

## VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

### PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P874/2022  
PERMIT APPLICATION NO. MPS/2021/1029

### CATCHWORDS

Section 79 of the *Planning and Environment Act 1987*; review of failure to determine to grant a permit within time; Moreland Planning Scheme; Mixed Use Zone; Design and Development Overlay Schedule 19 - Brunswick Activity Centre - Lygon Street Local Area; six storey apartment building and reduction of car parking; preferred building height; street wall height; building scale and form; visual impacts and overshadowing

<b>APPLICANT</b>	55 Albert Street Pty Ltd
<b>RESPONSIBLE AUTHORITY</b>	Merri-bek City Council
<b>RESPONDENTS</b>	Andrea Bunting & Nancy Atkin
<b>SUBJECT LAND</b>	53-57 Albert Street BRUNSWICK EAST VIC 3057
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	8 and 9 December 2022
<b>DATE OF ORDER</b>	13 January 2023
<b>CITATION</b>	55 Albert Street Pty Ltd v Merri-bek CC [2023] VCAT 23

### ORDER

#### Permit application amended

- 1 Pursuant to clause 64 of schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998*, the permit application is amended by:
  - Substituting the following plans for the application plans:
    - Development plans prepared by Jackson Clements Burrows Architects;
    - Drawing nos. TP0-000, TP00-001, TP0 -101, TP0-201 to TP0-204, TP1-101 to TP1-109, TP2-101 to TP2-108, TP3-101 to TP3-105, TP3-110, TP10-100 to TP10-101, TP10-103 to TP10-107, TP10-210 to TP10-232, TP10-250 to TP10-262 and TP10-400 all Revision C and dated 21/10/2022 and TP10-102, Revision B and dated 21/10/2022.
  - Amending the permit preamble to read:
    - Construction of a five storey apartment building and a reduction in the car parking requirement

### Permit granted

- 2 In application P874/2022 the decision of the responsible authority is set aside.
- 3 In planning permit application MPS/2021/1029 a permit is granted and directed to be issued for the land at 53-57 Albert Street Brunswick East VIC 3057 in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
  - Construction of a five storey apartment building and a reduction in the car parking requirement

**Christopher Harty**  
**Member**

### APPEARANCES

For 55 Albert Street Pty Ltd

Mr John Cicero, Solicitor from Best Hooper Lawyers. He called the following witnesses:

- Mr Jonathan Clements, Architect from Jackson Clements Burrows Architects
- Ms Julia Bell, Urban Designer from Kinetica Studio Pty Ltd
- Mr Tim McBride-Burgess, Town Planner from Contour Consultants Aust. Pty Ltd
- Mr Stan Zaslavsky, Visual Amenity Engineer from Eagle Vision

For Merri-bek City Council

Ms Louise Lunn, Town Planner from Louise Lunn Planning. She called the following witness:

- Mr Alistair Campbell, Urban Designer from Hansen Partnership Pty Ltd

For Dr Andrea Bunting and Ms Nancy Atkin

Both in person (Dr Bunting presenting)

**INFORMATION**

Description of proposal	The demolition of an existing warehouse and construction of a six storey apartment building with basement and reduction in the car parking requirement.
Nature of proceeding	Application under section 79 of the <i>Planning and Environment Act 1987</i> – to review the failure to grant a permit within the prescribed time. <sup>1</sup>
Planning scheme	Merri-bek (Moreland) Planning Scheme
Zone and overlays	Mixed Use Zone Schedule 1 – <i>Moreland Mixed Use Areas (MUZ1)</i> Design and Development Overlay Schedule 19 – <i>Brunswick Activity Centre – Lygon Street Local Area (DDO19)</i> Environmental Audit Overlay ( <b>EAO</b> ) Development Contributions Plan Overlay Schedule 1 – <i>Moreland Development Contributions Plan Overlay (DCPO1)</i> Parking Overlay Schedule 1 – <i>Mixed Use, Residential Growth, Commercial and Activity Centre Zones (PO1)</i>
Permit requirements	Clause 32.04-6 to construct two or more dwellings on a lot Clause 43.02-2 to construct a building or construct or carry out works Clause 52.06-3 to reduce the number of required car parking spaces
Relevant scheme policies and provisions	Clauses 02.01, 02.03, 02.04, 11, 15, 16, 18, 32.04, 43.02, 45.03, 45.06, 45.09, 52.06, 52.34, 53.18, 58, 65 and 71.02

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<sup>1</sup> Section 4(2)(d) of the *Victorian Civil and Administrative Tribunal Act 1998* states a failure to make a decision is deemed to be a decision to refuse to make the decision.

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## Land description

The subject land is located on the north side of Albert Street bounded by Cross Street to its east and Sedgman Street to its west. It is generally regular in shape with a frontage to Albert Street of 43.1 metres, 39.8 metres to its frontage to Sedgman Street and 43.5 metres to its frontage to Cross Street with an overall area of 1,779 square metres. The subject land is on the eastern edge of the Brunswick Activity Centre and within the Lygon Street Local Area with Lygon Street approximately 160 metres to the west. The subject land is currently developed with a single storey brick commercial warehouse constructed to its north, south, east and west boundaries. An existing crossover is in Sedgman Street and two crossovers are in Cross Street.

Fleming Park is located opposite the subject land to the east across Cross Street and is in the Heritage Overlay (**HO509**). The surrounding area is a mix of single and double storey Victorian terrace dwellings along Albert Street to the west and along Sedgman Street which are in the Heritage Overlay (**HO1**). Opposite the subject land to the south is a six storey apartment development with a three storey street wall. Further east on the opposite side of Albert Street is single storey inter and post war Californian bungalow housing.

## Tribunal inspection

5 January 2023 unaccompanied



## REASONS<sup>2</sup>

### WHAT IS THIS PROCEEDING ABOUT?

- 1 This is an application by 55 Albert Street Pty Ltd (**applicant**) to review the failure by Merri-bek City Council (**Council**) to grant a permit within the prescribed time for the construction of a six storey apartment building and a reduction in the car parking requirement at 53-57 Albert Street, Brunswick East (**site**). The review application was lodged on 11 July 2022.

### What is proposed?

- 2 The proposal (refer to Figures 1 and 2) is for a six storey building, that includes:
  - One basement level containing 50 car spaces, storage areas and bin room accessed from Cross Street and six storeys above.
  - At ground level or first storey, a centrally located communal garden (195.8 square metres) and a communal amenities room surrounded by a pedestrian accessway to dwellings fronting Albert Street, Cross Street and to the north of the site. On the western side of the ground level is secure storage for 152 bikes, a substation, and a communal deck/lobby.
  - Over six storeys, 68 dwellings comprising a mix of one, two and three bedroom apartments with each apartment provided with private open space in the form of balconies or terraces that either overlook Albert Street, Sedgman Street, Cross Street or the internal void created by the communal gardens at ground level.
  - At the fifth level (sixth storey) a communal terrace 120 square metres in area located on the south west corner of the development set back 3 metres from the western boundary, 4.9 metres from the southern boundary and 21.2 metres from the northern boundary. This level provides for one apartment set back 4.9 metres from Albert Street and two apartments set back 10.25 metres from Cross Street.
  - A mix of materials including brick, textured concrete, textured cement sheets, exposed aggregate and metal cladding.
  - Overall height of 19.84 metres (not including the 1.2 metre screening to the roof air conditioning condenser plant).
  - Materials that include textured cement sheeting, Australian hardwood timber and powder coated metal finishes.

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<sup>2</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.



Figure 1: Artist impression looking north-west to the corner of Albert and Cross Streets.



Figure 2: Artist impression looking north-east to the corner of Albert and Sedgman Streets.

