



Moreland City Council

# **COUNCIL AGENDA**

## **PLANNING AND RELATED MATTERS**

**WEDNESDAY 28 AUGUST 2019**

**COMMENCING 6.30 PM**

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

### **Language Link**

This is the Agenda for the Council meeting.  
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ਇਹ ਕੌਂਸਲ ਦੀ ਮੀਟਿੰਗ ਦਾ ਏਜੰਡਾ ਹੈ।  
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ਕ੍ਰਿਪਾ ਕਰਕੇ 9280 0751 ਤੇ ਟੈਲੀਫੋਨ ਕਰੋ।



**1. WELCOME**

**2. APOLOGIES**

Leave of absence has been granted to:

Cr. Irfanli - 26 August 2019 to 13 September 2019 inclusive

**3. DECLARATION OF INTERESTS AND/OR CONFLICTS OF INTERESTS**

**4. CONFIRMATION OF MINUTES**

The minutes of the Planning and Related Matters Meeting held on 24 July 2019 be confirmed.

**5. REPORTS**

**CITY FUTURES**

<b>DCF68/19</b>	<b>15 UNION STREET BRUNSWICK - PLANNING PERMIT APPLICATION MPS/2018/601 (D19/271712)</b>	<b>3</b>
<b>DCF69/19</b>	<b>699 AND 701 PARK STREET, 182, 184-186, 188 AND 190-192 BRUNSWICK ROAD, 2 AND 4 SYDNEY ROAD, BRUNSWICK - VCAT AMENDED PLANS (D19/320802)</b>	<b>73</b>
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**6. URGENT BUSINESS REPORTS**

# DCF68/19 15 UNION STREET BRUNSWICK - PLANNING PERMIT APPLICATION MPS/2018/601 (D19/271712)

Director City Futures

City Development

## Executive Summary



<b>Property:</b>	15 Union Street Brunswick
<b>Proposal:</b>	Development of an 8-storey building (with roof terrace) containing an office and 21 dwellings and a reduction of the standard car parking requirement.
<b>Zoning and Overlay/s:</b>	<ul style="list-style-type: none"> <li>• Mixed Use Zone</li> <li>• Development Contributions Plan Overlay (DCPO)</li> <li>• Parking Overlay (PO1)</li> <li>• Design and Development Overlay (DDO18)</li> <li>• Environmental Audit Overlay</li> </ul>
<b>Strategic setting:</b>	<div>Minimal housing growth</div> <div>Incremental housing growth</div> <div>Increased housing densities encouraged</div> <div>Significant housing growth</div>
<b>Objections:</b>	<ul style="list-style-type: none"> <li>• 118</li> <li>• Key issues: <ul style="list-style-type: none"> <li>• Equitable development of neighbouring property</li> <li>• Amenity impacts to neighbouring dwellings</li> <li>• Impact on existing business (Record Paradise)</li> </ul> </li> </ul>
<b>Targeted Consultation Meeting:</b>	<ul style="list-style-type: none"> <li>• Date: 29 May 2019</li> <li>• Attendees: Two objectors, the applicant, two Council officers, and Cr Mark Riley</li> <li>• Amended plans were prepared and informally submitted to Council for discussion after the consultation meeting.</li> </ul>
<b>ESD:</b>	<ul style="list-style-type: none"> <li>• Minimum average NatHERS rating of 6.5 stars.</li> </ul>
<b>Accessibility:</b>	<ul style="list-style-type: none"> <li>• Adaptable apartments comprise 66 per cent of the proposal.</li> </ul>
<b>Key reasons for support</b>	<ul style="list-style-type: none"> <li>• Appropriate building envelope which achieves objectives of DDO18</li> <li>• Good level of compliance with Clause 58</li> </ul>
<b>Recommendation:</b>	It is recommended that a Notice of Decision to Grant a Planning Permit be issued for the proposal.

## Officer Recommendation

That a Notice of Decision to Grant a Planning Permit No. MPS/2018/601 be issued for the development of an 8-storey building (with roof terrace) containing an office and dwellings and a reduction of the standard car parking requirement at 15 Union Street Brunswick, subject to the following conditions:

### Amended plans

1. Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and must be generally in accordance with the plans (advertised *19 March 2019*) but modified to show:
  - a) The changes, including an increase in the size of the eastern light court and associated internal rearrangement, shown on 'without prejudice' plans TP02.3 - TP02.5 prepared by Metaxas Architects and dated 8 July 2019.
  - b) A full set of amended elevation plans, including internal elevations, that reflect the changes to the floor layout of the 'without prejudice' plans TP02.3 - TP02.5 prepared by Metaxas Architects and dated 8 July 2019.
  - c) The provision of a fixed screen or balustrade, with a maximum of 25 per cent visual permeability, to a minimum height of 1.7 metres above finished floor level, along the entire eastern side of all trafficable areas of the rooftop.
  - d) The provision of a fixed screen with a maximum of 25 per cent visual permeability to a minimum height of 1.7 metres above finished floor level, or fixed obscure glazing to a minimum height of 1.7 metres above finished floor level, to the south-facing and north-facing bedroom windows and the east-facing kitchen windows (Levels 6 and 7) which face onto the eastern light court.
  - e) A screen diagram drawn at a scale of 1:50 which details the screen associated with Conditions 1 c) and d), as applicable. This diagram must include all dimensions, including the width of slats and the gap between slats.
  - f) At first floor level, deletion of that part of the planter box to Dwelling A101 which projects over the Union Street footpath, so that no portion of the habitable building, including balconies, projects into the road reserve to the satisfaction of the Responsible Authority. Any architectural elements may protrude up to a maximum of 300 millimetres.
  - g) At least 50 per cent of apartments shown as:
    - i. Providing a clear opening width of at least 850 millimetres at the entrance to the dwelling and main bedroom;
    - ii. Providing a clear path with a minimum width of 1.2 metres that connects the dwelling entrance to the main bedroom, an adaptable bathroom and the living area;
    - iii. Providing a main bedroom with access to an adaptable bathroom; and
    - iv. Providing at least one adaptable bathroom that meets all the requirements of either Design A or Design B specified in Table D4 of Clause 58.05-1 of the Moreland Planning Scheme;
    - v. Achieving the Silver standard of Liveable Housing Design Guidelines.
  - h) Initiatives contained within the amended Sustainable Management Plan including:
    - i. On-site stormwater treatments as per the STORM report.

- ii. Rainwater harvesting tank/s specified as being the capacity within the STORM report. The tanks must also be noted to be used only for reuse within the development, and that that it is completely independent of any detention requirements (through the Legal Point of Discharge process);
  - iii. Location of common area sub meters;
  - iv. Location of area/s dedicated to on-site management of food and green waste; and
  - v. Any other changes as per the amended SMP
- i) An amended landscape plan in accordance with Condition 3 of this permit.
  - j) A schedule of all proposed exterior decorations, materials, finishes and colours, including colour sample images. The schedule must include:
    - i. Any sustainable materials committed to in the endorsed Sustainable Management Plan; which could be present in the external building envelope;
    - ii. The material of the garage door to Little Gold Street; and
    - iii. Light-reflecting colour to the walls of each light court.
  - k) The bicycle parking room dimensioned at least 3.4 metres wide to provide for the 1.2 metre wide vertical bike spaces, 700 millimetres width to protect the handle bars on the horizontally parked bikes and still leave a 1.5 metre width for pedestrians to access the waste bin room.
  - l) An increase in the number of bicycle parking spaces to one per dwelling.
  - m) Rails along the floor of the bicycle parking room to ensure that the 1100 litre waste bins do not touch any of the parked bicycles as they are pushed from the waste room through the bicycle parking room.
  - n) The location of any substation required by the power company for this development. Any substation must be incorporated within the building (i.e. not free standing or pole mounted in the street) to ensure minimal impact on the visual amenity of the public realm.
  - o) At least 25 per cent of the mechanical car parking spaces to be able to accommodate a vehicle clearance height of at least 1.8 metres.
  - p) The level of the vehicle crossing at the Little Gold Street boundary no more than 150 millimetres above the street channel.
  - q) An amended waste management plan in accordance with Condition 10 of this permit.
  - r) An amended accessibility report in accordance with Condition 12 of this permit.
  - s) An amended acoustic report in accordance with Condition 14 of this permit.
  - t) Any changes required by the wind effects statement in accordance with Condition 16 of this permit.

#### **Development not to be altered**

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

### **Landscape plan**

3. Prior to the commencement of any development works, an amended landscape plan must be submitted to and approved by the Responsible Authority. The landscape plan must be generally in accordance with the plan prepared by ARG Landscape Design and dated 29 November 2018, except that it must provide the following:
  - a) Identification of any existing tree(s) and vegetation on site and adjoining land proposed to be removed and retained, including the tree protection zone(s). Vegetation retainment must include strategies for the retainment (i.e. barriers and signage during the construction process).
  - b) Any stormwater management details on the STORM report (which forms part of the endorsed Sustainable Management Plan) including rainwater harvesting tank size and location; and
  - c) The following detail of the landscaped area on the roof terrace: details of paved surface materials, substrate materials, drainage, irrigation and structural support required.
4. Prior to the issuing of a Statement of Compliance or occupation of the development, whichever occurs first, all landscaping works must be completed and maintained in accordance with the approved and endorsed landscape drawing to the satisfaction of the Responsible Authority.

### **Tree protection**

5. Prior to development commencing (including any demolition, excavations, tree removal, delivery of building/construction materials and/or temporary buildings), the street tree at the front of the site in Union Street must have a Tree Protection Zone (TPZ) to the satisfaction of the Responsible Authority. The fencing associated with this TPZ must meet the following requirements:
  - a) Extent

The tree protection fencing (TPF) is to be provided to the extent of the TPZ, calculated as being a radius of 12 x Diameter at Breast Height (DBH – measured at 1.4 metres above ground level as defined by the Australian Standard AS 4970.2009). If works are shown on any endorsed plan of this permit within the confines of the calculated TPZ, then the TPF must be taken in to only the minimum amount necessary to allow the works to be completed.
  - b) Fencing

All tree protection fencing required by this permit must be erected in accordance with the approved TPZ. The TPF must be erected to form a visual and physical barrier, be a minimum height of 1.5 metres above ground level and of chain mesh or similar material. A top line of high visibility plastic tape must be erected around the perimeter of the fence.
  - c) Signage

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

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

e) Provision of Services

All services (including water, electricity, gas and telephone) should be installed underground, and located outside of any TPZ, wherever practically possible. If underground services are to be routed within an established TPZ, they must be installed by directional boring with the top of the bore to be a minimum depth of 600 millimetres below the existing grade, to the satisfaction of the Responsible Authority. Bore pits must be located outside of the TPZ or manually excavated without damage to roots, to the satisfaction of the Responsible Authority.

f) Access to TPZ

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

**Sustainable management plan**

6. Prior to the endorsement of plans, an amended Sustainable Management Plan (SMP) must be submitted to and approved to the satisfaction by the Responsible Authority. The Sustainable Management Plan must demonstrate a best practice standard of environmentally sustainable design and be generally in accordance with the SMP prepared by Arc Resources and dated 28/11/2018, but modified to include the following changes:

- a) 'Publish' the BESS report (so it is no longer in 'draft' format);
- b) Include a print out of the entire BESS report and not merely a summary in Appendix 7 of the Sustainability Management Plan prepared by Arc Resources dated November 2018.
- c) Include washing machine selection of "3 star" in the BESS Report and SMP to account for the worst option that future residents will install.
- d) Demonstration of best practice stormwater management as per clause 22.08 by amending the on-site stormwater management response that maintains a minimum STORM score of 100% but is modified so that:
  - i. The pervious and impervious areas are consistent with the areas identified on the development plans. Specific impervious areas in the STORM report from which rainwater is harvested (such as impervious roof area) must also be consistent with the development plans;
  - ii. All pervious and impervious areas accounted for;
  - iii. All stormwater treatments can be realistically achieved and are practical, based on the roof areas and the location of rainwater tank/s; and
  - iv. Update the water balance calculations based on the intended number of apartments connected to the rainwater tank and justify the choice and adequacy of the 10,000 litre tank capacity to meet the flushing demands of the site and ensure long term water security and reliability.

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

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

7. All works must be undertaken in accordance with the endorsed Sustainability Management Plan to the satisfaction of the Responsible Authority. No alterations to these plans may occur without the written consent of the Responsible Authority.
8. Prior to the occupation of the building approved under this permit, a report (or reports) from the author of the Sustainability Management Plan (SMP), approved pursuant to this permit, or similarly qualified person or company, must be submitted to the Responsible Authority. The report(s) must be to the satisfaction of the Responsible Authority and must confirm that all measures specified in the approved SMP have been implemented in accordance with the approved plans.

#### **Development contribution**

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

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

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

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

#### **Waste management plan**

10. Prior to the endorsement of plans, an amended Waste Management Plan must be submitted and approved to the satisfaction of the Responsible Authority. The Plan must be generally in accordance with the plan prepared by Leigh Design and dated 4 June 2018, except that it must be amended to reflect the changes to the plans (including the reduced number of dwellings) required by condition 1 of this permit.

When submitted and approved to the satisfaction of the Responsible Authority, the Waste Management Plan and any associated notated plans will form part of this permit.

11. The Waste Management Plan approved under this permit must be implemented and complied with at all times to the satisfaction of the Responsible Authority unless with the further written approval of the Responsible Authority.

#### **Accessibility report**

12. Prior to the endorsement of plans an amended Accessibility Report must be prepared by a suitably qualified person detailing how the development will incorporate adaptable, accessible and visitable design features in accordance with the Silver Performance Level of the Livable Housing Design Guidelines 2012. The report must be generally in accordance with the report prepared by Access Studio and dated 15 November 2018, except that it must be amended to reflect the changes to the plans (including the reduced number of dwellings) required by condition 1 of this permit.



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

#### **Acoustic report**

14. Prior to the endorsement of plans an amended Acoustic Report must be prepared by a suitably qualified person. The report must be generally in accordance with the report prepared by Octave Acoustics and dated 13 March 2018, except that it must verify that the car stackers will operate in accordance with the Environment Protection Act 1970 (the Act) and the Environment Protection (Residential Noise) Regulations 2008 (Regulations). In the event that it is considered that the Act and Regulations would be breached, the acoustic report must recommend further noise attenuation measures to ensure compliance with the Act and these additional measures must be implemented at the owner's cost and to Council's satisfaction prior to the occupation of the development.
15. Construction and maintenance of the building must be in accordance with the recommendations contained in the acoustic report to the satisfaction of the Responsible Authority.

#### **Wind effects statement**

16. Prior to the endorsement of plans a wind effects statement must be submitted to and be to the satisfaction of the Responsible Authority. Modifications must be made to the design of the development to reduce any adverse wind conditions to the pedestrian realm and shared path. Conditions must be suitable for walking at a minimum. The report must be to the satisfaction of the Responsible Authority. The recommendations of the report must be implemented at no cost to the Responsible Authority and must not include reliance on street trees.

#### **Environmental audit**

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

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

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

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

### **General**

18. Prior to the occupation of the development all telecommunications and power connections (where by means of a cable) and associated infrastructure to the land (including all existing and new buildings) must be underground to the satisfaction of the Responsible Authority.
19. All stormwater from the land, where it is not collected in rainwater tanks for re-use, must be collected by an underground pipe drain approved by and to the satisfaction of the Responsible Authority (Note: Please contact Moreland City Council, City Infrastructure Department).
20. Prior to the occupation of the development, any existing vehicle crossing not to be used in this use or development must be removed and the kerb and channel, footpath and nature strip reinstated to the satisfaction of the Responsible Authority (Moreland City Council, City Infrastructure Department).
21. Prior to the commencement of the development, a legal point of discharge is to be obtained, and, where required, a stormwater drainage plan showing how the site will be drained from the property boundary to the stated point of discharge must be submitted to and approved by the Responsible Authority.

### **Permit to expire**

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

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

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

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

#### **Note 1:**

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

#### **Note 2:**

Council charges supervision (2.50%) and plan checking (0.75%) fees on the cost of constructing the drain along the easement or street as permitted by sections 5&6 of the Subdivision (Permit and Certification Fees) Regulations 2000.

**Note 3:**

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

**Note 4:**

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

## **1. Background**

### **Subject site**

The subject site is located at 15 Union Street Brunswick, approximately 125 metres west of Sydney Road and 27 metres east of the Upfield rail line. The site has a frontage of 11.25 metres to Union Street and 10.67 metres to Little Gold Street, and a depth of 38.1 metres. The overall site area is 417.58 square metres.

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

The site is currently developed with a brick warehouse built to the front boundary and used as a record shop (Record Paradise).

