



Moreland City Council

COUNCIL AGENDA

PLANNING AND RELATED MATTERS

WEDNESDAY 27 FEBRUARY 2019

COMMENCING 6.30 PM

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

Language Link

This is the Agenda for the Council meeting.
For assistance with any of the agenda items,
please telephone 9240 1111.

這是市政會會議的議程。您若在理解議程中有需要協助的地方，請打電話給“語言連接 (Language Link)”翻譯服務，號碼9280 1910。

Questo è l'ordine del giorno per la Riunione del consiglio Comunale. Se hai bisogno di aiuto sugli argomenti in discussione, sei pregato di telefonare al Language Link al numero 9280 1911.

Αυτή είναι η Ημερήσια Διάταξη για τη Συνεδρίαση του Συμβουλίου (Council Meeting). Για βοήθεια με οποιοδήποτε από τα θέματα της ημερήσιας διάταξης, παρακαλείστε να τηλεφωνήσετε στο Γλωσσικό Σύνδεσμο (Language Link), στο 9280 1912.

هذا هو جدول أعمال اجتماع المجلس البلدي. للمساعدة بأي بند من بنود جدول الأعمال الرجاء الاتصال بخط Language Link على الرقم 9280 1913.

Belediye Meclisi Toplantısının gündem maddeleri burada verilmiştir. Bu gündem maddeleri ile ilgili yardıma ihtiyacınız olursa, 9280 1914 numaralı telefondan Language Link tercüme hattını arayınız.

Đây là Nghị Trình cuộc họp của Ủy Ban Quy Hoạch Đô Thị. Nếu muốn biết thêm chi tiết về đề tài thảo luận, xin gọi điện thoại cho Language Link qua số 9280 1915.

यह काँसिल की बैठक का कार्यक्रम है। कार्यक्रम के किसी भी विषय के बारे में सहायता के लिए कृपया 9280 1918 पर फोन कीजिए।

这是市政府例会的议题安排，如果需要协助了解任何议题内容，请拨打9280 0750。

ਇਹ ਕੌਂਸਲ ਦੀ ਮੀਟਿੰਗ ਦਾ ਏਜੰਡਾ ਹੈ।
ਏਜੰਡੇ ਦੀ ਕਿਸੇ ਆਈਟਮ ਬਾਰੇ ਮਦਦ ਲਈ,
ਕ੍ਰਿਪਾ ਕਰਕੇ 9280 0751 ਤੇ ਟੈਲੀਫੋਨ ਕਰੋ।



1. **WELCOME**
2. **APOLOGIES**
3. **DECLARATION OF INTERESTS AND/OR CONFLICTS OF INTERESTS**
4. **CONFIRMATION OF MINUTES**

The minutes of the Planning and Related Matters Meeting held on 23 January 2019 be confirmed.

5. **COMMITTEE REPORTS**

CITY FUTURES

DCF11/19	1-5 WESTON STREET, BRUNSWICK - PLANNING APPLICATION MPS/2018/518 (D19/54600)	3
DCF10/19	21, 23, 25 NORTHUMBERLAND ROAD PASCOE VALE - PLANNING APPLICATION MPS/2018/471 (D19/24001)	24

6. **URGENT BUSINESS REPORTS**

**DCF11/19 1-5 WESTON STREET, BRUNSWICK - PLANNING
APPLICATION
MPS/2018/518 (D19/54600)**

Director City Futures

City Development

Executive Summary

The application seeks approval for the use and development of the land for a cinema, separate retail premises and reduction in car parking requirements to zero. The application was advertised and 34 objections were received in addition to three letters of support. The main issues raised in objections are, no car parking provided on site, loss of on-street parking to provide bicycle parking, noise from the cinemas and the orientation of the cinema complex.

A Planning Information and Discussion meeting was held on 21 November 2018 and was attended by Councillor Dorney, the applicant and approximately 15 objectors. Following the meeting the applicant has provided additional information in relation to the assumptions forming the basis of the traffic and acoustic report, as well as a response to a traffic report prepared on behalf of the management of Barkly Square Shopping Centre. They have also provided additional information in relation to the acoustic report.

The report details the assessment of the application against the policies and provisions of the Moreland Planning Scheme.

The key planning considerations are:

- The impact of the proposed uses on car parking demand in the area.
- The impact of noise associated with the cinema itself and from the arriving and leaving of patrons particularly at closing time.

The proposal incorporates a high level of compliance with the planning scheme. The location of the site is appropriate for the proposed use and the applicant has provided adequate justification for support of the proposal in response to the above concerns.

It is recommended that a Notice of Decision to Grant a Planning Permit be issued for the proposal subject to the conditions outlined in the recommendation.

Officer Recommendation

That a Notice of Decision to Grant a Planning Permit No. MPS/2018/518 be issued for the use and development of the land for a cinema, retail premises and reduction in car parking requirements to zero at 1-5 Weston Street Brunswick, subject to the following conditions:

1. Before the use and 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 11 September 2018 but modified to show:
 - a) The vertically parked bicycles will be parked no less than 500 millimetres apart and in a staggered height arrangement as shown in Figure B7 of the Australian Standard for Parking Facilities – Bicycle Parking (AS2890.3) 2015;
 - b) The provision of staff bicycle parking (for 6 staff) vertically parked in an area secure from the public;
 - c) Any practical changes to the plans required by condition 3 (public works plan) of this permit;
 - d) The verandah 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 in accordance with Clause 507 of the Building Regulations 2006;
 - e) 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;
 - f) The rear (northern end) of the rooftop cinema bar to be enclosed;
 - g) Initiatives contained within the amended Sustainable Management Plan (SMP) including:
 - i. The size location and placement of the rainwater harvesting tanks;
 - ii. Rainwater harvesting tanks specified as being the capacities 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. Any other changes as per the amended SMP.
 - h) All Council street trees in front of the site shown and marked as being retained;
 - i) A landscape plan which shows:
 - i. Any stormwater management details on the WSUD response, including rainwater harvesting tank locations, etc;
 - ii. Highlight details of green wall/green façade/roof planting on the plans showing the green wall or facade area, with details of proposed plant species, substrate materials and structural support required;
 - iii. Provision and location of planter boxes which shows vegetation as an integrated part of the architecture to include a planting schedule, along with typical details of the planter boxes including soil build up and drainage;
 - iv. All Council street trees marked on the endorsed plans as being retained must have a Tree Protection Zone (TPZ);
 - j) A note on the plans to confirm that the proposed feature wall on the western street elevation will be constructed from recycled bricks;

2. The use and 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 62.01, 62.02-1 and 62.02-2 of the Moreland Planning Scheme unless specifically noted as a permit condition.
3. Prior to the endorsement of plans, a Public Works Plan and associated construction drawing specifications detailing the works to the land must be submitted and approved to the satisfaction of the Responsible Authority. The Plan must detail works in front of the approved building along Weston Street, Brunswick; Edward Street, Brunswick and the adjacent laneway which include and show:
 - a) The extension of the public footpath into the road replacing the existing four on-street parking spaces in front of this site with bicycle parking in a layout in accordance with the Australian Standard for Bicycle Parking (AS2890.3), plus any associated drainage works that may be necessary. A detailed level and feature survey of the footpaths and roads;
 - b) 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;
 - c) A 1.5-metre-wide strip of existing bluestone cobbles in the adjacent laneway are to be reconstructed as saw-cut bluestone to Council's standards from Weston Street to Edward Street, Brunswick and the two exit doors of the building;
 - d) The public footpath reinstated with the standard crossfall slope of 1 in 40 from the top of the roadside kerb to the property boundary, within any level difference.
4. Prior to the issue of a Building Permit in relation to the development approved by this permit, a Development Infrastructure Levy must be paid to 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.

 If an application for subdivision of the land in accordance with the development approved by this permit is submitted to Council, payment of the Development Infrastructure Levy can be delayed to a date being whichever is the sooner of the following:
 - a) a maximum of 12 months from the date of issue of the Building Permit; or
 - b) prior to the issue of a Statement of Compliance for the subdivision.
5. 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.
6. The bicycle storage room is to have self-closing and self-locking doors or gates that are only accessible using keys, codes or swipe cards in accordance with the Australian Standard for Bicycle Parking (AS2890.3).
7. Prior to development commencing (including any demolition, excavations, tree removal, delivery of building/construction materials and/or temporary buildings), all Council trees marked on the endorsed plans as being retained 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 1 centimetre of trunk girth measured at the soil/trunk interface on a weekly basis.
 - e) Provision of Services
Unless with the prior written consent of the Responsible Authority, all services (including water, electricity, gas and telephone) must be installed underground, and located outside of any TPZ, 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).
8. 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).
 9. Prior to the commencement of construction or carrying out of 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 an Environmental Assessment Report must be submitted to and be to the satisfaction of the Responsible Authority. The Responsible Authority may require the applicant to contribute financially to an independent review of the environmental site assessment information by a suitably qualified environmental professional. The Environmental Assessment Report is to be conducted by a competent professional practitioner with relevant experience in the field. The owner must comply with the findings of the site assessment to the satisfaction of the Responsible Authority. The Environmental Assessment Report must:
 - a) Specify the name and qualifications of the person who has conducted the Report;
 - b) Provide comment on the potential for offsite contamination to have migrated to the subject land from neighbouring land. Soil sampling and analysis of the subject site may be required where access to definitive information regarding neighbouring land is not obtainable or is inconclusive;
 - c) Specify the industrial process or activity, waste or substance in respect of which the Report was conducted;
 - d) Specify the segment of the environment in respect of which the Report was conducted;

- e) Include an evaluation of the environmental quality of the relevant segment of the environment;
 - f) Include an assessment of any clean-up that is necessary, including recommendations relating to the carrying out of the clean-up, and any compliance requirements to enable the land owner to ensure that the land is suitable for the proposal;
 - g) Include a further recommendation to the Responsible Authority as to whether the condition of the land is such that an Environmental Audit should be conducted taking into consideration the proposed use.
10. Should the Environmental Assessment Report required by condition 9 recommend an Environmental Audit, then 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).

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

- 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.
- 12. Prior to the endorsement of plans, an amended SMP must be submitted to and approved to the satisfaction by the Responsible Authority. The SMP must demonstrate

a best practice standard of environmentally sustainable design and be generally in accordance with the SMP prepared by GIW and dated 22/06/2018, but modified to include the following changes:

- a) An improved response to the 'energy response' objectives of Clause 22.08, including:
 - i. Preliminary JV3 modelling report is required to demonstrate that the proposed building as modelled with proposed building fabric reduces annual heating and cooling energy consumption by 10% as compared to when the proposed building is modelled with NCC reference fabric should be included. The reference glazing spreadsheet and proposed glazing spreadsheets as part of this assessment. The JV3 report should be prepared at a minimum as per the ABCB Protocol for Building Energy Analysis Software.

