm to the satisfaction of the Responsible Authority must be engaged to:
- Oversee design and construction of the development;
 - Ensure the design quality and appearance of the development is realised as shown in the endorsed plans or otherwise to the satisfaction of the Responsible Authority.
28. This permit will expire if one of the following circumstances applies:
- The development is not commenced within 2 years from the date of issue of this permit.
 - The development is not completed within 4 years from the date of issue of this permit.

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

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

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

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

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

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

Note 4: The City of Moreland is committed to creating an environmentally sustainable city. A critical component in achieving this commitment is to encourage new development to meet appropriate environmental standards. Applicants are encouraged to include environmentally sustainable design principles within new developments via the online BESS tool.

The BESS tool is a sustainability assessment tool designed for planning assessments of all development types and sizes. Using the BESS tool involves entering data about the proposed design into the BESS assessment tool found at <http://www.bess.net.au>. BESS will produce a report for submission to Council and is free for applicants to use. This allows applicants to design more environmentally sustainable developments.

For more information or help on ESD or BESS please contact Council's Sustainable Development Department on 9240 1188.

Note 7: Council may not issue individual bins to new Owners Corporation developments. In the event that shared bins are provided for this development, an amendment to the plans may be required to show the location of a storage area for the shared bins on common land. Please contact Council's City Infrastructure Department on 9240 1111 for more information.

Note 8: This permit contains a condition requiring payment of Development Contributions. The applicable development contribution levies are indexed annually. To calculate the approximate once off levy amount, please visit <http://www.moreland.vic.gov.au/planning-building/> and click on 'Moreland Development Contributions Plan (DCP)'. Alternatively, please contact Moreland City Council on 9240 1111 and ask to speak to the DCP Officer.

Part B

That Council write to VCAT and all parties seeking the agreement of all parties to include the following additional conditions:

- Floor to ceiling heights increased to a minimum of 2.7 metres to ensure compliance with Clause 55.07-13 (room depth objective).
- An alternative screening method for north facing balconies generally in accordance with the detail provided on the plan described as TP 2-101 Rev E and provided to Council on 27 May 2019 and showing a lower screen that includes a horizontal portion that prevents downwards views. This plan must substitute the previous plan described as TP 2-101 Rev E circulated in the set dated 20 May 2019 prior to the commencement of public notice on 5 July 2019.

1. Background

In February 2019, following the lodgement of an appeal against Council's failure to grant a permit in the prescribed time, Council at its Planning and Related Matters meeting resolved that Council's submission to the Victorian Civil and Administrative Tribunal (VCAT) be one of refusal to grant a permit for the construction of a building (7 storeys with roof terrace) containing 73 dwellings. The grounds of refusal included:

- Excessive building height and insufficient setbacks.
- Inconsistency with Council's neighbourhood character policy.
- Poor internal amenity for future residents.
- Poor ESD outcomes.
- Inconsistency with Clause 58 (Apartment Developments).
- Poor resolution of car and bicycle parking.

The applicant foreshadowed at a VCAT Compulsory Conference, on 20 February 2019, that they would be preparing amended plans. On 3 April 2019, plans were circulated on a without prejudice basis prior to a second Compulsory Conference on 18 April 2019. Further changes were discussed at the Compulsory Conference and an amended set of plans was circulated on 20 May 2019. A further Compulsory Conference was held on 30 May 2019 where the parties agreed to consent to the proposal subject to further changes to the plans. This included the parties agreeing that the building be no more than 13.5 metres at any point and no more than 4 storeys above natural ground level (including any basement levels).

Subject site

The subject site consists of three lots located at 21, 23 and 25 Northumberland Road, Pascoe Vale, known as Lots 19, 20 and 21 of Plan of Subdivision 1763. The 3 lots have an overall site area of 2,391 square metres.

Each lot is currently developed with a single storey dwelling. The subject site slopes between 6.97 and 7.47 metres from the south-eastern corner to the north-western corner.



Photograph 1: View towards 17-19 Northumberland Road with subject site to the right of the page.

Surrounds

The surrounding area has 2 distinct characters – east and west.

East

The eastern side of Northumberland Road, Pascoe Vale and further to the east is located within a General Residential Zone, with a 3-storey, 11 metre height limit. The predominant built form of existing housing stock to the east is of single and double-storey dwellings on single lots. There is minimal infill development of double and single-storey townhouses. The density is low, with large open rear yards and significant landscaping. Between Northumberland Road and Cumberland Road to the east are a number of parks including James Reserve and Rogers Reserve.

West

The western side of Northumberland Road and the land to the west towards Railway Parade, to the south to Gaffney Street and north to Fawcner Road is contained within a Residential Growth Zone associated with the Gaffney Street/Pascoe Vale Station Neighbourhood Activity Centre. The area is undergoing significant change with multi-unit development, generally in the form of 3-storey townhouses. There are over 140 townhouses constructed over 30 sites within 150 metres of the subject site. The townhouses are generally in rows with building separations containing driveways or landscaped pedestrian walkways.



Photograph 3: View of typical 3-storey townhouse development on Fawcner Road

A location plan forms **Attachment 1**.

The proposal

The without prejudice plans circulated to Council and all parties on 20 May 2019 are summarised as follows:

- Development of a 4-storey apartment building above 2 basement levels. One basement level is located up to 1.2 metres above natural ground level.
- 63 apartments including 41 x 1 bed, 15 x 2 bed and 7 x 3 bed.
- 82 car parking spaces and 87 bicycle parking spaces.
- Split level central courtyard of 145 square metres and a rooftop terrace of 81 square metres, resulting a total communal open space provision of 226 square metres.
- External materials are comprised of light grey/beige bricks, feature green glazed brick and metal balustrades and pergola structures.

The without prejudice plans form **Attachment 2**.

The original advertised proposal included:

- 73 apartments across 5 residential levels above natural ground level and 2 basement levels below.
- A communal rooftop terrace or 235 square metres and service area.
- 106 car parking spaces provided in car stackers in the two levels of basement accessed via a car lift.
- 80 bicycle spaces to be provided at basement 1 and 2 car parks (location only annotated on plans).

Planning Permit and site history

Planning Permit MPS/2015/741 was issued for 21 and 23 Northumberland Road on 24 October 2016 for the development of the land for 10 (part three/part four-storey) dwellings over two lots. This permit is still valid.

Statutory Controls – why is a planning permit required?

Control	Permit Requirement
Residential Growth Zone	Use of the land as dwellings is a Section 1 use in the zone, meaning that a permit is not required for the use. Pursuant to Clause 32.07-5 a permit is required to construct two or more dwellings on a lot.
Design and Development Overlay Schedule 24	A permit is required to construct a building or construct or carry out works

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

- Clause 45.06: Development Contributions Plan Overlay: The site is affected by the Development Contribution Plan Overlay (DCPO) Schedule 1. Pursuant to Clause 45.06 of the Moreland Planning Scheme, a plan has been incorporated into the scheme enabling the levying of contributions for the provision of works, services and facilities prior to development commencing.
- Clause 45.09 (Parking Overlay) – For all uses listed in Table 1 of Clause 52.06-5, the number of car parking spaces required for a use is calculated using the Rate in Column B of that Table.
- Clause 52.06 (Car parking) – Pursuant to Clause 45.09 (Parking Overlay) Column B of Table 1 to Clause 52.06-5, no visitor car parking is required.

2. Internal/External Consultation

Public notification

Original application

Notification of the original application was 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 3 signs on the frontage the site.

Council received 77 submissions, consisting of 76 objections and one letter of support. A map identifying the location of objector's forms **Attachment 1** noting that several objectors reside outside of the immediate locality.

