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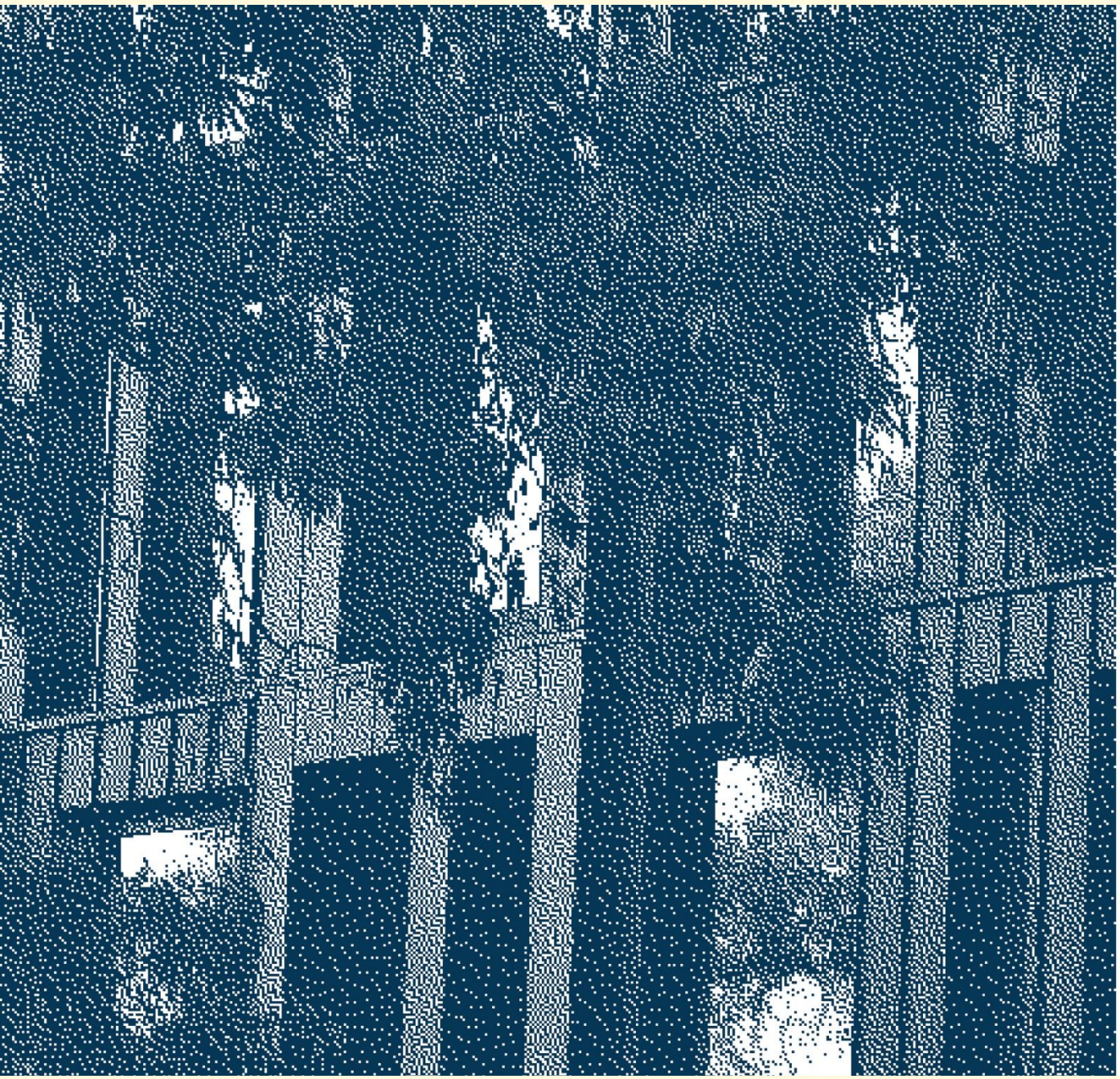
Advisory — Advocacy — Approval

Planning Assessment Report

Section 87A Amendment Application – Mixed Use Development

234 Lygon Street, Brunswick East

October 2026



Prepared for

MS Builders Constructions

Project No
1412

Prepared by
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Revision History

Revision	Date	Details	Author / Position	Authorised	
				Name / Position	Signature
A	6 October 2026	Draft Report for client review	Lachlan Smith Town Planner	Michael Dunn Director	Original Signed
B	9 October 2026	Final Report	Lachlan Smith Town Planner	Michael Dunn Director	Original Signed

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1.0 Introduction

This report has been prepared by Metropol Planning Solutions to support an application under Section 87A of the *Planning and Environment Act 1987* (the Act) to amend planning permit MPS/2015/5/B (the permit).

Planning Permit MPS/2015/5 was issued by Merri-bek City Council on 14 September 2015 (the permit was issued at the direction of the Victorian Civil and Administrative Tribunal). The permit was amended at the direction of the Victorian Civil and Administrative Tribunal (VCAT) via the Section 87A pathway on 10 December 2020. Further amendments to the permit (via Section 72 of the Act) have been approved by Merri-bek City Council on 9 January 2023 and 13 March 2026. As amended, the permit allows '*the use and development of a six storey building in the Special Building Overlay containing a Shop and Dwellings, a reduction in the car parking requirement and a waiver of the loading and unloading of vehicles requirement, in accordance with the endorsed plans*.'

Architectural drawings were most recently endorsed under condition 1 of the permit on 6 May 2026.

We understand that the permit remains valid, with an extension of time granted by Council on 2 October 2025 which states that the permit will expire if works have not commenced by 14 September 2027.

The proposed amendments to the design include the following:

- Reduction of the eastern and western setbacks at the third, fourth and fifth level
- Increase in building height from 20.46 metres to 23.34 metres through the introduction of a highly recessed sixth floor
- Increase in number of apartments from 11 to 13
- Deletion of the basement services level, with storage cages and bicycle parking relocated to the ground floor
- Reduction in floor area of the ground level commercial tenancy
- Introduction of additional landscaping through planter boxes provided on east and west facing balconies

We note that the amendment seeks to vary some of the built form parameters which were agreed to by consent in the previous Section 87A application (VCAT Ref: P1125/2020). Having regard to The King David School principles, these variations are considered appropriate having regard to the significant change in circumstances resulting from development on neighbouring properties, and in the Lygon Street precinct more broadly. This issue is discussed in detail in Section 4.2 of this report.

The subject site is located within the Brunswick Major Activity Centre and is afforded excellent access to public transport shops and services. The proposed amendments would provide additional dwellings on this very well located site.

Careful regard has been given to amenity impacts to the residential properties to the east of the site, while balancing the clear direction in the Merri-bek Planning Scheme for the intensification of urban development in the Brunswick Major Activity Centre (MAC).

The design response is consistent with the outcomes sought for the site in the State and local planning policies of the Merri-bek Planning Scheme as detailed in this report.

Our application comprises the following architectural drawings prepared by Eminent Design (all denoted as Revision V):

Table 1: List of Architectural Drawings

Drawing No.	Title	Comments
TP 01	General Notes	Notations detailing ESD and WSUD commitments
TP 02	Proposed Ground Floor Plan	Proposed ground floor plan

Table 1: List of Architectural Drawings

Drawing No.	Title	Comments
TP 03	Proposed First Floor Plan	Proposed first floor plan
TP 04	Proposed Second Floor Plan	Proposed second floor plan
TP 05	Proposed Third Floor Plan	Proposed third floor plan
TP 06	Proposed Fourth Floor Plan	Proposed fourth floor plan
TP 07	Proposed Fifth Floor Plan	Proposed fifth floor plan
TP 08	Proposed Sixth Floor Plan	Proposed sixth floor plan
TP 09	Proposed Roof Plan	Proposed roof plan and WSUD catchment plan
TP 10	Proposed West Elevation	Proposed west elevation
TP 11	Proposed East Elevation	Proposed east elevation
TP 12	Proposed North Elevation	Proposed north elevation
TP 13	Proposed South Elevation	Proposed south elevation
TP 14	Proposed materials and colours	Schedule of proposed façade materials and colours
TP 15	Light Court Elevations 1	Proposed elevations of light courts and lightwells
TP 16	Light Court Elevations 2	Proposed elevations of light courts and lightwells
TP 17	9:am Shadow Plans	Shadow diagram at 9:00am on 22 September
TP 18	12:pm Shadow Plans	Shadow diagram at 12:00pm on 22 September
TP 19	1:pm Shadow Plans	Shadow diagram at 1:00pm on 22 September
TP 20	2:pm Shadow Plans	Shadow diagram at 2:00pm on 22 September
TP21	3:pm Shadow Plans	Shadow diagram at 3:00pm on 22 September

This report and the architectural drawings should also be read in conjunction with the following reports and plans, which are intended to supersede those currently endorsed under the planning permit:

- Sustainablity Management Plan – prepared by Melbourne Sustainability Consultants dated 8 October 2026
- Waste Management Plan – prepared by Leigh Design dated 23 September 2026
- Access Report – prepared by Melbourne Sustainability Consultants dated 7 October 2026

We note that the proposed amendments to the design do not have any implications for the Acoustic Report prepared by Telemetric and endorsed under the permit on 16 June 2016.

As detailed in this report, there are a range of strategies, policies and plans identified in the Merri-bek Planning Scheme that are of relevance to this application to amend a planning permit. The design of the building responds appropriately to the context of the site and will contribute positively to the surrounding area and will assist in achieving the vision set out for the Brunswick Activity Centre and as such we submit should be supported.

2.0 Proposal

Table 2 provides a summary of the amendments for which approval is sought in this application. These changes are departures from the drawings endorsed under the existing permit as referred to in condition 1 of the permit (i.e. the Revision T drawings dated 4 May 2026).

Table 2: Summary of design changes

Serial	Description	Comments and Reason for Change	Refer Drawing(s)
A	Deletion of basement level	Bicycle parking and apartment storage cages have been relocated from the Basement to the Ground Floor which will enable much more convenient access to these facilities for residents. With these facilities relocated, the Basement was redundant.	TP02 – Proposed Ground Floor Plan
B	Revised Ground Level Layout	The proposed ground floor commercial (Shop) tenancy has been reduced from a leasable floor area of approximately 140 square metres to 85 square metres. Apartment storage cages (a total of 13 compared to the 11 previously proposed) have been relocated to the ground level, along with bicycle parking (also increasing from 11 to 13). Subsequent amendments to the bin storage room are proposed, consistent with the updated Waste Management Plan prepared by Leigh Design.	TP02 – Proposed Ground Floor Plan
C	Revised Third Floor layout consistent with the approved First and Second Floor design	The zero setback to the western frontage (to Lygon Street frontage) is maintained, however the balcony on this frontage is now enclosed, with the setback to the building line reduced from 3 metres to 1.675 metres. The two west facing apartments (Apartments 7 and 8) are now provided with enclosed balconies of 8 square metres in area with a minimum dimension of 1.675 metres. The eastern (rear) setback to the building line is reduced from 3 metres to 0 metres. The previously open balcony is replaced with an enclosed balcony and additional internal space. Apartment 9 is replaced with a single level (previously split level) design with an enclosed balcony on the eastern frontage.	TP05 – Proposed Third Floor Plan