### **What is the overall position of the parties?**

- 3 Council advised that, after lodgement of the review, it considered the permit application on 24 August 2022 where it resolved that the permit application be refused on the following grounds:

1. The development fails to satisfy the following requirements and objectives of Schedule 19 to the Design and Development Overlay at Clause 43.02 of the Moreland Planning Scheme by:
  - a) Not providing a built form transition between the Lygon Street Corridor and adjoining low-rise residential areas and Fleming Park;
  - b) Proposing a highly visible development that exceeds the preferred building height on a site not identified as a key redevelopment site;
  - c) Not protecting or enhancing the amenity nor maintaining solar access to Albert Street, an identified key pedestrian street;
  - d) Not maintaining solar access to Fleming Park; and
  - e) Not maintaining reasonable amenity for residential properties near the site.
2. The proposal results in overshadowing of the Albert Street footpath and Fleming Park, contrary to Clause 15.01-1L (Urban Design in Moreland).
3. The proposal does not satisfy the following objectives and standards of Clause 58 (Apartment Developments) of the Moreland Planning Scheme:
  - a) Clause 58.02-1 – Urban Context Objectives (Standard D1) – The design fails to contribute to the preferred future development of the area or respond to the features of the site and surrounding area, particularly the heritage context, and is not an appropriate design response to the urban context and the site;
  - b) Clause 58.02-5 – Integration with the Street (Standard D5) – The design utilises high solid front fencing (walls) to the street that limits the activation at the ground level;
  - c) Clause 58.05-3 – Private Open Space (Standard B20) – The design includes insufficient dimensioned ground floor secluded private open space areas that do not allow for the reasonable recreation and service needs to residents; and
  - d) Clause 58.07-3 – Windows (Standard D28) – The design includes habitable rooms with poorly located windows that have poor access to daylight and result in compromised internal amenity.
- 4 In October 2022, the applicant circulated amended plans which I have substituted as the plans under consideration. They made the following changes as summarised by Council:
  - overall decrease in height by 1 metre
  - reduction in floor to ceiling heights by an average of 300mm



- reduced height of vertical ‘pillars’ to eastern elevation:
    - from 5 to 4 storeys
    - decrease in area to east facing apartment 406-408 by setting back the main bedroom by 300mm and replacing it with a planter, reducing the vertical ‘pillar’ heights – reducing the overall visual bulk and decreased shadow
  - reduction in parapet height from 700mm to 300mm with level 04 parapet reduced from 1000mm to 300mm
  - deletion of 3 apartments to Level 05 reducing overall visual bulk to the north-west interface of Sedgman and Albert Streets and reducing shadows to the Albert Street southern footpath.
  - deletion of 3 apartments at Level 05 – reduce visual bulk to the north-west interface of Sedgman and Albert Streets and reduce shadows to the Albert Street southern footpath
  - additional 120 square metres of communal open space provided to level 5 (in place of removed apartments)
  - 117 square metres of additional roof area for the provision of solar PVs
  - increased setbacks
  - Level 05
    - 4.9m to southern interface
    - 10.47m to eastern interface
    - Increase to green space and planters to the perimeter setback to the north, east, south and west
  - Level 04
    - Private Open Space setback 300mm – additional planters to southern facing apartments 403 & 405
  - reduction from the 71 to 68 dwellings.
- 5 The amended plans were also supported by an updated urban context report and an updated sustainability management plan.
- 6 Council advised that following a review of the amended plans circulated for substitution, it's grounds of refusal remained except for the deletion of grounds 3b and 3c.
- 7 Council relies upon the urban design evidence of Mr Alastair Campbell from Hansen Partnership Pty Ltd and overall, maintains that the proposal should not be supported. Council considers the overall height and massing of the built form of the proposal exceeds the preferred maximum height provision in Design and Development Overlay Schedule 19 relating to the *Brunswick Activity Centre - Lygon Street Local Area (DDO19)* and does not appropriately meet its design objectives. The result is that the proposal



does not appropriately sit within the immediate urban context, transition down to its more sensitive residential and public open space interfaces and fails to maintain solar access to Albert Street which is a key pedestrian street or to Fleming Park.

- 8 The respondents, Ms Bunting, and Ms Atkin (**objectors**) support Council's position reiterating the excessive height and overshadowing impacts as well as poor traffic integration with vehicular and pedestrian access to the site adjoining one another in Cross Street potentially causing safety conflicts and its interface with Fleming Park. Regarding additional overshadowing of part of Fleming Park, they expressed concern the proposal could set a precedent for additional overshadowing to occur along the frontage of Fleming Park along Cross Street with future redevelopment.
- 9 In contrast, the applicant considers the proposal represents a considered and appropriate built form outcome which has had regard to and is consistent with the strategic and physical context of the site and the requirements of the Moreland Planning Scheme (**planning scheme**). The applicant relies on the urban design evidence of Ms Julia Bell from Kinetica Studio Pty Ltd, planning evidence of Mr Tim McBride-Burgess from Contour Consultants Aust. Pty Ltd, architectural design evidence from Mr Jonathan Clements from Jackson Clements Burrows Architects and the photomontage imagery evidence from Mr Stan Zaslavski from Eagle Vision.

## WHAT ARE THE KEY ISSUES?

- 10 The issues raised within the context of this review relate generally to the proposal's design responsiveness to the policy and physical contexts of the area, impacts from overshadowing and internal amenity. Having heard the submissions and evidence and inspected the site and locality, the key issues arising from this proposal are:
  - Does the proposal provide an appropriate built form response?
  - Does the proposal have unreasonable overshadowing impacts?
  - Does the proposal provide an appropriate internal amenity outcome?
- 11 I must decide whether the proposal will produce an acceptable outcome having regard to the relevant policies and provisions in the planning scheme. Net community benefit is central in reaching a conclusion. Clause 71.02-3 - *Integrated Decision Making* of the planning scheme requires the decision-maker to integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development.
- 12 With this proposed development I must decide whether a permit should be granted and, if so, what conditions should be applied.
- 13 Having considered all submissions and evidence presented with regards to the applicable policies and provisions of the planning scheme and from my

inspection, I find the proposal achieves an acceptable outcome subject to changes reducing the overall height from six to five storeys and reducing the street wall height facing Albert Street from four to three levels with upper-level setbacks.

- 14 Subject to changes to reduce street wall height to Albert Street and the overall building height, the proposal presents as a satisfactory design response to both the physical and policy contexts of the area. With the changes, I consider the proposal achieves a net community benefit and I have decided to set aside the decision of Council and direct that a permit is granted subject to conditions outlined in Appendix A. My reasons follow.

### **DOES THE PROPOSAL PROVIDE AN APPROPRIATE BUILT FORM RESPONSE?**

- 15 The site is within the Brunswick Activity Centre and more particularly within the Lygon Street Corridor as identified in the *Brunswick Structure Plan Reference Document, April 2018 (BSP)*.<sup>3</sup> The Lygon Street Corridor is the central corridor spine that forms part of the broader Brunswick Activity Centre with the Sydney Road/Upfield Corridor to the west and the Nicholson Street Corridor to the east.
- 16 The BSP is an amalgamation of previous strategic work related to the Brunswick Activity Centre including the Brunswick Structure Plan (2010), the Brunswick Structure Plan Addendum (2012) and the Sydney Road and Upfield Corridor Strategic Framework Plan (2014). There have been various amendments (notably, Amendments C134 and C164) to the planning scheme to incorporate the strategic directions of this work culminating in the application of various zones and overlays guiding the land use and built form aspirations of the area.
- 17 Any design response by a proposal to redevelop and intensify the use and development of land in the Brunswick Activity Centre needs to appropriately respond to both the policy and physical context of the site and its setting as it relates to built form.<sup>4</sup> The planning scheme sets the tone as to how a proposed development should respond to these aspirations.