### **Surrounds**

The site is located within the Brunswick Activity Centre and is characterised by a mix of residential built form ranging from attached single storey terraces to mid rise apartment buildings, and a range of commercial buildings including offices and former factories. Commercial uses near the site include cafes and restaurants. The adjoining site to the west is currently developed with a warehouse building which matches the building on the subject site. This land forms part of the Jewel Station development. A current planning permit (MPS/2015/503) allows construction of an 8-storey building comprising ground floor retail and apartments above. Beyond this site to the west is the Upfield shared path and railway line. To the east are two attached triple storey townhouses facing Union Street, and a vacant lot accessed from Little Gold Street. Further east on Union Street is a Council car park and a heritage building (5 Union Street) which has undergone redevelopment and alteration. Opposite the site is a 3-storey apartment building (20 Union Street). To the south, Little Gold Street is characterised by nineteenth century single storey terraces on its southern side.

A location plan forms **Attachment 1**.

### **The proposal**

The proposal is summarised as follows:

- Construction of an 8-storey building above a basement, with a roof terrace.
- A 73 square metre office tenancy at ground floor level, facing Union Street, with services behind and 21 apartments on the floors above.
- On each residential level, a 3-bedroom apartment facing Union Street, a 1-bedroom apartment facing Little Gold Street and a 2-bedroom apartment facing Little Gold Street.
- Vehicle access from Little Gold Street, with 20 car parking spaces provided in a stacker system.
- 13 bicycle parking spaces provided in a dedicated storage room at ground floor level.
- A street wall height of 8.2 metres (2-storeys plus the balustrade of second floor balconies) to Union Street, with an upper level setback of 5 metres (balconies protrude 2 metres into this setback).
- For the eastern part of the building, a street wall height of 10.03 metres (3-storeys) to Little Gold Street, with an upper level setback of 4-4.2 metres (balconies protrude 2-2.13 metres into this setback). The western part of the building to Little Gold Street is setback 1.9-2 metres for its entire height.
- A height of 26.2 metres plus roof top services.

The development plans form **Attachment 2**.

## Statutory Controls – why is a planning permit required?

Control	Permit Requirement
Mixed Use Zone	“Dwelling” is a Section 1 use in the zone, meaning that a permit is not required. “Office” is a Section 1 use in the zone provided the leasable floor area does not exceed 250sqm. As the proposed office does not exceed this size, a permit is not required. A permit is required to construct two or more dwellings on a lot.
Design and Development Overlay	Clause 43-02-2: A permit is required to construct a building or construct or carry out works.
Particular Provisions Clause 52.06	A permit is required to reduce the car parking requirement from 30 spaces to 20 spaces.

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

- Clause 45.03: Environment Audit Overlay
- Clause 45.06: Development Contributions Plan Overlay
- Clause 45.09: Parking Overlay

## 2. Internal/External Consultation

### Public notification

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

- Sending notices to the owners and occupiers of adjoining and nearby land and the current occupier of the subject site; and
- Placing signs on the Union Street and Little Gold Street frontages of the site.

Council has received 118 objections including 13 proforma objections to date. A map identifying the location of objectors forms **Attachment 1**.

The key issues raised in objections are:

- Impact of the development on the existing business which operates from the site (Record Paradise). This was the chief ground of the majority of objections.
- Impact on equitable development rights of 13 and 13A Union Street.
- Inadequate provision of car parking.
- Increased traffic generation.
- Excessive height of the building constitutes overdevelopment.
- Lack of setback from the street/visual bulk impact to the public realm.
- Inadequate provision of commercial floor space.
- Inappropriate built form relationship to the approved development at 15A Union Street with respect to proposed setbacks to Union Street at Levels 1-3 and Little Gold Street at Levels 1-8.
- Amenity impacts to the proposed development at 15A Union Street: overlooking, visual bulk, loss of daylight, loss of views and noise.
- Amenity impacts to dwellings opposite in Union Street: overshadowing, overlooking, noise.
- Overlooking to 13 Union Street.
- Reduced light to 13 Union Street.
- Eastern boundary wall treatment ‘visually disturbing’.
- Insufficient public open space in the area.
- Insufficient public transport capacity in the area.

- Inadequate apartment sizes.
- Loss of mature trees.
- Lack of landscaping.
- Disruption to dwellings nearby during construction.
- There are already enough developments of a similar kind in the area.

A targeted consultation meeting was held on 29 May 2019. The meeting focused on the immediately affected objectors to resolve their concerns in relation to built form. Objectors from adjoining and nearby properties were invited. Objectors from 13A Union Street, the applicant, Cr Riley and Council officers attended the meeting.

Following the meeting, the applicant informally submitted amended plans to Council for discussion (on 17 July 2019). The following changes were made:

- The minimum dimension of the eastern light court increased to 3.2 metres at Levels 1 -5.
- The length of the eastern light court increased to 9.1 metres at Levels 6 and 7.
- Consolidation of 2 apartments into 1, 3-bedroom apartment on Levels 6 and 7, resulting in an overall reduction of two dwellings.

A condition of the recommendation requires plans reflecting these changes to be submitted for endorsement.

The discussion plans were informally circulated to the objectors who attended the consultation meeting. To date no further comment has been received.

The discussion plans form [Attachment 3](#).

#### **Internal referrals**

The proposal was referred to the following internal business units:

<b>Internal Business Unit</b>	<b>Comments</b>
Urban Design Unit	No objections were offered to the proposal subject to modifications. A number of these were made at further information stage, including changes to the framing element of the façade to better reflect the character of the area. The remainder are addressed by conditions detailed in the recommendation.
Development Advice Engineer	No objections were offered to the proposal subject to modifications, which are addressed by conditions detailed in the recommendation.
ESD Unit	No objections were offered to the proposal subject to modification, which are addressed in the conditions detailed in the recommendation.

### **3. Policy Implications**

#### **Planning Policy Framework (PPF)**

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

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

- Housing Opportunity Areas (Clause 16.01-2R)
- Clause 17.0: Economic Development
- Clause 18: Transport

### **Local Planning Policy Framework (LPPF)**

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

Municipal Strategic Statement:

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

Local Planning Policies:

- Clause 22.01 Neighbourhood Character
- Clause 22.03 Car and Bike Parking and Vehicle Access
- Clause 22.07 Apartment Development of 5 or More Storeys
- Clause 22.08 Environmentally Sustainable Design

Council through its MSS, seeks increased residential densities in the Brunswick Activity Centre to take advantage of the excellent access to public transport and other services within this location. The proposal meets the objectives and strategies of the LPPF by incorporating a range of uses including increased housing and active spaces at ground level to create and reinforce an active and pedestrian friendly street environment. The proximity of the site to a variety of public transport options and the provision of bicycle facilities on the site encourages less reliance on cars as a means of travel.

Council's Neighbourhood Character Policy supports substantial change and creation of a new character of increased scale associated with increased density in this designated major activity centre. The proposal enjoys strong strategic support at both state and local level.

### **Human Rights Consideration**

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

## **4. Issues**

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

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

Council's Neighbourhood Character Policy is relevant to this application and has the following objective for the Brunswick Activity Centre:

*To support substantial change and create a new character of increased density and scale of built form, as defined in the relevant zone or overlay, Structure Plan and/or Place Framework.*

The development employs a simple design language to respond appropriately to both the proposed development to the west, the immediately adjoining development to the east and the heritage buildings further east at 5 Union Street and 133 Sydney Road, as recommended by Council's Urban Design Unit.

The development responds appropriately to the preferred character of the area as defined in Schedule 18 to the Design and Development Overlay. In particular:

The proposed height of 26.2 metres (excluding stair/lift core and roof top structures) only marginally exceeds the DDO18 preferred height of 25 metres and this additional height is unlikely to make a readily perceivable difference to the appearance of the building when viewed from the public realm or adjoining properties. The proposed height is supported by Council's Urban Design Unit as being appropriately responsive to the character of the area. It is noted that the proposed parapet height of the approved development to the west also exceeds the DDO18 preferred height, at 25.45 metres.

The street wall height to Union Street of 8.2 metres only marginally exceeds the DDO18 preferred height of 5-8 metres. The upper level setback is complied with and the development largely achieves the required 1:1 scale between street width and building height, with only a very small area of built form protruding. This marginal non-compliance is unlikely to be readily perceivable from the public realm and will still allow the development to achieve an appropriate balance between a sense of enclosure and openness. It is noted that the proposed street wall height of the approved development to the west also exceeds the DDO18 preferred height, at 10.4 metres.

The street wall height to Little Gold Street of 10 metres complies with the DDO18 preferred height of 7-10 metres. The development however does not achieve the required 1:1 scale between street width and building height with the upper level setback at 4.42 metres, short of the compliant 5 metre requirement. The western part of the building (to a depth of one room) is set at 1.9-2 metres from the street boundary for its entire height. These variations are considered acceptable because:

- Little Gold Street is not the primary frontage of the site. In this location it currently has a character of a rear service area facing the street.
- The site frontage is opposite the intersection with Wilson Avenue. The impact of the built form will therefore not impact the sense of enclosure and openness as much as if there was built form directly opposite the site.

It is noted that the approved development to the west is set at the Little Gold Street boundary for its entire height.

An angled part of the street wall which projects over the Union Street footpath is required to be deleted as a condition of the recommendation to reinforce the strong street wall character encouraged by DDO18.

#### **Has adequate car parking been provided?**

A total of 30 parking spaces are required for the dwellings and office. The development provides 19 on-site spaces for the dwellings and one for the office.

Based on Council's Local Planning Policy at Clause 22.03-3 (Car and Bike Parking and Vehicle Access) it is considered reasonable to reduce the car parking requirements. Clause 22.03-3 states that it is policy to:

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



The reduction of 10 spaces is supported because the site is located within an Activity Centre with excellent access to public transport, including Jewel railway station within 140 metres and tram route 19 within 200 metres. The development is also within 230 metres of four car share spaces and 25 metres of the Upfield shared path. The development provides 13 bicycle parking spaces which exceeds the six required by Clause 52.34. Given the proximity to the Upfield corridor, reduction in car parking spaces and promotion of alternative transport modes under the Moreland Integrated Transport Strategy, one bicycle space should be provided per dwelling. This forms a condition of the recommendation.

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

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

In relation to traffic impacts, Council's Strategic Transport and Compliance Branch have assessed the proposal and concur with the applicant's traffic impact assessment, which concludes the development will result in eight additional vehicle movements during each peak hour on Little Gold Street. This remains within the street's maximum traffic volume under the Moreland Integrated Transport Strategy and is not expected to cause traffic problems.

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

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

- Utilises the rear property frontage for vehicle access to allow the frontage to Union Street to prioritise pedestrian movement and safety and to create active frontages;
- Limits the number of vehicle crossings to 1 per site frontage;
- Limits the removal of on-street public parking spaces and removal of street trees; and
- Provides 13 bicycle spaces, significantly exceeding the 4 spaces required under Clause 52.34.

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

ESD features of the development are considered to be adequate subject to changes required via a condition of the recommendation and include:

- Rainwater harvesting system for toilet flushing and irrigation;
- A rooftop 3.4kW peak solar photovoltaic system; and
- High-performance glazing.

**Is the proposal accessible to people with limited mobility?**

Objective 9 of Clause 23.03-3 (Housing) is to increase the supply of housing that is visitable and adaptable to meet the needs of different sectors of the community. The proposal meets this objective by achieving a Silver standard of the Liveable Housing Design Guidelines for 14 dwellings (66 per cent of the dwellings as shown on the advertised plans). The amended discussion plans make internal rearrangements to some bathrooms which reduce the number of accessible apartments. A condition of the recommendation requires the plans be amended to achieve a minimum of 50 per cent accessible apartments.

### **Does the proposal satisfy the requirements of Clause 58?**

A detailed assessment of the proposal against the objectives at Clause 58 has been undertaken. The proposed development generally achieves a good level of compliance with the objectives and standards of Clause 58. In particular, it is noted that:

- Minimum room sizes are all achieved or exceeded;
- Communal open space requirements are exceeded; and
- Storage requirements are all achieved or exceeded.

Key issues from the Clause 58 assessment are discussed under the headings below.

#### ***Overlooking***

The objectives of Clause 58.04-1 (Amenity Impacts) include *to limit views into habitable room windows and private open space of new and existing dwellings*. Windows facing the eastern light court and the roof top communal area will have views to the secluded private open space of the adjoining property to the east (13 Union Street). A condition of the recommendation requires a 1.7 metre high balustrade along the eastern edge of trafficable areas of the rooftop. A condition also requires screening or the use of fixed obscure glazing to south-facing bedroom windows (into the eastern light court) sufficient to minimise views to the habitable room windows and secluded private open space of the adjoining property to the east (13 Union Street). Importantly these conditions will not unreasonably restrict outlook from within the building which remains to the north (Union Street) and south (Little Gold Street).

#### ***Accessibility***

The objective of Clause 58.05-1 is *to ensure the design of dwellings meets the needs of people with limited mobility*. The advertised plans show 66 per cent of dwelling comply with the accessibility standards of this clause, exceeding the requirement of 50 per cent. The discussion plans include internal rearrangement to the bathrooms of dwellings facing Union Street which results in them not meeting the standard, reducing the percentage of compliant dwellings to 36.8. A condition of the recommendation requires the dwellings be amended to achieve compliance with the standard.

#### ***Private open space***

The objectives of Clause 58.05-3 include *to provide adequate private open space for the reasonable recreation and service needs of residents*. The balconies for all dwellings meet or exceed the minimum area and dimension requirements with the exception of the 3-bedroom apartments facing Union Street from levels 4-7. These dwellings are provided with a balcony of 2 metres in width, short of the 2.4 metre requirement. The overall size of the balconies (14 square metres) exceeds the requirement of 12 square metres. Further, 154 square metres of communal open space is provided on the rooftop, in excess of Clause 58 requirements. On balance the development will provide adequate private open space and the objective is therefore met.

### **Room depth**

The objective of Clause 58.07-2 is *to allow adequate daylight into single aspect habitable rooms*. At first floor level, the apartment facing Union Street (A101) has a living, dining and kitchen area with a depth of 10.3 metres. This room's north-facing window faces onto a terrace which is covered by the 5 metre deep overhang of the balcony above. This increases the effective room depth to 15.3 metres. This exceeds the requirement under the Standard of 9 metres. One bedroom of the apartment is similarly affected, with its effective room depth of 7.8 metres exceeding the requirement under the standard of 6.75 metres. On the same level the apartments facing Little Gold Street have effective room depths of 10.6 metres (Apartment 103) and 13.2 metres (Apartment 102). Given this non-compliance with the standard affects three dwellings only, on balance dwellings will receive adequate daylight and the objective is achieved.

It is noted that the Union Street-facing apartments on levels above will receive adequate daylight because the balconies above are reduced in width.

### **Does the proposal comply with Clause 22.07 (Development of 5 or More Storeys)?**

The light court proposed on the eastern side of the building does not comply with the minimum dimensions at Clause 22.07-3. Amended plans informally submitted to Council for discussion on 17 July 2019 show the minimum dimension of the light court increased to 3.2 metres at levels 1-5. At levels 6 and 7 the length of the light court is increased to 9.1 metres. The amended plans demonstrate compliance with Clause 22.07-3 for levels 1-4 and 6-7. On level 5, the minimum dimension required is 4.5 metres, with 3.2 metres proposed. The overall size of the light court required is 29 square metres, with 16.1 metres proposed. The non-compliance affects 2 apartments only (2 bedrooms). On balance, this outcome delivers acceptable amenity outcomes for future residents. A condition of the recommendation requires plans reflecting these changes to be submitted for endorsement.

The light court on the western side of the building exceeds the size requirements of Clause 22.07-3 for levels 1 – 4. From level 5, the minimum dimension required is 4.5 metres, with 3.32 metres proposed. The overall size of the light court required, however, is 29 square metres, with 37.8 square metres proposed. The light court is located facing the proposed location of a 3.19 metre deep light court on the approved apartment development next door. Each light court provides daylight access to 1 bedroom of a 3-bedroom apartment and 1 bedroom of a 2-bedroom apartment. On balance, this outcome delivers acceptable amenity outcomes for future residents.

### **Is the site potentially contaminated?**

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

## **Do the proposed car stackers comply with the Environment Protection (Residential Noise) Regulations 2008?**

The application includes the use of car stackers. In order to ensure the car stackers do not unreasonably impact on amenity, a condition of the recommendation requires the submitted acoustic report to be amended to verify that the car stackers will operate in accordance with the Environment Protection Act 1970 (the Act) and the Environment Protection (Residential Noise) Regulations 2008 (Regulations). In the event that it is considered that the Act and Regulations would be breached, the acoustic report must recommend further noise attenuation measures to ensure compliance with the Act and these additional measures must be implemented at the owner's cost and to Council's satisfaction prior to the occupation of the development.