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.

- 13. 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.
- 14. Prior to the occupation of the building approved under this permit, a report (or reports) from the author of the SMP, approved pursuant to this permit, or similarly qualified person or company, must be submitted to the Responsible Authority.

The report(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. Specific details confirming the ESD measures have been implemented must be included.
- 15. The cinema allowed by this permit must operate only between the following hours:
 - a) Monday to Sunday 9:00 a.m. to 12:00 midnight
 - b) Daily cleaning of the premises must be completed by 1am the following day.
- 16. The maximum number of patrons permitted for the cinema must not exceed 1123 at any one time.
- 17. Patrons attending the roof top cinema must vacate the roof top within 30 minutes after the movie screening.
- 18. Any external lighting must be designed, baffled and located to the satisfaction of the Responsible Authority to prevent any adverse amenity impact on any adjoining property.
- 19. A suitably qualified acoustic consultant must be engaged to ensure SEPP N-2 noise limits are met during the detailed design phase of the project or prior to the commencement of the use.
- 20. The building must be constructed and 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.
- 21. Within 2 months of the commencement of the cinema use allowed by this permit, acoustic testing is to be carried out to ascertain whether the use complies with the recommendations of the approved acoustic report, including the maximum noise levels

prescribed in State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2. The testing is to be carried out by an independent acoustician approved by the Responsible Authority. If the testing reveals that the use does not meet the specified maximum noise levels, the buildings and works must be modified to make the use compliant with those levels. After any modifications have been made further acoustic testing must be carried out to ascertain whether the use complies with the prescribed noise levels. All acoustic testing is to be carried out during a busy period to the satisfaction of the Responsible Authority. The results of testing are to be provided to the Responsible Authority and made available to the public.

22. Noise levels associated with the use must at all times comply with the State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2. Should the Responsible Authority deem it necessary, the owner and/or occupier of the land must submit an Acoustic Report to the satisfaction of the Responsible Authority to demonstrate compliance, or which outlines any measures considered necessary to achieve compliance. The recommendations of the Acoustic Report must be implemented to the satisfaction of the Responsible Authority. The endorsed plans must be amended to accord with the recommendations contained in the Acoustic Report to the satisfaction of the Responsible Authority.
23. 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;
 - c) the use is not commenced 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:

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

Notes

Note 1. It may be necessary to obtain a building permit prior to the commencement of any demolition, building works or occupation of the building. It is strongly recommended that you consult with a registered building surveyor to advise on any requirements under the Building Act, the Building Regulations and any other subordinate legislation. Further information can be sought from the Victorian Building Authority, Phone 1300 815 127 or www.vba.vic.gov.au. Council's building services branch can also assist you in the provision of this service and can be contacted on 9240 1111 or <http://www.moreland.vic.gov.au/planning-building/building-renovations-and-extensions/>.

Note 2. This permit is for the use of the land and/or buildings and does not constitute any authority to conduct a business requiring Health Act/Food Act registration without prior approval in writing from the Responsible Authority.

Note 3. Unless no permit is required under the Moreland Planning Scheme, no sign must be constructed or displayed on the land without a further planning permit.

Note 4. 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 5. Environmental Audits

- 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 comprises land at 1-5 Weston Street, Brunswick (Lot 1 TP807631, Lot 1 TP807629, Lot 1 TP8683 and Lot 1 TP807632A). It is located approximately 50 metres east of Sydney Road, Brunswick.

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

The site has a northern frontage to Edward Street of 14.96 metres, a southern boundary to Weston Street of 41.28 metres, a western boundary to an unnamed laneway of approximately 41.28 metres and an overall site area of approximately 1925 square metres.

Occupying the site is a 2-storey building that was previously used as a warehouse and is currently vacant. The building is built to the boundary with the exception of the Edward Street, Brunswick frontage which is setback from the street and is currently used for the purpose of car parking.

Surrounds

The subject site is located near the Sydney Road corridor of the Brunswick Activity Centre which offers a variety of retail, commercial and hospitality uses including the Barkly Square Shopping Centre.

Having regard to the site's immediate interfaces, the following is noted:

- Land on the north side of Edward Street contains an at-grade public car park.
- Land to the immediate west at 12 Edward Street is occupied by a single storey building used for the purpose of a food and drink premises. Further west along Edward Street, on the opposite side of the lane, is a row of 2-storey townhouses (4, 4A, 6, 6A, 8, 8A and 10 Edward Street) with areas of secluded private open space located to the rear.
- Planning Permit No. MPS/2014/67 was issued for the land at 162-170 Sydney Road (west of the subject site) and allows for the construction of a 6-storey building plus roof deck comprising dwellings and a food and drink premises. As construction of this development is yet to commence, the site is currently vacant.
- A number of properties fronting Sydney Road also contain back of house areas which are located to the west of the subject site on the opposite side of the unnamed lane.
- Land to the east (18-20 Edward Street) contains a single storey brick building occupied by Scribe Publications.
- Along Weston Street, to the west of the Site is the Brunswick Hotel.

The site is close to the Jewell Railway Station and trams along Sydney Road and bus services along Brunswick Road and Glenlyon Road.

A location plan forms **Attachment 1**.

The proposal

The proposal is summarised as follows:

Buildings and works

- Demolition works including the removal of the existing stairs fronting Edward Street and internal walls (no permit required).
- Internal re-arrangement of the ground and first floor level of the building and conversion to ten (10) cinemas (including rooftop cinema), with approximately 1,123 seats combined.

- Creation of a new Cinema entry along Weston Street and infilling of the existing ground floor windows, creation of new circular window openings and new cantilevered canopy. The entry foyer includes a ticket box, back of house facilities and a candy bar counter.
- Infilling of the existing doors along Edward Street and introduction of a new entry door and glazing to the separate Retail Premises tenancy.
- Construction of a new outdoor cinema towards the southern end of the roof level towards the Weston Street frontage with 100 seats. The rooftop is accessed via a new stair and lift.
- The rooftop cinema is setback approximately 14 metres from the Weston Street frontage and 68 metres from Edward Street. It is approximately 11 metres wide and 25 metres long. The cinema screen is 8.5 metres long and the overall height of the new rooftop works is 14.42 metres from ground level to the top of the cinema screen.

Use

- The operating hours for the indoor cinemas will be between 9 am and midnight everyday.
- The rooftop cinema will operate until midnight (7 days) from November to the end of March, every day of the week.
- Patrons are proposed to wear headphones during the screening of movies in the rooftop cinema.
- A bar is proposed on the rooftop. The application does not include the sale and consumption of liquor.
- No car parking is to be provided, and there are 59 bicycle spaces proposed (6 on site and 53 on the Weston and Edward Street footpath). The on-street bicycle parking would become a Council asset and treated as street furniture that Council maintain.
- A separate retail premises tenancy is proposed on the ground floor with a floor area of 169sqm, fronting Edward Street.

Signage does not form part of this application and a separate application for signage will be made in the future, if necessary.

The development plans form **Attachment 2**.

Planning Permit and Site History

There is no relevant history for the site that relates to this application.

Statutory Controls – why is a planning permit required?

Control	Permit Requirement
Industrial 3 Zone	<p>Clause 33.03-1 A planning permit is required to use the land for the purpose of a Place of Assembly (cinema).</p> <p>Clause 33.03-1 A planning permit is required to use the land for the Retail Premises.</p> <p>Clause 33.03-4 A planning permit is required to construct buildings and works.</p>
Car parking	Clause 52.06 – A planning permit is required for a reduction in the car parking requirement to zero.

The following particular provisions are also relevant to the consideration of the proposal.

- Clause 45.06 - Development Contributions Plan Overlay.
- Clause 52.34 - Bicycle parking

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 letters to owners and occupiers of adjoining and nearby land. This included sending letters to the owners and occupiers of all properties within and including the area bounded by:
 - East side of Sydney Road between Merri Street and Barkly Street.
 - South side of Merri Street between Sydney Road and Charles.
 - East side of Charles Street Between Weston Street and Merri Street.
 - North side of Barkly Street between Sydney Road and Barkly Street Park.
 - All properties in Edward Street between Sydney Road and 77 Edward Street as well as all properties along Weston Street between Sydney Road and 49-51 Weston Street were also notified.
- Placing a sign on the Weston Street and Edward Street frontages of the site.
- Placing a copy of the public notice in one edition of the Moreland Leader and the Northern Leader.

Council has received 33 objections and 3 letters of support to date. A map identifying the location of objectors forms **Attachment 3**.

The key issues raised in objections are:

- Lack of car parking associated with the proposed development;
- Concerns about traffic report assumptions;
- Concerns expressed in the Salt Traffic Report on behalf of the owners of Barkly Square;
- Loss of on street parking;
- Loss of on street parking associated with the provision of bicycle parking;
- Impact of the proposed outdoor cinema in terms of noise on the surrounding residential properties;
- Orientation of the cinema complex;
- Whether headphones will be used whilst roof top cinema movies are being shown;
- General noise from roof top activities;
- Noise from patrons leaving the cinema;
- Operating hours;
- Overshadowing of solar panels on adjoining property;
- No loading facilities.

A Planning Information and Discussion meeting was held on Wednesday 21 November 2018 and was attended by Councillor Dorney, two Council Planning officers, the applicant and approximately 15 objectors. The meeting provided an opportunity to explain the application, for the objectors to elaborate on their concerns, and for the applicant to respond.

Following the discussions at the Planning and Information Discussion meeting, the applicant agreed to provide additional information to respond to the objector's concerns. The information provided will be discussed later in the report.

Internal/External Referrals

The proposal did not require referral to any external agencies.

The application was referred to the following internal branches/business units.