Table 2: Summary of design changes

Serial	Description	Comments and Reason for Change	Refer Drawing(s)
D	Revised Fourth Floor layout.	The western setback of 3 metres is reduced to 1.675 metres by the inclusion of an open balcony. The minimum setback to the building line is unchanged. Two apartments (Apartments 10 and 11) replace a single apartment on this level The eastern setback is reduced from 3.4 metres to 0 metres. Planter boxes are now proposed on the east and west facing balconies.	TP06 – Proposed Fourth Floor Plan
E	Revised Fifth Floor Plan.	The western setback of 3 metres is retained, however the previous open terrace is replaced with additional internal floor space and a smaller open balcony. The minimum western setback to the building line is reduced from 6 metres to 3 metres. The eastern setback is reduced from 5 metres to 3.2 metres, and the eastern setback to the building line reduced from 7 metres to 5 metres. Apartment 13 is now a split level design (compared to the single level Apartment 11 located on the Fifth Floor in the approved design), with multiple areas of secluded private open space at both the Fifth and Sixth floors. The private open space on the Fifth Floor has been redesigned and relocated in response to the construction of the neighbouring building at 236 Lygon Street, which features a communal roof terrace abutting the common boundary at the fifth floor level. In the approved design, there is no physical separation between this neighbouring roof terrace and the primary area of private open space associated with Apartment 11 of the approved design, which would have resulted in overlooking and potential noise impacts to Apartment 11. Planter boxes are now proposed on the north, east and west facing balconies.	TP07 – Proposed Fifth Floor Plan
F	New Sixth Floor	A highly recessed Sixth Floor is proposed, incorporating the upper level of the split level Apartment 13. The level also includes large areas of private open space to be provided to Apartment 13,	TP08 – Proposed Sixth Floor Plan

Table 2: Summary of design changes

Serial	Description	Comments and Reason for Change	Refer Drawing(s)
		with landscaping to provide for the planting of shrubs and small trees. Neighbouring communal open space is protected from overlooking by horizontal fixed elements in the form of planter boxes. The setbacks (to balcony edge) of the proposed Sixth Floor are as follows: • West: 3 metres • East: 5 metres • North: 0 metres • South: 0 metres Setbacks to the building line are as follows: • West: 9.41 metres • East: 9 metres • North: 2 metres • South: 0 metres	
G	Revised Roof layout	Consequential amendments to the Roof Plan are proposed to reflect the introduction of the Sixth Floor	TP09 – Proposed Roof Plan
H	Increased building height and increased street wall height	Building height is proposed to increase from 20.46 metres to 23.34 metres to reflect the introduction of a Sixth Floor. Street wall height is proposed to increase from approximately 12.1 metres to approximately 15 metres, due to the removal of the Third Floor setback.	TP10 – Proposed West Elevation
I	Revised East Elevation	Increase in wall on boundary height from approximately 12.1 metres to approximately 17.2 metres to reflect the deletion of setbacks at the Third and Fourth Floor levels. Revised materiality is proposed to ensure a consistent treatment at each level now proposed to extend to the eastern boundary.	TP11 – Proposed East Elevation
J	Revised materiality on north elevation	A single finish is proposed on the North Elevation. The previous variation in colour on this elevation was proposed to ensure a level of visual interest while 236 Lygon Street was undeveloped. Now that a six storey building has been constructed at 236 Lygon Street, the need for visual interest is redundant.	TP12 – Proposed North Elevation

Table 2: Summary of design changes

Serial	Description	Comments and Reason for Change	Refer Drawing(s)
K	Replacement of Express Panel material with render finish	Previously proposed Express Panel finishes (EF01 and EF06) are replaced with render finish in an equivalent colour.	TP14 – Proposed Colours and Finishes

2.1 Proposed Amendments to Planning Permit

Given the proposed amendments to the design, it is considered necessary to amend a number of permit conditions as well as the permit preamble.

Planning Permit MPS/2015/5/B currently allows for '*the use and development of a six storey building in the Special Building Overlay containing a Shop and Dwellings, a reduction in the car parking requirement and a waiver of the loading and unloading of vehicles requirement, in accordance with the endorsed plans*.'

While no additional permit requirements are triggered by this amendment application, we request the permit preamble is replaced with the following table to reflect current requirements for the form and content of planning permits under the *Planning and Environment Interim Regulations 2026.*

Planning Scheme Clause	Matter for which the permit is required
34.01-4	To construct a building or carry out works
43.02-2	To construct a building or carry out works
44.05-1	To construct a building or carry out works
52.06-3	To reduce the minimum number of car parking spaces required in a schedule to the Parking Overlay

It is proposed to amend condition 1 to refer to the set of architectural drawings which form part of the present application as follows (changes in red text):

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 to supersede the previously endorsed corresponding plans and will then form part of the permit. The plans must be drawn to scale with dimensions and must be generally in accordance with the plans prepared by Eminent Designs TP0~~50~~-TP~~19~~21 dated ~~24 February 2026~~ 18 August 2026 and must show:*

We note subconditions under condition 1 could either remain or be deleted subject to the preferred approach as necessary to reflect the amended drawings and to remove those conditions no longer considered warranted. We have identified specific sub-conditions that should be deleted or amended for consistency with the amended plans:

It is proposed to delete conditions 1(i), (j), (r) and (t) which read:

i) A minimum setback of 3 metre from the front (west) property boundary at the third and fourth levels. The balcony on the third level may encroach into this setback, but not the roof over the balcony.

j) A minimum setback of 3 metres from the rear (east) property boundary at the third and fourth levels. The balcony on the third level may encroach into the setback, but not the roof over the balcony.

…

r) A minimum setback of 7 metres from the rear (east) property boundary at the fifth floor. The balcony on the fifth floor may encroach into the setback, but not the roof over the balcony.

…

t) *At fifth floor, a minimum setback of 1 metre from the side (north) property boundary for the kitchen, a minimum setback of 1.5 metres from the southern boundary for the living room, and a minimum setback of 6 metres from the front (west) boundary for the living room.*

These conditions are incompatible with the amended design which incorporates reduced setbacks at the third, fourth and fifth floor levels.

Condition 1(k) currently reads:

k) *The highly visible north and south elevations redesigned to contribute and enhance the existing character, including replacing a minimum of 50 per cent of the rendered finish surfaces from these elevations with longer lasting finishes with architectural treatments and/or textured finishes.*

Following the development of the neighbouring property to the immediate north, the north elevation on the subject site would now be concealed. We therefore request condition 1(k) is amended as follows:

k) *The highly visible ~~north and~~ south elevation~~s~~ redesigned to contribute and enhance the existing character, including replacing a minimum of 50 per cent of the rendered finish surfaces from these elevations with longer lasting finishes with architectural treatments and/or textured finishes.*

We also note the incorrect cross-reference in condition 1(s) which reads:

s) *Changes to the layout of Apartment 11 as a result of condition 1.s).*

We assume this subcondition should cross-reference condition 1(r), but is in any case redundant, so request it is deleted.

.

3.0 Subject Site and Surrounds

3.1 Subject Site

The subject site has a street address of 234 Lygon Street, Brunswick East and a parcel description of Lot 1 on Plan of Subdivision 398650W.

The subject site is rectangular with a flat topography. The site is 307 square metres in area, with a frontage to Lygon Street of 10.06 metres and a depth of 30.48 metres. The site has a rear boundary to an unnamed laneway of 10.06 metres in length.

A cadastral plan (Figure 1) demonstrates that the lot sizes and shapes in the surrounding area are varied.

A recent search of the Certificate of Title (copy provided) has identified that the subject site is not affected by any restrictive covenants or easements.

Figure 1: Cadastral Plan



Source: LandChecker 2026

Figure 2 illustrates the site and its immediate surrounds.

The subject site is currently occupied by a single storey commercial building.

Immediately to the north of the site, 236 Lygon Street is occupied by a 6 storey mixed use building, with a ground level commercial tenancy and apartments on the upper level. This development was approved under planning permit MPS/2013/972/B and has recently been completed. The building features a 3 storey (approximately 12 metre) street wall with upper level setbacks of 3 metres.

Immediately to the south, 232 Lygon Street is occupied by a double storey warehouse.

To the east of the subject site (and separated by an approximately 3 metre wide laneway), are single and double storey dwellings fronting Leinster Grove. 11 Leinster Grove is a single storey interwar era weatherboard dwelling, with secluded private open space located to the rear of this property. An outbuilding is located in the northwestern corner of this property.

9 Leinster Grove is occupied by a single storey California bungalow. An extension to this dwelling (approved under planning permit MPS/2023/356) has recently been constructed along the rear (west) boundary of this property. The extension does not feature north or west facing windows. The secluded private open space is located to the north of this dwelling.

Directly opposite the site, 251-255 Lygon Street is occupied by an 8 storey mixed use building (approved under Ministerial Planning Permit PA2403218), currently under construction. This development features a four storey (15.63 metres) street wall, with an upper level setback of 4.5 metres

Figure 2: Aerial photograph of site and immediate surrounds

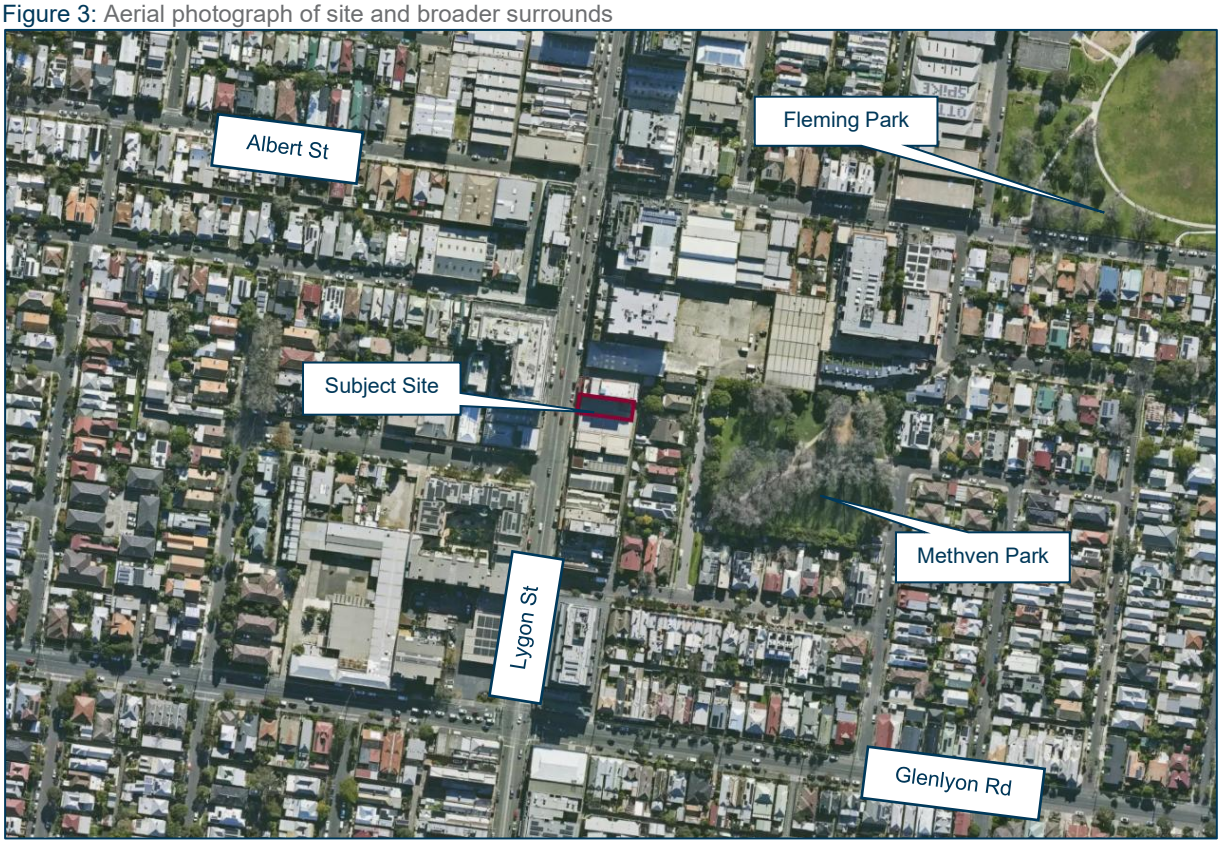


Source: LandChecker – Image date 2 August 2026

Figure 3 shows the site within its broader surrounds within Brunswick East.