## **5. Response to Objector Concerns**

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

- Inadequate provision of car parking.
- Increased traffic generation.
- Excessive height.
- Lack of setback from the street/visual bulk impact to the public realm.
- Inadequate apartment sizes.
- Equitable development rights of 13 and 13A Union Street.
- Overlooking to 13 Union Street.

Other issues raised by objectors are addressed below.

### **Impact of the development on the existing business which operates from the site (Record Paradise).**

Most objectors to this application objected to the impact of the development on Record Paradise, which currently operates from the site.

Some objectors also raised the land owner's failure to notify their tenant of the application before it was lodged.

The demolition of the existing building, which currently houses Record Paradise, does not require a planning permit and therefore is outside the scope of this application. It is not at Council's discretion to require that the land owner retain the existing commercial tenancies.

The *Planning and Environment Act 1987* does not compel the owner of the land to notify a tenant of a planning permit application on a site. The tenant was informed of the application as part of the notification process under section 52 of the Act.

### **Loss of mature trees.**

There are no mature trees on the site. A condition of the recommendation includes requirements for protection of the street tree at the front of the site in Union Street during construction.

### **Lack of landscaping.**

The proposal includes landscaping to the rooftop terrace in excess of Clause 58 requirements. Relevantly Clause 58.03-5 (Landscaping) suggests sites exceeding 750sqm should include tree planting as part of the development. It would be unreasonable to impose this requirement of a site of 417.58 square metres.

### **Disruption to dwellings nearby during construction.**

Noise and amenity impacts during the construction process are not generally a planning matter. The *Environmental Protection Act 1970* (s.48A(3)), provides noise control guidelines for commercial construction sites which set working hours and noise management expectations. Council's General Local Law 2018 also includes provisions regarding control of noise associated with commercial and industrial building work.

A range of other approvals are required from Council's City Infrastructure Department related to construction impact on public space. Notice as required is undertaken through these processes.

### **There are already enough developments of a similar kind in the area / no demand for medium density in the area**

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

### **Inadequate provision of commercial floor space.**

The site is located in a Mixed Use Zone. The objectives of the zone include to provide for a range of residential, commercial, industrial and other uses which complement the mixed-use function of the locality. The proposal responds appropriately by providing a usable office tenancy at ground level and dwellings above. The zone does not mandate the proportion of a development which must be allocated to office versus dwelling uses. There is no strategic direction within the planning scheme for this site which mandates the proportion of the development which must be allocated to an office use. The size of the tenancy (73 square metres) is adequate to allow for useability of the space.

### **Inappropriate built form relationship to the approved development at 15A Union Street with respect to proposed setbacks to Union Street at Levels 1-3 and Little Gold Street at Levels 1-8.**

Concerns have been raised about the street setbacks of the building as they relate to those of the approved development at 15A Union Street. The plans associated with the proposed redevelopment have been considered as part of the assessment of this application. Proposed street setbacks, as discussed above, are considered acceptable.

### **Amenity impacts to the proposed development at 15A Union Street: overlooking, visual bulk, loss of daylight, loss of views and noise.**

Concerns have been raised about the impact of the development on proposed dwellings at 15A Union Street which would face a light court on the common boundary with the subject site. The plans associated with the proposed redevelopment have been considered as part of the assessment of this application and it is considered that it will not unreasonably impact the amenity of the proposed development next door. In relation to the specific concerns raised:

- Light courts provide access to daylight and ventilation. Secondary rooms such as bedrooms and bathrooms which face onto light courts cannot be expected to receive the same level of amenity as primary rooms such as living areas which face the street.
- The development does not allow views from a habitable room window into any habitable room window or secluded private open space area within nine metres, which is considered appropriate.

- Residential noise associated with a dwelling is considered normal and reasonable in an urban setting. Any future issues of noise disturbance, if they arise, should be pursued as a civil matter. Whilst it is recognised that views may form part of residential amenity, the Tribunal has consistently held that there is no legal entitlement to a view.

**Amenity impacts to dwellings opposite in Union Street: overshadowing, overlooking, noise.**

The development is located to the south of dwellings opposite in Union Street and will therefore not cast shadow upon these dwellings. The site is located more than nine metres from dwellings opposite. The windows of the dwellings opposite face the public realm. It is therefore considered the development will not result in unreasonable overlooking to these dwellings. The residential use of the dwellings does not require a planning permit. Residential noise associated with a dwelling is considered normal and reasonable in an urban setting. Any future issues of noise disturbance, if they arise, should be pursued as a civil matter.

**Reduced daylight to 13 Union Street.**

The objector has raised concerns that the proposed building will reduce daylight to highlight windows on the western side of the dwelling at 13 Union Street, which provide the only source of light to a bathroom. While the proposed development will impact daylight access to these windows, given the site's location in an activity centre, where amenity outcomes cannot be expected to be as high as in a residential area, and the impact being chiefly to a bathroom, on balance this is considered acceptable.

**Eastern boundary wall treatment 'visually disturbing'.**

This ground relates to an image which appears on advertised Plan TP01.5 entitled 'Façade Reference: Artwork by Bridget Riley, Movement in Squares'. This image shows a distorted grid pattern. The east façade of the building employs an irregular grid pattern of precast concrete in two shades of grey. While presumably derived from the façade reference image, the façade treatment is not considered to be distorted or visually disturbing.

**Insufficient public open space in the area.**

The Planning Policy supports an increase in development and land use activity in proximity to transport corridors and activity centres. The site is within walking distance of three parks: Temple Park to the west, Barkly Street Park to the east and Princes Park and Royal Park to the south. Council is currently developing additional public open space in Brunswick through the Park Close to Home program.

**Insufficient public transport capacity in the area.**

The Planning Policy supports an increase in development and land use activity in proximity to transport corridors and activity centres. The availability and frequency of public transport is delivered by the State Government.

**Overdevelopment**

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

## **6. Officer Declaration of Conflict of Interest**

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

## **7. Financial and Resources Implications**

There are no financial or resource implications.




## 8. Conclusion

The proposal responds appropriately to the preferred character of the area by meeting the objectives of Schedule 18 to the Design and Development Overlay. In particular the proposal provides an appropriate building envelope which responds to the emerging development in the area.

The high level of compliance with Clause 58 demonstrates that the development will provide an acceptable level of amenity for future residents. External amenity impacts, subject to changes which are included as conditions of the recommendation, are appropriately managed.

On the balance of policies and controls within the Moreland Planning Scheme and objections received, it is considered that Notice of Decision to Grant a Planning Permit No MPS/2018/601 should be issued for construction of an 8-storey building (with roof terrace) containing an office and dwellings and a reduction of the standard car parking requirement subject to the conditions included in the recommendation of this report.

### Attachment/s

<a href="#"><u>1</u></a> 	15 Union Street Brunswick - MPS/2018/601 - Objector location map	D19/299707
<a href="#"><u>2</u></a> 	15 Union Street Brunswick - MPS/2018/601 - Advertised plans	D19/299669
<a href="#"><u>3</u></a> 	15 Union Street Brunswick - MPS/2018/601 - Discussion plans	D19/299673

**DCF69/19 699 AND 701 PARK STREET, 182, 184-186, 188 AND 190-192  
BRUNSWICK ROAD, 2 AND 4 SYDNEY ROAD, BRUNSWICK -  
VCAT AMENDED PLANS (D19/320802)**

**Director City Futures**

**City Development**

**Executive Summary**



<b>Property:</b>	699 and 701 Park Street, 182, 184-186, 188 and 190-192 Brunswick Road, 2 and 4 Sydney Road, Brunswick
<b>Proposal:</b>	Demolition of a heritage building and construction of a development comprising 214 dwellings, use of the land for retail premises and a child care centre, and alteration of access to a road in a Road Zone, Category 1.
<b>Zoning and Overlay/s:</b>	<ul style="list-style-type: none"> <li>• Mixed Use Zone</li> <li>• Design and Development Overlay (DDO18)</li> <li>• Heritage Overlay (HO279)</li> <li>• Heritage Overlay (HO149)</li> <li>• Development Contributions Plan Overlay</li> <li>• Environmental Audit Overlay</li> <li>• Parking Overlay</li> </ul>
<b>Strategic setting:</b>	<div>Minimal housing growth</div> <div>Incremental housing growth</div> <div>Increased housing densities encouraged</div> <div>Significant housing growth</div>
<b>Objections:</b>	<ul style="list-style-type: none"> <li>• 220 to original application. 10 parties to VCAT hearing.</li> <li>• Key issues expressed to VCAT:               <ul style="list-style-type: none"> <li>• Height</li> <li>• Traffic and car parking</li> <li>• Inconsistency with the character of the locality including height</li> </ul> </li> </ul>
<b>ESD:</b>	<ul style="list-style-type: none"> <li>• VCAT determined the ESD performance as acceptable subject to condition. Therefore, no changes to ESD are proposed.</li> </ul>
<b>Accessibility:</b>	<ul style="list-style-type: none"> <li>• Adaptable apartments comprise 98% of the proposal (subject to conditions).</li> </ul>



<b>Key reasons for maintaining a position of refusal at VCAT</b>	<ul style="list-style-type: none"> <li>• Inappropriate enclosure of heritage substation</li> <li>• Impact on equitable development opportunities of properties to the west</li> <li>• Unacceptable internal amenity of some apartments</li> <li>• Unacceptable pedestrian amenity along the eastern boundary Park Street pedestrian pathway</li> </ul>
<b>Recommendation:</b>	<p>That Council writes to VCAT advising:</p> <ul style="list-style-type: none"> <li>• Council does not support the amended plans prepared by Architectus dated 15 July 2019 based on the grounds in the recommendation</li> <li>• Council request a hearing be scheduled to hear submissions.</li> <li>• Council notes the without prejudice draft conditions as outlined in Attachment 3.</li> </ul>

## Officer Recommendation

### Recommendation A

That Council writes to the Victorian Civil and Administrative Tribunal (VCAT) and all parties to the VCAT review advising that Council does not support the amended plans prepared by Architectus dated 15 July 2019 for planning permit application No. MPS/2016/985 for the demolition of a heritage building and construction of a development comprising multiple dwellings, use of the land for retail premises and a child care centre alteration of access to a road in a Road Zone, Category 1 at 699 and 701 Park Street, 182, 184-186, 188 and 190-192 Brunswick Road, 2 and 4 Sydney Road, Brunswick, subject to the following grounds of refusal:

1. The enclosing of the electrical transformer station will not respect the scale or siting of this building and will dominate as well as obscure views to it, contrary to Clause 22.06 (Heritage) and Clause 43.01 (Heritage Overlay) of the Moreland Planning Scheme.
2. The separate pedestrian path on the eastern boundary where it abuts the vehicle access point on Park Street is inadequate to allow for two pedestrians to pass comfortably, particularly as the path is abutting the eastern boundary fence. The 8.1 metres setback between the eastern boundary and the townhouses is inadequate to accommodate a dedicated footpath of at least 2 metres, an accessway of 6.1 metres in addition 2 metres of landscaping.
3. The 8 metre setback of levels 4-9 from the western boundary will not result in equitable development opportunities for the properties at 6 and 20 Sydney Road and are contrary to Clause 22.07 (Apartment Developments of Five or More Storeys) of the Moreland Planning Scheme.
4. The internal amenity of the apartments for future occupants is unacceptable as the extent of non-compliance with the standards of the Victorian Apartment Design Guidelines and Clause 58 (Apartment Developments of the Moreland Planning Scheme) is unacceptable for a large unconstrained site. In particular:
  - a) Clause 58.05-3 (Private Open Space Objective) – 79 apartment balconies (8 x 1 bed Type 1, 6 x 1 bed Type 2, 22 x 1 Bed Type 4, 6 x 1 Bed Type 10, 3 x 2 Bed Type 1, 2 x 2 Bed Type 3, 9 x 2 Bed Type 2, 9 x 3 Bed Type 1, 4 x 1 Bed Type 9, 6 x 2b/2b Type 8, 2 x 2 Bed Type 12, 2 x 2 Bed 2 Bath Type 2) do not achieve the minimum depth and area required to satisfy Standard D19.
  - b) Clause 58.05-4 (Storage Objective) – 4 apartments (2 bed 2 bath Type 12) are provided with internal storage volumes that do not meet the requirements to satisfy Standard D20. External storage spaces have not been allocated to any of the individual apartments.
  - c) Clause 58.07-1 (Functional Layout Objective) – 17 apartments (3x Type 10 - 2b/2b, 3x Type 3 - 2b/1b, 5 x Type 7 - 2b/2b and 6 x Type 8 – 2b/2b) have not been provided living areas of 12m<sup>2</sup> as the dining areas encroach into these spaces and therefore do not meet the requirements of Standard D24.
  - d) Clause 58.07-3 (Windows Objective) – 20 apartments (4 x Type 2, 3b/2b, 2 x Type 3, 3b/2b, 4 x Type 6, 3b/2b, 4 x Type 8, 3b/2b, 4 x Type 12 3b/2b) include bedrooms that receive daylight from a smaller secondary area within the bedroom where the window is not clear to the sky and therefore do not meet the requirements of Standard D26.
  - e) Clause 58.07-4 (Natural Ventilation Objectives) – only 35% of apartments achieve effective cross ventilation, less than 40% required to meet the requirements of Standard D27.
5. Inconsistencies in the plans still remain. In particular:
  - a) The development summary indicates 150 bicycle parking spaces are provided at ground level. A review of the plans reveals that only 126 are provided.

- b) Not all typical apartment layouts are provided. For example, apartment Type 3 - 3b/3b (A.06.04) and Type 8 – 2b/2b (A.01.01) has not been defined.
- c) The design and uncertainty about the proposed use of the community hub will not achieve a good interface with and surveillance of Brunswick Road, contrary to Strategy 10.2 of Clause 21.03-4 (Urban Design, Built Form and Landscape Design) which seeks to ensure site design, building frontages, design articulation and internal layout achieve a good interface with and surveillance of the public realm.

**Recommendation B**

That Council writes to the Victorian Civil and Administrative Tribunal and requests that an additional hearing be scheduled to allow all parties to make submissions in relation to the amended plans.

**Recommendation C**

That Council notes the without prejudice conditions as outlined in Attachment 3 of this report.

## **1. Background**

### **What is this report considering?**

This report assesses amended plans received 15 July 2019 ('amended plans'). The amended plans seek to address the specific concerns identified by the Victorian Civil and Administrative Tribunal (VCAT) in its order 30 April 2019. At paragraph 242 of its order, the VCAT noted:

*The opportunity provided for a comprehensive development of a consolidated site is significant. The increased dwelling numbers, the intensity of built form and the substantial change that are proposed accords with the strategic direction set out in the Planning Scheme. We find the overall design concept sound. In these circumstances, we think there is benefit in providing an opportunity for the applicant to address our concerns through preparation of amended plans...*

VCAT made it clear that no other changes were to be made to the proposal, other than any consequential changes that arise from the modifications sought.

### **Planning Permit and site history**

#### Original planning permit application

On 29 December 2016 an application was lodged for a mixed-use development of up to 13-storeys.

On 30 November 2017, the application was amended, increasing the height to 14-storeys and modifying the layout of the development. The proposal sought approval for the demolition of a heritage substation building and construction of a development comprising 255 dwellings, use of the land for retail premises and a child-care centre, a reduction of the standard car parking requirement and alteration of access to a road in a Road Zone, Category 1 at 699 and 701 Park Street, 182, 184-186, 188 and 190-192 Brunswick Road, 2 and 4 Sydney Road, Brunswick.

On 22 May 2018, the applicant lodged a review with VCAT against Council's failure to determine the application within the prescribed time.

On 27 June 2018, officers tabled a report at the Planning and Related Matter meeting of Council, recommending the application be refused on the following grounds:

1. The height of the central tower and street wall heights;
2. Inadequate building setbacks to the west;
3. Poor visual amenity presented to Brunswick Road;
4. Poor activation of the ground level presented to Brunswick Road;
5. An inadequate number of bicycle parking spaces;
6. Poor ESD outcome;
7. The demolition of the heritage substation.

Council resolved that the officer recommendation be Council's position at VCAT.

On 17 September 2018, a VCAT Compulsory Conference was conducted. No agreement was reached.

On 4 October 2018, amended plans were circulated and included:

- Height reduced by 2 levels to 12-storeys
- Bicycle parking increased to 428 spaces

As a result of these changes Council was satisfied sufficient bicycle parking was provided and amended its grounds of refusal to remove Ground 5 re: insufficient bicycle parking.

### VCAT review

The VCAT hearing was conducted over 10 days in November 2018 and February 2019. A total of 10 expert witnesses were called to give evidence.