### **The zone and policy context**

- 18 The site is in the Mixed Use Zone Schedule 1 – *Moreland Mixed Use Areas (MUZI)*, which has the following purposes:
- To implement the Municipal Planning Strategy and the Planning Policy Framework.
  - To provide for a range of residential, commercial, industrial and other uses which complement the mixed-use function of the locality.

<sup>3</sup> Refer to Figure 2 of the Brunswick Structure Plan Reference Document, April 2018.

<sup>4</sup> This is referred to under the purposes of Clause 58 of the planning scheme.

- To provide for housing at higher densities.
- To encourage development that responds to the existing or preferred neighbourhood character of the area.
- To facilitate the use, development and redevelopment of land in accordance with the objectives specified in a schedule to this zone.

19 Schedule 1 to the zone includes the following objective:

To ensure the design and siting of new buildings maximise landscaping throughout the site, including the retention of existing canopy trees (where practicable) and the planting of new canopy trees and vegetation.

20 The proposal is for residential use only and does not include a mix of land uses. No permit is triggered for the use of land but only for the development of the site for two or more dwellings.<sup>5</sup> An apartment development of five or more storeys, excluding a basement, must meet the requirements of Clause 58 of the planning scheme.

21 The site is also affected by DDO19, which has the following design objectives relevant to the matter:

- To create a new mid rise built form character that provides a built form transition between the Lygon Activity Corridor and adjoining low-rise residential areas.
- To ensure highly visible development is limited to identified key redevelopment sites and responds to specific design objectives.
- To protect and enhance the amenity, and maintain solar access to existing and proposed public open spaces and key pedestrian streets, and maintain reasonable amenity for residential properties adjacent to or within the activity centre.

22 A permit is required for buildings and works under Clause 43.02-2 of DDO19.

23 DDO19 establishes a preferred maximum building height of 14 metres for the site identified in the *Lygon Street Local Area Built Form Controls, Map 1A (North)* and as shown in Figure 3. A street wall height or upper-level setbacks are not specified for the site under DDO19. Building height is specified as the vertical distance between the footpath or natural surface level at the centre of the site frontage and the highest point of the building and does not include architectural features and service equipment.

24 The proposal includes an overall building height of 19.8 metres, which exceeds the preferred maximum building height of 14 metres by 5.8 metres.

25 Regarding building layout and detailed design, DDO19 seeks development to incorporate active edges at street level with windows at all upper-level

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<sup>5</sup> Clause 32.04-6.



facades, minimisation of vehicle access and car parking on the public realm and careful integrated design with service cabinets.

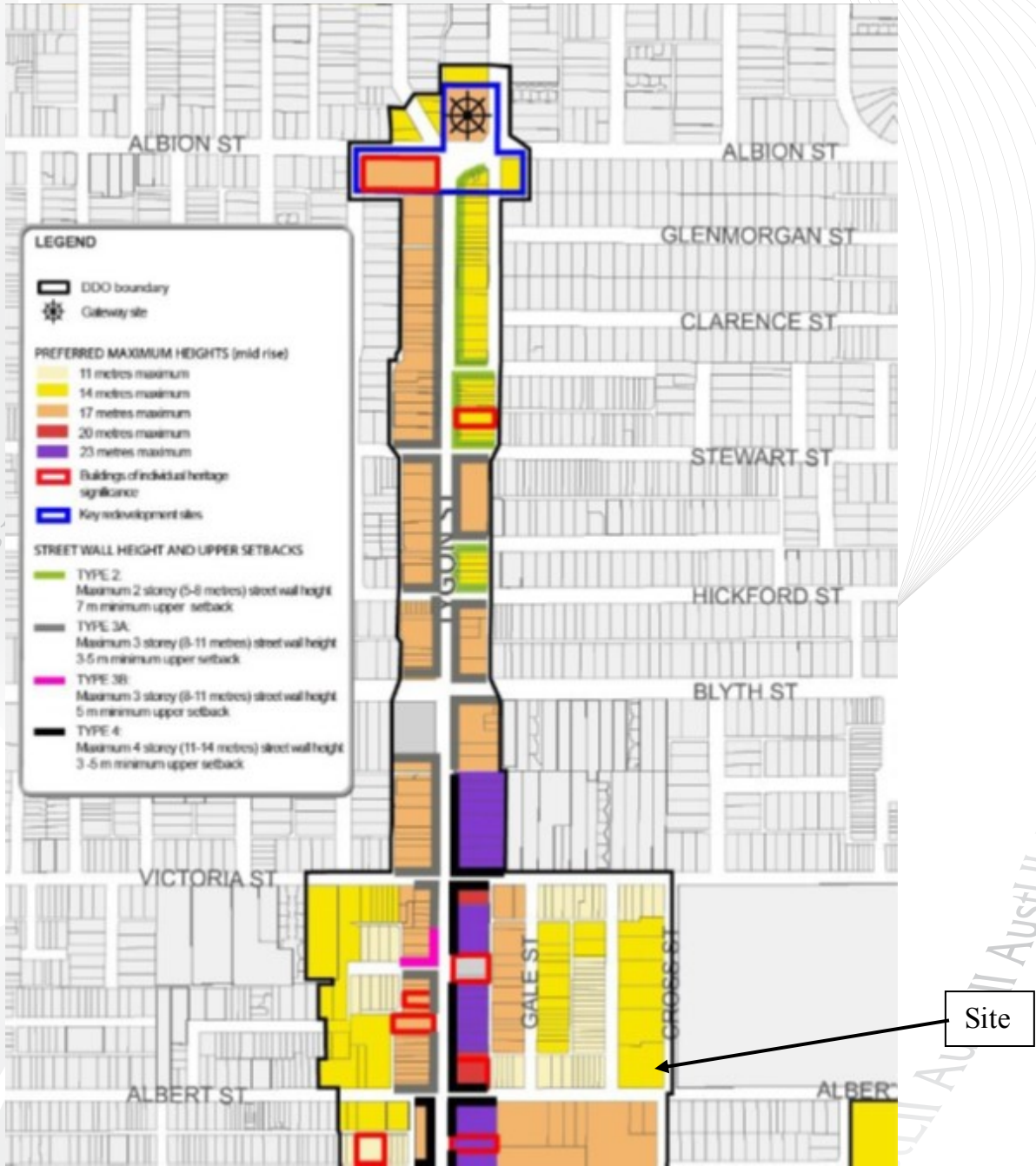


Figure 3: Map 1A from DDO19.

- 26 Relevant decision guidelines outlined in DDO19 include reference to the BSP and considerations regarding whether the maximum building height is achievable and an increased upper level setback is appropriate having regard to an adjoining site within the Heritage Overlay.



- 27 Policy recognises the Brunswick Activity Centre as a Major Activity Centre<sup>6</sup> designated to accommodate substantial residential/mixed use growth and change to create a new character of increased density and scale of built form. The site is located within the Brunswick Activity Centre as depicted in the *Activity Centre Framework Plan* under Clause 02.04.
- 28 Policy at Clause 02.03-5 – *Housing* seeks to facilitate housing in accordance with the *Housing Framework Plan* under Clause 02.04 which shows the site located within a *Transition-Residential Area* applicable to redevelopment of former industrial buildings.
- 29 Generally, Clause 11.01.1S - *Settlement*, Clause 11.03-1S - *Activity Centres*, Clause 15.01.1 - *Urban Design*, Clause 15.01.4S - *Healthy Neighbourhoods* and Clause 18.02-3R - *Principal Public Transport Network* all include objectives that support increased residential densities in areas that are well served by social and physical infrastructure and public transport.
- 30 Policy more specific to the proposal relating to *Urban design in Moreland* under Clause 15.01-1L seeks to ensure built form is designed with appropriate articulation, good surveillance and with active frontages. Notably, one of the strategies includes designing and siting development to not unreasonably overshadow public open space, which is a relevant issue with respect to Fleming Park to the east of the site.
- 31 Policy under Clause 15.01-2L – *Building design in Moreland* seeks to encourage good quality contemporary architecture and in relation to *Apartment developments in Moreland* sets out relevant detail with respect to setback and separation policy to guide development to ensure adequate daylight access, management of overlooking, provision of reasonable outlooks and future development opportunities on adjoining sites and management of amenity impacts.
- 32 The BSP is a background document under the schedule to Clause 72.08 and referred to in the decision guidelines in DDO19. The site is within Precinct 2B - *Lygon Street Central* of the Brunswick Activity Centre. The BSP says this area has significant capacity to provide new housing through good quality redevelopment of industrial sites.

