

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

**ADMINISTRATIVE DIVISION**

**PLANNING AND ENVIRONMENT LIST**

VCAT REFERENCE NO. P2451/2016  
PERMIT APPLICATION NO. MPS/2015/595

<b>APPLICANT</b>	Land Republic Pty Ltd
<b>RESPONSIBLE AUTHORITY</b>	Moreland City Council
<b>SUBJECT LAND</b>	718-724 Sydney Road, Coburg
<b>WHERE HELD</b>	Melbourne
<b>BEFORE</b>	Tracey Bilston-McGillen, Member
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	31 July 2017
<b>DATE OF ORDER</b>	2 August 2017
<b>CITATION</b>	Land Republic Pty Ltd v Moreland CC [2017] VCAT 1157

**ORDER**

- 1 The decision of the responsible authority is varied.
- 2 The Tribunal directs that planning permit MPS/2015/595 must contain the conditions set out in planning permit MPS/2015/595 issued by the responsible authority on 21 October 2016 with the following modifications:
  - (a) Condition 1(r) is deleted.
  - (b) The preamble to condition 1 is amended to read:

Before the use and development commences, amended plans must be to the satisfaction of the Responsible Authority and 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 tree copies must be provided. The plans must be generally in accordance with the plans received 28/06/2016 but modified to show:
- 3 The responsible authority is directed to issue a modified planning permit in accordance with this order.

**Tracey Bilston-McGillen**  
**Member**

## APPEARANCES

For applicant	Mr Ed Zagami, town planning consultant, Planning Studio on Peel.
For responsible authority	Mr Stephen Rowley, town planning consultant, RCI Planning.

## INFORMATION

Description of proposal	Use and development of land for two multi-storey buildings (plus basement) containing retail spaces and dwellings, to remove vegetation, to alter access to a road in a Road Zone Category 1 and to reduce car parking requirement associated with a shop.
Nature of proceeding	Application under section 80 of the <i>Planning and Environment Act 1987</i> – to review condition 1(r) contained in the permit which reads: <p style="margin-left: 40px;">The deletion of levels 5 from both buildings, to create two 5 storey buildings.</p>
Zone and overlays	Activity Centre Zone, Schedule 1. Development Contribution Plan Overlay, Schedule 1. Environmental Audit Overlay. Environmental Significance Overlay, Schedule 1. Erosion Management Overlay (part site). Parking Overlay, Schedule 1.

## Permit requirements

Clause 37.08-2 A permit is required for the use of a dwelling.

Clause 37.08-5 A permit is required for all buildings and works.

Clause 44.01-1 A permit is required to construct a building or construct or carry out works, and to remove vegetation.

Clause 42.02-1 A permit is required to construct a building or construct or carry out works.

Clause 52.06 A permit is required for a reduction of the standard car parking requirement associated with a shop.

Clause 52.29 A permit is required to create or alter access to a Road Zone.

## Land description

The review site comprises of four lots at 718-722 Sydney Road, Coburg. The site has a frontage to Sydney Road of 60.60 metres, a depth of 52 metres and a total site area of 3177 square metres.

The review site is currently occupied by a vacant retail and warehouse building.

The review site abuts the Coburg Lake Reserve to its rear boundary. To the north is a single storey motel and to the south is a commercial/industrial building.