The site is located on Lygon Street, a major activity centre and vibrant commercial shopping strip. The Lygon Street activity centre is undergoing substantial change, responding to direction for significant growth in housing in this location. Lower density residential areas are located to the east and west of Lygon Street.

Figure 3: Aerial photograph of site and broader surrounds



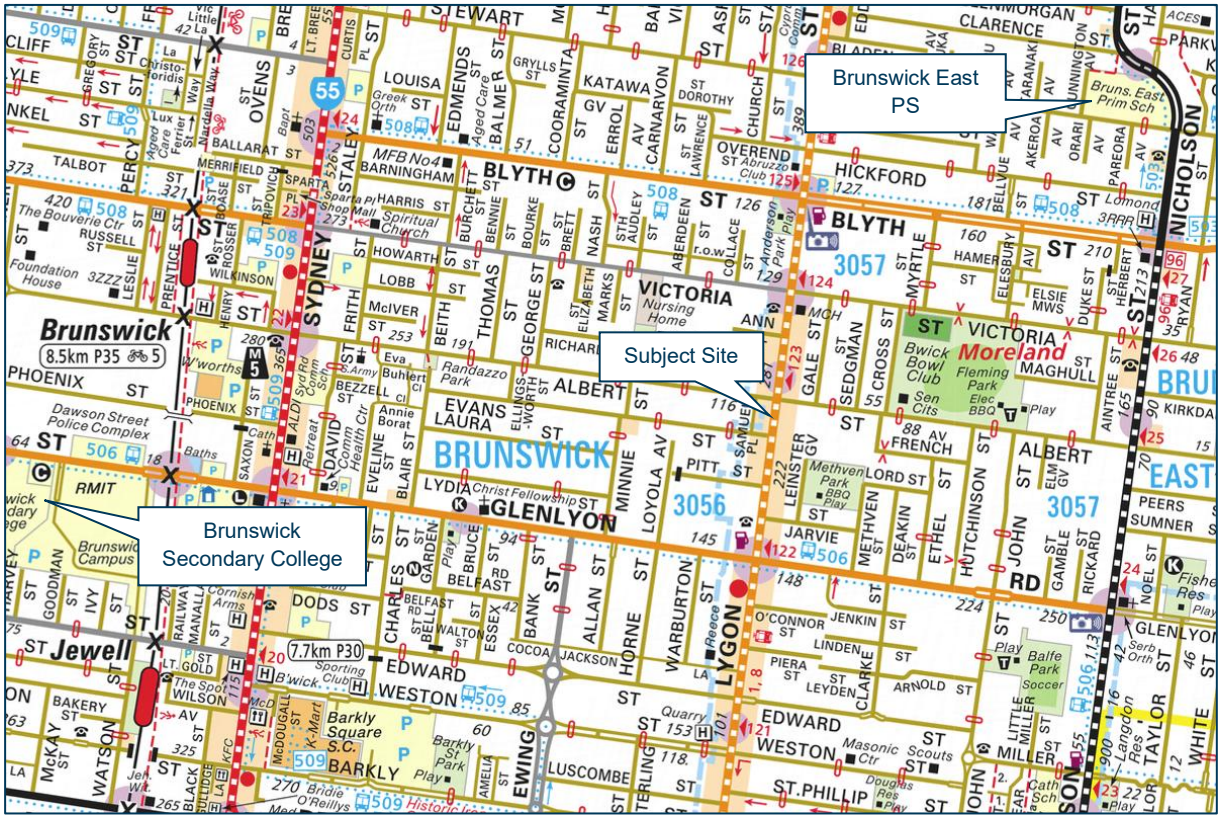
Source: LandChecker – Image date 2 August 2026

The site is very well serviced by public transport options, with tram routes 1 and 6 running along Lygon Street and stopping approximately 150 metres to the north. Routes 1 and 6 provide access to the Melbourne CBD and Melbourne University. Bus route 506 runs along Glenlyon Road, and stops approximately 180 metres to the south of the site. The site is also within walking distance of the route 96 and route 19 trams.

The site has excellent access to shops and services along Lygon Street. Brunswick East Primary School is located approximately 950 metres to the northeast of the site, and Brunswick Secondary College is located approximately 1.5 kilometres to the west. The site is also within walking distance of public open space at Methven and Fleming parks. Refer Figure 4.

Please refer to the appendix to this report, which includes a photographic study of the subject site and nearby surrounding sites including recently constructed developments.

Figure 4: Site Locality



Source: Melway Online

3.2 Planning History

Planning Permit MPS/2015/5 was issued by Merri-bek City Council on 14 September 2015. The permit allowed for *'the use and development of a five storey building containing a shop and dwellings, a reduction in the car park requirement and a waiver of the loading and unloading of vehicles requirement, in accordance with the endorsed plans.'*

This decision was the subject of an application to the Tribunal under Section 80 of the Act (VCAT ref: P2154/2015), in which the permit applicant (prior to our client's ownership of the land) disputed the need for permit conditions requiring a 3 metre setback to the east and west boundaries at the third and fourth floor. In *Ridolfi Architecture v Moreland CC [2016] VCAT 846,* the Tribunal found that the 3 metre upper level setback was appropriate having regard to the (then draft) Design and Development Overlay Schedule 19 and the existing urban form within the vicinity of the subject site. At the time of this decision, the Tribunal described the surrounding area as 'still relatively low-key' [refer paragraph 19].

The permit was amended at the direction of VCAT via the Section 87A pathway on 10 December 2020 (VCAT Ref: P1125/2020), to allow for the introduction of an additional level of development through a recessed fifth floor.

An amendment to the permit (via Section 72 of the Act) was approved by Merri-bek City Council on 9 January 2023 to allow for minor changes to the design at the basement and first floor levels, as well as material changes to the elevations.

A further amendment was approved by Council on 13 March 2026, which included minor design revisions and to incorporate a permit trigger under the Special Building Overlay, which was recently applied to the site via Amendment C196 to the Merri-bek Planning Scheme (on 8 January 2026).

As amended, the permit allows '*the use and development of a six storey building in the Special Building Overlay containing a Shop and Dwellings, a reduction in the car parking requirement and a waiver of the loading and unloading of vehicles requirement, in accordance with the endorsed plans*.'

4.0 Key Issues

4.1 Repeat Appeals

As detailed above, the planning permit has been the subject of two VCAT proceedings.

In *Ridolfi Architecture v Moreland CC [2016] VCAT 846* (Ridolfi Architecture), the applicant sought a review of Merribek City Council's decision to place conditions on the permit to require a minimum 3 metre setback at the third and fourth levels to both the front (west) boundary and rear (east) boundary. The conditions allowed for the setback to be encroached by a balcony, but not by a roof over a balcony.

In Ridolfi Architecture, the Tribunal affirmed the decision of Council, finding that the conditions were appropriate considering the (at the time) lack of recent mid or high-rise development in the surrounding area, the then draft Brunswick Structure Plan and Design and Development Plan Overlay Schedule 19 (which has since been applied to the site in a slightly revised form to the draft control considered by the Tribunal), and the 'quite open backyards' of residential properties to the east. The conditions (Condition 1(i) and (j)) remain on the permit as amended.

The current amendment seeks to reduce the third floor setback to 1.675 metres, with a roofed balcony encroaching the entirety of the setback, which is inconsistent with Condition 1(i). The amendments to the fourth floor are consistent Condition 1(i) as a setback of 3 metres is retained (with an unroofed balcony now proposed to encroach the setback).

The amendment also seeks to reduce the third and fourth floor setback to the rear boundary from 3 metre to 0 metres, which is inconsistent with Condition 1(j).

A question that now arises is how much weight (if any) should be given to the findings of the Tribunal in Ridolfi Architecture.

Zumpano v Banyule City Council [2016] VSC 420 (Zumpano) provides guidance on how repeat appeals should be treated. Repeat appeals may be considered to be 'corrective repeat appeal', where a significant departure from a previous decision may be justified, if there has been:

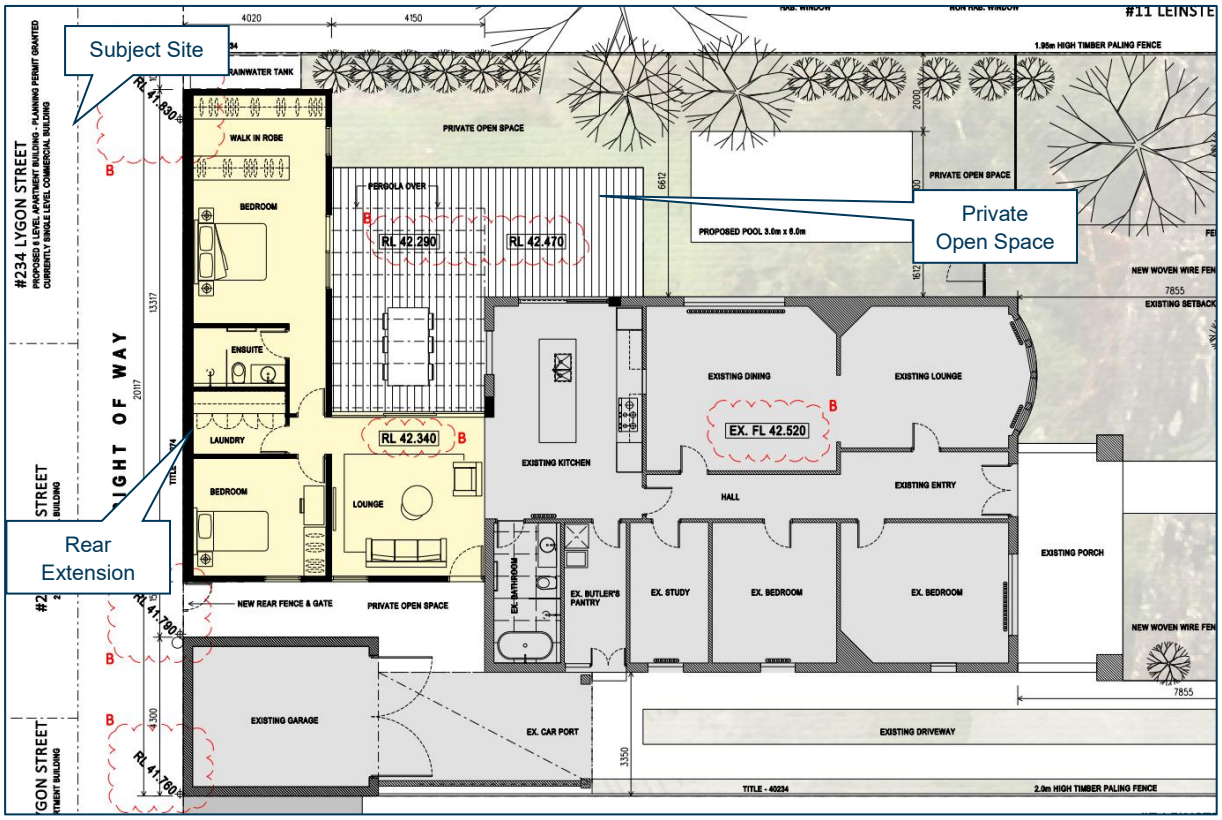
- *Significant changes in the application itself*
- *Changes in circumstances of the land and its surrounds*
- *Changes in planning policy; and/or*
- *Changes in the interpretation of the facts or law relevant to the Tribunal's consideration*

The appeal may otherwise be a 'classic repeat appeal', which is described as forum shopping where it is unlikely that a significant departure from a previous decision can be justified.