VCAT, at Paragraph 6, found that:

*‘...while the proposal has a number of positive attributes, there are unacceptable elements that cannot be addressed by permit condition. We have decided that the circumstances of this case justify an interim decision that allows the applicant the opportunity to prepare amended plans that address our concerns.’*

VCAT issued an interim order which identified specific issues with the proposal and offered the applicant an opportunity to amend the plans to address these specific matters.

At paragraph 58 of its reasons, VCAT notes:

*‘...we find several components of the design response unacceptable. In summary, these are demolition of a significant heritage building, excessive height of the central tower element and the building on the corner of Sydney Road and Park Street, inappropriate shared vehicle and pedestrian accessway and unacceptable response to equitable development opportunities to the west. Although individually some of these matters could be addressed by permit condition, in combination we think a reconfiguration of the plans is required to demonstrate whether or not these concerns can be resolved.’*

VCAT concluded that the following modifications to the plans were required:

- Retention of the former electricity transformer station.
- Reduction in the height of the tower element to a maximum of 10-storeys.
- Reduction in the height of the corner building to 6-storeys and the Park Street portion of Building B to 5-storeys.
- Provision of a separate pedestrian path adjacent to the vehicle access.
- Compliance with the residential interface envelope of DDO18 with 180 Brunswick Road.
- Increased setback of the tower from the western boundary to address equitable development of the sites to the west.
- Compliance of the apartments with the Victorian Apartment Design Guidelines.
- Resolution of inconsistencies and inaccuracies in plans, elevations and renders.

### Amended plans

On 31 May 2019 VCAT issued a subsequent order requiring the applicant to circulate amended plans by 15 July 2019.

On 15 July 2019 the applicant circulated amended plans in response to VCAT's interim order. These plans form the basis of consideration in this report.

On 26 July 2019, VCAT issued a subsequent order requiring:

- The applicant to give notice of the amended plans to owners and occupiers of immediately adjoining land to the east and west of the site.
- Council make submissions in relation to the amended plans.
- Council prepare and circulate without prejudice draft permit conditions that respond to the amended plans.

### **Subject site**

The subject site is located at the intersection of Park Street and Sydney Road on the east side of Sydney Road and south of Brunswick Road in Brunswick. The site is comprised of 9 parcels across 8 property addresses known as 182, 184-186, 188, and 190-192 Brunswick Road, 2 and 4 Sydney Road and 699 and 701 Park Street, Brunswick.

The site is currently occupied by the Princes Park Motor Inn on the southern side of the site. The northern portion of the site has been cleared and levelled with the exception of the former Brunswick Electricity Supply Transformer Station in the North West Corner of the site.

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

### Surrounds

The surrounding area is characterised by properties within commercial and residential zones with land generally to the north and west used for commercial purposes. The property immediately to the west is a 7 Eleven store on the corner of Sydney Road and Brunswick Road. The land to the south of this is a 2-storey residential building. To the east is a single storey dwelling at 180 Brunswick Road and land at 697 Park Street contains a 3-storey block of 'walk up' flats. Land to the south on the southern side of Park Street is Princes Park within the municipal boundaries of the City of Melbourne. To the south east is low scale 1 and 2 storey dwellings within the City of Yarra.

A location plan forms **Attachment 1**.

### The proposal

The table below summarises the proposal considered by VCAT compared with the amended plans.

	VCAT proposal	Amended proposal
<b>Building height</b>		
Centre of the site	12-storeys	10-storeys
Corner of Park Street and Sydney Road	7-storeys	6-storeys
Brunswick Road	8-storeys	8-storeys
Eastern boundary	6-storeys	6-storeys
Park Street	3-storey townhouses	3-storey townhouses
<b>Apartments</b>		
1 bedrooms	78	78
2 bedrooms	129	92
3 bedrooms	40	39
4 bed Townhouse	5	5
Total	252	214
<b>Non residential uses</b>		
Childcare centre	344m <sup>2</sup>	139m <sup>2</sup>
Café/retail	139m <sup>2</sup>	167m <sup>2</sup>
Work Hub	95m <sup>2</sup>	49m <sup>2</sup>
Community Hub	91m <sup>2</sup>	101m <sup>2</sup>
Mixed use/retail	n/a	105m <sup>2</sup>
<b>Car and bike parking</b>		
Car parking spaces	327	286
Bicycle parking spaces	428	408

The amended plans form **Attachment 2**.

### **Statutory Controls – why is a planning permit required?**

<b>Control</b>	<b>Permit Requirement</b>
Mixed Use Zone	Clause 32.04 - Childcare Centre is a Section 2 use in the zone, meaning that a permit is required for its use. Retail is also a Section 2 use meaning that a permit is required for its use. A permit is required to construct more than one dwelling on a lot. Pursuant to Clause 32.04-2, no permit is required to use the land for a dwelling. A permit is required to construct a building or construct or carry out works for a use in section 2.
Overlays	Clause 43.01 - Heritage Overlay (Schedule 279 and Schedule 149 affect only part of the site) – A permit is required to demolish or remove a building and to construct a building or construct or carry out works. – A permit is required to externally alter a building by structural work, rendering, sandblasting or in any other way. Clause 43.02 - Design and Development Overlay (Schedule 18) – A permit is required to construct a building or construct or carry out works.
Particular Provisions	Clause 52.29 - A permit is required to alter the access to a Road in a Road Zone Category 1.

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

- Clause 45.06 Development Contribution Plan Overlay
- Clause 45.03 Environment Audit Overlay (affects only part of the land at 190-192 Brunswick Road)
- Clause 45.09 Parking Overlay (affects only the land at 2 and 4 Sydney Road).
- Clause 58.01.1 Urban context report and design response
- Clause 52.36 Integrated public transport planning

## **2. Internal/External Consultation**

### **Public notification**

On 26 July 2019, VCAT issued an order requiring the applicant to give notice of the amended plans to owners and occupiers of immediately adjoining land to the east and west of the site. The 10 objector parties, like Council, have received the amended plans and are able to make submissions to VCAT. If any person wishes to make a submission on the amended plans they must do so by 19 August 2019. Submissions are made directly to VCAT. At the time of writing this report VCAT advised that no submissions had been received.

### **Internal/external referrals**

The amended plans were referred to the following internal branches/business units:

Internal Branch/Business Unit	Comments
Urban Design Unit	<ul style="list-style-type: none"> <li>• The reduced tower height of Building A and height of building B is supported. Although less than 75% of upper levels will maintain the same setback, this will not result in an undesirable 'wedding cake' appearance.</li> <li>• The retail and resident's entry from Park Street are not well defined and lack a sense of arrival due to the uniform grid-pattern façade treatment.</li> <li>• The plans do not clearly show the connection from the ground level of the Park Street frontage to the central courtyard. Steps are not supported.</li> <li>• Create a more inviting pedestrian entry to the proposed laneway from Park Street which is not compromised by the vehicular entry.</li> <li>• Ensure that the vehicle crossover does not compromise the width and entry to this pedestrian laneway.</li> <li>• For levels 01 to 05, provide direct windows to corridor view terminations at east-west corridor of Building A (west window), and north-south corridor of Building B (north window)</li> </ul>
Development Advice Engineer	No objection subject to conditions. Confirmation was provided that not all of the 150 bicycle parking spaces specified for ground level are shown on the plans and that 4 of the spaces provided are not practical.
Heritage Advisor	Objection to the design response which encloses the heritage substation and obscures views to it from the public realm. It is recommended that the apartments above the substation (levels 3-7) are removed and that the façade in front of the substation is removed to retain it open to the air.



Nigel Lewis (Heritage expert)	<p>The manner in which the substation is to be retained in response to the VCAT order is completely unacceptable:</p> <ul style="list-style-type: none"> <li>• The building is to be enclosed behind multiple glazing units</li> <li>• It is placed in a restricted location within the building.</li> <li>• It is pushed against high internal walls, in an awkward location to one inside of the entry foyer</li> <li>• It will have restricted clearance for circulation.</li> <li>• It has a bridge over the rear section at Level 2.</li> <li>• The glazing is only relatively frameless at the lower two levels and reverts to the apartment grid at the third level, which is in front of the roof of the substation.</li> <li>• The proposal does not conform to the Australia ICOMOS Burra Charter, Article 8 Setting: <i>Conservation requires the retention of an appropriate setting.</i></li> </ul> <p>A more appropriate context for this building would be for the existing substation allotment to be retained intact for the front section with at least 5 metres retained behind the rear of the building.</p> <p>The building and this retained allotment should not be enclosed or built over, and there should be a maximum building height of 11 metres on the three boundaries.</p>
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### 3. Policy Implications

#### Planning Policy Framework (PPF)

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

- Clause 11 - Settlement
- Clause 13.04-1S Contaminated and potentially contaminated land
- Clause 13.05 Noise
- Clause 15 Built Environment and Heritage including:
  - Built Environment (Clause 15.01)
  - Healthy neighbourhoods (Clause 15.01-4S and 15.01-4R)
  - Sustainable Development (Clause 15.02)
  - Heritage (Clause 15.03)
- Clause 16.02 Housing including:
  - Integrated Housing (Clause 16.01-1S and 16.01-1R)
  - Location of Residential Development (Clause 16.01-2S)
  - Housing Opportunity Areas (Clause 16.01-2R)
- Clause 17.02: Economic Development
- Clause 18.02: Movement Networks

## **Local Planning Policy Framework (LPPF)**

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

Municipal Strategic Statement:

- Clause 21.01 Municipal Profile
- Clause 21.02 Vision
- Clause 21.03-1 Activity Centres
- Clause 21.03-3 Housing
- Clause 21.03-4 Urban Design, Built Form and Landscape Design
- Clause 21.03-5 Environmentally Sustainable Design (Water, Waste and Energy)
- Clause 21.03-6 Open Space Network

Local Planning Policies:

- Clause 22.01 Neighbourhood Character
- Clause 22.03 Car and Bike Parking and Vehicle Access
- Clause 22.06 Heritage
- Clause 22.07 Development of Five or More Storeys
- Clause 22.08 Environmentally Sustainable Design

Council through its MSS, seeks increased residential densities in the Brunswick Activity Centre to take advantage of the excellent access to public transport and other services within this location. The proposal meets the objectives and strategies of the LPPF by incorporating a range of uses including increased housing and active spaces at ground level, to create and reinforce an active and pedestrian friendly street environment. The proximity of the site to a variety of public transport options provides an opportunity to encourage modal shift away from cars.

Council's Neighbourhood Character Policy supports substantial change and creation of a new character of increased scale associated with increased density in this designated Major Activity Centre. The proposal's provision of increased housing density enjoys strong strategic support. The policy also directs that the level of change is defined in the relevant overlay or Structure Plan. In this case the DDO18 sets out the expected scale of built form for this site which the amended plans achieve.

Council's Heritage policy seeks to encourage the conservation and enhancement of all heritage places and to ensure that buildings and works respect the significance of the heritage place as identified in the Statement of Significance. The amended plans fail to achieve these objectives by enveloping the heritage substation within the building.

## **Human Rights Consideration**

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

## **4. Issues**

VCAT, in its interim order dated 30 April 2019 found 'the overall design concept sound' but that there were unacceptable elements that could not be addressed by permit condition. In summary, while the amended plans address some of the VCAT's concerns, they fail to adequately address all of them. Following is an assessment of how the amended plans respond to each of the specific concerns of VCAT.

## **Retention of the transformer station**

The applicant sought to remove the transformer station and Council sought its retention, due to its heritage significance. VCAT was persuaded that the transformer station should be retained and that there was insufficient justification to allow its removal. VCAT was also influenced by the large size of the site, the location and relatively small size of the building and the various options for the building's reuse.

The amended plans retain the substation and incorporate it into the main entry to the building behind its glazed façade. A void equivalent to 3-storeys is maintained above the substation and it is intended to be reused as part of the residential lobby. The exterior of the transformer station will be altered through the removal of its doors and a widening of the door on its east side to make it more practical for reuse.

The way the building has been enclosed and built around does not result in an acceptable heritage outcome. The location of the transformer station within the foyer of the building will overwhelm it and isolate it from the public realm. While views of the transformer station will be possible through the glazing from the footpath, little attempt has been made to draw attention to the heritage building through the architectural treatment of the façade aside from removing one of the horizontal framing elements at level 2.

Council's heritage advisor does not support this response noting that the proposed building will 'consume' the transformer station and conceal it from the public realm. A far superior heritage outcome is to retain the transformer station in the open air and to remove the building above it at every level. This would retain the buildings visible presence in the public realm and enable interaction with the building.

Council officers also sought the opinion of Mr Nigel Lewis, Architect, who was called by Council to give heritage evidence during the VCAT hearing. After reviewing the amended plans Mr Lewis gave an opinion (see **Attachment 4**) in which he considers the enclosure of the substation as 'completely unacceptable'.

Mr Lewis noted that the proposed enclosure of the substation is inconsistent with Article 8 (Setting) of the ICOMOS Burra Charter which states that conservation requires an 'appropriate setting'. Nigel considers the enclosing of the substation behind glazing will give it a 'ghost like' presence within Brunswick Road, particularly as this façade will likely require some form of treatment due to its northern orientation which will likely reduce the transparency of the glass.

Mr Lewis also comments on the architectural treatment of the façade forward of the substation noting that the grid pattern is introduced at the third level which will partially obscure the roof of the substation. Mr Lewis also believes that simply removing the façade would still not result in an acceptable outcome. He is of the view that levels above the building would not be consistent with the Clause 22.06 of the Moreland Planning Scheme which seeks to ensure that additions to contributory places are 'visually recessive and not dominate the heritage place.'

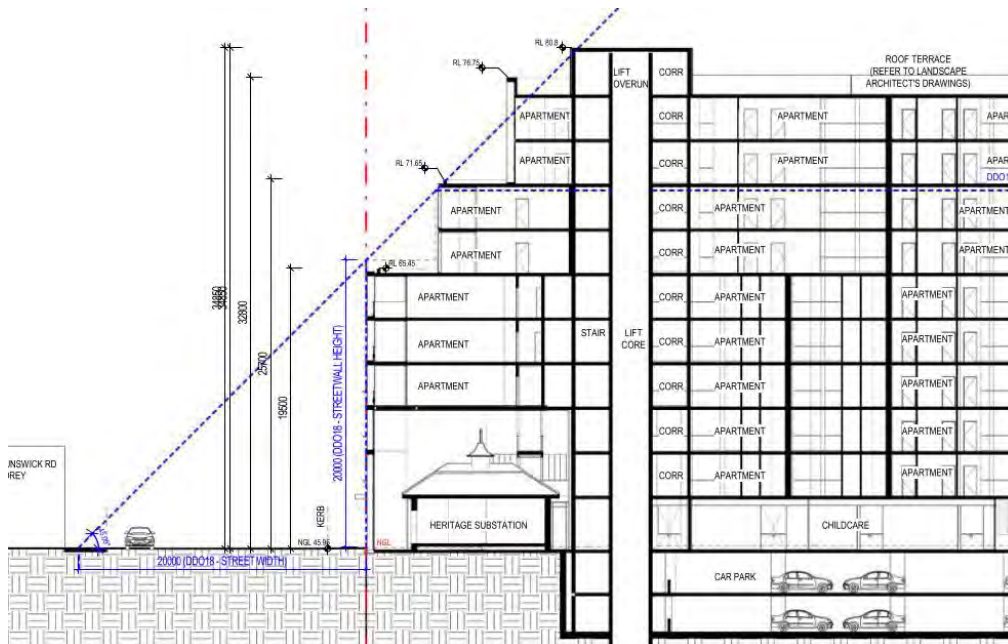
Mr Lewis concludes that the substation should not be enclosed or built over and the substation 'allotment' be retained with at least 5 metres behind it. He recommends building heights no greater than 11 metres on the 3 boundaries with the substation allotment.

For these reasons the way in which the substation has been retained should not be supported. Due to the uncertainty of how an alternative design solution may be resolved, it is difficult to require changes through conditions.

The DDO18 designates 3 different preferred heights at different parts of the site. 25 metres (approximately 8-storeys) is designated for the Brunswick Road portion of the site. The applicant sought approval for a 39 metre (12-storey) tower in this part of the site, setback approximately 10 metres from the Brunswick Road frontage. Council submitted to VCAT that the height was not consistent with the objectives of the DDO18 as it would not be recessive particularly due to the visually exposed location of the site.

*'The built form design objectives include encouragement for a new mid-rise built form character with buildings generally ranging from four to 10 storeys. Although there is no area in the Brunswick MAC (under DDO18) where the preferred maximum height exceeds eight storeys, we consider the upper end of the mid-rise character sought could be supported on the review site with its large site area.'*

The amended plans now propose a tower height of 10-storeys plus roof top terrace. This places the top level just outside the preferred upper level setback as sought by the DDO18, as illustrated in Figure 1 below. Despite the minor variation to the preferred setbacks at the top level, the height at 10-storeys responds to the VCAT's findings.