### **The physical context**

- 33 The site is effectively a peninsula because it has three road frontages - to the south, east and west and adjoins other industrial buildings to the north. These road frontages provide a sense of separation between the site and other nearby residential areas.

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<sup>6</sup> Clause 02.03-1.

- 34 The site is relatively flat and contains an industrial building. The immediate surrounding area is a mix of land uses including industry, commercial and residential activity.
- 35 The site is located within the Brunswick Activity Centre in an off-corridor location on the eastern edge of the Lygon Street Corridor forming part of the Brunswick Activity Centre. It is on the north side of Albert Street, which is identified as a primary pedestrian-friendly link between Lygon Street and Nicholson Street.
- 36 The site is in an area that is undergoing significant regeneration and close to commercial and community services and facilities. It is:
- Approximately 160 metres east of Lygon Street.
  - Approximately 460 metres west of Nicholson Street.
  - Adjacent to Fleming Park.
  - Proximate to Methven Park.
  - Proximate to a variety of different transport services.
- 37 Opposite the site to the east on the other side of Cross Street is Fleming Park, an open parkland containing the Clarrie Wohlers Senior Citizens Centre (which is proposed to be demolished and replaced by landscaping as part of a new masterplan for the reserve), bowling club passive parkland and a recreational oval. Fleming Park is also affected by the HO509 - *Fleming Park, 47-51 Albert Street, Brunswick East*. The Statement of Significance describes that *Fleming Park is of local historic, representative and aesthetic significance to the City of Moreland. It also has potential social significance for the local City of Moreland community*.
- 38 Opposite the site to the south on the other side of Albert Street, the site interfaces with a number of properties:
- No. 86 Albert Street, which contains a single storey weatherboard dwelling.
  - No. 88 Albert Street, a former warehouse building which is used as a double storey brick dwelling.
  - No. 90 Albert Street, which is used as a café and bakery (Wild Life Bakery).
  - No. 92-96 Albert Street, which is developed with a six storey apartment building of a contemporary design with a three storey street wall and three additional recessed upper levels with an overall building height of 18.49 metres.
- 39 Opposite the site to the west on the other side of Sedgman Street and further west along Albert Street is a row of fine grain residential dwellings including 59 Albert Street, which contains a double storey terrace dwelling

that forms part of a small row of six similar terrace dwellings. Further north along the west side of Sedgman Street is residential dwellings characterised by attached single fronted terrace dwellings which are included within HO1 – *Albert Street Precinct, Brunswick* which extends along the northern side of Albert Street (between Lygon Street and Sedgman Street) and along the western side of Sedgman Street. The same properties are included within the Neighbourhood Residential Zone (NRZ).

- 40 The statement of significance for HO1 refers to the local architectural significance of the Albert Street Precinct with the mix of 19<sup>th</sup> century building types and notable small single storey brick terraces in Sedgman Street contrasted with the ornate two-storey terraces on the north side of Albert Street.
- 41 My inspection of the site and surrounding area including along Sydney Road, Lygon Street and Nicholson Street and around Fleming Park, Methven Park and Balfe Park confirmed the descriptions of the physical context in the submissions of the parties and in the evidence.
- 42 Lygon Street, within the Lygon Street Corridor contains extensive intensive multi-storey built form with the east side of Lygon Street between Albert Street and Victoria Street containing buildings ranging in height from 6 to 11 storeys. Located between these larger built forms and the site are a range of fine grain residential terraces that are limited in development potential because of the combination of the NRZ and the heritage precincts.
- 43 It is clear the area has and is experiencing change with progressively large building forms becoming present in the neighbourhood.

### **The design response and the Tribunal's findings**

- 44 Generally, I find there was no real disagreement concerning the proposal's response to the strategic policy directions for the site and find that:
  - The provision of dwellings in the form of an apartment building is supported and encouraged in this area.
  - The provision of an apartment development will appropriately fit with the changing character of the area.
  - The proposed development is in an area with an emerging built form character that encourages medium density development that is close to a diversity of community and commercial services and public transport options.
- 45 The key dispute was in relation to building height and visual massing.
- 46 Associated with building height was a difference in interpretation of the provisions of DDO19 between Council and the applicant.



- 47 Council says the proposal exceeds the preferred maximum building height of 14 metres which was established under DDO19 through a considered Panel process associated with Amendment C164.
- 48 Amendment C164 proposed a building height of 17 metres for the site. The Panel concluded that such a height would not provide for the stepping down of built form from the robust development evident in Lygon Street to the peripheral areas of the corridor nor give sufficient consideration to Fleming Park to the east and the residential areas to the west of the site that are within the Heritage Overlay. The Panel considered that a scaling down of built form to the periphery of the Lygon Street Local Area would be an appropriate means of recognising the context of the area with finer grain residential housing book-ended by Fleming Park.
- 49 The Panel commented that:
- Both Cross Street and Sedgman Street are narrow streets and the potential of five storey development may not respect these sensitive interfaces, even with recessed upper floors. DDO19 does not nominate a street wall height for this land, which the Panel understands it is a reflection of the need for a site specific design response for this land with setbacks to be considered off both streets and a built form that would rise to central parts of the land. Council has generally supported lower built form in off-corridor land, which the Panel considers is appropriate. In this instance, the Panel considers that a height of 17 metres may challenge this approach, however a performance based approach to development in Cross Street may indicate that a height of 17 metres can only be achieved in the middle of the site (if at all) with lower form at the edges.
- 50 Ultimately, the Panel recommended the building height be changed from 17 to 14 metres.
- 51 Council's position is somewhat reflective of the C164 Panel outcome, which is to ensure that the increased residential density anticipated for the site acknowledges and respects the diverse built form context of the area by providing a transition from the higher development in Lygon Street to the open space area of Fleming Park. This includes the low rise, fine grain residential areas located between Lygon Street and the site which has the two storey terraces along Albert Street and the single storey terraces along Sedgman Street and the open space area of Fleming Park, all of which are in heritage precincts.
- 52 I note that Council's urban design unit generally supported the proposed design commenting that it is preferable that the height of the building is lowered to align fully with the DDO19 and noting some transitioning of street wall height along Albert Street may relate closely to the scale of terraces to the west that are in the Heritage Overlay.



- 53 I also note that Council's heritage advisor was not supportive of the proposal, commenting that, although the site is not in the Heritage Overlay, it is located between two heritage precincts with different character and appearance. The height of the proposal also represents a dramatic change in scale with the low-rise housing in Sedgman and Albert Streets. The street wall height and upper-level setbacks to Sedgman Street of 3 metres could be improved by lowering of height or increased upper level recession. Similarly, along Albert Street, the current building has an upper saw-tooth roof profile setback from the street that allows views along Albert Street to the west of the two-storey terraces (refer to Figure 4), which would be lost with the proposed four storey street wall to Albert Street.