We submit that there has clearly been a significant change in the physical context surrounding the subject site since the Ridolfi Architecture decision was made in 2016 (more than 10 years ago).

To the east of the site, a rear extension to the dwelling at 9 Leinster Grove has recently been constructed. Refer Figure 5. The rear extension has been constructed within an area formerly occupied by private open space, and referred to in the Tribunal in Ridolfi Architecture as key consideration for determining an acceptable rear setback.

Figure 5: Extract from development plans for the rear extension to the dwelling at 9 Leinster Grove



Source: Plans endorsed under permit MPS/2023/356 on 22 August 2023, prepared by Martino Leah Architecture

To the immediate north of the subject site, 236 Lygon Street has been developed with a six storey mixed use building. Amendments to the design are proposed (in part) in response to the construction of this building to better manage internal amenity on the subject site.

In addition to these immediately neighbouring sites, a number of sites have been redeveloped (or are currently being redeveloped) in the northern end of Lygon Street since the Ridolfi Architecture decision. The 'low key' nature of development noted by the Tribunal in 2016 has changed significantly in the last 10 years. These developments include:

- 251 Lygon Street – 8 storey mixed use building, approved under Ministerial Planning Permit PA2403218 and currently under construction
- 267 Lygon Street – 6 storey mixed use building, approved under Planning Permit MPS/2013/52 and completed early-mid 2022
- 240-250 Lygon Street – 5 storey mixed use building, approved under Planning Permit MPS/2009/304 and completed early 2020
- 270 Lygon Street – 8 storey approved under Planning Permit MPS/2013/767 and completed late 2017 – early 2018.
- 280-294 Lygon Street – 6 storey mixed use building, approved under Planning Permit MPS/2011/531 and completed early 2018
- 299 Lygon Street – 5 storey mixed use building, approved under Planning Permit MPS/2013/41 and completed late 2020.

We also note the significant changes in planning policy that have occurred in response to the Victorian Government's Housing Statement published in September 2023. The policy changes can be summarised as a renewed focus on infill development, particularly in well located areas with access to shops and services. A comprehensive response to the current Municipal Planning Strategy and Planning Policy Framework is detailed in Section 5.0 of this report.

For reasons set out above, we submit that there has clearly been a significant change in circumstances (both physical and strategic) and that this application is appropriately characterised as a correcting repeat appeal. We submit that the decision in Ridolfi Architecture should be given limited weight in this application.

4.2 The King David School Principles

The permit has previously been amended by the Tribunal via a Section 87A application (VCAT ref: P1125/2020). In this matter, shortly after a compulsory conference the parties (the applicant, Merri-bek City Council and an objector party) reached an agreement to request orders from the Tribunal by consent. The amended permit was issued on 10 December 2020.

Relevantly, the consent orders included the following subconditions of condition 1 that remain on the permit as amended:

> r) *A minimum setback of 7 metres from the rear (east) property boundary at the fifth floor. The balcony on the fifth floor may encroach into the setback, but not the roof over the balcony.*
>
> …
>
> t) *At fifth floor, a minimum setback of 1 metre from the side (north) property boundary for the kitchen, a minimum setback of 1.5 metres from the southern boundary for the living room, and a minimum setback of 6 metres from the front (west) boundary for the living room.*

The proposed amendments seek to reduce the rear (east) setback at the fifth floor from 7 metres to 5 metres, which is inconsistent with Condition 1(r). An unroofed balcony encroaches the setback.

The proposal would also reduce the side (north) setback at the fifth floor at the former location of the kitchen referred to in the condition (now the living and dining room of Apartment 13) to zero. The southern setback at the former location of the living room (now kitchen) is reduced to zero and the setback to the front (west boundary) has been reduced to zero. These changes are inconsistent with Condition 1(t)

In the matter of *The King David School v Stonnington City Council & Ors [2011] VCAT 520* (The King David School), the Tribunal sets down principles for considering Section 87A applications that seek to substantively vary key permit conditions relied on in an earlier Tribunal decision, including when the earlier decision comprises a consent order.

In The King David School, the Tribunal notes that caution should be exercised in making substantive amendments to permits in these circumstances as this has the potential to undermine the finality of the earlier Tribunal decision, particularly in the period shortly following the earlier decision. The Tribunal does however note that a substantive amendment can be considered if there has been '*a change in circumstances or some other good reason that makes it "appropriate" to do so*' [17]. Examples of 'good reasons' provided by the Tribunal include '*different market conditions or opportunities that arise after the permit was issued, or changes arising during the detailed design, construction or financing of a project*' [15].

As detailed in Section 4.1 above, there has been a significant change in the physical and strategic context of the subject site since the original Tribunal decision was made in December 2020. The proposed amendments respond to the changes to built form on neighbouring sites, as well as within the wider Brunswick MAC. The amendments also seek to provide for a more efficient use of the site.

As such, we submit that it is appropriate to consider the proposed amendments on their planning merits.

4.3 Built form changes

Key built form changes are detailed in Table 2 above, and include an increase in overall building height and reduced upper level setbacks to the east (rear) and the west (front) boundaries.

The increase in building height is considered appropriate having regard to the highly recessive Sixth Floor design. The proposed Sixth Floor is setback from Lygon Street by 9.41 metres and would therefore be of highly limited visibility from the public realm. The Sixth Floor is also setback from the rear boundary by 9 metres to mitigate amenity impacts to residential properties to the east from the additional height proposed. We note that there are a number of developments completed in the vicinity of the subject site with a six storey (or greater) building height,

including those which are subject to the same 17 metre building height limit under the Design and Development Overlay Schedule 19 as the subject site (e.g.: 251 Lygon Street and 267 Lygon Street). Please refer to Figure 6 below.

The revised street wall height and reduced upper level street setbacks are also considered appropriate, and will ensure the proposed development contributes positively to the Lygon Street streetscape. A four storey street wall height, such as that now proposed, would be consistent with nearby developments at 251 Lygon Street, 267 Lygon Street, 240-250 Lygon Street and 270 Lygon Street (which features a five storey street wall). The revised design would sit comfortably in this emerging character along Lygon Street. The lack of places of heritage significance nearby the site means strict compliance with street wall and upper level setback controls is not necessary for this site, provided the development contributes positively to the emerging streetscape character. The shadow diagrams prepared by Eminent Design demonstrate that a reasonable level of solar access to the opposite side of Lygon Street will be maintained.

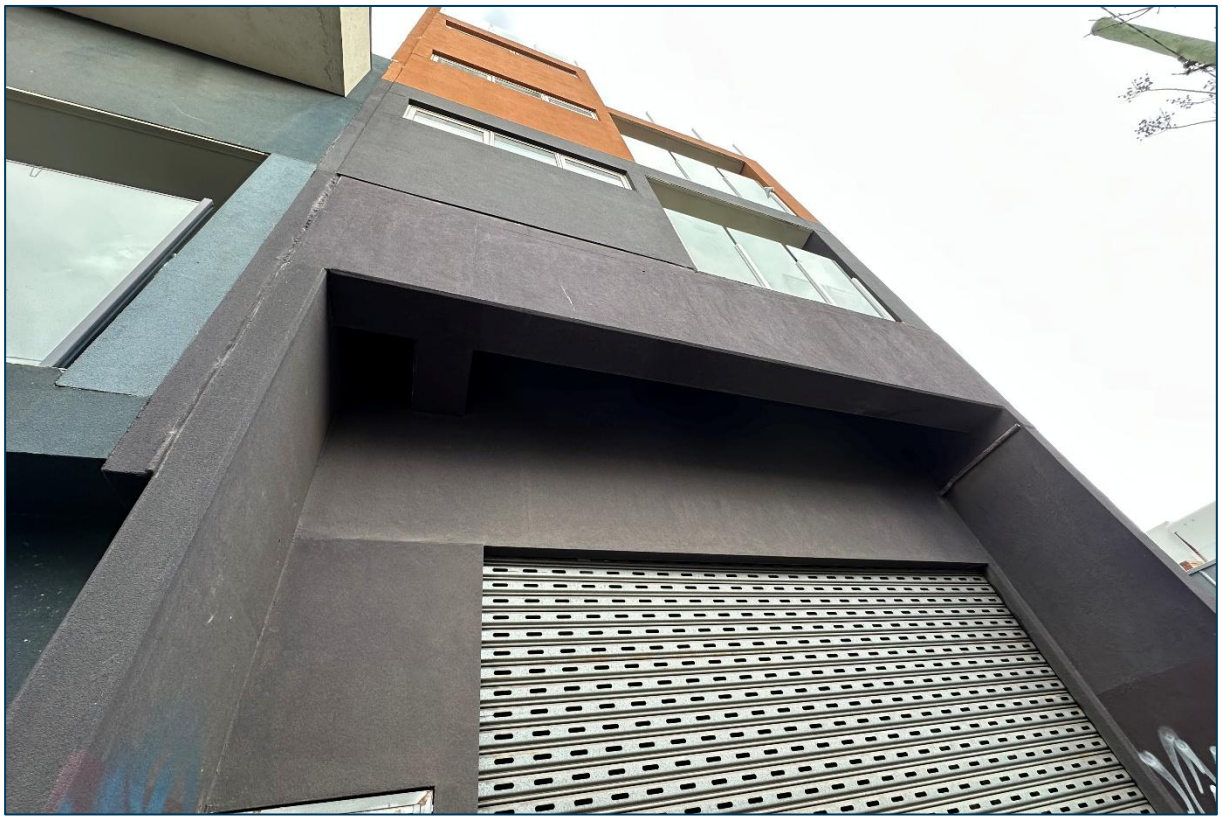
The reduced upper level setbacks to the western boundary are also partially in response to the recently constructed development to the immediate north of the site (236 Lygon Street) which features a communal roof terrace at the fifth floor level which would have had outlook to the private open space in the approved design on the subject site. The proposed amendments seek to provide greater separation between the neighbouring communal terrace and private open space on the subject site.

Figure 6: Nearby developments (clockwise from top right): (a) 267 Lygon Street, (b) 251 Lygon Street, (c) 270 Lygon Street, (d) 240-250 Lygon Street



The proposed amendments to the rear setbacks are considered appropriate as the amenity impacts to neighbouring properties within the Neighbourhood Residential Zone are not unreasonable. The amendments would result in a five storey wall on the rear boundary, separated from residential properties by a 3 metre wide laneway. The proposed rear wall is similar in scale to that at 218 Lygon Street (approximately 60 metres to the south) which we note is a much narrower site than the subject site at approximately 6.3 metres in width. Refer Figure 7.

Figure 7: Rear wall on boundary of 218 Lygon Street, to the south of the subject site



We note the recent construction of an addition to the dwelling at 9 Leinster Grove (refer Figure 5), which occupies a portion of that site previously occupied by private open space and to the east of the subject site. This rear addition has no windows facing the subject site and sits between the subject site and the remaining area of private open space at 9 Leinster Grove. The visual bulk impacts to this most affected property are mitigated by the this rear addition.

The shadow diagrams prepared by Eminent Design demonstrate that the proposed amendments do not result in any additional overshadowing to 9 Leinster Grove and only minor additional afternoon overshadowing to 7 Leinster Grove further to the south. All neighbouring properties to the east will continue to receive good solar access into the afternoon.

The proposed amendment represents an appropriate balance of the strategic direction for significant housing growth within the Brunswick MAC against the need to manage amenity impacts to properties outside of the activity centre.

5.0 Planning Policy

5.1 Municipal Planning Strategy

The Municipal Planning Strategy (MPS) of the Merri-bek Planning Scheme sets out key policies and objectives regarding land use planning within the municipality, and sets out Council's overarching for land use and development.