The DDO18 specifies that upper levels should adopt the same street setback for at least 75%. The VCAT plans proposed 6 levels above the street wall, with 2 levels setback 5 metres and 4 levels setback 10 metres. This resulted in 66% of the upper levels adopting the same setback, not complying with the DDO18. With a reduction of the top two levels, only 50% of the upper levels adopt the same setback (excluding the roof top terrace). Therefore a consequence of reducing the height is further non-compliance with this element of the DDO18.

However, the two level 'step' between the street wall and the tower behind (level 6 and 7) serves to provide a visual transition when viewed in Brunswick Road, reducing the visual dominance of the tower. Furthermore, when viewed from the west, the stepping of these levels is less pronounced, assisted by the 8 metre setback provided on the western elevation between the top of the street wall (level 5) and the levels above it. The architectural treatment of levels 6 and 7 also assists to make these levels visually recessive in contrast to the tower behind which is emphasised with vertical fin elements. When viewed from the east, the stepping up of the building along Brunswick Road effectively softens the 'wedding cake' appearance.

**Reduction in the height of corner building to 6-storeys and the Park Street portion of Building B to 5-storeys.**

The DDO18 specifies a preferred building height of 10.5 metres (approximately 3-storeys) for the Park Street frontage and 19 metres (approximately 6-storeys) for the corner of Sydney Road and Park Street. The applicant sought approval for a building of 23.7 metres (7-storeys) in the corner of Park Street and Sydney Road wrapping around the Park Street corner for a distance of approximately 18 metres and then lowered to 20.2 metres (6-storeys) for a length of approximately 34 metres, with a recessed seventh level above.

Council submitted that the height in excess of the preferred height in this location did not respond to the objectives of the DDO18 and did not respond to the character of residential development within Park Street to the east of the site.

VCAT found that there was the need for a strong street wall in the intersection of Park Street and Sydney Road but was not persuaded the additional storey above the preferred maximum of 6-storeys is acceptable. VCAT also commented that a reduction to 6-storeys in this location would result in an acceptable level of winter shadow to Princes Park.

With regards to the Park Street interface, VCAT noted the importance of the stepping down in the building heights to transition to the lower form of development to the eastern end of the site. For this reason, they found that the 6-storey street wall should be lowered to 5-storeys with no recessed level above.

The amended plans have responded to VCAT's findings by now proposing a building of 6-storeys in the corner of Park Street and Sydney Road stepping down to 5-storeys on the Park Street frontage with the recessed level removed from above. This is an acceptable outcome and will result in a strong street wall presentation to Park Street and Sydney Road without being dominating. It will also transition appropriately to the three storey townhouses proposed at the eastern end of the site on Park Street.

**Provision of a separate pedestrian path adjacent to the vehicle access.**

The application included a shared vehicle and pedestrian access point on Park Street that transitions to a dedicated pedestrian link that runs from Park Street to Brunswick Road.

VCAT found that a wider setback was required from the eastern boundary to the townhouses to accommodate a dedicated pedestrian path separated from the vehicle access. This is to include deep soil landscaping and is intended to avoid conflicts between vehicle and pedestrian movement.

In its decision, VCAT highlights the evidence of Mr Sheppard (applicant's urban design expert) who noted that a pedestrian path of 2 metres was sufficient to allow 2 people to walk two abreast or to pass. VCAT also noted the evidence of Mr Hunt (applicant's traffic expert) who recommended a minimum accessway width of 6.1 metres and the evidence of Mr Morris (applicant's landscape expert) who showed a 2 metre landscaped area. VCAT concluded that a wider setback from the townhouses was required to accommodate the vehicle access, deep soil landscaping and dedicated pedestrian path.

The amended plans include a dedicated pedestrian path on the eastern boundary. The path is proposed to be 1.2 metres wide and is to be separated from the vehicle accessway by a 600 millimetres wide landscape strip.

This is insufficient for 2 people to pass comfortably, particularly as the path is abutting the eastern boundary fence. In addition, no lighting has been indicated on the plans to enhance the safety and appeal of this path in the evening.

Therefore, a path of at least 2 metres width in addition to the originally proposed 2 metres wide landscaping and lighting is considered necessary. Some landscaping should also be provided against the fence given it is adjacent to the pedestrian path. This will require an approximate 2 metres to 2.5 metres greater setback between the eastern boundary and the townhouses than provided in the amended plans. The proposal in its current form is insufficient and should not be supported. It is likely that the additional setback will result in the loss of 1 of the 5 townhouses, with the 4 remaining townhouses made slightly wider. It is considered that the loss of 1 dwelling on a site proposing 214 dwellings will have a negligible impact on achievement of urban consolidation objectives for this strategic development site. It is considered the benefits of an appropriately resolved pedestrian entry area outweigh the loss of 1 dwelling.

#### **Compliance with the residential interface envelope of DDO18 with 180 Brunswick Road.**

VCAT found that the proposed interface to the east was generally acceptable noting that the setbacks met Clause 22.07 and DDO18 preferred setbacks except for an encroachment at the fourth level.

The amended plans increase the setback of this level from 5.4 metres to 10.5 metres, as shown in Figure 2 below, ensuring compliance with the DDO18 preferred setback at this residential interface. A minor encroachment remains at level 3 however, this will not have an unreasonable impact on the amenity of the property at 180 Brunswick Road.

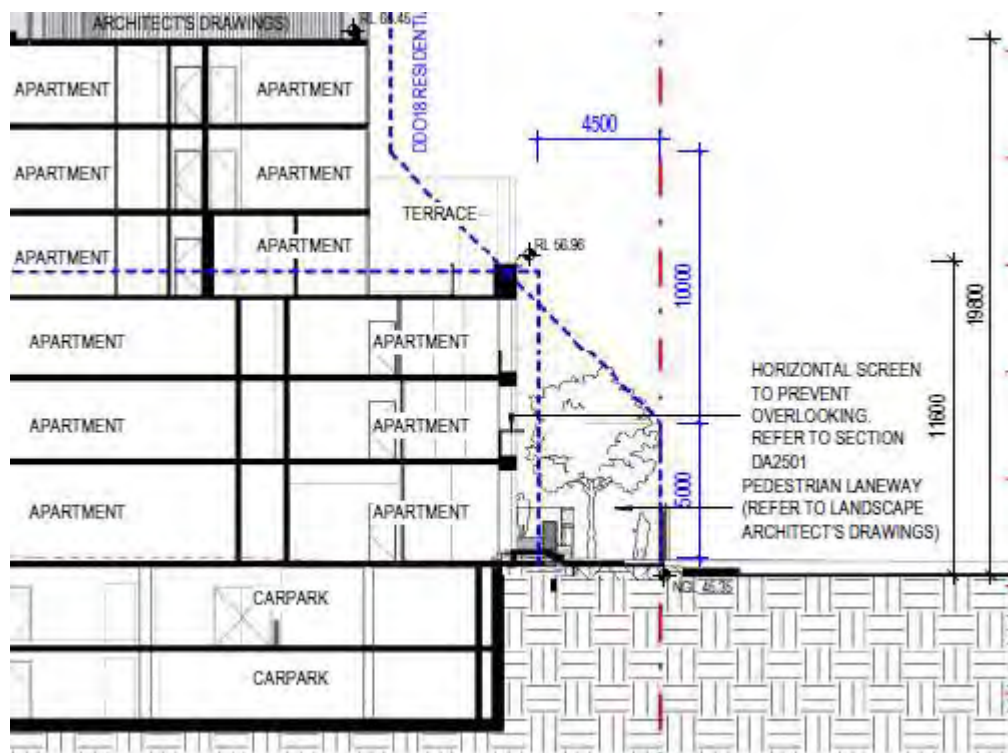


Figure 2.

**Increased setback of the tower from the western boundary to address equitable development.**

The proposed 12 storey tower was to be setback 6 metres from the western boundary with 6 and 20 Sydney Road at every level above ground level. Council submitted that these setbacks were an unacceptable response to Clause 22.07 (Apartment Developments of 5 or more storeys) and would result in inequitable development opportunities for the properties to the west.

VCAT agreed that the 6 metres setback was 'problematic' noting concerns about equitable development opportunities. VCAT also explained that it is reasonable for a larger site to absorb a larger portion of a shared setback to achieve an equitable outcome for both sites.

While noting that 6 metre setbacks were half of the preferred 12 metre setbacks as defined in Clause 22.07 (for 9 or more storeys), VCAT noted these setbacks offer policy guidance and are not prescriptive standards. This is the same approach adopted by Council officers.

The amended plans have increased the setback by 2 metres to a total of 8 metres at every level above ground level. This results in an exceedance of the preferred setbacks at levels 1-3 by 2 metres, a reduction of the preferred setbacks at levels 4-7 by 1 metre and a reduction of the preferred setback at the top two levels (8-9) by four metres, as described in Table 1 below.

Level	Setback	Required	Variation	Complies?
1-3	8	6	+2	Yes
4-7	8	9	-1	No
8-9	8	12	-4	No

Table 1.

Without any supporting information to justify how the proposal results in an equitable outcome, the proposed setbacks are not acceptable. The large size of this site (6463 square metres) and comparatively small size of the land at 6 and 20 Sydney Road (612 square metres and 945 square metres respectively) point to the need for the applicant to provide a greater setback from levels 4-9 and particularly the top 2 levels.

In its findings, VCAT comments on a scenario presented by Mr Sheppard. The scenario provided a total separation of 16-17 metres between buildings with 6 metres provided on the subject site and 10.9 metres on the properties to the west.

As noted by VCAT, the subject site has a dimension of approximately 70 metres and the properties to the west have a dimension of approximately 30 metres. VCAT concluded that applying Mr Sheppard's scenario would not result in an equitable outcome.

If 16-17 metres is accepted as an appropriate separation distance, the question becomes how this should be distributed across the subject site and 6 and 20 Sydney Road. As the subject site is approximately 57% wider than the Sydney Road sites, it is reasonable that 57% (9.1-9.7 metres) be provided on the subject site.

If these setbacks were applied, it would exceed the 9 metre preferred setback sought by Clause 22.07 for levels 4-7 but would be less than the 12 metre preferred setback at level 8 and 9. As the preferred height for the sites at 6 and 20 Sydney Road as outlined in the DDO18 is 19 metres, (6-storeys) some flexibility can be afforded for upper level setbacks on the subject site while still achieving an equitable outcome. For this reason, the setbacks should be increased to no less than 9 metres at levels 4-9. It is not appropriate to require this change via conditions as these setbacks would result in uncertain outcomes on apartment designs.

### **Compliance of the apartments with the Victoria Apartment Design Guidelines**

VCAT was generally satisfied that the proposal will provide acceptable internal amenity for future residents. However VCAT noted that improved detail was required to confirm room sizes and layouts to ensure compliance with the VADG (the basis of Clause 58 - Apartment Developments - of the Moreland Planning Scheme).

The amended plans include an updated set of typical apartment layouts, providing detail of the internal layout and dimensions of apartments. Following is an assessment of the aspects of the development that remain unresolved or are unsatisfactory:

#### Clause 58.05-1 Accessibility

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

According to the typical apartment layouts, 98% of apartments achieve Standard D17 of this Clause.

To ensure compliance, design option B bathrooms need to have toilets located closest to the door, bathroom doors are to have a clear opening of 820 millimetres and readily removable hinges and the shower must be hobless.

For design option A bathrooms door widths must have a clear opening of 850 millimetres and showers must be hobless.

Subject to these details being clarified, which can be required by condition, the proposal is an excellent response to this Clause.

#### Clause 58.05-2 Building Entry and Circulation

The objective of this Clause is:

- To provide each dwelling and building with its own sense of identity.
- To ensure the internal layout of buildings provide for the safe, functional and efficient movement of residents.
- To ensure internal communal areas provide adequate access to daylight and natural ventilation.

Council submitted that the proposal was a poor outcome noting the length of hallways and provision of few windows. Despite this, VCAT was satisfied with daylight in communal hallways, noting that there were windows providing natural light and ventilation to each end of the longest corridors extending east-west in the lower levels of Building A.

However, the amended plans result in changes that further compromise daylight and ventilation to communal areas. In particular, the western end of building A now has a reconfigured apartment, resulting in the window at the end of the corridor being relocated to the side. This substantially reduces its effectiveness in providing improved amenity to the communal hallway.

Similarly, for Building B, a reconfigured apartment at the northern end of the corridor results in a window that was previously located at the end of the hall relocated to the side of the hall. This substantially reduces its effectiveness in providing improved amenity to the communal hallway.



These 2 corridors should be amended so that the window is located at the end of the hallway. This will result in reduced floor area for some apartments. A condition could require this change

Turning to the Brunswick Road street presentation, the amended plans result in unresolved design detail where a series of recessed vertical features create 3 inactive alcoves of 2.7 metres deep and 2.2 metres wide at street level. In addition, it is unclear what treatment is proposed forward of the substation where the elevation suggests the use of a screen but this is not defined. If no screen is proposed, a large inactive alcove would also result forward of the substation. These alcoves create unnecessary and potentially unsafe spaces that need to be resolved. A condition can require this change.

Turning to the Park Street ground level presentation, the amended plans locate the entry to Building B near the corner of Park Street and Sydney Road. However, this entry is poorly defined and not easily identifiable or clearly distinguished from the entry to the commercial premises located nearby to the west. Further resolution is required to ensure the residential entry is easily identifiable. A condition could be included to require this change.

#### 58.05-3 Private open space objective

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

VCAT noted that some of the balconies did not meet the minimum sizes specified in this Clause. 79 balconies continue to not meet the required areas, as highlighted in Table 2 below.

<b>Apartment</b>	<b>Required</b>	<b>Proposed</b>	<b>Variation</b>
1 bed Type 1 (x8)	8m <sup>2</sup>	7m <sup>2</sup>	1m <sup>2</sup>
1 bed Type 2 (x6)	8m <sup>2</sup>	7.5 <sup>2</sup>	0.5m <sup>2</sup>
1 Bed Type 4 (x22)	8m <sup>2</sup>	7.7m <sup>2</sup>	0.3m <sup>2</sup>
1 Bed Type 10 (x6)	8m <sup>2</sup>	7.5m <sup>2</sup>	0.5m <sup>2</sup>
2 Bed Type 1 (x3)	8m <sup>2</sup>	7.5m <sup>2</sup>	0.5m <sup>2</sup>
2 Bed Type 3 (x2)	8m <sup>2</sup>	7.5m <sup>2</sup>	0.5m <sup>2</sup>
2 Bed Type 2 (x9)	8m <sup>2</sup>	7.5m <sup>2</sup>	0.5m <sup>2</sup>
3 Bed Type 1 (x9)	12m <sup>2</sup>	11.2m <sup>2</sup>	0.8m <sup>2</sup>
1 Bed Type 9 (x4)	8m <sup>2</sup>	7.6m <sup>2</sup>	0.4m <sup>2</sup>
2 Bed Type 12 (x2)	8m <sup>2</sup>	7.7m <sup>2</sup>	0.3m <sup>2</sup>
2 Bed 2 Bath Type 2 (x2)	8m <sup>2</sup>	7.7m <sup>2</sup>	0.3m <sup>2</sup>
2 Bed 2 Bath Type 8 (x6)	8m <sup>2</sup>	7.5m <sup>2</sup>	0.5m <sup>2</sup>

Table 2.

In isolation, this variation is relatively minor. But when combined with other variations, it is an indicator of a poorly resolved development proposal. As directed by VCAT all apartments should be provided with at least the minimum area required by this Clause.

#### 58.05-4 Storage objective

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

VCAT found that adequate storage was provided for each dwelling. However, the amended plans, which now include typical apartment layouts, do not clearly demonstrate how the storage volumes are achieved. The amended plans specify the internal and external storage volume for each apartment type although the plans do not allocate external storage cages to specific apartments. Therefore, it is not possible to check if the volume indicated has been accommodated.

In addition to this, the amended plans confirm that some apartments have not been provided with storage volumes that are consistent with Standard D20 of this Clause. Notably the 4 Type 12 2b/2b apartments are provided with only 5.56 cubic metres of internal storage where Standard D20 requires at least 9 cubic metres. These apartments should be provided with at least the minimum required by this standard.

Other apartments such as the 3 x Type 1 – 2b/2b, the 6 x Type 2 – 1b/1b and the 4 x Type 4 – 2b/2b apartments have less than the standard requires but the variation is less than half a cubic metre in each instance and is therefore acceptable.

The typical floor layout for Type 4 – 3b/2b is incomplete and therefore the storage area cannot be verified. The typical layout for this apartment indicates that 18.23 square metres of internal storage is provided, however, the storage capacity of the apartment appears to be less than this. This should be clarified and a condition could require this.

