VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P437/2024
PERMIT APPLICATION NO. MPS/2023/637

CATCHWORDS

Section 79 of the *Planning and Environment Act 1987* (Vic); Merri-bek Planning Scheme; Commercial 1 Zone; Design and Development Overlay Schedule 18; Heritage Overlay ('HO61' and 'HO600'), Mixed use development; Height above preferred maximum in DDO18; Building scale; Street wall; Response to proximate heritage buildings; Overshadowing public realm, commercial floor space and vary an easement.

APPLICANT	Milieu Dawson Developer Pty Ltd
RESPONSIBLE AUTHORITY	Merri-bek City Council
SUBJECT LAND	10 Dawson Street BRUNSWICK VIC 3056
HEARING TYPE	Hearing
DATE OF HEARING	16, 17, 18 & 19 September 2024
DATE OF ORDER	6 February 2025
CITATION	Milieu Dawson Developer Pty Ltd v Merri-bek CC [2025] VCAT 89

ORDER

1 In application P437/2024 the decision of the responsible authority is set aside.

2 In planning permit application MPS/2023/637 a permit is granted and directed to be issued for the land at 10 Dawson Street BRUNSWICK VIC 3056 in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:

Planning scheme clause	**Matter for which the permit has been granted**
Clause 34.01-1	Use land for a dwelling.
Clause 34.01-4	Construct a building or construct or carry out works.
Clause 43.01-1	Demolish or remove a building, construct a building or construct or carry out works.
Clause 43.02-2	Construct a building or construct or carry out works.



Clause 52.06-3	Reduce the car parking spaces required under clause 52.06-5.
Clause 52.02	Vary an easement.

Shiran Wickramasinghe
Member

APPEARANCES

For Milieu Dawson Developer Pty Ltd	N Tweedie SC and T Hooper of counsel, instructed by Planning & Property Partners Pty Ltd. Evidence was called from:[1] • K Twite, town planner of Urban Planning Collective Pty Ltd • C Baker, heritage consultant of Urbis Pty Ltd • C Czarny, urban designer of Hansen Partnership Pty Ltd.
For Merri-bek City Council	A Kellock, town planner of Kellock Town Planning Pty Ltd. Evidence was called from: • N Lewis, heritage consultant of Nigel Lewis Pty Ltd • A Roberts, urban designer of Lat Studios.

[1] An evidence statement and photomontages prepared by A Zaslavsky, of Eagle Vision Projects were submitted by the applicant. With the consent of all parties A Zaslavsky was not called to give evidence. The evidence and the photomontages were tended by the applicant to be taken as read.

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INFORMATION

Description of proposal	Demolish existing buildings, construct a multi storey mixed use building (9 storeys above two basement levels), use the land for dwellings, vary an easement and reduce the car parking requirement.
Nature of proceeding	Application under section 79 of the *Planning and Environment Act 1987* (Vic) – to review the failure to grant a permit within the prescribed time.[2]
Planning scheme	Merri-bek Planning Scheme
Zone and overlays	Commercial 1 Zone ('C1Z') Heritage Overlay ('HO61' and 'HO600') Design and Development Overlay – Schedule 18 ('DDO18') 'Brunswick Activity Centre – Sydney Road and Upfield Corridor. Parking Overlay – Precinct 1 ('PO1') 'Mixed Use, Residential Growth, Commercial and Activity Centre Zones'. Development Contributions Plan Overlay – Schedule 1 ('DCPO1') Environmental Audit Overlay ('EAO') Specific Controls Overlay – ('SCO5')

[2] Section 4(2)(d) of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic) states a failure to make a decision is deemed to be a decision to refuse to make the decision.

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Permit requirements	Clause 34.01-1 – permit required to use the land as a dwelling as the Section 1 condition is not met, which states that any frontage at ground level must not exceed 2 metres (other than a bed and breakfast and a caretaker's house). Clause 34.01-4 – permit required to construct a building or construct or carry out works. Clause 43.01-1 – permit required to demolish or remove a building and construct a building or construct or carry out works. Clause 43.02-2, – permit is required to construct a building or construct or carry out works. Clause 52.06-3 – permit required to reduce the car parking spaces required under clause 52.06-5. Clause 52.02 – permit required to vary an easement.

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Land description	The subject site is located at 10 Dawson Street Brunswick, approximately 68 metres west of Sydney Road and 53 metres east of the Upfield railway line. The site has an irregular shape, with a frontage of 50.76 metres to Dawson Street and 27.71 metres to Saxon Street, and an area of 1767 square metres. The land is currently occupied by a two storey brick building which accommodates Jesuit Social Services' Brosnan Centre. The main vehicle access is provided from Dawson Street to an at grade car park adjacent the west site boundary. A substation building is located toward the rear of the site adjacent the east boundary. A carriageway easement in favour of Council, as the owner of the adjoining property to the west (Brunswick Baths), runs adjacent to the west boundary of the site. To the north, 33 Saxon Street is currently a construction site. A five storey building that is to be used as a place of assembly and the sale and consumption of liquor is under construction. To the east at 259 Sydney Road (across Saxon Street), is a corner allotment that has a frontage to Sydney Road, a sideage to Dawson Street and a rear abuttal Saxon Street. It is located opposite the southern part of the subject site. The building has a two storey presentation when viewed from Sydney Road and Dawson Street but appears to contain three storeys as viewed from Saxon Street (i.e. it contains windows/door openings at three levels). To the north-east, 261 Sydney Road (across Saxon Street) is occupied by three buildings comprising two double storey brick buildings and St Ambrose Catholic Parish located centrally to the site. To the south, 1 Dawson Street is located directly opposite the site. It is affected by HO155, and described in the schedule as "1-3

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	Dawson Street, Brunswick – St Ambrose's School and Hall". To the south-west is 7-11 Dawson Street. The site contains a car park that provides for ticketed parking. To the west is 16 Dawson Street, which is occupied by the Brunswick Baths. This site fronts Dawson Street and also abuts Phoenix Street (to the north) and the Upfield railway reserve (to the west). It is covered by HO61. The site abuts the entire western boundary of the subject site and also a small part of its northern (rear) boundary.
Tribunal inspection	An unaccompanied site inspection was conducted.

REASONS[3]

WHAT IS THIS PROCEEDING ABOUT?

1 This is an application for review of the Merri-bek City Council's ('Council') failure to grant a permit to demolish existing buildings, construct a multi storey mixed use building (nine storeys above two basement levels), use the land for dwellings, vary an easement and reduce the car parking requirement.

2 More specifically the proposal is described as follows in Mr Twite's evidence statement:[4]

> 27. The application includes the demolition of the existing substation structure on the site.
>
> - The works include the construction of a 9 storey building (maximum 30.45 metres in height as measured in accordance with the DDO18) with 2 basement levels providing car and bicycle parking.
> - The development is generally constructed to the southern boundary for the lower 3 floors, with an approximately 5 metre minimum setback at levels 3 to 6 (excluding projecting terraces and balconies). At levels 7-8, the minimum setback is increased to approximately 10.5 metres (again excluding terraces) and at level 9, this is increased to a minimum 11.59 metres.
> - To the east, the ground floor is setback approximately 3.16 metres (excluding planters) to provide for footpath widening. A canopy partially extends over this space at level 1, with levels 1-6 setback approximately 3 metres. At levels 7-8, the setback is increased to a minimum of 8.945 metres and at level 9, 8.945 metres.
> - To the north, the setbacks vary. The eastern segment is partially constructed to the boundary, with the upper level setbacks increasing from approximately 4.805 metres to 5.885 metres (excluding terraces and balconies). The western segment is setback approximately 3 metres to 10.925 metres (excluding balconies).
> - Due to the irregular western boundary, the setbacks at this interface vary from approximately 1.23 metres to 4.915 metres (excluding balcony projections).

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[3] 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.

[4] K Twite evidence statement, pages 23 and 24.

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- The ground level car park will remain open partially to the sides and above, albeit with the development extending above.
- Incorporation of a 200sqm roof top communal open space area.
- The roof includes provision for services (hot water, fire tank, air conditioning units and 56 PV units).
- The development will be constructed with a mixture of exposed aggregate concrete (charcoal and dark grey), smooth concrete (green and grey) and metal panelling (green and grey). Glazing includes clear, obscure and light grey finishes.
- The design has been considered with regard to the street tree (a Red Iornbark) at the intersection of Dawson and Saxon Streets, with a TMP detailing the requirements for protecting this tree.

28. The development includes 80 dwellings:
    - 1-bedroom = 14
    - 2-bedroom = 54
    - 3-bedroom = 8
    - 3-bedroom plus study = 4
29. The 423sqm office and 61sqm food and drinks premises are section 1, permit not required uses. The tenancies front Dawson Street and Saxon Street respectively and include additional back of house areas.
30. A total of 83 resident car parking spaces provided across the ground and 2 basement levels and ground level, with a further 4 commercial car parking spaces at ground level.
31. A total of 153 bicycle parking spaces across the ground and 2 basement levels.

3 Subsequent to the lodgement of the application for review, Council advised that had it made a decision within the prescribed time, Council would have determined to issue a Notice of Decision to Grant a Planning Permit subject to conditions. More particularly Council's submission states:

> 1.4 Since the application for review was lodged, Council has determined that it supports the application and would have issued a Notice of Decision to Grant a Planning Permit with conditions, had the application not lodged a Section 79 application with the Tribunal. The draft conditions served on 28 August 2024 at Appendix 1 require various plan changes via Condition 1 including:

a) Deletion of one of levels 3, 4, 5 or 6 with the commensurate reduction in building height.

b) An additional 1 metre setback from the eastern title boundary to Levels 5 and 6.

c) Additional employment generating and/or creative industries floor area of approximately 700sqm to be provided at first floor level, along the Dawson Street and Saxon Street frontages. This may result in the deletion of apartments, 1.05 to 1.10.

Council submits that these three (3) conditions, as well as the various other conditions set out at Appendix 1, are necessary, appropriate and required to ensure that the development provides:

- An appropriate and acceptable planning outcome.
- An acceptable design response to the site context.
- A suitable response to the various 'competing' objectives of the planning policy context and the relevant provisions of the Merri-Bek Planning Scheme.

Council submits that:

- A decrease in the height and scale of the building, as well as an increase in the setback of part of the Saxon Street façade, is required to provide an acceptable design response to the site context, the planning policy context and the relevant provisions of the Design and Development Overlay (Schedule 18) and Heritage Overlay.
- Removal of one of the mid levels of the building (i.e. levels 3, 4, 5 or 6), rather than one of the two top levels or one of the three podium levels, in required in order to achieve a substantive decrease in the visual prominence of the building. This change is necessary and required to reduce the building mass and height to an acceptable level and to decrease overshadowing of the Dawson Street public realm.
- The proposed sheer seven (7) storey façade to Saxon Street is inappropriate and needs to be modulated via an increase in the setback of the two top floors of this façade (i.e. levels 5 or 6). This modification is necessary to decrease the visual prominence of the built form to an acceptable level.
- The proposal fails to adequately deliver on the strategic outcomes sought for the Brunswick activity centre and Brunswick Design District Core area, which seek to encourage creative industries and employment generating land uses. The provision of additional employment floor

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area at first floor level is necessary and required to address this aspect and can be achieved by deleting several of the dwellings located at first floor level.

Council relies on the heritage evidence of Mr Nigel Lewis and the urban design evidence of Ms Amanda Roberts in relation to the need for a reduction in the height and scale of the building. Having regard to the need to 'balance' competing objectives and provisions of the planning scheme, the following recommendation/design suggestions provided by the two experts will not be pursued by Council in its recommendations:

- A reduction in the podium height to 8.4 metres, as recommended by Mr Lewis.
- An alternative pedestrian entry to the lift lobby provided from Dawson Street to enhance activation and surveillance, as suggested by Ms Roberts.

4 The Tribunal must decide whether a permit should be granted and, if so, what conditions should be applied. Having considered the submissions and evidence, with regard to the relevant policies and provisions of the Merri-bek Planning Scheme ('Planning Scheme'), assisted by my inspection, I have determined to set aside Council's decision. My reasons follow.

BACKGROUND

5 The site has been the subject of a previous planning permit approval. Details of the approved development is detailed in Council's report as follows:[5]

> A previous planning application (MPS/2019/130), for a nine storey mixed use development, was supported by Council in 2020, subject to the deletion of two levels. Council's conditions were appealed at VCAT by the permit applicant. However, these VCAT proceedings were withdrawn as the Minister for Planning, through the Priority Project Process, approved a Special Controls Overlay (SCO5) facilitating a site-specific development outcome. This occurred following a Standing Advisory Committee Roundtable with all affected parties. As specified in the incorporated document approved under the SCO5, the development was subject to the following key changes/conditions:
>
> - Deletion of one storey (to eight storeys)
> - An affordable housing contribution of 20 per cent of the dwellings in the development which was the key consideration for Ministerial Intervention and in the development gaining Ministerial approval at greater overall building height.