Council will seek to manage population growth by creating sustainable neighbourhoods with development that is well designed and conscious of environmental impacts. Sustainable neighbourhoods are characterised by easy access to shops, services, community facilities, public transport and public open space. Residents should have choice of housing and employment opportunities suitable for their needs.

Clause 02.03-1 provides directions in relation to *Settlement*. Merri-bek is expected to continue to experience strong population growth. As there are limited greenfield and brownfield development opportunities in Merri-bek, housing demand will be accommodated in activity centres and established residential areas.

The subject site is located within the Brunswick Major Activity Centre (MAC) as identified on the Activity Centre Framework Plan at Clause 02.04. The Brunswick MAC is one of the highest order activity centres in the municipality which will provide for a mix of commercial and community uses, as well as significant residential development.

Response

The proposed development is excellently located in proximity to shops, services and public transport, and responds well to the direction for urban intensification within the Brunswick MAC. The amended proposal provides for an additional two dwellings on the site.

Clause 02.03-4 relates to the *Built Environment and Heritage*. Council will prioritise a high level of design quality in new development and seek to ensure development is environmentally sustainable. The following directions are of relevance:

- *Encouraging development that is designed to respond to and contribute to its context*
- *Encouraging development that is designed to integrate with landscape design to improve aesthetic quality and amenity for occupants and the public domain.*
- *Improving the quality of design of housing development.*
- *Encouraging development to incorporate environmentally sustainable design at the time of planning approval in the following areas: energy efficiency, water resources, indoor environment quality, stormwater management, transport, waste management and urban ecology.*

Response

The proposed amendment maintains the simple and attractive architectural expression of the approved design. New landscaping is proposed in the form of planter boxes at the upper levels, improving the design response.

The development will continue to demonstrate best practice environmentally sustainable design, as detailed in the Sustainability Management Plan which has been prepared by Melbourne Sustainability Consultants to reflect the amended design.

Clause 02.03-5 sets out directions relating to *Housing*. The policy notes that Merri-bek is experiencing a shift towards smaller households, with the majority existing housing stock in the municipality more suited for larger households. There is a need to provide a greater diversity of housing to respond to population growth and demographic changes.

The subject site is within a Significant Change area, as identified on the Housing Framework Plan at Clause 02.04.

The following directions are relevant to the application:

- *Facilitate housing growth and change in accordance with the Housing Framework shown on the Strategic Framework Plan: Housing at Clause 02.04.*
- *Encourage a diversity of housing that meets the needs of different sectors of the community.*
- *Encourage housing that is designed to meet the changing needs of occupants over their lifetimes.*

Response

The amended proposal would provide for 13 new dwellings in a site earmarked for significant residential development. Most dwellings proposed are 2 bedrooms, providing a significant contribution of housing stock which responds well to the demographic demands being experienced by Merri-bek and Greater Melbourne more widely.

As demonstrated in the Access Report prepared by Melbourne Sustainability Consultants, the development complies with the relevant disability standards of the National Construction Code, ensuring that dwellings will be suitable for the changing needs of occupants over their lifetime.

Clause 02.03-7 relates to *Transport.* Council will seek to ensure residents have access to a range of transport choices and that the transport system promotes safety, accessibility, sustainability and human health.

The following directions are relevant to the application:

- *Improve access to shops, services, and employment, for our community.*
- *Provide streets and public places which are well-designed, high-quality, vibrant, and encourage physical activity and socialisation amongst local communities.*
- *Reduce our transport emissions and support our community to reduce theirs.*

Response

The proximity of the site within easy walking distance of tram and bus services makes it well suited to achieving objectives relating to the sustainability of transport. Bicycle parking facilities for residents will encourage bicycle use.

In this location, many residents are expected to make the choice to forego access to a private vehicle, making use instead of public and active transport for everyday trips. Car parking is

provided on site commensurate with the expected demand for residential car parking in this location.

The ground floor frontage maintains a high level of activation through glazing to the commercial tenancy, which will contribute positively to the Lygon Street walking environment.

5.2 Planning Policy Framework

The Planning Policy Framework (PPF) sets out the State planning policies which apply to all land in Victoria, and local planning policy which applies within the City of Merri-bek. The PPF is structured around nine themes, the themes that are of most relevance to this proposal are discussed in this section of the report.

The PPF recognises the need for integrated decision making which recognises and responds to the needs and expectations of the community relating to land for settlement, protection of the environment, economic well-being, various social needs, proper management of resources and infrastructure. These needs are to be met through land use planning by addressing those aspects of economic, environmental and social wellbeing that are affected by land use and development. Conflicting objectives are to be balanced in favour of net community benefit and sustainable development for the benefit of present and future generations.

The first theme identified in the PPF is Settlement (Clause 11). This Clause identifies that planning is to anticipate and respond to the needs of existing and future communities and to recognise the need for and contribute towards health and safety, diversity of choice, a high standard of urban design and amenity, energy efficiency and land use and transport integration. Planning is to support sustainable development by taking advantage of existing settlement patterns and investment in infrastructure and community facilities.

Response

The development of the site reflects the desired future settlement pattern and makes for efficient use of very well located land.

The Built Environment and Heritage theme is addressed in Clause 15 of the PPF. This Clause identifies that planning should ensure that new land use and development appropriately responds to its context and recognises that quality built environments support the social, cultural, economic and environmental wellbeing of our communities. Planning should achieve high-quality urban design and architecture that contributes to the local urban character and sense of place and reflects the characteristics and aspirations of the community. New development is to enhance livability, diversity and amenity and safety of the public realm and make places more attractive.

Clause 15.01-1L sets out local policy for *Urban Design in Merri-bek.* The following strategies are relevant:

- *Ensure site design, building frontages, design articulation and internal layout achieve a good interface with and surveillance of the public realm, including maximising opportunities for active frontages.*
- *Design development to contribute to a fine grain urban structure reflecting an appropriate balance of open space to built-form.*
- *Design development to contribute to a fine grain architectural expression with detailed street frontages.*
- *Design and site development to not unreasonably overshadow public open space.*
- *Ensure landscape design improves aesthetic quality and amenity for occupants and the public realm by:*

  - *Integrating development with the surrounding environment.*
  - *Contributing to reduction of the urban heat island effect.*

- *Incorporating integrated water management and water sensitive urban design.*

Response

The development demonstrates a considered architectural response which will contribute positively to the streetscapes and respond appropriately to the residential interface to the east by providing appropriate setbacks.

The amended design improves passive surveillance of the public realm by bringing habitable room windows closer to the street at the third, fourth and fifth floor level. A highly active ground level frontage is maintained with a commercial tenancy and a high proportion of glazing.

The development contributes positively to a fine-grained urban structure, in that the site is relatively narrow and will sit comfortably, but distinctly, next to the recently constructed building at 236 Lygon Street (immediately to the north) which is of a similar form but of differing architectural expression

The amended design does not result in unreasonable overshadowing of the public realm. As demonstrated in the shadow diagrams prepared by Eminent Design, Lygon Street is overshadowed at 9am on 22 September, but this quickly reduces to zero shadowing beyond the canopy line at 12pm. Lygon Street would continue to receive excellent sunlight access in the middle hours of the day.

The amended design includes new landscaping to improve the presentation of the building from the street, while contributing to a reduction in urban heat island effect and better water sensitive urban design.

Clause 15.01-2L sets out local policy for *Building Design in Merri-bek.* The following strategies are relevant:

Encourage good-quality contemporary architecture.

- *Ensure service infrastructure and waste storage facilities:*
  - *Are well concealed and/or screened from the street or; integrated into building design.*
- *Design car parking facilities (crossovers, access ways, garages and carports) so to not dominate the streetscape.*
- *Design car stackers to suitably buffer adjoining dwellings from all impacts.*
- *Ensure development maximises the retention of existing vegetation and large trees and provides sufficient space and conditions for planting of new canopy and screening trees.*
- *Ensure development provides adequate on-site loading areas and waste collection vehicles where appropriate.*

Response

The proposal maintains existing arrangements for service infrastructure, waste facilities and car parking design. The proportion of the frontage taken up by service infrastructure has been

minimised to ensure an activated frontage. Car stackers are located to the rear of the building and are appropriately separated from neighbouring properties

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Clause 15.01-2L, titled *Apartments in Merri-bek* sets out local policy for apartment developments of five or more stories. The following strategies and policy guidelines are relevant to the proposal:

Building Setback and Separation Strategies

- *Design buildings to:*

  - *Allow adequate daylight to living rooms and bedrooms.*
  - *Provide opportunities for open space and landscaping areas.*
  - *Reduce overlooking into habitable rooms and private open space areas through location and design*
  - *Provide a reasonable outlook from living areas.*
  - *Enable the reasonable future development opportunities of adjoining sites.*
  - *Manage the amenity impacts to adjoining sites.*
  - *Achieve a greater level of privacy and higher levels of daylight compared to bedrooms.*

Policy guidelines are provided relating to building setbacks and separation within a site, however these guidelines are of limited relevance due to the place-based built form control in the form of the Design and Development Overlay Schedule 19, which implements the *Brunswick Structure Plan Reference Document.*

Response

The amended design maintains a high level of internal amenity. Living spaces are located on the east or west frontage and are provided with large glazed openings to provide outlook and daylight access. Bedrooms are primarily provided with daylight access from a series of light courts. Overlooking has been suitably managed.

The development potential of neighbouring sites to the north and south has been considered by orienting habitable room windows and private open space to the east and the west.

The design responds well to the outcomes sought for the site in the Design and Development Overlay Schedule 19 in terms of building setbacks, as discussed in Section 6.3.1 of this report.

Lightwell Strategies

- *Where bedrooms are serviced by a lightwell ensure they are of sufficient size to allow adequate daylight.*
- *Design and locate windows in light spills to protect the privacy of occupants without relying solely on screening including through:*
- *Staggering lightwells to avoid direct overlooking into existing bedroom windows in separate dwellings.*

Lightwell Policy Guidelines

- *Meeting the minimum width and area dimensions for light wells specified in Table 4 and:*

  - *Providing daylight access to bedrooms only.*
  - *Painting lightwells in a light reflective colour.*

Table 4 specifies a minimum dimension of 4.5 metres and minimum area of 29 square metres for a building of between 5 and 8 stories.

Response

Consistent with the approved design, bedrooms are provided with a lightwell for daylight access, outlook and daylight access for primary living areas.

While the depth of the lightwells has been increased with the introduction of a sixth floor, the lightwells are open on three sides at this new level, and so the additional depth would have a reduced impact on daylight access compared to a fully enclosed 6 storey lightwell.

Overlooking from lightwell windows has been suitably managed, consistent with the approved design strategy and a light, reflective finish has been specified within lightwells.

The Sustainability Management Plan prepared by Melbourne Sustainability Consultants demonstrates that the development continues to achieve the relevant BESS criteria relating to daylight access to habitable rooms.

Clause 15.01-2L-04, titled *Energy Efficiency in Merri-bek* seeks development that maximises passive energy efficiency through building orientation and design

Clause 15.01-2L-05 is local policy for *Environmentally Sustainable Development* and seeks to facilitate development that minimises environmental impact by responding to the themes of energy performance, integrated water management, indoor environmental quality, transport, waste management, and urban ecology.

Response

An updated Sustainability Management Plan has been prepared by Melbourne Sustainability Consultants to reflect the amended design. The proposal will continue to achieve best practice environmentally sustainable development through measures including water efficient fixtures, rainwater collection and reuse, energy efficient appliances, and a rooftop solar energy system.