The key issues raised in the objections were:

- Non-compliance with the requirements of the DDO24.
- Non-compliance with Clause 58 (Apartments) standards - lack of setbacks to rear boundary, lack of outlook, adverse amenity impacts.
- Lack of car spaces for visitors.
- Too many car spaces provided.
- Lack of landscaping and open space.
- Wrong typology (apartment building) with an excessively long 60 metre continuous façade and too many 1-bedroom apartments.
- Excessive traffic generation and increase road safety issues.
- Overdevelopment– density, height, scale and bulk - not respectful of the neighbourhood character.
- Overload existing infrastructure.
- Loss of property value due to loss of views.
- Overshadowing.
- Overlooking.
- Rubbish collection.

The one letter of support cited increased dwelling diversity and greater affordability.

There are 11 objector parties to the appeal.

Without prejudice plans

VCAT have determined that, because of the extent of change, public notice of the without prejudice plans will commence on 5 July 2019, if Council resolves to endorse the terms of settlement. If any objections are received, they will have the opportunity to become a party to the appeal. A further Compulsory Conference will be conducted to discuss the concerns of any new parties.

Internal/external referrals

The without prejudice plans received 20 May 2019 were referred to the following internal branches/business units

Internal Branch/Business Unit	Comments
Urban Design Unit	No objections were offered to the proposal. The bulk and mass is acceptable and the level of articulation is appropriate. The use of brick is supported, subject to providing details of the product. Provide individual entries at street level.
Development Advice Engineer	No objections were offered to the proposal subject to modifications, which are addressed by conditions detailed in the recommendation.
ESD Unit	No objections were offered to the proposal subject to modification, which are addressed in the conditions detailed in the recommendation.

3. Policy Implications

Planning Policy Framework (PPF)

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

- Clause 11 Settlement
- Clause 15 Built Environment and Heritage including:
 - Built Environment (Clause 15.01)
 - Healthy neighbourhoods (Clause 15.01-4S and 15.01-4R)
 - Sustainable Development (Clause 15.02)
- Clause 16.02 Housing including:
 - Integrated Housing (Clause 16.01-1S and 16.01-1R)
 - Location of Residential Development (Clause 16.01-2S)
 - Housing Opportunity Areas (Clause 16.01-2R)
- Clause 18 Transport

Local Planning Policy Framework (LPPF)

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

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

Local Planning Policies:

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

Council through its MSS, seeks increased residential densities into its Activity Centres to take advantage of access to public transport and other services within these locations. The subject site is located within the Gaffney Street/Pascoe Vale Station Neighbourhood Activity Centre. In this centre a change towards a new character to accommodate buildings up to and including four storeys is supported. The proposal enjoys strong strategic policy support.

Human Rights Consideration

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

4. Issues

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

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

The without prejudice plans represent an acceptable response to Clause 22.01 (Neighbourhood Character) and Clause 55.02 (Neighbourhood Character and Infrastructure) of the Moreland Planning Scheme.

The objectives of Council's Neighbourhood Character policy for sites within a Neighbourhood Activity Centre (NAC) are:

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

In addition, for sites within a NAC, the following policy is relevant:

- Ensure new development is designed to meet the provisions set out in DDO24 and if applicable, Schedule 2 to the Residential Growth Zone (RGZ2).
- Ensure building height does not exceed 4-storeys unless it can be demonstrated that:
 - The prevailing height of surrounding buildings is 5 or more storeys, in which case the prevailing height should not be exceeded.
 - The site is large enough to allow the visual impacts of the development to be mitigated through the design response. In such cases, the building height at the interface with adjoining properties and at street frontages should not exceed 4-storeys.
- Ensure development is designed to provide a suitable transition at interfaces with adjoining zones. This may include a transition in height and/or suitable landscaping.
- Encourage contemporary architecture.

The without prejudice plans have responded positively to the Neighbourhood Character policy by:

- Facilitating an increased residential density and scale of built form within the parameters of the DDO24 (discussed in detail below), commensurate with the scale expected for the Pascoe Vale NAC.
- Will result in high quality contemporary architecture.
- Proposing a building that, subject to conditions, will be no more than 4 storeys and 13.5 metres in height.

DDO24 requirements

The provisions of DDO24 outline a number of built form requirements including building height and setbacks. Following is an assessment of each of these.

Building Height requirements

The provisions of DDO24 state that the height for the Gaffney Street/Pascoe Vale Station NAC cannot be varied with a permit and must comply with the heights listed in the map at Figure 8 of the Schedule. This shows that maximum building heights for this activity centre are '*13.5 metres, four-storeys*'. The height in metres and storeys are mandatory.

The without prejudice elevation plans indicate that the height of the building does not exceed 13.5 metres. However, when the roof plan is compared with the survey plan, the relative levels provided at the top of the building indicate that there are portions of the building that may exceed 13.5 metres above natural ground level, albeit only slightly, especially on the western side of the building where the land is at its lowest.

Also of concern is the number of storeys proposed. The without prejudice plans show part of basement 1 protruding up to 1.2 metres above natural ground level. The Moreland Planning Scheme defines a basement level as a storey. In addition, the Moreland Planning Scheme defines building height as the vertical distance from natural ground level to the roof or parapet at any point. The DDO does not specifically exempt the inclusion of a basement storey for the purpose of calculating building height. As the without prejudice plans includes four storeys above a basement level that protrudes up to 1.2 metres above natural ground level, the proposal is prohibited as it exceeds the maximum number of storeys.

To overcome these 2 height exceedances, the applicant has agreed to a condition that the plans be amended to ensure the building is no more than 13.5 metres above natural ground level at any point and that no basement level protrude above natural ground level at any point. This will require the building to reduce in height by up to 1.2 metres.

This condition forms part of the terms of settlement that the parties agreed to at the compulsory conference on 30 May 2019.

It is noted that as the building is lowered, apartment G.01 and 1.01 at ground and first floors respectively will be set further below ground level. It is likely that these two apartments will no longer receive sufficient daylight or result in an appropriate amenity outcome for future occupants of these apartments. This was discussed at the Compulsory Conference however, the applicant was not certain what the impact would be and therefore a condition has not been included in the terms of settlement to require their removal. Any plans submitted for approval will need to be to the satisfaction of Council.

By ensuring the height remains below 13.5 metres and no higher than 4 storeys above ground level, the plans represent an improved outcome to the application plans which sought five storeys above ground level.

Front Setback requirements

- All buildings with residential uses at ground floor should be setback in accordance with Clause 55.03-1 Standard A3 or B6, or 3 metres, whichever is lesser.

The proposal satisfies this requirement by proposing a front setback of no less than 3 metres.

Side Setback requirements

- With outlook:
 - Rooms with a primary outlook (living/balcony outlook) should be setback 4.5 metres from the property boundary. This setback should be planted with trees.
 - Rooms with a secondary outlook (bedrooms outlook) should be setback 2 metres from the property boundary. These setbacks should also be planted with trees.

The without prejudice plans satisfy these setbacks at all levels.

DDO24 also specifies that separation of buildings within sites should have regard to the building separation distances in the Moreland Apartment Design Code (September 2015). The Moreland Apartment Design Code requires a setback of 6 metres for bedroom outlooks up to 4 storeys in height. The plans show a minimum setback of 9 metres across the internal courtyard between bedroom outlooks, exceeding this requirement.

The plans now demonstrate a high degree of compliance compared with the application plans which would have resulted in substantial variations including living room outlooks within 2.2 metres of the boundary instead of 4.5 metres.

Rear Setback requirements

- Buildings abutting a property boundary should be setback:
 - 3 metres from the property boundary for any part of a building up to a height of 4 metres.
 - A minimum of 6 metres from the property boundary for any part of a building exceeding 4 metres.