The typical apartment layouts allocate very small volumes of external storage to some apartments. For example, apartment Type 9 – 2b/2b claims to be provided with an external storage volume of 1 cubic metre, Type 10 – 1b/1b claims to be provided with an external storage volume of 2 cubic metres and apartment Type 6 – 1b/1b claims external storage of 3 cubic metres. However, the storage cages in the basement are all approximately 6 cubic metres in volume. Although the provision of more than what is stated on the typical plans is acceptable, there are insufficient cages to provide storage for all apartments. It is unclear where the smaller volumes are to be provided. This detail needs to be confirmed and can be dealt with by condition.

#### 58.07-1 Functional Layout Objective

The objective of this Clause is to ensure dwellings provide functional areas that meet the needs of residents.

The amended plans demonstrate that most apartments provide the minimum internal dimensions in accordance with Standard D24 of this Clause. However, Apartment Type 10 - 2b/2b (3), Type 3 - 2b/1b (3) and Type 7 - 2b/2b (5), Type 8 – 2b/2b (6) have not been provided living areas of 12 square metres as the dining areas encroach into these spaces. This is not acceptable.

#### 58.07-2 Room depth objective

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

The amended plans demonstrate a high degree of compliance with this Clause. Apartment Type 8 - 3b/2b has a room depth of 10 metres, 1 metre more than Standard D25. However, the living room has an alternative light source and is therefore acceptable.

#### 58.07-3 Windows Objectives

The objective of this Clause is to allow adequate daylight into new habitable room windows.

Standard D26 of this Clause states:

Habitable rooms should have a window in an external wall of the building.

A window may provide daylight to a bedroom from a smaller secondary area within the bedroom where the window is clear to the sky.

The secondary area should be:

- A minimum width of 1.2 metres.
- A maximum depth of 1.5 times the width, measured from the external surface of the window.

A review of the amended plans confirms that the 11 x Type 7 – 2b/2b apartments have bedrooms that receive daylight from a smaller secondary area within the bedroom where the window is clear to the sky. These windows satisfy the dimensions as outlined in Standard D26.

However, the following apartment types have proposed bedrooms that receive daylight from a smaller secondary area within the bedroom where the window is not clear to the sky:

- 3b/2b Type 2 (x4)
- 3b/2b Type 3 (x2)
- 3b/2b Type 6 (x4)
- 3b/2b Type 8 (x5)
- 3b/2b Type 12 (x5)

This amounts to 20 apartments that include windows that do not satisfy Standard D26 as the window is provided to a covered balcony rather than clear to the sky. In the absence of any attempt to justify this variation, the apartment layouts should be amended to provide windows to these bedrooms that are clear to the sky or avoid the need to provide daylight to these bedrooms from a smaller secondary area.

For apartment types 3b/2b Type 6, 3b/2b Type 8 and 3b/2b Type 12, the non-compliant windows could be made clear to the sky by removing part of the balcony they are covered by from levels 2-5. As these balconies are either smaller secondary balconies in addition to the main balcony areas that achieve the minimum area and dimension as required by Clause 58.05-3 or are large balconies well in excess of the minimum, this is acceptable. However, it is unclear what implications this would have for the architectural resolution of the western and southern elevations of Building B. As these are prominent façades, it is important that this is well resolved and will be difficult to achieve by condition.

For apartment type 3b/2b Type 2, making these windows clear to the sky would require the removal of at least 3 square metres of balcony area for these apartments at levels 7-9, reducing the size of the balconies to approximately 9 square metres, less than the 12 square metres required by Clause 58.05-3. Similarly for type 3b/2b Type 3, providing a window clear to the sky will reduce the balcony size from 13 square metres to approximately 10 square metres at level 7.

#### 58.07-4 Natural Ventilation Objectives

The objective of this Clause is to encourage natural ventilation of dwellings and to allow occupants to effectively manage natural ventilation of dwellings.

The amended plans show that 76 apartments can achieve effective cross ventilation in accordance with this standard which equals 35.5% of apartments. This is 4.5% less than the 40% sought by this standard.

The proposal should be amended to achieve compliance with the Standard as VCAT made it clear that compliance with Victorian Apartment Design Guidelines should be demonstrated. This will require an additional 10 apartments to achieve effective cross ventilation. It is unclear how this may be achieved and therefore can-not easily be required by condition.

The plans should also be amended to confirm which windows are operable in all apartments to confirm that effect cross ventilation can be achieved as proposed.

In summary, while each variation to Clause 58 may be minor in isolation and could be addressed by condition, it is not clear what the implications of such conditions would be. A comprehensive review of apartment layouts is required.

## **Resolution of inconsistencies and inaccuracies in plans, elevations and renders.**

In its findings, VCAT criticised the resolution of the plans, images and photomontages and noted significant inconsistencies in documentation. This led to frustration for VCAT about inadequate attention to detail in plan and image presentation.

A review of the amended plans shows that inconsistencies remain. The following are examples of inconsistencies:

- The development summary states that 150 bicycle parking spaces are provided at ground level. A review of the plans, however, reveals that only 126 are provided.
- Not all typical apartment layouts are provided. For example, apartment Type 3 - 3b/2b (A.06.04), Type 8 – 2b/2b (A.01.01) has not been defined.
- The 6 cubic metres stores nominated as 2.01, 2.02, 2.06, 2.07 in basement 1 and 2.09, 2.10, 2.11, 2.12, and 2.14 in basement 2 are located at the end or side of car parking spaces 107, 111, 112, 116 in basement 1 and 281, 282, 283, 284 and 286 in basement 2 which are all tandem car parking spaces. However, of the 39 3 bedroom apartments, which will be allocated tandem car parking spaces, only the nine 3b/2b Type 1 and the five 3b/2b Type 8 apartments require external storage (2m<sup>3</sup> 3m<sup>3</sup> respectably). These tandem spaces should therefore be allocated to these apartment types. A condition can require this change.

## **Are there other items that require consideration as a result of the amended plans?**

As a result of the changes made to address VCAT's concerns, the proposal results in some consequential changes to the plans. These are discussed below.

### Bicycle Parking

The amended plans result in a reduction of 20 bicycle parking spaces. The development summary suggests that 150 of the 408 bicycle parking spaces are provided at ground level. However, a review of the plans confirms that only 126 spaces are provided. Further, Council's Development Advice Engineer has confirmed that 4 of the spaces against the western wall are not practical as they interfere with other nearby bicycle parking spaces. These should be removed. Therefore, the total number would be reduced by 122 at ground level, resulting in 380 bicycle parking spaces for the 214 apartments. This is considered acceptable.

### The Community Hub

The proposal has relocated the proposed 'community hub' to the eastern boundary of the Brunswick Road frontage and increased its size from 91square metres to 101 square metres. Throughout the process the applicant has not made it clear how this space is proposed to be used. This room has no internal connection with the rest of the development and can only be accessed from Brunswick Road. This disconnection and isolation from the development without a clear purpose will likely result in a disused space that with not result in a good interface with and surveillance of Brunswick Road.

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

Council made submissions to VCAT that the ESD performance of the development was inadequate due to the absence of daylight evidence to justify variations to the building separation requirements of Clause 22.07.

VCAT was not persuaded that the daylight to habitable room windows would be unacceptable. They were satisfied that a permit condition could be included requiring an SMP to demonstrate achievement of best practice ESD.

## **5. Response to Objector Concerns**

As noted above, VCAT has ordered that the applicant give notice of the amended plans to owners and occupiers of immediately adjoining land to the east and west of the site. If any person wishes to make a submission on the amended plans they must do so by 19 August 2019 and make their submission directly to VCAT.

## **6. Officer Declaration of Conflict of Interest**

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

## **7. Financial and Resources Implications**

There are no financial or resource implications.

## **8. Conclusion**

The amended plans represent an improvement to the plans considered by VCAT. However, they do not adequately respond to the issues identified by VCAT, particularly with regards to the retention of the electrical transformer station, the setbacks of the tower from the western boundary, the upper level setbacks from Brunswick Road, the width of the pedestrian path on the eastern boundary and the inadequate response to some aspects of Clause 58 (Apartment Developments).

It is recommended that Council:

- Provide a written submission to VCAT outlining the remaining concerns
- Request that a hearing be held to enable Council, and potentially other parties, to justify the remaining concerns
- Provide VCAT with a revised set of draft planning permit conditions

## **Attachment/s**

<a href="#"><u>1↓</u></a>	Locality Plan	D18/222461
<a href="#"><u>2↓</u></a>	Architectural plans	D19/327038
<a href="#"><u>3↓</u></a>	VCAT Draft Conditions	D19/327138
<a href="#"><u>4↓</u></a>	Nigel Lewis opinion	D19/327053

# DCF70/19 843-851 SYDNEY ROAD, BRUNSWICK - PLANNING PERMIT APPLICATION - MPS/2018/941 (D19/327166)

Director City Futures

City Development

## Executive Summary



<b>Property:</b>	843-851 Sydney Road, Brunswick
<b>Proposal:</b>	Development of the land for an 8-storey building comprising dwellings and a restricted retail premises, with rooftop terrace and basement parking, use of the land for dwellings, a reduction of the car parking requirement and the removal of easements.
<b>Zoning and Overlays:</b>	<ul style="list-style-type: none"> <li>Commercial 1 Zone</li> <li>Design and Development Overlay, Schedule 18</li> <li>Development Contributions Plan Overlay, Schedule 1</li> <li>Parking Overlay, Schedule 1</li> </ul>
<b>Strategic setting:</b>	<div>Minimal housing growth</div> <div>Incremental housing growth</div> <div>Increased housing densities encouraged</div> <div>Significant housing growth</div>
<b>Objections:</b>	<ul style="list-style-type: none"> <li>Two</li> <li>Key issues: <ul style="list-style-type: none"> <li>Building height</li> <li>Car parking</li> <li>Amenity</li> </ul> </li> </ul>
<b>Planning Information and Discussion (PID) Meeting:</b>	A PID meeting has not been held though the objectors have been contacted.
<b>ESD:</b>	Minimum average NatHERS rating of 6.5 stars.
<b>Accessibility:</b>	Adaptable apartments comprise 52% of the proposal.
<b>Key reasons for support</b>	<ul style="list-style-type: none"> <li>Appropriate internal amenity (subject to conditions)</li> <li>Minimal off-site amenity impacts</li> <li>Responds to preferred built form and neighbourhood character (subject to conditions).</li> <li>Positive ESD and access outcomes.</li> </ul>
<b>Recommendation:</b>	It is recommended that a Notice of Decision to Grant a Planning Permit be issued for the proposal.

## Officer Recommendation

That a Notice of Decision to Grant a Planning Permit No. MPS/2018/941 be issued for the development of the land for a building comprising dwellings and a restricted retail premises with rooftop terrace and basement park, use of the land for dwellings, a reduction of the car parking requirement and the removal of easements at 843-851 Sydney Road Brunswick, subject to the following conditions:

1. Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions. The plans must be generally in accordance with the plans advertised on 20 December 2018 (prepared by Ascui and Co Revision A 1557 19/10/2018), but modified to show:
  - a) Deletion of level 7 (containing 6 dwellings), reducing the overall building height by a minimum of 3 metres.
  - b) The relocation of air conditioning away from habitable room windows.
  - c) Relocation of air conditioning units outside the areas of private open space (balconies or terraces) or increase the size of the private open space area by a minimum of 1.5 metres.
  - d) Portions of the face brick work façade extended to the ground plane, to reinforce the fine grain character of Sydney Road.
  - e) Additional visual cues such (as the property number) at the residential entry.
  - f) A glazed window on the northern wall of the stairwell.
  - g) Lighting to the under-croft area and ROW entry.
  - h) A minimum of one bicycle parking space per dwelling.
  - i) A notation indicating that the bicycle storage room will have a self-closing and self-locking doors or gates that are only accessible using keys, codes or swipe cards in accordance with the Australian Standard for Bicycle Parking (AS2890.3).
  - j) The entry door alcoves to dwellings 303, 403, 503, 603 and 703 with a minimum width of 1.2 metres.
  - k) The adaptable bathrooms in dwellings 302, 402, 502, 602, 605, 702 and 705 to have a 1.02 metre sliding door with a clear width of 0.85 metres.
  - l) Initiatives contained within the amended Sustainability Management Plan (SMP), including:
    - i. On-site stormwater treatments as per the amended STORM report; including the size and location of the rainwater harvesting tank/s;
    - ii. Rainwater harvesting tank/s must be noted to be used only for reuse within the development, and that that it is completely independent of any detention requirements (through the Legal Point of Discharge process);
    - iii. External shading for the exposed west facing habitable room glazing which demonstrates the glazing will be protected from sun during peak heat temperatures whilst not detracting from desired winter heat gain. Shading devices to be illustrated with a product diagram/section detail on Elevation plans.
    - iv. A notation that all glazing to living areas achieves at least a 60% Visible Light Transmittance (VLT).
    - v. Proposed location of electric vehicle charging infrastructure and confirmation they can charge the next generation electric vehicles;

- vi. Location of area/s dedicated to on-site management of food and green waste;
- vii. A schedule of materials detailing all sustainable materials committed to in the Sustainability Management Plan.
- viii. Any other changes as per the amended Sustainability Management Plan.
- m) The verandah must not project beyond the street alignment unless it is setback not less than 750 millimetres from the kerb and at a height less than 3 metres above the level of the footpath.
- n) An amended Acoustic Report in accordance with condition 4 of this Permit.
- o) An amended Sustainability Management Plan in accordance with condition 7 of this Permit.
- p) An amended Waste Management Plan in accordance with condition 10 of this Permit.
- q) An amended Landscape plans in accordance with condition 11 of this Permit.
- r) An amended Accessibility Report in accordance with condition 13 of this Permit.
- s) A Drainage Report in accordance with condition 27 of this Permit.
- t) Any practical changes to the plans required by the additional reports and plans required by conditions of this Permit.

#### **Development not to be altered**

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

#### **Environmental Assessment and Auditing Requirements**

3. Prior to the commencement of construction or carrying out of works pursuant to this permit, or any works associated with a sensitive use (other than buildings and works required to be undertaken in association with the Environmental Audit and testing, as detailed in the remediation plan under condition 5) either:
  - a) A Certificate of Environmental Audit for the land must be issued in accordance with Section 53Y of the *Environment Protection Act 1970* and provided to the Responsible Authority; or
  - b) An Environmental Auditor appointed under Section 53S of the *Environment Protection Act 1970* must make a Statement in accordance with Section 53Z of that Act that the environmental conditions of the land are suitable for the use and development that are the subject of this permit and that statement must be provided to the Responsible Authority.

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

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



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

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

### **Acoustic Requirements**

4. Prior to the endorsement of plans, an Acoustic Report prepared by a qualified Acoustic Engineer generally in accordance with the report prepared by Acoustical Design Pty Ltd dated 3 October 2018 must be submitted and approved to the satisfaction of the Responsible Authority reflecting the amended plans required by condition 1. When submitted and approved to the satisfaction of the Responsible Authority, the Acoustic Report will be endorsed to form part of this permit.
5. 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. The Acoustic Report endorsed under this permit must be implemented and complied with at all times to the satisfaction of the Responsible Authority unless with the further written approval of the Responsible Authority.
6. Prior to the occupation of any dwelling approved under this permit, a report from the author of the Acoustic Report approved pursuant to this permit or similarly qualified person or company must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm that all measures specified in the Acoustic Report have been implemented in accordance with the approved Acoustic Report.

### **Sustainability Management Plan**

7. Prior to the endorsement of plans, the Sustainability Management Plan prepared by Ark Resources dated 1 November 2018 must be amended by a suitably qualified environmental engineer or equivalent to the satisfaction of the Responsible Authority to include the following:
  - a) Provide NatHERS certificates including the NatHERS diagnostic reports for all ratings of thermally unique dwellings undertaken.
  - b) For the retail space provide preliminary JV3 modelling report to demonstrate that the proposed building as modelled with proposed building fabric reduces annual heating and cooling energy consumption by 10% as compared when the proposed building is modelled with NCC reference fabric; include the reference glazing calculator spreadsheet and proposed glazing calculator spreadsheets as part of this assessment. The JV3 report should be prepared at a minimum as per the example energy analysis report format provided in the ABCB Protocol for Building Energy Analysis Software. Alternatively, provide indicative insulation specifications being proposed for the walls, ceiling/roof, floor of applicable conditioned spaces and provide a copy of the NCC glazing calculator showing glazing performance characteristics (U-value, SHGC) that achieve 10% improvement above NCC.