Figure 4: Current view west along Albert Street.

- 54 Finally, a similar reduction in height of the proposed street wall in Cross Street was also suggested by the heritage officer to assist with reducing visual impacts on Fleming Park.
- 55 In contrast, the applicant's view was that the purpose of DDO19 referring to creation of a new mid rise built form character was to provide for that built form transition between the Lygon Activity Corridor, an area included in the coverage of DDO19 as shown in Figure 3, to the adjoining low-rise residential areas that refers to those residential areas that sit adjoining, but outside of the coverage of DDO19. In other words, the purpose does not

refer to those low-rise residential pockets that lie within the coverage of DDO19 or are located within the Lygon Activity Corridor as defined in Figure 2 of the BSP.

- 56 I note, the references to Lygon Street vary between the BSP which refers to *Lygon Street Corridor*, the DDO19 heading which refers to *Lygon Street Local Area* and to the first purpose of DDO19 which refers to *Lygon Activity Corridor*. This variation does not assist with how the provisions are to be considered and interpreted. Irrespective, I find that in a purposeful sense, it is not helpful to ignore the immediate built form context to which any design response is to react.<sup>7</sup> This is irrespective of the presence of roads separating the site from these residential and parkland areas.
- 57 Applying what may be a strict interpretation to considering the purpose of DDO19 to that area between the overlay and adjoining residential areas outside of the overlay is somewhat unhelpful and artificial. The low-rise residential areas along Albert Street and Sedgman Street, although within the Lygon Street Local Area, still interface with the site. They are limited in redevelopment opportunities because of the presence of the Heritage Overlay, and hence require relevant consideration with respect to any design response. This includes achievement of a mid-rise transition between what is significantly intense development along Lygon Street itself towards the site which is an off-corridor location on the edge of the Lygon Street Local Area.
- 58 To some extent this is acknowledged in the evidence of Mr Clements when he says the built form utilises articulated three to four storey street walls with repeated use of vertical pillars to reduce horizontal expression to reflect adjacent heritage dwelling precincts and their finer grain proportions.
- 59 The exceedance of the preferred maximum building height of 14 metres is in Council's view a poor design outcome. The applicant's view and the planning evidence of Mr McBride-Burgess and the urban design evidence of Ms Bell was that DDO19 did not specify a street wall height, which can be considered, in the applicant's view, to reflect the potential for a street wall height that could match the building height of 14 metres and still include, in a performance approach, additional upper levels appropriately recessed to limit the overwhelming visual presence in the neighbourhood.
- 60 Council says the overall building height of 14 metres is an appropriate outcome because the site sits at the lower end of the height range throughout the activity centre, and because it is located at the edge of the activity centre. Additionally, unlike the properties at the edge of the activity centre on the southern side of Albert Street, the site abuts Fleming Park. It is also separated from the higher built forms encouraged along

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<sup>7</sup> Clause 58 includes the purpose to encourage apartment development that is responsive to the site and the surrounding area.

Lygon Street by the low scale, fine grain dwellings along Albert Street and Sedgman Street that are within the Heritage Overlay. The proposed development exceeds the height of the six storey building on the north-east corner of Lygon and Albert Streets that wraps around the Brunswick East Hotel (280-294 Lygon Street at 20.085 metres) as well as that of the six storey building opposite the site at 92-96 Albert Street with a height of 18.4 metres. In exceeding the preferred height for the site and those of these nearby developments, the proposal will have an outcome of a highly visible nature of the upper levels which would result in a built form outcome that disrupts the streetscape and fails to achieve the built form transition sought.

- 61 I note the building height is discretionary. The C164 Panel accepted the opportunity for a site specific design response. The applicant says the proposal achieves a reasonable approach to achieving a mid-rise transition as shown in Figure 5 from the updated Urban Context and Design Response Report.



Figure 5: Design transition between Lygon Street and the proposal.

- 62 The applicant says the proposal responds to the character of the area with three and four storey street walls with levels above recessed to reduce visual presence when viewed from the surrounding context. Internal amenity is also supported through an internal central courtyard.
- 63 Taller form is set back from the edges as shown in Figure 6 from the urban design evidence of Ms Bell.
- 64 Facing Sedgman Street to the west, the proposal interfaces with the terrace housing with a three storey street wall with the fifth storey set back 3 metres and the sixth storey set back around 15 metres.
- 65 Facing Cross Street to the east, the proposal interfaces with Fleming Park with a four storey street wall with the fifth storey set back around 3 to 3.2 metres and the sixth storey set back around up to 10.4 metres.
- 66 Facing Albert Street to the south, the proposal interfaces to the apartments and buildings opposite with a four storey street wall with the fifth storey set back around 3 metres and the sixth storey set back around 4.9 metres.





Figure 6: Overall massing, street wall and overall building heights.

- 67 The urban design evidence from Council and the applicant contrasted in their opinions.
- 68 Both Mr McBride-Burgess and Ms Bell for the applicant were supportive of the urban design response of the proposal with the three storey street wall design facing Sedgman Street and the respective four storey street wall designs supported by open space balconies and vertical design features and façade articulation.
- 69 Mr Campbell for Council suggested that the slightly higher building height compared to the development wrapping around the Brunswick East Hotel and opposite at 92-96 Albert Street did not represent a transition down towards the periphery of the Lygon Activity Corridor. He suggested that the street wall height in Albert Street and overall height of the proposal should be reduced to create an appropriate transition on the site. His evidence was that the site is not an identified key redevelopment site as nominated under DDO19 and as such would be a highly visible development along Albert, Cross, and Sedgman Streets.
- 70 Mr Campbell applied the 1:1 built form ratio between street widths and building height, which is a commonly accepted urban design principle appropriate for a mid-rise context, where buildings remain below a 45° angle from the opposite street boundary. His evidence was that the width of Albert Street was around 12 metres and that the proposed four storey street



wall height facing Albert Street would be around 14.1 metres. This exceeds the ratio and Mr Campbell considered that given the relatively narrow nature of Albert Street and the presence of low-rise terrace housing interspersed along it, the massing profile to Albert Street should be tempered.

- 71 I agree with Mr Campbell and prefer his evidence in this regard. Under DDO19, the development opposite the site at 92-96 Albert Street is identified with a preferred maximum building height of 17 metres. This land has been developed with a three storey street wall. I consider the proposal would benefit by more closely aligning with what has occurred on 92-96 Albert Street for consistency along Albert Street and for a more considered response to the residential built form in the area. I note that there are no other four storey street walls located in off-corridor situations in this area of Albert Street. I also consider the proposed four storey street wall height to Albert Street would contribute to a canyon effect given the street width and existing built form which was a concern of both Council and the objectors.
- 72 Commensurate with a reduction in the street wall height to Albert Street, I consider deletion of a storey from the proposal together with an increase in setback of what would become the fourth storey by 3 metres and the fifth storey by 5 metres should ensure that the visual impacts of the street wall and overall height and upper levels are appropriately reduced.
- 73 Considering my changes to the street wall height and upper level setbacks in Albert Street, I do not consider it necessary to increase setbacks from the street to maintain view lines of the terraces in Albert Street. The reduction in height and overall built form should be sufficient to provide a respectful response to these dwellings in the heritage precinct.
- 74 I note Mr Campbell's opinion that the street wall design for Sedgman Street and Cross Street were acceptable with the proviso of increased setbacks of the upper levels in Sedgman Street.
- 75 I am not so concerned regarding these interfaces.
- 76 I consider the three storey street wall and upper level setbacks in Sedgman Street an appropriate and acceptable response. This will also be supported by the deletion of a storey and maintenance of the setbacks for the upper two storeys to this interface.
- 77 Similarly, I find the four storey street wall facing Cross Street, in conjunction with deletion of a storey and retention of the upper-level setback of what would become the fifth storey to around 10.4 metres will result in an improved and acceptable outcome. I consider the open space of Fleming Park offers a greater capacity to absorb the visual mass and scale of development with a higher street wall design facing the open space and

maximising the offer for good surveillance and an attractive outlook for future occupants of the apartments.