The without prejudice plans propose a rear setback of between 5.74 and 6 metres at each level of the building. This exceeds the 3 metres required up to a height of 4 metres but results in a variation of up to 260 millimetres for part of the building.

The extent of variation is considered acceptable as:

- The variation ranges from 260 millimetres to zero moving north along the rear boundary.
- The setbacks still achieve good outlook and daylight for the proposed development and do not impact on the amenity of the adjoining land, noting that:
 - The endorsed plans for the development at 5 Fawkner Road, to the rear of 23 and 25 Northumberland Road, has east facing bedroom windows with obscured glazing to a height of 1.7 metres.
 - The endorsed plans for the development at 14-16 Grover Street, to the rear of 21 Northumberland Road, has east facing living room and kitchen windows with timber screens to a height of 1.7 metres.

Building Frontage requirements

Active frontages:

- Development should incorporate individual entries to ground floor dwellings and habitable room windows facing the street. Privacy should be provided by elevating the ground floor approximately 0.5 to 1 metre above the street level and/or providing landscaping in a front setback.

The without prejudice plans respond to this policy by providing:

- Habitable room windows facing the street.
- Individual entries to 2 of the 4 street level apartments. Any reduction in height of the building may result in changes to individual apartments at ground level however, a modified layout will still allow for individual entries to Northumberland Road.
- Landscaping opportunities within the front setback to enhance privacy.

Building articulation

- Building façades should be designed with an appropriate rhythm and proportion that respond to the building's uses and context and contribute to a fine grain urban character.
- New buildings should adopt solid architectural expression that emphasises the street edge through the use of recessed balconies, framed elements and solid balustrades.
- Side setbacks should incorporate articulation to break down building mass through the use of materials and finishes.

The without prejudice plans respond positively to these objectives in following ways:

- The C shaped layout of the building creates two distinct forms presented to Northumberland Road, resulting in an appropriate rhythm and proportion that responds to the emerging character of development in the locality. The simple palate of materials including cream brick and solid metal balustrades to recessed balconies also contributes to visual interest and articulation.
- The use of grey bricks and contrasting green glazed brick contributes to a fine grain urban character and the use of solid balustrades and pergola structures results in a solid architectural expression
- Side setbacks are sufficiently articulated with recessed balconies and a simple palate of materials.

Car parking and vehicle entry

- The impact of vehicle access and car parking on the public realm should be minimised by:
 - Locating vehicle access to the rear of buildings wherever possible, or to the side, where rear access is not available.
 - Locating car parking where it cannot be seen from the public realm.
 - Locate vehicle crossings to minimise the removal of street trees, on-street car parking spaces, or encroachment into landscaped front setbacks.
 - Pedestrian safety and sight lines should be maximised.
 - Where car stackers are proposed, ensure they are suitably located to minimise adverse amenity impacts to adjoining sites.

The without prejudice plans have responded to this policy by:

- Concealing vehicles below ground within basement levels.
- Locating the vehicle crossing with appropriate sightlines and avoiding the need to remove trees.
- The proposed crossover location will result in the loss of one on street car space however, this will be offset with the removal of the two existing crossovers on the site, enabling the reinstatement of one on street car space.
- Car stackers are not proposed.

This represents an improvement to the decision plans by:

- Removing the car lift to gain access to basement levels.
- Avoiding any potential impact to neighbours as a result of car stackers by proposing all car parking at grade within the two basement levels.

Site services

- Service infrastructure should be concealed or integrated into building design.
- Waste storage areas should be screened from view of the street.

The without prejudice plans provide for all waste and service infrastructure to be located within the basement. An updated waste management plan is required as a condition in the terms of settlement. This will specify that waste will be collected on site by a private contractor.

Landscaping

- Provide at least one tree in the front setback, selected in accordance with the Moreland Tree Planting Manual, 2014.
- Provide tree planting along the side and rear boundaries for properties located in the Residential Growth Zone and Mixed-Use Zone.

The without prejudice plans provide sufficient space within the front setback to accommodate a number of trees. Landscaping can also be provided within the side setbacks where a minimum of 2.7 metres is provided and within the rear setback where setbacks of 5.7 to 6 metres are achieved. Although small deck areas encroach within these setbacks, sufficient inground planting opportunities remain to provide for small and medium sized trees.

Has adequate car and bicycle parking been provided?

A total of 70 spaces are required for the dwellings. No visitor spaces are required as the site is located within the Parking Overlay. Despite this, the proposal provides 12 visitor spaces and 70 residents spaces, exceeding the planning scheme requirement. The without prejudice plans satisfy the Moreland Planning Scheme with respect to the provision of car parking.

A total of 18 bicycle parking spaces are required for the dwellings, including 6 visitor spaces. The without prejudice plans show a total of 65 bicycle parking spaces.

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

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

In relation to traffic impacts, the without prejudice plans will result in fewer vehicle movements than the advertised plans. When originally assessed, Council's Strategic Transport and Compliance Branch considered the vehicle movements generated would be within the road's maximum volumes permitted under the Moreland Integrated Transport Strategy (a reference document at Clause 21.04 of the Scheme). The removal of the car lift will result in easier access to the basement and no need for vehicles to queue on the street while waiting for the car lift to become available.

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

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

- Limits the number of vehicle crossings to one and results in the removal of three existing crossovers.
- Results in no net loss of on-street public parking spaces, removal of street trees, and encroachment into landscaped front setbacks.
- Provides 65 bicycle spaces.

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

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

- 30kW rooftop solar photovoltaic system.
- 35,000 Litre rainwater collection tank for reuse in toilets.
- Bess score of 61%.
- Low VOC finishes.

As part of the terms of settlement, the applicant has agreed to providing an updated SMP that will:

- Provide updated energy modelling that accounts for a more representative number of apartments.
- Ensure that the Sustainability Victoria Better Practice Guide for Waste Management and Recycling in Multi Unit Developments (November 2018) is accounted for.
- Provide updated daylight modelling that demonstrates that at least 80% of the living rooms achieve a daylight factor greater than 1 for 90% of the floor area.

With these changes to the SMP and any consequential changes to the layout, the proposal will result in best practice ESD.

Is the proposal accessible to people with limited mobility?

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

The applicant has agreed to ensuring that at least 50% of apartments have internal dimensions that comply with Standard B41 (Accessibility) and 70% comply with the silver level standard of the livable housing design guidelines. A condition to require this forms part of the terms of settlement agreed to by all parties at the compulsory conference and is included in the recommendation. This exceeds the minimum requirements of the Planning Scheme.

Does the proposal satisfy the requirements of Clause 55?

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

Clause 55.04-6 – Standard B21 - Overlooking objective

Some north facing living room/balconies will allow for overlooking of neighbouring secluded private open space and possibly habitable room windows. The screens provided on the plans are to a height of 1.7 metres above floor level and will therefore provide a poor outlook for future residents of these apartments. An alternative screening method is possible that allows for a lower screen but that includes a horizontal portion that prevents downwards views, resulting in the same level of privacy for neighbouring properties. This was discussed at the Compulsory Conference and the alternative screen was agreed to by all parties. However, a condition was not included in the terms of settlement to require this. Therefore, a condition is included in Part B of the recommendation.

Some proposed south facing apartments also allow some overlooking of balconies and habitable room windows of existing town houses on the land at 17-19 Northumberland Road. However, the endorsed plans for the development at that property includes privacy screens to 1.7 metres above floor level.