The theme of housing is the subject of Clause 16 of the PPF. This clause recognizes the need for planning to provide for housing diversity. New housing is to have access to services and be planned for long term sustainability. Walkability is to be considered including walking access to activity centres, public transport, schools, and open space. The supply of housing in existing urban areas is to be increased by facilitating increasing housing yield in appropriate locations such as under-utilized urban land. Housing quality is to be considered in land use planning as is the efficiency of housing in terms of both water and energy use.

Clause 16.01-1S sets out State level policy relating to *Housing Supply.* The policy seeks to ensure that sufficient high quality, well-located housing is provided to meet demand. The policy sets out targets for each municipality in the State for the supply of housing units that should be delivered by 2051. The housing target for the City of Merri-bek is 69,000 dwellings.

Clause 16.01-1L, titled *Homes in Merri-bek* seeks to direct housing growth to areas marked for significant change in the Housing Framework Map at Clause 02.04.

Clause 16.01-1L, titled *Housing for People with Limited Mobility,* provides the following strategies and policy guidelines of relevance to the proposal:

- *Encourage the provision of housing that can be lived in by people with limited mobility (or easily adapted to be lived in) by incorporating the following design features:*

  - *An accessible path from the street and car park areas to a level entry.*
  - *A clear path of travel from the accessible entry to a living area and toilet.*

- *A bedroom, living area, kitchen, private open space, bathroom and toilet for people with limited mobility on entry level.*
- *Consider as relevant:*

  - *The design principles contained in the Liveable Housing Design Guidelines, Liveable Housing Australia.*
  - *A minimum width of 850 millimetres for doors and 1000 millimetres for hallways at entry level.*

Response

The amended development will increase the number of apartments provided on the site from 11 to 13, making more efficient use of the well located site, which is identified for significant change in the Merri-bek Planning Scheme.

The site has excellent access to public transport, retail and community services which are within short walking distance of the site. The provision of apartments on this site will lead to reduced transport energy use given the excellent access to public transport services.

The Access Report prepared by Melbourne Sustainability Consultants demonstrates that the development will comply with the relevant disabled access standards within the National Construction Code.

The theme of Transport is addressed at Clause 18 of the PPF. The clause recognises the importance of transport in connecting individuals to social and economic opportunities. The design of the transport system impacts environmental sustainability and human health.

Clause 18.02-2L, titled *Cycling in Merri-bek*, seeks to ensure bicycle parking is provided in accordance with likely demand.

Clause 18.02-4L, titled *Car Parking in Merri-bek*, recognises the role of car parking supply in influencing transport choices. The policy supports reduced rates of car parking for developments:

- *Within and close to activity centres*
- *With excellent access based on frequency and location to a range of public transport options.*
- *With increased provision of bicycle parking above the rates specified in Clause 52.34.*

Response

The amendments to the development include the increased provision of bicycle parking, commensurate with the increase in the number of dwellings. Bicycle parking is provided well in excess of the minimum requirement at Clause 52.34.

The site is excellently located within an activity centre, and has access to high quality public transport services. The amended proposal would result in two additional dwellings being provided

without a car parking space compared to the approved design, which is considered appropriate in this location.

6.0 Planning Controls

6.1 Permit Triggers

The subject site is affected by the following planning controls:

- Clause 34.01 – Commercial 1 Zone
- Clause 43.02 – Design and Development Overlay – Schedule 19
- Clause 44.05 – Special Building Overlay – Schedule 2
- Clause 45.06 – Development Contributions Plan Overlay – Schedule 1
- Clause 45.09 – Parking Overlay – Schedule 1

The existing planning permit provides permission for the matters outlined in the table below. The proposed amendments do not trigger any additional permit requirements.

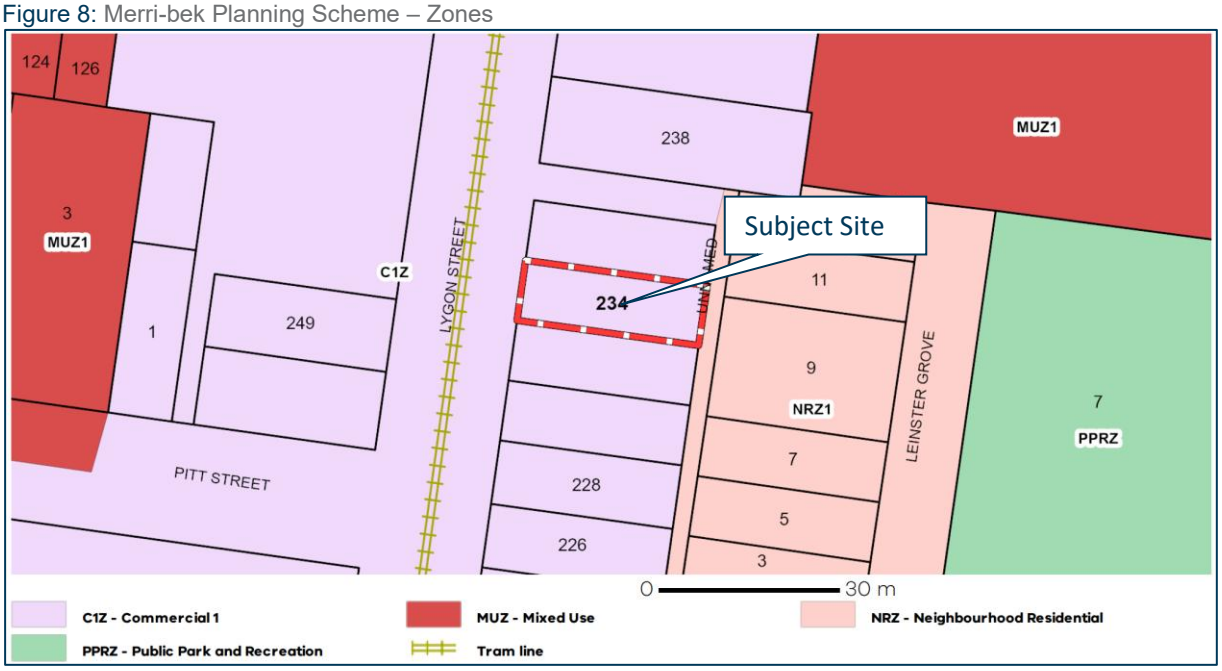
Table 3: Permit Triggers

Planning Scheme Clause	Matter for which the permit is required
34.01-4	To construct a building or carry out works
43.02-2	To construct a building or carry out works
44.05-1	To construct a building or carry out works
52.06-3	To reduce the minimum number of car parking spaces required in a schedule to the Parking Overlay

6.2 Zoning

The subject site is placed within the Commercial 1 Zone (C1Z), which has been applied to properties fronting Lygon Street (refer Figure 8). To the immediate east of the subject site, properties fronting Leinster Grove are within the Neighbourhood Residential Zone. Nearby former industrial sites have been rezoned to the Mixed Use Zone. Methven Park is within the Public Park and Recreation Zone.

Figure 8: Merri-bek Planning Scheme – Zones



Source: VicPlan 2026

The purpose of the C1Z includes:

- *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.*

Clause 34.01-4 requires a permit for buildings and works.

We note that planning permit MPS/2015/5 was issued on 14 September 2015, prior to the implementation of Amendment VC136 (which came into operation on 13 April 2017). The transitional provisions at Clause 34.01-4 confirm that the requirements of Clause 58 do not apply to an application to amend a permit issued prior to the implementation of Amendment VC136.

The following decision guidelines are relevant to the proposed amendments to the permit:

- *The movement of pedestrians and cyclists, and vehicles providing for supplies, waste removal, emergency services and public transport.*
- *The provision of car parking.*
- *The streetscape, including the conservation of buildings, the design of verandahs, access from the street front, protecting active frontages to pedestrian areas, the treatment of the fronts and backs of buildings and their appurtenances, illumination of buildings or their immediate spaces and the landscaping of land adjoining a road.*
- *The storage of rubbish and materials for recycling.*
- *Consideration of the overlooking and overshadowing as a result of building or works affecting adjoining land in a General Residential Zone, Housing Choice and Transport Zone, Neighbourhood Residential Zone, Residential Growth Zone or Township Zone.*
- *The design of buildings to provide for solar access.*

Response

The proposed amendments to the design would result in a minor increase in the density of residential development on the site, which would be commensurate with the size and role of the Brunswick Major Activity Centre within which the subject site is situated.

Operational arrangements relating to the movement of pedestrians, cyclists and vehicles around the site, as well as waste management are unchanged compared to the approved design. A highly active ground level frontage to Lygon Street is maintained.

The proposed increase in street wall height would be consistent with the emerging character of development along Lygon Street. The presentation of the building to the Lygon Street frontage and the treatment of the rear of the building has been carefully considered with a simple and attractive design.

The built form amendments to the rear of the building do not result in unreasonable amenity impacts to the neighbouring dwellings to the east within the Neighbourhood Residential Zones. The shadow diagrams demonstrate that overshadowing to 9 Leinster Grove is not increased by the proposed amendments.

7 Leinster Grove is most affected by overshadowing from 2pm, but will continue to receive solar access to an area of secluded private open space of approximately 50 square metres after this time.

Overlooking has been appropriately managed by balustrades that prevent a direct line of site to neighbouring private open space and habitable room windows.

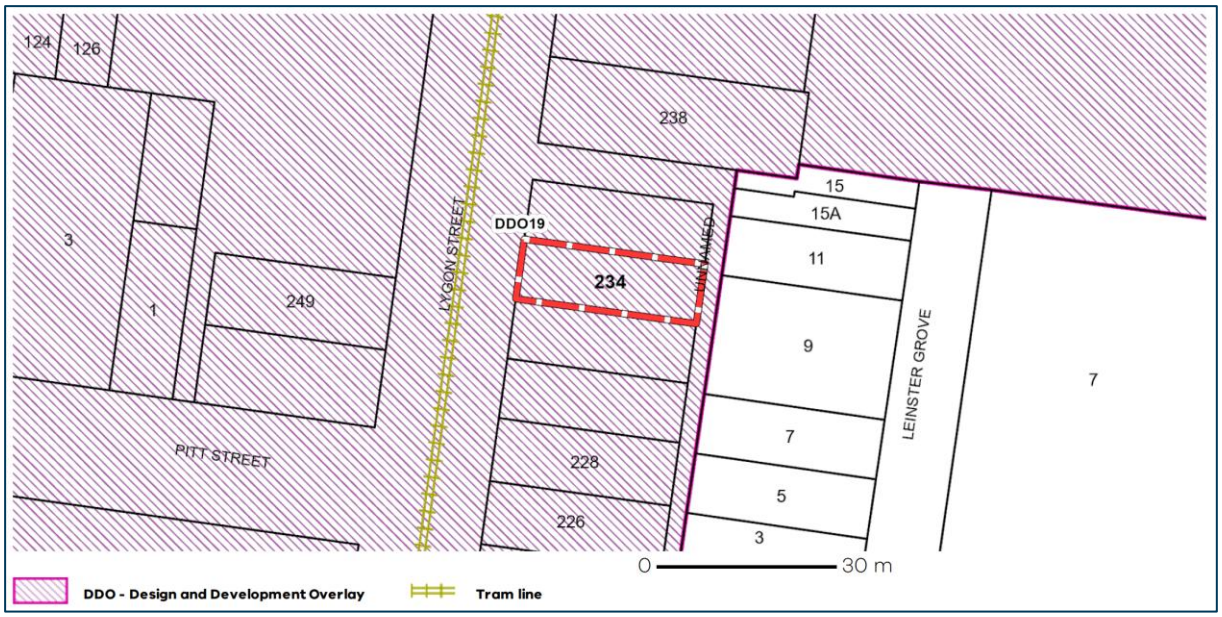
While the transitional provisions provide that Clause 58 does not apply to this application, the amended design will continue to provide a high level of internal amenity. Living rooms and bedrooms are generously sized, and will enjoy good cross ventilation and daylight access.