- c) Change washing machine selection from “scope out” to “3 star” to account for the worst option that future residents will install.
- d) Include the recommendations of the new Sustainability Victoria Guidelines (Sustainability Victoria ‘Better Practice Guide for the Waste Management and Recycling in Multi-Unit Developments’ released in November 2018) for the inclusion of on-site organics capacity.
- e) Increased bicycle parking to be at least one bicycle parking space per dwelling.
- f) An improved response to the ‘IEQ response’ objectives of Clause 22.08, including:
  - i. BESS report to be amended to realistically reflect the number of apartments that meet the Natural ventilation requirements or justify how the 100% (100% of apartments being naturally ventilated) was arrived at.

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

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

- 8. All works must be undertaken in accordance with the endorsed Sustainability Management Plan (SMP). No alterations to the SMP may occur without the prior written consent of the Responsible Authority.
- 9. Prior to the commencement of occupation or issue of a Statement of Compliance, whichever comes first, of any dwelling approved under this permit, a report from the author of the Sustainability Management Plan (SMP) approved pursuant to this permit, or similarly qualified person or company, must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm that all measures specified in the SMP have been implemented in accordance with the approved plan.

### **Waste Management**

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

### **Landscaping**

- 11. Prior to the commencement of any development works, amended landscape plans must be submitted to and approved by the Responsible Authority. The landscape plans must be generally in accordance with the plans prepared by Memla Pty Ltd dated August 2018 but modified to show:
  - a) The proposed plant selection for the planter boxes, deep planting and green façade (planters and climbing frames) together with substrate materials, drainage and structural support required.
  - b) Information about the maintenance of landscaped areas.
  - c) Details of proposed watering methods and maintenance of the plants, including an automatic irrigation system for all planter boxes and landscaped areas including the roof and facades.
  - d) Any storm water management details on the STORM report, including rainwater harvesting, tank size and location as shown in the Sustainability Management Plan.

12. Prior to the issuing of a Statement of Compliance or occupation of the development, whichever occurs first, all landscaping works must be completed and maintained in accordance with the approved and endorsed landscape drawing to the satisfaction of the Responsible Authority.

### **Access Plan**

13. Prior to the endorsement of plans, an Accessibility Report prepared by a suitably qualified person must be submitted and approved to the satisfaction of the Responsible Authority. The report must be generally in accordance with the report prepared by Think Access dated 10 October 2018 but updated to refer to the plans required by condition 1 of this permit and detail how the development complies with Standard D17 (Accessibility) of Clause 58 of the Moreland Planning Scheme, including the detailed design of the adaptable bathrooms. The recommendations of the report must be implemented to the satisfaction of the Responsible Authority prior to the occupation of the development. No alterations to the plan may occur without the written consent of the Responsible Authority.
14. Prior to the occupation of any dwelling approved under this permit, a report from the author of the Accessibility Report, approved pursuant to this permit, or similarly qualified person or company, must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm that all measures specified in the Accessibility Report have been implemented in accordance with the approved report.

### **Development Contributions Levy**

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

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

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

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

### **General**

16. Prior to the occupation of the development, the bicycle parking racks must be installed in a secure manner that accords with the specifications in Bicycle Victoria's Bicycle Parking Handbook, to the satisfaction of the Responsible Authority.
17. Prior to the occupation of the development, all boundary walls must be constructed, cleaned and finished to the satisfaction of the Responsible Authority.
18. 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.

19. Prior to the occupation of the development, any air-conditioning and other plant and generator equipment must be screened from the view of adjoining properties and the street to the satisfaction of the Responsible Authority.
20. Prior to the occupation of the development, all telecommunications and power connections (where by means of a cable) and associated infrastructure to the land must be underground to the satisfaction of the Responsible Authority.
21. Prior to the occupation of the development, any existing vehicle crossing not to be used in this use or development must be removed and the kerb and channel, footpath and nature strip reinstated to the satisfaction of the Responsible Authority (Moreland City Council, City Infrastructure Department).
22. Prior to the occupation of the development the public footpath is to be reinstated with the standard cross-fall slope of 1 in 40 from the top of roadside kerb to the property boundary, with any level difference made up within the site.
23. All stormwater from the land, where it is not collected in rainwater tanks for re-use, must be collected by an underground pipe drain approved by and to the satisfaction of the Responsible Authority (Note: Please contact Moreland City Council, City Infrastructure Department).
24. Stormwater from the land must not be directed to the surface of the laneway to the satisfaction of the Responsible Authority
25. The verandah must not project beyond the street alignment unless it is setback not less than 750 millimetres from the kerb and at a height less than 3m above the level of the footpath in accordance with Clause 507 of the Building Regulations 2006 to the satisfaction of the Responsible Authority.
26. Prior to the occupation of the development all telecommunications and power connections (where by means of a cable) and associated infrastructure to the land must be underground to the satisfaction of the Responsible Authority.
27. Prior to the commencement of any development works a drainage report, must be submitted to and approved by the Responsible Authority. The drainage report must be prepared by an appropriately qualified and experienced drainage engineer and respond to the flooding context demonstrating how the development will mitigate a 1 in 100 year inundation event arising from the overloading of the underground urban drainage system.

### **Easement Removal**

28. Prior to the commencement of works the easement must be removed and a plan of removal registered.
29. This permit will expire if one of the following circumstances applies:
  - a) The easement removal is not commenced within two years of the date of issue of this permit as evidenced by a Plan of Removal of Easement being certified by the Council within that time.
  - b) The Certified Plan of Removal of Easement is not registered within five years from the date of the Certification of the Plan.

The Responsible Authority may extend the period referred to if a request is made in writing before the permit expires or; within six months after the permit expires to extend the commencement date (as referred to in point (a) above). Section 7 of the Subdivision Act 1988 does not allow for any extension of time for the registration of the certified Plan of Removal of Easement as outlined in point (b) above.

## **Permit Expiry**

30. The use and development approved by this permit will expire if one of the following circumstances applies:
- a) The development is not commenced within 3 years from the date of issue of this permit.
  - b) The development is not completed within 5 years from the date of issue of this permit.

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

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

**These notes are for information only and do not constitute part of this Permit.**

**Note 1** Should Council impose car parking restrictions in this street, the owners and / or occupiers of the land would not be eligible for any Council parking permits to allow for on street parking

**Note 2** Contact needs to be made with CitiPower to determine whether CitiPower will require the power lines to be relocated away from the dwellings.

**Note 3** This permit contains a condition requiring payment of Development Contributions. The applicable development contribution levies are indexed annually. To calculate the approximate once off levy amount, please visit <http://www.moreland.vic.gov.au/planning-building/> and click on 'Moreland Development Contributions Plan (DCP)'. Alternatively, please contact Moreland City Council on 9240 1111 and ask to speak to the DCP Officer.

### **Note 4**

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

## **1. Background**

### **Subject site**

The subject site is located at 843-851 Sydney Road, Brunswick, on the south-western corner of Sydney Road and Cozens Street.

The site is regular in shape, with a width of 25.3 metres to Sydney Road and a depth of 40.2 metres to the Cozens Street frontage. The total site area is approximately 1020 square metres.

The site is currently occupied by a double storey electrical store (restricted retail premises). Off street car parking is accessed from Cozens Street.

The site comprises 2 lots. The northern lot includes a sewerage easement in its south-west corner (shown as E-1 on the survey plan). The southern lot includes 2 easements along the southern boundary, E-2 relating to Light and Air, and E-3 relating to overhanging eaves.

### **Surrounds**

The surrounding area is characterised by a mix of commercial; industrial and residential uses. Buildings in the area are of a predominantly single and double storey scale.

The site has only one direct abuttal, being the single storey commercial building to the south at 841 Sydney Road. This site is occupied by a single storey restaurant.

A double storey medical centre is located on the northern side of Cozens Street at 853 Sydney Road. Further north and south along Sydney Road are single and double storey buildings containing a variety of shops, offices and other commercial activities. Some accommodation may be located at the upper levels of buildings. Buildings are built to the Sydney Road frontage and present as a low scale shopping strip with a relatively fine grain. This section of the Sydney Road corridor, however, does not exhibit the “predominantly intact 19th and early 20th century retail and commercial strip” streetscape character of the Sydney Road heritage precinct situated further to the south (HO149).

To the west immediately adjoining the subject site a right-of-way (ROW) runs between Cozens Street and Peveril Street. The laneway is a single carriageway. To the west, on the other side of the ROW, is a double storey building at 7 Cozens Street, which is currently occupied by an acting studio. Further west along Cozens Street are a variety of local service industries such as vehicle repair workshops.

To the east, on the opposite side of Sydney Road, are single storey shops.

A location plan forms **Attachment 1**.

### **Planning Permit and site history**

There are no existing planning permits or relevant history for this site.

### ***The proposal***

The proposal is summarised as follows:

- It is proposed to construct an 8-storey building comprising 51 dwellings, a ground floor restricted retail premises, a partially covered rooftop terrace and two levels of basement car parking.
- The proposal will have a maximum building height of 29.45 metres measured from the natural ground level at the centre of the site frontage to the top of the lift overrun.

- The development is proposed to contain the following dwelling types: 17 one-bedroom dwellings; 32 two-bedroom dwellings; and 2 three-bedroom apartments.
- The dwellings have private open space areas ranging in size from 10 square metres to 126 square metres and a communal open space area of 129 square metres.
- The proposed development will provide a total of 46 on-site car parking spaces which will be accommodated within a two-level basement.
- A total of 42 bicycle spaces are provided at ground floor level directly accessible from Cozens Street.
- The materials include face-brickwork, concrete and metal detailing at the street-wall levels. The upper levels comprise of various smooth and ceramic tiles with an open frame to accommodate planting.
- It is proposed to remove all three easements applicable to the land.

The advertised plans form **Attachment 2**.

### **Statutory Controls – why is a planning permit required?**

<b>Control</b>	<b>Permit Requirement</b>
Commercial 1 Zone Schedule 1	Clause 34.01: A permit is required for the use of the land for dwellings. A permit is required to construct a building or construct or carry out works.  A retail premises is a Section 1 land use and a permit is not required for the use of the ground floor.
Design and Development Overlay Schedule 18	Clause 43.02-2: A permit is required to construct a building and carry out buildings and works.
Particular Provisions	Clause 52.02: A permit is required to create, vary or remove an easement.  Clause 52.06: A permit is required to reduce the car parking provision.

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

- Clause 45.06 – Development Contributions Plan Overlay (Schedule 1)
- Clause 45.09 – Parking Overlay (Schedule 1)
- Clause 58 – Apartment Developments.

## **2. Internal/External Consultation**

### **Public Notification**

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

- Sending notices to the owners and occupiers of adjoining and nearby land.
- Placing signs on the Sydney Road and Cozens Street frontages of the site.
- Sending notices to persons that benefit from the easements.

Council received two objections to the planning application.

The location of the objectors is as follows:

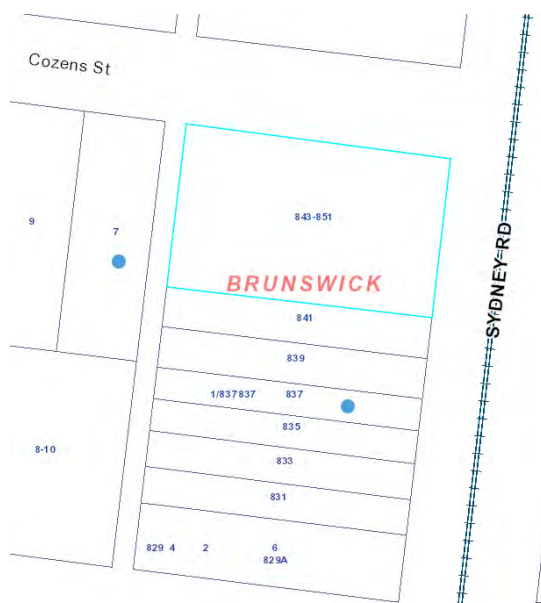


Figure 1 - Objectors marked in blue.

The key issues raised are:

- Overshadowing
- Loss of daylight
- Impact upon ventilation
- Car parking
- Noise
- Impact upon services
- Overdevelopment
- Size of the living areas within the dwellings
- Height of the building
- Neighbourhood Character
- Removal of easements

A planning and discussion meeting was not held. However, the applicant discussed the proposal with both objectors. Council has consulted with both objectors via phone call. There were no changes made to the plans as a result of these conversations.

#### Internal referrals

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

Internal Branch/Business Unit	Comments
Urban Design Unit	The key issue identified by Urban Design was the height and setbacks to Sydney Road. This is addressed in Section 4 of the report. The proposal was otherwise supported, subject to modifications, which are addressed by conditions detailed in the recommendation.
Development Advice Unit	No objections were offered to the proposal subject to modifications, which are addressed by conditions detailed in the recommendation.
ESD Unit	No objections were offered to the proposal subject to modification, which are addressed in the conditions detailed in the recommendation.



### 3. Policy Implications

#### Planning Policy Framework (PPF)

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

- Clause 11 Settlement
- Clause 15 Built Environment and Heritage including:
  - Built Environment (Clause 15.01)
  - Sustainable Development (Clause 15.02)
- Clause 16.02 Housing including:
  - Integrated Housing (Clause 16.01-1S and 16.01-1R)
  - Location of Residential Development (Clause 16.01-2S)
  - Housing Opportunity Areas (Clause 16.01-2R)
- Clause 17 Economic Development
- Clause 18 Transport

#### Local Planning Policy Framework (LPPF)

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

Municipal Strategic Statement:

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

Local Planning Policies:

- Clause 22.01 Neighbourhood Character
- Clause 22.03 Car and Bike Parking and Vehicle Access
- Clause 22.07 Apartment Development of 5 or More Storeys
- Clause 22.08 Environmentally Sustainable Design

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

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

#### Human Rights Consideration

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

### 4. Issues

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

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

The proposal is considered against Clause 22.01 (Neighbourhood Character) and Clause 43.02 (Design and Development Overlay Schedule 18 – DDO18) of the Moreland Planning Scheme. The site is within an area the policy marks for substantial change and has the following objective for the Brunswick Activity Centre:

*To support substantial change and create a new character of increased density and scale of built form as defined in the relevant zone or overlay, Structure Plan and/or Place Framework.*

#### Height and setbacks

The DDO18 establishes the following building envelope relevant to the subject site:

- A preferred overall building height of 19 metres.
- A mandatory street wall height requirement for the Sydney Road frontage of 8 to metres.
- Any part of the building above the street wall height in Sydney Road should:
  - Be set back at least 5 metres from the street boundary.
  - Be designed to ensure that it occupies no more than one quarter of the vertical angle defined by the whole building in the view from an eye-level of 1.7 metres on the opposite side of the street (see figure 2).
  - Adopt the same street setback for at least 75% of the height of the upper levels to avoid 'wedding cake' built form outcomes.
  - Materials at the upper levels of the building should be distinct from materials of the lower levels of the building.
  - The architectural expression of the upper and lower building components should be complementary and upper levels should be visually recessive.

At 10.7 metres, the proposed street wall complies with the mandatory street wall height for Sydney Road.

In Cozens Street, the DDO18 specifies a preferred street wall height of 8 to 11 metres. The DDO18 also says that upper levels on streets other than Sydney Road should be setback at a 1:1 ratio of building height to distance from the opposite side of the street boundary. The objective of this provision is to achieve an appropriate balance between a sense of enclosure and openness. Given that land to the west of the subject site is within a core industrial area and not subject to substantial redevelopment. The industrial nature of the majority of Cozens Street is likely to remain open negating the enclosure created by the upper levels of the development. As such, the 5 metre upper level setback to Cozens Street is acceptable. Variations are sought regarding the overall building height and upper level setbacks to Sydney Road, as follows:

#### *Building Height*

The proposal seeks a maximum building height of 29.45 metres (taken from the Sydney Road frontage). The lift overrun is not an allowable encroachment into the DDO18 height control in this instance as it exceeds 3.6 metres above the building height (at a height of 4.2 metres). The total variation to the DDO18 sought is therefore 9.7 metres. However, the lift overrun comprises a small proportion of the overall building bulk and supports a roof deck which provides positive internal amenity. The key consideration regarding height is Levels 6 and 7, which are both above the preferred 19 metre height.

#### *Upper level setback to Sydney Road*

The development provides a 5 metre upper level setback to the Sydney Road boundary to Levels 3-5, which increases to 10 metres at Levels 6 and 7.

The DDO18 states that the upper levels should occupy no more than one quarter of the vertical angle defined by the whole building in the view from an eye-level of 1.7 metres on the opposite side of Sydney Road.

The proposal in its current form does not achieve this (as demonstrated in the circled area below).