[5] Council report, section 1, dated 26 June 2024.

- Clearance height over the newly modified carriageway easement providing connection from Dawson Street to 33 Saxon Street to be no more than 4.1 metres.

The development provided 2306sqm of commercial floorspace comprising 57sqm shop and 773sqm office space at ground level, and 1476sqm office space at first floor. Jesuit Social Services, which currently occupies the site, was proposed to be retained and to occupy the office space at ground and first floor levels.

The approved development has not been acted upon, although it remains valid. The current approval will expire if the development is not commenced by 23 July 2024.

6 The parties advised that Council has sought authorisation from the Minister for Planning to exhibit Amendment C230mbek. It was common ground between the parties that the amendment is in its early stages and is not considered to be 'seriously entertained'.

WHAT ARE THE KEY ISSUES?

7 The key issues in this application are:

- Are the proposed land uses consistent with the relevant policies of the Planning Scheme?
- Is the proposal an acceptable heritage and built form response?
- Is the provision of employment generating floor space acceptable?
- Will there be any unacceptable car parking and traffic impacts?
- Does the proposal respond acceptably to clause 58 of the Planning Scheme?
- Will there be a net community benefit?

3 Having considered the submissions and evidence with regard to the relevant policies and provisions of the Planning Scheme, assisted by my site inspection, I have determined to set aside Councils decision. My reasons are as follows.

WHAT IS THE RELEVANT PLANNING CONTEXT?

8 The parties generally agree on the relevant clauses, provisions and policies in the Planning Scheme that provide the basis for assessment. I do not recite them in full. They have been fully considered, as relevant to the facts and matters relating to the proposal. Specific provisions will be referred to in this decision.

9 The subject land is in the Brunswick Major Activity Centre. This location has an important role in accommodating housing growth.[6] Its role and function in the activity centre hierarchy, as a major activity centre, are to:

> Provide a broad mix of retail uses, commercial and cultural activity, employment options functions, government investment and regional facilities.
>
> Accommodate substantial residential/mixed use growth and change to create a new character of increased density and scale of built form.

10 Housing, economic development and employment outcomes are addressed in detail through framework plans and policies in the Planning Scheme. In addition to being within the Brunswick Activity Centre, the site is in a core employment area.[7]

11 The subject site is located within the C1Z and the relevant purposes include:[8]

> To implement the Municipal Planning Strategy and the Planning Policy Framework.
>
> To create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses.
>
> To provide for residential uses at densities complementary to the role and scale of the commercial centre.

12 Clause 34.01-8 includes decision guidelines under four headings which include General, Use, Subdivision and Buildings and works. Those relating to Building and works and Use are most relevant in addition to the Planning Policy Framework.

13 Clause 34.01-4 states that an apartment development must meet the requirements of clause 58. A development must meet all of the objectives of clause 58 and should meet all of the standards of this clause. However, if the responsible authority is satisfied that an application for an alternative design solution meets the objective, the alternative design solution may be considered. The decision guidelines set out the matters that the responsible authority must consider before deciding if an application meets the objectives.

14 The land is located within DDO18. The purpose of the DDO at clause 43.02 include:

> To implement the Municipal Planning Strategy and the Planning Policy Framework.
>
> To identify areas which are affected by specific requirements relating to the design and built form of new development.

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6 Clause 02.03-1.
7 Clause 02-04, Strategic framework plans.
8 Clause 34.02.

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15 Clause 43.02-6 provides relevant decision guidelines that requires consideration of a number of matters including:

- Municipal Planning Strategy and Planning Policy Framework
- The design objectives of the relevant schedule to this overlay and the provisions of any relevant policies and urban design guidelines.
- Whether the bulk, location and appearance of any proposed buildings and works will be in keeping with the character and appearance of adjacent buildings, the streetscape or the area.
- The impact of the proposed built form on heritage places that surround the site.
- The layout and appearance of areas set aside for car parking, access and egress, loading and unloading.

16 Clause 1.0 of Schedule 18 to clause 43.02 includes the following design objectives:

- To encourage a new mid-rise built form character with lower built form at the interfaces with the adjoining low rise residential areas.
- To complement the valued built form and heritage character along Sydney Road and respect the form, design and context of buildings of individual heritage significance in the precinct.
- To ensure the street wall remains the visually dominant element of all development in Sydney Road and that any height above the street wall is visually recessive, subservient and does not dominate the streetscape appearance.
- To establish a new cohesive built form character in off-corridor locations to the east and west of Sydney Road to achieve an appropriate balance between a sense of enclosure and openness and to ensure new street walls reinforce the existing character of street walls in nominated off-corridor streets.
- To protect the amenity of existing and proposed public open spaces and key pedestrian streets, and maintain reasonable amenity for residential properties within and adjacent to the activity centre.

17 Clause 2.0 of Schedule 18 to clause 43.02 address building height, buildings of individual heritage significance, street walls, upper levels and Building layout and detailed design..

18 Provisions addressing building height include:[9]

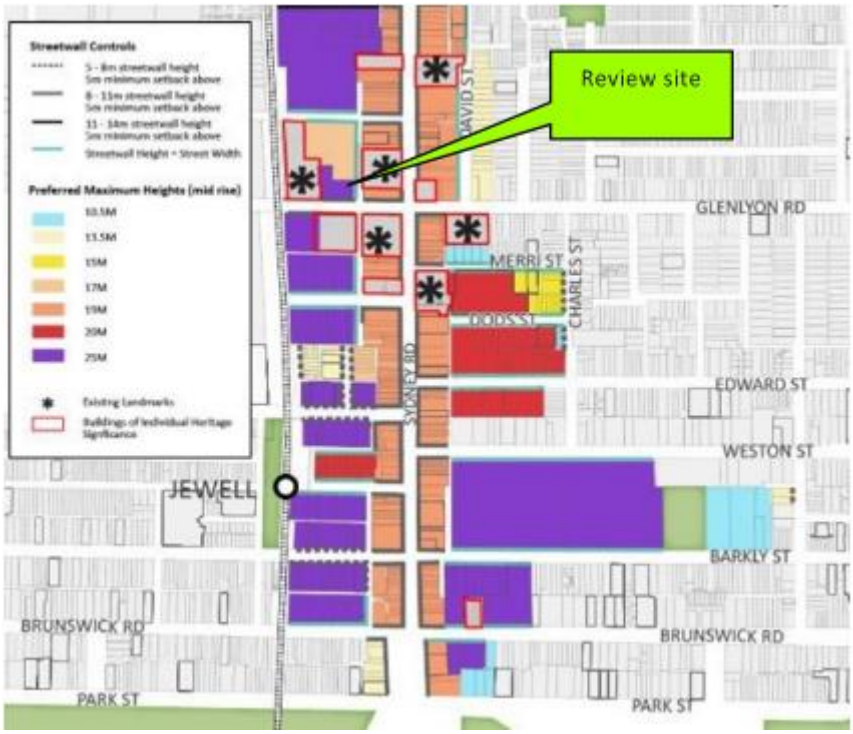
Building height

[9] Clause 2.0 of Schedule 18 to clause 43.02.

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- Building height should not exceed the preferred maximum building heights as shown in *Overall Building Heights, Map 1A (North) and Map 1B (South).*

19 Map 1B(South), an extract of which is below[10], shows a preferred maximum height of 25 metres applies to the subject land and other lots to the north, east and partly to the south. The measurement basis is set out in the clause. The proposal exceeds the 25 metre height.



Source: K Twite evidence statement[11]

20 Provisions relating to street walls include:[12]

Street walls

- Buildings within the commercial zone and mixed use zone should be constructed to the street frontage.
- Street wall heights on the following streets should be between 8.0 and 11 metres with a 5.0 metre setback above:
  - Dawson Street;
- Street facades within the Commercial 1 Zone should extend to both sides of the property boundary.

10 Clause 2.0 of Schedule 18 to clause 43.02.
11 K Twite evidence statement, page 30.
12 Clause 2.0 of Schedule 18 to clause 43.02.

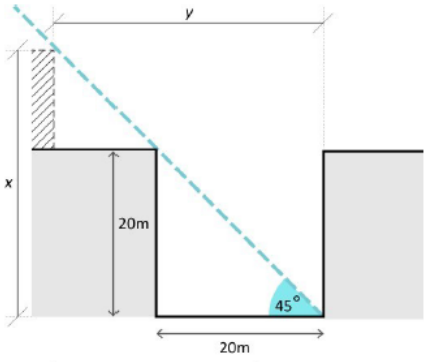
- A preferred eastern street wall preferred height equivalent to the street width (noting Saxon Street is approximately 10 metres wide).
- Development that seeks to vary the street wall heights must demonstrate how the design objectives and requirements of this schedule will be met.

21 Provisions for upper levels include:[13]

Upper levels (streets other than Sydney Road)

- Any part of a building above the street wall height should:
  - Be setback at least 5 metres from the street boundary. Balconies and other architectural features may protrude into the setback by a maximum of 2 metres.
  - From ground level not exceed the horizontal distance from the opposite street boundary as illustrated in *Figure 2* below.
  - Adopt the same street setback for at least 75% of the height of the upper levels to avoid 'wedding cake' built form outcomes.
  - Be designed to respect the form and design of adjacent civic buildings and heritage places.
- Development that seeks to vary the upper level setbacks must demonstrate how the design objectives and requirements of this schedule will be met.

Figure 2: Upper level setbacks and heights (streets other than Sydney Road)



Source: Clause 2.0 of Schedule 18 to clause 43.02

22 Map 2B shows the area of the subject land as a key pedestrian street.[14]

23 Map 3B: Building Edge Conditions (South) shows the subject land as in Frontage Type B Commercial, which is relevant to the creation of active

[13] Summarised description the first three dot points as the 'numerical formula', as shown in Figure 2 of clause 2.0 of Schedule 18 to clause 43.02.

[14] Clause 2.0 of Schedule 18 to clause 43.02.

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edges.[15] Other requirements relating to building layout and detailed design include:[16]

> In commercial and mixed use zones, development should have a ground floor ceiling height that allows for a range of commercial uses.

24 With respect to building layout and detailed design the following is stated:[17]

- Development should incorporate active edges at street level fronting all streets (except rear access lanes) and the Upfield Shared Path in accordance with Building Edge Conditions Map 3A (North) and Map 3B (South) to invigorate street life and contribute to a safe and pedestrian friendly environment. The Frontage types in Map 3A (North) and Map 3B (South) are as follows:

  – Frontage Type A: Retail – A display window and/or entrance, measuring 65 - 80% of the width of the street frontage of each individual premise.

- Development should incorporate windows in all upper level facades facing streets and the Upfield Shared Path.
- Development should minimise the impact of vehicle access and car parking on the public realm by:
  - Locating vehicle access at the rear of buildings where possible;
  - On secondary frontages, rear access is preferred but where not possible, vehicle access should be provided to the side of corner properties away from the front façade; and
  - Locating car parking where it cannot be seen from the public realm.
- In commercial and mixed use zones, development should have a ground floor ceiling height that allows for a range of commercial uses.
- Development should incorporate awnings over the footpath for the full width of the building frontage along Sydney Road and Key Pedestrian Streets indicatively shown on Open Space and Public Realm Network Map 2A (North) and Map 2B (South
- Services cabinets should be located at the rear of buildings wherever possible, or the side of corner buildings away from the front façade where rear access is not available. Where they can only be located in the front façade, the size of services cabinets should be minimised and they should be integrated with the overall façade design.

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15 Ibid.
16 Ibid.
17 Clause 2.0 of Schedule 18 to clause 43.02.

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25 Provisions relating to Category 2 Employment Areas are:[18]

- Development within Category 2 – Employment Areas should achieve commercial built form outcomes, including increased floor to ceiling heights and flexible floor plates, at ground and first floor to facilitate opportunities for employment uses.
- Ground floor commercial spaces should provide for activation, for example through entrances, transparent glazing and architectural features which encourage interaction and visual interest.

26 With respect to public realm the following is stated:[19]

- Development should maximise permeability through the Activity Centre and the accessibility to the Upfield Shared Path.
- Development should not overshadow the opposite footpath of Sydney Road and Key Pedestrian Streets indicatively shown on Map 2A (North) and Map 2B (South) between 10.00am and 2.00pm at the equinox.