Internal Branch/Business Unit	Comments
Urban Design Unit	No objections were offered to the proposal. The Urban Design Unit supports the project as the recommended design changes were included in the proposal prior to public notice.
Development Advice Unit	No objections were offered to the proposal subject to modifications, which are addressed by conditions detailed in the recommendation. The Development Advice Engineer has reviewed the applicants traffic assessment and the traffic assessment by the owners of Barkly Square and has concluded that the application should be supported.
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 State Planning Policies are of most relevance to this application:

- Clause 9 Plan Melbourne
- Clause 11.02 Managing Growth
- Clause 11.03-01S Activity Centres
- Clause 13.04-1S Contaminated and potentially contaminated land
- Clause 15.02 Sustainable Development
- Clause 17.01 Employment

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 21.03-2 Land for Industry and Economic Regeneration
- Clause 21.03-5 Environmentally Sustainable Design (Water, Waste and Energy)

Local Planning Policies:

- Clause 22.03 Car and Bike Parking and Vehicle Access
- Clause 22.08 Environmentally Sustainable Design

Whilst not located within an Activity Centre, the subject land is adjacent to the boundary of the Brunswick Activity Centre. The proposed use and development responds well to local policy and will create further employment opportunities consistent with the Moreland Industrial Land Strategy (MILS) 2015-2030).

Planning Scheme Amendments

Amendment C164

The northern part of the subject site which fronts Edward Street is affected by Amendment C164, which applies to industrial land within the Brunswick Activity Centre identified in the Moreland Industrial Land Strategy (MILS) 2015-30 as Category 2 – Employment and Category 3 – Transition-residential MILS Areas.

This part of the site is included as part of Amendment C164, as it falls within a MILS Category 2 – Employment Area.

This land is proposed to be rezoned to the Commercial 1 Zone, however Council resolved at the 14 November 2018 Council Meeting to investigate the opportunity for the application of the Commercial 3 Zone. The Design and Development Overlay (DDO18) will also be applied to the site as part of the Amendment.

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, objections received and the merits of the application.

Is there strategic support for the uses?

The proposed uses comprise use of the land for a Cinema and use of the land for a Retail Premises.

The site is located within two categories within the Moreland Industrial Land Use Strategy (MILS):

<i>Northern portion (fronting Edward Street)</i>	<i>Employment Area (Category 2)</i>
<i>Southern portion (fronting Weston Street)</i>	<i>Core Industry Area (Category 1)</i>

The MILS is a reference document within the Planning Scheme.

Clause 21.03 - The Strategic Framework identifies the relevant objectives and strategies to achieve the Council Vision and Strategic Objectives which includes the reinforcement of Core Industry and Employment areas and the transition of traditional industries to a broader range of employment issues within Employment Areas (Category 2).

The relevant purposes of the Industrial 3 Zone include:

- *To provide a buffer between the Industrial 1 Zone or Industrial 2 Zone and local communities, which allows for industries and associated uses compatible with the nearby community.*
- *To allow limited retail opportunities including convenience shops, small scale supermarkets and associated shops in appropriate locations.*
- *To ensure that uses do not affect the safety and amenity of adjacent, more sensitive land uses.*

The proposed uses are considered acceptable in terms of the above policy for the following reasons:

- The proposed use will support the Brunswick Activity Centre as a place where people can walk to work and access their daily and weekly needs which includes entertainment. Importantly, a cinema would add diversity to the night economy.
- The nature of industry is changing in the area and the proposed uses are complimentary to other uses within the industrial precinct and located within the core industry and employment areas.
- The uses add to the diversity of employment opportunities in the area.
- Whilst not approved, Amendment C164 indicates Council's strategic thinking to allow the rezoning of part of the site to a Commercial 3 Zone. The relevant purposes of the Commercial 3 Zone are:

- To provide for a range of industrial, commercial, office and other employment generating uses which support the mixed-use employment function of the area.
- To promote collaborative and high-quality working environments which support the area through good urban design and high-amenity, accessible and well-connected places.
- To provide opportunities for limited retail uses which are complementary to the role and scale of the area.

A planning permit would be required for a Place of Assembly (cinema) in a Commercial 3 Zone.

Can offsite amenity impacts be managed?

There are residential uses to the west of the site within the Commercial 1 Zone. The closest residentially zoned land is 103 metres to the east. The nearest industrial use is a steel fabrication factory located at 11 Weston Street approximately 20 metres to the east of the site.

The applicant has submitted an expert Acoustic Report in support of the application.

Outcomes from the Acoustic Report are as follows:

- Patrons will use headphones during the screening of films on the rooftop.
- Cinema and music noise emitted from the subject site must comply with the SEPP N-2 at the nearest residential receiver.
- A suitably qualified acoustic consultant must be engaged to ensure SEPP N-2 noise limits are met during the detailed design phase of the project or prior to the commencement of the use. This has been included as a condition in the recommendation.
- Patron noise complies with established noise limits (based on case law and inter-state requirements) for patron noise based on the assumptions specified in the report. However, it is noted that patron noise cannot be measured against any standard under Victorian State Environmental Protection Policies (SEPP).

Following the Planning Information and Discussion meeting, the applicant's acoustic engineer has further advised:

- The position and orientation of the roof top cinema was selected to provide the most appropriate noise mitigation solutions.
- Noise barriers are not required to comply with the project noise limits. Notwithstanding this, the applicant has agreed to a condition requiring the rear (northern end) of the rooftop cinema bar to be enclosed. This is included in the recommendation.
- Roof top cinema noise will be inaudible in the carpark to the north.

Based on the outcomes detailed in this assessment, noise emissions from the subject site are expected to comply with the appropriate noise limits and guidelines.

As part of the preparation of the report, a noise logger was placed at ground level 3 metres from the northern façade of the building. While objectors expressed concern that the placement of the noise logger did not factor in the elevated position of the outdoor cinema, the purpose of the noise logger was to determine the existing background noise rather than the noise from the proposed cinema. The ground level location of the noise logger was the most appropriate location to determine the existing background noise.

Objectors are also concerned with patron noise both from the rooftop cinema and from patrons leaving the site. The Acoustic Report notes that there are no State noise standards in relation to patron noise. Patron noise limits were therefore established with reference to assessment of sleep disturbance criteria, based on Guidance from NSW Road Noise Policy and Victoria Civil and Administrative Tribunal precedents.

Patron noise levels for the site were based on a sample of 100 people leaving the Lido Cinema in Hawthorn. The patron noise limits include a quasi-steady or average patron noise based on the existing background level noises and a maximum patron noise limit based on sleep disturbance criteria. The nearest sensitive noise source was located at residential properties at 162-170 Sydney Road and 10 Edward Street, Brunswick. Patron noise level complied with the criteria at these sites.

Objectors have raised concerns that patron noise in the public car park in Edward Street will impact on residents in Dodd Street to the north of the car park. In response to resident concerns, planning policy indicates that the amenity expectations are different in an Activity Centre and the same level of amenity cannot be expected as in a Residential Zone.

Some of the objectors have suggested that the cinema should cease operation at 11pm at night to reduce amenity impacts. The applicant responded by advising that a 12-midnight closing time is required to enable the roof top cinema to operate because movies will screen after dark. This is supported as any patron noise associated with the use complies with established noise limits for patron noise with respect to the location of the nearest residential receiver. The location of the site in terms of policy also supports the use and the proposed hours of operation.

Concerns have been expressed about lighting in general associated with the proposed use and development. A condition has been included in the recommendation to ensure that lighting from the use will not unreasonably impact on adjoining properties

Are the proposed buildings and works appropriate?

The decision guidelines at Clause 33.03-4 direct consideration to the streetscape character, built form, interface with non-industrial areas, parking and site access.

The proposed buildings and works are acceptable for this application. In particular, the zero setback of the proposed building extension to Edward Street is considered appropriate given the commercial/industrial context of the area.

The application was also assessed by Council's Urban Design Unit. It has been recommended that the feature wall of the development on Edward Street be constructed from recycled bricks and that the circular windows on the Weston Street elevation be inset further than was originally shown. The applicant has accepted both of these design recommendations which were included on the advertised plans.

Objectors from the adjoining property at 18-20 Edward Street are concerned about overshadowing of solar panels on their roof caused by the new buildings and works. The applicant has submitted a set of shadow diagrams that show that shadows will be cast on the solar panels from 1:00pm onwards on the 22 September. Despite this there are no specific requirements within the planning scheme for the protection of solar panels on a commercial building.

The orientation of the screen has been considered and is deemed to be acceptable in the context of the surrounding development. The applicant was asked to consider reorienting it to face south but advised that they did not wish to because the screen is positioned to provide the best views for patrons on the rooftop when they are viewing a movie – i.e. over the parkland to the south with the CBD in the background. It is noted that the screen will not be readily visible from the dwellings in Edward Street and the apartments on the north side of the Edward Street car park are located in excess of 170 metres from the proposed screen. Hence, the screen does not need to be re-oriented.

Has adequate car and bicycle parking been provided?

Clause 52.06 of the Planning Scheme requires 336 car spaces to be provided for the cinema use and 6 spaces for the retail premises use. No on-site parking is proposed, so approval for a reduction of car parking to zero is sought.

Based on Council's Local Planning Policy at Clause 22.03-3 (Car and Bike Parking and Vehicle Access) it is 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 proposal is located close to the boundary of the Brunswick Activity Centre and has excellent access to public transport. The locations of public transport routes are as follows:

- A 90 metre walk from a pair of tram stops on Sydney Road (north-south travel);
- A 120 metre walk east of the site to a bus stop on Weston Street (Brunswick to West Brunswick only);
- A 450 metre walk from a pair of bus stops in Glenlyon Road (east-west travel);
- A 400 metre walk from both entrances at Jewell Station (north-south travel);
- Close to good bicycle routes, including the Upfield Bike Path.

The proposal also includes the provision of 59 bicycle spaces. The proposed floor areas, number of patrons and employees for the retail premises and cinema generate a requirement for 7 bicycle spaces as specified in Clause 52.34 – Bicycle Facilities of the Moreland Planning Scheme. The additional provision of bicycle spaces further supports the proposed reduction of car parking and is therefore consistent with Clause 22.03 of the Scheme

Council's Strategic Transport and Compliance Branch is satisfied that the car parking requirement can be reduced for this application.

The applicant's Traffic Report also includes an empirical assessment of parking demand and supply. A comparable car parking profile was used to estimate demand for the proposed cinema based on Classic Cinema in Elsternwick which share similarities in location profile, and operation.

Classic Cinema Elsternwick has a total seating capacity of 729 seats and operational data indicates that typical cinema attendance on weekdays vary from 6%-16% of total permitted persons, with attendances in the evening increasing up to 20%. Saturday attendance in the evening vary from 35%-55% of capacity, with daytime attendance approaching 20%.