Clause 55.07-3 – Standard B37 - Solar access to communal outdoor open space objective

Although the shadow diagrams submitted with the without prejudice plans do not include shadows on 21 June (winter solstice), it is likely the internal courtyard will be completely in shadow at this time. This will result in less than 125 square metres of communal open space receiving more than 2 hours of sunlight on 21 June. However, this is considered acceptable on the basis that the rooftop terrace, which is 81 square metres in area, will receive full sun throughout the day on the 21 June.

Clause 55.03-5 – Standard B38 - Deep soil areas and canopy tree objective

10% (239 square metres) of the site with a minimum dimension of 6 metres is required to accommodate deep soil planting to satisfy this standard. The without prejudice plans show the building is setback between 5.76 and 6 metres from the rear boundary, providing in excess of 300 square metres (12.5%) of deep soil area. Although the minimum dimension is not provided for the entirety of the landscape area, it is an acceptable response due to the area being in excess of 10% of the total site area. It is also noted that this setback area includes elevated deck areas to the rear of apartments. This is acceptable on the basis that the decks remain permeable to allow for air and moisture penetration to the root zones of trees.

A condition requiring a landscape plan was agreed to at the compulsory conference which is required to be provided to the satisfaction of Council.

Clause 55.07-7 – Standard B41 – Accessibility Objective

The purpose of this Clause is to ensure the design of dwellings meets the needs of people with limited mobility.

The without prejudice plans indicate that 100% of apartments have been designed to satisfy this Clause. However, some key details have not been demonstrated on the plans, resulting in none of the apartments achieving complete compliance with this Standard.

The terms of settlement agreed to at the compulsory conference includes a condition requiring at least 50% of the apartments to achieve compliance with this standard and 70% achieving the silver standard of the livable housing design guidelines.

Clause 55.07-9 – Private Open Space Objective – Standard B43

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

The 3 x 1 bedroom Apartments described as type 13 achieve a balcony depth of 2.4 metres but total area of only 7.48 square metres, 0.5 square metres less than the standard requires. This is considered acceptable as it applies to only 3 apartments and the balcony remains usable given its depth exceeds the minimum 1.8 metres required.

All other apartments achieve compliance with this standard.

Clause 55.07-10 Storage Objective – Standard B44

The purpose of this Clause is to provide adequate storage facilities for each dwelling.

The plans include a table defining the amount of internal storage space for each apartment, which complies with the requirements of the Clause. However, the plans should be amended to clearly show where this is located on the indicative apartment layouts. This is included as a condition in the proposed terms of settlement.

Clause 55.07-13 Room Depth objective – Standard B47

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

Single aspect habitable rooms should not exceed a room depth of 2.5 times the ceiling height. The depth of a single aspect, open plan, habitable room may be increased to 9 metres if all the following requirements are met:

- The room combines the living area, dining area and kitchen.
- The kitchen is located furthest from the window.
- The ceiling height is at least 2.7 metres measured from finished floor level to finished ceiling level. This excludes where services are provided above the kitchen.

The floor to ceiling height for all residential levels is 2.65 metres, allowing for a room depth of up to 6.6 metres. This results in 35 apartments (53%) achieving the standard.

The apartments that exceed this depth appear to have been designed to rely on the second part of Standard B47 that allows for a room depth to be increased to 9 metres where the kitchen is located furthest from the window and where ceiling heights are 2.7 metres.

As the applicant has agreed to reduce the building height by 1.2 metres to ensure the basement is below ground level, an additional 50 millimetres could be accommodated at each level without exceeding the overall height of 13.5 metres. This would ensure that all apartments have a floor to ceiling height of 2.7 metres allowing all apartments to meet the room depth standard. This was not discussed at the compulsory conference and therefore does not form part of the terms of settlement. Therefore, a condition is included in Part B of the recommendation to address this.

5. Response to Objector Concerns

As noted in section 2, VCAT have determined that because of the extent of change, public notice of the without prejudice plans will commence on 5 July 2019, if Council resolves to endorse the terms of settlement.

If any objections are received, they will have the opportunity to become a party to the appeal. A further Compulsory Conference will be conducted to discuss the concerns of any new parties.

6. Officer Declaration of Conflict of Interest

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

7. Financial and Resources Implications

There are no financial or resource implications.

8. Conclusion

It is considered that the proposed development as shown in the without prejudice plans received by Council on 20 May 2019, subject to the terms of settlement reached by parties at the compulsory conference on 30 May 2019 and the proposed additional changes set out in the Part B recommendation, will result in an acceptable built form outcome, consistent with the DDO24. The plans will also result in acceptable amenity impacts to surrounding properties and will result in acceptable internal amenity for future residents.

On the balance of policies and controls within the Moreland Planning Scheme, it is recommended that, subject to the terms of settlement included in the recommendation of this report, Council authorise officers to notify VCAT by 28 June 2019 that it consents to the plans and the terms of settlement with the additional changes set out in Part B of the recommendation.

Attachment/s

- | | | |
|-------------------|-------------------------|------------|
| 1 | Location Plan | D19/30734 |
| 2 | Without Prejudice Plans | D19/214308 |

DCF52/19 2 ELM GROVE, BRUNSWICK EAST - PLANNING PERMIT MPS/2017/245 (D19/193951)

Director City Futures

City Development

Executive Summary

The application seeks approval for the use and development of an 8-storey building with a reduction of the car parking requirement. The application is exempt from the public notice requirements and review rights of the *Planning and Environment Act 1987*. One objection was received which relates to an adjoining substation and the proposal's impact upon it.

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

The key planning considerations are:

- Compliance with the approved Development Plan.
- Whether the proposal provides appropriate amenity for future residents.

The proposal by way of its height, form, setbacks and use comply with the approved Development Plan. Subject to conditions including the increase in the size of the lightwell the proposal will offer an appropriate level of amenity for future residents.

This application is presented to the Council meeting for Planning and Related Matters at the request of Councillor Riley and Councillor Dorney.

It is recommended that a Planning Permit be issued for the proposal.

Officer Recommendation

That a Planning Permit No. MPS/2017/245 be issued for use and development of a building containing dwellings and retail with a reduction of the car parking requirement at 2 Elm Grove, Brunswick East, subject to the following conditions:

Conditions

1. Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and must be generally in accordance with the plans referenced as TP01-TP20 prepared by Jam Architects Revision D dated 02.11.2017, but modified to show:
 - a) The depth of the internal space adjoining the window to dwellings 1.04, 2.04, 3.01, 4.04 and 5.04 reduced to 1.5 metres to comply with Standard D26 of Clause 58.07-3 (window objective) of the Moreland Planning Scheme.
 - b) The light-well on the fifth floor increased to a minimum of 21 square metres and a minimum depth of 4.5 metres, with the communal open space area reduced to accommodate the increased lightwell area.
 - c) The location and volume of internal storage facilities for each dwelling, to comply with Standard D20 Clause 58.05-4 (Storage) of the Moreland Planning Scheme.
 - d) The location of any substation required for the development that is incorporated into the building with minimal impact upon the public realm.
 - e) External adjustable east and west facing shading for the exposed east and west bedrooms of all dwellings.
 - f) 20% of the bicycle parking devices designed to park bicycles horizontally (i.e. 8 metres long).