- 78 More generally, I accept the proposal presents an acceptable design response regarding street interfaces through:
- Provision of windows and openings to all façades facing streets.
  - Provision of entry points to ground floor apartments fronting Cross Street, Albert Street and Sedgman Street.
  - Provision of raised floor levels at ground floor level above the footpath level for privacy whilst maintaining passive surveillance of the streetscape.
  - Integrating and concealing services into the design such as the car park ventilation to Albert Street and service cupboards to Cross Street.
- 79 Overall, I find that through the deletion of a storey and reduction of the overall building height to five storeys and reduction of the street wall height facing Albert Street to three storeys, an acceptable design response is achieved. Although the maximum building height of 14 metres may still be exceeded even with these changes, I consider an appropriate design response and an acceptable outcome is achieved for the site.

#### **DOES THE PROPOSAL HAVE UNREASONABLE OVERSHADOWING IMPACTS?**

- 80 The impacts associated with overshadowing by the proposal is an issue with respect to the purpose of the DDO19 to maintain solar access to existing public open spaces and key pedestrian streets. Albert Street is recognised as a key pedestrian street and Fleming Park to the east of the site is a large public open space area.
- 81 Council says the nature of the DDO19 purpose means it is anticipated that the proposal will not further increase overshadowing of open spaces and streets.
- 82 It says overshadow plans have been prepared showing overshadowing caused by the proposal at both the equinox and winter solstice. The equinox overshadowing plans show an increase in overshadowing of Albert Street from 11am to 3pm. They also show an increase in overshadowing of Fleming Park across the south-western corner at 3pm, which is an area currently occupied by the Clarrie Wohlers Senior Citizens Centre, but which is proposed under a new masterplan for the reserve to be removed and designed to become a new pedestrian entry with pathways and landscaping.
- 83 The applicant says the extent of overshadowing in Albert Street will be limited to what would occur for a DDO19 compliant building with a height of 14 metres. The applicant says that at 11am overshadowing from the

proposal would impact the northern half of the southern footpath. Due to the angle of the sun shadow would be cast onto the lower extremities of a pedestrian standing in the centre of the footpath.

- 84 I am now not so concerned about the impacts on Albert Street from overshadowing considering my decision to direct the deletion of a storey and a reduction in the street wall height to three storeys facing Albert Street. I consider these changes should reduce the extent of overshadowing in Albert Street to an extent that any impacts are acceptable.
- 85 Regarding overshadowing impacts on Fleming Park, I am comfortable that the extent of impact is acceptable. Although the existing extent of overshadowing will increase because of the proposal, the extent of impact will remain limited. In this regard, I accept the evidence of Mr McBride-Burgess that the overshadowing outcomes are acceptable because:
- They will be limited to late afternoon with shadows after 2pm on the equinox.
  - They are avoided entirely prior to 2pm on the equinox.
  - They would be commensurate with the extent of shadow cast by a building 14 metres in height and because of the extent of the proposed articulation and upper level setbacks.
  - They are limited to an area of Fleming Park currently occupied by the existing Clarrie Wohlers Senior Citizens Centre.
  - They are limited to a small sliver of the open space area immediately adjacent to the Cross Street frontage.
- 86 I note the objectors were concerned about precedent created by the proposal. However, I am not concerned because the extent of overshadowing of the reserve is limited and future redevelopment is unlikely to create impacts to an extent that the use of the open space area would be significantly diminished.
- 87 Overall, I am satisfied the proposal will not have unreasonable overshadowing impacts.

#### **DOES THE PROPOSAL PROVIDE AN APPROPRIATE INTERNAL AMENITY OUTCOME?**

- 88 Council has concerns regarding the design including habitable rooms with poorly located windows that have poor access to daylight and have compromised internal amenity. Council's concern is primarily in relation to the nature of the proposal to install 'tilt and turn' windows and the tilt nature providing limited privacy or noise protection because they are proposed to be used in external areas.
- 89 The applicant says they are proposed to be used with second bedrooms which have a window facing out to the open external corridor. The



corridors are 1.6 metres wide and external to the building. The proposed windows will have an orientation either to the north or east.

- 90 The planning evidence of Mr McBride-Burgess was that these windows are like any window facing out to a balcony. They are operable, and the internal amenity can be managed utilising the proposed integrated pull up/down privacy blind. Furthermore, the open passageway is a positive sustainability initiative and has the potential to create neighbourly interactions. The design of these type of windows allows for multiple configurations to give occupants control over their desired internal amenity.
- 91 I accept the evidence of Mr McBride-Burgess in this regard and consider the windows do not relate to primary living areas and can be managed in a way that provides the level of privacy that is sought by the occupant.
- 92 Generally, I am satisfied the proposal provides an appropriate level of internal amenity that is acceptable including the provision of the central ground floor courtyard, which will contribute to high quality amenity for future occupants of the proposal.

#### **ARE THERE ANY OTHER ISSUES?**

- 93 Other issues relate to a reduction in car parking, traffic safety, land contamination and development contributions.

#### **Reduction in car parking**

- 94 The site is affected by the Parking Overlay Schedule 1 – *Mixed Use, Residential Growth, Commercial and Activity Centre Zones (PO1)*. The PO1 does not vary the car parking requirements for single and two bedroom dwellings and for three or more bedroom dwellings under Clause 52.06-5 of the planning scheme relating to *Car Parking*.
- 95 A permit is required to reduce the number of required car parking spaces under Clause 52.06-3 of the planning scheme. The proposal provides for 50 car parking spaces in a basement configuration with access from Cross Street. Under Clause 52.06-5, the proposal requires the provision of 85 parking spaces. Hence a requirement for a waiver of 35 spaces is triggered.
- 96 I note this issue was not disputed between Council and the applicant. The objectors had some concerns however this primarily related to the location of vehicular access.
- 97 I also note that Council's traffic engineers did not offer any objection to the reduction in the required car parking. I generally agree and find that in locations such as this within the Brunswick Activity Centre, public transport options and proximity of services reduces the need for reliance on the motor car to access these services and facilities. This position is supported by one of the purposes of Clause 52.06 to support sustainable transport alternatives to the motor car. I am satisfied the reduction in car parking is appropriate.



### **Traffic safety**

- 98 As mentioned earlier, the objectors were concerned with the location of the car parking entrance in Cross Street opposite Fleming Park and the safety of additional traffic associated with the proposal and in conjunction with the location of the vehicular access and pedestrian access to the site beside each other.
- 99 I am not concerned safety issues will be prevalent, traffic movements in this area are controlled and the design of the road network ensure that excessive speeds are reduced. The location of the car parking access and the pedestrian access can be clearly differentiated and should not pose a risk to users.

### **Land contamination**

- 100 The site is affected by the Environmental Audit Overlay (EAO), which seeks to ensure that potentially contaminated land is suitable for a use which could be significantly adversely affected by any contamination. The site is currently occupied by a warehouse use which is proposed to be demolished and redeveloped for residential use. The EAO applies to the site irrespective of whether a permit is required.
- 101 Council advised that requirements of the EAO can be addressed by way of conditions on any permit granted. I consider this an acceptable approach to managing potential land contamination and residential development.

### **Development contributions**

- 102 The site is also affected by the Development Contributions Plan Overlay Schedule 1 – *Moreland Development Contributions Plan Overlay (DCPO1)*, which affects the municipality and includes the site within Charging Area 1 affecting Brunswick East/North Fitzroy. Council advised that conditions addressing appropriate development contributions can be included in any permit granted. I consider this an acceptable approach.