27 Decision guidelines at clause 6.0 of Schedule 18 to clause 43.02 include:

- The *Brunswick Structure Plan Reference Document,* Moreland City Council, 2018.
- How development within Category 2 Employment areas responds to the built form requirements for Category 2 Employment areas.
- The opportunities and constraints of the site.
- Whether the maximum building height is achievable having regard to lot size, dimensions (width and depth) and/or those sites within or adjoining the Heritage Overlay.
- Whether an increased upper level setback is required having regard to the heritage significance of the site or an adjoining site within the Heritage Overlay.
- Whether the preferred maximum street wall height is achievable having regard to the heritage significance of the site or an adjoining site within the Heritage Overlay.
- How the development responds to the fine grain character of Sydney Road.
- How the development considers views along Sydney Road to landmark buildings of individual heritage significance.
- The extent to which development achieves the design objectives in Part 1.0 of this schedule.

[18] Consistent with policies in clause 17.01-1L-02 with respect to employment floorspace.
[19] Clause 2.0 of Schedule 18 to clause 43.02.

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28 The land is affected by HO61 and HO600. The purposes of clause 43.01 includes:

> To implement the Municipal Planning Strategy and the Planning Policy Framework.
>
> To conserve and enhance heritage places of natural or cultural significance.
>
> To conserve and enhance those elements which contribute to the significance of heritage places.
>
> To ensure that development does not adversely affect the significance of heritage places.

29 Relevantly, clause 43.01-8 includes decision guidelines which must be considered, as appropriate, before deciding on an application:

> The Municipal Planning Strategy and the Planning Policy Framework.
>
> The significance of the heritage place and whether the proposal will adversely affect the natural or cultural significance of the place.
>
> Any appliable statement of significance (whether or not specified in the schedule to this overlay) and any applicable conservation policy.
>
> Any applicable heritage design guideline specified in the schedule to this overlay.
>
> Whether the location, bulk, form or appearance of the proposed building will adversely affect the significance of the heritage place.
>
> Whether the location, bulk, form and appearance of the proposed building is in keeping with the character and appearance of adjacent buildings and the heritage place.
>
> Whether the demolition, removal or external alteration will adversely affect the significance of the heritage place.
>
> Whether the proposed works will adversely affect the significance, character or appearance of the heritage place.

30 The site at 10 Dawson Street is located within the individual heritage overlay associated with the Brunswick Baths identified as HO61 in the schedule to the heritage overlay of the Planning Scheme. To the southern boundary of the subject site there is an additional heritage place, the electrical substation at 10 Dawson Street. The substation is included in the Brunswick Electricity Supply Substations serial listing identified as HO600 in the schedule to the HO. There are a total of 14 substations included in the serial listing.

31 An extract of the HO Map showing the location of the subject site that is included within HO61 (outlined in red) and the extent of HO600 comprising the electrical substation (shaded blue) is provided below.

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Source: C Baker evidence statement[20]

32 The Statement of Significance for HO61 reads as follows:[21]

> The Brunswick Baths complex is of local historical and architectural Significance. The baths have long been a key recreational focus for Brunswick, and was for many years host to the Victorian swimming championships. The Baths reflected the latest in swimming pool design and technology, and was once regarded as the finest complex of its type in Australia. The renovation of the Baths in 1927 – in particular the construction of the notable Dawson Street façade – reflects a period of considerable redevelopment of Brunswick's public assets, and of the reshaping of the civic precinct in Sydney Road and Dawson Street.

33 The Statement of Significance for HO600 includes the following:[22]

> What is significant?
>
> The electricity distribution substations, erected by the Brunswick Electricity Supply (BES) from 1912 to c.1940, are significant. All are constructed of brick and there are three basic types, as well as one-off or special designs.
>
> […]
>
> - Main substation '1' or 'A' at 10-14 Dawson Street. This is a rendered building with parapeted walls and triangular pediment with projecting brick courses. The timber entry doors are placed off-centre in the front wall;
>
> How is it significant?
>
> The BES electricity distribution substations are of local historic, representative and associative significance to the City of Merri-bek.
>
> Why is it significant?
>
> The substations are historically significant for their association with the establishment and development of the Brunswick's electricity supply network from its inception in 1914 until the interwar period.

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20 C Baker evidence statement, page 22.
21 C Baker evidence statement, paragraph 69, page 24.
22 C Baker evidence statement, paragraph 70, page 24.

> The former City of Brunswick was one of the first metropolitan councils to establish their own electricity supply and distribution networks, which played a critical role the residential, commercial and industrial expansion of the municipality during the interwar period. This is demonstrated by the number and geographic distribution of the substations throughout the city. Of particular historic significance are the substations in Dawson Street and Methven Park, which form part of the original network of four substations constructed in 1913-14, and the Frith Street substation, which is an example of the substations specifically constructed to provide additional supply to industrial areas. (Criterion A & H)
>
> The substations are significant as representative examples of early electricity substations and demonstrate the evolution in design. The Methven Park example is also notable as the only double-gable type, whilst the Stewart Street and Ryan Street substations are the only examples to retain a terracotta tile roof, which includes horn finials to the ventilation box. Also of note is the Frith Street substation as an example of the larger, double height substation required to meet increasing electricity demand, which were designed with sheer, parapeted walls that enabled them to be built on small sites hard against surrounding buildings. (Criterion D)
>
> Integrity
>
> 10 Dawson Street (S1) appears to have had the most alterations and additions over time, with no clear evidence of the original 1912 fabric. Its integrity is low.
>
> Physical condition
>
> 10 Dawson Street (S1) is in good condition although with minor cracking evident on the western face.23

34 The land is located within PO1. The purpose of the PO1 at clause 45.09 include:

> To implement the Municipal Planning Strategy and the Planning Policy Framework.
>
> To facilitate an appropriate provision of car parking spaces in an area.
>
> To identify areas and uses where local car parking rates apply.
>
> To identify areas where financial contributions are to be made for the provision of shared car parking.

35 Clause 1.0 of Schedule 1 to clause 45.09 incudes a parking objective that seeks to identify appropriate car parking rates for land uses in the Mixed Use Zone, Residential Growth Zone, Commercial 1 Zone, Commercial 2 Zone and Activity Centre Zone.

36 Clause 3.0 of Schedule 1 to clause 45.09 states that number of car parking spaces required is to be in accordance with the Rate in Column B of Table 1 in clause 52.06-5.

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37 The land is located within EAO. The purpose of the EAO at clause 45.03 include:

> To implement the Municipal Planning Strategy and the Planning Policy Framework.
>
> To ensure that potentially contaminated land is suitable for a use which could be significantly adversely affected by any contamination.

38 The provision applies to land in an EAO and applies whether or not a permit is required.[23]

39 The land is located within an DCPO. The purpose of the DCPO at clause 45.06 include:

> To implement the Municipal Planning Strategy and the Planning Policy Framework.
>
> To identify areas which require the preparation of a development contributions plan for the purpose of levying contributions for the provision of works, services and facilities before development can commence.

40 Councils submission states that the following:[24]

> The site and all nearby land is affected by a Development Contributions Plan Overlay (Schedule 1).
>
> The Development Contributions Plan has expired and is therefore not relevant to the application.

41 The land is located within an SCO5 '10 Dawson Street, Brunswick – February 2021' pursuant to clause 45.12 of the Planning Scheme. The purpose of the SCO at clause 45.12 include:

> To apply specific controls designed to achieve a particular land use and development outcome in extraordinary circumstances.

42 Mr Twite's evidence statement states the following with respect to the SCO5. [25]

> 80. The purpose of the Incorporated Document is to: Permit and facilitate the demolition of existing buildings and development of an eight storey mixed use building comprising retail, office floorspace, dwellings, rooftop garden and a reduction in the standard car parking requirement generally in accordance with the plans approved consistent with clause 6.0 of this incorporated document.
>
> 81. While one extension of time was granted, I am instructed that this approval expired on 23 July 2024. I note that the approved

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23 Clause 45.03.
24 Council submission page 28.
25 K Twite evidence statement, page 40.

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scheme is shown with a pink dashed line on the sections (TP 3-101 to TP 3-105) within the architectural plans.

82. Pursuant to clause 45.12-2, upon expiry of the specific control, the land may be used and developed only in accordance with the provisions of the Scheme.

43 Clause 52.02, easements, restrictions and reserves includes a purpose that seeks to enable the removal and variation of an easement or restrictions to enable a use or development that complies with the planning scheme after the interests of affected people are considered. With respect to the proposal a permit is required before a person proceeds under Section 23 of the *Subdivision Act 1988* (Vic) to vary an easement. Before deciding on an application, in addition to the decision guidelines in clause 65, the responsible authority must consider the interests of affected people.

44 Clause 52.06, car parking includes the following purposes:

> To ensure that car parking is provided in accordance with the Municipal Planning Strategy and the Planning Policy Framework.
>
> To ensure the provision of an appropriate number of car parking spaces having regard to the demand likely to be generated, the activities on the land and the nature of the locality.
>
> To support sustainable transport alternatives to the motor car.
>
> To promote the efficient use of car parking spaces through the consolidation of car parking facilities.
>
> To ensure that car parking does not adversely affect the amenity of the locality.
>
> To ensure that the design and location of car parking is of a high standard, creates a safe environment for users and enables easy and efficient use.

45 The provisions of clause 52.06 are applicable to the proposal including:

- Clause 52.06-3 which states that permit is required to reduce the number of car parking spaces required under clause 52.06-5.
- Clause 52.06-5, which sets out the number of car parking spaces requires for uses at Table 1, noting that Column B is applicable (as per the requirements of Schedule 1 to the Parking Overlay).
- Clause 52.06-7 which state that an application to reduce the number of car parking spaces under clause 52.06-5 must be accompanied by a Car Parking Demand Assessment.
- Clause 52.06-9, which sets out various design standards for car parking.

46 Relevant decision guidelines at clause 52.06-10 include the following:

- The role and function of nearby roads and the ease and safety with which vehicles gain access to the site.
- The ease and safety with which vehicles access and circulate within the parking area.
- The provision for pedestrian movement within and around the parking area.
- The provision of parking facilities for cyclists and disabled people.
- The protection and enhancement of the streetscape.
- The provisions of landscaping for screening and shade.
- The measures proposed to enhance the security of people using the parking area particularly at night.
- The amenity of the locality and any increased noise or disturbance to dwellings and the amenity of pedestrians.
- The workability and allocation of spaces of any mechanical parking arrangement.
- The design and construction standards proposed for paving, drainage, line marking, signage, lighting and other relevant matters.
- The type and size of vehicle likely to use the parking area.
- Whether the layout of car parking spaces and access lanes is consistent with the specific standards or an appropriate variation.
- The need for the required car parking spaces to adjoin the premises used by the occupier/s, if the land is used by more than one occupier.
- Whether the layout of car spaces and accessways are consistent with Australian Standards AS2890.1-2004 (off street) and AS2890.6-2009 (disabled).
- The relevant standards of clauses 56.06-2, 56.06-4, 56.06-5, 56.06-7 and 56.06-8 for residential developments with accessways longer than 60 metres or serving 16 or more dwellings.
- Any other matter specified in a schedule to the Parking Overlay.

47 The provisions of clause 58 are applicable to the proposal and include the following purposes:

> To implement the Municipal Planning Strategy and the Planning Policy Framework.
>
> To encourage apartment development that provides reasonable standards of amenity for existing and new residents.

To encourage apartment development that is responsive to the site and the surrounding area.

48 The provision of clause 58 require that a development must meet all of the objectives of this clause and should meet all of the standards. If a zone or a schedule to a zone, or a schedule to an overlay specifies a requirement different from a requirement of a standard set out in clause 58 (excluding clause 58.04-1), the requirement in clause 58 applies.

49 Relevantly with respect to building setbacks clause 58 states:

For Clause 58.04-1 (Building setback):

- If a zone or a schedule to a zone specifies a building setback requirement different from a requirement set out in Clause 58.04-1, the building setback requirement in the zone or a schedule to the zone applies.
- If the land is included in an overlay and a schedule to the overlay specifies a building setback requirement different from the requirement set out Clause 58.04-1 or a requirement set out in the zone or a schedule to the zone, the requirement for building setback in the overlay applies.

50 A suite of policies within the scheme are relevant to consideration of this matter as set out in Mr Twite's evidence statement include the following:

- Clause 11.01-1S (Settlement)
- Clause 11.01-1R (Settlement – Metropolitan Melbourne)
- Clause 11.03-1S (Activity Centres)
- Clause 12.01-1L (Biodiversity in Merri-bek)
- Clause 13.04-1S (Contaminated and Potentially Contaminated Land)
- Clause 13.05 (Noise)
- Clause 15.01-1S (Urban Design)
- Clause 15.01-1R (Urban Design – Metropolitan Melbourne)
- Clause 15.01-1L (Urban Design in Merri-bek)
- Clause 15.01-2S (Building Design)
- Clause 15.01-2L (Building Design in Merri-bek)
- Clause 15.01-2L (Apartment Developments in Merri-bek)
- Clause 15.01-2L-04 (Energy Efficiency in Merri-bek)
- Clause 15.01-2L-05 (Environmentally Sustainable Development)
- Clause 15.01-4S (Healthy Neighbourhoods)

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- Clause 15.01-4S (Healthy Neighbourhoods – Metropolitan Melbourne)
- Clause 15.01-5S (Neighbourhood Character)
- Clause 15.03-1S (Heritage Conservation)
- Clause 15.03-1L (Heritage in Merri-bek)
- Clause 16.01-1S (Housing Supply)
- Clause 16.01-1R (Housing Supply – Metropolitan Melbourne)
- Clause 16.01-1L (Homes in Merri-bek)
- Clause 16.01-1L (Housing for people with limited mobility)
- Clause 16.01-2S (Housing affordability)
- Clause 16.01-2L (Housing affordability in Merri-bek)
- Clause 17.01-1S (Diversified economy)
- Clause 17.01-1S-1R (Diversified economy – Metropolitan Melbourne)
- Clause 17.02-1S (Business)
- Clause 18.02-4L (Car Parking in Merri-bek)
- Clause 19.03-3S (Integrated water management).