- g) The bicycle facilities and waste storage areas in separate rooms.
 - h) The vehicle crossing with 1 metre straight splays on both sides commencing where the footpath meets the nature strip and finishing at the kerb.
 - i) Any amendments as required by condition 17 (Sustainability Management Plan).
 - j) Any amendments as required by condition 19 (Accessibility Plan).
2. The development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority. This does not apply to any exemption specified in Clauses 62.02-1 and 62.02-2 of the Moreland Planning Scheme unless specifically noted as a permit condition.
 3. Prior to the commencement of development the substation building located within the Elm Grove road reserve (shown dashed red on TP04) and all associated structures are to be removed to the satisfaction of the Responsible Authority at the cost of the developer.
 4. Prior to the endorsement of any plans, an amended landscape plan must be submitted to and approved by the Responsible Authority. The plans must be drawn to scale with dimensions and must be generally in accordance with the plans prepared by Rush Wright Associates dated 04.11.2016, but modified to show:
 - a) The planting at the rear of the building adjoining the eastern boundary including 3 semi mature trees in raised planter boxes.
 5. Prior to occupation of the development all landscaping works must be completed and maintained in accordance with the approved and endorsed landscape drawing to the satisfaction of the Responsible Authority.

Engineering

6. Prior to the commencement of development, a Public Works Plan and associated construction drawing specifications detailing the works to the land must be submitted and approved to the satisfaction of the Responsible Authority. The Plan must detail works adjoining the western boundary in front of the approved building and include:
 - a) The public footpath is to be reinstated with the standard cross-fall slope of 1 in 40 from the top of roadside kerb to the property boundary, with any level difference made up within the site.
 - b) The upgrade of the footpaths adjacent to the site.
 - c) A detailed level and feature survey of the footpaths and roads.
 - d) Street tree planting in Elm Grove accordance with the endorsed Landscaping Master Plan Development Plan (prepared by Rush Wright Associates dated 15/05/2018, endorsed 25/06/2018).
 - e) Re-construction of the Elm Grove road reserve as needed as a result of the demolition of the substation.
 - f) Bicycle hoops within the Elm Grove road reserve.

The approved Public Works Plan will form part of the endorsed plans under the permit and must be implemented to the satisfaction of the Responsible Authority at the expense of the owner of the land, prior to the occupation of the development unless otherwise agreed with prior written consent of the Responsible Authority.
7. All stormwater from the land, where it is not collected in rainwater tanks for re-use, must be collected by an underground pipe drain approved by and to the satisfaction of the Responsible Authority (Note: Please contact Moreland City Council, City Infrastructure Department).

8. Prior to the commencement of the development, a legal point of discharge is to be obtained, and where required, a stormwater drainage plan showing how the site will be drained from the property boundary to the stated point of discharge, must be submitted to and approved by the Responsible Authority.
9. The surface of all balconies and terraces are to be sloped to collect the stormwater run-off into stormwater drainage pipes that connect into the underground drainage system of the development to the satisfaction of the Responsible Authority.
10. Prior to the occupation of the development, a vehicle crossing must be constructed in every location shown on the endorsed plans to a standard satisfactory to the Responsible Authority (Moreland City Council, City Infrastructure Department).
11. Prior to the occupation of the development, any existing vehicle crossing/ loading not to be used in this use or development must be removed and the kerb and channel, footpath and nature strip reinstated to the satisfaction of the Responsible Authority (Moreland City Council, City Infrastructure Department).
12. Prior to the occupation of the development 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.
13. Prior to the occupation of the development the garage door must be installed and automatically remote controlled.

Development Contributions

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

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

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

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

Potential contamination

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

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

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

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

16. Prior to any remediation works being undertaken in association with the Environmental Audit, a 'remediation works' plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The plan must detail all excavation works as well as any proposed structures such as retaining walls required to facilitate the remediation works. Only those works detailed in the approved remediation works plan are permitted to be carried out prior to the issue of a Certificate or Statement of Environmental Audit.

Environmentally Sustainable Design

17. Prior to the endorsement of plans, the Sustainability Management Plan (SMP) and BESS report prepared by Edefice dated 01/11/2017 must be amended by a suitably qualified environmental engineer or equivalent to the satisfaction of the Responsible Authority to include the following:
 - a) IEQ categories as per the amended plans required by condition 1.
 - b) 5kW solar PV system.
 - c) Provide an irrigation performance specification covering automated irrigation and maintenance requirements for the green infrastructure elements.
 - d) External adjustable east and west facing shading for the exposed east and west bedrooms of all dwellings.

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 Sustainability Management Plan and associated notated plans will be endorsed to form part of this permit.

18. Prior to the occupation of either the dwellings or commercial premises which forms part of the development approved under this permit, a report from the author of the Sustainable Management Plan approved pursuant to this permit, or similarly qualified person or company, must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm that all measures specified in the SDA have been implemented in accordance with the approved Plan. Specific details confirming the Environmentally Sustainable Development ESD measures have been implemented must be included, such as:
- a) Evidence that the building works achieved an improvement of 10% or greater above minimum Section J requirements for building fabric and 20% for lighting.
 - b) Construction and waste management targets (including for construction and demolition waste and reuse of materials on site) occurred.
 - c) The stormwater harvesting tank was installed and connected to uses and fittings as committed.
 - d) And any other ESD initiatives committed to or referenced in the SDA occurred and were installed or constructed.

Accessibility

19. Prior to the endorsement of plans, the Accessibility Report prepared by Philip Chung dated 27/10/2017 must be amended by a suitably qualified person to the satisfaction of the Responsible Authority demonstrating:
- a) 50% of the dwellings demonstrating compliance with Standard D17 of Clause 58.05-1 (Accessibility) of the Moreland Planning Scheme.

When submitted and approved to the satisfaction of the Responsible Authority, the amended Accessibility Plan and associated notated plans will be endorsed to form part of this permit.

20. Prior to the occupation of any dwelling approved under this permit, a report from the author of the Accessibility Report, approved pursuant to this permit, or similarly qualified person or company, must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm that all measures specified in the Access Plan have been implemented in accordance with the approved Plan.

Waste storage

21. Prior to the endorsement of plans, a Waste Management Plan generally in accordance with the Waste Management Plan prepared by Leigh Design dated 14/11/2016 but updated to reflect the plans required by Condition 1, must be submitted and approved to the satisfaction of the Responsible Authority. When submitted and approved to the satisfaction of the Responsible Authority, the Waste Management Plan will form part of the permit.
22. 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.

Time

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

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

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

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

- Should Council impose car parking restrictions in this street, the owners and/or occupiers of the land would not be eligible for any Council parking permits to allow for on street parking.
- This permit contains a condition requiring payment of Development Contributions. The applicable development contribution levies are indexed annually. To calculate the approximate once off levy amount, please visit <http://www.moreland.vic.gov.au/planning-building/> and click on 'Moreland Development Contributions Plan (DCP)'. Alternatively, please contact Moreland City Council on 9240 1111 and ask to speak to the DCP Officer.
- Contact needs to be made with CitiPower to determine whether CitiPower will require the power lines to be relocated away from the dwellings.

Notes about Environmental Audits

- A copy of the Certificate or Statement of Environmental Audit, including the complete Environmental Audit Report must be submitted to the Responsible Authority within 7 days of issue, in accordance with Section 53ZB of the *Environment Protection Act 1970*.
- Where a Statement of Environmental Audit is issued for the land a copy of that Statement must be provided to any person who proposes to become an occupier of the land, pursuant to Section 53ZE of the *Environment Protection Act 1970*.
- The land owner and all its successors in title or transferees must, upon release for private sale of any part of the land, include in the Vendor's Statement pursuant to Section 32 of the *Sale of Land Act 1962*, a copy of the Certificate or Statement of Environmental Audit including a copy of any cover letter.
- Where a Statement of Environmental Audit issued for the land contains conditions that the Responsible Authority considers to be unreasonable in the circumstances, the Responsible Authority may seek cancellation or amendment of the planning permit in accordance with Section 87 of the *Planning and Environment Act 1987*.

1. Background

Subject site

The subject site is located at 2 Elm Grove, Brunswick East. It is located within the East Brunswick Village Development Plan area and comprises a lot of 532 square metres, with a frontage of 17.35 metres and a depth of 30.7 metres.