### **WHAT CONDITIONS ARE APPROPRIATE?**

- 103 I have had the benefit of a 'without prejudice' discussion of draft permit conditions circulated by Council.
- 104 I have included conditions as I consider appropriate for the proposal and the issues regarding the proposed development.

### **CONCLUSION**

- 105 Overall, the proposal achieves a satisfactory outcome subject to a reduction in overall height of a storey and with a reduction of a storey in the Albert Street street wall height with modified upper level setbacks. The proposal offers good sustainable design and supports the strategic intent of the planning scheme for change in the locality.

106 For the reasons given above, the decision of the responsible authority is set aside. A permit is granted subject to conditions.

**Christopher Harty**  
**Member**

**APPENDIX A – PERMIT CONDITIONS**

<b>PERMIT APPLICATION NO</b>	MPS/2021/1029
<b>LAND</b>	53-57 Albert Street BRUNSWICK EAST VIC 3057

**WHAT THE PERMIT ALLOWS**

In accordance with the endorsed plans:

- Construction of a five storey apartment building and a reduction in the car parking requirement

**CONDITIONS****Amended Plans**

1 Before the development commences, amended plans to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and must be generally in accordance with the plans prepared by Jackson Clements Burrows Architects, dated 21 October 2022 but modified to show:

- Deletion of a storey.
- Reduction of the street wall height in Albert Street to three storeys.
- Increase the setback from Albert Street for the new fourth storey by a minimum of 3 metres and the new fifth storey by a minimum of 5 metres.
- Provide for a setback from Cross Street for the new fifth storey a minimum of 10.47 metres.
- Treatment of the south-east corner of the proposed building to break up the appearance with greater articulation or use of materials.
- An updated materials schedule to include details of the garage door and substation door which should be a durable material that integrates into the overall ground floor level.
- All bicycle parking spaces 500mm wide as required by the Australian Standard for Bicycle Parking (AS2890.3).
- An area within the site for an accessible boundary trap.
- An amended Sustainability Management Plan prepared to include the changes outlined in Condition 7 and plans amended to show the



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

- (j) Any changes to the plans arising from the:
  - i Landscape Plan in accordance with Condition 3 of this permit.
  - ii Accessibility Report in accordance with Condition 11 of this permit.
  - iii Waste Management Plan in accordance with Condition 12 of this permit.
  - iv Public Works Plan in accordance with Condition 14 of this permit.

### **Compliance with Endorsed Plans**

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

### **Landscaping**

- 3 Prior to the endorsement of plans, an amended landscape plan must be submitted to the responsible authority. The landscape plan must be generally in accordance with the plan prepared by GLAS Landscape Architecture dated 12 December 2021 but amended to show:
  - (a) Any changes required to align with the plans for endorsement.
  - (b) 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) of trees to be retained and protected.
  - (c) Strategies for the retainment of vegetation (i.e. barriers and signage during the construction process) consistent with any conditions of this permit.
  - (d) A schedule of all proposed trees, shrubs and ground covers, including numbers, size at planting, size at maturity, botanical names and common names. The flora selection and landscape design should be drought tolerant and based on species selection recommended in the Moreland Landscape Guidelines 2009.
  - (e) Notes and diagrams detailing the establishment and maintenance of all proposed trees, shrubs and ground covers.
  - (f) Details of the location and type of all paved and sealed areas. Porous/permeable paving, rain gardens and other water sensitive urban design features must be in accordance with the Sustainability Design Assessment or Sustainability Management Plan.

- (g) Location and details of landscape lighting
- (h) Details of all planter boxes, above basement planting areas, green walls, rooftop gardens and similar, including:
  - i Scale drawings and sections.
  - ii Soil volume sufficient for the proposed vegetation
  - iii Soil mix
  - iv Drainage design
  - v Details of an automatic irrigation system, including maintenance program and responsibility for maintenance.

When submitted and approved to the satisfaction of the responsible authority, the landscape plan will be endorsed to form part of this permit. No alterations to the plan may occur without the written consent of the responsible authority.

- 4 Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, all landscaping works, including installation of automatic irrigation, must be completed in accordance with the endorsed landscape plan to the satisfaction of the responsible authority.
- 5 All landscaping and irrigation systems must be maintained to the satisfaction of the responsible authority in accordance with the endorsed landscape plans. Any dead, diseased or damaged plants must be replaced with a suitable species to the satisfaction of the responsible authority.

### **Tree Protection**

- 6 Prior to development commencing (including any demolition, excavations, tree removal, delivery of building/construction materials and/or temporary buildings), all council trees must have a Tree Protection Zone (TPZ) in accordance with AS4970 Protection of Trees on Development Sites to the satisfaction of the responsible authority. The TPZ must meet the following requirements:

#### **Tree Protection Fencing**

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

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

The TPF must be erected to form a visual and physical barrier, be a minimum height of 1.5 metres above ground level and of mesh panels,

chain mesh or similar material. A top line of high visibility plastic tape must be erected around the perimeter of the fence.

### Signage

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

### 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.

### Provision of Services

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

### **Environmentally Sustainable Design (ESD)**

- 7 Prior to the endorsement of plans, an amended Sustainability Management Plan (SMP) must be submitted to the satisfaction by the responsible authority. The SMP must demonstrate a best practice standard of environmentally sustainable design and be generally in accordance with the SMP prepared by Hip V Hype dated 21 October 2022, but modified to include the following changes:
  - (a) Amend the BESS report (and any other corresponding documentation) to remove BESS Credit management 3.2.
  - (b) A STORM report and stormwater management response that maintains a minimum STORM score of 100% but is modified so that:
    - i The water tank reliability is a minimum of 80% for all tanks.
    - ii All plans, WSUD plans, the SMP and BESS reports are updated to reflect any changes to the STORM report.
  - (c) Show the following ESD initiatives on the development plans:
    - i Provide a fixed awning/shading device to the east facing glazed doors on levels 4 and 5 for weather and sun protection.
    - ii Provide external horizontal shading devices to the north facing level 4 and 5 windows and glazed doors. The depth of the device should be equal to 45% of the distance from sill height to the base of the device and extending horizontally by the same



length to both sides. The shading must not sit directly above the glazing and have a gap of approximately 200mm.

- iii Add the note for the external adjustable blinds to the community room.
- iv Add the following note from the SMP to the carpark plans:  
'Load/demand managed electric vehicle infrastructure is being provided as part of the base building offering from Day 1, with the charge points included as an optional purchaser upgrade.'

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

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

- 8 Prior to the issue of a Certificate(s) of Occupancy, or Certificate(s) of Occupancy whichever occurs first, all works must be undertaken in accordance with the endorsed SMP to the satisfaction of the responsible authority. No alterations to these plans may occur without the written consent of the responsible authority.
- 9 Prior to the issue of Certificate of Occupancy, or Certificate of Occupancy whichever occurs first, of any dwelling approved under this permit, a report from the author of the SMP approved pursuant to this permit, or similarly qualified person or company, must be submitted to the responsible authority. The report must be to the satisfaction of the responsible authority and must confirm (and include evidence) that all measures specified in the SMP have been implemented in accordance with the approved plan.
- 10 All stormwater treatment devices (e.g., raingardens, rainwater tanks etc.) must be maintained to the satisfaction of the responsible authority to ensure water quality discharged from the site complies with the performance standard in the endorsed Sustainability Management Plan.