ARE THE PROPOSED LAND USES CONSISTENT WITH THE RELEVANT POLICIES OF THE PLANNING SCHEME?

51 The site is located within the C1Z, where relevant the strategic direction at clause 2.03-1 supports change from the existing character, to provide for taller buildings. Similarly, policy at clause 02.04 identifies the site as being within the Brunswick Major Activity Centre and within a 'significant change' area in the housing framework plan. DDO18 encourages development that creates a new mid-rise built form character and complements the valued built form and heritage character.

52 The proposal responds to this policy context, with the provision of a mixed use building comprising a food and drink premises and office at ground floor level and 80 dwellings (apartments) located at first floor and above.

53 A permit is not required for the office and food and drink premises in a C1Z. A planning permit is required for the dwelling use as the ground floor frontage exceeds 2.0 metre threshold entry width due to the proposed 4.8 metre wide entry to the dwellings from the Saxon Street frontage. While the frontage is greater than 2.0 metres, the provision of dwellings above ground floor level is an acceptable response. The ground floor layout locates the office and food and drink premises long the Dawson Street and Saxon Street frontage with the lobby entry to the dwellings set back from the street

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frontages with the ‘main’ access to the lobby located proximate to the north boundary of the site with frontage to Saxon Street. This design ensures the commercial floor space occupies the Dawson Street frontage and a majority of the Saxon Street frontage. This response ensures that the dwelling entry does not unacceptably impact the opportunity for commercial activity at ground level.

54 The corner location of the site also assists to mitigate the impact of the dwelling entry to the lobby at ground level. The provision of access from Saxon Street ensures an active commercial frontage to Dawson Street as the office use extends along the frontage and wraps around the street corner into Saxon Street. Similarly, the provision of the office and food and drink premises uses to the Saxon Street frontage also provides commercial activity to the Saxon Street. This outcome ensures the proposal does not unacceptably interrupt commercial street frontages.

55 In this context it was common ground between the parties that the proposal is consistent with relevant policy including the purpose of the C1Z, which seeks to create vibrant mixed use commercial centres and to provide for residential uses at densities complementary to the role and scale of the commercial centre.

56 Whilst Council is supportive of the proposed uses it says with respect to economic development and employment opportunities:

- The strategic directions at clause 2.03-6 seeks to create a sustainable economy and diversity of employment opportunities by supporting the economic viability and growth of activity centres and the Brunswick Design District.
- The proposed mixed use development provides an office and food and drink premises at the ground level only. Local policy seeks to prioritise employment uses over residential uses through the provision of employment floor space at ground floor and first floor.
- Council considers that the provision of a relatively small area of commercial floor space fails to adequately satisfy he strategic directions for economic development applicable to the subject site given its location within the identified Brunswick Design District Core.
- To resolve this concern, Council submits that it is necessary to provide additional employment generating floor area at the first floor level.
- Proposed Condition 1c) therefore requires: Additional employment generating and/or creative industries floor area of approximately 700 metres squared to be provided at first floor level, along the Dawson Street and Saxon Street frontages. This may result in the deletion of apartments 1.05 to 1.10.

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- Subject to above condition, Council considers that the proposal will deliver the strategic outcome sought for activity centres and the Brunswick Design District Core.

57 For the applicant, Mr Twite's evidence statement states that the Planning Scheme does not mandate a minimum amount of commercial floorspace in this location, nor does the C1Z require the lower two floors of a building to be commercial. Further Mr Tweedie's submission states:

> 113. The Brunswick Structure Plan Reference Document (2018) (Reference Document) is a reference document in the Scheme.26 It replaces the Brunswick Structure Plan 2010, the Brunswick Structure Plan Addendum (2012) and the Sydney Road/Upfield Corridor Strategic Framework Plan (2014), and incorporates strategies contained in various policies adopted by Council, including the Moreland Industrial Land Strategy 2015-2030(Moreland City Council, July 2016) (MILS).
>
> 114. Specifically, the Reference Document includes the following relevant strategies from the MILS:
>
> a) at 4.3.2, "To support transition from traditional industrial uses to a broader range of employment uses and prioritise employment uses over residential uses within MILS Category 2 Employment Areas."
>
> b) at 4.3.6, to ensure commercial uses are prioritised over residential uses in MILS Category 2 Employment Areas. Where mixed use is proposed, the amount of employment floorspace should be equivalent to the amount of all proposed ground and first floor building floorspace (inclusive of car parking, other services and circulation space)
>
> 115. However, insofar as it relates to the Site, the provision at 4.3.6 of the Reference Document has not been translated to the Local Policy Framework nor implemented elsewhere in the Scheme.
>
> 116. In the Applicant's submission, the only provision in the Scheme (through the Local Policy Framework) that references a quantum of employment floor space is Clause 17.01-1L-02 (Employment areas). That clause replicates the strategy contained within the MILS for "Employment Areas" (including "Employment Areas (Category 2)) to "ensur[e] the amount of employment floor space in a mixed use development is at least equivalent to the amount of all proposed ground and first floor building areas (inclusive of car parking, other services and circulation space).
>
> 117. Clause 17.01-1L-02 only relates to areas labelled in the Economic Development Framework Plan in Clause 02.04 as "Employment Areas" identified on the Strategic Framework Plan: Economic Development.

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> 118. Whist[sic] the Site is part of the Strategic Framework Plan: Economic Development, it is not identified as an "Employment Area" within that plan (or for that matter, Clause 02.03-6). Rather, the Site is designated as part of the "Brunswick Design District Key Sites":

58 Council relies on the scheme's encouragement of employment floor space in mixed use development (as set out in clause 17.01-1L-02) for the provision of additional commercial space at first floor level.

59 Clause 17.01-1L-02 seeks the provision of employment floor space in a mixed use development to be at least equivalent to the amount of all proposed ground and first floor building areas (inclusive of car parking, other services and circulation space). However, this clause only relates to areas labelled in the Economic Development Framework Plan in clause 02.04 as "Employment Areas" identified on the Strategic Framework Plan: Economic Development. Examination of the Strategic Framework Plan: Economic Development, shows the site is designated as part of the 'Brunswick Design District Key Sites' and is not identified as an "Employment Area" in the plan. In this context, I have been persuaded by the applicant there is no specific control that mandates the outcome sought by Council.

60 Even if I am wrong, the proposal includes the provision of approximately 423 metres squared of office space and a food and drink premises (cafe) that occupies 61.0 metres squared of floor area at ground level. These commercial uses have frontage to Dawson Street and Saxon Street. While a proposal that offered more commercial space would be considered more favourably by Council, I do not find the lack of additional commercial floor space at first floor level to make the proposal unacceptable.

61 The provision of the commercial floor space at ground level enables commercial activity on the site that will contribute to the vitality of the activity centre. This is particularly noteworthy in the context that the mix of uses as proposed is considered to be acceptable.

62 Further, I am persuaded by the applicant that that the part conversion of the first floor area to commercial would have other implications for the internal layout of the building with respect to the layout and location of the remaining first floor apartments. Therefore I am persuaded the proposal is an acceptable response with respect to the mix of uses and quantum of commercial floor space.

IS THE PROPOSAL AN ACCEPTABLE HERITAGE AND BUILT FORM RESPONSE?

Heritage

63 Council is concerned that the proposed building height of 30.45 metres is substantially taller than surrounding heritage buildings and fails to respect

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the form and design of heritage places sought by planning policy at clause 15.03-1S, clause 15.03-1L and DDO18. Council submits its Heritage Policy at clause 15.03-1L specifically seeks to ensure new buildings do not dominate heritage places.

64 They say this is a key consideration for any development on the site due to its location within the significant civic precinct comprising Sydney Road and Dawson Street. The current Statement of Significance for HO149 Sydney Road Precinct, Brunswick, lists a number of nearby significant buildings in Dawson Street, Sydney Road, and Glenlyon Road.

65 The site context in HO149 includes individually significant buildings including:

- Brunswick Baths, 10 Dawson Street, which also includes the subject site – HO61
- St Ambrose's Church, 289 Sydney Road (1871) - HO248
- St Ambrose's School Complex 1-3 Dawson Street (1916) - HO153
- Brunswick Town Hall and Municipal Offices, 233 Sydney Road (1876 onwards) - HO155
- Mechanics Institute, 270 Sydney Road (1868-70) - HO154
- Christ Church, 10 Glenlyon Road (1857-75) - HO83



Source: N Lewis Evidence Statement, paragraph 3.1.2

66 Council called heritage evidence from Mr Lewis. It was his evidence that:

- The proposed nine storey redevelopment is not supported as it will dominate the significant relatively low-rise civic precinct, and in particular, the adjoining Brunswick Baths.
- The proposal exceeds the preferred maximum height shown on Map 1B, DDO18 – Brunswick Activity Centre (Sydney Road and Upfield

Corridor), by 5.7 metres. The proposal is of a form and design that should not exceed the preferred DDO height.

- The proposal fails to conform to the heritage provisions of the Merri-bek Planning Scheme with respect to clause 15.03-1L - Heritage in Merri-bek, and clause 43.01 Heritage Overlay. It should not be approved without major changes that include:
  - restricting the building height to a maximum of 25.0 metres; and
  - reducing the podium height to 8.4 metres.

67 Council, whilst acknowledging the evidence from Mr Lewis submits that they are not seeking to pursue the reduction in podium height to 8.4 metres sought by Mr Lewis. They say that:[26]

- On balance, the street wall to Dawson Street is appropriate as it generally reinforces the scale of the adjacent buildings to the east and west and sits within the established height ranges of the south side of Dawson Street.
- The western section of the Dawson Street front façade provides an acceptable design response to the abutting Brunswick Baths building, as it is set back at the south-west corner. This design approach ensures that the abutting significant heritage building will remain readily visible from Dawson Street.
- The overall building height is inappropriate given the heritage context. The proposed building will result in a dramatic change in height in the context of surrounding buildings, which will tend to 'compete' for visual dominance with nearby buildings of individual heritage significance.
- Heritage policy at clause 15.03-1L seeks to ensure that new buildings do not adversely affect views and vistas toward, from and within heritage landscapes. The height of the development will impact the vista of the Brunswick Town Hall landmark when looking down Dawson Street from Sydney Road, because the Town Hall would no longer become the most dominant building on the skyline.
- While the overall height of the development will be taller than nearby heritage properties, it is recognised that this must be balanced against the strategic direction to provide a significantly increased density and new character in the Brunswick Activity Centre. Therefore the reduction in the height of the development by one level (rather than two) it will acceptably reduce the visual prominence of the building and its visual impact on nearby heritage buildings.

[26] Council submission page 50.

68 The applicant submits the development as proposed presents an appropriate response to the nearby heritage built form within the Brunswick Activity Centre. Ms Baker's evidence is:[27]

- The current proposed scheme is an appropriate response to HO61 and its broader heritage context considering the strategic support for higher density development in this part of Brunswick as reflected in the zoning and broader policy directives. Broader planning considerations such as the zoning of the site and the provisions of DDO18 must be balanced against heritage considerations as tools with which to assess matters of design, height, setback and other built form characteristics.
- The proposed infill development largely aligns with the previous approval for the site, the major difference being that the current proposal is half a storey taller (2.45 metres). Such a limited increase in height would have no material impact upon the proximate heritage buildings given that the existing policy setting contemplates a building of some scale on this site. The proposal rises to a maximum height of 30.45 metres excluding plant, services and lift overrun. The eight storey 'scheme' permitted by the now expired Incorporated Document rose to a height of 28.0 metres.
- Although the proposed scheme will result in a degree of change, the surrounding context can readily absorb the degree of change proposed without adverse impact upon the significance of the Brunswick Baths (HO61), the nearby individually significant heritage buildings or the Sydney Road Heritage Precinct (HO149) to the east. The current proposal will fit comfortably within the range of height and built form typologies that characterise the existing and emerging character of the area.
- The design of the building is generally considered to be an acceptable response. The podium is appropriately responsive to the neighbouring Brunswick Baths building, both in scale and design. The proposed materials and colour palette also acceptably reference adjoining heritage buildings.
- The proposal is appropriately respectful of its context and successfully balances heritage considerations with other policy considerations that encourage higher density development in this part of Brunswick.