Applying the operational data to the proposed cinema with daytime seating capacity of 1033 and evening seating capacity of 1123, an anticipated parking demand can be calculated. During weekday operation attendance would expect to be 62-165 persons and evening patronage up to 224 people. Saturday day attendance is expected to be up to 206 and evening attendance varying from 339-561.

The traffic report does not provide information about the percentage of patrons that drive to the Classic Cinema in Elsternwick. The parking demand of 0.3 spaces per patron from Clause 52.06 is applied to calculate the parking demand generated from the expected patrons:

- Weekday afternoon: 21-51 spaces
- Weekday evening: 68 spaces
- Weekend afternoon: 64 spaces
- Weekend evening: 118-185 spaces

A parking occupancy survey was undertaken on Friday, 2 February 2018 and Saturday, 3 February 2018 between 12:00PM and 11:00PM at 1-hour intervals. The survey area included the surrounding streets, with the furthest parking space no more than 450m away, and excluding permit zones, loading zones or time restrictions allowing for less than a 2-hour stay. It is noted that the survey occurred prior to the closure of the nearby Brunswick Hotel, which closed in March 2018.

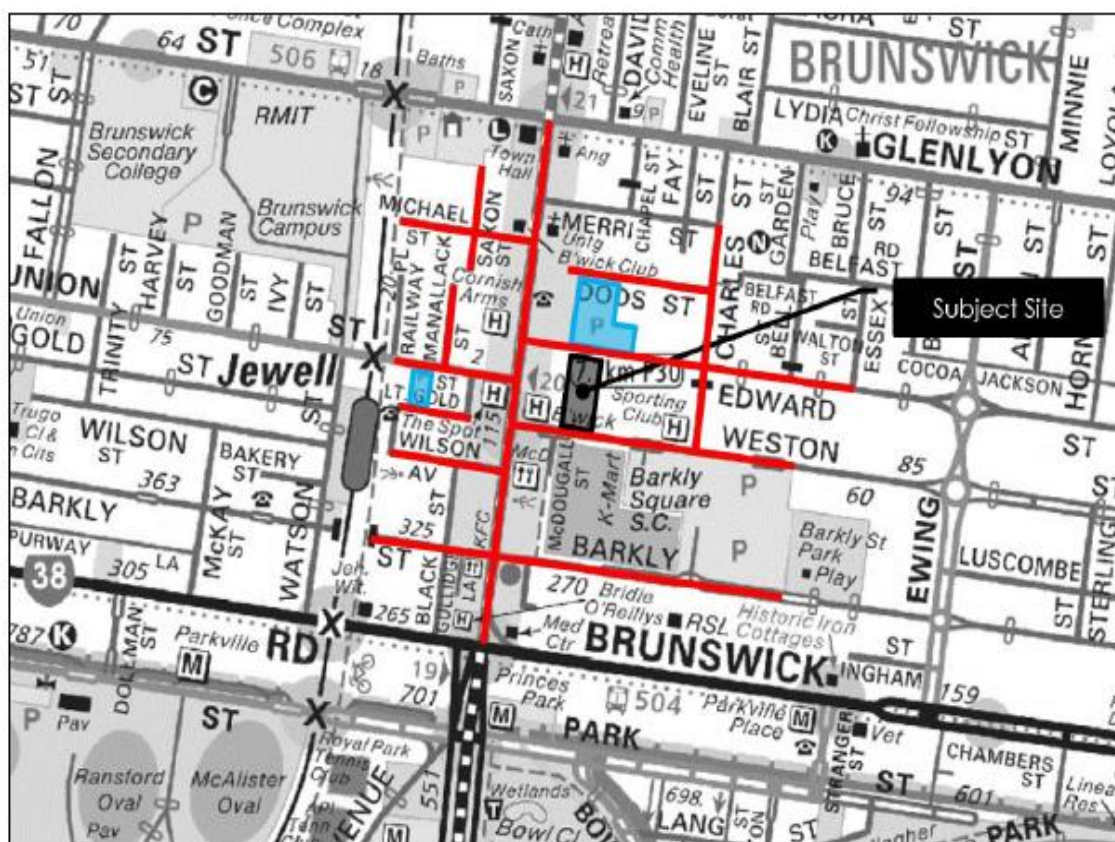


Figure 1 Parking Survey Area (Source: Traffic Report by one-mile grid dated 26 June 2018)

Day	Period	Parking Demand	Peak parking Demand Time	Minimum Parking spaces Available during peak	% of Available Spaces
Weekday	Open – 6pm	21 – 51	1:00pm	61	34% - 84%
	6pm – Close	68	7:00pm	216	31%
Weekend	Open – 6pm	64	6:00pm	157	39%
	6pm – Close	118 - 185	9:00pm	298	40% - 62%

Note: Parking demand rate of 0.3 per patron from Clause 52.06 is applied to expected cinema attendees to determine parking demand.

The parking survey shows that sufficient vacancies exist within the available parking spaces to accommodate expected parking demands generated by the site. Further, the parking survey shows the availability of parking in the surrounding area is greatest in the evening which coincides with the period of peak demand generated by the proposal.

Council undertook a review of the traffic impact assessment and in principle support the waiver. The additional supply of bicycle parking facilities and access to public transport routes aligns with Council's policy of supporting sustainable modes of transport.

Council has also considered other relevant factors identified under Clause 52.06-7 of the Moreland Planning Scheme for considering whether a car parking reduction is appropriate for the proposed use, which among other things include:

- *Likelihood of multipurpose trips.* It is conceivable that people will do their shopping and at the same time go and see a movie. This would reduce the demand for car parking associated with the proposed use.
- *The practicality of providing car parking on site.* Given the retention of the existing building, the site is very limited in terms of the number of car spaces it could provide on-site to support the proposed use. The provision of parking on-site would also interfere with pedestrian movement to and from the site.
- *End of trip facilities for bikes.* The proposal includes the provision of 52 bicycle parks in support of the application that people can use when they attend the movies if they ride bikes when attending a movie. The proposal includes staff showers to encourage staff bicycle use.

Based on the information submitted to Council, the reduction in car parking and provision of bicycle parking can be supported for the proposed uses.

Other objector concerns relating to car parking

The owners of Barkly Square engaged Salt Traffic Engineers to provide a peer review on the traffic report submitted by the applicant. One of the concerns related to the use of available parking in front of residential properties in the traffic report. Although the parking survey included spaces in front of some residential properties, they are still within areas where mixed parking use would be expected. Through a separate process, residents are able to apply for parking restriction modification including extended parking restrictions. When implementing parking modifications, Council will prepare a circular advising of any proposed changes and if it is supported by residents/businesses of that street then Council will implement parking restrictions.

Objections have also been submitted concerning the use of Barkly Square by patrons at the cinemas. Council acknowledges that vehicles visiting the cinema may utilise the Barkly Square Shopping Centre carpark due to its close proximity and unmetered 3P time parking restriction. Barkly Square Carpark is privately owned and managed, as such it is the responsibility of the management to provide and maintain parking as they see fit. The private carpark could introduce a number of measures to ensure supply is maintained for customers only, including, pay stations, gated carpark or regular enforcement.

Objectors have expressed concern about the loss of on-street car parking to accommodate the proposed bicycle parking at the expense of residents who cannot obtain parking permits. Residents who are ineligible for parking permits are from new dwellings that were subdivided after 31 August 2011. Those dwellings were approved on the basis that parking on-street parking would not be necessary for their dwelling.

Are adequate loading/unloading facilities provided?

Objectors have expressed concern about the absence of any loading or unloading facilities on the site. Council's Strategic Transport and Compliance Branch have assessed the application and conclude that the proposal without loading bays is accepted. It is likely that most deliveries will occur from small vans which can be accommodated on the street.

There are two existing loading bays which can be utilised by the proposed uses. On-street loading bays do not provide exclusive access for a single business and can be utilised by all appropriate delivery vehicles in the area.

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. Council have provided the applicant with existing traffic data for surrounding streets including Weston Street and Edward Street to assist in an analysis and traffic generation. The response provided by the applicant indicates that the proposed use will generate an additional 400 traffic movements a day on Weston Street and an additional 600 movements a day on Edward Street. There will also be additional traffic in the nearby streets (Charles Street and Ewing Street) as cars arrive, depart and circulate looking for parking. However, the additional traffic volumes will not cause these streets (other than Weston Street) to exceed the traffic volumes recommended in the Moreland Integrated Transport Strategy 2010. Weston Street (Sydney to Ewing) is industrial/commercial and is one of the major access streets to the Barkly Square Shopping Centre, hence its significant historical traffic volumes. However, the traffic signals in Weston Street at Sydney Road will ensure that the intersection will operate appropriately, even with the additional traffic, and therefore the traffic is accepted.

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 is generous with the provision of bicycle parking.
- It provides good access bicycle routes.
- The proposal also includes 59 bicycle parking spaces which is above the 7 specified in Clause 52.34.
- The proposal integrates appropriately with the Upfield bike path given the location of the site.
- It removes a crossover from Edward Street.

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

The objective of Clause 21.03-5 Environmentally Sustainable Design (Water, Waste and Energy) is *to encourage development to contribute to environmentally sustainable development*. The applicant has submitted an ESD report which has been assessed and will be endorsed to form part of the permit. Conditions are included in the recommendation to ensure the implementation of the ESD report and to achieve best practice in environmentally sustainable design in accordance with Clause 22.08 of the Moreland Planning Scheme. The development will include positive ESD features such as 20kW solar panels, a 40,000 litre rainwater tank, rooftop planting, bicycle spaces and end of trip facilities.

Is the site potentially contaminated?

The applicant has advised that a Preliminary Site Assessment was conducted on the site and a report as completed by Senversa in January 2018. The report recommended that intrusive investigation works be completed at the site to assess the risk to future site users (currently a non-sensitive commercial use) from potential land contamination associated with previous site uses and activities. Part of the recommendation will require the applicant to conduct another Preliminary Site Assessment which will include an intrusive investigation into the site. The report associated with this assessment will either conclude that the site is suitable for the proposed use in its current condition or that an Environmental Audit is required for the site. Appropriate conditions have been included in the recommendation to ensure that the site is suitable for the proposed use.