6.3 Overlays

6.3.1 Design and Development Overlay

Schedule 19 to the Design and Development Overlay (DDO19) applies to the *Brunswick Activity Centre – Lygon Street Local Area*. Refer Figure 9.

Figure 9: Merri-bek Planning Scheme – Design and Development Overlay



Source: VicPlan 2026

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

DDO19 contains the following relevant design objectives:

- *To create a new mid rise built form character that provides a built form transition between the Lygon Activity Corridor and adjoining low-rise residential areas.*
- *To ensure the street wall remains the visually dominant element of all development in Lygon Street and that any height above the street wall is visually recessive, subservient and does not dominate the streetscape appearance.*
- *To protect and enhance the amenity, and maintain solar access to existing and proposed public open spaces and key pedestrian streets, and maintain reasonable amenity for residential properties adjacent to or within the activity centre.*

The following table sets out relevant built form requirements applying to the subject site and provides a comparison of the approved (in the decision plans referred to in condition 1 of the permit) and amended design response.

Table 4: Built Form Requirements under DDO19

Built Form Element	Applicable Requirement	Approved Development	Proposed Amendment
Building Height	Building height should not exceed the preferred maximum building heights as shown in Lygon Street Local Area Built Form Controls Map 1B (South). Map 1B identifies a 17 metre preferred building height for the subject site	20.46 metres	23.34 metres
Street Wall Height	Street wall heights should not exceed the street wall heights specified on Map 1B (South) and Diagram 1: Lygon Street Local Area Section Diagrams. Map 1B and Diagram 1 identify a preferred maximum street wall height of 3 storeys (8-11 metres) for the subject site.	3 storeys (approx. 12.1 metres)	4 storeys (approx. 15 metres)
Upper levels	Development above the street wall height or behind an existing parapet should be: • Set back at least the minimum distance specified in Map 1B (South) and Diagram 1. Balconies must not intrude into this setback. • Designed to differentiate it from the building's street wall component through façade articulation and materials. Map 1B and Diagram 1 identify a preferred upper level setback of 3-5 metres for the subject site. Material at the upper levels of buildings should be distinct from materials of the levels of the building. The architectural expression of the upper levels and lower level building components should	**Fourth Floor:** • 3 metres to balcony and building line **Fifth Floor:** • 3 metres to balcony • 6 metres to building line	**Fourth Floor:** • 1.325 metres to balcony • 3 metres to building line **Fifth Floor** • 3 metres to balcony and building line **Sixth Floor** • 3 metres to balcony

Table 4: Built Form Requirements under DDO19

	complementary and upper levels should be visually recessive.		• 9.41 metres to building line
Setbacks to residential land	Any part of a building adjacent to residentially zoned land outside the activity centre (including across a lane) should be set back from the residential boundary at that interface by a dimension equivalent to its height above 5 metres, up to a maximum setback of 10 metres.	0 metre setback to approximately 12.1 metres in height (third floor parapet wall) 3 metres setback at fourth floor 5 metres setback at fifth floor	0 metre setback to approximately 18.3 metres in height (fifth floor parapet wall) 5 metres setback at sixth floor

Response

The proposal is consistent with the overall strategic visions of DDO19.

The minor increase in building height (by 2.9 metres) is consistent with the mid-rise development character sought for the Brunswick MAC, noting that the amendment would result in a 6 storey building. The proposed sixth floor is highly recessed, with the building line setback from Lygon Street by 9.41 metres and by 9 metres to the rear boundary. The sixth floor will therefore be of limited visibility from the public realm and neighbouring properties to the east.

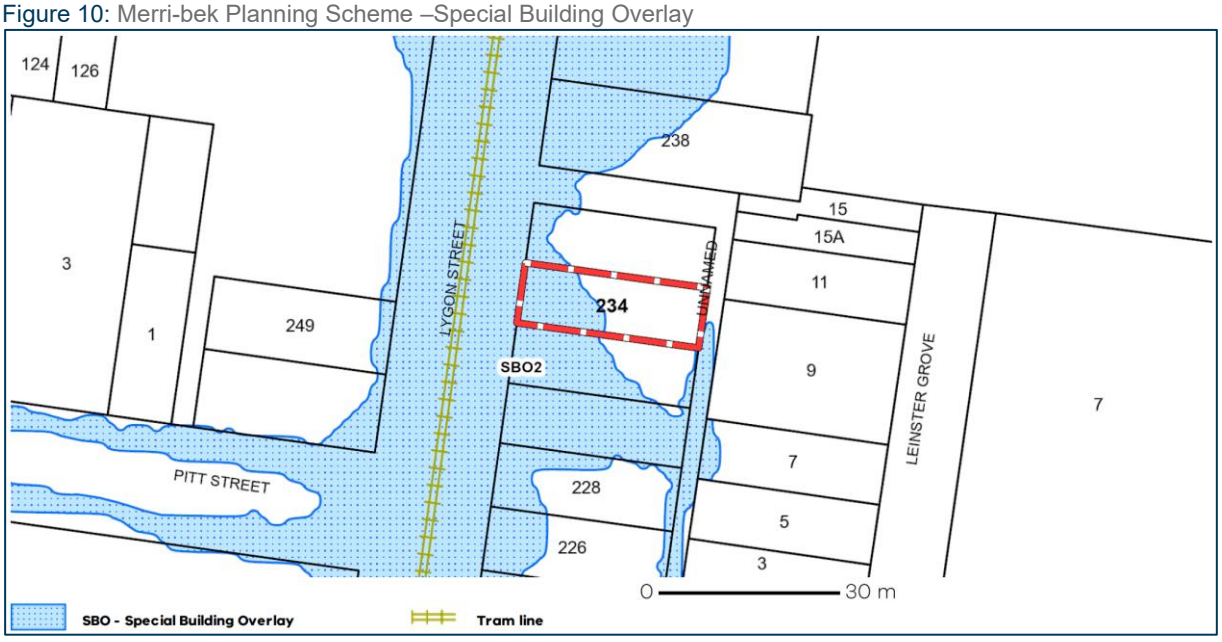
The proposed increase in street wall height to 4 storeys is consistent with nearby developments on Lygon Street as detailed in Section 4.2 above. Levels above the street wall are provided with appropriate setbacks and a light materiality, contrasting with the darker finish of the street wall. Built form above the street wall therefore continues to be visually recessive in comparison to the street wall.

The revised rear setbacks have been carefully designed so as to not result in any unreasonable amenity impacts to neighbouring properties, having regard to the recent construction of a rear addition at 9 Leinster Grove.

6.3.2 Special Building Overlay

Schedule 2 to the Special Building Overlay (SBO2) applies partially to the site, refer Figure 10.

Figure 10: Merri-bek Planning Scheme –Special Building Overlay



Source: VicPlan 2026

SBO2 identifies land subject to flooding from the municipal drainage network.

The overlay was recently applied to the site by Amendment C196 to the Merri-bek Planning Scheme (on 8 January 2026).

A permit is required under Clause 44.05-1 for buildings and works.

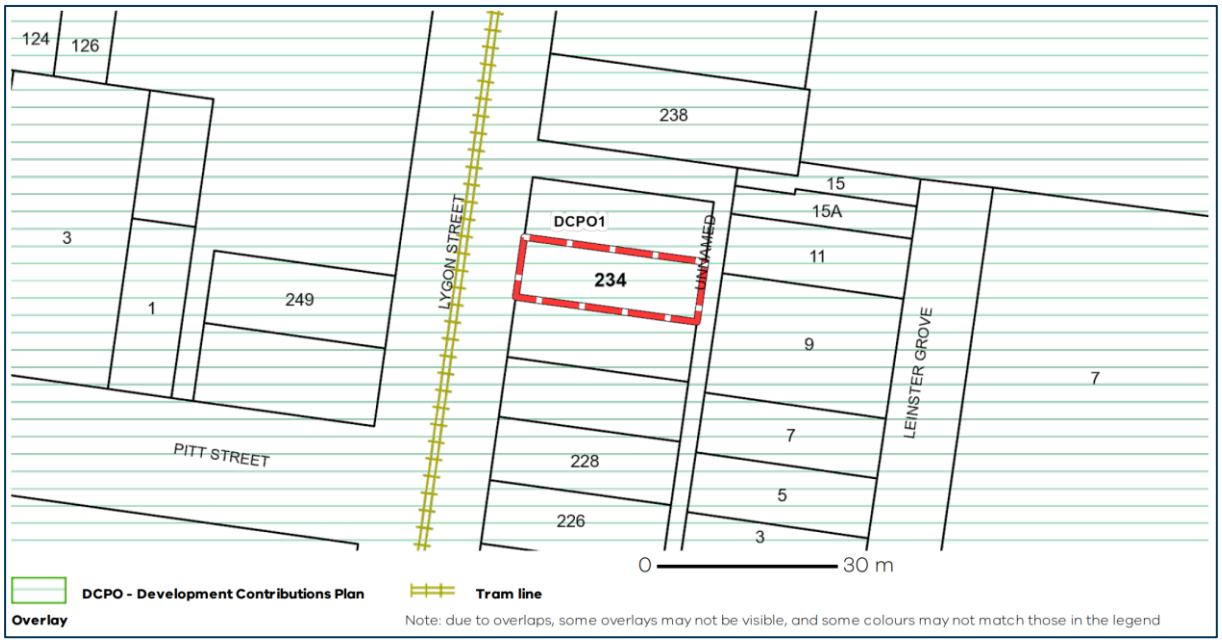
Response

Given that no amendments are proposed to be made to the approved finished floor levels at the ground floor, we submit that the overlay has little relevance to the proposal amended design. The proposal remains consistent with permit conditions 33-35, placed on the permit at the request of Melbourne Water.

6.3.3 Development Contributions Plan Overlay

Schedule 1 to the Development Contributions Plan Overlay applies to the entirety of the municipality. Refer Figure 11.

Figure 11: Merri-bek Planning Scheme – Development Contributions Plan Overlay



Source: VicPlan 2026

The overlay requires a levy to be paid to Council to contribute towards the provision of works, services and facilities in the local area.

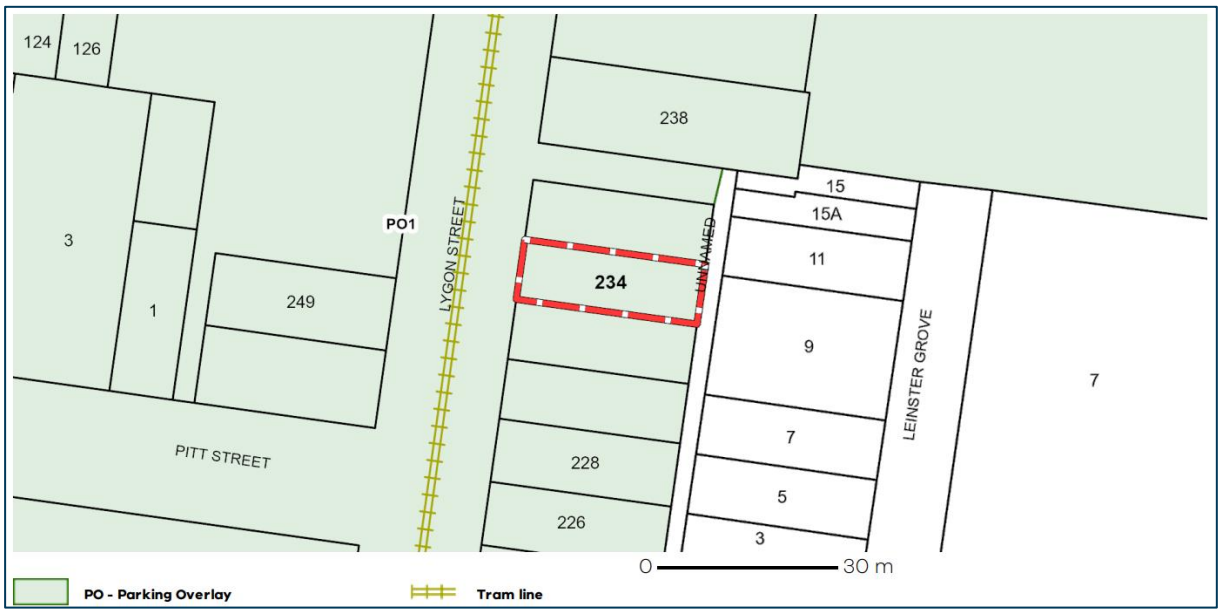
Condition 31 of the permit requires development contributions to be paid in accordance with the approved Development Contribution Plan.