Elm Grove is a dead-end street that runs south from Albert Street and is approximately 150 metres west of Nicholson Street. The site is currently occupied by a single storey brick warehouse with a concreted front setback. On street parking is available along some sections of Elm Grove.

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

Surrounds

The surrounding area is characterised by newer development, including 5 and 6 storey buildings associated with the East Brunswick Village (EBV), and older industrial buildings which are transitioning to residential and commercial developments over time.

The site is bound on three sides by a large parcel of land known as 127-151 Nicholson Street. This land has a planning permit for the development of 10 buildings in 3 stages. Stage one of this development is currently under construction. The immediate interfaces with the subject site once the land has been fully developed in accordance with the permit will be:

- North: A 6-storey residential building, including two-storey high void immediately adjoining the subject site that forms part of a pedestrian link from Nicholson Street to Elm Grove.
- East: A road and loading zone and a 6-storey residential building with ground floor supermarket and retail shops.
- South: A 6-storey residential building, with ground floor retail fronting Main Street.

Immediately west of the subject site adjoining the south-western corner of the site is a double storey, red brick substation. The substation sits within the Elm Grove road reserve and currently houses electricity supply infrastructure.

Opposite the site to the west is a single storey warehouse previously used for steel fabrication. This use has ceased, and the site is currently vacant. This property has its primary street frontage to John Street and has car parking spaces adjoining its rear boundary to Elm Grove.

The site is located within proximity of the 96 tram route and has access to several bus services at Glenlyon Road. It has convenient pedestrian connections to Fleming Park and the Merri Creek (via Albert Street). Once the East Brunswick Village main street is complete and occupied the site will have retail uses within walking distance.

A location plan forms **Attachment 1**.

Planning Permit and Site History

East Brunswick Village Development Plan

The East Brunswick Village Development Plan (the Development Plan) was first endorsed by Council on 4 October 2012 to satisfy the requirements of Schedule 11 to the Development Plan Overlay (DPO11), which affects the land. The endorsed Development Plan prescribed building envelopes, requirements for public realm works, vehicle and pedestrian circulation, ESD expectations and developer contributions. The Development Plan guides the future development of approximately 63 per cent of the DPO11 precinct.

On 25 June 2018, an amended Development Plan was approved by Council at the direction of the Victorian Civil and Administrative Tribunal (VCAT). The approved Development Plan references the subject site in the following ways:

- A building height of a maximum of 6-storeys.
- Identifies Elm Grove as a minor public vista.
- The use is to be 'multi residential' with a Commercial 1 Zoning and a frontage that is part retail and part residential. There is no preferred frontage type specified for the rear (east) boundary.

The proposal

The proposal is summarised as follows:

- Construction of an 8 storey building, comprising 6 residential storeys and a roof deck and storage mezzanine (24 metres).
- 20 dwellings (10 x 3 bedroom and 10 x 2 bedroom).
- The ground floor comprises a 55 square metre retail space, together with vehicle and pedestrian access, car parking and site services.
- Car parking (22 spaces).
- Bicycle parking (24 spaces).
- The finishes comprise bricks and render in off-white and grey, with timber cladding accents and glazing.

The development plans form **Attachment 2**.

Statutory Controls – why is a planning permit required?

Control	Permit Requirement
Commercial 1 Zone	A permit is required to use the land for accommodation as the lobby entry for the dwellings exceeds 2 metres. A permit is required to construct a building or construct or carry out works.
Development Plan Overlay Schedule 11 (DPO11)	In the Development Plan Overlay a permit must not be granted to use or subdivide land, construct a building or construct or carry out works until a Plan has been prepared to the satisfaction of the Responsible Authority. The requirements of Clause 43.04-1 have been satisfied via the approved Development Plan and supporting documents dated October 2012 and revised in June 2018.
Particular Provisions	Clause 52.06: A permit is required to reduce the car parking requirement from 31 spaces to 22 spaces (9).

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

- Clause 43.02: Design and Development Overlay Schedule 20. Section 2.0 in the schedule states that a permit is not required under the DDO because the subject site forms part of a development plan approved in accordance with DPO11;
- Clause 45.03: Environmental Audit Overlay;
- Clause 45.06: Development Contributions Plan Overlay;
- Clause 45.09: Parking Overlay Schedule 1;
- Clause 53.18: Stormwater Management in Urban Development. This Clause does not apply to an application for land affected by a development plan that was approved before the approval date of Amendment VC154. As the East Brunswick Village Development plan was approved prior to the approval date of VC154, the application is exempt from the requirements of this Clause; and
- Clause 58: Apartment Developments.

2. Internal/External Consultation

Public notification

Under Clause 43.04-2 of the Moreland Planning Scheme, an application is exempt from public notice and third-party review if a Development Plan has been approved. The amended EBV Development Plan was endorsed by Council on 25 June 2018.

Despite this, Council received one objection to the planning application.

The key issues raised by the objector include:

- The design is dependent upon the removal of the adjoining substation.
- The removal of the substation impacts upon the heritage and industrial history of the area.
- The design could be modified to accommodate the retention of the substation.

This objector will not have the opportunity to seek a review of Council's decision at VCAT, however the Responsible Authority must still consider their objection before deciding the application.

Council's officers have met with the objector and the applicant separately to discuss these issues. The meeting with the applicant satisfied a resolution of Council made at the March 2019 meeting (DCF13/19).

Internal referrals

Internal Branch/Business Unit	Comments
Urban Design Unit	No objections were offered to the proposal. Supported the proposed material and colour palette.
Development Advice Engineer	No objections were offered to the proposal subject to modifications, which are addressed by conditions detailed in the recommendation.
ESD Unit	No objections were offered to the proposal subject to modifications, which are addressed in the conditions detailed in the recommendation.
Open Space Design and Development Unit	No objections were offered to the proposal.

3. Policy Implications

Planning Policy Framework (PPF)

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

- Clause 11 Settlement
- Clause 15 Built Environment and Heritage including:
 - Built Environment (Clause 15.01)
 - Sustainable Development (Clause 15.02)
- Clause 16.02 Housing including:
 - Integrated Housing (Clause 16.01-1S and 16.01-1R)
 - Location of Residential Development (Clause 16.01-2S)
 - Housing Opportunity Areas (Clause 16.01-2R)
- Clause 18 Transport

Local Planning Policy Framework (LPPF)

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

Municipal Strategic Statement:

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

Local Planning Policies:

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

Council through its MSS, seeks increased residential densities in the Brunswick Activity Centre to take advantage of the excellent access to public transport and other services within this location. The proposal meets the objectives and strategies of the LPPF by incorporating a range of uses, including a small retail space, offering increased housing within an activity centre and increased dwelling diversity. The proximity of the site to a variety of public transport options and the provision of bicycle facilities on the site encourages less reliance on cars as a means of travel.

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

Human Rights Consideration

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

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, the approved East Brunswick Village Development Plan, the objection received and the merits of the application.

Is the proposal generally in accordance with the endorsed Development Plan?

Clause 43.04-2 (Development Plan Overlay) requires that a permit granted must be generally in accordance with the endorsed Development Plan. The proposal is deemed to be generally in accordance with the endorsed Development Plan, subject to conditions of this recommendation. Key built form aspects of the proposal which require consideration against the Development Plan are assessed below.

Height

The Development Plan identifies a building height of six storeys for this site. The proposal is technically eight storeys which includes the covered portions of the communal roof area and a mezzanine level containing the storage units. The mezzanine level has a lower floor to ceiling height of 2.55 metres and is not visible as a separate level external to the building. The top floor comprises a relatively small circulation space adjoining the lift and stairwell.