5. Response to Objector Concerns

The following issues and questions raised by objectors and applicant responses are addressed in Section 4 of this report:

- *Lack of car parking associated with the proposed development*
- *Concerns about traffic report assumptions*
- *Concerns expressed in the Salt Traffic Report on behalf of the owners of Barkly Square.*
- *Loss of on street parking.*
- *Loss of on street parking associated with the provision of bicycle parking.*
- *Impact of the proposed outdoor cinema in terms of noise on the surrounding residential properties.*
- *Orientation of the cinema complex.*
- *Whether headphones will be used whilst roof top cinema movies are being shown.*
- *General noise from roof top activities.*
- *Noise from patrons leaving the cinema.*
- *Operating hours.*
- *Overshadowing of solar panels on adjoining property.*
- *No loading facilities*

Other issues raised by objectors are addressed below.

- *Impact of the proposed development on sewerage*

Sewerage infrastructure is a broader matter that is beyond the scope of this application. The owner will be required to address infrastructure servicing demands as required by the relevant service authorities towards the upgrade of existing infrastructure.

- *Concern regarding the limitations expressed in the acoustic report.*

The company responsible for the acoustic report has advised that the intent of the third-party disclaimer is to limit potential reliance on the report by parties not associated with the application at the time the acoustic report was prepared. It does not mean the report cannot be relied upon by Council in making a decision on this application.

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 proposed cinema development is appropriate for the site having considered concerns with regard to noise, the proposed operating hours and the reduction in car parking. The applicant has justified the need for the proposed operating hours and the traffic and acoustic reports submitted with the application have addressed the remaining concerns.

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 a Planning Permit No. MPS/2018/518 be issued for the use and development of the land for a Cinema (including a roof top cinema) and separate Retail Premise and reduction in car parking requirements to zero at 1-5 Weston Street Brunswick, subject to the conditions included in the recommendation of this report.

Attachment/s

- | | | |
|----------|--|-----------|
| 1 | MPS/2018/518 - 1-5 Weston Street Brunswick - Location Plan | D19/54785 |
| 2 | MPS/2018/518 - 1-5 Weston Street Brunswick - Development Plans | D19/54854 |
| 3 | MPS/2018/518 1-5 Weston Street, Brunswick - Objector Map | D19/54746 |

**DCF10/19 21, 23, 25 NORTHUMBERLAND ROAD PASCOE VALE -
PLANNING APPLICATION MPS/2018/471 (D19/24001)**

Director City Futures

City Development

Executive Summary

The application seeks approval for the development of the land by the construction of a building (seven storeys with roof terrace) containing 73 dwellings.

The application was advertised, and 76 objections were received. The main issues raised in objections are excessive height, lack of car parking, traffic generation and an overdevelopment of the site.

The report details the assessment of the application against the policies and provisions of the Moreland Planning Scheme.

The key planning considerations are:

- Does the proposed building exceed the mandatory height limit of the Design and Development Overlay Schedule 24 (DDO24) of the Moreland Planning Scheme?
- Is the proposal an overdevelopment of the site?
- Is the built-form an appropriate design outcome?
- Will the amenity for future occupants be acceptable?
- Is traffic congestion to the surrounding area acceptable?

The proposal exceeds the mandatory height limits of 13.5 metres and four storeys of DDO24 of the Moreland Planning Scheme. This means the proposal is prohibited and a permit cannot be granted. The proposal is an overdevelopment of the site, is not an appropriate design outcome, will result in unreasonable amenity for future occupants and will unreasonably affect traffic flow.

The matter is currently before the Victorian Civil and Administrative Tribunal (VCAT) as the applicant lodged a review for Council's failure to make a determination within the statutory timeframe. It is recommended that Council's submission to VCAT be one of refusal for the application subject to the grounds outlined in the recommendation.

Officer Recommendation

That Council notify the Victorian Civil and Administrative Tribunal that had it been in a position to determine the application, a Notice of Refusal to Grant a Planning Permit No. MPS/2018/471 would have been issued. The development of the land by the construction of a building (seven storeys with roof terrace) containing 73 dwellings at 21, 23 and 25 Northumberland Road, Pascoe Vale is subject to the following grounds of refusal:

1. The proposed development fails to meet the following standards and objectives of the Design and Development Overlay, Schedule 24 and Schedule 2 to the Residential Growth Zone and the Moreland Neighbourhood Centres Strategy 2017:
 - (a) The development exceeds the mandatory height limit of 13.5 metres and four storeys.
 - (b) The preferred 4.5 metre primary setback for living areas of apartments G.17, M.17 L3.14 and L3.15, resulting in poor outlooks and lower daylight levels.
 2. The proposal is an overdevelopment of the site and fails to meet the requirements of Clause 22.01 (Neighbourhood Character Policy) of the Moreland Planning Scheme as the proposal does not align with the intended intensity of the Neighborhood Activity Centre at a lesser scale than Moreland's Major Activity Centres.
 3. The proposal fails to respond to Clause 58.01-3 (Design Response) as demonstrated through:
 - (a) The extent of excavation resulting in subterranean Secluded Private Open Space to dwellings GR.01, GR.02, GR.03, GR.04, GR.05, GR.06, GR.07, GR.08 and GR.09 at Garden Level and dwellings LG.01, LG.02, LG.03, LG.04, LG.05, GR.06, GR.07, GR.08 and GR.09 at Lower Ground Level.
 - (b) The poor presentation of dwellings G.01, G.03, G.05, G.07, G.09, G.11, G.13, G.15 and G.17 to the street.
 - (c) Lack of accessibility due to the number of steps from the street frontage to dwelling entries and the slope of access ramps.
 - (d) The use of a car lift and the access restrictions this creates.
 4. The proposal fails to respond to the requirements of Clause 22.07 (Apartment Development of Five or More Storeys) of the Moreland Planning Scheme as the lack of rear setback will result in unreasonable daylight levels to habitable rooms of the Garden Level and the Lower Ground Level.
 5. The development fails to meet the requirements of Clause 22.08 (Environmental Sustainable Development) of the Moreland Planning Scheme.
 6. The development fails to meet the following Standards and Objectives of Clause 58 (Apartment Developments) of the Moreland Planning Scheme:
 - a) Standard D1 – Urban Context Objective
 - b) Standard D2 – Residential Policy Objective
 - c) Standard D4 – Infrastructure Objective
 - d) Standard D6 – Energy Efficiency Objective
 - e) Standard D7 – Communal Open Space Objective
 - f) Standard D10 - Landscaping Objective
 - g) Standard D14 – Building Setback Objective
 - h) Standard D16 – Internal Views Objective
-

- i) Standard D22 – Site Services Objective
 - j) Standard D26 – Windows Objective
 - k) Standard D27 – Natural Ventilation Objective
7. The proposal fails to meet the requirements of Clause 52.06 (Car Parking) of the Moreland Planning Scheme as:
- (a) The development will result in unacceptable traffic congestion impacts on the function of nearby roads due to the restricted access to the car parking entry to the site.
 - (b) The development does not demonstrate that the Northumberland Road bus route will not be disrupted in accordance with Transport for Victoria requirements.
 - (c) The car parking is not convenient to dwellings contrary to Design Standard 6 (Safety).
 - (d) The floor to ceiling heights of the lower and upper basement car parks are insufficient for the installation of the proposed car stacker units.
8. The development does not meet the purpose of Clause 52.34 (Bicycle Facilities) as the bicycle parking proposed is not accessible and convenient.
-

REPORT

1. Background

Subject site

The subject site consists of three lots located at 21, 23 and 25 Northumberland Road Pascoe Vale, known as Lots 19, 20 and 21 of Plan of Subdivision 1763. The three lots have an overall site area of 2,391 square metres.

Each lot is currently developed with a single storey dwelling. The subject site slopes between 6.97 and 7.47 metres from the south-eastern corner to the north-western corner.



Photograph 1: View of the subject site to 25, 23 and 21 Northumberland Road.

Surrounds

The surrounding area has two distinct characters – east and west.

East

The eastern side of Northumberland Road, Pascoe Vale and further to the east is located within a General Residential Zone, with a three-storey, 11 metre height limit. The predominant built form of existing housing stock to the east is of single and double-storey dwellings on single lots. There is minimal infill development of double and single-storey townhouses. The density is low, with large open rear yards and significant landscaping. Between Northumberland Road and Cumberland Road to the east are a number of parks including James Reserve and Rogers Reserve.



Photograph 2: View of eastern side of Northumberland Road and the typical character of the streetscape.

West

The western side of Northumberland Road and the land to the west towards Railway Parade, to the south to Gaffney Street and north to Fawcner Road is contained within a Residential Growth Zone associated with the Gaffney St/Pascoe Vale Station Neighbourhood Activity Centre. The area is undergoing significant change with multi-unit development, generally in the form of three-storey townhouses. There are over 140 townhouses constructed over 30 sites within 150 metres of the subject site. The townhouses are generally in rows with building separations containing driveways or landscaped pedestrian walkways.



Photograph 3: View of typical three-storey townhouse development on Fawcner Road

A location plan forms **Attachment 1**.

The proposal

It is proposed to construct a multi-storey building containing 73 dwellings.

The proposal is summarised as follows:

- Two levels of apartments below natural ground level.
- Five levels of apartments above natural ground level.
- A rooftop with a service area containing plant and solar array, along with a 235 square metres communal roof terrace with a staircase access from Level 3.
- A total of 106 car spaces provided in car stacker arrangement in two levels of basement. Vehicle access is provided via a crossover on the northwest corner of Northumberland Road, with the basement accessed via a car lift.
- 80 bicycle spaces to be provided at basement 1 and 2 car parks (location only annotated on plans).
- The dwelling typologies proposed are:

Dwelling type	1 bed apartment	2 bed apartment	3 bed apartment	2 bed townhouse	3 bed townhouse	4 bed townhouse
Number	31	6	6	3	22	5



Figure 2: East Elevation (from Northumberland Road)

What is the proposed height?

This is a key issue for clarification given the implications of the mandatory height controls.