69 The proposal nine storey built form will have an overall height of 30.45 metres high to the main roof, above with a roof top deck and lift overrun above rising to a height of 34.50 metres.

70 The proposal has a stepped profile, with a three storey podium set to the Dawson Street frontage that rises 11.9 metres above ground level. At the

[27] C Baker, evidence statement page 1.

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second and third floor levels the Dawson Street façade is 'separated' into three sections by the inclusion of a recessed faced elements. The upper facade sections comprising the fourth floor to the seventh are set back 4.795 metres to 5.095 metres from the Dawson Street frontage. These floors have projecting cantilevered balconies that extend to approximately 2.5 metres from the façade in a semi-circular form. They are to be set in an irregular arrangement for the fifth, sixth and seventh floors. The eighth and ninth floors are set back 10.51 metres and 11.91 metres respectively from the Dawson Street frontage as shown below:[28]



Source: N Lewis evidence statement, page 21.

71 A roof top deck that accommodates various structures is set back 11.59 metres and 12.90 metres from the Dawson Street frontage, while the lift overrun is set back 14.02 metres. Consistent with the above setbacks, the west elevation is set back an approximate minimum of 3.8 metres from the eaves of the Brunswick Baths building roof. Similarly the proposal is set back an approximate minimum of 3.0 metres from the Saxon Street frontage.

72 In addition to the considerations in clause 43.01, relevant provisions in State and Local heritage policy at clauses 15.03-1S and 15.03-1L include strategies that seek to:

- encourage appropriate development that respects places with identified heritage values;
- ensure an appropriate setting and context for heritage places is maintained or enhanced;
- encourage new buildings to respect the existing scale, massing, form and siting of contributory or significant elements and do not dominate the heritage place or precinct;

[28] N Lewis evidence statement, page 21.

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- encourage new buildings to be set back the same distance (or an average) from the front boundary as existing adjacent or nearby contributory or significant buildings;
- encourage new buildings to not obscure important view lines to contributory or significant heritage buildings or their features; and
- encourage new buildings to adopt a facade height that is consistent with adjoining or nearby contributory or significant buildings.

73 Further, DDO18 has a design objective to respect the form, design, and context of buildings of individual heritage significance in the precinct.[29] The decision guidelines also require consideration of:[30]

- whether the maximum building height is achievable having regard to lot size, dimensions (width and depth) and/or those sites within or adjoining the Heritage Overlay;
- whether an increased upper level setback is required having regard to the heritage significance of the site or an adjoining site within the Heritage Overlay.
- whether the preferred maximum street wall height is achievable having regard to the heritage significance of the site or an adjoining site within the Heritage Overlay.
- how the development considers views along Sydney Road to landmark buildings of individual heritage significance.

74 In this context, I have been persuaded by the applicant the proposal is an acceptable outcome from a heritage perspective. I say this for the following reasons:

- The proposal has a three storey podium form to the Dawson Street frontage that has a length of approximately 38.0 metres and height of 11.9 metres. The siting and height of the podium to the Dawson Street frontage acceptably responds to the siting of the Brunswick Baths building and its horizontal form as shown below:

[29] Clause 1.0 of Schedule 18 to clause 43.02.
[30] Clause 6.0 of Schedule 18 to clause 43.02.



Source: S Zaslavsky evidence statement.

- The form and proximate walls of the Brunswick Baths building comprise a ‘tall’ two storey form that is approximately 8.4 metres high with a hipped roof above that rises to approximately 11.35 metres. In this context the scale massing of 11.9 metre high podium is respectful of the Brunswick Baths building.
- The siting of the three storey podium to the Dawson Street frontage is consistent with the siting of the Brunswick Baths building and the non-contributory commercial building located at 259 Sydney Road. The height and siting of the podium respect the heritage form of the Brunswick Baths building and does not disrupt its setting.
- The façade of the podium to Dawson Street includes design detailing that provides three ‘separate’ sections at the second and third level. The design includes the provision of recessed faced elements. The three storey podium height combined with the design detail that ‘separates’ the façade and the proposed fenestration acceptably responds to the robust heritage form of the Brunswick Baths building and respects its design detail and massing to the Dawson Street frontage.
- Separation is provided between the Brunswick Baths building and the west elevation of the proposed building. The separation varies from 3.8 metres to 10.1 metres proximate to the Dawson Street frontage. This separation ensures that the Brunswick Baths building reads as a distinct separate element in the streetscape and is not dominated by the podium form.

- To the east, the site fronts Saxon Street with there being a non-contributory building located on the opposite side of the street (259 Sydney Road, Brunswick). The site is occupied by a building that is constructed abutting all property boundaries. The location of this non-contributory building, albeit in a HO, combined with the site's frontage to Saxon Street ensures the proposal will not unacceptably impact any heritage buildings to its east in Dawson Street as shown below:



Source: S Zaslavsky evidence statement.

- Council considers that the proposal will unacceptably impact views of the Brunswick Town Hall and the Brunswick Baths from Sydney Road. I have not been persuaded that the proposal will have an unacceptable impact on the views along Sydney Road to landmark buildings of heritage significance. Whilst there will be long range views of the proposal from Sydney Road, the Town Hall is a substantial two storey building that is located on the south-west corner of Sydney Road and Dawson Street and the subject site is located approximately 70.0 metres from the intersection of Sydney Road and Dawson Street.
- From some vantage points oblique views to the Town Hall building will include the proposed building as a backdrop. Having regard to the dominant form of the Town Hall that will be in the foreground and the separation between the sites, I am not persuaded the proposal will have an unacceptable impact on the views to the Brunswick Town Hall, as shown below:



Source: S Zaslavsky evidence statement.

- Whilst the proposal is to be built to the Dawson Street frontage, the separation between the proposal and the Brunswick Baths building combined with three storey podium form will ensure the proposal is respectful of the scale and form of the Brunswick Baths building. This design response combined with the robust architectural form of the Brunswick Baths will ensure views from Sydney Road are not unacceptably impacted.
- I have previously found the proposed podium form to be acceptable. With respect to the balance of the building, at a height of 30.45 metres it will be taller than surrounding heritage buildings. However a taller building is anticipated on the site. The provisions of DDO18 stipulate a discretionary preferred maximum height of 25.0 metres.
- Council is supportive of the proposal subject to the deletion of one level (levels, three, four, five or six) with the commensurate reduction in building height. The deletion of the level would result in an approximate 3.1 metre reduction in height to 27.35 metres. Whilst the reduction in height would lower the overall height of the building I am not persuaded that the proposed upper level built form is unacceptable.
- Levels three, four, five and six are located above the podium and have a minimum setback of 5.0 metres from the Dawson Street frontage and a minimum 3.8 metre setback from the west (side) façade of the Brunswick Baths. Further, the west elevation comprises a ‘simplified’ design detail that includes a moderately articulated facade with recessive balconies that assists to ensure that the proposal does not visually detract or dominate the Brunswick Baths building. The

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simplified design detail, combined with the separation will ensure that the proposed building height is acceptable.

- The proposed built form will be taller and visible above the Brunswick Baths when viewed from the south and west respectively. However, whilst the proposal will be visible, the visibility alone does not make it unacceptable. The robust form of the Brunswick Baths building with its prominent wide form, distinct colour, and architectural style, combined with the separation between the buildings will ensure its heritage setting and legibility is not diminished.
- On the opposite side of Dawson Street, other heritage buildings include the parish buildings of St Ambrose's that has single storey street walls with a roof ridge of the hall that is equivalent to two storeys. Further to the east, the Brunswick Town Hall has three storey wall heights.
- The proposal includes a three storey podium form to the Dawson Street frontage combined with the setbacks of the upper levels that vary from 5.0 metres to 10.5 metres. The three storey scale of the podium ensures the taller portion of the proposed building is recessed from the street frontage and located away from the heritage buildings on the opposite side of Dawson Street. The setback of the upper levels, combined with the road separation limits the visual impact of the proposal on these buildings.
- Permission is required for the demolition of the existing building and the electrical substation. The electrical substation was constructed circa 1913 and is said to date back to the initial period of Brunswick's connection to the electrical network. The substation is located next to where the Brunswick Electricity Department building previously stood on the subject site. Council does not oppose the demolition. In the context of Council's support of the demolition and Ms Bakers evidence that demolition is acceptable on account of its low integrity, the proposed demolition is acceptable.
- In the context of the preferred maximum height and having regard to the proposed setbacks, I find the proposed height to be acceptable from a heritage perspective. Therefore the proposal is an acceptable response that will not have an adverse impact upon the significance of the Brunswick Baths site, proximate individually significant heritage buildings, or the Sydney Road Heritage Precinct (HO149) to the east. It is an acceptable response to the provisions of clause 43.01 (Heritage Overlay), policies at clauses 15.03-1S (Heritage Conservation), and 15.03-1L (Heritage), and the provisions of DDO18.

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Built form

75 Council submits the proposed building height of 30.45 metres (nine storeys), excluding roof top plant, is unacceptable. They say:

- The additional height will impact the amenity of the streetscape and cause additional overshadowing to Dawson Street at 10.00am at the equinox. They say this outcome is contrary to the DDO18, which states that development should not overshadow the opposite footpath of Key Pedestrian Streets (including Dawson Street) between 10.00am and 2.00pm at the equinox.
- A reduction in building height by one storey is necessary to reduce overshadowing to the southern footpath of Dawson Street.
- Subject a one storey building height reduction the proposal will exceed the preferred DDO height by approximately 2.35 metres (excluding the rooftop plant). This is an acceptable outcome.
- Council's submission provides a table that details the proposed development in relation to the preferred height, street wall height and upper level setbacks:[31]

Design Element	***Preferred DDO18 control***	***Proposed***
Overall height	25 metres	34.5 metres (30.45 metres when excluding roof top services, which are permitted above the preferred height)
Street wall height – Dawson Street	8-11 metres	11.65 – 11.9 metres
Street wall height – Saxon Street	7-10 metres	24.3 metres (but setback from the frontage)
Upper level setback – Dawson Street	5 metres	4.86 – 5 metres (2.5 metres to balconies)
Upper level setback – Saxon Street	5 metres	3 – 3.56 metres between levels 1-6 and 8.9 – 9.5 metres at levels 7 & 8

76 Council called urban design evidence from Ms Roberts which is summarised as follows:

- The proposed development exceeds the preferred height by approximately 5.0 metres when measured to the parapet with the services sitting an additional 3.9 metres above. The emerging new mid-rise character of the area is predominately mixed use apartment buildings of eight storeys.
- Any built form on the review site is likely to remain highly visible given it is surrounded by heritage buildings of modest heights including the Brunswick Baths to the immediate west of the site, St

[31] Council submission page 23.

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Ambrose Catholic Church to the north east, the Brunswick Town Hall to the south east and St Ambrose Hall to the south.

- The development currently underway to the direct north of the site on Saxon Street will likely obscure views to the bulk of the proposal from that direction, noting that the closest that building gets to the eastern boundary is around 5.0 metres whereas the proposal under review is setback 3.56 metres from the eastern boundary.
- The additional height will be visible from a reasonable distance and will remain prominent due to the surrounding heritage fabric. While it is 'just' one level higher, or 'just' 5.0 metres taller than the preferred (excluding the 4.0 metre plant) there is no justification from an urban design perspective that I am aware of for this exceedance. The preferred 25.0 metres is already the greatest of the heights within the precinct.
- Reduce the height of the building by one level (3.1 metres) to ensure direct sunlight to the opposite side of Dawson Street between 10.00am – 2.00pm during the equinox and ensure the building reads as an eight storey mid-rise building when viewed from the surrounding public realm.
- The entry point to the apartment complex from Saxon Street includes a secure gate into a circulation space that leads to the lift lobby. This circulation space will receive limited passive surveillance due to the 2.1 metre fence and the 5.0 metre brick wall to the north against part of the boundary. The proposal should be altered to create an alternative entry to the lift lobby from Dawson Street which would provide direct and visible access to the lift core and further enhance the activation of Dawson Street.

77 Council is not pursuing the recommendation to create an alternative entry to the lift lobby from Dawson Street.

78 The applicant called urban design evidence from Mr Czarny. It was his evidence that:

- The proposed height reinforces the DDO18 strategic objectives to encourage a new mid-rise built form character. The proposal rises some 5.45 metres above the DDO18 discretionary measure of 25.0 metres. The exceedance is well set back from the boundary and street walls below (10.5 metres from Dawson Street and 8.9 metres from Saxon Street). The additional height will not be dominant within the viewshed, nor will it result in ground-level pedestrian impacts.
- The presentation to Dawson Street will not dominate the civic buildings. The proposal is a rhythmic and dynamic insertion into a diverse streetscape. The removal of an intermediate level from the proposal cannot be justified on streetscape terms.