The building height is 21.1 metres excluding the rooftop, which is akin to a typical 6-storey building. With an overall height of 24 metres, the proposed building height is in keeping with the overall height of buildings approved and under construction within the EBV development. Within Stage 1 of the EBV, there is a 7-storey building with an overall height of 26.8 metres and a 6-storey building with an overall height of 22 metres.

The proposal is therefore generally in accordance with the approved Development Plan.

Activity and Land Use

The *Development Plan – Activity and Land Use Plan* identifies the subject site as being multi-residential, with a frontage that is part retail and part residential. There is no preferred frontage type specified for the rear boundary of the site (which abuts a proposed common property road in the EBV).

In addition, the *Development Plan – Built Form Plan* nominates an area in the north-western corner of the site adjoining Elm Grove as Retail.

Design and Development Overlay Schedule 20 describes frontage type A and C as follows:

Frontage Type A: Retail: A display window and/or entrance, measuring at least 80% of the width of the street frontage of each individual premises.

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

The ground floor frontage to Elm Grove is comprised of a 55 square metre retail tenancy, a 6.5 metre wide accessway and a residential lobby. This arrangement meets the Development Plan and is acceptable for the following reasons:

- Although the vehicle access takes up a portion of the front façade, it is compatible with the existing character of Elm Grove which comprises many driveways. Furthermore, the site is otherwise landlocked and Elm Grove is the only legal access point.
- The retail space meets the requirements of the Development Plan in size and location. Glass floor to ceiling windows for the full extent of the retail frontage achieve the requirements of 'Frontage Type A'.
- The lobby entry is located within the area marked as frontage type C. While this is not an individual entry door to a ground floor dwelling, it is a residential lobby. Furthermore, a transitional space at the entry provides space for pedestrians and is softened by planting and balconies at the upper levels offer passive surveillance to Elm Grove.

The north and east ground floor facades are not active. This is a consequence of the fact that the site is in separate ownership to the remainder of the East Brunswick Village Development. While not ideal, the design response is acceptable within this constraint, given that:

- The development plan does not specify active frontages in these locations;
- At the north-west corner of the site a glass brick window adjoins the future pedestrian link along the northern boundary for the depth of the retail tenancy; and
- To the east, aluminium battens in different shades provide visual interest to the ground floor façade and balconies provide passive surveillance from the upper levels.

There is a 4.35 metre wide portion of land at the rear of the site that is proposed to be transferred to owner of the adjoining development. The plans note that this part of the site will form part of the adjoining development. Given that the land is currently within the title of 2 Elm Grove, it is considered to form part of this permit application and the landscaping should therefore be provided as part of the development of this land. As such, a condition of the recommendation requires an amended landscape plan to clearly show this.

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

Subject to amendments the proposal generally complies with the requirements of Clause 58 resulting in an appropriate level of on-site amenity for future residents.

The positive aspects of the proposal include:

- The living areas are generally 6 metres in depth.
- Floor to ceiling heights of 2.7 metres are provided for the residential floors.
- The east and west windows facing balconies are floor to ceiling in height.
- All dwellings are naturally ventilated with operable windows.
- External clothes drying is available on the roof.
- External shading is provided to the east and west balconies.
- The building has appropriate dwelling diversity with 10 x 2-bedroom dwellings and 10 x 3-bedroom dwellings.
- The bedrooms are generously sized and provide for a functional layout.
- The 2-bedroom dwellings are generally 82 square metres and the 3 bedroom dwellings are 95 square metres.
- The 2-bedroom dwellings have balconies of 10.5 square metres and the 3 bedroom dwellings have balconies of 12.5 square metres. The minimum balcony depth is between 2.4 metres and 3 metres.
- Weather protection is provided at the entry.
- The proposal includes a large roof garden area of 62.3 square metres.

- Each dwelling has between 18 cubic metres and 21 cubic metres of storage space including 8 cubic metres of external storage.
- The lobby provides a convenient location for services including mail boxes.

The proposal includes two bedrooms on each level that have a battle-axe arrangement or an 'L' shape layout. Standard D26 requires rooms of this type to have access to a window that is clear to the sky from an area of a minimum of width of 1.2 metres and a maximum depth of 1.5 metres.

There are 10 of these dwellings, identified on the plans as the master bedroom or bedroom 1.

Internally these spaces are used for a desk and have a width of 1.26-1.31 metres which exceeds the standard. The depth of these spaces are 1.5 metres and therefore comply with the standard for dwellings 1.01, 2.01, 3.01, 4.01 and 5.01.

The remaining dwellings (1.04, 2.04, 3.04, 4.04 and 5.04) do not comply with this standard with a depth of 1.9 metres. A condition of the recommendation requires the layout of bedrooms 1 and 2 of these dwellings to be amended to show compliance.

Standard D18 requires natural light and ventilation to communal circulation spaces. The communal corridors range in width from 1.6 metres to 1.8 metres. They service four dwellings per level and are short in length at 5 metres running in an 'L' shape. Due to these factors, the communal corridor is still considered to provide an acceptable level of amenity, despite not meeting this Standard.

Does the proposal comply with the building separation requirements of Clause 22.07?

On the north side of the development there are two bedrooms on each level that face a lightwell on the northern boundary of 5.13 metres by 1.32 metres (6.7 square metres). For the first four residential levels, the lightwell is required to have a minimum area of 9 square metres and a minimum width of 2 metres, 6.8 square metres is proposed with a minimum width of 1.3 metres.

At the fifth floor, Clause 22.07 requires the lightwell to have a minimum depth of 4.5 metres and a minimum area of 29 square metres which the proposal significantly falls short by 13.5 square metres.

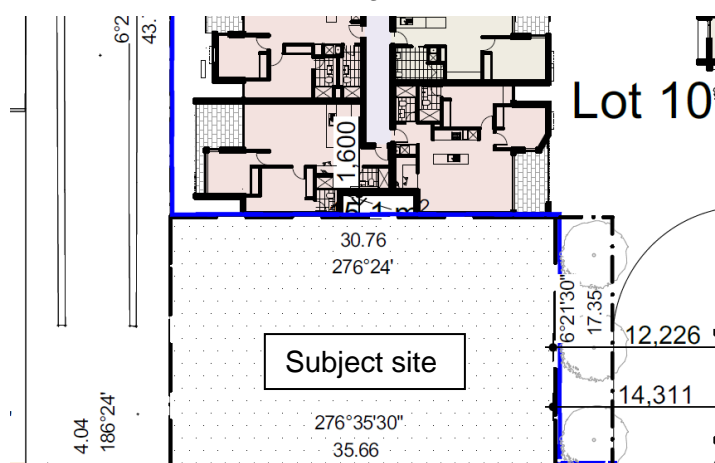
The size of the lightwell at levels 1-4 is acceptable for the following reasons:

- A permit has been issued for the northern adjoining property which includes a simultaneously constructed light well. When combined with the proposed light well the total area is 15.1 square metres.
- There are no windows from the adjoining property facing into the lightwell. The construction of this building does not impede upon the amenity of those dwellings.
- If the approved development on the northern adjoining property was proposed to be amended the site would remain restricted by Clause 22.07 and the amenity of the subject site would be protected.
- A condition of the recommendation will require the light well at the fifth floor to be significantly increased, improving daylight access to the dwellings at levels 1-4. This is discussed below.