Clause 73.01 (General Terms) of the Moreland Planning Scheme contains the following definitions that are relevant to this application and its description:

<u>Basement</u>	A storey below ground level, or that projects no more than 1.2 metres above ground level
<u>Building Height</u>	The vertical distance from natural ground level to the roof or parapet at any point
<u>Storey</u>	That part of a building between floor levels. If there is no floor above, it is the part between the floor level and the ceiling. It may include an attic, basement, built-over car parking area, and mezzanine

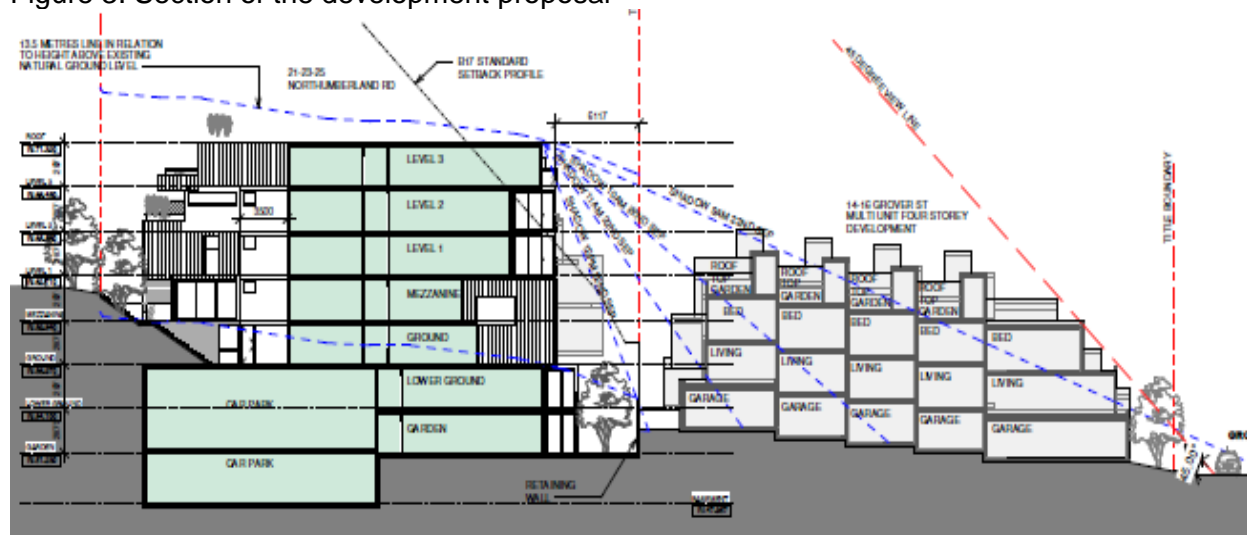
Due to the slope of the land, and the cut proposed within the site, the lower two levels of apartments are below natural ground level.

The proposal is for a building that varies in height across the site. At some points the building is 4 storeys above natural ground level (i.e. 9.76 metres at street frontage). However, at other points of the site (i.e. west elevation) the building is 5 storeys and 15.82 metres above natural ground level with two basement stories below (i.e. 7 storeys). This is demonstrated in Figure 3 below.

Given the above definitions, the proposal is for a seven-storey building.

This is because the basement levels and the mezzanine are defined as a storey in their own right.

Figure 3: Section of the development proposal



SECTION D 1:200

The development plans form **Attachment 2**.

Planning Permit and site history

Planning Permit MPS/2015/741 was issued for 21 and 23 Northumberland Road on 24 October 2016 for the development of the land for 10 (part three/part four-storey) dwellings over two lots. This permit is still valid.

Statutory Controls – why is a planning permit required?

Control	Permit Requirement
Residential Growth Zone	Use of the land as dwellings is a Section 1 use in the zone, meaning that a permit is not required for the use. Pursuant to Clause 32.07-5 a permit is required to construct two or more dwellings on a lot.

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

- Clause 45.06: Development Contributions Plan Overlay: The site is affected by the Development Contribution Plan Overlay (DCPO) Schedule 1. Pursuant to Clause 45.06 of the Moreland Planning Scheme, a plan has been incorporated into the scheme enabling the levying of contributions for the provision of works, services and facilities prior to development commencing.
- Clause 52.06: Pursuant to Clause 45 Column B of Clause 52.06-5 Table 1 no visitor car parking is required.

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; and
- By placing three signs on the frontage the site.

Council has received 77 submissions, consisting of 76 objections and one letter of support to date. A map identifying the location of objector's forms **Attachment 3** noting that several objectors reside outside of the immediate locality.

The key issues raised in the objections are:

- a) Non-compliance with the requirements of the DDO24
- b) Non-compliance with Clause 58 (Apartments) standards - lack of setbacks to rear boundary, lack of outlook, adverse amenity impacts
- c) Lack of car spaces for visitors
- d) Too many car spaces provided
- e) Lack of landscaping and open space
- f) Wrong typology (apartment building) with an excessively long 60 metre continuous façade and too many 1-bedroom apartments
- g) Excessive traffic generation and increase road safety issues
- h) Overdevelopment– density, height, scale and bulk - not respectful of the neighbourhood character
- i) Overload existing infrastructure
- j) Loss of property value due to loss of views
- k) Overshadowing
- l) Overlooking
- m) Rubbish collection

There is one letter of support, which cites more housing choice with smaller apartments (increased dwelling diversity) means greater affordability.

The applicant lodged an appeal against Council's failure to determine the application within the statutory timeframe to the Victorian Civil Administration Tribunal on 13 November 2018.

It is noted a Compulsory Conference is scheduled for 20 February 2019, where VCAT parties are encouraged to resolve the dispute. On a without prejudice basis, amended plans have been circulated to VCAT parties, these are not the application plans and do not form part of this assessment.

There are 11 objector parties to the appeal.

Internal/external referrals

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

External Agency	Objection/No objection
Transport for Victoria	No objection subject to condition requiring no disruption to the bus operation along Northumberland Road during construction.

Internal Branch/Business Unit	Comments
Urban Design Unit	Unsupportive of the proposal in regard to: <ul style="list-style-type: none">(a) The lack of rear setbacks(b) The lack of design response to the existing lower-scale built form on surrounding sites and resulting excessive visual bulk(c) Poor amenity for future occupants due to the lack of outlook

Strategic Transport and Compliance Branch	<p>Unsupportive of the proposal in regard to:</p> <ul style="list-style-type: none"> (a) The lower ground level and garden level car parks have insufficient floor-to-ceiling heights to support the double and triple car stackers without a redesign and increased deep soil excavation. (b) Concern regarding traffic impact on the local road network from car lift and impact on public transport route. (c) The lack of access due to steps and ramps
Environmental Sustainable Development (ESD) Unit	Unsupportive of the proposal due to a poor ESD outcome relative to a proposal of this size.
Open Space Design and Development Unit	Unsupportive of the proposed location and type of planting will result in a poor landscaping outcome.

3. Policy Implications

Planning Policy Framework (PPF)

The following State 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 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 Five or More Storeys
 - Clause 22.08 Environmentally Sustainable Design
-

Council through its MSS, seeks increased residential densities into its Activity Centres to take advantage of access to public transport and other services within these locations. The subject site is located within the Gaffney Road/Pascoe Vale Station Neighbourhood Activity Centre. In this centre a substantial change towards a new character to accommodate buildings up to and including four storeys is supported.

The subject site is located within a neighbourhood activity centre with access to public transport and a range of community services. However, with a building of seven storeys proposed, the application is in excess of the four-storey mandated height. The proposal represents a poor environmental response and a poor design response to Council's Neighbourhood Character Policy and DDO24.

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, objections received and the merits of the application.

Does the proposal respond to the preferred and future character of the area?

The proposal is an unacceptable response to Clause 22.01 (Neighbourhood Character), Clause 58.02-1 (Urban Context objectives), Clause 58.03-1 (Residential Policy Objectives) and Schedule 24 of Clause 43.02 (Design and Development Overlay) of the Moreland Planning Scheme.

The subject site is located within the Gaffney Street/Pascoe Vale Station Neighbourhood Activity Centre (Pascoe Vale NAC). Clause 22.01-2 policy objective states that in regard to neighbourhood centres, policy objectives are:

- (a) To facilitate an increase in density and scale of built form at a lesser intensity and scale to the larger centres of Coburg, Brunswick and Glenroy.*
- (b) To support change towards a new character as defined in Schedule 24 to the Design and Development Overlay (DDO24).*

The proposal at 7 storeys with 73 dwellings is considered to be similar to development which is occurring within the three major activity centres of Coburg, Brunswick and Glenroy and therefore does not meet the above policy objective. Additionally, it does not meet the new character as defined in DDO24 for buildings up to four-storeys.

The Neighbourhood Character policy at Clause 22.01-3 goes on to state:

- (a) Ensure new development is designed to meet the provisions set out in Schedule 24 to the Design and Development Overlay (DDO24) and if applicable, Schedule 2 to the Residential Growth Zone (RGZ2).*
 - (b) Ensure building height does not exceed four storeys unless it can be demonstrated that:*
 - (i) The prevailing height of surrounding buildings is five or more storeys, in which case the prevailing height should not be exceeded; or*
 - (ii) The site is large enough to allow the visual impacts of the development to be mitigated through the design response. In such cases, the building height at the interface with adjoining properties and at street frontages should not exceed four storeys.*
-

- (c) *Ensure development is designed to provide a suitable transition at interfaces with adjoining zones. This may include a transition in height and/or suitable landscaping.*
- (d) *Encourage contemporary architecture.*

Schedule 2 of the RGZ2 states that the maximum height of 13.5 metres does not apply to land where the slope of land is greater than 2.5 degrees over an 8-metre cross-section (as is the subject site), in which case the building height must not exceed a height of 14.5 metres.

However, the provisions of DDO24 state that the height for this Neighbourhood Activity Centre (NAC) cannot be varied with a permit and must comply with the heights listed in the map at Figure 8 (Gaffney Street/Pascoe Vale Station, Pascoe Vale Neighbourhood Centre). This shows that maximum building heights for this activity centre are “13.5 metre, four-storeys”. This height is the mandatory limit.

Council’s interpretation of the DDO24 as it applies to this site is that a proposal must not exceed 13.5 metres and be no greater than four-storeys. In other words, both the height in metres and storeys are mandatory.

A calculation of the building height using the survey and the roof plans submitted with the application shows that the building will have a maximum height of between 13.85 metres and 15.82 metres along the southern façade, which is between 0.35 metre and 2.32 metres above the mandatory 13.5 metre height limit. In addition, the elevations show that greater than 4-storeys will be visible above natural ground level, in excess of the 4-storey height limit. At the western elevation parts of the building are 7-storeys overall, with 5-storeys being above natural ground level.

Clause 73 includes a basement and a mezzanine as a defined storey, and therefore, the proposal will contain 7-storeys overall, 3-storeys in excess of the mandatory 4-storey control.

In addition to exceeding the mandatory height of the DDO24, the provisions of the Neighbourhood Character policy are to ensure that the building height does not exceed 4- storeys unless the prevailing height of surrounding buildings is 5 or more storeys or the site is large enough to allow for visual impacts to be mitigated through the design response and building height at the interface with adjoining properties and at street frontages should not exceed 4-storeys.