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- At the corner of Dawson Street and Saxon Street, retention of an established canopy tree (Red Ironbark) requires the envelope to be set back between 3.0 metres to 3.5 metres from the Saxon Street frontage. The setback provides a widened pedestrian realm and improved access to the residential entry to the north. The proposed building successfully turns the corner with an articulated east elevation to seven storeys and 24.3 metres. The design response is well executed.

79 I have been persuaded by the applicant that the proposed built form is acceptable. Relevant design objectives seek to encourage a new mid-rise built form character and to establish a new cohesive built form character in off-corridor locations to the east and west of Sydney Road, to achieve an appropriate balance between a sense of enclosure and openness and to ensure new street walls reinforce the existing character of streets.[32]

80 The proposed building will exceed the preferred height 25.0 metre height. However I find that it will acceptably integrate with the emerging new mid-rise character of development that has been constructed in the area as shown on the photographs provided by the parties including those provided by Ms Roberts shown below.[33]






81 These buildings being eight storeys are similar in form to the proposed nine storey built form of the proposal. With respect to other nearby sites it is noteworthy that:

- to the east at 259 Sydney Road contains a non-contributory building that is located in HO149 has a preferred height of 19 metres for the site, an 8-11 metre street wall, and 5.0 metre upper level setback pursuant to the provisions of DDO18. Whilst the existing non-contributory built form has an approximate height of 9.0 metres.
- to the north at 33 Saxon Steet, Council is currently building a five storey (23.39 metre) community building. DDO18 specifies a preferred height of 17.0 metres for the site.

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32 Clause 1.0 of Schedule 18 to clause 43.02.
33 A Roberts evidence statement, page 16.

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- to the south-west the existing council car park at 7-11 Dawson Street has a preferred maximum height control of 25.0 metres pursuant to the provisions of DDO18. This site is not affected by the Heritage Overlay.

82 The proposal when viewed from the north will integrate with the 23.39 metre high building at 33 Saxon Street. In addition, the integration the building at 33 Saxon Street will moderate the height of the proposal when viewed from the north. There are no current proposals for the nearby sites at 259 Sydney Road and 7-11 Dawson Street. However, DDO18 specifies preferred heights of 19.0 metres and 25.0 metres respectively. The provision of these preferred heights provides direction with respect to their future development and the desired emerging character that may occur proximate to the proposed development in the event they are developed.

83 The development proposes an 11.9 metre podium height (street wall) along Dawson Street. Council supports the design of the Dawson Street street wall. Whilst Council's heritage expert, Mr. Lewis, disagrees and suggests that the podium height should be reduced to 8.4 metres to match the height of the Brunswick Baths. Ms Robert's evidence does not raise any concerns with Dawson Street street wall height.

84 I have been persuaded by the applicant and find the podium height to Dawson Street, albeit 900mm above the preferred street wall height under the DDO18, is acceptable as it responds to the horizontal built form of the Brunswick Baths located to the west and the non-contributory buildings located to the east. Further, the stepping back of the upper levels that varies from 5.0 metres to 12.9 metres with projecting balconies will ensure the podium street wall remains the visually dominant element to the Dawson Street frontage. This design response ensures an appropriate balance between openness and enclosure is achieved along the Dawson Street frontage.

85 With respect to the concerns regarding shadow impact on the public realm DDO18 seeks development to not overshadow the opposite footpath of Sydney Road and Key Pedestrian Streets indicatively shown on Map 2A (North) and Map 2B (South) between 10.00am and 2.00pm at the equinox.

86 DDO18 seeks to maintain solar access to key pedestrian streets to enhance amenity and the pedestrian experience. The application plans show the overshadowing resulting from the development falls on a small portion of a single raingarden adjacent to the footpath on the opposite side of Dawson Street at 10.00 am. The applicant provided additional shadow diagrams that show approximately 0.6 square metres of the raingarden is overshadowed at 10:15am with their being no overshadowing at 10:30am. The diagrams also show the separation between the raingarden to the walkable portion of the footpath by existing bicycle hoops and bench seating, neither of which are affected by overshadowing.

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87 The applicant's submissions noted that DDO18 does not contain a definition of a footpath and that the ordinary and natural meaning of 'footpath' is a pavement that pedestrians walk along. They say there is no basis to include a raingarden within that definition, given that it is not an area designed for people to walk through, nor is it a pavement.

88 I have been persuaded by the applicant that the extent of overshadowing is minor and will not unacceptably impact the amenity and pedestrian experience of those walking along Dawson Street. The shadow falls on a small portion of the raingarden for a limited period of time. In this context I am not persuaded by Council that the height of the proposal needs to be reduced to limit the impact of overshadowing pursuant to the guidance provided at DDO18. Therefore, as I find the extent of overshadow impact to be acceptable, I make no findings regrading whether the rain garden is or is not part of the footpath.

89 To Saxon Street the proposal does not include a street wall. The east wall that rises to a height of 24.3 metres has a setback that varies from 3.0 metres to 3.5 metres from the ground floor to level 6 from the Saxon Street frontage. The setback enables footpath widening and retention of an established canopy tree located at the corner of Saxon Street and Dawson Street.

90 Pursuant to DDO18, in locations such as Saxon Street, a setback equivalent to a 1:1 ratio of street width to street wall height is preferred.[34] Therefore a maximum street wall height to Saxon Street of 10.0 metres is preferred. However, Council recognises that given the narrowness of Saxon Street, it is difficult for a development to achieve full compliance with the 1:1 ratio. In this context they say levels five and six should be set back an additional 1.0 metre from Saxon Street.

91 I have been persuaded by the applicant the proposed design response is acceptable. The proposal provides a varying 3.0 metre to 3.5 metre setback to Saxon Street and retains an existing tree located at the corner of Saxon Street and Dawson Street.

92 The proposed setback from the east boundary including retention of the tree creates a widened pedestrian realm that 'opens' the street corner and the frontage to Saxon Street. Further, the proposed setback combined with the width of Saxon Street provides an approximate separation of 12.9 metres between the proposed east façade and the west façade of the building located to the east at 259 Sydney Road that is built to its Saxon Street frontage.

93 Similarly, the proposed height of 24.3 metres is an acceptable response having regard to the development at 33 Saxon Street that rises to a height of

[34] Clause 2.0 of Schedule 18 to clause 43.02.

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approximately 23.39 metres with a minimum setback of approximately 5.2 metres from the Saxon Street frontage.

94 In this context the design response achieves an acceptable balance of enclosure and openness sought by the DDO18 design objective with respect to the Saxon Street frontage.[35] Therefore, having regard to the above, the proposal is an acceptable response to DDO18, clause 15.01-1L - Urban design and clause 15.01-2L - Building design of the Planning Scheme.

IS THE PROVISION OF EMPLOYMENT GENERATING FLOOR SPACE ACCEPTABLE?

95 Council submits the site is within the Brunswick Activity Centre and located within the Brunswick Design District Core area. They say:

- Strategic direction for economic development in Merri-bek seeks to create a sustainable economy and diversity of employment opportunities by supporting the economic viability and growth of activity centres and the Brunswick Design District.
- Local policy at clause 17.01-1L-02 (Employment areas) seeks to prioritise employment uses over residential either by ensuring the amount of employment floor space in a mixed use development is at least equivalent to the amount of all proposed ground and first floor building areas (inclusive of car parking, other services and circulation space).
- The Moreland Industrial Land Strategy ('MILS') classifies the subject site as a Category 2 (Employment) Area. The proposal provides only 484.0 metres squared of employment generating floor space at ground floor level, comprising an office and cafe.
- It is appropriate and necessary to require the provision of extra employment generating and/or creative industries floor space at first floor level via a condition of permit. Proposed Condition 1c) seeks to achieve approximately 700 metres squared of additional floor space along the Dawson Street and Saxon Street frontages and notes that it may result in the deletion of apartment No's 1.05 to 1.10 inclusive.
- Subject to this condition, Council considers that the proposal will provide an acceptable amount of employment generating floor space.
- Separately, the proposal aligns with the DDO18 and Commercial 1 Zone objectives by providing an active ground floor commercial space with extensive transparent glazing.

96 The applicant submits:[36]

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35 Ibid.

36 Applicant's submission, pages 19, 20 and 21.

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111. Mr Twite observes that the MPS does not mandate a minimum amount of commercial floorspace in this location, nor does the C1Z require the lower 2 floors of a building to be commercial.

112. To justify this condition, Council notes in its officer report that "local policy seeks to prioritise employment uses over residential uses through the provision of employment floor space at ground floor and first floor."

113. The Brunswick Structure Plan Reference Document (2018) (Reference Document) is a reference document in the Scheme. It replaces the Brunswick Structure Plan 2010, the Brunswick Structure Plan Addendum (2012) and the Sydney Road/Upfield Corridor Strategy Framework Plan (2014), and incorporates strategies contained in various policies adopted by Council, including the Moreland Industrial Land Strategy 2015-2030(Moreland City Council, July 2016) (MILS).

114. Specifically, the Reference Document includes the following relevant strategies from the MILS:

    a) at 4.3.2, "To support transition from traditional industrial uses to a broader range of employment uses and prioritise employment uses over residential uses within MILS Category 2 Employment Areas."

    b) at 4.3.6, to ensure commercial uses are prioritised over residential uses in MILS Category 2 Employment Areas. Where mixed use is proposed, the amount of employment floorspace should be equivalent to the amount of all proposed ground and first floor building floorspace (inclusive of car parking, other services and circulation space).

115. However, insofar as it relates to the Site, the provision at 4.3.6 of the Reference Document has not been translated to the Local Policy Framework nor implemented elsewhere in the Scheme.

116. In the Applicant's submission, the only provision in the Scheme (through the Local Policy Framework) that references a quantum of employment floor space is Clause 17.01-1L-02 (Employment areas). That clause replicates the strategy contained within the MILS for "Employment Areas" (including "Employment Areas (Category 2)) to "ensur[e] the amount of employment floor space in a mixed use development is at least equivalent to the amount of all proposed ground and first floor building areas (inclusive of car parking, other services and circulation space).

117. Clause 17.01-1L-02 only relates to areas labelled in the Economic Development Framework Plan in Clause 02.04 as "Employment Areas" identified on the Strategic Framework Plan: Economic Development.

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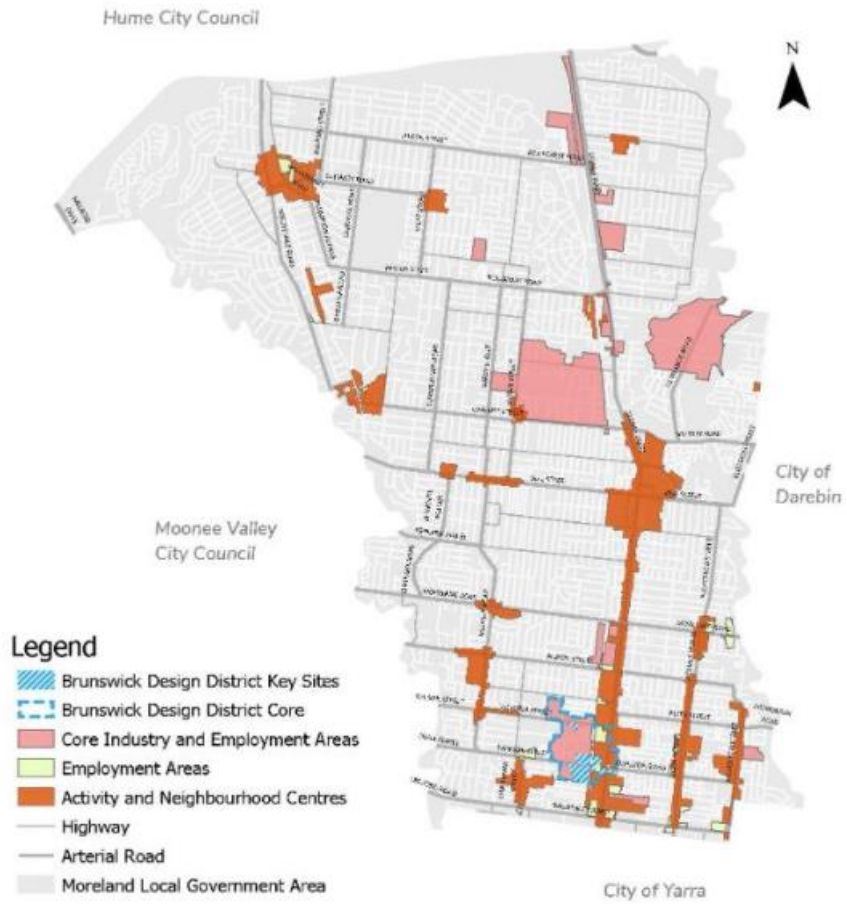
118. Whist the Site is part of the Strategic Framework Plan: Economic Development, it is not identified as an "Employment Area" within that plan (or for that matter, Clause 02.03-6). Rather, the Site is designated as part of the "Brunswick Design District Key Sites".