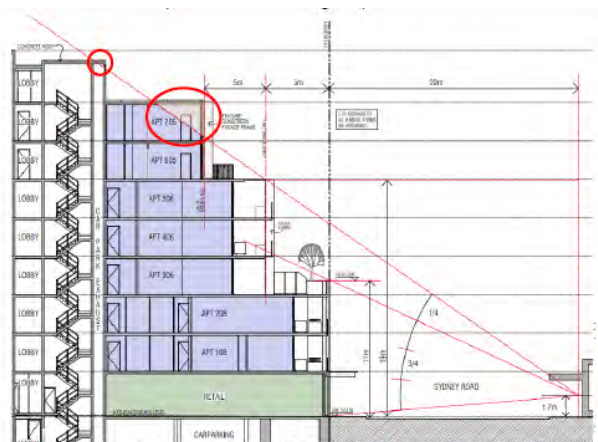


Figure 3: Extract from Town Planning Drawing - TP-25 (Section A), showing the minor encroachments into the indicative sightline prescribed under DDO18.

Figure 2 – Cross-section

The proposal also fails to adopt the same street setback for at least 75% of the height of the upper levels to avoid 'wedding cake' built form outcomes. Furthermore, while the materials at the upper level are distinct from the lower levels and are supported by Urban Design, the upper level does not present as 'visually recessive'.

In considering the height and setback variations, the following objectives of DDO18 are relevant:

- To encourage a new mid-rise built form character with buildings generally ranging from 4-10 storeys 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.
- 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 reinforce the fine grain character of Sydney Road.

At 8-storeys (plus the centralised roof deck) the height sits within the 4-10 storey range sought by the first objective of the DDO18. The size and locational attributes enable this site to accommodate a building at the taller end of this scale. Contextual features of the site that are relevant to the proposal include the wide frontage; long depth; setback from residential properties to the west afforded by the commercial and industrial sites and train line; and the emerging character of taller buildings within the vicinity. All these factors together with the supportive policy context contribute to this site being able to accommodate a taller building.

However, the DDO18 specifically seeks that the street wall remains the visually dominant element and that upper levels are recessive which this proposal fails to achieve. While this section of Sydney Road is not covered by a heritage overlay, there is still a valued low scale and fine grain character that should be respected.

It is therefore recommended that Level 7 be deleted. This will achieve compliance with the preferred upper level setback provisions of DDO18 and mean that the proposal will be only one storey (plus the roof deck) above the preferred overall height. This is considered to be an acceptable outcome that achieves the overarching objectives of the control. A secondary consequence of deleting one storey, is a reduction in the variation to the 1:1 ratio thus reducing the sense of enclosure to Cozens Street.

### Architectural Detail and Materials

The DDO includes the following relevant objectives:

- To reinforce the fine grain character of Sydney Road
- To create an inviting, safe and vibrant public realm.

Through the provision and retention of a large ground floor commercial area along Sydney Road, the proposal provides an active frontage. Council's Urban Designer noted *"Ground level with retail frontage to Sydney Road and turning the corner on Cozens Street is supported. The frontages are transparent to ensure optimal interest and will effectively contribute to an inviting, safe and vibrant streetscape."*

The street wall is also broken into sections, to reinforce the fine grain character of Sydney Road. However, Council's Urban Designer recommended reinforcing the street wall character by extending portions of the face brick work façade to the ground plane. This forms a condition of the recommendation.

The proposal also provides a safe and inviting entry to the dwellings from Cozens Street and restricts vehicle access to the rear of the site, protecting the pedestrian realm.

The simple rectilinear form and expression of a modern façade above the podium is generally supported. While retaining the sense of a simple overall form, the design of upper levels has enough detail and articulation to provide interest. Overall the building will present as an interesting addition to the streetscape.

The following additional recommendations regarding design detail from Council's Urban Designer are incorporated within the conditions of the recommendation:

- Glazing to the stairwell to allow for natural light from the court yard to enter the stairwell and promote a sense of safety.
- Additional visual cues such (as the property number) to enhance legibility of the residential entry.

The Urban Designer recommended the installation of a panel lift door to carpark along the western boundary to address security in the under-croft entry. The proposed location of the door is considered a better outcome as it allows for the bins to be easily taken in and out of the site, allows an adequate turning circle for vehicles, manages vehicle queuing and for pedestrian access. A condition will require this area be appropriately lighting to improve visibility and enhance security.

### Landscape design

The proposed landscaping ensures that the proposed development will sit comfortably within the streetscape and future residents are provided with an attractive and functional communal open space.

Clause 58.03-5 (Landscaping) seeks to provide appropriate landscaping with climate responsive design and water management. The standard requires:

- 7.5% of site area (min dimension of 3 metres) and;
- 1 medium tree (8-12 metres) per 50 square metres of deep soil or 1 large tree per 90 square metres of deep soil.

The current site coverage is 100% with no vegetation on site. Given the site constraints and proposed layout, the development cannot achieve the deep soil areas sought by the standard. However, the proposal will provide vegetated planters; landscaped terraces at level 3; vegetated roof top communal space; and planters and climbing frames integrated into the facade composition. The proposed various forms of vegetation at all levels will soften the built form and create visually attractive facades to Sydney Road and Cozens Street. This is considered to be sufficient to satisfy the objective of the landscaping Clause.

**Does the proposal result in any unreasonable impacts on neighbouring properties?**

Given the neighbouring uses are mostly commercial or industrial there are limited impacts upon the existing properties in terms of residential amenity. The shadow cast by the proposal is acceptable as it falls mostly upon existing shadows and roofs.

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

The proposal was assessed against Clause 58 (Apartments) and deemed satisfactory. The proposal offers a high level of onsite amenity for future occupants; notable features include:

- The building offers dwelling diversity with three dwelling types of varying sizes (17 one bedroom, 32 two bedrooms and 2 three bedroom dwellings).
- A 129 square metre north facing communal roof terrace, which is partly covered for weather protection and year-round use.
- All rooms have direct access to natural light, with no borrowed light arrangements.
- Each dwelling has adequate storage.
- All the dwellings have at least one area of open space that is of a practical size for usability.
- The car parking is located within the basement levels which are secure, convenient to access and ventilated.
- All bedrooms are a minimum of 3 metres by 3 metres and the main bedrooms are 3.4 metres by 3 metres.
- The living areas are all a minimum of 12 square metres for the two-bedroom dwellings and 10m<sup>2</sup> for the one bedroom dwellings with a minimum width of 3.6 metres.
- Floor to ceiling heights of 2.7 metres are proposed for all levels.

Key internal amenity considerations are assessed below.

**Building Separation**

Clause 58.04-1 seeks to provide building separation in order to:

- Ensure the setback of a building from a boundary appropriately responds to the existing urban context or contributes to the preferred future development of the area.
- Allow adequate daylight into new dwellings.
- Limit views into habitable room windows and private open space of new and existing dwellings.
- Provide a reasonable outlook from new dwellings.
- Ensure the building setbacks provide appropriate internal amenity to meet the needs of residents.

However, the standard does not specify metrics for achieving this. Clause 22.07 is a local policy which addresses this gap, by specifying preferred setbacks dependent on the interface and type of outlook.

The rear (west facing) dwellings along the laneway (level 2 and above) do not comply with the building setback to lane standard outlined in Clause 22.07. The living areas should be setback 6 metres from the centre of the laneway to the balcony edge, whereas they are setback 3 metres.

A variation is appropriate in this instance because the land to the west is located within a core industrial area. This means that this land is unlikely to redevelop to a significant height. As such, the west facing dwellings will enjoy appropriate internal amenity into the future.

Otherwise the proposal generally provides adequate daylight to living rooms, bedrooms, provides opportunities for open space and landscaping areas and ensures dwellings are located and designed to reduce overlooking into habitable rooms and private open space areas. The dwellings are primarily oriented to the three street frontages and the southern lightwell exceeds the minimum dimensions sought by Clause 22.07.

#### Room Depth

The floor to ceiling heights are 2.7 metres. Standard D25 (Room Depth) requires single aspect rooms to not exceed a depth of more than 2.5 times the floor to ceiling height. On this basis the depth of the living area should not exceed 6.75 metres. There are 23 dwellings where the living area depth exceeds 6.75 metres by between 0.05 metres and 1.85 metres. These dwellings are appropriate given the depth does not exceed 9 metres, the floor to ceiling height is 2.7 metres and the rooms combine the living areas, kitchen and dining area.

#### Windows

The proposed building incorporates eight dwellings where the second bedrooms light source (window) is via a smaller secondary area (saddleback arrangement). Standard D26 requires that the window be clear to sky and the secondary area be a minimum width of 1.2 metres and a maximum depth of 1.5 metres.

Dwellings 104, 105, 106, 204, 205 and 206 comply with this standard. Dwellings 108 and 208 meet the minimum width requirement but not the minimum depth requirement, with a proposed depth of 1.8 metres (0.3 metre variation). The variation sought for these two dwellings is negligible and appropriate given the width and floor to ceiling height both comply with the standard.

A condition of the recommendation requires the air-conditioning units to be relocated away from the windows to prevent any obstruction of daylight.

#### Natural Ventilation

40% of dwellings should provide for effective cross ventilation that has a maximum breeze path through the dwelling of 18 metres and a minimum breeze path through the dwelling of 5 metres. Ventilation openings should be approximately the same area. The breeze path is measured between the ventilation openings on different orientations of the dwelling. The SMP commits to 100% of dwellings with natural ventilation whilst the plans show 47%. This provision is compliant with the standard a condition of the recommendation will require a revision to the SMP.

#### Noise

The proposal was accompanied by an Acoustic Report demonstrating that the site will be adequately sound attenuated from neighbouring industrial land uses and road noise. Concerns have been raised regarding the potential noise generated from the dwellings after occupancy. Residential noise associated with a dwelling is considered normal and reasonable in an urban setting. Any future issues of noise disturbance, if they arise, should be pursued as a civil matter.

#### Balconies

As described above the dwellings each have an area of private open space compliant with the planning scheme requirement of at least 8 square metres. However, Standard D9 (Private Open Space) requires that if a cooling or heating unit is located on a balcony, the balcony should provide an additional area of 1.5 square metres. 26 of the 51 dwellings have air conditioning units with the balcony space, this compromises the useability, functionality and amenity of this space. A permit condition will require that these balconies be increased by 1.5 metres or that the units be relocated outside the private open space area.

## **Has adequate car and bicycle parking been provided?**

### Car parking

Clause 52.06 requires 53 spaces for the dwellings. A total of 46 spaces are proposed, therefore a reduction of 7 spaces is sought. The existing retail tenancy has no existing on site car parking and the use and size of the retail is not proposed to change. Therefore, there is no car parking requirement for this component of the proposal.

Clause 22.02-3 (Car and Bike Parking and Vehicle Access) that it is policy to:

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

The site is within:

- A 150m walk of the furthest of the closest pair of tram stops (north-south travel);
- A 130m walk of the furthest of the closest pair of bus stops (east-west travel);
- A 350m walk of the (from city) entrance of Moreland station (north-south travel);
- A 270m walk to the closest car share vehicles of the same company; and
- Close to good bicycle routes.

Council's Development Advice Engineer advised given the site has good access to alternative transport modes the reduction of seven car spaces is appropriate.

### Bicycle Parking

This application provides 42 bicycle parking spaces for the 51 apartments (containing 85 bedrooms). Clause 52.34-5 requires the provision of 15 spaces. Clause 22.03-3 supports reduced car parking rates in developments where the provision of bicycle parking exceeds the rates specified in Clause 52.34. The proposal offers less than one bicycle parking space per dwelling in an area where bicycle usage is particularly high and encouraged. Provision of one space per dwelling will be required as a condition of the recommendation.

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

In relation to traffic impacts, Council's Development Advice Engineer assessed the advertised plans and considered that the development would result in 310 vehicle movements per day along Cozens Street. This remains within the capacity of the street network and is not expected to cause traffic problems.

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

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

- Utilises the laneway from Cozens Street for vehicle access to allow street frontages to prioritise pedestrian movement and safety and to create active frontages.
- Provides one bicycle spaces per dwelling (required by condition) in a convenient bicycle storage room.
- Removes two crossovers from the Cozens Street frontage and maintains no crossovers to Sydney Road.

## **Does the proposal incorporate adequate ESD features?**

The advertised plans were not supported by the ESD Unit on the basis that the development and associated documentation does not adequately demonstrate best practice ESD in accordance with Clause 22.08 of the Moreland Planning Scheme.

The positive aspects of the proposal include:

- 6.5-star NatHERS average
- 7.5kW solar PV system
- Improved materials, such as lower toxicity paints.
- 80% construction and demolition waste recycling.

Further information is required to confirm the development achieves best practice, including detail regarding the stormwater response, additional energy modelling for apartments and commercial areas, details regarding the efficiency of the western external shading devices and the proposed glazing. The SMP commits to an electric vehicle charging station and on site green/food waste; these initiatives are required to be shown on the plans prior to endorsement (this is required by the recommendation).

The recommendation includes a condition requiring the submission of an amended Sustainability Management Plan that achieves best practice to Council's satisfaction.

### **Removal of Easements**

Clause 52.02 relates to Easements and 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.*

A permit is required to create, vary or remove an easement. Easements E1, E2 and E3 apply to the land and are proposed to be removed. E1 is a sewerage easement providing connection to a drain within the ROW to 8431 Sydney Road, this site is now within the subject site so upon the redevelopment of this proposal E1 will be redundant.

E-2 and E-3 easements relate to eaves and light and air and sit between the subject site and the southern adjoining lot (841 Sydney Road). The existing conditions consist of a wall built on the south boundary where easements E-2 and E-3 are located. There are no longer windows on the adjoining site to the south which benefit from the light and air easements.

The proposal was advertised and the beneficiary did not object. An objection was received from the western adjoining property regarding the easements however they do not benefit that property. Therefore, these easements are no longer serving their original purpose and their removal will be in accordance with the purpose of Clause 52.02. Conditions contained within the recommendation will ensure the easements are removed prior to the commencement of works.

### **Is the proposal accessible to people with limited mobility?**

Objective 9 of Clause 23.03-3 (Housing) is to increase the supply of housing that is visitable and adaptable to meet the needs of different sectors of the community. Standard D17 (Accessibility) of Clause 58 requires at least 50% of apartments to meet certain design criteria, including clear paths of travel and adaptable bathrooms. The proposal achieves this with 27 of the 51 dwellings meet this requirement (52%). Some conditions, included in the recommendation, are required to ensure these dwellings fully comply with Standard D17.

### **Is the site potentially contaminated?**

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



### **Are there potential flooding requirements?**

The site is not subject to a Special Building Overlay or Land Subject to Inundation Overlay or any other flooding relating control contained within the Moreland Planning Scheme. However, Council's City Infrastructure Department advised that the north-eastern corner of the site is potentially subject to a 1 in 100-year flooding event. The applicant has been made aware of this information and has agreed to a condition requiring a drainage report to be prepared addressing and mitigating any potential flooding threat.

## **5. Response to Objector Concerns**

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

- Overshadowing
- Loss of daylight
- Impact upon ventilation
- Car parking
- Size of the living areas within the dwellings
- Height of the building
- Neighbourhood Character
- Noise
- Removal of easements

Other issues raised by objectors are addressed below.

### Overdevelopment

The proposal satisfies the requirements of the Planning Scheme, including Clause 58, therefore the proposal is not considered to be an over development of the site. State Government Policy, particularly Plan Melbourne, as well as Council Policy supports higher densities in areas that are within Activity Centres, or within areas with good access to public transport and other services. Given the sites location in an Activity Centre and its proximity to public transport the level of development proposed is appropriate and consistent with the Planning Policy Frameworks.

### Impact on infrastructure

An objector concern was the impact of the dwellings on infrastructure, particularly sewer, drainage and rubbish collection. The site owner will be required to address infrastructure servicing demands of the additional dwellings as required by the various service agencies at the time of subdivision or connection of the development, including any service authority's requirements to contribute to the cost of upgrading trunk infrastructure. It is noted that private garbage collection where loading occurs on site is proposed.

## **6. Officer Declaration of Conflict of Interest**

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

## **7. Financial and Resources Implications**

There are no financial or resource implications.

## **8. Conclusion**

On the balance of policies and controls within the Moreland Planning Scheme and objections received, it is considered that a Notice of Decision to Grant Planning Permit No MPS/2019/941 should be issued for the development of the land for a building comprising dwellings and a restricted retail premises, with rooftop terrace and basement park, use of the land as dwellings, a reduction of the car parking requirement and the removal of easements subject to the conditions included in the recommendation of this report.

## Attachment/s

- 1 [!\[\]\(467d80e979964f7f8c752fb22248b5b7\_img.jpg\)](#) MPS/2018/941 Attachment 1 – Locality Plan D19/302922
- 2 [!\[\]\(b71552d33dbf62adf5e5199a70ee02bf\_img.jpg\)](#) MPS/2018/941 Attachment 2 - Advertised plans D19/302907