The prevailing surrounding building height is of 3-storey townhouses to the west and single-storey dwellings to the east. The proposal will present at 5-storeys to the western adjoining property and as part 4/part 5 to the northern and southern adjoining sites. The 5-storey presentation to the sites to the west, north and south does not mitigate visual impacts or allow for a transition in height either through setbacks or landscaping. Any revised proposal which complies with the mandatory height requirement would still need to achieve a suitable transition to adjoining sites.

Clause 58.02-1 Urban Context Objective (Standard D1) states that the design response must be appropriate to the urban context and the site and must respect the existing or preferred urban context.

The proposal does not meet the mandatory height limits, meaning that a planning permit cannot be issued for the proposal in its current form.

Built-form and articulation

The surrounding area has undergone a substantial change with an intensification of development by the construction of over 140 townhouses in the surrounding streets within the NAC. The common built-form is of row housing, with blocks of 5 to 7 three-storey townhouses separated by common driveways and landscaped pedestrian walkways.

Council's Urban Design Unit do not support the proposed design response at this location. The design of the proposed apartment building does not reduce the massing in response to the rhythm of building placement on surrounding sites.

The design guidelines of the DDO24 state:

- *Building façades should be designed with an appropriate rhythm and proportion that respond to the building's uses and context and contribute to a fine grain urban character.*
- *New buildings should adopt solid architectural expression that emphasises the street edge through the use of recessed balconies, framed elements and solid balustrades.*
- *Side setbacks should incorporate articulation to break down building mass through the use of materials and finishes.*

The proposal fails to satisfactorily respond to the above design guidelines as:

- (a) The building extends across the street frontage approximately 57 metres. This mass contains inadequate visual breaks and results in a proposal that does not contribute to a fine grain character. The building will present as a large single unbroken mass.
- (b) The western (rear) façade presents as a single unbroken continuous façade and at five storeys above natural ground level will be a dominating feature as seen from surrounding sites and within the immediate neighbourhood.
- (c) The façade design to the Northumberland streetscape is of projecting unframed balconies and garden terraces. This is contrary to the design guideline that the street edge should be emphasised by the use of recessed balconies and framed elements.

Has adequate car and bicycle parking been provided?

Bicycle spaces

A total of 22 bicycle spaces (15 for the dwellings plus 7 visitor bicycle spaces) are required in accordance with Clause 52.34 (Bicycle Facilities) of the Scheme. The traffic report submitted with the application states incorrectly that only 15 spaces are required and goes on to state that 80 on-site spaces will be provided.

However, these are not clearly shown on the plans with only a plan notation of the location on the basement car park plans. The area designated appears insufficient to provide 22 spaces in accordance with Clause 52.34.

Access to the car park and the designated bicycle spaces is via a steep entry to the main lobby from the street frontage (a slope of 1:6), and access only via lifts to the basement car parks. Council's Strategic Transport and Compliance Branch consider this access to the bicycle spaces for both residents and visitors to be unacceptable, as it is difficult to push a bicycle up a steep slope and accessing the bicycle space via the vehicle lift is time-consuming given the refresh rate of the lift. This fails to meet the purpose of Clause 52.34 (Bicycle Facilities) as it does not provide accessible and convenient bicycle parking facilities.

Car parking

Clause 52.06 (Car Parking) of the Scheme requires the provision of 1 car space for each 1 and 2-bedroom dwelling and 2 car spaces for each 3 or more-bedroom dwelling.

A total of 106 car spaces are required and have been provided, compliant with the statutory requirement. In addition, the site is located in a Parking Overlay meaning no visitor car parking is required.

Council's Strategic Transport and Compliance Branch consider the floor to ceiling heights of the lower and upper basement car parks to be insufficient to support the double and triple car stacker mechanisms proposed. This is a fundamental flaw in the design that means that the provision of 106 car spaces is unlikely in the space provided.

Consequently, Council is not confident that the proposed development satisfies the Moreland Planning Scheme with respect to the provision of car parking.

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

Council's Strategic Transport and Compliance Branch consider that the development will result in 275 additional vehicle movements per day on Northumberland Road. This road is a collector road and these numbers remain within the road's maximum volumes permitted under the Moreland Integrated Transport Strategy (a reference document at Clause 21.04 of the Scheme).

However, the basement car parks accessed via two vertical vehicle lifts will cause traffic flows concern. Whilst no lift manufacturing details were provided, an investigation into various lift brands available on the market show that common specifications for lift speeds would mean that each of the lifts in the proposed development could only accept one car every three minutes, with a maximum of 20 vehicles per hour per lift capacity (combined 40 vehicles per hour overall).

The ML Traffic Engineer report states that the maximum peak hour vehicle trip rate will be 36.5 vehicles per hour, which is within the 40-vehicle capacity of the two lifts. However, Council's Strategic Transport and Compliance Branch states that vehicles will generally arrive in batches during peak hours and not at regularly spaced time periods. Therefore, there will be vehicles queuing to get lift access, forcing cars onto the street. The ML Traffic Engineering Report is silent on this matter.

The access to the proposed car park is only via lifts from each floor. There is limited access from the street to the car parks due to the number of steps from each dwelling and the steep slope to the main pedestrian lobby. Residents of dwellings G.01, G.03, G.05, G.07, G.09, G.11, G.13, G.15 and G.17 can only access the lift by leaving the building via steps and re-entering the building from the footpath via the pedestrian lobby and then via lifts. This is not convenient access and fails to meet the requirement of Design Standard 6: Safety, of Clause 52.06.

This section of the street has a steep slope to the south-east, towards the crest of a hill, and is only 9m wide. There is car parking on both sides of the street. Northumberland Road contains a designated bus route (Route 542 Roxburgh Park).

Council's Transport and Compliance Branch state this will result in an unacceptable level of traffic congestion on Northumberland Road as there will be insufficient room within the street to accommodate waiting cars. This will cause interrupted traffic flow and disruption of public transport and has the potential to impact on traffic flow entering and exiting the Fawkner Road junction, 50 metres to the north of the car lift entry. The application has also therefore failed to demonstrate that Transport for Victoria's requirement can be achieved.

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

ESD features of the development are considered to be inadequate for a development of this size. Council's ESD Unit consider the proposal is a poor response to Clause 22.08 (Environmentally Sustainable Development) of the Moreland Planning Scheme. Key concerns included:

- (a) The submitted ESD report states that the average NatHERS rating will be 6.5 - 6.6 star, however no modelling was provided to demonstrate this.
-

- (b) The lower 2-storeys are located below natural ground level and over half the apartments are west-facing.
- (c) The 10kW solar PV system is undersized for a development of this scale, and the energy demands in common areas.
- (d) The eastern, northern and western facades show excessive glazing with no solar protection.
- (e) Poor Indoor Environmental Quality, specifically poor natural and cross ventilation.
- (f) No catchment plan provided to demonstrate catchment of water from roof.
- (g) The 937 square metres of permeable area is not shown as being achievable.
- (h) Large areas of green wall/façade are proposed. No details as to planting, soil depths, irrigation and drainage have been provided to demonstrate they can survive. No details of deep soil planting areas have been provided.
- (i) The communal roof has no planting / greening and will be an excessively hot and unusable space in summer.
- (j) Commitments in the Built Environment Sustainability Scorecard (BESS) Report are not shown.
- (k) The BESS report contains missing or misleading information. This results in a pass score that is not accepted.

The cumulation of the above result in an application that has a poor ESD response that does not meet Clause 22.08 (Environmentally Sustainable Development) and Standard D6 Energy Efficiency Objective of Clause 58 (Apartment Developments).

Is the proposal accessible to people with limited mobility?

Objective 9 of Clause 21.03-3 (Housing) is to increase the supply of housing that is visitable and adaptable to meet the needs of different sectors of the community.

Clause 58.05-1 Standard 17 (Accessibility objective) requires 50 per cent of dwellings to meet the needs of people with limited mobility. 55 percent of the 73 dwellings within this development meet this standard.

However, the accessibility of the building from the public realm is not acceptable. The Silver Level standard of the Liveable Housing Design Guidelines is referenced at Clause 21.03-3.1 (Accessibility). It states that a safe, continuous step-free pathway from the front boundary to an entry door to the dwelling should be provided, and the path of travel should have a maximum pathway slope of 1:14.

The development proposes steps to the individual dwelling entries from the street frontage and a path with a slope of 1:6 to the main pedestrian lobby. The Silver Standard is not met. Objective 9 is not met.

Does the proposal satisfy the requirements of Clause 58 (Apartment Developments)?

The purpose of Clause 58 is to:

- *encourage apartment development that provides reasonable standards of amenity for existing and new residents.*
- *To encourage apartment development that is responsive to the site and the surrounding area.*

Clause 58 contains a number of Objectives and associated Standards to ensure the above purpose is met. Below outlines an assessment against the key issues of Clause 58 that have not been addressed in the assessment above.

Standard D4 – Infrastructure Objective

The development should not unreasonably exceed the capacity of the utility services, including reticulated services and road network.

The proposal will have 106 car spaces with an additional 245 vehicle movements a day. Whilst this does not exceed the capacity of Northumberland Road (a collector road) in accordance with Moreland Integrated Transport Strategy, the potential for traffic congestion in the immediate area due to the vehicle lift car park access, will impact on the efficient operation of the local road network.

Standard D7 – Communal Open Space Objective

A communal roof terrace is proposed with an area of 235 square metres, which is in excess of the 182 square metres required for a development of this size. However, the roof terrace will be exposed, having no roof/shading devices and no planting of any kind. Whilst a condition could address this by requiring a roofed structure for shading, with the height of the proposal already exceeding the mandatory 13.5 metres and four-storeys, no further increase in height can be supported.

Standard D10 - Landscaping Objective

A landscaping plan has been submitted. It shows a limited planting scheme. It will have green facades to the building and a green vertical wall to the western retaining wall at lower garden level. There will be 8 new small trees in the Public Open Space (POS) in the street frontage setback and 12 large trees in the POS of the lower garden level and various shrubs.

For a site with an area of 2,391 square metres, this standard requires that a minimum of 15 percent of the site area, or 358 square metres of area to be deep soil planting, with 1 large tree or 2 medium trees per 90 square metres of deep soil. The plans show only 163 square meters of deep soil planting areas (81.87 square metres to the western boundary at Garden Level and 81.68 square metres of garden beds within the front setback. This is 190 square metres less than the standard requires.