### **Accessibility**

- 11 The Accessibility Report submitted with the application will be endorsed to form part of this permit. No alterations to the plan may occur without the written consent of the responsible authority. The recommendations of the report must be implemented to the satisfaction of the responsible authority prior to the occupation of the development and a report prepared by the author to the satisfaction of the responsible authority must confirm that all measures specified in the Accessibility Report have been implemented.

## Waste Management

- 12 Prior to the endorsement of plans, an amended Waste Management Plan (WMP) must be submitted to the satisfaction of the responsible authority. The plan must be generally in accordance with the report prepared by Hip V Hype and dated 1 March 2022 and any changes from the amended plans but modified to:
- (a) Include the 4 waste streams (general recycling, general rubbish, food/organics, and glass recycling).
  - (b) Provide details of how the large bins will be circulated to ensure residents with limited mobility will be able to reach the correct bin.

When submitted and approved to the satisfaction of the responsible authority, the WMP will be endorsed to form part of this permit. No alterations to the WMP may occur without the written consent of the responsible authority.

- 13 The Waste Management Plan approved under this permit must be implemented and complied with at all times to the satisfaction of the responsible authority unless with the further written approval of the responsible authority.

## Public Works Plan

- 14 Prior to the endorsement of plans, a Public Works Plan and associated construction drawing specifications detailing the works within the verge in front of the site must be submitted to the satisfaction of the responsible authority. The Plan must be in accordance the *Moreland City Council Technical Notes July 2019*, or any updated version, and include the items shown on the main plans, such as:
- (a) The visitor bicycle parking;
  - (b) Street furniture such as seating; and
  - (c) Street trees;
  - (d) Any other works to the public land adjacent to the development.

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

- 15 Prior to the issue of an Occupancy Permit, or Certificate of Occupancy whichever occurs first, all public works shown on the endorsed public works plan must be implemented to the satisfaction of the responsible authority at the expense of the owner of the land, unless otherwise agreed with prior written consent of the responsible authority.

## Environmental Audit Condition

- 16 Before the construction or carrying out of buildings and works (excluding demolition), or where no buildings and works are proposed, prior to the commencement of the permitted use or the issue of a statement of compliance under the *Subdivision Act 1988* (whichever is earlier), the owner(s) must provide:
- (a) A preliminary risk screen assessment statement in accordance with the *Environment Protection Act 2017* stating that an environmental audit is not required for the use or, if this permit authorises the construction or carrying out of buildings or works, is not required for the use for which the buildings or works are constructed or carried out; or,
  - (b) An environmental audit statement under Part 8.3 of the *Environment Protection Act 2017* stating that the land is suitable for the use or, if this permit authorises the construction or carrying out of buildings or works, is suitable for the use for which the buildings or works are constructed or carried out; or,
  - (c) An environmental audit statement under Part 8.3 of the *Environment Protection Act 2017* stating that the land is suitable for the use or, if this permit authorises the construction or carrying out of buildings or works, is suitable for the use for which the buildings or works are constructed or carried out, if the recommendations made in the statement are complied with
- 17 Where an environmental audit statement is issued for the land, and any recommendation of that environmental audit statement requires any maintenance and/or monitoring of an ongoing nature, the responsible authority may require the Owner(s) to enter into an Agreement with the responsible authority pursuant to Section 173 of the *Planning and Environment Act 1987* that provides for the undertaking of the ongoing maintenance and/or monitoring as required by the environmental audit statement.
- Where a Section 173 Agreement is required, the Agreement must be executed prior to the commencement of the permitted use, the issue of an Occupancy Permit under the *Building Act 1993* or the issue of a Statement of Compliance under the *Subdivision Act 1988* (whichever occurs first). All expenses involved in the drafting, negotiating, lodging, registering and execution of the Agreement, including those incurred by the responsible authority, must be met by the Owner(s).
- 18 Prior to any remediation works (if required) being undertaken in association with the environmental audit, a 'remediation works' plan to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. The plan must detail all excavation works as well as any proposed structures such as retaining walls required to facilitate the



remediation works. Only those works detailed in the approved remediation works plan are permitted to be carried out prior to the issue of an environmental audit statement.

- 19 No works to construct the development hereby approved shall be carried out on the land and no building contract to construct the development hereby approved may be entered into, other than in accordance with a building contract that stipulates that works must not be commenced until such time as Conditions 20, 21 and 22 are satisfied.
- 20 Prior to commencement of the use, the issue of an Occupancy Permit under the *Building Act 1993* or the issue of a Statement of Compliance under the *Subdivision Act 1988* (whichever occurs first), written confirmation of compliance with all the recommendations of the environmental audit statement must be provided by an environmental auditor appointed under the *Environment Protection Act 2017*, including confirming that any requirements in the environmental audit statement recommendations regarding verification of works have been complied with. All the recommendations of the environmental audit statement must be complied with to the satisfaction of the responsible authority.
- 21 Where a preliminary risk screen assessment has satisfied Condition 20 (that an environmental audit is not required), the development and use must not deviate from the assumptions or limitations contained in the preliminary risk screen assessment, including but not limited to the- layout and design of the development and use of the land without the written consent of the responsible authority. The development and use must accord with any requirements and recommendations of the preliminary risk screen assessment to the satisfaction of the responsible authority.

### **3D model**

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

### **Development Contributions**

- 23 Prior to the issue of a Building Permit in relation to the development approved by this permit, a Development Infrastructure Levy must be paid to Merri-bek City Council in accordance with the approved Development

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

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

- (a) a maximum of 12 months from the date of issue of the Building Permit; or
- (b) prior to the issue of a Statement of Compliance for the subdivision;

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

### **Engineering Matters**

- 24 Prior to occupation of the development, the applicant must apply to Council for 2 hour parking restrictions 8am-11pm, every day, along the frontage in the Cross Street.
- 25 Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, a vehicle crossing must be constructed in every location shown on the endorsed plans to a standard satisfactory to the responsible authority (Merri-bek City Council, City Infrastructure Department).
- 26 Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, any existing vehicle crossing not to be used in this use or development must be removed and the kerb and channel, footpath and nature strip reinstated to the satisfaction of the responsible authority (Merri-bek City Council, City Infrastructure Department).
- 27 Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, access to the site, any vehicle crossover and any ancillary road and road drainage works must be constructed in accordance with any requirement of the responsible authority (Merri-bek City Council, City Infrastructure Department).
- 28 Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, all telecommunications and power connections (where by means of a cable) and associated infrastructure to the land must be underground to the satisfaction of the responsible authority.
- 29 Prior to the issue of an Occupancy Permit or issue of a Statement of Compliance, whichever comes first, the bicycle storage room must have self-closing and self-locking doors or gates that are only accessible using

keys, codes or swipe cards in accordance with the Australian Standard for Bicycle Parking (AS2890.3).

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

### **Stormwater**

- 31 All stormwater from the land, where it is not collected in rainwater tanks for re-use, must be collected by an underground pipe drain approved by and to the satisfaction of the responsible authority (Note: Please contact Merri-bek City Council, City Infrastructure Department).
- 32 The surface of all balconies 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.

### **Car Parking**

- 33 All parking spaces are to be marked with the associated apartment to facilitate management of the car park to the satisfaction of the responsible authority.

### **General**

- 34 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.
- 35 All lighting of external areas must be designed not to emit direct light onto adjoining properties to the satisfaction of the responsible authority.

### **Retention of Architect**

- 36 Jackson Clements Burrows Architects or an equivalent Architect must be retained to complete and provide architectural oversight during construction of the detailed design as shown on the endorsed plans, to the satisfaction of the responsible authority.

### **Expiry of permit for development**

- 37 This permit as it relates to development (buildings and works) will expire if one of the following circumstances applies:



- (a) The development is not started within three (3) years of the issue date of this permit.
- (b) The development is not completed within five (5) years of the issue date of this permit.

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

**– End of conditions –**