## REASONS<sup>1</sup>

### ORAL REASONS GIVEN

- 1 After having heard from parties and considered their written and oral submissions, I stood the matter down for a short period of time, then returned to provide an oral decision with reasons. What follows is a written record of the reasons given orally at the hearing.
- 2 This is an application for review against condition 1(r) which requires the deletion of a level of the building to result in two five level buildings (to Sydney Road).
- 3 In making an assessment, there are a few background factors to note including the following.
  - i There is no policy dispute that the site is well placed for higher density development.
  - ii There was Council Officer support for the proposed development at 6 storeys.
  - iii The site is zoned Activity Centre Zone, Schedule 1. The zone establishes a preferred maximum height of 14.4 metres and a streetwall to Sydney Road of 7.5 metres. The zone establishes clear guidance on the matters to consider when a building is seeking to exceed the maximum building height or setbacks. These matters include:
    - Does the development support the vision of the activity centre?
    - Is the development of exemplary quality design that makes a positive contribution to the character of the neighbourhood?
    - Does the additional height result in:
      - i. Specific design benefits;
      - ii. Facilitating benefits to the community;
      - iii. No adverse impact on the public realm, streetscape;
      - iv. Meeting overshadowing standards; and
      - v. Does not cause an unreasonable visual impact on surrounding streets, public spaces.
- 4 Essentially, it was Council' submission that despite the benefits of the proposal including the positive features such as the link between the Park and Sydney Road, the preferred heights nominated in the Activity Centre Zone warrant support. It was put that the heights express the strategic

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<sup>1</sup> The submissions and evidence of the parties, any supporting exhibits given at the hearing and the statements of grounds filed have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons.

intent of the planning scheme. It was further put to me that Amendment C123 is relatively new and should therefore be given weight to ensure compliance.

- 5 This site will be 'the first' in Precinct 8 to be developed to such as height (as it was put to me and I understand). In coming to my conclusion to delete condition 1(r), I have placed weight on the guidelines/tests established in the zone when considering buildings that propose to exceed the maximum building height. My assessment against these guidelines/tests result in the following observations.
  - i The proposed development supports the vision of the Activity Centre Zone. It is a mixed use building that will contribute to achieving a vibrant and diverse pedestrian orientated, high density mixed use zone.
  - ii I agree with Mr Czarny that the building is of exemplary quality design. This is largely the result of the 'generosity' of design features such as:
    - o The width of the communal courtyard.
    - o The provision of communal gardens.
    - o The materials proposed.
    - o The variation in setbacks between the lower and upper levels.
    - o The positive interface treatment of the building to the Park.
    - o It removes an old industrial use that has a poor interface with the Park.
  - iii The proposed building facilitates benefits to the community including:
    - o The provision of a generous pedestrian walkway linking Sydney Road and the Park.
    - o The provision of access stairs from the Park to the proposed development.
    - o The pop up kiosk spaces provided at the ground level adjoining the walkway. These spaces provide for a positive pedestrian experience.
    - o Improved safety and security of the Park due to visual surveillance from the building.
  - iv The proposed building at six levels (to Sydney Road) does not have an adverse impact on Sydney Road or the public realm.
  - v The six level building or additional 4.1 metres, does not have an unacceptable visually imposing impact on surrounding streets, public space or private open space.
- 6 Other factors to take into account in reaching my decision include:

- It is further noted, as Council Officers did, that there are no immediately adjoining small-scale dwellings within the sites immediate context.
  - I note the comments of the Panel considering Amendment C123 with regards to the two ‘extra levels’ (as put to me by Mr Zagami), but I do not give these statements weight as they did not translate to the planning control. I do however make the observation that the proposed building has a ‘distinctive top’.
  - I do not agree that the building is a gateway location, therefore used as a reason for allowing increased height. The building will be taller than its neighbours until such time that the adjoining site, particularly to the north is developed.
- 7 I agree with Council that when discretion is maintained in a control, it is not to be abused. That is why, it is important to apply the controls own guidelines/tests to establish the impact of exceeding the control (height or setback). In this case, applying these guidelines/tests, Council has not demonstrated that the approval of this building would undermine the control or vision of the control. This building, given its high quality design and number of public benefits, sets a high bar, for any future development assessment against the control.
- 8 I will order that condition 1(r) is deleted.
- 9 I will also amend the preamble to condition 1 to reflect the correct date of reference for the plans being 2016 not 2015.

**Tracey Bilston-McGillen**  
**Member**