The overlay does not have any bearing on this application.

6.3.4 Parking Overlay

Schedule 1 to the Parking Overlay (PO1) has been applied to Mixed Use, Residential Growth, Commercial and Activity Centre Zones within the municipality, including the subject site. Refer Figure 12.

Figure 12: Merri-bek Planning Scheme – Parking Overlay



Source: VicPlan 2026

The relevant purposes of the Parking Overlay include:

- *To facilitate an appropriate provision of car parking spaces in an area.*
- *To identify areas and uses where local car parking requirements apply.*

PO1 varies the standard car parking requirements at Clause 52.06, such that the car parking rates included in Column B of Table 1 at Clause 52.06-5 (as it existed prior to Amendment VC277) apply to the site.

PO1 predates Amendment VC277 to the Merri-bek Planning Scheme, which substantially reformed the standard car parking requirements at Clause 52.06. PO1 continues to apply the same car parking requirement to the site that existed prior to Amendment VC277.

The car parking requirement is discussed in further detail in Section 7.1.1 of this report.

7.0 Particular Provisions

7.1.1 Clause 52.06 - Car Parking

The purpose of Clause 52.06 is to ensure that sufficient and appropriately designed car parking facilities are provided for new developments commensurate with the demand generated by the intended use of the site, having regard to the nature of the locality.

Clause 52.06 also aims to ensure that car parking is appropriately designed and located so that it does not impact upon the amenity of the locality, including existing residents or pedestrians and other road users and achieves a high standard of urban design. Car parking areas should be designed so that they are safe and easy and efficient to use.

A new use must not commence, or the floor area of an existing use must not be increased until the required car parking has been provided on the land. A permit may be granted to reduce or waive the number of car spaces required. The clause specifies the rate at which car parking is to be provided according to the proposed use of the site.

PO1 varies the standard car parking requirements at Clause 52.06, such that the car parking rates included in Column B of Table 1 at Clause 52.06-5 (as it existed prior to Amendment VC277) apply to the site.

Where an existing use is increased by the corresponding measure in Table 1, the car parking requirement only applies to the increase, provided the existing number of car parking spaces currently being provided in connection with the existing use is not reduced.

The subject site is located within a Category 3 area within the *Car Parking Requirement Maps (2025)*, reflecting the site's excellent access to public transport. We note that, if it were not for PO1, there would be no minimum car parking rate applicable to the land uses of Dwelling and Shop for this site.

A comparison of the car parking requirements as they apply to the approved development and the proposed amendments is detailed in Table 5 below.

Table 5: Car parking rates specified in Clause 52.06

Land Use		Column B Planning Scheme Rate	Total car spaces required	Total car spaces provided
Approved Dwellings	10 two-bedroom apartments 1 three-bedroom apartments	1 space to each one or two bedroom dwelling 2 spaces to each three bedroom dwelling	12 spaces	8 spaces
Proposed *Dwellings*	*12 two-bedroom apartments* *1 four-bedroom apartment*		*14 spaces*	*8 spaces*
Approved Shop	Approx 140 sqm leasable floor area	3.5 spaces to each 100m^2 of leasable floor space	4 spaces	0 spaces
Proposed *Shop*	*85 sqm leasable floor area*		*2 spaces*	*0 spaces*
Approved Totals			**16 spaces**	***8 spaces***
Proposed Totals			***16 spaces***	***8 spaces***

Clause 52.06-7 requires that for an application to reduce the statutory number of car parking spaces a Car Parking Demand Assessment is provided.

Response

The amended proposal does not result in any variation in the overall size of the car reduction approved under the existing planning permit despite the two additional dwellings, due to the decrease in commercial floor space.

Nonetheless, it is recognised that car parking demand associated with the Shop is not directly comparable with the residential component of the development. The amendment would result in two additional dwellings being provided without a car parking space compared to the approved design.

Table 5 below provides a Car Parking Demand Assessment. The proposed provision of car parking is considered appropriate having regard to the physical context of the site and strategic context outlined in the Merri-bek Planning Scheme.

We note that, if it were not for PO1, the subject site would not have any minimum car parking requirement (and maximum rates would apply) under the standard requirements of Clause 52.06.

Table 6: Car Parking Demand Assessment

Criteria	Response
The likelihood of multi-purpose trips within the locality which are likely to be combined with a trip to the land in connection with the proposed use.	As the subject site is located within an activity centre, there is a high likelihood of multi-purpose trips occurring, reducing the overall demand for car parking.
The variation of car parking demand likely to be generated by the proposed use over time.	Peak car parking demand associated with the Shop use would ultimately depend on the nature of the business that would occupy the tenancy, noting that a range of commercial land uses would be allowed as-of-right in this location. Car parking demand associated with the residential component would peak during evenings, when residents are at home overnight.
The short-stay and long-stay car parking demand likely to be generated by the proposed use.	Car parking demand generated by the Shop use will be predominantly short-stay for visitors, with a small amount of long-stay parking demand associated with staff (noting the small size of the Shop would only be expected to accommodate approximately 1-2 staff at any one time) Car parking demand generated by the residential use will be predominantly long-stay, with residents parking on-site during the day and overnight.
The availability of public transport in the locality of the land.	The site is very highly accessible via public transport with tram routes 1 and 6 running along Lygon Street and stopping approximately 150 metres to the north. Routes 1 and 6 provides access to the Melbourne CBD and Melbourne University. Bus route 506 runs along Glenlyon Road, and stops approximately 180 metres to the south of the site. The site is also within walking distance of the route 96 and route 19 trams.
The convenience of pedestrian and cyclist access to the land.	The subject site and surrounding area are connected by a complete footpath network. Walking is a viable option for many daily trips, due to the proximity of a large variety of shops, services, and food and drink premises in the Brunswick MAC. The site also has access to cycling infrastructure, in the form of 'shimmy routes' along quiet streets, connecting to major cycle paths such as the Merri Creek Trail and the Upfield Line Shared Path. The area surrounding the site is relatively flat and conducive for cycling.

Table 6: Car Parking Demand Assessment	
Criteria	**Response**
The provision of bicycle parking and end of trip facilities for cyclists in the locality of the land.	Dedicated parking for 13 bicycles (1 per apartment) is provided on site, for use by residents and residential visitors. There is also good availability of public bicycle parking on Lygon Street, within easy walking distance of the site.
The anticipated car ownership rates of likely or proposed visitors to or occupants (residents or employees) of the land.	2021 Census data for the Brunswick East SA2 (which includes the subject site) indicates that 18.6% of households own no motor vehicle, which is much higher than in the Greater Melbourne region (7.5%). Of households residing in a flat or apartment, this figure increases to 20%. The predominance of households in this area opting to forego ownership of a car reflects the excellent access to public and active transport options, as well as the growing availability of car share services, which provide a genuine alternative to private vehicle ownership.
Any empirical assessment or case study.	Not applicable

7.1.2 Clause 52.34 – Bicycle Facilities

The purpose of this clause is to encourage cycling as a mode of transport. Secure, accessible and convenient bicycle parking spaces are to be provided for higher density developments with associated shower and change facilities where commercial uses are proposed.

Table 7 below summarises the approved and proposed provision of bicycle parking in relation to the minimum requirements of Clause 52.34.

Table 7: Bike parking rates specified in Clause 52.34

Land Use		Planning Scheme Rate	Total bike spaces required	Total bike spaces provided
Approved Dwellings	11 apartments	1 space for each 5 dwellings for residents 1 space for each 10 dwellings for visitors	2 resident spaces 1 visitor space	11 spaces
Proposed *Dwellings*	*13 apartments*		*3 resident spaces* *1 visitor space*	*13 spaces*
Approved Shop	Approx 140 sqm leasable floor area	1 to each 600 sqm of leasable floor if the leasable floor area exceeds 1000 sqm for employees 1 to each 500 sqm of leasable floor area if the leasable floor area exceeds 1000sqm for visitors	0 spaces	0 spaces
Proposed *Shop*	*85 sqm leasable floor area*		*0 spaces*	*0 spaces*
Approved Totals			**3 spaces**	***11 spaces***
Proposed Totals			***4 spaces***	***13 spaces***

As fewer than 5 employee visitors parking spaces are required, there is no requirement for end of trip facilities.

Response

The proposed number of bicycle spaces exceeds the number required and thus encourages cycling as a mode of transport.

Bicycle parking would be available for residents and residential visitors. Public bicycle parking is also available a short distance from the site on Lygon Street which would be suitable for visitors.

We note that bicycle parking is provided in accordance with the requirement of Condition 20 of the permit (which requires a minimum of 1 space per apartment).

7.1.3 Clause 53.18 – Stormwater Management in Urban Development

The purpose of this clause is to ensure that stormwater is managed in urban developments to mitigate the risks associated with poor stormwater management on the environments, property and public safety as well as to provide cooling, local habitat and amenity.

The stormwater management system should be designed to:

- *Meet the current best practice performance objectives for stormwater quality as contained in the Urban stormwater management guidance (Environment Protection Authority - Publication 1739.1, 2021).*
- *Minimise the impact of chemical pollutants and other toxicants including by, but not limited to, bunding and covering or roofing of storage, loading and work areas.*
- *Contribute to cooling, improving local habitat and providing attractive and enjoyable spaces.*

Response

The Sustainability Management Plan, prepared by Melbourne Sustainability Consultants demonstrates that the development continues to achieve a Blue Factor score of 100%.

We note that the development was approved prior to the introduction of the Blue Factor assessment tool, which assesses additional stormwater outcomes compared to the previous STORM calculator.

As such, we submit that the non-compliances with the additional Blue Factor targets should not have any bearing on this amendment application.

8.0 Conclusion

The amended proposal demonstrates a high degree of consistency with the outcomes sought for this site as set out in the relevant provisions of the Merri-bek Planning Scheme as detailed in this report.

The amended design responds to the direction for increased housing growth in the Brunswick Major Activity Centre, and constitutes an appropriate response to the substantial changes in the surrounding urban context since the permit was granted.

Amenity impacts to neighbouring residential properties have been appropriately considered and are not unreasonable.

For the reasons outlined in this report it is considered that the amended proposal is an appropriate response given the physical and strategic context of the site and is consistent with the outcomes sought for this site in the Merri-bek Planning Scheme and hence is worthy of support.

Appendix: Photographic Study

Photo 1: Looking south along the lane to the rear of the subject site (center right)



Photo 2: Looking south along the lane to the rear of the subject site with the recently constructed dwelling addition at 9 Leinster Grove centre.



Photo 3: Looking at the northeast corner of the neighbouring development at 236 Lygon Street and interface with the rear laneway



Photo 4: Looking at the northwest corner of the neighbouring development at 236 Lygon Street at the street frontage