The 12 large trees in the rear setback exceeds this standard. However, these trees will be 3.77m below natural ground level and behind a 5.43-metre-high western retaining wall and will be in shadow. The shadow diagrams provided do not take the 5.43-metre-high retaining wall into account and fail to show that the POS of the garden level will be in shadow. Council's Open Space Unit consider that this will impact on the success of all planting to the garden area (including the lawn).

Standard D14 – Building Setback Objective

This standard states that buildings should be separated to allow adequate daylight into new dwellings, limit views into habitable rooms and private open space of new and existing dwellings and provide a reasonable outlook from new dwellings. This should consider any purpose of the zone and overlays, and any relevant policy set out in the Scheme.

The two relevant considerations within the Scheme are DDO24 and Clause 22.07(Apartment development of five or more storey). DDO24 states that there should be a 4.5m setback from the boundary for primary living areas. Clause 22.07 states that for a seven-storey building a setback of 6 metres for the first four storeys and then a 9-metre setback for all remaining levels from a boundary is required.

DDO24

Rear western boundary:

Six of the nine dwellings at Garden Level fail to achieve the required 4.5 metre setback and as they are 3.77 metres below ground level and have a retaining wall 5.43 metres high will have limited outlook. At Lower Ground Level, seven of the nine dwellings fail to achieve this Standard, and will have an outlook to the 5.43-metre-high retaining wall. These apartments will not provide an acceptable level of amenity to future occupants.

The remaining upper levels will all be greater than 4.5 metres setback from the rear boundary.

Northern side boundary:

Apartments G.17 (ground level), M.17 (Mezzanine level) and L3.14 and L3.15 (Level 3) have a northern outlook. These apartments have a balcony setback 4.5 metres from the boundary (meeting the standard) however, both of the balconies are covered and are not fully open with Levels 1, 2 and 3 above.

The living room windows of these apartments are non-compliant with a setback of less than 3 metres (2.19 metres respectively) a shortfall of 2.31 metres. Apartments L3.14 and L3.15 have north-facing balconies setback only 2.88 metres from the northern boundary – a shortfall of 1.62 metres. These apartments will not provide an acceptable level of amenity to future occupants.

Therefore, to be made compliant the development would need to be redesigned to increase the northern setback and potentially require apartments to be removed. This is too large a change to be required by conditions and is an example of the over development of the site.

Clause 22.07 Apartment development of five or more storey

Clause 22.07 states that for a seven-storey building a setback of 6 metres for the first four storeys and then a 9-metre setback for all remaining levels from a boundary is required.

The first four storeys have a rear setback as follows:

- (a) between 4.4 metre and 4.6 metre at Garden Level (storey 1),
- (b) between 3.25 metre and 4.52 metre setback at Lower Ground Level (Storey 2),
- (c) between 6.14 metres and 7.09 metres at Ground Level (Storey 3) and
- (d) between 6.05 metres and 10.09 metres at Mezzanine Level (Storey 4).

The lower two storeys are not compliant with the six-metre setback requirement with a shortage of between 1.6 metre and 2.75 metres. The Garden Level and the Lower Ground Level are below natural ground level, behind a 5.4-metre-high retaining wall and adjacent to 3-storey built-form to the west. These lower level dwellings will be in shadow almost all the time and will have restricted access to daylight which leads to poor indoor environmental quality (IEQ) and is a poor planning outcome.

The upper 3 storeys have rear setbacks that are non-compliant with the 9 metre setback requirement, with a shortage of between 0.27 metres and 2.94 metres. The western properties have already been redeveloped (14-16 Grover Street – three-storey townhouses with roof terraces currently under construction directly to the west). There will continue to be adequate daylight access over the western properties and a variation to the upper levels would be considered acceptable.

Standard D14 - Overlooking

The lesser setbacks will result in overlooking into the habitable room windows of the existing dwellings to the west. This matter could be addressed through screening. However, Standard D14 states that buildings should be setback from rear boundaries to avoid direct views into habitable room windows of existing dwellings and that developments should avoid relying on screening to reduce views. Therefore, screening is not considered an acceptable solution and the proposed setback is unacceptable to address direct views to adjoining sites.

Standard D16 – Internal Views Objective

All of the west-facing dwellings (40 apartments) will have overlooking opportunities into the POS of the Garden Level dwellings. This cannot be conditioned without compromising the outlook of the apartments and is an example of the poor design response.

Standard D22 – Site Services Objective

An area has been set aside at ground level within the northern setback to accommodate services (electricity, internet and water). However, this area is insufficient to accommodate electricity meters, NBN boxes and water meters for a development of this scale with 73 dwellings. Another area for gas meters is located to the south of the vehicle lifts doors. This also appears insufficient to accommodate gas meters for 73 dwellings.

These items could be conditioned but are examples of the lack of design detailing to the proposal and its unsuitability to the site context.

There is a substation shown on plans on the Lower Ground Level Car Park. There will be limited access to this for maintenance as access is via a car lift that would not be able to support larger maintenance vehicles.

Council's Strategic Transport and Compliance Branch have checked the submitted Waste Management Plan (prepared by One-mile grid dated 4 June 2018) and are satisfied with the proposed waste strategy, the bin storage room, the volume of waste proposed, the method of transfer to street level and the collection process.

Standard D26 – Windows Objective

This standard is to ensure that new habitable windows receive adequate daylight. Both Council's Urban Design Unit and ESD Officer expressed concerns regarding the habitable (bedroom) windows of the east-facing dwellings that have a 5-storey deep light court. These dwellings have 1.3-metre-wide windows to bedrooms, which is greater than the 1.2 metre requirement. They are however, located in a 5-storey deep light court, and not on the external wall of the building as is required, and they have obscure glazing to 1.7 metres above the finished floor levels. This will result in poor daylight access.

Clause 22.07 (Apartment development of five or more storeys) has the following requirements for light court sizes:

- (a) Up to 4 storeys or 12 metres – minimum width of 2 metres and a minimum area of 9 square metres.
- (b) 5 to 8 storeys or up to 25 metres – minimum width of 4.5 metres and a minimum area of 29 square metres

The light courts provided are 10.5 square metres in area with a 3-metre minimum width. The first 4 storeys are compliant with the standard however the fifth floor is not, as the fifth-floor light court is not 29 square metres in area or 4.5 metres in width. This compromises the light access to all the lower levels. These lower levels are further compromised as the habitable room windows (bedrooms) have obscure glazing to 1.7 metres above their finished floor level, limiting daylight penetration into the dwellings. This standard is not met, and the affected windows will not receive adequate daylight.

Standard D27 – Natural Ventilation Objective

This standard requires at least 40 percent of dwelling provide for cross-ventilation. The application documents claim that 33 dwellings (45 percent) met this standard.

However, the Apartment Design Guidelines for Victoria (The State of Victoria Department of Environment, Land, Water & Planning 2017) state:

- (a) *Cross ventilation is the movement of air through an internal space (or spaces) between one external opening and another.*
-

Therefore, the breeze path needs to be from one external wall to another. The applicant has included dwellings in their calculations that rely on a path to an internal courtyard that is four storeys deep and is partially encumbered by a flight of stairs rising one storey to the east. Removing these dwellings from the calculations results in 24 dwellings being compliant which is only 32 percent, which falls short of the minimum 40 percent requirement.

This is an example of the over development of the site and its poor design response.

5. Response to Objector Concerns

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

- (a) Non-compliance with the requirements of Design and Development Overlay Schedule 24
- (b) Non-compliance with Clause 58 standards - lack of setbacks to rear boundary, lack of outlook, adverse amenity impacts
- (c) Lack of car spaces for visitors
- (d) Too many car spaces provided
- (e) Lack of landscaping and open space
- (f) Wrong typology (apartment building not townhouses) with an excessively long 60 metre continuous façade
- (g) Excessive traffic generation and increased road safety issues
- (h) Overdevelopment – density, height, scale and bulk - not respectful of the neighbourhood character
- (i) Overload existing infrastructure
- (j) Overlooking
- (k) Rubbish collection

The remaining objector concerns are considered below:

(a) Too many 1-bedroom apartments

The provision of 31 one-bedroom dwellings as well as a mix of other dwelling types will add to the diversity of dwelling types available in the suburb and increase affordability and housing choice in a NAC with a train station. Adequate dwelling diversity is proposed.

(b) Loss of property value to surrounding sites due to loss of views

Property values are speculative and not a planning matter. Fluctuations in property prices are not a relevant consideration in assessing an application under the provisions of the Planning & Environment Act 1987, or the Moreland Planning Scheme.

The Victorian Civil and Administrative Tribunal has consistently found that although impact upon views can be considered amongst the amenity impacts of a proposal, there cannot be considered a right to any particular view. In the absence of particular planning controls which might require the protection of, or sharing of views, loss of views is usually afforded very limited weight. This is especially the case where a view is obtained across adjoining land and the views are not afforded any special consideration in a planning control.

(c) Overshadowing

Clause 58 of the Scheme does not require a shadow impact assessment, unlike Clause 55 of the Scheme. DDO24 only requires an assessment of overshadowing impacts on an existing rooftop solar energy facility on dwellings on adjoining lots in a Residential Growth Zone.

(d) Overload existing infrastructure

A concern in a number of objections was the impact of development on infrastructure. The site owner will be required to address infrastructure servicing demands of the additional dwellings as stipulated by the various service agencies at the time of either subdivision or connection of the development including any service authority requirements to contribute to the cost of upgrading trunk infrastructure.

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 proposed height of the building exceeds the mandatory height controls of the DDO24. As such, the proposal is prohibited as a permit cannot be granted to exceed these mandatory heights. Even if the proposal was not prohibited, an assessment reveals that the proposal results in a poor response to the preferred character, poor amenity for future residents and unacceptable traffic flow impacts. It is considered that Council's position at VCAT be that application No. MPS/2018/471 not be supported, and had Council been in a position to determine the application it would have refused the application on the grounds included in the recommendation of this report.

Attachment/s

- | | | |
|----------|--|-----------|
| 1 | Attachment 1 - Location Map - MPS2018471 - 21, 23, 25 Northumberland Road Pascoe Vale | D19/30730 |
| 2 | Attachment 2 - Objector Location Map - MPS2018471 - 21, 23, 25 Northumberland Road Pascoe Vale | D19/30734 |
| 3 | Attachment 3 - Development Plans - MPS2018471 - 21, 23, 25 Northumberland Road Pascoe Vale | D19/30737 |