119. f the intent of Clause 17.01-1L-02 was to include areas within the Brunswick Design District, it would have done so.

120. No weight should be given to polices in a reference document that have not been included in the Scheme.

97 The location of the site in an activity centre and the importance of economic development and employment opportunities as submitted by Council are acknowledged, as is the encouragement of employment floor space in mixed use development, as set out in clause 17.01-1L-02.

98 Clause 17.01-1L-02 applies to land identified as Employment Areas as identified on the Strategic Framework Plan: Economic Development. The plan at clause 02-04 shows the site to be part of the 'Brunswick Design District Key Sites' and not an Employment Area as shown below:



99 Having regard to the submissions I am persuaded by the applicant that the Planning Scheme does not mandate an outcome that requires additional

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commercial floor space at first floor level. Even if I am wrong, I find the proposal provides an acceptable amount of commercial floorspace. The floor space provided for the office has an area of 423.0 metres squared. The use is located at ground level with frontage to Dawson and Saxon Street. The design response acceptably activates the street frontages and will add to the mix of commercial activity in the activity centre.

100 A proposal that offered more commercial space may be more acceptable to Council. However as submitted by Council I agree that the proposed mix of commercial and residential uses are an acceptable response within the activity centre.

WILL THERE BE ANY UNACCEPTABLE CAR PARKING AND TRAFFIC IMPACTS?

101 It was common ground between the parties that the proposal is an acceptable response from a car parking and traffic perspective. A permit is required to reduce the car parking requirement as a total of 106 spaces are required and 91 spaces are provided. [37]

102 Clause 52.06-7 specifies that an application to reduce the number of car parking spaces required must be accompanied by a car parking demand assessment. The assessment is to address specified matters including the availability of public transport, the convenience of pedestrian and cyclist access, the provision of bicycle parking, anticipated car ownership rates and any empirical study.

103 Before granting a permit to reduce the number of car spaces, consideration must be given to a number of matters. These include the car parking demand assessment, local policy, the availability of car parking in the locality, impact of fewer car spaces on local amenity and access to alternative transport modes.

104 Policy at clause 18.02-4S seeks to ensure there is an adequate supply of car parking with strategies that refer to consideration of other modes of access including public transport, road capacity, the potential for demand management of car parking and protecting the amenity of residential precincts from the effects of road congestion created by on-street parking.

105 Clause 52.02-7 sets out the matters that must be considered before granting a permit to reduce the number of car spaces required by the Planning Scheme. This clause effectively requires an assessment of the likely demand for parking spaces and whether it is appropriate to allow fewer spaces to be provided.

106 With respect to the car parking reduction and traffic generation Council's submission states the following:[38]

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37 Council submission, page 56.
38 Council submission page 56.

Council considers that the proposed reduction is acceptable, having regard to the relevant decision guidelines of clause 52.06 and relevant local policy. In support of this position it submits that:

- Clause 18.02-4L (Car parking in Merri-bek) supports reduced car parking rates in developments within and close to activity centres, with excellent access based on frequency and location to a range of public transport options and with increased provision of bicycle parking above the rates specified in Clause 52.34.
- The site has excellent access to various alternate transport modes including:
- Tram route 19, which provides for north-south travel along Sydney Road (75 metres east).
- The Upfield shared path bicycle route (65 metres west).
- Jewell Railway Station (500 metres south-west) and Brunswick Railway Station (500 metres north-west).
- Route 506 buses (100 metres east).
- The Traffic Engineering Assessment found that the Clause 52.06 parking rates for dwellings are higher than the car ownership statistics for apartment housing in Brunswick. In central Brunswick, 43 per cent of residents living in one-bedroom apartments do not own a vehicle, and 52 per cent of residents own one vehicle or less. The assessment concluded that the 60 per cent of one-bedroom apartments provided with one car space is consistent with the car ownership rates of apartment households in Brunswick. The assessment also considered the site's excellent access to alternative modes of transport would further suppress parking demand for the development as a whole.
- The proposal provides 153 bicycle parking spaces which is well in excess of the 24 spaces required by the Planning Scheme.

The Traffic Engineering Assessment found that the development would result in approximately 275 additional vehicle movements per day (14 commercial and 261 residential) which will travel along Dawson Street (a local major road) given there is no vehicle access connected to Saxon Street. Council's Development Engineering Unit concluded the additional traffic is not expected to cause any unacceptable congestion at the nearby intersections.

107 Having regard to the relevant provisions of the Planning Scheme I am persuaded by the Council's submission. The provision of car parking and traffic generation are an acceptable design response and outcome.

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DOES THE PROPOSAL RESPOND ACCEPTABLEY TO CLAUSE 58 OF THE PLANNING SCHEME?

108 With respect to the provisions of clause 58, a development must meet all of the objectives of this clause and should meet all of the standards of this clause. However, if the responsible authority (and Tribunal on review) is satisfied that an application for an alternative design solution meets the objective, the alternative design solution may be considered. The decision guidelines set out the matters that the responsible authority must consider before deciding if an application meets the objectives.

109 Having regard to the submissions of the parties, I do not recite all of the standards or the decision guidelines to be applied where the standard is not met. These have, however, formed the basis of assessment as well as local policy in clause 15.01-2L.

110 There is common ground between the parties that the proposal generally meets the requirements of clause 58. Council's submission raises concerns with respect to the provision of clause 58.03-5, Landscaping objective. Council submits:

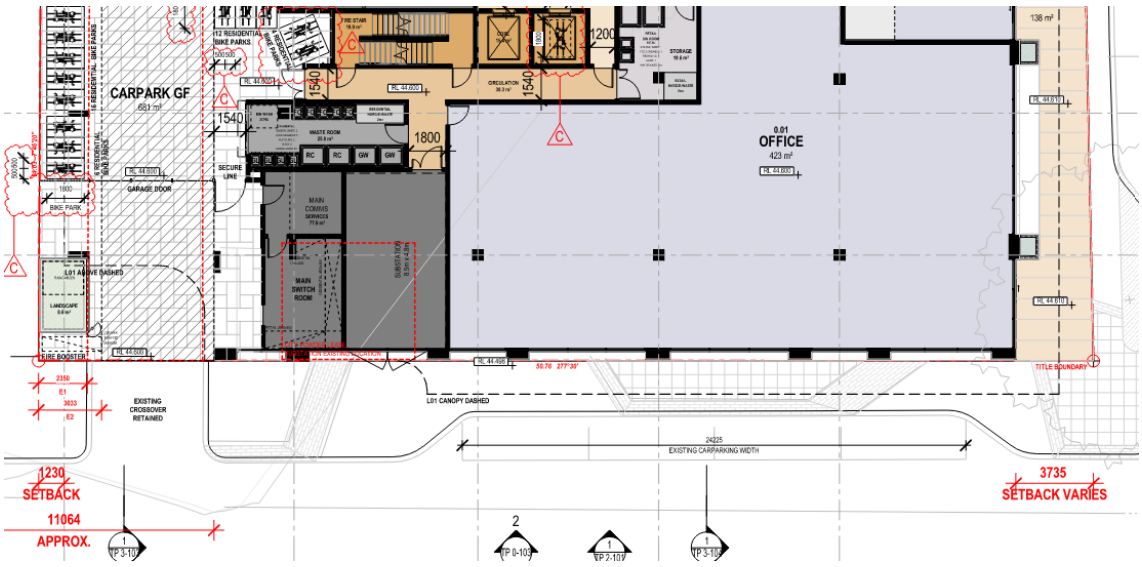
- The front setback to the main switch room, which fronts Dawson Street, should be increased by 1.0 metre to enhance the streetscape presentation of the front façade. They say inclusion of a condition requiring this setback is considered warranted and necessary. It will enable the planting of low level vegetation, which will assist in softening the wide stretch of blank wall and allow for further landscaping along the street frontage in accordance with the standard. The landscape outcome for the site is otherwise considered appropriate and meets the relevant objectives.
- The landscaping objective and standard of clause 58 seeks the retention of existing trees. There is a large, mature, native canopy street tree (Red Ironbark) in proximity to the corner of Saxon Street and Dawson Street. This tree is of significance to the streetscape and Council supports its retention.

111 The applicant submits the provision of a 1.0 metres setback to the switch room is unnecessary and that it will disrupt the Dawson Street façade that is built to the front boundary.

112 The switch room is located at the west end of the Dawson Street façade and has a frontage width of approximately 3.7 metres. Further the switch room is located immediately adjacent to the driveway and pedestrian access as shown below. The character of development in this section of Dawson Street, provided by the Brunswick Baths building and the development to the east at 259 Sydney Road is for development to be built to the street frontage. In this context, I am not persuaded that a setback of 1.0 metre for the switch room from the Dawson Street frontage is necessary to enable the

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provision of landscaping. I find the provision of a 1.0 metre deep by 3.7 metre long landscape strip along the site frontage will disrupt the continuity of built form and will be discordant with the existing pattern of development along the Dawson Street frontage. Therefore, I find the provision landscaping as proposed by Council to be unnecessary.



Source: Applicant

OTHER MATTERS

113 The proposal seeks to alter the alignment of the existing carriageway easement, with an agreed height of 4.1 metres above ground. With respect to the alteration Council advised as follows:

- This alteration formed part of an agreement reached as part of the previous development and one which will improve the connections between Dawson Street and the Saxon Street Community and Arts Hub that is being constructed at 33 Saxon Street, whilst continuing to serve the ongoing needs of the Brunswick Baths to the west.
- The proposed building would be constructed over the carriageway easement; however the clearance height is sufficient to allow maintenance vehicles (including a crane) to use the accessway to then serve the needs of the Brunswick Baths from the 33 Saxon Street site. The provision of a new link to 33 Saxon Street, was considered an additional community benefit.
- The easement realignment is considered acceptable.
- The proposed development relies on the new easement alignment, as car parking is proposed over part of the location of the current easement.

- Due to these factors, Council's proposed permit conditions seek to ensure delivery of these previously agreed outcomes and associated community benefit by including a requirement that the applicant provide evidence that the varied carriageway easement has been registered on title within six months of the permit being issued.

114 The applicant submits that site is burdened by a carriageway easement in favour of the Brunswick Baths site, which is owned by Council. They say Council has formed a position of support to vary the easement and that in addition to the decision guidelines in clause 65, the interests of affected people are supported by this application.

115 Having regard to the submissions the alteration to the alignment of the existing carriageway easement is an acceptable outcome.

WILL THERE BE A NET COMMUNITY BENEFIT?

116 For the reasons given, I find the proposal is acceptable.

117 The subject land is located in an activity centre and appropriate for redevelopment that is guided by the policies and provisions in the Planning Scheme.

118 When balancing all relevant considerations and outcomes, the proposal achieves a net community benefit. The proposal is located within a HO and seeks to introduce change. The proximity to the nearby heritage buildings requires a sensitive design response. The proposal acceptably responds to its heritage context as well as the strategic directions contained in the Planning Scheme.

119 The alterations to the proposal sought by Council, to reduce the height of the building or provide additional setbacks, are not required to achieve an acceptable outcome.

CONCLUSION

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

Shiran Wickramasinghe
Member

APPENDIX A – PERMIT DESCRIPTION AND CONDITIONS

PERMIT NO	MPS/2023/637
PLANNING SCHEME	Merri-bek Planning Scheme
RESPONSIBLE AUTHORITY	Merri-bek City Council
ADDRESS OF THE LAND	10 Dawson Street BRUNSWICK VIC 3056

THE PERMIT ALLOWS:

Planning scheme clause	**Matter for which the permit has been granted**
Clause 34.01-1	Use land for a dwelling.
Clause 34.01-4	Construct a building or construct or carry out works.
Clause 43.01-1	Demolish or remove a building, construct a building or construct or carry out works.
Clause 43.02-2	Construct a building or construct or carry out works.
Clause 52.06-3	Reduce the car parking spaces required under clause 52.06-5.
Clause 52.02	Vary an easement.

CONDITIONS TO APPLY TO THE PERMIT:

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 advertised 9 February 2024 but modified to show:

(a) The upper level front (southern) setbacks to Dawson Street to be dimensioned to the front wall instead of the dashed lines beyond the front wall.

(b) Demonstration that at least 50% of dwellings achieve Standard D18 of Clause 58.05-1.

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(c) At least 20 per cent of the bicycle parking devices designed to provide ground level horizontal (i.e. 1800mm long) bike parking devices in accordance with the Australian Standard for Bicycle Parking (AS2890.3).