- The size of the lightwell at this level assists with daylight to the lower levels.
- Any amendment to the development at the northern adjoining property could compromise this site.
- No daylight modelling demonstrating adequate daylight access with the reduced lightwell size has been provided by the applicant.
- At this level the proposed roof level of the adjoining building to the north is 1.67 metres above floor level however this arrangement is largely dependent upon the northern adjoining site.
- Clause 22.07 includes the following objective: *‘To ensure the reasonable future development opportunities of adjoining sites.’* If the adjoining site were to apply for a new planning permit or amend the existing planning permit in the future, access to daylight for the subject site would be unreasonably compromised.
- The northern adjoining lightwell has no windows facing into it is appropriate in this instance to rely upon the neighbouring site at the lower levels. If the lower levels were to be amended and windows added it could incorporate screening or maintain its existing arrangement where the windows face east and west.

Does the proposal result in any unreasonable impacts upon neighbouring properties?

There are no unreasonable opportunities for overlooking. The dwellings generally face east or west and face either Elm Grove or the road reserve adjoining the residential and retail building of the EBV both of which exceed 9 metres in width.



Typical layout of lot 10 of Stage 3 of the East Brunswick Village adjoining the common light court.

Has adequate car and bicycle parking been provided?

A total of 31 spaces are required pursuant to Clause 52.06 (car parking) of the Moreland Planning Scheme and the development provides 22 on-site spaces.

The Development Plan includes an Integrated Transport Plan, which was endorsed to comprise part of the Development plan. It states that:

the residential parking within the Development Plan Area is to be provided at overall rates if not less than... 1.0 per two bedroom and 1.5 per three bedroom dwelling.

Applying these rates, 25 spaces should be provided. The proposal falls short of this requirement by 3 spaces.

Based on Council's Local Planning Policy at Clause 22.03-3 (Car and Bike Parking and Vehicle Access) it is considered reasonable to reduce the car parking requirements by three spaces particularly given the proximity to public transport, services and the Activity Centre context. Clause 22.03-3 states that it is policy to:

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

The proposal is located within the Brunswick Activity Centre and has excellent access to public transport including the Nicholson Street tram routes and provides bicycle parking spaces in excess of the rate specified in Clause 52.34.

Council's City Change Development Advice Unit is satisfied that car parking requirement can be reduced for this application.

Vehicles, whether related to this or other developments in the street, can only park on the street in accordance with any parking regulations. The number of vehicles that can park on the street and at what time will be dictated by the parking restrictions and the availability of on-street car spaces. It is expected that the level of parking provided will cater for car ownership levels of the occupiers.

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

The proposal provides a total of 28 bicycle parking spaces, 24 within a bicycle storage room at ground floor and four on Elm Grove adjoining the proposed street tree.

The endorsed Integrated Transport Plan requires:

Resident bicycle parking is to be provided at one space per dwelling. Bicycle parking is also to be provided for retail and commercial uses in excess of the planning scheme requirement. Visitor bicycle parking is to be provided at purpose built parking facilities.'

Applying this rate, 20 bicycle spaces are required. The proposal exceeds this by eight and therefore provides an appropriate provision. A condition included in the recommendation requires a public works plan to show (amongst other things) the bicycle parking within the road reserve. This will ensure it is constructed to Council's satisfaction.

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

In relation to traffic impacts, Council's Strategic Transport and Compliance Branch have assessed the proposal and consider that the development remains within the road's design capacity and is not expected to cause traffic problems. Whilst Elm Grove provides a pedestrian connection it does not provide a vehicle connection through or from the remainder of the EBV.

The endorsed Development Plan (Integrated Transport Plan) anticipates 950 vehicle movements per day at the intersection of Elm Grove and Albert Street given the extent of development anticipated by the Development Plan as a whole. The anticipated daily traffic generation caused by the proposal is projected to equate to 103 movements per day. The proposal therefore remains significantly below this rate and represents a contribution towards anticipated traffic movements in this street that is commensurate with the scale of the development.

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

The proposal provides an acceptable response to Council's Local Planning Policy Clause 22.03 (Car and Bike Parking and Vehicle Access) as it provides 28 bicycle spaces. Conditions in the recommendation require the bicycle spaces to be separate from the waste storage area as well as being appropriately sized.

With regard to pedestrian safety the design is generally in accordance with the Endorsed Landscape Masterplan that forms part of the Development Plan. The Landscape Masterplan shows paving around the building at the east and west frontages and three trees in raised planters set down into the slab at the rear of the site. This has been provided on the development plans. A tree is also required within the footpath of Elm Grove. This will be required to be shown on the public works plan.

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

The proposal is supported by Council's ESD officers and achieves best practice in accordance with Clause 22.08 of the Moreland Planning Scheme.

The Sustainable Management Plan subject to conditions in the recommendation is generally adequate for implementation and includes the following ESD features:

- A communal green roof comprising of planting and canopy cover.
- Water efficient taps, showers and toilets.
- Low toxicity materials.
- Commitment for recycling a minimum of 80% construction and demolition waste.
- 6.9 star average energy rating (best practice aims for 6.5 stars, so this is an improvement upon minimum best practice).
- 9,000L rainwater harvesting tank.

Is the site potentially contaminated?

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

Is the proposal accessible to people with limited mobility?

All of the proposed apartments will be visitable as encouraged by Council's MSS and 5 out of 20 apartments are proposed to be adaptable (25%). The endorsed Development Plan - Access Plan anticipates a provision of adaptable housing ranging between 10% and 30%. This requirement has therefore been met.

Standard D17 of Clause 58.05-1 (Accessibility) requires 50% of the dwellings to meet the accessible standard. A condition will require the submission of an amended Access Plan and plans demonstrating compliance with this Clause also.

5. Response to Objector Concerns

The following issues were raised by the objector:

- The design is dependent upon the removal of the adjoining substation.
- The removal of the substation impacts upon the heritage and industrial history of the area.
- The design could be modified to accommodate the retention of the substation.

An electrical substation adjoins the subject site to the west. It sits along the western boundary within the Elm Grove road reserve. The substation is constructed of brick and double storey in height. The substation does not comprise part of the subject site nor is it within land owned by the permit applicant.

Amendment C174 proposes to introduce new heritage places into the Moreland Planning Scheme. At its meeting 13 March 2019 (DCF13/19) Council resolved to endorse the Moreland Heritage Gaps Study 2019 and request an independent panel. This Amendment does not include the substation in a Heritage Overlay. In addition, the subject site does not fall within a Heritage Overlay and is not proposed to be included in any heritage related amendments to the Moreland Planning Scheme. Neither the subject site or the substation were included in the exhibited amendment and they are not within the interim heritage overlay.

The panel hearing was held in May 2019. The panel report has not yet been released. Council's position at the hearing was that the substation does not form part of the amendment.

The approved Development Plan contemplates the removal of the substation.

The proposal assumes and is reliant upon the demolition of the substation as it sits in front of the residential lobby and the primary light source of dwelling 1.01. The developer has explored the viability of retaining the substation and found it unviable for their purposes.

The demolition of the substation will need to undergo a separate approval process with Citipower. A condition of this recommendation therefore requires that the substation building be removed prior to the commencement of the development, at the cost of the permit holder.

The substation's location and potential demolition are not matters which warrant refusing the application.

6. Officer Declaration of Conflict of Interest

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

7. Financial and Resources Implications



There are no financial or resource implications.

8. Conclusion

It is considered that the proposed development is generally in accordance with the approved Development Plan, provides acceptable internal amenity, will positively contribute to the character of the area and is acceptable.

On the balance of policies and controls within the Moreland Planning Scheme and objections received, it is considered that Planning Permit MPS/2017/245 should be issued, subject to the conditions included in the recommendation of this report.

Attachment/s

- | | | |
|---|--|------------|
| 1  | Locality Plans - 2 Elm Grove, Brunswick East | D19/209111 |
| 2  | Development Plan - 2 Elm Grove, Brunswick East | D19/209080 |