(d) Dimension the accessway grades of the car basement ramps to comply with Clause 52.06-9 of the Merri-bek Planning Scheme with:

i Slopes no greater than 1 in 4;

ii Slopes within 5 metres of the street boundary to be no greater than 1 in 10;

iii Changes of grade of more than 1 in 8 for a summit grade change or more than 1 in 6.7 for a sag grade change, to be provided with a transition of at least 2 metres to prevent vehicles scraping or bottoming.

(e) Dimensions of the tandem car parking spaces.

(f) Each pedestrian entrance labelled with the statement "Slope floor to match existing footpath level".

(g) Any changes to the plans arising from the:

i Landscape Plan in accordance with Condition 5 of this permit.

ii Tree Protection Plan in accordance with Condition 8 of this permit.

iii Sustainability Management Plan in accordance with Condition 11 of this permit.

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

v Acoustic Report in accordance with Condition 17 of this permit.

vi Waste Management Plan in accordance with Condition 20 of this permit.

vii Wind impact assessment in accordance with Condition 22 of this permit.

Compliance with Endorsed Plans

2 The use and development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority..

Carriageway Easement

3 Within 12 months of the commencement of construction, the permit holder must provide evidence to the Responsible Authority that a carriageway easement (Easement E-2) has been registered on the title of 10 Dawson Street, Brunswick in favour of 33 Saxon Street /15 Phoenix Street,

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generally in accordance with the advertised Plan of Creation and Removal of Easement.

4 Prior to the issue of a Statement of Compliance or an occupancy permit for any part of the development, whichever occurs first, the proposed Easement E-2 must be fully constructed to the satisfaction of the Responsible Authority at the cost of the permit holder.

Landscaping

5 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 Oculus dated 01 December 2023 but amended to show:

(a) Any changes required to align with the plans for endorsement.

(b) The tree species proposed for the ground level rain garden annotated.

(c) The mature size of proposed trees (e.g. Waterhousea/Syzygium floribunda) updated.

(d) Use of 50cm or smaller stock for rooftop trees.

(e) Placement of ferns and other shade-loving plants reviewed (e.g. sufficient shading from creepers and nearby structures).

(f) Confirmation of lawn species and demonstrate consideration of suitable solar exposure between different lawn areas.

(g) Details of planter box design including:

i Media product name

ii Construction/section diagrams

iii Irrigation (e.g. location of controllers, irrigation volumes/frequency, connection points)

iv Drainage design (including discharge points)

v Consideration of water collection, water recycling and water tanks.

When approved, 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.

6 Before the development is occupied, 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.

7 All landscaping and irrigation systems must be maintained to the satisfaction of the Responsible Authority in accordance with the endorsed

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landscape plans. Any dead, diseased or damaged plants must be replaced with a suitable species to the satisfaction of the Responsible Authority.

Tree Protection Plan

8 Before the plans required by Condition 1 are endorsed, an updated Tree Protection Management Plan (TPMP) must be submitted to the Responsible Authority. The TPMP must be compliant with section 5 of AS4970-2009 Protection of Trees on Development Sites, to ensure that the street tree on the Dawson Street and Saxon Street corner (Tree 1) remains healthy and viable during construction. The TPMP must be prepared by a suitably qualified and experienced arborist (AQF Level 5+ plus a minimum 5 year demonstrated industry experience). The TPMP must be to the satisfaction of the Responsible Authority, must be generally in accordance with the Tree Management Report and Protection Plan prepared by Arbor Survey Revision 3 dated 19/01/2024 and must include the following updates to the satisfaction of the Responsible Authority:

(a) Name, qualifications and experience of the author to be included.

(b) A Tree Protection Plan to scale that shows:

i All Tree Protection Zones and Structural Root Zones

ii All Tree Protection Fencing

iii Areas where ground protection systems will be used2

iv The type of footings within any Tree Protection Zone

v The location of services within any Tree Protection Zone

(c) The location and design of Tree Protection Fencing.

(d) Details of appropriate footings within the Tree Protection Zone.

(e) The method of installing any services through the Tree Protection Zone.

(f) Details of how the root zone within the Tree Protection Zone will be managed throughout the project.

(g) A timetable outlining works requiring supervision by the Project Arborist.

(h) The results of any exploratory trenching where there is encroachment (construction or excavation) greater than 10 per cent into the Tree Protection Zone (in accordance with Australian Standard AS4970:2009 - Protection of Trees on Development Sites) of any tree to be retained. This must include photographic evidence of any trenching/ excavation undertaken.

(i) All remedial pruning works that are required to be performed on the tree during the development of the site. The pruning comments must

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reference Australian Standards 4373:2007, Pruning of Amenity Trees and a detailed photographic diagram specifying what pruning will occur.

(j) Results of non-destructive root investigation (NDRI) (e.g. hydro excavation) where the TPZ of Tree 1 is encroached by the proposed basement (e.g. on subject side of fence where the TPZ extends, to a depth of 1000mm+. Project arborist (AQF Level 5+) to supervise and document works and provide the applicant with advice regarding impacts of proposed basement works. Advice must be made to assure the long-term viability (including structural integrity) of Tree 1 is not compromised by development works.

When approved the TPMP will be endorsed to form part of this permit and must not be altered without the prior written consent of the Responsible Authority. The recommendations of the endorsed TPMP must be implemented to the satisfaction of the Responsible Authority.

Tree Removal

9 In the event that public tree(s) are proposed for removal at any stage of the development, or Merri-bek City Council determine that impacts from the development will result in any of the public street trees to be no longer viable, the applicant must, before the development is occupied, pay Council the amenity value, removal, replacement and establishment costs in accordance with the Merri-bek Urban Forest Strategy 2017 for each street tree removed or damaged through the building works, to the satisfaction of the Responsible Authority.

Heritage Record

10 Prior to the commencement of any demolition, a professionally prepared archival record of the substation on the land must be carried out and submitted to the satisfaction of the Responsible Authority. This record must be carried out in accordance with Heritage Victoria's technical note 'Specification for the submission of Archival' undated.

Environmentally Sustainable Design (ESD)

11 Before the plans required by Condition 1 are endorsed, an amended Sustainability Management Plan (SMP) and plans must be submitted to the Responsible Authority. The SMP must be to the satisfaction of the Responsible Authority, must demonstrate a best practice standard of environmentally sustainable design and must be generally in accordance with the SMP prepared by GIW Environmental Solutions Dated 23 January 2024 but modified to include the following changes:

(a) A summary of re-use options for the >80 per cent of fire test water proposed to be collected and re-used on site.

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(b) Solar Reflectance Index (SRI) values of all hard surfaces clearly annotated on the development plans, aligned with endorsed SMP commitments.

(c) Provide a preliminary NCC Part J facade calculator, demonstrating compliance to NCC Part J and the BESS DtS Energy compliance criteria.

(d) Show the following ESD initiatives on the development plans:

i An ESD table on the plans for items that cannot be drawn e.g. NatHERS, tap and cooling/heating ratings, etc.

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

12 The development must be constructed in accordance with the endorsed Sustainability Management Plan (including any BESS and STORM reports and NatHERS Ratings) to the satisfaction of the Responsible Authority.

13 Before the development is occupied, a report from the author of the endorsed Sustainability Management Plan (SMP), or similarly qualified person or company, must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm (with documented evidence) that all measures specified in the SMP have been implemented in accordance with the endorsed SMP.

14 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

15 Before the plans required by Condition 1 are endorsed, an Accessibility Report prepared by a suitably qualified person must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must include the following:

(a) Detail how the ‘designated accessible apartments’ in the development will incorporate design features in accordance with Standard D17 (Accessibility) of Clause 58 of the Merri-bek Planning Scheme, including the detailed design of the adaptable bathrooms (e.g. confirmation of hobless showers and removable hinges to doors).

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When approved, the Accessibility Report will be endorsed to form part of this permit. No alterations to the endorsed Accessibility Report 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 before the development is occupied.

16 Before the development is occupied, a report from the author of the endorsed Accessibility Report, 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 endorsed Accessibility Report.

Acoustic Attenuation

17 Before the plans required by Condition 1 are endorsed, an amended Acoustic Report prepared by a qualified Acoustic Engineer must be submitted to the Responsible Authority. The Acoustic Report must be to the satisfaction of the Responsible Authority and must be generally in accordance with the Acoustic Report prepared by Acoustic Logic advertised on 9/02/2024 but modified to:

(a) Reflect the changes required by Condition 1 of this permit.

(b) Include measures to ensure the design of dwellings comply with Standard D16 of Clause 58.04-3 (Noise impacts objective) of the Merri-bek Planning Scheme.

When approved, the Acoustic Report will be endorsed to form part of this permit. No alterations to the endorsed Acoustic Report may occur without the written consent of the Responsible Authority.

18 The building must be constructed and thereafter maintained in accordance with the recommendations contained within the approved Acoustic Report to the satisfaction of the Responsible Authority, unless with the further written approval of the Responsible Authority.

19 Before the development is occupied, a report from the author of the endorsed Acoustic Report 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 endorsed Acoustic Report have been implemented.

Waste Management

20 Before the plans required by Condition 1 are endorsed, a Waste Management Plan (WMP) to the satisfaction of the Responsible Authority must be submitted to, and be approved by, the Responsible Authority. The WMP must generally in accordance with the Waste Management Plan prepared by Leigh Design dated 19 October 2023.

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When approved, the WMP will be endorsed to form part of this permit. No alterations to the endorsed WMP may occur without the written consent of the Responsible Authority.

21 The endorsed Waste Management Plan 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.

Wind impact assessment

22 Before the plans required by Condition 1 are endorsed, an amended Wind Impact Assessment must be submitted and approved by Responsible Authority. When approved, the Wind Impact Assessment will be endorsed and will form part of this permit. The Wind Impact Assessment must be generally in accordance with the environmental wind assessment prepared by MEL Consultants advertised 9/02/2024 but it must be amended as required, to show the development layout updated to reflect the changes required by Condition 1 of this permit.

23 The endorsed Wind Impact Assessment 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

24 Before the development starts, a Public Works Plan and associated construction drawing specifications detailing the works to the land must be submitted and approved by the Responsible Authority. The Public Works Plan must be in accordance with the Merri-bek City Council Technical Notes July 2019, or any updated version and detail works in front of the approved building along Dawson Street and Saxon Street including:

(a) A detailed feature survey of the footpaths and roads.

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

(c) Any other works to the public land adjacent to the development.

When approved, 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.

25 Before the development is occupied, 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

26 Before the construction or carrying out of buildings and works, or where no buildings and works are proposed, prior to the commencement of the

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permitted use or the issue of a statement of compliance under the *Subdivision Act 1988* (whichever is earlier), the owner(s) must provide:

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

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

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

27 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).

28 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.

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29 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.

30 Where a preliminary risk screen assessment has satisfied Condition 26 (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

31 Before the development starts, 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 Responsible Authority. The model should be prepared in accordance with Merri-bek City Council's 3D model submission 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. (Note: A copy of the 3D model submission guidelines and further information on the Virtual Merri-bek Project can be found Council's website).

Engineering Matters

32 Before the development is occupied, all new 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.

33 Before the development is occupied, 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.

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Stormwater

34 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).

35 The surface of all balconies is 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.

36 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.

Car Parking

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

(a) Be completed before the development is occupied.

(b) Be maintained.

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

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

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

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

38 All parking spaces are to be marked with the associated apartment or commercial business number to facilitate management of the car park to the satisfaction of the Responsible Authority.

39 No additional columns are to be placed in the car park without the prior written consent of the Responsible Authority.

General

40 Before the development is occupied, all boundary walls must be constructed, cleaned and finished to the satisfaction of the Responsible Authority.

41 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.

42 The windows associated to the ‘commercial floor space must not be painted or blocked out in any way to the satisfaction of the Responsible Authority.

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43 Bicycle signage at least 300mm wide and 450mm high showing a white bicycle on a blue background, directing cyclists to the location of the bicycle parking.

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

45 Before the development starts, 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.

CitiPower Conditions

46 CitiPower letter dated 28 June 2024 (reference No: 309299507) shall be supplied to the applicant in its entirety.

47 The applicant must provide an electricity supply to the development in accordance with the distributor's requirements and standards.

48 The applicant must ensure that existing and proposed buildings and electrical installations on the subject land are compliant with the Victorian Service and Installation Rules (VSIR).

49 The applicant must, when required by the distributor, set aside areas with the subdivision for the purposes of establishing a substation or substations.

50 Any buildings must comply with the clearances required by the Electricity Safety (Installations) Regulations.

51 Any construction work must comply with the Energy Safe Victoria's "No Go Zone" rules.

Permit Expiry

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

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

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

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

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

(a) within six months after the permit expires to extend the commencement date.

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

– End of conditions –